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## Headnote

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

## Exemption Order

### Merrill Lynch Financial Assets Inc.

#### Section 4.5 of Multilateral Instrument 52-109

#### *Certification of Disclosure in Issuer's Annual and Interim Filings (MI 52-109)*

### Background

- ¶ 1 Merrill Lynch Financial Assets Inc. (the Issuer) applied for an exemption from the requirements in Parts 2 and 3 of MI 52-109 to file interim certificates and annual certificates.

### Representations

- ¶ 2 The Issuer represents that:
1. it was incorporated under the laws of Canada on March 13, 1995 under the name Bulls Offering Corporation, and subsequently changed its name to Merrill Lynch Financial Assets Inc.; it is a wholly-owned subsidiary of Merrill Lynch & Co., Canada Ltd. (ML & Co.);
  2. it is a reporting issuer or equivalent in each of the provinces of Canada that provides for a reporting issuer regime;
  3. its financial year end is December 31;
  4. other than ML & Co., which owns all of its issued and outstanding voting securities, the only security holders of the Issuer are and will be the holders (the Certificateholders) of the Issuer's asset-backed securities (the Certificates);
  5. since December 21, 1998, it has issued Certificates in the approximate aggregate principal amount of \$6,222 million under short form prospectuses, and in the approximate aggregate principal amount of \$395 million on a private placement basis in Canada;

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6. it does not carry on any activities other than issuing Certificates and acquiring certain property (the Custodial Property) in connection with issuing those Certificates;
7. it is currently a venture issuer (as that term is defined in National Instrument 51-102 – *Continuous Disclosure Obligations*);
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 the Issuer;
9. under an MRRS decision document dated May 16, 2003 (the Continuous Disclosure Order), the Issuer is exempted, on certain terms and conditions, from the requirements of the securities legislation in British Columbia and certain other provinces concerning the preparation, filing and delivery of interim financial statements and audited annual financial statements;
10. under section 13.2 of NI 51-102, the Issuer has delivered a notice to the applicable local securities regulatory authority or regulator in each jurisdiction that participated in the Continuous Disclosure Order, stating that it intends to rely on the Continuous Disclosure Order;
11. under an MRRS decision document dated June 29, 2005, in certain provinces other than British Columbia, the Issuer is exempted, on certain terms and conditions, from the requirements under MI 52-109 to file annual and interim certificates;
12. for each offering of Certificates, the Issuer enters into a pooling and servicing agreement or similar agreement (the Securitization Agreement) with a reporting agent (the Reporting Agent), one or more servicers (each, a Servicer), and 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;
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 such lesser period as may be required under applicable laws), the Issuer 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

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management discussion and analysis (MD&A) with respect to the applicable Custodial Property acquired with the proceeds of the Certificates; and

14. in accordance with the Continuous Disclosure Order, within 140 days of the end of each of its financial years, the Issuer or its duly appointed representative or agent will post on the applicable website or mail to Certificateholders who so request, and also file or cause to be filed reasonably contemporaneously therewith on SEDAR:
  - (a) annual MD&A with respect to the Custodial Property pools acquired with the proceeds of the Certificates;
  - (b) an annual statement of compliance signed by a senior officer of each applicable Servicer, or other party acting in a similar capacity on behalf of the Issuer for the applicable Custodial Property pool, certifying that the Servicer or such other party acting in a similar capacity has fulfilled all of its obligations under the related Securitization Agreement during the year, or, if there has been a material default in the fulfillment of any obligation, specifying each such default and the status thereof; and
  - (c) for each Custodial Property pool, an annual accountant's report in form and content acceptable to the Commission prepared by a firm of independent public or chartered accountants acceptable to the Commission respecting compliance by each applicable Servicer, or other party acting in a similar capacity on behalf of the Issuer with the Uniform Single Attestation Program for Mortgage Bankers published by the Mortgage Bankers Association of America or such other servicing standard as may be 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 the Issuer is exempt from the requirements in MI 52-109 to file annual and interim certificates, provided that:

- (a) the Issuer is not required to prepare, file and deliver financial statements under the legislation of British Columbia or under an exemption;
- (b) within 140 days of the end of each of its financial years (or within 90 days of the end of a financial year of the Issuer if the Issuer is not a venture issuer at the end of that financial year), the Issuer or its duly appointed representative or agent will file through SEDAR an annual certificate in the form set out in Schedule A of this decision document and signed by a

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person who, at the time of filing, is a senior officer of the Issuer, a servicer or an administrative agent of the Issuer;

- (c) if the Issuer voluntarily files an annual information form (AIF) for a financial year after it has filed the annual certificate for that year under paragraph (b), the Issuer will file through SEDAR a second annual certificate that:
  - (i) is in the form set out in Schedule A of this decision document;
  - (ii) is signed by a person who, at the time of filing of the second annual certificate, is a senior officer of the same person or company whose senior officer signed the annual certificate under paragraph (b); and
  - (iii) certifies the AIF 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 of the Issuer if the Issuer is not a venture issuer at the end of that interim period), the Issuer or its duly appointed representative or agent will file through SEDAR an interim certificate in the form set out in Schedule B, signed by a person who, at the time of filing, is a senior officer of the Issuer, a servicer or an administrative agent of the Issuer; and
- (e) this order will cease to be effective on the earlier of:
  - (i) June 1, 2008; and
  - (ii) 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 13, 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]

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[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; and
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]

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[Signature]

[Title]

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