

IN THE MATTER OF

THE SECURITIES LEGISLATION OF ONTARIO, BRITISH COLUMBIA, ALBERTA,
SASKATCHEWAN, MANITOBA, QUEBEC, NOVA SCOTIA AND NEWFOUNDLAND

AND

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

AND

IN THE MATTER OF THE BUSINESS CORPORATIONS ACT R.S.O. 1990, c. B.16
(THE "OBCA")

AND

IN THE MATTER OF
MERRILL LYNCH & CO., CANADA LTD.

MRRS DECISION DOCUMENT

AND

ORDER
(section 113 of the OBCA)

WHEREAS the local securities regulatory authority or regulator (collectively, the "Decision Makers") in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia and Newfoundland (collectively, the "Jurisdictions") has received an application from Merrill Lynch & Co., Canada Ltd. ("ML Exchangeco") for a decision pursuant to the securities legislation of the Jurisdictions (collectively, the "Legislation") that ML Exchangeco be exempted from the requirement under the Legislation to include certain information in the circular of ML Exchangeco (the "ML Exchangeco Circular") to be prepared in connection with the special meeting (the "Special Meeting") of holders of non-voting exchangeable shares of ML Exchangeco (the "Exchangeable Shares");

AND WHEREAS the Decision Maker in Ontario has received an application from ML Exchangeco for a decision pursuant to the *Business Corporations Act* (Ontario) (the "OBCA") that ML Exchangeco be exempted from the requirement under the OBCA to include certain information in the ML Exchangeco Circular to be prepared in connection with the Special Meeting;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS ML Exchangeco has represented to the Decision Makers that:

1. ML Exchangeco is a corporation incorporated under the OBCA and is a reporting issuer in each province and territory of Canada (other than Newfoundland and those jurisdictions which do not recognize the concept of a reporting issuer). The Exchangeable Shares are listed on The Toronto Stock Exchange.
2. The authorized capital of ML Exchangeco consists of an unlimited number of non-voting preference shares, an unlimited number of common shares and an unlimited number of Exchangeable Shares of which 2,507,908 non-voting preference shares, 71,878 common shares and 9,662,448 Exchangeable Shares were outstanding on December 29, 2000.
3. All the non-voting preference shares and common shares of ML Exchangeco are held indirectly by Merrill Lynch & Co., Inc. ("Merrill Lynch"). On December 29, 2000, 5,008,070 Exchangeable Shares were held indirectly by Merrill Lynch.
4. ML Exchangeco is a holding company which holds shares of various Canadian indirect subsidiaries of Merrill Lynch and does not carry on any active business.
5. On August 26, 1998, Merrill Lynch acquired all of the issued and outstanding shares of Midland Walwyn Inc. ("Midland Walwyn") pursuant to a plan of arrangement (the "Arrangement") effected under section 192 of the *Canada Business Corporations Act*. Upon the closing of the Arrangement, the ordinary shares of Midland Walwyn were exchanged for common shares of Merrill Lynch or, at the option of the holders thereof, Exchangeable Shares.
6. The Exchangeable Shares are intended to provide the holders thereof with a security of a Canadian issuer having economic and voting rights which are, as nearly as practicable, equivalent to those of a Merrill Lynch common share.
7. To achieve the desired economic equivalence, the provisions attaching to the Exchangeable Shares (the "Exchangeable Share Provisions") and the support agreement (the "Support Agreement") dated August 26, 1998 between Merrill Lynch and ML Exchangeco, among others, provide that certain actions cannot be undertaken in respect of the Merrill Lynch common shares unless an economic equivalent action is undertaken in respect of the Exchangeable Shares. In addition, pursuant to the terms of a voting and exchange trust agreement entered into by Merrill Lynch, ML Exchangeco and Montreal Trust Company of Canada on August 26, 1998, the holders of Exchangeable Shares are entitled, through a Merrill Lynch special voting share, to one vote at each meeting of holders of common shares of Merrill Lynch for each Exchangeable Share held and are entitled to receive all shareholder materials prepared by Merrill Lynch for distribution to its common shareholders, including any information circulars prepared in connection with a shareholder meeting.
8. In connection with the Arrangement the Decision Makers in each of the Jurisdictions recognized the economic equivalence of the Exchangeable Shares and the Merrill Lynch common shares and issued an order providing that, *inter alia*, ML Exchangeco was exempt from the continuous disclosure requirements imposed by securities legislation in Canada provided that

Merrill Lynch continues to comply with its continuous disclosure obligations under U.S. law and sends such materials to Canadian holders of Exchangeable Shares (the "Order").

9. Article 3.1 of the Exchangeable Share Provisions provides that, in the case of a dividend declared on the common shares of Merrill Lynch, a holder of Exchangeable Shares shall be entitled to receive, and the board of directors of ML Exchangeco shall declare, a dividend on each Exchangeable Share as specified in the Exchangeable Share Provisions.

10. Furthermore, pursuant to section 2.1(a) of the Support Agreement, Merrill Lynch is not to declare or pay any dividend on the Merrill Lynch common shares unless ML Exchangeco simultaneously declares and pays an equivalent dividend (as provided in the Exchangeable Share Provisions) on the Exchangeable Shares.

11. ML Exchangeco wishes to amend (the "Amendment") the Exchangeable Share Provisions to make it clear that, in lieu of declaring a dividend on the Exchangeable Shares in the circumstances contemplated in section 3.1. of the Exchangeable Share Provisions, the board of directors of ML Exchangeco may, in its discretion and subject to applicable law, cause ML Exchangeco to take such action as to result in the receipt by the holders of Exchangeable Shares of the economic equivalent to the dividend which would otherwise have been declared on the Exchangeable Shares.

12. The proposed Amendment makes it clear that ML Exchangeco has the flexibility to implement a dividend declared and paid on the common shares of Merrill Lynch by any means which results in the economic equivalent. In particular, the Amendment clarifies that ML Exchangeco may implement a stock dividend on the Merrill Lynch common shares by way of a stock split on the Exchangeable Shares, which is a more tax efficient way of achieving the same result in Canada.

13. Section 2.1(a) of the Support Agreement will also be amended to make the Support Agreement consistent with the Exchangeable Share Provisions on this point.

14. The OBCA and the Exchangeable Share Provisions require that the Amendment be approved by no less than two-thirds of the votes cast by holders of Exchangeable Shares at the Special Meeting. No matters other than the Amendment will be considered at the Special Meeting.

15. Pursuant to section 2.10 of the Support Agreement, Merrill Lynch has agreed that it will not, and will cause its affiliates not to, exercise any voting rights with respect to any Exchangeable Shares held by it or its affiliates. Therefore, Merrill Lynch and its affiliates will not vote their Exchangeable Shares in respect of the Amendment.

16. The Legislation and the OBCA require ML Exchangeco to solicit proxies and deliver the ML Exchangeco Circular to each of the holders of the Exchangeable Shares in connection with the Special Meeting.

17. It is anticipated that Merrill Lynch will hold the annual meeting of holders of its common shares on the same date as the Special Meeting and in connection therewith will deliver to each

such holder, as well as to each holder of Exchangeable Shares, proxy materials prepared in accordance with U.S. laws (the "Merrill Lynch Proxy Materials").

18. Unless a discretionary exemption is granted, the ML Exchangeco Circular is required to include disclosure regarding executive compensation and indebtedness of directors, executive officers and senior officers (collectively, the "Required Disclosure").

19. The Required Disclosure is not relevant to the matters being considered by the holders of Exchangeable Shares at the Special Meeting since the only matter to be considered at the Special Meeting is the Amendment.

AND WHEREAS under the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each Decision Maker is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that ML Exchangeco be exempted from the requirement to include the Required Disclosure in the ML Exchangeco Circular.

DATED March 13th, 2001.

"J. A. Geller" "R. W. Davis"

AND UPON the Decision Maker in Ontario being satisfied that there is adequate justification for so doing;

IT IS THE FURTHER DECISION of the Decision Maker in Ontario under section 113 of the OBCA that ML Exchangeco be exempted from the requirement to include the Required Disclosure in the ML Exchangeco Circular.

DATED March 13th, 2001.

"J. A. Geller" "R. W. Davis"

Headnote

MRRS - Exemption granted from the requirement to disclose executive compensation and indebtedness of directors, executive officers and senior officers in the information circular provided to shareholders in connection with a special meeting - the excluded information not relevant to the matters to be decided upon at the special meeting.

Applicable Ontario Statutes

Securities Act, R.S.O. 1990, c.S.5, as am.

Applicable Ontario Regulations

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am.,