

2002 BCSECCOM 878

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - issuer of mortgage pass-through certificates exempt from the requirement to prepare, file and deliver annual report, where applicable, interim and annual financial statements and annual reports, where applicable, in lieu of an information circular subject to conditions, including the requirement to prepare, file and deliver monthly and annual reports regarding performance of pools of assets

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 91 and 119

Securities Rules, B.C. Reg. 194/97, ss. 144, 145, 149 and 184(2)

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, 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 GMAC COMMERCIAL MORTGAGE SECURITIES OF CANADA, INC./GMAC TITRES HYPOTHÉCAIRES COMMERCIAUX DU CANADA INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from GMAC Commercial Mortgage Securities of Canada, Inc./GMAC titres hypothécaires commerciaux du Canada Inc. (the “Issuer”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that the provisions of the Legislation concerning the preparation, filing and delivery of an annual report, where applicable, interim and annual financial statements and the annual filing, where applicable, in lieu of an information circular, shall not apply to the Issuer in connection with public offerings of mortgage pass-through certificates (“Certificates”) of the Issuer;

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

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 the Issuer has represented to the Decision Makers as follows:

1. The Issuer was incorporated under the laws of Canada on March 25, 2002 and is a wholly-owned subsidiary of GMAC Commercial Mortgage of Canada, Limited (“GMACCM Canada”).
2. The head office of the Issuer is located in Toronto, Ontario.
3. The Issuer is a special purpose corporation, the only securityholders of which, excluding GMACCM Canada, will be the holders of its Certificates.
4. The Issuer has offered and will offer mortgage pass-through certificates that entitle the holders thereof (the “Certificateholders”) to the cash flows of discrete pools of whole or participating interests in mortgages, hypothecs or other charges on real or immovable property situated in Canada, and all related assets (including the proceeds thereof and any related security) (collectively, “Assets”) that by their terms convert into cash within a finite time period, and any rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Certificates. The Certificates have been and will be sold to the public pursuant to short form prospectuses on the basis of an approved rating by an approved rating organization, as those terms are defined in National Instrument 44-101 - *Short Form Prospectus Distributions*, or any successor instrument thereto. The proceeds from the sale of Certificates will finance the purchase by the Certificateholders of undivided ownership interests in Assets.
5. As a special purpose corporation, the Issuer will not carry on any activities other than acquiring Assets and issuing Certificates.
6. The Issuer currently has and will have no material assets or liabilities other than its rights and obligations arising from acquiring Assets and issuing Certificates.

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7. No director or officer of the Issuer or any associate thereof is indebted to the Issuer, nor has any director, officer, or any other insider, or any associate or affiliate thereof, entered into a material contract with the Issuer, other than as previously disclosed in documents filed with the Decision Makers.
8. No insider of the Issuer, or associate or affiliate of such insider, has a direct or indirect interest in any transaction which has materially affected or which would materially affect the Issuer.
9. The auditors of the Issuer are PricewaterhouseCoopers LLP.
10. The information contained in the interim and annual financial statements of the Issuer is not and will not be relevant to the Certificateholders since such Certificateholders only have recourse to the Assets (or ownership interests therein) securing their series of Certificates and do not have any recourse to any other assets of the Issuer.
11. For each Offering, the Issuer and, among others, GMAC Commercial Mortgage Corporation, as master servicer (the "Master Servicer"), a Canadian trust company, as custodian on behalf of Certificateholders (the "Custodian") and a reporting agent (the "Reporting Agent") will enter into a pooling and servicing agreement (the "Pooling and Servicing Agreement") providing for the issuance of Certificates and governing the rights of Certificateholders. There is, however, a possibility that other parties acceptable to the rating agencies rating a particular series of Certificates may serve as Master Servicer.
12. Each Pooling and Servicing Agreement provides or will provide for certain administrative functions relating to the Certificates, such as maintaining a register of holders of Certificates and other duties specified in each Pooling and Servicing Agreement including the making of periodic reports to Certificateholders.
13. The Issuer, Master Servicer or Reporting Agent will provide, on the Reporting Agent's website to be identified in the relevant short form prospectus for the Certificates or in correspondence sent to Certificateholders, or otherwise as provided for in the relevant short form prospectus, the financial and other information prescribed therein to be delivered or made available to Certificateholders on a monthly basis, such information to include information relating to distributions made in that month, as well as Commercial Mortgage Securities Association reports that would be specified in the relevant short form prospectus, together with such additional information as may be prescribed by the Decision Makers (the "Distribution Date Statement"), authorized by the Issuer or on its behalf by its duly appointed representative,

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and will contemporaneously file or cause to be filed reasonably contemporaneously therewith a summary of such information as contained in the Distribution Date Statement on the System for Electronic Document Analysis and Retrieval ("SEDAR").

14. Notwithstanding paragraph 13 hereof, the Issuer may amend the contents of the financial and other information posted on the website and filed on SEDAR in order not to disclose the names of individual obligors of Assets as may be required by confidentiality agreements or other obligations of confidentiality binding on the Issuer.
15. There will be no annual meetings of Certificateholders. Each Pooling and Servicing Agreement provides or will provide that only the holders of a certain percentage of Certificates of each series of the Issuer have the right to direct the Custodian to take certain actions under the Pooling and Servicing Agreement with respect to such series of Certificates.
16. On not less than an annual basis, the Issuer will request intermediaries to deliver a notice to Certificateholders pursuant to the procedures stipulated by National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, advising Certificateholders that the monthly information prescribed in paragraph 13 hereof, the quarterly information prescribed in paragraph 17 hereof and the annual information prescribed in paragraph 18 hereof is available on SEDAR and on a website, the website address, and that Certificateholders may request that paper copies of such reports be provided to them by ordinary mail.
17. Within 60 days of the end of each fiscal quarter of the Issuer (or such lesser period as may be required under applicable laws), the Reporting Agent or the Issuer or its duly appointed representative or agent will post on the applicable website or mail to Certificateholders who so request and will contemporaneously file on SEDAR management's discussion and analysis ("MD&A") with respect to the applicable pool of Assets included in the Issuer's Annual Information Form filed with the Decision Makers (as supplemented by any short form prospectuses filed by the Issuer during the intervening period).
18. Within 140 days of the end of each fiscal year of the Issuer (or such lesser period as may be required under applicable laws), the Reporting Agent or the Issuer or its duly appointed representative or agent will post on the applicable website or mail to Certificateholders who so request and will contemporaneously file on SEDAR:

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- (a) cumulative financial and other information as prescribed by the Decision Makers for the last completed fiscal year with respect to the applicable pool of Assets;
 - (b) MD&A with respect to the applicable pool of Assets included in the Issuer's Annual Information Form filed with the Decision Makers (as supplemented by any short form prospectuses filed by the Issuer during the intervening period);
 - (c) an annual statement of compliance signed by a senior officer of each applicable Master Servicer or other party acting in a similar capacity on behalf of the Issuer for the applicable pool of Assets, certifying that the Master Servicer or such other party acting in a similar capacity has fulfilled all of its obligations under the related Pooling and Servicing Agreement during the year or, if there has been a default, specifying each such default and the status thereof; and
 - (d) an annual accountants' report in form and content acceptable to the Decision Makers prepared by a firm of independent public or chartered accountants acceptable to the Decision Makers respecting compliance by the Master Servicer (or such other party acting in a similar capacity) with the Uniform Single Attestation Program or such other servicing standard acceptable to the Decision Makers.
19. The Issuer will issue press releases and file material change reports in accordance with the requirements of the Legislation in respect of material changes in its affairs and in respect of changes in the status (including defaults in payments due to Certificateholders), of the Assets underlying the Certificates which may reasonably be considered to be material to Certificateholders.
20. Fees payable in connection with the filing of annual financial statements will be paid at the time that, and in respect of, the annual financial information specified in paragraph 18 hereof is filed.
21. The provision of information to Certificateholders on a monthly, quarterly and annual basis as described in paragraphs 13, 17 and 18 hereof, as well as the annual notices to be given by the Issuer as to the availability of such information given pursuant to terms of paragraph 15 hereof will meet the objectives of allowing the Certificateholders to monitor and make informed decisions about their investment.

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AND WHEREAS pursuant to the System 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 Issuer is exempted from the requirements of the Legislation concerning the preparation, filing and delivery of an annual report, where applicable, interim and annual financial statements and the annual filing, where applicable, in lieu of an information circular, provided that:

- (a) the only securities that the Issuer distributes to the public are Certificates;
- (b) the Issuer complies with paragraphs 13, 16, 17, 18, 19 and 20 hereof; and
- (c) the exemption from the requirements of the Legislation concerning the preparation, filing and delivery of an annual report, where applicable, and the annual filing, where applicable, in lieu of an information circular, shall terminate sixty days after the occurrence of a material change in any of the representations of the Issuer contained in paragraphs 5 through 8 inclusive hereof, unless the Issuer satisfies the Decision Makers that the exemption should continue.

DATED October 16, 2002.

Howard I. Wetston

Kerry D. Adams