

## **2003 BCSECCOM 340**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - issuer of asset-backed securities exempt from the requirement to prepare, file and deliver interim and annual financial statements and annual filing 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 securities assets – previous order revoked and replaced

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 91, 119 and 171

National Instrument 44-101 *Short Form Prospectus Distributions*

National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*

### **IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO, BRITISH COLUMBIA, ALBERTA, NEWFOUNDLAND AND LABRADOR, NOVA SCOTIA AND SASKATCHEWAN**

**AND**

### **IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

### **IN THE MATTER OF MERRILL LYNCH FINANCIAL ASSETS 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, Newfoundland and Labrador, Nova Scotia and Saskatchewan (the “Jurisdictions”) issued on November 30, 2000 a decision, as varied by an MRRS Decision Document dated September 17, 2001 and an MRRS Decision Document dated January 7, 2003 (the “Original Decision”), pursuant to the securities legislation of the Jurisdictions (the “Legislation”), that provisions of the Legislation concerning the preparation, filing and delivery of interim and annual financial statements and the annual filing of a form by a reporting issuer shall not apply to Merrill Lynch Mortgage Loans Inc., subsequently renamed Merrill Lynch Financial Assets Inc. (the “Issuer”), and Merrill Lynch Canada Inc. (“ML Canada”, and collectively with the Issuer, the “Filer”) in connection with the Issuer and its offerings of Certificates (as defined herein) and Future Certificates (as defined herein);

## 2003 BCSECCOM 340

AND WHEREAS the Filer wishes to amend the Original Decision in order to:

- (i) conform the relief to the relief that has been granted to similar issuers subsequent to the Original Decision;
- (ii) allow for the protection of confidential information;
- (iii) reduce the annual filing burden of the Filer; and
- (iv) provide clearer guidance to investors as to alternate sources of information.

AND WHEREAS in order to so amend the Original Decision, the Filer has applied to revoke the Original Decision and to replace it as set out below;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System") the Ontario Securities Commission is the principal regulator for this Application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*;

AND WHEREAS the Filer has represented to the Decision Makers as follows:

1. The Issuer was incorporated under the laws of Canada on March 13, 1995 under the name Bulls Offering Corporation. By articles of amendment dated December 3, 1998, the name of the Issuer was changed to Merrill Lynch Mortgage Loans Inc. By articles of amendment dated March 15, 2001, the name of the Issuer was changed to Merrill Lynch Financial Assets Inc. The issuer is a wholly-owned subsidiary of Merrill Lynch & Co., Canada Ltd. ("ML & Co.")
2. The head offices of the Issuer and ML Canada are both located in Toronto, Ontario.
3. The Issuer has issued and has outstanding approximately \$3,064,000,000 of asset-backed securities in 13 issues as follows:
  - (i) \$182,083,237 initial certificate balance of pass-through certificates (the "C-1 Certificates") evidencing undivided co-ownership interests in a pool of 32 commercial mortgage loans issued December 21, 1998 of which \$163,874,000 initial certificate

## 2003 BCSECCOM 340

balance were subsequently qualified by a short form prospectus dated May 31, 1999.

- (ii) \$214,079,251 initial certificate balance of pass-through certificates (the “C-2 Certificates”) evidencing undivided co-ownership interests in a pool of 43 commercial mortgage loans of which \$193,741,000 initial certificate balance were offered pursuant to a short form prospectus dated September 16, 1999.
- (iii) \$220,000,000 initial certificate balance of pass-through certificates (the “1STT Certificates”) evidencing an undivided co-ownership interest in first mortgage bonds (the “1STT First Mortgage Bonds”) issued by 1<sup>st</sup> Street Tower Trust was offered pursuant to a short form prospectus dated October 1, 1999.
- (iv) \$257,591,683 initial certificate balance of pass-through certificates (the “C-3 Certificates”) evidencing undivided co-ownership interests in a pool of 53 commercial mortgage loans of which \$227,324,000 initial certificate balance were offered pursuant to a short form prospectus dated May 19, 2000.
- (v) \$115,500,000 initial certificate balance of pass-through certificates (“BMCC Certificates”) evidencing an undivided co-ownership interest in first mortgage bonds issued by BMCC Corporate Centre were offered pursuant to a short form prospectus dated September 28, 2000.
- (vi) \$287,619,638 initial certificate balance of pass-through certificates (the “C-4 Certificates”) evidencing undivided co-ownership interests in a pool of 63 commercial mortgage loans of which \$255,981,000 initial certificate balance were offered pursuant to a short form prospectus dated November 21, 2000.
- (vii) \$200,192,047 initial certificate balance of pass-through certificates (the “LBC Certificates”) evidencing undivided co-ownership interests in a pool of 229 mortgage loans of which \$187,680,000 initial certificate balance were offered pursuant to a short form prospectus dated January 24, 2001.
- (viii) \$248,729,008 initial certificate balance of pass-through certificates (the “C-5 Certificates”) evidencing undivided co-ownership interests in a pool of 55 commercial mortgage loans of which

## 2003 BCSECCOM 340

\$221,990,000 initial certificate balance were offered pursuant to a short form prospectus dated May 15, 2001.

- (ix) \$265,495,510 initial certificate balance of pass-through certificates (the “C-6 Certificates”) evidencing undivided co-ownership interests in a pool of 40 commercial mortgage loans of which \$236,954,000 initial certificate balance were offered pursuant to a short form prospectus dated November 27, 2001.
- (x) \$100,000,000 initial certificate balance of pass-through certificates (the “BC2P Certificates”) evidencing undivided co-ownership interests in two commercial mortgage were loans offered for sale pursuant to a short form prospectus dated February 5, 2002.
- (xi) \$280,741,039 initial certificate balance of pass-through certificates (the “C-7 Certificates”) evidencing undivided co-ownership interests in a pool of 49 commercial mortgage loans of which \$256,100,000 initial certificate balance were offered pursuant to a short form prospectus dated May 8, 2002.
- (xii) \$223,879,000 initial certificate balance of co-ownership certificates (the “AmeriCredit Certificates”) evidencing undivided co-ownership interests in a pool of automobile loans and certain related assets together with payments and other proceeds and property received thereon were offered for sale by ML Canada pursuant to a short form prospectus dated May 10, 2002.
- (xiii) \$468,331,177 initial certificate balance of pass-through certificates (the “C-8 Certificates”) evidencing undivided co-ownership interests in a pool of 70 commercial mortgage loans of which \$423,830,000 initial certificate balance were offered pursuant to a short form prospectus dated November 20, 2002.

(the C-1 Certificates, C-2 Certificates, C-3 Certificates, C-4 Certificates, C-5 Certificates, C-6 Certificates, 1STT Certificates, BMCC Certificates, LBC Certificates, BC2P Certificates, AmeriCredit Certificates, C-7 Certificates and C-8 Certificates being referred to collectively as the “Certificates” and the transactions pursuant to which the Certificates were issued as the “Transactions”).

(certificates similar to the Certificates, distributed by the Issuer from time to time, that are serviced by the cash flows of discrete pools of mortgages, receivables or other financial assets, either fixed or revolving that by their

## 2003 BCSECCOM 340

terms convert into cash within a finite time period and rights or other assets designed to assure the servicing or timely distribution of proceeds to securityholders ("Securitized Assets") are referred to herein as the Future Certificates and the transactions to which the Future Certificates are distributed are referred to herein as the "Future Transactions").

4. The Issuer is a special purpose corporation, the only securityholders of which, excluding ML & Co., which owns all of its issued and outstanding voting securities, are or will be the holders of the Certificates and the holders of Future Certificates issued from time to time (collectively, the "Certificateholders").
5. The Issuer currently has and in the future will have no assets or liabilities other than limited rights and obligations under certain of the material contracts related to the Transactions or Future Transactions, and does not presently carry on and will not carry on in the future any activities except in relation to the structuring and issue of asset-backed securities including the Transactions and Future Transactions. Certificateholders have and will have recourse only to the Securitized Assets and will not have recourse to the Issuer.
6. ML Canada administers the ongoing operations and pays the operating expenses of the Issuer pursuant to an amended and restated administration agreement made as of January 11, 2002 (the "Administration Agreement"). No consideration is payable by the Issuer in connection with ML Canada's services under the Administration Agreement.
7. The directors and officers of the Issuer are directors and/or officers of ML & Co. and have not been and will not be compensated by the Issuer for serving in such positions with the Issuer.
8. No director or officer of the Issuer or any associate thereof is indebted to the Issuer, nor has any director, officer, or any other insider, or any associate or affiliate thereof, entered into a material contract with the Issuer, other than as previously disclosed in documents filed with the Decision Makers.
9. No insider of the Issuer or associate or affiliate of any insider has a direct or indirect interest in any transaction that has materially affected or which would materially affect the Issuer, other than as previously disclosed in documents filed with the Decision Makers.
10. The current auditors of the Issuer are Deloitte & Touche LLP.

## 2003 BCSECCOM 340

11. Certificates sold to the public pursuant to a short form prospectus have been, and will continue to be, sold on the basis of an Approved Rating by an Approved Rating Organization (as such terms are defined in National Instrument 44-101 *Short Form Prospectus Distributions*, or in any successor instrument thereto) which will from time to time independently review such rating based on the performance of the Securitized Assets.
12. The information contained in the interim and annual financial statements of the Issuer is not and will not be relevant to the Certificateholders since such Certificateholders only have, or will have, an interest in the related Securitized Assets and do not have any interest in or any claim on the assets of the Issuer.
13. Each pooling and servicing agreement or similar agreement (each, a “Securitization Agreement”) which governs or will govern, as the case may be, the rights of the Certificateholders and their entitlement to the related Securitized Assets provides for or will provide for, as the case may be, the fulfilment of certain administrative or servicing functions relating to the asset-backed securities, such as maintaining a register of holders of asset-backed securities and the making of periodic reports to Certificateholders by a custodian and one or more servicers or other agents appointed pursuant to such Securitization Agreement. The names of each such servicer and agent are or will be disclosed in the applicable prospectus.
14. The Issuer or its duly appointed representative or agent provides or will provide, on an internet website identified or to be identified in the relevant prospectus for the Certificates and Future Certificates to which all Certificateholders will be afforded access (the “Reporting Website”) and otherwise as provided for in the relevant prospectus, no later than the 20th day of each month (or such subsequent business day as is provided in the Securitization Agreement if the 20th day of the month is not a business day) the financial and other information prescribed therein to be delivered or made available to Certificateholders on a monthly basis, signed by the Issuer or on its behalf by its duly appointed representative, and will also file or cause to be filed reasonably contemporaneously therewith the monthly reports commonly known as distribution date statements or their equivalent on the System for Electronic Document Analysis and Retrieval (“SEDAR”).
15. Notwithstanding paragraph 14, the Issuer may amend the contents of distribution date statements posted on the Reporting Website and filed on SEDAR in order to not disclose the names or other personal information of individual obligors of Securitized Assets or, in the case of Canadian mortgage-backed securities, the name or address of any mortgaged property, as may be

## 2003 BCSECCOM 340

required by confidentiality agreements or other obligations of confidentiality binding the Issuer.

16. There will be no annual meetings of Certificateholders. Each Securitization Agreement provides or will provide that the holders of a certain percentage of the applicable asset-backed securities will have the right to direct the custodian of the relevant Securitized Assets to take certain actions under such Securitization Agreement.
17. On not less than an annual basis, the Issuer will request intermediaries to deliver a notice to Certificateholders 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 Certificateholders that the monthly distribution date statements and the annual information prescribed in paragraph 19 hereof are available on SEDAR and on the Reporting Website, the Reporting Website address, and that Certificateholders may request paper copies of such reports be provided to them by ordinary mail.
18. Within 60 days of the end of each fiscal quarter of the Issuer, or such lesser period as may be required under applicable laws, the Issuer or its duly appointed representative or agent will post on the Reporting Website and file on SEDAR, and mail to Certificateholders who so request, interim management discussion and analysis with respect to the applicable 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).
19. Within 140 days of the end of each calendar year, the Issuer or its duly appointed representative or agent will post on the Reporting Website or mail to Certificateholders who so request in accordance with the procedures set forth above and also file or cause to be filed reasonably contemporaneously therewith on SEDAR:
  - (a) annual management's discussion and analysis with respect to each applicable Securitized Assets pool included in the Issuer's Annual Information Form for such year filed with the Decision Makers;
  - (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 pool of Securitized Assets, certifying that the servicer or such other party acting in a similar capacity has fulfilled all its obligations under the related Securitization Agreement during the year

## 2003 BCSECCOM 340

or, if there has been a default in the fulfilment of any obligation, specifying each such default and the status thereof; and

- (c) for each Securitized Assets pool, an 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 for Mortgage Bankers published by the Mortgage Bankers Association of America or such other servicing standard as may be acceptable to the Decision Makers.
20. The Issuer's annual information form will describe each of the Transactions and Future Transactions that the Issuer has outstanding at the date stated therein and will state that the monthly information contained in the distribution date statements or equivalent for each such Transaction or Future Transaction are available on SEDAR, that those reports and certain additional information are available on the Reporting Website, the website address, and that the Certificateholders may request paper copies of all such reports and information be provided to them by ordinary mail. The Issuer's annual information form will omit annual information on the underlying pools of financial assets and payments in respect of principal and interest or capital and yield which, but for this Decision Document, would be required to be stated.
21. The Issuer will issue press releases and file material change reports in accordance with the requirements of the Legislation in respect of material changes in its affairs, in respect of changes in the status (including defaults in payments due to Certificateholders) of the Securitized Assets underlying the Certificates, which may be reasonably considered to be material to Certificateholders of any Transaction or Future Transaction, and in respect of a downgrade in the rating of any of the Certificates by an approved rating organization, as defined under National Instrument 44-101 *Short Form Prospectus Distributions* or under any successor instrument thereto.
22. Fees payable in connection with the filing of annual financial statements, or in connection with the Issuer's participation as a reporting issuer in any Jurisdiction, will be paid at the time that the annual information specified in paragraph 19 is filed on SEDAR.
23. The provision of additional information to Certificateholders on a monthly and annual basis as described in paragraphs 14, 17, 18, 19 and 20 hereof will meet the objectives of allowing the Certificateholders to monitor and make informed decisions about their investment.



## 2003 BCSECCOM 340

AND WHEREAS pursuant to the System 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 Maker under the Legislation is that the Original Decision is revoked;

AND IT IS FURTHER THE DECISION of the Decision Makers under the Legislation that the Issuer is exempted from the requirements in the Legislation concerning the preparation, filing and delivery of annual reports, where applicable, interim and annual financial statements, the annual filing, where applicable, in lieu of an information circular by a reporting issuer, and the content of the Issuer’s annual information form, provided that:

- (a) the only securities that the Issuer distributes to the public are Certificates and Future Certificates;
- (b) the Issuer complies with paragraphs 5, 7, 8, 13, 14, 17, 18, 19, 20, 21 and 22 hereof; and
- (c) the exemption from the requirements of the Legislation concerning the preparation, filing and delivery of annual reports, where applicable, interim and annual financial statements, the annual filing, where applicable, in lieu of an information circular by a reporting issuer, and the content of Issuer’s annual information form shall terminate 60 days after the occurrence of a material change in any of the representations of the Issuer contained in paragraphs 4 through 10, inclusive, unless the Issuer satisfies the Decision Makers that the exemption should continue.

DATED this 16th day of May, 2003.

Harold P. Hands  
Commissioner

Robert W. Korthals  
Commissioner