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February 14, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications -

National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - General - An issuer wants an exemption from having to file continuous disclosure documents to permit it to rely on the continuous disclosure documents of its parent issuer - The issuer issues both exchangeable shares and credit support securities and, as a result, cannot rely on either the exchangeable share exemption or credit support issuer exemption in NI 51-102; the issuer's parent company files non-essential Form 8-Ks with the SEC in connection with takedowns under the parent's US prospectus; the issuer will file copies of all the parent's documents except the non-essential Form 8-Ks; the issuer will otherwise comply with the exchangeable share and credit support issuer exemptions in NI 51-102

Multilateral Instrument 52-109 s. 4.5 - Certification of Disclosure in Issuer's Annual and Interim Filings - An issuer wants relief from the requirement in parts 2 and 3 of MI 52-109 to file annual and interim certificates - The issuer has applied for and received an exemption from filing interim and annual financial statements

National Instrument 44-101, s. 8.1 - Short Form Prospectus Distributions - An issuer that is a credit support issuer wants an exemption from having to incorporate by reference certain documents of its credit supporter in its short form prospectus under NI 44-101 - The issuer is a credit support issuer that must incorporate into its prospectus documents, including certain Form 8-Ks, filed by its credit supporter with the SEC; the credit support issuer will incorporate all Form 8-Ks filed by its credit supporter except non-essential Form 8-Ks that are unrelated to the credit support issuer and do not provide useful information to Canadian investors; the other documents are not documents that other issuers are required to incorporate into their prospectuses in Canada; the issuer will file the documents in Canada; the issuer's Canadian prospectus will refer to the fact that the documents have been filed and are available on SEDAR

National Instrument 33-105, s. 5.1 - Underwriting Conflicts - An issuer wants an exemption from the requirement for a specified level of independent underwriter involvement in its prospectus distribution - The securities issued under the offering will have an approved credit rating; the minimum subscription price for each offering will be \$150,000; the prospectus will include disclosure about the involvement of the related or connected underwriter, and the involvement of any independent underwriters; if the underwriting is being done solely by a related or connected underwriter, at least 66 2/3% of the offering will be made to

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institutional investors; the related or connected underwriter will receive only the normal arm's length underwriting commissions and reimbursement of expenses

Applicable British Columbia Provisions

National Instrument 51-102, ss. 13.1, 13.3 and 13.4

Multilateral Instrument 52-109, s. 4.5

National Instrument 44-101, s. 8.1

Form 44-101F1, s. 12.1(2)

National Instrument 33-105, ss. 2.1 and 5.1

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova
Scotia and New Brunswick (the "Jurisdictions")

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
Merrill Lynch & Co., Inc. ("ML&Co."), Merrill Lynch & Co. Canada, Ltd. ("ML
Exchangeco") and Merrill Lynch Canada Inc. ("ML Canada" and together with
ML&Co. and ML Exchangeco, the "Filers")

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 Filers for a decision under the securities legislation of the Jurisdictions (the "Legislation") exempting the Filers from:

- (a) in respect of ML Exchangeco only, the application of *National Instrument 51-102 - Continuous Disclosure Obligations* ("NI 51-102"), pursuant to section 13.1 of NI 51-102, and the application of any comparable continuous disclosure requirements under the Legislation of the Jurisdictions that have not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102 (the "Continuous Disclosure Requirements");

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- (b) in respect of ML Exchangeco only, the requirement in *Multilateral Instrument 52-109 – Certification of Disclosure in Issuers' Annual and Interim Filings* that the chief executive officer and chief financial officer of ML Exchangeco certify ML Exchangeco's annual and interim filings (the “Certification Requirement”);
- (c) in respect of ML Exchangeco only, the requirement contained in section 12.1(2) of Form 44-101F1 – *Short Form Prospectus*, to incorporate by reference into a Prospectus and any Supplements (as defined below) thereto, the Non-Incorporated Exhibits (as defined below) (the “Incorporation by Reference Requirements”); and
- (d) the requirement contained in section 2.1 of National Instrument 33-105 – *Underwriting Conflicts* (“NI 33-105”) as it relates to the requirement that the distribution of securities of ML Exchangeco, a related issuer or connected issuer of ML Canada, be done through a specified level of independent underwriter involvement (the “Independent Underwriter Requirement”).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission (the “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 otherwise defined in this decision.

Representations

This decision is based on the following facts represented by the Filers:

ML&Co.

1. ML&Co. was incorporated under the laws of the State of Delaware on March 27, 1973.
2. The principal office of ML&Co. is located at 4 World Financial Center, New York, New York, 10080.

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3. ML&Co. is a holding company that, through its U.S. and non-U.S. subsidiaries and affiliates, provides investment, financing, advisory, insurance and related products on a global basis.
4. ML&Co.'s authorized capital consists of 25,000,000 shares of undesignated preferred stock, US\$1.00 par value per share, issuable in series, and 3,000,000,000 shares of common stock, US\$1.33⅓ par value per share ("Merrill Lynch Common Shares"). As of July 1, 2005 there were: (a) 21,000 preference shares authorized as Floating Rate Non-Cumulative Preferred Stock, Series 1; (b) 37,000 preference shares authorized as Floating Rate Non-Cumulative Preferred Stock, Series 2; (c) 43,333 preference shares authorized as 6.375% Non-Cumulative Preferred Stock, Series 3; and (d) 23,333 preference shares authorized as Floating Rate Non-Cumulative Preferred Stock, Series 4. As of October 28, 2005, there were approximately 916,189,099 common shares of ML&Co. issued and outstanding.
5. ML&Co. has securities registered under subsections 12(b) and 12(g) of the *Securities Exchange Act of 1934*, as amended (the "1934 Act"), and is required to file reports under subsection 15(d) of the 1934 Act.
6. In June 2004, ML&Co. filed a U.S. \$18,362,988,000 shelf prospectus (the "Initial MJDS Prospectus") in the United States and Canada under *National Instrument 71-101 – The Multijurisdictional Disclosure System* ("NI 71-101") relating to the offering of debt securities, linked debt securities, index warrants, debt warrants, preferred stock, depositary shares and common stock of ML&Co. In March 2005, ML&Co. filed a U.S. \$39,390,000,000 shelf prospectus in the United States and Canada under Northbound MJDS under NI 71-101 relating to the offering of debt securities, warrants, preferred stock, depositary shares and common stock of ML&Co.
7. ML&Co. has been a reporting issuer or the equivalent thereof in British Columbia, Alberta, Saskatchewan, Manitoba, Québec and Nova Scotia since October 22, 1999 (or earlier, in the case of certain of such provinces) and became a reporting issuer or the equivalent thereof in Ontario, New Brunswick, Prince Edward Island, Newfoundland and Labrador, the Yukon Territory, the Northwest Territories and Nunavut in June 2004 when it filed the Northbound MJDS Prospectus in each of the Jurisdictions under NI 71-101 and the Jurisdictions issued an MRRS receipt for the Northbound MJDS Prospectus. ML&Co. is not on the list of defaulting reporting issuers in those provinces and territories.

ML Exchangeco

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8. ML Exchangeco was incorporated under the laws of Canada on December 22, 1953 and continued under the laws of the Province of Ontario on December 28, 1983. ML Exchangeco is an indirect wholly-owned subsidiary of ML&Co.
9. The principal office of ML Exchangeco is located at 400-181 Bay Street, Toronto, Ontario, M5J 2V8.
10. ML Exchangeco is a reporting issuer in each Jurisdiction (other than those Jurisdictions which do not recognize the concept of a reporting issuer).
11. ML Exchangeco is a holding company which holds: 33% of the outstanding shares of ML Canada, a fully registered Canadian investment dealer; 63% of the outstanding voting shares of Midland Walwyn Inc. ("Midland Walwyn"); 100% of the outstanding shares of each of Merrill Lynch Capital Canada Inc., a provider of third-party loans and credit, and Merrill Lynch Financial Assets Inc. (formerly known as BULLS Offering Corporation), an issuer of publicly traded units consisting of interests in a strip bond and related call option. ML Exchangeco also operates an unsecured, short-term promissory note and commercial paper program (the "Note Program"), guaranteed by ML&Co., the proceeds from which are used for ML Exchangeco's working capital requirements (including on-lending of funds to ML Canada) and general corporate purposes.
12. The authorized capital of ML Exchangeco consists of an unlimited number of non-voting preference shares, an unlimited number of common shares and an unlimited number of non-voting exchangeable shares (the "Exchangeable Shares"). On December 31, 2004, there were 2,507,908 non-voting preference shares, 71,878 common shares, and 9,662,448 Exchangeable Shares outstanding.
13. On March 18, 2005, ML Exchangeco gave notice pursuant to section 13.2(2) of NI 51-102 that it intended to rely on the 1998 Orders (as hereinafter defined) in respect of the continuous disclosure requirements under the Legislation from which ML&Co and ML Exchangeco were previously granted relief which are substantially similar to the NI 51-102 Requirements. ML Exchangeco first intended to rely on subsection 13.2(1) in connection with the requirement under NI 51-102 to file interim financial statements for the period ended March 31, 2004.

ML Canada

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14. ML Canada was continued and amalgamated under the laws of Canada on August 26, 1998 and is an indirect wholly owned subsidiary of ML&Co. ML Canada is not a reporting issuer in any of the Jurisdictions.
15. ML Canada is registered as a dealer in the categories of “broker” and/or “investment dealer” under the Legislation of each of the Jurisdictions and is a member of the Investment Dealers Association of Canada.
16. The principal office of ML Canada is located at 400-181 Bay Street, Toronto, Ontario, M5J 2V8.

Merger Between ML&Co. and Midland Walwyn Inc.

17. In 1998 ML&Co., through its subsidiaries ML Exchangeco and Merrill Lynch Canada Holdings Company (“ML Holdings”), acquired Midland Walwyn (the “Transaction”). At the time of the Transaction, Midland Walwyn was a financial services holding company that operated a fully integrated investment dealer, Midland Walwyn Capital Inc. and other subsidiary companies, and was a reporting issuer under the *Securities Act* (Ontario) (the “OSA”). Midland Walwyn had an authorized capital that consisted of an unlimited number of first preference shares, of which 3,000,000 first preference shares were authorized as series 1, and an unlimited number of ordinary shares of Midland Walwyn (the “Midland Walwyn Ordinary Shares”). As of June 21st, 1998, there were no preference shares issued or outstanding. There were 37,571,598 Midland Walwyn Ordinary Shares outstanding and 3,154,936 Midland Walwyn Ordinary Shares reserved, in the aggregate, for issuance in respect of outstanding options to purchase Midland Walwyn Ordinary Shares held by directors, officers and employees of Midland Walwyn and its affiliates.
18. The Transaction was effected by way of an arrangement (the “Arrangement”) pursuant to section 192 of the *Canada Business Corporations Act* (the “CBCA”). Upon the Arrangement becoming effective on or about August 26, 1998, the Midland Walwyn Ordinary Shares were exchanged for either Merrill Lynch Common Shares, Exchangeable Shares or some combination thereof, based on elections made by each Midland Walwyn shareholder. As a result of the Transaction, all of the issued and outstanding Midland Walwyn Ordinary Shares were transferred to ML Exchangeco and ML Holdings, and the previous holders of Midland Walwyn Ordinary shares became holders of Merrill Lynch Common Shares, Exchangeable Shares or a combination of both.
19. The Exchangeable Shares issued in conjunction with the Transaction are associated with various rights, privileges and restrictions as between the

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holders, ML Exchangeco and ML Holdings. These rights, privileges and restrictions were contemplated as part of the Transaction and continue to be exercised on an ongoing basis. The following section describes these features in greater detail.

Exchangeable Shares of ML Exchangeco

20. The Exchangeable Shares are listed on the Toronto Stock Exchange under the trading symbol “MLC”. The Exchangeable Shares rank senior to the non-voting preference shares and the common shares of ML Exchangeco. All of the issued and outstanding non-voting preference shares and common shares of ML Exchangeco are held indirectly by ML&Co.
21. The rights, privileges, restrictions and conditions attaching to the Exchangeable Shares (the “Exchangeable Share Provisions”) provide that each Exchangeable Share will entitle the holder to dividends from ML Exchangeco payable at the same time as, and equivalent to, each dividend paid by ML&Co. on a Merrill Lynch Common Share. Subject to the overriding call right of ML Holdings referred to below in this paragraph, on the liquidation, dissolution or winding-up of ML Exchangeco, a holder of Exchangeable Shares will be entitled to receive from ML Exchangeco, for each Exchangeable Share held, an amount equal to the current market price of a Merrill Lynch Common Share, to be satisfied by delivery of one Merrill Lynch Common Share, together with all declared and unpaid dividends on each such Exchangeable Share held by the holder on any dividend record date prior to the date of liquidation, dissolution or winding-up (such aggregate amount, the “Liquidation Price”). Upon a proposed liquidation, dissolution or winding-up of ML Exchangeco, ML Holdings will have an overriding call right to purchase all of the outstanding Exchangeable Shares from the holders thereof (other than ML&Co. or its affiliates) for a price per share equal to the Liquidation Price.
22. The Exchangeable Shares are non-voting (except as required by the Exchangeable Share Provisions or by applicable law) and retractable at the option of the holder at any time. Subject to the overriding call right of ML Holdings referred to below in this paragraph, upon retraction the holder will be entitled to receive from ML Exchangeco for each Exchangeable Share retracted an amount equal to the current market price of a common share of ML&Co., to be satisfied by delivery of one common share of ML&Co., together with, on the designated payment date therefor, all declared and unpaid dividends on each such retracted Exchangeable Share held by the holder on any dividend record date prior to the date of retraction (such aggregate amount, the “Retraction Price”). Upon being notified by ML

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Exchangeco of a proposed retraction of Exchangeable Shares, ML Holdings will have an overriding call right to purchase from the holder all of the Exchangeable Shares that are the subject of the retraction notice for a price per share equal to the Retraction Price.

23. Subject to the overriding call right of ML Holdings referred to below in this paragraph, ML Exchangeco may redeem all the Exchangeable Shares then outstanding at any time on or after January 31, 2011 (the "Redemption Date"). The board of directors of ML Exchangeco may also accelerate the Redemption Date in certain specified circumstances. Upon such redemption, a holder will be entitled to receive from ML Exchangeco for each Exchangeable Share redeemed an amount equal to the current market price of a Merrill Lynch Common Share, to be satisfied by the delivery of one Merrill Lynch Common Share, together with all declared and unpaid dividends on each such redeemed Exchangeable Share held by the holder on any dividend record date prior to the date of redemption (such aggregate amount, the "Redemption Price"). Upon being notified by ML Exchangeco of a proposed redemption of Exchangeable Shares, ML Holdings will have an overriding call right to purchase from the holders all of the outstanding Exchangeable Shares (other than ML&Co. or its affiliates) for a price per share equal to the Redemption Price.
24. Upon the liquidation, dissolution or winding-up of ML&Co., the Exchangeable Shares will be automatically exchanged for Merrill Lynch Common Shares pursuant to a voting and exchange trust agreement (the "Voting and Exchange Trust Agreement") such that holders of Exchangeable Shares may participate in the dissolution of ML&Co. on the same basis as holders of Merrill Lynch Common Shares. Upon the insolvency of ML Exchangeco, holders of Exchangeable Shares may put their Exchangeable Shares to ML&Co. in exchange for Merrill Lynch Common Shares.
25. A special voting share (the "Merrill Lynch Special Voting Share") was issued to and is currently held by Computershare Trust Company of Canada (the "Trustee") for the benefit of the holders of Exchangeable Shares outstanding from time to time (other than ML&Co. and its affiliates) pursuant to the Voting and Exchange Trust Agreement. The Merrill Lynch Special Voting Share carries a number of voting rights, exercisable at any meeting of the holders of Merrill Lynch Common Shares, equal to the number of Exchangeable Shares outstanding from time to time that are not owned by ML&Co. and its affiliates.
26. Under the Voting and Exchange Trust Agreement, ML&Co. granted to the Trustee for the benefit of the holders of the Exchangeable Shares a put right

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(the “Optional Exchange Right”), exercisable upon the insolvency of ML Exchangeco, to require ML&Co. to purchase from a holder of Exchangeable Shares all or any part of his or her Exchangeable Shares. The purchase price for each Exchangeable Share purchased by ML&Co. will be an amount equal to the current market price of a Merrill Lynch Common Share, to be satisfied by the delivery to the Trustee, on behalf of the holder, of one Merrill Lynch Common Share, together with an additional amount equivalent to the full amount of all declared and unpaid dividends on such Exchangeable Share held by such holder on any dividend record date prior to the closing of the purchase and sale.

27. Under the Voting and Exchange Trust Agreement, upon the liquidation, dissolution or winding-up of ML&Co., ML&Co. will be required to purchase each outstanding Exchangeable Share, and each holder will be required to sell all of his or her Exchangeable Shares (such purchase and sale obligations are hereinafter referred to as the “Automatic Exchange Right”) for a purchase price per share equal to the current market price of a Merrill Lynch Common Share, to be satisfied by the delivery to the Trustee, on behalf of the holder, of one Merrill Lynch Common Share, together with an additional amount equivalent to the full amount of all declared and unpaid dividends on such Exchangeable Share held by such holder on any dividend record date prior to the closing of the purchase and sale.

Potential Future Issuances by ML Exchangeco

28. ML Exchangeco currently issues the Exchangeable Shares and may also issue from time to time in the future, the securities described at (a) through (d) below:
- (a) designated exchangeable securities (as defined in section 13.3 of NI 51-102);
 - (b) designated credit support securities (as such term is defined in section 13.4 of NI 51-102);
 - (c) securities issued to ML&Co. or its affiliates; and
 - (d) debt securities issued to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions.
29. Without limitation to the foregoing, ML Exchangeco may offer from time to time designated credit support securities that are qualified by a short form

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prospectus (a “Prospectus”) filed pursuant to *National Instrument 44-101 – Short Form Prospectus Distributions* (“NI 44-101”) and, where such a Prospectus is a shelf prospectus, any supplement thereto (a “Supplement”). Any such securities are hereinafter referred to as the “Securities” and any such offering of Securities is hereinafter referred to as the “Offering”.

30. Any Prospectus will be signed by ML Exchangeco, as issuer, ML&Co., as credit supporter, and dealers party to a dealer agreement for the Prospectus as of the date thereof. The Prospectus will include disclosure to the effect that:
 - (a) ML&Co. will fully and unconditionally guarantee payment of the principal and interest of the Securities, together with any other amounts that may be due under any provisions of the trust indenture relating to the Securities;
 - (b) separate continuous disclosure information relating to ML Exchangeco will not be provided to the purchasers of the Securities;
 - (c) the Securities issued under the Prospectus has an approved rating (as defined below).
31. The Securities will be fully and unconditionally guaranteed by ML&Co. as to payment of principal, interest and all other amounts due thereunder. The trust indenture under which the Securities are created will provide that ML&Co. will make any payment or performance under the indenture promptly upon demand and, in any event, within 15 days of any failure by ML Exchangeco to punctually make any payment or performance in respect of the Securities. All Securities will have an “approved rating” (as defined in NI 51-102) issued by an “approved rating organization” (as defined in NI 51-102) (an “Approved Rating”).

ML&Co. Filings

32. The consolidated annual and interim financial statements of ML&Co. and its consolidated subsidiaries to be included in or incorporated by reference into the Prospectus are prepared in accordance with U.S. GAAP (as defined in *National Instrument 52-107 – Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (“NI 52-107”)) and otherwise comply with the requirements of U.S. law, and, in the case of ML&Co.'s consolidated annual financial statements, such financial statements are audited in accordance with U.S. GAAS (as defined in NI 52-107).
33. In connection with takedowns under ML&Co.'s base shelf prospectus in the U.S., ML&Co. is required to file with the SEC a large number of current

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reports on Form 8-K (the “Non-Essential 8-Ks”) whose contents are comprised solely of:

- (a) exhibits attaching the form of securities for each such takedown;
- (b) the consent and opinion of counsel relating thereto; and
- (c) other documentation, all of a non-financial nature, that may be required to be filed with the SEC in connection with such takedowns.

34. In the present Application, in addition to the exemptive relief that the Filers are requesting be granted with respect to ML Exchangeco's obligations to incorporate by reference into a Prospectus (including for greater certainty, any Supplement thereto, if applicable) certain of ML&Co.'s continuous disclosure documents, the Filers are seeking an exemption from the requirement in section 13.2(d) of NI 51-102 as it relates to the requirement to file Non-Essential 8-K's. The Non-Essential 8-K's are publicly available on the SEC's internet website at www.sec.gov.

35. In addition to the Non-Essential 8-K's, ML&Co. may file as a current report on Form 8-K, attach as exhibits to or incorporate by reference into its annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, definitive proxy or information statements or other continuous disclosure documents filed under the 1934 Act (the “1934 Act Filings”), the following documents which would not be required to be incorporated by reference in a Canadian issuer's prospectus (each, a “Non-Incorporated Exhibit”):

- (a) contracts not made in the ordinary course of business that are material to ML&Co., limited partnership agreements, indemnification and severance agreements, deferred compensation plans, stock unit and stock option plans and other stock option or award plans, and all amendments, supplements and restatements thereto (collectively, the “Material Contracts”) and any underwriting agreements or voting trust agreements of ML&Co. and all amendments, supplements and restatements thereto;
- (b) plans of acquisition, reorganization, arrangement, liquidation or succession;
- (c) articles of incorporation (or instruments corresponding thereto) and bylaws of ML&Co. and any amendments or restatements thereof;

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- (d) instruments defining the rights of security holders, including deposit agreements, rights agreements and any supplements to and amendments or restatements thereof;
 - (e) charters of committees of the ML&Co. board of directors, other than the audit committee charter;
 - (f) opinions of: (i) legal counsel as to legality of securities being registered in the U.S. indicating whether such securities will, when sold, be legally issued, fully paid and non-assessable and, if debt securities, whether they will be binding obligations of ML&Co.; and (ii) legal counsel or an independent or public or public certified accountant, or revenue rulings from the Internal Revenue Service, supporting the description of tax matters and consequences to the shareholders in certain filings of ML&Co.;
 - (g) published reports regarding matters submitted to security holders which are required to be filed with the SEC;
 - (h) manually signed powers of attorney filed with the SEC if any name is signed to a registration statement or report of ML&Co. pursuant to a power of attorney;
 - (i) indentures and supplemental indentures relating to the issuance of debt securities and forms of certificates and depositary receipts relating to securities of ML&Co.;
 - (j) current reports on Form 8-K of ML&Co. other than the Material 8-Ks (which Material 8-Ks would exclude, for greater certainty, any exhibits to the Material 8-Ks that would otherwise constitute a Non-Incorporated Exhibit); and
 - (k) codes of ethics that ML&Co. voluntarily files as exhibits to its annual report on Form 10K and also posts on its website.
36. By virtue of the Non-Incorporated Exhibits being filed as current reports on Form 8-K or being attached as exhibits or being incorporated by reference into ML&Co.'s 1934 Act Filings, ML&Co. and ML Exchangeco are required to incorporate the Non-Incorporated Exhibits into a Prospectus under section 12.1(2) of Form 44-101F1.
37. The Non-Incorporated Exhibits are typically very lengthy and incorporation by reference of such documents into a Prospectus would therefore impose a

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disproportionately burdensome translation obligation on ML&Co. in comparison to Canadian issuers.

38. In lieu of the Non-Incorporated Exhibits being incorporated by reference into a Prospectus, ML Exchangeco will file the Non-Incorporated Exhibits, other than Non-Incorporated Exhibits that have previously been filed, as soon as practicable following the filings of such disclosure documents with the SEC and, in any event, prior to the filings of any subsequent Supplement (where applicable) with the Decision Makers.
39. A Prospectus delivered to Canadian purchasers will incorporate by reference continuous disclosure documents of ML&Co. similar to the continuous disclosure documents that would be required to be incorporated by reference by a Canadian issuer in connection with similar offerings of securities by a Canadian issuer, notwithstanding that such Prospectus will not incorporate by reference the same documents that would be incorporated by reference into a U.S. base shelf prospectus filed with the SEC pursuant to a registration statement on Form S-3.
40. All of ML&Co.'s continuous disclosure documents except for the Non-Essential 8-Ks will continue to be filed with the Decision Makers and, except for the incorporation by reference relief granted herein, will remain subject to the requirements under the Legislation. Such materials are also available on EDGAR.
41. The Filers will include a statement in each Prospectus explaining that the Filers have received exemptive relief exempting the Filers from the requirement to include certain materials in such Prospectus, identifying this Decision, and explaining how investors can obtain a copy of this Decision.

Underwriting Arrangements

42. ML Exchangeco is considered to be a “related issuer” and a “connected issuer” (as such terms are defined in NI 33-105) of ML Canada for Offerings because both ML Canada and ML Exchangeco are indirect wholly-owned subsidiaries of ML&Co.
43. ML Exchangeco proposes to offer the Securities from time to time through one of three alternative underwriting arrangements, the first being provided for in NI 33-105 and the other two being Offerings made through:
 - (a) A syndicate structure pursuant to which ML Canada will act as an underwriter in respect of up to 49% of the offering (based on either the

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dollar value of the Offering or the total management fees for the Offering, as applicable) (a “49% Underwriting”) and subject to the following conditions: (i) the minimum subscription for each subscriber under the Offering will be \$150,000; (ii) each Supplement will, to the extent not disclosed in the Prospectus, identify the independent underwriters and disclose their role in structuring and pricing the applicable Offering and in due diligence activities performed by the underwriters for the Offering; and (iii) a Prospectus (including for greater certainty, any Supplement) will contain, on the front page and in the body of such document, the information listed in Appendix C of NI 33-105 as required information for the front page and body of such document; or

(b) An arrangement whereby ML Canada will underwrite up to 100% of an Offering (an “ML Majority Underwriting”), subject to the following conditions: (i) the minimum subscription for each subscriber under the Offering will be \$150,000; (ii) a minimum of 66 ²/₃% of the Offering will be made to institutional investors; (iii) any Supplement will, to the extent not disclosed in a Prospectus, identify the independent underwriters, if applicable, and disclose their role in structuring and pricing the applicable Offering and in the due diligence activities performed by the underwriters for the Offering; and (iv) a Prospectus will contain, on the front page and in the body of such document, the information listed in Appendix C of NI 33-105 as required information for the front page and body of such document.

44. If ML Exchangeco is offering the Securities through an ML Majority Underwriting, the initial offering price of the Securities will be determined by market comparisons in both the secondary and primary market for such Securities at the time of pricing; secondary market levels on comparable offerings will be obtained from other dealers and investors and final pricing of the Securities will be based on the secondary market bid spread (being the difference in yield between comparable securities 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.
45. Each of independent underwriters who is in a contractual relationship with ML Exchangeco at the time a Prospectus is filed will sign the certificate in the form prescribed by section 21.2 of Form 44-101F1.
46. Other than the proceeds of the 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 either a 49%

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Underwriting or a ML Majority Underwriting are the normal arm's length underwriting commissions and reimbursement of expenses associated with a public offering in Canada and, because the net proceeds from the sale of Securities may be loaned to or otherwise invested in various affiliates of ML Exchangeco or ML&Co., ML Canada may also receive inter-company financing.

Prior Orders

47. In August 1998, each of the Jurisdictions granted orders (collectively, the "1998 Orders") exempting ML Exchangeco from substantially all of the continuous disclosure requirements then set out in the Legislation of that Jurisdiction. The 1998 Orders are listed in Schedule A to this MRRS Decision Document.
48. ML Exchangeco has provided an undertaking to the securities regulatory authorities in the Jurisdictions that it will not rely on the continuous disclosure relief granted under the 1998 Orders.
49. Each Supplement to a Prospectus will incorporate by reference the following information:
 - (a) ML&Co.'s most recent annual report on Form 10-K filed under the 1934 Act, excluding any Non-Incorporated Exhibits thereto;
 - (b) ML&Co.'s most recent quarterly report on Form 10-Q, excluding any Non-Incorporated Exhibits thereto; and
 - (c) all of ML&Co.'s other 1934 Act Filings that are filed subsequent to the filing of ML&Co.'s most recent annual report on Form 10-K under the 1934 Act, other than the Non-Incorporated Exhibits.

Continuous Disclosure Relief

50. Other than the condition set forth in paragraphs 13.3(2)(c) and (d) of NI 51-102, ML Exchangeco satisfies the conditions set forth in section 13.3(2) of NI 51-102. Other than the conditions set forth in paragraphs 13.4(2)(c) and (d) of NI 51-102, ML Exchangeco satisfies the conditions set forth in section 13.4(2) of NI 51-102.
51. ML Exchangeco does not satisfy the conditions set forth in paragraph 13.3(2)(c) because it has issued designated credit support securities (as defined in section 13.4 of NI 51-102). ML Exchangeco does not satisfy the conditions

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set forth in paragraph 13.4(2)(c) because it has issued designated exchangeable securities (as defined in section 13.3 of NI 51-102).

52. ML Exchangeco does not satisfy the conditions set forth in paragraphs 13.3(2)(d) and 13.4(2)(d) because ML&Co. has been granted relief from the requirement to file Non-Essential 8-Ks pursuant to an MRRS decision document dated July 12, 2005 (*Merrill Lynch & Co., Inc.* (2005) 28 OSCB 6850).

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.

Continuous Disclosure Requirements

The Decision of the Decision Makers under the Legislation is that the Continuous Disclosure Requirements shall not apply to ML Exchangeco, provided that:

- (a) for so long as ML Exchangeco is an “exchangeable security issuer” (as such term is defined in NI 51-102), the Filers continue to satisfy each of the conditions set forth in paragraphs 13.3(2)(a), (b), (e), (f), (g) and (h) of NI 51-102;
- (b) for so long as ML Exchangeco is a “credit support issuer” (as such term is defined in NI 51-102), the Filers continue to satisfy each of the conditions set forth in subsection 13.4(2)(a), (b), (e), (f), (g), (h), and (i) of NI 51-102;
- (c) ML Exchangeco does not issue any securities, other than:
 - (i) designated exchangeable securities (as defined in section 13.3 of NI 51-102);
 - (ii) designated credit support securities (as defined in section 13.4 of NI 51-102);
 - (iii) securities issued to ML&Co. or its affiliates; or
 - (iv) debt securities issued to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions; and

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- (d) ML Exchangeco files with the securities regulatory authorities in each of the Jurisdictions copies of all documents ML&Co. is required file with the SEC, except for the Non-Essential 8-Ks, at the same time as, or as soon as practicable after, the filing by ML&Co. of those documents with the SEC.

Certification Requirement

The further Decision of the Decision Makers under the Legislation is that the Certification Requirement shall not apply to ML Exchangeco, provided that the Filers comply with the conditions in paragraphs (a) through (d) of the Decision above.

Incorporation by Reference

The further Decision of the Decision Makers is that ML&Co. and ML Exchangeco are exempt from the requirement of section 12.1(2) of Form 44-101F1 as it relates to the requirement to incorporate by reference into any Prospectus (including, for greater certainty, any Supplement, where applicable) the Non-Incorporated Exhibits, so long as:

- (a) ML&Co. and ML Exchangeco continue to incorporate by reference into a Prospectus (including for greater certainty, any Supplement, where applicable) ML&Co.'s most recent annual report on Form 10-K, its most recent quarterly report on Form 10-Q and all of its other 1934 Act filings that are filed since the date of ML&Co.'s most recent annual report on Form 10-K, other than the Non-Incorporated Exhibits; and
- (b) the representations in paragraphs 38, 40 and 41 remain true.

Independent Underwriter Requirement

The further Decision of the Decision Makers under the Legislation is that the Independent Underwriting Requirement contained in NI 33-105 shall not apply to ML Canada in respect of any 49% Underwriting and any ML Majority Underwriting made under a Prospectus, provided that:

- (a) the independent underwriters participate in each proposed 49% Underwriting as stated in paragraph 43(a) hereof;
- (b) ML Exchangeco complies with paragraph 43(b) hereof in connection with each ML Majority Underwriting; and
- (c) ML Exchangeco complies with paragraphs 31 and 46 hereof.

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Charlie MacCready
Assistant Manager, Corporate Finance
Ontario Securities Commission

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Schedule A

1998 ORDERS

British Columbia

Merrill Lynch & Co. (Re), Weekly Summary, Edition 98:35, p. 81 (September 4, 1998)

Alberta

Merrill Lynch & Co. (Re), (1998), 7 ASCS 3131

Saskatchewan

In the Matter of the Securities Act, S.S. 1988, c. 2-42.2 and In the Matter of Merrill Lynch & Co., Inc. and Merrill Lynch & Co., Canada Ltd. (August 25, 1998)

In the Matter of the Securities Act, 1988, SS 1988, C. S-42.2 and In the Matter of Merrill Lynch & Co., Inc. (August 30, 1998)

Manitoba

Merrill Lynch & Co., Inc. and Merrill Lynch & Co., Canada Ltd., Order No. 2303 (August 24, 1998)

Ontario

Merrill Lynch & Co. (Re) (1998), 21 OSCB 5459

Québec

Merrill Lynch & Co., Inc. (Décision No. 1998-C-0295 (August 21, 1998)

New Brunswick

In the Matter of the Securities Act, R.S.N.B. 1973, Chapter S-6, as amended and In the Matter of Merrill Lynch & Co., Inc. and Merrill Lynch & Co., Canada Ltd., Order #98-80032 (August 6, 1998)

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Nova Scotia

In the Matter of the Securities Act, R.S.N.S 1989, c. 418, as amended and In the Matter of Merrill Lynch & Co., Inc. (August 19, 1998)

Prince Edward Island

In the Matter of the Securities Act, R.S.P.E.I. 1998, Cap S-3, as amended and In the Matter of Merrill Lynch & Co., Inc. and Merrill Lynch & Co., Canada Ltd. (August 20, 1998)

Northwest Territories

In the Matter of the Securities Act, R.S.N.W.T. 1988, c. S-5 and In the Matter of Merrill Lynch & Co., Inc. and Merrill Lynch & Co., Canada Ltd. (August 24, 1998)

Yukon Territory

In the Matter of the Securities Act R.S.Y. 1986, Chapter 158, as amended and In the Matter of Merrill Lynch & Co., Inc. and Merrill Lynch & Co., Canada Ltd., Registrar's Order 98/54 (August 14, 1998)