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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief from independent underwriter requirement for dealer to 100% underwrite rated debt securities of a related issuer – issuer and dealer both indirect subsidiaries of U.S. based parent – debt securities have an approved rating from an approved rating organization

Applicable British Columbia Provisions

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

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, ONTARIO, 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 CANADA FINANCE COMPANY MERRILL LYNCH & CO., INC. AND MERRILL LYNCH CANADA INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Ontario, Québec, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Merrill Lynch Canada Finance Company (the “Issuer”), Merrill Lynch & Co., Inc. (“ML&Co”) and Merrill Lynch Canada Inc. (“ML Canada”) (the Issuer, ML&Co and ML Canada are collectively referred to herein as the “Filers”) for a decision under 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 offerings (the “MLCFC Offerings”) of medium term notes (the “Notes”) issued by the Issuer from time to time by way of a short form base shelf prospectus dated May 10, 2002 (the “Prospectus”) and pricing supplements thereto (the “Prospectus Supplements”) on the terms herein specified;

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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 or in Québec Commission Notice 14-101;

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

1. the Issuer is an unlimited liability company incorporated under the *Companies Act* (Nova Scotia). The Issuer was incorporated on August 25, 1999 and has a registered office in Halifax, Nova Scotia and its principal place of business in Toronto, Ontario. The Issuer is an indirect wholly-owned subsidiary of ML&Co.;
2. to date, the Issuer has completed seven public medium term notes transactions (the “Prior Offerings”);
3. the Issuer has been a “reporting issuer” pursuant to the securities legislation in each of the provinces of Canada for over 12 calendar months. Pursuant to a decision dated May 3, 2002 of the Decision Makers of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia Newfoundland and Labrador and Prince Edward Island (the “May 3, 2002 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 May 3, 2002 Decision;
4. pursuant to the May 3, 2002 Decision, the requirement to file an annual information form does not apply to the Issuer, provided that ML&Co complies with the requirement to file an annual information form as if it were the Issuer and the Filers comply with all of the conditions in the May 3, 2002 Decision. ML&Co filed a renewal annual information form with the U.S. Securities and Exchange Commission on March 15, 2002 (consisting of Parts I and II and any exhibits relating to the computation of the ratio of earnings to fixed charges referred to in item 14(a)(3) of Part IV of the annual report on Form 10-K of ML&Co for the year ended December 28, 2001 filed with the Securities and Exchange Commission pursuant to the *Securities Exchange Act of 1934*, as amended);

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5. the Issuer was incorporated solely for the purpose of undertaking financing activities, including the issuance of Notes, to raise funds for ML&Co's Canadian operations, and does not and will not carry on any operating or other business activities;
6. the Issuer may be considered to be a related (or equivalent) issuer (as defined in the Legislation) of ML Canada for the purposes of the MLCFC Offerings because both ML Canada and the Issuer are indirect wholly-owned subsidiaries of ML&Co;
7. ML Canada was continued and amalgamated under the laws of Canada on November 5, 2002 and is an indirect wholly-owned subsidiary of ML&Co; the head office of ML Canada is located in Toronto, Ontario;
8. ML Canada is not a reporting issuer in any Canadian province;
9. ML Canada is registered in all Jurisdictions as a dealer in the categories of "broker" and "investment dealer" and is a member of the Investment Dealers Association of Canada;
10. the Issuer has established a medium term note program to raise up to \$2,000,000,000 in Canada through the issuance of Notes pursuant to National Instrument 44-101 *Short Form Prospectus Distributions* (the "POP Requirements") and National Instrument 44-102 *Shelf Distributions* (the "Shelf Requirements"); the distributions of the Notes have been and will be qualified by the Prospectus and the Prospectus Supplements;
11. the Notes may be offered from time to time, under Prospectus Supplements, in an aggregate principal amount of up to \$2,000,000,000 during the twenty-five month period that the Prospectus, including any amendments thereto, is valid pursuant to the POP Requirements and the Shelf Requirements;
12. all Notes have and will have an approved rating (as defined in the POP Requirements) and will be rated by a recognized security evaluation agency in one of the categories determined by the Commission des valeurs mobilières du Québec (an "Approved Rating");
13. ML Canada proposes to act as the underwriter in connection with the distribution of 100% of the dollar value of the distribution of Notes for the MLCFC Offerings;

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14. no Notes will be issued by the Issuer where ML Canada is underwriting 100% of the offering of such Notes, unless the Notes have been rated by an approved rating organization;
15. based upon the experience of the Prior Offerings, the Filers expect that approximately 90% of such MLCFC Offerings will be made to Canadian institutions, pension funds, endowment funds or mutual funds (collectively, "Institutional Investors") who can be expected to be knowledgeable about the appropriate pricing parameters for securities of the type offered under the MLCFC Offerings and to independently determine the appropriateness of the price in making a purchase decision with respect to any such MLCFC Offering;
16. a minimum of 66 2/3 % of each MLCFC Offering will be made to Institutional Investors;
17. the initial offering price of each MLCFC Offering will be determined by market comparisons in both the secondary and primary market for medium term notes at the time of pricing; secondary market levels on comparable offerings will be obtained from other dealers and investors and final pricing of each MLCFC Offering will be based on the secondary market bid spread (being the difference in yield between comparable medium term notes trading in the secondary market and the current Government of Canada bond) plus, in appropriate circumstances, a new issue premium plus the current Government of Canada bond yield;
18. if ML Canada is underwriting 100% of an offering of Notes, no Notes will be distributed at a yield higher (and correspondingly a price lower) than the mean of a reasonably interpreted, internally generated yield curve (across all available maturities) which will be based on the secondary market yields of the Issuer's outstanding debt as well as the secondary market yields on outstanding public debt issued by similarly rated issuers at arm's length to the Issuer, ML Canada or their affiliates;
19. Other than the proceeds of each MLCFC Offering, which are intended for general corporate purposes (including ML&Co's Canadian operations), the only financial benefits which ML Canada will receive as a result of the MLCFC Offerings are the normal arm's length underwriting commission and reimbursement of expenses associated with a public offering in Canada, which commissions and reimbursements shall 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 Quebec, and because the net proceeds from the sale of Notes may be loaned to or otherwise invested

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in various affiliates of the Issuer or of ML&Co, ML Canada may also receive inter-company financing;

20. in connection with the proposed distribution by ML Canada of 100% of any Notes of the Issuer, the Prospectus and each Prospectus Supplement of the Issuer shall contain the following information:

- (a) on the front page of each such document, the information listed in Appendix C of the National Instrument as required information for the front page of such document;
- (b) in the body of each such document, the information listed in Appendix C of the National Instrument as required information for the body of such document; and
- (c) on the front page of each such document, a statement that the minimum subscription amount is \$150,000;

AND WHEREAS under 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 Makers under 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 MLCFC Offerings provided that the Issuer complies with Paragraph 14, 16, 18 and 20 hereof.

DATED March 7, 2003.

Iva Vranic