

## **2002 BCSECCOM 372**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from the independent underwriting requirements to permit a registrant to underwrite 100% of an offering of asset-backed securities by a related party, subject to conditions

### **Applicable British Columbia Provisions**

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

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO,  
BRITISH COLUMBIA, ALBERTA, QUÉBEC, NOVA SCOTIA, PRINCE  
EDWARD ISLAND AND NEWFOUNDLAND AND LABRADOR**

**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**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, British Columbia, Alberta, Québec, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the "Jurisdictions") has received an application from Merrill Lynch Financial Assets Inc. (formerly Merrill Lynch Mortgage Loans Inc.) (the "Issuer") and Merrill Lynch Canada Inc. ("ML Canada") (the Issuer and ML Canada are collectively referred to herein as the "Filer") for a decision pursuant to section 5.1 of National Instrument 33-105 *Underwriting Conflicts* (the "National Instrument") and section 263 of the Securities Act (Quebec) (the "Quebec Act") (collectively, the "Legislation") that the provision contained in section 2.1 of the National Instrument and sections 236.1 and 237.1 of the regulation to the Quebec Act mandating independent underwriter involvement shall not apply to ML Canada and the Issuer in respect of the proposed offering (the "Offering") of the AmeriCredit Certificates (as defined below);

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**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** it has been represented by the Filer to the Decision Makers that:

1. the Issuer was incorporated under the laws of Canada on March 13, 1995; 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 600,000,000 S&P BULLS (the "S&P 500 Bulls"), \$182,083,237 (initial certificate balance) of pass-through certificates of which \$163,874,000 (initial certificate balance) were designated as Exchangeable Commercial Mortgage Pass-Through Certificates, Series 1998 - Canada 1, \$163,874,000 (initial certificate balance) Commercial Mortgage Pass-Through Certificates, Series 1998-Canada 1 (the "C-1 Certificates"), \$193,741,000 (initial certificate balance) of Commercial Mortgage Pass-Through Certificates, Series 1999-Canada 2 (the "C-2 Certificates"), \$220,000,000 (initial certificate balance) of 1<sup>st</sup> Street Tower Pass-Through Certificates (the "Tower Certificates"), approximately \$227,324,000 (initial certificate balance) of Commercial Mortgage Pass-Through Certificates, Series 2000-Canada 3 (the "C-3 Certificates"), approximately \$115,500,000 (initial certificate balance) of BMCC Corporate Centre Pass-Through Certificates, Series 2000-BMCC (the "BMCC Certificates"), approximately \$255,981,000 (initial certificate balance) of Commercial Mortgage Pass-Through Certificates, Series 2000-Canada 4 (the "C-4 Certificates"), approximately \$187,680,000 (initial certificate balance) of Commercial Mortgage Pass-Through Certificates, Series 2001-LBC (the "LBC Certificates"), approximately \$221,990,000 (initial certificate balance) of Commercial Mortgage Pass-Through Certificates, Series 2001-Canada 5 (the "C-5 Certificates") and approximately \$236,954,000 (initial certificate balance) of Commercial Mortgage Pass-Through Certificates, Series 2001-Canada 6 (the "C-6 Certificates");
3. on January 28, 2002, the Issuer filed a preliminary short form base PREP prospectus and on February 5, 2002 the Issuer filed a prospectus supplement in connection with the offering of \$100,000,000 (initial certificate balance) of Commercial Mortgage Pass-Through Certificates, Series 2002-BC2P;

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4. the Issuer filed a renewal annual information form on May 18, 2001;
5. the Issuer has been a "reporting issuer" pursuant to the securities legislation in each of the provinces of Canada for over 12 calendar months and is not in default of the Legislation. Pursuant to a decision dated November 30, 2000 of the Decision Makers of Ontario, British Columbia, Alberta, Newfoundland, Nova Scotia and Saskatchewan, as amended, (the "November 30, 2000 Decision"), the Issuer has been granted certain relief in connection with the requirement in 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 November 30, 2000 Decision;
6. the Issuer currently has no assets or liabilities other than its rights and obligations under certain of the material contracts related to the C-1 Certificates, the C-2 Certificates, the C-3 Certificates, the C-4 Certificates, the C-5 Certificates, the C-6 Certificates, the LBC Certificates, the Tower Certificates and the BMCC Certificates transactions and does not presently carry on any activities except in relation to the C-1 Certificates, the C-2 Certificates, the C-3 Certificates, the C-4 Certificates, the C-5 Certificates, the C-6 Certificates, the LBC Certificates, the Tower Certificates and the BMCC Certificates;
7. the officers and directors of the Issuer are employees of ML Canada or its affiliates;
8. ML Canada was continued and amalgamated under the laws of Canada on August 26, 1998; the authorized share capital of ML Canada consists of an unlimited number of common shares; the common shares of ML Canada are owned by ML & Co. and Midland Walwyn Inc; the head office of ML Canada is located in Toronto, Ontario;
9. ML Canada is not a reporting issuer in any Canadian province;
10. ML Canada is registered as a dealer in the categories of "broker" and "investment dealer" and is a member of the Investment Dealers Association of Canada;
11. the Issuer proposes to offer AmeriCredit Canada Automobile Receivables Pass-Through Certificates, Series 2002-A (the "AmeriCredit Certificates"), issuable in classes, with an Approved Rating by an Approved Rating Organization, as those terms are defined in the Legislation with respect to

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short form prospectus distributions, to the public in Canada, to finance the purchase by the Issuer from AmeriCredit Financial Services of Canada Limited ("AmeriCredit") or an affiliate or subsidiary thereof and from other originators of automobile loans as may be specified in the prospectus in respect of the AmeriCredit Certificates of ownership interests in particular automobile loans deposited with BNY Trust Company of Canada as custodian; each AmeriCredit Certificate will represent an undivided co-ownership interest in a particular pool of automobile loans;

12. AmeriCredit is a corporation incorporated under the laws of Ontario and is not a reporting issuer pursuant to the securities legislation in any of the provinces or territories in Canada. AmeriCredit is an independent arm's length party of ML Canada and the Issuer.
13. the proceeds of the sale of the automobile loans by AmeriCredit will be used by AmeriCredit to finance its existing business;
14. ML Canada proposes to act as the underwriter in connection with the distribution of 100% of the dollar value of the distribution for the proposed Offering;
15. all material terms of the AmeriCredit Certificates and the Offering will be negotiated on an arm's length basis between AmeriCredit and ML Canada; AmeriCredit will participate in the drafting of the preliminary prospectus and prospectus in connection with the Offering, the due diligence relating to the Offering and in the pricing of the Offering;
16. the only financial benefits which ML Canada will receive as a result of the proposed Offering are the normal arm's length underwriting commission, structuring fee and reimbursement of expenses associated with a public offering in Canada, which commissions and reimbursements shall for the purposes of this Decision be deemed to include the increases or decreases contemplated by Section 1.5(b) of Form 44-101F3 Short Form Prospectus and by the applicable securities legislation in Québec;
17. ML Canada administers the ongoing operations and pays the ongoing operating expenses of the Issuer, for which ML Canada receives no additional compensation;
18. the Issuer may be considered to be a related (or equivalent) issuer (as defined in the Legislation) and therefore a connected (or equivalent) issuer (as defined in the Legislation) of ML Canada for the purposes of the proposed Offering because:

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- (a) both ML Canada and the Issuer are subsidiaries of ML & Co.;
- (b) the officers of the Issuer are employees of ML Canada or its affiliates;
- (c) ML Canada administers the on-going operations of the Issuer;

19. in connection with the proposed distribution by ML Canada of 100% of the AmeriCredit Certificates of the Issuer, the preliminary and final prospectus and the prospectus supplement of the Issuer shall contain the following information:

- (a) on the front page of each such document,
  - (i) a statement, naming ML Canada, in bold type which states that the Issuer is a related or connected issuer of ML Canada in connection with the distribution,
  - (ii) a summary, naming ML Canada, stating the basis upon which the Issuer is a related or connected issuer of ML Canada, and
  - (iii) a cross-reference to the applicable section in the body of the document where further information concerning the relationship between the Issuer and ML Canada is provided,
- (b) in the body of each such document,
  - (i) a statement, naming ML Canada, setting out that the Issuer is a related or connected issuer of ML Canada in connection with the distribution,
  - (ii) the basis on which the Issuer is a related or connected issuer to ML Canada, including details of the common ownership by ML & Co. of ML Canada and the Issuer, and other aspects of the relationship between ML Canada and the Issuer,
  - (iii) disclosure regarding the involvement of ML Canada in the decision to distribute the AmeriCredit Certificates and the determination of the terms of the distribution,
  - (iv) details of the financial benefits described in paragraph 16 of this Decision Document which ML Canada will receive from the proposed Offering, and

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- (v) disclosure detailing the arm's length negotiation between AmeriCredit and ML Canada and participation of AmeriCredit in the drafting of the preliminary prospectus and prospectus in connection with the Offering, the due diligence relating to the Offering and the pricing of the Offering as described in paragraph 15 above;

**AND WHEREAS** pursuant to the MRRS 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 requirement contained in the Legislation mandating independent underwriter involvement shall not apply to ML Canada and the Issuer in connection with the Offering provided:

- (a) AmeriCredit participates in the Offering as stated in paragraph 15 above;  
and
- (b) AmeriCredit's participation on the Offering and the relationship between the Issuer and ML Canada are disclosed in the preliminary prospectus, the prospectus and the prospectus supplement as stated in paragraph 19 above.

**DATED** this 2nd day of April, 2002.

Paul M. Moore

Robert W. Korthals