

THE SECURITIES ACT ) Order No. 3051  
 )  
Section 20 ) September 7, 2000

MERRILL LYNCH & CO., INC. AND  
ORATEC INTERVENTIONS, INC.

WHEREAS:

(A) Merrill Lynch & Co., Inc. (the "Applicant") has applied to The Manitoba Securities Commission (the "Commission") for an order pursuant to subsection 20(1) of *The Securities Act*, R.S.M. 1988, c. S50 (Manitoba) (the "Act") that certain trades of shares of common stock ("Shares") of Oratec Interventions, Inc. ("Oratec") to a purchaser resident in the Province of Manitoba be exempt from sections 6 and 37 of the Act;

(B) The Applicant has represented to the Commission that:

1. The Applicant, through its subsidiaries, provides investment, financing, advisory, insurance, and related products on a global basis. The Applicant is organized under the laws of Delaware and has its principal offices at the World Financial Center, North Tower, New York, New York 10080. The Applicant's wholly owned subsidiary, Merrill Lynch, Pierce, Fenner & Smith Incorporated, was the lead underwriter in the offering (the "Offering") of Shares. Neither the Applicant nor Merrill Lynch, Pierce, Fenner & Smith is registered with the Commission;
2. Oratec develops and markets medical devices that use controlled thermal energy to treat spine and joint disorders. Oratec is organized under the laws of Delaware and has its principal offices at 3700 Haven Court, Menlo Park, California 94025;
3. On the basis of documents publicly filed in the United States: (i) Oratec's authorized share capital is 75,000,000 Shares, and 5,000,000 shares of undesignated preferred stock; and (ii) as at December 31, 1999, there were 16,491,149 Shares outstanding, 3,369,037 Shares subject to outstanding options and 212,908 Shares subject to outstanding warrants;
4. The Shares currently trade on the Nasdaq National Market;
5. Oratec is not subject to the reporting obligations of Parts X, XI and XII of the Act;
6. Pursuant to a registration statement on Form S-1 dated April 4, 2000 filed with the United States Securities and Exchange Commission, Oratec offered to the

public in the United States 4,000,000 Shares at a price of US\$14.00 per Share. In connection with the Offering the Issuer granted the underwriters an option to purchase an additional 600,000 shares at the public offering price to cover over allotments;

7. Concurrently with the Offering in the United States, Shares were offered to certain purchasers in Canada under the Applicant's private placement program (the "Program"). Under the Program, prospective purchasers in Manitoba and Ontario were provided with preliminary and final offering documents consisting of the United States preliminary and final prospectus supplemented with certain additional disclosure relating to the offering of Shares in Canada;

8. On April 10, 2000, the Offering closed and four Canadian purchasers purchased a total of 60,000 Shares. The only sale to a Manitoba entity was to I.G. Investment Management Ltd. (the "Purchaser"), which purchased 25,000 Shares through the Applicant at the price of US\$14.00 per Share for an aggregate purchase price of US\$350,000;

9. The Applicant acted as agent in connection with the issuance by Oratec of 25,000 Shares to the Purchaser on April 10, 2000. The trade was intended to be made in reliance on the exemption from the registration and prospectus requirements of the Act found in subsection 19(3) and clause 58(1)(a) of the Act. Due to an oversight, no Form 8 has been filed with the Commission in respect of the trade, as required pursuant to section 7 of the *Securities Regulation* under the Act;

(C) The Commission is of the opinion that it would not be prejudicial to the public interest to grant the order requested.

IT IS ORDERED:

**1. THAT**, pursuant to section 20(1) of the Act, the Applicant and Oratec are exempt from the requirements of sections 6 and 37 of the Act in connection with the trade of Shares to the Purchaser provided that:

(a) the Purchaser receives a copy of this Order;

(b) the Applicant or Oratec files or causes to be filed with the Commission a report in accordance with Form 8 to the *Securities Regulation* promulgated under the Act within 10 days of the date of this Order;

(c) the Purchaser be offered an opportunity to confirm or rescind its purchase within 10 days of the date of this Order.

**2. THAT** the fee for this order shall be \$1,000.00.

BY ORDER OF THE COMMISSION

Director