

BY COURIER AND EMAIL

May 31, 2001

Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario
M4H 3S8

Attention: John Stevenson, Secretary

Dear Sirs:

Re: Ontario Securities Commission Request for Comments 11-901

We write in response to your Request for Comments 11-901 regarding the amendments (the "Proposed Amendments") to Schedule 1 (Fees) to the Regulation to the *Ontario Securities Act* (the "Act"). Merrill Lynch Canada Inc. is a registered broker dealer, and Merrill Lynch & Co., Canada Ltd., Merrill Lynch Canada Finance Company and Merrill Lynch Financial Assets Inc. are reporting issuers under the Act. Accordingly, our comments address both the proposed capital markets and corporate finance fee amendments.

The OSC's stated purpose of the Proposed Amendments is to:

- simplify, clarify and streamline the current fee schedule;
- reduce overall fees charged to market participants; and
- more accurately reflect the OSC's cost of providing services.

While the Proposed Amendments may simplify the current fee schedule, it is respectfully submitted that the other, and more important, objectives may not be met, particularly in respect to larger market participants.

It is our strong view that fees based on usage of services by a market participant, rather than on its revenues or market capitalization are better aligned with the stated goals of the OSC. For services provided by the OSC that are not directly attributable to usage a much smaller participation fee than that proposed may be appropriate. Further, given the size of the surpluses of the OSC in recent years, we submit that any fee amendments should not result in increased costs to any market participant. Our suggested approach would provide for:

- greater transparency in representing the costs of the OSC in providing the relevant service; and
- equity among market participants.

Capital Markets

The OSC proposes to charge an Annual Participation Fee to registrants based on the Gross Revenues Attributable to Ontario. We submit that the Annual Participation Fee should not be based on Gross Revenues Attributable to Ontario, but should be tied more closely with the usage of services by the

registrant and the cost of those services provided by the OSC. Our reasons for this suggestion are as follows:

- Fees payable by larger registrants will be substantially increased when compared to 2000 fees and may not decrease, or decrease by only a nominal amount when compared with prior years.
- The revenue of a registrant does not correlate to the usage of services provided by the OSC. The amount of fees paid by larger firms may be disproportionately higher than the fees paid by smaller firms for the same level of OSC services. This would, in effect, result in larger firms subsidizing costs of the smaller firms. Smaller registrants with fewer resources in the areas of law, compliance and audit may, in fact generate proportionately higher regulatory costs than larger registrants with such resources.
- Substantial fees for day to day regulation and monitoring of registrants is conducted by SROs, who also charge substantial fees.
- The proposal would provide an incentive to registrants to move products and services to non-registered entities. For example, a registered dealer's F/X business could be moved to an unregistered affiliate to avoid Gross Revenue based charges. Larger registrants, in particular, could move revenue to affiliates which already have financial services infrastructure but which are not registered. This approach would introduce a level of complexity not present today.

Corporate Finance

The OSC proposes to charge an Annual Participation Fee based on an issuer's book value or market value capitalization. It is respectfully submitted that the OSC should not charge an Annual Participation Fee, but continue to base fees on service usage. We offer the following in support of the foregoing submission:

- The Annual Participation Fee payable by an issuer under the Proposed Amendments will not necessarily result in lower fees and may in fact, result in substantially higher fees for larger issuers that do not access the capital markets on a frequent basis.
- The cost of participation in the Ontario capital markets is not determinable by the market or book value capitalization of an issuer. An issuer that goes to market frequently is using a greater amount of the resources of the OSC. The fees payable by such entity should reflect this.
- The OSC provides its services and has jurisdiction only in Ontario. Accordingly, any fee it charges should bear relationship to the capital raised in the Ontario marketplace, not to the overall value of the issuer. This approach would be consistent with the current regime in Ontario for various transactions, including private placements and public offerings.
- Regulatory issues involving an issuer are not necessarily related to its market/book value capitalization. As in the case of registrants, a smaller issuer may prove to require more of the OSC's resources from a regulatory and compliance perspective.
- An annual participation fee, similar to the one proposed by the OSC is not charged by most other major market regulators. This fee may act as a competitive impediment or disincentive to access the Ontario capital markets.

- Any issuer who has paid the current prospectus activity fee should be exempt from the application of the Annual Participation Fee, if one is applied. A substantial fee has already been paid by such issuers to access the Ontario market. An unfair burden would be placed upon those participants if they were required to in effect pay the OSC twice for the same service.

As a further general comment, we note that one of the guiding principles for the Proposed Amendments is the ability of registrants to pay OSC fees. As noted above, we believe that it would be inequitable for larger registrants to be required to subsidize smaller players.

Another guiding principle of the Proposed Amendments is to reduce the vulnerability of OSC revenues to fluctuations in general market activity. Unfortunately, in doing so, the OSC is effectively shifting this vulnerability to the market participants. The OSC intends to review fees every three years, and we suggest that this is the appropriate time to adjust fees, as necessary. There is also an implied suggestion in the proposal that the OSC should be made less vulnerable to the revenue fluctuations of the market place. However, each of the market participants in Ontario is highly vulnerable to revenue fluctuations and is required to make periodic adjustments to its expenses. It is our view that similar discipline should be exercised by the OSC.

We are enclosing two copies of this comment letter and will follow with an electronic copy by email.

We thank the OSC for the opportunity to make the foregoing submissions. We would be pleased to discuss this matter in more detail and invite you to contact the undersigned at your convenience.

Yours truly,
Merrill Lynch Canada Inc.
Merrill Lynch & Co., Canada Ltd.
Merrill Lynch Financial Assets Inc.
Merrill Lynch Canada Finance Company

Lynn Korbak
Corporate Secretary & Counsel