

IN THE MATTER OF THE
SECURITIES LEGISLATION OF
ONTARIO, MANITOBA, NEW BRUNSWICK,
PRINCE EDWARD ISLAND, Qu罃c,
NEWFOUNDLAND, AND YUKON TERRITORY

AND

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

AND

IN THE MATTER OF
MERRILL LYNCH INVESTMENT MANAGEMENT CANADA INC.

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of Ontario, Manitoba, Qu罃c, New Brunswick, Prince Edward Island, Newfoundland and Yukon Territory (the "Jurisdictions") has received an application (the "Application") from Merrill Lynch Investment Management Canada Inc. (the "Applicant") for a decision pursuant to the securities legislation and securities directions of the Jurisdictions (the "Legislation") that the distribution of class A non-voting participating shares (the "Class A Shares") and class B non-voting participating shares (the "Class B Shares", with the Class A Shares, collectively the "Shares") of the Merrill Lynch Equity Arbitrage Portfolio (the "Portfolio") by Merrill Lynch Canada Inc. (the "Agent") on behalf of the Applicant not be subject to the prospectus requirement, subject to certain conditions, and that the requirement contained in the Legislation to file a report of an exempt trade within 10 days of such trade shall not apply to the Portfolio in connection with certain trades of Shares, subject to certain conditions;

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

AND WHEREAS it has been represented by the Applicant to the Decision Makers that:

1. The Portfolio is a limited liability company incorporated under the laws of the Cayman Islands on December 10, 1999.
2. The Portfolio is a mutual fund regulated by the Cayman Islands Monetary Authority under *The Mutual Fund Law (1999 revision)* (Cayman Islands).
3. The Applicant is a corporation organized under the laws of Canada.

4. The Applicant is registered in Ontario as an advisor under the category of Portfolio Manager/Investment Counsel.
5. The Agent is a corporation organized under the laws of Canada.
6. The Agent is a fully registered dealer in all jurisdictions of Canada.
7. The Portfolio has an authorized share capital of 245,000,000 Class A Shares, par value U.S.\$0.0001 per share, 245,000,000 Class B Shares, par value U.S.\$0.0001 per share, and 1,000 voting shares (the "Voting Shares"), par value U.S.\$1.00 per share. The Class A Shares and Class B Shares differ only as to the quantum and timing of sales charges and exchange fees levied in connection with their purchase and disposition.
8. The Shares do not have any voting rights, except as required by Cayman Islands law or disclosed in the offering memorandum provided to prospective purchasers.
9. One thousand (1,000) Voting Shares were issued to, and were purchased at par value U.S.\$1.00 per share by, MeesPierson (Cayman) Limited, a Cayman Islands company, which holds the Voting Shares in trust for various charities.
10. The Voting Shares are not entitled to any dividends and do not have preemptive redemption or conversion rights.
11. Starting on the date that is the three-month anniversary of a shareholder's effective purchase date of Shares, a holder of Shares will have the right to redeem its Shares at a price equal to the net asset value calculated on the next valuation date following receipt of written redemption request from the shareholder by the transfer agent.
12. The Shares may not be assigned or otherwise transferred (except by operation of law) in whole or in part, without the consent of the investment advisor to the Portfolio, which consent will be conditioned upon receipt by the transfer agent of an application from the proposed transferee and any attempt to sell or transfer Shares without the prior approval of the investment adviser may cause the Shares to be redeemed by the Portfolio.
13. The Portfolio has the right to redeem any Shares sold to anyone other than eligible investors or if, in the Portfolio's sole opinion, continued ownership of the Shares by an investor would require the Portfolio to register under any securities laws or would subject the Portfolio to adverse tax or other consequences.
14. No partial redemption of the Shares will be permitted that would have the effect of reducing the aggregate net asset value of the Shares held by a shareholder below the greater of Cdn.\$150,000 and U.S.\$100,000, unless such minimum is waived by the Portfolio.
15. Shares of the Portfolio will be sold to purchasers on behalf of the Applicant by the Agent, a registered dealer in all jurisdictions of Canada as part of a global offering of the Shares.

16. The minimum initial investment in either class of the Shares by an investor in Canada is not less than the greater of Cdn.\$150,000 and U.S.\$100,000 (the "Initial Investment"), and the Initial Investment will be made in reliance upon applicable prospectus exemptions contained in the Legislation.

17. Following the Initial Investment, it is proposed that existing Shareholders in the Portfolio be permitted to subscribe for further Shares by:

(a) automatically reinvesting distributions otherwise receivable by the Shareholder which are attributable to outstanding Shares, unless otherwise requested by a shareholder, or

(b) subscribing and paying for additional Shares (the "Additional Shares") in amounts greater than Cdn.\$50,000.

18. No Shareholder will be permitted to acquire Additional Shares of a class at an acquisition cost of less than the greater of Cdn.\$150,000 and U.S.\$100,000 unless, at the time of such subsequent acquisition, the shareholder holds Shares which have either an aggregate acquisition cost or an aggregate net asset value of at least the greater of Cdn.\$150,000 and U.S.\$100,000.

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

AND WHEREAS each of the Decision Makers are 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 pursuant to the Legislation is that:

A. the prospectus requirements of the Legislation do not apply to the purchase of Additional Shares provided that:

(a) this decision will cease to be effective in a Jurisdiction 90 days after the coming into force in such Jurisdiction of legislation or a rule governing the distribution of additional securities of pooled funds;

(b) at the time of acquisition of Additional Shares, the Shareholder then owns Shares having either an aggregate acquisition cost or net asset value of not less than the minimum Initial Investment amount;

(c) in accordance with the Legislation, the Applicant files with the applicable Decision Maker a report in respect of all trades in Additional Shares made by the Portfolio as if the trades in Additional Shares were trades in Shares and pays to the applicable Decision Maker the fees relating to such filing prescribed by the Legislation; and

(d) the first trade in Additional Shares is deemed to be a distribution under the Legislation of the Jurisdiction in which the trade takes place (the "Applicable Legislation"), unless otherwise exempt thereunder or unless such first trade is made in the following circumstances:

(i) the Portfolio is a reporting issuer or the equivalent under the Applicable Legislation;

(ii) if the seller of the Additional Shares is in a special relationship (where such expression is defined in the Applicable Legislation) with the Portfolio, the seller has reasonable grounds to believe that the Portfolio is not in default of any requirement of the Applicable Legislation;

(iii) no unusual effort is made to prepare the market or to create a demand for the Additional Shares and no extraordinary commission or consideration is paid in respect of such trade; and

(iv) the Additional Shares have been held for a period of at least eighteen months from the later of the date they were acquired by the seller of the Additional Shares or the date the Portfolio became a reporting issuer or the equivalent in the applicable Jurisdiction.

B. the requirement contained in the Legislation to file a report of an Initial Investment or subscription for Additional Shares (the "Exempt Trades") within 10 days of such trade shall not apply, except in Manitoba, in connection with the Exempt Trades, provided that within 30 days after each financial year end of the Portfolio:

(a) the Applicant files with the applicable Decision Maker a report in respect of all trades in Shares and Additional Shares by the Applicant during that financial year, in the form prescribed by the Applicable Legislation; and

(b) the Applicant remits the fee prescribed by the Legislation to the Decision Makers of the applicable Jurisdictions.

DATED at Toronto, Ontario this 18th day of July, 2000.

J.A. Geller K.D. Adams

Headnote

MRRS for Exemptive Relief Applications - trades by mutual fund of additional shares to existing shareholders holding shares of such fund having an aggregate acquisition cost or net asset value of not less than \$150,000 exempted from prospectus requirement - trades in units of pooled funds exempt from requirement to file a report of such trades within ten days of the trade provided that reports filed and fees paid yearly.

Applicable Ontario Statutes

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 72(1), 72(3), 72(4), 147

Applicable Ontario Regulations

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

Applicable Ontario Rules

Rule 45-501 *Exempt Distributions* (1998) 21 OSCB 6548