

DATE: JUNE 7, 2006

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
SASKATCHEWAN AND MANITOBA (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 from the Filers for a decision under the securities legislation of the Jurisdictions (the "Legislation") exempting ML Canada in respect of any 49% Underwriting (as defined below) and any ML Majority Underwriting (as defined below) made under a Shelf Prospectus (as defined below) from the requirement contained in section 2.1 of *National Instrument 33-105 Underwriting Conflicts* ("NI 33-105") that the distribution of securities of ML Finance, a related issuer of ML Canada be done through a specified level of independent underwriter involvement (the "Requested Relief").

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Manitoba 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:

General

1. ML Finance was incorporated under the laws of Nova Scotia on August 25, 1999 and is an indirect wholly-owned subsidiary of ML&Co.
2. ML Finance is a reporting issuer or the equivalent thereof in all of the provinces of Canada. The activities of ML Finance consist in undertaking financing activities, including the issuance of medium term notes, to raise funds for ML&Co.'s Canadian operations, and ML Finance does not carry on any operating or other business activities.
3. The principal office of ML Finance is located at 400-181 Bay Street, Toronto, Ontario, M5J 2V8.
4. ML&Co. was incorporated under the laws of Delaware on March 27, 1973. ML&Co. is a reporting company under the *United States Securities Exchange Act of 1934*, as amended, and 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 in Ontario, New Brunswick, Prince Edward Island, Newfoundland and Labrador, the Yukon territory, the Northwest Territories and Nunavut since June 2004, and is not on the list of the defaulting reporting issuers in those provinces and territories.
5. ML&Co.'s long-term debt is investment-grade rated.
6. The principal office of ML&Co. is located at 4 World Finance Centre, New York, NY 10080.
7. ML Finance filed a Current Shelf Prospectus (as defined below) with respect to the issuance of up to an aggregate principal amount of Cdn. \$5,000,000,000 of medium term notes unconditionally guaranteed by ML&Co (the "Notes").
8. ML Finance has from time to time filed supplements to the Prospectus and completed offerings of the Notes thereunder.
9. 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.
10. 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.
11. The principal office of ML Canada is located at 400-181 Bay Street, Toronto, Ontario, M5J 2V8.

MTN Program

12. ML Finance renewed its medium term note program (the "Current MTN Program" and, together with any future medium term note 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 of ML Finance issued under a Shelf Prospectus are hereinafter referred to as the "Notes" 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 the Jurisdictions and each of the other Prior Jurisdictions (as defined below).

13. The Notes will be fully and unconditionally guaranteed by ML&Co. as to payments of all amounts payable thereunder. The trust indenture relating to the Notes 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" issued by an "approved rating organization" (as such terms are defined in NI 44-101) (the "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 all amounts due;
- (b) separate continuous disclosure information relating to ML Finance will not be provided to the purchasers of the Notes; and
- (c) the Notes issued under the Shelf Prospectus have an Approved Rating.

Underwriting Arrangements

15. 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.

16. 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:

- (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 % 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.

17. 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.

18. Each independent underwriter 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 44-101F1 or pursuant to Appendix A of NI 44-102.

19. 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 an 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.

Prior Orders

20. The Filers previously obtained certain exemptive relief in relation to the offering of Notes under the Shelf Prospectus in the MRRS decision document dated June 25, 2004 which was subsequently amended on July 12, 2005 (the "Decision Document") pursuant to which the local securities regulatory authority or regulator (collectively, the "Prior Decision Makers") in each of British Columbia, Alberta, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (collectively, the "Prior Jurisdictions") exempted ML Canada from the independent underwriter requirement in section 2.1 of NI 33-105 (or in the case of Québec, the 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).

21. At the time relief was granted in the Decision Document, NI 33-105 was not in force in the Jurisdictions. However, NI 33-105 was subsequently adopted in Saskatchewan on September 14, 2005 and, in Manitoba on January 20, 2006 in the form of MSC Rule 2006-1.

22. The Requested Relief has already been granted pursuant to the Decision Document by all Prior Decision Makers other than the Decision Makers in the Jurisdictions since NI 33-105 was not in force in the Jurisdictions at the date the Decision Document was issued. The decision requested pursuant hereto is therefore required in order to permit the Filers to be treated uniformly in all Canadian jurisdictions.

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.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

- (a) the independent underwriters participate in each proposed 49% Underwriting as stated in paragraph 16(a) hereof;
- (b) ML Finance complies with paragraph 16(b) hereof in connection with each ML Majority Underwriting; and
- (c) ML Finance complies with paragraphs 13 and 19 hereof.

"Chris Besko"

Title: Deputy Director - Legal
Manitoba Securities Commission