

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): March 14, 2005

Merrill Lynch & Co., Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other
jurisdiction of
incorporation)

1-7182
(Commission
File Number)

13-2740599
(I.R.S Employer
Identification No.)

4 World Financial Center, New York, New York 10080

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (212) 449-1000

(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 (see General Instruction A.2. below):

- 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))

Item 8.01. Other Events

Exhibits are filed herewith in connection with the Registration Statement on Form S-3 (File No. 333-122639) filed by Merrill Lynch & Co., Inc. (the "Company") with the Securities and Exchange Commission covering (i) Senior Debt Securities issuable under an indenture, dated as of April 1, 1983, as amended and restated through the date hereof, between the Company and JPMorgan Chase Bank, N.A. (the "Indenture") and (ii) Warrants issuable under the Warrant Agreement dated as of March 14, 2005, between the Company and JPMorgan Chase Bank, N.A., as Warrant Agent (the "Warrant Agreement"). The Company has issued (i) Cdn. \$3,014,200 of its Global Equity Performance Weighted Notes, Series 3 due March 14, 2012 (the "Notes"), under the Indenture and (ii) and Cdn. \$3,011,200 of its Global Equity Performance Weighted Warrants, Series 3 exercisable March 14, 2012 (the "Warrants"), under the Warrant Agreement. The exhibits consist of the form of Agency Agreement, form of Note, form of Warrant Agreement (including a form of Warrant) and an opinion of counsel relating thereto.

Item 9.01. Financial Statements, Pro Forma Financial Information and Exhibits

EXHIBITS

- (1) Underwriting Agreement.
Agency Agreement, dated March 10, 2005, among Merrill Lynch & Co., Inc., Merrill Lynch Canada Inc. and Canaccord Capital Corporation.
- (4) Instruments defining the rights of security holders, including indentures.
 - (a) Form of Merrill Lynch & Co., Inc.'s Global Equity Performance Weighted Notes, Series 3 due March 14, 2012.
 - (b) Form of Warrant Agreement, dated as of March 14, 2005, including a form of Merrill Lynch & Co., Inc.'s Global Equity Performance Weighted Warrants, Series 3 exercisable March 14, 2012.
- (5) & (23) Opinion re: legality; consent of counsel.

Opinion of Sidley Austin Brown & Wood LLP relating to (i) the Global Equity Performance Weighted Notes, Series 3 due March 14, 2012 and (ii) the Global Equity Performance Weighted Warrants, Series 3 exercisable March 14, 2012 (including consent for inclusion of such opinion in this report and in Merrill Lynch & Co., Inc.'s Registration Statement relating to such Notes and Warrants).

SIGNATURE

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, thereto duly authorized.

MERRILL LYNCH & CO., INC.
(Registrant)

By: /S/ JOHN LAWS
John Laws
Assistant Treasurer

Date: March 14, 2005

**SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

MERRILL LYNCH & CO., INC.

**EXHIBITS TO CURRENT REPORT ON
FORM 8-K DATED MARCH 14, 2005**

Commission File Number 1-7182

Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>	<u>Page</u>
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March 10, 2005

Merrill Lynch & Co., Inc.
4 World Financial Center
New York, NY 10080

Ladies and Gentlemen:

The undersigned, Merrill Lynch Canada Inc. (“**MLCI**”) and Canaccord Capital Corporation (“**Canaccord**”, and, together with MLCI, the “**Agents**”, and, individually, an “**Agent**”), understand that Merrill Lynch & Co., Inc. (the “**Company**”), a Delaware corporation, proposes to issue and sell up to Cdn.\$3,014,200 Global Equity Performance Weighted Notes, Series 3 due March 14, 2012 (the “**Notes**”) and up to Cdn.\$3,011,200 Global Equity Performance Weighted Warrants, Series 3 due March 14, 2012 (the “**Warrants**”, and, together with the Notes, the “**Securities**”, and, individually, a “**Security**”).

We understand that the Company has filed with the United States Securities and Exchange Commission (the “**SEC**”) under the *United States Securities Act of 1933* as amended (the “**1933 Act**”), a registration statement on Form S-3 dated February 8, 2005 relating to the offering of debt securities, warrants, preferred stock, depositary shares and common stock of the Company pursuant to Rule 415 under the 1933 Act (such registration statement, declared effective by the SEC on February 25, 2005 under the 1933 Act, including the exhibits thereto and the documents incorporated by reference therein, being hereinafter referred to as the “**Registration Statement**”) and a related prospectus dated February 25, 2005.

The Company has also filed (i) with the SEC pursuant to Rule 424(b)(6) under the 1933 Act a U.S. shelf prospectus dated March 8, 2005 (the “**U.S. Shelf Prospectus**”), and (ii) with the Canadian securities regulatory authorities (the “**Canadian Securities Commissions**”) of each of the provinces and territories of Canada (the “**Qualifying Jurisdictions**”) a Canadian shelf prospectus dated March 8, 2005 (the “**Canadian MJDS Prospectus**”) under National Instrument 71-101 – *The Multijurisdictional Disclosure System* (“**NI 71-101**”), which includes the U.S. Shelf Prospectus (which such deletions therefrom and additions thereto as are permitted or required by NI 71-101), in order to qualify the offering and sale of up to \$39,390,000,000 aggregate amount of debt securities, warrants, preferred stock, depositary shares and common stock in Canada. A final receipt was issued for the Canadian MJDS Prospectus by the Ontario Securities Commission, on behalf of itself and the other Canadian Securities Commissions, on March 9, 2005.

The Company has also prepared and filed with the SEC in accordance with Rule 424(b)(6) under the 1933 Act and with the Canadian Securities Commissions under NI 71-101 a preliminary MJDS prospectus supplement (the “**Preliminary MJDS Supplement**”) dated February 1, 2005 relating to the offering of the Notes and the Warrants. We understand that the Company will prepare a final MJDS prospectus supplement to be dated the date of

this Agreement and filed (the "**Final MJDS Supplement**") with the SEC pursuant to Rule 424(b)(6) under the 1933 Act and with the Canadian Securities Commissions under NI 71-101 in order to qualify the Securities for distribution in each of the Qualifying Jurisdictions (the "**Offering**").

The Company has requested the Agents to act as the sole and exclusive agents of the Company to solicit, on a best efforts basis, offers to purchase the Securities in all of the Qualifying Jurisdictions and the Agents hereby agree to act as exclusive agents for such purpose on the terms and conditions contained herein. In consideration of the services to be rendered to the Company, the Company shall pay to Canaccord a fee of Cdn.\$5.25 for each Security sold (the "**Agents' Fee**") on the Closing Date. MLCI shall not be entitled to receive a fee in connection with its acting as Agent hereunder. The Company has also agreed that the Agents may form a selling group consisting of registered dealers to solicit offers to purchase the Securities and may determine the fee to be paid to such selling group, which fee will be paid by Canaccord out of the Agents' Fee.

1. **Definitions and Interpretation**

1.1 Unless otherwise defined herein, as used herein:

"**Auditors**" means the firm of Deloitte & Touche LLP (New York);

"**Business Day**" means a day which is not a Saturday, Sunday or statutory or civic holiday in Toronto, Ontario;

"**Canadian Securities Laws**" means all applicable securities laws in each of the Qualifying Jurisdictions and the respective regulations made thereunder, together with applicable published policy statements, rules and orders of the securities regulatory authorities in each of the Qualifying Jurisdictions, including, for greater certainty, NI 71-101 and Companion Policy 71-101CP;

"**CDS**" means The Canadian Depository for Securities Limited;

"**Closing Date**" means March 14, 2005, or such other date not later than April 4, 2005 as the parties hereto may agree upon in writing;

"**Closing Time**" means 9:00 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the parties hereto may agree upon in writing.

"**distribution**" means a "**distribution**" or "**distribution to the public**" as defined in the Canadian Securities Laws and "distribute" has a corresponding meaning;

"**Indenture**" means the amended and restated indenture dated as of April 1, 1983, as further amended and restated from time to time, between the Company and the Trustee pursuant to which the Notes will be issued;

"**misrepresentation**", "**material fact**" and "**material change**" have the respective meanings attributed thereto in the *Securities Act* (Ontario);

“**Prospectus**” means, collectively, the U.S. Shelf Prospectus and the Canadian MJDS Prospectus (in the English and French languages), including the documents incorporated by reference therein;

“**Prospectus Supplement**” means, collectively, the Preliminary MJDS Supplement and the Final MJDS Supplement (in the English and French languages), including the documents incorporated by reference therein (in the English and French languages);

“**Supplementary Material**” means, individually or collectively as the context requires, any amendment or supplement to the Prospectus or Final MJDS Supplement or any amending or supplemental prospectus or other supplemental documentation or any similar document required to be filed by the Company under any of the Canadian Securities Laws during the period of distribution of the Securities;

“**Trustee**” means JPMorgan Chase Bank, N.A., as trustee under the Indenture;

“**U.S. Person**” means any person who is or who acts, directly or indirectly, in the capacity of agent for the benefit of:

- (a) any natural person who is a resident in the United States, its territories, possessions or all areas subject to its jurisdiction;
- (b) any partnership, corporation, trust or other entity organized under United States law or organized or owned beneficially primarily by U.S. Persons;
- (c) any estate or trust of which an executor, trustee or similar person is a U.S. Person unless the beneficiaries are not U.S. Persons and a non-U.S. Person who is also an executor, trustee or similar person has or shares investment discretion;
- (d) any U.S. agency or branch of a foreign person; or
- (e) any discretionary or non-discretionary account for the benefit of a U.S. Person;

“**Warrant Agreement**” means the warrant agreement dated March 14, 2005 between the Company and the Warrant Agent pursuant to which the Warrants will be issued; and

“**Warrant Agent**” means JPMorgan Chase Bank, N.A., as warrant agent under the Warrant Agreement.

1.2 Words importing the singular number only shall include the plural and vice versa, and words importing the use of any gender shall include all genders.

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- 1.3 The headings in this Agreement are for convenience of reference only and shall not affect the interpretation or meaning of this Agreement.
- 1.4 The following are the schedules attached to and forming part of this Agreement:
- Schedule A - Form of Legal Opinion of Canadian Counsel to the Company
 - Schedule B - Form of Legal Opinion of U.S. Counsel to the Company
 - Schedule C - Form of Legal Opinion of Counsel to the Agents
2. **Appointment of Agents**
- 2.1 Subject to the following terms and conditions in this Agreement, the Company hereby appoints the Agents, and the Agents hereby accept such appointment, to act as the sole and exclusive agents of the Company to lawfully solicit, on a best efforts basis, on behalf of the Company, directly and through sub-agents lawfully authorized to sell the Securities in the Qualifying Jurisdictions, offers to purchase the Securities in the Qualifying Jurisdictions during the period of the distribution of the Securities at an initial offering price of Cdn.\$100 per Security.
- 2.2 The Agents shall communicate to the Company, orally, each offer to purchase Securities solicited by such Agents on an agency basis, other than those offers rejected by the Agents. Each Agent shall have the right, in its discretion reasonably exercised, to reject any proposed purchase of Securities, as a whole or in part, and any such rejection shall not be deemed a breach of the Agent's agreement contained herein. The Company may accept or reject any proposed purchase of the Securities, in whole or in part. The Agents shall make reasonable efforts to assist the Company in obtaining performance by each purchaser whose offer to purchase Securities has been solicited by the Agents and accepted by the Company.
- 2.3 The Agents agree to use their best efforts to solicit offers to purchase the Securities on the terms and conditions set forth herein and in the Prospectus and the Final MJDS Supplement as aforesaid but it is hereby agreed and understood that the Agents shall act as agents only and shall not at any time be obligated to purchase or to arrange for the purchase of any Securities. The Securities will be offered by the Agents directly and through sub-agents lawfully authorized to sell the Securities for sale to the public in all of the Qualifying Jurisdictions in compliance with Canadian Securities Laws.
3. **Distribution of Securities**
- 3.1 The Agents shall solicit offers to purchase the Securities for sale from the public, directly and through other members of the selling group, in compliance with applicable Canadian Securities Laws and upon the terms and conditions set forth in the Prospectus, the Final MJDS Supplement, any Supplementary Material and this Agreement. The Agents shall not solicit

offers to purchase or sell the Securities so as to require registration of the Securities or the filing of a prospectus, registration statement or other notice or document with respect to the distribution of the Securities under the laws of any jurisdiction other than the Qualifying Jurisdictions and shall require each other member of the selling group to agree with the Agents not to so solicit or sell. The Agents shall be entitled to assume that the Securities are qualified for distribution in any Qualifying Jurisdiction, unless the Agents receive notice to the contrary from the Company or the applicable Canadian Securities Commission. The Securities shall not be offered, sold or delivered, directly or indirectly, in the United States or to, or for the account or benefit of, a U.S. Person.

3.2 The Agents shall, after the Closing Date, use their best efforts to complete the distribution of the Securities as promptly as possible and MLCI shall notify the Company if and when, in its opinion, the distribution of Securities has been completed and shall, as soon as practicable thereafter (and in any event within the time periods necessary to obtain a refund of filing fees), provide the Company with a breakdown of the number of Securities distributed in each of the Qualifying Jurisdictions where such breakdown is required for the purpose of calculating fees payable to the applicable Canadian Securities Commissions.

4. **Representations and Warranties of the Company**

4.1 The Company represents and warrants to the Agents, as of the date hereof and as of the Closing Time, and acknowledges that the Agents are relying upon such representations and warranties in connection with the entering into of this Agreement and the sale by the Agents, on behalf of the Company, of the Securities, as follows:

- (a) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware with corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus; and the Company is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify and be in good standing would not have a material adverse effect on the condition, financial or otherwise, or the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise.
- (b) the Registration Statement has become effective under the 1933 Act;
- (c) the Registration Statement and the U.S. Prospectus comply as to form in all material respects with the requirements for registration statements on Form S-3 under the 1933 Act and the rules and regulations of the SEC thereunder,

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- and the *United States Securities Exchange Act of 1934* as amended (the “1934 Act”) and the documents incorporated by reference in the U.S. Prospectus, at the time they were or hereafter are filed with the SEC, complied or when so filed will comply, as the case may be, in all material respects with the rules thereunder;
- (d) the Company has complied in all material respects with all requirements of the 1933 Act and the rules and regulations thereunder with respect to the preparation and filing of the Registration Statement;
 - (e) the Company meets the general eligibility requirements of NI 71-101 for use of a MJDS shelf prospectus with respect to the Securities, as amended by an order dated June 30, 2004 issued by the Canadian Securities Commissions providing, among other things, an exemption from the limitations on distributions of derivative securities set forth in subsection 3.3(1) of NI 71-101;
 - (f) the Canadian MJDS Prospectus conforms to the U.S. Shelf Prospectus except for such deletions therefrom and additions thereto as are permitted or required by NI 71-101;
 - (g) the Canadian MJDS Prospectus has been prepared and filed in compliance in all material respects with Canadian Securities Laws;
 - (h) to the knowledge of the Company, none of the SEC, Canadian Securities Commissions, any stock exchange in Canada or the United States or any regulatory authority or court has issued an order preventing or suspending the use or effectiveness, as the case may be, of the Registration Statement or the Prospectus or preventing the distribution of the Securities or instituted proceedings for that purpose and no proceedings for that purpose are pending or are contemplated by any of the aforementioned parties, and any request on the part of such parties for additional information from the Company has been complied with;
 - (i) the Company has prepared and filed with the Canadian Securities Commissions a submission to jurisdiction and appointment of agent for service of process on Form 71-101F1 on behalf of itself;
 - (j) there has not occurred any material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, since the date of its most recent current report on Form 10-K, 10-Q or 8-K which has not been publicly disclosed;
 - (k) this Agreement has been duly authorized, executed and delivered by the Company and is legally binding upon the Company and is enforceable against the Company in accordance with its terms, subject to bankruptcy,

insolvency and similar laws affecting the rights of creditors generally, the qualification that equitable remedies may be granted only in the discretion of a court of competent jurisdiction and the qualification that the enforceability of rights of indemnity and contribution may be limited by applicable law;

- (l) the Notes have been, or prior to the issuance of such Notes will have been, duly authorized by the Company for issuance and sale pursuant to this Agreement. The Notes, when issued and authenticated by the Trustee in the manner provided for in the Indenture and delivered against payment of the consideration therefor specified in this Agreement, will constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms and the terms of the Indenture, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law), and except further as enforcement thereof may be limited by (A) requirements that a claim with respect to any debt securities denominated other than in U.S. dollars (or a foreign or composite currency judgement in respect of such claim) be converted into U.S. dollars at a rate of exchange prevailing on a date determined pursuant to applicable law or (B) governmental authority to limit, delay or prohibit the making of payments outside the United States, and such Notes will be in the form contemplated by, and each registered holder thereof will be entitled to the benefits of, the Indenture;
- (m) the Indenture has been duly authorized, executed and delivered by the Company and duly qualified under the United States *Trust Indenture Act* of 1939, as amended and (assuming the due authorization, execution and delivery by the Trustee), will constitute a valid and legally binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law), and except further as enforcement thereof may be limited by (A) requirements that a claim with respect to any debt securities denominated other than in U.S. dollars (or a foreign or composite currency judgement in respect of such claim) be converted into U.S. dollars at a rate of exchange prevailing on a date determined pursuant to applicable law or (B) governmental authority to limit, delay or prohibit the making of payments outside the United States;
- (n) the Warrants have been, or prior to the issuance of such Warrants will be, duly authorized by the Company for issuance and sale pursuant to this Agreement and the Warrants, when issued and authenticated in the manner

provided for in the Warrant Agreement and delivered against payment of the consideration therefor specified in this Agreement, will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law), and except further as enforcement thereof may be limited by (A) requirements that a claim with respect to any warrant payable other than in U.S. dollars (or a foreign or composite currency judgment in respect of such claim) be converted into U.S. dollars at a rate of exchange prevailing on a date determined pursuant to applicable law or (B) governmental authority to limit, delay or prohibit the making of payments outside the United States. The Warrants will be in the form contemplated by, and each registered holder thereof will be entitled to the benefits of, the Warrant Agreement;

- (o) the Warrant Agreement has been, or prior to the issuance of the Warrants will have been, duly authorized, executed and delivered by the Company and, upon such authorization, execution and delivery (assuming the due authorization, execution and delivery by the Warrant Agent), will constitute a valid and legally binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law), and except further as enforcement thereof may be limited by (A) requirements that a claim with respect to any warrant payable other than in U.S. dollars (or a foreign or composite currency judgment in respect of such claim) be converted into U.S. dollars at a rate of exchange prevailing on a date determined pursuant to applicable law or (B) governmental authority to limit, delay or prohibit the making of payments outside the United States;
- (p) the Warrants and the Notes being sold pursuant to this Agreement and the Indenture and Warrant Agreement, as applicable, when issued and delivered in accordance with their respective terms, will conform in all material respects to the respective statements relating thereto contained in the Prospectus and the Final MJDS Supplement;
- (q) none of the execution and delivery by the Company of this Agreement, the performance by the Company of its obligations hereunder or the issuance and sale of the Securities will conflict with or result in a breach of:
 - (i) any statute, rule or regulation applicable to the Company;

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- (ii) the constating documents, by-laws or resolutions of the directors or shareholders of the Company which are in effect at the date hereof;
 - (iii) any mortgage, note, indenture, contract, agreement, instrument, lease or other document to which the Company is a party or by which it is bound; or
 - (iv) any judgment, decree or order binding the Company or the property or assets of the Company;
- which, in the case of the foregoing clauses (i), (iii) and (iv), may have a material adverse effect on the Company;
- (r) there are no actions, suits, proceedings or inquiries pending or, to the best of the knowledge, information and belief of the Company, threatened against or affecting the Company or any of its properties or assets at law or in equity or before or by any governmental agency or body, domestic or foreign, which may, in any way, have a material adverse effect on the ability of the Company to perform its obligations under this Agreement, the Securities, the Indenture or the Warrant Agreement; and
 - (s) no filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency, domestic or foreign, is necessary or required for the performance by the Company of its obligations under this Agreement, the Securities, the Indenture or the Warrant Agreement or in connection with the transactions contemplated under this Agreement, the Indenture or the Warrant Agreement, except such as have been already obtained.
- 4.2 Any certificate signed by any officer of the Company or any of its subsidiaries and delivered to any Agent or to counsel for the Agents in connection with the offering of the Securities shall be deemed a representation and warranty by the Company to each Agent as to the matters covered thereby on the date of such certificate.
- 4.3 The delivery of the Prospectus, the Prospectus Supplement and the delivery of any Supplementary Material to the Agents shall constitute a representation and warranty by the Company in respect of the Prospectus, Prospectus Supplement and any such Supplementary Material that, as at the time of delivery:
- (a) all information and statements (except information and statements relating solely to or provided solely by the Agents) contained or incorporated by reference in such documents:
 - (i) are true and correct in all material respects;
 - (ii) contain no misrepresentation;

- (iii) constitute full, true and plain disclosure of all material facts relating to the Company and the Securities; and
 - (iv) omit no material fact or information (except facts or information relating solely to the Agents) which is required to be stated therein or is necessary to make the statements or information contained therein not misleading in light of the circumstances under which they were made;
- (b) such document complies with the provisions of Canadian Securities Laws; and
- (c) such document filed in the French language in the Province of Québec is in all material respects a reasonable and proper translation of the English language version thereof and that such versions are not susceptible to any materially different interpretations with respect to any material matter contained therein.

5. **Covenants of the Company**

5.1 In further consideration of the agreements of the Agents herein contained, the Company covenants with the Agents as follows:

- (a) the Company will comply with the requirements of NI 71-101, file the Final MJDS Supplement (in the English and French languages) with the SEC and the Canadian Securities Commissions in accordance with Rule 424(b)(6) under the 1933 Act and NI 71-101 and in any event not later than the date the Final MJDS Supplement is first used in Canada and obtain confirmation, to the extent such confirmation can be obtained, of receipt thereof from the Canadian Securities Commissions;
- (b) the Company will, during the period of the distribution of the Securities, notify the Agents promptly:
 - (i) of the filing of any amendment or supplement to the Prospectus;
 - (ii) of any request by any Canadian Securities Commission or the SEC for any amendment of or supplement to the Registration Statement or the Prospectus or for additional information;
 - (iii) of the institution or, to the extent known by the Company, threatening by the SEC or any Canadian Securities Commission of any stop order proceedings in respect of the Registration Statement or the Prospectus, or any proceedings, with respect to the suspension of the qualification of the Securities for distribution in any jurisdiction or with respect to any order to cease trade any securities of the Company in any jurisdiction; and

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- (iv) of any notification it has received from Moody's Investors Services Inc. of any downgrade in the rating assigned to the Securities;
 - (c) the Company will use its reasonable commercial efforts to prevent the issuance of any stop order, cease trading order or suspension referred to in (b)(iii) above and to obtain as soon as possible the lifting of any such stop order, cease trading order or suspension, if issued;
 - (d) during the period of the distribution of the Securities, the Company will not make or file any amendment or supplement to the Prospectus of which the Agents shall not have previously been advised or which the Agents shall reasonably object in writing after being so advised; provided, however, that this provision shall not prohibit the Company from complying in a timely manner with (i) its timely disclosure and other obligations under applicable securities legislation and the requirements of any relevant stock exchange arising out of any material change or change in material information or otherwise, and (ii) its obligations under clause (f) below;
 - (e) the Company will furnish to the Agents, without charge, a signed copy of the Prospectus and a copy of the Final MJDS Supplement and will use its reasonable best efforts to promptly deliver after the execution of this Agreement and for so long as delivery of a prospectus by an Agent may be required by the 1933 Act or Canadian Securities Laws, as many copies of the Prospectus and the Final MJDS Supplement as the Agents may reasonably request;
 - (f) if, at any time during the period of distribution of the Securities, any event shall occur or condition exist as a result of which it is necessary, in the reasonable opinion of counsel for the Agents or counsel for the Company, to further amend or supplement the Prospectus in order that the Prospectus will not include a misrepresentation or an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time the Prospectus is delivered to a purchaser, or if it shall be necessary, in the reasonable opinion of either such counsel, to amend or supplement the Registration Statement or the Prospectus in order to comply with the requirements of the 1933 Act or the Canadian Securities Laws, the Company will forthwith prepare and file with the SEC and the Canadian Securities Commissions, as applicable, an appropriate supplement or amendment thereto and will furnish to the Agents and to the dealers in the selling group (whose names and addresses the Agents will furnish to the Company), such number of copies thereof as the Agents may reasonably request; and

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- (g) during the period of the distribution of the Securities, to allow the Agents and the Agents' counsel to continue to conduct reasonable due diligence necessary to fulfill the Agents' obligations under Canadian Securities Laws.

6. **Closing**

- 6.1 Subject as hereinafter provided, the closing of the Offering shall be completed at the Closing Time at the offices of Canadian counsel to the Company, Davies Ward Phillips & Vineberg LLP, 1 First Canadian Place, Toronto, Ontario.
- 6.2 At the Closing Time, and provided that all conditions precedent to the completion of the Offering as stipulated in Section 7 of this Agreement have been satisfied:
- (a) the Company shall deliver (i) to CDS or its nominee, global certificates representing such number of Notes and Warrants for which the Agents have provided subscriptions on behalf of the Company, such global certificates to be registered in the name of CDS or its nominee and (ii) to the Agents, the requisite legal opinions and certificates as provided for herein, and such further documentation as may be contemplated herein; and
- (b) the Agents shall pay to the Company, by wire transfer of immediately available funds to a bank account designated by the Company, the aggregate purchase price for the Securities in lawful money of Canada, net of the Agents' Fee. The foregoing payment shall be made against delivery of the Securities being purchased by the Agents to CDS no later than the Closing Time, or at such other time or such other date as shall be agreed to in writing between the Company and the Agents.

7. **Conditions and Closing Deliveries**

- 7.1 The Agents' obligations to solicit offers to purchase the Securities as agents of the Company hereunder, including, without limitation, those set out in Section 6.2, shall be subject to the conditions (each of which is expressly declared to be solely for the benefit of the Agents) (i) that the terms and conditions of the Securities described in the Prospectus and the Final MJDS Supplement shall conform to the description thereof in such documents; (ii) that the Prospectus and Final MJDS Supplement shall not contain a misrepresentation; and (iii) that:
- (a) at the Closing Date, no order having the effect of ceasing or suspending the distribution of the Securities or the trading in any of the securities of the Company, including a stop order suspending the effectiveness of the Registration Statement, shall have been issued by the SEC or any Canadian Securities Commission or stock exchange in Canada or the United States and no proceedings for that purpose shall have been instituted or pending or, to the knowledge of the Company, shall be contemplated by the SEC,

any Canadian Securities Commission or stock exchange in Canada or the United States; and any request on the part of the SEC or any Canadian Securities Commission for additional information from the Company shall have been complied with. The Final MJDS Supplement shall have been filed with the SEC in accordance with Rule 424(b)(6) under the 1933 Act and with the Canadian Securities Commissions in accordance with NI 71-101;

- (b) the Agents shall have received on the Closing Date a certificate, dated the Closing Date and signed by an authorized officer of the Company, in his or her capacity as such, to the effect that:
- (i) the representations and warranties of the Company contained in this Agreement are true and correct in all material respects as of the Closing Date with the same force and effect as if made at and as of the Closing Time;
 - (ii) the Company has complied in all material respects with all the terms and conditions of this Agreement on its part to be complied with up to the Closing Time; and
 - (iii) subsequent to the respective dates as of which information is given in the Registration Statement, there has not been any material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, which requires disclosure under the timely disclosure provisions of U.S. securities laws applicable to the Company, except as has been publicly disclosed;
- (c) the Agents shall have received on the Closing Date the following the opinions:
- (i) an opinion of Davies Ward Phillips & Vineberg LLP, Canadian counsel to the Company, to the effect that the French language version of each of the Prospectus and Prospectus Supplement (excluding all documents incorporated by reference therein) are in all material respects complete and proper translations of the English language versions thereof;
 - (ii) an opinion of the Auditors, to the effect that the French language version of the financial portions of the Prospectus and Prospectus Supplement and the documents incorporated by reference therein are, in all material respects, a complete and proper translation of the English language versions thereof;
 - (iii) an opinion of Heenan Blaikie LLP, to the effect that the French language version of the non-financial portions of the documents

incorporated by reference in the Prospectus and Prospectus Supplement are, in all material respects, a complete and proper translation of the English language versions thereof;

- (iv) an opinion of Davies Ward Phillips & Vineberg LLP addressed to the Agents, substantially in the form of Schedule A hereto; provided that in providing such opinion, Davies Ward Phillips & Vineberg LLP may rely on the opinions of local counsel as to matters governed by the laws of jurisdictions other than the laws of the Provinces of Ontario and Quebec and the federal laws of Canada applicable therein;
 - (v) an opinion of Sidley Austin Brown & Wood LLP, United States counsel for the Company, addressed to the Agents, substantially in the form of Schedule B hereto; and
 - (vi) an opinion of McMillan Binch LLP, counsel for the Agents, substantially in the form of Schedule C hereto; and
- (d) in connection with their review of the Prospectus and the Final MJDS Supplement, the Auditors shall have furnished a comfort letter to the Company and the Agents, in form and substance satisfactory to the Company and the Agents acting reasonably, relating to the verification of financial information and accounting data contained in the Prospectus (including information incorporated therein by reference) relating to the Company and matters involving changes or developments since the respective dates as of which specified financial information is given in the Prospectus and Final MJDS Supplement to a date not more than five days prior to the date of such letter. Such letter shall further state that (i) the Auditors are independent with respect to the Company within the meaning of the 1933 Act and the regulations thereunder, and (ii) in their opinion, the audited financial statements of the Company included or incorporated by reference in the Registration Statement and the Prospectus comply as to form in all material respects with the applicable accounting requirements of the 1933 Act and the regulations thereunder.

8. **Termination**

8.1 If prior to the Closing Time:

- (a) there has been any material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, which, in the reasonable opinion of the Agents, would reasonably be expected to have a significant adverse effect on the market price or value of the Securities;
- (b) any enquiry, action, suit, investigation or other proceeding, whether formal or informal, in relation to the Company or the distribution of the Securities should be instituted or any order under or pursuant to any laws or regulations of the United States or of any of the Qualifying Jurisdictions or by any relevant stock exchanges in the United States or Canada or any other regulatory or governmental authority in the United States or should be made or issued (except for any such order based upon the activities or the alleged activities of the Agents and not of the Company) which, in the reasonable opinion of the Agents, operates to prevent or restrict the trading or the distribution of the Securities or which has a material adverse impact on the marketability thereof; or
- (c) there should develop, occur or come into effect or existence any event, action, state, condition or occurrence of national or international consequence, including any act of terrorism, war or like event, or any law or regulation, which in the opinion of the Agents, acting reasonably, seriously adversely affects, or would seriously adversely affect the Canadian, United States or international financial markets such that it would be impractical in the reasonable opinion of the Agents to sell the Securities,

then, in any one or more of the foregoing cases, each of the Agents shall be entitled, at its or their sole option, to terminate all of its obligations under this Agreement, and the obligations of any purchaser from whom the Agent has solicited an order to purchase Securities, by notice to that effect delivered to the Company prior to the Closing Time; provided, however, that if Canaccord terminates its obligations hereunder and the Company otherwise fails to comply with the requirements of National Instrument 33-105 – *Underwriting Conflicts*, all of the obligations of the Agents under this Agreement, and the obligations of any purchaser from whom the Agents have solicited an order to purchase Securities, shall terminate without any further act or formality.

- 8.2 The rights of the Agents to terminate their obligations hereunder are in addition to any other remedies they may have in respect of any default, act or failure to act of the Company, in respect of any of the matters contemplated hereby. In the event of any termination, there shall be no

further liability on the part of the Company to the terminating Agent or persons from whom it has solicited orders except in respect of any liability which may have arisen or may thereafter arise under Sections 9.1 or Section 10. Each of the Agents may waive, in whole or in part, or extend the time for compliance with, any terms and conditions without prejudice to its rights in respect of any other terms and conditions or any other or subsequent breach or non-compliance provided, however, that any waiver or extension must be in writing and signed by the Agent in order to be binding upon it.

9. **Expenses of Offering and Agents' Expenses**

- 9.1 Whether or not any sale of the Securities shall be completed, the Company (or any of its affiliates) shall pay all reasonable expenses relating to this transaction and all other costs and expenses of or incidental to the creation, offering, issue, sale and delivery of the Securities including, without limitation, the Agents' reasonable out-of-pocket expenses relating directly and solely to this transaction up to \$65,000 (including, without limitation, the reasonable fees and disbursements of counsel up to \$60,000 and travel expenses relating to information meetings), the advertising and marketing expenses relating to the Offering (including all roadshow expenses), the cost of preparing and printing and translating the Prospectus, Prospectus Supplement, any Supplementary Material, any sales memorandum and the certificates for the Securities, the cost of qualifying the Securities for sale to the public in the Qualifying Jurisdictions, the fees and expenses of the Company, the cost of registration and delivery of certificates for the Securities and the fees and expenses of the Auditors, counsel and all local counsel of the Company, including all legal and accounting fees and expenses relating to the Prospectus and the Prospectus Supplement and preparing the Company for the Offering.

10. **Indemnification**

- 10.1 The Company agrees to indemnify and hold harmless each Agent and each person, if any, who controls any Agent within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act as follows:
- (a) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any misrepresentation or alleged misrepresentation contained in the Registration Statement (or any amendment thereto) or the Prospectus Supplement or the Prospectus (or in any amendment or supplement thereto), or any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto) or the Prospectus Supplement or the Prospectus (or in any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to

make the statements therein, in light of the circumstances in which they are made, not misleading;

- (b) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such misrepresentation or alleged misrepresentation, any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 10.3 below) any such settlement is effected with the written consent of the Company; and
- (c) against any and all expense whatsoever, as incurred (including the fees and disbursements of counsel chosen by MLCI), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such misrepresentation or alleged misrepresentation, any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (a) or (b) above;

provided, however, that this indemnity shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any misrepresentation or alleged misrepresentation, untrue statement or omission, or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by any Agent expressly for use in the Registration Statement (or any amendment thereto) or the Prospectus Supplement or the Prospectus (or any amendment or supplement thereto).

Insofar as this indemnity may permit indemnification for liabilities under the 1933 Act of any person who is a partner of an Agent or who controls an Agent within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and who is a director or officer of the Company or controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, such indemnity is subject to the undertaking of the Company in the Registration Statement.

- 10.2 Each Agent severally agrees to indemnify and hold harmless the Company, its directors, each of its officers who signed the Registration Statement and the Prospectus, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in Section 10.1, as incurred, but only with respect to misrepresentations or alleged misrepresentations, untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto) or the Prospectus (or

any amendment or supplement thereto) in reliance upon and in conformity with written information furnished to the Company by such Agent expressly for use in the Registration Statement (or any amendment thereto) or the Prospectus Supplement or the Prospectus (or any amendment or supplement thereto).

- 10.3 Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity. In the case of parties indemnified pursuant to Section 10.1 above, counsel to the indemnified parties shall be selected by MLCI, and, in the case of parties indemnified pursuant to Section 10.2 above, counsel to the indemnified parties shall be selected by the Company. An indemnifying party may participate at its own expense in the defence of any such action; provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, except that the Company shall be liable for the fees and expenses of one counsel representing MLCI and the persons controlling MLCI and one counsel representing all other Agents and the persons controlling them. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 10 or Section 11 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.
- 10.4 If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 10.1(b) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30

days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

11. **Contribution**

- 11.1 If the indemnification provided for in Section 10 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Agents, on the other hand, from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and of the Agents, on the other hand, in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Company, on the one hand, and the Agents, on the other hand, in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of such Securities (before deducting expenses) received by the Company and the total Agents' Fee received by the Agents, in each case as set forth on the cover of the Final MJDS Supplement.

The relative fault of the Company, on the one hand, and the Agents, on the other hand, shall be determined by reference to, among other things, whether any such misrepresentation or alleged misrepresentation, any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or by the Agents and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

- 11.2 The Company and the Agents agree that it would not be just and equitable if contribution pursuant to this Section 11 were determined by pro rata allocation (even if the Agents were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 11. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 11 shall be deemed to include any legal or other expenses reasonably incurred by such

-
- indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such misrepresentation or alleged misrepresentation, any such untrue or alleged untrue statement or omission or alleged omission.
- 11.3 Notwithstanding the provisions of this Section 11, no Agent shall be required to contribute any amount in excess of the amount by which the total price at which the Securities placed by it and offered to the public exceeds the amount of any damages which such Agent has otherwise been required to pay by reason of any such misrepresentation or alleged misrepresentation, any such untrue or alleged untrue statement or omission or alleged omission.
- 11.4 No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.
- 11.5 For purposes of this Section 11, each person, if any, who controls an Agent within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as such Agent, and each director of the Company, each officer of the Company who signed the Registration Statement and the Prospectus, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company. The Agents' respective obligations to contribute pursuant to this Section 11 are several in proportion to the aggregate amount of Securities sold by the Agents, and not joint.
- 11.6 The rights of indemnity and contribution contained in Sections 10 and 11 in respect of a particular claim based on misrepresentation or omission or alleged misrepresentation or omission in the Prospectus, the Prospectus Supplement or any Supplementary Material shall not apply if the Company has complied with Sections 5.1(e) and 5.1(f) and the person asserting such claim was not provided with a copy of the Prospectus, Prospectus Supplement or any Supplementary Material which corrected such misrepresentation or omission by an Agent or other selling group member within two Business Days after commercial copies of such Prospectus or any Supplementary Material were provided to the Agents or other selling group members in accordance with Sections 5.1(e) and 5.1(f).
12. **Notices**
- 12.1 Unless herein otherwise expressly provided, any notice, request, direction, consent, waiver, extension, agreement or other communication required or permitted to be given hereunder shall be in writing and shall be delivered by personal delivery to an officer of the party to whom notice is given or shall

be sent by commercial courier to the attention of the individuals noted below, in each case at the following address:

(a) To the Company:

Merrill Lynch & Co., Inc.
4 World Financial Center
New York, NY 10080

Attention: Jens Berding
Facsimile: (212) 449-7481

with a copy to:

Sidley Austin Brown & Wood LLP
787 Seventh Avenue
New York, NY 10019

Attention: Mark Wiltshire
Facsimile: (212) 839-5599

- and -

Davies Ward Phillips & Vineberg LLP
44th Floor
1 First Canadian Place
Toronto, ON M5X 1B1

Attention: Patricia Olasker
Facsimile: (416) 863-0871

(b) To MLCI:

Merrill Lynch Canada Inc.
Suite 400, BCE Place
181 Bay Street
Toronto, ON M5J 2V8

Attention: P. Scott McBurney
Facsimile: (416) 369-7790

(c) To Canaccord:

Canaccord Capital Corporation
P.O. Box 6, Suite 1210
320 Bay Street
Toronto, ON M5H 4A6

Attention: Isaac Muskat
Facsimile: (416) 867-6011

with a copy to:

McMillan Binch LLP
Barristers & Solicitors
BCE Place, Suite 4400
Bay Wellington Tower
Toronto, ON M5J 2T3

Attention: Michael A. Burns
Facsimile: (416) 865-7048

The parties hereto may change their respective address for notice by notice given in the manner aforesaid.

13. **General Provisions**

- 13.1 Time shall be of the essence hereof.
- 13.2 This Agreement shall be governed by and construed, performed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the courts of such province shall have non-exclusive jurisdiction over any dispute hereunder.
- 13.3 The representations, warranties, obligations, covenants, agreements and indemnities herein contained or contained in any certificate delivered pursuant to this Agreement shall survive the sale of the Securities and shall continue in full force and effect unaffected by the termination of the obligations of the Agents hereunder, nor shall they be limited or prejudiced by any investigation made by or on behalf of any Agent in the course of preparation of the Prospectus or any Supplementary Material or the sale of the Securities.
- 13.4 If any provision of this Agreement is determined to be void or unenforceable in whole or in part, such void or unenforceable provision shall not affect or impair the validity of any other provision of this Agreement and shall be severable from this Agreement.
- 13.5 This Agreement may not be assigned by any of the parties hereto without the prior written consent of the other parties hereto. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
- 13.6 This Agreement may be executed in several counterparts each of which when so executed shall be deemed to be an original, and such counterparts

shall constitute one and the same instrument; and notwithstanding the date of execution, this Agreement shall be deemed to bear the date first shown on this Agreement.

- 13.7 This Agreement may be executed and delivered by the parties hereto by facsimile transmission and such facsimile copy, when received, shall constitute an original hereof.
- 13.8 The Company shall be entitled to make any delivery or give any disclosure or notice that is to be given to the Agents hereunder to MLCI on their behalf and shall act on any notice, waiver, extension, receipt or other communication given by or on behalf of the Agents by MLCI which shall represent the Agents and which shall have authority to bind the Agents in respect of all matters hereunder, except matters referred to in Sections 10.1 through 10.3. MLCI shall use its reasonable best efforts to consult fully with the other Agent with respect to any such notice, waiver, extension or other communication.
- 13.9 The parties hereto shall provide all such reasonable assurances as may be required or desirable to consummate the transactions contemplated hereby and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary or desirable to effect the purpose of this Agreement and to carry out its provisions.

[The remainder of this page intentionally left blank.]

If the foregoing is in accordance with your understanding and is agreed to by you, please signify your acceptance on the accompanying counterparts of this letter and return the same to the undersigned, whereupon this letter as so accepted shall constitute an agreement among the Company and the Agents in accordance with the foregoing.

Yours very truly,

MERRILL LYNCH CANADA INC.

by _____
Name:
Title:

by _____
Name:
Title:

CANACCORD CAPITAL CORPORATION

by _____
Name:
Title:

MERRILL LYNCH & CO., INC.

by _____
Name:
Title:

SCHEDULE A

FORM OF OPINION OF CANADIAN COUNSEL TO THE COMPANY

See attached.

SCHEDULE B

FORM OF OPINION OF U.S. COUNSEL TO THE COMPANY

See attached.

SCHEDULE C

FORM OF OPINION OF COUNSEL TO THE AGENTS

See attached.

THIS NOTE IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITORY OR A NOMINEE THEREOF. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED ("CDS") TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IN RESPECT THEREOF IS REGISTERED IN THE NAME OF CDS & CO., OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS (AND ANY PAYMENT IS MADE TO CDS & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED HOLDER HEREOF, CDS & CO., HAS AN INTEREST HEREIN.

No. R-1
CUSIP 59021S679

30,142 Units
(Each Unit representing Cdn. \$100 principal amount of
Notes)

MERRILL LYNCH & CO., INC.
Cdn. \$3,014,200
Global Equity Performance Weighted Notes, Series 3
due March 14, 2012
(the "Notes")

Merrill Lynch & Co., Inc., a Delaware corporation (hereinafter referred to as the "Company", which term includes any successor corporation under the Indenture herein referred to), for value received, hereby promises to pay to CDS & CO., as nominee of The Canadian Depository for Securities Limited, or its registered assigns, a sum for each unit of the Notes equal to the Redemption Amount (as defined below) on March 14, 2012 (the "Stated Maturity"), upon presentation and surrender of this Global Note.

Payment or delivery of the Redemption Amount and any interest on any overdue amount thereof with respect to this Global Note shall be made at the office or agency of the Company maintained for that purpose in Toronto, Canada, in such coin or currency of Canada as at the time of payment is legal tender for payment of public and private debts.

This Global Note is one of the series of Global Equity Performance Weighted Notes, Series 3 due March 14, 2012.

Payment at Maturity

The "Redemption Amount" per unit shall be denominated in Canadian dollars and shall be determined by the Calculation Agent (as defined below) in accordance with the following formula; provided that in no event shall the Redemption Amount of a Note be less than Cdn. \$20 per unit of Notes:

$$\$100 \times [W_1P_1 + W_2P_2 + W_3P_3] - AF$$

where:

W_1 equals the weighting of the best performing Regional Basket (as defined below) over the term of the Notes (determined after the Calculation Period (as defined below) and after giving effect to the conversion of the Regional Basket into Canadian dollars) which shall be equal to 55%.

W_2 equals the weighting of the second best performing Regional Basket over the term of the Notes (determined after the Calculation Period and after giving effect to the conversion of the Regional Basket into Canadian dollars) which shall be equal to 30%.

W_3 equals the weighting of the third best performing Regional Basket over the term of the Notes (determined after the Calculation Period and after giving effect to the conversion of the Regional Basket into Canadian dollars) which shall be equal to 15%.

P_1 equals the performance of the best performing Regional Basket.

P_2 equals the performance of the second best performing Regional Basket.

P_3 equals the performance of the third best performing Regional Basket.

AF equals the Adjustment Fee (as defined below).

The performance of the North American Regional Basket (as defined below) equals:

$$\frac{IE_1}{IS_1}$$

The performance of the European Regional Basket (as defined below) equals:

$$\left[60\% \times \frac{IE_2}{IS_2} \right] + \left[40\% \times \frac{IE_3}{IS_3} \right]$$

The performance of the Asian Regional Basket (as defined below) equals:

$$\left[55\% \times \frac{IE_4}{IS_4} \right] + \left[35\% \times \frac{IE_5}{IS_5} \right] + \left[10\% \times \frac{IE_6}{IS_6} \right]$$

The index values are:

IS_i equals the Starting Value (as defined below) of Index_{*i*}

IE_i equals the Ending Value (as defined below) of Index_{*i*}

The underlying equity indices (each, a “Basket Index”) are:

Index₁ = S&P 500 Index

Index₂ = Dow Jones EURO STOXX 50 Index

Index₃ = FTSE 100 Index

Index₄ = Nikkei 225 Index

Index₅ = MSCI Hong Kong Index

Index₆ = S&P/ASX 200 Index

The “Regional Baskets” shall be the North American Regional Basket, the European Regional Basket and the Asian Regional Basket.

The “North American Regional Basket” shall be an index basket expressed in Canadian dollars that is 100% weighted to the S&P 500 Index.

The “European Regional Basket” shall be an index basket expressed in Canadian dollars that is 60% weighted to the Dow Jones EURO STOXX 50 Index and 40% weighted to the FTSE 100 Index.

The “Asian Regional Basket” shall be an index basket expressed in Canadian dollars that is 55% weighted to the Nikkei 225 Index, 35% weighted to the MSCI Hong Kong Index and 10% weighted to the S&P/ASX 200 Index.

The “Adjustment Fee” shall be calculated by the Calculation Agent for each calendar day and accrue over the term of the Notes at an annual rate of 0.85% of the initial issue price of the Warrants.

The “Starting Value” for each Basket Index shall be the following:

S&P 500 Index = 1,456.9044

Dow Jones EURO STOXX 50 Index = 4,933.1877

FTSE 100 Index = 11,500.6592

Nikkei 225 Index = 137.2533

MSCI Hong Kong Index = 1,158.6378

S&P/ASX 200 Index = 4,011.0483

The "Ending Value" for each Basket Index shall be determined by Merrill Lynch International (the "Calculation Agent") and shall equal the average, arithmetic mean, of the closing values of such Basket Index determined by the designated Index Calculation Agent (as defined below) on each of the ten Calculation Days (as defined below) during the Calculation Period multiplied by the then current exchange rate between the Canadian dollar and the relevant Index Currency (as defined below). If there are fewer than ten Calculation Days during the Calculation Period, then the Ending Value shall equal the average, arithmetic mean, of the closing values of the Basket Index on those Calculation Days. If there is only one Calculation Day during the Calculation Period, then the Ending Value shall equal the closing value of the Basket Index on that Calculation Day. If no Calculation Days occur during the Calculation Period, then the Ending Value shall equal the closing value of the Basket Index determined on the last scheduled Index Business Day (as defined below) in the Calculation Period, regardless of the occurrence of a Market Disruption Event (as defined below) on that scheduled Index Business Day.

"Calculation Period" means the period from and including the twelfth scheduled Index Business Day prior to the Stated Maturity to and including the third scheduled Index Business Day prior to the Stated Maturity.

"Calculation Day" means any Index Business Day during the Calculation Period on which a Market Disruption Event has not occurred.

"Index Business Day" means, for each Basket Index, a day on which the Basket Index or any Successor Index (as defined below) is calculated and published.

"Index Calculation Agent" means, with respect to the S&P 500 Index and the S&P/ASX 200 Index, Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("S&P"), with respect to the Dow Jones EURO STOXX 50 Index, STOXX Limited ("STOXX"), with respect to the FTSE 100 Index, FTSE International Limited ("FTSE"), with respect to the Nikkei 225 Index, Nihon Keizai Shimbun, Inc. ("NKS"), and with respect to the MSCI Hong Kong Index, Morgan Stanley Capital International Inc. ("MSCI").

"Index Currency" means, for each Basket Index, the currency in which that Basket Index is denominated.

For purposes of determining the Redemption Amount, the exchange rate between the Canadian dollar and each Index Currency shall be the amount of Canadian dollars (or part thereof) for which one unit of the relevant Index Currency could be purchased as quoted at 12:00 noon (Toronto time) by the Bank of Canada as shown on the applicable Bloomberg L.P. ("Bloomberg") page (or its successor page for the purpose of displaying such rate) on each Calculation Day in respect of all Index Currencies. In the event that the applicable Bloomberg page (or successor page) should not be available or no rate is quoted on such page on a Calculation Day at the applicable time, the exchange rate shall be the rate of exchange as determined by the Calculation Agent.

All determinations made by the Calculation Agent and each Index Calculation Agent shall be at its sole discretion and, absent manifest error, shall be conclusive for all purposes and binding on the Company and the Holders and beneficial owners of the Notes. Whenever the Calculation Agent is required to act, it shall do so in good faith using its reasonable judgment.

The Company shall make available to the Trustee or a paying agent appointed by the Company (the "Paying Agent"), no later than 10:00 A.M., Toronto time, on the Stated Maturity, funds in an amount sufficient to pay such aggregate Redemption Amount. Provided that the Company has made adequate funds available to the Trustee or the Paying Agent in such manner, the Trustee or the Paying Agent shall make payment to the Depository, after 10:00 A.M., Toronto time, but prior to 2:00 P.M., Toronto time, on such Stated Maturity. Any such payment shall be in the amount of the aggregate Redemption Amount, and in respect of Notes issued in definitive form, the aggregate Redemption Amount in respect of Notes for which delivery has been accepted by the Trustee or the Paying Agent.

Adjustments to the Basket Indices; Market Disruption Events

If at any time S&P, STOXX, FTSE, NKS or MSCI (each, an "Index Publisher") makes a material change in the formula for or the method of calculating its respective Basket Index or any Successor Index or in any other way materially modifies such Index so that such Index does not, in the opinion of the Calculation Agent, fairly represent the value of such Index had those changes or modifications not been made, then, from and after that time, the Calculation Agent shall, at the close of business in New York, New York, on each date that the closing value of such Index is to be calculated, make those adjustments as, in the good faith judgment of the Calculation Agent, may be necessary in order to arrive at a calculation of a value of a stock index comparable to such Index as if those changes or modifications had not been made, and calculate the closing value with reference to such Index, as so adjusted.

"Market Disruption Event" means either of the following events as determined by the Calculation Agent:

- (A) the suspension of or material limitation on trading for more than two hours of trading, or during the one-half hour period preceding the close of trading, on the applicable exchange (without taking into account any extended after-hours trading session), in 20% or more of the stocks which then comprise a Basket Index or any Successor Index; or
- (B) the suspension of or material limitation on trading, in each case, for more than two hours of trading, or during the one-half hour period preceding the close of trading, on the applicable exchange (without taking into account any extended after-hours trading session), whether by reason of movements in price otherwise exceeding levels permitted by the applicable exchange or otherwise, in option contracts or futures contracts related to the applicable Basket Index, or any Successor Index.

For the purpose of determining whether a Market Disruption Event has occurred:

- (1) a limitation on the hours in a trading day and/or number of days of trading shall not constitute a Market Disruption Event if it results from an announced change in the regular business hours of the applicable exchange;
- (2) a limitation on trading imposed during the course of a day by reason of movements in price otherwise exceeding levels permitted by the applicable exchange shall constitute a Market Disruption Event;

-
- (3) a decision to permanently discontinue trading in the applicable futures or options contracts related to the applicable Basket Index, or any Successor Index, shall not constitute a Market Disruption Event;
 - (4) a suspension in trading in a futures or options contract on the applicable Basket Index, or any Successor Index, by a major securities market by reason of (a) a price change violating limits set by that securities market, (b) an imbalance of orders relating to those contracts or (c) a disparity in bid and ask quotes relating to those contracts shall constitute a suspension or material limitation of trading in futures or options contracts related to that Basket Index; and
 - (5) an absence of trading on the relevant exchange shall not include any time when that exchange is closed for trading under ordinary circumstances.

Discontinuance of the Basket Indices

If an Index Publisher discontinues publication of its respective Basket Index and the Index Publisher or another entity publishes a successor or substitute index that the Calculation Agent determines, in its sole discretion, to be comparable to that Basket Index (a "Successor Index"), then, upon the Calculation Agent's notification of such determination to the Trustee (as defined below) and the Company, the Calculation Agent shall substitute the Successor Index as calculated by the relevant Index Publisher or any other entity for that Basket Index and calculate the Ending Value as described above under "Payment at Maturity". Upon any selection by the Calculation Agent of a Successor Index, the Company shall cause notice to be given to Holders of the Notes.

In the event that an Index Publisher discontinues publication of its respective Basket Index and:

- the Calculation Agent does not select a Successor Index; or
- the Successor Index is not published on any of the Calculation Days,

the Calculation Agent shall compute a substitute value for that Basket Index in accordance with the procedures last used to calculate that Basket Index before any discontinuance. If a Successor Index is selected or the Calculation Agent calculates a value as a substitute for that Basket Index as described below, the Successor Index or value shall be used as a substitute for that Basket Index for all purposes, including for purposes of determining whether a Market Disruption Event exists.

If an Index Publisher discontinues publication of its respective Basket Index before the Calculation Period and the Calculation Agent determines that no Successor Index is available at that time, then on each Business Day (as defined below) until the earlier to occur of:

- the determination of the Ending Value; and
- a determination by the Calculation Agent that a Successor Index is available,

the Calculation Agent shall determine the value that would be used in computing the Redemption Amount as described in the preceding paragraph as if that day were a Calculation Day. The Calculation Agent shall cause notice of each value to be published not less often than once each month in the national edition of a major English language Canadian newspaper and a French language newspaper of general circulation in the Province of Quebec, and arrange for information with respect to these values to be made available by telephone.

A "Business Day" is any day other than a Saturday or Sunday that is neither a legal holiday nor a day on which banking institutions in London are authorized or required by law, regulation or executive order to close and those banks are open for dealing in foreign exchange and foreign currency deposits.

License Agreements

The license agreements entered into by the Company or Merrill Lynch, Pierce, Fenner & Smith Incorporated, an affiliate of the Company ("MLPF&S"), with the respective publishers of the Basket Indices indicated below, require that the following language be included in this Global Note in connection with the licensing of each such Basket Index:

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General

This Global Note is one of a duly authorized issue of Securities of the Company, issued and to be issued under an Indenture, dated as of April 1, 1983, as amended and restated (herein referred to as the “Indenture”), between the Company and JPMorgan Chase Bank, N.A., as Trustee (herein referred to as the “Trustee”, which term includes any successor Trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights thereunder of the Company, the Trustee and the Holders of the Notes, and the terms upon which this Global Note is, and is to be, authenticated and delivered.

The Company hereby covenants for the benefit of the Holders of this Global Note, to the extent permitted by applicable law, not to claim voluntarily the benefits of any laws concerning usurious rates of interest against a Holder of this Global Note.

This Global Note is not subject to redemption by the Company or at the option of the Holder prior to the Stated Maturity.

In case an Event of Default with respect to this Global Note shall have occurred and be continuing, the amount payable to a Holder of a Note upon any acceleration permitted by this Global Note, with respect to each unit hereof, shall be equal to the Redemption Amount, calculated as though the date of acceleration were the Stated Maturity of this Global Note.

In case of default in payment of this Global Note, whether at the Stated Maturity or upon acceleration, from and after such date this Global Note shall bear interest, payable upon demand of the Holders of this Global Note, at the rate of 2.25% per annum to the extent that payment of any interest is legally enforceable on the unpaid amount due and payable on such date in accordance with the terms of this Global Note to the date payment of such amount has been made or duly provided for.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities of each series to be affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of not less than 66 2/3% in aggregate original public offering price or principal amount, as the case may be, of the Securities at the time Outstanding of each series affected thereby. Holders of specified percentages in aggregate original public offering price or principal amount, as the case may be, of the Securities of each series at the time Outstanding, on behalf of the Holders of all Securities of each series, are permitted to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Global Note shall be conclusive and binding upon such Holder and upon all future Holders of this Global Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof whether or not notation of such consent or waiver is made upon this Global Note.

No reference herein to the Indenture and no provision of this Global Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the amount payable with respect to this Global Note and any interest on any overdue amount thereof at the time, place and rate, and in the coin or currency herein prescribed.

As provided in the Indenture and subject to certain limitations set forth therein and on the first page hereof, the transfer of this Global Note may be registered on the Security Register of the Company, upon surrender of this Global Note for registration of transfer at the office or agency of the Company in Toronto, Canada, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company duly executed by, the Holder hereof or by his attorney duly authorized in writing, and thereupon one or more new Notes, of authorized denominations and for the same aggregate principal amount, shall be issued to the designated transferee or transferees.

The Notes are issuable only in registered form without coupons in denominations of a single unit and integral multiples thereof, with a minimum initial investment of Cdn. \$2,000. This Global Note shall remain in the form of a global security held by a Depository. Notwithstanding the foregoing, if (x) any Depository is at any time unwilling or unable to continue as Depository and a successor depository is not appointed by the Company within 60 days, (y) the Company executes and delivers to the Trustee a Company Order to the effect that this Global Note shall be exchangeable or (z) an Event of Default has occurred and is continuing with respect to the Notes, this Global Note shall be exchangeable for Notes in definitive form of like tenor and of an equal aggregate principal amount, in denominations of a single unit and integral multiples thereof. Such definitive Notes shall be registered in such name or names as the Depository shall instruct the Trustee. If definitive Notes are so delivered, the Company may make such changes to the form of this Global Note as are necessary or appropriate to allow for the issuance of such definitive Notes.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment by the beneficial owners of the Notes of a sum sufficient to cover any tax or governmental charge payable in connection therewith.

Prior to due presentment of this Global Note for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Global Note is registered as the owner hereof for all purposes, whether or not this Global Note be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

The Company and a Holder (and beneficial owners) of a Note shall agree (in the absence of an administrative determination or judicial ruling to the contrary) to treat each Note for all U.S. federal income tax purposes as a pre-paid cash-settled forward contract linked to the Regional Baskets.

All terms used in this Global Note which are defined in the Indenture but not in this Global Note shall have the meanings assigned to them in the Indenture.

Unless the certificate of authentication hereon has been executed by JPMorgan Chase Bank, N.A., the Trustee under the Indenture, or its successor thereunder, by the manual signature of one of its authorized officers, this Global Note shall not be entitled to any benefits under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated: March 14, 2005

CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series designated therein referred to in the [Copy of Seal]
within-mentioned Indenture.

Merrill Lynch & Co., Inc.

JPMorgan Chase Bank, N.A. as Trustee

By:

Assistant Treasurer

By:

Authorized Officer

Attest:

Secretary

MERRILL LYNCH & CO., INC.

and

JPMORGAN CHASE BANK, N.A., as Warrant Agent

WARRANT AGREEMENT

dated as of March 14, 2005

GLOBAL EQUITY PERFORMANCE WEIGHTED WARRANTS, SERIES 3

EXERCISABLE MARCH 14, 2012

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SIGNATURES

EXHIBIT A - Form of Global Warrant Certificate

WARRANT AGREEMENT

THIS AGREEMENT, dated as of March 14, 2005, between MERRILL LYNCH & CO., INC., a corporation duly organized and existing under the laws of the State of Delaware (the "Company"), and JPMORGAN CHASE BANK, N.A., a New York banking corporation, as Warrant Agent (the "Warrant Agent").

WITNESSETH THAT:

WHEREAS, the Company proposes to sell warrants (the "Warrants" or, individually, a "Warrant") constituting a call option in respect of three Regional Baskets (as defined below), exercisable on the Exercise Date (as defined below) and representing the right to receive from the Company (i) a cash settlement amount equal to the Redemption Amount (as defined below), in Canadian dollars, computed by reference to changes in the value of the three Regional Baskets or, (ii) in certain limited circumstances, physical settlement by delivery of certain securities; and

WHEREAS, the Company desires to appoint the Warrant Agent to act on behalf of the Company in connection with the issuance, transfer and exercise of the Warrants, and desires to set forth herein, among other things, the provisions of the Warrants and the terms and conditions on which they may be issued, transferred, exercised and cancelled.

NOW, THEREFORE, in consideration of the promises and of the mutual agreements herein contained, the parties hereto agree as follows:

ARTICLE I

ISSUANCE, FORM, EXECUTION,
DELIVERY AND REGISTRATION OF WARRANTS

SECTION 1.01. Issuance of Warrants; Book-Entry Procedures; Successor Depository. (a) The Warrants shall be issued in book-entry form and shall initially be represented by a single fully-registered global certificate (the "Global Warrant Certificate"). Each Warrant shall represent the right, subject to the provisions contained herein and in the Global Warrant Certificate, to receive from the Company (i) the Redemption Amount or, (ii) in certain limited circumstances, physical settlement of such Warrant by delivery of certain securities. Beneficial owners of interests in the Global Warrant Certificate shall not be entitled to receive definitive Warrants evidencing the Warrants; *provided, however*, that if (i) the Depository (as defined below) is at any time unwilling or unable to continue as Depository for the Warrants and a successor Depository is not appointed by the Company within 60 days, (ii) the Company determines not to have the Warrants represented by a Global Warrant Certificate, and executes and delivers to the Warrant Agent a Company order to the effect that the Warrants shall no longer be represented by the Global Warrant Certificate or (iii) in the event the Company shall be adjudged bankrupt or insolvent or make an assignment for the benefit of its creditors or institute proceedings to be adjudicated bankrupt or shall consent to the filing of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking

reorganization under applicable law, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver or custodian of all or any substantial part of its property, or shall admit in writing its inability to pay or meet its debts as they mature, or if a receiver or custodian of it or all or any substantial part of its property shall be appointed, or if any public officer shall have taken charge or control of the Company or of its property or affairs, for the purpose of rehabilitation, conservation or liquidation, provided any such event does not result in the automatic exercise of the Warrants as described in Section 2.03, the Company shall issue Warrants in definitive form in exchange for the Global Warrant Certificate. In any such instance, and in accordance with the provisions of this Agreement, each beneficial owner of an interest in the Global Warrant Certificate shall be entitled to have a number of Warrants equivalent to such owner's beneficial interest in the Global Warrant Certificate registered in its name and shall be entitled to physical delivery of such Warrants in definitive form by the Depository Participant (as defined below) through which such owner's beneficial interest is reflected. The provisions of Section 1.04 shall apply only if, and when, Warrants in definitive form ("Warrant Certificates") are issued hereunder. Unless the context shall otherwise require, all references in this Agreement to the Global Warrant Certificate shall include the Warrant Certificates in the event that Warrant Certificates are issued.

(b) Upon the issuance of the Warrants by the Company, the Global Warrant Certificate shall be deposited with the Depository or its nominee (the "Depository"), for credit to the accounts of the Depository Participants as shown on the records of the Depository from time to time. As used herein, the term "Depository" initially refers to The Canadian Depository for Securities Limited and includes any successor Depository selected by the Company as provided in Section 1.01(d).

(c) The Global Warrant Certificate shall initially be registered in the name of the Depository, or a nominee of the Depository, selected by the Company for the Warrants. The Warrant holdings of Depository Participants shall be recorded on the books of the Depository. The holdings of customers of Depository Participants shall be reflected on the books and records of such Depository Participants. "Depository Participants" include banks, investment dealers and trust companies and may include Merrill Lynch Canada Inc. and Canaccord Capital Corporation. The Global Warrant Certificate shall be held by the Depository or its nominee.

(d) The Company may from time to time select a new entity to act as Depository and, if such selection is made, the Company shall promptly give the Warrant Agent and the acting Depository written notice to such effect identifying the new Depository, and the Global Warrant Certificate shall be delivered to the Warrant Agent and shall be transferred to the new Depository as provided in Section 1.03 as promptly as possible. Appropriate changes may be made in the Global Warrant Certificate, the notice of exercise and the related notices delivered in connection with an exercise of Warrants to reflect the selection of the new Depository.

SECTION 1.02. Form, Execution, Authentication and Delivery of Global Warrant Certificate The Global Warrant Certificate shall be in fully-registered form and substantially in the form set forth in Exhibit A hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Agreement. The

Global Warrant Certificate may have imprinted or otherwise reproduced thereon such letters, numbers or other marks of identification or designation and such legends or endorsements as the officers of the Company executing the same may approve (execution thereof to be conclusive evidence of such approval) and are not inconsistent with the provisions of this Agreement (but which do not affect the rights, duties or immunities of the Warrant Agent), or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Warrants may be listed or of the Depository, or to conform to usage. The Global Warrant Certificate shall be signed manually on behalf of the Company by its Chairman of the Board, President, Vice President serving as Chief Financial Officer, Treasurer or Assistant Treasurer, and its corporate seal shall be impressed, imprinted or engraved manually thereon, which shall be attested manually by its Secretary or any Assistant Secretary. Typographical and other minor errors or defects in any such reproduction of the seal or any such signature shall not affect the validity or enforceability of the Global Warrant Certificate that has been duly authenticated and delivered by the Warrant Agent.

In case any officer of the Company who shall have signed the Global Warrant Certificate shall cease to be such officer before the Global Warrant Certificate so signed shall have been authenticated and delivered by the Warrant Agent or delivered by the Company, such Global Warrant Certificate nevertheless may be authenticated and delivered as though the person who signed such Global Warrant Certificate had not ceased to be such officer of the Company; and the Global Warrant Certificate may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Global Warrant Certificate, shall be the proper officers of the Company, although at the date of the execution of this Agreement any such person was not such officer.

A Global Warrant Certificate relating to 30,112 units of the Warrants originally issued may be executed by the Company and delivered to the Warrant Agent on or after the date of execution of this Agreement. The Warrant Agent is authorized, upon receipt of the Global Warrant Certificate from the Company, duly executed on behalf of the Company, to authenticate such Global Warrant Certificate. The Global Warrant Certificate shall be manually authenticated and dated the date of its authentication by the Warrant Agent and shall not be valid for any purpose unless so authenticated. The Warrant Agent shall authenticate and deliver the Global Warrant Certificate to or upon the written order of the Company.

SECTION 1.03. Registration of Transfers and Exchanges. Except as otherwise provided herein or in the Global Warrant Certificate, the Warrant Agent shall from time to time register the transfer of the Global Warrant Certificate in the records of the Warrant Agent only to the Depository, to a nominee of the Depository, to a successor Depository, or to a nominee of a successor Depository, upon surrender of such Global Warrant Certificate, duly endorsed and accompanied by a written instrument or instruments of transfer in form satisfactory to the Warrant Agent and the Company, duly signed by the registered Holder (as defined below) thereof or by the duly appointed legal representative thereof or by a duly authorized attorney. Upon any such registration of transfer, the Company shall execute, and the Warrant Agent shall authenticate and deliver in the name of the designated transferee, a new Global Warrant Certificate of like tenor and evidencing a like number of Warrants as evidenced by the Global Warrant Certificate at the time of such registration of transfer.

The Global Warrant Certificate may be transferred as provided above at the option of the Holder thereof when surrendered to the Warrant Agent at its office or agency maintained for the purpose of transferring and exercising any of the Warrants, which shall be in Toronto, Canada, or at the office or agency of any successor Warrant Agent as provided in Section 5.03, in exchange for another Global Warrant Certificate of like tenor and representing a like number of Warrants.

SECTION 1.04. Warrant Certificates.

(a) Form, Execution, Authentication and Delivery of Warrant Certificates. Any Warrant Certificates issued in definitive form in accordance with Section 1.01(a) shall be substantially in the form set forth in Exhibit A hereto, with such appropriate insertions, omissions, substitutions and other variations as are necessary or desirable for individual Warrant Certificates, and may represent any integral multiple of Warrants. The Warrant Certificates may have imprinted or otherwise reproduced thereon such letters, numbers or other marks of identification or designation and such legends or endorsements as the officers of the Company executing the same may approve (execution thereof to be conclusive evidence of such approval) and are not inconsistent with the provisions of this Agreement (but which do not affect the rights, duties or immunities of the Warrant Agent), or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Warrants may be listed or of the Depository, or to conform to usage. Warrant Certificates shall be signed on behalf of the Company upon the same conditions, in substantially the same manner and with the same effect as the Global Warrant Certificate, as described in Section 1.02.

Each Warrant Certificate, when so signed on behalf of the Company, shall be delivered to the Warrant Agent, which shall manually authenticate and deliver the same to the Holder upon the written order of the Company. Each Warrant Certificate shall be dated the date of its authentication.

No Warrant Certificate shall be valid for any purpose, and no Warrant evidenced thereby shall be exercisable, until such Warrant Certificate has been authenticated by the manual signature of the Warrant Agent. Such signature by the Warrant Agent upon any Warrant Certificate executed by the Company shall be conclusive evidence that the Warrant Certificate so authenticated has been duly issued hereunder.

(b) Registration of Transfers and Exchanges of Warrant Certificates. Warrant Certificates delivered in exchange for the Global Warrant Certificate shall be registered in such names and addresses (including tax identification numbers) and in such denominations as shall be requested in writing by the Depository or its nominee in whose name the Global Warrant Certificate is registered, upon written certification to the Company and the Warrant Agent in form satisfactory to each of them of a beneficial ownership interest in the Global Warrant Certificate.

The Company shall cause to be kept at an office or agency of the Warrant Agent in Toronto, Canada, a register (the register maintained in such office and in any other office or

agency maintained by or on behalf of the Company for such purpose being herein sometimes collectively referred to as the “Warrant Register”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Warrant Certificates and the transfer of Warrant Certificates. The Warrant Agent is hereby appointed “Warrant Registrar” for the purpose of registering Warrant Certificates and the transfer of Warrant Certificates as herein provided.

Upon surrender for registration of a transfer of a Warrant Certificate at an office or agency of the Company maintained for such purpose, the Company shall execute, and the Warrant Agent shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Warrant Certificates of any authorized denominations and representing Warrants of a like aggregate number.

At the option of the Holder, Warrant Certificates may be exchanged for other Warrant Certificates of any authorized denominations and representing units of the Warrants of a like aggregate number, upon surrender of the Warrant Certificates to be exchanged at such office or agency. Whenever any Warrant Certificates are so surrendered for exchange, the Company shall execute, and the Warrant Agent shall authenticate and deliver, the Warrant Certificates which the Holder making the exchange is entitled to receive.

All Warrant Certificates issued upon any registration of a transfer or an exchange of Warrant Certificates shall be the valid obligations of the Company, evidencing the same obligations of the Company, and entitled to the same benefits under this Warrant Agreement, as the Warrant Certificates surrendered upon such registration of a transfer or an exchange.

Every Warrant Certificate presented or surrendered for registration of a transfer or for an exchange shall (if so required by the Company or the Warrant Agent) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Warrant Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of a transfer or an exchange of Warrant Certificates, but the Company or the Warrant Agent may require payment of a sum sufficient from the beneficial owners of the Warrants to cover any tax or other governmental charge that may be imposed in connection with any registration of a transfer or an exchange of Warrant Certificates.

Prior to due presentment of a Warrant Certificate for registration of transfer, the Company, the Warrant Agent and any agent of the Company or the Warrant Agent may treat the person in whose name such Warrant Certificate is registered as the owner of such Warrant Certificate for all purposes hereunder whatsoever, whether or not such Warrant Certificate has been transferred, and neither the Company, the Warrant Agent nor any agent of the Company or the Warrant Agent shall be affected by notice to the contrary.

All Warrant Certificates surrendered for exercise, registration of transfer or exchange shall, if surrendered to any person other than the Warrant Agent, be delivered to the

Warrant Agent and shall be promptly cancelled by it. The Company may at any time deliver to the Warrant Agent for cancellation any Warrant Certificate previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and any Warrant Certificate so delivered shall be promptly cancelled by the Warrant Agent. No Warrant Certificate shall be authenticated in lieu of or in exchange for any Warrant Certificate cancelled as provided in this Section 1.04, except as expressly permitted by this Warrant Agreement. All cancelled Warrant Certificates held by the Warrant Agent shall be disposed of as directed in writing by the Company.

(c) Mutilated, Destroyed, Lost or Stolen Warrant Certificates. If any mutilated Warrant Certificate is surrendered to the Warrant Agent, the Company shall execute and the Warrant Agent shall authenticate and deliver in exchange therefor a new Warrant Certificate of like tenor representing Warrants of a like number and bearing a number not contemporaneously outstanding.

If there shall be delivered by a Holder to the Company and the Warrant Agent (i) evidence to their satisfaction of the destruction, loss or theft of any Warrant Certificate, (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless and (iii) funds sufficient to cover any cost or expense to the Company (including any fees and expenses, including legal fees and expenses, charged by the Warrant Agent) relating to the issuance of a new Warrant Certificate, then, in the absence of written notice to the Company or the Warrant Agent that such Warrant Certificate has been acquired by a bona fide purchaser, the Company shall execute and upon its written request the Warrant Agent shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Warrant Certificate, a new Warrant Certificate of like tenor representing Warrants of a like number and bearing a number not contemporaneously outstanding.

Every new Warrant Certificate issued pursuant to this Section 1.04(c) in lieu of any destroyed, lost or stolen Warrant Certificate shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Warrant Certificate shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Warrant Agreement.

The provisions of this Section 1.04(c) are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Warrant Certificates.

ARTICLE II

DURATION AND EXERCISE OF WARRANTS

SECTION 2.01. General. The Warrants constitute a call option in respect of the three Regional Baskets exercisable on the Exercise Date. The Warrants are unsecured contractual obligations of the Company and rank equally with its other unsecured contractual obligations and unsecured and unsubordinated debt.

SECTION 2.02. The Regional Baskets. The "Regional Baskets" shall be the North American Regional Basket, the European Regional Basket and the Asian Regional Basket. The "North American Regional Basket" shall be an index basket expressed in Canadian dollars that is 100% weighted to the S&P 500 Index. The "European Regional Basket" shall be an index basket expressed in Canadian dollars that is 60% weighted to the Dow Jones EURO STOXX 50 Index and 40% weighted to the FTSE 100 Index. The "Asian Regional Basket" shall be an index basket expressed in Canadian dollars that is 55% weighted to the Nikkei 225 Index, 35% weighted to the MSCI Hong Kong Index, and 10% weighted to the S&P/ASX 200 Index.

SECTION 2.03. Duration, Exercise and Delivery of Warrants. (a) Subject to the limitations described herein, each Warrant evidenced by the Global Warrant Certificate shall be automatically exercised for no additional consideration on the earlier of (i) the Index Business Day (as defined below) immediately prior to the occurrence of certain events in bankruptcy, insolvency or reorganization involving the Company as are set forth in subsection (f) below and (ii) March 14, 2012 (any such day being the "Exercise Date"). The Warrants are not exercisable at the option of the Holders prior to the Exercise Date. On the Exercise Date, Holders shall be entitled to receive, without payment of any further amount, a cash settlement amount equal to the Redemption Amount or, if a Holder and the Company both agree to physical settlement, to physical settlement in the manner agreed upon by any such Holder and the Company. In the event that physical settlement is agreed upon by the Company and a Holder, the Company shall provide notice to the Holder and the Warrant Agent or the Paying Agent (as defined below), of the terms of the physical settlement at least 60 days prior to the Exercise Date. In such notice, the Company may also indicate that it will agree to a combination of physical and cash settlement. Such notice shall indicate how a Holder may accept the Company's offer of physical settlement.

(b) On or before the Business Day (as defined below) immediately preceding the Exercise Date, the Warrant Agent shall (i) be informed by the Calculation Agent (as defined below) of the Redemption Amount, (ii) be informed by the Company of any agreement, including the terms of such agreement, between it and any Holder for the Holder to receive physical settlement by delivery of certain securities in full or partial satisfaction of the Company's obligation to pay the Redemption Amount to such Holder, (iii) advise the Company of the aggregate Redemption Amount and (iv) advise the Company of such other matters relating to the Warrants as the Company shall reasonably request in writing. Any notice to be given to the Company by the Warrant Agent pursuant to this Section 2.03 shall be by telephone and shall promptly be confirmed in writing. Any notice to be given by the Company or the Calculation Agent to the Warrant Agent pursuant to this Section 2.03(b) shall be by facsimile transmission to

the Warrant Agent as set forth in Section 6.03 or by such other means as is acceptable to the Warrant Agent.

(c) Except as provided in Section 2.03(h), the Company shall make available to the Warrant Agent or a paying agent appointed by the Company (the "Paying Agent"), no later than 10:00 A.M., Toronto time, on the Exercise Date funds in an amount sufficient to pay such aggregate Redemption Amount and/or securities sufficient to physically settle any such agreement for physical settlement of the Warrants. Provided that the Company has made adequate funds and securities available to the Warrant Agent or the Paying Agent in such manner, the Warrant Agent or the Paying Agent shall make payment, and deliver any such securities, to the Depository against receipt by the Warrant Agent from the Depository of the Global Warrant Certificate, after 10:00 A.M., Toronto time, but prior to 2:00 P.M. Toronto time, on such Exercise Date. Any such payment shall be in the amount of the aggregate Redemption Amount and any such delivery of securities shall be as provided in any such agreement for physical settlement, and in the case of Warrants issued in definitive form, the aggregate Redemption Amount, and any such delivery of securities, in respect of exercised Warrants for which delivery has been accepted by the Warrant Agent or the Paying Agent.

(d) The "Redemption Amount" shall be denominated in Canadian dollars and shall be determined by the Calculation Agent in accordance with the following formula:

$$\$100 \times [W_1P_1 + W_2P_2 + W_3P_3] - AF$$

Where:

W_1 equals the weighting of the best performing Regional Basket over the term of the Warrants (determined after the Calculation Period (as defined below) and after giving effect to the conversion of the Regional Basket into Canadian dollars) which shall be equal to 55%.

W_2 equals the weighting of the second best performing Regional Basket over the term of the Warrants (determined after the Calculation Period and after giving effect to the conversion of the Regional Basket into Canadian dollars) which shall be equal to 30%.

W_3 equals the weighting of the third best performing Regional Basket over the term of the Warrants (determined after the Calculation Period and after giving effect to the conversion of the Regional Basket into Canadian dollars) which shall be equal to 15%.

P_1 equals the performance of the best performing Regional Basket.

P_2 equals the performance of the second best performing Regional Basket.

P_3 equals the performance of the third best performing Regional Basket.

AF equals the Adjustment Fee (as defined below).

The performance of the North American Regional Basket equals:

$$\frac{IE_1}{IS_1}$$

The performance of the European Regional Basket equals:

$$\left[60\% \times \frac{IE_2}{IS_2} \right] + \left[40\% \times \frac{IE_3}{IS_3} \right]$$

The performance of the Asian Regional Basket equals:

$$\left[55\% \times \frac{IE_4}{IS_4} \right] + \left[35\% \times \frac{IE_5}{IS_5} \right] + \left[10\% \times \frac{IE_6}{IS_6} \right]$$

The index values are:

IS_i equals the Starting Value (as defined below) of Index_i

IE_i equals the Ending Value (as defined below) of Index_i

The underlying equity indices (each, a “Basket Index”) are:

Index₁ = S&P 500 Index

Index₂ = Dow Jones EURO STOXX 50 Index

Index₃ = FTSE 100 Index

Index₄ = Nikkei 225 Index

Index₅ = MSCI Hong Kong Index

Index₆ = S&P/ASX 200 Index

The “Adjustment Fee” shall be calculated by the Calculation Agent for each calendar day and accrue over the term of the Warrants at an annual rate of 0.85% of the initial issue price of the Warrants.

The “Starting Value” for each Basket Index shall be the following:

S&P 500 Index = 1,456.9044

Dow Jones EURO STOXX 50 Index = 4,933.1877

FTSE 100 Index = 11,500.6592

Nikkei 225 Index = 137.2533

MSCI Hong Kong Index = 1,158.6378

S&P/ASX 200 Index = 4,011.0483

The “Ending Value” for each Basket Index shall be determined by Merrill Lynch International (the “Calculation Agent”) and shall equal the average, arithmetic mean, of the closing values of such Basket Index determined by the designated Index Calculation Agent (as defined below) on each of the ten Calculation Days (as defined below) during the Calculation Period multiplied by the then current exchange rate between the Canadian dollar and the relevant Index Currency (as defined below). If there are fewer than ten Calculation Days during the Calculation Period, then the Ending Value shall equal the average, arithmetic mean, of the closing values of the Basket Index on those Calculation Days. If there is only one Calculation Day during the Calculation Period, then the Ending Value shall equal the closing value of the Basket Index on that Calculation Day. If no Calculation Days occur during the Calculation Period, then the Ending Value shall equal the closing value of the Basket Index determined on the last scheduled Index Business Day in the Calculation Period, regardless of the occurrence of a Market Disruption Event (as defined below) on that scheduled Index Business Day.

“Calculation Period” means the period from and including the twelfth scheduled Index Business Day prior to the Exercise Date to and including the third scheduled Index Business Day prior to the Exercise Date.

“Calculation Day” means any Index Business Day during the Calculation Period on which a Market Disruption Event has not occurred.

“Index Business Day” means, for each Basket Index, a day on which the Basket Index or any Successor Index (as defined below) is calculated and published.

“Index Calculation Agent” means, with respect to the S&P 500 Index and the S&P/ASX 200 Index, Standard & Poor’s, a division of The McGraw-Hill Companies, Inc. (“S&P”), with respect to the Dow Jones EURO STOXX 50 Index, STOXX Limited (“STOXX”), with respect to the FTSE 100 Index, FTSE International Limited (“FTSE”), with respect to the Nikkei 225 Index, Nihon Keizai Shimbun, Inc. (“NKS”), and with respect to the MSCI Hong Kong Index, Morgan Stanley Capital International Inc. (“MSCI”).

“Index Currency” means, for each Basket Index, the currency in which that Basket Index is denominated.

For purposes of determining the Redemption Amount, the exchange rate between the Canadian dollar and each Index Currency shall be the amount of Canadian dollars (or part thereof) for which one unit of the relevant Index Currency could be purchased as quoted at 12:00 noon (Toronto time) by the Bank of Canada as shown on the applicable Bloomberg, L.P. (“Bloomberg”) page (or its successor page for the purpose of displaying such rate) on each Calculation Day in respect of all Index Currencies. In the event that the applicable Bloomberg page (or successor page) should not be available or no rate is quoted on such page on a

Calculation Day at the applicable time, the exchange rate shall be the rate of exchange as determined by the Calculation Agent.

All determinations made by the Calculation Agent and each Index Calculation Agent shall be at its sole discretion and, absent manifest error, shall be conclusive for all purposes and binding on the Company and the Holders and beneficial owners of the Warrants. Whenever the Calculation Agent is required to act, it shall do so in good faith using its reasonable judgment. The Warrant Agent shall have no duty or obligation to review or confirm any of the calculations of the Calculation Agent hereunder.

(e) In case of default in payment of the Warrants, whether on the Exercise Date or upon acceleration, from and after such date the Warrants shall bear interest, payable upon demand of the Holders, at the rate of 2.25% per annum to the extent that payment of any interest is legally enforceable on the unpaid amount due and payable on such date in accordance with the terms of Section 2.03(d) to the date payment of such amount has been made or duly provided for.

(f) The Warrants shall expire on the date that either of the following events occur and the Warrants shall be automatically exercised as of the Index Business Day immediately preceding such date:

(i) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereinafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days; or

(ii) the Company commences a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereinafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any substantial part of its property, or shall make any general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due or shall take any corporate action in furtherance of any of the foregoing.

(g) Upon the occurrence of any of the events described in subsection (f) above, the Redemption Amount, if any, shall be determined by the Calculation Agent pursuant to subsection (d) above.

(h) The Warrant Agent shall, as soon as practicable after the Exercise Date determined pursuant to subsection (f) above, (i) be informed by the Calculation Agent of the

Redemption Amount, (ii) be informed by the Company of any agreement, including the terms of such agreement, between it and any Holder for the Holder to receive physical settlement by delivery of certain securities in full or partial satisfaction of the Company's obligation to pay the Redemption Amount to such Holder, (iii) advise the Company of the Redemption Amount and (iv) advise the Company of such other matters relating to the Warrants as the Company shall reasonably request in writing. Notices to be given pursuant to this Section 2.03(h) shall be given in the same manner set forth in Section 2.03(b). Provided that the Company has made the adequate funds and/or securities sufficient to physically settle any such agreement for physical settlement available to the Warrant Agent or the Paying Agent in a timely manner which shall, in no event, be later than 10:00 A.M., New York City time, on the fifth Business Day following the Exercise Date determined in accordance with subsection (f) of this Section 2.03, the Warrant Agent or the Paying Agent shall make payment, and deliver any such securities, to the Depository against receipt by the Warrant Agent from the Depository of the Global Warrant Certificate on the fifth Business Day following such Exercise Date. Any such payment shall be in the amount of the aggregate Redemption Amount and any such delivery of securities shall be as provided in any such agreement for physical settlement, and in respect of Warrants issued in definitive form, the aggregate Redemption Amount, and any such delivery of securities, in respect of exercised Warrants for which delivery has been accepted by the Warrant Agent or the Paying Agent.

SECTION 2.04. Adjustments to the Basket Indices. If at any time S&P, STOXX, FTSE, NKS or MSCI (each, an "Index Publisher") makes a material change in the formula for or the method of calculating its respective Basket Index or any Successor Index or in any other way materially modifies such Index so that such Index does not, in the opinion of the Calculation Agent, fairly represent the value of such Index had such changes or modifications not been made, then, from and after such time, the Calculation Agent shall, at the close of business in New York, New York, on each date that the closing value of such Index is to be calculated, make those adjustments as, in the good faith judgment of the Calculation Agent, may be necessary in order to arrive at a calculation of a value of a stock index comparable to such Index as if such changes or modifications had not been made, and calculate such closing value with reference to such Index, as so adjusted.

SECTION 2.05. Discontinuance of the Basket Indices. If an Index Publisher discontinues publication of its respective Basket Index and the Index Publisher or another entity publishes a successor or substitute index that the Calculation Agent determines, in its sole discretion, to be comparable to that Basket Index (a "Successor Index"), then, upon the Calculation Agent's notification of such determination to the Warrant Agent and the Company, the Calculation Agent shall substitute the Successor Index as calculated by the relevant Index Publisher or any other entity for that Basket Index and calculate the Ending Value as set forth in Section 2.03(d). Upon any selection by the Calculation Agent of a Successor Index, the Company shall cause notice to be given to the Holders of the Warrants.

In the event that an Index Publisher discontinues publication of its respective Basket Index and:

- (i) the Calculation Agent does not select a Successor Index; or

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- (ii) the Successor Index is not published on any of the Calculation Days,

the Calculation Agent shall compute a substitute value for that Basket Index in accordance with the procedures last used to calculate that Basket Index before any discontinuance. If a Successor Index is selected or the Calculation Agent calculates a value as a substitute for that Basket Index as described below, the Successor Index or value shall be used as a substitute for that Basket Index for all purposes, including for purposes of determining whether a Market Disruption Event exists.

If an Index Publisher discontinues publication of its respective Basket Index before the Calculation Period and the Calculation Agent determines that no Successor Index is available at that time, then on each Business Day until the earlier to occur of:

- (i) the determination of the Ending Value; and
- (ii) a determination by the Calculation Agent that a Successor Index is available,

the Calculation Agent shall determine the value that would be used in computing the Redemption Amount as described in the preceding paragraph as if that day were a Calculation Day. The Calculation Agent shall cause notice of each value to be published not less often than once each month in the national edition of a major English language Canadian newspaper and a French language newspaper of general circulation in the Province of Quebec, and arrange for information with respect to these values to be made available by telephone.

A "Business Day" is any day other than a Saturday or Sunday that is neither a legal holiday nor a day on which banking institutions in London are authorized or required by law, regulation or executive order to close and those banks are open for dealing in a foreign exchange and foreign currency deposits.

SECTION 2.06. Denominations. The Warrants shall be issued in denominations of whole units, each at an initial price of Cdn. \$100 per unit.

SECTION 2.07. Return of Global Warrant Certificate. At such time as all of the Warrants have been automatically exercised or otherwise cancelled, the Warrant Agent shall destroy the cancelled Global Warrant Certificate unless the Company directs the Warrant Agent in writing to return such cancelled Global Warrant Certificate to it.

SECTION 2.08. Return of Property Held Unclaimed for Two Years. Any money deposited with or paid, or securities delivered, to the Warrant Agent for the payment of the Redemption Amount or physical settlement of any Warrants and not applied but remaining unclaimed for two years after the date upon which such Redemption Amount shall have become due and payable or such physical settlement had been due to occur, shall be repaid or delivered by the Warrant Agent to the Company and the Holder of such Warrants shall thereafter look only to the Company for any payment or delivery which such Holder may be entitled and all liability of the Warrant Agent with respect to such property shall thereupon cease; *provided, however*, that the Warrant Agent, before making any such repayment or delivery, may at the expense of

the Company notify the Holders concerned that said property has not been so applied and remains unclaimed and that after a date named therein any unclaimed property then remaining shall be returned to the Company.

SECTION 2.09. Designation of Agent for Receipt of Notice. The Company may from time to time designate in writing to the Warrant Agent a designee for receipt of all notices required to be given by the Warrant Agent to the Company pursuant to this Article II and all such notices thereafter shall be given in the manner herein provided by the Warrant Agent to such designee.

SECTION 2.10. Market Disruption Events.

“Market Disruption Event” means either of the following events as determined by the Calculation Agent:

- (i) the suspension of or material limitation on trading for more than two hours of trading, or during the one-half hour period preceding the close of trading, on the applicable exchange (without taking into account any extended or after-hours trading session), in 20% or more of the stocks which then comprise a Basket Index or any Successor Index; or
- (ii) the suspension of or material limitation on trading, in each case, for more than two hours of trading, or during the one-half hour period preceding the close of trading, on the applicable exchange (without taking into account any extended or after-hours trading session), whether by reason of movements in price otherwise exceeding levels permitted by the applicable exchange or otherwise, in option contracts or futures contracts related to the applicable Basket Index, or any Successor Index.

For the purpose of determining whether a Market Disruption Event has occurred:

- (i) a limitation on the hours in a trading day and/or number of days of trading shall not constitute a Market Disruption Event if it results from an announced change in the regular business hours of the applicable exchange;
- (ii) a limitation on trading imposed during the course of a day by reason of movements in price otherwise exceeding levels permitted by the applicable exchange shall constitute a Market Disruption Event;
- (iii) a decision to permanently discontinue trading in the applicable futures or options contracts related to the applicable Basket Index, or any Successor Index, shall not constitute a Market Disruption Event;
- (iv) a suspension in trading in a futures or options contract on the applicable Basket Index, or any Successor Index, by a major securities market by reason of (a) a price change violating limits set by that securities market,

(b) an imbalance of orders relating to those contracts or (c) a disparity in bid and ask quotes relating to those contracts shall constitute a suspension or material limitation of trading in futures or options contracts related to that Basket Index; and

(v) an absence of trading on the relevant exchange shall not include any time when that exchange is closed for trading under ordinary circumstances.

ARTICLE III

OTHER PROVISIONS RELATING TO RIGHTS OF HOLDERS

SECTION 3.01. Holder of Warrant May Enforce Rights. Notwithstanding any of the provisions of this Agreement, any Holder, without the consent of the Warrant Agent, may, in and for his own behalf, enforce, and may institute and maintain any suit, action or proceeding against the Company suitable to enforce, or otherwise in respect of, his right to exercise, and to receive payment or delivery for, his Warrants as provided in the Global Warrant Certificate and in this Agreement.

SECTION 3.02. Merger, Consolidation, Sale, Transfer or Conveyance. The Company may consolidate with, or sell, lease or convey all or substantially all of its assets to, or merge with or into any other entity, *provided that*, in any such case, (i) either the Company shall be the continuing entity, or the successor entity shall be organized and existing under the laws of the United States of America or a State thereof and such successor entity shall expressly assume (a) the payment of the Redemption Amount with respect to the Warrants, according to their tenor, and (b) the due and punctual performance and observance of all of the covenants and conditions of this Agreement and the Global Warrant Certificate to be performed by the Company and (ii) the Company or such successor entity, as the case may be, shall not, immediately after such merger or consolidation, or such sale, lease or conveyance, be in default in the performance of any such covenant or condition. Such successor or assuming entity thereupon may cause to be signed, and may issue either in its own name or in the name of the Company, a new Global Warrant Certificate in exchange and substitution for the Global Warrant Certificate theretofore issued. Such Global Warrant Certificate shall in all respects have the same legal rank and benefit under this Agreement as the Global Warrant Certificate theretofore issued in accordance with the terms of this Agreement as though such new Global Warrant Certificate had been issued at the date of the execution hereof. In any case of any such consolidation, merger, sale, lease or conveyance of substantially all of the assets of the Company, such changes in phraseology and form (but not in substance) may be made in the new Global Warrant Certificate as may be appropriate.

The Warrant Agent shall receive a written opinion of legal counsel as conclusive evidence that any such consolidation, merger, sale, lease or conveyance of substantially all of the assets of the Company complies with the provisions of this Section 3.02 and that the assumption of this Agreement by the successor or assuming corporation is binding and effective.

ARTICLE IV

CANCELLATION OF WARRANTS

SECTION 4.01. Cancellation of Warrants. In the event the Company shall purchase or otherwise acquire Warrants, such Warrants may, at the option of the Company and upon written notification to the Warrant Agent, be surrendered free through a Depository Participant for credit to the account of the Warrant Agent and if so credited, the Warrant Agent shall promptly note the cancellation of such Warrants by notation on the records of the Warrant Agent. No Warrant shall be issued in lieu of or in exchange for any Warrant which is cancelled as provided by this Section 4.01, except as otherwise expressly permitted by this Agreement.

SECTION 4.02. Treatment of Holders. The Company, the Warrant Agent and any agent of the Company or the Warrant Agent may deem and treat the person in whose name a Warrant Certificate or the Global Warrant Certificate shall be registered in the records of the Warrant Agent as the absolute owner of such Warrant Certificate or Global Warrant Certificate, as the case may be (notwithstanding any notation of ownership or other writing thereon) (the "Holder") for any purpose and as the person entitled to exercise the rights represented by the Warrants evidenced hereby, and neither the Company nor the Warrant Agent, nor any agent of the Company or the Warrant Agent shall be affected by any notice to the contrary, except that the Warrant Agent and the Company and any agent of the Company or the Warrant Agent shall be entitled to conclusively rely on and act pursuant to instructions of the Depository or the Depository Participants, as applicable, as contemplated by Article II of this Agreement. This Section 4.02 shall be without prejudice to the rights of Holders as described elsewhere herein.

ARTICLE V
CONCERNING THE WARRANT AGENT

SECTION 5.01. Warrant Agent. (a) The Company hereby appoints JPMorgan Chase Bank, N.A., as Warrant Agent of the Company in respect of the Warrants and Global Warrant Certificate upon the terms and subject to the conditions set forth herein and in the Global Warrant Certificate; and JPMorgan Chase Bank, N.A. hereby accepts such appointment. The Warrant Agent shall have the powers and authority granted to and conferred upon it in the Global Warrant Certificate and hereby and such further powers and authority acceptable to it to act on behalf of the Company as the Company may hereafter grant to or confer upon it. All of the terms and provisions with respect to such powers and authority contained in the Global Warrant Certificate are subject to and governed by the terms and provisions hereof.

SECTION 5.02. Conditions of Warrant Agent's Obligations. The Warrant Agent accepts its obligations herein set forth upon the terms and conditions hereof and of the Global Warrant Certificates, including the following, to all of which the Company agrees and to all of which the rights hereunder of the Holders and beneficial owners from time to time of the Warrants shall be subject:

(a) The Company agrees promptly to pay the Warrant Agent the compensation to be agreed upon with the Company in writing for all services rendered by the Warrant Agent and to reimburse the Warrant Agent for its reasonable out-of-pocket expenses (including counsel fees and expenses) incurred by the Warrant Agent without negligence or bad faith on its part in connection with the services rendered by it hereunder. The Company also agrees to indemnify the Warrant Agent and its officers, directors, agents and employees for, and to hold it and them harmless against, any loss, damage, cost, penalty, liability or expense (including reasonable attorneys' fees and expenses) incurred without negligence or bad faith on the part of the Warrant Agent or them, arising out of or in connection with it acting as Warrant Agent hereunder or with respect to the Warrants or the Global Warrant Certificate and any transactions or documents contemplated herewith or therewith, as well as the reasonable costs and expenses of defending against any claim of liability in the premises.

(b) In acting under this Agreement and in connection with the Global Warrant Certificate, the Warrant Agent is acting solely as agent of the Company and does not assume any obligation or relationship of agency or trust for or with any of the beneficial owners or Holders of the Warrants.

(c) The Warrant Agent may consult with counsel satisfactory to it, and the advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in accordance with the advice or opinion of such counsel.

(d) The Warrant Agent shall be protected and shall incur no liability for or in respect of any action taken or omitted or any thing suffered by it in reliance upon any Global Warrant Certificate, notice, direction, consent, certificate, affidavit, statement or other paper or

document reasonably believed by it to be genuine and to have been presented or signed by the proper parties. Notwithstanding anything in this Agreement to the contrary, the Warrant Agent shall not be liable in any event for special, punitive, indirect, incidental or consequential losses or damages of any kind whatsoever (including but not limited to lost profits), even if the Warrant Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

(e) The Warrant Agent, and its officers, directors and employees, may become the owner of, or acquire an interest in, any Warrants or other obligations of the Company, with the same rights that it or they would have if it were not the Warrant Agent hereunder, and, to the extent permitted by applicable law, it or they may engage or be interested in any financial or other transaction with the Company and may act on, or as Depository, trustee or agent for, any committee or body of Holders of Warrants or other obligations of the Company as freely as if it were not the Warrant Agent hereunder.

(f) The Warrant Agent shall not be under any liability for interest on any monies at any time received by it pursuant to any of the provisions of this Agreement or of the Global Warrant Certificate nor shall it be obligated to segregate such monies from other monies held by it, except as required by law. The Warrant Agent shall not be responsible for advancing funds on behalf of the Company and shall have no duty or obligation to make any payments if it has not timely received sufficient funds to make timely payments.

(g) The Warrant Agent shall not be under any responsibility with respect to the validity or sufficiency of this Agreement or the execution and delivery hereof (except the due execution and delivery hereof by the Warrant Agent) or with respect to the validity or execution of the Global Warrant Certificate (except its authentication thereof).

(h) The recitals contained herein and in the Global Warrant Certificate (except as to the Warrant Agent's authentication thereon) shall be taken as the statements of the Company and the Warrant Agent assumes no responsibility for the correctness of the same.

(i) The Warrant Agent shall be obligated to perform only such duties as are expressly set forth herein and in the Global Warrant Certificate and no implied duties or obligations shall be read into this Agreement or the Global Warrant Certificate against the Warrant Agent. The Warrant Agent shall not be under any obligation to take any action hereunder likely to involve it in any expense or liability, the payment of which or indemnity satisfactory to it is not, in its reasonable opinion, assured to it. The Warrant Agent shall not be accountable or under any duty or responsibility for the use by the Company of the Global Warrant Certificate authenticated by the Warrant Agent and delivered by it to the Company pursuant to this Agreement or for the application by the Company of any proceeds. The Warrant Agent shall have no duty or responsibility in case of any default by the Company in the performance of its covenants or agreements contained herein or in the Global Warrant Certificate or in the case of the receipt of any written demand from a Holder of a Warrant with respect to such default, except as provided in Section 6.03 hereof, including, without limiting the generality of the foregoing, any duty or responsibility to initiate or attempt to initiate any proceedings at law or otherwise or to make any demand upon the Company.

(j) Unless otherwise specifically provided herein or in the Global Warrant Certificate, any order, certificate, notice, request, direction or other communication from the Company made or given by the Company under any provision of this Agreement shall be sufficient if signed by its Chairman of the Board, President, a Vice President or by the Treasurer, and by an Assistant Treasurer, the Secretary or an Assistant Secretary of the Company and delivered to the Warrant Agent.

(k) In the absence of bad faith on the part of the Warrant Agent, the Warrant Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Warrant Agent which conform to the requirements of this Agreement.

(l) The Warrant Agent shall not be liable for any error of judgment made by an officer or officers of the Warrant Agent, unless it shall be conclusively determined by a court of competent jurisdiction that the Warrant Agent was negligent in ascertaining the pertinent facts.

(m) The Warrant Agent shall not be liable with respect to any action taken or omitted to be taken by it in accordance with any direction of the Company given under this Agreement.

(n) Whenever in the administration of the provisions of this Agreement the Warrant Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action to be taken hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Warrant Agent, be deemed to be conclusively proved and established by a certificate signed by one of Company's officers, as the case may be, and delivered to the Warrant Agent and such certificate, in the absence of negligence or bad faith on the part of the Warrant Agent, shall be full warrant to the Warrant Agent for any action taken, suffered or omitted by it under the provisions of this Agreement upon the faith thereof.

(o) The Warrant Agent shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, entitlement order, approval or other paper or document delivered to it pursuant to the terms of this Agreement.

(p) In the event the Warrant Agent believes any ambiguity or uncertainty exists hereunder or in any notice, instruction, direction, request or other communication, paper or document received by the Warrant Agent hereunder, the Warrant Agent, may, in its sole discretion, refrain from taking any action, and shall be fully protected and shall not be liable in any way to the Company, any Holders or any other person or entity for refraining from taking such action, unless the Warrant Agent receives written instructions signed by the Company which eliminates such ambiguity or uncertainty to the satisfaction of the Warrant Agent.

SECTION 5.03. Resignation and Appointment of Successor. (a) The Company agrees, for the benefit of the Holders from time to time of the Warrants, that there shall at all times be a Warrant Agent hereunder until all the Warrants are no longer exercisable.

(b) The Warrant Agent may at any time resign as such agent by giving at least 60 days written notice to the Company of such intention on its part, specifying the date on which its desired resignation shall become effective, subject to the appointment of a successor Warrant Agent, and acceptance of such appointment by such successor Warrant Agent, as hereinafter provided. The Warrant Agent hereunder may be removed at any time by the filing with it of an instrument in writing signed by or on behalf of the Company and specifying such removal and the date when it shall become effective. Such resignation or removal shall take effect upon the appointment by the Company, as hereinafter provided, of a successor Warrant Agent, which shall be a corporation authorized to carry on the business of a trust company under the laws of Canada or the provinces thereof, or a banking institution (or an affiliate thereof) organized under the laws of the United States of America, or one of the States thereof and having an office or an agent's office in the Borough of Manhattan, The City of New York, and the acceptance of such appointment by such successor Warrant Agent. In the event a successor Warrant Agent has not been appointed and accepted its duties within 90 days of the Warrant Agent's notice of resignation or removal, the Warrant Agent may apply to any court of competent jurisdiction for the designation of a successor Warrant Agent. The indemnification obligation of the Company under Section 5.02(a) shall continue to the extent set forth therein notwithstanding the resignation, replacement or removal of the Warrant Agent and shall survive the termination of this Agreement.

(c) In case at any time the Warrant Agent shall resign, or shall be removed, or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or make an assignment for the benefit of its creditors or consent to the appointment of a receiver or custodian of all or any substantial part of its property, or shall admit in writing its inability to pay or meet its debts as they mature, or if a receiver or custodian of it or all or any substantial part of its property shall be appointed, or if any public officer shall have taken charge or control of the Warrant Agent or of its property or affairs, for the purpose of rehabilitation, conservation or liquidation, a successor Warrant Agent, qualified as aforesaid, shall be appointed by the Company by an instrument in writing, filed with the successor Warrant Agent. Upon the appointment as aforesaid of a successor Warrant Agent and acceptance by the latter of such appointment, the Warrant Agent so superseded shall cease to be Warrant Agent hereunder.

(d) Any successor Warrant Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the Company an instrument accepting such appointment hereunder, and thereupon such successor Warrant Agent, without any further act, deed or conveyance, shall become vested with all the authority, rights, powers, immunities, duties and obligations of such predecessor with like effect as if originally named as Warrant Agent hereunder, and such predecessor, upon payment of its charges and disbursements then unpaid, shall thereupon become obligated to transfer, deliver and pay over, and such successor Warrant Agent shall be entitled to receive, all monies, securities and other property on deposit with or held by such predecessor, as Warrant Agent hereunder.

(e) Any entity into which the Warrant Agent hereunder may be merged or converted or any entity with which the Warrant Agent may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Warrant Agent shall be a party, or any entity to which the Warrant Agent shall sell or otherwise transfer all or substantially all of the corporate trust business of the Warrant Agent, *provided that*, it shall be qualified as aforesaid, shall be the successor Warrant Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto.

ARTICLE VI
MISCELLANEOUS

SECTION 6.01. Tax Treatment. The Company and the beneficial owners of the of Warrants shall agree (in the absence of an administrative determination or judicial ruling to the contrary) to treat each Warrant for all U.S. federal income tax purposes as a pre-paid forward contract based upon the Regional Baskets (subject to cash settlement).

SECTION 6.02. Amendment. This Agreement and the Global Warrant Certificate may be amended by the Company and the Warrant Agent, without the consent of the Holder of the Global Warrant Certificate or the beneficial owners, for the purpose of:

- (i) curing any ambiguity, or of curing, correcting or supplementing any defective or inconsistent provision, or of making any other provisions with respect to matters or questions arising under this Agreement which are not inconsistent with the provisions of this Agreement or of the Global Warrant Certificates;
- (ii) evidencing the succession to the Company and the assumption by the successor of the Company's covenants contained in this Agreement and the Global Warrant Certificates;
- (iii) appointing a successor Depository;
- (iv) evidencing and providing for the acceptance of appointment by a successor warrant agent with respect to the Warrants;
- (v) adding to the covenants of the Company for the benefit of the Holders or surrendering any right or power conferred upon the Company under this Agreement;
- (vi) issuing the Warrants in definitive form; or
- (vii) amending this Agreement in any manner which the Company may deem to be necessary or desirable and which will not materially and adversely affect the interests of the Holders.

The Company and the Warrant Agent may also amend this Agreement and the terms of the Global Warrant Certificates, by a supplemental agreement, with the consent of the Holders holding not less than 66 2/3% of the then outstanding unexercised Warrants affected by the amendment, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement or of modifying in any manner the rights of the Holders; *provided however*, that without the consent of each Holder so affected, no amendment shall be made that:

- (i) changes the determination, or any aspects of the determination, of the Redemption Amount or any payment or delivery to be made on cancellation, of the Warrants so as to reduce the payment or delivery to be made upon exercise or deemed exercise;

(ii) shortens the period of time during which the Warrants may be exercised, or otherwise materially and adversely affects the exercise rights of the Holders; or
(iii) reduces the number of outstanding Warrants, the consent of whose Holders is required for amendment of this Agreement or the terms of the Global Warrant Certificates.

The Warrant Agent shall be entitled to receive an opinion of counsel (who may be an employee of or counsel for the Company, or other counsel acceptable to the Warrant Agent) prior to executing any amendment, modification or supplement under this Section 6.01.

SECTION 6.03. Notices and Demands to the Company and Warrant Agent. If the Warrant Agent shall receive any notice or demand addressed to the Company by any Holder pursuant to the provisions of the Global Warrant Certificate, the Warrant Agent shall promptly forward such notice or demand to the Company.

SECTION 6.04. Addresses for Notices. Any communications from the Company to the Warrant Agent with respect to this Agreement shall be addressed to the Warrant Agent at JPMorgan Chase Bank, N.A., 4 New York Plaza, 15th Floor, New York, NY 10004, Attention: James Fevola, Institutional Trust Services, telephone number 212-623-5492, facsimile number 212-623-6274; any communications from the Warrant Agent to the Company with respect to this Agreement shall be addressed to (i) Merrill Lynch & Co., Inc., 4 World Financial Center, New York, NY 10080, Attention: Jens Berding, Treasury (first copy), telephone number 212-449-1791, facsimile number 212-449-7481, (ii) Merrill Lynch & Co., Inc., 222 Broadway, 17th Floor, New York, NY 10038, Attention: Judith A. Witterschein, Corporate Secretary (second copy), telephone 212-449-1963, facsimile 212-449-7481 and (iii) Merrill Lynch Canada Inc., 181 Bay Street, Suite 400, Toronto, Ontario M5J 2V8 (third copy), Attention: Mark Dickerson, Office of the General Counsel, telephone number 416-369-3907, facsimile number 416-369-8796; and any communications from the Warrant Agent to the Calculation Agent with respect to this Agreement shall be addressed to Merrill Lynch International, 4 World Financial Center, New York, NY 10080, Attention: Debra Searle, Treasury (or such other contact information as shall be specified in writing by the Warrant Agent, the Company, Merrill Lynch Canada Inc. or the Calculation Agent, respectively).

SECTION 6.05. Notices to Holders. The Company or the Warrant Agent may cause to have notice given to the beneficial owners of interests in the Global Warrant Certificate by providing the Depository with a form of notice to be distributed by the Depository to Depository Participants in accordance with the customs and practices of the Depository.

SECTION 6.06. Applicable Law. The validity, interpretation and performance of this Agreement and each Warrant issued hereunder and of the respective terms and provisions thereof shall be governed by the laws of the State of New York applicable to agreements made and to be performed in such State.

SECTION 6.07. Obtaining of Governmental Approvals. The Company shall from time to time take all actions which may be necessary to obtain and keep effective any and all permits, consents and approvals of governmental agencies and authorities and securities acts filings under United States Federal and State laws and Canadian Federal, Provincial and Territorial laws, which may be or become requisite in connection with the issuance, sale, trading, transfer or delivery of the Warrants, the Global Warrant Certificate and the exercise of the Warrants.

SECTION 6.08. Persons Having Rights Under Warrant Agreement. Nothing in this Agreement expressed or implied and nothing that may be inferred from any of the provisions hereof is intended, or shall be construed, to confer upon, or give to, any person or entity other than the Company, the Warrant Agent and the Holders any right, remedy or claim under or by reason of this Agreement or of any covenant, condition, stipulation, promise or agreement hereof; and all covenants, conditions, stipulations, promises and agreements in this Agreement contained shall be for the sole and exclusive benefit of the Company and the Warrant Agent and their successors and of the registered Holders of the Global Warrant Certificate.

SECTION 6.09. Headings. The descriptive headings of the several Articles and Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

SECTION 6.10. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original; but such counterparts shall together constitute but one and the same instrument.

SECTION 6.11. Inspection of Agreement. A copy of this Agreement shall be available at all reasonable times at the corporate trust office of the Warrant Agent, during its normal business hours for inspection by the Depository Participants and the Holders.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

MERRILL LYNCH & CO., INC.

By _____
Name: John Laws
Title: Assistant Treasurer

JPMORGAN CHASE BANK, N.A.,
as Warrant Agent

By _____
Name:
Title:

FORM OF GLOBAL WARRANT

THIS WARRANT IS A GLOBAL WARRANT WITHIN THE MEANING OF THE WARRANT AGREEMENT HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITORY OR A NOMINEE THEREOF. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED ("CDS") TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IN RESPECT THEREOF IS REGISTERED IN THE NAME OF CDS & CO., OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS (AND ANY PAYMENT IS MADE TO CDS & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED HOLDER HEREOF, CDS & CO., HAS AN INTEREST HEREIN.

No. R-1
CUSIP No. 59021S125

30,112 Units
(Each Unit representing Cdn. \$100
original public offering price per Warrant)

MERRILL LYNCH & CO., INC.
Cdn. \$3,011,200
Global Equity Performance Weighted Warrants, Series 3
exercisable March 14, 2012

This certifies that CDS & Co., as nominee of The Canadian Depository for Securities Limited, or registered assigns is the registered Holder of 30,112 units of Global Equity Performance Weighted Warrants, Series 3 exercisable March 14, 2012 (the "Warrants") or such lesser amount as is indicated in the records of JPMorgan Chase Bank, N.A., as Warrant Agent. This Global Warrant Certificate is issued under and in accordance with the Warrant Agreement, dated as of March 14, 2005 (the "Warrant Agreement"), between the Company and the Warrant Agent, and is subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions all beneficial owners of the Warrants evidenced by this Global Warrant Certificate and the Holder of this Global Warrant Certificate consent by acceptance hereof by the Depository (as defined below). Copies of the Warrant Agreement are on file at the office or agency of the Warrant Agent in Toronto, Canada.

Each Warrant entitles the beneficial owner thereof, subject to the provisions contained herein and in the Warrant Agreement referred to below, to receive from Merrill Lynch & Co., Inc. (the "Company"), without any further payment on its behalf, the Redemption Amount specified in Section 2.03(d) of the Warrant Agreement or, if a Holder and the Company both agree to physical settlement, to physical settlement by delivery of certain securities in the manner agreed. The Holder hereof shall not be entitled to any interest on any Redemption Amount to which it is otherwise entitled (unless the Company shall default in the payment of

such Redemption Amount, in which case, the Holder shall be entitled to interest in accordance with Section 2.03(e) of the Warrant Agreement). Except as provided in the Warrant Agreement, beneficial owners of the Warrants evidenced by this Global Warrant Certificate shall not be entitled to receive definitive Warrants evidencing their Warrants. Warrants shall be held through a Depository selected by the Company which initially is The Canadian Depository for Securities Limited (the "Depository", which term, as used herein, includes any successor Depository selected by the Company as further provided in the Warrant Agreement).

The Warrants are issuable only in registered form without coupons in denominations of a single unit and integral multiples thereof, with a minimum initial investment of Cdn. \$2,000. Subject to the terms of the Warrant Agreement, this Global Warrant shall remain in the form of a global security held by a Depository.

The Warrants shall be automatically exercised for no additional consideration on the earlier of (i) the Index Business Day immediately prior to the occurrence of certain events in bankruptcy, insolvency or reorganization involving the Company as set forth in Section 2.03(f) of the Warrant Agreement and (ii) March 14, 2012 (any such day being the "Exercise Date"). The Warrants may not be exercised at the option of the Holders or beneficial owners prior to the Exercise Date.

All determinations made by the Calculation Agent and each Index Calculation Agent shall be at its sole discretion and, absent manifest error, shall be conclusive for all purposes and binding on the Company and the Holders and beneficial owners of the Warrants. Whenever the Calculation Agent is required to act, it shall do so in good faith using its reasonable judgment.

In case of default in payment of this Global Warrant, whether on the Exercise Date or upon acceleration, from and after such date the Warrants shall bear interest, payable upon demand of the Holders, at the rate of 2.25% per annum to the extent that payment of any interest is legally enforceable on the unpaid amount due and payable on such date in accordance with the terms of Section 2.03(d) of the Warrant Agreement to the date payment of such amount has been made or duly provided for.

On or before the Business Day immediately preceding the Exercise Date, the Warrant Agent shall (i) be informed by the Calculation Agent of the Redemption Amount, (ii) be informed by the Company of any agreement, including the terms of such agreement, between it and any Holder for the Holder to receive physical settlement by delivery of certain securities in full or partial satisfaction of the Company's obligation to pay the Redemption Amount to such Holder, (iii) advise the Company of the aggregate Redemption Amount and (iv) advise the Company of such other matters relating to the Warrants as the Company shall reasonably request in writing. Any notice to be given to the Company by the Warrant Agent pursuant to the Warrant Agreement shall be by telephone and shall promptly be confirmed in writing. Any notice to be given by the Company or the Calculation Agent to the Warrant Agent pursuant to the Warrant Agreement shall be by facsimile transmission to the Warrant Agent set forth in the Warrant Agreement or by such other means as is acceptable to the Warrant Agent.

The Company shall make available to the Warrant Agent or the Paying Agent, no later than 10:00 A.M., Toronto time, on the Exercise Date funds in an amount sufficient to pay such aggregate Redemption Amount and/or securities sufficient to physically settle any such agreement for physical settlement of the Warrants. Provided that the Company has made adequate funds and securities available to the Warrant Agent or the Paying Agent in such manner, the Warrant Agent or the Paying Agent shall make payment, and deliver any such securities, to the Depository against receipt by the Warrant Agent from the Depository of this Global Warrant Certificate, after 10:00 A.M., Toronto time, but prior to 2:00 P.M. Toronto time, on such Exercise Date. Any such payment shall be in the amount of the aggregate Redemption Amount and any such delivery of securities shall be as provided in any such agreement for physical settlement, and in respect of Warrants issued in definitive form, the aggregate Redemption Amount, and any such delivery of securities, in respect of exercised Warrants for which delivery has been accepted by the Warrant Agent or the Paying Agent.

The Company, the Warrant Agent and any agent of the Company or the Warrant Agent may deem and treat the registered owner hereof as the absolute owner of the Warrants evidenced hereby (notwithstanding any notation of ownership or other writing hereon) for any purpose and as the person entitled to exercise the rights represented by the Warrants evidenced hereby, and neither the Company nor the Warrant Agent nor any agent of the Company or the Warrant Agent shall be affected by any notice to the contrary, subject to certain provisions of the Warrant Agreement, except that the Company and the Warrant Agent and any agent of the Company or the Warrant Agent shall be entitled to rely on and act pursuant to instructions of the Depository and/or the Depository Participants, as applicable, as contemplated herein and in the Warrant Agreement.

Subject to the terms of the Warrant Agreement and certain restrictions set forth hereinabove, upon due presentment for registration of transfer of this Global Warrant Certificate at the office or agency of the Warrant Agent in Toronto, Canada, the Company shall execute and the Warrant Agent shall authenticate and deliver in the name of the designated transferee a new Global Warrant Certificate of like tenor and evidencing a like number of Warrants as evidenced by this Global Warrant Certificate at the time of such registration of transfer, which shall be issued to the designated transferee in exchange for this Global Warrant Certificate, subject to the limitations provided in the Warrant Agreement, without charge, but the Company may require payment of a sum sufficient to cover any tax or governmental charge payable in connection therewith.

License Agreements. The license agreements entered into by the Company or Merrill Lynch, Pierce, Fenner & Smith Incorporated, an affiliate of the Company (“MLPF&S”), with the respective publishers of the Basket Indices indicated below, require that the following language be included in this Global Warrant Certificate in connection with the licensing of each such Basket Index:

- (a) S&P 500 Index.

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The Company and a Holder (and beneficial owners) of the Warrants shall agree (in the absence of an administrative determination or judicial ruling to the contrary) to treat each Warrant for all U.S. federal income tax purposes as a pre-paid forward contract based upon the Regional Baskets (subject to cash settlement).

This Global Warrant Certificate and the Warrant Agreement are subject to amendment as provided in the Warrant Agreement.

This Global Warrant Certificate shall not be valid or obligatory for any purpose until authenticated by the Warrant Agent.

Capitalized terms included herein but not defined herein have the same meaning assigned thereto in the Warrant Agreement.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated: March 14, 2005

MERRILL LYNCH & CO., INC.

By: _____
Assistant Treasurer

Attest: _____
Secretary

[SEAL]

This is one of the Warrants
referred to in the within-mentioned
Warrant Agreement:

JPMORGAN CHASE BANK, N.A.,
as Warrant Agent

By: _____
Authorized Officer

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March 14, 2005

Merrill Lynch & Co., Inc.
4 World Financial Center
New York, New York 10080

Ladies and Gentlemen:

As your counsel, we have examined a copy of the Restated Certificate of Incorporation, as amended, of Merrill Lynch & Co., Inc. (hereinafter called the "Company"), certified by the Secretary of State of the State of Delaware. We are familiar with the corporate proceedings had in connection with the proposed issuance and sale by the Company to the Agents named in the Agency Agreement, dated March 10, 2005 (the "Agency Agreement"), among the Company, Merrill Lynch Canada Inc. and Canaccord Capital Corporation relating to (i) Cdn. \$3,014,200 the Company's Global Equity Performance Weighted Notes, Series 3 due March 14, 2012 (the "Notes"), and (ii) Cdn. \$3,011,200 the Company's Global Equity Performance Weighted Warrants, Series 3 exercisable March 14, 2012 (the "Warrants", and collectively with the Notes, the "Securities"). We have also examined (i) a copy of the Indenture between the Company

and JPMorgan Chase Bank, N.A., as Trustee, dated as of April 1, 1983, as amended and restated (the "Indenture"), (ii) a copy of the Warrant Agreement between the Company and JPMorgan Chase Bank, N.A., as Warrant Agent, dated as of March 14, 2005 (the "Warrant Agreement"), and (iii) the Company's Registration Statement on Form S-3 (File No. 333-122639) relating to the Securities (the "Registration Statement")

Based upon the foregoing and upon such further investigation as we deemed relevant in the premises, we are of the opinion that:

1. The Company has been duly incorporated under the laws of the State of Delaware.
2. The Notes have been duly and validly authorized by the Company and when the Notes have been duly executed and authenticated in accordance with the terms of the Indenture and delivered against payment therefor as set forth in the Agency Agreement, the Notes will constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, except to the extent that enforcement thereof may be limited by bankruptcy, moratorium, insolvency, reorganization or similar laws relating to or affecting creditors' rights generally and except as enforcement thereof is subject to general principles at equity (regardless of whether enforcement is considered in a proceeding in equity or at law).
3. The Warrants have been duly and validly authorized by the Company and when the Warrants have been duly executed and authenticated in accordance with the terms of the Warrant Agreement and delivered against payment therefor as set forth in the Agency Agreement, the Warrants will constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, except to

the extent that enforcement thereof may be limited by bankruptcy, moratorium, insolvency, reorganization or similar laws relating to or affecting creditors' rights generally and except as enforcement thereof is subject to general principles at equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

We consent to the filing of this opinion as an exhibit to the Registration Statement and as an exhibit to the Current Report of the Company on Form 8-K dated March 14, 2005. We also consent to the use of our name under the caption "United States Federal Income Tax Considerations" in the prospectus supplement related to the offering of the Securities.

Very truly yours,

/s/ Sidley Austin Brown & Wood LLP