

# 2006 BCSECCOM 388

June 16, 2006

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application – National Instrument 33-105, s. 5.1 - An issuer wants an exemption from the requirement for a specified level of independent underwriter involvement in its prospectus distribution - The securities issued under the offering will have an approved credit rating; the prospectus will include disclosure about the involvement of the related or connected underwriter; at least 66 2/3% of the offering will be made to institutional investors; the related or connected underwriter will receive only the normal arm's length underwriting commissions and reimbursement of expenses.

## **Applicable British Columbia Provisions**

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

**In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Ontario,  
Québec, Nova Scotia, New Brunswick, Prince Edward Island and  
Newfoundland and Labrador (the Jurisdictions)**

**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**

## **Background**

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from Merrill Lynch Canada Inc. (the Filer) for a decision under section 5.1 of National Instrument 33-105 *Underwriting Conflicts* (NI 33-105) that the provisions contained in section 2.1 of NI 33-105 mandating independent underwriter involvement shall not apply to the Filer and Merrill Lynch Financial Assets Inc. (the Issuer) in respect of

## 2006 BCSECCOM 388

distributions of asset-backed securities (the Offerings) issued by the Issuer from time to time on the terms specified in this decision (the Requested Relief).  
Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

### **Representations**

This decision is based on the following facts represented by the Filer:

1. The Issuer was incorporated under the laws of Canada on March 13, 1995 under the name BULLS Offering Corporation. Effective December 3, 1998, the Issuer changed its name from BULLS Offering Corporation to Merrill Lynch Mortgage Loans Inc. 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 issued and has outstanding approximately \$7,207,586,275 of asset-backed securities in 22 issues (the Prior Transactions).
3. The Issuer filed its seventh renewal annual information form on May 18, 2006.
4. The Issuer has been a “reporting issuer” or its nearest equivalent pursuant to the securities legislation in each of the provinces of Canada for over 12 calendar months. Pursuant to a decision dated June 29, 2005 of the Decision Makers of Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, New Brunswick and Newfoundland and Labrador, (the June 29, 2005 Decision), the Issuer has been granted certain relief in connection with the requirement in the 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 June 29, 2005 Decision.

## 2006 BCSECCOM 388

5. The officers and directors of the Issuer are employees of the Filer or its affiliates.
6. The Filer was continued and amalgamated under the laws of Canada on August 26, 1998. The authorized share capital of the Filer consists of an unlimited number of common shares. The common shares of the Filer are owned by ML & Co. and Midland Walwyn Inc. The head office of the Filer is located in Toronto, Ontario.
7. The Filer is not a reporting issuer in any Canadian province.
8. The Filer is registered in all Jurisdictions as a dealer in the categories of “broker” and “investment dealer” and is a member of the Investment Dealers Association of Canada.
9. As a special purpose vehicle, the Issuer is restricted to activities relating to the acquisition of various categories of commercial and residential mortgages, hypothecs or other charges on real or immovable property situated in Canada and originated by parties other than the Issuer (the Custodial Property). The Issuer funds successive acquisitions of Custodial Property by issuing mortgage pass-through certificates (the Certificates) in successive series, each evidencing an undivided co-ownership interest in the Custodial Property acquired by the Issuer from the proceeds of such series (the Offerings). Each series of Certificates will be entitled to receive distributions from the Custodial Property acquired by the Issuer from the proceeds of such series. The Custodial Property of each series will be deposited with a custodian and the recourse of Certificate holders of each series will be limited to the Custodial Property of such series and any proceeds thereof.
10. The Issuer is a special purpose vehicle and does not carry on any activities other than activities related to the issuing of asset-backed securities in respect of Custodial Property acquired by the Issuer. The Issuer 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 asset-backed securities, or from the Prior Transactions. Certificate holders will only have recourse to the Custodial Property and will not have any recourse to the Issuer.
11. The Issuer has operated and will continue to operate as an issuer corporation for the purpose of distributing from time to time “asset-backed securities”, as such term is defined in National Instrument 44-101 Short Form Prospectus Distributions (“NI 44-101”), with an “approved rating” by an “approved rating

## 2006 BCSECCOM 388

organization”, as those terms are defined in NI 44-101, to the public in Canada.

12. The Filer proposes to act as the underwriter in connection with the distribution of up to 100% of the dollar value of the distribution of the Certificates as described below for the Offerings.
13. The Filer expects that approximately 90% of the Offerings will be made to Canadian institutions, pension funds, endowment funds or mutual funds (collectively, Institutional Investors) based upon the experience of the Prior Transactions.
14. A minimum of 66⅔% of each Offering will be made to Institutional Investors.
15. The Issuer will not offer any Certificates by prospectus in circumstances where an independent underwriter underwrites less than the prescribed amount of the offering contemplated by s. 2.1 of NI 33-105, unless the Certificates have been rated by an approved rating agency.
16. The independent review provided by an approved rating agency in the circumstances of the Offerings would provide an alternative to the independent review which an independent underwriter would provide, and would provide the basis for a prospective purchaser to independently price the Certificates of each Offering.
17. The pricing of each Offering will be determined by market comparisons in both the secondary and primary market for commercial mortgage backed securities at the time; secondary market levels on comparable offerings will be obtained from other dealers and investors and final pricing of each Offering will be based on the secondary market bid spread (being the difference in yield between comparable commercial mortgage backed securities trading in the secondary market and the current Government of Canada bond) plus, in appropriate circumstances, a new issue premium plus the current Government of Canada bond yield.
18. The only financial benefits which the Filer will receive as a result of the Offerings are the normal arm’s length underwriting commission and reimbursement of expenses associated with a public offering in Canada, which commissions and reimbursements shall be deemed to include the increases or decreases contemplated by Section 1.7(b) of Form 44-101F1 Short Form Prospectus and by the applicable securities legislation in Québec.

## 2006 BCSECCOM 388

19. The Filer administers the ongoing operations and pays the ongoing operating expenses of the Issuer, for which the Filer receives no additional compensation.
20. The Issuer may be considered to be a related (or equivalent) issuer (as defined in the Legislation) of the Filer for the purposes of the Offerings because both the Filer and the Issuer are subsidiaries of ML & Co.
21. The Filer proposes that in connection with the distribution by the Issuer of up to 100% of any Certificates of the Issuer, the preliminary prospectus, the final prospectus and any prospectus supplement of the Issuer contain the following information:
  - (a) on the front page of each such document, the information listed in Appendix C of NI 33-105 as required information for the front page of such document; and
  - (b) in the body of each such document, the information listed in Appendix C of NI 33-105 as required information for the body of such document;
  - (c) in the body of each such document disclosure reflecting the substance of paragraphs 14 and 17; and
  - (d) in the body of each such document the rating of each Certificate granted by at least one approved rating agency.

### **Decision**

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 under the Legislation is that the Requested Relief is granted provided that the Issuer complies with paragraphs 14, 15, 18 and 21 of this decision.

Jo-Anne Matear  
Assistant Manager, Corporate Finance  
Ontario Securities Commission