

2006 BCSECCOM 687

October 30, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 – requirements to prepare and file annual and interim financial statements - Financial statements - An issuer of asset-backed notes wants relief from the requirements concerning the preparation, filing and delivery of unaudited interim financial statements and/or audited annual financial statements - The issuer is a special purpose vehicle; the issuer's sole purpose is to issue asset backed securities; the issuer's security holders only have an interest in the securitized assets; issuer will file and provide its security holders with alternative disclosure that is relevant to the status of the assets

Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, s. 4.5 – certification requirements - An issuer wants relief from the requirement in parts 2 and 3 of MI 52-109 to file annual and interim certificates - An issuer of asset-backed securities has been exempted from filing interim and annual financial statements provided it files alternative information; the issuer wants to file modified certificates

Applicable British Columbia Provisions

National Instrument 51-102, ss. 4.1, 4.3 and 13.1

Multilateral Instrument 52-109, Parts 2 and 3 and s. 4.5

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova
Scotia, New Brunswick 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
ClareGold Trust (formerly known as Claret Trust)
(the "Issuer")

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MRRS Decision Document

Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from the Issuer for a decision under the securities legislation of the Jurisdictions (the “Legislation”) for an exemption from the provisions of the Legislation concerning the preparation, filing and delivery of interim and annual financial statements (the “Continuous Disclosure Requirements”) of the Issuer (the “Continuous Disclosure Relief”), and for an exemption from the requirements in Multilateral Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* to file interim certificates and annual certificates (the “52-109 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 Issuer:

1. The Issuer is a special purpose trust that was established by CIBC Mellon Trust Company under the laws of the Province of Ontario pursuant to a declaration of trust dated March 10, 2006 (the “Declaration of Trust”), the beneficiary of which is a registered charity. Currently, CIBC Mellon Trust Company is the issuer trustee (the “Issuer Trustee”) of the Issuer.
2. Canadian Imperial Bank of Commerce (“CIBC”) is the financial services agent of the Issuer pursuant to a financial services agreement between CIBC and the Issuer Trustee dated as of March 10, 2006.
3. The Issuer Trustee is located in Toronto, Ontario and the executive office of CIBC is located in Toronto, Ontario.
4. The financial year-end of the Issuer is February 28.

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5. The Issuer is a “reporting issuer”, or the equivalent, in each Jurisdiction. The Issuer became a reporting issuer, or the equivalent, in each Jurisdiction on June 15, 2006, the date the Issuer received a MRRS decision document in respect of its short form prospectus dated June 14, 2006 (the “Series 2006-1 Prospectus”).
6. The Declaration of Trust restricts the activities of the Issuer to the acquisition of various categories of commercial and multi-family 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 the acquisition of the Custodial Property by issuing asset-backed securities, namely mortgage pass-through certificates that evidence an undivided co-ownership interest in the Custodial Property (the “Certificates”). The only security holders of the Issuer are and will be the holders of the Certificates (the “Certificate holders”).
7. The Issuer was created solely to act as a vehicle for carrying out activities related to issuing asset-backed securities in respect of Custodial Property acquired by the Issuer.
8. The Issuer has issued (i) \$359,636,000 aggregate amount of Commercial Mortgage Pass-Through Certificates, Series 2006-1, designated as Classes A, B and C, each with an Approved Rating by an Approved Rating Organization (as such terms are defined in National Instrument 44-101 – *Short Form Prospectus Distributions*), pursuant to the Series 2006-1 Prospectus, and (ii) \$19,927,821 aggregate amount of Commercial Mortgage Pass-Through Certificates, Series 2006-1, designated as Classes D, E, F, G, H, J, K, L, M and X, on a private placement basis in Canada (collectively, the “Issued Certificates”).
9. The Issuer is a “venture issuer” as defined in National Instrument 51-102 – *Continuous Disclosure Obligations* (“NI 51-102”).
10. Pending this Decision, the Issuer has complied with the alternative disclosure described in paragraph 18 hereof and, pursuant to Sections 4.7 and 5.1 of NI 51-102, the Issuer has not filed any interim financial statements or interim management's discussion and analysis since the Issuer became a reporting issuer, or the equivalent, in each Jurisdiction after its interim period ended August 30, 2006. Financial statements for the Issuer were not included in the Prospectus.

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11. As a special purpose vehicle, the Issuer will not carry on any activities other than activities related to issuing asset-backed securities in respect of Custodial Property acquired by the Issuer.
12. The Issued Certificates sold pursuant to the Series 2006-1 Prospectus have been, and the Certificates to be sold in the future pursuant to a short form prospectus will be, sold on the basis of an Approved Rating by an Approved Rating Organization which will from time to time independently review such rating based on the performance of the Custodial Property.
13. 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. Certificate holders will only have recourse to the Custodial Property and will not have any recourse to the Issuer.
14. The information that is to be disclosed in the interim and annual financial statements of the Issuer is not relevant to the holders of Certificates because, as noted in paragraph 13, such holders only have entitlements in and recourse to the Custodial Property and do not have any entitlements in or recourse to the Issuer.
15. For the offering of the Issued Certificates, the Issuer entered into, and for each future offering of Certificates, the Issuer will enter into, a pooling and servicing agreement (the "Pooling and Servicing Agreement") with a reporting agent (the "Reporting Agent"), a Canadian trust company, as custodian on behalf of the Certificate holders (the "Custodian"), and one or more servicers (each, a "Servicer"), among others, providing for, among other things, the issuance of Certificates and governing the rights of Certificate holders.
16. The Pooling and Servicing Agreement in respect of the Issued Certificates provides, and the Pooling and Servicing Agreement in respect of future series of Certificates will provide, for the fulfillment of certain administrative functions relating to such Certificates, such as maintaining a register of Certificate holders and the preparation by the Servicer and the Reporting Agent of periodic reports (the "Reports") to Certificate holders containing financial and other information in respect of the Custodial Property.
17. There will be no annual meetings of Certificate holders since the Pooling and Servicing Agreement with respect to the Issued Certificates provides, and the Pooling and Servicing Agreement with respect to future series of Certificates will provide, that only the holders of a certain percentage of Certificates of

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each series of the Issuer have the right to direct a Servicer or the Custodian to take certain actions under the Pooling and Servicing Agreement with respect to such series of Certificates.

18. The Reporting Agent provides, and will continue to provide, on a website to be identified in the relevant short form prospectus of the Issuer, the financial and other information prescribed therein to be made available to Certificate holders on a monthly basis, such information to include information relating to distributions made in that month, Certificate balances, administration and other fees, and certain aspects of the performance and composition of the Custodial Property, and the Issuer has contemporaneously filed, and will continue to contemporaneously file or cause to be reasonably contemporaneously filed, the monthly reports commonly known as distribution date statements or their equivalent (the "Distribution Date Statements") on the System for Electronic Document Analysis and Retrieval ("SEDAR").
19. Notwithstanding paragraph 18 hereof, the Issuer may amend the contents of the financial and other information posted on the Reporting Agent's website and filed on SEDAR to prevent the disclosure of the name or address of a mortgaged property or any obligor pursuant to the *Personal Information Protection and Electronic Documents Act* (Canada), confidentiality agreements or other obligations of confidentiality binding on the Issuer and certain information on the Reporting Agent's website will only be available on a restricted access basis. No material information will be disclosed on the Reporting Agent's website unless it is also filed contemporaneously via SEDAR with the Decision Makers for posting on www.sedar.com.
20. On not less than an annual basis, the Issuer will request intermediaries to deliver a notice to Certificate holders pursuant to the procedures stipulated by National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer* or any successor instrument thereto, advising Certificate holders that the monthly information prescribed in paragraph 18 hereof, the quarterly information prescribed in paragraph 21 hereof and the annual information prescribed in paragraph 22 hereof is available on SEDAR and on a website, providing the website address and advising that Certificate holders may request that paper copies of such reports be provided to them by ordinary mail.
21. Within 60 days of the end of each interim period of the Issuer (or within 45 days of the end of an interim period if the Issuer is not a venture issuer at the end of such interim period), the Reporting Agent or the Issuer or its duly appointed representative or agent will post on the applicable website and file

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on SEDAR, and mail to Certificate holders who so request, interim management discussion and analysis for that interim period with respect to the Custodial Property pools acquired with the proceeds of the Certificates and a quarterly report which shall include the amount of distributions of principal and interest on the Certificates, administration and other fees, and other information on the Certificates for the interim period.

22. Within 120 days of the end of each financial year of the Issuer (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 such financial year), the Reporting Agent or the Issuer or its duly appointed representative or agent will post on the applicable website and file on SEDAR, and mail to Certificate holders who so request:
 - (a) annual management discussion and analysis for that financial year with respect to the Custodial Property pools acquired with the proceeds of the Certificates and an annual report which shall include the amount of distributions of principal and interest on the Certificates, administration and other fees, and other information on the Certificates for the financial year;
 - (b) an annual statement of compliance (the “Certificate of Compliance”) signed by a senior officer of each applicable Servicer or other party acting in a similar capacity 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 applicable Pooling and Servicing Agreement during the year, or, if there has been a material default, specifying each such default and the nature and status thereof; and
 - (c) an annual accountants’ report (the “Accountants’ Report”) prepared by a firm of independent public or chartered accountants respecting compliance by each Servicer or such other party acting in a similar capacity with the Uniform Single Attestation Program for Mortgage Bankers, or such other servicing standard acceptable to the Decision Makers, during the year.
23. The Issuer will issue news releases and file material change reports in accordance with the requirements of the Legislation in respect of material changes in the status (including as a result of defaults in payments due to Certificate holders) of the Custodial Property pool underlying the Certificates which may reasonably be considered to be material to Certificate holders.

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24. Other than in Ontario, 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 required to be filed.
25. In Ontario, the fees payable by the Issuer pursuant to the Ontario Securities Commission Rule 13-502 – *Fees* or as otherwise determined by the Decision Maker in Ontario, will be paid no later than the date on which the annual financial information specified in paragraph 23 hereof is required to be filed.
26. The provision of information to Certificate holders on a monthly, quarterly and annual basis as described in paragraphs 18, 21 and 22 hereof, as well as the annual notices to be given by the Issuer as to the availability of such information given pursuant to the terms of paragraph 20 hereof will meet the objectives of allowing the Certificate holders to monitor and make informed decisions about their investment.
27. The Certificate of Compliance and, by opining on servicer management's compliance with certain minimum servicing standards, the Accountants' Report, will provide assurance to Certificate holders in respect of the accuracy of the Reports since the Issuer does not participate in the preparation of the Reports other than reviewing the Reports and informing the Reporting Agent of any errors that they are aware of therein.
28. Certificate holders will obtain adequate and relevant financial information regarding the Certificates from the information described in paragraphs 18, 21 and 22 hereof.

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 Continuous Disclosure Relief is granted, provided that:

- a) the Issuer has not issued any securities, other than Certificates;
- b) the Issuer complies with paragraphs 11, 13 and 15 through 25 inclusive hereof;
- c) the Issuer complies with all requirements of NI 51-102 other than the Continuous Disclosure Requirements; and

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- d) the Continuous Disclosure Relief shall terminate sixty days after the occurrence of a material change in any of the representations of the Issuer contained in paragraphs 5, 6, 11, 13, 14, 16 and 18 hereof, unless the Issuer satisfies the Decision Makers that the exemption should continue.

The decision of each Decision Maker under the applicable Legislation is that the exemptions from the 52-109 Requirements in each Jurisdiction, the 52-109 Relief requested herein is granted, provided that:

- a) the Issuer is not required to prepare, file and deliver interim and annual financial statements under the Legislation, whether pursuant to exemptive relief or otherwise;
- b) for each financial year of the Issuer, within 120 days of the end of the financial year (or within 90 days of the end of the financial year if the Issuer is not a venture issuer at the end of such 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 MRRS decision document and personally signed by a person who, at the time of filing of the annual certificate, is a senior officer of the Issuer, a Servicer or a financial services agent of the Issuer;
- c) if the Issuer voluntarily files an AIF for a financial year after it has filed the annual certificate referred to in paragraph (b) above for a financial year, the Issuer will file through SEDAR a second annual certificate that:
 - i. is in the form set out in Schedule “A” of this MRRS decision document;
 - ii. is personally 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 of which the senior officer who signed the annual certificate referred to in paragraph (b) is an officer; and
 - iii. certifies the AIF in addition to the other documents identified in the annual certificate;
- d) for each interim period of the Issuer, within 60 days of the end of the interim period (or within 45 days of the end of the interim period if the Issuer is not a venture issuer at the end of such 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” of this MRRS decision document and personally signed by a person who, at the time of filing of the

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interim certificate, is a senior officer of the Issuer, a Servicer or a financial services agent of the Issuer; and

- e) the 52-109 Relief 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 comes into force in a Jurisdiction.

Jo-Anne Matear
Assistant Manager, Corporate Finance
Ontario 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 filed on SEDAR 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>*

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I am responsible for reviewing the activities performed by the servicer(s) and 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 financial services 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 noncompliance 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-servicer, financial services agent, reporting agent or trustee>.*]

Date: *<insert date of filing>*

[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 filed on SEDAR for each month in the interim period ended *<insert relevant date>* (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-servicer, financial services agent, reporting agent or trustee>*.]

Date: *<insert date of filing>*

[Signature]

[Title]

<indicate the capacity in which the certifying officer is providing the certificate>