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**Via Courier**

August 10, 2001

Ontario Securities Commission  
c/o John Stevenson, Secretary  
20 Queen Street West  
Suite 1903, Box 55  
Toronto, Ontario  
M4H 3S8

Dear Mr. Stevenson:

**Re: Proposed OSC Rule 45-501 – Exempt Distribution**

We would like to thank you for providing us with the opportunity to comment on Proposed OSC Rule 45-501. A diskette with an electronic copy of this submission formatted in MS Word 2000 is also enclosed.

We are pleased that the OSC has accepted in principle the comments related to the offering of pooled funds and have agreed to preserve the status quo for pooled funds until such time as a more detailed review of the regulation of pooled funds can be completed. That said, there is one issue that we believe requires clarification in the Proposed Rule. The pooled fund exemption in sub-section 2.12 (c) operates to exempt pooled funds that are managed by a portfolio adviser or a trust corporation registered under the *Loan and Trust Corporations Act*. “Portfolio adviser” is defined in the rule as a portfolio manager or a broker or investment dealer exempted from resignation as an adviser under certain regulations. The Securities Act (Ontario) defines “portfolio manager” as “an advisor registered for the purpose of managing the investment portfolio of clients through discretionary authority granted by the clients”. This exemption appears to exclude pooled funds offered to Canadians that may be managed by an adviser not resident in Ontario pursuant to an exemption from registration under OSC Rule 35-502 – Non-Resident Advisors. By operation of the definition of portfolio adviser and the language in section 2.12 (c) of the Proposed Rule, the pooled funds managed by these non-resident advisers would not be exempt from the requirements of Proposed OSC Rule 45-501. We cannot discern any policy reason for excluding those pooled funds from the exemption provided by s.2.12.

To correct this, we would suggest that the definition of “portfolio adviser” in the Proposed Rule be changed to include a portfolio manager registered in Ontario or exempt from registration under section 7.4 of OSC Rule 35-502.

We appreciate your consideration of these comments and would be pleased to discuss them further at your convenience.

Yours very truly,

**MERRILL LYNCH INVESTMENT MANAGERS  
CANADA INC.**

*“Original Signed By”*

Andre G. Poles

cc: *Ben MacInnis, President and CEO, Merrill Lynch Investment Managers Canada Inc.  
Brad Doney, Senior Vice President and General Counsel, Merrill Lynch Canada Inc.*