As filed with the Securities and Exchange Commission on February 25, 2009

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported):
February 25, 2009

BANK OF AMERICA CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	**1-6523**	**56-0906609**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

100 North Tryon Street **Charlotte, North Carolina**	**28255**
(Address of principal executive offices)	(Zip Code)

704.386.5681
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

TABLE OF CONTENTS

ITEM 8.01. OTHER EVENTS
ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS
SIGNATURES
EX-23.1: CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM
EX-99.1: AUDITED CONSOLIDATED BALANCE SHEETS

ITEM 8.01. OTHER EVENTS

On January 1, 2009, pursuant to the terms and conditions of the Agreement and Plan of Merger, dated as of September 15, 2008, as amended by Amendment No. 1, dated as of October 21, 2008 (the “Merger Agreement”), between Bank of America Corporation, a Delaware corporation (“Bank of America”) and Merrill Lynch & Co., Inc. (“Merrill Lynch”), a wholly owned subsidiary of Bank of America merged with and into Merrill Lynch, with Merrill Lynch continuing as the surviving corporation and as a subsidiary of Bank of America.

Bank of America is filing this Current Report on Form 8-K for the purpose of providing the audited consolidated balance sheets of Merrill Lynch as of December 26, 2008 and December 28, 2007, and the related consolidated statements of (loss)/earnings, changes in stockholders’ equity, comprehensive (loss)/income and cash flows for each of the three years in the period ended December 26, 2008. These financial statements are attached hereto as Exhibit 99.1.

ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS

(d) Exhibits.

The following exhibits are filed herewith:

EXHIBIT NO.	DESCRIPTION OF EXHIBIT
23.1	Consent of Independent Registered Public Accounting Firm of Merrill Lynch & Co, Inc., Deloitte & Touche LLP
99.1	The audited consolidated balance sheets of Merrill Lynch & Co., Inc. as of December 26, 2008 and December 28, 2007, and the related consolidated statements of (loss)/earnings, changes in stockholders’ equity, comprehensive (loss)/income and cash flows for each of the three years in the period ended December 26, 2008
99.2	Report of Independent Registered Accounting Firm, dated February 23, 2009 (included in Exhibit 99.1)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

BANK OF AMERICA CORPORATION

By: /s/ Craig R. Rosato
Craig R. Rosato
Chief Accounting Officer

Dated: February 25, 2009

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the following Registration Statements of Bank of America Corporation of our report dated February 23, 2009, relating to the consolidated financial statements of Merrill Lynch & Co., Inc. (which report expresses an unqualified opinion on those financial statements, and includes explanatory paragraphs regarding (1) the changes in accounting methods in 2007 relating to the adoption of Statement of Financial Accounting Standards No. 157, "*Fair Value Measurements,*" Statement of Financial Accounting Standards No. 159, "*The Fair Value Option for Financial Assets and Financial Liabilities—Including an amendment of FASB Statement No. 115,"* and FASB Interpretation No. 48, "*Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109*" and (2) Merrill Lynch becoming a wholly-owned subsidiary of Bank of America Corporation on January 1, 2009), appearing as an exhibit to the Bank of America Corporation Current Report on Form 8-K to be filed on or about February 25, 2009.

Filed on Form S-3:

Registration Statement No. 333-155381
Registration Statement No. 333-152418
Registration Statement No. 333-133852
Registration Statement No. 333-112708
Registration Statement No. 333-123714
Registration Statement No. 333-70984
Registration Statement No. 333-15375
Registration Statement No. 333-18273
Registration Statement No. 333-97157
Registration Statement No. 333-97197
Registration Statement No. 333-83503
Registration Statement No. 333-07229
Registration Statement No. 333-51367
Registration Statement No. 033-57533
Registration Statement No. 033-30717
Registration Statement No. 033-49881
Registration Statement No. 333-13811
Registration Statement No. 333-47222
Registration Statement No. 333-64450
Registration Statement No. 333-104151

Filed on Form S-8:

Registration Statement No. 333-157085
Registration Statement No. 333-133566
Registration Statement No. 333-121513
Registration Statement No. 333-69849
Registration Statement No. 333-81810
Registration Statement No. 333-53664
Registration Statement No. 333-102043
Registration Statement No. 333-102852
Registration Statement No. 333-65209
Registration Statement No. 033-45279
Registration Statement No. 002-80406
Registration Statement No. 333-02875
Registration Statement No. 033-60695
Registration Statement No. 333-58657

Filed on Post-Effective Amendments on Form S-8 to Registration Statement on Form S-4:

Registration Statement No. 333-153771
Registration Statement No. 333-149204
Registration Statement No. 333-127124
Registration Statement No. 333-110924
Registration Statement No. 033-43125
Registration Statement No. 033-55145
Registration Statement No. 033-63351
Registration Statement No. 033-62069
Registration Statement No. 033-62208
Registration Statement No. 333-16189
Registration Statement No. 333-60553
Registration Statement No. 333-40515

/s/ Deloitte & Touche LLP
New York, New York
February 23, 2009

(Note: The page numbers in this Exhibit 99.1 correspond to Merrill Lynch's 2008 Annual Report on Form 10-K)

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of Merrill Lynch & Co., Inc.:

We have audited the accompanying consolidated balance sheets of Merrill Lynch & Co., Inc. and subsidiaries ("Merrill Lynch") as of December 26, 2008 and December 28, 2007, and the related consolidated statements of (loss)/earnings, changes in stockholders' equity, comprehensive (loss)/income and cash flows for each of the three years in the period ended December 26, 2008. These financial statements are the responsibility of Merrill Lynch's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Merrill Lynch as of December 26, 2008 and December 28, 2007, and the results of its operations and its cash flows for each of the three years in the period ended December 26, 2008, in conformity with accounting principles generally accepted in the United States of America.

As discussed in Notes 1 and 3 to the consolidated financial statements, in 2007 Merrill Lynch adopted Statement of Financial Accounting Standards No. 157, "*Fair Value Measurements,*" Statement of Financial Accounting Standards No. 159, "*The Fair Value Option for Financial Assets and Financial Liabilities — Including an amendment of FASB Statement No. 115,"* and FASB Interpretation No. 48, "*Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109.*"

As discussed in Note 1, Merrill Lynch became a wholly-owned subsidiary of Bank of America Corporation on January 1, 2009.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Merrill Lynch's internal control over financial reporting as of December 26, 2008, based on the criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 23, 2009 expressed an adverse opinion on Merrill Lynch's internal control over financial reporting because of material weaknesses.

/s/ Deloitte & Touche LLP
New York, New York
February 23, 2009

Merrill Lynch & Co., Inc. and Subsidiaries
Consolidated Statements of (Loss)/Earnings

(dollars in millions, except per share amounts)	2008 (52 weeks)	2007 (52 weeks)	2006 (52 weeks)
	Year Ended Last Friday in December		
Revenues			
Principal transactions	**$ (27,225)**	$ (12,067)	$ 7,248
Commissions	**6,895**	7,284	5,985
Managed accounts and other fee-based revenues	**5,544**	5,465	6,273
Investment banking	**3,733**	5,582	4,648
Earnings from equity method investments	**4,491**	1,627	556
Other	**(10,065)**	(2,190)	2,883
Subtotal	**(16,627)**	5,701	27,593
Interest and dividend revenues	**33,383**	56,974	39,790
Less interest expense	**29,349**	51,425	35,571
Net interest profit	**4,034**	5,549	4,219
Gain on merger	**-**	-	1,969
Revenues, net of interest expense	**(12,593)**	11,250	33,781
Non-interest expenses			
Compensation and benefits	**14,763**	15,903	16,867
Communications and technology	**2,201**	2,057	1,838
Brokerage, clearing, and exchange fees	**1,394**	1,415	1,096
Occupancy and related depreciation	**1,267**	1,139	991
Professional fees	**1,058**	1,027	885
Advertising and market development	**652**	785	686
Office supplies and postage	**215**	233	225
Other	**2,402**	1,522	1,383
Payment related to price reset on common stock offering	**2,500**	-	-
Goodwill impairment charge	**2,300**	-	-
Restructuring charge	**486**	-	-
Total non-interest expenses	**29,238**	24,081	23,971
Pre-tax (loss)/earnings from continuing operations	**(41,831)**	(12,831)	9,810
Income tax (benefit)/expense	**(14,280)**	(4,194)	2,713
Net (loss)/earnings from continuing operations	**(27,551)**	(8,637)	7,097
Discontinued operations:			
Pre-tax (loss)/earnings from discontinued operations	**(141)**	1,397	616
Income tax (benefit)/expense	**(80)**	537	214
Net (loss)/earnings from discontinued operations	**(61)**	860	402
Net (loss)/earnings	**$ (27,612)**	$ (7,777)	$ 7,499
Preferred stock dividends	**2,869**	270	188
Net (loss)/earnings applicable to common stockholders	**$ (30,481)**	$ (8,047)	$ 7,311
Basic (loss)/earnings per common share from continuing operations	**$ (24.82)**	(10.73)	7.96
Basic (loss)/earnings per common share from discontinued operations	**(0.05)**	1.04	0.46
Basic (loss)/earnings per common share	**$ (24.87)**	$ (9.69)	$ 8.42
Diluted (loss)/earnings per common share from continuing operations	**$ (24.82)**	(10.73)	7.17
Diluted (loss)/earnings per common share from discontinued operations	**(0.05)**	1.04	0.42
Diluted (loss)/earnings per common share	**$ (24.87)**	$ (9.69)	$ 7.59
Dividend paid per common share	**$ 1.40**	$ 1.40	$ 1.00
Average shares used in computing (losses)/earnings per common share			
Basic	**1,225.6**	830.4	868.1
Diluted	**1,225.6**	830.4	963.0

See Notes to Consolidated Financial Statements

Merrill Lynch & Co., Inc. and Subsidiaries
Consolidated Balance Sheets

(dollars in millions, except per share amounts)	**Dec. 26, 2008**	**Dec. 28, 2007**
ASSETS		
Cash and cash equivalents	$ 68,403	$ 41,346
Cash and securities segregated for regulatory purposes or deposited with clearing organizations	32,923	22,999
Securities financing transactions		
Receivables under resale agreements (includes $62,146 in 2008 and $100,214 in 2007 measured at fair value in accordance with SFAS No. 159)	93,247	221,617
Receivables under securities borrowed transactions (includes $853 in 2008 measured at fair value in accordance with SFAS No. 159)	35,077	133,140
	128,324	354,757
Trading assets, at fair value (includes securities pledged as collateral that can be sold or repledged of $18,663 in 2008 and $45,177 in 2007)		
Derivative contracts	89,477	72,689
Corporate debt and preferred stock	30,829	37,849
Equities and convertible debentures	26,160	60,681
Mortgages, mortgage-backed, and asset-backed	13,786	28,013
Non-U.S. governments and agencies	6,107	15,082
U.S. Government and agencies	5,253	11,219
Municipals, money markets and physical commodities	3,993	9,136
	175,605	234,669
Investment securities (includes $2,770 in 2008 and $4,685 in 2007 measured at fair value in accordance with SFAS No. 159) (includes securities pledged as collateral that can be sold or repledged of $2,557 in 2008 and $16,124 in 2007)	57,007	82,532
Securities received as collateral, at fair value	11,658	45,245
Other receivables		
Customers (net of allowance for doubtful accounts of $143 in 2008 and $24 in 2007)	51,131	70,719
Brokers and dealers	12,410	22,643
Interest and other	26,331	23,487
	89,872	116,849
Loans, notes and mortgages (net of allowances for loan losses of $2,072 in 2008 and $533 in 2007) (includes $979 in 2008 and $1,149 in 2007 measured at fair value in accordance with SFAS No. 159)	69,190	94,992
Equipment and facilities (net of accumulated depreciation and amortization of $5,856 in 2008 and $5,518 in 2007)	2,928	3,127
Goodwill and other intangible assets	2,616	5,091
Other assets	29,017	18,443
Total Assets	$667,543	$1,020,050

Merrill Lynch & Co., Inc. and Subsidiaries
Consolidated Balance Sheets

(dollars in millions, except per share amounts)	**Dec. 26, 2008**	**Dec. 28, 2007**
LIABILITIES		
Securities financing transactions		
Payables under repurchase agreements (includes $32,910 in 2008 and $89,733 in 2007 measured at fair value in accordance with SFAS No. 159)	$ 92,654	$ 235,725
Payables under securities loaned transactions	24,426	55,906
	117,080	291,631
Short-term borrowings (includes $3,387 in 2008 measured at fair value in accordance with SFAS No. 159)	37,895	24,914
Deposits	96,107	103,987
Trading liabilities, at fair value		
Derivative contracts	71,363	73,294
Equities and convertible debentures	7,871	29,652
Non-U.S. governments and agencies	4,345	9,407
U.S. Government and agencies	3,463	6,135
Corporate debt and preferred stock	1,318	4,549
Municipals, money markets and other	1,111	551
	89,471	123,588
Obligation to return securities received as collateral, at fair value	11,658	45,245
Other payables		
Customers	44,924	63,582
Brokers and dealers	12,553	24,499
Interest and other	32,918	44,545
	90,395	132,626
Long-term borrowings (includes $49,521 in 2008 and $76,334 in 2007 measured at fair value in accordance with SFAS No. 159)	199,678	260,973
Junior subordinated notes (related to trust preferred securities)	5,256	5,154
Total Liabilities	647,540	988,118
COMMITMENTS AND CONTINGENCIES		
STOCKHOLDERS' EQUITY		
Preferred Stockholders' Equity (liquidation preference of $30,000 per share; issued: 2008 — 244,100 shares; 2007 — 155,000 shares; liquidation preference of $1,000 per share; issued: 2008 and 2007 — 115,000 shares; liquidation preference of $100,000 per share; issued: 2008 — 17,000 shares)	8,605	4,383
Common Stockholders' Equity		
Shares exchangeable into common stock	-	39
Common stock (par value $1.33 1/3 per share; authorized: 3,000,000,000 shares; issued: 2008 — 2,031,995,436 shares; 2007 — 1,354,309,819 shares)	2,709	1,805
Paid-in capital	47,232	27,163
Accumulated other comprehensive loss (net of tax)	(6,318)	(1,791)
(Accumulated deficit) / retained earnings	(8,603)	23,737
	35,020	50,953
Less: Treasury stock, at cost (2008 — 431,742,565 shares; 2007 — 418,270,289 shares)	23,622	23,404
Total Common Stockholders' Equity	11,398	27,549
Total Stockholders' Equity	20,003	31,932
Total Liabilities and Stockholders' Equity	$667,543	$1,020,050

See Notes to Consolidated Financial Statements

Merrill Lynch & Co., Inc. and Subsidiaries
Consolidated Statements of Changes in Stockholders' Equity

	Year Ended Last Friday in December					
	Amounts			Shares		
(dollars in millions)	**2008**	2007	2006	**2008**	2007	2006
Preferred Stock, net						
Balance, beginning of year	**$ 4,383**	$ 3,145	$ 2,673	**257,134**	104,928	89,685
Issuances	**10,814**	1,615	374	**172,100**	165,000	12,000
Redemptions	**(6,600)**	-	-	**(66,000)**	-	-
Shares (repurchased) re-issuances	**8**	(377)	98	**211**	(12,794)	3,243
Balance, end of year	**$ 8,605**	$ 4,383	$ 3,145	**363,445**	257,134	104,928
Common Stockholders' Equity						
Shares Exchangeable into Common Stock						
Balance, beginning of year	**$ 39**	$ 39	$ 41	**2,552,982**	2,659,926	2,707,797
Exchanges	**(39)**	-	(2)	**(2,544,793)**	(106,944)	(47,871)
Balance, end of year	**-**	39	39	**8,189**	2,552,982	2,659,926
Common Stock						
Balance, beginning of year	**1,805**	1,620	1,531	**1,354,309,819**	1,215,381,006	1,148,714,008
Capital issuance and acquisition[1][2]	**648**	122	-	**486,166,666**	91,576,096	-
Preferred stock conversion	**236**	-	-	**177,322,917**	-	-
Shares issued to employees	**20**	63	89	**14,196,034**	47,352,717	66,666,998
Balance, end of year	**2,709**	1,805	1,620	**2,031,995,436**	1,354,309,819	1,215,381,006
Paid-in Capital						
Balance, beginning of year	**27,163**	18,919	13,320			
Capital issuance and acquisition[1][2]	**11,544**	4,643	-			
Preferred stock conversion	**6,970**	-	-			
Employee stock plan activity and other	**(553)**	1,962	2,351			
Amortization of employee stock grants	**2,108**	1,639	3,248			
Balance, end of year	**47,232**	27,163	18,919			
Accumulated Other Comprehensive Loss:						
Foreign Currency Translation Adjustment (net of tax)						
Balance, beginning of year	**(441)**	(430)	(507)			
Translation adjustment	**(304)**	(11)	77			
Balance, end of year	**(745)**	(441)	(430)			
Net Unrealized Gains (Losses) on Investment Securities Available-for-Sale (net of tax)						
Balance, beginning of year	**(1,509)**	(192)	(181)			
Net unrealized losses on available-for-sale securities	**(7,617)**	(2,460)	(15)			
Adjustment to initially apply SFAS 159[3]	-	172	-			
Other adjustments[4]	**3,088**	971	4			
Balance, end of year	**(6,038)**	(1,509)	(192)			
Deferred Gains (losses) on Cash Flow Hedges (net of tax)						
Balance, beginning of year	**83**	2	(3)			
Net deferred (losses) gains on cash flow hedges	**(2)**	81	5			
Balance, end of year	**81**	83	2			
Defined benefit pension and postretirement plans (net of tax)						
Balance, beginning of year	**76**	(164)	(153)			
Net gains	**306**	240	-			
Minimum pension liability adjustment	-	-	(76)			
Adjustment to apply SFAS 158 change in measurement date[3]	**2**	-	-			
Adjustment to initially apply SFAS 158[3]	-	-	65			
Balance, end of year	**384**	76	(164)			
Balance, end of year	**(6,318)**	(1,791)	(784)			
(Accumulated deficit) Retained Earnings						
Balance, beginning of year	**23,737**	33,217	26,824			
Net (loss) earnings	**(27,612)**	(7,777)	7,499			
Preferred stock dividends declared	**(2,869)**	(270)	(188)			
Common stock dividends declared	**(1,853)**	(1,235)	(918)			
Adjustment to initially apply SFAS 157	-	53	-			
Adjustment to apply SFAS 158 change in measurement date	**(6)**	-	-			
Adjustment to initially apply SFAS 159	-	(185)	-			
Adjustment to initially apply FIN 48	-	(66)	-			
Balance, end of year	**(8,603)**	23,737	33,217			
Treasury Stock, at cost						
Balance, beginning of year	**(23,404)**	(17,118)	(7,945)	**(418,270,289)**	(350,697,271)	(233,112,271)
Shares repurchased	-	(5,272)	(9,088)	-	(62,112,876)	(116,610,876)
Shares reacquired from employees and other[5]	**(363)**	(1,014)	(89)	**(16,017,069)**	(5,567,086)	(1,021,995)
Share exchanges	**145**	-	4	**2,544,793**	106,944	47,871
Balance, end of year	**(23,622)**	(23,404)	(17,118)	**(431,742,565)**	(418,270,289)	(350,697,271)
Total Common Stockholders' Equity	**$ 11,398**	$ 27,549	$ 35,893			
Total Stockholders' Equity	**$ 20,003**	$ 31,932	$ 39,038			

(1) The 2008 activity relates to the July 28, 2008 public offering and additional shares issued to Davis Selected Advisors and Temasek Holdings.
(2) The 2007 activity relates to the acquisition of First Republic Bank and to additional shares issued to Davis Selected Advisors and Temasek Holdings.
(3) This adjustment is not reflected on the Statement of Comprehensive (Loss)/Income.
(4) Other adjustments primarily relate to income taxes, policyholder liabilities and deferred policy acquisition costs.
(5) Share amounts are net of reacquisitions from employees of 19,057,068, 12,490,283 shares and 6,622,887 shares, in 2008, 2007 and 2006, respectively.

See Notes to Consolidated Financial Statements

Merrill Lynch & Co., Inc. and Subsidiaries
Consolidated Statements of Comprehensive (Loss)/Income

(dollars in millions)	Year Ended Last Friday in December		
	2008	2007	2006
Net (Loss)/Earnings	**$(27,612)**	$(7,777)	$7,499
Other Comprehensive (Loss) Income			
Foreign currency translation adjustment:			
Foreign currency translation gains (losses)	**694**	(282)	(366)
Income tax (expense) benefit	**(998)**	271	443
Total	**(304)**	(11)	77
Net unrealized gains (losses) on investment securities available-for-sale:			
Net unrealized losses arising during the period	**(11,916)**	(2,291)	(16)
Reclassification adjustment for realized losses/(gains) included in net (loss)/earnings	**4,299**	(169)	1
Net unrealized losses on investment securities available-for-sale	**(7,617)**	(2,460)	(15)
Adjustments for:			
Policyholder liabilities	**-**	4	1
Income tax benefit	**3,088**	967	3
Total	**(4,529)**	(1,489)	(11)
Deferred gains (losses) on cash flow hedges:			
Deferred gains (losses) on cash flow hedges	**240**	162	9
Reclassification adjustment for realized losses (gains) included in net earnings	**(241)**	(30)	(2)
Income tax (expense) benefit	**(1)**	(51)	(2)
Total	**(2)**	81	5
Defined benefit pension and postretirement plans:			
Minimum pension liability adjustment	**-**	-	(110)
Net actuarial gains	**489**	353	
Prior service cost	**(4)**	6	
Reclassification adjustment for realized losses included in net (loss)/earnings	**(5)**	23	-
Income tax (expense) benefit	**(174)**	(142)	34
Total	**306**	240	(76)
Total Other Comprehensive Loss	**(4,529)**	(1,179)	(5)
Comprehensive (Loss)/Income	**$(32,141)**	$(8,956)	$7,494

See Notes to Consolidated Financial Statements

Merrill Lynch & Co., Inc. and Subsidiaries

Consolidated Statements of Cash Flows

(dollars in millions)	Year Ended Last Friday in December		
	2008	**2007**	**2006**
Cash flows from operating activities:			
Net (loss)/earnings	$ (27,612)	$ (7,777)	$ 7,499
Adjustments to reconcile net (loss)/earnings to cash provided by (used for) operating activities			
Gain on merger	-	-	(1,969)
Gain on sale of MLIG	-	(316)	-
Depreciation and amortization	886	901	523
Share-based compensation expense	2,044	1,795	3,156
Payment related to price reset on common stock offering	2,500	-	-
Goodwill impairment charge	2,300	-	-
Deferred taxes	(16,086)	(4,924)	(360)
Gain on sale of Bloomberg L.P. interest	(4,296)	-	-
Loss (earnings) from equity method investments	306	(1,409)	(421)
Other	13,556	160	1,045
Changes in operating assets and liabilities:			
Trading assets	59,064	(29,650)	(55,392)
Cash and securities segregated for regulatory purposes or deposited with clearing organizations	(6,214)	(8,886)	(1,019)
Receivables under resale agreements	128,370	(43,247)	(15,346)
Receivables under securities borrowed transactions	98,063	(14,530)	(26,126)
Customer receivables	19,561	(21,280)	(9,562)
Brokers and dealers receivables	10,236	(3,744)	(6,825)
Proceeds from loans, notes, and mortgages held for sale	21,962	72,054	41,317
Other changes in loans, notes, and mortgages held for sale	2,700	(86,894)	(47,670)
Trading liabilities	(34,338)	23,878	9,554
Payables under repurchase agreements	(143,071)	13,101	29,557
Payables under securities loaned transactions	(31,480)	12,414	24,157
Customer payables	(18,658)	14,135	13,795
Brokers and dealers payables	(11,946)	113	4,791
Trading investment securities	3,216	9,333	(867)
Other, net	(31,588)	2,411	6,400
Cash provided by (used for) operating activities	39,475	(72,362)	(23,763)
Cash flows from investing activities:			
Proceeds from (payments for):			
Maturities of available-for-sale securities	7,250	13,362	13,222
Sales of available-for-sale securities	29,537	39,327	16,176
Purchases of available-for-sale securities	(31,017)	(58,325)	(31,357)
Proceeds from the sale of discontinued operations	12,576	1,250	-
Equipment and facilities, net	(630)	(719)	(1,174)
Loans, notes, and mortgages held for investment	(13,379)	5,113	(681)
Other investments	1,336	(5,049)	(6,543)
Transfer of cash balances related to merger	-	-	(651)
Acquisitions, net of cash	-	(2,045)	-
Cash provided by (used for) investing activities	5,673	(7,086)	(11,008)
Cash flows from financing activities:			
Proceeds from (payments for):			
Commercial paper and short-term borrowings	12,981	6,316	9,123
Issuance and resale of long-term borrowings	70,194	165,107	87,814
Settlement and repurchases of long-term borrowings	(109,731)	(93,258)	(42,545)
Deposits	(7,880)	9,884	4,108
Derivative financing transactions	543	848	608
Issuance of common stock	9,899	4,787	1,838
Issuance of preferred stock, net	9,281	1,123	472
Common stock repurchases	-	(5,272)	(9,088)
Other common stock transactions	(833)	(60)	539
Excess tax benefits related to share-based compensation	39	715	531
Dividends	(2,584)	(1,505)	(1,106)
Cash (used for) provided by financing activities	(18,091)	88,685	52,294
Increase in cash and cash equivalents	27,057	9,237	17,523
Cash and cash equivalents, beginning of period	41,346	32,109	14,586
Cash and cash equivalents, end of period	$ 68,403	$ 41,346	$ 32,109
Supplemental Disclosure of Cash Flow Information:			
Income taxes paid	$ 1,518	$ 1,846	$ 2,638
Interest paid	30,397	49,881	35,685

Non-cash investing and financing activities :

As a result of the conversion of $6.6 billion of Merrill Lynch's mandatory convertible preferred stock, series 1, the Company recorded additional preferred dividends of $2.1 billion in 2008. The preferred dividends were paid in additional shares of common and preferred stock.

In satisfaction of Merrill Lynch's obligations under the reset provisions contained in the investment agreement with Temasek, Merrill Lynch agreed to pay Temasek $2.5 billion, all of which was paid through the issuance of common stock.

As a result of the completed sale of Merrill Lynch's 20% ownership stake in Bloomberg, L.P., Merrill Lynch recorded a $4.3 billion pre-tax gain. In connection with this sale, Merrill Lynch received notes totaling approximately $4.3 billion that have been recorded as held-to-maturity investment securities on the Consolidated Balance Sheets.

See Notes to Consolidated Financial Statements

Note 1. Summary of Significant Accounting Policies

Description of Business

Merrill Lynch & Co., Inc. ("ML & Co.") and together with its subsidiaries, ("Merrill Lynch" or the "Company") provide investment, financing, insurance, and related services to individuals and institutions on a global basis through its broker, dealer, banking, and other financial services subsidiaries. Its principal subsidiaries include:

- Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"), a U.S.-based broker-dealer in securities and futures commission merchant;
- Merrill Lynch International ("MLI"), a U.K.-based broker-dealer in securities and dealer in equity and credit derivatives;
- Merrill Lynch Government Securities Inc. ("MLGSI"), a U.S.-based dealer in U.S. Government securities;
- Merrill Lynch Capital Services, Inc., a U.S.-based dealer in interest rate, currency, credit derivatives and commodities;
- Merrill Lynch Bank USA ("MLBUSA"), a U.S.-based, state chartered, Federal Deposit Insurance Corporation ("FDIC")-insured depository institution;
- Merrill Lynch Bank & Trust Co., FSB ("MLBT-FSB"), a U.S.-based, federally chartered, FDIC-insured depository institution;
- Merrill Lynch International Bank Limited ("MLIB"), an Ireland-based bank;
- Merrill Lynch Mortgage Capital, Inc., a U.S.-based dealer in syndicated commercial loans;
- Merrill Lynch Japan Securities Co., Ltd. ("MLJS"), a Japan-based broker-dealer;
- Merrill Lynch Derivative Products, AG, a Switzerland-based derivatives dealer; and
- ML IBK Positions Inc., a U.S.-based entity involved in private equity and principal investing.

Services provided to clients by Merrill Lynch and other activities include:

- Securities brokerage, trading and underwriting;
- Investment banking, strategic advisory services (including mergers and acquisitions) and other corporate finance activities;
- Wealth management products and services, including financial, retirement and generational planning;
- Investment management and advisory and related record-keeping services;
- Origination, brokerage, dealer, and related activities in swaps, options, forwards, exchange-traded futures, other derivatives, commodities and foreign exchange products;
- Securities clearance, settlement financing services and prime brokerage;
- Private equity and other principal investing activities;
- Proprietary trading of securities, derivatives and loans;
- Banking, trust, and lending services, including deposit-taking, consumer and commercial lending, including mortgage loans, and related services;
- Insurance and annuities sales; and
- Research services on a global basis

Bank of America Acquisition

On January 1, 2009, Merrill Lynch was acquired by Bank of America Corporation ("Bank of America") through the merger of a wholly owned subsidiary of Bank of America with and into ML & Co. with ML & Co. continuing as the surviving corporation and a wholly owned subsidiary of Bank of America. Upon completion of the acquisition, each outstanding share of ML & Co. common stock was

converted into 0.8595 shares of Bank of America common stock. As of the completion of the acquisition, ML & Co. Series 1 through Series 8 preferred stock were converted into Bank of America preferred stock with substantially identical terms of the corresponding series of Merrill Lynch preferred stock (except for additional voting rights provided to the Bank of America securities). The Merrill Lynch 9.00% Non-Voting Mandatory Convertible Non-Cumulative Preferred Stock, Series 2, and 9.00% Non-Voting Mandatory Convertible Non-Cumulative Preferred Stock, Series 3 that was outstanding immediately prior to the completion of the acquisition remained issued and outstanding subsequent to the acquisition, but are now convertible into Bank of America common stock.

Basis of Presentation

The Consolidated Financial Statements include the accounts of ML & Co. and subsidiaries (collectively, "Merrill Lynch"). The Consolidated Financial Statements are presented in accordance with U.S. Generally Accepted Accounting Principles, which include industry practices. Intercompany transactions and balances have been eliminated. Certain reclassifications have been made to the prior period financial statements to conform to the current period presentation.

The Consolidated Financial Statements are presented in U.S. dollars. Many non-U.S. subsidiaries have a functional currency (i.e., the currency in which activities are primarily conducted) that is other than the U.S. dollar, often the currency of the country in which a subsidiary is domiciled. Subsidiaries' assets and liabilities are translated to U.S. dollars at year-end exchange rates, while revenues and expenses are translated at average exchange rates during the year. Adjustments that result from translating amounts in a subsidiary's functional currency and related hedging, net of related tax effects, are reported in stockholders' equity as a component of accumulated other comprehensive loss. All other translation adjustments are included in earnings. Merrill Lynch uses derivatives to manage the currency exposure arising from activities in non-U.S. subsidiaries. See the Derivatives section for additional information on accounting for derivatives.

Merrill Lynch offers a broad array of products and services to its diverse client base of individuals, small to mid-size businesses, employee benefit plans, corporations, financial institutions, and governments around the world. These products and services are offered from a number of locations globally. In some cases, the same or similar products and services may be offered to both individual and institutional clients, utilizing the same infrastructure. In other cases, a single infrastructure may be used to support multiple products and services offered to clients. When Merrill Lynch analyzes its profitability, it does not focus on the profitability of a single product or service. Instead, Merrill Lynch views the profitability of businesses offering an array of products and services to various types of clients. The profitability of the products and services offered to individuals, small to mid-size businesses, and employee benefit plans is analyzed separately from the profitability of products and services offered to corporations, financial institutions, and governments, regardless of whether there is commonality in products and services infrastructure. As such, Merrill Lynch does not separately disclose the costs associated with the products and services sold or general and administrative costs either in total or by product.

When determining the prices for products and services, Merrill Lynch considers multiple factors, including prices being offered in the market for similar products and services, the competitiveness of its pricing compared to competitors, the profitability of its businesses and its overall profitability, as well as the profitability, creditworthiness, and importance of the overall client relationships.

Shared expenses that are incurred to support products and services and infrastructures are allocated to the businesses based on various methodologies, which may include headcount, square footage, and certain other criteria. Similarly, certain revenues may be shared based upon agreed methodologies. When looking at the profitability of various businesses, Merrill Lynch considers all expenses incurred, including overhead and the costs of shared services, as all are considered integral to the operation of the businesses.

Discontinued Operations

On August 13, 2007, Merrill Lynch announced a strategic business relationship with AEGON, N.V. ("AEGON") in the areas of insurance and investment products. As part of this relationship, Merrill Lynch sold Merrill Lynch Life Insurance Company and ML Life Insurance Company of New York (together "Merrill Lynch Insurance Group" or "MLIG") to AEGON for $1.3 billion in the fourth quarter of 2007, which resulted in an after-tax gain of approximately $316 million. The gain along with the financial results of MLIG, have been reported within discontinued operations for all periods presented. Merrill Lynch previously reported the results of MLIG in the Global Wealth Management ("GWM") business segment. Refer to Note 16 for additional information.

On December 24, 2007 Merrill Lynch announced that it had reached an agreement with GE Capital to sell Merrill Lynch Capital, a wholly-owned middle-market commercial finance business. The sale included substantially all of Merrill Lynch Capital's operations, including its commercial real estate division. This transaction closed on February 4, 2008. Merrill Lynch has included results of Merrill Lynch Capital within discontinued operations for all periods presented. Merrill Lynch previously reported results of Merrill Lynch Capital in the Global Markets and Investment Banking ("GMI") business segment. Refer to Note 16 for additional information.

Consolidation Accounting Policies

The Consolidated Financial Statements include the accounts of Merrill Lynch, whose subsidiaries are generally controlled through a majority voting interest. In certain cases, Merrill Lynch subsidiaries may also be consolidated based on a risks and rewards approach. Merrill Lynch does not consolidate those special purpose entities that meet the criteria of a qualified special purpose entity ("QSPE").

Merrill Lynch determines whether it is required to consolidate an entity by first evaluating whether the entity qualifies as a voting rights entity ("VRE"), a variable interest entity ("VIE"), or a QSPE.

VREs are defined to include entities that have both equity at risk that is sufficient to fund future operations and have equity investors with decision making ability that absorb the majority of the expected losses and expected returns of the entity. In accordance with SFAS No. 94, *Consolidation of All Majority-Owned Subsidiaries,* Merrill Lynch generally consolidates those VREs where it holds a controlling financial interest. For investments in limited partnerships and certain limited liability corporations that Merrill Lynch does not control, Merrill Lynch applies Emerging Issues Task Force ("EITF") Topic D-46, *Accounting for Limited Partnership Investments*, which requires use of the equity method of accounting for investors that have more than a minor influence, which is typically defined as an investment of greater than 3% of the outstanding equity in the entity. For more traditional corporate structures, in accordance with Accounting Principles Board Opinion No. 18, *The Equity Method of Accounting for Investments in Common Stock*, Merrill Lynch applies the equity method of accounting where it has significant influence over the investee. Significant influence can be evidenced by a significant ownership interest (which is generally defined as a voting interest of 20% to 50%), significant board of director representation, or other contracts and arrangements.

VIEs — Those entities that do not meet the VRE criteria are generally analyzed for consolidation as either VIEs or QSPEs. Merrill Lynch consolidates those VIEs in which it absorbs the majority of the variability in expected losses and/or the variability in expected returns of the entity as required by FIN 46(R), *Consolidation of Variable Interest Entities* ("FIN 46(R)"). Merrill Lynch relies on a qualitative and/or quantitative analysis, including an analysis of the design of the entity, to determine if it is the primary beneficiary of the VIE and therefore must consolidate the VIE. Merrill Lynch reassesses whether it is the primary beneficiary of a VIE upon the occurrence of a reconsideration event.

QSPEs — QSPEs are passive entities with significantly limited permitted activities. QSPEs are generally used as securitization vehicles and are limited in the type of assets they may hold, the derivatives into which they can enter and the level of discretion that they may exercise through

servicing activities. In accordance with SFAS No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities* (“SFAS No. 140”), and FIN 46(R), Merrill Lynch does not consolidate QSPEs.

Securitization Activities

In the normal course of business, Merrill Lynch securitizes commercial and residential mortgage loans; municipal, government, and corporate bonds; and other types of financial assets. Merrill Lynch may retain interests in the securitized financial assets by holding issuances of the securitization. In accordance with SFAS No. 140, where Merrill Lynch relinquishes control, it recognizes transfers of financial assets as sales to the extent of cash and any proceeds received. Control is considered to be relinquished when all of the following conditions have been met:

- The transferred assets have been legally isolated from the transferor even in bankruptcy or other receivership;
- The transferee has the right to pledge or exchange the assets it received, or if the entity is a QSPE, the beneficial interest holders have the right to pledge or exchange their beneficial interests; and
- The transferor does not maintain effective control over the transferred assets (e.g. the ability to unilaterally cause the holder to return specific transferred assets).

Revenue Recognition

Principal transactions revenues include both realized and unrealized gains and losses on trading assets and trading liabilities, investment securities classified as trading investments and fair value changes associated with structured debt. These instruments are recorded at fair value. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between marketplace participants. Gains and losses are recognized on a trade date basis.

Commissions revenues include commissions, mutual fund distribution fees and contingent deferred sales charge revenue, which are all accrued as earned. Commissions revenues also include mutual fund redemption fees, which are recognized at the time of redemption. Commissions revenues earned from certain customer equity transactions are recorded net of related brokerage, clearing and exchange fees.

Managed accounts and other fee-based revenues primarily consist of asset-priced portfolio service fees earned from the administration of separately managed accounts and other investment accounts for retail investors, annual account fees, and certain other account-related fees. In addition, until the merger of the Merrill Lynch Investment Management (“MLIM”) business with BlackRock, Inc. (“BlackRock”) at the end of the third quarter of 2006 (the “BlackRock Merger”), managed accounts and other fee-based revenues also included fees earned from the management and administration of retail mutual funds and institutional funds, such as pension assets, and performance fees earned on certain separately managed accounts and institutional money management arrangements.

Investment banking revenues include underwriting revenues and fees for merger and acquisition advisory services, which are accrued when services for the transactions are substantially completed. Underwriting revenues are presented net of transaction-related expenses. Transaction-related expenses, primarily legal, travel and other costs directly associated with the transaction, are deferred and recognized in the same period as the related revenue from the investment banking transaction to match revenue recognition.

Earnings from equity method investments include Merrill Lynch’s pro rata share of income and losses associated with investments accounted for under the equity method. In addition, earnings from equity method investments for the year ended December 26, 2008 included a gain of $4.3 billion associated with the sale of Bloomberg, L.P. (see Note 5).

Other revenues include gains/(losses) on investment securities, including sales and other-than-temporary-impairment losses associated with certain available-for-sale securities, gains/(losses) on private equity investments and gains/(losses) on loans and other miscellaneous items.

Contractual interest and dividends received and paid on trading assets and trading liabilities, excluding derivatives, are recognized on an accrual basis as a component of interest and dividend revenues and interest expense. Interest and dividends on investment securities are recognized on an accrual basis as a component of interest and dividend revenues. Interest related to loans, notes, and mortgages, securities financing activities and certain short- and long-term borrowings are recorded on an accrual basis with related interest recorded as interest revenue or interest expense, as applicable. Contractual interest, if any, on structured notes is recorded as a component of interest expense.

Use of Estimates

In presenting the Consolidated Financial Statements, management makes estimates regarding:

- Valuations of assets and liabilities requiring fair value estimates;
- The allowance for credit losses;
- Determination of other-than-temporary impairments for available-for-sale investment securities;
- The outcome of litigation;
- Assumptions and cash flow projections used in determining whether VIEs should be consolidated and the determination of the qualifying status of QSPEs;
- The realization of deferred taxes and the recognition and measurement of uncertain tax positions;
- The carrying amount of goodwill and other intangible assets;
- The amortization period of intangible assets with definite lives;
- Incentive-based compensation accruals and valuation of share-based payment compensation arrangements; and
- Other matters that affect the reported amounts and disclosure of contingencies in the financial statements.

Estimates, by their nature, are based on judgment and available information. Therefore, actual results could differ from those estimates and could have a material impact on the Consolidated Financial Statements, and it is possible that such changes could occur in the near term. A discussion of certain areas in which estimates are a significant component of the amounts reported in the Consolidated Financial Statements follows:

Fair Value Measurement

Merrill Lynch accounts for a significant portion of its financial instruments at fair value or considers fair value in their measurement. Merrill Lynch accounts for certain financial assets and liabilities at fair value under various accounting literature, including SFAS No. 115, *Accounting for Certain Investments in Debt and Equity Securities* (“SFAS No. 115”), SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities* (“SFAS No. 133”), and SFAS No. 159, *Fair Value Option for Financial Assets and Liabilities* (“SFAS No. 159”). Merrill Lynch also accounts for certain assets at fair value under applicable industry guidance, namely broker-dealer and investment company accounting guidance.

Merrill Lynch early adopted the provisions of SFAS No. 157, *Fair Value Measurements* (“SFAS No. 157”), in the first quarter of 2007. SFAS No. 157 defines fair value, establishes a framework for measuring fair value, establishes a fair value hierarchy based on the quality of inputs used to measure fair value and enhances disclosure requirements for fair value measurements. SFAS No. 157 nullifies the guidance provided by EITF Issue No. 02-3, *Issues Involved in Accounting for Derivative Contracts Held for Trading Purposes and Contracts Involved in Energy Trading and Risk Management Activities* (“EITF 02-3”), which prohibited recognition of day one gains or losses on derivative transactions where model inputs that significantly impact valuation are not observable.

Fair values for over-the-counter ("OTC") derivative financial instruments, principally forwards, options, and swaps, represent the present value of amounts estimated to be received from or paid to a marketplace participant in settlement of these instruments (i.e., the amount Merrill Lynch would expect to receive in a derivative asset assignment or would expect to pay to have a derivative liability assumed). These derivatives are valued using pricing models based on the net present value of estimated future cash flows and directly observed prices from exchange-traded derivatives, other OTC trades, or external pricing services, while taking into account the counterparty's creditworthiness, or Merrill Lynch's own creditworthiness, as appropriate. Determining the fair value for OTC derivative contracts can require a significant level of estimation and management judgment.

New and/or complex instruments may have immature or limited markets. As a result, the pricing models used for valuation often incorporate significant estimates and assumptions that market participants would use in pricing the instrument, which may impact the results of operations reported in the Consolidated Financial Statements. For instance, on long-dated and illiquid contracts extrapolation methods are applied to observed market data in order to estimate inputs and assumptions that are not directly observable. This enables Merrill Lynch to mark to fair value all positions consistently when only a subset of prices are directly observable. Values for OTC derivatives are verified using observed information about the costs of hedging the risk and other trades in the market. As the markets for these products develop, Merrill Lynch continually refines its pricing models to correlate more closely to the market price of these instruments.

Prior to adoption of SFAS No. 157, Merrill Lynch followed the provisions of EITF 02-3. Under EITF 02-3, recognition of day one gains and losses on derivative transactions where model inputs that significantly impact valuation are not observable were prohibited. Day one gains and losses deferred at inception under EITF 02-3 were recognized at the earlier of when the valuation of such derivatives became observable or at the termination of the contract. Although the guidance in EITF 02-3 has been nullified, the recognition of significant inception gains and losses that incorporate unobservable inputs is reviewed by management to ensure such gains and losses are derived from observable inputs and/or incorporate reasonable assumptions about the unobservable component, such as implied bid-offer adjustments.

Certain financial instruments recorded at fair value are initially measured using mid-market prices which results in gross long and short positions marked-to-market at the same pricing level prior to the application of position netting. The resulting net positions are then adjusted to fair value representing the exit price as defined in SFAS No. 157. The significant adjustments include liquidity and counterparty credit risk.

Liquidity

Merrill Lynch makes adjustments to bring a position from a mid-market to a bid or offer price, depending upon the net open position. Merrill Lynch values net long positions at bid prices and net short positions at offer prices. These adjustments are based upon either observable or implied bid-offer prices.

Counterparty Credit Risk

In determining fair value, Merrill Lynch considers both the credit risk of its counterparties, as well as its own creditworthiness. Merrill Lynch attempts to mitigate credit risk to third parties by entering into netting and collateral arrangements. Net counterparty exposure (counterparty positions netted by offsetting transactions and both cash and securities collateral) is then valued for counterparty creditworthiness and this resultant value is incorporated into the fair value of the respective instruments. Merrill Lynch generally calculates the credit risk adjustment for derivatives on observable market credit spreads.

SFAS No. 157 also requires that Merrill Lynch consider its own creditworthiness when determining the fair value of an instrument, including OTC derivative instruments. The approach to measuring the

impact of Merrill Lynch's credit risk on an instrument is done in the same manner as for third party credit risk. The impact of Merrill Lynch's credit risk is incorporated into the fair value, even when credit risk is not readily observable, of an instrument such as in OTC derivatives contracts. OTC derivative liabilities are valued based on the net counterparty exposure as described above.

Legal Reserves

Merrill Lynch is a party in various actions, some of which involve claims for substantial amounts. Amounts are accrued for the financial resolution of claims that have either been asserted or are deemed probable of assertion if, in the opinion of management, it is both probable that a liability has been incurred and the amount of the loss can be reasonably estimated. In many cases, it is not possible to determine whether a liability has been incurred or to estimate the ultimate or minimum amount of that liability until the case is close to resolution, in which case no accrual is made until that time. Accruals are subject to significant estimation by management with input from outside counsel.

Income Taxes

Merrill Lynch provides for income taxes on all transactions that have been recognized in the Consolidated Financial Statements in accordance with SFAS No. 109, *Accounting for Income Taxes* ("SFAS No. 109"). Accordingly, deferred taxes are adjusted to reflect the tax rates at which future taxable amounts will likely be settled or realized. The effects of tax rate changes on future deferred tax liabilities and deferred tax assets, as well as other changes in income tax laws, are recognized in net earnings in the period during which such changes are enacted. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized. Merrill Lynch assesses its ability to realize deferred tax assets based on past and projected earnings, tax carryforward periods, tax planning strategies and other factors of the legal entities through which the deferred tax assets will be realized as discussed in SFAS No. 109. Deferred tax assets of approximately $10.0 billion, which were previously classified as interest and other receivables at December 28, 2007, have been restated to other assets in the Consolidated Balance Sheets.

Merrill Lynch recognizes and measures its unrecognized tax benefits in accordance with FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* ("FIN 48"). Merrill Lynch estimates the likelihood, based on the technical merits, that tax positions will be sustained upon examination based on the facts and circumstances and information available at the end of each period. Merrill Lynch adjusts the level of unrecognized tax benefits when there is more information available, or when an event occurs requiring a change. The reassessment of unrecognized tax benefits could have a material impact on Merrill Lynch's effective tax rate in the period in which it occurs.

ML & Co. and certain of its wholly-owned subsidiaries file a consolidated U.S. federal income tax return. Certain other Merrill Lynch entities file tax returns in their local jurisdictions. See Note 14 for a further discussion of income taxes.

Goodwill and Intangibles

Merrill Lynch makes certain complex judgments with respect to its goodwill and intangible assets. These include assumptions and estimates used to determine the fair value of its reporting units. Reporting unit fair value is determined using market-multiple and discounted cash flow analyses. Merrill Lynch also makes assumptions and estimates in valuing its intangible assets and determining the useful lives of its intangible assets with definite lives. Refer to Note 8 for further information.

Employee Stock Options

The fair value of stock options with vesting based solely on service requirements is estimated as of the grant date based on a Black-Scholes option pricing model. The fair value of stock options with vesting that is partially dependent on pre-determined increases in the price of Merrill Lynch's common stock is estimated as of the grant date using a lattice option pricing model. These models take into account the

exercise price and expected life of the option, the current price of the underlying stock and its expected volatility, expected dividends and the risk-free interest rate for the expected term of the option. Judgment is required in determining certain of the inputs to the model. The expected life of the option is based on an analysis of historical employee exercise behavior. The expected volatility is based on Merrill Lynch's implied stock price volatility for the same number of months as the expected life of the option. The fair value of the option estimated at grant date is not adjusted for subsequent changes in assumptions.

Balance Sheet

Cash and Cash Equivalents

Merrill Lynch defines cash equivalents as short-term, highly liquid securities, federal funds sold, and interest-earning deposits with maturities, when purchased, of 90 days or less, that are not used for trading purposes. The amounts recognized for cash and cash equivalents in the Consolidated Balance Sheets approximate fair value.

Cash and Securities Segregated for Regulatory Purposes or Deposited with Clearing Organizations

Merrill Lynch maintains relationships with clients around the world and, as a result, it is subject to various regulatory regimes. As a result of its client activities, Merrill Lynch is obligated by rules mandated by its primary regulators, including the Securities and Exchange Commission ("SEC") and the Commodities Futures Trading Commission ("CFTC") in the United States and the Financial Services Authority ("FSA") in the United Kingdom to segregate or set aside cash and/or qualified securities to satisfy these regulations, which have been promulgated to protect customer assets. In addition, Merrill Lynch is a member of various clearing organizations at which it maintains cash and/or securities required for the conduct of its day-to-day clearance activities. The amounts recognized for cash and securities segregated for regulatory purposes or deposited with clearing organizations in the Consolidated Balance Sheets approximate fair value.

Securities Financing Transactions

Merrill Lynch enters into repurchase and resale agreements and securities borrowed and loaned transactions to accommodate customers and earn interest rate spreads (also referred to as "matched-book transactions"), obtain securities for settlement and finance inventory positions.

Resale and repurchase agreements are accounted for as collateralized financing transactions and may be recorded at their contractual amounts plus accrued interest or at fair value under the fair value option election in SFAS No. 159. Resale and repurchase agreements recorded at fair value are generally valued based on pricing models that use inputs with observable levels of price transparency.

Where the fair value option has been elected, changes in the fair value of resale and repurchase agreements are reflected in principal transactions revenues and the contractual interest coupon is recorded as interest revenue or interest expense, respectively. For further information refer to Note 3. Resale and repurchase agreements recorded at their contractual amounts plus accrued interest approximate fair value, as the fair value of these items is not materially sensitive to shifts in market interest rates because of the short-term nature of these instruments and/or variable interest rates or to credit risk because the resale and repurchase agreements are fully collateralized.

Merrill Lynch's policy is to obtain possession of collateral with a market value equal to or in excess of the principal amount loaned under resale agreements. To ensure that the market value of the underlying collateral remains sufficient, collateral is generally valued daily and Merrill Lynch may require counterparties to deposit additional collateral or may return collateral pledged when appropriate.

Substantially all repurchase and resale activities are transacted under master repurchase agreements that give Merrill Lynch the right, in the event of default, to liquidate collateral held and to offset

receivables and payables with the same counterparty. Merrill Lynch offsets certain repurchase and resale agreement balances with the same counterparty on the Consolidated Balance Sheets.

Merrill Lynch may use securities received as collateral for resale agreements to satisfy regulatory requirements such as Rule 15c3-3 of the SEC.

Securities borrowed and loaned transactions may be recorded at the amount of cash collateral advanced or received plus accrued interest or at fair value under the fair value option election in SFAS No. 159. Securities borrowed transactions require Merrill Lynch to provide the counterparty with collateral in the form of cash, letters of credit, or other securities. Merrill Lynch receives collateral in the form of cash or other securities for securities loaned transactions. For these transactions, the fees received or paid by Merrill Lynch are recorded as interest revenue or expense. On a daily basis, Merrill Lynch monitors the market value of securities borrowed or loaned against the collateral value, and Merrill Lynch may require counterparties to deposit additional collateral or may return collateral pledged, when appropriate. The carrying value of these instruments approximates fair value as these items are not materially sensitive to shifts in market interest rates because of their short-term nature and/or their variable interest rates.

All firm-owned securities pledged to counterparties where the counterparty has the right, by contract or custom, to sell or repledge the securities are disclosed parenthetically in trading assets or, if applicable, in investment securities on the Consolidated Balance Sheets.

In transactions where Merrill Lynch acts as the lender in a securities lending agreement and receives securities that can be pledged or sold as collateral, it recognizes an asset on the Consolidated Balance Sheets carried at fair value, representing the securities received (securities received as collateral), and a liability for the same amount, representing the obligation to return those securities (obligation to return securities received as collateral). The amounts on the Consolidated Balance Sheets result from non-cash transactions.

Trading Assets and Liabilities

Merrill Lynch's trading activities consist primarily of securities brokerage and trading; derivatives dealing and brokerage; commodities trading and futures brokerage; and securities financing transactions. Trading assets and trading liabilities consist of cash instruments (e.g., securities and loans) and derivative instruments used for trading purposes or for managing risk exposures in other trading inventory. See the Derivatives section of this Note for additional information on the accounting for derivatives. Trading assets and trading liabilities also include commodities inventory.

Trading assets and liabilities are generally recorded on a trade date basis at fair value. Included in trading liabilities are securities that Merrill Lynch has sold but did not own and will therefore be obligated to purchase at a future date ("short sales"). Commodities inventory is recorded at the lower of cost or market value. Changes in fair value of trading assets and liabilities (i.e., unrealized gains and losses) are recognized as principal transactions revenues in the current period. Realized gains and losses and any related interest amounts are included in principal transactions revenues and interest revenues and expenses, depending on the nature of the instrument.

Derivatives

A derivative is an instrument whose value is derived from an underlying instrument or index, such as interest rates, equity security prices, currencies, commodity prices or credit spreads. Derivatives include futures, forwards, swaps, option contracts and other financial instruments with similar characteristics. Derivative contracts often involve future commitments to exchange interest payment streams or currencies based on a notional or contractual amount (e.g., interest rate swaps or currency forwards) or to purchase or sell other financial instruments at specified terms on a specified date (e.g., options to buy or sell securities or currencies). Derivative activity is subject to Merrill Lynch's overall risk management policies and procedures.

SFAS No. 133, as amended, establishes accounting and reporting standards for derivative instruments, including certain derivative instruments embedded in other contracts ("embedded derivatives") and for hedging activities. SFAS No. 133 requires that an entity recognize all derivatives as either assets or liabilities in the Consolidated Balance Sheets and measure those instruments at fair value. The fair value of derivatives is recorded on a net-by-counterparty basis on the Consolidated Balance Sheets where management believes a legal right of setoff exists under an enforceable netting agreement.

The accounting for changes in fair value of a derivative instrument depends on its intended use and if it is designated and qualifies as an accounting hedging instrument under SFAS No. 133.

Merrill Lynch enters into derivatives to facilitate client transactions, for proprietary trading and financing purposes, and to manage risk exposures arising from trading assets and liabilities. Derivatives entered into for these purposes are recognized at fair value on the Consolidated Balance Sheets as trading assets and liabilities, and changes in fair value are reported in current period earnings as principal transactions revenues.

Merrill Lynch also enters into derivatives in order to manage risk exposures arising from assets and liabilities not carried at fair value as follows:

1. Merrill Lynch issued debt in a variety of maturities and currencies to achieve the lowest cost financing possible. In addition, Merrill Lynch's regulated bank entities accept time deposits of varying rates and maturities. Merrill Lynch enters into derivative transactions to hedge these liabilities. Derivatives used most frequently include swap agreements that:
    - Convert fixed-rate interest payments into variable-rate interest payments;
    - Change the underlying interest rate basis or reset frequency; and
    - Change the settlement currency of a debt instrument.
2. Merrill Lynch entered into hedges on marketable investment securities to manage the interest rate risk, currency risk, and net duration of its investment portfolios. As of December 26, 2008 these hedges had been discontinued.
3. Merrill Lynch has fair value hedges of long-term fixed rate resale and repurchase agreements to manage the interest rate risk of these assets and liabilities. Subsequent to the adoption of SFAS No. 159, Merrill Lynch elects to account for these instruments on a fair value basis rather than apply hedge accounting.
4. Merrill Lynch uses foreign-exchange forward contracts, foreign-exchange options, currency swaps, and foreign-currency-denominated debt to hedge its net investments in foreign operations. These derivatives and cash instruments are used to mitigate the impact of changes in exchange rates.
5. Merrill Lynch enters into futures, swaps, options and forward contracts to manage the price risk of certain commodity inventory.

Derivatives entered into by Merrill Lynch to hedge its funding, marketable investment securities and net investments in foreign subsidiaries are reported at fair value in other assets or interest and other payables on the Consolidated Balance Sheets. Derivatives used to hedge commodity inventory are included in trading assets and trading liabilities on the Consolidated Balance Sheets.

Derivatives that qualify as accounting hedges under the guidance in SFAS No. 133 are designated as one of the following:

1. A hedge of the fair value of a recognized asset or liability ("fair value" hedge). Changes in the fair value of derivatives that are designated and qualify as fair value hedges of interest rate risk, along with the gain or loss on the hedged asset or liability that is attributable to the hedged risk, are recorded in current period earnings as interest revenue or expense. Changes in the fair value of derivatives that are designated and qualify as fair value hedges of commodity price risk, along with

the gain or loss on the hedged asset or liability that is attributable to the hedged risk, are recorded in current period earnings in principal transactions.

2. A hedge of the variability of cash flows to be received or paid related to a recognized asset or liability ("cash flow" hedge). Changes in the fair value of derivatives that are designated and qualify as effective cash flow hedges are recorded in accumulated other comprehensive loss until earnings are affected by the variability of cash flows of the hedged asset or liability (e.g., when periodic interest accruals on a variable-rate asset or liability are recorded in earnings).
3. A hedge of a net investment in a foreign operation. Changes in the fair value of derivatives that are designated and qualify as hedges of a net investment in a foreign operation are recorded in the foreign currency translation adjustment account within accumulated other comprehensive loss. Changes in the fair value of the hedging instruments that are associated with the difference between the spot translation rate and the forward translation rate are recorded in current period earnings in other revenues.

Merrill Lynch formally assesses, both at the inception of the hedge and on an ongoing basis, whether the hedging derivatives are highly effective in offsetting changes in fair value or cash flows of hedged items. When it is determined that a derivative is not highly effective as a hedge, Merrill Lynch discontinues hedge accounting. Under the provisions of SFAS No. 133, 100% hedge effectiveness is assumed for those derivatives whose terms meet the conditions of the SFAS No. 133 "short-cut method."

As noted above, Merrill Lynch enters into fair value and cash flow hedges of interest rate exposure associated with certain investment securities and debt issuances. Merrill Lynch uses interest rate swaps to hedge this exposure. Hedge effectiveness testing is required for certain of these hedging relationships on a quarterly basis. For fair value hedges, Merrill Lynch assesses effectiveness on a prospective basis by comparing the expected change in the price of the hedge instrument to the expected change in the value of the hedged item under various interest rate shock scenarios. For cash flow hedges, Merrill Lynch assesses effectiveness on a prospective basis by comparing the present value of the projected cash flows on the variable leg of the hedge instrument against the present value of the projected cash flows of the hedged item (the "change in variable cash flows" method) under various interest rate, prepayment and credit shock scenarios. In addition, Merrill Lynch assesses effectiveness on a retrospective basis using the dollar-offset ratio approach. When assessing hedge effectiveness, there are no attributes of the derivatives used to hedge the fair value exposure that are excluded from the assessment. Ineffectiveness associated with these hedges was immaterial for all periods presented. As of December 26, 2008, Merrill Lynch had discontinued its cash flow hedges on marketable investment securities. The cash flows that had been hedged were still expected to occur, therefore, amounts remained in accumulated other comprehensive loss in the Consolidated Balance Sheets in relation to these hedges. Of the deferred net gains from cash flow hedges that were in accumulated other comprehensive loss on the Consolidated Balance Sheet at December 26, 2008, $31 million are expected to be reclassified into earnings during 2009.

Merrill Lynch also enters into fair value hedges of commodity price risk associated with certain commodity inventory. For these hedges, Merrill Lynch assesses effectiveness on a prospective and retrospective basis using regression techniques. The difference between the spot rate and the contracted forward rate which represents the time value of money is excluded from the assessment of hedge effectiveness and is recorded in principal transactions revenues. The amount of ineffectiveness related to these hedges reported in earnings was not material for all periods presented.

For hedges of net investments in foreign operations, gains of $1,649 million and losses of $432 million related to non-U.S. dollar hedges of investments in non-U.S. dollar subsidiaries were included in accumulated other comprehensive loss on the Consolidated Balance Sheets for the years ended 2008 and 2007, respectively. In 2008, hedging gains were substantially offset by net losses on translation of the foreign investments. Conversely, in 2007, the hedge losses were substantially offset by net gains on the translation of the foreign investments.

Netting of Derivative Contracts

Where Merrill Lynch has entered into a legally enforceable netting agreement with counterparties, it reports derivative assets and liabilities, and any related cash collateral, net in the Consolidated Balance Sheets in accordance with FIN No. 39, *Offsetting Amounts Related to Certain Contracts* (“FIN No. 39”). Derivative assets and liabilities are presented net of cash collateral of approximately $50.2 billion and $65.5 billion, respectively, at December 26, 2008 and $13.5 billion and $39.7 billion, respectively, at December 28, 2007.

Derivatives that Contain a Significant Financing Element

In the ordinary course of trading activities, Merrill Lynch enters into certain transactions that are documented as derivatives where a significant cash investment is made by one party. Certain derivative instruments that contain a significant financing element at inception and where Merrill Lynch is deemed to be the borrower are included in financing activities in the Consolidated Statements of Cash Flows. The cash flows from all other derivative transactions that do not contain a significant financing element at inception are included in operating activities.

Investment Securities

Investment securities consist of marketable investment securities and non-qualifying investments. Refer to Note 5.

Marketable Investments

ML & Co. and certain of its non-broker-dealer subsidiaries, including Merrill Lynch banks, follow the guidance in SFAS No. 115 when accounting for investments in debt and publicly traded equity securities. Merrill Lynch classifies those debt securities that it has the intent and ability to hold to maturity as held-to-maturity securities. Held-to-maturity securities are carried at cost unless a decline in value is deemed other-than-temporary, in which case the carrying value is reduced. For Merrill Lynch, the trading classification under SFAS No. 115 generally includes those securities that are bought and held principally for the purpose of selling them in the near term, securities that are economically hedged, or securities that may contain a bifurcatable embedded derivative as defined in SFAS No. 133. Securities classified as trading are marked to fair value through earnings. All other qualifying securities are classified as available-for-sale and held at fair value with unrealized gains and losses reported in accumulated other comprehensive loss. Any unrealized losses that are deemed other-than-temporary are included in current period earnings and removed from accumulated other comprehensive loss.

Realized gains and losses on investment securities are included in current period earnings. For purposes of computing realized gains and losses, the cost basis of each investment sold is generally based on the average cost method.

Merrill Lynch regularly (at least quarterly) evaluates each held-to-maturity and available-for-sale security whose value has declined below amortized cost to assess whether the decline in fair value is other-than-temporary. A decline in a debt security’s fair value is considered to be other-than-temporary if it is probable that all amounts contractually due will not be collected or management determines that it does not have the intent and ability to hold the security for a period of time sufficient for a forecasted market price recovery up to or beyond the amortized cost of the security.

Merrill Lynch’s impairment review generally includes:

- Identifying securities with indicators of possible impairment;
- Analyzing individual securities with fair value less than amortized cost for specific factors including:
    - An adverse change in cash flows
    - The estimated length of time to recover from fair value to amortized cost

- The severity and duration of the fair value decline from amortized cost
- Deterioration in the financial condition of the issuer;

• Discussing evidential matter, including an evaluation of the factors that could cause individual securities to have an other-than-temporary impairment;

• Determining whether management intends to hold the security through to recovery. Absent other indicators of possible impairment, to the extent that Merrill Lynch has the ability and intent to hold the securities, no impairment charge will be recognized; and

• Documenting the analysis and conclusions.

Non-Qualifying Investments

Non-qualifying investments are those investments that are not within the scope of SFAS No. 115 and primarily include private equity investments accounted for at fair value and securities carried at cost or under the equity method of accounting.

Private equity investments that are held for capital appreciation and/or current income are accounted for under the AICPA Accounting and Auditing Guide, *Investment Companies* (the "Investment Company Guide") and carried at fair value. Additionally, certain private equity investments that are not accounted for under the Investment Company Guide may be carried at fair value under the fair value option election in SFAS No. 159. The carrying value of private equity investments reflects expected exit values based upon market prices or other valuation methodologies including expected cash flows and market comparables of similar companies.

Merrill Lynch has minority investments in the common shares of corporations and in partnerships that do not fall within the scope of SFAS No. 115 or the Investment Company Guide. Merrill Lynch accounts for these investments using either the cost or the equity method of accounting based on management's ability to influence the investees. See the Consolidation Accounting Policies section of this Note for more information.

For investments accounted for using the equity method, income is recognized based on Merrill Lynch's share of the earnings or losses of the investee. Dividend distributions are generally recorded as reductions in the investment balance. Impairment testing is based on the guidance provided in APB Opinion No. 18, *The Equity Method of Accounting for Investments in Common Stock*, and the investment is reduced when an impairment is deemed other-than-temporary.

For investments accounted for at cost, income is recognized as dividends are received. Impairment testing is based on the guidance provided in FASB Staff Position Nos. SFAS 115-1 and SFAS 124-1, *The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments*, and the cost basis is reduced when an impairment is determined to be other-than-temporary.

Loans, Notes and Mortgages, Net

Merrill Lynch's lending and related activities include loan originations, syndications and securitizations. Loan originations include corporate and institutional loans, residential and commercial mortgages, asset-based loans, and other loans to individuals and businesses. Merrill Lynch also engages in secondary market loan trading (see Trading Assets and Liabilities section) and margin lending. Loans included in loans, notes, and mortgages are classified for accounting purposes as loans held for investment and loans held for sale.

Loans held for investment are carried at amortized cost, less an allowance for loan losses. The provision for loan losses is based on management's estimate of the amount necessary to maintain the allowance for loan losses at a level adequate to absorb probable incurred loan losses and is included in interest revenue in the Consolidated Statements of (Loss)/Earnings. Management's estimate of loan losses is influenced by many factors, including adverse situations that may affect the borrower's ability to repay, current economic conditions, prior loan loss experience, and the estimated fair value of any

underlying collateral. The fair value of collateral is generally determined by third-party appraisals in the case of residential mortgages, quoted market prices for securities, or other types of estimates for other assets.

Management's estimate of loan losses includes judgment about collectibility based on available information at the balance sheet date, and the uncertainties inherent in those underlying assumptions. While management has based its estimates on the best information available, future adjustments to the allowance for loan losses may be necessary as a result of changes in the economic environment or variances between actual results and the original assumptions.

In general, loans are evaluated for impairment when they are greater than 90 days past due or exhibit credit quality weakness. Loans are considered impaired when it is probable that Merrill Lynch will not be able to collect the contractual principal and interest due from the borrower. All payments received on impaired loans are applied to principal until the principal balance has been reduced to a level where collection of the remaining recorded investment is not in doubt. Typically, when collection of principal on an impaired loan is not in doubt, contractual interest will be credited to interest income when received.

Loans held for sale are carried at lower of cost or fair value. The fair value option in SFAS No. 159 has been elected for certain held for sale loans, notes and mortgages. Estimation is required in determining these fair values. The fair value of loans made in connection with commercial lending activity, consisting mainly of senior debt, is primarily estimated using the market value of publicly issued debt instruments or discounted cash flows. Merrill Lynch's estimate of fair value for other loans, notes, and mortgages is determined based on the individual loan characteristics. For certain homogeneous categories of loans, including residential mortgages, automobile loans, and home equity loans, fair value is estimated using a whole loan valuation or an "as-if" securitized price based on market conditions. An "as-if" securitized price is based on estimated performance of the underlying asset pool collateral, rating agency credit structure assumptions and market pricing for similar securitizations previously executed. Declines in the carrying value of loans held for sale and loans accounted for at fair value under the fair value option are included in other revenues in the Consolidated Statements of (Loss)/Earnings.

Nonrefundable loan origination fees, loan commitment fees, and "draw down" fees received in conjunction with held for investment loans are generally deferred and recognized over the contractual life of the loan as an adjustment to the yield. If, at the outset, or any time during the term of the loan, it becomes probable that the repayment period will be extended, the amortization is recalculated using the expected remaining life of the loan. When the loan contract does not provide for a specific maturity date, management's best estimate of the repayment period is used. At repayment of the loan, any unrecognized deferred fee is immediately recognized in earnings. If the loan is accounted for as held for sale, the fees received are deferred and recognized as part of the gain or loss on sale in other revenues. If the loan is accounted for under the fair value option, the fees are included in the determination of the fair value and included in other revenue.

Other Receivables and Payables

Customer Receivables and Payables

Customer securities transactions are recorded on a settlement date basis. Receivables from and payables to customers include amounts due on cash and margin transactions, including futures contracts transacted on behalf of Merrill Lynch customers. Due to their short-term nature, such amounts approximate fair value. Securities owned by customers, including those that collateralize margin or other similar transactions, are not reflected on the Consolidated Balance Sheets.

Brokers and Dealers Receivables and Payables

Receivables from brokers and dealers include amounts receivable for securities not delivered by Merrill Lynch to a purchaser by the settlement date ("fails to deliver"), margin deposits, commissions, and net

receivables arising from unsettled trades. Payables to brokers and dealers include amounts payable for securities not received by Merrill Lynch from a seller by the settlement date ("fails to receive"). Brokers and dealers receivables and payables also include amounts related to futures contracts on behalf of Merrill Lynch customers as well as net payables and receivables from unsettled trades. Due to their short-term nature, the amounts recognized for brokers and dealers receivables and payables approximate fair value.

Interest and Other Receivables and Payables

Interest and other receivables include interest receivable on corporate and governmental obligations, customer or other receivables, and stock-borrowed transactions. Also included are receivables from income taxes, underwriting and advisory fees, commissions and fees, and other receivables. Interest and other payables include interest payable for stock-loaned transactions, and short-term and long-term borrowings. Also included are amounts payable for employee compensation and benefits, income taxes, minority interest, non-trading derivatives, dividends, other reserves, and other payables.

Equipment and Facilities

Equipment and facilities consist primarily of technology hardware and software, leasehold improvements, and owned facilities. Equipment and facilities are reported at historical cost, net of accumulated depreciation and amortization, except for land, which is reported at historical cost.

Depreciation and amortization are computed using the straight-line method. Equipment is depreciated over its estimated useful life, while leasehold improvements are amortized over the lesser of the improvement's estimated economic useful life or the term of the lease. Maintenance and repair costs are expensed as incurred.

Included in occupancy and related depreciation expense was depreciation and amortization of $302 million, $258 million, and $216 million in 2008, 2007 and 2006, respectively. Depreciation and amortization recognized in communications and technology expense was $488 million, $394 million, and $303 million for 2008, 2007 and 2006, respectively.

Qualifying costs incurred in the development of internal-use software are capitalized when costs exceed $5 million and are amortized over the useful life of the developed software, generally not exceeding three years.

Goodwill

Goodwill is the cost of an acquired company in excess of the fair value of identifiable net assets at the acquisition date. Goodwill is tested annually (or more frequently under certain conditions) for impairment at the reporting unit level in accordance with SFAS No. 142, *Goodwill and Other Intangible Assets* ("SFAS No. 142"). Refer to Note 8 for further information.

Intangible Assets

Intangible assets consist primarily of value assigned to customer relationships and core deposits. Intangible assets with definite lives are tested for impairment in accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets* ("SFAS No. 144"), whenever certain conditions exist which would indicate the carrying amount of such assets may not be recoverable. Intangible assets with definitive lives are amortized over their respective estimated useful lives.

Other Assets

Other assets include unrealized gains on derivatives used to hedge Merrill Lynch's non-trading borrowing and investing activities. All of these derivatives are recorded at fair value with changes reflected in earnings or accumulated other comprehensive loss (refer to the Derivatives section for more information). Other assets also include deferred tax assets, the excess of the fair value of pension

assets over the related benefit obligations, other prepaid expenses, and other deferred charges. Refer to Note 12 for further information.

In addition, real estate purchased for investment purposes is also included in other assets. Real estate held in this category may be classified as either held and used or held for sale depending on the facts and circumstances. Real estate held and used is valued at cost, less depreciation, and real estate held for sale is valued at the lower of cost or fair value, less estimated costs to sell.

Deposits

Savings deposits are interest-bearing accounts that have no maturity or expiration date, whereby the depositor is not required by the deposit contract, but may at any time be required by the depository institution, to give written notice of an intended withdrawal not less than seven days before withdrawal is made. Certificates of deposits are accounts that have a stipulated maturity and interest rate. However, depositors may recover their funds prior to the stated maturity but may pay a penalty to do so. In certain cases, Merrill Lynch enters into interest rate swaps to hedge the fair value risk in these deposits. The carrying amount of deposits approximates fair value amounts. Refer to the Derivatives section for more information.

Short- and Long-Term Borrowings

Merrill Lynch's general-purpose funding is principally obtained from medium-term and long-term borrowings. Commercial paper, when issued at a discount, is recorded at the proceeds received and accreted to its par value. Long-term borrowings are carried at either the principal amount borrowed, net of unamortized discounts or premiums, adjusted for the effects of fair value hedges or fair value if it has been elected under SFAS No. 159.

Merrill Lynch issues structured debt instruments that have coupons or repayment terms linked to the performance of debt or equity securities, indices, currencies, or commodities, generally referred to as hybrid debt instruments or structured notes. The contingent payment components of these obligations may meet the definition in SFAS No. 133 of an "embedded derivative." Historically, these hybrid debt instruments were assessed to determine if the embedded derivative required separate reporting (i.e. bifurcation) and accounting, and if so, the embedded derivative was accounted for at fair value and reported in long-term borrowings on the Consolidated Balance Sheets along with the debt obligation. Changes in the fair value of the bifurcated embedded derivative and related economic hedges were reported in principal transactions revenues. Separating an embedded derivative from its host contract required careful analysis, judgment, and an understanding of the terms and conditions of the instrument. Beginning in the first quarter of 2007, Merrill Lynch elected the fair value option in SFAS No. 159 for all hybrid debt instruments issued subsequent to December 29, 2006. Changes in fair value of the entire hybrid debt instrument are reflected in principal transactions revenues and the contractual interest coupon, if any, is recorded as interest expense. For further information refer to Note 3.

Merrill Lynch uses derivatives to manage the interest rate, currency, equity, and other risk exposures of its borrowings. See the Derivatives section for additional information on accounting policy for derivatives.

Stock-Based Compensation

Merrill Lynch accounts for stock-based compensation expense in accordance with SFAS No. 123(R), *Share-Based Payment* ("SFAS No. 123(R)"). Under SFAS No. 123(R), compensation expense for share-based awards that do not require future service are recorded immediately, while those that do require future service are amortized into expense over the relevant service period. Further, expected forfeitures of share-based compensation awards for non-retirement-eligible employees are included in determining compensation expense.

New Accounting Pronouncements

In January 2009, the FASB issued FSP EITF 99-20-1, *Amendments to the Impairment Guidance of EITF Issue No. 99-20* ("FSP EITF 99-20-1"), which eliminates the requirement that the holder's best estimate of cash flows be based upon those that a "market participant" would use. FSP EITF 99-20-1 was amended to require recognition of other-than-temporary impairment when it is "probable" that there has been an adverse change in the holder's best estimate of cash flows from the cash flows previously projected. This amendment aligns the impairment guidance under EITF 99-20, *Recognition of Interest Income and Impairment on Purchased Beneficial Interests and Beneficial Interests That Continue to Be Held by a Transferor in Securitized Financial Assets,* with the guidance in SFAS No. 115. FSP EITF 99-20-1 retains and re-emphasizes the other-than-temporary impairment guidance and disclosures in pre-existing GAAP and SEC requirements. FSP EITF 99-20-1 is effective for interim and annual reporting periods ending after December 15, 2008. FSP EITF 99-20-1 did not have a material impact on the Consolidated Financial Statements.

In December 2008, the FASB issued FSP FAS 140-4 and FIN 46(R)-8, *Disclosures by Public Entities (Enterprises) about Transfers of Financial Assets and Interests in Variable Interest Entities* ("FSP FAS 140-4 and FIN 46(R)-8"), which requires expanded disclosures for transfers of financial assets and involvement with variable interest entities ("VIEs"). Under this guidance, the disclosure objectives related to transfers of financial assets now include providing information on (i) Merrill Lynch's continued involvement with financial assets transferred in a securitization or asset backed financing arrangement, (ii) the nature of restrictions on assets held by Merrill Lynch that relate to transferred financial assets, and (iii) the impact on financial results of continued involvement with assets sold and assets transferred in secured borrowing arrangements. VIE disclosure objectives now include providing information on (i) significant judgments and assumptions used by Merrill Lynch to determine the consolidation or disclosure of a VIE, (ii) the nature of restrictions related to the assets of a consolidated VIE, (iii) the nature of risks related to Merrill Lynch's involvement with the VIE and (iv) the impact on financial results related to Merrill Lynch's involvement with the VIE. Certain disclosures are also required where Merrill Lynch is a non-transferor sponsor or servicer of a QSPE. FSP FAS 140-4 and FIN 46(R)-8 is effective for the first reporting period ending after December 15, 2008, and the required disclosures have been reflected in Note 4 and Note 6. Since the FSP only requires certain additional disclosures, it did not affect Merrill Lynch's consolidated financial position, results of operations or cash flows.

In October 2008, the FASB issued Staff Position No. 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active* ("FSP FAS 157-3"). FSP FAS 157-3 clarifies the application of SFAS No. 157 in periods of market dislocation and provides an example to illustrate key considerations for determining the fair value of a financial asset when the market for that asset is not active. FSP FAS 157-3 became effective upon issuance and is applicable for periods for which financial statements have not been issued. The clarifying guidance provided in FSP FAS 157-3 did not result in a change to Merrill Lynch's application of SFAS No. 157 and did not have an impact on the Consolidated Financial Statements.

In September 2008, the FASB issued FSP FAS 133-1 and FIN 45-4, *Disclosures about Credit Derivatives and Certain Guarantees: An Amendment of FASB Statement No. 133 and FASB Interpretation No. 45; and Clarification of the Effective Date of FASB Statement No. 161* ("FSP FAS 133-1 and FIN 45-4"), which amends SFAS No. 133 to require expanded disclosures regarding the potential effect of credit derivative instruments on an entity's financial position, financial performance and cash flows. FSP FAS 133-1 and FIN 45-4 applies to credit derivative instruments where Merrill Lynch is the seller of protection. This includes freestanding credit derivative instruments as well as credit derivatives that are embedded in hybrid instruments. FSP FAS 133-1 and FIN 45-4 additionally amends FASB Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* ("FIN 45") to require an additional disclosure about the current status of the payment/performance risk of guarantees. FSP FAS 133-1 and FIN 45-4 is effective prospectively for financial statements issued for fiscal years and

interim periods ending after November 15, 2008. See Note 11 for further information regarding these disclosures. Since the FSP only requires certain additional disclosures, it did not affect Merrill Lynch's consolidated financial position, results of operations or cash flows.

In May 2008, the FASB issued FSP APB 14-1, *Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)* ("FSP APB 14-1"), which clarifies that convertible instruments that may be settled in cash upon conversion (including partial cash settlement) are not addressed by APB Opinion No. 14, *Accounting for Convertible Debt and Debt Issued with Stock Purchase Warrants*. Additionally, FSP APB 14-1 specifies that issuers of such instruments should separately account for the liability and equity components in a manner that will reflect the entity's nonconvertible debt borrowing rate when interest cost is recognized in subsequent periods. FSP APB 14-1 which will apply to Merrill Lynch's contingently convertible liquid yield option notes ("LYONs®") is effective for financial statements issued for fiscal years and interim periods beginning after December 15, 2008, and is to be applied retrospectively for all periods that are presented in the annual financial statements for the period of adoption. FSP APB 14-1 will not have a material impact on the Consolidated Financial Statements.

In March 2008, the FASB issued SFAS No. 161, *Disclosure about Derivative Instruments and Hedging Activities, an Amendment of FASB Statement No. 133* ("SFAS No. 161"). SFAS No. 161 is intended to improve transparency in financial reporting by requiring enhanced disclosures of an entity's derivative instruments and hedging activities and their effects on the entity's financial position, financial performance, and cash flows. SFAS No. 161 applies to all derivative instruments within the scope of SFAS No. 133. It also applies to non-derivative hedging instruments and all hedged items designated and qualifying as hedges under SFAS No. 133. SFAS No. 161 amends the current qualitative and quantitative disclosure requirements for derivative instruments and hedging activities set forth in SFAS No. 133 and generally increases the level of disaggregation that will be required in an entity's financial statements. SFAS No. 161 requires qualitative disclosures about objectives and strategies for using derivatives, quantitative disclosures about fair value amounts of gains and losses on derivative instruments, and disclosures about credit-risk related contingent features in derivative agreements. SFAS No. 161 is effective prospectively for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. Since SFAS No. 161 only requires certain additional disclosures, it will not affect Merrill Lynch's consolidated financial position, results of operations or cash flows.

In February 2008, the FASB issued FSP FAS 140-3, *Accounting for Transfers of Financial Assets and Repurchase Financing Transactions* ("FSP FAS 140-3"). Under the guidance in FSP FAS 140-3, there is a presumption that the initial transfer of a financial asset and subsequent repurchase financing involving the same asset are considered part of the same arrangement (i.e. a linked transaction) under SFAS No. 140. However, if certain criteria are met, the initial transfer and repurchase financing will be evaluated as two separate transactions under SFAS No. 140. FSP FAS 140-3 is effective for new transactions entered into in fiscal years beginning after November 15, 2008. Early adoption is prohibited. The adoption of FSP FAS 140-3 is not expected to have a material impact on the Consolidated Financial Statements.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements-an amendment of ARB No. 51* ("SFAS No. 160"). SFAS No. 160 requires noncontrolling interests in subsidiaries (formerly known as "minority interests") initially to be measured at fair value and classified as a separate component of equity. Under SFAS No. 160, gains or losses on sales of noncontrolling interests in subsidiaries are not recognized, instead sales of noncontrolling interests are accounted for as equity transactions. However, in a sale of a subsidiary's shares that results in the deconsolidation of the subsidiary, a gain or loss is recognized for the difference between the proceeds of that sale and the carrying amount of the interest sold and a new fair value basis is established for any remaining ownership interest. SFAS No. 160 is effective for Merrill Lynch beginning in 2009; earlier application is prohibited. SFAS No. 160 is required to be adopted prospectively, with the exception of certain presentation and disclosure requirements (e.g., reclassifying noncontrolling

interests to appear in equity), which are required to be adopted retrospectively. The adoption of SFAS No. 160 is not expected to have a material impact on the Consolidated Financial Statements.

In December 2007, the FASB issued SFAS No. 141(R), *Business Combinations* ("SFAS No. 141(R)"), which significantly changes the financial accounting and reporting for business combinations. SFAS No. 141(R) will require, for example: (i) more assets and liabilities to be measured at fair value as of the acquisition date, (ii) liabilities related to contingent consideration to be remeasured at fair value in each subsequent reporting period with changes reflected in earnings and not goodwill, and (iii) all acquisition-related costs to be expensed as incurred by the acquirer. SFAS No. 141(R) is required to be adopted on a prospective basis concurrently with SFAS No. 160 and is effective for business combinations beginning in fiscal 2009. Early adoption is prohibited.

In April 2007, the FASB issued FSP No. FIN 39-1, *Amendment of FASB Interpretation No. 39* ("FSP FIN 39-1"). FSP FIN 39-1 modifies FIN No. 39 and permits companies to offset cash collateral receivables or payables with net derivative positions. FSP FIN 39-1 is effective for fiscal years beginning after November 15, 2007 with early adoption permitted. Merrill Lynch adopted FSP FIN 39-1 in the first quarter of 2008. FSP FIN 39-1 did not have a material effect on the Consolidated Financial Statements as it clarified the acceptability of existing market practice, which Merrill Lynch applied, for netting of cash collateral against net derivative assets and liabilities.

In September 2006, the FASB issued SFAS No. 158, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106 and 132R* ("SFAS No. 158"). SFAS No. 158 requires an employer to recognize the overfunded or underfunded status of its defined benefit pension and other postretirement plans, measured as the difference between the fair value of plan assets and the benefit obligation as an asset or liability in its statement of financial condition. Upon adoption, SFAS No. 158 requires an entity to recognize previously unrecognized actuarial gains and losses and prior service costs within accumulated other comprehensive loss, net of tax. In accordance with the guidance in SFAS No. 158, Merrill Lynch adopted this provision of the standard for year-end 2006. The adoption of SFAS No. 158 resulted in a net credit of $65 million to accumulated other comprehensive loss recorded on the Consolidated Financial Statements at December 29, 2006. SFAS No. 158 also requires defined benefit plan assets and benefit obligations to be measured as of the date of the company's fiscal year-end. Merrill Lynch has historically used a September 30 measurement date. As of the beginning of fiscal year 2008, Merrill Lynch changed its measurement date to coincide with its fiscal year end. The impact of adopting the measurement date provision of SFAS No. 158 was not material to the Consolidated Financial Statements.

In June 2006, the FASB issued FIN 48. FIN 48 clarifies the accounting for uncertainty in income taxes recognized in a company's financial statements and prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure and transition. Merrill Lynch adopted FIN 48 in the first quarter of 2007. The impact of the adoption of FIN 48 resulted in a decrease to beginning retained earnings and an increase to the liability for unrecognized tax benefits of approximately $66 million.

Note 2. Segment and Geographic Information

Segment Information

Merrill Lynch's operations are organized into two business segments: Global Markets and Investment Banking ("GMI") and Global Wealth Management ("GWM"). GMI provides full service global markets and origination products and services to corporate, institutional, and government clients around the world. GWM creates and distributes investment products and services for individuals, small- to mid-size businesses, and employee benefit plans.

Merrill Lynch also records revenues and expenses within a "Corporate" category. Corporate results primarily include unrealized gains and losses related to interest rate hedges on certain debt. In addition, Corporate results for the year ended December 26, 2008 included expenses of $2.5 billion related to the payment to affiliates and transferees of Temasek Holdings (Private) Limited ("Temasek") (refer to Note 10 for further information), $0.5 billion associated with the auction rate securities ("ARS") repurchase program and the associated settlement with regulators (refer to Note 11 for further information), and approximately $0.7 billion of litigation accruals recorded in 2008.

The following segment results represent the information that is relied upon by management in its decision-making processes. Management believes that the following information by business segment provides a reasonable representation of each segment's contribution to Merrill Lynch's consolidated net revenues and pre-tax earnings or loss from continuing operations.

The principal methodologies used in preparing the segment results in the table that follows include:

- Revenues and expenses are assigned to segments where directly attributable;
- Principal transactions, net interest and investment banking revenues and related costs resulting from the client activities of GWM are allocated among GMI and GWM based on production credits, share counts, trade counts, and other measures that estimate relative value;
- Interest (cost of carry) is allocated by charging each segment based on its capital usage and Merrill Lynch's blended cost of capital;
- Merrill Lynch has revenue and expense sharing agreements for joint activities between segments, and the results of each segment reflect the agreed-upon apportionment of revenues and expenses associated with these activities; and
- Residual expenses (i.e. those related to overhead and support units) are attributed to segments based on specific methodologies (e.g. headcount, square footage, intersegment agreements).

(dollars in millions)

	GMI	GWM	MLIM[1]	Corporate[2]	Total
2008					
Non-interest revenues	$ (25,416)	$10,464	$ -	$ (1,675)	$ (16,627)
Net interest (loss)/profit[3]	(1,044)	2,314	-	2,764	4,034
Net revenues	(26,460)	12,778	-	1,089	(12,593)
Non-interest expenses[4]	15,084	10,432	-	3,722	29,238
Pre-tax (loss)/earnings from continuing operations[5]	$ (41,544)	$ 2,346	$ -	$ (2,633)	$ (41,831)
Year-end total assets	$568,868	$97,849	$ -	$ 826	$ 667,543
2007					
Non-interest revenues	$ (4,950)	$11,719	$ -	$ (1,068)	$ 5,701
Net interest profit[3]	2,282	2,302	-	965	5,549
Net revenues	(2,668)	14,021	-	(103)	11,250
Non-interest expenses	13,677	10,391	-	13	24,081
Pre-tax (loss)/earnings from continuing operations[5]	$ (16,345)	$ 3,630	$ -	$ (116)	$ (12,831)
Year-end total assets[6]	$920,388	$99,196	$ -	$ 466	$1,020,050
2006					
Non-interest revenues	$ 15,947	$ 9,738	$ 1,867	$ 2,010	$ 29,562
Net interest profit/(loss)[3]	2,358	2,103	33	(275)	4,219
Net revenues	18,305	11,841	1,900	1,735	33,781
Non-interest expenses	13,013	9,551	1,263	144	23,971
Pre-tax earnings from continuing operations[5]	$ 5,292	$ 2,290	$ 637	$ 1,591	$ 9,810
Year-end total assets[6]	$747,737	$93,017	$ -	$ 545	$ 841,299

(1) MLIM ceased to exist in connection with the BlackRock Merger in September 2006.

(2) Results for 2008 and 2007 include an allocation of non-interest revenues (principal transactions) and net interest profit among the business and corporate segments associated with certain hybrid financing instruments accounted for under SFAS No. 159. Results for 2006 include $2.0 billion of non-interest revenues and $202 million of non-interest expenses related to the closing of the BlackRock merger.

(3) Management views interest and dividend income net of interest expense in evaluating results.

(4) Includes restructuring charges recorded in 2008 of $331 million for GMI and $155 million for GWM. See Note 17 for further information.

(5) See Note 16 for further information on discontinued operations.

(6) Amounts have been restated to properly reflect goodwill balances in the respective business segments. Such amounts were previously included in Corporate. For 2007 and 2006, such amounts were $3,161 million in GMI and $1,930 million in GWM and $2,045 million in GMI and $357 million in GWM, respectively.

Geographic Information

Merrill Lynch conducts its business activities through offices in the following five regions:

- United States;
- Europe, Middle East, and Africa ("EMEA");
- Pacific Rim;
- Latin America; and
- Canada.

The principal methodologies used in preparing the geographic information below are as follows:

- Revenues and expenses are generally recorded based on the location of the employee generating the revenue or incurring the expense without regard to legal entity;
- Pre-tax earnings or loss from continuing operations include the allocation of certain shared expenses among regions; and
- Intercompany transfers are based primarily on service agreements.

The information that follows, in management's judgment, provides a reasonable representation of each region's contribution to the consolidated net revenues and pre-tax loss or earnings from continuing operations:

(dollars in millions)

	2008	2007	2006(2)
Net revenues			
Europe, Middle East, and Africa(1)	**$ (2,390)**	$ 5,973	$ 6,896
Pacific Rim	**69**	5,065	3,703
Latin America	**1,237**	1,401	1,009
Canada	**161**	430	386
Total Non-U.S.	**(923)**	12,869	11,994
United States(3)(5)(6)	**(11,670)**	(1,619)	21,787
Total net revenues	**$(12,593)**	$ 11,250	$33,781
Pre-tax earnings from continuing operations(4)(7)			
Europe, Middle East, and Africa(1)	**$ (6,735)**	$ 1,211	$ 2,091
Pacific Rim	**(2,559)**	2,403	1,204
Latin America	**340**	632	357
Canada	**5**	235	181
Total Non-U.S.	**(8,949)**	4,481	3,833
United States(3)(5)(6)	**(32,882)**	(17,312)	5,977
Total pre-tax (loss) earnings from continuing operations(7)	**$(41,831)**	$(12,831)	$ 9,810

(1) The EMEA 2008 results include net losses of $4.3 billion primarily related to residential and commercial mortgage-related exposures.

(2) The 2006 results include net revenues earned by MLIM of $1.9 billion, which include non-U.S. net revenues of $1.0 billion.

(3) Corporate net revenues and adjustments are reflected in the U.S. region.

(4) The 2006 pre-tax earnings from continuing operations include the impact of the $1.8 billion of one-time compensation expenses incurred in 2006. These costs have been allocated to each of the regions.

(5) The U.S. 2008 results include net losses of $21.5 billion, primarily related to credit valuation adjustments related to hedges with financial guarantors, losses from ABS CDOs, losses from residential and commercial mortgage-related exposures, other than temporary impairment charges recognized in *the investment portfolio of Merrill Lynch's U.S. banks, and losses on leveraged finance loans and commitments. These losses were partially offset by gains resulting from the widening of Merrill Lynch's credit spreads on the carrying value of certain long-term liabilities and a net gain related to the sale of Merrill Lynch's ownership stake in Bloomberg L.P. (see Note 5).*

(6) The U.S. 2007 results include net losses of $23.2 billion related to ABS CDOs, U.S. sub-prime residential mortgages and securities, and credit valuation adjustments related to hedges with financial guarantors on U.S. ABS CDOs.

(7) See Note 16 for further information on discontinued operations.

Note 3. Fair Value

Fair Value Measurements

Fair Value Hierarchy

In accordance with SFAS No. 157, Merrill Lynch has categorized its financial instruments, based on the priority of the inputs to the valuation technique, into a three-level fair value hierarchy. The fair value hierarchy gives the highest priority to quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). If the inputs used to measure the financial instruments fall within different levels of the hierarchy, the categorization is based on the lowest level input that is significant to the fair value measurement of the instrument.

Financial assets and liabilities recorded on the Consolidated Balance Sheets are categorized based on the inputs to the valuation techniques as follows:

Level 1. Financial assets and liabilities whose values are based on unadjusted quoted prices for identical assets or liabilities in an active market that Merrill Lynch has the ability to access (examples include active exchange-traded equity securities, exchange-traded derivatives, most U.S. Government and agency securities, and certain other sovereign government obligations).

Level 2. Financial assets and liabilities whose values are based on quoted prices in markets that are not active or model inputs that are observable either directly or indirectly for substantially the full term of the asset or liability. Level 2 inputs include the following:

a) Quoted prices for similar assets or liabilities in active markets (for example, restricted stock);

b) Quoted prices for identical or similar assets or liabilities in non-active markets (examples include corporate and municipal bonds, which trade infrequently);

c) Pricing models whose inputs are observable for substantially the full term of the asset or liability (examples include most over-the-counter derivatives, including interest rate and currency swaps); and

d) Pricing models whose inputs are derived principally from or corroborated by observable market data through correlation or other means for substantially the full term of the asset or liability (examples include certain residential and commercial mortgage-related assets, including loans, securities and derivatives).

Level 3. Financial assets and liabilities whose values are based on prices or valuation techniques that require inputs that are both unobservable and significant to the overall fair value measurement. These inputs reflect management's own assumptions about the assumptions a market participant would use in pricing the asset or liability (examples include certain private equity investments, certain residential and commercial mortgage-related assets (including loans, securities and derivatives), and long-dated or complex derivatives (including certain equity and currency derivatives and long-dated options on gas and power)).

As required by SFAS No. 157, when the inputs used to measure fair value fall within different levels of the hierarchy, the level within which the fair value measurement is categorized is based on the lowest level input that is significant to the fair value measurement in its entirety. For example, a Level 3 fair value measurement may include inputs that are observable (Levels 1 and 2) and unobservable (Level 3). Therefore gains and losses for such assets and liabilities categorized within the Level 3 table below may include changes in fair value that are attributable to both observable inputs (Levels 1 and 2) and unobservable inputs (Level 3). Further, the following tables do not take into consideration the effect of offsetting Level 1 and 2 financial instruments entered into by Merrill Lynch that economically hedge certain exposures to the Level 3 positions.

A review of fair value hierarchy classifications is conducted on a quarterly basis. Changes in the observability of valuation inputs may result in a reclassification for certain financial assets or

liabilities. Level 3 gains and losses represent amounts incurred during the period in which the instrument was classified as Level 3. Reclassifications impacting Level 3 of the fair value hierarchy are reported as transfers in/out of the Level 3 category as of the beginning of the quarter in which the reclassifications occur. Refer to the recurring and non-recurring sections within this Note for further information on net transfers in and out.

Recurring Fair Value

The following tables present Merrill Lynch's fair value hierarchy for those assets and liabilities measured at fair value on a recurring basis as of December 26, 2008 and December 28, 2007, respectively.

(dollars in millions)

	Fair Value Measurements on a Recurring Basis as of December 26, 2008				
	Level 1	Level 2	Level 3	Netting Adj[1]	Total
Assets:					
Securities segregated for regulatory purposes or deposited with clearing organizations	$ 1,421	$ 10,156	$ -	-	$11,577
Receivables under resale agreements	-	62,146	-	-	62,146
Receivables under securities borrowed transactions	-	853	-	-	853
Trading assets, excluding derivative contracts	30,106	33,902	22,120	-	86,128
Derivative contracts	8,538	1,239,225	37,325	(1,195,611)	89,477
Investment securities	2,280	29,254	3,279	-	34,813
Securities received as collateral	9,430	2,228	-	-	11,658
Loans, notes and mortgages	-	690	359	-	1,049
Other assets[2]	-	8,046	-	-	8,046
Liabilities:					
Payables under repurchase agreements	$ -	$ 32,910	$ -	-	$32,910
Short-term borrowings	-	3,387	-	-	3,387
Trading liabilities, excluding derivative contracts	14,098	4,010	-	-	18,108
Derivative contracts	8,438	1,254,158	35,018	(1,226,251)	71,363
Obligation to return securities received as collateral	9,430	2,228	-	-	11,658
Long-term borrowings[3]	-	41,575	7,480	-	49,055
Other payables — interest and other[2]	10	741	-	(79)	672

(1) Represents counterparty and cash collateral netting.
(2) Primarily represents certain derivatives used for non-trading purposes.
(3) Includes bifurcated embedded derivatives carried at fair value.

Level 3 trading assets primarily include U.S. asset-backed collateralized debt obligations ("U.S. ABS CDOs") of $9.4 billion, corporate bonds and loans of $5.0 billion and auction rate securities of $3.9 billion.

Level 3 derivative contracts (assets) primarily relate to derivative positions on U.S. ABS CDOs of $5.8 billion, $23.6 billion of other credit derivatives that incorporate unobservable correlation, and $7.9 billion of equity, currency, interest rate and commodity derivatives that are long-dated and/or have unobservable correlation.

Level 3 investment securities primarily relate to certain private equity and principal investment positions of $2.6 billion.

Level 3 derivative contracts (liabilities) primarily relate to derivative positions on U.S. ABS CDOs of $6.1 billion, $22.3 billion of other credit derivatives that incorporate unobservable correlation, and $4.8 billion of equity derivatives that are long-dated and/or have unobservable correlation.

Level 3 long-term borrowings primarily relate to structured notes with embedded equity derivatives of $6.3 billion that are long-dated and/or have unobservable correlation.

(dollars in millions)

	Fair Value Measurements on a Recurring Basis as of December 28, 2007				
	Level 1	**Level 2**	**Level 3**	**Netting Adj(1)**	**Total**
Assets:					
Securities segregated for regulatory purposes or deposited with clearing organizations	$ 1,478	$ 5,595	$ 84	$ -	$ 7,157
Receivables under resale agreements	-	100,214	-	-	100,214
Trading assets, excluding derivative contracts	71,038	81,169	9,773	-	161,980
Derivative contracts	4,916	522,014	26,038	(480,279)	72,689
Investment securities	2,240	53,403	5,491	-	61,134
Securities received as collateral	42,451	2,794	-	-	45,245
Loans, notes and mortgages	-	1,145	63	-	1,208
Other assets(2)	7	1,739	-	(24)	1,722
Liabilities:					
Payables under repurchase agreements	$ -	$ 89,733	$ -	$ -	$ 89,733
Trading liabilities, excluding derivative contracts	43,609	6,685	-	-	50,294
Derivative contracts	5,562	526,780	35,107	(494,155)	73,294
Obligation to return securities received as collateral	42,451	2,794	-	-	45,245
Long-term borrowings(3)	-	75,984	4,765	-	80,749
Other payables — interest and other(2)	2	287	-	(13)	276

(1) Represents counterparty and cash collateral netting.
(2) Primarily represents certain derivatives used for non-trading purposes.
(3) Includes bifurcated embedded derivatives carried at fair value.

Level 3 Assets and Liabilities as of December 28, 2007

Level 3 trading assets primarily include corporate bonds and loans of $5.4 billion and U.S. ABS CDOs of $2.4 billion, of which $1.0 billion was sub-prime related.

Level 3 derivative contracts (assets) primarily relate to derivative positions on U.S. ABS CDOs of $18.9 billion, of which $14.7 billion is sub-prime related, and $5.1 billion of equity derivatives that are long-dated and/or have unobservable correlation.

Level 3 investment securities primarily relate to certain private equity and principal investment positions of $4.0 billion, as well as U.S. ABS CDOs of $834 million that are accounted for as trading securities under SFAS No. 115.

Level 3 derivative contracts (liabilities) primarily relate to derivative positions on U.S. ABS CDOs of $25.1 billion, of which $23.9 billion relates to sub-prime, and $8.3 billion of equity derivatives that are long-dated and/or have unobservable correlation.

Level 3 long-term borrowings primarily relate to structured notes with embedded long-dated equity and currency derivatives.

The following tables provide a summary of changes in fair value of Merrill Lynch's Level 3 financial assets and liabilities for the years-ended December 26, 2008 and December 28, 2007, respectively.

(dollars in millions)

	Level 3 Financial Assets and Liabilities Year Ended December 26, 2008							
		Total Realized and Unrealized Gains or (Losses) included in Income			Total Realized and Unrealized Gains	Purchases, Issuances		
	Beginning Balance	Principal Transactions	Other Revenue	Interest	or (Losses) included in Income	and Settlements	Transfers in (out)	Ending Balance
Assets:								
Securities segregated for regulatory purposes or deposited with clearing organizations	$ 84	$ -	$ -	$ 1	$ 1	$ (79)	$ (6)	$ -
Trading assets	9,773	(5,460)	-	122	(5,338)	10,114	7,571	22,120
Derivative contracts, net	(9,069)	(11,955)	-	5	(11,950)	26,187	(2,861)	2,307
Investment securities	5,491	(1,021)	(1,535)	-	(2,556)	426	(82)	3,279
Loans, notes and mortgages	63	-	(105)	(8)	(113)	399	10	359
Liabilities:								
Long-term borrowings	$ 4,765	$ 5,582	$ 285	$ -	$ 5,867	$ 1,198	$ 7,384	$ 7,480

Net losses in principal transactions for 2008 were due primarily to losses of $15.5 billion related to U.S. ABS CDOs and the termination and potential settlement of related hedges with monoline guarantor counterparties, of which $12.6 billion was realized as a result of the sale of these assets to Lone Star during the third quarter. These losses were partially offset by $4.8 billion in gains related to long-term borrowings with equity and commodity related embedded derivatives.

The increase in Level 3 trading assets and net derivative contracts for the year-ended December 26, 2008 due to purchases, issuances and settlements is primarily attributable to the recording of assets for which the exposure was previously recognized as derivative liabilities (total return swaps) at December 28, 2007. During 2008, Merrill Lynch recorded certain of these trading assets as a result of consolidating certain SPEs that held the underlying assets on which the total return swaps were referenced. The increase in trading assets was partially offset by the sale of U.S. ABS CDO assets to Lone Star during the third quarter of 2008. As a result of the Lone Star transaction, certain total return swaps that were in a liability position were terminated, resulting in an increase in purchases, issuances and settlements for derivative contracts, net.

The Level 3 net transfers in for trading assets primarily relates to decreased observability of inputs on certain corporate bonds and loans. The net transfers on Level 3 derivative contracts were primarily due to the impact of counterparty credit valuation adjustments for U.S. ABS CDO positions as well as other net credit derivative contracts that incorporate unobservable correlation and that were in a net liability position at December 26, 2008. The Level 3 net transfers in for long-term borrowings were primarily due to decreased observability of inputs on certain long-dated equity linked notes.

The loss in other revenue is primarily related to net losses of $1.0 billion on private equity investments primarily during the fourth quarter of 2008.

(dollars in millions)

	Level 3 Financial Assets and Liabilities Year Ended December 28, 2007							
		Total Realized and Unrealized Gains or (Losses) included in Income			Total Realized and Unrealized Gains	Purchases, Issuances		
	Beginning Balance	Principal Transactions	Other Revenue	Interest	or (Losses) included in Income	and Settlements	Transfers in (out)	Ending Balance
Assets:								
Securities segregated for regulatory purposes or deposited with clearing organizations	$ -	$ (5)	$ -	$ 1	$ (4)	$ -	$ 88	$ 84
Trading assets	2,021	(4,180)	-	46	(4,134)	2,945	8,941	9,773
Derivative contracts, net	(2,030)	(7,687)	4	25	(7,658)	465	154	(9,069)
Investment securities	5,117	(2,412)	518	8	(1,886)	3,000	(740)	5,491
Loans, notes and mortgages	7	-	(18)	-	(18)	(5)	79	63
Liabilities:								
Long-term borrowings	$ -	$ 524	$ 7	$ -	$ 531	$ 2,203	$ 3,093	$ 4,765

The following tables provide the portion of gains or losses included in income for the years ended December 26, 2008 and December 28, 2007 attributable to unrealized gains or losses relating to those Level 3 assets and liabilities still held at December 26, 2008 and December 28, 2007, respectively.

(dollars in millions)

	Unrealized Gains or (Losses) for Level 3 Assets and Liabilities Still Held							
	Year Ended December 26, 2008				Year Ended December 28, 2007			
	Principal Transactions	Other Revenue	Interest	Total	Principal Transactions	Other Revenue	Interest	Total
Assets:								
Securities segregated for regulatory purposes or deposited with clearing organizations	$ -	$ -	$ 1	$ 1	$ (5)	$ -	$ 1	$ (4)
Trading assets	(4,945)	-	83	(4,862)	(4,205)	-	4	(4,201)
Derivative contracts, net	114	-	5	119	(7,826)	(2)	25	(7,803)
Investment securities	(964)	(1,523)	-	(2,487)	(2,412)	428	8	(1,976)
Loans, notes and mortgages	-	(94)	(8)	(102)	-	1	-	1
Liabilities:								
Long-term borrowings	$ 5,221	$ 285	$ -	$ 5,506	$ 524	$ 7	$ -	$ 531

Net unrealized losses in principal transactions for the year-ended December 26, 2008 were primarily due to approximately $2.9 billion of net losses on U.S. ABS CDO related assets and liabilities. These losses were largely offset by $4.8 billion of gains on long-term borrowings with equity and commodity related embedded derivatives.

The loss in other revenue is primarily related to net losses of $1.0 billion on private equity investments primarily during the fourth quarter of 2008.

Non-recurring Fair Value

Certain assets and liabilities are measured at fair value on a non-recurring basis and are not included in the tables above. These assets and liabilities primarily include loans and loan commitments held for sale and reported at lower of cost or fair value and loans held for investment that were initially measured at cost and have been written down to fair value as a result of an impairment. The following table shows the fair value hierarchy for those assets and liabilities measured at fair value on a non-recurring basis as of December 26, 2008 and December 28, 2007, respectively.

(dollars in millions)

	Non-Recurring Basis as of December 26, 2008				Losses Year Ended
	Level 1	Level 2	Level 3	Total	Dec. 26, 2008
Assets:					
Loans, notes and mortgages	$ -	$4,386	$6,727	$11,113	$ (6,555)
Goodwill	-	-	-	-	(2,300)
Liabilities:					
Other liabilities	$ -	$1,258	$ 67	$ 1,325	$ (653)

(dollars in millions)

	Non-Recurring Basis as of December 28, 2007				Losses Year Ended
	Level 1	Level 2	Level 3	Total	Dec. 28, 2007
Assets:					
Loans, notes and mortgages	$ -	$32,594	$7,157	$39,751	$ (1,304)
Liabilities:					
Other liabilities	$ -	$ 666	$ -	$ 666	$ (502)

Loans, notes, and mortgages include held for sale loans that are carried at the lower of cost or fair value and for which the fair value was below the cost basis at December 26, 2008 and/or December 28, 2007. It also includes certain impaired held for investment loans where an allowance for loan losses has been calculated based upon the fair value of the loans or collateral. Level 3 assets as of December 26, 2008 primarily relate to U.K. and other European residential and commercial real estate loans of $4.6 billion that are classified as held for sale where there continues to be significant illiquidity in the loan trading and securitization markets. The fair value of Level 3 loans was calculated

primarily by a fundamental cash flow valuation analysis. This cash flow analysis includes cumulative loss and prepayment assumptions derived from multiple inputs including mortgage remittance reports, property prices and other market data. In addition, independent third party bids received on loans are also considered for valuation purposes. Level 3 assets as of December 28, 2007 primarily related to residential and commercial real estate loans that are classified as held for sale in the U.K. of $4.1 billion.

Goodwill with a carrying value of $2.3 billion was written down in its entirety, resulting in a related $2.3 billion impairment charge. This impairment charge is primarily related to the Fixed Income, Currencies and Commodities ("FICC") reporting unit within the GMI business segment. The fair value was estimated by considering Merrill Lynch's market capitalization as determined by the Bank of America acquisition price, price-to-earnings and price-to-book multiples, and discounted cash flow analyses.

Other liabilities include amounts recorded for loan commitments at lower of cost or fair value where the funded loan will be held for sale, particularly leveraged loan commitments in the U.S. The losses were calculated by models incorporating significant observable market data.

Fair Value Option

SFAS No. 159 provides a fair value option election that allows companies to irrevocably elect fair value as the initial and subsequent measurement attribute for certain financial assets and liabilities. Changes in fair value for assets and liabilities for which the election is made will be recognized in earnings as they occur. SFAS No. 159 permits the fair value option election on an instrument by instrument basis at initial recognition of an asset or liability or upon an event that gives rise to a new basis of accounting for that instrument. As discussed above, certain of Merrill Lynch's financial instruments are required to be accounted for at fair value under SFAS No. 115 and SFAS No. 133, as well as industry level guidance. For certain financial instruments that are not accounted for at fair value under other applicable accounting guidance, the fair value option has been elected.

The following tables provide information about where in the Consolidated Statements of (Loss)/Earnings changes in fair values of assets and liabilities, for which the fair value option has been elected, are included for the years ended December 26, 2008 and December 28, 2007, respectively.

(dollars in millions)

	Changes in Fair Value for the Year Ended Dec. 26, 2008, for Items Measured at Fair Value Pursuant to Fair Value Option			Changes in Fair Value for the Year Ended Dec. 28, 2007, for Items Measured at Fair Value Pursuant to Fair Value Option		
	Gains/ (losses) Principal Transactions	Gains/ (losses) Other Revenues	Total Changes in Fair Value	Gains/ (losses) Principal Transactions	Gains Other Revenues	Total Changes in Fair Value
Assets:						
Receivables under resale agreements	$ 190	$ -	$ 190	$ 124	$ -	$ 124
Investment securities	(1,637)	(923)	(2,560)	234	43	277
Loans, notes and mortgages	(87)	(11)	(98)	(2)	73	71
Liabilities:						
Payables under repurchase agreements	$ (54)	$ -	$ (54)	$ (7)	$ -	$ (7)
Short-term borrowings	(438)	-	(438)	-	-	-
Long-term borrowings(1)	15,938	1,709	17,647	3,857	1,182	5,039

(1) Other revenues primarily represent fair value changes on non-recourse long-term borrowings issued by consolidated SPEs.

The following describes the rationale for electing to account for certain financial assets and liabilities at fair value, as well as the impact of instrument-specific credit risk on the fair value.

Resale and repurchase agreements:

Merrill Lynch elected the fair value option on a prospective basis for certain resale and repurchase agreements. The fair value option election was made based on the tenor of the resale and repurchase

agreements, which reflects the magnitude of the interest rate risk. The majority of resale and repurchase agreements collateralized by U.S. government securities were excluded from the fair value option election as these contracts are generally short-dated and therefore the interest rate risk is not considered significant. Amounts loaned under resale agreements require collateral with a market value equal to or in excess of the principal amount loaned resulting in minimal credit risk for such transactions.

Securities borrowed transactions:

Merrill Lynch elected the fair value option for certain Japanese government bond borrowing transactions during the second quarter of 2008. Fair value changes related to such transactions were immaterial for 2008.

Investment securities:

At December 26, 2008, investment securities primarily represented non-marketable convertible preferred shares for which Merrill Lynch has economically hedged a majority of the position with derivatives.

Loans, notes and mortgages:

Merrill Lynch elected the fair value option for automobile and certain corporate loans because the loans are risk managed on a fair value basis. The change in the fair value of loans, notes, and mortgages for which the fair value option was elected that was attributable to changes in borrower-specific credit risk was $77 million for the year ended December 26, 2008, and was not material for the year ended December 28, 2007.

For those loans, notes and mortgages for which the fair value option has been elected, the aggregate fair value of loans that are 90 days or more past due and in non-accrual status is not material to the Consolidated Financial Statements.

Short-term and long-term borrowings:

Merrill Lynch elected the fair value option for certain short-term and long-term borrowings that are risk managed on a fair value basis, including structured notes, and for which hedge accounting under SFAS No. 133 had been difficult to obtain. The majority of the fair value changes on long-term borrowings is from structured notes with coupon or repayment terms that are linked to the performance of debt and equity securities, indices, currencies or commodities. The majority of gains in 2008 and 2007 are offset by losses on derivatives that economically hedge these borrowings and that are accounted for at fair value under SFAS No. 133. The changes in the fair value of liabilities for which the fair value option was elected that was attributable to changes in Merrill Lynch credit spreads were estimated gains of $5.1 billion for the year ended December 26, 2008. The changes in the fair value of liabilities for which the fair value option was elected that were attributable to changes in Merrill Lynch credit spreads were estimated gains of $2.0 billion for the year ended December 28, 2007. Changes in Merrill Lynch specific credit risk are derived by isolating fair value changes due to changes in Merrill Lynch's credit spreads as observed in the secondary cash market.

The fair value option was also elected for certain non-recourse long-term borrowings issued by consolidated SPEs. The fair value of these long-term borrowings is unaffected by changes in Merrill Lynch's creditworthiness.

The following tables present the difference between fair values and the aggregate contractual principal amounts of receivables under resale agreements, receivables under securities borrowed transactions,

loans, notes, and mortgages and long-term borrowings for which the fair value option has been elected as of December 26, 2008 and December 28, 2007, respectively.

(dollars in millions)

	Fair Value at December 26, 2008	Principal Amount Due Upon Maturity	Difference
Assets:			
Receivables under resale agreements	$ 62,146	$ 61,466	$ 680
Receivables under securities borrowed transactions	853	853	-
Loans, notes and mortgages	979	1,326	(347)
Liabilities:			
Long-term borrowings(1)	$ 49,521	$ 62,244	$(12,723)

(1) The majority of the difference relates to the impact of the widening of Merrill Lynch's credit spreads, the change in fair value of non-recourse debt, and zero coupon notes issued at a substantial discount from the principal amount.

(dollars in millions)

	Fair Value at December 28, 2007	Principal Amount Due Upon Maturity	Difference
Assets:			
Receivables under resale agreements	$ 100,214	$100,090	$ 124
Loans, notes and mortgages(1)	1,149	1,355	(206)
Liabilities:			
Long-term borrowings(2)	$ 76,334	$ 81,681	$ (5,347)

(1) The majority of the difference relates to loans purchased at a substantial discount from the principal amount.
(2) The majority of the difference relates to the impact of the widening of Merrill Lynch's credit spreads, the change in fair value of non-recourse debt, and zero coupon notes issued at a substantial discount from the principal amount.

Trading Risk Management

Trading activities subject Merrill Lynch to market and credit risks. These risks are managed in accordance with established risk management policies and procedures. Specifically, the independent risk and control groups work to ensure that risks were properly identified, measured, monitored, and managed throughout Merrill Lynch. To accomplish this, Merrill Lynch maintained a risk management process that included:

- A risk governance structure that defined the oversight process and its components;
- A regular review of the risk management process by the Audit Committee of the Board of Directors as well as a regular review of credit, market and liquidity risks and processes by the Finance Committee of the Board of Directors;
- Clearly defined risk management policies and procedures;
- Communication and coordination among the businesses, executive management, and risk functions while maintaining strict segregation of responsibilities, controls, and oversight; and
- Clearly articulated risk tolerance levels, which were consistent with business strategy, capital structure, and current and anticipated market conditions.

Independent risk and control groups interact with the businesses to establish and maintain this overall risk management control process. While no risk management system can ever be absolutely complete, the goal of these independent risk and control groups is to mitigate risk-related losses so that they fall within acceptable, predefined levels, under foreseeable scenarios.

Market Risk

Market risk is the potential change in an instrument's value caused by fluctuations in interest and currency exchange rates, equity and commodity prices, credit spreads, or other risks. The level of

market risk is influenced by the volatility and the liquidity in the markets in which financial instruments are traded.

Merrill Lynch seeks to mitigate market risk associated with trading inventories by employing hedging strategies that correlate rate, price, and spread movements of trading inventories and related financing and hedging activities. Merrill Lynch uses a combination of cash instruments and derivatives to hedge its market exposures. The following discussion describes the types of market risk faced by Merrill Lynch.

Interest Rate Risk

Interest rate risk arises from the possibility that changes in interest rates will affect the value of financial instruments. Interest rate swap agreements, Eurodollar futures, and U.S. Treasury securities and futures are common interest rate risk management tools. The decision to manage interest rate risk using futures or swap contracts, as opposed to buying or selling short U.S. Treasury or other securities, depends on current market conditions and funding considerations.

Interest rate agreements used by Merrill Lynch include caps, collars, floors, basis swaps, leveraged swaps, and options. Interest rate caps and floors provide the purchaser with protection against rising and falling interest rates, respectively. Interest rate collars combine a cap and a floor, providing the purchaser with a predetermined interest rate range. Basis swaps are a type of interest rate swap agreement where variable rates are received and paid, but are based on different index rates. Leveraged swaps are another type of interest rate swap where changes in the variable rate are multiplied by a contractual leverage factor, such as four times three-month London Interbank Offered Rate (“LIBOR”). Merrill Lynch’s exposure to interest rate risk resulting from these leverage factors is typically hedged with other financial instruments.

Currency Risk

Currency risk arises from the possibility that fluctuations in foreign exchange rates will impact the value of financial instruments. Merrill Lynch’s trading assets and liabilities include both cash instruments denominated in and derivatives linked to more than 50 currencies, including the euro, Japanese yen, British pound, and Swiss franc. Currency forwards and options are commonly used to manage currency risk associated with these instruments. Currency swaps may also be used in situations where a long-dated forward market is not available or where the client needs a customized instrument to hedge a foreign currency cash flow stream. Typically, parties to a currency swap initially exchange principal amounts in two currencies, agreeing to exchange interest payments and to re-exchange the currencies at a future date and exchange rate.

Equity Price Risk

Equity price risk arises from the possibility that equity security prices will fluctuate, affecting the value of equity securities and other instruments that derive their value from a particular stock, a defined basket of stocks, or a stock index. Instruments typically used by Merrill Lynch to manage equity price risk include equity options, warrants, and baskets of equity securities. Equity options, for example, can require the writer to purchase or sell a specified stock or to make a cash payment based on changes in the market price of that stock, basket of stocks, or stock index.

Credit Spread Risk

Credit spread risk arises from the possibility that changes in credit spreads will affect the value of financial instruments. Credit spreads represent the credit risk premiums required by market participants for a given credit quality (i.e., the additional yield that a debt instrument issued by a AA-rated entity must produce over a risk-free alternative (e.g., U.S. Treasury instrument)). Certain instruments are used by Merrill Lynch to manage this type of risk. Swaps and options, for example, can be designed to mitigate losses due to changes in credit spreads, as well as the credit downgrade or default of the

issuer. Credit risk resulting from default on counterparty obligations is discussed in the Counterparty Credit Risk section.

Commodity Price and Other Risks

Through its commodities business, Merrill Lynch enters into exchange-traded contracts, financially settled OTC derivatives, contracts for physical delivery and contracts providing for the transportation, transmission and/or storage rights on or in vessels, barges, pipelines, transmission lines or storage facilities. Commodity, related storage, transportation or other contracts expose Merrill Lynch to the risk that the price of the underlying commodity or the cost of storing or transporting commodities may rise or fall. In addition, contracts relating to physical ownership and/or delivery can expose Merrill Lynch to numerous other risks, including performance and environmental risks.

Counterparty Credit Risk

Merrill Lynch is exposed to risk of loss if an individual, counterparty or issuer fails to perform its obligations under contractual terms ("default risk"). Both cash instruments and derivatives expose Merrill Lynch to default risk. Credit risk arising from changes in credit spreads is discussed in the Market Risk section.

Merrill Lynch has established policies and procedures for mitigating credit risk on principal transactions, including reviewing and establishing limits for credit exposure, maintaining qualifying collateral, purchasing credit protection, and continually assessing the creditworthiness of counterparties.

In the normal course of business, Merrill Lynch executes, settles, and finances various customer securities transactions. Execution of these transactions includes the purchase and sale of securities by Merrill Lynch. These activities may expose Merrill Lynch to default risk arising from the potential that customers or counterparties may fail to satisfy their obligations. In these situations, Merrill Lynch may be required to purchase or sell financial instruments at unfavorable market prices to satisfy obligations to other customers or counterparties. Additional information about these obligations is provided in Note 11. In addition, Merrill Lynch seeks to control the risks associated with its customer margin activities by requiring customers to maintain collateral in compliance with regulatory and internal guidelines.

Liabilities to other brokers and dealers related to unsettled transactions (i.e., securities failed-to-receive) are recorded at the amount for which the securities were purchased, and are paid upon receipt of the securities from other brokers or dealers. In the case of aged securities failed-to-receive, Merrill Lynch may purchase the underlying security in the market and seek reimbursement for losses from the counterparty.

Concentrations of Credit Risk

Merrill Lynch's exposure to credit risk (both default and credit spread) associated with its trading and other activities is measured on an individual counterparty basis, as well as by groups of counterparties that share similar attributes. Concentrations of credit risk can be affected by changes in political, industry, or economic factors. To reduce the potential for risk concentration, credit limits are established and monitored in light of changing counterparty and market conditions.

Concentration of Risk to Financial Guarantors

To economically hedge certain ABS CDO and U.S. sub-prime mortgage positions, Merrill Lynch entered into credit derivatives with various counterparties, including monolines and other financial guarantors. At December 26, 2008, the carrying value of our hedges with monolines and other financial guarantors related to U.S. super senior ABS CDOs was $1.5 billion.

In addition to hedges with monolines and other financial guarantors on U.S. super senior ABS CDOs, we also have hedges on certain long exposures related to corporate Collateralized Debt Obligations

(“CDOs”), Collateralized Loan Obligations (“CLOs”), Residential Mortgage-Backed Securities (“RMBS”) and Commercial Mortgage-Backed Securities (“CMBS”). At December 26, 2008, the carrying value of our hedges with monolines and other financial guarantors related to these types of exposures was $7.8 billion, of which approximately 50% pertains to CLOs and various high grade basket trades. The other 50% relates primarily to CMBS and RMBS in the U.S. and Europe.

Concentration of Risk to the U.S. Government and its Agencies

At December 26, 2008, Merrill Lynch had exposure to the U.S. Government and its agencies. This concentration consists of both direct and indirect exposures. Direct exposure, which primarily results from trading asset and investment security positions in instruments issued by the U.S. Government and its agencies, excluding mortgage-backed securities, amounted to $6.0 billion and $11.1 billion at December 26, 2008 and December 28, 2007, respectively. Merrill Lynch’s indirect exposure results from maintaining U.S. Government and agencies securities as collateral for resale agreements and securities borrowed transactions. Merrill Lynch’s direct credit exposure on these transactions is with the counterparty; thus Merrill Lynch has credit exposure to the U.S. Government and its agencies only in the event of the counterparty’s default. Securities issued by the U.S. Government or its agencies held as collateral for resale agreements and securities borrowed transactions at December 26, 2008 and December 28, 2007 totaled $127.0 billion and $105.2 billion, respectively.

Concentration of Risk to the Mortgage Markets

At December 26, 2008, Merrill Lynch had sizeable exposure to the mortgage market through securities, derivatives, loans and loan commitments. This included:

- Net exposures of $34.8 billion in U.S. Prime residential mortgage-related positions and $3.6 billion in other residential mortgage-related positions, excluding Merrill Lynch’s U.S. banks’ investment securities portfolio;
- Net exposure of $10.4 billion in Merrill Lynch’s U.S. banks’ investment securities portfolio;
- Net exposure of $9.7 billion in commercial real estate related positions, excluding First Republic, and $3.1 billion in First Republic commercial real estate related positions; and
- Net exposure of $0.7 billion in U.S. super senior ABS CDOs.

In September 2008, Merrill Lynch sold $30.6 billion gross notional amount of U.S. super senior ABS CDOs (the “Portfolio”) to an affiliate of Lone Star Funds for a sales price of $6.7 billion. In connection with this sale, Merrill Lynch provided financing to the purchaser for approximately 75% of the purchase price. The recourse on this loan is limited to the assets of the purchaser, which consist solely of the Portfolio. All cash flows and distributions from the Portfolio (including sale proceeds) will be applied in accordance with a specified priority of payments. The loan of approximately $4.7 billion is carried at fair value and is recorded in trading assets on the Consolidated Balance Sheets. Events of default under the loan are customary events of default, including failure to pay interest when due and failure to pay principal at maturity.

Valuation of these exposures will continue to be impacted by external market factors including default rates, rating agency actions, and the prices at which observable market transactions occur. Merrill Lynch’s ability to mitigate its risk by selling or hedging its exposures is also limited by the market environment. Merrill Lynch’s future results may continue to be materially impacted by the valuation adjustments applied to these positions.

Other Concentrations of Risk

At December 26, 2008, Merrill Lynch had other concentrations of credit risk, the largest of which was related to a foreign bank carrying an internal credit rating of AA, reflecting diversification across products, sound capital adequacy and flexibility. Total outstanding unsecured exposure to this counterparty was approximately $4.5 billion, or 0.68% of total assets.

Merrill Lynch's most significant industry credit concentration is with financial institutions. Financial institutions include banks, insurance companies, finance companies, investment managers, and other diversified financial institutions. This concentration arises in the normal course of Merrill Lynch's brokerage, trading, hedging, financing, and underwriting activities. Merrill Lynch also monitors credit exposures worldwide by region. Outside the United States, financial institutions and sovereign governments represent the most significant concentrations of credit risk.

In the normal course of business, Merrill Lynch purchases, sells, underwrites, and makes markets in non-investment grade instruments. Merrill Lynch also provides extensions of credit and makes equity investments to facilitate leveraged transactions. These activities expose Merrill Lynch to a higher degree of credit risk than is associated with trading, investing in, and underwriting investment grade instruments and extending credit to investment grade counterparties.

Derivatives

Merrill Lynch's trading derivatives consist of derivatives provided to customers and derivatives entered into for proprietary trading strategies or risk management purposes.

Default risk exposure varies by type of derivative. Default risk on derivatives can occur for the full notional amount of the trade where a final exchange of principal takes place, as may be the case for currency swaps. Swap agreements and forward contracts are generally OTC-transacted and thus are exposed to default risk to the extent of their replacement cost. Since futures contracts are exchange-traded and usually require daily cash settlement, the related risk of loss is generally limited to a one-day net positive change in market value. Generally such receivables and payables are recorded in customers' receivables and payables on the Consolidated Balance Sheets. Option contracts can be exchange-traded or OTC. Purchased options have default risk to the extent of their replacement cost. Written options represent a potential obligation to counterparties and typically do not subject Merrill Lynch to default risk except under circumstances where the option premium is being financed or in cases where Merrill Lynch is required to post collateral. Additional information about derivatives that meet the definition of a guarantee for accounting purposes is included in Note 11.

Merrill Lynch generally enters into ISDA master agreements or their equivalent with substantially all of its counterparties, as soon as possible. Master netting agreements provide protection in bankruptcy in certain circumstances and, in some cases, enable receivables and payables with the same counterparty to be offset on the Consolidated Balance Sheets, providing for a more meaningful balance sheet presentation of credit exposure. Agreements are negotiated bilaterally and can require complex terms. While reasonable efforts are made to execute such agreements, it is possible that a counterparty may be unwilling to sign such an agreement and, as a result, would subject Merrill Lynch to additional credit risk. The enforceability of master netting agreements under bankruptcy laws in certain countries or in certain industries is not free from doubt and receivables and payables with counterparties in these countries or industries are accordingly recorded on a gross basis.

To reduce the risk of loss, Merrill Lynch requires collateral, principally cash and U.S. Government and agency securities, on certain derivative transactions. Merrill Lynch nets cash collateral paid or received under credit support annexes associated with legally enforceable master netting agreements against derivative inventory. At December 26, 2008, cash collateral received of $50.2 billion was netted against derivative inventory. From an economic standpoint, Merrill Lynch evaluates default risk exposures net of related collateral. In addition to obtaining collateral, Merrill Lynch attempts to mitigate default risk on derivatives by entering into transactions with provisions that enable Merrill Lynch to terminate or reset the terms of the derivative contract.

Many of Merrill Lynch's derivative contracts contain provisions that could, upon an adverse change in ML & Co.'s credit rating, trigger a requirement for an early payment or additional collateral support.

Note 4. Securities Financing Transactions

Merrill Lynch enters into secured borrowing and lending transactions in order to meet customers' needs and earn residual interest rate spreads, obtain securities for settlement and finance trading inventory positions.

Under these transactions, Merrill Lynch either receives or provides collateral, including U.S. Government and agencies, asset-backed, corporate debt, equity, and non-U.S. governments and agencies securities. Merrill Lynch receives collateral in connection with resale agreements, securities borrowed transactions, customer margin loans and other loans. Under most agreements, Merrill Lynch is permitted to sell or repledge the securities received (e.g., use the securities to secure repurchase agreements, enter into securities lending transactions, or deliver to counterparties to cover short positions). At December 26, 2008 and December 28, 2007, the fair value of securities received as collateral where Merrill Lynch is permitted to sell or repledge the securities was $327 billion and $853 billion, respectively, and the fair value of the portion that has been sold or repledged was $251 billion and $675 billion, respectively. Merrill Lynch may use securities received as collateral for resale agreements to satisfy regulatory requirements such as Rule 15c3-3 of the SEC.

Merrill Lynch additionally receives securities as collateral in connection with certain securities transactions in which Merrill Lynch is the lender. In instances where Merrill Lynch is permitted to sell or repledge securities received, Merrill Lynch reports the fair value of such securities received as collateral and the related obligation to return securities received as collateral in the Consolidated Balance Sheets.

Merrill Lynch pledges firm-owned assets to collateralize repurchase agreements and other secured financings. Pledged securities that can be sold or repledged by the secured party are parenthetically disclosed in trading assets and investment securities on the Consolidated Balance Sheets. The parenthetically disclosed amount for December 28, 2007 relating to trading assets has been restated from approximately $79 billion (as previously reported) to approximately $45 billion to properly reflect the amount of pledged securities that can be sold or repledged by the secured party. The carrying value and classification of securities owned by Merrill Lynch that have been pledged to counterparties where those counterparties do not have the right to sell or repledge at December 26, 2008 and December 28, 2007 are as follows:

(dollars in millions)

	Dec. 26, 2008	Dec. 28, 2007
Trading asset category		
Mortgages, mortgage-backed, and asset-backed securities	$12,462	$11,873
Equities and convertible debentures	10,995	9,327
Corporate debt and preferred stock	15,024	17,144
U.S. Government and agencies	4,982	11,110
Municipals and money markets	1,320	450
Non-U.S. governments and agencies	587	2,461
Total	$45,370	$52,365

Additionally, Merrill Lynch has pledged approximately $18.6 billion of loans and $4.4 billion of investment securities to counterparties at December 26, 2008, where those counterparties do not have the right to sell or repledge those assets. In some cases, Merrill Lynch has transferred assets to consolidated VIEs where those restricted assets serve as collateral for the interests issued by the VIEs. These restricted assets are included in the amounts above. These transactions are also described in Note 6.

Generally, when Merrill Lynch transfers financial instruments that are not recorded as sales (i.e., secured borrowing transactions), the Company records the liability as either payables under repurchase agreements or payables under securities loaned transactions; however, in instances where Merrill Lynch transfers financial assets to a consolidated VIE, the liabilities of the consolidated VIE will be reflected in long or short term borrowings (see Note 6). In either case, at the time of transfer, the related liability is equal to the cash received in the transaction. In most cases the lenders in secured borrowing transactions have full recourse to Merrill Lynch (i.e., recourse beyond the assets pledged). Instances where the lenders do not have full recourse to Merrill Lynch are described in Note 6. These instances relate to failed securitization transactions where residential and commercial mortgages are transferred to VIEs that do not meet QSPE conditions (typically as a result of derivatives entered into by the VIE that pertain to interests held by Merrill Lynch).

Note 5. Investment Securities

Investment securities on the Consolidated Balance Sheets include:

- SFAS No. 115 investments held by ML & Co. and certain of its non-broker-dealer entities, including Merrill Lynch banks. SFAS No. 115 investments consist of:
  - Debt securities, including debt held for investment and liquidity and collateral management purposes that are classified as available-for-sale, debt securities held for trading purposes, and debt securities that Merrill Lynch intends to hold until maturity;
  - Marketable equity securities, which are generally classified as available-for-sale.
- Non-qualifying investments are those that do not fall within the scope of SFAS No. 115. Non-qualifying investments consist principally of:
  - Equity investments, including investments in partnerships and joint ventures. Included in equity investments are investments accounted for under the equity method of accounting, which consist of investments in (i) partnerships and certain limited liability corporations where Merrill Lynch has more than minor influence (generally defined as greater than a three percent interest) and (ii) corporate entities where Merrill Lynch has the ability to exercise significant influence over the investee (generally defined as ownership and voting interest of 20% to 50%). Also included in equity investments are private equity investments that Merrill Lynch holds for capital appreciation and/or current income and which are accounted for at fair value in accordance with the Investment Company Guide, as well as private equity investments accounted for at fair value under the fair value option election in SFAS No. 159. The carrying value of such private equity investments reflects expected exit values based upon market prices or other valuation methodologies, including discounted expected cash flows and market comparables of similar companies.
  - Deferred compensation hedges, which are investments economically hedging deferred compensation liabilities and are accounted for at fair value.

Investment securities reported on the Consolidated Balance Sheets at December 26, 2008 and December 28, 2007 are as follows:

(dollars in millions)

	2008	**2007**
Investment securities		
Available-for-sale[1]	**$34,103**	$50,922
Trading	**1,745**	5,015
Held-to-maturity[2]	**4,576**	267
Non-qualifying[3]		
Equity investments[4]	**24,306**	29,623
Deferred compensation hedges	**1,001**	1,710
Investments in trust preferred securities and other investments	**431**	438
Total	**$66,162**	$87,975

(1) At December 26, 2008 and December 28, 2007, includes $9.2 billion and $5.4 billion, respectively, of investment securities reported in cash and securities segregated for regulatory purposes or deposited with clearing organizations.
(2) The 2008 balance primarily relates to notes issued by Bloomberg Inc. in connection with the sale of Merrill Lynch's 20% stake in Bloomberg L.P.
(3) Non-qualifying for SFAS No. 115 purposes.
(4) Includes Merrill Lynch's investment in BlackRock.

Included in available-for-sale investment securities above are certain mortgage- and asset-backed securities held in Merrill Lynch's U.S. banks' investment securities portfolio. The fair values of most of these mortgage- and asset-backed securities have declined below the respective security's amortized cost basis. Changes in fair value are initially captured in the financial statements by reporting the securities at fair value with the cumulative change in fair value reported in accumulated other comprehensive loss, a component of shareholder's equity. Merrill Lynch regularly (at least quarterly) evaluates each security whose value has declined below amortized cost to assess whether the decline in fair value is other-than-temporary. If the decline in fair value is determined to be other-than-temporary, the cost basis of the security is reduced to an amount equal to the fair value of the security at the time of impairment (the new cost basis), and the amount of the reduction in cost basis is recorded in earnings.

A decline in a debt security's fair value is considered to be other-than-temporary if it is probable that all amounts contractually due will not be collected. In assessing whether it is probable that all amounts contractually due will not be collected, Merrill Lynch considers the following:

- Whether there has been an adverse change in the estimated cash flows of the security;
- The period of time over which it is estimated that the fair value will increase from the current level to at least the amortized cost level, or until principal and interest is estimated to be received;
- The period of time a security's fair value has been below amortized cost;
- The amount by which the security's fair value is below amortized cost;
- The financial condition of the issuer; and
- Management's ability and intent to hold the security until fair value recovers or until the principal and interest is received.

The determination of whether a security is other-than-temporarily impaired is based, in large part, on estimates and assumptions related to the prepayment and default rates of the loans collateralizing the securities, the loss severities experienced on the sale of foreclosed properties, and other matters affecting the security's underlying cash flows. The cash flow estimates and assumptions used to assess whether an adverse change has occurred as well as the other factors affecting the other-than-temporary determination are regularly reviewed and revised, incorporating new information as it becomes available and due to changes in market conditions.

For all securities, including those securities that are deemed to be other-than-temporarily impaired based on the specific analysis described above, management must conclude on whether it has the intent and ability to hold the securities to recovery. To that end, management has considered its ability and intent to hold available-for-sale securities relative to the cash flow requirements of Merrill Lynch's operating, investing and financing activities and has determined that it has the ability and intent to hold the securities with unrealized losses until the fair value recovers to an amount at least equal to the amortized cost or principal and interest is received.

Investment securities accounted for under SFAS No. 115 are classified as available-for-sale, held-to-maturity, or trading as described in Note 1.

Information regarding investment securities subject to SFAS No. 115 follows:

(dollars in millions)

	December 26, 2008				December 28, 2007			
	Cost/ Amortized Cost	**Gross Unrealized Gains**	**Gross Unrealized Losses**	**Estimated Fair Value**	Cost/ Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Available-for-Sale								
Mortgage-and asset-backed	**$ 42,142**	**$ 19**	**$ (9,390)**	**$ 32,771**	$ 50,904	$ 29	$ (2,384)	$ 48,549
U.S. Government and agencies	**712**	**2**	**-**	**714**	322	-	-	322
Corporate debt	**343**	**-**	**(72)**	**271**	729	10	(18)	721
Other(1)	**259**	**-**	**-**	**259**	1,200	6	-	1,206
Total debt securities	**43,456**	**21**	**(9,462)**	**34,015**	53,155	45	(2,402)	50,798
Equity securities	**93**	**17**	**(22)**	**88**	110	25	(11)	124
Total	**$ 43,549**	**$ 38**	**$ (9,484)**	**$ 34,103**	$ 53,265	$ 70	$ (2,413)	$ 50,922
Held-to-Maturity								
Corporate debt and municipal(2)	**$ 4,560**	$ -	$ -	**$ 4,560**	$ 254	$ -	$ -	$ 254
Mortgage-and asset-backed	**16**	-	-	**16**	13	-	-	13
Total	**$ 4,576**	$ -	$ -	**$ 4,576**	$ 267	$ -	$ -	$ 267

(1) Includes investments in non-U.S. Government and agency securities and certificates of deposit.
(2) Primarily relates to notes issued by Bloomberg Inc. in connection with the sale of Merrill Lynch's 20% ownership stake in Bloomberg, L.P.

The following table presents fair value and unrealized losses, after hedges, for available-for-sale securities, aggregated by investment category and length of time that the individual securities have been in a continuous unrealized loss position at December 26, 2008 and December 28, 2007.

(dollars in millions)

	Less than 1 Year		**More than 1 Year**		**Total**	
Asset category	**Estimated Fair Value**	**Unrealized Losses**	**Estimated Fair Value**	**Unrealized Losses**	**Estimated Fair Value**	**Unrealized Losses**
December 26, 2008						
Mortgage- and asset-backed	**$ 8,449**	**$ (4,132)**	**$ 22,291**	**$ (5,910)**	**$ 30,740**	**$ (10,042)**
U.S. Government and agencies	**3**	**-**	**-**	**-**	**3**	**-**
Corporate debt	**2**	**(2)**	**192**	**(78)**	**194**	**(80)**
Total debt securities	**8,454**	**(4,134)**	**22,483**	**(5,988)**	**30,937**	**(10,122)**
Equity securities	**1**	**(2)**	**55**	**(20)**	**56**	**(22)**
Total temporarily impaired securities	**$ 8,455**	**$ (4,136)**	**$ 22,538**	**$ (6,008)**	**$ 30,993**	**$ (10,144)**
December 28, 2007						
Mortgage- and asset-backed	$ 38,162	$ (2,159)	$ 7,912	$ (389)	$ 46,074	$ (2,548)
U.S. Government and agencies	2	-	-	-	2	-
Corporate debt	182	(14)	41	(5)	223	(19)
Other(1)	201	-	-	-	201	-
Total debt securities	38,547	(2,173)	7,953	(394)	46,500	(2,567)
Equity securities	64	(10)	-	-	64	(10)
Total temporarily impaired securities	$ 38,611	$ (2,183)	$ 7,953	$ (394)	$ 46,564	$ (2,577)

(1) Includes investments in certificates of deposit.

The investment securities portfolio of Merrill Lynch Bank USA ("MLBUSA") and Merrill Lynch Bank & Trust Co., FSB ("MLBT-FSB") includes investment securities comprising various asset classes that are accounted for as available-for-sale securities. During the fourth quarter of 2008, in order to manage capital at MLBUSA, certain investment securities were transferred from MLBUSA to a consolidated non-bank entity. This transfer had no impact on how the investment securities were valued

or the subsequent accounting treatment. Other-than-temporary impairments related to these available-for-sale securities, which are recorded within other revenues on the Consolidated Statement of (Loss)/Earnings, have been recognized for the years ended December 26, 2008 and December 28, 2007 as follows.

(dollars in millions)

	2008	2007
Security Description		
Alt A	**$3,105**	$148
Sub-prime	**544**	477
Prime	**275**	17
CDOs	**288**	285
Total	**$4,212**	$927

The amortized cost and estimated fair value of debt securities at December 26, 2008 by contractual maturity for available-for-sale and held-to-maturity investments are as follows:

(dollars in millions)

	Available-for-Sale		**Held-to-Maturity**	
	Amortized Cost	**Estimated Fair Value**	**Amortized Cost**	**Estimated Fair Value**
Due in one year or less	**$ 777**	**$ 774**	$ -	$ -
Due after one year through five years	**237**	**215**	**246**	**246**
Due after five years through ten years	**235**	**192**	**1,314**	**1,314**
Due after ten years	**65**	**63**	**3,000**	**3,000**
	1,314	**1,244**	**4,560**	**4,560**
Mortgage- and asset-backed securities	**42,142**	**32,771**	**16**	**16**
Total(1)	**$ 43,456**	**$ 34,015**	**$ 4,576**	**$ 4,576**

(1) Expected maturities may differ from contractual maturities because borrowers may have the right to call or prepay obligations with or without prepayment penalties.

The proceeds and gross realized gains (losses) from the sale of available-for-sale investments are as follows:

(dollars in millions)

	2008	2007	2006
Proceeds	**$29,537**	$39,327	$16,176
Gross realized gains	**33**	224	160
Gross realized losses	**(28)**	(55)	(161)

Net unrealized gains and (losses) from investment securities classified as trading included in the 2008, 2007 and 2006 Consolidated Statements of (Loss)/Earnings were $(0.9) billion, $(2.6) billion and $125 million, respectively.

Equity Method Investments

Merrill Lynch has numerous investments accounted for under the equity method. The following table includes the carrying amount and ownership percentage of Merrill Lynch's most significant equity method investments:

(dollars in millions)

	December 26, 2008		December 28, 2007	
	Carrying Amount	**Ownership Percentage**	Carrying Amount	Ownership Percentage
BlackRock Inc.(1)	**$ 8,000**	**50%**	$ 7,964	50%
Bloomberg L.P.(2)	**-**	**-**	-	20
Warburg Pincus Funds IX and X, L.P.(3)	**651**	**7**	560	7
WCG Master Fund Ltd.(4)	**998**	**31**	1,234	60

(1) Carrying amount includes a 44% voting common equity interest and a non-voting preferred equity interest.

(2) Ownership stake was sold in 2008. Carrying amount at December 28, 2007 was zero as a result of dividends received in excess of cumulative equity method earnings and Merrill Lynch's initial investment.

(3) Investment in private equity funds. Carrying value and ownership percentage as of December 28, 2007 only reflects Warburg Pincus Fund IX .

(4) Investment in an alternative investment fund. Merrill Lynch does not consolidate this investment as its ownership percentage represents a non-voting interest.

On July 17, 2008, Merrill Lynch announced and completed the sale of its 20% ownership stake in Bloomberg, L.P. to Bloomberg Inc., for $4.4 billion. In connection with the sale, Merrill Lynch received notes totaling approximately $4.3 billion, which have been recorded as held-to-maturity investment securities, and recorded a $4.3 billion net pre-tax gain.

As of December 26, 2008, the aggregate market value of Merrill Lynch's common equity interest in BlackRock was $6.6 billion, based on the closing stock price on the New York Stock Exchange. This market value does not reflect Merrill Lynch's preferred equity interest in BlackRock. The carrying amount of Merrill Lynch's investment in BlackRock at December 26, 2008 was $4.7 billion more than the underlying equity in net assets due to equity method goodwill, indefinite-lived intangible assets and definite-lived intangible assets, of which Merrill Lynch amortized $48 million in both 2008 and 2007. Such amortization is reflected in earnings from equity method investments in the Consolidated Statements of (Loss)/Earnings.

Summarized aggregate financial information for Merrill Lynch's most significant equity method investees (BlackRock Inc., Bloomberg L.P., Warburg Pincus Funds IX and X, L.P. and WCG Master Fund Ltd.), which represents 100% of the investees' financial information for the periods in which Merrill Lynch held the investments, is as follows:

(dollars in millions)

	2008(1)	2007(2)	2006(2)
Revenues	**$6,513**	$11,725	$6,013
Operating income	**761**	4,726	2,331
(Loss)/earnings before income taxes	**(7)**	4,692	2,362
Net (loss)/earnings	**(308)**	4,107	2,161

(dollars in millions)

	2008	2007(2)
Total assets	**$60,628**	$49,438
Total liabilities	**34,396**	32,672
Minority interest	**869**	603

(1) Results relating to the investment in Bloomberg L.P. reflect amounts through June 30, 2008, as the investment was sold on July 17, 2008

(2) Does not include summarized financial information for Warburg Pincus Fund X, L.P.

Note 6. Securitization Transactions and Transactions with Variable Interest Entities ("VIEs")

FSP FAS 140-4 and FIN 46(R)-8, which was adopted by Merrill Lynch on December 26, 2008, provides the disclosure requirements for transactions with VIEs or special purpose entities ("SPEs") and transfers of financial assets in securitizations or asset-backed financing arrangements. Under this guidance, Merrill Lynch is required to disclose information for consolidated VIEs, for VIEs in which Merrill Lynch is the sponsor as defined below or is a significant variable interest holder ("Sponsor/Significant VIH") and for VIEs that are established for securitizations and asset-backed financing arrangements. FSP FAS 140-4 and FIN 46(R)-8 has expanded the population of VIEs for which disclosure is required.

Merrill Lynch has defined "sponsor" to include all transactions where Merrill Lynch has transferred assets to a VIE and/or structured the VIE, regardless of whether or not the asset transfer has met the sale conditions in SFAS No. 140. Merrill Lynch discloses all instances where continued involvement with the assets exposes it to potential economic gain/(loss), regardless of whether or not that continued involvement is considered to be a variable interest in the VIE.

Continued involvement includes:

- Retaining or holding an interest in the VIE,
- Providing liquidity or other support to the VIE or directly to the investors in the VIE. This includes liquidity facilities, guarantees, and derivatives that absorb the risk of the assets in the VIE, including total return swaps and written credit default swaps,
- Servicing the assets in the VIE, and
- Acting as counterparty to derivatives that do not absorb the risk of the assets in the VIE. These derivatives include: interest rate derivatives, currency derivatives and derivatives that introduce risk into the VIE such as purchased credit default swap protection where the VIE takes credit risk (generally found in credit-linked note structures) or equity derivatives where the VIE takes equity risk (generally found in equity-linked note structures).

Merrill Lynch does not generally provide financial support to any VIE beyond that which is contractually required. Quantitative information on contractually required support is reflected in the tables provided below and in Note 11.

For the purposes of this disclosure, transactions with VIEs are categorized as follows:

Primary Beneficiary – Includes transactions where Merrill Lynch is the primary beneficiary and consolidates the VIE.

Sponsor/Significant VIH (Non-securitization transactions) – Includes transactions where Merrill Lynch is the sponsor and has continued involvement with the VIE or is a significant variable interest holder in the VIE. This category excludes transactions where Merrill Lynch transferred financial assets and the transfer was accounted for as a sale (included in securitization transactions below).

Securitization transactions – For the purposes of this disclosure, securitization transactions include transactions where Merrill Lynch transferred financial assets and accounted for the transfer as a sale. This category includes both QSPEs and non-QSPEs and is reflected in the securitization section of this Note. QSPEs are commonly used by Merrill Lynch in mortgage, municipal bond and "repackaging" securitization transactions as described below. In accordance with SFAS No. 140 and FIN 46(R), Merrill Lynch does not consolidate QSPEs.

Merrill Lynch has entered into transactions with different types of VIEs which are described as follows:

Loan and Real Estate VIEs

- Merrill Lynch has involvement with VIEs that hold mortgage related loans or real estate. These VIEs include entities that are primarily designed to obtain exposure to mortgage related assets or invest in real estate for both clients and Merrill Lynch. Loan and real estate VIEs include 1) failed securitization transactions where residential and commercial mortgages are transferred to VIEs that do not meet QSPE conditions (typically as a result of derivatives entered into by the VIE that pertain to interests held by Merrill Lynch) and 2) loan VIEs that hold mortgage loans where Merrill Lynch holds most or all of the issued financing but does not have voting control. Loan and real estate VIEs are reported in the Primary Beneficiary table and the Sponsor/Significant VIH table. In addition, many loan VIEs, specifically those related to residential and commercial mortgages, are securitization VIEs that meet the QSPE criteria in SFAS No. 140. Transactions where Merrill Lynch is the transferor of loans to a VIE or QSPE and accounts for the transaction as a sale are reflected in the Securitization tables of this Note.
- Merrill Lynch generally consolidates failed securitization VIEs where it retains the residual interests in the VIE and therefore absorbs the majority of the VIEs' expected losses, gains or both. As a result of the illiquidity in the securitization markets, Merrill Lynch has been unable to sell certain securities, which has prohibited these VIEs from being considered QSPEs. Depending upon the liquidity in the securitization market, these transactions and future transactions could continue to fail QSPE status and may require consolidation and related disclosures. Given that these VIEs have been designed to meet the QSPE requirements, Merrill Lynch has no control over the assets held by these VIEs. These assets have been pledged to the noteholders in the VIEs, and these assets are included in the firm-owned assets pledged balance reported in Note 4. In most instances, the beneficial interest holders in these VIEs have no recourse to the general credit of Merrill Lynch; rather their investments are paid exclusively from the assets in the VIE. Securitization VIEs that hold loan assets are typically financed through the issuance of several classes of debt (i.e., tranches) with ratings that range from AAA to unrated residuals.
- Loan VIEs that hold mortgage loans and are not securitization VIEs are typically wholly owned or have a small amount of financing provided by investors (which may include the investment manager) through different classes of loans or securities. Where Merrill Lynch consolidates these VIEs, Merrill Lynch has the ability to use the assets to fund operations.
- Real estate VIEs that hold property are typically financed through the issuance of one or more classes of loans or securities (e.g. senior, junior, and mezzanine) and an equity tranche. The investors have recourse only to the real estate assets held by these VIEs. In most real estate entities, the equity tranche is considered sufficient to finance the activities of the entity, and the entity would meet the conditions to be considered a VRE. The real estate entities included in this disclosure are VIEs because generally they do not have sufficient equity to finance their activities.

Guaranteed and Other Funds

- Merrill Lynch sponsors funds that provide a guaranteed return to investors at the maturity of the VIE. This guarantee may include a guarantee of the return of an initial investment or of the initial investment plus an agreed upon return depending on the terms of the VIE. Investors in certain of these VIEs have recourse to Merrill Lynch to the extent that the value of the assets held by the VIEs at maturity is less than the guaranteed amount. In some instances, Merrill Lynch is the primary beneficiary and must consolidate the fund. In instances where Merrill Lynch is not the primary beneficiary, the guarantees related to these funds are further discussed in Note 11. These VIEs are typically financed by a single tranche of limited life preferred shares or similar debt instruments that pass through the economics of the underlying assets and derivative contracts.

- Merrill Lynch has made certain investments in alternative investment fund structures that are VIEs. Merrill Lynch may be the primary beneficiary of these funds as a result of a majority investment in the vehicles. In instances where Merrill Lynch is not the primary beneficiary of these funds, it is still considered to be the sponsor and generally has continued involvement through derivatives with these VIEs. These VIEs are reflected in the Sponsor/Significant VIH table. These VIEs are typically financed by a single tranche of limited life preferred shares or similar debt instruments that pass through the economics of the underlying assets and derivative contracts.
- Merrill Lynch had established two asset-backed commercial paper conduits ("Conduits"), one of which remained active until July 2008. Merrill Lynch had variable interests in these Conduits in the form of 1) a liquidity facility that protected commercial paper holders against short term changes in the fair value of the assets held by the Conduit in the event of a disruption in the commercial paper market, and 2) a credit facility to the Conduit that protected commercial paper investors against credit losses for up to a certain percentage of the portfolio of assets held by the Conduit. Merrill Lynch also provided a liquidity facility to a third Conduit that it did not establish and Merrill Lynch had purchased all the assets from this Conduit at December 28, 2007. The remaining Conduit became inactive in July 2008, as Merrill Lynch purchased the assets of this Conduit. Merrill Lynch does not intend to utilize this or the other Conduits discussed above in the future. At December 26, 2008, Merrill Lynch had no liquidity and credit facilities outstanding or maximum exposure to loss as these Conduits are no longer active.

The liquidity and credit facilities are further discussed in Note 11.

Credit-Linked Note and Other VIEs

Merrill Lynch has entered into transactions with VIEs where Merrill Lynch typically purchases credit protection from the VIE in the form of a credit default swap in order to provide investors exposure to a specific credit risk. These are commonly known as credit-linked note VIEs (CLN VIEs). Merrill Lynch may also enter into interest rate swaps and/or cross currency swaps with these CLN VIEs. The assets held by the VIE provide collateral for the derivatives that Merrill Lynch has entered into with the VIE. Most CLN VIEs issue a single credit-linked note, which is often held by a single investor. Typically the assets held by the CLN VIEs can be substituted for other assets by the investors. For these transactions, Merrill Lynch generally transfers the financial assets to the VIE and accounts for that transfer as a sale and therefore CLN VIEs are generally reported in the Securitization tables.

In certain transactions Merrill Lynch takes exposure through total return swaps to the underlying collateral held in the CLN VIEs, including super senior U.S. sub-prime ABS CDOs. As the assets related to these VIEs were not transferred into the VIE by Merrill Lynch, these transactions are reported in the Sponsor/Significant VIH table.

Collateralized Debt Obligations/Collateralized Loan Obligations (CDO/CLOs)

Merrill Lynch has entered into transactions with CDOs, synthetic CDOs and CLOs. These entities are generally considered VIEs. CDOs hold pools of corporate debt or asset-backed securities and issue various classes of rated debt and an unrated equity tranche. Synthetic CDOs purchase assets and enter into a portfolio of credit default swaps to synthetically create exposure to corporate or asset-backed securities. CLOs hold pools of loans (corporate, commercial mortgages and residential mortgages) and issue various classes of rated debt and an unrated equity tranche. CDOs, synthetic CDOs and CLOs are typically managed by third party portfolio managers. Merrill Lynch transfers assets to these VIEs, hold interests in the issuances of the VIEs and may be derivative counterparty to the VIEs (including credit default swap counterparty for synthetic CDOs). Merrill Lynch typically owns less than half of any tranche issued by the VIE and is

therefore not the primary beneficiary. Where Merrill Lynch holds more than half of any tranche issued by a VIE, a quantitative analysis is performed to determine whether or not Merrill Lynch is the primary beneficiary.

Transactions with these VIEs are reflected in the Sponsor/Significant VIH table in instances where Merrill Lynch has not transferred the assets to the VIE or in the Securitization tables where Merrill Lynch has transferred assets and has accounted for the transfer as a sale.

“Repackaging” Transactions

Merrill Lynch enters into transactions with VIEs that provide investors with a specific risk profile, such as interest rate or currency exposure (“Repackaging VIEs”). Generally, the VIE holds a security and a derivative that modifies the interest rate or currency of that security. These VIEs typically issue one class of note and there is often a single investor. These entities generally meet the QSPE criteria. Merrill Lynch reports these VIEs in the Securitization tables below.

Municipal Bond Securitizations

Municipal Bond Securitizations are transactions where Merrill Lynch transfers municipal bonds to SPEs and those SPEs issue puttable floating rate instruments and a residual interest in the form of an inverse floater. These SPEs are QSPEs and are therefore not consolidated by Merrill Lynch. Merrill Lynch reports these SPEs in the securitization tables below.

In the normal course of dealer market-making activities, Merrill Lynch acts as liquidity provider for municipal bond securitization SPEs. Specifically, the holders of beneficial interests issued by municipal bond securitization SPEs have the right to tender their interests for purchase by Merrill Lynch on specified dates at a specified price. Beneficial interests that are tendered are then sold by Merrill Lynch to investors through a best efforts remarketing where Merrill Lynch is the remarketing agent. If the beneficial interests are not successfully remarketed, the holders of beneficial interests are paid from funds drawn under a standby liquidity facility issued by Merrill Lynch.

In addition to standby liquidity facilities, Merrill Lynch also provides default protection or credit enhancement to investors in securities issued by certain municipal bond securitization SPEs. Interest and principal payments on beneficial interests issued by these SPEs are secured by a guarantee issued by Merrill Lynch. In the event that the issuer of the underlying municipal bond defaults on any payment of principal and/or interest when due, the payments on the bonds will be made to beneficial interest holders from an irrevocable guarantee by Merrill Lynch. Additional information regarding these commitments is provided in Note 11.

Variable Interest Entities

FIN 46(R) requires an entity to consolidate a VIE if that entity holds a variable interest that will absorb a majority of the VIE’s expected losses, receive a majority of the VIE’s expected residual returns, or both. The entity required to consolidate a VIE is known as the primary beneficiary. VIEs are reassessed for consolidation when reconsideration events occur. Reconsideration events include, changes to the VIEs’ governing documents that reallocate the expected losses/returns of the VIE between the primary beneficiary and other variable interest holders or sales and purchases of variable interests in the VIE. Refer to Note 1 for further information.

The decline in assets associated with Loan and real estate VIEs from last year is the result of certain residential mortgage securitization entities meeting the QSPE requirements during the year (for more information see Loan and Real Estate VIEs above). These entities are now reported in the Securitization tables below. There were no other material reconsideration events during the period.

The table below provides the disclosure information required by FSP FAS 140-4 and FIN 46(R)-8 for VIEs that are consolidated by Merrill Lynch. The table excludes consolidated VIEs where Merrill Lynch also holds a majority of the voting interests in the entity unless the activities of the VIE are primarily related to securitization or other forms of asset-backed financings.

(dollars in millions)

Consolidated VIEs Type of VIE	Total Assets	Assets after intercompany eliminations: Unrestricted	Assets after intercompany eliminations: Restricted(1)	Liabilities after intercompany eliminations	Recourse to Merrill Lynch(2)
December 26, 2008					
Loan and real estate VIEs(3)	$ 9,080	$ 2,475	$ 2,680	$ 4,769	$ 3,479
Guaranteed and other funds(4)	1,370	998	119	227	113
Credit-linked note and other VIEs(5)	746	226	-	48	48
CDOs/CLOs(6)	693	-	360	489	237

(1) Assets are considered restricted when they cannot be freely pledged or sold by Merrill Lynch.
(2) This column reflects the extent, if any, to which investors have recourse to Merrill Lynch beyond the assets held by the VIE and assumes a total loss of the assets held by the VIE.
(3) For Loan and real estate VIEs, assets are primarily recorded in Loans, notes and mortgages. Assets related to VIEs that hold real estate investments are included in Other assets. Liabilities are primarily recorded in Short-term borrowings. Recourse relates to derivative contracts entered into with Merrill Lynch that are in a liability position.
(4) For Guaranteed and other fund VIEs, the assets are reflected in Investment securities and Trading asset – corporate debt and preferred stock, and liabilities are reflected in Long- term borrowings. Recourse relates to Merrill Lynch's maximum exposure to loss associated with derivative contracts that provide a minimum return to investors.
(5) For Credit-linked note and other VIEs, the assets are reflected in Trading assets – corporate debt and preferred stock and liabilities are recorded in Long-term borrowings.
(6) For CDOs/CLOs, assets are recorded in Trading assets – mortgage, mortgage-backed and asset-backed and Loans, notes and mortgages and liabilities are recorded in Long-term borrowings. Certain consolidated CDOs are established to provide full recourse secured financing to Merrill Lynch. The recourse associated with CDOs/CLOs relates to these consolidated transactions.

Merrill Lynch may also be a Sponsor/Significant VIH in VIEs. Where Merrill Lynch has involvement as a Sponsor/Significant VIH, it is required to disclose the size of the VIE, the assets and liabilities on its balance sheet related to transactions with the VIE, and its maximum exposure to loss as a result of its interest in the VIE.

As noted above, Sponsor/Significant VIH VIEs are separately categorized between securitization VIEs in which Merrill Lynch has transferred financial assets and has accounted for the transfer as a sale and non-securitization VIEs. The following table summarizes Merrill Lynch's involvement with non-securitization Sponsor/Significant VIH VIEs as of December 26, 2008.

(dollars in millions)

Sponsor/Significant VIH Type of VIE	Size of VIE(1)	Assets on Merrill Lynch's Balance Sheet(2)	Liabilities on Merrill Lynch's Balance Sheet(2)	Maximum Exposure to Loss(3)
December 26, 2008				
Loan and real estate VIEs(4)	$ 1,174	$ 560	$ 61	$ 560
Guaranteed and other funds(5)	1,845	271	537	271
Credit-linked note and other VIEs(6)	11,372	5,169	857	8,815

(1) Size generally reflects the estimated principal of securities issued by the VIE or the principal of the underlying assets held by the VIE and serves to provide information on the relative size of the VIE as compared to Merrill Lynch's involvement with the VIE.
(2) Assets and Liabilities on Merrill Lynch's Balance Sheet reflect the effect of FIN 39 balance sheet netting, if applicable.
(3) The maximum exposure to loss includes: the assets held by Merrill Lynch - including the value of derivatives that are in an asset position, and the notional amount of liquidity and other support provided to VIEs generally through total return swaps over the assets of the VIE. The maximum exposure to loss for liquidity and other support assumes a total loss on the referenced assets held by the VIE.
(4) The assets of Loan and real estate VIEs are primarily recorded in Loans, notes and mortgages. The liabilities of these VIEs are recorded in Trading liabilities – derivative contracts.
(5) The assets of Guaranteed and other fund VIEs are recorded in Trading assets- derivative contracts or Trading assets – equities and convertible debentures, and liabilities are recorded in Trading liabilities – derivative contracts or Payables under repurchase agreements in instances where assets were transferred but the transfer did not meet the sale requirements of SFAS No. 140.
(6) The assets/liabilities of Credit-linked note and other VIEs are recorded in Trading assets/liabilities-derivative contracts. In certain transactions, Merrill Lynch enters into total return swaps over assets held by the VIEs. Maximum exposure to loss represents the sum of the notional amount of these derivatives and the value of any assets on Merrill Lynch's balance sheet.

The table below reflects Merrill Lynch's involvement with VIEs at December 28, 2007. The information for transactions in which Merrill Lynch is considered a significant variable interest holder is not comparable to the information in the Sponsor/Significant VIH table above as it only includes VIEs in which Merrill Lynch had a significant variable interest. FSP FAS 140-4 and FIN 46(R) – 8 expanded the required population to include VIEs that Merrill Lynch sponsors. The Sponsor/Significant VIH table above does not provide comparative information as this information is not required by FSP FAS 140-4 and FIN 46(R)–8.

(dollars in millions)

	Primary Beneficiary		**Significant Variable Interest Holder**	
	Net Asset Size(4)	**Recourse to Merrill Lynch(5)**	**Total Asset Size(6)**	**Maximum Exposure to Loss**
December 28, 2007				
Loan and real estate VIEs	$ 15,420	$ -	$ 307	$ 232
Guaranteed and other funds(1)	4,655	928	246	23
Credit-linked note and other VIEs(2)	83	-	5,438	9,081
Tax planning VIEs(3)	1	-	483	15

(1) The maximum exposure for guaranteed and other funds is the fair value of Merrill Lynch's investments, derivatives entered into with the VIEs if they are in an asset position, and liquidity and credit facilities with certain VIEs.
(2) The maximum exposure for credit-linked note and other VIEs is the notional amount of total return swaps that Merrill Lynch has entered into with the VIEs. This assumes a total loss on the referenced asset underlying the total return swaps. The maximum exposure may be different than the total asset size due to the netting of certain derivatives in the VIE.
(3) The maximum exposure for tax planning VIEs reflects indemnifications made by Merrill Lynch to investors in the VIEs.
(4) This column reflects the size of the assets held in the VIE after accounting for intercompany eliminations and any balance sheet netting of assets and liabilities as permitted by FIN 39.
(5) This column reflects the extent, if any, to which investors have recourse to Merrill Lynch beyond the assets held in the VIE. For certain loan and real estate VIEs, recourse to Merrill Lynch represents the notional amount of derivatives that Merrill Lynch has on the assets in the VIEs.
(6) This column reflects the total size of the assets in the VIE.

Securitizations

In the normal course of business, Merrill Lynch securitizes commercial and residential mortgage loans, municipal, government, and corporate bonds, and other types of financial assets (as described above). In addition, Merrill Lynch sells financial assets to entities that are controlled and consolidated by third parties and provides financing to these entities under asset-backed financing arrangements (these transactions are reflected in the continued involvement table under Non-QSPEs Loans and real estate entities below). Merrill Lynch's involvement with VIEs that are used to securitize financial assets includes: structuring and/or establishing VIEs; selling assets to VIEs; managing or servicing assets held by VIEs; underwriting, distributing, and making loans to VIEs; making markets in securities issued by VIEs; engaging in derivative transactions with VIEs; owning notes or certificates issued by VIEs; and/or providing liquidity facilities and other guarantees to, or for the benefit of, VIEs. In many instances Merrill Lynch has continued involvement with the transferred assets, including servicing, retaining or holding an interest in the issuances of the VIE, providing liquidity and other support to the VIEs or investors in the VIEs, and entering into derivative contracts with the VIEs.

The tables below further categorize securitization transactions between QSPEs and non-QSPEs by type of continued involvement. The type of continued involvement helps indicate the relevance of Merrill Lynch's involvement with the transferred assets. It is Merrill Lynch's view that securitizations where Merrill Lynch's only continued involvement with the assets is through a derivative that does not absorb the risk of the assets in the VIE or QSPE should be distinguished from other securitizations. In these securitizations, Merrill Lynch's relationship with the securitization VIE is no different from its relationship with other derivative counterparties.

The following table relates to securitizations where Merrill Lynch's involvement is limited to derivatives that do not absorb the risk of the assets held by the entity:

(dollars in millions)

Limited Continued Involvement Type of Entity	Size/Principal Outstanding(1)	Assets on Balance Sheet(2)(4)	Liabilities on Balance Sheet(2)(4)	Maximum Exposure to Loss(3)	2008 Gain on Sale	2008 Cash Flows
December 26, 2008						
QSPEs:						
Repackaging transactions	$ 4,267	$ 564	$ 316	$ 564	$ -	$ 76
Non-QSPEs:						
Credit-linked note and other VIEs	17,950	2,953	140	2,953	-	539
CDOs/CLOs	20,741	676	-	676	-	15

(1) Size/Principal Outstanding reflects the estimated principal of the underlying assets held by the VIE/SPEs.
(2) Assets and Liabilities on Merrill Lynch's Balance Sheet reflect the effect of FIN 39 balance sheet netting, if applicable.
(3) The maximum exposure to loss includes the value of derivatives that are in an asset position.
(4) Assets and liabilities of these entities are all recorded in Trading assets – Derivative contracts or Trading liabilities – Derivative contracts.

The following table relates to securitizations where Merrill Lynch is servicer, retained interest holder, liquidity provider or enters into derivatives that absorb the risks of the assets held by the entity:

(dollars in millions)

Continued Involvement Type of Entity	Size/Principal Outstanding(1)	Assets on Balance Sheet(2)	Liabilities on Balance Sheet(2)	Maximum Exposure to Loss(3)	2008 Loss on Sale	2008 Cash Flows
December 26, 2008						
QSPEs:						
Residential mortgage loans(4)	$ 78,162	$ 1,667	$ 207	$ 1,654	$ -	$ 10,141
Municipal bonds(5)	9,377	487	674	8,644	-	5,824
Other(6)	18,366	288	-	288	-	1,091
Non-QSPEs:						
Loan and real estate entities(7)	10,182	6,757	-	6,757	(22)	3,035
CDOs/CLOs(8)	59,475	3,584	344	8,155	-	(578)

(1) Size/Principal Outstanding reflects the estimated principal of the underlying assets held by the VIE/SPEs.

(2) Assets and Liabilities on Merrill Lynch's Balance Sheet reflect the effect of FIN 39 balance sheet netting, if applicable.

(3) The maximum exposure to loss includes the following: the assets held by Merrill Lynch – including the value of derivatives that are in an asset position and retained interests in the VIEs/SPEs; and the notional amount of liquidity and other support generally provided through total return swaps. The maximum exposure to loss for liquidity and other support assumes a total loss on the referenced assets held by the VIE.

(4) For Residential mortgage loans QSPEs, assets on balance sheet are primarily securities issued by the entity and are recorded in Trading assets-mortgages, mortgage-backed and asset-backed or Investment securities. Derivatives with the SPEs are recorded in Trading assets – derivative contracts and Trading liabilities – derivative contracts.

(5) For Municipal bond QSPEs, assets are recorded in Trading assets – municipals, money markets and physical commodities or Investment securities, and liabilities are recorded in Trading liabilities – derivative contracts. At December 26, 2008, the carrying value of the liquidity and other support related to these transactions was $674 million.

(6) Other QSPEs primarily includes commercial mortgage securitizations. Assets are primarily recorded in Trading assets – mortgages, mortgage-backed and asset-backed.

(7) For Loan and real estate VIEs, assets are included in Trading assets – corporate debt and preferred stock and Loans, notes and mortgages and primarily relate to asset-backed financing arrangements such as the sale of U.S. super senior ABS CDOs to an affiliate of Lone Star Funds.

(8) For CDOs/CLOs, assets are recorded primarily in Trading assets – derivative contracts and mortgage, mortgage-backed, and asset-backed and liabilities are recorded in Trading liabilities – derivative contracts. The maximum exposure to loss includes approximately $4.9 billion notional amount of total return swaps over assets that were transferred to the CDOs by third parties (in these transactions, the assets that Merrill Lynch transferred to the CDOs are not covered by the total return swaps) and $177 million notional amount of senior liquidity facilities that provide support to CDOs/CLOs that hold assets that were transferred by Merrill Lynch.

In certain instances, Merrill Lynch retains interests in the senior tranche, subordinated tranche, and/or residual tranche of securities issued by VIEs that are created to securitize assets. The gain or loss on the sale of the assets is determined with reference to the previous carrying amount of the financial assets transferred, which is allocated between the assets sold and the retained interests, if any, based on their relative fair values at the date of transfer.

Generally, retained interests and contracts that are used to provide support to the VIE or the investors are recorded in the Consolidated Balance Sheets at fair value. To obtain fair values, observable market prices are used if available. Where observable market prices are unavailable, Merrill Lynch generally estimates fair value based on the present value of expected future cash flows using management's best estimates of credit losses, prepayment rates, forward yield curves, and discount rates, commensurate with the risks involved. Retained interests are either held as trading assets, with changes in fair value

recorded in the Consolidated Statements of (Loss)/Earnings, or as securities available-for-sale, with changes in fair value included in accumulated other comprehensive loss.

Retained interests held as available-for-sale are reviewed periodically for impairment. In certain cases liquidity facilities are accounted for as guarantees under FIN 45 (refer to Note 11 for more information) and a liability is recorded at fair value at the inception of the transaction.

Retained interests in securitized assets were approximately $1.8 billion and $6.1 billion at December 26, 2008 and December 28, 2007, respectively, which primarily relate to residential mortgage-related, municipal bond and commercial-related assets and corporate bond securitization transactions. Retained interests in securitized assets do not include loans made to entities under asset-backed financing arrangements.

The following table presents information on retained interests excluding the offsetting benefit of financial instruments used to hedge risks, held by Merrill Lynch as of December 26, 2008 arising from Merrill Lynch's residential mortgage-related, municipal bond and commercial-related assets and corporate bond securitization transactions. The pre-tax sensitivities of the current fair value of the retained interests to immediate 10% and 20% adverse changes in assumptions and parameters are also shown.

(dollars in millions)

	Residential Mortgage Loans	Municipal Bonds	Commercial Loans and Corporate Bonds
Retained interest amount	$ 406	$ 487	$ 947
Weighted average credit losses (rate per annum)(1)	0.0%	0.0%	1.9%
Impact on fair value of 10% adverse change	$ (1)	$ -	$ (1)
Impact on fair value of 20% adverse change	$ (1)	$ -	$ (3)
Weighted average discount rate	7.3%	2.7%	5.7%
Impact on fair value of 10% adverse change	$ (8)	$ (11)	$ (6)
Impact on fair value of 20% adverse change	$ (16)	$ (17)	$ (11)
Weighted average life (in years)	3.8	8.7	6.2
Weighted average prepayment speed (CPR)(2)	36.9%	-%	5.8%
Impact on fair value of 10% adverse change	$ (2)	$ -	$ -
Impact on fair value of 20% adverse change	$ (3)	$ -	$ (1)

CPR=Constant Prepayment Rate

(1) Credit losses are computed only on positions for which expected credit loss is either a key assumption in the determination of fair value or is not reflected in the discount rate.

(2) Relates to select securitization transactions where assets are prepayable.

The preceding sensitivity analysis is hypothetical and should be used with caution. In particular, the effect of a variation in a particular assumption on the fair value of the retained interest is calculated independent of changes in any other assumption; in practice, changes in one factor may result in changes in another, which might magnify or counteract the sensitivities. Further, changes in fair value based on a 10% or 20% variation in an assumption or parameter generally cannot be extrapolated because the relationship of the change in the assumption to the change in fair value may not be linear. Also, the sensitivity analysis does not include the offsetting benefit of financial instruments that Merrill Lynch utilizes to hedge risks, including credit, interest rate, and prepayment risk, that are inherent in the retained interests. These hedging strategies are structured to take into consideration the hypothetical stress scenarios above, such that they would be effective in principally offsetting Merrill Lynch's exposure to loss in the event that these scenarios occur.

Mortgage Servicing Rights

In connection with its residential mortgage business, Merrill Lynch may retain or acquire servicing rights associated with certain mortgage loans that are sold through its securitization activities. These loan sale transactions create assets referred to as mortgage servicing rights, or MSRs, which are included within other assets on the Consolidated Balance Sheets.

Retained MSRs are accounted for in accordance with SFAS No. 156, which requires all separately recognized servicing assets and servicing liabilities to be initially measured at fair value, if practicable. SFAS No. 156 also permits servicers to subsequently measure each separate class of servicing assets and liabilities at fair value rather than at the lower of amortized cost or market. Merrill Lynch has not elected to subsequently fair value retained MSRs.

Retained MSRs are initially recorded at fair value and subsequently amortized in proportion to and over the period of estimated future net servicing revenues. MSRs are assessed for impairment, at a minimum, on a quarterly basis. Management's estimates of fair value of MSRs are determined using the net discounted present value of future cash flows, which consists of projecting future servicing cash flows and discounting such cash flows using an appropriate risk-adjusted discount rate. These valuations require various assumptions, including future servicing fees, servicing costs, credit losses, discount rates and mortgage prepayment speeds. Due to subsequent changes in economic and market conditions, these assumptions can, and generally will, change from quarter to quarter.

Changes in Merrill Lynch's MSR balance are summarized below:

(dollars in millions)

	Carrying Value
Mortgage servicing rights, December 28, 2007 (fair value is $476)	$ 389
Additions	6
Amortization	(153)
Valuation allowance adjustments	(33)
Mortgage servicing rights, December 26, 2008 (fair value is $243)	$ 209

The amount of contractually specified revenues for the years ended December 26, 2008 and December 28, 2007, which are included within managed accounts and other fee-based revenues in the Consolidated Statements of (Loss)/Earnings include:

(dollars in millions)

	2008	2007
Servicing fees	$351	$341
Ancillary and late fees	51	63
Total	$402	$404

The following table presents Merrill Lynch's key assumptions used in measuring the fair value of MSRs at December 26, 2008 and the pre-tax sensitivity of the fair values to an immediate 10% and 20% adverse change in these assumptions:

(dollars in millions)

Fair value of capitalized MSRs	$ 243
Weighted average prepayment speed (CPR)	26.6%
Impact on fair value of 10% adverse change	$ (15)
Impact on fair value of 20% adverse change	$ (30)
Weighted average discount rate	17.0%
Impact on fair value of 10% adverse change	$ (7)
Impact on fair value of 20% adverse change	$ (16)

The sensitivity analysis above is hypothetical and should be used with caution. In particular, the effect of a variation in a particular assumption on the fair value of MSRs is calculated independent of changes in any other assumption; in practice, changes in one factor may result in changes in another factor, which may magnify or counteract the sensitivities. Further changes in fair value based on a single variation in assumptions generally cannot be extrapolated because the relationship of the change in a single assumption to the change in fair value may not be linear.

Note 7. Loans, Notes, Mortgages and Related Commitments to Extend Credit

Loans, notes, mortgages and related commitments to extend credit include:

- Consumer loans, which are substantially secured, including residential mortgages, home equity loans, and other loans to individuals for household, family, or other personal expenditures; and
- Commercial loans including corporate and institutional loans (including corporate and financial sponsor, non-investment grade lending commitments), commercial mortgages, asset-based loans, small- and middle-market business loans, and other loans to businesses.

Loans, notes, mortgages and related commitments to extend credit at December 26, 2008 and December 28, 2007, are presented below. This disclosure includes commitments to extend credit that, if drawn upon, will result in loans held for investment or loans held for sale.

(dollars in millions)

	Loans		Commitments(1)	
	2008	2007	2008(2)(3)	2007(3)
Consumer:				
Mortgages	$29,397	$26,939	$ 8,269	$ 7,023
Other	1,360	5,392	2,582	3,298
Commercial and small- and middle-market business:				
Investment grade	17,321	18,917	28,269	36,921
Non-investment grade	23,184	44,277	9,291	30,990
	71,262	95,525	48,411	78,232
Allowance for loan losses	(2,072)	(533)	-	-
Reserve for lending-related commitments	-	-	(2,471)	(1,408)
Total, net	$69,190	$94,992	$45,940	$76,824

(1) Commitments are outstanding as of the date the commitment letter is issued and are comprised of closed and contingent commitments. Closed commitments represent the unfunded portion of existing commitments available for draw down. Contingent commitments are contingent on the borrower fulfilling certain conditions or upon a particular event, such as an acquisition. A portion of these contingent commitments may be syndicated among other lenders or replaced with capital markets funding.

(2) See Note 11 for a maturity profile of these commitments.

(3) In addition to the loan origination commitments included in the table above, at December 26, 2008, Merrill Lynch entered into agreements to purchase $284 million of loans that, upon settlement of the commitment, will be classified in loans held for investment and loans held for sale. Similar loan purchase commitments totaled $330 million at December 28, 2007. See Note 11 for additional information.

Activity in the allowance for loan losses is presented below:

(dollars in millions)

	2008	2007
Allowance for loan losses, at beginning of period	$ 533	$478
Provision for loan losses	1,886	169
Charge-offs	(360)	(73)
Recoveries	14	36
Net charge-offs	(346)	(37)
Other	(1)	(77)
Allowance for loan losses, at end of period	$2,072	$533

Consumer loans, which are substantially secured, consisted of approximately 379,000 individual loans at December 26, 2008. Commercial loans consisted of approximately 18,000 separate loans. The principal balance of non-accrual loans was $2.5 billion at December 26, 2008 and $607 million at December 28, 2007. The investment grade and non-investment grade categorization is determined using the credit rating agency equivalent of internal credit ratings. Non-investment grade counterparties

are those rated lower than the BBB- category. In some cases Merrill Lynch enters into single name and index credit default swaps to mitigate credit exposure related to funded and unfunded commercial loans. The notional value of these swaps totaled $13.2 billion and $16.1 billion at December 26, 2008 and December 28, 2007, respectively.

The above amounts include $11.5 billion and $49.0 billion of loans held for sale at December 26, 2008 and December 28, 2007, respectively. Loans held for sale are loans that management expects to sell prior to maturity. At December 26, 2008, such loans consisted of $4.0 billion of consumer loans, primarily residential mortgages and automobile loans, and $7.5 billion of commercial loans, approximately 15% of which are to investment grade counterparties. At December 28, 2007, such loans consisted of $11.6 billion of consumer loans, primarily residential mortgages and automobile loans, and $37.4 billion of commercial loans, approximately 19% of which were to investment grade counterparties.

The fair values of loans, notes, and mortgages were approximately $64 billion and $95 billion at December 26, 2008 and December 28, 2007, respectively. Merrill Lynch estimates the fair value of loans utilizing a number of methods ranging from market price quotations to discounted cash flows.

Merrill Lynch generally maintains collateral on secured loans in the form of securities, liens on real estate, perfected security interests in other assets of the borrower, and guarantees. Consumer loans are typically collateralized by liens on real estate, automobiles, and other property. Commercial secured loans primarily include asset-based loans secured by financial assets such as loan receivables and trade receivables where the amount of the loan is based on the level of available collateral (i.e., the borrowing base) and commercial mortgages secured by real property. In addition, for secured commercial loans related to the corporate and institutional lending business, Merrill Lynch typically receives collateral in the form of either a first or second lien on the assets of the borrower or the stock of a subsidiary, which gives Merrill Lynch a priority claim in the case of a bankruptcy filing by the borrower. In many cases, where a security interest in the assets of the borrower is granted, no restrictions are placed on the use of assets by the borrower and asset levels are not typically subject to periodic review; however, the borrowers are typically subject to stringent debt covenants. Where the borrower grants a security interest in the stock of its subsidiary, the subsidiary's ability to issue additional debt is typically restricted.

Merrill Lynch enters into commitments to extend credit, predominantly at variable interest rates, in connection with corporate finance and loan syndication transactions. Customers may also be extended loans or lines of credit collateralized by first and second mortgages on real estate, certain assets of small businesses, or securities. Merrill Lynch considers commitments to be outstanding as of the date the commitment letter is issued. These commitments usually have a fixed expiration date and are contingent on certain contractual conditions that may require payment of a fee by the counterparty. Once commitments are drawn upon, Merrill Lynch may require the counterparty to post collateral depending on its creditworthiness and general market conditions.

Merrill Lynch holds loans that have certain features that may be viewed as increasing Merrill Lynch's exposure to nonpayment risk by the borrower. These loans include commercial and residential loans held in loans, notes, and mortgages as of December 26, 2008 that have the following features:

- Negative amortizing features that permit the borrower to draw on unfunded commitments to pay current interest (commercial loans only);
- Subject the borrower to payment increases over the life of the loan; and
- High LTV ratios.

Although these features may be considered non-traditional for residential mortgages, interest-only features are considered traditional for commercial loans. Therefore, the table below includes only those commercial loans with features that permit negative amortization.

The table below summarizes the level of exposure to each type of loan at December 26, 2008 and December 28, 2007:

(dollars in millions)

	2008(2)	**2007(2)**
Loans with negative amortization features	**$ 229**	$ 1,232
Loans where borrowers may be subject to payment increases(1)	**22,041**	15,697
Loans with high LTV ratios	**1,490**	5,478
Loans with both high LTV ratios and loans where borrowers may be subject to payment increases	**4,101**	3,315

(1) Includes $10.2 billion and $5.9 billion of prime residential mortgage loans with low LTV ratios at December 26, 2008 and December 28, 2007, respectively, that were acquired or originated in connection with the acquisition of First Republic.

(2) Includes loans from securitizations where due to Merrill Lynch's inability to sell certain securities, the VIEs were not considered QSPEs thereby resulting in Merrill Lynch's consolidation of the VIEs. Merrill Lynch's exposure is limited to (i) any retained interest (see Note 6) and (ii) the representations and warranties made upon securitization (see Note 11).

Loans where borrowers may be subject to payment increases primarily include interest-only loans. This caption also includes mortgages with low initial rates. These loans are underwritten based on a variety of factors including, for example, the borrower's credit history, debt to income ratio, employment, the LTV ratio, and the borrower's disposable income and cash reserves, typically using a qualifying formula that conforms to the guidance issued by the federal banking agencies with respect to non-traditional mortgage loans.

In instances where the borrower is of lower credit standing, the loans are typically underwritten to have a lower LTV ratio and/or other mitigating factors.

High LTV loans include all mortgage loans where the LTV is greater than 80% and the borrower has not purchased private mortgage insurance ("PMI"). High LTV loans also include residential mortgage products where a mortgage and home equity loan are simultaneously established for the same property. The maximum original LTV ratio for the mortgage portfolio with no PMI or other security is 85%, which can, on an exception basis, be extended to 90%. In addition, the Mortgage 100SM product is included in this category. The Mortgage 100SM product permits high credit quality borrowers to pledge eligible securities in lieu of a traditional down payment. The securities portfolio is subject to daily monitoring, and additional collateral is required if the value of the pledged securities declines below certain levels.

The contractual amounts of these commitments represent the amounts at risk should the contract be fully drawn upon, the client defaults, and the value of the existing collateral becomes worthless. The total amount of outstanding commitments may not represent future cash requirements, as commitments may expire without being drawn upon. For a maturity profile of these and other commitments see Note 11.

Note 8. Goodwill and Intangibles

Goodwill

Goodwill is the cost of an acquired company in excess of the fair value of identifiable net assets at acquisition date. Goodwill is tested annually (or more frequently under certain conditions) for impairment at the reporting unit level in accordance with SFAS No. 142, *Goodwill and Other Intangible Assets*. Merrill Lynch performs this test for the FICC, Equity Markets, Investment Banking, and GWM reporting units and compares the fair value of each reporting unit to its carrying value, including goodwill. If the fair value of the reporting unit exceeds the carrying value, goodwill is not deemed to be impaired. If the fair value is less than the carrying value, a further analysis is required to

determine the amount of impairment, if any. The fair values of the reporting units were determined by considering Merrill Lynch's market capitalization as determined by the Bank of America acquisition price, price-to-earnings and price-to-book multiples, and discounted cash flow analyses.

Merrill Lynch conducted its annual goodwill impairment test as of September 26, 2008, which did not result in an impairment charge. Due to the severe deterioration in the financial markets in the fourth quarter of 2008 and the related impact on the fair value of Merrill Lynch's reporting units, an impairment analysis was conducted during the fourth quarter of 2008. Based on this analysis, a non-cash impairment charge of $2.3 billion, primarily related to FICC, was recognized within the GMI business segment.

The following table sets forth the changes in the carrying amount of Merrill Lynch's goodwill by business segment for the years ended December 26, 2008 and December 28, 2007:

(dollars in millions)

	GMI	GWM	Total
Goodwill:			
December 29, 2006	$ 1,907	$ 302	$ 2,209
Goodwill acquired	1,009	1,315	2,324
Translation adjustment and other	54	3	57
December 28, 2007	2,970	1,620	4,590
Impairment charge	(2,300)	-	(2,300)
Translation adjustment and other	(69)	-	(69)
December 26, 2008	$ 601	$1,620	$ 2,221

GMI 2007 activity primarily relates to goodwill acquired in connection with the acquisition of First Franklin whose operations were integrated into GMI's mortgage securitization business. GWM 2007 activity primarily relates to goodwill acquired in connection with the acquisition of First Republic.

Intangible Assets

Intangible assets at December 26, 2008 and December 28, 2007 consist primarily of value assigned to customer relationships and core deposits. Intangible assets with definite lives are tested for impairment in accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, ("SFAS No. 144") whenever certain conditions exist which would indicate the carrying amounts of such assets may not be recoverable. Intangible assets with definite lives are amortized over their respective estimated useful lives.

The table below presents the gross carrying amount, accumulated amortization, and net carrying amounts of other intangible assets as of December 26, 2008 and December 28, 2007:

(dollars in millions)

		2008	2007
Customer relationships	Gross Carrying Amount	$ 295	$ 311
	Accumulated amortization	(87)	(64)
	Net carrying amount	208	247
Core deposits	Gross Carrying Amount	194	194
	Accumulated amortization	(52)	(17)
	Net carrying amount	142	177
Other[1]	Gross Carrying Amount	122	139
	Accumulated amortization	(77)	(62)
	Net carrying amount	45	77
Total	Gross Carrying Amount	611	644
	Accumulated amortization	(216)	(143)
	Net carrying amount	$ 395	$ 501

(1) Other is primarily related to trademarks and technology.

Amortization expense for the year ended December 26, 2008 was $97 million compared with $249 million in 2007, which included a $160 million write-off of identifiable intangible assets related to First Franklin mortgage broker relationships. Amortization expense for 2006 was $40 million.

The estimated future amortization of intangible assets through 2013 is as follows[1]:

(dollars in millions)

2009	$72
2010	60
2011	56
2012	52
2013	48

(1) The above amounts do not reflect the impact of acquisition accounting under SFAS 141(R) as of January 1, 2009.

Note 9. Borrowings and Deposits

Prior to the Bank of America acquisition, ML & Co. was the primary issuer of all of Merrill Lynch's debt instruments. For local tax or regulatory reasons, debt was also issued by certain subsidiaries.

Prior to the Bank of America acquisition, Merrill Lynch concentrated unsecured funding and the excess liquidity pool at ML & Co. to maintain sufficient funding sources to support business activities and ensure liquidity across market cycles. Following the completion of the Bank of America acquisition, ML & Co. became a subsidiary of Bank of America and established intercompany lending and borrowing arrangements to facilitate centralized liquidity management in the new organization. Included in these intercompany agreements is an initial $75 billion one-year, revolving unsecured line of credit that allows ML & Co. to borrow funds from Bank of America for operating needs. Immediately following the acquisition, Merrill Lynch placed a substantial portion of its excess liquidity with Bank of America through an intercompany lending agreement. ML & Co will no longer be a primary issuer of new unsecured long-term borrowings under the Bank of America platform.

The value of Merrill Lynch's debt instruments as recorded on the Consolidated Balance Sheets does not necessarily represent the amount that will be repaid at maturity. This is due to the following:

- Certain debt issuances are issued at a discount to their redemption amount, which will accrete up to the redemption amount as they approach maturity;
- Certain debt issuances are accounted for at fair value and incorporate changes in Merrill Lynch's creditworthiness as well as other underlying risks (see Note 3);
- Certain structured notes whose coupon or repayment terms are linked to the performance of debt and equity securities, indices, currencies or commodities reflect the fair value of those risks; and
- Certain debt issuances are adjusted for the impact of fair value hedge accounting (see Note 1).

Total borrowings at December 26, 2008 and December 28, 2007, which are comprised of short-term borrowings, long-term borrowings and junior subordinated notes (related to trust preferred securities), consisted of the following:

(dollars in millions)

	2008	2007[2]
Senior debt issued by ML & Co.	$140,615	$148,190
Senior debt issued by subsidiaries — guaranteed by ML & Co.	11,598	14,878
Senior structured notes issued by ML & Co.	34,541	45,133
Senior structured notes issued by subsidiaries — guaranteed by ML & Co.	24,048	31,401
Subordinated debt issued by ML & Co.	13,317	10,887
Junior subordinated notes (related to trust preferred securities)	5,256	5,154
Other subsidiary financing — non-recourse[1] and/or not guaranteed by ML & Co.	13,454	35,398
Total	$242,829	$291,041

(1) Other subsidiary financing — non-recourse is primarily attributable to collateralized borrowings of subsidiaries.
(2) Certain 2007 amounts have been reclassified to conform with the current year's presentation.

Borrowings and deposits at December 26, 2008 and December 28, 2007, are presented below:

(dollars in millions)

	2008	2007
Short-term borrowings		
Commercial paper	$ 20,104	$ 12,908
Promissory notes	-	2,750
Secured short-term borrowings[1]	14,137	4,851
Other unsecured short-term borrowings	3,654	4,405
Total	$ 37,895	$ 24,914
Long-term borrowings[2]		
Fixed-rate obligations[3]	$101,403	$102,020
Variable-rate obligations[4][5]	96,511	156,743
Zero-coupon contingent convertible debt (LYONs®)	1,599	2,210
Other Zero-coupon obligations	165	-
Total	$199,678	$260,973
Deposits		
U.S.	$ 79,528	$ 76,634
Non U.S.	16,579	27,353
Total	$ 96,107	$103,987

(1) Consisted primarily of borrowings from Federal Home Loan Banks for both periods, and as of December 26, 2008, also included borrowings under a secured bank credit facility.
(2) Excludes junior subordinated notes (related to trust preferred securities).

(3) Fixed-rate obligations are generally swapped to floating rates.
(4) Variable interest rates are generally based on rates such as LIBOR, the U.S. Treasury Bill Rate, or the Federal Funds Rate.
(5) Included are various equity-linked, credit-linked or other indexed instruments.

The fair value of short-term borrowings approximated carrying values at December 26, 2008 and December 28, 2007. In determining fair value of long-term borrowings at December 26, 2008 and December 28, 2007 for the purposes of the disclosure requirements under SFAS No. 107, *Disclosures about Fair Value of Financial Instruments*, an entity's own creditworthiness is required to be incorporated into the fair value measurements per the guidance in SFAS No. 157. The fair value of total long-term borrowings is estimated using a discounted cash flow model with inputs for similar types of borrowing arrangements. The fair value of long-term borrowings at December 26, 2008 and December 28, 2007 that are not accounted for at fair value under SFAS No. 159 was approximately $15.1 billion and $9.0 billion, respectively, less than the carrying amounts primarily due to the widening of Merrill Lynch credit spreads. In addition, the amounts of long-term borrowings that are accounted for at fair value under SFAS No. 159 were approximately $49.5 billion and $76.3 billion at December 26, 2008 and December 28, 2007, respectively. The credit spread component for the long-term borrowings carried at fair value was $5.1 billion and $2.0 billion at December 26, 2008 and December 28, 2007, respectively, and has been included in earnings. Refer to Note 3.

The effective weighted-average interest rates for borrowings at December 26, 2008 and December 28, 2007 (excluding structured notes) were as follows:

	2008	2007
Short-term borrowings	2.95%	4.64%
Long-term borrowings	4.65	4.35
Junior subordinated notes (related to trust preferred securities)	6.83	6.91

Long-Term Borrowings

At December 26, 2008, long-term borrowings mature as follows (dollars in millions):

(dollars in millions)		
Less than 1 year	$ 45,174	23%
1 – 2 years	25,481	13
2+ – 3 years	19,664	10
3+ – 4 years	19,083	10
4+ – 5 years	19,393	10
Greater than 5 years	70,883	34
Total	$199,678	100%

Certain long-term borrowing agreements contain provisions whereby the borrowings are redeemable at the option of the holder ("put" options) at specified dates prior to maturity. These borrowings are reflected in the above table as maturing at their put dates, rather than their contractual maturities. Management believes, however, that a portion of such borrowings will remain outstanding beyond their earliest redemption date.

A limited number of notes whose coupon or repayment terms are linked to the performance of debt and equity securities, indices, currencies or commodities maturities may be accelerated based on the value of a referenced index or security, in which case Merrill Lynch may be required to immediately settle the obligation for cash or other securities. These notes are included in the portion of long-term debt maturing in less than a year.

Except for the $1.6 billion of aggregate principal amount of floating rate zero-coupon contingently convertible liquid yield option notes ("LYONs®") that were outstanding at December 26, 2008, the $4.0 billion credit facility described below, the $7.5 billion secured short-term credit facility described below and the $10.0 billion short-term unsecured credit facility described below, senior and

subordinated debt obligations issued by ML & Co. and senior debt issued by subsidiaries and guaranteed by ML & Co. did not contain provisions that could, upon an adverse change in ML & Co.'s credit rating, financial ratios, earnings, cash flows, or stock price, trigger a requirement for an early payment, additional collateral support, changes in terms, acceleration of maturity, or the creation of an additional financial obligation.

Floating Rate LYONs®

At December 26, 2008, $1.6 billion of LYONs® were outstanding. The LYONs® are unsecured and unsubordinated indebtedness of Merrill Lynch and mature in 2032.

At maturity, holders of the LYONs® will receive the original principal amount of $1,000 increased daily by a rate that resets on a quarterly basis. Upon conversion, holders of the LYONs® will receive the value of 16.8528 shares of Merrill Lynch common stock based on the conditions described below. This value will be paid in cash in an amount equal to the contingent principal amount of the LYONs® on the conversion date and the remainder, at Merrill Lynch's election, will be paid in cash, common stock or a combination thereof.

In addition, under the terms of the LYONs®:

- Merrill Lynch may redeem the LYONs® at any time on or after March 13, 2014.
- Investors may require Merrill Lynch to repurchase the LYONs® in 2010, 2012, 2014, 2017, 2022 and 2027. Repurchases may be settled only in cash.
- Until March 2014, the conversion rate on the LYONS® will be adjusted upon the issuance of a quarterly cash dividend to holders of Merrill Lynch common stock to the extent that such dividend exceeds $0.16 per share. In 2008, Merrill Lynch's common stock dividend exceeded $0.16 per share and, as a result, Merrill Lynch adjusted the conversion ratio to 16.8528 from 16.5000. In addition, the conversion rate on the LYONs® will be adjusted for any other cash dividends or distributions to all holders of Merrill Lynch common stock until March 2014. After March 2014, cash dividends and distributions will cause the conversion ratio to be adjusted only to the extent such dividends are extraordinary.
- The conversion rate on the LYONs® will also adjust upon: (1) dividends or distributions payable in Merrill Lynch common stock, (2) subdivisions, combinations or certain reclassifications of Merrill Lynch common stock, (3) distributions to all holders of Merrill Lynch common stock of certain rights to purchase the stock at less than the sale price of Merrill Lynch common stock at that time, and (4) distributions of Merrill Lynch assets or debt securities to holders of Merrill Lynch common stock (including certain cash dividends and distributions as described above).

The LYONs® may be converted based on any of the following conditions:

- If the closing price of Merrill Lynch common stock for at least 20 of the last 30 consecutive trading days ending on the last day of the calendar quarter is more than the conversion trigger price. The conversion trigger price for the LYONs® at December 31, 2008 was $78.04. That is, on and after January 1, 2009, a holder could have converted LYONs® into the value of 16.8528 shares of Merrill Lynch common stock if the Merrill Lynch stock price had been greater than $78.04 for at least 20 of the last 30 consecutive trading days ending December 31, 2008;
- During any period in which the credit rating of the LYONs® is Baa1 or lower by Moody's Investor Services, Inc., BBB+ or lower by Standard & Poor's Credit Market Services, or BBB+ or lower by Fitch, Inc.;
- If the LYONs® are called for redemption;
- If Merrill Lynch is party to a consolidation, merger or binding share exchange; or

- If Merrill Lynch makes a distribution that has a per share value equal to more than 15% of the sale price of its shares on the day preceding the declaration date for such distribution.

Following the completion of Bank of America's acquisition of ML & Co., a change in control event under the terms of the LYONs®, Merrill Lynch was required to make certain adjustments to the terms of the LYONs® and offer to repurchase the LYONs®.

On January 1, 2009, Merrill Lynch amended the conversion rate to 14.4850 shares of Bank of America common stock. Increases to the conversion rate may occur if Bank of America's quarterly dividend exceeds $0.1375 per share. The amendments were in accordance with the merger consideration of 0.8595 shares of Bank of America common stock for one share of Merrill Lynch common stock. The conversion trigger prices and conversion rate adjustment events described above also are now related to Bank of America common stock.

On January 22, 2009, Merrill Lynch offered to repurchase the LYONs® at the accreted price of $1,095.98 for each $1,000 original principal amount. LYONs® holders have until February 23, 2009 to validly submit the securities for repurchase.

Junior Subordinated Notes (related to trust preferred securities)

Merrill Lynch has created six trusts that have issued preferred securities to the public ("trust preferred securities"). Merrill Lynch Preferred Capital Trust III, IV and V used the issuance proceeds to purchase Partnership Preferred Securities, representing limited partnership interests. Using the purchase proceeds, the limited partnerships extended junior subordinated loans to ML & Co. and one or more subsidiaries of ML & Co. Merrill Lynch Capital Trust I, II and III directly invested in junior subordinated notes issued by ML & Co.

ML & Co. has guaranteed, on a junior subordinated basis, the payment in full of all distributions and other payments on the trust preferred securities to the extent that the trusts have funds legally available. This guarantee and similar partnership distribution guarantees are subordinated to all other liabilities of ML & Co. and rank equally with preferred stock of ML & Co.

The following table summarizes Merrill Lynch's trust preferred securities as of December 26, 2008.

(dollars in millions)

TRUST	ISSUE DATE	AGGREGATE PRINCIPAL AMOUNT OF TRUST PREFERRED SECURITIES	AGGREGATE PRINCIPAL AMOUNT OF NOTES	ANNUAL DISTRIBUTION RATE	STATED MATURITY	EARLIEST REDEMPTION DATE
ML Preferred Capital Trust III	Jan–1998	$ 750	$ 900	7.00%	Perpetual	Mar–2008
ML Preferred Capital Trust IV	Jun–1998	400	480	7.12	Perpetual	Jun–2008
ML Preferred Capital Trust V	Nov–1998	850	1,021	7.28	Perpetual	Sep–2008
ML Capital Trust I	Dec–2006	1,050	1,051	6.45	Dec–2066(1)	Dec–2011
ML Capital Trust II	May–2007	950	951	6.45	Jun–2062(2)	Jun–2012
ML Capital Trust III	Aug–2007	750	751	7.375	Sep–2062(3)	Sep–2012
Total		**$ 4,750(4)**	**$ 5,154**			

(1) Merrill Lynch has the option to extend the maturity of the junior subordinated note until December 2086.
(2) Merrill Lynch has the option to extend the maturity of the junior subordinated note until June 2087.
(3) Merrill Lynch has the option to extend the maturity of the junior subordinated note until September 2087.
(4) Includes related investments of $25 million, which are deducted for equity capital purposes.

Committed Credit Facilities

Merrill Lynch maintains credit facilities that are available to cover regular and contingent funding needs. Following the Bank of America acquisition, certain sources of liquidity were centralized, and ML & Co. terminated all of its external committed credit facilities.

Merrill Lynch maintained a committed, three-year multi-currency, unsecured bank credit facility that totaled $4.0 billion as of December 26, 2008. Merrill Lynch borrowed regularly from this facility as an additional funding source to conduct normal business activities. At both December 26, 2008 and December 28, 2007, Merrill Lynch had $1.0 billion of borrowings outstanding under this facility. Following the completion of the Bank of America acquisition, Merrill Lynch repaid the outstanding borrowings and terminated the facility in January 2009.

Merrill Lynch maintained a $2.7 billion and $3.5 billion committed, secured credit facility, at December 26, 2008 and December 28, 2007, respectively. There were no borrowings under the facility at December 26, 2008. Following the completion of the Bank of America acquisition, Merrill Lynch terminated the facility in January 2009.

In December 2008, Merrill Lynch decided not to seek a renewal of a $3.0 billion committed, secured credit facility. There were no borrowings under the facility at termination. At December 28, 2007 the facility was outstanding for $3.0 billion and there were no borrowings.

In October 2008, Merrill Lynch entered into a $10.0 billion committed unsecured bank revolving credit facility with Bank of America, N.A. with borrowings guaranteed under the FDIC's guarantee program. There were no borrowings under the facility at December 26, 2008. Following the completion of the Bank of America acquisition, the facility was terminated.

In September 2008, Merrill Lynch established an additional $7.5 billion bilateral secured credit facility with Bank of America. There was $3.5 billion outstanding under this facility at year end. Following the completion of the Bank of America acquisition, Merrill Lynch repaid the outstanding borrowings and the facility was terminated.

During June 2008, Merrill Lynch terminated the $11.75 billion committed, secured credit facilities previously maintained with two financial institutions. The secured facilities were available if collateralized by government obligations eligible for pledging. The facilities were scheduled to expire at various dates through 2014, but could be terminated earlier by either party under certain circumstances. The decision to terminate the facilities was based on changes in tax laws that adversely impacted the economics of the facility structures. At December 28, 2007, Merrill Lynch had no borrowings outstanding under the facilities.

Deposits

Deposits at December 26, 2008 and December 28, 2007, are presented below:

(dollars in millions)

	2008	2007
U.S.		
Savings and Demand Deposits[1]	$71,377	$ 69,707
Time Deposits	8,151	6,927
Total U.S. Deposits	79,528	76,634
Non-U.S.		
Non-interest bearing	664	803
Interest bearing	15,915	26,550
Total Non-U.S. Deposits	16,579	27,353
Total Deposits	$96,107	$103,987

(1) Includes $1.9 billion and $1.8 billion of non-interest bearing demand deposits as of December 26, 2008 and December 28, 2007, respectively.

Certificates of deposit and other time deposit accounts issued in amounts of $100,000 or more totaled $6.5 billion and $5.8 billion at December 26, 2008 and December 28, 2007, respectively. At December 26, 2008, $2.3 billion of these deposits mature in three months or less, $2.5 billion mature in more than three but less than six months and the remaining balance matures in more than six months.

The effective weighted-average interest rate for deposits, which includes the impact of hedges, was 0.9% and 3.5% at December 26, 2008 and December 28, 2007, respectively. The fair values of deposits approximated carrying values at December 26, 2008 and December 28, 2007.

Other

Merrill Lynch also obtains standby letters of credit from issuing banks to satisfy various counterparty collateral requirements, in lieu of depositing cash or securities collateral. Such standby letters of credit aggregated $2.6 billion and $5.8 billion at December 26, 2008 and December 28, 2007, respectively.

Note 10. Stockholders' Equity and Earnings Per Share

See Note 1 for a discussion of the Bank of America acquisition, which was completed on January 1, 2009, and its impact to common and preferred shareholders of Merrill Lynch. The following disclosures reflect Merrill Lynch's historical stockholders' equity through December 26, 2008 and do not reflect the effects of the January 1, 2009 acquisition by Bank of America.

Preferred Equity

ML & Co. is authorized to issue 25 million shares of undesignated preferred stock, $1.00 par value per share. All shares of outstanding preferred stock constitute one and the same class and have equal rank and priority over common stockholders as to dividends and in the event of liquidation. All shares are perpetual, non-cumulative and dividends are payable quarterly when, and if, declared by the Board of Directors. Each share of preferred stock of Series 1 through Series 5 has a liquidation preference of $30,000, is represented by 1,200 depositary shares and is redeemable at Merrill Lynch's option at a redemption price equal to $30,000 plus declared and unpaid dividends, without accumulation of any undeclared dividends.

On April 29, 2008, Merrill Lynch issued $2.7 billion of new perpetual 8.625% Non-Cumulative Preferred Stock, Series 8.

On September 21, 2007, in connection with the acquisition of First Republic, Merrill Lynch issued two new series of preferred stock, $65 million in aggregate principal amount of 6.70% Non-Cumulative, Perpetual Preferred Stock, Series 6, and $50 million in aggregate principal amount of 6.25% Non-Cumulative, Perpetual Preferred Stock, Series 7. Each share of preferred stock of series 6 and 7 has a liquidation preference of $1,000. Upon closing the First Republic acquisition, Merrill Lynch also issued 11.6 million shares of common stock, par value $1.33 $^{1}/_{3}$ per share, as consideration.

On March 20, 2007, Merrill Lynch issued $1.5 billion in aggregate principal amount of Floating Rate, Non-Cumulative, Perpetual Preferred Stock, Series 5.

The following table summarizes Merrill Lynch's preferred stock (excluding Mandatory Convertible securities) issued at December 26, 2008.

(dollars in millions)

SERIES	DESCRIPTION	INITIAL ISSUE DATE	TOTAL SHARES ISSUED	AGGREGATE LIQUIDATION PREFERENCE	DIVIDEND	EARLIEST REDEMPTION DATE
1	Perpetual Floating Rate Non-Cumulative	Nov-2004	21,000	$ 630	3-mo LIBOR +) 75bps(2	Nov-2009
2	Perpetual Floating Rate Non-Cumulative	Mar-2005	37,000	1,110	3-mo LIBOR + 65bps(2)	Nov-2009
3	Perpetual 6.375% Non-Cumulative	Nov-2005	27,000	810	6.375%	Nov-2010
4	Perpetual Floating Rate Non-Cumulative	Nov-2005	20,000	600	3-mo LIBOR + 75bps(3)	Nov-2010
5	Perpetual Floating Rate Non-Cumulative	Mar-2007	50,000	1,500	3-mo LIBOR + 50bps(3)	May-2012
6	Perpetual 6.70% Non-Cumulative	Sept-2007	65,000	65	6.700%	Feb-2009
7	Perpetual 6.25% Non-Cumulative	Sept-2007	50,000	50	6.250%	Mar-2010
8	Perpetual 8.625% Non-Cumulative	Apr-2008	89,100	2,673	8.625%	May-2013
Total			359,100	**$ 7,438(1)**		

(1) Preferred stockholders' equity reported on the Consolidated Balance Sheets is reduced by amounts held in inventory as a result of market making activities.

(2) Subject to 3.00% minimum rate per annum.

(3) Subject to 4.00% minimum rate per annum.

Mandatory Convertible

On various dates in January and February 2008, Merrill Lynch issued an aggregate of 66,000 shares of 9% Non-Voting Mandatory Convertible Non-Cumulative Preferred Stock, Series 1, par value $1.00 per share and liquidation preference $100,000 per share, to several long-term investors at a price of $100,000 per share (the "Series 1 convertible preferred stock"), for an aggregate purchase price of approximately $6.6 billion. The Series 1 convertible preferred stock contained a reset feature, which would have resulted in an adjustment to the conversion formula in certain circumstances.

On July 28, 2008, holders of $4.9 billion of the $6.6 billion of outstanding Series 1 convertible preferred stock agreed to exchange their Series 1 convertible preferred stock for approximately 177 million shares of common stock, plus $65 million in cash. Holders of the remaining $1.7 billion of outstanding Series 1 convertible preferred stock agreed to exchange their preferred stock for new mandatory convertible preferred stock described below. Because all holders of Series 1 convertible preferred stock exchanged their shares, the reset feature associated with the Series 1 convertible preferred stock was eliminated. In connection with the exchange of the Series 1 convertible preferred stock and in satisfaction of its obligations under the reset provisions of the Series 1 convertible preferred stock, Merrill Lynch recorded additional preferred dividends of $2.1 billion in the third quarter of 2008.

On July 28, 2008 Merrill Lynch issued an aggregate of 12,000 shares of newly issued 9% Non-Voting Mandatory Convertible Non-Cumulative Preferred Stock, Series 2, par value $1.00 per share and liquidation preference $100,000 per share (the "Series 2 convertible preferred stock"). On July 29, 2008 Merrill Lynch issued an aggregate of 5,000 shares of newly issued 9% Non-Voting Mandatory Convertible Non-Cumulative Preferred Stock, Series 3, par value $1.00 per share and liquidation preference $100,000 per share (the "Series 3 convertible preferred stock" and, together with the Series 2 convertible preferred stock, the "new convertible preferred stock").

If not converted earlier, the new convertible preferred stock will automatically convert into Merrill Lynch common stock on October 15, 2010, based on the 20 consecutive trading day volume weighted

average price of Merrill Lynch common stock ending the day immediately preceding the mandatory conversion date ("the current stock price"). The number of shares of Merrill Lynch common stock that a holder of the new convertible preferred stock will receive upon conversion will be determined based on the current stock price on the mandatory conversion date relative to the respective minimum conversion price and threshold appreciation price on the mandatory conversion date.

If the current stock price at the mandatory conversion date is less than the threshold appreciation price but greater than the minimum conversion price, a holder will receive a variable number of shares of common stock equal to the value of its initial investment. The following table shows the number of shares of common stock a holder will receive in other circumstances:

Series	Initial minimum conversion price	Initial threshold appreciation price	Current stock price is greater than or equal to initial threshold appreciation price	Current stock price is less than or equal to initial minimum conversion price
Series 2	$ 33.00	$ 38.61	2,590 shares	3,030 shares
Series 3	$ 22.50	$ 26.33	3,798 shares	4,444 shares

The conversion rates described above are subject to certain anti-dilution provisions. Holders of the new convertible preferred stock may elect to convert anytime prior to October 15, 2010 into the minimum number of shares permitted under the conversion formula. In addition, Merrill Lynch has the ability to accelerate conversion in the event that the convertible preferred stock no longer qualifies as Tier 1 capital for regulatory purposes. Upon an accelerated conversion, a holder will receive the maximum number of shares permitted under the conversion formula. In addition, Merrill Lynch will pay the holder of the new convertible preferred stock an amount equal to the present value of the remaining fixed dividend payments through and including the original mandatory conversion date.

The convertible preferred stock that was outstanding immediately prior to the completion of the Bank of America acquisition remained issued and outstanding subsequent to the acquisition, but is now convertible into Bank of America common stock with the conversion prices adjusted based on the exchange ratio of 0.8595 Bank of America common shares per Merrill Lynch common share.

Dividends on the new convertible preferred stock, if and when declared, are payable in cash on a quarterly basis in arrears on February 28, May 28, August 28 and November 28 of each year through the mandatory conversion date. Merrill Lynch can not declare dividends on its common stock unless dividends are declared on the new convertible preferred stock.

Common Stock

On December 24, 2007, Merrill Lynch reached agreements with each of Temasek and Davis Selected Advisors LP ("Davis") to sell an aggregate of 116.7 million shares of newly issued ML & Co. common stock, par value $1.33^1/_3$ per share, at $48.00 per share, for an aggregate purchase price of approximately $5.6 billion.

Davis purchased 25 million shares of Merrill Lynch common stock on December 27, 2007 at a price per share of $48.00, or an aggregate purchase price of $1.2 billion. Temasek purchased 55 million shares on December 28, 2007 and the remaining 36.7 million shares on January 11, 2008 for an aggregate purchase price of $4.4 billion. In addition, Merrill Lynch granted Temasek an option to purchase an additional 12.5 million shares of common stock under certain circumstances. This option was exercised, with 2.8 million shares issued on February 1, 2008 and 9.7 million shares issued on February 5, 2008, in each case at a purchase price of $48.00 per share for an aggregate purchase price of $600 million.

In connection with the Temasek transaction, Merrill Lynch agreed that if it were to sell any common stock (or equity securities convertible into common stock) within one year of the closing of the initial Temasek purchase at a purchase, conversion or reference price per share less than $48.00, then it must

make a payment to Temasek to compensate Temasek for the aggregate excess amount per share paid by Temasek, which is settled in cash or common stock at Merrill Lynch's option.

On July 28, 2008, Merrill Lynch announced a public offering of 437 million shares of common stock (including the exercise of the over-allotment option) at a price of $22.50 per share, for an aggregate amount of $9.8 billion. In satisfaction of Merrill Lynch's obligations under the reset provisions contained in the investment agreement with Temasek, Merrill Lynch paid Temasek $2.5 billion, all of which was invested in the offering at the public offering price without any future reset protection. On August 1, 2008, Merrill Lynch issued 368,273,954 shares of common stock as part of the offering. On September 26, 2008 an additional 68,726,046 shares of common stock were issued to Temasek after receipt of the requisite regulatory approvals. In total, Temasek received $3.4 billion of common stock in the offering. The $2.5 billion payment to Temasek was recorded as an expense in the Consolidated Statement of (Loss)/Earnings for the year-ended December 26, 2008.

Merrill Lynch did not repurchase any common stock during 2008. During 2007, Merrill Lynch repurchased 62.1 million common shares at an average repurchase price of $84.88 per share. On April 30, 2007 the Board of Directors authorized the repurchase of an additional $6 billion of Merrill Lynch's outstanding common shares. During 2007, Merrill Lynch had completed the $5 billion repurchase program authorized in October 2006 and had $4.0 billion of authorized repurchase capacity remaining under the repurchase program authorized in April 2007.

Upon closing the First Republic acquisition on September 21, 2007, Merrill Lynch issued 11.6 million shares of common stock as a portion of the consideration.

On January 18, 2007, the Board of Directors declared a 40% increase in the regular quarterly dividend to $0.35 per common share, from $0.25 per common share. Dividends paid on common stock were $1.40 per share in 2008 and 2007 and $1.00 per share in 2006.

Accumulated Other Comprehensive Loss

Accumulated other comprehensive loss represents cumulative gains and losses on items that are not reflected in (loss)/earnings. The balances at December 26, 2008 and December 28, 2007 are as follows:

(dollars in millions)

	2008	2007
Foreign currency translation adjustment		
Unrealized (losses), net of gains	**$ (942)**	$(1,636)
Income taxes	**197**	1,195
Total	**(745)**	(441)
Unrealized (losses) on investment securities available-for-sale		
Unrealized (losses), net of gains	**(10,099)**	(2,759)
Adjustments for:		
Adjustment to initially apply SFAS No. 159	**-**	277
Income taxes	**4,061**	973
Total	**(6,038)**	(1,509)
Deferred gains on cash flow hedges		
Deferred gains	**135**	136
Income taxes	**(54)**	(53)
Total	**81**	83
Defined benefit pension and postretirement plans		
Net actuarial gains	**538**	49
Net prior service cost	**66**	70
Foreign currency translation gain	**53**	58
Adjustment to apply SFAS No. 158 change in measurement date	**2**	-
Income taxes	**(275)**	(101)
Total	**384**	76
Total accumulated other comprehensive loss	**$ (6,318)**	$(1,791)

Earnings Per Share

Basic EPS is calculated by dividing earnings applicable to common stockholders by the weighted-average number of common shares outstanding. Diluted EPS is similar to basic EPS, but adjusts for the effect of the potential issuance of common shares. The following table presents the computations of basic and diluted EPS:

(dollars in millions, except per share amounts)

	2008	2007	2006
Net (loss)/earnings from continuing operations	$ (27,551)	$ (8,637)	$ 7,097
Net (loss)/earnings from discontinued operations	(61)	860	402
Preferred stock dividends	(2,869)	(270)	(188)
Net (loss)/earnings applicable to common shareholders — for basic EPS	(30,481)	(8,047)	7,311
Interest expense on LYONs®	-	-	1
Net (loss)/earnings applicable to common shareholders — for diluted EPS[(1)]	$ (30,481)	$ (8,047)	$ 7,312
(shares in thousands)			
Weighted-average basic shares outstanding[(2)]	1,225,611	830,415	868,095
Effect of dilutive instruments:			
Employee stock options[(3)]	-	-	42,802
FACAAP shares[(3)]	-	-	21,724
Restricted shares and units[(3)]	-	-	28,496
Convertible LYONs®[(4)]	-	-	1,835
ESPP shares[(3)]	-	-	10
Dilutive potential common shares	-	-	94,867
Diluted Shares[(5)(6)]	1,225,611	830,415	962,962
Basic EPS from continuing operations	$ (24.82)	$ (10.73)	$ 7.96
Basic EPS from discontinued operations	(0.05)	1.04	0.46
Basic EPS	$ (24.87)	$ (9.69)	$ 8.42
Diluted EPS from continuing operations	$ (24.82)	$ (10.73)	$ 7.17
Diluted EPS from discontinued operations	(0.05)	1.04	0.42
Diluted EPS	$ (24.87)	$ (9.69)	$ 7.59

(1) Due to the net loss for the year ended December 26, 2008, inclusion of the incremental shares on the Mandatory Convertible Preferred Stock would be antidilutive and, therefore, those shares have not been included as part of the Diluted EPS calculation. See Mandatory Convertible section above for additional information.

(2) Includes shares exchangeable into common stock.

(3) See Note 13 for a description of these instruments.

(4) See Note 9 for additional information on LYONs®.

(5) Due to the net loss for the year-ended December 28, 2007, the Diluted EPS calculation excludes 192 million instruments as they were antidilutive. At year-end 2006 there were 25,119 instruments that were antidilutive and thus were not included in the above calculations.

(6) Due to the net loss for the year-ended December 26, 2008, the Diluted EPS calculation excludes 585 million instruments as they were antidilutive.

Note 11. Commitments, Contingencies and Guarantees

Litigation

In the ordinary course of business as a global diversified financial services institution, the Company is routinely a defendant in many pending and threatened legal actions and proceedings, including actions brought on behalf of various classes of claimants. The Company is also subject to regulatory

examinations, information gathering requests, inquiries, and investigations. In connection with formal and informal inquiries by its regulators, it receives numerous requests, subpoenas and orders for documents, testimony and information in connection with various aspects of its regulated activities.

In view of the inherent difficulty of predicting the outcome of such litigation and regulatory matters, particularly where the claimants seek unspecified or very large damages or where the matters present novel legal theories or involve a large number of parties, the Company cannot state with confidence what the eventual outcome of the pending matters will be, what the timing of the ultimate resolution of these matters will be, or what the eventual loss, fines or penalties related to each pending matter may be.

In accordance with SFAS No. 5, *Accounting for Contingencies*, the Company establishes reserves for litigation and regulatory matters when those matters present loss contingencies that are both probable and estimable. When loss contingencies are not both probable and estimable, the Company does not establish reserves. In many matters, including most class action lawsuits, it is not possible to determine whether a liability has been incurred or to estimate the ultimate or minimum amount of that liability until the matter is close to resolution, in which case no accrual is made until that time. Based on current knowledge, management does not believe that loss contingencies arising from pending litigation and regulatory matters, including the litigation and regulatory matters described below, will have a material adverse effect on the consolidated financial position or liquidity of the Company, but may be material to the Company's operating results or cash flows for any particular reporting period and may impact its credit ratings.

Specific Litigation

IPO Allocation Litigation

In re Initial Public Offering Securities Litigation: Beginning in 2001, the Company was named as one of the defendants in approximately 110 securities class action complaints alleging that dozens of underwriter defendants artificially inflated and maintained the stock prices of securities by creating an artificially high post-IPO demand for shares. On October 13, 2004, the U.S. District Court of the Southern District of New York, having previously denied defendants' motions to dismiss, issued an order allowing certain of these cases to proceed against the underwriter defendants as class actions. On December 5, 2006, the Second Circuit Court of Appeals reversed this order, holding that the district court erred in certifying these cases as class actions. On September 27, 2007, plaintiffs again moved for class certification. On December 21, 2007, defendants filed their opposition to plaintiffs' motion. The court has not issued a decision on the class certification issue. Most of the parties in the case, including the Company, have agreed in principle to a settlement of the case, subject to court approval. The Company's portion of the settlement has been fully accrued and reflected in the Company's consolidated financial statements.

Enron Litigation

Newby v. Enron Corp. et al.: On April 8, 2002, the Company was added as a defendant in a consolidated class action filed in the U.S. District Court for the Southern District of Texas on behalf of the purchasers of Enron's publicly traded equity and debt securities during the period October 19, 1998 through November 27, 2001. The complaint alleges, among other things, that the Company engaged in improper transactions in the fourth quarter of 1999 that helped Enron misrepresent its earnings and revenues in the fourth quarter of 1999. The district court denied the Company's motions to dismiss, and certified a class action by Enron shareholders and bondholders against the Company and other defendants. On March 19, 2007, the Fifth Circuit Court of Appeals reversed the district court's decision certifying the case as a class action. On January 22, 2008, the Supreme Court denied plaintiffs' petition to review the Fifth Circuit's decision. The parties are currently awaiting the Court's decision on the Company's request to dismiss the case based on the Fifth Circuit's March 19, 2007 decision rejecting class certification and the Supreme Court's January 15, 2008 decision rejecting liability in

another case, *Stoneridge Investment v. Scientific Atlanta*. Other individual actions have been brought against the Company and other investment firms in connection with their Enron-related activities. There has been no adjudication of the merits of these claims.

Subprime Mortgage-Related Litigation

In re Merrill Lynch & Co., Inc. Securities, Derivative, and ERISA Litigation: Beginning in October 2007, the Company was named in putative class actions filed on behalf of certain persons who acquired Merrill Lynch securities (the "Securities Action") or participated in Merrill Lynch retirement plans (the "ERISA Action") and purported shareholder derivative actions (the "Derivative Actions") that have largely been consolidated under the caption, *In re Merrill Lynch & Co., Inc. Securities, Derivative, and ERISA Litigation*, filed in the U.S. District Court for the Southern District of New York. The complaints allege, among other things, that the defendants misrepresented and omitted facts related to Merrill Lynch's exposure to subprime collateralized debt obligations and subprime lending markets in violation of the federal securities laws, and seek damages in unspecified amounts. The Securities Action plaintiffs allege harm to investors who purchased Merrill Lynch securities during the class period; the ERISA Action plaintiffs allege harm to employees who invested retirement assets in Merrill Lynch securities, in violation of the Employee Retirement Income Security Act of 1974 ("ERISA"); and the plaintiffs in the Derivative Actions allege harm to Merrill Lynch itself from alleged breaches of fiduciary duty. In January 2009, the parties entered into agreements in principle to settle the Securities Action for $475 million and the ERISA Action for $75 million, all of which has been accrued and reflected in the Company's consolidated financial statements. The settlements are subject to a number of conditions, including court approval and confirmatory discovery, and were reached without any adjudication of the merits or finding of liability. On February 17, 2009, the court granted Defendants' motion to dismiss the Derivative Actions.

Louisiana Sheriffs' Pension & Relief Fund v. Conway, et al.: On October 3, 2008, the Louisiana Sheriffs' Pension & Relief Fund and the Louisiana Municipal Police Employees' Retirement System filed a class action against Merrill Lynch, MLPF&S, and certain present and former officers and directors in New York Supreme Court. The complaint seeks relief on behalf of all persons who purchased or otherwise acquired Merrill Lynch debt securities issued pursuant to a shelf registration statement dated March 31, 2006. The complaint alleges that Merrill Lynch's prospectuses misstated Merrill Lynch's financial condition and failed to disclose its exposures to losses from investments tied to subprime and other mortgages, as well as its liability arising from its participation in the market for auction rate securities. On October 22, 2008, the case was removed to federal court and on November 5, 2008 it was accepted as a related case to *In re Merrill Lynch & Co., Inc. Securities, Derivative, and ERISA Litigation*. On February 9, 2009, Merrill Lynch filed a motion to dismiss the action.

Connecticut Carpenters Pension Fund, et al. v. Merrill Lynch & Co., Inc., et al.: On December 5, 2008, a class action complaint was filed against Merrill Lynch and affiliated entities in the Superior Court of the State of California, County of Los Angeles on behalf of persons who purchased billions of dollars of Merrill Lynch Mortgage Trust Certificates pursuant or traceable to registration statements that Merrill Lynch Mortgage Investors, Inc. filed with the SEC on August 5, 2005, December 21, 2005, and February 2, 2007. The complaint alleges that the registration statements misrepresented or omitted material facts regarding the quality of the mortgage pools underlying the Trusts, the mortgages' loan-to-value ratios and other criteria that were used to qualify borrowers for mortgages. Merrill Lynch intends to file a motion to dismiss or an answer denying the principal allegations in the complaint.

Iron Workers Local No. 25 Pension Fund v. Credit-Based Asset Servicing and Securitization LLC, et al.: On December 12, 2008, a class action complaint was filed against Merrill Lynch and others in the U.S. District Court for the Southern District of New York on behalf of persons who purchased approximately $476 million of asset-backed certificates pursuant or traceable to a registration statement that Credit-Based Asset Servicing and Securitization LLC ("C-BASS") filed with the SEC on April 26,

2007. The complaint alleges that Merrill Lynch and an affiliate acted either as underwriter or depositor for C-BASS and are liable for alleged misrepresentations or omissions in the C-BASS registration statement regarding the underwriting standards purportedly used in connection with the underwriting of the mortgage loans underlying the asset-backed certificates, the loan-to-value ratios used to qualify borrowers, the appraisals of properties underlying the mortgage loans, and the debt-to-income ratios for applicants associated with the underlying mortgage loans. Merrill Lynch intends to file a motion to dismiss or an answer denying the principal allegations in the complaint.

Public Employees' Retirement System of Mississippi v. Merrill Lynch & Co. Inc.: On February 17, 2009, the Public Employees' Retirement System of Mississippi filed a putative class action against Merrill Lynch and others in the U.S. District Court for the Southern District of New York on behalf of persons who purchased approximately $55 billion of Merrill Lynch Mortgage Trust Certificates pursuant or traceable to registration statements that Merrill Lynch Mortgage Investors, Inc. filed with the SEC on December 21, 2005 and February 2, 2007. The complaint alleges that the registration statements and accompanying prospectuses and prospectus supplements misrepresented or omitted material facts regarding the underwriting standards used to originate the mortgages in the mortgage pools underlying the Trusts, the process by which Merrill Lynch Mortgage Lending and First Franklin Financial Corp. acquired the mortgage pools, and the appraisals of the homes secured by the mortgages. Plaintiffs seek to recover alleged losses in the market value of the Certificates allegedly caused by the performance of the underlying mortgages or to rescind their purchases of the Certificates. Merrill Lynch intends to file a motion to dismiss or an answer denying the principal allegations in the complaint.

In addition to the above class actions, Merrill Lynch is a respondent or defendant in arbitrations and lawsuits brought by customers relating to the purchase of subprime-related securities that, in the aggregate, allege hundreds of millions of dollars of damages. The complaints in these cases generally allege causes of action for negligence, breach of duty, and fraud. Merrill Lynch is defending itself in these actions.

Lehman Brothers Litigation

In re Lehman Brothers Securities and ERISA Litigation: The Company, along with other underwriters and individuals, has been named as a defendant in several putative class action complaints filed in the U.S. District Court for the Southern District of New York and state courts in New York and Arkansas. Plaintiffs allege that the underwriter defendants violated Sections 11 and 12 of the Securities Act of 1933 by making false or misleading disclosures in connection with various debt and convertible stock offerings of Lehman Brothers Holdings, Inc. and seek unspecified damages. On January 9, 2009, the court entered an order consolidating most of the cases under the caption *In re Lehman Brothers Securities and ERISA Litigation*, and ordered the plaintiffs to file consolidated amended complaints within 45 days of the order and for the defendants to file answers or motions to dismiss 45 days thereafter.

Auction Rate Litigation

Burton v. Merrill Lynch & Co., Inc., et al.: On March 25, 2008, a purported class action was filed in the U.S. District Court for the Southern District of New York against the Company on behalf of persons who purchased and continue to hold auction rate securities offered for sale by the Company between March 25, 2003 and February 13, 2008. The complaint alleges that the Company failed to disclose material facts about auction rate securities. A similar action, captioned *Stanton v. Merrill Lynch & Co., Inc., et al.*, was filed the next day in the same court. On October 31, 2008, the two cases were consolidated, and on December 10, 2008, a consolidated class action amended complaint was filed. On January 9, 2009, the court entered an order requiring the defendants to respond to the consolidated class action amended complaint on or before February 27, 2009. Merrill Lynch intends to move to dismiss or file an answer denying the principal allegations in the complaint.

Mayor and City Council of Baltimore Maryland v. Citigroup, Inc., et al. and Russell Mayfield, et al. v. Citigroup, Inc., et al.: On September 4, 2008, plaintiffs filed two purported class actions under the antitrust laws against over a dozen defendants in the U.S. District Court for the Southern District of New York. One seeks to represent a class of issuers of auction rate securities underwritten by the defendants between May 12, 2003 and February 13, 2008. The other seeks to represent a class of persons who acquired auction rate securities directly from defendants and who held those securities as of February 13, 2008. Plaintiffs allege that the defendants colluded in connection with their auction rate securities practices. On January 15, 2009, defendants, including Merrill Lynch, moved to dismiss the complaints. Briefing on the motion is scheduled to be completed by April 16, 2009.

Merrill Lynch has entered into agreements in principle to settle regulatory actions related to its sale of ARS. As part of these settlements, Merrill Lynch agreed to offer to purchase ARS held by certain individuals, charities, and non-profit corporations and to pay a fine of $125 million.

Diane Blas v. O'Neal, et al. and Louisiana Municipal Police Employees Retirement System v. Thain, et al.: On August 21, 2008, and August 28, 2008, plaintiffs filed shareholder derivative actions in the U.S. District Court for the Southern District of New York alleging that directors, officers, and other employees of Merrill Lynch breached their fiduciary duties in connection with the auction rate securities issues. On February 6, 2009, the parties entered into a stipulation dismissing the complaints.

Municipal Derivatives Litigation

In re Municipal Derivatives Antitrust Litigation: Beginning in March 2008, antitrust actions were filed against dozens of financial institutions and other defendants, including Merrill Lynch, in federal courts in the District of Columbia, New York and elsewhere. Plaintiffs purport to represent classes of government and private entities that purchased municipal derivatives from defendants. The complaints allege that defendants conspired to allocate customers and fix or stabilize the prices of certain municipal derivatives from 1992 through the present. The plaintiffs' complaints seek unspecified damages, including treble damages. On June 18, 2008, these lawsuits were consolidated for pre-trial proceedings in *In re Municipal Derivatives Antitrust Litigation*, MDL No. 1950 (Master Docket No. 08-2516), pending in the U.S. District Court for the Southern District of New York, and on August 22, 2008, plaintiffs filed a consolidated class action complaint in this matter. On October 21, 2008, Merrill Lynch and other defendants filed a joint motion to dismiss. Briefing on the motion was completed on January 21, 2009. Merrill Lynch and other financial institutions were also named in several related individual suits filed in California state courts on behalf of a number of cities and counties in California. These complaints allege a substantially similar conspiracy and assert violations of California's Cartwright Act, as well as fraud and deceit claims. All of these state complaints have been removed to federal court and have been transferred or conditionally transferred to the *In re Municipal Derivatives Antitrust Litigation*, MDL No. 1950 (Master Docket No. 08-2516). Motions to remand these cases to state court have been filed in all these actions. The motions have been denied in three actions and are pending in the one other.

Bank Sweep Programs Litigation

DeBlasio v. Merrill Lynch, et al.: On January 12, 2007, a purported class action was brought against Merrill Lynch and other securities firms in the U.S. District Court for the Southern District of New York alleging that their bank sweep programs violated state law because their terms were not adequately disclosed to customers. On May 1, 2007, plaintiffs filed an amended complaint, which added additional defendants. On November 12, 2007, defendants filed motions to dismiss the amended complaint. Briefing on the motions was completed on March 6, 2008. The parties are awaiting the court's ruling on the motions to dismiss.

Mediafiction Litigation

Approximately a decade ago, MLIB (formerly Merrill Lynch Capital Markets Bank Limited) acted as manager for a $284 million issuance of notes for an Italian library of movies, backed by the future flow of receivables to such movie rights. Mediafiction S.p.A. (“Mediafiction”) was responsible for collecting payments in connection with the rights to the movies and forwarding the payments to MLIB for distribution to note holders. Mediafiction failed to make the required payments to MLIB and subsequently filed for protection under the bankruptcy laws of Italy. MLIB has filed claims in the Mediafiction bankruptcy proceeding for amounts that Mediafiction failed to pay on the notes and Mediafiction has filed a counterclaim alleging that the agreement between MLIB and Mediafiction is null and void and seeking return of the payments previously made by Mediafiction to MLIB. In October 2008, the Court of Rome granted Mediafiction S.p.A.’s counter-claim against MLIB in the amount of $137 million. MLIB has appealed the court’s ruling to the Court of Appeals of the Court of Rome.

Compensation and Merger-Related Inquiries

Merrill Lynch has also received and is responding to inquiries from governmental authorities relating to (1) incentive compensation paid to employees for 2008, and (2) the acquisition of Merrill Lynch by Bank of America.

Commitments

At December 26, 2008, Merrill Lynch's commitments had the following expirations:

(dollars in millions)

		Commitment expiration			
	Total	**Less than 1 year**	**1 - 3 years**	**3+- 5 years**	**Over 5 years**
Lending commitments(1)	$48,411	$13,115	$ 13,314	$ 15,050	$ 6,932
Purchasing and other commitments	8,117	3,685	1,064	1,579	1,789
Operating leases	3,907	683	1,260	965	999
Commitments to enter into forward dated resale and securities borrowing agreements	24,536	24,536	-	-	-
Commitments to enter into forward dated repurchase and securities lending agreements	16,557	16,557	-	-	-

(1) See Note 7.

Lending Commitments

Merrill Lynch enters into commitments to extend credit, predominantly at variable interest rates, in connection with corporate finance, corporate and institutional transactions and asset-based lending transactions. Clients may also be extended loans or lines of credit collateralized by first and second mortgages on real estate, certain liquid assets of small businesses, or securities. These commitments usually have a fixed expiration date and are contingent on certain contractual conditions that may require payment of a fee by the counterparty. Once commitments are drawn upon, Merrill Lynch may require the counterparty to post collateral depending upon creditworthiness and general market conditions. See Note 7 for additional information.

The contractual amounts of these commitments represent the amounts at risk should the contract be fully drawn upon, the client defaults, and the value of the existing collateral becomes worthless. The total amount of outstanding commitments may not represent future cash requirements, as commitments may expire without being drawn.

For lending commitments where the loan will be classified as held for sale upon funding, liabilities associated with unfunded commitments are calculated at the lower of cost or fair value, capturing declines in the fair value of the respective credit risk. For loan commitments where the loan will be classified as held for investment upon funding, liabilities are calculated considering both market and historical loss rates. Loan commitments held by entities that apply broker-dealer industry level accounting are accounted for at fair value.

Purchasing and Other Commitments

In the normal course of business, Merrill Lynch enters into institutional and margin-lending transactions, some of which are on a committed basis, but most of which are not. Margin lending on a committed basis only includes amounts where Merrill Lynch has a binding commitment. There were no binding margin lending commitments outstanding at December 26, 2008 and $693 million outstanding at December 28, 2007.

Merrill Lynch had commitments to purchase partnership interests, primarily related to private equity and principal investing activities, of $1.3 billion and $3.1 billion at December 26, 2008 and December 28, 2007, respectively. Merrill Lynch also has entered into agreements with providers of market data, communications, systems consulting, and other office-related services, including Bloomberg Inc. At December 26, 2008 and December 28, 2007, minimum fee commitments over the

remaining life of these agreements totaled $2.2 billion and $453 million, respectively. This increase in commitments primarily relates to agreements entered into with Bloomberg Inc. Merrill Lynch entered into commitments to purchase loans of $3.9 billion (which upon settlement of the commitment will be included in trading assets, loans held for investment or loans held for sale) at December 26, 2008. Such commitments totaled $3.0 billion at December 28, 2007. Other purchasing commitments amounted to $0.7 billion and $0.9 billion at December 26, 2008 and December 28, 2007, respectively.

In the normal course of business, Merrill Lynch enters into commitments for underwriting transactions. Settlement of these transactions as of December 26, 2008 would not have a material effect on the Consolidated Balance Sheets of Merrill Lynch.

In connection with trading activities, Merrill Lynch enters into commitments to enter into resale and securities borrowing and also repurchase and securities lending agreements.

Operating Leases

Merrill Lynch has entered into various non-cancelable long-term lease agreements for premises that expire through 2024. Merrill Lynch has also entered into various non-cancelable short-term lease agreements, which are primarily commitments of less than one year under equipment leases.

Merrill Lynch leases its Hopewell, New Jersey campus and an aircraft from a limited partnership. The leases with the limited partnership are accounted for as operating leases and mature in 2009. Each lease has a renewal term to 2014. In addition, Merrill Lynch has entered into guarantees with the limited partnership, whereby if Merrill Lynch does not renew the lease or purchase the assets under its lease at the end of either the initial or the renewal lease term, the underlying assets will be sold to a third party, and Merrill Lynch has guaranteed that the proceeds of such sale will amount to at least 84% of the acquisition cost of the assets. The maximum exposure to Merrill Lynch as a result of this residual value guarantee is approximately $322 million as of both December 26, 2008 and December 28, 2007. As of December 26, 2008 and December 28, 2007, the carrying value of the liability on the Consolidated Balance Sheets is $9 million and $13 million, respectively. Merrill Lynch's residual value guarantee does not comprise more than half of the limited partnership's assets.

On June 19, 2007, Merrill Lynch sold its ownership interest in Chapterhouse Holdings Limited, whose primary asset is Merrill Lynch's London Headquarters, for approximately $950 million. Merrill Lynch leased the premises back for an initial term of 15 years under an agreement which is classified as an operating lease. The leaseback also includes renewal rights extending significantly beyond the initial term. The sale resulted in a pre-tax gain of approximately $370 million which was deferred and is being recognized over the lease term as a reduction of occupancy expense.

At December 26, 2008, future noncancelable minimum rental commitments under leases with remaining terms exceeding one year, including lease payments to the limited partnerships discussed above are as follows:

(dollars in millions)

	WFC(1)	Other	Total
2009	$ 179	$ 504	$ 683
2010	179	486	665
2011	179	416	595
2012	179	346	525
2013	134	306	440
2014 and thereafter	-	999	999
Total	$ 850	$3,057	$3,907

(1) World Financial Center Headquarters, New York.

The minimum rental commitments shown above have not been reduced by $533 million of minimum sublease rentals to be received in the future under noncancelable subleases. The amounts in the above

table do not include amounts related to lease renewal or purchase options or escalation clauses providing for increased rental payments based upon maintenance, utility and tax increases.

Net rent expense for each of the last three years is presented below:

(dollars in millions)

	2008	2007	2006
Rent expense	**$ 837**	$ 762	$ 649
Sublease revenue	**(189)**	(190)	(154)
Net rent expense	**$ 648**	$ 572	$ 495

Guarantees

Merrill Lynch issues various guarantees to counterparties in connection with certain leasing, securitization and other transactions. In addition, Merrill Lynch provides guarantees under certain derivative contracts as a seller of credit and other protection. In accordance with FIN 45 and FSP FAS 133-1 and FIN 45-4, Merrill Lynch is required to disclose information for guarantee arrangements such as the maximum potential amount of future payments under the guarantee, the term and carrying value of the guarantee, the nature of any collateral or recourse provisions and the current payment status of the guarantee. Merrill Lynch's guarantee arrangements and their expiration at December 26, 2008 are summarized as follows:

(dollars in millions)

	Maximum Payout / Notional	**Less than 1 year**	**1 - 3 years**	**3+- 5 years**	**Over 5 years**	**Carrying Value[1]**
Derivative contracts:						
Credit derivatives:						
Investment grade[2]	$1,269,176	$ 72,511	$ 186,709	$ 595,860	$ 414,096	$126,054
Non-investment grade[2]	808,589	44,374	224,611	292,637	246,967	156,542
Total credit derivatives	2,077,765	116,885	411,320	888,497	661,063	282,596
Other derivatives	1,387,513	406,837	378,680	251,941	350,055	89,677
Total derivative contracts	$3,465,278	$523,722	$ 790,000	$1,140,438	$1,011,118	$372,273
Other guarantees:						
Standby liquidity facilities	$ 9,144	$ 6,279	$ -	$ 2,849	$ 16	$ 669
Auction rate security guarantees	5,235	-	5,235	-	-	278
Residual value guarantees	738	322	96	320	-	9
Standby letters of credit and other guarantees	40,499	825	2,738	690	36,246	633

(1) Derivative contracts are shown on a gross basis prior to cash collateral or counterparty netting.
(2) Refers to the creditworthiness of the underlying reference obligations.

Derivative Contracts

Merrill Lynch enters into certain derivative contracts that meet the definition of a guarantee under FIN 45. FIN 45 defines guarantees to include derivative contracts that contingently require a guarantor to make payment to a guaranteed party based on changes in an underlying (such as changes in the value of interest rates, security prices, currency rates, commodity prices, indices, etc.), that relate to an asset, liability or equity security of a guaranteed party. Derivatives that meet the FIN 45 definition of guarantees include certain written options (e.g., written interest rate and written currency options). Merrill Lynch additionally enters into credit derivative arrangements (e.g., credit default swaps) whereby Merrill Lynch is contingently required to make payment to a guaranteed party based on a change in the underlying credit risk of a specified entity or an index based upon the credit risk of a group of entities. Merrill Lynch does not track, for accounting purposes, whether its clients enter into these derivative contracts for speculative or hedging purposes. Accordingly, Merrill Lynch has disclosed information about all credit derivatives and certain types of written options that can

potentially be used by clients to protect against changes in an underlying, regardless of how the contracts are actually used by the client. Merrill Lynch records all derivative transactions at fair value on its Consolidated Balance Sheets.

Credit Derivatives

Merrill Lynch enters into credit derivatives for proprietary trading purposes, to manage credit risk exposures and to facilitate client transactions. Credit derivatives derive value based on an underlying third party referenced obligation or a portfolio of referenced obligations and generally require Merrill Lynch as the seller of credit protection to make payments to a buyer upon the occurrence of a predefined credit event. Such credit events generally include bankruptcy of the referenced credit entity and failure to pay under their credit obligations, as well as acceleration of indebtedness and payment repudiation or moratorium. For credit derivatives based on a portfolio of referenced credits or credit indices, Merrill Lynch may not be required to make payment until a specified amount of loss has occurred and/or may only be required to make payment up to a specified amount.

For most credit derivatives, the notional value represents the maximum amount payable by Merrill Lynch. However, Merrill Lynch does not exclusively monitor its exposure to credit derivatives based on notional value. Instead, a risk framework is used to define risk tolerances and establish limits to help to ensure that certain credit risk-related losses occur within acceptable, predefined limits. Merrill Lynch discloses internal categorizations (i.e., investment grade, non-investment grade) consistent with how risk is managed to evaluate the payment status of its freestanding credit derivative instruments. Merrill Lynch economically hedges its exposure to credit derivatives by entering into a variety of offsetting derivative contracts and security positions. For example, in certain instances, Merrill Lynch purchases credit protection with an identical underlying(s) to offset its exposure.

Collateral is held by Merrill Lynch in relation to these instruments. Collateral requirements are determined at the counterparty level and cover numerous transactions and products as opposed to individual contracts.

Other Derivative Contracts

Other derivative contracts primarily represent written interest rate options and written currency options. For such contracts the maximum payout could theoretically be unlimited, because, for example, the rise in interest rates or changes in foreign exchange rates could theoretically be unlimited. Merrill Lynch does not monitor its exposure to derivatives based on the theoretical maximum payout because that measure does not take into consideration the probability of the occurrence. As such, rather than including the maximum payout, the notional value of these contracts has been included to provide information about the magnitude of involvement with these types of contracts. However, it should be noted that the notional value is not a reliable indicator of Merrill Lynch's exposure to these contracts. Instead, as previously noted, a risk framework is used to define risk tolerances and establish limits to help ensure that certain risk-related losses occur within acceptable, predefined limits.

As the fair value and risk of payment under these derivative contracts are based upon market factors, such as changes in interest rates or foreign exchange rates, the carrying values in the table above reflect the best estimate of Merrill Lynch's performance risk under these transactions at December 26, 2008. Merrill Lynch economically hedges its exposure to these contracts by entering into a variety of offsetting derivative contracts and security positions. See the Derivatives section of Note 1 for further discussion of risk management of derivatives.

Merrill Lynch also funds selected assets, including CDOs and CLOs, via derivative contracts with third party structures that are not consolidated on its balance sheet. Of the total notional amount of these total return swaps, approximately $6 billion is term financed through facilities provided by commercial banks and $21 billion of long term funding is provided by third party special purpose vehicles. In certain circumstances, Merrill Lynch may be required to purchase these assets which would not result

in additional gain or loss to the firm as such exposure is already reflected in the fair value of the derivative contracts recorded by Merrill Lynch.

Standby Liquidity Facilities

Merrill Lynch provides standby liquidity facilities to certain municipal bond securitization SPEs. In these arrangements, Merrill Lynch is required to fund these standby liquidity facilities if the fair value of the assets held by the SPE declines below par value and certain other contingent events take place. In those instances where the residual interest in the securitized trust is owned by a third party, any payments under the facilities are offset by economic hedges entered into by Merrill Lynch. In those instances where the residual interest in the securitized trust is owned by Merrill Lynch, any requirement to pay under the facilities is considered remote because Merrill Lynch, in most instances, will purchase the senior interests issued by the trust at fair value as part of its dealer market-making activities. However, Merrill Lynch will have exposure to these purchased senior interests. In certain of these facilities, Merrill Lynch is required to provide liquidity support within seven days, while the remainder have third-party liquidity support for between 30 and 364 days before Merrill Lynch is required to provide liquidity. A significant portion of the facilities where Merrill Lynch is required to provide liquidity support within seven days are “net liquidity” facilities where upon draw Merrill Lynch may direct the trustee for the SPE to collapse the SPE trusts and liquidate the municipal bonds, and Merrill Lynch would only be required to fund any difference between par and the sale price of the bonds. “Gross liquidity” facilities require Merrill Lynch to wait up to 30 days before directing the trustee to liquidate the municipal bonds. Beginning in 2007, Merrill Lynch began reducing facilities that require liquidity in seven days, and the total amount of such facilities was $5.4 billion as of December 26, 2008, down from $32.5 billion as of December 28, 2007. Details of these liquidity facilities as of December 26, 2008, are illustrated in the table below:

(dollars in millions)

	Merrill Lynch Liquidity Facilities Can Be Drawn:				Municipal Bonds to Which Merrill Lynch Has Recourse if Facilities Are Drawn
	In 7 Days with ‘‘Net Liquidity”	In 7 Days with “Gross Liquidity”	After 7 and Up to 364 Days(1)	Total	
Merrill Lynch provides standby liquidity facilities	$ 3,822	$ 1,609	$ 3,213	$8,644	$ 8,302

(1) Initial liquidity support is provided by third parties within seven days, to be reimbursed by Merrill Lynch within 364 days.

In addition, Merrill Lynch, through a U.S. bank subsidiary, has provided liquidity and credit facilities to three Conduits. The assets in these Conduits included loans and asset-backed securities. In the event of a disruption in the commercial paper market, the Conduits were able to draw upon their liquidity facilities and sell certain assets held by the respective Conduits to Merrill Lynch, thereby protecting commercial paper holders against certain changes in the fair value of the assets held by the Conduits. The credit facilities protected commercial paper investors against credit losses for up to a certain percentage of the portfolio of assets held by the respective Conduits.

At December 26, 2008, all three Conduits were inactive. Merrill Lynch does not intend to utilize these Conduits in the future.

Refer to Note 6 for further information.

Auction Rate Security Guarantees

Under the terms of its announced purchase program, as augmented by the global agreement reached with the New York Attorney General, the Securities and Exchange Commission, the Massachusetts Securities Division and other state securities regulators, Merrill Lynch agreed to purchase ARS at par from its retail clients, including individual, not-for-profit, and small business clients. Certain retail

clients with less than $4 million in assets with Merrill Lynch as of February 13, 2008 were eligible to sell eligible ARS to Merrill Lynch starting on October 1, 2008. Other eligible retail clients meeting specified asset requirements were eligible to sell ARS to Merrill Lynch beginning on January 2, 2009. The final date of the ARS purchase program is January 15, 2010. Under the ARS purchase program, the eligible ARS held in accounts of eligible retail clients at Merrill Lynch as of December 26, 2008 was $5.2 billion. As of December 26, 2008, Merrill Lynch had purchased $3.2 billion of ARS from eligible clients. In addition, under the ARS purchase program, Merrill Lynch has agreed to purchase ARS from retail clients who purchased their securities from Merrill Lynch and transferred their accounts to other brokers prior to February 13, 2008. Payment risk related to ARS guarantees is based largely upon the client's overall financial objectives. At December 26, 2008, a liability of $278 million has been recorded for the difference between the fair value and par value of all outstanding ARS that are subject to this guarantee.

Residual Value Guarantees

At December 26, 2008, residual value guarantees of $738 million include amounts associated with the Hopewell, NJ campus, aircraft leases and certain power plant facilities. Payments under these guarantees would only be required if the fair value of such assets declined below their guaranteed value. At December 26, 2008, the estimated fair value of such assets was in excess of their guaranteed value.

Standby Letters of Credit and Other FIN 45 Guarantees

Merrill Lynch provides guarantees to certain counterparties in the form of standby letters of credit in the amount of $2.6 billion. Payment risk is evaluated based upon historical payment activity. As of December 26, 2008, $149 million was drawn under such arrangements. At December 26, 2008 Merrill Lynch held marketable securities of $419 million as collateral to secure these guarantees and a liability of $68 million was recorded on the Consolidated Balance Sheets.

Further, in conjunction with certain mutual funds, Merrill Lynch guarantees the return of principal investments or distributions as contractually specified. At December 26, 2008, Merrill Lynch's maximum potential exposure to loss with respect to these guarantees is $298 million assuming that the funds are invested exclusively in other general investments (i.e., the funds hold no risk-free assets), and that those other general investments suffer a total loss. As such, this measure significantly overstates Merrill Lynch's exposure or expected loss at December 26, 2008. Payment under these guarantees would only be required if, based on the current market value of the investments, there were a substantial one day decline in value for any of these funds below their guaranteed value. Based on the current market value of the guaranteed funds, the risk of payment under these guarantees is deemed remote at December 26, 2008. These transactions meet the SFAS No. 133 definition of a derivative and, as such, are carried as a liability with a fair value of approximately $1 million at December 26, 2008.

In connection with residential mortgage loan and other securitization transactions, Merrill Lynch typically makes representations and warranties about the underlying assets. If there is a material breach of such representations and warranties, Merrill Lynch may have an obligation to repurchase the assets or indemnify the purchaser against any loss. For residential mortgage loan and other securitizations, the maximum potential amount that could be required to be repurchased is the current outstanding asset balance. Specifically related to First Franklin activities, there is currently approximately $36 billion (including loans serviced by others) of outstanding loans that First Franklin sold in various asset sales and securitization transactions where management believes we may have an obligation to repurchase the asset or indemnify the purchaser against the loss if claims are made and it is ultimately determined that there has been a material breach related to such loans. The risk of repurchase under the First Franklin representations and warranties is evaluated by management based on an analysis of the unpaid principal balance on the loans sold along with historical payment experience and general market conditions. Merrill Lynch has recognized a repurchase reserve liability of approximately $560 million

at December 26, 2008 arising from these First Franklin residential mortgage sales and securitization transactions.

Merrill Lynch provides guarantees to securities clearinghouses and exchanges. Under the standard membership agreement, members are required to guarantee the performance of other members. Under the agreements, if another member becomes unable to satisfy its obligations to the clearinghouse, other members would be required to meet shortfalls. Merrill Lynch's liability under these arrangements is not quantifiable and could exceed the cash and securities it has posted as collateral. However, the potential for Merrill Lynch to be required to make payments under these arrangements is remote. Accordingly, no liability is carried in the Consolidated Balance Sheets for these arrangements.

In connection with its prime brokerage business, Merrill Lynch provides to counterparties guarantees of the performance of its prime brokerage clients. Under these arrangements, Merrill Lynch stands ready to meet the obligations of its customers with respect to securities transactions. If the customer fails to fulfill its obligation, Merrill Lynch must fulfill the customer's obligation with the counterparty. Merrill Lynch is secured by the assets in the customer's account as well as any proceeds received from the securities transaction entered into by Merrill Lynch on behalf of the customer. No contingent liability is carried in the Consolidated Balance Sheets for these transactions as the potential for Merrill Lynch to be required to make payments under these arrangements is remote.

In connection with its securities clearing business, Merrill Lynch performs securities execution, clearance and settlement services on behalf of other broker-dealer clients for whom it commits to settle trades submitted for or by such clients, with the applicable clearinghouse; trades are submitted either individually, in groups or series or, if specific arrangements are made with a particular clearinghouse and client, all transactions with such clearing entity by such client. Merrill Lynch's liability under these arrangements is not quantifiable and could exceed any cash deposit made by a client. However, the potential for Merrill Lynch to be required to make unreimbursed payments under these arrangements is remote due to the contractual capital requirements associated with clients' activity and the regular review of clients' capital. Accordingly, no liability is carried in the Consolidated Balance Sheets for these transactions.

In connection with certain European mergers and acquisition transactions, Merrill Lynch, in its capacity as financial advisor, in some cases may be required by law to provide a guarantee that the acquiring entity has or can obtain or issue sufficient funds or securities to complete the transaction. These arrangements are short-term in nature, extending from the commencement of the offer through the termination or closing. Where guarantees are required or implied by law, Merrill Lynch engages in a credit review of the acquirer, obtains indemnification and requests other contractual protections where appropriate. Merrill Lynch's maximum liability equals the required funding for each transaction and varies throughout the year depending upon the size and number of open transactions. Based on the review procedures performed, management believes the likelihood of being required to pay under these arrangements is remote. Accordingly, no liability is recorded in the Consolidated Balance Sheets for these transactions.

In the course of its business, Merrill Lynch routinely indemnifies investors for certain taxes, including U.S. and foreign withholding taxes on interest and other payments made on securities, swaps and other derivatives. These additional payments would be required upon a change in law or interpretation thereof. Merrill Lynch's maximum exposure under these indemnifications is not quantifiable. Merrill Lynch believes that the potential for such an adverse change is remote. As such, no liability is recorded in the Consolidated Balance Sheets.

Other Guarantees

Merrill Lynch provides indemnifications related to the U.S. tax treatment of certain foreign tax planning transactions. The maximum exposure to loss associated with these transactions at December 26, 2008 is $167 million; however, Merrill Lynch believes that the likelihood of loss with

respect to these arrangements is remote, and therefore has not recorded any liabilities in respect of these guarantees.

In connection with providing supplementary protection to its customers, MLPF&S holds insurance in excess of that furnished by the Securities Investor Protection Corporation (“SIPC”), and MLI holds insurance in excess of the protection provided by the United Kingdom Compensation Scheme (Financial Services Compensation Scheme, “FSCS”). The policy provides total combined coverage up to $1 billion in the aggregate (including up to $1.9 million per customer for cash) for losses incurred by customers in excess of the SIPC and/or FSCS limits. ML & Co. provides full indemnity to the policy provider syndicate against any losses as a result of this agreement. No contingent liability is carried in the Consolidated Balance Sheets for this indemnification as the potential for Merrill Lynch to be required to make payments under this agreement is remote.

Note 12. Employee Benefit Plans

See Note 1 for a discussion of the Bank of America acquisition, which was completed on January 1, 2009. The following disclosures reflect Merrill Lynch’s historical employee benefit plan information for all periods presented. The disclosures do not reflect the effects of the January 1, 2009 acquisition by Bank of America or the effects of any employee benefit plan modifications that may occur as a result of the acquisition.

Merrill Lynch provides pension and other postretirement benefits to its employees worldwide through defined contribution pension, defined benefit pension and other postretirement plans. These plans vary based on the country and local practices. Merrill Lynch reserves the right to amend, modify or terminate any of its employee plans, programs and practices for any reason at any time without prior notice to employees. Merrill Lynch’s (or its successor’s) decision to amend, replace or terminate any of the plans may be due to changes in federal law or state laws, including the requirements of the Internal Revenue Code or ERISA, or for any other reason.

Merrill Lynch accounts for its defined benefit pension plans in accordance with SFAS No. 158, *Employers’ Accounting for Defined Benefit Pension and Other Postretirement Plans — an amendment of FASB Statements No. 87, 88, 106, and 132(R)*, SFAS No. 87, *Employers’ Accounting for Pensions* and SFAS No. 88, *Employers’ Accounting for Settlements and Curtailments of Defined Benefit Pension Plans and for Termination Benefits.* Its postretirement benefit plans are accounted for in accordance with SFAS No. 106, *Employers’ Accounting for Postretirement Benefits Other Than Pensions.* Merrill Lynch discloses information regarding defined benefit pension and postretirement plans in accordance with SFAS No. 132(R), *Employers’ Disclosures about Pensions and Other Postretirement Benefits.* Postemployment benefits are accounted for in accordance with SFAS No. 112, *Employers’ Accounting for Postemployment Benefits.*

SFAS No. 158 requires an employer to recognize the overfunded and underfunded status of its defined benefit pension and other postretirement plans, measured as the difference between the fair value of plan assets and the benefit obligation, as an asset or liability in its statement of financial condition. The benefit obligation is defined as the projected benefit obligation for pension plans and the accumulated postretirement benefit obligation for postretirement plans. SFAS No. 158 also requires defined benefit plan assets and benefit obligations to be measured as of the date of the Company’s fiscal year end. Merrill Lynch had historically used a September 30 measurement date. Under the provisions of SFAS No. 158, Merrill Lynch has changed its measurement date to coincide with its fiscal year end effective December 26, 2008. Merrill Lynch adopted the measurement date provisions of SFAS No. 158 under the alternative transition method.

Defined Contribution Pension Plans

The U.S. defined contribution pension plans consist of the Retirement Accumulation Plan ("RAP"), the Employee Stock Ownership Plan ("ESOP"), and the 401(k) Savings & Investment Plan ("401(k)"). The RAP and ESOP cover substantially all U.S. employees who have met the service requirement. There is no service requirement for employee deferrals in the 401(k). However, there is a service requirement for an employee to receive corporate contributions in the 401(k).

Merrill Lynch established the RAP and the ESOP, collectively known as the "Retirement Program," for the benefit of employees with a minimum of one year of service. A notional retirement account is maintained for each participant. The RAP contributions are employer-funded based on compensation and years of service. Merrill Lynch made a contribution of approximately $183 million to the Retirement Program in order to satisfy the 2008 contribution requirement. These contributions for 2007 and 2006 were $186 million and $165 million, respectively. Under the RAP, employees are given the opportunity to invest their retirement savings in a number of different investment alternatives including ML & Co. common stock. Under the ESOP, all retirement savings are invested in ML & Co. common stock, until employees have five years of service, after which they have the ability to diversify. Merrill Lynch expects to make contributions of approximately $190 million in 2009.

ESOP shares are considered to be either allocated (contributed to participants' accounts), committed (scheduled to be contributed at a specified future date but not yet released), or unallocated (not committed or allocated). Since December 28, 2007 all shares were allocated to participant accounts.

Employees can participate in the 401(k) by contributing on a tax-deferred basis, or on an after-tax basis via Roth contributions since January 1, 2007, a certain percentage of their eligible compensation, up to 25%, but not more than the maximum annual amount allowed by law. Employees may also contribute up to 25% of eligible compensation in after-tax dollars up to an annual maximum of $10,000. Employees over the age of 50 may also make a catch-up contribution up to the maximum annual amount allowed by law. Employees are given the opportunity to invest their 401(k) contributions in a number of different investment alternatives including ML & Co. common stock. Merrill Lynch's contributions are made in cash and effective January 1, 2007, are equal to 100% of the first 4% of each participant's eligible compensation contributed to the 401(k), up to a maximum of $3,000 annually for employees with eligible compensation of less than $300,000 and $2,000 for all others. Merrill Lynch makes contributions to the 401(k) on a pay period basis and expects to make contributions of approximately $93 million in 2009.

Merrill Lynch also sponsors various non-U.S. defined contribution pension plans. The costs of benefits under the RAP, 401(k), and non-U.S. plans are expensed during the related service period.

Defined Benefit Pension Plans

In 1988 Merrill Lynch purchased a group annuity contract that guarantees the payment of benefits vested under a U.S. defined benefit pension plan that was terminated (the "U.S. Terminated Pension Plan") in accordance with the applicable provisions of ERISA. At year-end 2008 and 2007, a substantial portion of the assets supporting the annuity contract were invested in U.S. Government and agencies securities. Merrill Lynch, under a supplemental agreement, may be responsible for, or benefit from, actual experience and investment performance of the annuity assets. Merrill Lynch expects to contribute approximately $120 million toward this agreement in 2009. Merrill Lynch also maintains supplemental defined benefit pension plans (i.e., plans not subject to Title IV of ERISA) for certain U.S. participants. Merrill Lynch expects to pay $1 million of benefit payments to participants in the U.S. non-qualified pension plans in 2009.

Employees of certain non-U.S. subsidiaries participate in various local defined benefit pension plans. These plans provide benefits that are generally based on years of credited service and a percentage of the employee's eligible compensation during the final years of employment. Merrill Lynch's funding

policy has been to contribute annually at least the amount necessary to satisfy local funding standards. Merrill Lynch currently expects to contribute $55 million to its non-U.S. pension plans in 2009.

Postretirement Benefits Other Than Pensions

Merrill Lynch provides health insurance benefits to retired employees under a plan that covers substantially all U.S. employees who have met age and service requirements. The health care coverage is contributory, with certain retiree contributions adjusted periodically. Non-contributory life insurance was offered to employees that had retired prior to February 1, 2000. The accounting for costs of health care benefits anticipates future changes in cost-sharing provisions. Merrill Lynch pays claims as incurred. Full-time employees of Merrill Lynch become eligible for these benefits upon attainment of certain age and service requirements. Employees who turn age 65 after January 1, 2011 and are eligible for and elect supplemental retiree medical coverage will pay the full cost of coverage after age 65. Beginning January 1, 2006, newly hired employees and rehired employees will be offered retiree medical coverage, if they otherwise meet the eligibility requirement, but on a retiree-pay-all basis for coverage before and after age 65. Merrill Lynch also sponsors similar plans that provide health care benefits to retired employees of certain non-U.S. subsidiaries. As of December 26, 2008, none of these plans had been funded.

The following table provides a summary of the changes in the plans' benefit obligations, fair value of plan assets and funded status, for the fiscal years ended December 26, 2008 and December 28, 2007, and amounts recognized in the Consolidated Balance Sheets at year-end 2008 and 2007 for Merrill Lynch's U.S. and non-U.S. defined benefit pension and postretirement benefit plans:

(dollars in millions)

	U.S. Defined Benefit Pension Plans		Non-U.S. Defined Benefit Pension Plans(1)		Total Defined Benefit Pension Plans		Postretirement Plans(2)	
	2008	**2007**	**2008**	**2007**	**2008**	**2007**	**2008**	**2007**
Benefit obligations								
Balance, beginning of period	**$ 1,681**	$ 1,804	**$ 1,498**	$ 1,662	**$3,179**	$3,466	**$ 263**	$ 307
Adjustment due to Change in Measurement Date	**24**	-	**27**	-	**51**	-	**5**	-
Service cost	**-**	-	**30**	28	**30**	28	**6**	7
Interest cost	**97**	96	**79**	81	**176**	177	**15**	16
Net actuarial (gains)	**(28)**	(90)	**(103)**	(255)	**(131)**	(345)	**(57)**	(51)
Employee contributions	**-**	-	**3**	2	**3**	2	**-**	-
Amendments	**-**	-	**-**	(6)	**-**	(6)	**-**	-
Benefits paid	**(139)**	(108)	**(45)**	(34)	**(184)**	(142)	**(17)**	(17)
Curtailment and settlements(3)	**-**	(21)	**(5)**	(28)	**(5)**	(49)	**(1)**	-
Foreign exchange and other	**-**	-	**(303)**	48	**(303)**	48	**(6)**	1
Balance, end of period	**1,635**	1,681	**1,181**	1,498	**2,816**	3,179	**208**	263
Fair value of plan assets								
Balance, beginning of period	**2,261**	2,273	**1,263**	1,103	**3,524**	3,376	**-**	-
Actual return on plan assets	**438**	94	**21**	58	**459**	152	**-**	-
Settlements(3)	**-**	(21)	**(4)**	(28)	**(4)**	(49)	**-**	-
Contributions	**99**	23	**80**	130	**179**	153	**17**	17
Benefits paid	**(139)**	(108)	**(45)**	(34)	**(184)**	(142)	**(17)**	(17)
Foreign exchange and other	**-**	-	**(290)**	34	**(290)**	34	**-**	-
Balance, end of period	**2,659**	2,261	**1,025**	1,263	**3,684**	3,524	**-**	-
Funded status end of period	**1,024**	580	**(156)**	(235)	**868**	345	**(208)**	(263)
Fourth-quarter activity, net	**-**	2	**-**	5	**-**	7	**-**	4
Amount recognized in Consolidated Balance Sheet	**$ 1,024**	$ 582	**$ (156)**	$ (230)	**$ 868**	$ 352	**$(208)**	$(259)
Assets	**$ 1,033**	$ 592	**$ 11**	$ 19	**$1,044**	$ 611	**$ -**	$ -
Liabilities	**(9)**	(10)	**(167)**	(249)	**(176)**	(259)	**(208)**	(259)
Amount recognized in Consolidated Balance Sheet	**$ 1,024**	$ 582	**$ (156)**	$ (230)	**$ 868**	$ 352	**$(208)**	$(259)

(1) Primarily represents the U.K. pension plan which accounts for 69% of the benefit obligation and 80% of the fair value of plan assets at December 26, 2008.

(2) Approximately 92% of the postretirement benefit obligation at the end of the period relates to the U.S. postretirement plan.

(3) Relates to settlement of two non-U.S. pension plans in 2008 and one of the U.S. non-qualified pension plans and two non-U.S. pension plans in 2007.

The accumulated benefit obligation ("ABO"), for all defined benefit pension plans was $2.7 billion and $3.1 billion at December 26, 2008 and September 30, 2007, respectively.

The projected benefit obligation ("PBO"), ABO, and fair value of plan assets for pension plans with ABO and PBO in excess of plan assets as of December 26, 2008 and September 30, 2007 are presented in the tables below. These plans primarily represent U.S. supplemental plans not subject to ERISA or non-U.S. plans where funding strategies vary due to legal requirements and local practices.

(dollars in millions)

	U.S. Defined Benefit Pension Plans		Non-U.S. Defined Benefit Pension Plans		Total Defined Benefit Pension Plans	
	2008	**2007**	**2008**	**2007**	**2008**	**2007**
Plans with ABO in excess of plan assets						
PBO	**$ 9**	$ 10	**$ 349**	$ 1,332	**$ 358**	$ 1,342
ABO	**9**	10	**301**	1,232	**310**	1,242
FV plan assets	**-**	-	**182**	1,081	**182**	1,081
Plans with PBO in excess of plan assets						
PBO	**$ 9**	$ 10	**$ 349**	$ 1,360	**$ 358**	$ 1,370
ABO	**9**	10	**301**	1,258	**310**	1,268
FV plan assets	**-**	-	**182**	1,108	**182**	1,108

Amounts recognized in accumulated other comprehensive loss, pre-tax, at year-end 2008 consisted of:

(dollars in millions)

	U.S. Defined Benefit Pension Plans	Non-U.S. Defined Benefit Pension Plans	Total Defined Benefit Pension Plans	Postretirement Plans
Net actuarial (gain)/loss	**$ (563)**	**$ 189**	**$ (374)**	**$ (164)**
Prior service credit	-	**(7)**	(7)	**(59)**
Foreign currency translation (gain)/loss and adjustment due to change in measurement date	-	**(57)**	**(57)**	**2**
Total	**$ (563)**	**$ 125**	**$ (438)**	**$ (221)**

The estimated net gain for the defined benefit pension plans that will be amortized from accumulated other comprehensive loss into net periodic benefit cost over the next fiscal year is approximately $17 million. The estimated net gain and prior service credit for the postretirement plans that will be amortized from accumulated other comprehensive loss into net periodic benefit cost over the next fiscal year is approximately $9 million and $6 million, respectively.

The weighted average assumptions used in calculating the benefit obligations at December 26, 2008 and September 30, 2007 are as follows:

	U.S. Defined Benefit Pension Plans		Non-U.S. Defined Benefit Pension Plans		Total Defined Benefit Pension Plans		Postretirement Plans	
	2008	**2007**	**2008**	**2007**	**2008**	**2007**	**2008**	**2007**
Discount rate	**6.3%**	6.0%	**6.2%**	5.8%	**6.2%**	5.9%	**6.3%**	6.0%
Rate of compensation increase	**N/A**	N/A	**4.6**	4.7	**4.6**	4.7	**N/A**	N/A
Healthcare cost trend rates(1)								
Initial	**N/A**	N/A	**N/A**	N/A	**N/A**	N/A	**9.0**	8.8
Long-term	**N/A**	N/A	**N/A**	N/A	**N/A**	N/A	**5.0**	5.0

N/A=Not Applicable

(1) The healthcare cost trend rate is assumed to decrease gradually through 2018 and remain constant thereafter.

Total net periodic benefit cost for the years ended 2008, 2007 and 2006 included the following components:

(dollars in millions)

	U.S. Pension Plans			Non-U.S. Pension Plans			Total Pension Plans			Postretirement Plans		
	2008	**2007**	**2006**	**2008**	**2007**	**2006**	**2008**	**2007**	**2006**	**2008**	**2007**	**2006**
Defined contribution pension plan cost	**$ 274**	$ 278	$ 228	**$ 89**	$ 85	$ 68	**$ 363**	$ 363	$ 296	**N/A**	N/A	N/A
Defined benefit and postretirement plans Service cost[1]	**-**	-	-	**30**	28	27	**30**	28	27	**$ 5**	$ 7	$ 8
Interest cost	**97**	96	95	**79**	81	66	**176**	177	161	**15**	16	17
Expected return on plan assets[2]	**(118)**	(117)	(112)	**(82)**	(81)	(63)	**(200)**	(198)	(175)	**-**	-	-
Amortization of (gains)/losses, prior service costs and other	**(2)**	(4)	-	**12**	31	20	**10**	27	20	**(10)**	(6)	(5)
Cost of SFAS No. 88 Events	**-**	-	-	**-**	-	-	**-**	-	-	**(5)**	-	-
Total defined benefit and postretirement plan costs	**(23)**	(25)	(17)	**39**	59	50	**16**	34	33	**5**	17	20
Total net periodic benefit cost	**$ 251**	$ 253	$ 211	**$128**	$144	$118	**$ 379**	$ 397	$ 329	**$ 5**	$ 17	$ 20

N/A=Not Applicable

(1) The U.S. plan was terminated in 1988 and thus does not incur service costs.

(2) Effective 2006 Merrill Lynch modified the investment policy relating to the U.S. Terminated Pension Plan which increased the expected long-term rate of return on plan assets. The increase in the expected return on plan assets for the Non-U.S. plans from 2006 to 2007 can primarily be attributed to the U.K. Pension Plan as a result of increased contributions, favorable actual investment returns and exchange rate movements.

The net actuarial losses (gains) represent changes in the amount of either the projected benefit obligation or plan assets resulting from actual experience being different than that assumed and from changes in assumptions. Merrill Lynch amortizes net actuarial losses (gains) over the average future service periods of active participants to the extent that the loss or gain exceeds 10% of the greater of the projected benefit obligation or the fair value of plan assets. This amount is recorded within net periodic benefit cost. The average future service periods for the U.K. defined benefit pension plan, the U.S. postretirement plan and the U.S. Terminated Pension Plan as of December 26, 2008 were 12 years, 13 years and 12 years, respectively. Accordingly, the expense to be recorded in fiscal year ending 2009 related to the U.K. defined benefit pension plan net actuarial loss is $3 million, while credits related to the U.S. postretirement plan and the U.S. Terminated Plan net actuarial gains to be recorded in fiscal year ending 2009 are approximately $(9) million and $(25) million, respectively.

The weighted average assumptions used in calculating the net periodic benefit cost for the years ended December 26, 2008 and September 30, 2007 and 2006 are as follows:

	U.S. Defined Benefit Pension Plans			Non-U.S. Defined Benefit Pension Plans			Total Defined Benefit Pension Plans			Postretirement Plans		
	2008	**2007**	**2006**	**2008**	**2007**	**2006**	**2008**	**2007**	**2006**	**2008**	**2007**	**2006**
Discount rate	**6.0%**	5.5%	5.3%	**5.8%**	4.9%	4.9%	**5.9%**	5.2%	5.1%	**6.0%**	5.5%	5.3%
Expected long-term return on pension plan assets	**5.3**	5.3	4.9	**6.9**	6.8	6.6	**5.9**	5.8	5.4	**N/A**	N/A	N/A
Rate of compensation increase	**N/A**	N/A	N/A	**4.7**	4.5	4.3	**4.7**	4.5	4.3	**N/A**	N/A	N/A
Healthcare cost trend rates[1]												
Initial	**N/A**	N/A	N/A	**N/A**	N/A	N/A	**N/A**	N/A	N/A	**8.8**	9.5	10.3
Long-term	**N/A**	N/A	N/A	**N/A**	N/A	N/A	**N/A**	N/A	N/A	**5.0**	5.0	4.9

N/A=Not Applicable

(1) The healthcare cost trend rate is assumed to decrease gradually through 2018 and remain constant thereafter.

Plan Assumptions

The discount rate used in determining the benefit obligation for the U.S. defined benefit pension and postretirement plans was developed by selecting the appropriate U.S. Treasury yield, and the related swap spread, consistent with the duration of the plan's obligation. This yield was further adjusted to reference a Merrill Lynch specific Moody's Corporate Aa rating. The discount rate for the U.K. pension plan was selected by reference to the appropriate U.K. Gilts rate, and the related swap spread, consistent with the duration of the plan's obligation. This yield was further adjusted to reference a Merrill Lynch-specific Moody's Corporate Aa rating.

The expected long-term rate of return on plan assets reflects the average rate of earnings expected on the funds invested or to be invested to provide for the benefits included in the projected benefit obligation. The U.S. terminated pension plan, which represents approximately 72% of Merrill Lynch's total pension plan assets as of December 26, 2008, is solely invested in a group annuity contract, which was 100% invested in fixed income securities. The expected long-term rate of return on plan assets for the U.S. terminated pension plan is based on the U.S. Treasury strip plus 50 basis points, which reflects the current investment policy. The U.K. pension plan represented approximately 22% of Merrill Lynch's total plan assets as of December 26, 2008. The year-end asset allocation for the U.K. pension plan was 28% target return fund, 23% equity securities, 13% cash, 5% real estate and 31% other. The target return fund utilizes a dynamic asset allocation method designed to achieve a minimum level of return based on LIBOR through the use of cash, debt and equity instruments. The investment manager for the target return fund has discretion to allocate the portfolio among the respective asset classes in order to achieve the return. The expected long-term rate of return on the U.K. pension plan assets was determined by Merrill Lynch and reflects estimates by the plan investment advisors of the expected returns on different asset classes held by the plan in light of prevailing economic conditions at the beginning of the fiscal year. At December 26, 2008, Merrill Lynch increased the discount rate used to determine the U.S. pension plan and postretirement benefit plan obligations to 6.3%. The expected rate of return for the U.S. pension plan assets remained 5.3% in 2008. The discount rate at December 26, 2008 for the U.K. pension plan obligation was increased from 6.0% in 2007 to 7.0% for 2008. The expected rate of return for the U.K. pension plan assets of 7.3% was unchanged at December 26, 2008.

Although Merrill Lynch's pension and postretirement benefit plans can be sensitive to changes in the discount rate, it is expected that a 25 basis point rate reduction would not have a material impact on the U.S. plan expenses for 2009. This change would increase the U.K. pension plan expense for 2009 by approximately $1 million. Also, such a change would increase the U.S. and U.K. plan obligations at December 26, 2008 by $42 million and $40 million, respectively. A 25 basis point decline in the expected rate of return for the U.S. pension plan and the U.K. pension plan would result in an expense increase for 2009 of approximately $7 million and $3 million, respectively.

The assumed health care cost trend rate has a significant effect on the amounts reported for the postretirement health care plans. A one percent change in the assumed healthcare cost trend rate would have the following effects:

(dollars in millions)

	1% Increase		1% Decrease	
	2008	**2007**	**2008**	**2007**
Effect on:				
Other postretirement benefits cost	**$ 2**	$ 3	**$ (2)**	$ (2)
Accumulated benefit obligation	**19**	23	**(16)**	(20)

Investment Strategy and Asset Allocation

The U.S. terminated pension plan asset portfolio is structured such that the asset maturities match the duration of the plan's obligations. Consistent with the plan termination in 1988, the annuity contract

and the supplemental agreement, the asset portfolio's investment objective calls for a concentration in fixed income securities, the majority of which have an investment grade rating.

The assets of the U.K. pension plan are invested prudently so that the benefits promised to members are provided, having regard to the nature and the duration of the plan's liabilities. The current planned investment strategy was set following an asset-liability study and advice from the Trustees' investment advisors. The selected asset allocation strategy is designed to achieve a higher return than the lowest risk strategy while maintaining a prudent approach to meeting the plan's liabilities. For the U.K. pension plan, the target asset allocation is 36% target return fund, 35% equity securities, 10% cash, 7% real estate and 12% other. As a risk control measure, a series of interest rate and inflation risk swaps have been executed covering a target of 100% of the plan's assets.

The pension plan weighted-average asset allocations and target asset allocations at December 26, 2008 and September 30, 2007, by asset category are presented in the table below. The Merrill Lynch postretirement benefit plans are not funded and do not hold assets for investment.

	Defined Benefit Pension Plans					
	U.S. Plans			**Non-U.S. Plans**		
	Target Allocation	**2008**	**2007**	**Target Allocation**	**2008**	**2007**
Debt securities	100%	**100%**	100%	9%	**11%**	15%
Equity securities	-	**-**	-	33	**22**	52
Real estate	-	**-**	-	6	**5**	6
Other	-	**-**	-	52	**62**	27
Total	100%	**100%**	100%	100%	**100%**	100%

Estimated Future Benefit Payments

Expected benefit payments associated with Merrill Lynch's defined benefit pension and postretirement plans for the next five years and in aggregate for the five years thereafter are as follows:

(dollars in millions)

	Defined Benefit Pension Plans			**Postretirement Plans(3)**		
	U.S.(1)	**Non-U.S.(2)**	**Total**	**Gross Payments**	**Medicare Subsidy**	**Net Payments**
2009	$ 108	$ 33	$141	$ 19	$ 3	$ 16
2010	111	34	145	21	4	17
2011	114	34	148	22	4	18
2012	117	36	153	23	5	18
2013	119	37	156	23	5	18
2014 through 2018	622	201	823	119	31	88

(1) The U.S. defined benefit pension plan payments are primarily funded under the terminated plan annuity contract.
(2) The U.K., Swiss and Japan pension plan payments represent approximately 49%, 17% and 13%, respectively, of the non-U.S. 2009 expected defined benefit pension payments.
(3) The U.S. postretirement plan payments, including the Medicare subsidy, represent approximately 95% of the total 2009 expected postretirement benefit payments.

Postemployment Benefits

Merrill Lynch provides certain postemployment benefits for employees on extended leave due to injury or illness and for terminated employees. Employees who are disabled due to non-work-related illness or injury are entitled to disability income, medical coverage, and life insurance. Merrill Lynch also provides severance benefits to terminated employees. In addition, Merrill Lynch is mandated by U.S. state and federal regulations to provide certain other postemployment benefits plans.

Merrill Lynch recognized $471 million, $335 million, and $424 million in 2008, 2007, and 2006, respectively, of postemployment benefits expense (exclusive of the restructuring charge recorded in 2008), which included severance costs for terminated employees of $456 million, $323 million, and $417 million in 2008, 2007, and 2006.

Note 13. Employee Incentive Plans

See Note 1 for a discussion of the Bank of America acquisition, which was completed on January 1, 2009. The following disclosures reflect Merrill Lynch's historical employee incentive plan information for all periods presented. The disclosures do not reflect the effects of the January 1, 2009 acquisition by Bank of America or the effects of any employee incentive plan modifications that may occur as a result of the acquisition.

To align the interests of employees with those of stockholders, Merrill Lynch sponsors several employee compensation plans that provide eligible employees with stock or options to purchase stock. The total pre-tax compensation cost recognized in earnings for stock-based compensation plans for 2008 and 2007 was $1.9 billion and $1.8 billion, respectively. Pre-tax compensation cost for 2006 was $3.1 billion (net of $18 million re-classified to discontinued operations), which includes approximately $1.8 billion associated with one-time, non-cash compensation expenses due to modifications of most outstanding stock awards previously granted to employees. Total related tax benefits recognized in earnings for share-based payment compensation plans for 2008, 2007 and 2006 were $0.7 billion, $0.7 billion and $1.2 billion, respectively. Merrill Lynch also sponsors deferred cash compensation plans and award programs for eligible employees.

As of December 26, 2008, there was $2.6 billion of total unrecognized compensation cost related to non-vested share-based payment compensation arrangements. This cost is expected to be recognized over a weighted average period of 2.4 years.

Below is a description of Merrill Lynch's share-based payment compensation plans.

Long-Term Incentive Compensation Plans ("LTIC Plans"), Employee Stock Compensation Plan ("ESCP") and Equity Capital Accumulation Plan ("ECAP")

LTIC Plans, the ESCP and the ECAP provide for grants of equity and equity-related instruments to certain employees. LTIC Plans consist of the Long-Term Incentive Compensation Plan, a shareholder approved plan used for grants to executive officers, and the Long-Term Incentive Compensation Plan for Managers and Producers, a broad-based plan which was approved by the Board of Directors, but has not been shareholder approved. LTIC Plans provide for the issuance of Restricted Shares, Restricted Units, and Non-qualified Stock Options, as well as Incentive Stock Options, Performance Shares, Performance Units, Performance Options, Stock Appreciation Rights, and other securities of Merrill Lynch. The ESCP, a broad-based plan approved by shareholders in 2003, provides for the issuance of Restricted Shares, Restricted Units, Non-qualified Stock Options and Stock Appreciation Rights. The ECAP, a shareholder-approved plan, provides for the issuance of Restricted Shares, as well as Performance Shares. All plans under LTIC Plans, the ESCP and the ECAP may be satisfied using either treasury or newly issued shares. As of December 26, 2008, no instruments other than Restricted Shares, Restricted Units, Non-qualified Stock Options, Performance Options and Stock Appreciation Rights had been granted.

Restricted Shares and Units

Restricted Shares are shares of ML & Co. common stock carrying voting and dividend rights. A Restricted Unit is deemed equivalent in fair market value to one share of common stock. Substantially all awards are settled in shares of common stock. Recipients of Restricted Unit awards receive cash payments equivalent to dividends. Under these plans, such shares and units are restricted from sale, transfer, or assignment until the end of the restricted period. Such shares and units are subject to

forfeiture during the vesting period for grants under LTIC Plans, or the restricted period for grants under ECAP. Restricted share and unit grants made in 2003 through 2005 generally cliff vest in four years. Beginning in 2006, restricted share and unit grants generally step vest in four years. In December 2007, Merrill Lynch modified the vesting schedule of certain previously-granted stock bonus awards. As a result, all outstanding stock bonus awards held by employees other than current or former executive officers that were scheduled to vest on January 31, 2009, vested on January 31, 2008. The accelerated vesting resulted in approximately $181 million of compensation expense in fiscal year 2007 that would have otherwise been recognized in 2008 and 2009.

In January 2007 and 2006, Participation Units were granted from the Long-Term Incentive Compensation Plan under Merrill Lynch's Managing Partners Incentive Program. The awards granted under this program are fully at risk, and the potential payout varies depending on Merrill Lynch's financial performance against pre-determined return on average common stockholders' equity ("ROE") targets. One-third of the Participation Units converted into Restricted Shares or Restricted Units on January 31, 2007. No Participation Units converted as a result of Merrill Lynch's 2008 or 2007 performance; however, all remaining Participation Units converted on January 1, 2009 due to change in control provisions included within the Plan and Bank of America's acquisition of ML & Co. as of that date.

In March 2007, Participation Units were granted from the Long-Term Incentive Compensation Plan under Merrill Lynch's GMI Managing Partners Incentive Program. The awards granted under this program are fully at risk, and the potential payout varies depending on Merrill Lynch's financial performance against a pre-determined GMI year-over-year pre-tax profit growth target. No participation units converted as a result of Merrill Lynch's 2008 or 2007 performance; however, all remaining Participation Units converted on January 1, 2009 due to change in control provisions included within the Plan and Bank of America's acquisition of ML & Co. as of that date.

In connection with the 2006 BlackRock Merger, 1,564,808 Restricted Shares held by employees that transferred to BlackRock were converted to Restricted Units effective June 2, 2006. The vesting period for such awards was accelerated to end on the transaction closing date of September 29, 2006. In addition, the vesting periods for 1,135,477 Restricted Share and 156,118 Restricted Unit awards that were not converted were accelerated to end on the transaction closing date of September 29, 2006.

The activity for Restricted Shares and Units under these plans during 2008 and 2007 follows:

	LTIC Plans		ECAP	ESCP	
	Restricted Shares	**Restricted Units**	**Restricted Shares**	**Restricted Shares**	**Restricted Units**
Authorized for issuance at:					
December 26, 2008	**660,000,000**	**N/A**	**104,800,000**	**75,000,000**	**N/A**
December 28, 2007	660,000,000	N/A	104,800,000	75,000,000	N/A
Available for issuance at:(1)					
December 26, 2008	**39,409,796**	**N/A**	**-**	**19,692,085**	**N/A**
December 28, 2007	63,164,095	N/A	10,825,078	28,601,214	N/A
Outstanding, end of 2006	**29,272,338**	**7,916,925**	**19,885**	**29,081,187**	**5,712,989**
Granted — 2007	6,193,079	2,087,899	7,009	13,153,487	2,439,219
Paid, forfeited, or released from contingencies	(13,895,368)	(3,107,137)	(2,919)	(5,929,819)	(2,170,943)
Outstanding, end of 2007	**21,570,049**	**6,897,687**	**23,975**	**36,304,855**	**5,981,265**
Granted — 2008	506,412	12,094,494	6,732	-	36,545,501
Paid, forfeited, or released from contingencies	(13,351,660)	(4,582,512)	(12,576)	(27,373,905)	(8,104,569)
Outstanding, end of 2008	**8,724,801**	**14,409,669**	**18,131**	**8,930,950**	**34,422,197**

N/A = Not Applicable

(1) Includes shares reserved for issuance upon the exercise of stock options.

SFAS No. 123(R) requires the immediate expensing of share-based payment awards granted or modified to retirement-eligible employees, including awards that are subject to non-compete provisions. The above activity contains awards with or without a future service requirement, as follows:

	No Future Service Required		Future Service Required	
	Shares/Units	**Weighted Avg Grant Price**	**Shares/Units**	**Weighted Avg Grant Price**
Outstanding at December 28, 2007	**48,738,883**	**$ 66.33**	**22,038,948**	**$ 83.60**
Granted — 2008	14,099,302	52.13	35,053,837	52.19
Delivered	(46,722,014)	67.23	-	-
Forfeited	(1,697,122)	75.28	(5,006,086)	64.16
Service criteria satisfied(1)	12,351,587	82.90	(12,351,587)	82.90
Outstanding at December 26, 2008	**26,770,636**	**64.36**	**39,735,112**	**58.56**

(1) Represents those awards for which employees attained retirement-eligibility or for which service criteria were satisfied during 2008, subsequent to the grant date.

The total fair value of Restricted Shares and Units granted to retirement-eligible employees, or for which service criteria were satisfied during 2008 and 2007 was approximately $0.9 billion and $0.6 billion, respectively. The total fair value of Restricted Shares and Units delivered during 2008 and 2007 was approximately $1.6 billion and $1.7 billion, respectively.

The weighted-average fair value per share or unit for 2008, 2007, and 2006 grants follows. The fair value of Restricted Shares and Restricted Units was determined based on the price of Merrill Lynch common stock at the date of grant:

	2008	2007	2006
LTIC Plans			
Restricted Shares	**$34.25**	$80.56	$75.45
Restricted Units	**42.60**	81.28	71.63
ECAP Restricted Shares	**49.04**	88.55	70.22
ESCP Plans			
Restricted Shares	**N/A**	95.83	71.54
Restricted Units	**55.59**	95.60	71.67

Non-Qualified Stock Options

Non-qualified Stock Options granted under LTIC Plans in 1996 through 2000 generally became exercisable over five years; options granted in 2001 and 2002 became exercisable after approximately six months. Option and Stock Appreciation Right grants made after 2002 generally become exercisable over four years. The exercise price of these grants is equal to 100% of the fair market value (as defined in LTIC Plans) of a share of ML & Co. common stock on the date of grant. Options and Stock Appreciation Rights expire ten years after their grant date.

The total number of Stock Appreciation Rights that remained outstanding at December 26, 2008 and December 28, 2007, were 606,961 and 245,402, respectively.

The activity for Non-qualified Stock Options under LTIC Plans for 2008, 2007, and 2006 follows:

	Options Outstanding	**Weighted-Average Exercise Price**
Outstanding, beginning of 2006	176,713,075	49.10
Granted — 2006	368,973	72.72
Exercised	(46,257,695)	39.78
Forfeited	(336,546)	49.20
Outstanding, end of 2006	130,487,807	52.47
Granted — 2007	3,376,222	49.37
Exercised	(20,786,338)	43.77
Forfeited	(268,617)	45.75
Outstanding, end of 2007	112,809,074	54.00
Granted — 2008	17,692,428	49.22
Exercised	(4,126,509)	32.19
Forfeited	(1,243,611)	53.84
Outstanding, end of 2008	**125,131,382**	**$ 54.04**
Exercisable, end of 2008	**105,800,355**	**$ 54.66**

All Options and Stock Appreciation Rights outstanding as of December 26, 2008 are fully vested or expected to vest.

At year end 2008, the weighted-average remaining contractual terms of options outstanding and exercisable were 3.4 years and 2.4 years, respectively.

The weighted-average fair value of options granted in 2008, 2007, and 2006 was $15.47, $19.29, and $18.46, per option, respectively.

The fair value of option awards with vesting based solely on service requirements is estimated on the date of grant based on a Black-Scholes option pricing model. Beginning in 2008, expected volatilities were based upon the implied volatility of ML & Co. common stock, in accordance with guidance provided by SEC Staff Accounting Bulletin No. 107, *Share-Based Payment*. Prior to 2008, expected volatilities were based upon the historic volatility of ML & Co. common stock. The expected term of options granted is estimated based on an analysis of historical exercise activity. The risk-free rate for periods within the contractual life of the option is based on the U.S. Treasury yield curve in effect at the time of grant. The expected dividend yield is based on the current dividend rate at the time of grant. The weighted average assumptions used to determine the fair value of these options in 2008, 2007 and 2006 were as follows:

	2008	**2007**	**2006**
Risk-free interest rate	**3.14%**	4.79%	4.40%
Expected life (in years)	**6.6**	4.3	4.5
Expected volatility	**39.42%**	21.39%	28.87%
Expected dividend yield	**3.20%**	1.49%	1.37%

In 2008, performance-based option awards were granted to certain senior executive employees. The fair value of each performance based option award is estimated on the date of grant based on a lattice option pricing model. Expected volatilities are based on implied volatility of ML & Co. common stock. The expected life of options granted is based on performance conditions relating to minimum stock price thresholds required for exercisability and assuming exercise when the stock price reaches a level equal to two times the exercise price. The risk-free rate for periods within the contractual life of the option is based on the U.S. Treasury yield curve in effect at the time of grant. The expected dividend yield is based on the current dividend rate at the time of grant.

In December 2008, the performance-based stock option awards were amended to eliminate the performance conditions related to stock price thresholds; as a result, all remaining unvested options vested and became exercisable immediately upon Bank of America's acquisition of ML & Co. on January 1, 2009. The weighted average assumptions used to determine the fair value of the performance-based options in 2008 were as follows:

	2008
Risk-free interest rate	**3.61%**
Expected life (in years)	**7.9**
Expected volatility	**35.00%**
Expected dividend yield	**2.52%**

Merrill Lynch received approximately $136 million and $894 million in cash from the exercise of stock options during 2008 and 2007, respectively. The net tax benefit realized from the exercise of these options was $13 million and $219 million for 2008 and 2007, respectively.

The total intrinsic value of options exercised during 2008 and 2007 was $77 million and $925 million, respectively. As of December 26, 2008, the total intrinsic value of options outstanding and exercisable was zero. As of December 28, 2007, the total intrinsic value of options outstanding and exercisable was $676 million and $673 million, respectively.

Employee Stock Purchase Plans ("ESPP")

ESPP, which are shareholder approved, allow eligible employees to invest from 1% to 10% of their eligible compensation to purchase ML & Co. common stock, subject to legal limits. For 2008, 2007, and 2006 the maximum annual purchase was $23,750. Purchases were made at a discount equal to 5% of the average high and low market price on the relevant investment date. Up to 125,000,000 shares of common stock have been authorized for issuance under ESPP. The activity in ESPP during 2008, 2007, and 2006 follows:

	2008	2007	2006
Available, beginning of year	**21,710,119**	22,572,871	23,462,435
Purchased through plan	**(2,571,438)**	(862,752)	(889,564)
Available, end of year	**19,138,681**	21,710,119	22,572,871

The weighted-average fair value of ESPP stock purchase rights (i.e. the 5% employee discount on Merrill Lynch stock purchases) exercised by employees in 2008, 2007, and 2006 was $1.47, $4.24, and $3.75 per right, respectively.

Director Plans

Merrill Lynch provides stock-based compensation to its non-employee directors under the Merrill Lynch & Co., Inc. Deferred Stock Unit Plan for Non-Employee Directors ("New Directors Plan"), which was approved by shareholders in 2005 and the Deferred Stock Unit and Stock Option Plan for Non-Employee Directors ("Old Directors Plan") which was adopted by the Board of Directors in 1996 and discontinued after stockholders approved the New Directors Plan. In 2005, shareholders authorized Merrill Lynch to issue 500,000 shares under the New Directors Plan and also authorized adding all shares that remained available for issuance under the Old Directors Plan to shares available under the New Directors Plan for a total of approximately 1 million shares.

Under both plans, non-employee directors are to receive deferred stock units, payable in shares of ML & Co. common stock after a deferral period of five years. Under the Old Directors Plan, 10,953 and 13,916 deferred stock units were outstanding at year-end 2008 and 2007, respectively. Under the New Directors Plan, 106,050 and 65,239 deferred stock units remained outstanding at year-end 2008 and 2007, respectively.

Additionally, the Old Directors Plan provided for the grant of stock options which the New Directors Plan eliminated. There were 110,961 stock options outstanding under the Old Directors Plan at both year-end 2008 and 2007.

Financial Advisor Capital Accumulation Award Plans ("FACAAP")

Under FACAAP, eligible employees in GWM are granted awards generally based upon their prior year's performance. Payment for an award is contingent upon continued employment for a period of time and is subject to forfeiture during that period. Awards granted in 2003 and thereafter are generally payable eight years from the date of grant in a fixed number of shares of ML & Co. common stock. For outstanding awards granted prior to 2003, payment is generally made ten years from the date of grant in a fixed number of shares of ML & Co. common stock unless the fair market value of such shares is less than a specified minimum value, in which case the minimum value is paid in cash. Eligible participants may defer awards beyond the scheduled payment date. Only shares of common stock held as treasury stock may be issued under FACAAP. FACAAP, which was approved by the Board of Directors, has not been shareholder approved.

At December 26, 2008, shares subject to outstanding awards totaled 38,097,750 while 5,284,660 shares were available for issuance through future awards. The weighted-average fair value of awards granted under FACAAP during 2008, 2007, and 2006 was $45.04, $83.30, and $79.70 per award, respectively.

Other Compensation Arrangements

Merrill Lynch sponsors deferred compensation plans in which employees who meet certain minimum compensation thresholds may participate on either a voluntary or mandatory basis. Contributions to the plans are made on a tax-deferred basis by participants. Participants' returns on these contributions may be indexed to various mutual funds and other funds.

Merrill Lynch also sponsors several cash-based employee award programs, under which certain employees are eligible to receive future cash compensation, generally upon fulfillment of the service and vesting criteria for the particular program.

When appropriate, Merrill Lynch maintains various assets as an economic hedge of its liabilities to participants under the deferred compensation plans and award programs. These assets and the payables accrued by Merrill Lynch under the various plans and grants are included on the Consolidated Balance Sheets. Such assets totaled $1.6 billion and $2.2 billion at December 26, 2008 and December 28, 2007, respectively. Accrued liabilities at year-end 2008 and 2007 were $1.7 billion and $2.2 billion, respectively. Changes to deferred compensation liabilities and corresponding returns on the assets that economically hedge these liabilities are recorded within compensation and benefits expense on the Consolidated Statements of (Loss)/Earnings.

Note 14. Income Taxes

Income tax (benefit)/expense on (loss)/earnings consisted of:

(dollars in millions)

	2008	2007	2006
U.S. federal			
Current	**$ (854)**	$ (391)	$1,370
Deferred	**(6,516)**	(867)	386
U.S. state and local			
Current	**218**	(73)	271
Deferred	**(895)**	(112)	(116)
Non-U.S.			
Current	**2,442**	1,194	1,432
Deferred	**(8,675)**	(3,945)	(630)
Income tax (benefit)/expense from continuing operations	**$(14,280)**	$(4,194)	$2,713
Income tax (benefit)/expense from discontinued operations	**$ (80)**	$ 537	$ 214

The corporate statutory U.S. federal tax rate was 35% for the three years presented. A reconciliation of statutory U.S. federal income taxes to Merrill Lynch's income tax (benefit)/expense from continuing operations follows:

(dollars in millions)

	2008	2007	2006
U.S. federal income tax at statutory rate	**$(14,641)**	$(4,491)	$3,431
U.S. state and local income taxes, net of federal effect	**(440)**	(120)	101
Non-U.S. operations	**2,663**	809	(539)
Capital losses including foreign subsidiary stock (net of valuation allowance)	**(2,651)**	-	-
Payment related to price reset on common stock offering	**875**	-	-
Tax-exempt interest	**(159)**	(201)	(163)
Dividends received deduction	**(96)**	(188)	(49)
Other	**169**	(3)	(68)
Income tax (benefit)/expense from continuing operations	**$(14,280)**	$(4,194)	$2,713
Income tax (benefit)/expense from discontinued operations	**$ (80)**	$ 537	$ 214

The 2008, 2007 and 2006 effective tax rates reflect net (costs)/benefits of ($253) million, $6 million and $496 million, respectively, related to changes in estimates or rates with respect to prior years, and settlements with various tax authorities.

Deferred income taxes are provided for the effects of temporary differences between the tax basis of an asset or liability and its reported amount in the Consolidated Balance Sheets. These temporary differences result in taxable or deductible amounts in future years. In addition, deferred taxes are recognized with respect to losses and credits that have been generated for tax purposes that will be recognized in future periods.

At December 28, 2007, Merrill Lynch had a U.K. net operating loss ("NOL") carryforward of approximately $13.5 billion. In the fourth quarter of 2008, in order to manage foreign exchange risk, Merrill Lynch undertook a transaction that utilized the 2007 U.K. NOL carryforward and certain 2008 losses, both denominated in British Pounds, and replaced them with future corporate tax deductions denominated in U.S. Dollars for which a tax-related asset has been recognized in the amount of $9.7 billion. The future corporate tax deductions have an unlimited carryforward period, and therefore no valuation allowance is required for this tax-related asset.

Merrill Lynch also had a U.S. federal NOL carryforward of approximately $11.9 billion at the end of 2008. This NOL can be carried forward for 20 years until 2028. After examining all available evidence, Merrill Lynch concluded that it is more likely than not that the NOL will be utilized over the carryforward period and no valuation allowance has been established. Merrill Lynch has established a full valuation allowance for its U.S. foreign tax credit carryforwards of approximately $400 million expiring in 2017 and a $2.8 billion valuation allowance for its U.S. federal capital loss carryforward of $8.1 billion expiring in 2018. In addition, a valuation allowance of approximately $500 million has been established for federal and state deferred tax assets related to items that are capital in nature. Merrill Lynch also had state NOL carryforwards of approximately $7.3 billion. The state NOL carryforwards expire in various years from 2009 through 2028. Merrill Lynch established net valuation allowances of approximately $300 million for certain state and city NOLs.

Details of Merrill Lynch's deferred tax assets and liabilities follow:

(dollars in millions)

	2008	2007
Valuation and other reserves	**$ 7,233**	$ 2,109
Net operating loss carryforwards	**4,721**	4,009
Capital loss	**2,867**	-
Deferred compensation	**1,991**	2,419
Stock options	**1,045**	1,016
Employee benefits and pension	**135**	382
Foreign exchange translation	**763**	611
Deferred interest	**772**	729
Goodwill	**604**	29
Partnership activity	**299**	(9)
Deferred foreign tax credit	**418**	543
Other	**860**	779
Gross deferred tax assets	**21,708**	12,617
Valuation allowances	**(4,015)**	(73)
Total deferred tax assets	**17,693**	12,544
Deferred tax liabilities		
BlackRock investment	**209**	1,274
Deferred income	**44**	449
Interest and dividends	**396**	161
Depreciation and amortization	**42**	213
Other	**555**	606
Total deferred tax liabilities	**1,246**	2,703
Net deferred tax assets	**$16,447**	$ 9,841

The 2008 net deferred tax assets do not include the $9.7 billion U.K. tax-related asset discussed above.

Merrill Lynch adopted FIN 48 effective the beginning of the first quarter of 2007 and recognized a decrease to beginning retained earnings and an increase to the liability for unrecognized tax benefits of approximately $66 million.

A reconciliation of the beginning and ending amount of unrecognized tax benefits follows:

(dollars in millions)

	2008	2007
Balance, beginning of year	**$1,526**	$1,482
Additions based on tax positions related to the current year	**212**	226
Additions for tax positions of prior years	**61**	46
Reductions for tax positions of prior years	**(255)**	(244)
Settlements	**(4)**	(1)
Expiration of statute of limitations	**-**	(1)
Cumulative translation adjustments	**36**	18
Balance, end of year	**$1,576**	$1,526

At the end of 2008, approximately $1.3 billion (net of federal benefit of state issues, Competent Authority and foreign tax credit offsets) represents the amount of unrecognized tax benefits that, if recognized, would favorably affect the effective tax rate in future periods. Merrill Lynch paid an assessment to Japan in 2005 for the fiscal years April 1, 1998 through March 31, 2003, and in 2008 for the fiscal years April 1, 2003 through March 31, 2007, in relation to the taxation of income that was originally reported in other jurisdictions. In 2005, Merrill Lynch started the process of obtaining clarification from international tax authorities on the appropriate allocation of income among multiple jurisdictions to prevent double taxation. In addition, Merrill Lynch filed briefs with the U.S. Tax Court in 2005 with respect to a tax case that had been remanded for further proceedings in accordance with a 2004 opinion of the U.S. Court of Appeals for the Second Circuit. The U.S. Court of Appeals affirmed the initial adverse opinion of the U.S. Tax Court rendered in 2003 against Merrill Lynch, with respect to a 1987 transaction, but remanded the case to the U.S. Tax Court to consider a new argument. In December 2008, the U.S. Tax Court issued an adverse decision on this remanded matter, and it is uncertain as to whether Merrill Lynch will appeal. The unrecognized tax benefits with respect to this case and the Japanese assessments, while paid, have been included in the $1.6 billion and the $1.3 billion amounts above.

Merrill Lynch recognizes the accrual of interest and penalties related to unrecognized tax benefits in income tax expense. For the years 2008, 2007 and 2006, Merrill Lynch recognized net (benefit)/expense of approximately $(15) million, $64 million and $(21) million in interest and penalties. Merrill Lynch had approximately $146 million and $156 million for the payment of interest and penalties accrued at December 26, 2008 and December 28, 2007, respectively.

Merrill Lynch is under examination by the Internal Revenue Service ("IRS") and other tax authorities in countries and states in which Merrill Lynch has significant business operations. The tax years under examination vary by jurisdiction. The IRS audit for the year 2004 was completed in 2008 and the statute of limitations for the year expired during 2008. Adjustments were proposed for two issues, which Merrill Lynch will challenge. The issues involve eligibility for the dividend received deduction and foreign tax credits with respect to different transactions. These two issues have also been raised in the ongoing IRS audits for the years 2005 and 2006, which may be completed during the next twelve months. During 2008, Japan tax authorities completed the audit of the fiscal tax years April 1, 2003 through March 31, 2007. An assessment was issued, which has been paid, reflecting the Japanese tax authorities' view that certain income on which Merrill Lynch previously paid income tax to other international jurisdictions, primarily the U.S., should have been allocated to Japan. Similar to the Japan tax assessment received in 2005, Merrill Lynch will utilize the process of obtaining clarification from international authorities (Competent Authority) on the appropriate allocation of income among multiple jurisdictions to prevent double taxation. The audits in the U.K. for the tax year 2005 and in Germany for the tax years 2002 through 2006 were also completed during 2008. The Canadian tax authorities have commenced the audit of the tax years 2004 and 2005. New York State and New York City audits are in progress for the years 2002 through 2006.

Below is a table of tax years that remain subject to examination by major tax jurisdiction:

JURISDICTION	YEARS SUBJECT TO EXAMINATION
U.S. federal	2005—2008
New York State and City	2002—2008
U.K.	2006—2008
Canada	2004—2008
India	3/31/92—3/31/08
Japan	3/31/08
Hong Kong	2006—2008
Singapore	1998—2008

Depending on the outcomes of multi-jurisdictional global audits and the ongoing Competent Authority proceeding with respect to the Japan assessments, it is reasonably possible Merrill Lynch's unrecognized tax benefits may be reduced during the next 12 months, either because Merrill Lynch's tax positions are sustained on audit or Merrill Lynch agrees to settle certain issues. While it is reasonably possible that a significant reduction in unrecognized tax benefits may occur within 12 months of December 26, 2008, quantification of an estimated range cannot be made at this time due to the uncertainty of the potential outcomes.

Income tax (costs)/benefits of ($182) million, $641 million, and $501 million were allocated to stockholders' equity related to employee stock compensation transactions for 2008, 2007, and 2006, respectively.

Cumulative undistributed earnings of non-U.S. subsidiaries were approximately $7.5 billion at December 26, 2008. No deferred U.S. federal income taxes have been provided for these earnings as they are permanently reinvested in Merrill Lynch's non-U.S. operations. It is not practical to determine the amount of additional tax that may be payable in the event these earnings are repatriated.

Note 15. Regulatory Requirements

Prior to its acquisition by Bank of America, Merrill Lynch was a consolidated supervised entity subject to group-wide supervision by the SEC and capital requirements generally consistent with the standards of the Basel Committee on Banking Supervision. As such, Merrill Lynch computed allowable capital and risk allowances consistent with Basel II capital standards; permitted the SEC to examine the books and records of ML & Co. and any affiliate that did not have a principal regulator; and had various additional SEC reporting, record-keeping, and notification requirements.

As a wholly-owned subsidiary of Bank of America, a bank holding company that is also a financial holding company, Merrill Lynch is subject to the oversight of, and inspection by, the Board of Governors of the Federal Reserve System (the "Federal Reserve Board" or "FRB").

Certain U.S. and non-U.S. subsidiaries are subject to various securities and banking regulations and capital adequacy requirements promulgated by the regulatory and exchange authorities of the countries in which they operate. These regulatory restrictions may impose regulatory capital requirements and limit the amounts that these subsidiaries can pay in dividends or advance to Merrill Lynch. Merrill Lynch's principal regulated subsidiaries are discussed below.

Securities Regulation

As a registered broker-dealer, MLPF&S is subject to the net capital requirements of Rule 15c3-1 under the Securities Exchange Act of 1934 ("the Rule"). Under the alternative method permitted by the Rule, the minimum required net capital, as defined, shall be the greater of 2% of aggregate debit items ("ADI") arising from customer transactions or $500 million in accordance with Appendix E of the Rule. At December 26, 2008, MLPF&S's regulatory net capital of $4,128 million was approximately

38.3% of ADI, and its regulatory net capital in excess of the SEC minimum required was $3,607 million.

As a futures commission merchant, MLPF&S is also subject to the capital requirements of the Commodity Futures Trading Commission ("CFTC"), which requires that minimum net capital should not be less than 8% of the total customer risk margin requirement plus 4% of the total non-customer risk margin requirement. MLPF&S regulatory net capital of $4,128 million exceeded the CFTC minimum requirement of $604 million by $3,524 million.

MLI, a U.K. regulated investment firm, is subject to capital requirements of the Financial Services Authority ("FSA"). Financial resources, as defined, must exceed the total financial resources requirement set by the FSA. At December 26, 2008, MLI's financial resources were $16,983 million, exceeding the minimum requirement by $3,861 million.

MLGSI, a primary dealer in U.S. Government securities, is subject to the capital adequacy requirements of the Government Securities Act of 1986. This rule requires dealers to maintain liquid capital in excess of market and credit risk, as defined, by 20% (a 1.2-to-1 capital-to-risk standard). At December 26, 2008, MLGSI's liquid capital of $1,431 million was 385% of its total market and credit risk, and liquid capital in excess of the minimum required was $985 million. As a result of the Bank of America acquisition, MLGSI was delisted as a primary U.S. Government securities dealer in February 2009.

MLJS, a Japan-based regulated broker-dealer, is subject to capital requirements of the Japanese Financial Services Agency ("JFSA"). Net capital, as defined, must exceed 120% of the total risk equivalents requirement of the JFSA. At December 26, 2008, MLJS's net capital was $1,705 million, exceeding the minimum requirement by $1,127 million.

Banking Regulation

MLBUSA is a Utah-chartered industrial bank, regulated by the Federal Deposit Insurance Corporation ("FDIC") and the State of Utah Department of Financial Institutions ("UTDFI"). MLBT-FSB is a full service thrift institution regulated by the Office of Thrift Supervision ("OTS"), whose deposits are insured by the FDIC. Both MLBUSA and MLBT-FSB are required to maintain capital levels that at least equal minimum capital levels specified in federal banking laws and regulations. Failure to meet the minimum levels will result in certain mandatory, and possibly additional discretionary, actions by the regulators that, if undertaken, could have a direct material effect on the banks. The following table illustrates the actual capital ratios and capital amounts for MLBUSA and MLBT-FSB as of December 26, 2008.

(dollars in millions)

		MLBUSA		MLBT-FSB	
	Well Capitalized Minimum	Actual Ratio	Actual Amount	Actual Ratio	Actual Amount
Tier 1 leverage	5%	6.98%	$ 4,321	7.45%	$ 2,686
Tier 1 capital	6%	11.15%	4,321	10.62%	2,686
Total capital	10%	12.42%	4,816	11.41%	2,888

As a result of its ownership of MLBT-FSB, ML & Co. is registered with the OTS as a savings and loan holding company ("SLHC") and is subject to regulation and examination by the OTS as a SLHC. As a result of the Bank of America acquisition, ML & Co. has requested that it be deregistered as a SLHC.

Merrill Lynch International Bank Limited ("MLIB"), an Ireland-based regulated bank, is subject to the capital requirements of the Irish Financial Services Regulatory Authority ("IFSRA"). MLIB is required to meet minimum regulatory capital requirements under the European Union ("EU") banking law as

implemented in Ireland by the IFSRA. At December 26, 2008, MLIB's financial resources were $11,078 million, exceeding the minimum requirement by $1,496 million.

Note 16. Discontinued Operations

On August 13, 2007, Merrill Lynch announced a strategic business relationship with AEGON in the areas of insurance and investment products. As part of this relationship, Merrill Lynch sold MLIG to AEGON for $1.3 billion in the fourth quarter of 2007, which resulted in an after-tax gain of $316 million. The gain, along with the financial results of MLIG, has been reported within discontinued operations for all periods presented and the assets and liabilities were not considered material for separate presentation. Merrill Lynch previously reported the results of MLIG in the GWM business segment.

On December 24, 2007 Merrill Lynch announced that it had reached an agreement with GE Capital to sell Merrill Lynch Capital, a wholly-owned middle-market commercial finance business. The sale included substantially all of Merrill Lynch Capital's operations, including its commercial real estate division and closed on February 4, 2008. Merrill Lynch has included results of Merrill Lynch Capital within discontinued operations for all periods presented and the assets and liabilities were not considered material for separate presentation. Merrill Lynch previously reported results of Merrill Lynch Capital in the GMI business segment.

Net losses from discontinued operations for the year ended December 26, 2008 were $61 million compared with net earnings of $860 million for the year ended December 28, 2007, respectively.

Certain financial information included in discontinued operations on Merrill Lynch's Consolidated Statements of (Loss)/Earnings is shown below:

(dollars in millions)

	2008	2007	2006
Total revenues, net of interest expense	**$ 28**	$1,542	$878
(Losses) / earnings before income taxes	**(141)**	1,397	616
Income tax (benefit) /expense	**(80)**	537	214
Net (loss) / earnings from discontinued operations	**$ (61)**	$ 860	$402

The following assets and liabilities related to discontinued operations are recorded on Merrill Lynch's Consolidated Balance Sheets as of December 26, 2008 and December 28, 2007:

(dollars in millions)

	2008	2007
Assets:		
Loans, notes and mortgages	**$117**	$12,995
Other assets	**53**	332
Total Assets	**$170**	$13,327
Liabilities:		
Other payables, including interest	**$ 5**	$ 489
Total Liabilities	**$ 5**	$ 489

As of December 26, 2008, a small portfolio of commercial real estate loans related to the Merrill Lynch Capital portfolio remain in discontinued operations as they were not part of the GE Capital transaction.

Note 17. Restructuring Charge

The Company recorded a pre-tax restructuring charge of approximately $486 million during 2008. This charge was comprised of severance costs of $348 million and expenses related to the accelerated

amortization of previous granted equity-based compensation awards of $138 million. These charges were recorded within the GMI and GWM operating segments and were $331 million and $155 million, respectively. The headcount reduction primarily occurred in the United States, within technology and support areas.

During 2008, the Company made cash payments, primarily severance related, of $331 million, resulting in a remaining liability balance of $17 million as of December 26, 2008. This liability is recorded in other payables on the Consolidated Balance Sheet at December 26, 2008.

Note 18. Quarterly Information (Unaudited)

The unaudited quarterly results of operations of Merrill Lynch for 2008 and 2007 are prepared in conformity with U.S. generally accepted accounting principles, which include industry practices, and reflect all adjustments that are, in the opinion of management, necessary for a fair presentation of the results of operations for the periods presented. Results of any interim period are not necessarily indicative of results for a full year.

(dollars in millions, except per share amounts)

	For The Quarter Ended							
	Dec. 26, 2008	**Sept. 26, 2008**	**June 27, 2008**	**Mar. 28, 2008**	Dec. 28, 2007	Sept. 28, 2007	June 29, 2007	Mar. 30, 2007
Revenues	**$ (9,832)**	**$ 7,846**	**$ 6,056**	**$12,686**	$ 4,432	$13,702	$23,429	$21,112
Interest expense	**3,595**	**7,830**	**8,172**	**9,752**	12,624	13,322	13,970	11,509
Revenues, net of interest expense	**(13,427)**	**16**	**(2,116)**	**2,934**	(8,192)	380	9,459	9,603
Non-interest expenses	**8,741**	**8,267**	**5,995**	**6,235**	6,728	4,018	6,633	6,702
Pre-tax (loss)/earnings from continuing operations	**(22,168)**	**(8,251)**	**(8,111)**	**(3,301)**	(14,920)	(3,638)	2,826	2,901
Income tax (benefit)/expense	**(6,340)**	**(3,131)**	**(3,477)**	**(1,332)**	(4,623)	(1,258)	816	871
Net (loss)/earnings from continuing operations	**(15,828)**	**(5,120)**	**(4,634)**	**(1,969)**	(10,297)	(2,380)	2,010	2,030
Pre-tax (loss)/earnings from discontinued operations	**(31)**	**(53)**	**(32)**	**(25)**	795	211	197	194
Income tax (benefit)/expense	**(15)**	**(21)**	**(12)**	**(32)**	331	72	68	66
Net (loss)/earnings from discontinued operations	**(16)**	**(32)**	**(20)**	**7**	464	139	129	128
Net (loss)/earnings	**$(15,844)**	**$ (5,152)**	**$(4,654)**	**$ (1,962)**	$ (9,833)	$ (2,241)	$ 2,139	$ 2,158
(Loss)/earnings per common share:								
Basic (loss)/earnings per common share from continuing operations	**$ (9.94)**	**$ (5.56)**	**$ (4.95)**	**$ (2.20)**	$ (12.57)	$ (2.99)	$ 2.32	$ 2.35
Basic (loss)/earnings per common share from discontinued operations	**(0.01)**	**(0.02)**	**(0.02)**	**0.01**	0.56	0.17	0.16	0.15
Basic (loss)/earnings per common share	**$ (9.95)**	**$ (5.58)**	**$ (4.97)**	**$ (2.19)**	$ (12.01)	$ (2.82)	$ 2.48	$ 2.50
Diluted (loss)/earnings per common share from continuing operations	**$ (9.94)**	**$ (5.56)**	**$ (4.95)**	**$ (2.20)**	$ (12.57)	$ (2.99)	$ 2.10	$ 2.12
Diluted (loss)/earnings per common share from discontinued operations	**(0.01)**	**(0.02)**	**(0.02)**	**0.01**	0.56	0.17	0.14	0.14
Diluted (loss)/earnings per common share	**$ (9.95)**	**$ (5.58)**	**$ (4.97)**	**$ (2.19)**	$ (12.01)	$ (2.82)	$ 2.24	$ 2.26