

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 10-Q

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

For the Quarterly Period Ended March 30, 2001  
Commission File Number 1-7182

MERRILL LYNCH & CO., INC.

(Exact name of registrant as specified in its charter)

Delaware 13-2740599

(State of incorporation) (I.R.S. Employer Identification No.)

4 World Financial Center  
New York, New York 10080

(Address of principal executive offices) (Zip Code)

(212) 449-1000

Registrant's telephone number, including area code

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

YES X NO

APPLICABLE ONLY TO CORPORATE ISSUERS:

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

835,134,179 shares of Common Stock and 4,197,921 Exchangeable Shares as of the close of business on May 4, 2001. The Exchangeable Shares, which were issued by Merrill Lynch & Co., Canada Ltd. in connection with the merger with Midland Walwyn Inc., are exchangeable at any time into Common Stock on a one-for-one basis and entitle holders to dividend, voting, and other rights equivalent to Common Stock.

PART I. FINANCIAL INFORMATION

ITEM 1. Financial Statements

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

<TABLE>  
<CAPTION>

(in millions, except per share amounts) (Dec.)	For the Three Months Ended		
	Mar. 30, 2001	Mar. 31, 2000	Percent Inc.
--			
<S>	<C>	<C>	<C>
Net Revenues			
Commissions	\$1,505	\$2,160	(30.3)%
Principal transactions	1,740	2,038	(14.6)
Investment banking			
Underwriting	629	670	(6.1)
Strategic advisory	284	326	(12.9)
Asset management and portfolio service fees	1,379	1,390	(0.8)

Other	164	249	(34.1)
	-----	-----	
Subtotal	5,701	6,833	(16.6)
	-----	-----	
Interest and dividend revenues	6,249	4,473	39.7
Less interest expense	5,524	3,782	46.1
	-----	-----	
Net interest profit	725	691	4.9
	-----	-----	
Total Net Revenues	6,426	7,524	(14.6)
	-----	-----	
Non-Interest Expenses			
Compensation and benefits	3,244	3,918	(17.2)
Communications and technology	598	584	2.4
Occupancy and related depreciation	270	253	6.7
Advertising and market development	208	245	(15.1)
Brokerage, clearing, and exchange fees	235	233	0.9
Professional fees	134	147	(8.8)
Goodwill amortization	52	56	(7.1)
Other	334	403	(17.1)
	-----	-----	
Total Non-Interest Expenses	5,075	5,839	(13.1)
	-----	-----	
Earnings Before Income Taxes and Dividends on Preferred Securities Issued by Subsidiaries	1,351	1,685	(19.8)
Income tax expense	428	535	(20.0)
Dividends on preferred securities issued by subsidiaries	49	49	-
	-----	-----	
Net Earnings	\$ 874	\$1,101	(20.6)
	=====	=====	
Net Earnings Applicable to Common Stockholders	\$ 864	\$1,091	(20.8)
	=====	=====	
Earnings Per Common Share			
Basic	\$ 1.04	\$ 1.40	
	=====	=====	
Diluted	\$ 0.92	\$ 1.24	
	=====	=====	
Dividend Paid Per Common Share	\$ 0.16	\$ 0.14	
	=====	=====	
Average Shares Used in Computing Earnings Per Common Share			
Basic	832.2	780.2	
	=====	=====	
Diluted	938.0	881.7	
	=====	=====	

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 </TABLE>  
 See Notes to Consolidated Financial Statements

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

<TABLE>  
 <CAPTION>

Dec. 29, Mar. 30,  
 (dollars in millions) 2001  
 2000

-----  
 -----

<S> <C>  
 ASSETS

Cash and cash equivalents \$ 25,696  
 \$ 23,205

Cash and securities segregated for regulatory purposes  
 or deposited with clearing organizations 5,628

6,092	
Receivables under resale agreements and securities borrowed transactions	124,138
114,581	
Marketable investment securities	59,621
49,251	
Trading assets, at fair value	
Equities and convertible debentures	22,747
20,232	
Corporate debt and preferred stock	15,145
17,377	
Contractual agreements	22,897
20,361	
U.S. Government and agencies	20,663
17,519	
Mortgages, mortgage-backed, and asset-backed	9,413
8,225	
Non-U.S. governments and agencies	4,786
5,009	
Municipals and money markets	3,684
2,791	
-----	-----
	99,335
91,514	
Securities pledged as collateral	12,272
9,097	
-----	-----
Other receivables	
Customers (net of allowance for doubtful accounts of \$82 in 2001 and \$68 in 2000)	39,472
41,613	
Brokers and dealers	21,383
26,421	
Interest and other	7,912
8,879	
-----	-----
	68,767
76,913	
-----	-----
Investments of insurance subsidiaries	3,996
4,002	
Loans, notes, and mortgages (net of allowance for loan losses of \$205 in 2001 and \$176 in 2000)	17,512
17,472	
Other investments	4,770
4,938	
Equipment and facilities (net of accumulated depreciation and amortization of \$4,777 in 2001 and \$4,658 in 2000)	3,462
3,444	
Goodwill (net of accumulated amortization of \$751 in 2001 and \$720 in 2000)	4,214
4,407	
Other assets	2,193
2,284	
-----	-----
Total Assets	\$431,604
\$407,200	=====
=====	

</TABLE>

Dec. 29, (dollars in millions, except per share amount) 2000	2001
-----	-----
<S>	<C>
<C>	
LIABILITIES	
Payables under repurchase agreements and securities loaned transactions \$103,883	\$103,722
Commercial paper and other short-term borrowings 15,183	13,084
Deposits 67,648	77,929
Trading liabilities, at fair value	
Contractual agreements	24,041
21,587	
Equities and convertible debentures	20,644
18,535	
U.S. Government and agencies	20,073
14,466	
Non-U.S. governments and agencies	8,898
7,135	
Corporate debt, municipals and preferred stock	5,415
7,134	
-----	-----
	79,071
68,857	
-----	-----
Other payables	
Customers	26,231
24,762	
Brokers and dealers	13,508
9,514	
Interest and other	18,198
22,204	
-----	-----
	57,937
56,480	
-----	-----
Liabilities of insurance subsidiaries	3,869
3,908	
Long-term borrowings	73,345
70,223	
-----	-----
Total Liabilities	408,957
386,182	
-----	-----
PREFERRED SECURITIES ISSUED BY SUBSIDIARIES	2,708
2,714	
-----	-----
STOCKHOLDERS' EQUITY	
Preferred Stockholders' Equity (42,500 shares issued, liquidation preference \$10,000 per share)	425
425	
-----	-----
Common Stockholders' Equity	
Shares exchangeable into common stock	62
68	
Common stock (par value \$1.33 1/3 per share; authorized: 1,000,000,000 shares; issued: 2001 and 2000 - 962,533,498 shares)	1,283
1,283	
Paid-in capital	4,039
2,843	
Accumulated other comprehensive loss (net of tax)	(287)

(345)		
Retained earnings		16,887
16,156		
-----		-----
		21,984
20,005		
Less: Treasury stock, at cost: 2001 - 130,336,130 shares; 2000 - 154,578,945 shares		1,052
1,273		
Employee stock transactions		1,418
853		
-----		-----
Total Common Stockholders' Equity		19,514
17,879		
-----		-----
Total Stockholders' Equity		19,939
18,304		
-----		-----
Total Liabilities, Preferred Securities Issued by Subsidiaries, and Stockholders' Equity		\$431,604
\$407,200		
		=====
=====		
-		
-----		

</TABLE>

See Notes to Consolidated Financial Statements

Merrill Lynch & Co., Inc. and Subsidiaries  
Consolidated Statements of Cash Flows (Unaudited)

<TABLE>

<CAPTION>

Ended	For the Three Months
-----	-----
(dollars in millions)	Mar. 30,
Mar. 31,	2001
2000	-----
-----	
<S>	<C>
<C>	
Cash flows from operating activities:	
Net earnings	\$ 874
\$ 1,101	
Noncash items included in earnings:	
Depreciation and amortization	217
193	
Policyholder reserves	47
48	
Goodwill amortization	52
56	
Amortization of stock-based compensation	158
119	
Other	1,305
491	
(Increase) decrease in operating assets:	
Trading assets and securities pledged as collateral	(10,677)
(9,062)	
Cash and securities segregated for regulatory purposes or deposited with clearing organizations	464
(228)	

Receivables under resale agreements and securities borrowed transactions	(9,557)
(17,908)	
Customer receivables	2,131
(6,119)	
Brokers and dealers receivables	5,038
249	
Other	1,000
(509)	
Increase (decrease) in operating liabilities:	
Trading liabilities	10,214
7,557	
Payables under repurchase agreements and securities loaned transactions	(161)
13,948	
Customer payables	1,469
2,665	
Brokers and dealers payables	3,994
1,271	
Other	(3,994)
794	
-----	-----
Cash provided by (used for) by operating activities	2,574
(5,334)	
-----	-----
Cash flows from investing activities:	
Proceeds from (payments for):	
Maturities of available-for-sale securities	7,300
1,146	
Sales of available-for-sale securities	4,502
667	
Purchases of available-for-sale securities	(21,689)
(4,884)	
Maturities of held-to-maturity securities	239
1,550	
Purchases of held-to-maturity securities	(249)
(1,292)	
Loans, notes, and mortgages	(57)
(244)	
Other investments and other assets	(536)
89	
Equipment and facilities	(235)
(230)	
-----	-----
Cash used for investing activities	(10,725)
(3,198)	
-----	-----
Cash flows from financing activities:	
Proceeds from (payments for):	
Commercial paper and other short-term borrowings	(2,099)
3,188	
Deposits	10,281
721	
Issuance and resale of long-term borrowings	10,884
8,961	
Maturities and repurchases of long-term borrowings	(8,191)
(5,266)	
Issuance of treasury stock	256
196	
Other common and preferred stock transactions	(346)
15	
Dividends	(143)
(113)	
-----	-----
Cash provided by financing activities	10,642
7,702	
-----	-----
Increase (decrease) in cash and cash equivalents	2,491
(830)	
Cash and cash equivalents, beginning of year	23,205
12,155	
-----	-----
Cash and cash equivalents, end of period	\$25,696
\$11,325	
=====	=====

Supplemental Disclosure of Cash Flow Information:  
Cash paid for:

Income taxes	\$	89	\$
142			
Interest		5,804	
3,357			
-----			
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</TABLE>

See Notes to Consolidated Financial Statements

Merrill Lynch & Co., Inc. and Subsidiaries  
Notes to Consolidated Financial Statements (Unaudited)  
March 30, 2001

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Note 1. Summary of Significant Accounting Policies  
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Basis of Presentation

The Consolidated Financial Statements include the accounts of Merrill Lynch & Co., Inc. ("ML & Co.") and subsidiaries (collectively, "Merrill Lynch"). All material intercompany balances have been eliminated. The December 29, 2000 unaudited Consolidated Balance Sheet was derived from the audited financial statements. The interim consolidated financial statements for the three month periods are unaudited; however, in the opinion of Merrill Lynch management, all adjustments necessary for a fair statement of the results of operations have been included.

These unaudited financial statements should be read in conjunction with the audited financial statements included in Merrill Lynch's Annual Report included as an exhibit to Form 10-K for the year ended December 29, 2000. The nature of Merrill Lynch's business is such that the results of any interim period are not necessarily indicative of results for a full year. Certain reclassifications have also been made to prior period financial statements, where appropriate, to conform to the current period presentation.

New Accounting Pronouncements

On the first day of fiscal year 2001, Merrill Lynch adopted the provisions of SFAS No. 133, Accounting for Derivative Instruments and Hedging Activities ("SFAS No. 133"). On adoption, all existing hedge relationships were designated anew. Merrill Lynch recorded a pre-tax loss of \$32 million (\$22 million after-tax) in interest expense upon adoption of SFAS No. 133.

SFAS No.133 establishes accounting and reporting standards for derivative instruments, including certain derivative instruments embedded in other contracts ("embedded derivatives"), and for hedging activities. It requires that an entity recognize all derivatives as either assets or liabilities in the Consolidated Balance Sheet and measure those instruments at fair value. The accounting for changes in fair value of a derivative instrument depends on its intended use and the resulting designation.

The majority of Merrill Lynch's derivatives are recognized at fair value as trading assets and liabilities, as they are entered into in a dealing capacity. As part of its trading activities, Merrill Lynch uses derivatives to facilitate customer transactions, to take proprietary positions and as a means of risk management. The Corporate Risk Management group monitors and manages these risks in accordance with established risk management policies and procedures that include risk tolerance levels. For further information on Merrill Lynch's risk management see the Annual Report on Form 10-K for the year ended December 29, 2000.

As part of its overall risk management strategy, Merrill Lynch uses derivatives to manage its risk exposures arising from non-trading assets and liabilities, some of which, depending on the nature of the derivative and the related hedged item, were not previously carried at fair value. These derivatives are typically designated as fair-value hedges, to manage the interest rate and currency exposure on long-term borrowings and marketable investment securities. These derivatives generally include interest rate and currency swap agreements that are primarily used to convert fixed rate assets and liabilities into U.S. dollar-based floating rate instruments.

The net losses associated with the ineffective portion (the extent to which exact offset is not achieved) of the fair value hedges were \$14 million for the three months ended March 30, 2001 and are included in net interest profit on the Consolidated Statement of Earnings.

Merrill Lynch also uses derivatives and foreign-currency-denominated debt to manage its exposure to foreign exchange rate movements related to investments in non-U.S. operations. These derivatives generally include forward exchange contracts and cross currency interest rate swaps.

For the three months ended March 30, 2001, \$196 million of net gains related to non-U.S. dollar net investment hedges, which were principally offset by the net losses recorded on these investments, were included in "Accumulated other comprehensive loss" on the Consolidated Balance Sheet.

Merrill Lynch issues long-term obligations whose repayment terms are linked to the performance of equity or other indexes (e.g., S&P 500), baskets of securities, or individual securities. The contingent components of these indexed debt obligations may be embedded derivatives. If the contingent component is determined to be a derivative it is separated from the underlying obligation and carried at fair value. The separated embedded derivative is reported in long-term borrowings on the Consolidated Balance Sheet with the underlying obligation. The embedded derivatives are hedged with derivatives that are carried at fair value.

In addition, Merrill Lynch enters into cash flow hedges to hedge interest rate risk. All of these hedges qualify for the "short-cut method" as defined by SFAS No. 133. As such, no ineffectiveness related to these hedges is reported in earnings.

Derivative instruments are reported on a net-by-counterparty basis on the Consolidated Balance Sheet where management believes a legal right of setoff exists under an enforceable netting agreement. The fair value of derivative instruments is set forth below:

<TABLE>

<CAPTION>

(dollars in millions)

	Mar. 30, 2001		Dec. 29, 2000	
	Assets	Liabilities	Assets	Liabilities
<S>	<C>	<C>	<C>	<C>
Swap agreements	\$19,798	\$20,989	\$17,283	\$18,819
Forward contracts	618	659	1,580	1,335
Options(1)	6,931	12,125	6,759	10,587

</TABLE>

(1) Due to cross product netting under master netting agreements, the majority of the firm's FX options are included in forward contracts.

In September 2000, the Financial Accounting Standards Board released SFAS No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities, a replacement of SFAS No. 125. Merrill Lynch has adopted those provisions of the statement that are required to be adopted as of December 29, 2000. These provisions relate primarily to the accounting and disclosures for collateral received or pledged in secured borrowing transactions. Other provisions of the statement are not required to be adopted until the second quarter of 2001. These provisions provide new guidance for determining whether a transfer of assets should be accounted for as a sale or a secured borrowing, and also change the accounting for certain securities lending transactions. Under the new provisions, Merrill Lynch is required to recognize on the Consolidated Balance Sheet certain securities lending transactions in which Merrill Lynch acts as securities lender and receives securities (rather than cash) as collateral. Merrill Lynch is currently evaluating the impact of adoption.

## Note 2. Short-Term Borrowings

Short-term borrowings at March 30, 2001 and December 29, 2000 are presented below:

<TABLE>

<CAPTION>

(dollars in millions)



	Mar. 30, 2001	Dec. 29, 2000
<S>	<C>	<C>
Payables under repurchase agreements and securities loaned transactions		
Repurchase agreements	\$ 94,157	\$ 89,901
Securities loaned transactions	9,565	13,982
Total	\$103,722	\$103,883
Commercial paper and other short-term borrowings		
Commercial paper	\$ 10,803	\$ 14,022
Other	2,281	1,161
Total	\$ 13,084	\$ 15,183
Deposits		
U.S.	\$ 66,188	\$ 54,887
Non-U.S.	11,741	12,761
Total	\$ 77,929	\$ 67,648

</TABLE>

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### Note 3. Segment Information

In reporting to management, Merrill Lynch's operating results are categorized into three business segments: the Corporate and Institutional Client Group ("CICG"), the Private Client Group ("PCG") and Merrill Lynch Investment Managers ("MLIM"). Prior period amounts have been restated to conform to the current period presentation. For information on each segment's activities, see the 2000 Annual Report included as an exhibit to Form 10-K.

Operating results by business segment follow:

<TABLE>  
<CAPTION>  
(dollars in millions)

Three Months Ended	CICG	PCG	MLIM	Corporate Items (1)	Total
March 30, 2001					
<S>	<C>	<C>	<C>	<C>	<C>
Non-interest revenues	\$ 2,957	\$ 2,274	\$ 553	\$ (83) (2)	\$ 5,701
Net interest revenue(3)	288	435	15	(13) (4)	725
Net revenues	3,245	2,709	568	(96)	6,426
Non-interest expenses	2,266	2,354	470	(15) (5)	5,075
Earnings (loss) before income taxes and dividends on preferred securities issued by subsidiaries	\$ 979	\$ 355	\$ 98	\$ (81)	\$ 1,351
Quarter-end total assets	\$297,463	\$127,542	\$2,385	\$4,214	\$431,604

Three Months Ended	CICG	PCG	MLIM	Corporate Items (1)	Total
March 31, 2000					
Non-interest revenues	\$ 3,333	\$ 2,994	\$ 598	\$ (92) (2)	\$ 6,833
Net interest revenue(3)	318	389	15	(31) (4)	691

Net revenues	3,651	3,383	613	(123)	7,524
Non-interest expenses	2,442	2,899	510	(12) (5)	5,839
Earnings (loss) before income taxes and dividends on preferred securities issued by subsidiaries	\$ 1,209	\$ 484	\$ 103	\$ (111)	\$ 1,685
Quarter-end total assets	\$275,541	\$ 61,985	\$2,621	\$4,845	\$344,992

</TABLE>

- (1) Including intersegment eliminations.  
(2) Represents the elimination of intersegment revenues and, in 2001, 33% of the loss incurred by Merrill Lynch HSBC.  
(3) Management views interest income net of interest expense in evaluating results.  
(4) Represents Mercury financing costs.  
(5) Represents goodwill amortization of \$52 million, net of elimination of intersegment expenses of \$67 million in 2001 and \$56 million and \$68 million, respectively, in 2000.

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#### Note 4. Comprehensive Income

The components of comprehensive income are as follows:

<TABLE>

<CAPTION>

(dollars in millions)

	Three Months Ended	
	Mar. 30, 2001	Mar. 31, 2000
Net earnings	\$874	\$1,101
Other comprehensive income, net of tax:		
Currency translation adjustment	38	(8)
Net unrealized gain (loss) on investment securities available-for-sale	(1)	10
Deferred gain on cash flow hedges	21	-
Total other comprehensive income, net of tax	58	2
Comprehensive income	\$932	\$1,103

</TABLE>

#### Note 5. Earnings Per Common Share

Information relating to earnings per common share computations follows:

<TABLE>

<CAPTION>

(dollars in millions)

	Three Months Ended	
	Mar. 30, 2001	Mar. 31, 2000
Net earnings	\$ 874	\$ 1,101
Preferred stock dividends	10	10
Net earnings applicable to common stockholders	\$ 864	\$ 1,091
(shares in thousands)		
Weighted-average shares outstanding	832,195	780,220
Effect of dilutive instruments (1) (2):		
Employee stock options	64,379	61,928
FCCAAP shares	27,688	28,215
Restricted Units	13,587	11,162

ESPP shares	105	156
	-----	-----
Dilutive potential common shares	105,759	101,461
	-----	-----
Total weighted-average diluted shares	937,954	881,681
	=====	=====
-----		
Basic earnings per common share	\$ 1.04	\$ 1.40
Diluted earnings per common share	\$ 0.92	\$ 1.24
-----		

</TABLE>

- (1) During the 2001 and 2000 first quarter there were 39 million and 153 thousand instruments, respectively that were considered antidilutive and were not included in the above computations.
- (2) See Note 11 to Consolidated Financial Statements in the 2000 Annual Report included as an exhibit to Form 10-K for a description of these instruments.

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#### Note 6. Commitments, and Other Contingencies

In the normal course of business, Merrill Lynch enters into underwriting commitments and commitments to extend credit. As of March 30, 2001, these commitments are not material to the financial condition of Merrill Lynch.

As of March 30, 2001, Merrill Lynch has been named as parties in various actions, some of which involve claims for substantial amounts. Although the results of legal actions cannot be predicted with certainty, it is the opinion of management that the resolution of these actions will not have a material adverse effect on the financial condition of Merrill Lynch as set forth in the Consolidated Financial Statements, but may be material to Merrill Lynch's operating results for any particular period.

#### Note 7. Regulatory Requirements

Certain U.S. and non-U.S. subsidiaries are subject to various securities, banking and insurance regulations and capital adequacy requirements promulgated by the regulatory and exchange authorities of the countries in which they operate. Merrill Lynch's principal regulated subsidiaries are discussed below.

##### Securities Regulation

Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"), a U.S. registered broker-dealer, is subject to the net capital requirements of Rule 15c3-1 under the Securities Exchange Act of 1934. Under the alternative method permitted by this rule, the minimum required net capital, as defined, shall not be less than 2% of aggregate debit items arising from customer transactions. At March 30, 2001, MLPF&S's regulatory net capital of \$3,868 million was 19% of aggregate debit items, and its regulatory net capital in excess of the minimum required was \$3,451 million.

Merrill Lynch International ("MLI"), a U.K. registered broker-dealer, is subject to capital requirements of the Financial Services Authority ("FSA"). Financial resources, as defined, must exceed the total financial resources requirement of the FSA. At March 30, 2001, MLI's financial resources were \$4,539 million, exceeding the minimum requirement by \$695 million.

Merrill Lynch Government Securities Inc. ("MLGSI"), a primary dealer in U.S. Government securities, is subject to the capital adequacy requirements of the Government Securities Act of 1986. This rule requires dealers to maintain liquid capital in excess of market and credit risk, as defined, by 20% (a 1.2-to-1 capital-to-risk standard). At March 30, 2001, MLGSI's liquid capital of \$1,341 million was 226% of its total market and credit risk, and liquid capital in excess of the minimum required was \$629 million.

##### Banking Regulation

Two of the direct subsidiaries of ML & Co., Merrill Lynch Bank USA ("MLBUSA"), an FDIC-insured Utah chartered depository institution, and Merrill Lynch Bank & Trust Co. ("MLB&T"), an FDIC-insured New Jersey chartered depository institution, are each subject to certain minimum aggregate capital requirements under applicable federal banking laws. Among other things, Part 325 of the FDIC regulations establishes levels of Risk Based Capital ("RBC") each institution must maintain. RBC is defined as the ratio of (i) Tier 1 capital or Total capital to (ii) risk-weighted assets, as those terms are defined in the FDIC regulations. As of March 30, 2001, MLBUSA had a Tier I RBC ratio of 10.34% and a total RBC ratio of 10.99% and MLB&T had a Tier I RBC ratio of 10.08%

and a total RBC ratio of 10.10%. At March 30, 2001 MLBUSA had Tier I capital of \$3,066 million and MLB&T had Tier I capital of \$1,015 million.

MLBUSA and MLB&T have each entered into a synthetic securitization of specified reference portfolios of asset-backed securities ("ABS") owned by each institution totaling in aggregate up to \$20 billion. These ABS are AAA-rated and all are further insured as to principal and interest payments by a AAA-rated insurer. The synthetic securitization has allowed MLBUSA and MLB&T to reduce the credit risk on the respective reference portfolios by means of credit default swaps with a bankruptcy-remote special purpose vehicle ("SPV"). In turn, the SPV has issued a \$20 million credit linked note to an unaffiliated buyer. These transactions have resulted in reductions in each institution's risk-weighted assets. MLBUSA has retained a first risk of loss equity tranche in this transaction of \$1 million.

As a result of this transaction, MLBUSA has been able to reduce risk-weighted assets by \$13,477 million at March 30, 2001, thereby increasing its Tier I and Total RBC ratios by 323 basis points and 344 basis points, respectively. MLB&T has been able to reduce risk-weighted assets by \$2,362 million at March 30, 2001, thereby increasing its Tier I and Total RBC ratios by 192 basis points. These structures have not resulted in a material change in the distribution or concentration of risk in the retained portfolio.

#### INDEPENDENT ACCOUNTANTS' REPORT

- - - - -

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

We have reviewed the accompanying condensed consolidated balance sheet of Merrill Lynch & Co., Inc. and subsidiaries ("Merrill Lynch") as of March 30, 2001, and the related condensed consolidated statements of earnings and cash flows for the three-month periods ended March 30, 2001 and March 31, 2000. These financial statements are the responsibility of Merrill Lynch's management.

We conducted our review in accordance with standards established by the American Institute of Certified Public Accountants. A review of interim financial information consists principally of applying analytical procedures to financial data and of making inquiries of persons responsible for financial and accounting matters. It is substantially less in scope than an audit conducted in accordance with auditing standards generally accepted in the United States of America, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Based on our review, we are not aware of any material modifications that should be made to such condensed consolidated financial statements for them to be in conformity with accounting principles generally accepted in the United States of America.

We have previously audited, in accordance with auditing standards generally accepted in the United States of America, the consolidated balance sheet of Merrill Lynch as of December 29, 2000, and the related consolidated statements of earnings, changes in stockholders' equity, comprehensive income and cash flows for the year then ended (not presented herein); and in our report dated February 26, 2001, we expressed an unqualified opinion on those consolidated financial statements. In our opinion, the information set forth in the accompanying condensed consolidated balance sheet as of December 29, 2000 is fairly stated, in all material respects, in relation to the consolidated balance sheet from which it has been derived.

/s/ Deloitte & Touche LLP

May 11, 2001  
New York, New York

#### ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Merrill Lynch & Co., Inc. ("ML & Co." and, together with its subsidiaries and

affiliates, "Merrill Lynch") is a holding company that, through its subsidiaries and affiliates, provides investment, financing, advisory, insurance, and related services worldwide. The financial services industry, in which Merrill Lynch is a leading participant, is highly competitive and highly regulated. This industry and the global financial markets are influenced by numerous uncontrollable factors. These factors include economic conditions, monetary and fiscal policies, the liquidity of global markets, international and regional political events, regulatory developments, the competitive environment, and investor sentiment. These conditions or events can significantly affect the volatility of financial markets. While greater volatility may increase risk, it may also increase order flow and revenues in businesses such as trading and brokerage. Revenues and net earnings may vary significantly from period to period due to these unpredictable factors and the resulting market volatility and volumes.

The financial services industry continues to be affected by the intensifying competitive environment, as demonstrated by consolidation through mergers and acquisitions and competition from new entrants as well as established competitors using the Internet or other technology to establish or expand their businesses, and diminishing margins in many mature products and services. The Gramm-Leach-Bliley Act, passed in 1999, which repealed laws that separated commercial banking, investment banking and insurance activities, together with changes to the industry resulting from previous reforms, has increased the number of companies competing for a similar customer base.

In addition to providing historical information, Merrill Lynch may make or publish forward-looking statements about management expectations, strategic objectives, business prospects, anticipated financial performance, and other similar matters. A variety of factors, many of which are beyond its control, affect the operations, performance, business strategy, and results of Merrill Lynch and could cause actual results and experience to differ materially from the expectations and objectives expressed in these statements. These factors include, but are not limited to, the factors listed in the previous two paragraphs, as well as actions and initiatives taken by both current and potential competitors, the effect of current, pending, and future legislation and regulation both in the United States and throughout the world, and the other risks detailed in Merrill Lynch's 2000 Form 10-K and in this Form 10-Q.

Merrill Lynch undertakes no responsibility to update or revise any forward-looking statements.

- -----  
Business Environment  
- -----

Global financial markets continued to face challenging conditions and a difficult operating environment in the first quarter of 2001. While the equity markets continued to suffer, the debt environment benefited from declining interest rates, precipitated by three rate cuts by the U.S. Federal Reserve Bank in the quarter totaling 150 basis points, and few inflationary pressures. Global debt underwriting volumes were boosted during the quarter by an increased demand for debt securities, as conservative investors showed a preference for stability.

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Long-term U.S. interest rates, as measured by the yield on the 10-year U.S. Treasury note, declined modestly during the quarter to 4.92% from 5.11%. The decline generally resulted from a flight to quality, as investors exercised caution in uncertain equity markets, driving note prices upward. However, the yield on the longer term 30-year Treasury bond remained virtually unchanged from the end of 2000. The Treasury yield curve steepened during the quarter, as investors anticipated both further interest rate cuts and a large paydown of government debt, which stimulated demand for shorter term securities. The U.S. Federal Reserve Bank rate cuts of 150 basis points caused short-term U.S. rates to decline since year-end. Credit spreads, which represent the risk premium over the risk-free rate paid by an issuer (based on the issuer's perceived creditworthiness), widened slightly in the first quarter, as credit quality declined. European and Japanese short- and long-term interest rates declined during the 2001 first quarter.

U.S. equity indices, which experienced increased volatility beginning in the second half of 2000, continued to face sharp declines in 2001, as the market responded to numerous corporate profit warnings. The Nasdaq Composite Index ended the 2001 first quarter down 25.5% for the three-month period and 59.8% from the 2000 first quarter, as technology stocks continued to decline in value. The Dow Jones Industrial Average lost 8.4% during the quarter, and 9.6% from the end of the first quarter of 2000. The S&P 500 fell 12.1% from year-end 2000, and 22.6% from the end of the 2000 first quarter.

As evidenced by the Dow Jones World Index, global equity markets dropped 14.1% during the 2001 first quarter, and 29.0% since the end of the first quarter of 2000, as the downturn in the U.S. economy spread globally. Growth in European markets slowed, though the European Central Bank was the only major bank not to

ease interest rates during the quarter. The stock market in Japan, as measured by the Dow Jones Global Index, fell 10% in U.S. dollar terms, and the Bank of Japan announced the adoption of a policy focused on increasing money supply, rather than targeting interest rates. The increased liquidity is intended to ensure that Japanese overnight interbank rates remain at approximately 0%.

Total global stock and debt issuance increased 11% from the year-ago quarter, as investors increased the demand for debt and convertible securities. Global debt underwriting volume increased from \$747 billion in the first quarter of 2000 to \$921 billion in the first quarter of 2001 according to Thomson Financial Securities Data, as bond issuers took advantage of lower interest rates. However, global equity underwriting volume was down 44% from the first quarter of 2000, as the Initial Public Offering ("IPO") market declined dramatically compared with the first quarter a year ago. In the first quarter of 2001, only 25 companies were brought public in the U.S., compared with 122 in the same period last year.

Merger and acquisition activity dropped sharply in the first quarter of 2001 as a result of economic uncertainty and unfavorable market conditions. Global announced merger and acquisition volume was \$455 billion, down 61% from the first quarter of 2000, and down 37% from the fourth quarter of 2000, according to Thomson Financial Securities Data. In the U.S., announced merger and acquisition volume was \$212 billion, down 63% and 47% from the first and fourth quarters of 2000, respectively.

Merrill Lynch continually evaluates its businesses for profitability and performance under varying market conditions and, in light of the evolving conditions in its competitive environment, for alignment with its long-term strategic objectives. Maintaining long-term client relationships, closely monitoring costs and risks, diversifying revenue sources, and growing fee-based revenues, all contribute to mitigating the effects of market volatility on Merrill Lynch's business as a whole.

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Results of Operations  
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<TABLE>

<CAPTION>

	For the Three Months Ended			% Inc. /(Dec.) 1Q01 Versus	
	Mar. 30, 2001	Dec. 29, 2000	Mar. 31, 2000	4Q00	1Q00
(dollars in millions, except per share amounts)	-----	-----	-----	----	----
<S>	<C>	<C>	<C>	<C>	<C>
Total revenues	\$11,950	\$11,663	\$11,306	2%	6%
Net revenues	6,426	6,268	7,524	3	(15)
Pre-tax earnings	1,351	1,308	1,685	3	(20)
Net earnings	874	877	1,101	-	(21)
Earnings per common share:					
Basic	1.04	1.07	1.40	(3)	(26)
Diluted	0.92	0.93	1.24	(1)	(26)
Annualized return on average common stockholders' equity	18.4 %	20.0%	32.4%		
Pre-tax profit margin	21.0	20.9	22.4		

</TABLE>

Merrill Lynch's net earnings were \$874 million for the 2001 first quarter, 21% lower than the record \$1.1 billion in the first quarter of 2000, and essentially unchanged from the fourth quarter of last year. Earnings per common share were \$1.04 basic and \$0.92 diluted, compared with \$1.40 basic and \$1.24 diluted in the 2000 first quarter, and \$1.07 basic and \$0.93 diluted in the fourth quarter of 2000.

Net revenues were \$6.4 billion, 15% lower than the 2000 first quarter and 3% above the fourth quarter of 2000. Non-compensation expenses were \$1.8 billion, 5% lower than the 2000 first quarter.

The pre-tax profit margin for the quarter was 21.0%, compared with 22.4% in the first quarter of 2000 and 20.9% in the 2000 fourth quarter. The first quarter annualized return on average common equity was 18.4%, compared with 32.4% and 20.0% in the first and fourth quarters of 2000, respectively.

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Business Segments  
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Merrill Lynch reports its results in three business segments: Corporate and Institutional Client Group ("CICG"), Private Client Group ("PCG"), and Merrill

Lynch Investment Managers ("MLIM"). CIGG provides investment banking and capital market services to corporate, institutional, and governmental clients throughout the world. PCG provides wealth management services and products to individuals, small- to mid-size businesses and employee benefit plan clients globally; and MLIM provides investment management services to a wide variety of retail and institutional clients. For further information on services provided to clients within these segments, see the 2000 Form 10-K and the portions of the 2000 Annual Report included as an exhibit thereto.

Certain MLIM and CIGG products are distributed by PCG distribution channels, and to a lesser extent, certain MLIM products are distributed through the distribution capabilities of CIGG. Revenues and expenses associated with these intersegment activities are recognized in each segment and eliminated at the corporate level. In addition, revenue and expense sharing agreements for shared activities are in place and the results of each segment reflect the agreed upon portion of these activities. The following segment operating results, which exclude certain corporate items, represent the information that is relied upon by management in its decision-making processes. Restatements occur to reflect reallocations of revenues and expenses which result from changes in Merrill Lynch's business strategy and structure.

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Corporate and Institutional Client Group  
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CIGG's Results of Operations  
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(dollars in millions)	For the Three Months Ended		Percent Change Inc./ (Dec.)
	Mar. 30, 2001	Mar. 31, 2000	
<S>	<C>	<C>	<C>
Commissions	\$ 611	\$ 745	(18) %
Principal transactions and net interest profit	1,715	1,945	(12)
Investment banking	802	782	3
Other revenues	117	179	(35)
	-----	-----	
Total net revenues	\$3,245	\$3,651	(11)
	-----	-----	
Pre-tax earnings	\$ 979	\$1,209	(19)
	-----	-----	
Pre-tax profit margin	30.2%	33.1%	

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</TABLE>

CIGG faced difficult market conditions in the 2001 first quarter, characterized by the decline in most global equity markets, a reduction in equity IPOs and secondary offerings, and a sharp drop in merger and acquisition activity. Despite the challenging environment, CIGG achieved solid results, including strong debt markets revenues. Net revenues were \$3.2 billion for the quarter, compared with \$3.7 billion in the first quarter of 2000. CIGG's pre-tax earnings were \$979 million in the first quarter of 2001, a decline of 19% from the first quarter of 2000. The net impact on pre-tax earnings in the first quarter of 2001 from the energy-trading business was \$84 million (\$51 million after-tax). This includes the gain on the sale of the majority of the assets of this business. The pre-tax profit margin was 30.2% , compared with 33.1% in the 2000 first quarter.

Client Facilitation and Trading

Commissions

Commissions revenues fell 18% in the first quarter of 2001 to \$611 million from \$745 million in the first quarter of 2000 partly as a result of a decline in equity trading volume.

Principal transactions and net interest profit

(dollars in millions)	For the Three Months Ended		Percent Change Inc. / (Dec.)
	Mar. 30, 2001	Mar. 31, 2000	
<S>	<C>	<C>	<C>

Equities and equity derivatives	\$ 696	\$1,338	(48)%
Debt and debt derivatives	1,019	607	68
	-----	-----	
Total	\$1,715	\$1,945	(12)
-----			

</TABLE>

Trading of over-the-counter equity, fixed-income, and equity derivative instruments and related hedging and financing activities generates both principal transactions revenues and net interest profit. In assessing the profitability of its client facilitation and trading activities, Merrill Lynch aggregates net interest profit and principal transactions revenues. For financial reporting purposes, realized and unrealized gains and losses on trading positions, including hedges, are recorded in principal transactions revenues and dividends and interest are in net interest revenues. Changes in the composition of trading inventories and hedge positions can cause the recognition of principal transactions and net interest revenues to fluctuate.

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Principal transactions and net interest revenues were \$1.7 billion in the first quarter of 2001, down 12% from \$1.9 billion in the first quarter of 2000. The decrease from the year-ago quarter reflects significantly lower revenues from equities and equity derivatives, partially offset by improved debt markets trading revenues. Net trading revenues from debt and debt derivatives increased 68% to \$1.0 billion, benefiting from improved results in derivatives and government bonds as well as the net impact of the energy-trading business. Reduced order flow and spread compression resulting from declining stock prices contributed to a 48% decline in equity trading revenues.

#### Investment Banking

<TABLE>

<CAPTION>

(dollars in millions)	For the Three Months Ended		
	Mar. 30,	Mar. 31,	Percent Change
	2001	2000	Inc. / (Dec.)
	-----	-----	-----
<S>	<C>	<C>	<C>
Debt underwriting	\$191	\$ 90	112 %
Equity underwriting	327	367	(11)
Strategic advisory services	284	325	(13)
	----	----	
Total	\$802	\$782	3

</TABLE>

#### Underwriting

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Underwriting revenues were \$518 million, up 13% from the \$457 million recorded in the first quarter of 2000, as increased revenues from corporate debt issues more than offset an 11% decline in equity underwriting revenues. Merrill Lynch retained its position as the leading global underwriter of total debt and equity offerings during the first quarter of 2001. Merrill Lynch's underwriting market share information based on transaction value follows:

<TABLE>

<CAPTION>

	For the Three Months Ended			
	Mar. 2001		Mar. 2000	
	-----		-----	
	Market		Market	
	Share	Rank	Share	Rank
	-----	----	-----	----
<S>	<C>	<C>	<C>	<C>
Global proceeds				
Debt and equity	13.0%	1	10.6%	1
Debt	12.8	1	10.7	2
Equity and equity-linked	15.2	2	8.4	5
U.S. proceeds				
Debt and equity	16.2%	1	13.5%	1
Debt	15.8	1	14.3	1
Equity and equity-linked	20.0	2	7.7	6

</TABLE>

Source: Thomson Financial Securities Data statistics based on full credit to book manager.

#### Strategic Advisory Services

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Strategic advisory services fees fell 13% from the first quarter of 2000 to \$284 million in the first quarter of 2001 as a result of lower fees from completed merger and acquisition transactions. Global announced merger and acquisition industry volume was down 61% from the first quarter of 2000. Merrill Lynch's merger and acquisition market share information based on transaction values follows:

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<TABLE>  
<CAPTION>

	For the Three Months Ended			
	Mar. 2001		Mar. 2000	
	Market	Rank	Market	Rank
	Share		Share	
<S>	<C>	<C>	<C>	<C>
Completed transactions				
Global	40.1%	3	28.2%	3
U.S.	52.7	3	13.4	5
Announced transactions				
Global	21.0%	2	27.5%	4
U.S.	21.1	4	43.1	3

</TABLE>

Source: Thomson Financial Securities Data statistics based on full credit to both target and acquiring companies' advisors.

#### Other Revenues

Other revenues include investment gains and losses and partnership distributions. Other revenues declined 35% to \$117 million in the first quarter of 2001 as the result of lower gains on investments.

#### Private Client Group

#### PCG's Results of Operations

<TABLE>  
<CAPTION>

(dollars in millions)	For the Three Months Ended		
	Mar. 30,	Mar. 31,	Percent Change
	2001	2000	Inc. / (Dec.)
	<C>	<C>	<C>
Commissions	\$ 863	\$1,402	(38) %
Principal transactions and new issue revenues	417	627	(33)
Asset management and portfolio service fees	928	903	3
Net interest profit	435	389	12
Other revenues	66	62	6
Total net revenues	\$2,709	\$3,383	(20)
Pre-tax earnings	\$ 355	\$ 484	(27)
Pre-tax profit margin	13.1%	14.3%	

</TABLE>

First quarter pre-tax earnings for PCG were \$355 million, 27% lower than the first quarter of 2000. Lower transaction volumes and a reduction in demand for new equity and mutual fund products adversely impacted net revenues. Net revenues were \$2.7 billion, 20% below the first quarter of last year. The 2001 first quarter pre-tax profit margin was 13.1%, compared with 14.3% in the first quarter of 2000. PCG's results were a combination of a relatively strong performance in the United States and weaker results outside the United States. Net revenues in the United States declined 14% from the first quarter of 2000, while, as a result of actions taken in the United States in the second half of 2000 to contain expenses, pre-tax earnings declined only 2% over the same period. Outside the United States, where transaction-related commissions are a higher percentage of revenues than fees and net interest, net revenues declined more sharply compared with the first quarter of last year due to a greater reduction in equity transaction volumes and lower demand for new equity and mutual fund products.

PCG employed approximately 19,400 financial advisors at the end of the first quarter, compared with 19,000 at the end of the 2000 first quarter and 20,200 at



# MLIM's Results of Operations

<TABLE>  
<CAPTION>

(dollars in millions)	For the Three Months Ended		Percent Change Inc. / (Dec.)
	Mar. 30, 2001	Mar. 31, 2000	
<S>	<C>	<C>	<C>
Commissions	\$ 79	\$106	(25) %
Asset management fees	446	482	(7)
Other revenues	43	25	72
Total net revenues	\$568	\$613	(7)
Pre-tax earnings	\$ 98	\$103	(5)
Pre-tax profit margin	17.3%	16.8%	

</TABLE>

MLIM continued to produce competitive investment performance and to attract net new money during the quarter. However, a 6% drop in assets under management in the 2001 first quarter due to market depreciation and adverse foreign exchange translation negatively impacted financial results. Pre-tax earnings for MLIM were \$98 million in the first quarter of 2001, a decline of 5% from the first quarter of 2000. Net revenues declined 7% from the first quarter of last year to \$568 million. The pre-tax profit margin grew from 16.8% in the first quarter of 2000 to 17.3% in the first quarter of 2001. MLIM's improved profit margin since the year-ago quarter, despite lower assets under management, reflects a reduction in expenses over the period, including the completion of amortization of employee stock awards related to the Mercury acquisition. In addition, a benefit was realized from the January 2001 outsourcing of U.S. mutual fund accounting.

## Commissions

Commissions revenues declined 25% to \$79 million due to lower sales of mutual funds in the first quarter of 2001 compared with the first quarter of 2000.

## Asset management fees

Asset management fees were \$446 million, a decline of 7% from the first quarter of 2000 due to lower performance fees and a decrease in management fees, resulting from the depreciation in assets under management. At the end of the first quarter of 2001, assets under management totaled \$525 billion, compared with \$602 billion at the end of the 2000 first quarter. MLIM has attracted positive net new money for six consecutive quarters, including \$7 billion in the first quarter of 2001, after adjusting for money flows from taxable money market funds to U.S. bank deposits.

MLIM's assets under management include taxable money market funds, the fees for which are included in the results of PCG. These funds totaled \$64 billion at March 30, 2001. An analysis of changes in assets under management from March 31, 2000 to March 30, 2001 is as follows:

<TABLE>  
<CAPTION>

(dollars in billions)	Net Changes Due To				Mar. 30, 2001
	Mar. 31, 2000	New Money	Asset Depreciation (1)	Other(2)	
<S>	<C>	<C>	<C>	<C>	<C>
Assets under management	\$ 602	\$ 36	\$ (78)	\$ (35)	\$ 525

</TABLE>

- (1) Includes \$(27) billion impact of foreign exchange, primarily due to the decline in value of the British Pound against the U.S. dollar.  
(2) Includes reinvested dividends of \$9 billion and net outflows of \$44 billion of retail money market funds which were transferred to bank deposits at Merrill Lynch's U.S. banks.

## Other Revenues

Other revenues increased 72% from the first quarter of 2000 to \$43 million in the first quarter of 2001.

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Non-Interest Expenses  
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Merrill Lynch's non-interest expenses are summarized below:

<TABLE>

<CAPTION>

(dollars in millions)	For the Three Months Ended	
	Mar. 30, 2001	Mar. 31, 2000
<S>	<C>	<C>
Compensation and benefits	\$ 3,244	\$ 3,918
Non-compensation expenses:		
Communications and technology	598	584
Occupancy and related depreciation	270	253
Advertising and market development	208	245
Brokerage, clearing, and exchange fees	235	233
Professional fees	134	147
Goodwill amortization	52	56
Other	334	403
Total non-compensation expenses	1,831	1,921
Total non-interest expenses	\$ 5,075	\$ 5,839
Compensation and benefits		
as a percentage of net revenues	50.5%	52.1%
Non-compensation expenses		
as a percentage of net revenues	28.5	25.5

</TABLE>

Compensation and benefits, the largest expense category, decreased 17% from the 2000 first quarter to \$3.2 billion as a result of reduced profitability. Compensation and benefits as a percentage of net revenues was 50.5% for the 2001 first quarter, compared with 52.1% in the first quarter of last year and in line with the previous quarter. Non-compensation expenses were 5% lower than the 2000 first quarter, as the result of actions initiated in the second half of 2000 to contain expenses and more effective allocation of resources.

Communications and technology expenses were \$598 million, up 2% from the first quarter of 2000 due to higher technology equipment costs.

Occupancy and related depreciation expense was \$270 million in the first quarter of 2001, 7% higher than the first quarter of 2000 principally due to increased depreciation expense.

Advertising and market development expenses declined 15% from the 2000 first quarter to \$208 million, due to continued lower levels of advertising spending, in line with the second half of 2000.

Brokerage, clearing, and exchange fees were \$235 million, approximately equal to the year-ago quarter.

Professional fees decreased 9% to \$134 million primarily due to reduced spending on legal and consulting services.

Goodwill amortization was \$52 million in the first quarter of 2001, virtually unchanged from the 2000 first quarter. Other expenses were \$334 million, 17% lower than the 2000 first quarter due to a decline in provisions.

The effective tax rate was 31.7% for the first quarter of 2001, virtually unchanged from the corresponding period in 2000 and up from the full-year 2000 rate of 30.4%. The increase from the full-year 2000 is a result of a lower percentage of non-U.S. income.

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Average Assets and Liabilities  
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Management continually monitors and evaluates on a daily basis the level and composition of the balance sheet.

For the first three months of 2001, average total assets were \$423 billion, up 10% from \$385 billion for the 2000 fourth quarter. Average total liabilities increased 10% to \$401 billion from \$365 billion for the 2000 fourth quarter. The

major components in the changes in average total assets and liabilities for the first three months of 2001 as compared with the fourth quarter of 2000 are summarized as follows:

<TABLE>

<CAPTION>

(dollars in millions)	Increase	Change
<S>	<C>	<C>
Average assets		
Marketable investment securities	\$ 9,718	21%
Trading assets	4,226	4
Receivables under resale agreements and securities borrowed transactions	13,377	13
Average liabilities		
Deposits	\$15,405	27%
Long-term borrowings	3,338	5
Customer payables	3,197	11
Payables under repurchase agreements and securities loaned transactions	11,719	11

</TABLE>

The significant growth in deposits in the first three months of 2001 reflects the continued cash inflows from certain CMA(Registered Trade Mark) and other types of accounts from taxable money market funds which are included in assets under management to bank deposits at Merrill Lynch's U.S. banks. This increase in deposits was used by the U.S. banks to fund the growth in marketable investment securities. Additionally, receivables under resale agreements and securities borrowed transactions rose due to increased matched-book activity.

#### Capital Adequacy and Liquidity

The primary objectives of Merrill Lynch's capital structure and funding policies are to:

1. Ensure sufficient equity capital to absorb losses,
2. Support the business strategies, and
3. Assure liquidity at all times, across market cycles, and through periods of financial stress.

These objectives and Merrill Lynch's capital structure and funding policies are discussed more fully in the Annual Report on Form 10-K for the year ended December 29, 2000.

At March 30, 2001, Merrill Lynch's equity capital was comprised of \$19.5 billion in common equity, \$425 million in preferred stock, and \$2.7 billion of preferred securities issued by subsidiaries. Preferred securities issued by subsidiaries consist primarily of Trust Originated Preferred Securities (Service Mark) ("TOPrS"(Service Mark)). Based on various analyses and criteria, management believes that Merrill Lynch's equity capital base of \$22.6 billion is adequate.

Merrill Lynch's leverage ratios were as follows:

<TABLE>

<CAPTION>

	Leverage Ratio (1)	Adjusted Leverage Ratio (2)	Adjusted Leverage Ratio (3)
<S>	<C>	<C>	<C>
Period-end			
March 30, 2001	19.1x	13.6x	10.9x
December 29, 2000	19.4x	13.9x	11.6x
Average (4)			
Three months ended March 30, 2001	19.5x	14.0x	11.5x
Year ended December 29, 2000	19.0x	13.1x	11.7x

</TABLE>

(1) Total assets to total stockholders' equity and preferred securities issued by subsidiaries.

(2) Total assets less receivables under resale agreements and securities borrowed transactions to total stockholders' equity and preferred securities issued by subsidiaries.

- (3) Total assets less (a) receivables under resale agreements and securities borrowed transactions and (b) marketable investment securities to total stockholders' equity and preferred securities issued by subsidiaries.
- (4) Computed using month-end balances.

Commercial paper outstanding totaled \$10.8 billion at March 30, 2001 and \$14.0 billion at December 29, 2000, which was 3% of total assets at March 30, 2001 and year-end 2000. Deposits at Merrill Lynch's banking subsidiaries have increased from \$67.6 billion at year-end 2000 to \$77.9 billion at March 30, 2001, including \$66.2 billion at Merrill Lynch's U.S. banks. The U.S. bank deposits were primarily invested in high quality marketable investment securities. Outstanding long-term borrowings increased to \$73.3 billion at March 30, 2001 from \$70.2 billion at December 29, 2000. Major components of the change in long-term borrowings during the first three months of 2001 follow:

(1) At March 30, 2001, \$51.6 billion of long-term borrowings had maturity dates beyond one year.

The cost and availability of unsecured financing generally are dependent on credit ratings. Merrill Lynch's senior long-term debt, preferred stock, and TOPrS were rated by several recognized credit rating agencies at March 30, 2001 as follows:

## Risk Management

## Market Risk

portfolios could lose with a specified degree of confidence over a given time interval. The VaR for Merrill Lynch's overall portfolios is less than the sum of the VaRs for individual risk categories because movements in different risk categories occur at different times and, historically, extreme movements have not occurred in all risk categories simultaneously. The difference between the sum of the VaRs for individual risk categories and the VaR calculated for all risk categories is shown in the following tables and may be viewed as a measure of the diversification within Merrill Lynch's portfolios. Merrill Lynch's Corporate Risk Management believes that the tabulated risk measures provide some guidance as to the amount Merrill Lynch could lose in future periods and it works continuously to improve its measurement and the methodology of its VaR. However, like all statistical measures, especially those that rely heavily on historical data, VaR needs to be interpreted with a clear understanding of its assumptions and limitations.

The Merrill Lynch VaR system uses a historical simulation approach to estimate value-at-risk using a 99% confidence level and a two-week holding period for trading and non-trading portfolios. Sensitivities to market risk factors are aggregated and combined with a database of historical biweekly changes in market factors to simulate a series of profits and losses. The level of loss that is exceeded in that series 1% of the time is used as the estimate for the 99% confidence level VaR. The overall total VaR amounts are presented across major risk categories, including exposure to volatility risk found in certain products, e.g., options. The table that follows presents Merrill Lynch's VaR for its trading portfolios at March 30, 2001 and December 29, 2000 as well as daily average VaR for the three months ended March 30, 2001. Additionally, high and low VaR for the first quarter of 2001 is presented based on an overall aggregate basis.

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<TABLE>  
<CAPTION>

(dollars in millions)	Mar. 30, 2001	Dec. 29, 2000	Daily Average 1Q01	High 2001	Low 2001
<S>	<C>	<C>	<C>	<C>	<C>
Trading value-at-risk(1)					
Interest rate and credit spread	\$ 90	\$ 81	\$ 83	\$ 95	\$ 84
Equity	50	77	66	78	47
Commodity	2	9	6	4	8
Currency	13	14	18	13	16
Volatility	26	34	40	28	56
	----	----	----	----	----
	181	215	213	218	211
Diversification benefit	(75)	(116)	(105)	(89)	(123)
	----	----	----	----	----
Overall(2)	\$106	\$ 99	\$108	\$129	\$ 88
	=====	=====	=====	=====	=====

</TABLE>

- (1) Based on a 99% confidence level and a two-week holding period.  
(2) Overall VaR using a 95% confidence level and a one-day holding period was \$20 million at both March 30, 2001 and December 29, 2000.

During the first quarter of 2001, overall VaR increased slightly as the impact of an increase in interest and credit spread VaR and a decrease in the diversification benefit was substantially offset by decreases in equity and volatility VaR.

Merrill Lynch's energy trading business, for which VaR has severe limitations as a risk measure, has been excluded from the table above. During the first quarter of 2001, Merrill Lynch sold the majority of its energy-trading assets. Although Merrill Lynch entered into a thirty - month non-compete covenant in connection with this asset sale, some energy-trading positions still remain.

The following table presents Merrill Lynch's VaR for its non-trading portfolios (excluding U.S. banks):

<TABLE>  
<CAPTION>

(dollars in millions)	Mar. 30, 2001	Dec. 29, 2000
<S>	<C>	<C>

Non-trading value-at-risk(1)

Interest rate and credit spread	\$ 79	\$ 67
Currency	15	23
Equity	46	47
Volatility	10	3
	----	----
	150	140
Diversification benefit	(26)	(44)
	----	----
Overall	\$124	\$ 96
	=====	=====

</TABLE>

(1) Based on a 99% confidence level and a two-week holding period.

Non-Trading VaR increased during the first quarter of 2001 due to higher interest rate and credit spread risk and volatility risk as well as a lower diversification benefit, partially offset by lower currency risk.

In addition to the amounts reported in the accompanying table, non-trading interest rate VaR associated with Merrill Lynch's TOPrS at March 30, 2001 and December 29, 2000 was \$91 million and \$138 million, respectively. TOPrS, which are fixed-rate perpetual preferred securities, are considered a component of Merrill Lynch's equity capital and, therefore, the associated interest rate sensitivity is not hedged.

Beginning in 2000, client funds in certain CMA and other types of accounts were redirected from taxable money market funds to bank deposits at Merrill Lynch's U.S. banks. This increase in deposits was used to fund the growth in high quality marketable investment securities. The overall

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VaR for the U.S. banks, driven largely by these securities and based on a 99% confidence interval and a two-week holding period, was \$254 million and \$191 million at March 30, 2001 and December 29, 2000, respectively.

#### Credit Risk

Merrill Lynch enters into International Swaps and Derivatives Association, Inc. master agreements or their equivalent ("master netting agreements") with each of its derivative counterparties as soon as possible. Master netting agreements provide protection in bankruptcy in certain circumstances and, in some cases, enable receivables and payables with the same counterparty to be offset on the Consolidated Balance Sheets, providing for a more meaningful balance sheet presentation of credit exposure.

In addition, to reduce default risk, Merrill Lynch requires collateral, principally U.S. Government and agencies securities, on certain derivative transactions. From an economic standpoint, Merrill Lynch evaluates default risk exposures net of related collateral. The following is a summary of counterparty credit ratings for the replacement cost (net of \$5.0 billion of collateral) of trading derivatives in a gain position by maturity at March 30, 2001. (Please note that the following table is inclusive of credit exposure from derivative transactions only and does not include other credit exposures, which may be material).

<TABLE>

<CAPTION>

Credit Rating(1)	Years to Maturity				Cross-Maturity Netting(2)	Total
	0-3	3-5	5-7	Over 7		
<S>	<C>	<C>	<C>	<C>	<C>	<C>
AAA	\$ 2,082	\$1,028	\$ 785	\$1,593	\$ (706)	\$ 4,782
AA+/AA	1,489	626	400	724	(479)	2,760
AA-	1,981	997	730	958	(1,438)	3,228
A+/A	2,298	685	283	594	(829)	3,031
A-	2,959	736	473	771	(525)	4,414
BBB	1,305	382	247	571	(358)	2,147
BB+	805	97	141	131	(147)	1,027
Other	537	257	133	152	(168)	911
	-----	-----	-----	-----	-----	-----
Total	\$13,456	\$4,808	\$3,192	\$5,494	\$ (4,650)	\$22,300
	=====	=====	=====	=====	=====	=====

</TABLE>

(1) Represents credit rating agency equivalent of internal credit ratings.

(2) Represents netting of payable balances with receivable balances for the same counterparty across maturity band categories. Receivable and payable balances with the same counterparty in the same maturity category, however, are net within the maturity category.



In addition to obtaining collateral, Merrill Lynch attempts to mitigate its default risk on derivatives whenever possible by entering into transactions with provisions that enable Merrill Lynch to terminate or reset the terms.

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Non-Investment Grade Holdings  
-----

Non-investment grade holdings and highly leveraged transactions, involve risks related to the creditworthiness of the issuers or counterparties and the liquidity of the market for such investments. Merrill Lynch recognizes these risks and, whenever possible, employs strategies to mitigate exposures. The specific components and overall level of non-investment grade and highly-leveraged positions may vary significantly from period to period as a result of inventory turnover, investment sales, and asset redeployment.

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In the normal course of business, Merrill Lynch underwrites, trades, and holds non-investment grade cash instruments in connection with its investment banking, market-making, and derivative structuring activities. Non-investment grade holdings have been defined as debt and preferred equity securities rated as BB+ or lower, or equivalent ratings by recognized credit rating agencies, sovereign debt in emerging markets, amounts due under derivative contracts from non-investment grade counterparties, and other instruments that, in the opinion of management, are non-investment grade.

In addition to the amounts included in the following table, derivatives may also expose Merrill Lynch to credit risk related to the underlying security where a derivative contract either synthesizes ownership of the underlying security (e.g., long total return swaps) or can potentially force ownership of the underlying security (e.g., short put options). Derivatives may also subject Merrill Lynch to credit spread or issuer default risk, in that changes in credit spreads or in the credit quality of the underlying securities may adversely affect the derivatives' fair values. Merrill Lynch seeks to manage these risks by engaging in various hedging strategies to reduce its exposure associated with non-investment grade positions, such as purchasing an option to sell the related security or entering into other offsetting derivative contracts.

Merrill Lynch provides financing and advisory services to, and invests in, companies entering into leveraged transactions, which may include leveraged buyouts, recapitalizations, and mergers and acquisitions. Merrill Lynch provides extensions of credit to leveraged companies in the form of senior and subordinated debt, as well as bridge financing on a select basis. In addition, Merrill Lynch syndicates loans for non-investment grade companies or in connection with highly leveraged transactions and may retain a residual portion of these loans.

Merrill Lynch holds direct equity investments in leveraged companies and interests in partnerships that invest in leveraged transactions. Merrill Lynch has also committed to participate in limited partnerships that invest in leveraged transactions. Future commitments to participate in limited partnerships and other direct equity investments will be made on a select basis.

-----  
Trading Exposures  
-----

The following table summarizes Merrill Lynch's trading exposure to non-investment grade or highly-leveraged issuers or counterparties:

<TABLE>  
<CAPTION>

	Mar. 30, 2001	Dec. 29, 2000
(dollars in millions)		
<S>	<C>	<C>
Trading assets:		
Cash instruments	\$ 4,995	\$ 5,227
Derivatives	3,384	3,982
Trading liabilities - cash instruments	(1,270)	(1,087)
Collateral on derivative assets	(1,446)	(1,796)
	-----	-----
Net trading asset exposure	\$ 5,663	\$ 6,326
	=====	=====

</TABLE>

Among the trading exposures included in the preceding table are debt and equity securities and bank loans of companies in various stages of bankruptcy proceedings or in default. At March 30, 2001, the carrying value of such debt and equity securities totaled \$57 million, of which 18% resulted from Merrill Lynch's market-making activities in such securities, compared with \$43 million at December 29, 2000, of which 64% related to market-making activities. Also

included are distressed bank loans with a carrying value totaling \$153 million and \$122 million at March 30, 2001 and December 29, 2000, respectively.

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-----  
Non-Trading Exposures  
-----

The following table summarizes Merrill Lynch's non-investment grade non-trading exposures:

<TABLE>  
<CAPTION>

(dollars in millions)	Mar. 30, 2001	Dec. 29, 2000
<S>	<C>	<C>
Marketable investment securities	\$ 112	\$ 199
Investments of insurance subsidiaries	123	136
Loans (net of allowance for loan losses):		
Bridge loans	476	524
Other loans(1)	2,966	2,741
Other investments:		
Partnership interests(2)	1,141	993
Other equity investments(3)	185	284

</TABLE>

- (1)Represents outstanding loans to 145 and 135 companies at March 30, 2001 and December 29, 2000, respectively.  
(2)Includes \$632 million and \$504 million in investments at March 30, 2001 and December 29, 2000, respectively, related to deferred compensation plans, for which the default risk of the investments generally rests with the participating employees.  
(3)Includes investments in 80 and 98 enterprises at March 30, 2001 and December 29, 2000, respectively.

The following table summarizes Merrill Lynch's commitments with exposure to non-investment grade or highly-leveraged counterparties:

<TABLE>  
<CAPTION>

(dollars in millions)	Mar. 30, 2001	Dec. 29, 2000
<S>	<C>	<C>
Additional commitments to invest in partnerships	\$ 354	\$ 467
Unutilized revolving lines of credit and other lending commitments	3,455	3,664

</TABLE>

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New Accounting Pronouncement  
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In September 2000, the Financial Accounting Standards Board released SFAS No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities, a replacement of SFAS No. 125. Merrill Lynch has adopted those provisions of the statement that are required to be adopted as of December 29, 2000. These provisions relate primarily to the accounting and disclosures for collateral received or pledged in secured borrowing transactions. Other provisions of the statement are not required to be adopted until the second quarter of 2001. These provisions provide new guidance for determining whether a transfer of assets should be accounted for as a sale or a secured borrowing, and also change the accounting for certain securities lending transactions. Under the new provisions, Merrill Lynch will be required to recognize on the Consolidated Balance Sheet securities lending transactions in which Merrill Lynch as securities lender receives securities (rather than cash) as collateral. Merrill Lynch is currently evaluating the impact of adoption.

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<TABLE>					
<CAPTION>					
-----					
Statistical Data					
-----					
	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.	1st
Qtr.	2000	2000	2000	2000	
2001					
	-----	-----	-----	-----	--
<S>	<C>	<C>	<C>	<C>	<C>
Client Assets (dollars in billions):					
Private Client					
U.S.	\$ 1,424	\$ 1,415	\$ 1,417	\$ 1,337	\$
1,254					
Non-U.S.	149	146	148	140	
131					
	-----	-----	-----	-----	--
Total Private Client	1,573	1,561	1,565	1,477	
1,385					
MLIM direct sales (1)	219	211	203	204	
179					
	-----	-----	-----	-----	--
Total client assets	\$ 1,792	\$ 1,772	\$ 1,768	\$ 1,681	\$
1,564					
	=====	=====	=====	=====	
Assets in Asset-Priced Accounts	\$ 203	\$ 208	\$ 220	\$ 209	\$
193					
Assets Under Management:					
Retail	\$ 307	\$ 283	\$ 274	\$ 250	\$
233					
Institutional	253	257	252	262	
250					
Private investors	42	45	45	45	
42					
Equity	341	343	337	321	
282					
Fixed-income	103	104	101	108	
118					
Money market	158	138	133	128	
125					
U.S.	364	356	351	333	
319					
Non-U.S.	238	229	220	224	
206					
U.S. Bank Deposits	\$ 7	\$ 19	\$ 38	\$ 55	\$
66					
-----					
Underwriting:					
Global Debt and Equity:					
Volume (dollars in billions)	\$ 96	\$ 92	\$ 108	\$ 76	\$
132					
Market share	10.6%	12.1%	13.8%	11.8%	
13.0%					
U.S. debt and equity:					
Volume (dollars in billions)	\$ 79	\$ 69	\$ 77	\$ 55	\$
112					
Market share	13.5%	14.2%	14.7%	12.6%	
16.2%					
-----					
Full-Time Employees:					
U.S.	50,900	52,300	52,700	51,800	
50,400					
Non-U.S.	18,500	19,200	20,000	20,200	
19,900					
Total	-----	-----	-----	-----	---
	69,400	71,500	72,700	72,000	
70,300					
	=====	=====	=====	=====	
Financial advisors and					

other investment professionals 20,400	19,900	20,600	21,000	21,200	
-----					
Income Statement:					
Net earnings (dollars in millions)	\$ 1,101	\$ 921	\$ 885	\$ 877	\$
874					
Annualized return on average common stockholders' equity	32.4%	24.4%	21.6%	20.0%	
18.4%					
Earnings per common share:					
Basic	\$ 1.40	\$ 1.15	\$ 1.09	\$ 1.07	\$
1.04					
Diluted	1.24	1.01	0.94	0.93	
0.92					
-----					
Balance Sheet (dollars in millions):					
Total assets	\$344,992	\$334,875	\$361,691	\$407,200	
\$431,604					
Total stockholders' equity	\$ 14,733	\$ 16,014	\$ 17,171	\$ 18,304	\$
19,939					
Book value per common share	\$ 18.13	\$ 19.47	\$ 20.70	\$ 21.95	\$
23.28					
Share Information (in thousands):					
Weighted-average shares outstanding:					
Basic	780,220	795,070	805,855	811,943	
832,195					
Diluted	881,681	904,246	929,048	930,688	
937,954					
Common shares outstanding	789,057	800,863	809,069	814,572	
838,389					
-----					

</TABLE>

(1) Reflects funds managed by MLIM not sold through Private Client channels.

## PART II - OTHER INFORMATION

### Item 4. Submission of Matters to a Vote of Security Holders

On April 27, 2001, ML & Co. held its Annual Meeting of Stockholders, at which 84.4% of the shares of ML & Co. common stock outstanding and eligible to vote, either in person or by proxy, were represented, constituting a quorum. At the Annual Meeting, the following matters were voted upon: (i) the election of three directors to the Board of Directors to hold office for a term of three years; (ii) a proposal to amend ML & Co.'s certificate of incorporation to increase the authorized shares of common stock from 1,000,000,000 to 3,000,000,000; (iii) a proposal to amend ML & Co.'s employee stock purchase plan to increase the number of shares of common stock available under the plan by 25,000,000 for a total of 125,600,000 shares; and (iv) a stockholder proposal concerning cumulative voting in the election of directors. Proxies for the Annual Meeting were solicited by the Board of Directors pursuant to Regulation 14A of the Securities Exchange Act of 1934.

The stockholders elected all three nominees to the Board of Directors as set forth in ML & Co.'s Proxy Statement. There was no solicitation in opposition to the nominees. The votes cast for or withheld from the election of directors were as follows: David H. Komansky received 698,451,092 votes in favor and 6,010,492 votes were withheld; Robert P. Luciano received 698,759,648 votes in favor and 5,701,936 votes were withheld; and David K. Newbigging received 698,564,387 votes in favor and 5,897,197 votes were withheld.

The stockholders approved the proposal to amend the certificate of incorporation to increase the authorized shares of common stock. The votes cast for and against, as well as the number of abstentions for this proposal were as follows: 588,488,443 votes in favor, 112,461,876 votes against, and 3,511,265 shares abstained.

The stockholders approved the proposal to amend the employee stock purchase plan to increase the number of shares of common stock available under the plan. The votes cast for and against, as well as the number of abstentions for this proposal were as follows: 646,050,682 votes in favor, 54,702,585 votes against, and 3,708,317 shares abstained.

The stockholders did not approve the stockholder proposal concerning cumulative voting in the election of directors. The votes cast for and against, as well as the number of abstentions and broker non-votes for this proposal were as follows: 157,609,479 votes in favor, 395,421,760 votes against, 7,719,191 shares abstained, and 143,711,154 shares represented broker non-votes.

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits

- (3) (i) ML & Co.'s Restated Certificate of Incorporation effective as of May 3, 2001
- (ii) ML & Co.'s By-Laws effective as of April 27, 2001
- (4) Instruments defining the rights of security holders, including indentures:  
  
Pursuant to Item 601(b)(4)(iii)(A) of Regulation S-K, ML & Co. hereby undertakes to furnish to the Securities and Exchange Commission, upon request, copies of the instruments defining the rights of holders of long-term debt securities of ML & Co. that authorize an amount of securities constituting 10% or less of the total assets of ML & Co. and its subsidiaries on a consolidated basis.
- (10) Merrill Lynch & Co., Inc. Deferred Stock Unit and Stock Option Plan for Non-Employee Directors, as amended February 16, 2001
- (12) Statement re: computation of ratios
- (15) Letter re: unaudited interim financial information

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(b) Reports on Form 8-K

The following Current Reports on Form 8-K were filed with or furnished to the Securities and Exchange Commission during the quarterly period covered by this report:

- (i) Current Report dated January 18, 2001, for the purpose of furnishing notice of a webcast of a conference call scheduled for January 23, 2001 to review ML & Co.'s operating results.
- (ii) Current Report dated January 23, 2001, for the purpose of filing ML & Co.'s Preliminary Unaudited Earnings Summary for the three months and the year ended December 29, 2000.
- (iii) Current Report dated February 28, 2001, for the purpose of filing ML & Co.'s Preliminary Unaudited Consolidated Balance Sheet as of December 29, 2000.
- (iv) Current Report dated March 5, 2001, for the purpose of furnishing notice of a webcast of a meeting scheduled for March 12, 2001 between ML & Co. management and investors.

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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 hereunto duly authorized.

MERRILL LYNCH & CO., INC.

-----  
(Registrant)

-----  
Thomas H. Patrick  
Executive Vice President and  
Chief Financial Officer

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INDEX TO EXHIBITS

Exhibits

- 3 (i) ML & Co.'s Restated Certificate of Incorporation effective as of  
May 3, 2001
- (ii) ML & Co.'s By-Laws effective as of April 27, 2001
- 10 Merrill Lynch & Co., Inc. Deferred Stock Unit and Stock  
Option Plan for Non-Employee Directors, as amended February 16, 2001
- 12 Statement re: computation of ratios
- 15 Letter re: unaudited interim financial information

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RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
MERRILL LYNCH & CO., INC.

---

May 3, 2001

RESTATED CERTIFICATE OF INCORPORATION  
OF  
MERRILL LYNCH & CO., INC.

---

MERRILL LYNCH & CO., INC., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the Corporation is Merrill Lynch & Co., Inc.
2. The date of filing of its original Certificate of Incorporation with the Secretary of State was March 27, 1973.
3. In accordance with the provisions of Section 245 of the General Corporation Law of the State of Delaware, the Board of Directors of the Corporation duly adopted this Restated Certificate of Incorporation on April 27, 2001, at a meeting duly convened.
4. This Restated Certificate of Incorporation only restates and integrates and does not further amend the provisions of the Certificate of Incorporation of the Corporation as heretofore amended or supplemented, and there is no discrepancy between such provisions and the provisions of this Restated Certificate of Incorporation, except as permitted by Section 245(c) of the General Corporation Law of the State of Delaware.
5. The text of the Restated Certificate of Incorporation is as follows:

ARTICLE I

NAME

The name of the Corporation is Merrill Lynch & Co., Inc.

## ARTICLE II

### REGISTERED OFFICE AND REGISTERED AGENT

The registered office of the Corporation in the State of Delaware is located at Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name and address of the Corporation's registered agent is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

## ARTICLE III

### CORPORATE PURPOSES

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

## ARTICLE IV

### CAPITAL STOCK

SECTION 1. Shares, Classes and Series Authorized. The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is three billion, twenty-five million (3,025,000,000) shares, of which three billion (3,000,000,000) shares shall be Common Stock of the par value of one dollar and thirty-three and one-third cents (\$1.33 1/3) each (hereinafter called "Common Stock") and twenty-five million (25,000,000) shares shall be Preferred Stock of the par value of one dollar (\$1.00) each (hereinafter called "Preferred Stock").

The Preferred Stock is hereby authorized to be issued from time to time in one or more series, the shares of each series to have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof and may be convertible into, or exchangeable for, at the option of either the holder or the Corporation or upon the happening of a specified event, shares of any other class or classes or any other series of the same or any other class or classes of capital stock of the Corporation at such price or prices or at such rate or rates of exchange and with such adjustments as shall be stated and expressed in the Certificate of Incorporation or in any amendment thereto or in the resolution or resolutions adopted by the Board of Directors providing for the issue thereof.

SECTION 2. Description of Capital Stock. The following is a description of each of the classes of capital stock which the Corporation has authority to issue with the designations, preferences, voting powers and participating, optional or other special rights and the qualifications, limitations or restrictions thereof:

### THE PREFERRED STOCK

A. RIGHTS AND RESTRICTIONS OF PREFERRED STOCK. Authority is hereby expressly vested in the Board of Directors of the Corporation, subject to the provisions of this Article IV and to the limitations prescribed by law, to authorize the issue from time to time of one or more series of Preferred Stock and with respect to each such series to fix by resolution or resolutions adopted by the affirmative vote of a majority of the whole Board of Directors providing for the issue of such series the voting powers, full or limited, if any, of the shares of such series and the designations, preferences and relative, participating, optional or other special rights and the qualifications, limitations or restrictions thereof. The authority of the Board of Directors with respect to each series shall include, but not be limited to, the determination or fixing of the following:

(a) The designation of such series.

(b) The dividend rate of such series, the conditions and dates upon which such dividends shall be payable, the relation which such dividends shall bear to

the dividends payable on any other class or classes or series of the Corporation's capital stock, and whether such dividends shall be cumulative or non-cumulative.

(c) Whether the shares of such series shall be subject to redemption for cash, property or rights, including securities of any other corporation, by the Corporation at the option of either the Corporation or the holder or both or upon the happening of a specified event, and, if made subject to any such redemption, the times or events, prices and other terms and conditions of such redemption.

(d) The terms and amount of any sinking fund provided for the purchase or redemption of the shares of such series.

(e) Whether or not the shares of such series shall be convertible into, or exchangeable for, at the option of either the holder or the Corporation or upon the happening of a specified event, shares of any other class or classes or of any other series of the same or any other class or classes of the Corporation's capital stock, and, if provision be made for conversion or exchange, the times or events, prices, rates, adjustments and other terms and conditions of such conversions or exchanges.

(f) The restrictions, if any, on the issue or reissue of any additional Preferred Stock.

(g) The rights of the holders of the shares of such series upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

(h) The provisions as to voting, optional and/or other special rights and preferences, if any.

Pursuant to the authority conferred by this Section, the following series of Preferred Stock have been designated, each such series consisting of such number of shares, with such voting powers and with such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof as are stated and expressed in the exhibit with respect to such series attached hereto as specified below and incorporated herein by reference:

Exhibit A	Series A Junior Preferred Stock
Exhibit B	9% Cumulative Preferred Stock, Series A
Exhibit C	Special Voting Stock

#### COMMON STOCK

B. RIGHTS AND RESTRICTIONS OF COMMON STOCK. The powers, preferences, rights, qualifications, limitations or restrictions thereof in respect to the Common Stock are as follows:

(a) The Common Stock is junior to the Preferred Stock and is subject to all the powers, rights, privileges, preferences and priorities of the Preferred Stock as herein or in any resolution or resolutions adopted by the Board of Directors pursuant to authority expressly vested in it by the provisions of Section 2 of this Article.

(b) The Common Stock shall have voting rights for the election of directors and for all other purposes, each holder of Common Stock being entitled to one vote for each share thereof held by such holder, except as otherwise required by law.

C. INCREASE OR DECREASE IN AMOUNT OF AUTHORIZED SHARES. The number of authorized shares of any class or classes of capital stock of the Corporation may be increased or decreased by an amendment to this Certificate of Incorporation authorized by the affirmative vote of the holders of a majority of the shares of the Common Stock outstanding and entitled to vote thereon and, except as expressly provided in the Certificate of Incorporation or in any resolution or resolutions adopted by the Board of Directors pursuant to authority expressly vested in it by the provisions of Section 2 of this Article with respect to the Preferred Stock and except as otherwise provided by law, no vote by holders of capital stock of the Corporation other than the Common Stock shall be required to approve such action.

D. SHARES ENTITLED TO MORE OR LESS THAN ONE VOTE. If any class or series of the Corporation's capital stock shall be entitled to more or less than one vote for any share, on any matter, every reference in this Certificate of Incorporation and in any relevant provision of law to a majority or other proportion of stock shall refer to such majority or other proportion of the votes of such stock.

## ARTICLE V

### DENIAL OF PREEMPTIVE RIGHTS

No holder of any class of capital stock of the Corporation, whether now or hereafter authorized, shall be entitled, as such, as a matter of right, to subscribe for or purchase any part of any new or additional issue of capital stock of the Corporation of any class whatsoever, or of securities convertible into or exchangeable for capital stock of the Corporation of any class whatsoever, whether now or hereafter authorized, or whether issued for cash, property or services.

## ARTICLE VI

### RESTRICTION ON DIVIDENDS

Dividends may be declared or paid upon the shares of the Corporation's capital stock either (1) out of its surplus, determined as provided under the General Corporation Law of the State of Delaware, or (2) in case there shall be no such surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year.

A director shall be fully protected in relying in good faith upon the books of account or other records of the Corporation or statements prepared by any of its officials or by independent public accountants or by an appraiser selected with reasonable care by the Board of Directors as to the value and amount of the assets, liabilities and/or net profits of the Corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid, or with which the Corporation's capital stock might properly be purchased or redeemed.

## ARTICLE VII

### STOCKHOLDER VOTE REQUIRED IN CONNECTION WITH CERTAIN BUSINESS COMBINATIONS

SECTION 1. Vote Generally Required. Notwithstanding anything contained herein or in the General Corporation Law of the State of Delaware, and subject to the provisions of Section 3 of this Article VII, the Corporation shall not (a) merge or consolidate with any one or more corporations, joint-stock associations or non-stock corporations (other than in a merger not requiring any vote of stockholders of the Corporation under the General Corporation Law of the State of Delaware), (b) sell, lease or exchange all or substantially all of its property and assets, or (c) dissolve, unless the Board of Directors shall, at a meeting duly called, adopt a resolution, by the affirmative vote of at least two-thirds (2/3) of the entire Board of Directors, approving such action and unless such action shall be approved at a meeting by the affirmative vote of the holders of a majority of the shares of the Common Stock outstanding and entitled to vote thereon and, except as expressly provided in the Certificate of Incorporation or in any resolution or resolutions adopted by the Board of Directors pursuant to authority expressly vested in it by the provisions of Section 2 of Article IV with respect to the Preferred Stock and except as otherwise provided by law, no vote by holders of capital stock of the Corporation other than the Common Stock shall be required to approve such action.

SECTION 2. Certain Definitions. For the purposes of this Article:

(a) "Business Combination" means:

(i) any merger or consolidation of the Corporation or any Subsidiary with (a) an Interested Stockholder or (b) any other Person (whether or not itself an Interested Stockholder) that is, or after such merger or consolidation would be, an Affiliate or Associate of an Interested Stockholder; or

(ii) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with, or proposed by or on behalf of, an Interested Stockholder or an Affiliate or Associate of an Interested Stockholder of any assets of the Corporation or any Subsidiary having an aggregate Fair Market Value of not less than \$100,000,000; or

(iii) the issuance or transfer by the Corporation or any Subsidiary (in one

transaction or a series of transactions) of any securities of the Corporation or any Subsidiary to, or proposed by or on behalf of, an Interested Stockholder or an Affiliate or Associate of an Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value of not less than \$100,000,000; or

(iv) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation, or any spinoff or split-up of any kind of the Corporation or any Subsidiary, proposed by or on behalf of an Interested Stockholder or an Affiliate or Associate of an Interested Stockholder; or

(v) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any Subsidiary or any other transaction (whether or not with or into or otherwise involving an Interested Stockholder) that has the effect, directly or indirectly, of increasing the percentage of the outstanding shares of (a) any class of equity securities of the Corporation or any Subsidiary or (b) any class of securities of the Corporation or any Subsidiary convertible into or exchangeable for equity securities of the Corporation or any Subsidiary, that are directly or indirectly owned by an Interested Stockholder and all of its Affiliates and Associates; or

(vi) any agreement, contract or other arrangement providing for any one or more of the actions specified in clauses (i) through (v) of this Section 2(a).

(b) "Affiliate" or "Associate" have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as in effect on January 1, 1986.

(c) "Beneficial Owner" has the meaning ascribed to such term in Rule 13d-3 of the General Rules and Regulations under the Exchange Act, as in effect on January 1, 1986.

(d) "Continuing Director" means (i) any member of the Board of Directors who (a) is neither the Interested Stockholder involved in the Business Combination as to which a determination of Continuing Directors is provided hereunder, nor an Affiliate, Associate, employee, agent, or nominee of such Interested Stockholder, or the relative of any of the foregoing, and (b) was a member of the Board of Directors prior to the time that such Interested Stockholder became an Interested Stockholder, and (ii) any successor of a Continuing Director described in clause (i) who is recommended or elected to succeed a Continuing Director by the affirmative vote of a majority of Continuing Directors then on the Board of Directors.

(e) "Fair Market Value" means: (i) in the case of stock, the average of the closing sale prices during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange-Listed Stocks, or, if such stock is not reported on the Composite Tape, on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the principal United States securities exchange registered under the Exchange Act on which such stock is listed, or, if such stock is not listed on any such exchange, the average of the closing bid quotations with respect to a share of such stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any similar interdealer quotation system then in use, or, if no such quotation is available, the fair market value on the date in question of a share of such stock as determined by a majority of the Continuing Directors in good faith; and (ii) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined by a majority of the Continuing Directors in good faith.

(f) "Interested Stockholder" means any person (other than the Corporation or any Subsidiary, any employee benefit plan maintained by the Corporation or any Subsidiary or any trustee or fiduciary with respect to any such plan when acting in such capacity) that:

(i) is, or was at any time within the two-year period immediately prior to the date in question, the Beneficial Owner of 5% or more of the voting power of the then outstanding shares of Voting Stock of the Corporation and who did not become the Beneficial Owner of such amount of Voting Stock pursuant to a transaction that was approved by the affirmative vote of a majority of the entire Board of Directors; or

(ii) is an assignee of, or has otherwise succeeded to, any shares of Voting Stock of the Corporation of which an Interested Stockholder was the Beneficial Owner at any time within the two-year period immediately prior to the date in question, if such assignment or succession shall have occurred in the course of a transaction, or series of transactions, not involving a public offering within the meaning of the Securities Act of 1933, as amended.

For the purpose of determining whether a Person is an Interested Stockholder, the outstanding Voting Stock of the Corporation shall include unissued shares of Voting Stock of the Corporation of which the Interested Stockholder is the Beneficial Owner but shall not include any other shares of

Voting Stock of the Corporation that may be issuable pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, warrants or options, or otherwise, to any Person who is not the Interested Stockholder.

(g) A "Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity, as well as any syndicate or group deemed to be a person under Section 14(d)(2) of the Exchange Act.

(h) "Subsidiary" means any corporation of which the Corporation owns, directly or indirectly, (i) a majority of the outstanding shares of equity securities of such corporation, or (ii) shares having a majority of the voting power represented by all of the outstanding shares of Voting Stock of such corporation. For the purpose of determining whether a corporation is a Subsidiary, the outstanding Voting Stock and shares of equity securities thereof shall include unissued shares of which the Corporation is the Beneficial Owner but shall not include any other shares of Voting Stock of such corporation that may be issuable pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, warrants or options, or otherwise, to any Person other than the Corporation.

(i) "Voting Stock" means outstanding shares of capital stock of the relevant corporation entitled to vote generally in the election of directors.

SECTION 3. Greater Vote for Business Combinations. In addition to any affirmative vote required by law or by this Certificate of Incorporation, the affirmative vote of the holders of record of outstanding shares representing at least eighty percent (80%) of the voting power of the then outstanding shares of the Voting Stock of the Corporation, voting together as a single class, shall be required to approve any Business Combination. Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

SECTION 4. Powers of Continuing Directors. The Continuing Directors shall have the power and duty to determine, on the basis of information known to them after reasonable inquiry, all facts necessary to determine compliance with this Article, including, without limitation, (A) whether a Person is an Interested Stockholder, (B) the number of shares of Voting Stock of the Corporation beneficially owned by any Person, (C) whether a Person is an Affiliate or Associate of another and (D) whether the assets that are the subject of any Business Combination have, or the consideration to be received for the issuance or transfer of securities by the Corporation or any Subsidiary in any Business Combination has, an aggregate Fair Market Value of not less than \$100,000,000; and the good faith determination of the Continuing Directors on such matters shall be conclusive and binding for all the purposes of this Article.

SECTION 5. No Effect on Fiduciary Obligations. Nothing contained in this Article shall be construed to relieve the members of the Board of Directors or an Interested Stockholder from any fiduciary obligation imposed by law.

SECTION 6. Amendment or Repeal. Notwithstanding the fact that a lesser percentage may be specified by the General Corporation Law of Delaware, the affirmative vote of the holders of record of outstanding shares representing at least eighty percent (80%) of the voting power of all the outstanding shares of the Voting Stock of the Corporation, voting together as a single class, shall be required to amend, alter or repeal any provision of, or to adopt any provision or provisions inconsistent with, any provision of this Article.

## ARTICLE VIII

### CORPORATE EXISTENCE

The Corporation is to have perpetual existence.

## ARTICLE IX

### NO LIABILITY OF HOLDERS OF CAPITAL STOCK FOR CORPORATE DEBTS

The holders of the capital stock of the Corporation shall not be personally liable for the payment of the Corporation's debts and the private property of the holders of the capital stock of the Corporation shall not be subject to the payment of debts of the Corporation to any extent whatsoever.

## ARTICLE X

BOARD OF DIRECTORS

SECTION 1. Powers of Board of Directors. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized:

(a) To make, alter, amend or repeal the By-Laws, except as otherwise expressly provided in any By-Law made by the holders of the capital stock of the Corporation entitled to vote thereon. Any By-Law may be altered, amended or repealed by the holders of the capital stock of the Corporation entitled to vote thereon at any annual meeting or at any special meeting called for that purpose.

(b) To authorize and cause to be executed mortgages and liens upon the real and personal property of the Corporation.

(c) To determine the use and disposition of any surplus and net profits of the Corporation, including the determination of the amount of working capital required, to set apart out of any of the funds of the Corporation, whether or not available for dividends, a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created.

(d) To designate, by resolution passed by a majority of the whole Board of Directors, one or more committees, each committee to consist of two or more directors of the Corporation, which, to the extent provided in the resolution designating the committee or in the By-Laws of the Corporation, shall, subject to the limitations prescribed by law, have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be provided in the By-Laws of the Corporation or as may be determined from time to time by resolution adopted by the Board of Directors.

(e) To grant or assume rights or options entitling the holders thereof to purchase from the Corporation shares of its capital stock of any class or series (to be evidenced by or in such instrument or instruments as shall be approved by the Board of Directors); the terms upon which, the time or times at or within which, the persons to whom, and the price or prices at which any such rights or options may be issued and any such shares may be purchased from the Corporation upon the exercise of any such right or option, shall be such as shall be fixed in a resolution or resolutions adopted by the Board of Directors providing for the creation and issue of such rights or options. In the absence of actual fraud in the transaction, the judgment of the Board of Directors as to the consideration for the issuance of such rights or options and the sufficiency thereof shall be conclusive. No such rights or options shall be invalidated or in any way affected by the fact that any director shall be a grantee thereof or shall vote for the issuance of such rights or options to himself or for any plan pursuant to which he may receive any such rights or options.

(f) To adopt or assume such plans as may, from time to time, be approved by it for the purchase by officers or employees of the Corporation and of any corporation either affiliated with or a subsidiary of the Corporation of shares of capital stock of the Corporation of any class or series; the terms upon which and the price or prices at which shares may be purchased from the Corporation pursuant to such a plan shall be such as shall be fixed by the Board of Directors in the plan. No such plan which is not at the time of adoption unreasonable or unfair shall be invalidated or in any way affected because any director shall be entitled to purchase shares of capital stock of the Corporation thereunder and shall vote for any such plan.

(g) To adopt or assume and carry out such plans as may from time to time be approved by it for the distribution among the officers or employees of the Corporation and of any corporation which is a subsidiary of the Corporation, or any of them, in addition to their regular salaries or wages, of part of the earnings of the Corporation and of any corporation which is a subsidiary of the Corporation, or any of them, in consideration for or in recognition of the services rendered by such officers or employees or as an inducement to future efforts. No such plan which is not at the time of adoption or assumption unreasonable or unfair shall be invalidated or in any way affected because any director shall be a beneficiary thereunder or shall vote for any plan under which he may benefit or for any distribution thereunder in which he may participate.

(h) To adopt such pension, retirement, deferred compensation or other employee benefit plans or provisions as may, from time to time, be approved by it, providing for pensions, retirement income, deferred compensation or other benefits for officers or employees of the Corporation and of any corporation which is a subsidiary of the Corporation, or any of them, in consideration for or in recognition of the services rendered by such officers or employees or as an inducement to future efforts. No such plan or provision, which is not at the time of adoption unreasonable or unfair, shall be invalidated or in any way affected because any director shall be a beneficiary thereunder or shall vote for any plan or provision under which he may benefit.



(i) To exercise, in addition to the powers and authorities hereinbefore or by law conferred upon it, any such powers and authorities and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the laws of the State of Delaware and of the Certificate of Incorporation and of the By-Laws of the Corporation.

SECTION 2. Classified Board. At the 1986 annual meeting of holders of capital stock of the Corporation, the directors shall be divided into three classes, with respect to the time that they severally hold office, as nearly equal in number as possible, with the initial term of office of the first class of directors to expire at the 1987 annual meeting of holders of capital stock of the Corporation, the initial term of office of the second class of directors to expire at the 1988 annual meeting of holders of capital stock of the Corporation and the initial term of office of the third class of directors to expire at the 1989 annual meeting of holders of capital stock of the Corporation. Commencing with the 1987 annual meeting of holders of capital stock of the Corporation, directors elected to succeed those directors whose terms have thereupon expired shall be elected for a term of office to expire at the third succeeding annual meeting of holders of capital stock of the Corporation after their election. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain or attain, if possible, the equality of the number of directors in each class, but in no case will a decrease in the number of directors shorten the term of any incumbent director. If such equality is not possible, the increase or decrease shall be apportioned among the classes in such a way that the difference in the number of directors in any two classes shall not exceed one.

SECTION 3. Nominations. Subject to the rights of holders of any series of Preferred Stock or any other class of capital stock of the Corporation (other than the Common Stock) then outstanding, nominations for the election of directors may be made by the affirmative vote of a majority of the entire Board of Directors or by any stockholder of record entitled to vote generally in the election of directors. However, any stockholder of record entitled to vote generally in the election of directors may nominate one or more persons for election as directors at a meeting only if written notice of such stockholder's intent to make such nomination or nominations has been given, either by personal delivery or by United States mail, postage prepaid, to the Secretary of the Corporation not less than 50 days nor more than 75 days prior to the meeting; provided, that in the event that less than 60 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the 10th day following the day on which such notice of the date of meeting was mailed or such public disclosure was made, whichever first occurs. Each such notice to the Secretary shall set forth: (i) the name and address of record of the stockholder who intends to make the nomination; (ii) a representation that the stockholder is a holder of record of shares of the Corporation's capital stock entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (iii) the name, age, business and residence addresses, and principal occupation or employment of each proposed nominee; (iv) a description of all arrangements or understandings between the stockholder and each proposed nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder; (v) such other information regarding each proposed nominee as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission; and (vi) the written consent of each proposed nominee to serve as a director of the Corporation if so elected. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director of the Corporation. The presiding officer of the meeting may, if the facts warrant, determine that a nomination was not made in accordance with the foregoing procedure, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

SECTION 4. Removal of Directors. Subject to the rights of the holders of any series of Preferred Stock or any other class of capital stock of the Corporation (other than the Common Stock) then outstanding, (i) any director, or the entire Board of Directors may be removed from office at any time, but only for cause, by the affirmative vote of the holders of record of outstanding shares representing at least 80% of the voting power of all the shares of capital stock of the Corporation then entitled to vote generally in the election of directors, voting together as a single class, and (ii) any director may be removed from office at any time, but only for cause, by the affirmative vote of a majority of the entire Board of Directors.

SECTION 5. Vacancies. Subject to the rights of the holders of any series of Preferred Stock or any other class of capital stock of the Corporation (other than the Common Stock) then outstanding, any vacancies in the Board of Directors for any reason, including by reason of any increase in the number of directors, shall, if occurring prior to the expiration of the term of office of the class in which such vacancy occurs, be filled only by the Board of Directors, acting by the affirmative vote of a majority of the remaining directors then in office, although less than a quorum, and any directors so elected shall hold office

until the next election of the class for which such directors have been elected and until their successors are elected and qualify.

SECTION 6. Preferred Stock. Whenever the holders of any one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately by class or series, to elect directors at an annual or a special meeting of holders of capital stock of the Corporation, the nomination, election, term of office, filling of vacancies and other features of such directorships shall be governed by this Article X unless expressly otherwise provided by the resolution or resolutions providing for the creation of such series.

## ARTICLE XI

### MEETINGS OF STOCKHOLDERS AND DIRECTORS; ELECTIONS OF DIRECTORS; CORPORATION BOOKS

SECTION 1. Stockholders' Meetings. Meetings of holders of capital stock of the Corporation may be held outside the State of Delaware if the By-Laws so provide. Any action required or permitted to be taken by the holders of capital stock of the Corporation must be effected at a duly called annual or special meeting of holders of capital stock of the Corporation and may not be effected by any consent in writing by such holders. Meetings of holders of capital stock of the Corporation may be called only by the Board of Directors pursuant to a resolution adopted by the affirmative vote of a majority of the entire Board of Directors.

SECTION 2. Directors' Meetings, Consents and Elections. Meetings of the Board of Directors and of any committee thereof may be held outside the State of Delaware if the By-Laws so provide. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting as provided by statute, if the By-Laws of the Corporation so provide. The elections of directors need not be by ballot unless the By-Laws of the Corporation so provide.

SECTION 3. Books of the Corporation. Except as otherwise provided by law, the books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

## ARTICLE XII

### TRANSACTIONS WITH DIRECTORS AND OFFICERS

No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose if (a) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or the committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum, or (b) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders, or (c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof, or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

## ARTICLE XIII

### LIMITATION OF DIRECTORS' LIABILITY; INDEMNIFICATION BY CORPORATION; INSURANCE

SECTION 1. Limitation of Directors' Liability. (a) No director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except, to the extent provided by applicable law, for liability (i) for breach of the

director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is hereafter amended to authorize corporate action further limiting or eliminating the personal liability of directors, then the liability of each director of the Corporation shall be limited or eliminated to the full extent permitted by the Delaware General Corporation Law as so amended from time to time.

(b) Neither the amendment nor repeal of this Section 1, nor the adoption of any provision of the Certificate of Incorporation inconsistent with this Section 1, shall eliminate or reduce the effect of this Section 1, in respect of any matter occurring, or any cause of action, suit or claim that, but for this Section 1, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

SECTION 2. Indemnification by Corporation. (a) The Corporation shall indemnify any person who is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer or trustee of another corporation, trust or other enterprise, with respect to actions taken or omitted by such person in any capacity in which such person serves the Corporation or such other corporation, trust or other enterprise, to the full extent authorized or permitted by law, as now or hereafter in effect, and such right to indemnification shall continue as to a person who has ceased to be a director, officer or trustee, as the case may be, and shall inure to the benefit of such person's heirs, executors and personal and legal representatives; provided, however, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any person in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized in advance, or unanimously consented to, by the Board of Directors of the Corporation. Any person who is or was a director or officer of a subsidiary of the Corporation shall be deemed to be serving in such capacity at the request of the Corporation for purposes of this Section 2.

(b) Directors and officers of the Corporation shall have the right to be paid by the Corporation expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition. The Corporation may, to the extent authorized from time to time by the Board of Directors, advance such expenses to any person who is or was serving at the request of the Corporation as a director, officer or trustee of another corporation, trust or other enterprise.

(c) The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation and to any person serving at the request of the Corporation as an employee or agent of another corporation, trust or other enterprise.

(d) The rights to indemnification and to the advancement of expenses conferred in this Section 2 shall not be exclusive of any other right that any person may have or hereafter acquire under this Restated Certificate of Incorporation, the by-laws, any statute, agreement, vote of stockholders or disinterested directors, or otherwise.

(e) Any repeal or modification of this Section 2 by the stockholders of the Corporation shall not adversely affect any rights to indemnification and to advancement of expenses that any person may have at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

SECTION 3. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation or any subsidiary of the Corporation, or is or was serving at the request of the Corporation as a director, officer, trustee, employee or agent of another corporation, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation shall have the power to indemnify him against such liability under the provisions of Section 2 of this Article XIII.

#### ARTICLE XIV

##### COMPROMISE OR ARRANGEMENT BETWEEN CORPORATION AND ITS CREDITORS OR STOCKHOLDERS

Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within

the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders of this Corporation, as the case may be, and also on this Corporation.

#### ARTICLE XV

##### RESERVATION OF RIGHT TO AMEND CERTIFICATE OF INCORPORATION

The Corporation reserves the right to amend, alter, change or repeal any provisions contained in this Certificate of Incorporation in the manner now or hereafter prescribed by law, and all the provisions of this Certificate of Incorporation and all rights and powers conferred in this Certificate of Incorporation on stockholders, directors and officers are subject to this reserved power, provided that the affirmative vote of the holders of record of outstanding shares representing at least 80% of the voting power of all of the shares of capital stock of the Corporation then entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, alter, change, or repeal any provision of, or to adopt any provision or provisions inconsistent with, Section 2(A) of Article IV, Article X, Article XI, Article XIII or this Article XV of this Certificate of Incorporation unless such amendment, alteration, repeal or adoption of any inconsistent provision or provisions is declared advisable by the Board of Directors by the affirmative vote of at least seventy-five percent (75%) of the entire Board of Directors, notwithstanding the fact that a lesser percentage may be specified by the General Corporation Law of Delaware, and provided further that any amendment, alteration, change, repeal or adoption of any provision or provisions inconsistent with Article VII may only be made in accordance with the provisions thereof.

IN WITNESS WHEREOF, said MERRILL LYNCH & CO., INC. has caused this certificate to be signed by the Secretary, with its corporate seal to be hereunto duly affixed and to be attested by an Assistant Secretary this 3rd day of May, 2001.

MERRILL LYNCH & CO., INC.

By: /s/ Andrea L. Dulberg

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Andrea L. Dulberg  
Secretary

CORPORATE SEAL

Attest: /s/ Michael A. LaMaina

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By: Michael A. LaMaina  
Assistant Secretary

EXHIBIT A

CERTIFICATE OF DESIGNATION OF THE VOTING POWERS,  
DESIGNATION, PREFERENCES AND RELATIVE, PARTICIPATING,  
OPTIONAL OR OTHER SPECIAL RIGHTS AND QUALIFICATIONS,  
LIMITATIONS AND RESTRICTIONS OF THE SERIES A JUNIOR  
PREFERRED STOCK

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Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

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We, Stephen L. Hammerman, Executive Vice President and Stephen M.M. Miller, Secretary of Merrill Lynch & Co., Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), DO HEREBY CERTIFY:

that, pursuant to authority conferred upon the Board of Directors of the Corporation by its Restated Certificate of Incorporation (the "Certificate"), and, pursuant to the provisions of Section 151 of the General Corporation Law of the State of Delaware, said Board of Directors, at a duly called meeting held on December 16, 1987, at which a quorum was present and acted throughout, adopted the following resolutions, which resolutions remain in full force and effect on the date hereof creating a series of 2,000,000 shares of Preferred Stock having a par value of \$1.00 per share, designated as Series A Junior Preferred Stock (the "Series A Preferred Stock") out of the class of 25,000,000 shares of preferred stock of the par value of \$1.00 per share (the "Preferred Stock"):

RESOLVED that pursuant to the authority vested in the Board of Directors in accordance with the provisions of the Certificate, the Board of Directors does hereby create, authorize and provide for the issuance of the Series A Preferred Stock having the voting powers, designation, relative, participating, optional and other special rights, preferences, and qualifications, limitations and restrictions thereof that are set forth as follows:

Section 1. Designation and Amount. The shares of such series shall be designated as "Series A Junior Preferred Stock" ("Series A Preferred Stock") and the number of shares constituting such series shall be 2,000,000.

Section 2. Dividends and Distributions. (A) Subject to the prior and superior rights of the holders of any shares of any other series of Preferred Stock or any other shares of preferred stock of the Corporation ranking prior and superior to the shares of Series A Preferred Stock with respect to dividends, each holder of one one-hundredth (1/100) of a share (a "Unit") of Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for that purpose, (i) quarterly dividends payable in cash on the 30th day of February, May, August and November in each year (each such date being a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of such Unit of Series A Preferred Stock, in an amount per Unit (rounded to the nearest cent) equal to the greater of (a) \$0.25 or (b) subject to the provision for adjustment hereinafter set forth, the aggregate per share amount of all cash dividends declared on shares of the Common Stock since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of a Unit of Series A Preferred Stock, and (ii) subject to the provision for adjustment hereinafter set forth, quarterly distributions (payable in kind) on each Quarterly Dividend Payment Date in an amount per Unit equal to the aggregate per share amount of all non-cash dividends or other distributions (other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock, by reclassification or otherwise) declared on shares of Common Stock since the immediately preceding Quarterly Dividend Payment Date, or with respect to the first Quarterly Dividend Payment Date, since the first issuance of a Unit of Series A Preferred Stock. In the event that the Corporation shall at any time after December 16, 1987 (the "Rights Declaration Date") (i) declare any dividend on outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivide outstanding shares of Common Stock or (iii) combine outstanding shares of Common Stock into a smaller number of shares, then in each such case the amount to which the holder of a Unit of Series A Preferred Stock was entitled immediately prior to such event pursuant to the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which shall be the number of shares of Common Stock that are outstanding immediately after such event and the denominator of which shall be the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on Units of Series A Preferred Stock as provided in paragraph (A) above immediately after it declares a dividend or distribution on the shares of Common Stock (other than a dividend payable in shares of Common Stock); provided, however, that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$0.25 per Unit on the Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and shall be cumulative on each outstanding Unit of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issuance of such Unit of Series A Preferred Stock, unless the date of issuance of such Unit is prior to the record date for the first Quarterly Dividend Payment Date, in which case, dividends on such Unit shall begin to accrue from the date of issuance of such Unit, or unless the date of issuance is a Quarterly Dividend Payment Date or is a date after the record

date for the determination of holders of Units of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on Units of Series A Preferred Stock in an amount less than the aggregate amount of all such dividends at the time accrued and payable on such Units shall be allocated pro rata on a unit-by-unit basis among all Units of Series A Preferred Stock at the time outstanding. The Board of Directors may fix a record date for the determination of holders of Units of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than 30 days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of Units of Series A Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each Unit of Series A Preferred Stock shall entitle the holder thereof to one vote on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivide outstanding shares of Common Stock or (iii) combine the outstanding shares of Common Stock into a smaller number of shares, then in each such case the number of votes per Unit to which holders of Units of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction the numerator of which shall be the number of shares of Common Stock outstanding immediately after such event and the denominator of which shall be the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein or by law, the holders of Units of Series A Preferred Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) (i) If at any time dividends on any Units of Series A Preferred Stock shall be in arrears in an amount equal to six quarterly dividends thereon, then during the period (a "default period") from the occurrence of such event until such time as all accrued and unpaid dividends for all previous quarterly dividend periods and for the current quarterly dividend period on all Units of Series A Preferred Stock then outstanding shall have been declared and paid or set apart for payment, all holders of Units of Series A Preferred Stock, voting separately as a class, shall have the right to elect two Directors.

(ii) During any default period, such voting rights of the holders of Units of Series A Preferred Stock may be exercised initially at a special meeting called pursuant to subparagraph (iii) of this Section 3(C) or at any annual meeting of stockholders, and thereafter at annual meetings of stockholders, provided that neither such voting rights nor any right of the holders of Units of Series A Preferred Stock to increase, in certain cases, the authorized number of Directors may be exercised at any meeting unless one-third of the outstanding Units of Preferred Stock shall be present at such meeting in person or by proxy. The absence of a quorum of the holders of Common Stock shall not affect the exercise by the holders of Units of Series A Preferred Stock of such rights. At any meeting at which the holders of Units of Series A Preferred Stock shall exercise such voting right initially during an existing default period, they shall have the right, voting separately as a class, to elect Directors to fill up to two vacancies in the Board of Directors, if any such vacancies may then exist, or, if such right is exercised at an annual meeting, to elect two Directors. If the number which may be so elected at any special meeting does not amount to the required number, the holders of the Series A Preferred Stock shall have the right to make such increase in the number of Directors as shall be necessary to permit the election by them of the required number. After the holders of Units of Series A Preferred Stock shall have exercised their right to elect Directors during any default period, the number of Directors shall not be increased or decreased except as approved by a vote of the holders of Units of Series A Preferred Stock as herein provided or pursuant to the rights of any equity securities ranking senior to the Series A Preferred Stock.

(iii) Unless the holders of Series A Preferred Stock shall, during an existing default period, have previously exercised their right to elect Directors, the Board of Directors may order, or any stockholder or stockholders owning in the aggregate not less than 25% of the total number of Units of Series A Preferred Stock outstanding may request, the calling of a special meeting of the holders of Units of Series A Preferred Stock, which meeting shall thereupon be called by the Secretary of the Corporation. Notice of such meeting and of any annual meeting at which holders of Units of Series A Preferred Stock are entitled to vote pursuant to this paragraph (C)(iii) shall be given to each holder of record of Units of Series A Preferred Stock by mailing a copy of such notice to him at his last address as the same appears on the books of the Corporation. Such meeting shall be called for a time not earlier than 20 days and not later than 60 days after such order or request or in default of the calling of such meeting within 60 days after such order or request, such meeting may be called on similar notice by any stockholder or stockholders owning in the aggregate not less than 25% of the total number of outstanding Units of Series A

Preferred Stock. Notwithstanding the provisions of this paragraph (C)(iii), no such special meeting shall be called during the 60 days immediately preceding the date fixed for the next annual meeting of the stockholders.

(iv) During any default period, the holders of shares of Common Stock, and other classes or series of stock of the Corporation, if applicable, shall continue to be entitled to elect all the Directors until the holders of Units of Series A Preferred Stock shall have exercised their right to elect two Directors voting as a separate class, after the exercise of which right (x) the Directors so elected by the holders of Units of Series A Preferred Stock shall continue in office until their successors shall have been elected by such holders or until the expiration of the default period, and (y) any vacancy in the Board of Directors may (except as provided in paragraph (C)(ii) of this Section 3) be filled by vote of a majority of the remaining Directors theretofore elected by the holders of the class of capital stock which elected the Director whose office shall have become vacant. References in this paragraph (C) to Directors elected by the holders of a particular class of capital stock shall include Directors elected by such Directors to fill vacancies as provided in clause (y) of the foregoing sentence.

(v) Immediately upon the expiration of a default period, (x) the right of the holders of Units of Series A Preferred Stock as a separate class to elect Directors shall cease, (y) the term of any Directors elected by the holders of Units of Series A Preferred Stock as a separate class shall terminate, and (z) the number of Directors shall be such number as may be provided for in the Certificate or by-laws irrespective of any increase made pursuant to the provisions of paragraph (C)(ii) of this Section 3 (such number being subject, however, to change thereafter in any manner provided by law or in the Certificate or by-laws). Any vacancies in the Board of Directors effected by the provisions of clauses (y) and (z) in the preceding sentence may be filled by a majority of the remaining Directors.

(vi) The provisions of this paragraph (C) shall govern the election of Directors by holders of Units of Preferred Stock during any default period notwithstanding any provisions of the Certificate to the contrary, including, without limitation, the provisions of Article X of the Certificate.

(D) Except as set forth herein, holders of Units of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Shares of Common Stock as set forth herein) for taking any corporate action.

Section 4. Certain Restrictions. (A) Whenever quarterly dividends or other dividends or distributions payable on Units of Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on outstanding Units of Series A Preferred Stock shall have been paid in full, the Corporation shall not

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of junior stock;

(ii) declare or pay dividends on or make any other distributions on any shares of parity stock, except dividends paid ratably on Units of Series A Preferred Stock and shares of all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of such Units and all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any parity stock, provided, however, that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any junior stock;

(iv) purchase or otherwise acquire for consideration any Units of Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such Units.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any Units of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such Units shall, upon their cancellation, become authorized but unissued Units of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

Section 6. Liquidation, Dissolution or Winding Up. (A) Upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, no distribution shall be made (i) to the holders of shares of junior stock unless the holders of Units of Series A Preferred Stock shall have received, subject to

adjustment as hereinafter provided in paragraph (B), the greater of either (a) \$.01 per Unit plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not earned or declared, to the date of such payment, or (b) the amount equal to the aggregate per share amount to be distributed to holders of shares of Common Stock, or (ii) to the holders of shares of parity stock, unless simultaneously therewith distributions are made ratably on Units of Series A Preferred Stock and all other shares of such parity stock in proportion to the total amounts to which the holders of Units of Series A Preferred Stock are entitled under clause (i)(a) of this sentence and to which the holders of shares of such parity stock are entitled, in each case upon such liquidation, dissolution or winding up.

(B) In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivide outstanding shares of Common Stock, or (iii) combine outstanding shares of Common Stock into a smaller number of shares, then in each such case the aggregate amount to which holders of Units of Series A Preferred Stock were entitled immediately prior to such event pursuant to clause (i)(b) of paragraph (A) of this Section 6 shall be adjusted by multiplying such amount by a fraction the numerator of which shall be the number of shares of Common Stock that are outstanding immediately after such event and the denominator of which shall be the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or converted into other stock or securities, cash and/or any other property, then in any such case Units of Series A Preferred Stock shall at the same time be similarly exchanged for or converted into an amount per Unit (subject to the provision for adjustment hereinafter set forth) equal to the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is converted or exchanged. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivide outstanding shares of Common Stock, or (iii) combine outstanding Common Stock into a smaller number of shares, then in each such case the amount set forth in the immediately preceding sentence with respect to the exchange or conversion of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction the numerator of which shall be the number of shares of Common Stock that are outstanding immediately after such event and the denominator of which shall be the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. Redemption. The Units of Series A Preferred Stock shall not be redeemable.

Section 9. Ranking. The Units of Series A Preferred Stock shall rank junior to the Corporation's Remarketed Preferred Stock and to all other series of the Preferred Stock and to any other class of preferred stock that hereafter may be issued by the Corporation as to the payment of dividends and the distribution of assets, unless the terms of any such series or class shall provide otherwise.

Section 10. Amendment. The Certificate, including, without limitation, this resolution, shall not hereafter be amended, either directly or indirectly, or through merger or consolidation with another corporation, in any manner that would alter or change the powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely without the affirmative vote of the holders of a majority or more of the outstanding Units of Series A Preferred Stock, voting separately as a class.

Section 11. Fractional Shares. The Series A Preferred Stock may be issued in Units or other fractions of a share, which Units or fractions shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Preferred Stock.

Section 12. Certain Definitions. As used herein with respect to the Series A Preferred Stock, the following terms shall have the following meanings:

(A) The term "Common Stock" shall mean the class of stock designated as the common stock, par value \$1.33 1/3 per share, of the Corporation at the date hereof or any other class of stock resulting from successive changes or reclassification of the common stock.

(B) The term "junior stock" (i) as used in Section 4, shall mean the Common Stock and any other class or series of capital stock of the Corporation hereafter authorized or issued over which the Series A Preferred Stock has preference or priority as to the payment of dividends and (ii) as used in Section 6, shall mean the Common Stock and any other class or series of capital stock of the Corporation over which the Series A Preferred Stock has preference or priority in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

(C) The term "parity stock" (i) as used in Section 4, shall mean any class



or series of stock of the Corporation hereafter authorized or issued ranking pari passu with the Series A Preferred Stock as to dividends and (ii) as used in Section 6, shall mean any class or series of capital stock ranking pari passu with the Preferred Stock in the distribution of assets or any liquidation, dissolution or winding up.

EXHIBIT B

MERRILL LYNCH & CO., INC.

CERTIFICATE OF DESIGNATIONS  
Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

9% CUMULATIVE PREFERRED STOCK, SERIES A  
(Par Value \$1.00 Per Share)

MERRILL LYNCH & CO., INC., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), HEREBY CERTIFIES that the following resolutions were duly adopted by the Board of Directors of the Corporation and by the Executive Committee of the Board of Directors, pursuant to authority conferred upon the Board of Directors by the provisions of the Restated Certificate of Incorporation, as amended, of the Corporation, which authorize the issuance of up to 25,000,000 shares of preferred stock, par value \$1.00 per share, and pursuant to authority conferred upon the Executive Committee of the Board of Directors in accordance with Section 141(c) of the General Corporation Law of the State of Delaware, by Article IV, Section 1 of the By-laws of the Corporation and by the resolutions of the Board of Directors set forth herein, at a meeting of the Board of Directors duly held on April 19, 1994, by unanimous written consent to corporate action of the Board of Directors dated August 22, 1994, and by unanimous written consent of the Executive Committee dated November 2, 1994:

1. The Board of Directors on April 19, 1994 adopted the following resolutions authorizing the Executive Committee of the Board of Directors to act on behalf of the Board of Directors in connection with the designation, issuance and sale of up to 100,000 shares of preferred stock of the Corporation in one or more series (the "Preferred Stock") and depositary shares representing interests in the Preferred Stock (the "Depositary Shares"), either directly or in exchange for other obligations of the Corporation undertaken in connection with the issuance of preferred units that may be issued by a limited liability company affiliated with the Corporation, upon such terms as may be deemed appropriate by the Executive Committee, including, but not limited to, determinations with respect to classes and series, dividend and liquidation rights and preferences (provided that the aggregate liquidation preference of the Preferred Stock, does not exceed \$600,000,000), stated value, denomination, redemption and conversion or exchange features and to take all such actions in connection therewith as such Committee may deem necessary or appropriate:

"RESOLVED, that the Board of Directors hereby authorizes and empowers the Executive Committee to take all such actions as may be necessary or appropriate for the issuance and sale of up to 100,000 shares of the Corporation's Preferred Stock, par value \$1.00 per share (the "Preferred Shares"), in one or more series, either directly or in exchange for other obligations of the Corporation undertaken in connection with the issuance of preferred units that may be issued by a limited liability company affiliated with the Corporation (the "LLC Units"); provided that the aggregate liquidation preference of such Preferred Shares shall not exceed \$600,000,000;"

"FURTHER RESOLVED, that the Executive Committee may approve the issuance of the Preferred Shares upon such terms as may be deemed appropriate by the Executive Committee, including, but not limited to, determinations with respect to classes and series, dividend and liquidation rights and preferences, stated value, denomination, redemption and conversion or exchange features, and may provide for the issuance of depositary shares representing interests in the Preferred Shares in order to accommodate retail marketing; provided, however, that the Preferred Shares shall not have voting rights except (i) in the event that dividends are in arrears for six consecutive quarters, the number of the Corporation's directors shall be increased by two and the holders of the Preferred Shares shall be entitled, voting as a class, to elect two directors of the Corporation to serve until such time as such arrearages are paid in full or (ii) as otherwise required by law;"

2. The Board of Directors, by unanimous written consent to corporate action dated August 22, 1994, adopted the following resolution amending the second resolution set forth in paragraph 1 above:

"RESOLVED, that the resolution attached hereto as Exhibit A, which was adopted at the meeting of the Board of Directors duly called and held on April 19, 1994, is hereby amended by deleting the word "consecutive" in the third line of the proviso and inserting the words "or the requirements of any stock exchange on which the Preferred Shares may be listed" at the end thereof prior

to the semicolon."

3. The Executive Committee of the Board of Directors, by unanimous written consent to corporate action dated November 2, 1994, adopted the following resolution pursuant to the authority conferred upon the Executive Committee by the resolution of the Board of Directors set forth in paragraph 1 above adopted pursuant to Article 4, Section 1 of the By-laws of the Corporation and Section 141(c) of the General Corporation Law of the State of Delaware:

"RESOLVED, that the issue of a series of preferred stock, par value \$1.00 per share, of the Corporation is hereby authorized and the designation, preferences and privileges, relative, participating, optional and other special rights, and qualifications, limitations and restrictions thereof, in addition to those set forth in the Restated Certificate of Incorporation, as amended, of the Corporation, are hereby fixed as follows:

9% CUMULATIVE PREFERRED STOCK, SERIES A

(1) Number of Shares and Designation. 42,500 shares of the preferred stock, par value \$1.00 per share, of the Corporation are hereby constituted as a series of preferred stock, par value \$1.00 per share, designated as 9% Cumulative Preferred Stock, Series A (hereinafter called the "Preferred Stock, Series A").

(2) Dividends. (a) The holders of shares of the Preferred Stock, Series A, shall be entitled to receive, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized Committee thereof), out of assets of the Corporation legally available for the payment of dividends, cash dividends at the rate set forth below in this Section (2) applied to the amount of \$10,000 per share. Such dividends shall be cumulative from the date of original issue of such shares, whether or not in any Dividend Period or Dividend Periods (as defined in subsection (b) of this Section (2)) there are assets of the Corporation legally available for the payment thereof, and shall be payable quarterly, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized Committee thereof), on March 30, June 30, September 30, and December 30 of each year, commencing on December 30, 1994; provided that if any such payment date is not a business day, dividends (if declared) on the Preferred Stock, Series A, will be paid on the immediately succeeding business day, without interest. Each such dividend shall be payable to the holders of record of shares of the Preferred Stock, Series A, as they appear on the stock register of the Corporation on such record dates, which shall be the fifteenth day immediately preceding the payment date thereof, or such other date not more than 30 nor less than 15 days preceding the payment dates thereof, as shall be fixed by the Board of Directors of the Corporation (or a duly authorized Committee thereof). Dividends on account of arrears for any past Dividend Periods may be declared and paid at any time, without reference to any regular dividend payment date, to holders of record on such date, not exceeding 45 days preceding the payment date thereof, as may be fixed by the Board of Directors of the Corporation (or a duly authorized Committee thereof).

(b) (i) Dividend periods ("Dividend Periods") shall commence on March 30, June 30, September 30, and December 30 of each year (other than the initial Dividend Period which shall commence on the date of original issue of the Preferred Stock, Series A) and shall end on and include the calendar day next preceding the first day of the next Dividend Period. The dividend rate on the shares of Preferred Stock, Series A, for the period from the date of original issue thereof to and including December 30, 1994, and for each Dividend Period thereafter shall be 9% per annum.

(ii) The amount of dividends payable for each full Dividend Period for the Preferred Stock, Series A, shall be computed by dividing the dividend rate of 9% per annum by four, rounded to the nearest one-hundredth of a percent, with five one-thousandths rounded upwards, and applying the resulting rate to the amount of \$10,000 per share. The amount of dividends payable for the initial Dividend Period on the Preferred Stock, Series A, or any other period shorter than a full Dividend Period on the Preferred Stock, Series A, shall be computed on the basis of 30-day months, a 360-day year and the actual number of days elapsed in any period of less than one month. The amount of dividends payable on the Preferred Stock, Series A, shall be rounded to the nearest cent, with one-half cent being rounded upwards.

(c) So long as any shares of the Preferred Stock, Series A, are outstanding, no full dividends shall be declared or paid or set apart for payment on the preferred stock of the Corporation of any series ranking, as to dividends, on a parity with or junior to the Preferred Stock, Series A, for any period unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for such payment on the Preferred Stock, Series A, for all Dividend Periods terminating on or prior to the date of payment of such full cumulative dividends. When dividends are not paid in full, as aforesaid, upon the shares of the Preferred Stock, Series A, and any other preferred stock ranking on a parity as to dividends with the Preferred Stock, Series A, all dividends declared upon shares of the Preferred Stock, Series A, and any other preferred stock ranking on a parity as to dividends (whether cumulative or noncumulative) shall be declared pro rata so that the amount of dividends declared per share on the

Preferred Stock, Series A, and such other preferred stock shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Preferred Stock, Series A, and such other preferred stock bear to each other. Holders of shares of the Preferred Stock, Series A, shall not be entitled to any dividends, whether payable in cash, property or stock, in excess of full cumulative dividends, as herein provided, on the Preferred Stock, Series A. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Preferred Stock, Series A, which may be in arrears.

(d) So long as any shares of the Preferred Stock, Series A, are outstanding, no dividends (other than dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, the Common Stock or another stock of the Corporation ranking junior to the Preferred Stock, Series A, as to dividends and upon liquidation and other than as provided in subsection (c) of this Section (2)) shall be declared or paid or set aside for payment or other distribution declared or made upon the Common Stock or upon any other stock of the Corporation ranking junior to or on a parity with the Preferred Stock, Series A, as to dividends or upon liquidation, nor shall any Common Stock nor any other stock of the Corporation ranking junior to or on parity with the Preferred Stock, Series A, as to dividends or upon liquidation be redeemed, purchased or otherwise acquired, other than in connection with the distribution or trading thereof, for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any shares of any such stock) by the Corporation (except by conversion into or exchange for stock of the Corporation ranking junior to the Preferred Stock, Series A, as to dividends and upon liquidation) unless, in each case, full cumulative dividends on all outstanding shares of the Preferred Stock, Series A, shall have been declared and paid for all Dividend Periods terminating on or prior to the date of payment of such full cumulative dividends.

(3) Liquidation Preference. (a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, before any payment or distribution of the assets of the Corporation or proceeds thereof (whether capital or surplus) shall be made to or set apart for the holders of any series or class or classes of stock of the Corporation ranking junior to the Preferred Stock, Series A, upon liquidation, dissolution, or winding up, the holders of the shares of the Preferred Stock, Series A, shall be entitled to receive \$10,000 per share plus an amount equal to all dividends (whether or not earned or declared) accrued and unpaid thereon to the date of final distribution to such holders but such holders shall not be entitled to any further payment. If, upon any liquidation, dissolution, or winding up of the Corporation, the assets of the Corporation, or proceeds thereof, distributable among the holders of the shares of the Preferred Stock, Series A, shall be insufficient to pay in full the preferential amount aforesaid and liquidating payments on any other shares of preferred stock ranking, as to liquidation, dissolution or winding up, on a parity with the Preferred Stock, Series A, then such assets, or the proceeds thereof, shall be distributed among the holders of shares of Preferred Stock, Series A, and any such other preferred stock ratably in accordance with the respective amounts which would be payable on such shares of Preferred Stock, Series A, and any such other preferred stock if all amounts payable thereon were paid in full. For the purposes of this Section (3), a consolidation or merger of the Corporation with one or more corporations shall not be deemed to be a liquidation, dissolution or winding up, voluntary or involuntary, of the Corporation.

(b) Subject to the rights of the holders of shares of any series or class or classes of stock ranking on a parity with or prior to the Preferred Stock, Series A, upon liquidation, dissolution or winding up, upon any liquidation, dissolution or winding up of the Corporation, after payment shall have been made in full to the holders of Preferred Stock, Series A, as provided in this Section (3), but not prior thereto, any other series of class or classes of stock ranking junior to the Preferred Stock, Series A, upon liquidation shall, subject to the respective terms and provisions (if any) applying thereto, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of the Preferred Stock, Series A, shall not be entitled to share therein.

(4) Redemption. (a) The Preferred Stock, Series A, may not be redeemed prior to December 30, 2004. At any time or from time to time on and after December 30, 2004, the Corporation, at its option, may redeem shares of the Preferred Stock, Series A, as a whole or in part, at a redemption price of \$10,000 per share, together in each case with accrued and unpaid dividends (whether or not earned or declared) to the date fixed for redemption.

(b) In the event the Corporation shall redeem shares of Preferred Stock, Series A, notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the redemption date, to each holder of record of the shares to be redeemed, at such holder's address as the same appears on the stock register of the Corporation. Each such notice shall state: (1) the redemption date; (2) the number of shares of Preferred Stock, Series A, to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price; and (5) that dividends on the shares to be redeemed shall cease to accrue

on such redemption date. Notice having been mailed as aforesaid, from and after the redemption date (unless default shall be made by the Corporation in providing money for the payment of the redemption price) dividends on the shares of the Preferred Stock, Series A, so called for redemption shall cease to accrue, and said shares shall no longer be deemed to be outstanding, and all rights of the holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the redemption price) shall cease. The Corporation's obligation to provide moneys in accordance with the preceding sentence shall be deemed fulfilled if, on or before the redemption date, the Corporation shall deposit with a bank or trust company (which may be an affiliate of the Corporation) having an office in the Borough of Manhattan, City of New York, having a capital and surplus of at least \$50,000,000, funds necessary for such redemption, in trust, with irrevocable instructions that such funds be applied to the redemption of the shares of Preferred Stock, Series A, so called for redemption. Any interest accrued on such funds shall be paid to the Corporation from time to time. Any funds so deposited and unclaimed at the end of two years from such redemption date shall be released or repaid to the Corporation, after which the holder or holders of such shares of Preferred Stock, Series A, so called for redemption shall look only to the Corporation for payment of the redemption price.

Upon surrender, in accordance with said notice, of the certificates for any such shares so redeemed (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the applicable redemption price aforesaid. If less than all the outstanding shares of Preferred Stock, Series A, are to be redeemed, shares to be redeemed shall be selected by the Board of Directors of the Corporation (or a duly authorized committee thereof) from outstanding shares of Preferred Stock, Series A, not previously called for redemption by lot or pro rata or by any other method determined by the Board of Directors of the Corporation (or a duly authorized committee thereof) to be equitable. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

(c) In no event shall the Corporation redeem less than all the outstanding shares of Preferred Stock, Series A, pursuant to subsection (a) of this Section (4) unless full cumulative dividends on all outstanding shares of the Preferred Stock, Series A, shall have been or all contemporaneously declared and paid or declared and a sum sufficient for payment thereof set apart for such payment for all Dividend Periods terminating on or prior to the date of payment of such full cumulative dividends.

(5) Voting Rights. The Preferred Stock, Series A, shall have no voting rights, except as hereinafter set forth or as otherwise from time to time required by law. Whenever dividends payable on the Preferred Stock, Series A, shall be in arrears for such number of dividend periods, whether or not consecutive, which shall in the aggregate contain a number of months equivalent to six calendar quarters, the holders of outstanding shares of the Preferred Stock, Series A, shall have the exclusive right, voting as a class with holders of shares of all other series of preferred stock ranking on a parity with the Preferred Stock, Series A, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable, to vote for the election of two additional directors at the next annual meeting of stockholders and at each subsequent annual meeting of stockholders. At elections for such directors, each holder of the Preferred Stock, Series A, shall be entitled to one vote for each share held (the holders of shares of any other series of preferred stock ranking on such a parity being entitled to such number of votes, if any, for each share of stock held as may be granted to them). Upon the vesting of such right of such holders, the maximum authorized number of members of the Board of Directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of such outstanding shares of Preferred Stock, Series A, (either alone or together with the holders of shares of all other series of preferred stock ranking on such a parity) as hereinafter set forth. The right of such holders of such shares of the Preferred Stock, Series A, voting as a class with holders of shares of all other series of preferred stock ranking on such a parity, to elect members of the Board of Directors of the Corporation as aforesaid shall continue until all past dividends accumulated on such shares of Preferred Stock, Series A, shall have been paid in full. Upon payment in full of such dividends, such voting rights shall terminate except as expressly provided by law, subject to re-vesting in the event of each and every subsequent default in the payment of dividends as aforesaid.

Upon termination of the right of the holders of the Preferred Stock, Series A, to vote for directors as herein provided, the term of office of all directors then in office elected by such holders will terminate immediately. If the office of any director elected by such holders voting as a class becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the remaining director elected by such holders voting as a class may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting rights shall have expired, the number of directors shall be such number as may be provided for in the By-laws irrespective of any increase made pursuant to the

provisions hereof.

So long as any shares of the Preferred Stock, Series A, remain outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares of the Preferred Stock, Series A, outstanding at the time (voting as a class with all other series of preferred stock ranking on a parity with the Preferred Stock, Series A, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable), given in person or by proxy, either in writing or at any meeting called for the purpose, shall be necessary to permit, effect or validate any one or more of the following:

(i) the authorization, creation or issuance, or any increase in the authorized or issued amount, of any class or series of stock ranking prior to the Preferred Stock, Series A, with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up; or

(ii) the amendment, alteration or repeal, whether by merger, consolidation or otherwise, of any of the provisions of the Restated Certificate of Incorporation, as amended, or of the resolutions set forth in a Certificate of Designations for such Preferred Stock, Series A, which would materially and adversely affect any right, preference, privilege or voting power of the Preferred Stock, Series A, or of the holders thereof; provided, however, that any increase in the amount of authorized preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of preferred stock, or any increase in the amount of authorized shares of Preferred Stock, Series A, in each case ranking on a parity with or junior to the Preferred Stock, Series A, with respect to the payment of dividends and the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Preferred Stock, Series A, shall have been redeemed or sufficient funds shall have been deposited in trust to effect such a redemption which is scheduled to be consummated within three months after the time that such rights would otherwise be exercisable.

(6) Record Holders. The Corporation and the transfer agent for the Preferred Stock, Series A, may deem and treat the record holder of any share of such Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

(7) Ranking. Any class or classes of stock of the Corporation shall be deemed to rank:

(i) on a parity with the Preferred Stock, Series A, as to dividends or as to distribution of assets upon liquidation, dissolution or winding up, whether or not the dividend rates, dividend payment dates, or redemption or liquidation prices per share thereof be different from those of the Preferred Stock, Series A, if the holders of such class of stock and the Preferred Stock, Series A, shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective dividend rates or liquidation prices, without preference or priority one over the other; and

(ii) junior to the Preferred Stock, Series A, as to dividends or as to the distribution of assets upon liquidation, dissolution or winding up, if such stock shall be Common Stock or if the holders of Preferred Stock, Series A, shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up, as the case may be, in preference or priority to the holders of shares of such stock.

(8) Exclusion of Other Rights. Unless otherwise required by law, shares of Preferred Stock, Series A, shall not have any rights, including preemptive rights, or preferences other than those specifically set forth herein or as provided by applicable law.

(9) Notices. All notices or communications unless otherwise specified in the By-laws of the Corporation or the Restated Certificate of Incorporation, as amended, shall be sufficiently given if in writing and delivered in person or by first class mail, postage prepaid. Notice shall be deemed given on the earlier of the date received or the date such notice is mailed."

EXHIBIT C

MERRILL LYNCH & CO., INC.

CERTIFICATE OF DESIGNATION

SPECIAL VOTING STOCK

MERRILL LYNCH & CO., INC., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), HEREBY CERTIFIES that, the following resolutions were duly adopted by the Board of Directors of the Corporation and by the Executive Committee of the Board of Directors pursuant to authority conferred upon the Board of Directors by the provisions of the Restated Certificate of Incorporation of the Corporation, as amended, (the "Certificate of Incorporation"), and pursuant to authority conferred upon the Executive Committee of the Board of Directors in accordance with Section 141(c) of the General Corporation Law of the State of Delaware, by Article IV, Section 1 of the Bylaws of the Corporation and by the resolutions of the Board of Directors set forth herein, at a meeting of the Board of Directors duly held on June 22, 1998 and by unanimous written consent of the Executive Committee dated August 18, 1998:

1. The Board of Directors on June 22, 1998 adopted the following resolutions authorizing the Executive Committee of the Board of Directors to act on behalf of the Board of Directors in connection with the issuance of the Special Voting Share and fixing the relative powers, preferences, rights, qualifications, limitations and restrictions of such share:

"FURTHER RESOLVED, that in connection with the Transaction and the Arrangement the Corporation, directly or indirectly, through one or more foreign or domestic subsidiaries of the Corporation, is hereby authorized to undertake and complete and cause to be undertaken and completed each of the following actions:

...g) the Executive Committee is hereby authorized to take any and all action that the Executive Committee may deem necessary or desirable under applicable law, including without limitation, the execution of one or more Certificates of Designation under Section 151 of the General Corporation Law of the State of Delaware, to create and issue one Special Voting Share in the capital of the Corporation, to have the rights, privileges, restrictions and conditions substantially as set forth in and contemplated by the MWI Plan of Arrangement and the Voting and Exchange Trust Agreement, in each case, as discussed at this meeting, such share to be issued for an aggregate consideration of \$1.00, and upon receipt by the Corporation of the consideration therefor such Special Voting Share shall be issued to the trustee under the Voting and Exchange Trust Agreement hereinafter approved, to be held and exercised by such trustee as therein contemplated;"

2. The Executive Committee of the Board of Directors, by unanimous written consent to corporate action dated August 18, 1998 adopted the following resolution pursuant to authority conferred upon the Executive Committee by the resolution of the Board of Directors set forth in paragraph 1:

"RESOLVED, that Special Voting Stock of the Corporation is hereby authorized, and the Executive Committee hereby fixes the number, powers, designations, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions of such Special Voting Stock as follows:

I. AUTHORIZED NUMBER AND DESIGNATION. There is hereby created out of the authorized and unissued shares of Preferred Stock of the Corporation a series of Preferred Stock designated as "Special Voting Stock". The number of shares constituting the Special Voting Stock shall be one (the "Special Voting Share").

II. DIVIDENDS. Neither the holder nor, if different, the owner of the Special Voting Share shall be entitled to receive Corporation dividends in its capacity as holder or owner thereof.

III. VOTING RIGHTS. The holder of record of the Special Voting Share shall be entitled to all of the voting rights, including the right to vote in person or by proxy, of the Special Voting Share on any matters, questions, proposals or propositions whatsoever that may properly come before the shareholders of the Corporation at a Corporation meeting or in connection with a Corporation consent.

IV. LIQUIDATION PREFERENCE. Upon any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, the holder of the Special Voting Share shall be entitled to receive out of the assets of the Corporation available for distribution to the stockholders, an amount equal to \$1.00 before any distribution is made on the common stock of the Corporation or any other stock ranking junior to the Special Voting Share as to distribution of assets upon liquidation, dissolution or winding-up.

V. RANKING. The Special Voting Share shall, with respect to rights on liquidation, winding up and dissolution, rank (i) senior to all classes of common stock of the Corporation and (ii) junior to any other class of capital stock of the Corporation.

VI. REDEMPTION. The Special Voting Share shall not be subject to redemption, except that at such time as no exchangeable shares ("Exchangeable Shares") of Merrill Lynch & Co., Canada Ltd. (other than Exchangeable Shares owned by the Corporation and its affiliates) shall be outstanding, the Special Voting Share shall automatically be redeemed and canceled, for an amount equal to \$1.00 due and payable upon such redemption.

VII. OTHER PROVISIONS. Pursuant to the terms of that certain Voting and Exchange Trust Agreement by and between Merrill Lynch & Co., Canada Ltd., the Corporation, and Montreal Trust Company of Canada, as such agreement may be amended, modified or supplemented from time to time (the "Trust Agreement"):

(i) During the term of the Trust Agreement, the Corporation may not, without the consent of the holders of the Exchangeable Shares (as defined in the Trust Agreement), issue any shares of its Special Voting Stock in addition to the Special Voting Share;

(ii) the Special Voting Share entitles the holder of record to a number of votes at meetings of holders of Corporation common shares equal to the number of Exchangeable Shares (as defined by the Trust Agreement) outstanding from time to time (other than the Exchangeable Shares held by the Corporation and its affiliates);

(iii) the Trustee (as defined by the Trust Agreement) shall exercise the votes held by the Special Voting Share pursuant to and in accordance with the Trust Agreement;

(iv) the voting rights attached to the Special Voting Share shall terminate pursuant to and in accordance with the Trust Agreement; and

(v) the powers, designations, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions of such Special Voting Share shall be as otherwise provided in the Trust Agreement."

BY-LAWS

OF

MERRILL LYNCH & CO., INC.

Effective: April 27, 2001

INDEX

to

BY-LAWS

of

MERRILL LYNCH & CO., INC.

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#### BY-LAWS

#### OF

#### MERRILL LYNCH & CO., INC.

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#### ARTICLE I.

#### OFFICES

Merrill Lynch & Co., Inc. (hereinafter called the "Corporation") may establish or discontinue, from time to time, such offices and places of business within or without the State of Delaware as the Board of Directors may deem proper for the conduct of the Corporation's business.

#### ARTICLE II.

#### MEETINGS OF STOCKHOLDERS

Section 1. Annual Meeting. The annual meeting of the holders of shares of such classes or series of stock as are entitled to notice thereof and to vote thereat pursuant to the provisions of the Certificate of Incorporation (hereinafter called the "Annual Meeting of Stockholders") for the purpose of electing directors and transacting such other business as may come before it shall be held in each year at such time, on such day and at such place, within or without the State of Delaware, as shall be designated by the Board of Directors.

Section 2. Special Meetings. In addition to such meetings as are provided for by law or by the Certificate of Incorporation, special meetings of the holders of any class or series or of all classes or series of the Corporation's stock may be called at any time by the Board of Directors pursuant to a resolution adopted by the affirmative vote of a majority of the entire Board of Directors and may be held at such time, on such day and at such place, within or without the State of Delaware, as shall be designated by the Board of Directors.

Section 3. Notice of, and Business at, Meetings.

a. Notice. Except as otherwise provided by law, notice of each meeting of stockholders shall be given either by delivering a written notice personally or mailing a written notice to each stockholder of record entitled to vote thereat or by providing notice in such other form and by such other method as may be permitted by Delaware law. If mailed, the notice shall be directed to the stockholder in a postage-prepaid envelope at his address as it appears on the stock books of the Corporation unless, prior to the time of mailing, he shall have filed with the Secretary a written request that notices intended for him be mailed to some other address, in which case it shall be mailed to the address designated in such request. Notice of each meeting of stockholders shall be in such form as is approved by the Board of Directors and shall state the purpose or purposes for which the meeting is called, the date and time when and the place where it is to be held, and shall be delivered personally or mailed not more than sixty (60) days and not less than ten (10) days before the day of the meeting. Except as otherwise provided by law, the business which may be transacted at any special meeting of stockholders shall consist of and be limited to the purpose or purposes so stated in such notice. The Secretary or an Assistant Secretary or the Transfer Agent of the Corporation shall, after giving such notice, make an affidavit stating that notice has been given, which shall be filed with the minutes of such meeting.

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b. Business. No business may be transacted at an annual meeting of stockholders, other than business that is either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the annual meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (c) otherwise properly brought before the annual meeting by any stockholder of the Corporation who (i) is a stockholder of record on the date of the giving of the notice provided for in this Section 3(b) and on the record date for the determination of stockholders entitled to vote at such annual meeting and (ii) complies with the notice procedures set forth in this Section 3(b).

In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received by the Secretary of the Corporation not less than fifty (50) days prior to the date of the annual meeting of stockholders; provided, that in the event that less than 60 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting was made, whichever first occurs.

To be in proper written form, a stockholder's notice to the Secretary must set forth as to each matter such stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and record address of such stockholder, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder, (iv) a description of all arrangements or understandings between such stockholder and any other person or persons (including their names) in connection with the proposal of such business by such stockholder and any material interest of such stockholder in such business and (v) a representation that such stockholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting.

No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set

forth in this Section 3(b), provided, however, that, once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 3(b) shall be deemed to preclude discussion by any stockholder of any such business. If the Chairman of an annual meeting determines that business was not properly brought before the annual meeting in accordance with the foregoing procedures, the Chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

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Section 4. Waiver of Notice. Whenever notice is required to be given under any provision of law or of the Certificate of Incorporation or the By-Laws, a waiver thereof in writing or by telegraph, cable or other form of recorded communication, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting of stockholders shall constitute a waiver of notice of such meeting, except when the person attends such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of stockholders need be specified in any waiver of notice unless so required by the Certificate of Incorporation.

Section 5. Organization. The Chairman of the Board shall act as chairman at all meetings of stockholders at which he is present, and as such chairman shall call such meetings of stockholders to order and preside thereat. If the Chairman of the Board shall be absent from any meeting of stockholders, the duties otherwise provided in this Section 5 of Article II to be performed by him at such meeting shall be performed at such meeting by the officer prescribed by Section 6 of Article V. The Secretary of the Corporation shall act as secretary at all meetings of the stockholders, but in his absence the chairman of the meeting may appoint any person present to act as secretary of the meeting.

Section 6. Inspectors of Election. a. The Chairman of the Board shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Chairman of the Board may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his ability.

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b. The inspectors shall: (1) ascertain the number of shares outstanding and the voting power of each; (2) determine the shares represented at a meeting and the validity of proxies and ballots; (3) count all votes and ballots; (4) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and (5) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of their duties.

Section 7. Stockholders Entitled to Vote. The Board of Directors may fix a date not more than sixty (60) days nor less than ten (10) days prior to the date of any meeting of stockholders, as a record date for the determination of the stockholders entitled to notice of and to vote at such meeting and any adjournment thereof, and in such case such stockholders and only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to notice of, and to vote at, such meeting and any adjournment thereof, notwithstanding any transfer of any stock on the books of the Corporation after any such record date fixed as aforesaid. No record date shall precede the date on which the Board of Directors establishes such record date. The Secretary shall prepare and make or cause to be prepared and made, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at such meeting, arranged in alphabetical order and showing the address of each such stockholder and the number of shares registered in the name of each such stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place, specified in the notice of the meeting, within the city where the meeting is to be held, or, if not so specified, at the place where the meeting is to be held. Such list shall be produced and kept at the time and place of the meeting during the whole time thereof, and subject to the inspection of any stockholder who may be present.

Section 8. Quorum and Adjournment. Except as otherwise provided by law or by the Certificate of Incorporation, the holders of a majority of the shares of stock entitled to vote at the meeting present in person or by proxy without regard to class or series shall constitute a quorum at all meetings of the stockholders. In the absence of a quorum, the holders of a majority of such

shares of stock present in person or by proxy may adjourn any meeting, from time to time, until a quorum shall be present. At any such adjourned meeting at which a quorum may be present, any business may be transacted which might have been transacted at the meeting as originally called. No notice of any adjourned meeting need be given other than by announcement at the meeting that is being adjourned, provided that if the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, then a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 9. Order of Business. The order of business at all meetings of stockholders shall be as determined by the chairman of the meeting.

Section 10. Vote of Stockholders. Except as otherwise required by law or by the Certificate of Incorporation or by the By-Laws, all action by stockholders shall be taken at a stockholders' meeting. Every stockholder of record, as determined pursuant to Section 7 of this Article II, and who is entitled to vote, shall, except as otherwise expressly provided in the Certificate of Incorporation with respect to any class or series of the Corporation's capital stock, be entitled at every meeting of the stockholders to one vote for every share of stock standing in his name on the books of the Corporation. Every stockholder entitled to vote may authorize another person or persons to act for him by proxy duly appointed by an instrument in writing, subscribed by such stockholder and executed not more than three (3) years prior to the meeting, unless the instrument provides for a longer period. The attendance at any meeting of stockholders of a stockholder who may theretofore have given a proxy shall not have the effect of revoking such proxy. Election of directors shall be by written ballot but, unless otherwise provided by law, no vote on any question upon which a vote of the stockholders may be taken need be by ballot unless the chairman of the meeting shall determine that it shall be by ballot or the holders of a majority of the shares of stock present in person or by proxy and entitled to participate in such vote shall so demand. In a vote by ballot each ballot shall state the number of shares voted and the name of the stockholder or proxy voting. Except as otherwise provided in Sections 14 and 15 of Article III or by the Certificate of Incorporation, directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Except as otherwise provided by law or by the Certificate of Incorporation, the affirmative vote of a majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject shall be the act of the stockholders.

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Section 11. Shares Entitled to More or Less than One Vote. If any class or series of the Corporation's capital stock shall be entitled to more or less than one vote for any share, on any matter, every reference in the By-Laws to a majority or other proportion of stock shall refer to such majority or other proportion of the votes of such stock.

#### ARTICLE III.

##### BOARD OF DIRECTORS

Section 1. Election and Term. Except as otherwise provided by law or by the Certificate of Incorporation, and subject to the provisions of Sections 13, 14 and 15 of this Article III, directors shall be elected at the Annual Meeting of Stockholders to serve until the Annual Meeting of Stockholders in the third year following their election and until their successors are elected and qualify or until their earlier resignation or removal.

Section 2. Qualification. No one shall be a director who is not the owner of shares of Common Stock of the Corporation. Acceptance of the office of director may be expressed orally or in writing.

Section 3. Number. The number of directors may be fixed from time to time by resolution of the Board of Directors but shall not be less than three (3) nor more than thirty (30).

Section 4. General Powers. The business, properties and affairs of the Corporation shall be managed by, or under the direction of, the Board of Directors, which, without limiting the generality of the foregoing, shall have power to elect and appoint officers of the Corporation, to appoint and direct agents, to grant general or limited authority to officers, employees and agents of the Corporation to make, execute and deliver contracts and other instruments and documents in the name and on behalf of the Corporation and over its seal, without specific authority in each case, and, by resolution adopted by a majority of the whole Board of Directors, to appoint committees of the Board of Directors in addition to those appointed pursuant to Article IV hereof, the membership of which may consist of one or more directors, and which may advise the Board of Directors with respect to any matters relating to the conduct of the Corporation's business. The Board of Directors may designate one or more directors as alternate members of any committee, including those appointed pursuant to Article IV hereof, who may replace any absent or disqualified member at any meeting of the committee. In addition, the Board of Directors may

exercise all the powers of the Corporation and do all lawful acts and things which are not reserved to the stockholders by law or by the Certificate of Incorporation.

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Section 5. Place of Meetings. Meetings of the Board of Directors may be held at any place, within or without the State of Delaware, from time to time designated by the Board of Directors.

Section 6. Organization Meeting. A newly elected Board of Directors may meet and organize, and also may transact any other business which might be transacted at a regular meeting on the day of the Annual Meeting of Stockholders, at the place at which such meeting of stockholders took place, without notice of such meeting, provided a majority of the whole Board of Directors is present. Such organization meeting may otherwise be held at any other time or place which may be specified in a notice given in the manner provided in Section 8 of this Article III for special meetings of the Board of Directors, or in a waiver of notice thereof.

Section 7. Regular Meetings. Regular meetings of the Board of Directors shall be held at such times as may be determined by resolution of the Board of Directors and no notice shall be required for any regular meeting. Except as otherwise provided by law, any business may be transacted at any regular meeting of the Board of Directors.

Section 8. Special Meetings; Notice and Waiver of Notice. Special meetings of the Board of Directors shall be called by the Secretary on the request of the Chairman of the Board, the President or a Vice Chairman of the Board, or on the request in writing of any three other directors stating the purpose or purposes of such meeting. Notice of any special meeting shall be in form approved by the Chairman of the Board, the President or a Vice Chairman of the Board, as the case may be. Notices of special meetings shall be mailed to each director, addressed to him at his residence or usual place of business, not later than two (2) days before the day on which the meeting is to be held, or shall be sent to him at such place by telegraph, cable or other form of recorded communication or be delivered personally or by telephone, not later than the day before such day of meeting. Notice of any meeting of the Board of Directors need not be given to any director if he shall sign a written waiver thereof either before or after the time stated therein, or if he shall attend a meeting, except when he attends such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any special meeting of the Board of Directors need be specified in any notice or written waiver of notice unless so required by the Certificate of Incorporation or by the By-Laws. Unless limited by law, by the Certificate of Incorporation or by the By-Laws, any and all business may be transacted at any special meeting.

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Section 9. Organization of Meetings. The Chairman of the Board shall preside at all meetings of the Board of Directors at which he is present. If the Chairman of the Board shall be absent from any meeting of the Board of Directors, the duties otherwise provided in this Section 9 of Article III to be performed by him at such meeting shall be performed at such meeting by the officer prescribed by Section 6 of Article V. If no such officer is present at such meeting, one of the directors present shall be chosen by the members of the Board of Directors present to preside at such meeting. The Secretary of the Corporation shall act as the secretary at all meetings of the Board of Directors, and in his absence a temporary secretary shall be appointed by the chairman of the meeting.

Section 10. Quorum and Manner of Acting. Except as otherwise provided by Section 6 of this Article III, at every meeting of the Board of Directors one-third (1/3) of the total number of directors constituting the whole Board of Directors shall constitute a quorum but in no event shall a quorum be constituted by less than two (2) directors. Except as otherwise provided by law or by the Certificate of Incorporation, or by Section 15 of this Article III, or by Section 1 or Section 8 of Article IV, or by Section 3 of Article V, or by Article IX, the act of a majority of the directors present at any such meeting, at which a quorum is present, shall be the act of the Board of Directors. In the absence of a quorum, a majority of the directors present may adjourn any meeting, from time to time, until a quorum is present. No notice of any adjourned meeting need be given other than by announcement at the meeting that is being adjourned. Members of the Board of Directors or any committee thereof may participate in a meeting of the Board of Directors or of such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation by a member of the Board of Directors in a meeting pursuant to this Section 10 of Article III shall constitute his presence in person at such meeting.

Section 11. Voting. On any question on which the Board of Directors shall vote, the names of those voting and their votes shall be entered in the minutes

of the meeting if any member of the Board of Directors so requests at the time.

Section 12. Action without a Meeting. Except as otherwise provided by law or by the Certificate of Incorporation, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if prior to such action all members of the Board of Directors or of such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or the committee.

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Section 13. Resignations. Any director may resign at any time upon written notice of resignation to the Corporation. Any resignation shall be effective immediately unless a date certain is specified for it to take effect, in which event it shall be effective upon such date, and acceptance of any resignation shall not be necessary to make it effective, irrespective of whether the resignation is tendered subject to such acceptance.

Section 14. Removal of Directors. Subject to the rights of the holders of any series of Preferred Stock or any other class of capital stock of the Corporation (other than the Common Stock) then outstanding, (i) any director, or the entire Board of Directors, may be removed from office at any time, but only for cause, by the affirmative vote of the holders of record of outstanding shares representing at least 80% of the voting power of all the shares of capital stock of the Corporation then entitled to vote generally in the election of directors, voting together as a single class, and (ii) any director may be removed from office at any time, but only for cause, by the affirmative vote of a majority of the entire Board of Directors.

Section 15. Vacancies. Subject to the rights of the holders of any series of Preferred Stock or any other class of capital stock of the Corporation (other than the Common Stock) then outstanding, any vacancies in the Board of Directors for any reason, including by reason of any increase in the number of directors, shall, if occurring prior to the expiration of the term of office of the class in which such vacancy occurs, be filled only by the Board of Directors, acting by the affirmative vote of a majority of the remaining directors then in office, although less than a quorum, and any directors so elected shall hold office until the next election of the class for which such directors have been elected and until their successors are elected and qualify.

Section 16. Directors' Compensation. Any and all directors may receive such reasonable compensation for their services as such, whether in the form of salary or a fixed fee for attendance at meetings, with expenses, if any, as the Board of Directors may from time to time determine. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

#### ARTICLE IV.

##### COMMITTEES

Section 1. Constitution and Powers. The Board of Directors may, by resolution adopted by affirmative vote of a majority of the whole Board of Directors, appoint one or more committees of the Board of Directors, which committees shall have such powers and duties as the Board of Directors shall properly determine. Unless otherwise provided by the Board of Directors, no such other committee of the Board of Directors shall be composed of fewer than two (2) directors.

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Section 2. Place of Meetings. Meetings of any committee of the Board of Directors may be held at any place, within or without the State of Delaware, from time to time designated by the Board of Directors or such committee.

Section 3. Meetings; Notice and Waiver of Notice. Regular meetings of any committee of the Board of Directors shall be held at such times as may be determined by resolution either of the Board of Directors or of such committee and no notice shall be required for any regular meeting. Special meetings of any committee shall be called by the secretary thereof upon request of any two members thereof. Notice of any special meeting of any committee shall be in form approved by the Chairman of the Board, the President or a Vice Chairman of the Board, as the case may be. Notices of special meetings shall be mailed to each member, addressed to him at his residence or usual place of business, not later than two (2) days before the day on which the meeting is to be held, or shall be sent to him at such place by telegraph, cable or any other form of recorded communication, or be delivered personally or by telephone, not later than the day before such day of meeting. Neither the business to be transacted at, nor the purpose of, any special meeting of any committee, need be specified in any notice or written waiver of notice unless so required by the Certificate of Incorporation or the By-Laws. Notices of any such meeting need not be given to any member of any committee, however, if waived by him as provided in Section 8 of Article III, and the provisions of such Section 8 with respect to waiver of notice of meetings of the Board of Directors shall apply to meetings of any

committee as well.

Section 4. Organization of Meetings. The most senior officer of the Corporation present, if any be members of the committee, and, if not, the director present who has served the longest as a director, except as otherwise expressly provided by the Board of Directors or the committee, shall preside at all meetings of any committee. The Secretary of the Corporation, except as otherwise expressly provided by the Board of Directors, shall act as secretary at all meetings of any committee and in his absence a temporary secretary shall be appointed by the chairman of the meeting.

Section 5. Quorum and Manner of Acting. One-third (1/3) of the members of any committee then in office shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present, shall be the act of such committee. In the absence of a quorum, a majority of the members of any committee present, or, if two or fewer members shall be present, any member of the committee present or the Secretary, may adjourn any meeting, from time to time, until a quorum is present. No notice of any adjourned meeting need be given other than by announcement at the meeting that is being adjourned. The provisions of Section 10 of Article III with respect to participation in a meeting of a committee of the Board of Directors and the provisions of Section 12 of Article III with respect to action taken by a committee of the Board of Directors without a meeting shall apply to participation in meetings of and action taken by any committee.

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Section 6. Voting. On any question on which any committee shall vote, the names of those voting and their votes shall be entered in the minutes of the meeting if any member of such committee so requests.

Section 7. Records. All committees shall keep minutes of their acts and proceedings, which shall be submitted at the next regular meeting of the Board of Directors unless sooner submitted at an organization or special meeting of the Board of Directors, and any action taken by the Board of Directors with respect thereto shall be entered in the minutes of the Board of Directors.

Section 8. Vacancies. Any vacancy among the appointed members or alternate members of any committee of the Board of Directors may be filled by affirmative vote of a majority of the whole Board of Directors.

Section 9. Members' Compensation. Members of all committees may receive such reasonable compensation for their services as such, whether in the form of salary or a fixed fee for attendance at meetings, with expenses, if any, as the Board of Directors may from time to time determine. Nothing herein contained shall be construed to preclude any member of any committee from serving the Corporation in any other capacity and receiving compensation therefor.

Section 10. Emergency Management Committee. In the event that a quorum of the Board of Directors cannot readily be convened as a result of emergency conditions following a catastrophe or disaster, then all the powers and duties vested in the Board of Directors shall vest automatically in an Emergency Management Committee which shall consist of all readily available members of the Board of Directors and which Committee shall have and may exercise all of the powers of the Board of Directors in the management of the business and affairs of the Corporation. Two members shall constitute a quorum. Other provisions of these By-Laws notwithstanding, the Emergency Management Committee shall call a meeting of the Board of Directors as soon as circumstances permit, for the purpose of filling vacancies on the Board of Directors and its committees and to take such other action as may be appropriate; and if the Emergency Management Committee determines that less than a majority of the members of the Board of Directors are available for service, the Emergency Management Committee shall, as soon as practicable, issue a call for a special meeting of stockholders for the election of directors. The powers of the Emergency Management Committee shall terminate upon the convening of the meeting of the Board of Directors above prescribed at which a majority of the members thereof shall be present, or upon the convening of the above prescribed meeting of stockholders, whichever first shall occur.

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#### ARTICLE V.

##### THE OFFICERS

Section 1. Officers - Qualifications. The elected officers of the Corporation shall be a Chairman of the Board, a Secretary and a Treasurer and may also include one or more Vice Chairmen of the Board, a President, one or more Executive Vice Presidents, one or more Senior Vice Presidents and one or more Vice Presidents. The elected officers shall be elected by the Board of Directors. The Chairman of the Board, the President and each Vice Chairman of the Board, shall be selected from the directors. Assistant Secretaries, Assistant Treasurers and such other officers as may be deemed necessary or appropriate may be appointed by the Board of Directors or may be appointed pursuant to Section 6 of this Article V.

Section 2. Term of Office; Vacancies. So far as is practicable, all elected officers shall be elected at the organization meeting of the Board of Directors in each year, and except as otherwise provided in Sections 3 and 4, and subject to the provisions of Section 6, of this Article V, shall hold office until the organization meeting of the Board of Directors in the next subsequent year and until their respective successors are elected and qualify or until their earlier resignation or removal. All appointed officers shall hold office during the pleasure of the Board of Directors and the Chairman of the Board. If any vacancy shall occur in any office, the Board of Directors may elect or appoint a successor to fill such vacancy for the remainder of the term.

Section 3. Removal of Elected Officers. Any elected officer may be removed at any time, either for or without cause, by affirmative vote of a majority of the whole Board of Directors, at any regular meeting or at any special meeting called for the purpose and, in the case of any officer not more senior than a Senior Vice President, by affirmative vote of a majority of the whole committee of the Board of Directors so empowered at any regular meeting or at any special meeting called for the purpose.

Section 4. Resignations. Any officer may resign at any time, upon written notice of resignation to the Corporation. Any resignation shall be effective immediately unless a date certain is specified for it to take effect, in which event it shall be effective upon such date, and acceptance of any resignation shall not be necessary to make it effective, irrespective of whether the resignation is tendered subject to such acceptance.

Section 5. Officers Holding More Than One Office. Any officer may hold two or more offices the duties of which can be consistently performed by the same person.

Section 6. The Chairman of the Board. The Chairman of the Board shall be the chief executive officer of the Corporation. He shall direct, coordinate and control the Corporation's business and activities and its operating expenses and capital expenditures, and shall have general authority to exercise all the powers necessary for the chief executive officer of the Corporation, all in accordance with basic policies established by and subject to the control of the Board of Directors. He shall be responsible for the employment or appointment of employees, agents and officers (except officers to be elected by the Board of Directors pursuant to Section 1 of this Article V) as may be required for the conduct of the business and the attainment of the objectives of the Corporation, and shall have authority to fix compensation as provided in Section 15 of this Article V. He shall have authority to suspend or to remove any employee, agent or appointed officer of the Corporation and to suspend for cause any elected officer of the Corporation and, in the case of the suspension for cause of any such elected officer, to recommend to the Board of Directors what further action should be taken. He shall have general authority to execute bonds, deeds and contracts in the name and on behalf of the Corporation. As provided in Section 5 of Article II, he shall act as chairman at all meetings of the stockholders at which he is present, and, as provided in Section 9 of Article III, he shall preside at all meetings of the Board of Directors at which he is present. In the absence of the Chairman of the Board, his duties shall be performed and his authority may be exercised by the President, and, in the absence of the Chairman of the Board and the President, such duties shall be performed and such authority may be exercised by such officer as may have been designated by the most senior officer of the Corporation who has made any such designation, with the right reserved to the Board of Directors to make the designation or supersede any designation so made.

Section 7. The President. The President, if any, shall be the chief operating officer of the Corporation. He shall implement the general directives, plans and policies formulated by the Chairman of the Board pursuant to the By-Laws, in general shall have authority to exercise all powers delegated to him by the Chairman of the Board and shall establish operating and administrative plans and policies and direct and coordinate the Corporation's organizational components, within the scope of the authority delegated to him by the Board of Directors or the Chairman of the Board. He shall have general authority to execute bonds, deeds and contracts in the name and on behalf of the Corporation and responsibility for the employment or appointment of such employees, agents and officers (except officers to be elected by the Board of Directors pursuant to Section 1 of this Article V) as may be required to carry on the operations of the business and authority to fix compensation of such employees, agents and officers as provided in Section 15 of this Article V. He shall have authority to suspend or to remove any employee or agent of the Corporation (other than officers). As provided in Section 6 of this Article V, in the absence of the Chairman of the Board, the President shall perform all the duties and exercise the authority of the Chairman of the Board. In the absence of the President, his duties shall be performed and his authority may be exercised by the Chairman of the Board. In the absence of the President and the Chairman of the Board, the duties of the President shall be performed and his authority may be exercised by such officer as may have been designated by the most senior officer of the Corporation who has made any such designation, with the right reserved to the Board of Directors to make the designation or supersede any designation so made.



Section 8. The Vice Chairmen of the Board. The several Vice Chairmen of the Board, if any, shall perform such duties and may exercise such authority as may from time to time be conferred upon them by the Board of Directors, the Chairman of the Board or the President.

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Section 9. The Executive Vice Presidents. The several Executive Vice Presidents, if any, shall perform such duties and may exercise such authority as may from time to time be conferred upon them by the Board of Directors, the Chairman of the Board or the President.

Section 10. The Senior Vice Presidents. The several Senior Vice Presidents, if any, shall perform such duties and may exercise such authority as may from time to time be conferred upon them by the Board of Directors, the Chairman of the Board, the President, any Vice Chairman of the Board or any Executive Vice President.

Section 11. The Vice Presidents. The several Vice Presidents, if any, shall perform such duties and may exercise such authority as may from time to time be conferred upon them by the Board of Directors, the Chairman of the Board, the President, any Vice Chairman of the Board or any Executive Vice President.

Section 12. The Secretary. The Secretary shall attend to the giving of notice of all meetings of stockholders and of the Board of Directors and committees thereof, and, as provided in Section 5 of Article II and Section 9 of Article III, shall keep minutes of all proceedings at meetings of the stockholders and of the Board of Directors at which he is present, as well as of all proceedings at all meetings of committees of the Board of Directors at which he has served as secretary, and where some other person has served as secretary thereto, the Secretary shall maintain custody of the minutes of such proceedings. As provided in Section 2 of Article VII, he shall have charge of the corporate seal and shall have authority to attest any and all instruments or writings to which the same may be affixed. He shall keep and account for all books, documents, papers and records of the Corporation, except those for which some other officer or agent is properly accountable. He shall generally perform all the duties usually appertaining to the office of secretary of a corporation. In the absence of the Secretary, such person as shall be designated by the Chairman of the Board shall perform his duties.

Section 13. The Treasurer. The Treasurer shall have the care and custody of all the funds of the Corporation and shall deposit the same in such banks or other depositories as the Board of Directors or any officer or officers, or any officer and agent jointly, thereunto duly authorized by the Board of Directors, shall, from time to time, direct or approve. Except as otherwise provided by the Board of Directors or in the Corporation's plan of organization, the Treasurer shall keep a full and accurate account of all moneys received and paid on account of the Corporation, shall render a statement of accounts whenever the Board of Directors shall require, shall perform all other necessary acts and duties in connection with the administration of the financial affairs of the Corporation and shall generally perform all the duties usually appertaining to the office of the treasurer of a corporation. Whenever required by the Board of Directors, the Treasurer shall give bonds for the faithful discharge of the duties of that office in such sums and with such sureties as the Board of Directors shall approve. In the absence of the Treasurer, such person as shall be designated by the President shall perform such duties.

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Section 14. Additional Duties and Authority. In addition to the foregoing specifically enumerated duties and authority, the several officers of the Corporation shall perform such other duties and may exercise such further authority as the Board of Directors may, from time to time, determine, or as may be assigned to them by any superior officer.

Section 15. Compensation. Except as fixed or controlled by the Board of Directors or otherwise, compensation of all officers and employees shall be fixed by the Chairman of the Board, or by the President within the limits approved by the Chairman of the Board, or by other officers of the Corporation exercising authority granted to them under the plan of organization of the Corporation.

#### ARTICLE VI.

##### STOCK AND TRANSFERS OF STOCK

Section 1. Stock Certificates. The capital stock of the Corporation shall be represented by certificates signed by, or in the name of the Corporation by, the Chairman of the Board, the President or a Vice Chairman of the Board, and by the Secretary or an Assistant Secretary or by the Treasurer or an Assistant Treasurer, and sealed with the seal of the Corporation. If such stock certificate is countersigned by a Transfer Agent other than the Corporation or its employee or by a Registrar other than the Corporation or its employee, any other signature on the certificate may be a facsimile, engraved or printed. Such

seal may be a facsimile, engraved or printed. In case any such officer, Transfer Agent or Registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, Transfer Agent or Registrar before such certificate is issued by the Corporation, it may nevertheless be issued by the Corporation with the same effect as if such officer, Transfer Agent or Registrar had not ceased to be such at the date of its issue. The certificates representing the capital stock of the Corporation shall be in such form as shall be approved by the Board of Directors.

Section 2. Transfers of Stock. Transfers of stock shall be made on the books of the Corporation by the person named in the certificate, or by an attorney lawfully constituted in writing, and upon surrender and cancellation of a certificate or certificates for a like number of shares of the same class or series of stock, duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, and with such proof of the authenticity of the signatures as the Corporation or its agents may reasonably require and with all required stock transfer tax stamps affixed thereto and canceled or accompanied by sufficient funds to pay such taxes.

Section 3. Lost Certificates. In case any certificate of stock shall be lost, stolen or destroyed, the Board of Directors, in its discretion, or any officer or officers thereunto duly authorized by the Board of Directors, may authorize the issue of a substitute certificate in place of the certificate so lost, stolen or destroyed; provided, however, that, in each such case, the applicant for a substitute certificate shall furnish evidence to the Corporation, which it determines in its discretion is satisfactory, of the loss, theft or destruction of such certificate and of the ownership thereof, and also such security or indemnity as may be required by it.

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Section 4. Determination of Holders of Record for Certain Purposes. In order to determine the stockholders or other holders of securities entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of capital stock or other securities or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, not more than sixty (60) days prior to the date of payment of such dividend or other distribution or allotment of such rights or the date when any such rights in respect of any change, conversion or exchange of stock or securities may be exercised, and in such case only holders of record on the date so fixed shall be entitled to receive payment of such dividend or other distribution or to receive such allotment of rights, or to exercise such rights, notwithstanding any transfer of any stock or other securities on the books of the Corporation after any such record date fixed as aforesaid. No record date shall precede the date on which the Board of Directors establishes such record date.

#### ARTICLE VII.

##### CORPORATE SEAL

Section 1. Seal. The seal of the Corporation shall be in the form of a circle and shall bear the name of the Corporation and in the center of the circle the words "Corporate Seal, Delaware" and the figures "1973".

Section 2. Affixing and Attesting. The seal of the Corporation shall be in the custody of the Secretary, who shall have power to affix it to the proper corporate instruments and documents, and who shall attest it. In his absence, it may be affixed and attested by an Assistant Secretary, or by the Treasurer or an Assistant Treasurer or by any other person or persons as may be designated by the Board of Directors.

#### ARTICLE VIII.

##### MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of the Corporation shall end on the last Friday of December in each year and the succeeding fiscal year shall begin on the day next succeeding the last day of the preceding fiscal year.

Section 2. Signatures on Negotiable Instruments. All bills, notes, checks or other instruments for the payment of money shall be signed or countersigned by such officers or agents and in such manner as, from time to time, may be prescribed by resolution (whether general or special) of the Board of Directors, or may be prescribed by any officer or officers, or any officer and agent jointly, thereunto duly authorized by the Board of Directors.

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Section 3. References to Article and Section Numbers and to the By-Laws and the Certificate of Incorporation. Whenever in the By-Laws reference is made to an Article or Section number, such reference is to the number of an Article or Section of the By-Laws. Whenever in the By-Laws reference is made to the By-Laws, such reference is to these By-Laws of the Corporation, as amended, and whenever reference is made to the Certificate of Incorporation, such reference

is to the Certificate of Incorporation of the Corporation, as amended, including all documents deemed by the General Corporation Law of the State of Delaware to constitute a part thereof.

#### ARTICLE IX.

##### AMENDMENTS

The By-Laws may be altered, amended or repealed at any Annual Meeting of Stockholders, or at any special meeting of holders of shares of stock entitled to vote thereon, provided that in the case of a special meeting notice of such proposed alteration, amendment or repeal be included in the notice of meeting, by a vote of the holders of a majority of the shares of stock present in person or by proxy at the meeting and entitled to vote thereon, or (except as otherwise expressly provided in any By-Law adopted by the stockholders) by the Board of Directors at any valid meeting by affirmative vote of a majority of the whole Board of Directors.

As Amended February 16, 2001

MERRILL LYNCH & CO., INC. DEFERRED STOCK UNIT AND STOCK OPTION PLAN FOR  
NON-EMPLOYEE DIRECTORS

Article I - General

Section 1.1 Purposes.

The purposes of the Merrill Lynch & Co., Inc. Deferred Stock Unit and Stock Option Plan for Non-Employee Directors, as amended (the "Plan") are (a) to provide an incentive to highly qualified individuals to serve as Directors of Merrill Lynch & Co., Inc. ("ML & Co."), and (b) to further align the interests of Non-Employee Directors with the stockholders of ML & Co.

Section 1.2 Definitions.

For purposes of the Plan, the following terms shall have the meanings indicated.

"Account" means a notional account recording grants of Deferred Units and Deferred Stock Units under the Plan.

"Account Balance" means the balance of a Participant's Account reflecting Deferred Units and Deferred Stock Units credited to a Participant's Account, adjusted in accordance with Section 3.1 to reflect the addition of dividend equivalents and any changes in capitalization and adjusted for any payments to the Participant.

"Administrator" means the Head of Human Resources of ML & Co., or his or her functional successor.

"Affiliate" means any corporation, partnership, or other organization of which ML & Co. owns or controls, directly or indirectly, not less than 50% of the total combined voting power of all classes of stock or other equity interests.

"Annual Meeting" means the Annual Meeting of Stockholders of ML & Co.

"Board of Directors" or "Board" shall mean the Board of Directors of ML & Co.

"Business Day" shall mean any day on which the New York Stock Exchange is open for business.

"Change in Control" means a change in control of ML & Co. of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A promulgated under the Exchange Act, whether or not ML & Co. is then subject to such reporting requirement; provided, however, that, without limitation, a Change in Control shall be deemed to have occurred if:

(a) any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity, or any syndicate or group deemed to be a person under Section 14(d)(2) of the Exchange Act, other than ML & Co.'s employee stock ownership plan, is or becomes the "beneficial owner" (as defined in Rule 13d-3 of the General Rules and Regulations under the Exchange Act), directly or indirectly, of securities of ML & Co. representing 30% or more of the combined voting power of ML & Co.'s then outstanding securities entitled to vote in the election of directors of ML & Co.;

(b) during any period of two consecutive years (not including any period prior to the adoption of this Plan), individuals who at the beginning of such period constituted the Board of Directors and any new Directors whose election by the Board of Directors or nomination for election by the stockholders of ML & Co. was approved by a vote of at least three quarters of the Directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority thereof; or

(c) all or substantially all of the assets of ML & Co. are liquidated or distributed.

"Code" means the U.S. Internal Revenue Code of 1986, as amended from time to time.

"Common Stock" means the Common Stock, par value \$1.33 1/3 per share, of ML & Co. and a "share of Common Stock" shall mean one share of Common Stock together with, for so long as Rights are outstanding, one Right (whether trading

with the Common Stock or separately).

"Company" means ML & Co. and all of its Affiliates.

"Current Market Value" per share of Common Stock, for any date, means the average of the Daily Market Prices of a share of Common Stock for each Business Day for which such Daily Market Prices are available during a period commencing on a date 21 consecutive Business Days prior to such date and ending on the second Business Day prior to such date.

"Daily Market Price" of shares of Common Stock on any date means: (a) the mean of the high and low sales prices reported on the New York Stock Exchange--Composite Tape (or, if shares of Common Stock are not traded on the New York Stock Exchange, the mean of the high and low sales prices reported on any securities exchange or quotation service on which the shares of Common Stock are listed or traded) of such shares on the date in question, or (b) if shares of Common Stock are not then listed or admitted to trading on any securities exchange for which reported sales prices are available, the mean of reported high bid and low asked prices on such date, as reported by a reputable quotation service, or by The Wall Street Journal, Eastern Edition, or a newspaper of general circulation in the Borough of Manhattan, City and State of New York.

"Deferred Stock Unit" or "Deferred Unit" means a unit representing ML & Co.'s obligation to deliver one share of Common Stock in accordance with the terms of the Plan.

"Director" means a member of the Board.

"Disability" means any physical or mental condition that, in the opinion of the Administrator, renders a Director incapable of continuing to serve on the Board.

"End of Service Date" means the date on which a Participant ceases to serve as a Director for any reason.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Executive Committee" means the Executive Committee of the Board of Directors.

"Holding Period" has the meaning specified in Section 2.4.

"Initial Payment Date" has the meaning specified in Section 2.6(b).

"Junior Preferred Stock" means ML & Co.'s Series A Junior Preferred Stock, par value \$1.00 per share.

"Non-Employee Director" means a member of the Board who is not employed by ML & Co. or any Affiliate of ML & Co.

"Participant" means each Non-Employee Director to whom a grant of Deferred Units, Deferred Stock Units, or Stock Options is made under the Plan.

"Retirement Payments" means the arrangements for post-retirement payments to Non-Employee Directors adopted by ML & Co. for its Non-Employee Directors, as amended February 16, 2001.

"Retirement" means ceasing to serve as a Director of ML & Co. in accordance with ML & Co.'s retirement policy for Non-Employee Directors.

"Retirement Annual Meeting" means, with respect to any Retiring Non-Employee Director, the Annual Meeting that coincides with such Director's Retirement.

"Retiring Non-Employee Director" means a Non-Employee Director whose Retirement Annual Meeting will occur prior to, or will be the fifth Annual Meeting following, the effective date of any grant of Deferred Units or Deferred Stock Units to such Director.

"Rights" means the Rights to Purchase Units of Series A Junior Preferred Stock, par value \$1.00 per share, of ML & Co. issued pursuant to the Rights Agreement dated as of December 16, 1987 between ML & Co. and Manufacturers Hanover Trust Company, Rights Agent, as amended from time to time.

"Stock Option" means a right, granted to a Non-Employee Director, pursuant to Section 2.4 hereof, to purchase prior to a specified date and at a specified price a specified number of shares of Common Stock.

"Tender Offer" means an offer to purchase all or a portion of the outstanding shares of Common Stock that is subject to Section 14D of the Exchange Act, provided that such offer, if consummated, would result in a Change in Control.

Section 1.3 Shares Subject to the Plan.

The total number of shares of Common Stock that shall be reserved for issuance in payment of Deferred Stock Units under the Plan shall be 800,000, subject to automatic adjustment for changes in capitalization of ML & Co. as provided in Section 3.1 hereof. Shares of Common Stock issued under the Plan shall only be shares previously issued and reacquired by ML & Co. and held in its treasury.

Article II - Deferred Units, Deferred Stock Units, and Stock Options;  
Optional Deferral of Payment

Section 2.1 Deferred Unit Grants.

(a) Five-Year Initial Grants. (i) Effective February 16, 2001, no further grants will be made under this Section 2.1(a). Grants previously made under this Section 2.1(a) shall be payable in shares of Common Stock of the Company and otherwise remain outstanding and payable in accordance with their terms. (ii) Each Non-Employee Director who was a member of the Board on August 1, 1996 was granted, as of August 1, 1996, the number of Deferred Units obtained by dividing \$50,000 by the Current Market Value per share of Common Stock on such date (with the result rounded upwards to the nearest whole Deferred Unit).

(b) Five-Year New Director Grants. (i) Effective February 16, 2001, no further grants will be made under this Section 2.1(b). Grants previously made under this Section 2.1(b) shall be payable in shares of Common Stock of the Company and otherwise remain outstanding in accordance with their terms. (ii) Each person who became a Non-Employee Director between August 1, 1996 until February 16, 2001, as of the date when such person became a Non-Employee Director, was granted the number of Deferred Units obtained by dividing \$50,000 (adjusted downward in the event that such directors Retirement would have been within 5 years of the grant) by the Current Market Value per share of Common Stock on such date (with the result rounded rounding the result upwards to the nearest whole Deferred Unit).

(c) Annual Grants. (i) Effective February 16, 2001 no further grants will be made under this Section 2.1(c). Grants previously made under this Section 2.1(c) shall be payable in shares of Common Stock of the Company and otherwise remain outstanding in accordance with their terms. (ii) During the period between April 1, 1998 and February 16, 2001 (effective on the close of business on the first Business Day of the month next following the date of each Annual Meeting) any Director then serving as a Non-Employee Director was granted, without any action by the Board of Directors, on such date the number of Deferred Units obtained by dividing \$10,000 by the Current Market Value per share of Common Stock on such date (with the result rounded upwards to the nearest whole Deferred Unit). (iii) Each person who became a Non-Employee Director during such period on a date other than the date of an Annual Meeting, was granted, on the date when such person became a Non-Employee Director and without any action by the Board of Directors, the number of Deferred Units obtained by dividing \$10,000 by the Current Market Value per share of Common Stock on such date (with the result rounded upwards to the nearest whole Deferred Unit).

Section 2.2 Five-Year Deferred Stock Unit Grants.

Effective February 16, 2001 no further grants will be made under this Section 2.2. Grants previously made under this Section 2.2 shall be payable in shares of Common Stock of the Company and otherwise remain outstanding in accordance with their terms. During the period between October 26, 1996 and February 16, 2001, without any action by the Board of Directors:

(i) each Non-Employee Director who had received a grant under the Merrill Lynch & Co., Inc. Non-Employee Director's Equity Plan, ("Equity Plan") effective on the close of business on the first Business Day of the month next following the date of the Annual Meeting upon which such Director's grant became fully vested and

(ii) each Non-Employee Director who had not received a grant under the Equity Plan, effective on the date that such Director joined the Board of Directors

was granted the number of Deferred Stock Units obtained by dividing \$50,000 by the Current Market Value per share of Common Stock on such date and rounding the result upwards to the nearest whole Deferred Stock Unit, provided, however, that, in each case, the dollar amount used to determine the grant to any Retiring Non-Employee Director was \$50,000 multiplied by the Retirement Fraction applicable to such Retiring Non-Employee Director.

Section 2.3 Annual Deferred Stock Unit Grants.

(a) Regular Grants. Each Non-Employee Director who (i) is a member of the Board on February 26, 2001, and makes an election (in accordance with procedures set forth by the Administrator) to receive no further increases in his or her retirement payments, or (ii) is appointed or elected to the Board following February 26, 2001, shall, without any further action by the Board of Directors, receive as of the date of every subsequent Annual Meeting for which he or she is a Continuing Director, the number of Deferred Stock Units obtained by dividing

\$72,500 by the Daily Market Price per share of Common Stock on such date and rounding the result upwards to the nearest whole Deferred Stock Unit.

(b) Mid-Year Regular Grants. In the event that after April 27, 2001, a Non-Employee Director joins the Board after the date of an Annual Meeting, but prior to the date of the Board's regularly scheduled meeting in October, shall without any further action by the Board of Directors receive the number of Deferred Stock Units obtained by dividing \$36,250 by the Daily Market Price per share of Common Stock on the date of his or her appointment to the Board.

(c) Adjusted Grants. Each Non-Employee Director who is a member of the Board on February 26, 2001, and makes an election (in accordance with procedures determined by the Administrator) to continue to receive increases in his or her retirement payments shall, without any further action by the Board of Directors receive (i) as of April 27, 2001, and (ii) as of the date of every subsequent Annual Meeting, the number of Deferred Stock Units obtained by dividing \$42,500 by the Daily Market Price per share of Common Stock on such date and rounding the result upwards to the nearest whole Deferred Stock Unit.

(d) Further Adjustment. The dollar amounts for the Deferred Stock Unit grants specified in subsections (a) and (b) above shall be reduced by \$10,000 each year in which Deferred Stock Units and Deferred Units granted prior to February 16, 2001 under Sections 2.1 or 2.2 of this Plan remain subject to the five-year Holding Period determined for such awards under Section 2.4.

#### Section 2.4 Payment of Awards Upon Expiration of the Holding Period.

Unless deferred at the option of the Participant in accordance with Section 2.6(a) hereof, Deferred Units or Deferred Stock Units will become payable upon the expiration of the holding period with respect to such grants (the "Holding Period"), which shall expire on the earlier of: (i) the date of the fifth Annual Meeting following the date of such grant, and (ii) a Participant's End of Service Date. The Deferred Units and the Deferred Stock Units will be paid in shares of Common Stock. One share of Common Stock will be delivered for each Deferred Unit and Deferred Stock Unit to be paid, after rounding any fractional unit upwards to the nearest whole share.

#### Section 2.5 Stock Options.

(a) Regular Annual Stock Option Grants. Each Non-Employee Director who is a member of the Board on February 26, 2001 or is appointed or elected to the Board following February 26, 2001 shall, without any further action by the Board of Directors receive as of the date of every subsequent Annual Meeting, a grant of the number of Stock Options obtained by dividing \$72,500 by the Daily Market Price of the Company's Common Stock on such date and multiplying the result by three.

(b) Regular Grants for Directors Joining in Mid-year. Each Non-Employee Director who joins the Board during the period beginning on the date of the Company's Annual Meeting after February 26, 2001, and ending on the date of the Board's regularly scheduled October meeting, shall, without any further action by the Board of Directors receive, as of the date when he or she joins the Board, the number of Stock Options obtained by dividing \$36,250 by the Daily Market Price of the Company's Common Stock on such date and multiplying the result by three.

(c) Exercise Price. The exercise price for each such Stock Option shall be the Daily Market Price of a share of Common Stock on the grant date.

(d) Exercise of Stock Options.

(i) Exercisability: Stock Options shall become exercisable six months following the grant date. A Stock Option may be exercised at any time from such date until the close of business on the expiration date of the Stock Option.

(ii) Expiration: Each Stock Option granted shall expire and shall no longer be exercisable after the expiration of 10 years from the date of grant of such Stock Option.

(iii) Exercise in the Event of Termination of Service as a Director: If a Non-Employee Director ceases to serve as a Director prior to the exercise or expiration of Stock Options granted to him or her, such Stock Options may be exercised, to the full extent not yet exercised, regardless of whether or not then fully exercisable, and, in the event of death, such Stock Options may be exercised by his or her estate or beneficiaries, as the case may be, but in no event after the expiration date of such Stock Option.

(iv) Limitations on Transferability: Stock Options are not transferable by a Non-Employee Director except to immediate family members (or trusts or other entities established for the benefit of immediate family members) or by will or the laws of descent and distribution and are exercisable during his or her lifetime only by him or her.

(e) Payment of Purchase Price and Tax Liability Upon Exercise; Delivery of Shares.

(i) Payment of Purchase Price: The purchase price of the shares as to which a Stock Option is exercised shall be paid to the Company at the time of exercise (A) in cash, (B) by delivering freely transferable shares of Common Stock already owned by the person exercising the Stock Option for at least six months having a total Daily Market Price on the date of exercise equal to the purchase price, or (C) a combination of cash and shares of Common Stock equal in value to the exercise price.

(ii) Delivery of Shares: Upon receipt by the Company of the purchase price, stock certificate(s) for the shares of Common Stock as to which a Stock Option is exercised shall be delivered to the person in whose name the Stock Option is outstanding or such person's estate or beneficiaries, as the case may be, or such shares shall be credited to a brokerage account or otherwise delivered, in such manner as such person or such person's estate or beneficiaries, as the case may be, may direct.

#### Section 2.6 Optional Deferral of Payment.

(a) Optional Deferral of Payment. A Participant shall have the option to defer the payment of all or a portion of any Deferred Unit or Deferred Stock Unit grant upon the expiration of the relevant Holding Period for later payment in accordance with this Section 2.6 by submitting to the Administrator or his or her designee such forms as the Administrator shall prescribe by no later than one year prior to the expiration of the relevant Holding Period. No such deferral election shall become effective if the Holding Period expires prior to the fifth Annual Meeting following the date of the relevant grant as a result of the Participant's Retirement, death or Disability. With respect to Deferred Units and Deferred Stock Units, a Participant may elect to have all or a portion of his or her Account Balance retained as Deferred Stock Units in his or her Account for payment at a later date. A Participant shall also have the right to defer the gain on exercise of a stock options in accordance with the terms of the Merrill Lynch Stock Option Gain Deferral Program.

(b) Irrevocability of Deferral Election. Except as provided in Sections 2.6(c) or (d) or Section 2.9, an election to defer the payment of all or a portion of a Participant's Deferred Units or Deferred Stock Units made pursuant to Section 2.6(a) shall be irrevocable once submitted to the Administrator or his or her designee.

(c) Rescission of Deferral Election Prior to the Expiration of the Holding Period. An optional deferral election may be rescinded at the request of the Participant only (i) prior to the expiration of the Holding Period with respect to any grant of Deferred Units or Deferred Stock Units, and (ii) if the Administrator, in his or her sole discretion and upon evidence of such basis that he or she finds persuasive (including a material applicable change in the Participant's U.S. Federal and/or foreign income tax rate during the period between the deferral election and the expiration of the Holding Period), agrees to the rescission of the election. In the event of a rescission under this Section 2.6(c), no deferral will be effected under the Plan and the Participant will be paid the Deferred Units or Deferred Stock Units in accordance with Section 2.7(a).

(d) Rescission of Deferral Election Caused by an Adverse Tax Determination. Notwithstanding the provisions of Section 2.6(a), a deferral election may be rescinded at any time if (i) a final determination is made by a court or other governmental body of competent jurisdiction that the election was ineffective to defer income for purposes of U.S. Federal, state, local or foreign income taxation and the time for appeal from this determination has expired, and (ii) the Administrator, in his or her sole discretion, decides, upon the Participant's request and upon evidence of the occurrence of the events described in clause (i) hereof that he or she finds persuasive, to rescind the election. Upon such rescission, the relevant Account Balance will be paid to the Participant as soon as practicable as provided herein.

#### Section 2.7 Payment of Units Optionally Deferred.

(a) Regular Payment Elections. A Participant's Account Balance will be paid by ML & Co., as elected by the Participant at the time of his or her optional deferral election, either in a single payment to be made, or in the number of annual installment payments (not to exceed 15) chosen by the Participant to commence, (i) in the month following the month of the Participant's End of Service Date or death, (ii) in any month and year selected by the Participant after the scheduled expiration of the Holding Period (i.e., without taking into account the possibility of Early Separation, death or Disability), or (iii) in any month in the calendar year following the Participant's End of Service Date, but in no event may the date elected under clause (i), (ii) or (iii) result in the payment (in the case of a single payment) or commencement of payments (in the case of installment payments) later than the month following the Participant's 72nd birthday. The amount of each annual installment payment, if applicable, shall be determined by multiplying the Account Balance as of the last day of the month immediately preceding the month in which the payment is to be made by a fraction, the numerator of which is one and the denominator of which is the number of remaining installment payments (including the installment payment to be made) and rounding the result to the nearest whole Deferred Unit,



Deferred Stock Unit or cent, as the case may be.

(b) Form of Payment. Deferred Units and Deferred Stock Units payable pursuant to this Section 2.7 will be paid in shares of Common Stock. One share of Common Stock will be delivered for each unit to be paid, after rounding any fractional unit upwards to the nearest whole share.

(c) Death Prior to Payment. If the Participant dies prior to payment of any or all amounts optionally deferred, then the Account Balance will be paid to the Participant's beneficiary in accordance with the Participant's election of either installment payments, or a single payment, provided, however, that, in the event that a beneficiary of the Participant's Account Balance is the Participant's estate or is otherwise not a natural person, then (i) if the Participant has elected a regular payment election pursuant to Section 2.7(a), the applicable portion of the Account Balance will be paid in a single payment to such beneficiary, and (ii) if the Participant has elected installment payments, the applicable portion of the Account Balance will continue to be paid as installment payments, but only to a single person consisting of the administrator or executor of the Participant's estate or another person lawfully designated by the administrator or executor (and in the event no such person is designated within a reasonable time, payment will be made in a lump sum).

(d) Discretion to Alter Payment Date. Notwithstanding the other provisions of this Section 2.7, if the Participant ceases to be a Director for any reason, the Administrator may, in his or her sole discretion, direct that the Account Balance (but not any subsequent optional deferral thereof), be paid at some other time or that it be paid in installments; provided, that no such direction that adversely affects the rights of the Participant or his or her beneficiary under this Plan shall be implemented without the consent of the affected Participant or beneficiary. This direction may be revoked by the Administrator at any time in his or her sole discretion.

(e) Hardship Distributions. ML & Co. may pay to the Participant, on such terms and conditions as the Administrator may establish, such part or all of the Account Balance, as the Administrator may, in his or her sole discretion based upon substantial evidence submitted by the Participant, determine necessary to alleviate hardship caused by an unanticipated emergency or necessity outside of the Participant's control affecting the Participant's personal or family affairs. Such payment will be made only at the Participant's written request and with the express approval of the Administrator and will be made on the date selected by the Administrator in his or her sole discretion. The balance of the Account, if any, will continue to be governed by the terms of this Plan. Hardship shall be deemed to exist only on account of expenses for medical care (described in Code Section 213(d)) of the Participant, the Participant's spouse or the Participant's dependents (described in Code Section 152); payment of unreimbursed tuition and related educational fees for the Participant, the Participant's spouse or the Participant's dependents; the need to prevent the Participant's eviction from, or foreclosure on, the Participant's principal residence; unreimbursed damages resulting from a natural disaster; or such other financial need deemed by the Administrator in his or her sole discretion to be immediate and substantial.

## Section 2.8 Beneficiary.

(a) Designation of Beneficiary. The Participant may designate, in a writing delivered to the Administrator or his or her designee before the Participant's death, a beneficiary (which may be a charity or other entity) to receive payments under the Plan in the event of the Participant's death. The Participant may also designate a contingent beneficiary to receive payments under the Plan if the primary beneficiary does not survive the Participant. The Participant may designate more than one person as the Participant's beneficiary or contingent beneficiary, in which case (i) no contingent beneficiary would receive any payment unless all of the primary beneficiaries predeceased the Participant, and (ii) the surviving beneficiaries in any class shall share in any payments in proportion to the percentages of interest assigned to them by the Participant.

(b) Change in Beneficiary. The Participant may change his or her beneficiary or contingent beneficiary (without the consent of any prior beneficiary) in a writing delivered to the Administrator or his or her designee before the Participant's death. Unless the Participant states otherwise in writing, any change in beneficiary or contingent beneficiary will automatically revoke such prior designations of the Participant's beneficiary or of the Participant's contingent beneficiary, as the case may be, under this Plan only; and any designations under other deferral agreements or plans of the Company will remain unaffected.

(c) Default Beneficiary. In the event a Participant does not designate a beneficiary, or no designated beneficiary survives the Participant, the Participant's beneficiary shall be the Participant's surviving spouse, if the Participant is married at the time of his or her death and not subject to a court-approved agreement or court decree of separation, or otherwise the person or persons designated to receive benefits on account of the Participant's death under the ML & Co. pre-retirement death benefit for Non-Employee Directors, unless the rights to such benefit have been assigned, in which case any amounts payable to the Participant's beneficiary under the Plan will be paid to the

Participant's estate.

(d) If the Beneficiary Dies During Payment. If a beneficiary who is receiving or is entitled to receive payments hereunder dies after the Participant but before all the payments have been made, the portion of the Account Balance to which that beneficiary was entitled will be paid as soon as practicable in a single payment to such beneficiary's estate and not to any contingent beneficiary the Participant may have designated; provided, however, that if the beneficiary was receiving installment payments, the applicable portion of the Account Balance will continue to be paid as installment payments but only to a single person consisting of the administrator or executor of the beneficiary's estate or another person lawfully designated by the administrator or executor (and in the event no such person is designated within a reasonable time, payment will be made in a lump sum).

#### Section 2.9 Domestic Relations Orders.

Notwithstanding the Participant's elections hereunder, ML & Co. will pay to, or to the Participant for the benefit of, the Participant's spouse or former spouse the portion of the Participant's Account Balance specified in a valid court order entered in a domestic relations proceeding involving the Participant's divorce or legal separation. Any such payment will be made net of any amounts the Company may be required to withhold under applicable federal, state or local law.

#### Section 2.10 Withholding of Taxes.

ML & Co. will deduct from any payment to be made or deferred hereunder any U.S. Federal, state or local or foreign income or employment taxes required by law to be withheld or require the Participant or the Participant's beneficiary to pay any amount, or the balance of any amount, required to be withheld.

#### Article III - Adjustment of Accounts

##### Section 3.1 Adjustment of Accounts.

(a) Dividend Equivalents. Whenever a cash dividend is paid on a share of Common Stock, a Participant's Deferred Units and Deferred Stock Units will be adjusted by adding to the Deferred Units or Deferred Stock Units, as applicable, the number of Deferred Units or Deferred Stock Units determined by multiplying the per share amount of the cash dividend by the Deferred Units or Deferred Stock Units, as applicable, on the record date for the cash dividend, dividing the result by the price per share of Common Stock used for purposes of the reinvestment of such cash dividend in the Merrill Lynch & Co., Inc. Dividend Reinvestment Program currently administered by Business Information Services (or their functional successor), or if at any time there is no Dividend Reinvestment Program, the Daily Market Price of a share of Common Stock on the date the cash dividend is paid, and rounding the result to the nearest 1/100th of a Deferred Unit or Deferred Stock Unit as the case may be (with .005 being rounded upwards); provided that, if the number of a Participant's Deferred Units or Deferred Stock Units is reduced to zero in accordance with the Plan between the record date and the payment date for such cash dividend, then, in lieu of such adjustment to the Participant's Account, the dividend equivalent amount with respect to such record date will be determined by multiplying the per share amount of the cash dividend by the Deferred Units or Deferred Stock Units in the Account on the record date for the cash dividend and rounding the result to the nearest whole cent. This amount shall be paid to the Participant in cash at the same time as such cash dividend is paid to the holders of the Common Stock.

(b) Changes in Capitalization. Any other provision of the Plan to the contrary notwithstanding, if any change shall occur in or affect shares of Common Stock (or the Rights or Junior Preferred Stock) on account of a merger, consolidation, reorganization, stock dividend, stock split or combination, reclassification, recapitalization, or distribution to holders of shares of Common Stock (other than cash dividends), including, without limitation, a merger or other reorganization event in which the shares of Common Stock cease to exist, then appropriate adjustments shall be made, without any action by the Board of Directors, to the Deferred Units, Deferred Stock Units and Stock Options, as shall be necessary to maintain the proportionate interest of the Participants and to preserve, without increasing, the value of Stock Options or the Account Balance. In the event of a change in the presently authorized shares of Common Stock that is limited to a change in the designation thereof or a change of authorized shares with par value into the same number of shares with a different par value or into the same number of shares without par value, the shares resulting from any such change shall be deemed to be shares of Common Stock within the meaning of the Plan.

#### Article IV - Status of Accounts

##### Section 4.1 No Trust or Fund Created; General Creditor Status.

Nothing contained herein and no action taken pursuant hereto will be construed to create a trust or separate fund of any kind or a fiduciary relationship between ML & Co. and any Participant, the Participant's beneficiary or estate, or any other person. Title to and beneficial ownership of any funds

represented by the Account Balance will at all times remain in ML & Co.; such funds will continue for all purposes to be a part of the general funds of ML & Co. and may be used for any corporate purpose. No person will, by virtue of the provisions of this Plan, have any interest whatsoever in any specific assets of the Company. TO THE EXTENT THAT ANY PERSON ACQUIRES A RIGHT TO RECEIVE PAYMENTS FROM ML & CO. UNDER THIS PLAN, SUCH RIGHT WILL BE NO GREATER THAN THE RIGHT OF ANY UNSECURED GENERAL CREDITOR OF ML & CO.

#### Section 4.2 Non-Assignability.

Except as provided in Section 2.5(d)(iv), a Participant's right or the right of any other person to his or her Account Balance or any other benefits hereunder cannot be assigned, alienated, sold, garnished, transferred, pledged, or encumbered except by a written designation of beneficiary under this Plan, by written will, or by the laws of descent and distribution.

#### Section 4.3 Effect on Benefits Under Pension and Welfare Benefit Plans.

The effect of the grants, deferrals and payments under the Plan on pension and welfare benefit plans in which the Participant may be a participant will depend upon the provisions of each such plan, as amended from time to time.

### Article V - Change in Control

#### Section 5.1 Payment of Account Balance upon Change in Control.

(a) Payment of Account Balance. Notwithstanding any other provision of this Plan, in the event that (i) ML & Co. receives a Tender Offer Statement on Schedule 14D-1 under the Securities Exchange Act of 1934 relating to a Tender Offer, or (ii) a Change in Control shall occur, the Participant's Account Balance, will be paid to the Participant in a lump sum promptly after the receipt of such Tender Offer Statement or the occurrence of such Change in Control, and in any event, not later than 30 days thereafter.

(b) Manner of Payment. Payment of Account Balances pursuant to Section 5.1(a) shall be made in the following manner:

(i) With respect to Deferred Units and Deferred Stock Units, payment shall be made in cash and shall be calculated as if any applicable Holding Period had expired. The amount of the cash payment shall be determined by multiplying the number of Deferred Units and Deferred Stock Units in the Participant's Account by the Daily Market Price per share of Common Stock on the date of the event specified in Section 5.1(a)(i) or (ii), as the case may be, or, if higher, the highest Daily Market Price per share of Common Stock on any day during the 90-day period ending on such date.

(ii) With respect to Stock Options, for each underlying share of Common Stock, the excess of the Daily Market Price of a share of Common Stock on the on the date of the event specified in Section 5.1(a)(i) or (ii), as the case may be, or, if higher, the highest Daily Market Price per share of Common Stock on any day during the 90-day period ending on such date, over the per share exercise price for such Stock Option.

### Article VI - Administration of the Plan

#### Section 6.1 Powers of the Administrator.

The Administrator has full power and authority to interpret, construe, and administer this Plan. The Administrator's interpretations and construction hereof, and actions hereunder, including any determinations regarding the amount or recipient of any payments, will be binding and conclusive on all persons for all purposes. The Administrator will not be liable to any person for any action taken or omitted in connection with the interpretation and administration of this Plan unless attributable to his or her willful misconduct or lack of good faith. The Administrator may designate persons to carry out the specified responsibilities of the Administrator and shall not be liable for any act or omission of a person as designated.

#### Section 6.2 Payments on Behalf of an Incompetent.

If the Administrator finds that any person who is presently entitled to any payment hereunder is a minor or is unable to care for his or her affairs because of disability or incompetency, payment of the Account Balances may be made to anyone found by the Administrator to be the committee or other authorized representative of such person, or to be otherwise entitled to such payment, in the manner and under the conditions that the Administrator determines. Such payment will be a complete discharge of the liabilities of ML & Co. hereunder with respect to the amounts so paid.

#### Section 6.3 Corporate Books and Records Controlling.

The books and records of the Company will be controlling in the event a question arises hereunder concerning Account Balances, deferral elections, beneficiary designations, or any other matters.

## Article VII - Miscellaneous Provisions

### Section 7.1 Litigation.

The Company shall have the right to contest, at its expense, any ruling or decision, administrative or judicial, on an issue that is related to the Plan and that the Administrator believes to be important to Participants, and to conduct any such contest or any litigation arising therefrom to a final decision.

### Section 7.2 Headings Are Not Controlling.

The headings contained in this Plan are for convenience only and will not control or affect the meaning or construction of any of the terms or provisions of this Plan.

### Section 7.3 Governing Law.

To the extent not preempted by applicable U.S. Federal law, this Plan will be construed in accordance with and governed by the laws of the State of New York as to all matters, including, but not limited to, matters of validity, construction, and performance.

### Section 7.4 Amendment and Termination.

The Board of Directors, or, if permitted pursuant to Rule 16b-3 under the Exchange Act, the Executive Committee may amend or terminate this Plan at any time, provided that no amendment or termination may be made that would adversely affect the right of a Participant to his or her Account Balance as of the date of such amendment or termination.

## Article VIII - Effective Date

The initial plan was effective on August 1, 1996, the amended Plan shall be effective as of February 16, 2001.

EX-12  
Ratio of Earnings to Fixed charges

<TABLE>  
<CAPTION>

EXHIBIT 12

MERRILL LYNCH & CO., INC. AND SUBSIDIARIES  
COMPUTATION OF RATIOS OF EARNINGS TO FIXED CHARGES AND  
COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS  
(dollars in millions)

	FOR THE THREE MONTHS ENDED	
	MARCH 30, 2001	MARCH 31, 2000
	-----	-----
<S>	<C>	<C>
Pre-tax earnings from continuing operations	\$ 1,351	\$ 1,685
Add: Fixed charges (excluding capitalized interest and preferred security dividend requirements of subsidiaries)	5,577	3,843
	-----	-----
Pre-tax earnings before fixed charges	6,928	5,528
	=====	=====
Fixed charges:		
Interest	5,512	3,775
Other (a)	117	120
	-----	-----
Total fixed charges	5,629	3,895
	=====	=====
Preferred stock dividend requirements	14	14
	-----	-----
Total combined fixed charges and preferred stock dividends	\$ 5,643	\$ 3,909
	=====	=====
RATIO OF EARNINGS TO FIXED CHARGES	1.23	1.42
RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS	1.23	1.41

(a) Other fixed charges consists of the interest factor in rentals, amortization of debt issuance costs, preferred security dividend requirements of subsidiaries, and capitalized interest.

Note: Prior period amounts have been restated to reflect the merger with Herzog, Heine, Geduld, Inc. as required under pooling-of-interests accounting.

</TABLE>

May 11, 2001  
New York, New York

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

We have made a review, in accordance with standards established by the American Institute of Certified Public Accountants, of the unaudited interim condensed consolidated financial information of Merrill Lynch & Co., Inc. and subsidiaries ("Merrill Lynch") as of March 30, 2001 and for the three-month periods ended March 30, 2001 and March 31, 2000, as indicated in our report dated May 11, 2001; because we did not perform an audit, we expressed no opinion on that information.

We are aware that our report referred to above, which is included in your Quarterly Report on Form 10-Q for the quarter ended March 30, 2001, is incorporated by reference in the following documents, as amended:

Filed on Form S-8:

Registration Statement No. 33-41942 (1986 Employee Stock Purchase Plan)

Registration Statement No. 33-17908 (Incentive Equity Purchase Plan)

Registration Statement No. 33-33336 (Long-Term Incentive Compensation Plan)

Registration Statement No. 33-51831 (Long-Term Incentive Compensation Plan)

Registration Statement No. 33-51829 (401(k) Savings and Investment Plan)

Registration Statement No. 33-54154 (Non-Employee Directors' Equity Plan)

Registration Statement No. 33-54572 (401(k) Savings and Investment Plan (Puerto Rico))

Registration Statement No. 33-56427 (Amended and Restated 1994 Deferred Compensation Plan for a Select Group of Eligible Employees)

Registration Statement No. 33-55155 (1995 Deferred Compensation Plan for a Select Group of Eligible Employees)

Registration Statement No. 33-60989 (1996 Deferred Compensation Plan for a Select Group of Eligible Employees)

Registration Statement No. 333-00863 (401(k) Savings & Investment Plan)

Registration Statement No. 333-09779 (1997 Deferred Compensation Plan for a Select Group of Eligible Employees)

Registration Statement No. 333-13367 (Restricted Stock Plan for Former Employees of Hotchkis and Wiley)

Registration Statement No. 333-15009 (1997 KECALP Deferred Compensation Plan for a Select Group of Eligible Employees)

Registration Statement No. 333-17099 (Deferred Unit and Stock Unit Plan for Non-Employee Directors)

Registration Statement No. 333-18915 (Long-Term Incentive Compensation Plan for Managers and Producers)

Registration Statement No. 333-32209 (1998 Deferred Compensation Plan for a Select Group of Eligible Employees)

Registration Statement No. 333-33125 (Employee Stock Purchase Plan for Employees of Merrill Lynch Partnerships)

Registration Statement No. 333-41425 (401(k) Savings & Investment Plan)

Registration Statement No. 333-56291 (Long-Term Incentive Compensation Plan for Managers and Producers)

Registration Statement No. 333-60211 (1999 Deferred Compensation Plan for a Select Group of Eligible Employees)

Registration Statement No. 333-62311 (Replacement Options; Midland Walwyn

Inc.)

Registration Statement No. 333-85421 (401(k) Savings and Investment Plan)

Registration Statement No. 333-85423 (2000 Deferred Compensation Plan  
For a Select Group of Eligible Employees)

Registration Statement No. 333-92663 (Long-Term Incentive Compensation  
Plan for Managers and Producers)

Registration Statement No. 333-44912 (2001 Deferred Compensation Plan for  
a Select Group of Eligible Employees)

Filed on Form S-3:

Debt Securities, Warrants, Common Stock, Preferred Securities, and/or  
Depository Shares:

Registration Statement No. 33-54218

Registration Statement No. 2-78338

Registration Statement No. 2-89519

Registration Statement No. 2-83477

Registration Statement No. 33-03602

Registration Statement No. 33-17965

Registration Statement No. 33-27512

Registration Statement No. 33-33335

Registration Statement No. 33-35456

Registration Statement No. 33-42041

Registration Statement No. 33-45327

Registration Statement No. 33-45777

Registration Statement No. 33-49947

Registration Statement No. 33-51489

Registration Statement No. 33-52647

Registration Statement No. 33-55363

Registration Statement No. 33-60413

Registration Statement No. 33-61559

Registration Statement No. 33-65135

Registration Statement No. 333-13649

Registration Statement No. 333-16603

Registration Statement No. 333-20137

Registration Statement No. 333-25255

Registration Statement No. 333-28537

Registration Statement No. 333-42859

Registration Statement No. 333-44173

Registration Statement No. 333-59997

Registration Statement No. 333-68747

Registration Statement No. 333-38792

Registration Statement No. 333-52822

Medium Term Notes:

Registration Statement No. 2-96315

Registration Statement No. 33-03079

Registration Statement No. 33-05125

Registration Statement No. 33-09910

Registration Statement No. 33-16165

Registration Statement No. 33-19820

Registration Statement No. 33-23605

Registration Statement No. 33-27549

Registration Statement No. 33-38879

Other Securities:

Registration Statement No. 333-02275 (Long-Term Incentive Compensation Plan)

Registration Statement No. 333-24889 (Long-Term Incentive Compensation Plan, and Long-Term Incentive Compensation Plan for Managers and Producers)

Registration Statement No. 333-36651 (Hotchkis and Wiley Resale)

Registration Statement No. 333-59263 (Exchangeable Shares of Merrill Lynch & Co., Canada Ltd. re: Midland Walwyn Inc.)

Registration Statement No. 333-67903 (Howard Johnson & Company Resale)

Registration Statement No. 333-45880 (Herzog, Heine, Geduld, Inc. Resale)

We are also aware that the aforementioned report, pursuant to Rule 436(c) under the Securities Act of 1933, is not considered a part of the Registration Statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of Sections 7 and 11 of that Act.

May 11, 2001