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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief for issuer of asset-backed securities from the requirement to prepare, file and deliver interim and annual financial statements and annual information circulars or, where applicable, annual reports 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 securitized assets

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 91, 117, 119

Securities Rules, B.C. Reg. 194/97, ss. 144, 145, 149, 184(1) and (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 FALCON TRUST/FIDUCIE FALCON

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 (the “Application”) from Falcon Trust/Fiducie Falcon (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:

- (a) interim and annual financial statements,
- (b) annual filing reports prepared and certified in accordance with the Legislation or, where applicable, annual reports in prescribed form, and
- (c) information circulars where management of the Issuer solicits the proxies of holders of “voting securities” in respect of a meeting of which notice has or will be given,

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shall not apply to the Issuer in connection with public offerings of Asset-Backed Securities, including the offering of the Certificates (as such terms are 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 the Issuer has represented to the Decision Makers that:

1. The Issuer was created as a special purpose vehicle pursuant to a declaration of trust made as of July 10, 2002 (the "Declaration of Trust") under the laws of the Province of Ontario, the beneficiary of which is a charity registered under the *Income Tax Act* (Canada). The head office of the Issuer is located in Toronto, Ontario.
2. The Issuer has issued and will issue (the "Offerings") mortgage pass-through certificates (the "Asset-Backed Securities") to the public in Canada, including commercial mortgage-backed pass-through certificates issuable in series and classes, that are primarily serviced by the cash flows of discrete pools of mortgage loan receivables, hypothecs or other charges on real or immovable property situated in Canada, and all related assets (including the proceeds thereof and any related securities), either fixed or revolving, 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 Asset-Backed Securities (collectively, the "Securitized Assets").
3. It is anticipated that the Offerings will be undertaken by the Issuer from time to time 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 in any successor instrument thereto (the "POP System"). Securities may also be offered on a "private placement" basis in reliance upon exemptions from the prospectus requirements of applicable securities laws.
4. The proceeds from the Offerings have been and will be used to finance the origination or purchase by the Issuer of discrete pools of Securitized Assets. Each particular series and class of Asset-Backed Securities will represent undivided co-ownership interests in a particular pool of Securitized Assets.
5. The Issuer filed a short form prospectus dated October 4, 2002 with each provincial securities regulatory authority or regulator for the issuance of

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approximately \$147,500,000 aggregate principal amount of Commercial Mortgage Pass-Through Certificates, Series 2002-SMU (the "Certificates") and received receipts for such prospectus from each provincial securities regulatory authority or regulator.

6. The Issuer was initially settled with \$10.00 and the issuer trustee (the "Issuer Trustee") is CIBC Mellon Trust Company, a trust company incorporated under the *Trust and Loans Companies Act* (Canada). The Issuer Trustee's registered and principal office is located in Toronto, Ontario.

7. The only security holders of the Issuer will be the holders of its Asset-Backed Securities, including the holders of the Certificates. The Issuer currently has no material assets or liabilities other than its rights and obligations arising under certain of the material contracts related to the Asset-Backed Securities issued by the Issuer.

8. As a special purpose vehicle, the Issuer will not carry on any activities except in respect of the issuance of Asset-Backed Securities (including the Certificates), the origination of commercial mortgages and the purchase and acquisition of Securitized Assets.

9. Scotia Capital Inc. ("Scotia") has entered into an administration agreement dated July 10, 2002 with the Issuer, as amended (the "Administration Agreement") pursuant to which Scotia will provide certain administrative and management activities for and on behalf of the Issuer, for which Scotia will receive an administrative fee.

10. The Issuer has no directors and no officers.

11. No insider of the Issuer, or associate or affiliate of same, has a direct or indirect interest in any transaction which has materially affected or would materially affect the Issuer.

12. The auditors of the Issuer are Deloitte & Touche LLP.

13. Purchasers of asset-backed securities on a private placement basis normally do not receive financial information regarding the issuer of the asset-backed securities but normally receive summaries of the monthly portfolio reports relating to the asset-backed securities.

14. The information contained in the interim financial statements and comparative financial statements of the Issuer is not and will not be relevant to holders of Asset-Backed Securities (including holders of Certificates) since such holders

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only have recourse to the pool of Securitized Assets securing their series and class of Asset-Backed Securities and do not have any recourse to any assets of the Issuer.

15. For each Offering (including the offering of the Certificates), the discrete pool of Securitized Assets will be deposited with a custodian pursuant to a servicing agreement or other custodial arrangement (each a "Servicing Agreement") that the Issuer will enter into which will govern the rights of holders of Asset-Backed Securities (including holders of Certificates) and their entitlement to the Securitized Assets.

16. Each Servicing Agreement will also provide for the fulfilment of certain administrative functions relating to the Asset-Backed Securities (including the Certificates), such as the maintenance of a register of holders of Asset-Backed Securities and the making of periodic reports to holders of Asset-Backed Securities.

17. The Issuer or a representative or agent will provide, on a website identified or to be identified in the relevant short form prospectus for the Asset-Backed Securities or in correspondence sent to holders of Asset-Backed Securities, or otherwise as provided for in the relevant short form prospectus, no later than the 15th day of each month (or such subsequent business day if the 15th day of the month is not a business day) the financial and other information prescribed therein to be delivered or made available to holders of Asset-Backed Securities on a monthly basis, together with such additional information as may be prescribed by the Decision Makers (the "Distribution Date Statement"), and will contemporaneously file or cause to be filed reasonably contemporaneously therewith the Distribution Date Statement on the System for Electronic Document Analysis and Retrieval ("SEDAR").

18. Notwithstanding paragraph 17, the Issuer may amend, or caused to be amended, 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 Securitized Assets as may be required by confidentiality agreements or other obligations of confidentiality binding on the Issuer.

19. There will be no annual meeting of holders of Asset-Backed Securities since the Servicing Agreement provides, or will provide, that only the holders of a certain percentage of Asset-Backed Securities of each series and class of the Issuer have the right to direct the custodian and parties that may perform servicing functions with respect to the Securitized Assets to take certain actions under the Servicing Agreement.

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20. On not less than an annual basis, the Issuer will request, or cause to be requested, intermediaries to deliver a notice to holders of Asset-Backed Securities pursuant to the procedures stipulated by National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer*, or its successor instrument, advising holders of Asset-Backed Securities that the monthly information prescribed by paragraph 17, the quarterly information prescribed in paragraph 21 and the annual information prescribed in paragraph 22 is available on SEDAR and on a website, the website address, and that holders of Asset-Backed Securities may request that paper copies of same be provided to them by ordinary mail.

21. Within 60 days of the end of each fiscal quarter of the Issuer, the Issuer or a representative or agent will post on the applicable website or mail to holders of Asset-Backed Securities who so request in accordance with the procedures set forth above, and will contemporaneously file on SEDAR, management's discussion and analysis ("MD&A") with respect to the applicable pool of Securitized Assets included in the Issuer's Annual Information Form filed with the Decision Makers (as supplemented by any short form prospectus filed by the Issuer during the intervening period).

22. Within 140 days of the end of each fiscal year of the Issuer, the Issuer or a representative or agent will post on the applicable website or mail to holders of Asset-Backed Securities who so request in accordance with the procedures set forth above, and will contemporaneously file on SEDAR:

- (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 Securitized Assets;
- (b) MD&A with respect to the applicable pool of Securitized 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) 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 pool of Securitized Assets, certifying that the servicer or such other party acting in a similar capacity has fulfilled all of its obligations under the related Servicing Agreement during the year or, if there has been a default in the fulfilment of any such obligation, specifying each such default and the status thereof; and

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- (d) annual accountant's 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 each applicable servicer or other party acting in a similar capacity on behalf of the Issuer with the Uniform Single Attestation Program ("USAP") or such other servicing standard acceptable to the Decision Makers.

23. The Issuer will issue, or cause to be issued, 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 default in payment due to holders of Asset-Backed Securities), of the Securitized Assets underlying the Asset-Backed Securities which may be reasonably be considered to be material to holders of Asset-Backed Securities.

24. The provision of information to holders of Asset-Backed Securities on a monthly, quarterly and annual basis as described in paragraphs 17, 21 and 22, as well as the annual notice to be given by, or behalf of, the Issuer as to the availability of such information pursuant to the terms of paragraph 20 will meet the objectives of allowing the holders of Asset-Backed Securities to monitor and make informed decisions about their investments.

25. 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 22 hereof is filed.

AND WHEREAS pursuant to the MRRS this Decision Document evidences the decision of each Decision Maker (collectively, the "Decision").

AND WHEREAS each Decision Maker is satisfied that the test contained in the Legislation providing 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 in the Legislation concerning the preparation, filing and delivery of interim and annual financial statements, annual filing reports prepared and certified in accordance with the Legislation or, where applicable, annual reports in prescribed form, and information circulars where management of the Issuer solicits the proxies of holders of "voting securities" in respect of a meeting of which notice has or will be given, provided that:

- (a) the only securities that the issuer distributes to the public are Asset-Backed Securities;

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- (b) the Issuer complies with paragraphs 17, 20, 21, 22 and 23 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 8 through 11 inclusive, unless the Issuer satisfies the Decision Makers that the exemption should continue.

DATED this 14th day of November, 2002.

Paul M. Moore, Q.C.

Mary Theresa McLeod