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July 12, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

National Instrument 44-101, s. 15.1 - 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 51-102, s. 13.1 - Continuous Disclosure Obligations - A credit support issuer wants an exemption from having to file continuous disclosure documents to permit it to rely on the continuous disclosure documents of its credit supporter - The issuer is a credit support issuer that can comply with all of the conditions for continuous disclosure relief in section 13.4 of National Instrument 51-102 Continuous Disclosure Obligations except filing copies of all Forms 8-K filed by its credit supporter that are unrelated to the credit support issuer and would not have to be filed under Canadian material change reporting requirements; the credit support issuer will file copies of all Forms 8-K filed by its credit supporter except non-essential Forms 8-K that are unrelated to the credit support issuer and do not provide useful information to Canadian investors

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

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Applicable British Columbia Provisions

National Instrument 44-101, s. 15.1

Form 44-101F3, section 13.2(2)

National Instrument 51-102, ss. 13.1 and 13.4

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, New
Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador
(the “Jurisdictions”)

and

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

and

In the Matter of Merrill Lynch & Co., Inc. (“ML&Co.”), Merrill Lynch Canada
Finance Company (“ML Finance”) and Merrill Lynch Canada Inc., (“ML
Canada” and, together with ML&Co. and ML Finance, 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 (the “Application”) from the Filers for a decision under the securities legislation of the Jurisdictions (the “Legislation”) exempting the Filers from the following requirements of the Legislation, subject to certain terms and conditions:

- (a) the requirement contained in section 13.2(2) of Form 44-101F3, as it relates to the requirement for ML Finance to incorporate by reference into a Shelf Prospectus and any Supplements (as defined below) thereto the Non-Incorporated Exhibits (as defined below);
- (b) the requirement contained in section 13.4(2)(d) of National Instrument 51-102 – *Continuous Disclosure Obligations* (“NI 51-102”) as it relates to the requirement for ML Finance to file the Non-Essential 8-Ks (as defined below); and

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- (c) the requirement contained in section 2.1 of National Instrument 33-105 – *Underwriting Conflicts* (“NI 33-105”) (and equivalent provisions in Québec) as it relates to the requirement that the distribution of securities of ML Finance, a related issuer or a 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 is the principal regulator for this application; and
- (b) this MRRS decision 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 defined in this decision.

Representations

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

General

1. ML&Co. was incorporated under the laws of Delaware on March 27, 1973. ML&Co. has been a reporting issuer or the equivalent thereof (where applicable) in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Québec and Nova Scotia since October 22, 1999 (or earlier, in the case of certain of such Jurisdictions) and since June 2004 in the Provinces of Ontario, New Brunswick, Prince Edward Island and Newfoundland and Labrador and in the Yukon Territory, the Northwest Territories and Nunavut, and is not on the list of defaulting reporting issuers in those provinces and territories.
2. ML&Co. is a reporting company under the *Securities Exchange Act of 1934*, as amended (the “1934 Act”). ML&Co. has filed with the U.S. 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 pricing or prospectus supplement. ML&Co. is not registered or required to be registered as an investment company under the *Investment Company Act of 1940*, as amended.

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3. The principal office of ML&Co. is located at 4 World Financial Centre, New York, New York, 10080.
4. ML Finance was incorporated under the laws of Nova Scotia on August 25, 1999 and is an indirect wholly-owned subsidiary of ML&Co.
5. ML Finance was incorporated solely for the purpose of undertaking financing activities, including the issuance of medium term notes, to raise funds for ML&Co.'s Canadian operations, and does not carry on any operating or other business activities.
6. ML Finance became a reporting issuer or the equivalent thereof (where applicable) in the Jurisdictions by virtue of it filing a short form base shelf prospectus dated November 8, 1999 with the Decision Makers under the provisions of former National Policy 47 and former National Policy 44 in connection with the establishment of the 1999 medium term note program of ML Finance.
7. The principal office of ML Finance is located at 400-181 Bay Street, Toronto, Ontario, M5J 2V8.
8. 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.
9. 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.
10. The principal office ML Canada is located at 400-181 Bay Street, Toronto, Ontario, M5J 2V8.

MTN Program

11. ML Finance renewed its medium term note program (the “Current MTN Program” and, together with any future medium term program of ML Finance, the “MTN Program”) on July 28, 2004 by filing a short form base shelf prospectus pursuant to *National Instrument 44-101 – Short Form Prospectus Distributions* (“NI 44-101”) and *National Instrument 44-102 – Shelf Distributions* (“NI 44-102”) (the “Current Shelf Prospectus” and, together with any preliminary or final prospectus filed by ML Finance under NI 44-101 and NI 44-102, a “Shelf Prospectus”). Any medium term notes issued under a Shelf Prospectus are hereinafter referred to as the “Notes”

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and any offering of such Notes is hereinafter referred to as an “Offering”. The Current Shelf Prospectus qualifies the issuance of up to Cdn. \$5,000,000,000 (or the equivalent thereof in one or more non-Canadian currencies) of Notes over a twenty-four month period in New Brunswick and a twenty-five month period in each of the other Jurisdictions.

12. The Filers previously obtained certain exemptive relief in relation to the offering of Notes under the Current Shelf Prospectus in the Decision *In the Matter of Merrill Lynch & Co., Inc., Merrill Lynch Canada Finance Company and Merrill Lynch Canada Inc.* dated June 25, 2004 (the “Previous MTN Decision”). The Filers have made this Application as they wish to amend certain of the terms and conditions of the Previous MTN Decision relating to: (a) ML&Co.'s obligations to file certain of ML&Co.'s continuous disclosure documents with the Decision Makers; (b) ML Finance's obligations to incorporate by reference certain of ML&Co.'s continuous disclosure documents into a Shelf Prospectus (including, for greater certainty, any Supplements); and (c) the Independent Underwriter Requirement to ensure that the relief granted under the Previous MTN Decision will apply to an Offering under any Shelf Prospectus.
13. The Notes 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 Notes 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 Finance to punctually make any payment or performance in respect of the Notes. All Notes will have an “approved rating” (as defined in NI 44-101) and will be rated by a recognized security evaluation agency in one of the categories determined by determined by the Autorité des marchés financiers du Québec (an “Approved Rating”).
14. The Current Shelf Prospectus was signed by, and any other Shelf Prospectus will be signed by, ML Finance, as issuer, ML&Co., as credit supporter, and the dealers party to the dealer agreement for the MTN Program as of the date thereof. The Current Shelf Prospectus includes, and any other Shelf Prospectus will include, disclosure to the effect that:
 - (a) ML&Co. will fully and unconditionally guarantee payment of the principal and interest on the Notes, together with any other amounts that may be due under any provisions of the trust indenture relating to the Notes;

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- (b) separate continuous disclosure information relating to ML Finance will not be provided to the purchasers of the Notes; and
 - (c) the MTN Program has an Approved Rating.
15. If the relief requested in this Application is granted, each pricing supplement (a “Supplement” and, together with a Shelf Prospectus, a “Prospectus”) to a Shelf 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 (as defined below) thereto;
 - (b) ML&Co.'s most recent quarterly report on Form 10-Q, excluding any Non-Incorporated Exhibits (as defined below) 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 (as hereinafter defined).

ML&Co. Filings

16. 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).
17. 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 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.

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18. In the present Application, in addition to the exemptive relief that the Filers are requesting be granted with respect to ML Finance's obligations to incorporate by reference into a Shelf Prospectus (including, for greater certainty, each Supplement) 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-Ks. The Non-Essential 8-Ks are publicly available on the SEC's Internet website at www.sec.gov.
19. In the Previous MTN Decision, the Filers were granted relief from the requirement to incorporate by reference into the Current Shelf Prospectus (and, for greater certainty, the Supplements thereto) any current reports on Form 8-K of ML&Co. other than current reports on Form 8-K of ML&Co. relating to the financial condition of, or disclosing a material change in the affairs of, ML&Co. (the "Material 8-Ks"), which are filed by ML&Co. with the SEC.
20. In addition to the Non-Essential 8-Ks, ML&Co. may file as a material 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 by-laws 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: (a) 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 (b) legal counsel or an independent 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 10-K and also posts on its website.
21. By virtue of the Non-Incorporated Exhibits being filed as material 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 Finance are required to incorporate the Non-Incorporated Exhibits into a Shelf Prospectus under section 13.2(2) of Form 44-101F3.
22. The Non-Incorporated Exhibits are typically very lengthy and incorporation by reference of such documents into a Shelf Prospectus would therefore

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

23. In lieu of the Non-Incorporated Exhibits being incorporated by reference into a Shelf Prospectus, ML Finance will file the Non-Incorporated Exhibits, other than Non-Incorporated Exhibits that have previously been filed, as soon as practicable following the filing of such disclosure documents with the SEC and, in any event, prior to the filing of any subsequent Supplement with the Decision Makers.
24. If the requested relief is granted, a Shelf 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 Shelf Prospectus will not incorporate by reference certain information 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.
25. 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.
26. The Filers will include a statement in each Shelf Prospectus explaining that the Filers have received exemptive relief exempting the Filers from the requirement to include certain materials in such Shelf Prospectus, identifying this Decision, and explaining how investors can obtain a copy of this Decision.

Underwriting Arrangements

27. ML Finance 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 under a Shelf Prospectus because both ML Canada and ML Finance are indirect wholly-owned subsidiaries of ML&Co.
28. ML Finance proposes to offer the Notes 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:

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- (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 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 a Shelf Prospectus, identify the independent underwriters 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 (iii) a Shelf 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 $\frac{2}{3}$ % of the Offering will be made to institutional investors; (iii) each Supplement will, to the extent not disclosed in a Shelf 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 Shelf 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.
- 29. If ML Finance is offering the Notes through an ML Majority Underwriting, the initial offering price of the Notes 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 the Notes 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.
- 30. Each of independent underwriters who is in a contractual relationship with ML Finance at the time a Shelf Prospectus is filed will sign the certificate in the form prescribed by Section 21.2 of Form 44-101F3.

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31. 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% 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 Notes may be loaned to or otherwise invested in various affiliates of ML Finance or ML&Co., ML Canada may also receive inter-company financing.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the decision has been met.

Incorporation by Reference

The Decision of the Decision Makers is that ML&Co. and ML Finance are exempt from the requirement of section 13.2(2) of Form 44-101F3 as it relates to the requirement to incorporate by reference into any Shelf Prospectus (including, for greater certainty, any Supplement) the Non-Incorporated Exhibits, so long as:

- (a) ML&Co. and ML Finance continue to incorporate by reference into a Shelf Prospectus (including, for greater certainty, any Supplement) 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 23, 25 and 26 remain true.

Filing of the Non-Essential 8-Ks

The Further Decision of the Decision Makers under the Legislation in connection with an Offering of Notes under any Shelf Prospectus is that ML Finance is exempt from the requirement in section 13.4(2)(d) of NI 51-102 as it relates to the requirement to file the Non-Essential 8-Ks, so long as ML&Co. files with the Decision Makers copies of all of the documents required to be filed by ML&Co. with the SEC except for the Non-Essential 8-Ks.

Independent Underwriter

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The Further Decision of the Decision Makers (other than the Decision Makers in Saskatchewan and Manitoba) under the Legislation is that the Independent Underwriter Requirement contained in NI 33-105 (or, in the case of Québec, the Independent Underwriter Requirement contained in sections 236.1 and 237.1 of the Regulation Concerning Securities and the requirements of Décision générale No. 2003-C-0047 dated February 11, 2003) shall not apply to ML Canada in respect of any 49% Underwriting and any ML Majority Underwritings made under a Shelf Prospectus, provided that:

- (a) the independent underwriters participate in each proposed 49% Underwriting as stated in paragraph 28(a) hereof;
- (b) ML Finance complies with paragraph 28(b) hereof in connection with each ML Majority Underwriting; and
- (c) ML Finance complies with paragraphs 13 and 31 hereof.

Charlie MacCready
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Ontario Securities Commission