

2002 BCSECCOM 971

Headnote

Relief granted from the requirement to file a Form 45-902F for distributions under an employee plan, subject to certain conditions

Exemption Order

Merrill Lynch & Co., Inc.

Section 187(c) of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 Merrill Lynch applied for an exemption from the requirement in section 139 of the *Securities Rules*, B.C. Reg. 194/97 to file a Form 45-902F2 in connection with certain distributions of its securities to residents of British Columbia;

Representations

- ¶ 2 Merrill Lynch represents that:
1. it is subject to the reporting requirements of the United States *Securities Exchange Act of 1934*, as amended, and files annual reports, proxy statements and other continuous disclosure information required under applicable United States securities laws with the United States Securities and Exchange Commission;
 2. its shares of common stock are widely held, and listed on the New York, Chicago, Pacific, London, Paris, and Tokyo stock exchanges, but are not listed or quoted on an exchange or organized market in Canada;
 3. it is a reporting issuer in British Columbia and is not in default of any requirement of the Act or the Rules;
 4. under its Long-Term Incentive Compensation Plan for Managers and Producers (the plan), it distributed restricted units and stock options to certain employees of its subsidiaries resident in British Columbia (BC employees);
 5. it relied on the registration and prospectus exemptions in sections 45(2)(10) and 74(2)(9) of the Act to distribute the securities to the BC employees;
 6. it is required, under section 139(4) of the Rules, to annually file a Form 45-902F in respect of the distribution of its securities to the BC employees; and
 7. as with other details of compensation arrangements with individual employees, such as salary and benefit levels, details regarding the number of

2002 BCSECCOM 971

restricted units and stock options granted to each employee are kept strictly confidential by Merrill Lynch.

Order

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders under section 187(c) of the Act that the requirement in section 139 of the Rules to file a Form 45-902F in respect of the grant of securities by Merrill Lynch under the Plan does not apply to Merrill Lynch provided that:
- (a) Merrill Lynch files the information prescribed in the Form 45-902F, except the first column in item 5 and all of item 6 of the Form 45-902F, with the Commission;
 - (b) Merrill Lynch files the information in paragraph (a) at the same time it would have been required to file the Form 45-902F under section 139 of the Rules;
 - (c) Merrill Lynch pays the fees that would have been payable if it were filing the Form 45-902F; and
 - (d) this order will expire on the effective date of Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors, and Consultants*.
- ¶ 4 November 29, 2002

Brenda Leong
Director