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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from limitation on distributions of derivative securities in NI 71-101 in connection with an offering of certain equity linked securities – relief subject to the conditions that an investment in the securities will not require an investment decision by the holder other than at the time of purchase, the securities are not linked to a mutual fund or a non-redeemable investment fund, and if the securities provide for physical settlement, certain conditions are met – relief granted to allow current reports on Form 8-K of the issuer incorporated by reference in the prospectus filed under NI 71-101 to be limited to ones that relate to the financial condition of, or disclose a material change in the affairs of, the issuer

National Instrument Cited

National Instrument 71-101 – *The Multijurisdictional Disclosure System*

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH
COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO,
QUÉBEC, NOVA SCOTIA, NEW BRUNSWICK, PRINCE EDWARD
ISLAND, NEWFOUNDLAND, THE YUKON TERRITORY, THE
NORTHWEST TERRITORIES AND NUNAVUT**

AND

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

AND

IN THE MATTER OF MERRILL LYNCH & CO., INC.

MRRS DECISION DOCUMENT

WHEREAS the securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland, the Yukon Territory, the Northwest Territories and Nunavut (collectively, the “Jurisdictions”) has received an application from Merrill Lynch & Co., Inc. (“ML&Co.”) in connection with ML&Co.’s proposed offering of equity linked debt securities (the “Notes”) and index put warrants and index call warrants (collectively, “Index Warrants”) in Canada from time to time under the Canadian multijurisdictional disclosure system (the “MJDS” or “Northbound MJDS”) for a decision pursuant to the securities legislation in each of the Jurisdictions (collectively, the “Legislation”) exempting ML&Co. from (a) the limitation on

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distributions of derivative securities set forth in subsection 3.3(1) of National Instrument 71-101 – *The Multijurisdictional Disclosure System* (“NI 71-101”) and (b) the requirement in section 4.4 of NI 71-101 to incorporate by reference into a preliminary prospectus and (final) prospectus filed by ML&Co. under the MJDS all current reports of ML&Co. on Form 8-K that are incorporated or deemed to be incorporated by reference into its U.S. prospectus under U.S. federal securities law, to the extent that such Form 8-Ks do not relate to the financial condition of, or disclose a material change in the affairs of, ML&Co.;

AND WHEREAS pursuant to National Policy 12-201 – *Mutual Reliance Review System for Exemptive Relief Applications* (the “MRRS”), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meanings set out in National Instrument 14-101 – *Definitions* or in Quebec Commission Notice 14-101;

AND WHEREAS ML&Co. has represented to the Decision Makers that:

1. ML&Co. was incorporated under the laws of the State of Delaware on March 27, 1973.
2. 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.
3. As of January 30, 2004, ML&Co. had approximately U.S. \$85.8 billion of long term debt outstanding. All of ML&Co.'s long term debt is currently rated “A+” by Standard & Poor's Rating Services, a division of the McGraw-Hill Companies, Inc., “Aa3” by Moody's Investors Service, Inc., “AA(low)” by Dominion Bond Rating Service Limited and “AA-” by Fitch Ratings Ltd.
4. ML&Co. has securities registered under sections 12(b) and 12(g) of the *Securities Exchange Act of 1934*, as amended (the “1934 Act”), and is required to file reports under section 15(d) of the 1934 Act.
5. ML&Co. has filed with the Securities and Exchange Commission (the “SEC”) all 1934 Act filings for a period of 12 calendar months immediately before the date hereof and will file all 1934 Act filings required to be filed with the SEC between the date hereof and the date it files a prospectus under the MJDS in the principal jurisdiction. ML&Co. is not registered or required to be registered as an investment company under the *Investment Company Act of*

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1940, as amended. ML&Co. is not a commodity pool issuer (as such term is defined in NI 71-101).

6. ML&Co. currently offers medium term notes in Canada through its Canadian-incorporated wholly owned finance subsidiary, Merrill Lynch Canada Finance Company ("ML Finance"). These notes are fully and unconditionally guaranteed by ML&Co.
7. ML&Co. has been a reporting issuer 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 is not on the list of defaulting reporting issuers in those provinces.
8. Since 1998, ML&Co. has offered approximately U.S. \$7.5 billion of equity linked debt securities to the retail and institutional market in the United States by prospectus. Typical retail market oriented equity linked debt securities issued by ML&Co. in the United States include principal and non-principal protected notes with interest or principal linked to: (a) global equity, bond, commodity, foreign exchange and other indices; (b) global equity and bond mutual funds; (c) ML&Co. proprietary indices; (d) single stocks and baskets of stocks; and (e) exchange traded funds. Most of these equity linked debt securities are cash settled; however, some contemplate physical settlement. ML&Co. wishes to extend these offerings of equity linked debt securities into the Canadian retail market by filing its U.S. shelf prospectus and the related prospectus supplements under Northbound MJDS.
9. ML&Co. has also offered Index Warrants to the retail and institutional market in the United States by prospectus. Typical retail market oriented Index Warrants issued by ML&Co. in the United States are linked to the level or value of an index such as: (a) an equity or debt security, or a portfolio or basket of indices or securities, which may include the price or yield of securities; (b) any statistical measure of economic or financial performance, which may include any currency, consumer price or mortgage index; (c) the price or value of any commodity or any other item or index or any combination thereof; or (d) a global equity or bond mutual fund or an exchange traded fund. ML&Co. wishes to extend these offerings of Index Warrants into the Canadian retail market by filing its U.S. shelf prospectus and the related prospectus supplements under Northbound MJDS.
10. ML&Co. currently has a number of shelf prospectuses registered with the SEC under which it offers equity and debt securities. In October 2003, ML&Co. registered another shelf prospectus with the SEC in order to become eligible to issue an additional U.S. \$25 billion of equity and debt securities. ML&Co.

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intends to amend its U.S. \$25 billion shelf prospectus to include the disclosure required under NI 71-101 and file its amended U.S. \$25 billion shelf prospectus as well as any subsequent replacement or renewal shelf prospectuses that it may register with the SEC from time to time in Canada under Northbound MJDS.

The Offering

11. ML&Co. satisfies the eligibility criteria set forth in paragraph 3.1(c) of NI 71-101 and is eligible to use the MJDS for the purpose of distributing any of its securities in Canada on the basis of documentation prepared in compliance with U.S. federal securities law together with certain additional Canadian disclosure. ML&Co. proposes to distribute the Notes and the Index Warrants in Canada using the MJDS in reliance upon paragraph 3.1(c) of NI 71-101.
12. The Notes and the Index Warrants each constitute “derivative” securities because the market price, value or payment obligations of the Notes and the Index Warrants will be derived from, referenced to, or based on an underlying interest of the type described above in paragraphs 8 and 9, respectively.
13. Each issue of the Notes will have terms that reflect some or all of the following variables:
 - (a) whether the Notes are principal protected or non-principal protected;
 - (b) whether exposure to appreciation and/or depreciation in the principal amount of the Notes is unlimited or capped;
 - (c) whether the Notes bear interest and whether interest is at a fixed or variable rate, and, where it is at a variable rate, whether it is based on an index or a formula plus or minus a fixed amount or multiplied by a factor;
 - (d) whether the Notes are redeemable;
 - (e) whether the Notes are settled at maturity by cash settlement or physical settlement; and
 - (f) the nature of the underlying interest for the Notes by reference to which the principal value of the Notes at maturity or interest, if any, may be determined, including, for example:
 - (i) the price or yield of certain equity or debt securities;

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- (ii) any statistical measure of economic or financial performance, including, but not limited to, any currency, consumer price or mortgage index; or
- (iii) the price or value of any commodity or any other item or index or any combination thereof.

The payment or delivery of any consideration on any such Notes at maturity will be determined by the decrease or increase, as applicable, in the price or value of the applicable underlying interest. The terms of and any additional considerations, including any material tax consequences, relating to any Notes will be specified in the applicable prospectus supplement.

14. Each issue of the Index Warrants will have terms that reflect some or all of the following variables:

- (a) whether the Index Warrants to be issued will be index put warrants, index call warrants, or both;
- (b) whether the Index Warrants will be deemed automatically exercised as of a specific date or whether the Index Warrants may be exercised during a period and the date on which the right to exercise the Index Warrants commences and expires;
- (c) whether the Index Warrants will automatically expire at a date other than the expiration date;
- (d) whether ML&Co. will be permitted to cancel the Index Warrants upon the occurrence of certain events;
- (e) whether the Index Warrants are settled by cash settlement or physical settlement;
- (f) the method of determining (i) the payment or delivery, if any, to be made in connection with the exercise or deemed exercise of the Index Warrants, (ii) the minimum payment or delivery, if any, to be made upon expiration of the Index Warrants, (iii) the payment or delivery to be made upon the exercise of any right which ML&Co. may have to cancel the Index Warrants and (iv) the value of the index; and
- (g) the nature of the underlying index by reference to which ML&Co. will pay or deliver consideration on each Index Warrant, including, for example:

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- (i) an equity or debt security, or a portfolio or basket of indices or securities, which may include the price or yield of securities;
- (ii) any statistical measure of economic or financial performance, including, but not limited to, any currency, consumer price or mortgage index; or
- (iii) the price or value of any commodity or any other item or index or any combination thereof.

The payment or delivery of any consideration on any index put warrant will be determined by the decrease in the level or value of the applicable index and the payment or delivery of any consideration on any index call warrant will be determined by the increase in the level or value of the applicable index. The terms of and any additional considerations, including any material tax consequences, relating to any Index Warrants will be specified in the applicable prospectus supplement.

15. The Index Warrants are unsecured contractual obligations of ML&Co. and will rank equally with its other unsecured contractual obligations and with its unsecured and unsubordinated debt.
16. A purchaser of Notes or Index Warrants will make its investment decision at the time of purchase and, in contrast to an investment in a forward purchase contract, an investment in Notes or Index Warrants requires no further investment by the holder and therefore no further investment decision (except whether to sell the Notes or Index Warrants in the secondary market, if any).
17. Unless otherwise specified in the prospectus supplement relating to a specific issue of Notes or Index Warrants, the net proceeds from the sale of the Notes and Index Warrants will be used by ML&Co. for general corporate purposes, including financing the activities of its subsidiaries, financing its assets and those of its subsidiaries, lengthening the average maturity of its borrowings and financing acquisitions. ML&Co.'s decision to offer a particular issue of Notes or Index Warrants is based on retail demand for such Notes or Index Warrants and is not for the purpose of providing financing for issuers of the underlying interest.

Incorporation by Reference of Form 8-Ks

18. ML&Co. is required to file current reports on Form 8-K in a considerably broader range of circumstances than those that would require a material

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change report filing in Canada, resulting in extensive incorporation by reference into its U.S. shelf prospectus of documents that would not, under the Legislation, be required to be incorporated by reference into a Canadian shelf prospectus.

19. ML&Co. will incorporate by reference into its preliminary shelf prospectus and (final) shelf prospectus filed under NI 71-101 all Form 8-Ks that relate to the financial condition of, or disclose a material change in the affairs of, ML&Co. In addition, Canadian investors can access all of the Form 8-Ks filed by ML&Co. on EDGAR if they so choose.

AND WHEREAS pursuant to the MRRS this MRRS Decision Document evidences the decision of each of the Decision Makers (collectively, the “Decision”);

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides each 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 limitation on distributions of derivative securities set forth in subsection 3.3(1) of NI 71-101 shall not apply to ML&Co. in connection with an offering of the Notes or Index Warrants in Canada provided that:

- (a) an investment in Notes or Index Warrants will not require an investment by the holder other than at the time of purchase;
- (b) the Notes or Index Warrants are not linked to a mutual fund or a non-redeemable investment fund; and
- (c) if the Notes or Index Warrants provide for physical settlement in the securities of another issuer (an “Underlying Issuer”), the Underlying Issuer satisfies the eligibility criteria under either (i) paragraph 3.1(c) of NI 71-101 for United States issuers distributing securities in Canada under Northbound MJDS or (ii) Form F-10 for Canadian issuers distributing securities in the United States under the U.S. multijurisdictional disclosure system, which requires that the issuer (A) be incorporated or organized under the laws of Canada or any Canadian province or territory, (B) be a “foreign private issuer” (as defined under the 1934 Act), (C) has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for at least 12 calendar months immediately preceding the date thereof and (D) has an

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aggregate market value of the public float of its outstanding equity shares of U.S. \$75 million or more.

THE FURTHER DECISION of the Decision Makers pursuant to the Legislation is that the current reports of ML&Co. on Form 8-K required under section 4.4 of NI 71-101 to be incorporated by reference into a preliminary prospectus and (final) prospectus filed by ML&Co. under NI 71-101 shall be limited to those Form 8-Ks which relate to the financial condition of, or disclose a material change in the affairs of, ML&Co.

DATED this 30th day of June, 2004.

Iva Vranic
Manager, Corporate Finance