

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Issuer of mortgage pass-through certificates previously granted an exemption from the requirements to file annual and interim financial statements, subject to certain conditions. Issuer granted an exemption from the requirements in Multilateral Instrument 52-109 to file interim and annual certificates, subject to certain conditions, including the requirement to file alternative forms of annual and interim certificates.

Ontario Rules

Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings

May 31, 2005

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, 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
SCHOONER TRUST
(the Filer)**

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 Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the requirements in Multilateral Instrument 52-109 - *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109) to file interim certificates and annual certificates, subject to certain conditions (the Requested 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 Filer was created pursuant to a declaration of trust dated July 5, 2000 (the Declaration of Trust) under the laws of the Province of Ontario. The Filer was created under the name of Solar Trust. By a declaration of change of name dated November 17, 2003, the name of the Filer was changed to Schooner Trust.
2. The issuer trustee of the Filer is CIBC Mellon Trust Company (the Issuer Trustee), a trust company incorporated under the *Trust and Loan Companies Act* (Canada).
3. The Toronto-Dominion Bank (TD) is the administrative agent of the Filer pursuant to an administration agreement between TD and the Issuer Trustee dated as of July 5, 2000.
4. The Filer is a reporting issuer, or the equivalent, in each of the provinces of Canada that provides for a reporting issuer regime.
5. The head office of the Issuer Trustee is located in Toronto, Ontario.
6. The financial year end of the Filer is December 31.
7. The Declaration of Trust of the Filer restricts the activities of the Filer to the acquisition of various categories of commercial and multifamily residential mortgages, hypothecs or other charges on real or immovable property situated in Canada and originated by parties other than the Filer (the Custodial Property). The Filer funds the acquisition of the Custodial Property by issuing mortgage pass-through certificates that receive distributions from the Custodial Property acquired by the Filer and evidence an undivided co-ownership interest in the Custodial Property (the Certificates). The Custodial Property is deposited with a custodian and the recourse of Certificate holders is limited to the Custodial Property and any proceeds thereof.
8. The Filer 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 Filer.
9. The Filer has issued (i) \$189,550,000 aggregate amount of Commercial Mortgage Pass-Through Certificates, Series 2000-1, designated as Classes A-1, A-2, IO, B, C and D, 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 a short form prospectus dated October 24, 2000 (the Series 2000-1 Prospectus), (ii) \$214,660,425 aggregate amount of Commercial Mortgage Pass-Through Certificates, Series 2001-1, designated as Classes A-1, A-2, B and C, each with an Approved Rating by an Approved Rating Organization, pursuant to a short form prospectus dated August 2, 2001 (the Series 2001-1 Prospectus), (iii) \$26,531,063 aggregate amount of Commercial Mortgage Pass-Through Certificates, Series 2001-1, designated as Classes IO, D, E, F, G, H, J and K, on a private placement basis in Canada, (iv) \$253,955,000 aggregate amount of Commercial Mortgage Pass-Through Certificates, Series 2002-1, designated as Classes A-1, A-2, IO, B, C, D and E, each with an Approved Rating by an Approved Rating Organization, pursuant to an amended and restated short form prospectus dated December 4, 2002 (the Series 2002-1 Prospectus), (v) \$12,664,153 aggregate amount of Commercial Mortgage Pass-Through Certificates, Series 2002-1, designated as Classes F, G, H, J and K, on a private placement basis in Canada, (vi) \$430,150,000 aggregate amount of Commercial Mortgage Pass-Through Certificates, Series 2003-CC1, designated as Classes A-1, A-2, IO-1, B, C and D-1, each with an Approved Rating by an Approved Rating Organization, pursuant to a short form prospectus dated May 21, 2003 (the Series 2003-CC1 Prospectus), (vii) \$38,020,452 aggregate amount of Commercial Mortgage Pass-Through Certificates, Series 2003-CC1, designated as Classes IO-2, D-2, E, F, G, H, J, K and L, on a private placement basis in Canada, (viii) \$437,575,000 aggregate amount of Commercial Mortgage Pass-Through Certificates, Series 2004-CCF1, designated as Classes A-1, A-2, IO-1, B, C and D-1, each with an Approved Rating by an Approved Rating Organization, pursuant to a short form prospectus dated January 15, 2004 (the "Series 2004-CCF1 Prospectus"), (ix) \$36,439,947 aggregate amount of Commercial Mortgage Pass-Through Certificates, Series 2004-CCF1, designated as Classes IO-2, D-2, E, F, G, H, J, K and L, on a private placement basis in Canada, (x) \$332,445,000 aggregate amount of Commercial Mortgage Pass-Through Certificates, Series 2004-CF2, designated as Classes A-1, A-2, B and C, each with an Approved Rating by an Approved Rating Organization, pursuant to a short form prospectus dated September 20, 2004 (the "Series 2004-CF2 Prospectus"), (xi) \$30,881,924 aggregate amount of Commercial Mortgage Pass-Through Certificates, Series 2004-CF2, designated as Classes X, D, E, F, G, H, J, K, L and M, on a private placement basis in Canada, (xii) \$375,700,000 aggregate amount of Commercial Mortgage Pass-Through Certificates, Series 2005-3, designated as Classes A-1, A-2, XP-1, XC-1, B, C, D-1 and E, each with an Approved Rating by an Approved Rating Organization, pursuant to a short form prospectus dated April 15, 2005 (the "Series 2005-3 Prospectus", and together with the Series 2000-1 Prospectus, the Series 2001-1 Prospectus, the Series 2002-1 Prospectus, the Series 2003-CC1 Prospectus, the Series 2004-CCF1 Prospectus and the Series 2004-CF2 Prospectus, the "Prospectuses"), and (xiii) \$20,266,045 aggregate amount of Commercial Mortgage Pass-Through Certificates, Series 2005-3, designated as Classes XP-2, XC-2, D-2, F, G, H, J, K, L and M, on a private placement basis in Canada (collectively, the "Issued Certificates"). All issues completed prior to November 17, 2003 continue to trade under the name of Solar Trust.

10. The Filer is currently a venture issuer (as such term is defined in National Instrument 51-102 - *Continuous Disclosure Obligations*).

11. As a special purpose vehicle, the Filer will not carry on any activities other than activities related to issuing asset-backed securities in respect of Custodial Property acquired by the Filer.

12. The Filer 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 Filer.

13 Pursuant to an MRRS decision document dated May 20, 2005 and an order dated November 29, 2004 of the New Brunswick Securities Commission (collectively, the "Previous Decision"), the Filer is exempted, on certain terms and conditions, from the requirements of the securities legislation in the jurisdictions of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, New Brunswick and Newfoundland and Labrador (the local securities regulatory authority or regulator in each such jurisdiction collectively, the "Previous Decision Makers") concerning the preparation, filing and delivery of interim financial statements and audited annual financial statements (the "Financial Statements").

14. For each offering of the Issued Certificates, the Filer entered into, and for each future offering of Certificates, the Filer will enter into, a pooling and servicing agreement (the "Pooling and Servicing 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 Certificate holders (the "Custodian"), among others, providing for, among other things, the issuance of Certificates and governing the rights of Certificate holders.

15. The Pooling and Servicing Agreements in respect of the Issued Certificates provide, and each 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.

16. The Reporting Agent provides, and will continue to provide, on a website to be identified in the relevant short form prospectus of the Filer, 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. In accordance with the Previous Decision, the Filer 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"). 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.

17. In accordance with the Previous Decision, within 60 days of the end of each interim period of the Filer (or within 45 days of the end of an interim period if the Filer is not a venture issuer at the end of such interim period), the Reporting Agent or the Filer 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, interim management discussion and analysis 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.

18. In accordance with the Previous Decision, within 120 days of the end of each financial year of the Filer (or within 90 days of the end of a financial year of the Filer if the Filer is not a venture issuer at the end of such financial year), the Reporting Agent or the Filer 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 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 Compliance Certificate) 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 Previous Decision Makers, during the year.

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 in the Jurisdictions under the Legislation is that the Requested Relief is granted provided that:

(a) the Filer is not required to prepare, file and deliver Financial Statements under the Legislation, whether pursuant to exemptive relief or otherwise;

(b) for each financial year of the Filer, within 120 days of the end of the financial year (or within 90 days of the end of a financial year of the Filer if the Filer is not a venture issuer at the end of such financial year), the Filer 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 Filer, a Servicer or an administrative agent of the Filer;

(c) if the Filer voluntarily files an AIF for a financial year after it has filed the annual certificate referred to in paragraph (b) above for the financial year, the Filer 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, within 60 days of the end of the interim period (or within 45 days of the end of an interim period of the Filer if the Filer is not a venture issuer at the end of such interim period), the Filer 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 interim certificate, is a senior officer of the Filer, a Servicer or an administrative agent of the Filer; and

(e) the Requested Relief will cease to be effective in a Jurisdiction 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.

"Erez Blumberger"
Assistant Manager, Corporate Finance
Ontario Securities Commission

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 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 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, administrative agent, reporting agent or trustee >*.]

Date: <insert date of filing>

[Signature]

[Title]

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

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 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, administrative agent, reporting agent or trustee >.]

Date: <insert date of filing>

[Signature]

[Title]

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