

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, BRITISH COLUMBIA, ALBERTA,
MANITOBA, SASKATCHEWAN, Québec,
NEW BRUNSWICK, NOVA SCOTIA,
NEWFOUNDLAND AND PRINCE EDWARD ISLAND

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM FOR
EXEMPIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
SOLAR TRUST / FIDUCIE SOLAR

AND

IN THE MATTER OF
TD SECURITIES INC.

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland (the "Jurisdictions") has received an application from Solar Trust/Fiducie Solar (the "Issuer") and TD Securities Inc. ("TDSI") (the Issuer and TDSI are collectively referred to herein as the "Filers") for a decision pursuant to the securities legislation and policies of the Jurisdictions (collectively, the "Legislation") that:

- (a) pursuant to section 4.5 of Canadian Securities Administrators' National Policy Statement No. 47 ("NP 47") and the applicable securities legislation of Québec, including but not limited to, those set forth in Title II and Title III of the *Securities Act and Regulation (Québec)*, the Issuer is permitted to participate in the Prompt Offering Qualification System (the "POP System") solely for the purpose of distributing Asset Backed Securities (as defined below) with an Approved Rating (as defined in NP 47) from time to time; and
- (b) the restrictions contained in the Legislation concerning registrants acting as underwriters in connection with the distribution of securities of related or connected issuers will not apply to TDSI in respect of the proposed distributions of Asset-Backed Securities of the Issuer;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS the Filers have represented to the Decision Makers that:

1. the Issuer is a private, special purpose trust which was organized pursuant to a declaration of trust under the laws of Ontario dated July 5, 2000; the Issuer's trustee is CIBC Mellon Trust Company; the only security holders of the Issuer will be the holders of its Asset-Backed Securities;
2. TDSI is a corporation incorporated under the *Business Corporations Act* (Ontario) and is a wholly owned subsidiary of The Toronto-Dominion Bank ("TD");
3. TDSI is not a reporting issuer in any Jurisdiction;
4. TDSI is registered as a dealer in the categories of "broker" and "investment dealer" and is a member of the Investment Dealers Association of Canada;
5. the Issuer proposes to offer under the POP System or the shelf system (the "Shelf System"), as contemplated in National Policy Statement No. 44 ("NP 44") and the applicable securities legislation in Québec, including but not limited to, those set forth in Title II and Title III of the *Securities Act and Regulation (Québec)*, from time to time (the "Offerings"), securities that are primarily serviced by the cash flows of discrete pools of mortgage loan receivables or other financial assets, 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 security holders ("Asset-Backed Securities"), including commercial mortgage-backed pass-through certificates issuable in series and classes ("Pass-Through Certificates"), with an Approved Rating by an Approved Rating Organization under the POP System or Shelf System, from time to time to the public in Canada (the "Offerings"), to finance the purchase by the Issuer from Commercial Mortgage Origination Company of Canada Inc. ("CMO"), Commercial Mortgage Origination Trust ("CMOT"), The Toronto-Dominion Bank ("TD"), Canada Trustco Mortgage Company ("CTMC") and from other originators of discrete pools of mortgage loan receivables or other financial assets ("Securitized Assets") or ownership interests in pools of Securitized Assets (CMO, CMOT, TD, CTMC and such other originators are collectively referred to herein as the "Sellers"); each Asset-Backed Security of a particular series and class will represent the right to receive payment of principal and interest thereon to be funded from a particular pool of Securitized Assets;
6. the Issuer currently has no assets or liabilities and does not carry on any activities;
7. as a special purpose trust, the Issuer will not carry on any activities other than purchasing the Securitized Assets and issuing Asset-Backed Securities, including Pass-Through Certificates;
8. each Asset-Backed Security of a particular series and class will

(a) represent an undivided co-ownership interest in a pool of Securitized Assets,
or

(b) be secured by a charge over the Issuer's ownership interest in a pool of
Securitized Assets;

9. the proceeds of each proposed Offering will be used by the Issuer to pay the applicable Sellers for the purchase of pools of Securitized Assets or ownership interests therein;

10. the Issuer would not be eligible to participate in the POP System or the Shelf System without this decision because it does not satisfy the reporting issuer eligibility criteria and public float eligibility criteria set forth in NP 47;

11. in connection with each proposed Offering by the Issuer

(a) the Issuer will have a current annual information form ("AIF"),

(b) the Asset-Backed Securities to be distributed

(i) will have received an Approved Rating on a provisional basis,

(ii) will not have been the subject of an announcement by an Approved Rating Organization (as defined in NP 47) of which the Issuer is or ought reasonably to be aware that the Approved Rating given by the Approved Rating Organization may be down-graded to a rating category that would not be an Approved Rating, and

(ii) will not have received a provisional or final rating lower than an Approved Rating from any Approved Rating Organization, and

(c) if the Issuer files a preliminary Short Form Prospectus (as defined below) more than 90 days after the end of its most recently completed financial year, the Issuer will have filed financial statements for that year;

12. each AIF of the Issuer will be prepared in accordance with Appendix A of NP 47, with the following additional information

(a) the disclosure in AIFs filed by the Issuer shall reflect the special nature of its business; and

(b) if the Issuer has Asset-Backed Securities outstanding, the AIF will disclose on a pool by pool basis

(i) a description of any events, covenants, standards or preconditions that are dependant or based on the economic performance of the underlying pool of financial assets and that

may impact on the timing or amount of payments or distributions to be made under the Asset-Backed Securities,

(ii) for the past two completed financial years of the Issuer or such lesser period commencing on the first date on which the Issuer had Asset-Backed Securities outstanding, information on the underlying pool of financial assets relating to

(A) the composition of the pool as of the end of the financial year or partial period,

(B) income and losses from the pool on at least a quarterly basis,

(C) the payment, prepayment and collection experience of the pool on a quarterly basis, and

(D) any significant variances experienced in the matters referred to in subclauses (A), (B) and (C),

(iii) if any of the information disclosed under clause (ii) of this paragraph 12 has been audited, the existence and results of the audit,

(iv) the investment parameters applicable to investments of any cash flow surpluses,

(v) the amount of payments made in respect of principal and interest or capital and yield, each stated separately, on Asset-Backed Securities of the Issuer outstanding during the most recently completed financial year or a lesser period commencing on the first day on which the Issuer had Asset-Backed Securities outstanding,

(vi) the occurrence of any events that have led or with the passage of time could lead to the accelerated payment of principal or capital of Asset-Backed Securities, and

(vii) the identity of any principal obligors for the outstanding Asset-Backed Securities of the Issuer at the end of the most recent financial year or interim period, the percentage of the underlying pool of financial assets represented by obligations of each principal obligor and whether the principal obligor, if any, has filed an AIF in any jurisdiction or a Form 10-K or Form 20-F in the United States;

13. the preliminary short form prospectus ("preliminary Short Form Prospectus"), the preliminary short form base shelf prospectus ("preliminary Shelf Prospectus"), the final short form prospectus ("final Short Form Prospectus") and the final short form base shelf prospectus ("final Shelf Prospectus") of the Issuer will be prepared in accordance with Appendix B of NP 47 and Schedule IV to the regulation made under the *Securities Act (Quān)*, with such amendments in connection with the Shelf System as are specified in subsection 2.3(b), Section 3 and Appendix B of NP 44 and Section III.1 of Division III of Chapter 1 of Title II to the regulation under the *Securities Act (Quān)*, and with the following additional information

(a) the disclosure in a preliminary Shelf or Short Form Prospectus and a final Shelf or Short Form Prospectus filed by the Issuer shall reflect the special nature of its business,

(b) a preliminary Shelf or Short Form Prospectus and a final Shelf or Short Form Prospectus filed by the Issuer will describe or set out

(i) the material attributes and characteristics of the Asset-Backed Securities to be offered, including details on

(A) the rate of interest or stipulated yield and any premium,

(B) the date for repayment of principal or return of capital and any circumstances in which payments of principal or capital may be made before such date, including any redemption or pre-payment obligations or privileges of the Issuer and any events that may trigger early liquidation or amortization of the underlying pool of financial assets,

(C) provisions for the accumulation of cash flows to provide for the repayment of principal or return of capital,

(D) provisions permitting or restricting the issuance of additional securities and any other material negative covenants applicable to the Issuer,

(E) the nature, order and priority of the entitlements of holders of Asset-Backed Securities and any other entitled persons or companies to receive cash flows generated from the underlying pool of financial assets, and

(F) any events, covenants, standards or preconditions that are dependant or based on the economic performance of the underlying pool of financial assets and that may impact on the timing or amount of payments or distributions to be made under the Asset-Backed Securities,

(ii) information on the underlying pool of financial assets for the period from the date as at which the following information was presented in the issuer's current AIF to a date not more than 90 days before the date of the issuance of a receipt for the preliminary Shelf or Short Form Prospectus, as the case may be, relating to

(A) the composition of the pool as of the end of the period,

(B) income and losses from the pool for the period, on at least a quarterly basis, and

(C) the payment, prepayment and collection experience of the pool for the period, on at least a quarterly basis,

(iii) the type or types of the financial assets, the manner in which the financial assets originated or will originate and, if applicable, the mechanism and terms of the agreement governing the transfer of the financial assets comprising the underlying pool to or through the Issuer, including the consideration paid for the financial assets,

(iv) any person or company (including its general business activities and its material responsibilities under the Asset-Backed Securities) who

(A) originates, sells or deposits a material portion of the financial assets comprising the pool, or has agreed to do so,

(B) acts, or has agreed to act, as a trustee, custodian, bailee or agent of the Issuer or any holder of the Asset-Backed Securities, or in a similar capacity,

(C) administers or services a material portion of the financial assets comprising the pool or provides administrative or managerial services to the Issuer, or has agreed to do so, on a conditional basis or otherwise, if (1) finding a replacement provider of

the services at a cost comparable to the cost of the current provider is not reasonably likely, (2) a replacement provider of the services is likely to achieve materially worse results than the current provider, (3) the current provider of the services is likely to default in its service obligations because of its current financial condition, or (4) the disclosure is otherwise material,

(D) provides a guarantee, alternative credit support or other credit enhancement to support the obligations of the Issuer under the Asset-Backed Securities or the performance of some or all of the financial assets in the pool, or has agreed to do so, or

(E) lends to the Issuer in order to facilitate the timely payment or repayment of amounts payable under the Asset-Backed Securities, or has agreed to do so,

(v) the terms of any material relationships between (A) the persons or companies referred to in subparagraph (iv) of this paragraph 13 and any of their respective affiliates, and (B) the Issuer and any of its affiliates,

(vi) any provisions relating to termination of services or responsibilities of any of the persons or companies referred to in subparagraph (iv) of this paragraph 13 and the terms on which a replacement may be appointed, and

(vii) any risk factors associated with the Asset-Backed Securities, including disclosure of material risks associated with changes in interest rates or prepayment levels, and any circumstances where payments on the Asset-Backed Securities could be impaired or disrupted as a result of any reasonably foreseeable event that may delay, divert or disrupt the cash flows dedicated to service the Asset-Backed Securities,

provided that if any of the foregoing information will be disclosed in a final Prospectus Supplement (as defined below), it may be omitted from the corresponding Shelf Prospectus,

(c) the final Shelf Prospectus will contain a statement that the Issuer undertakes that it will not distribute Asset-Based Securities of a type that at the time of distribution have not previously been distributed by prospectus in the Jurisdiction

("Novel Asset-Backed Securities") without pre-clearing with the Decision Makers the disclosure to be contained in any Prospectus Supplement pertaining to the distribution of such Novel Asset-Based Securities, and

(d) the preliminary Shelf or Short Form Prospectus, as the case may be, and final Shelf or Short Form Prospectus, as the case may be, will disclose any factors or considerations identified by the Approved Rating Organization as giving rise to unusual risks associated with the securities to be distributed;

14. Shelf Prospectus supplements (each a "Prospectus Supplement") will be prepared in accordance with subsection 3.4(a) of NP 44, and will include all of the shelf information pertaining to the distribution of Asset-Backed Securities which was omitted from the final Shelf Prospectus;

15. TDSI proposes to act as the underwriter for 50 to 80 percent of the dollar value of the distribution for each proposed Offering of Asset-Backed Securities by the Issuer;

16. the only financial benefits which TDSJ will receive as a result of each proposed Offering are

(a) normal arm's length underwriting commission and reimbursement of expenses associated with a public offering in Canada, and

(b) nominal fees in its capacity as sub-administrative agent for the Issuer pursuant to a sub-administration agreement to be entered into between TDSI and TD;

17. TD is taking the initiative in organizing the business of the Issuer in connection with the proposed Offerings and as such TD may be considered to be a "promoter" of the Issuer within the meaning of securities legislation of certain Jurisdictions;

18. TD entered into an administrative services agreement dated July 5, 2000 with the Issuer under which TD has agreed to provide all administrative services relating to the operation of the Issuer, for which TD will receive a nominal administrative fee;

19. the Issuer's costs and expenses related to the issuance of the Pass-Thorough Certificates as well as its ongoing operating expenses will be funded either

(a) through a fee which will be payable from the collections on the pools of Securitized Assets, or

(b) by TD;

20. the Issuer may be considered to be a related issuer and connected issuer (as defined in the Legislation) of TDSI for the purposes of the proposed Offerings because

(a) TDSI is a subsidiary of TD,

(b) TD is a promoter of the Issuer,

(c) TD will administer the on-going operations of the issuer pursuant to an administrative services agreement, and

(d) TDSI will administer the on-going operations of the issuer pursuant to a sub-administration agreement;

21. in connection with the proposed distribution by TDSI of Asset-Backed Securities of the Issuer for each proposed Offering

(a) each preliminary Shelf or Short Form Prospectus, final Shelf or Short Form Prospectus and Prospectus Supplement of the Issuer shall contain the following information,

(i) on the front page of each such document,

(A) a statement, naming TDSI, in bold type which states that the Issuer is a related and connected issuer of TDSI in connection with the distribution,

(B) a summary, naming TDSI, stating that the Issuer is a related and connected issuer of TDSI based on, among other things, the common links between the Issuer, TDSI and TD, and

(C) a cross-reference to the applicable section in the body of the document where further information concerning the relationship between the Issuer and TDSI is provided, and

(ii) in the body of each such document,

(A) a statement, naming TDSI, that the Issuer is a related and connected issuer of TDSI in connection with the distribution,

(B) the basis on which the Issuer is a related and connected issuer to TDSI, including details of the common links between TD, TDSI and the Issuer, and other aspects of the relationship between TDSI and the Issuer,

(C) disclosure regarding the involvement of TDSI and of TD in the decision to distribute the Asset-

Backed Securities being offered and the determination of the terms of the distribution, and

(D) details of the financial benefits which TDSI will receive from the proposed Offerings,

(b) an independent underwriter shall underwrite no less than 20 percent of the dollar value of the distribution for an Offering, participate in the structuring and pricing of the distribution of such Offering and in the due diligence activities performed by the underwriters for the distribution, and sign the prospectus certificate required by the Legislation, and

(c) each such document shall identify the independent underwriter and disclose the role of the independent underwriter in the structuring and pricing of the distribution of the applicable Offering and in the due diligence activities performed by the underwriters for the distribution.

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 requirements contained in the Legislation shall be waived solely to permit the Issuer to participate in the POP System to distribute Asset-Backed Securities with an Approved Rating from time to time, provided that:

A. the Issuer complies with paragraphs 11, 12, 13 and 14 hereof;

B. except as otherwise provided herein, the issuer complies with all of the filing requirements and procedures set out in the Legislation governing the POP System and the Shelf System;

C. the Issuer files an undertaking before or concurrently with its preliminary Shelf Prospectus, if utilized, which states that:

(a) the Issuer will not distribute under the final Shelf Prospectus Novel Asset-Backed Securities without pre-clearing the disclosure pertaining to the distribution of such Novel Asset-Backed Securities in any Prospectus Supplement with the applicable Decision Makers; and

(b) the Issuer will not distribute such Novel Asset-Backed Securities unless:

(i) the draft Prospectus Supplements pertaining to the distribution of such Novel Asset-Backed Securities have been delivered to the Decision Makers in substantially final form; and

(ii) either:

(A) the Decision Makers have confirmed their acceptance of each draft Prospectus Supplement in substantially final form or in final form; or

(B) 21 days has elapsed since the date of delivery of each draft Prospectus Supplement in substantially final form to the Decision Makers and the Decision Makers have not provided written comments on the draft Prospectus Supplement;

D. the Issuer files with each preliminary Short Form or Shelf Prospectus a qualification certificate executed on behalf of the Issuer by an officer of its administrative agent, certifying that the issuer satisfies the eligibility criteria set out in paragraph 11 hereof, and which makes reference to this Decision; and

E. this Decision will automatically expire upon the latter of proposed National Instrument 44-101 and proposed National Instrument 44-102 coming into force and being adopted as a rule in each of the Jurisdictions.

DATED at Toronto, this "1st" day of "September", 2000.

THE FURTHER DECISION of the Decision Makers pursuant to the Legislation is that the restrictions contained in the Legislation concerning registrants acting as underwriters in connection with the distribution of securities of related or connected issuers will not apply to TDSI in respect of the proposed Offerings provided that the such Offerings are completed in compliance with the requirements contained in paragraph 21 herein.

DATED at Toronto, this "1st" day of "September", 2000.

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Waiver granted pursuant to section 4.5 of National Policy Statement No. 47 to enable issuer to participate in the POP System and the Shelf System (as contemplated in National Policy Statement No. 44 to distribute asset-backed securities.

Issuer is a connected and related issuer of lead underwriter- independent underwriter will underwrite at least 20% of the offering - lead underwriter exempt from the independent underwriter requirement, subject to certain conditions.

Ontario Regulations Cited

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., SS. 224(1)(b) and 233.

Policies Cited

National Policy Statement No. 47 - Prompt Offering Qualification System.

National Policy Statement No.44- Rules for Shelf Prospectus Offerings and for Pricing Offerings After the Final Prospectus is Received.

Proposed National Instrument 44-101- Short Form Prospectus Distributions (1999), 22 OSCB (POP Supp 2).

Proposed National Instrument 44-102 - Shelf Distribution (1998), 21 OSCB 6206.