

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 September 24, 2004

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	10080
New York, New York	
(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 ☒ NO ☐

Indicate by check mark whether the registrant is an accelerated filer (as defined in Exchange Act Rule 12b-2).

YES ☒ 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.

928,629,718 shares of Common Stock and 2,782,912 Exchangeable Shares as of the close of business on October 25, 2004. 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.

**MERRILL LYNCH & CO., INC. QUARTERLY REPORT ON FORM 10-Q
FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 24, 2004
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Available Information

Merrill Lynch & Co.'s ("ML & Co.") internet address is www.ml.com. ML & Co. makes available, free of charge, our proxy statements, annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934. Investors can find this information under "SEC Filings" through the investor relations section of our website which can be accessed directly at www.ir.ml.com. These reports are available through our website as soon as reasonably practicable after ML & Co. electronically files such material with, or furnishes it to, the Securities and Exchange Commission ("SEC"). Additionally, Merrill Lynch's Corporate Governance Guidelines, Guidelines for Business Conduct, Code of Ethics for Financial Professionals and charters for the committees of our Board of Directors have been filed as exhibits to SEC reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and are also available on Merrill Lynch's Investor Relations website at www.ir.ml.com. The information on Merrill Lynch's websites is not incorporated by reference into this report. Shareholders may obtain copies of these materials, free of charge, upon written request to Judith A. Witterschein, Corporate Secretary, Merrill Lynch & Co., Inc., 222 Broadway, 17th Floor, New York, NY 10038-2510.

PART I. FINANCIAL INFORMATION

ITEM 1. Financial Statements

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

	For the Three Months Ended		
	Sept. 24, 2004	Sept. 26, 2003	Percent Inc. (Dec.)
(in millions, except per share amounts)			
Net Revenues			
Asset management and portfolio service fees	\$ 1,340	\$ 1,184	13.2%
Commissions	1,092	1,099	(0.6)
Principal transactions	390	704	(44.6)
Investment banking	666	678	(1.8)
Other	438	311	40.8
Subtotal	3,926	3,976	(1.3)
Interest and dividend revenues	3,669	2,872	27.8
Less interest expense	2,755	1,850	48.9
Net interest profit	914	1,022	(10.6)
Total Net Revenues	4,840	4,998	(3.2)
Non-Interest Expenses			
Compensation and benefits	2,273	2,448	(7.1)
Communications and technology	363	352	3.1
Occupancy and related depreciation	219	226	(3.1)
Brokerage, clearing, and exchange fees	213	188	13.3
Professional fees	163	146	11.6
Advertising and market development	127	89	42.7
Office supplies and postage	47	46	2.2
Other	231	118	95.8
Net recoveries related to September 11	—	(21)	(100.0)
Total Non-Interest Expenses	3,636	3,592	1.2
Earnings Before Income Taxes	1,204	1,406	(14.4)
Income tax expense	284	403	(29.5)
Net Earnings	\$ 920	\$ 1,003	(8.3)
Preferred Stock Dividends	10	10	—
Net Earnings Applicable to Common Stockholders	\$ 910	\$ 993	(8.4)
Earnings Per Common Share			
Basic	\$ 1.01	\$ 1.10	
Diluted	\$ 0.93	\$ 1.00	
Dividend Paid Per Common Share	\$ 0.16	\$ 0.16	
Average Shares Used in Computing Earnings Per Common Share			
Basic	903.2	904.8	
Diluted	981.8	991.9	

See Notes to Condensed Consolidated Financial Statements.

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

	For the Nine Months Ended		
	Sept. 24, 2004	Sept. 26, 2003	Percent Inc. (Dec.)
(in millions, except per share amounts)			
Net Revenues			
Asset management and portfolio service fees	\$ 4,012	\$ 3,465	15.8%
Commissions	3,619	3,185	13.6
Principal transactions	2,066	2,856	(27.7)
Investment banking	2,267	1,869	21.3
Other	1,120	810	38.3
Subtotal	13,084	12,185	7.4
Interest and dividend revenues	9,858	8,876	11.1
Less interest expense	6,731	6,011	12.0
Net interest profit	3,127	2,865	9.1
Total Net Revenues	16,211	15,050	7.7
Non-Interest Expenses			
Compensation and benefits	7,907	7,758	1.9
Communications and technology	1,061	1,112	(4.6)
Occupancy and related depreciation	638	663	(3.8)
Brokerage, clearing, and exchange fees	631	527	19.7
Professional fees	503	430	17.0
Advertising and market development	381	323	18.0
Office supplies and postage	147	154	(4.5)
Other	648	502	29.1
Net recoveries related to September 11	—	(82)	(100.0)
Total Non-Interest Expenses	11,916	11,387	4.6
Earnings Before Income Taxes	4,295	3,663	17.3
Income tax expense	1,045	1,040	0.5
Net Earnings	\$ 3,250	\$ 2,623	23.9
Preferred Stock Dividends	29	29	—
Net Earnings Applicable to Common Stockholders	\$ 3,221	\$ 2,594	24.2
Earnings Per Common Share			
Basic	\$ 3.51	\$ 2.89	
Diluted	\$ 3.21	\$ 2.68	
Dividend Paid Per Common Share	\$ 0.48	\$ 0.48	
Average Shares Used in Computing Earnings Per Common Share			
Basic	918.8	896.5	
Diluted	1,004.7	967.1	

See Notes to Condensed Consolidated Financial Statements.

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

<i>(dollars in millions)</i>	Sept. 24, 2004	Dec. 26, 2003
ASSETS		
Cash and cash equivalents	\$ 11,405	\$ 10,150
Cash and securities segregated for regulatory purposes or deposited with clearing organizations	18,232	15,171
Securities financing transactions		
Receivables under resale agreements	125,714	71,756
Receivables under securities borrowed transactions	57,834	45,472
	<u>183,548</u>	<u>117,228</u>
Trading assets, at fair value (includes securities pledged as collateral of \$33,828 in 2004 and \$26,233 in 2003)		
Contractual agreements	36,293	37,196
Corporate debt and preferred stock	30,721	22,459
Non-U.S. governments and agencies	27,434	15,991
Mortgages, mortgage-backed, and asset-backed	26,161	20,508
Equities and convertible debentures	24,751	23,170
U.S. Government and agencies	11,981	10,408
Municipals and money markets	5,229	4,577
	<u>162,570</u>	<u>134,309</u>
Investment securities (includes securities pledged as collateral of \$3,564 in 2004 and \$8,724 in 2003)	73,209	74,809
Securities received as collateral	8,292	9,156
Other receivables		
Customers (net of allowance for doubtful accounts of \$46 in 2004 and \$60 in 2003)	38,418	36,955
Brokers and dealers	12,429	7,346
Interest and other	13,867	11,144
	<u>64,714</u>	<u>55,445</u>
Loans, notes, and mortgages (net of allowances of \$314 in 2004 and \$318 in 2003)	55,220	50,993
Separate accounts assets	17,180	17,034
Equipment and facilities (net of accumulated depreciation and amortization of \$5,138 in 2004 and \$5,054 in 2003)	2,478	2,612
Goodwill	4,957	4,814
Other assets	<u>4,876</u>	<u>4,595</u>
Total Assets	<u>\$ 606,681</u>	<u>\$ 496,316</u>

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

<i>(dollars in millions, except per share amounts)</i>	Sept. 24, 2004	Dec. 26, 2003
LIABILITIES		
Securities financing transactions		
Payables under repurchase agreements	\$ 152,739	\$ 96,138
Payables under securities loaned transactions	21,045	11,081
	<u>173,784</u>	<u>107,219</u>
Commercial paper and other short-term borrowings	6,000	5,000
Deposits	77,269	79,457
Trading liabilities, at fair value		
Contractual agreements	42,028	43,353
Non-U.S. governments and agencies	22,571	12,066
Equities and convertible debentures	14,662	10,793
U.S. Government and agencies	11,865	15,323
Corporate debt, municipals and preferred stock	9,623	7,798
	<u>100,749</u>	<u>89,333</u>
Obligation to return securities received as collateral	8,292	9,156
Other payables		
Customers	34,291	28,859
Brokers and dealers	23,748	19,109
Interest and other	26,360	22,344
	<u>84,399</u>	<u>70,312</u>
Liabilities of insurance subsidiaries	3,213	3,353
Separate accounts liabilities	17,180	17,034
Long-term borrowings	102,582	83,299
Long-term debt issued to TOPrSSM partnerships	3,092	3,203
Total Liabilities	<u>576,560</u>	<u>467,366</u>
STOCKHOLDERS' EQUITY		
Preferred Stockholders' Equity (42,500 shares issued and outstanding, liquidation preference \$10,000 per share)	<u>425</u>	<u>425</u>
Common Stockholders' Equity		
Shares exchangeable into common stock	41	43
Common stock (par value \$1.33 ⅓ per share; authorized: 3,000,000,000 shares; issued: 2004 - 1,093,759,473 shares; 2003 - 1,063,205,274 shares)	1,458	1,417
Paid-in capital	12,097	10,676
Accumulated other comprehensive loss (net of tax)	(571)	(551)
Retained earnings	<u>21,525</u>	<u>18,758</u>
	34,550	30,343
Less: Treasury stock, at cost (2004 - 164,660,399 shares; 2003 - 117,294,392 shares)	3,879	1,195
Unamortized employee stock grants	<u>975</u>	<u>623</u>
Total Common Stockholders' Equity	<u>29,696</u>	<u>28,525</u>
Total Stockholders' Equity	<u>30,121</u>	<u>28,950</u>
Total Liabilities and Stockholders' Equity	<u>\$ 606,681</u>	<u>\$ 496,316</u>

See Notes to Condensed Consolidated Financial Statements.

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

	For the Nine Months Ended	
	Sept. 24, 2004	Sept. 26, 2003(a)
<i>(dollars in millions)</i>		
Cash flows from operating activities:		
Net earnings	\$ 3,250	\$ 2,623
Noncash items included in earnings:		
Depreciation and amortization	376	430
Policyholder reserves	109	120
Stock compensation plan expense	394	640
Deferred taxes	152	65
Undistributed (earnings) loss from equity investments	(346)	(82)
Other	(254)	(40)
Changes in operating assets and liabilities:		
Trading assets	(28,155)	(20,089)
Cash and securities segregated for regulatory purposes or deposited with clearing organizations	(2,819)	1,004
Receivables under resale agreements	(53,946)	(3,829)
Receivables under securities borrowed transactions	(12,362)	(13)
Customer receivables	(1,449)	(6,577)
Brokers and dealers receivables	(5,083)	5,031
Trading liabilities	6,019	12,015
Payables under repurchase agreements	56,601	10,561
Payables under securities loaned transactions	9,964	(249)
Customer payables	5,432	5,956
Brokers and dealers payables	4,639	(32)
Other, net	1,524	3,882
Cash provided by (used for) operating activities	<u>(15,954)</u>	<u>11,416</u>
Cash flows from investing activities:		
Proceeds from (payments for):		
Maturities of available-for-sale securities	17,617	22,498
Sales of available-for-sale securities	21,620	49,960
Purchases of available-for-sale securities	(37,345)	(65,568)
Maturities of held-to-maturity securities	156	998
Purchases of held-to-maturity securities	(163)	(1,288)
Loans, notes, and mortgages	(4,223)	(6,063)
Other investments and other assets	(94)	(3,303)
Equipment and facilities	(242)	44
Cash used for investing activities	<u>(2,674)</u>	<u>(2,722)</u>
Cash flows from financing activities:		
Proceeds from (payments for):		
Commercial paper and other short-term borrowings	1,000	(2,338)
Deposits	(2,188)	(2,530)
Issuance and resale of long-term borrowings	35,594	22,037
Settlement and repurchases of long-term borrowings	(17,397)	(20,908)
Derivative financing transactions	5,397	341
Issuance of common stock	461	450
Treasury stock repurchases	(2,619)	—
Other common stock transactions	118	48
Dividends	(483)	(473)
Cash provided by (used for) financing activities	<u>19,883</u>	<u>(3,373)</u>
Increase in cash and cash equivalents	1,255	5,321
Cash and cash equivalents, beginning of period	10,150	10,211
Cash and cash equivalents, end of period	<u>\$ 11,405</u>	<u>\$ 15,532</u>
Supplemental Disclosure of Cash Flow Information:		
Cash paid for:		
Income taxes	\$ 562	\$ 59
Interest	6,557	5,726

(a) Prior period amounts have been restated to reflect the retroactive adoption of the fair value recognition provisions of SFAS No. 123, *Accounting for Stock-Based Compensation*, as discussed in Note 2.

See Notes to Condensed Consolidated Financial Statements.

Merrill Lynch & Co., Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (Unaudited)
September 24, 2004

Note 1. Summary of Significant Accounting Policies

For a complete discussion of Merrill Lynch's accounting policies, refer to the restated excerpt of the Annual Report to Shareholders filed as Exhibit 13 to Merrill Lynch & Co., Inc.'s Annual Report on Form 10-K for the fiscal year ended December 26, 2003, which was included as an exhibit to a Form 8-K dated May 4, 2004 ("2003 Annual Report").

Basis of Presentation

The Condensed Consolidated Financial Statements include the accounts of Merrill Lynch & Co., Inc. ("ML & Co.") and subsidiaries (collectively, "Merrill Lynch"), whose subsidiaries are generally controlled through a majority voting interest but may be controlled by means of a significant minority ownership, by contract, lease or otherwise. In certain cases, Merrill Lynch subsidiaries (i.e., Variable Interest Entities ("VIEs")) may also be consolidated based on a risks and rewards approach as required by Financial Accounting Standards Board ("FASB") Revised Interpretation No. ("FIN") 46R. Intercompany balances have been eliminated. The interim Condensed Consolidated Financial Statements for the three- and nine- month periods are unaudited; however, in the opinion of Merrill Lynch management, all adjustments (consisting of normal recurring accruals) necessary for a fair statement of the Condensed Consolidated Financial Statements have been included.

These unaudited Condensed Consolidated Financial Statements should be read in conjunction with the audited consolidated financial statements included in the 2003 Annual Report. The December 26, 2003 restated Condensed Consolidated Balance Sheet was derived from the consolidated financial statements included in the 2003 Annual Report. 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. In presenting the Condensed Consolidated Financial Statements, management makes estimates that affect the reported amounts and disclosures in the financial statements. Estimates, by their nature, are based on judgment and available information. Therefore, actual results could differ from those estimates and could have a material impact on the Condensed Consolidated Financial Statements, and it is possible that such changes could occur in the near term. Certain reclassifications have been made to prior period financial statements, where appropriate, to conform to the current period presentation.

New Accounting Pronouncements

On September 30, 2004, the Emerging Issues Task Force ("EITF") affirmed its previous consensus regarding Issue 04-8, *The Effect of Contingently Convertible Debt on Diluted Earnings Per Share*. The guidance in this Issue requires that contingently convertible instruments be included in diluted earnings per share computations (if dilutive) regardless of whether the market price trigger has been met. The effective date of this consensus is expected to be for reporting periods ending after December 15, 2004. Retroactive restatement of earnings per share amounts is required for contingent convertible debt issuances that are outstanding at the effective date. Merrill Lynch currently has two contingently convertible debt issuance outstanding (see Note 8 to the Condensed Consolidated Financial Statements for additional information on LYONs®) and estimates that the inclusion of these instruments in the earnings per share computation for the third quarter of 2004 would have resulted in an increase in diluted shares of approximately 6% and a reduction in diluted earnings per share of 3%.

On December 15, 2003, the FASB issued an Exposure Draft, *Earnings Per Share, an Amendment of FASB Statement No. 128* (the "Amendment"). The proposed Amendment requires, in part, that for contracts that can be settled in either cash or shares, issuing entities should assume share settlement for purposes of computing diluted earnings per share. The FASB subsequently decided that retroactive restatement of earnings per share is not required for those contracts that are appropriately modified prior to the effective date of the Amendment. This Amendment is expected to be finalized in the fourth quarter of 2004 and effective for reporting periods ending after December 15, 2004. Currently, Merrill Lynch has two debt issuances outstanding for which Merrill Lynch has the right to elect cash or share settlement in the event that holders of LYONs® require Merrill Lynch to repurchase the securities. (see Note 8 to the Condensed Consolidated Financial Statements for additional information on LYONs®). On November 1, 2004, Merrill Lynch entered into supplemental indentures pursuant to which it surrendered the right to elect to pay such amounts in common stock and instead will be obligated to pay such amounts when and if required in cash. As a result, the proposed Amendment, if finalized based on the decisions of the Board reached to date, would have no impact on Merrill Lynch's diluted earnings per share.

On June 30, 2004, the EITF reached a consensus on Issue 02-14, *Whether the Equity Method of Accounting Applies When an Investor Does Not Have an Investment in Voting Stock of an Investee but Exercises Significant Influence through Other Means*. The consensus reached indicates that in situations where an investor has the ability to exercise significant influence over the investee, an investor should apply the equity method of accounting only when it has either common stock or “in-substance” common stock of a corporation. The guidance prohibits the application of the equity method in instances where an investment is neither common stock nor “in-substance” common stock. Merrill Lynch will adopt the new guidance in the fourth quarter of 2004 on a prospective basis, and as a result, will adopt the cost method of accounting for certain investments to which the equity method of accounting had previously been applied. Under the equity method of accounting, Merrill Lynch recognized cumulative \$320 million in Other Revenues related to one of these investments over the period from the third quarter of 2003 to the third quarter of 2004. Under the cost method of accounting, Merrill Lynch will record income when dividends are declared by the investee.

On May 19, 2004, the FASB issued a final FASB Staff Position (“FSP”) 106-2, *Accounting and Disclosure Requirements Related to the Medicare Prescription Drug, Improvement and Modernization Act of 2003*, which supersedes FSP 106-1 of the same title issued in January 2004. FSP 106-2 provides guidance on accounting for the effects of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (“the Act”) that was signed into law on December 8, 2003. The Act allows for a tax-free government subsidy to employers providing “actuarially equivalent” prescription drug benefits to its Medicare eligible retirees. Management concluded that the benefits provided under Merrill Lynch’s plan are “actuarially equivalent” to Medicare Part D and qualify for the subsidy provided by the Act. Effective for the third quarter of 2004, Merrill Lynch adopted FSP 106-2 using the prospective application method. As a result, Merrill Lynch’s accumulated postretirement benefit obligation has been reduced by approximately \$43 million and the net periodic postretirement benefit cost for the third quarter of 2004 has decreased by \$1.3 million.

In March 2004, the EITF reached a final consensus on Issue 03-1, *The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments*. EITF 03-1 requires that when the fair value of an investment security is less than its carrying value, an impairment exists for which the determination must be made as to whether the impairment is other-than-temporary. The EITF 03-1 impairment model applies to all investment securities accounted for under SFAS No. 115, *Accounting for Certain Investments in Debt and Equity Securities* and to investment securities accounted for under the cost method to the extent an impairment indicator exists. Under the guidance, the determination of whether an impairment is other-than-temporary and therefore would result in a recognized loss depends on market conditions and management’s intent and ability to hold the securities with unrealized losses. In September 2004, the FASB approved FSP EITF 03-1, which defers the effective date for recognition and measurement guidance contained in EITF 03-1 until certain issues are resolved. Merrill Lynch expects that the issues will be resolved in the fourth quarter and will adopt the guidance at the time it is issued. Merrill Lynch previously implemented the disclosure requirements of EITF 03-1 in its December 26, 2003 Consolidated Financial Statements. See Note 6 to the 2003 Annual Report for additional information.

On December 23, 2003, the FASB issued SFAS No. 132 (revised 2003), *Employers’ Disclosures about Pensions and Other Postretirement Benefits*. The revised SFAS No. 132 retains the disclosure requirements in the original statement and requires additional disclosures about pension plan assets, benefit obligations, cash flows, benefit costs and other relevant information. Merrill Lynch adopted the provisions of SFAS No. 132 as of December 26, 2003. See Note 12 to the Condensed Consolidated Financial Statements for these disclosures.

In December of 2003, the American Institute of Certified Public Accountants (“AICPA”) issued Statement of Position (“SOP”) 03-3, *Accounting for Certain Loans or Debt Securities Acquired in a Transfer*. SOP 03-3 addresses revenue recognition and impairment assessments for certain loans and debt securities that were purchased at a discount that was at least in part due to credit quality. SOP 03-3 states that where expected cash flows from the loan or debt security can be reasonably estimated, the difference between the purchase price and the expected cash flows (i.e., the “accretable yield”) should be accreted into income. In addition, the SOP prohibits the recognition of a reserve for impairment on the purchase date. Further, the SOP requires that the allowance for loan losses be supported through a cash flow analysis, on either an individual or on a pooled basis, for all loans that fall within the scope of the guidance. Merrill Lynch will adopt SOP 03-3 as of the beginning of fiscal year 2005 and is currently assessing the potential impact on the Condensed Consolidated Financial Statements.

On July 7, 2003, the AICPA issued SOP 03-1, *Accounting and Reporting by Insurance Enterprises for Certain Nontraditional Long-Duration Contracts and for Separate Accounts*. The SOP was effective for financial statements for Merrill Lynch beginning in 2004. The SOP required the establishment of a liability for contracts that contain death or other insurance benefits using a specified reserve methodology that is different from the methodology that Merrill Lynch previously employed. The adoption of SOP 03-1 resulted in an additional \$45 million of pre-tax expense in the first quarter of 2004.

On January 17, 2003, the FASB issued FASB Interpretation No. 46 (“FIN 46”), which clarifies when an entity should consolidate entities that are considered VIEs, and on December 24, 2003 the FASB issued a revised standard (“FIN 46R”). A VIE is an entity in which equity investors do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties, and may include many types of Special Purpose Entities (“SPEs”). FIN 46R requires that an entity consolidate a VIE if that enterprise has a variable interest that will absorb a majority of the VIE’s expected losses, receive a majority of the VIE’s expected residual returns, or both. FIN 46R does not apply to qualifying special purpose entities (“QSPEs”), the accounting for which is governed by SFAS No. 140. As permitted by the transition guidance in FIN 46R, Merrill Lynch adopted the revised standard on an entity-by-entity basis. At December 26, 2003, Merrill Lynch applied FIN 46R to all VIEs with which it is involved, with the exception of those VIEs that issue Merrill Lynch Trust Originated Preferred Securities (“TOPrSSM”). The adoption of FIN 46R at December 26, 2003 was reported as a cumulative effect of a change in accounting principle and did not have a material effect on the Consolidated Financial Statements. As of March 26, 2004, Merrill Lynch applied FIN 46R to those VIEs that issue TOPrSSM. As a result, these VIEs were deconsolidated. The deconsolidation of TOPrSSM did not have a material impact on the Condensed Consolidated Financial Statements of Merrill Lynch and was reported by retroactively restating prior period financial statements. See Note 6 to the Condensed Consolidated Financial Statements for additional FIN 46R disclosure.

Note 2. Change in Accounting for Stock-Based Compensation

On December 31, 2002 the FASB issued SFAS No. 148, *Accounting for Stock-Based Compensation — Transition and Disclosure, an amendment of FASB Statement No. 123, Accounting for Stock-Based Compensation*. Effective for the first quarter of 2004, Merrill Lynch adopted the fair value method of accounting for stock-based compensation under SFAS No. 123, using the retroactive restatement method described in SFAS No. 148. Under the fair value recognition provisions of SFAS No. 123, stock-based compensation cost is measured at the grant date based on the value of the award and is recognized as expense over the vesting period. The December 26, 2003 Condensed Consolidated

Balance Sheet and the Condensed Consolidated Statements of Earnings for the three and nine months ended September 26, 2003 have been restated for the retroactive adoption of the fair value recognition provisions of SFAS No. 123. Accordingly, the December 26, 2003 Condensed Consolidated Balance Sheet reflects a \$4.0 billion increase in paid-in capital, a \$2.7 billion decrease in retained earnings, and a \$1.3 billion increase in deferred income tax assets. See Note 15 to the 2003 Annual Report for additional information related to stock-based compensation.

Note 3. Other Significant Events

Restructuring and Other Charges

During the fourth quarter of 2001, Merrill Lynch's management formally committed to a restructuring plan designed to position Merrill Lynch for improved profitability and growth, which included the resizing of selected businesses and other structural changes. As a result, Merrill Lynch incurred a 2001 fourth quarter pre-tax charge to earnings of \$2.2 billion, which included restructuring costs of \$1.8 billion and other charges of \$396 million. Utilization of the restructuring reserve at September 24, 2004 is as follows:

(dollars in millions)

	Balance Dec. 26, 2003	Utilized in 2004	Balance Sept. 24, 2004
Category:			
Severance costs	\$ 5	\$ (3)	\$ 2
Facilities costs	206	(34)	172
Other costs	20	(18)(1)	2
	<u>\$ 231</u>	<u>\$ (55)</u>	<u>\$ 176</u>

(1) The 2004 utilization includes changes in estimate, which are attributable to differences in actual costs from initial estimates in implementing the original restructuring plan. As a result of changes in estimates, net reserves of \$13 million were reversed in 2004 and are included in Other Expenses.

Note 4. Segment Information

In reporting to management, Merrill Lynch's operating results are categorized into three business segments: the Global Markets and Investment Banking Group ("GMI"), Global Private Client ("GPC") and Merrill Lynch Investment Managers ("MLIM"). Prior period amounts have been restated to reflect the retroactive restatement for accounting for stock-based compensation under SFAS No. 123, and to conform to the current period presentation. For information on each segment's business activities, see the 2003 Annual Report.

Results by business segment are as follows:

(dollars in millions)

	<u>GMI</u>	<u>GPC</u>	<u>MLIM</u>	<u>Corporate Items</u>	<u>Total</u>
Three Months Ended September 24, 2004					
Non-interest revenues	\$ 1,548	\$ 2,010	\$ 368	\$ —(1)	\$ 3,926
Net interest profit(2)	<u>702</u>	<u>303</u>	<u>5</u>	<u>(96)(3)</u>	<u>914</u>
Net revenues	2,250	2,313	373	(96)	4,840
Non-interest expenses	<u>1,479</u>	<u>1,904</u>	<u>263</u>	<u>(10)(1)</u>	<u>3,636</u>
Pre-tax earnings (loss)	<u>\$ 771</u>	<u>\$ 409</u>	<u>\$ 110</u>	<u>\$ (86)</u>	<u>\$ 1,204</u>
Quarter-end total assets	\$523,539	\$ 69,028	\$ 8,609	\$ 5,505	\$606,681
Three Months Ended September 26, 2003					
Non-interest revenues	\$ 1,681	\$ 1,962	\$ 332	\$ 1(1)	\$ 3,976
Net interest profit(2)	<u>794</u>	<u>352</u>	<u>6</u>	<u>(130)(3)</u>	<u>1,022</u>
Net revenues	2,475	2,314	338	(129)	4,998
Non-interest expenses	<u>1,489</u>	<u>1,859</u>	<u>269</u>	<u>(25)(1)</u>	<u>3,592</u>
Pre-tax earnings (loss)	<u>\$ 986</u>	<u>\$ 455</u>	<u>\$ 69</u>	<u>\$ (104)</u>	<u>\$ 1,406</u>
Quarter-end total assets	\$412,903	\$ 64,026	\$ 5,475	\$ 5,160	\$487,564
Nine Months Ended September 24, 2004					
Non-interest revenues	\$ 5,664	\$ 6,284	\$ 1,140	\$ (4)(1)	\$ 13,084
Net interest profit(2)	<u>2,482</u>	<u>941</u>	<u>15</u>	<u>(311)(3)</u>	<u>3,127</u>
Net revenues	8,146	7,225	1,155	(315)	16,211
Non-interest expenses	<u>5,270</u>	<u>5,858</u>	<u>824</u>	<u>(36)(1)</u>	<u>11,916</u>
Pre-tax earnings (loss)	<u>\$ 2,876</u>	<u>\$ 1,367</u>	<u>\$ 331</u>	<u>\$ (279)</u>	<u>\$ 4,295</u>
Nine Months Ended September 26, 2003					
Non-interest revenues	\$ 5,671	\$ 5,550	\$ 966	\$ (2)(1)	\$ 12,185
Net interest profit(2)	<u>2,130</u>	<u>1,009</u>	<u>18</u>	<u>(292)(3)</u>	<u>2,865</u>
Net revenues	7,801	6,559	984	(294)	15,050
Non-interest expenses	<u>4,994</u>	<u>5,534</u>	<u>819</u>	<u>40(1)</u>	<u>11,387</u>
Pre-tax earnings (loss)	<u>\$ 2,807</u>	<u>\$ 1,025</u>	<u>\$ 165</u>	<u>\$ (334)</u>	<u>\$ 3,663</u>

(1) Primarily represents the elimination of intersegment revenues and expenses.

(2) Management views interest income net of interest expense in evaluating results.

(3) Represents acquisition financing costs and other corporate interest, including the impact of TOPr\$M. See Note 6 for additional information on the impact of TOPr\$SM.

Note 5. Investment Securities

Investment securities at September 24, 2004 and December 26, 2003 are presented below:

<i>(dollars in millions)</i>	Sept. 24, 2004	Dec. 26, 2003
Investment securities		
Available-for-sale ⁽¹⁾	\$ 64,021	\$ 66,121
Trading	5,200	4,798
Held-to-maturity	682	636
Non-qualifying ⁽²⁾		
Investments in and advances to cost and equity method investees	7,473	7,191
Investments of Insurance Subsidiaries ⁽³⁾	1,397	1,442
Deferred compensation hedges ⁽⁴⁾	709	636
Investments in TOPrSM partnerships	548	564
Total	\$ 80,030	\$ 81,388

(1) At September 24, 2004 and December 26, 2003, includes \$6.8 billion and \$6.6 billion, respectively, of investment securities reported in Cash and securities segregated for regulatory purposes or deposited with clearing organizations.

(2) Non-qualifying for SFAS No. 115 purposes.

(3) Primarily represents insurance policy loans.

(4) Represents investments economically hedging deferred compensation liabilities.

Note 6. Securitization Transactions and Transactions with Special Purpose Entities (SPEs)

In the normal course of business, Merrill Lynch securitizes commercial and residential mortgage and home equity loans; municipal, government, and corporate bonds; and other types of financial assets. SPEs are often used when entering into or facilitating securitization transactions. Merrill Lynch's involvement with SPEs used to securitize financial assets includes: establishing SPEs; selling assets to SPEs; structuring SPEs; underwriting, distributing, and making loans to SPEs; making markets in securities issued by SPEs; engaging in derivative transactions with SPEs; owning notes or certificates issued by SPEs; and/or providing liquidity facilities and other guarantees to SPEs.

Merrill Lynch securitized assets of \$48.6 billion and \$48.5 billion for the nine months ended September 24, 2004 and September 26, 2003, respectively. For the nine months ended September 24, 2004, and September 26, 2003, Merrill Lynch received \$49.2 billion and \$49.1 billion, respectively, of proceeds, and other cash inflows, from new securitization transactions, and recognized net securitization gains of \$341 million and \$190 million, respectively, in Merrill Lynch's Condensed Consolidated Statements of Earnings. The increase in the net gains in 2004 reflects a higher proportion of more profitable securitization transactions. Merrill Lynch generally records assets prior to securitization at fair value.

For the first nine months of 2004 and 2003, cash inflows from securitizations related to the following asset types:

(dollars in millions)

Asset category	Nine Months Ended	
	Sept. 24, 2004	Sept. 26, 2003
Residential mortgage loans	\$ 35,456	\$ 35,105
Municipal bonds	7,582	8,409
Corporate and government bonds	1,003	1,330
Commercial loans and other	5,172	4,304
	<u>\$ 49,213</u>	<u>\$ 49,148</u>

Retained interests in securitized assets were approximately \$2.0 billion and \$2.7 billion at September 24, 2004 and December 26, 2003, respectively, which related primarily to residential mortgage loan and municipal bond securitization transactions. The majority of the retained interest balance consists of mortgage-backed securities that have observable market prices. These retained interests include mortgage-backed securities that Merrill Lynch has purchased and expects to sell to investors in the normal course of its underwriting activity.

The following table presents information on retained interests, excluding the offsetting benefit of financial instruments used to hedge risks, held by Merrill Lynch as of September 24, 2004 arising from Merrill Lynch's residential mortgage loan, municipal bond and other securitization transactions. The sensitivities of the current fair value of the retained interests to immediate 10% and 20% adverse changes in those assumptions and parameters are also shown.

(dollars in millions)

	Residential Mortgage Loans	Municipal Bonds	Other
Retained interest amount	\$ 1,119	\$ 670	\$ 227
Weighted average life (in years)	4.0	3.1	3.0
Range	0.0 – 17.9	0.1 – 6.5	0.8 – 9.8
Weighted average credit losses (rate per annum)	0.9%	0%	1.1%
Range	0.0 – 8.0%	0%	0.0 – 8.0%
Impact on fair value of 10% adverse change	\$ (8)	\$ –	\$ –
Impact on fair value of 20% adverse change	\$ (16)	\$ –	\$ –
Weighted average discount rate	6.6%	2.8%	15.0%
Range	2.2 – 50.0%	1.6 – 12.0%	2.4 – 25.0%
Impact on fair value of 10% adverse change	\$ (24)	\$ (69)	\$ (7)
Impact on fair value of 20% adverse change	\$ (43)	\$ (131)	\$ (13)
Weighted average prepayment speed (CPR)	22.3%	15.7%	1.3%
Range	0.0 – 55.0%	5.0 – 24.0%	0.0 – 15.0%
Impact on fair value of 10% adverse change	\$ (16)	\$ (1)	\$ (1)
Impact on fair value of 20% adverse change	\$ (31)	\$ (1)	\$ (1)

N/A = Not Applicable

CPR = Constant Prepayment Rate

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

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

The weighted average assumptions and parameters used initially to value retained interests relating to securitizations effected in 2004 that were still held by Merrill Lynch as of September 24, 2004 are as follows:

	Residential Mortgage Loans	Municipal Bonds	Other
Weighted average life (in years)	3.6	N/A	N/A
Credit losses (rate per annum)	0.3%	0.0%	0.0%
Weighted average discount rate	4.9%	3.9%	3.0%
Prepayment speed assumption (CPR)	13.7%	N/A	N/A

N/A = Not Applicable

CPR = Constant Prepayment Rate

For residential mortgage loan and other securitizations, the investors and the securitization trust have no recourse to Merrill Lynch's other assets for failure of mortgage holders to pay when due.

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

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

The maximum commitment under these liquidity and default guarantees totaled \$19.8 billion and \$17.0 billion at September 24, 2004 and December 26, 2003, respectively. The fair value of the commitments approximated \$152 million and \$126 million at September 24, 2004 and December 26, 2003, respectively, which is reflected in the Condensed Consolidated Financial Statements. Of these arrangements, \$3.1 billion and \$2.8 billion at September 24, 2004 and December 26, 2003, respectively, represent agreements where the guarantee is provided to the SPE by a third party financial intermediary and Merrill Lynch enters into a reimbursement agreement with the financial

intermediary. In these arrangements, if the financial intermediary incurs losses, Merrill Lynch has up to one year to fund those losses. Additional information regarding these commitments is provided in Note 11 to the Condensed Consolidated Financial Statements and in Note 13 in the 2003 Annual Report.

The following table summarizes principal amounts outstanding and delinquencies of securitized financial assets as of September 24, 2004 and December 26, 2003, and net credit losses for the year-to-date periods then ended.

(dollars in millions)

	Residential Mortgage Loans	Municipal Bonds	Other
September 24, 2004			
Principal Amount Outstanding	\$ 30,738	\$ 13,883	\$ 8,794
Delinquencies	31	—	—
Net Credit Losses	2	—	9
December 26, 2003			
Principal Amount Outstanding	\$ 43,777	\$ 14,890	\$ 4,527
Delinquencies	54	—	—
Net Credit Losses	3	—	8

Variable Interest Entities

In January 2003, the FASB issued FIN 46, which provides additional guidance on the application of Accounting Research Bulletin No. 51, *Consolidated Financial Statements*, for enterprises that have interests in entities that meet the definition of a VIE, and on December 24, 2003, the FASB issued FIN 46R. FIN 46R requires that an entity shall consolidate a VIE if that enterprise has a variable interest that will absorb a majority of the VIE's expected losses, receive a majority of the VIE's expected residual returns, or both.

As permitted under the transition guidance, Merrill Lynch adopted the provisions of FIN 46R on an entity-by-entity basis. At December 26, 2003 Merrill Lynch applied FIN 46R for purposes of determining those VIEs that must be consolidated or disclosed as giving rise to a significant variable interest, with the exception of those VIEs that issue TOPrSSM, in which case Merrill Lynch applied FIN 46R beginning in the first quarter of 2004. Merrill Lynch accounted for those VIEs that were consolidated under FIN 46R at year-end 2003 as a cumulative effect of a change in accounting principle, which did not have a material effect on the year-end 2003 consolidated financial statements.

During the first quarter of 2004, in accordance with FIN 46R, Merrill Lynch deconsolidated the partnerships and trusts that issue TOPrSSM since Merrill Lynch does not bear the majority of the risks and rewards of those entities. As a result, the dividends, of approximately \$48 million per quarter, related to the TOPrSSM have been reclassified from dividends on preferred securities issued by subsidiaries to net revenues (primarily interest expense), and the debt, of approximately \$3.2 billion, and partnership interests, of \$564 million, related to the entities have been included in the Condensed Consolidated Balance Sheets as Long-term debt issued to TOPrSSM partnerships and Investment securities, respectively. Merrill Lynch has reflected the deconsolidation of TOPrSSM by retroactively restating prior period financial statements in order to provide comparability from period to period.

Merrill Lynch has entered into transactions with a number of VIEs in which it is the primary beneficiary and therefore must consolidate the VIE; or is a significant variable interest holder in the VIE. These VIEs are as follows:

- Merrill Lynch is the primary beneficiary of VIEs that own convertible bonds purchased from Merrill Lynch, in which Merrill Lynch maintains a call option to repurchase the convertible bonds from the VIE. The purpose of these VIEs is to market convertible bonds to a broad investor base by separating the bonds into callable debt and a conversion call option. Assets held by these VIEs are reported in Equities and convertible debentures or Receivables under resale agreements, depending on the nature of the transaction, in the Condensed Consolidated Balance Sheet. Holders of the beneficial interests in these VIEs have no recourse to the general credit of Merrill Lynch; their investment is paid exclusively from the convertible bonds held by the VIE.
- Merrill Lynch is the primary beneficiary of “maturity shortening transactions,” in which the VIE serves to shorten the maturity of a fixed income security, and, at the maturity date of the VIE, Merrill Lynch has the obligation to repurchase some or all of the securities held by the VIE. Assets held by these VIEs are reported in Trading assets (Corporate debt and preferred stock). The beneficial interest holders in these VIEs have recourse to Merrill Lynch to the extent that the underlying assets that Merrill Lynch is required to repurchase have declined in value from the initial transaction date.
- Merrill Lynch is the sponsor and/or guarantor of certain mutual funds, closed-end funds and similar investment entities that provide a guaranteed return to the investors at the maturity of the fund. This guarantee may include a guarantee of the return of an initial investment or of the initial investment plus an agreed upon return depending on the terms of the funds. Although the investors typically hold voting equity in the entity, these entities are deemed to be VIEs because their losses are limited. Investors in these VIEs have recourse to Merrill Lynch to the extent that the value of the assets held by the VIEs at maturity is less than the guaranteed amount. In some instances Merrill Lynch is the primary beneficiary and must consolidate the fund. In instances where Merrill Lynch is not the primary beneficiary, the guarantees related to these funds are considered to be a significant variable interest and further discussed in Note 11 to the Condensed Consolidated Financial Statements.
- Merrill Lynch has made loans to, and/or investments in, VIEs that hold loan receivable assets and real estate, and as a result of these loans and investments, Merrill Lynch may be either the primary beneficiary of and consolidate the VIE, or may be a significant variable interest holder. These VIEs are primarily designed to provide temporary on or off-balance sheet financing to clients and/or to invest in real estate. Assets held by VIEs where Merrill Lynch has provided financing and is the primary beneficiary are recorded in Other assets and/or Loans, notes, and mortgages in the Condensed Consolidated Balance Sheet. Assets held by VIEs where Merrill Lynch has invested in real estate partnerships are classified as Investment securities where Merrill Lynch holds a significant variable interest, and in Other assets where Merrill Lynch is the primary beneficiary. The beneficial interest holders in these VIEs have no recourse to the general credit of Merrill Lynch; their investments are paid exclusively from the assets in the VIE.
- Merrill Lynch has a significant variable interest in municipal bond securitization QSPEs to which it provides liquidity and default facilities. Additional information on these programs is provided in the retained interest securitization disclosures above and in Note 11 to the Condensed Consolidated Financial Statements.

- Merrill Lynch has entered into transactions with VIEs that are used, in part, to provide tax planning strategies to investors, and in certain instances, to Merrill Lynch. Merrill Lynch is a significant variable interest holder in these VIEs.
- Merrill Lynch has a significant variable interest in a residential mortgage securitization entered into by one of its banking subsidiaries. Specifically, Merrill Lynch retains a 97% interest in the VIE. In accordance with the previous accounting guidance of SFAS No. 125, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, this entity qualifies as a QSPE, and therefore Merrill Lynch does not consolidate the VIE. The 97% interest is reported in Investment securities on Merrill Lynch's Condensed Consolidated Balance Sheets.
- Merrill Lynch has entered into transactions with VIEs where Merrill Lynch is a derivative counterparty to a VIE that serves to synthetically expose investors to a specific credit risk. Based on the provisions of FIN 46R, Merrill Lynch does not have a significant variable interest since the derivative it has purchased does not absorb variability of the VIE. However, because these structures represent a significant Merrill Lynch sponsored program, information related to these structures has been included in the following table.

The following tables summarize Merrill Lynch's involvement with the VIEs listed above as of September 24, 2004 and December 26, 2003, respectively. Where an entity is a significant variable interest holder, FIN 46R requires that entity to disclose its maximum exposure to loss as a result of its interest in the VIE. It should be noted that this measure does not reflect Merrill Lynch's estimate of the actual losses that could result from adverse changes because it does not reflect the economic hedges Merrill Lynch enters into to reduce its exposure.

(dollars in millions)

Description	September 24, 2004				
	Primary Beneficiary		Significant Variable Interest Holder		
	Asset Size	Recourse to Merrill Lynch(4)	Asset Size	Maximum Exposure	
Convertible Bond Stripping	\$ 1,255	None	\$ —	\$ —	—
Maturity Shortening	153	\$ —	—	—	—
Guaranteed Funds	1,118	1,118	—	—	—
Loan and Real Estate VIEs	711	None	1,182	1,023	
Municipal Bond Securitizations(1)	—	—	19,752	19,752	
Tax Planning VIEs(2)	—	—	2,295	107	
Mortgage Securitization	—	—	298	289	
Synthetic Credit Risk VIEs(3)	—	—	6,524	462	

(dollars in millions)

Description	December 26, 2003			
	Primary Beneficiary		Significant Variable Interest Holder	
	Asset Size	Recourse to Merrill Lynch(4)	Asset Size	Maximum Exposure
Convertible Bond Stripping	\$ 1,864	None	\$ —	\$ —
Maturity Shortening	379	\$ 1	—	—
Guaranteed Funds	863	863	—	—
Loan and Real Estate VIEs	775	None	636	567
Municipal Bond Securitizations(1)	—	—	16,927	16,927
Tax Planning VIEs(2)	—	—	2,811	114
Mortgage Securitization	—	—	345	334
Synthetic Credit Risk VIEs(3)	—	—	6,402	474

(1) The maximum exposure for Municipal Bond Securitizations reflects Merrill Lynch's potential liability as a result of the liquidity and default facilities entered into with the VIEs. It significantly overestimates Merrill Lynch's probability weighted exposure to these VIEs because it does not reflect the economic hedges that are designed to be effective in principally offsetting Merrill Lynch's exposure to loss.

(2) The maximum exposure for Tax Planning VIEs reflects the fair value of derivatives entered into with the VIEs, as well as the maximum exposure to loss associated with indemnifications made to investors in the VIEs.

(3) The maximum exposure for Synthetic Credit Risk VIEs is the asset carrying value of the derivatives entered into with the VIEs as of September 24, 2004 and December 26, 2003, respectively.

(4) This column reflects the extent, if any, to which investors have recourse to Merrill Lynch beyond the assets held in the VIE.

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

Loans, Notes, and Mortgages and related commitments to extend credit at September 24, 2004 and December 26, 2003, are presented below:

(dollars in millions)

	Loans		Commitments	
	Sept. 24, 2004	Dec. 26, 2003	Sept. 24, 2004(1)	Dec. 26, 2003
Consumer and small- and middle-market business:				
Mortgages	\$ 15,884	\$ 16,688	\$ 4,985	\$ 4,842
Small- and middle-market business	5,749	6,737	3,476	3,411
Other	5,086	4,045	815	603
Commercial:				
Secured	26,155	21,048	12,946	12,425
Unsecured investment grade	1,499	1,806	18,032	15,028
Unsecured non-investment grade	847	669	1,931	562
Total	\$ 55,220	\$ 50,993	\$ 42,185	\$ 36,871

(1) See Note 11 for the maturity profile of these commitments.

The loan amounts are net of an allowance for loan losses of \$314 million and \$318 million as of September 24, 2004 and December 26, 2003, respectively.

Consumer and small- and middle-market business loans, substantially all of which are secured by real and/or personal property, consisted of approximately 213,500 individual loans at September 24, 2004 and included residential mortgages, home equity loans, small- and middle-market business loans, and other loans to individuals for household, family, or other personal expenditures. Commercial loans, which at September 24, 2004 consisted of approximately 7,200 separate loans, included syndicated loans and other loans to corporations and other businesses. Secured loans and commitments include lending activities made in the normal course of Merrill Lynch's securities and financing businesses. The investment grade and non-investment grade categorization is determined using the credit rating agency equivalent of internal credit ratings. Non-investment grade counterparties are those rated lower than BBB or equivalent ratings by recognized credit rating agencies. Merrill Lynch enters into credit default swaps to mitigate credit exposure primarily related to funded and unfunded unsecured commercial loans. The notional value of these swaps totaled \$5.5 billion and \$4.9 billion at September 24, 2004 and December 26, 2003, respectively.

The above amounts include \$7.5 billion and \$7.6 billion of loans held-for-sale at September 24, 2004 and December 26, 2003, respectively. Loans held-for-sale are loans which management expects to sell prior to maturity. At September 24, 2004, such loans consisted of \$4.5 billion of consumer loans, primarily residential mortgages, and \$3.0 billion of commercial loans, approximately 48% of which are to investment grade counterparties. At December 26, 2003, such loans consisted of \$5.2 billion of consumer loans, primarily residential mortgages, and \$2.4 billion of commercial loans, approximately 59% of which were to investment grade counterparties. For information on the accounting policy related to loans, notes, and mortgages, see Note 1 in the 2003 Annual Report.

Note 8. Commercial Paper, Short- and Long-Term Borrowings, and Bank Deposits

ML & Co. is the primary issuer of all debt instruments. For local tax or regulatory reasons, debt is also issued by certain subsidiaries.

Total borrowings at September 24, 2004 and December 26, 2003, which is comprised of Commercial paper and other short-term borrowings, Long-term borrowings and Long-term debt issued to TOPrSSM partnerships, consisted of the following:

(dollars in millions)

	Sept. 24, 2004	Dec. 26, 2003
Senior debt issued by ML & Co.	\$ 100,823	\$ 82,814
Senior debt issued by subsidiaries, guaranteed by ML & Co.	6,453	5,989
Other subsidiary financing — not guaranteed by ML & Co.	1,230	1,455
Other subsidiary financing — non-recourse	3,168	1,244
Total	\$ 111,674	\$ 91,502

These borrowing activities may create exposure to market risk, most notably interest rate, equity, and currency risk. Refer to Note 1 in the 2003 Annual Report, Derivatives section, for additional information on the use of derivatives to hedge these risks and the accounting for derivatives embedded in these instruments. Other subsidiary financing — non-recourse is primarily attributable to entities

qualifying as VIEs, in accordance with FIN 46R. Additional information regarding VIEs is provided in Note 6 to the Condensed Consolidated Financial Statements, Variable Interest Entities section.

Borrowings and Bank deposits at September 24, 2004 and December 26, 2003 are presented below:

(dollars in millions)

	Sept. 24, 2004	Dec. 26, 2003
Commercial paper and other short-term borrowings		
Commercial paper	\$ 5,121	\$ 4,568
Other	879	432
Total	<u>\$ 6,000</u>	<u>\$ 5,000</u>
Long-term borrowings(1)		
Fixed-rate obligations(2)(4)	\$ 43,968	\$ 40,413
Variable-rate obligations(3)(4)	57,040	41,297
Zero-coupon contingent convertible debt (LYONs®)	4,666	4,792
Total	<u>\$ 105,674</u>	<u>\$ 86,502</u>
Bank deposits		
U.S.	\$ 63,469	\$ 65,409
Non-U.S.	13,800	14,048
Total	<u>\$ 77,269</u>	<u>\$ 79,457</u>

(1) Includes Long-term debt issued to TOPrSM partnerships.

(2) Fixed-rate obligations are generally swapped to floating rates.

(3) Variable interest rates are generally based on rates such as LIBOR, the U.S. Treasury Bill Rate, or the Federal Funds Rate.

(4) Included are various equity-linked or other indexed instruments.

Long-term borrowings, including adjustments related to fair value hedges and various equity-linked or other indexed instruments, at September 24, 2004, mature as follows:

(dollars in millions)

9/25/04 – 9/24/05	\$ 17,565	17%
9/25/05 – 9/24/06	14,655	14
9/25/06 – 9/24/07	12,906	12
9/25/07 – 9/24/08	8,683	8
9/25/08 – 9/24/09	19,490	18
9/25/09 and thereafter	32,375	31
Total	<u>\$ 105,674</u>	<u>100%</u>

Certain long-term borrowing agreements contain provisions whereby the borrowings are redeemable at the option of the holder at specified dates prior to maturity. Management believes, however, that a portion of such borrowings will remain outstanding beyond their earliest redemption date. A limited number of notes whose coupon or repayment terms are linked to the performance of individual equity securities, or baskets of securities, or equity or other indices, may be accelerated based on the value of a referenced index or security, in which case Merrill Lynch may be required to immediately settle the obligation for cash or other securities. Merrill Lynch typically hedges these notes with positions in derivatives and/or in the underlying securities. Merrill Lynch also makes markets buying and selling its debt instruments, including such notes.

Senior debt issued by ML & Co. and senior debt issued by subsidiaries guaranteed by ML & Co. do not contain provisions that could, upon an adverse change in ML & Co.'s credit rating, financial

ratios, earnings, cash flows, or ML & Co. stock price, trigger a requirement for an early payment, additional collateral support, changes in terms, acceleration of maturity, or the creation of an additional financial obligation.

The effective weighted-average interest rates for borrowings, at September 24, 2004 and December 26, 2003 were:

	Sept. 24, 2004	Dec. 26, 2003
Commercial paper and other short-term borrowings	2.17%	2.10%
Long-term borrowings, contractual rate	2.90	2.99
Long-term borrowings, including the impact of hedges	1.89	1.38
Long-term debt issued to TOPrSSM partnerships	7.31	7.15

Merrill Lynch issues debt and certificates of deposit whose coupons or repayment terms are linked to the performance of individual equity securities, or baskets of securities, or equity or other indices (e.g., S&P 500). These instruments are assessed to determine if there is an embedded derivative that requires separate reporting and accounting. Beginning in 2004, in accordance with SEC guidance, Merrill Lynch amortizes any upfront profit associated with the embedded derivative into income as a yield adjustment over the life of the related debt instrument or certificate of deposit.

On June 30, 2004, Merrill Lynch redeemed its Yen TOPrSSM debentures, which were due on June 30, 2019, pursuant to the optional redemption provisions stated in the terms and conditions of the debentures. Such redemption resulted in a cash payment of \$107.1 million. No gain or loss was recognized on the transaction.

Long-term borrowings/LYONs®

In March 2002, Merrill Lynch issued \$2.3 billion of aggregate original principal amount of floating rate zero-coupon contingently convertible debt (Liquid Yield Option™ notes or LYONs®) at an issue price of \$1,000 per note. At maturity, the LYONs® holder will receive the original principal amount of \$1,000 increased daily by a variable rate. The LYONs® are unsecured and unsubordinated indebtedness of Merrill Lynch with a maturity date of 30 years. Merrill Lynch will pay no interest prior to maturity unless, during any six-month period beginning June 1, 2007, the average market price of a LYONs® for a certain period exceeds 120% of the accreted value of the LYONs®. Holders of LYONs® may convert each security into 13.8213 shares (i.e., the “conversion rate”) of Merrill Lynch common stock based on the conditions described below.

In May 2001, Merrill Lynch issued \$4.6 billion of aggregate original principal amount of fixed rate contingently convertible LYONs® at an issue price of \$511.08 per note, which resulted in gross proceeds of approximately \$2.4 billion. Each note has a yield to maturity of 2.25% with a maturity value of \$1,000 on May 23, 2031. Merrill Lynch is amortizing the issue discount using the effective interest method over the term of the LYONs®. The LYONs® are unsecured unsubordinated indebtedness of Merrill Lynch with a maturity of 30 years. Merrill Lynch will pay no interest prior to maturity unless, during any six-month period beginning June 1, 2006, the average market price of a LYONs® for a certain period exceeds 120% of the accreted value of the LYONs®. Holders of LYONs® may convert each security into 5.6787 shares (i.e., the “conversion rate”) of common stock based on the conditions described below.

Both Merrill Lynch LYONs® issuances may be converted based on any of the following conditions:

- If the closing price of Merrill Lynch common stock for at least 20 of the last 30 consecutive trading days ending on the last day of the calendar quarter is more than the conversion trigger price. The conversion trigger price for the floating rate LYONs® at September 30, 2004 was \$86.82. (That is, on and after October 1, 2004, a holder could have converted a floating rate LYONs® into 13.8213 shares of Merrill Lynch stock if the Merrill Lynch stock price had been greater than \$86.82 for at least 20 of the last 30 consecutive trading days ending September 30, 2004). The conversion trigger price for the fixed rate LYONs® at September 30, 2004 was \$115.43. The conversion trigger price will change each calendar quarter based on the accreted value of the LYONs® at that date;
- During any period in which the credit rating of LYONs® is Baa1 or lower by Moody's Investor Services, Inc., BBB+ or lower by Standard & Poor's Credit Market Services, or BBB+ or lower by Fitch, Inc;
- If the LYONs® are called for redemption;
- If Merrill Lynch is party to a consolidation, merger or binding share exchange; or
- If Merrill Lynch makes a distribution that has a per share value equal to more than 15% of the sale price of its shares on the day preceding the declaration date for such distribution.

The conversion rate for both of Merrill Lynch's LYONs® will be adjusted for:

- Dividends or distributions payable in Merrill Lynch common stock.
- Distributions to all holders of Merrill Lynch common stock of certain rights to purchase the stock at less than the sale price of Merrill Lynch stock at that time.
- Distribution of Merrill Lynch assets to holders of Merrill Lynch common stock (excluding cash dividends that are not extraordinary dividends), or
- Certain corporate events, such as consolidation, merger or transfer of all, or substantially all, of Merrill Lynch's assets.

As of September 24, 2004 (fiscal quarter end) and September 30, 2004 (last conversion calculation date prior to issuance of this report), none of the conversion triggers above had been met and, as a result, the related shares have not been included in the diluted EPS calculation.

Holders of LYONs® may required Merrill Lynch to repurchase their convertible instruments at accreted value on various dates prior to maturity. The initial put date for holders of floating rate LYONs® is March 13, 2005. The initial put date for fixed rate LYONs® was May 23, 2004. Merrill Lynch elected to pay the purchase price for the \$166.3 million fixed rate LYONs® that were put back to Merrill Lynch on May 24, 2004 with cash. No gain or loss was recognized on the transaction. Holders of the LYONs® have the right to require Merrill Lynch to purchase the securities on certain specified dates. Pursuant to the indentures, Merrill Lynch had the right to elect to pay the purchase price payable upon exercise of such put rights in cash or common stock, or a combination thereof. Merrill Lynch entered into supplemental indentures on November 1, 2004 pursuant to which it surrendered the right to elect to pay such amounts in common stock and instead will be obligated to pay such amounts when and if required only in cash. The supplemental indentures do not affect Merrill Lynch's obligation to deliver common stock upon conversion of the LYONs® should they become convertible.

In October 2004, Merrill Lynch repurchased outstanding LYONs® with a face value of \$1.0 billion.

For further information regarding Merrill Lynch LYONs® issuances, refer to Note 1, New Accounting Pronouncements, and Note 10 to the 2003 Annual Report.

Note 9. Comprehensive Income

The components of comprehensive income are as follows:

(dollars in millions)

	Three Months Ended		Nine Months Ended	
	Sept. 24, 2004	Sept. 26, 2003	Sept. 24, 2004	Sept. 26, 2003
Net Earnings	\$ 920	\$ 1,003	\$ 3,250	\$ 2,623
Other comprehensive income (loss), net of tax:				
Currency translation adjustment	20	16	(14)	20
Net unrealized gain (loss) on investment securities available-for-sale	150	(35)	16	32
Deferred gain (loss) on cash flow hedges	8	13	(23)	7
Total other comprehensive income (loss), net of tax	178	(6)	(21)	59
Comprehensive income	\$ 1,098	\$ 997	\$ 3,229	\$ 2,682

Note 10. Earnings Per Share

The computation of earnings per common share is as follows:

(dollars in millions, except per share amounts)

	Three Months Ended		Nine Months Ended	
	Sept. 24, 2004	Sept. 26, 2003	Sept. 24, 2004	Sept. 26, 2003
Net Earnings	\$ 920	\$ 1,003	\$ 3,250	\$ 2,623
Preferred stock dividends	10	10	29	29
Net earnings applicable to common stockholders	\$ 910	\$ 993	\$ 3,221	\$ 2,594
(shares in thousands)				
Weighted-average basic shares outstanding	903,216	904,829	918,795	896,528
Effect of dilutive instruments ⁽¹⁾⁽²⁾ :				
Employee stock options	33,333	38,394	41,552	29,147
Financial Advisor Capital Accumulation Award Plan shares	23,353	24,158	23,309	22,167
Restricted shares and units	21,891	24,526	21,083	19,175
Employee Stock Purchase Plan shares	—	40	—	72
Dilutive potential common shares	78,577	87,118	85,944	70,561
Total weighted-average diluted shares	981,793	991,947	1,004,739	967,089
Basic earnings per common share	\$ 1.01	\$ 1.10	\$ 3.51	\$ 2.89
Diluted earnings per common share	\$ 0.93	\$ 1.00	\$ 3.21	\$ 2.68

(1) During the 2004 and 2003 third quarter there were 85 million and 78 million instruments, respectively, that were considered antidilutive and thus were not included in the above calculations. Additionally, shares related to Merrill Lynch's LYONs® issuances are not included in the computation of diluted earnings per share because the threshold trigger price for conversion has not been reached. See Note 8 to these Condensed Consolidated Financial Statements.

(2) See Note 15 to the 2003 Annual Report for a description of these instruments.

Note 11. Commitments, Contingencies and Guarantees

Litigation

Merrill Lynch has been named as a defendant in various legal actions, including arbitrations, class actions, and other litigation arising from its activities as a global diversified financial services institution. The general decline of equity securities prices between 2000 and 2003 has resulted in increased legal actions against many firms, including Merrill Lynch, and has resulted in higher professional fees and litigation expenses than those incurred in the past.

Some of the legal actions include claims for substantial compensatory and/or punitive damages or claims for indeterminate amounts of damages. In some cases, the issuers who would otherwise be the primary defendants in such cases are bankrupt or otherwise in financial distress. Merrill Lynch is also involved in investigations and/or proceedings by governmental and self-regulatory agencies. The number of these investigations has also increased in recent years with regard to many firms, including Merrill Lynch.

Given the number of these matters, some are likely to result in adverse judgments, settlements, penalties, injunctions, fines, or other relief. Merrill Lynch believes it has strong defenses to and, where appropriate, will vigorously contest many of these matters. In accordance with SFAS No. 5, *Accounting for Contingencies*, when resolution of cases is both probable and estimable, Merrill Lynch will accrue a liability. In many lawsuits and arbitrations, including the class action lawsuits disclosed in Item 3 of the 2003 Form 10-K, it is not possible to determine whether a liability has been incurred or to estimate the ultimate or minimum amount of that liability until the case is close to resolution, in which case no accrual is made until that time. In view of the inherent difficulty of predicting the outcome of such matters, particularly in cases in which claimants seek substantial or indeterminate damages, Merrill Lynch often cannot predict what the eventual loss or range of loss related to such matters will be. Merrill Lynch continues to assess these cases and believes, based on information available to it, that the resolution of these matters will not have a material adverse effect on the financial condition of Merrill Lynch as set forth in the Condensed Consolidated Financial Statements, but may be material to Merrill Lynch's operating results or cash flows for any particular period and may impact ML & Co.'s credit ratings.

Commitments

At September 24, 2004, Merrill Lynch's commitments had the following expirations:

(dollars in millions)

	Total	Commitment expiration			
		Less than 1 Year	1 – 3 Years	3+ – 5 Years	Over 5 Years
Commitments to extend credit ⁽¹⁾	\$ 42,185	\$ 18,488	\$ 8,168	\$ 8,754	\$ 6,775
Purchasing and other commitments	4,583	3,440	724	275	144
Operating leases	3,694	542	1,019	829	1,304
Resale agreements	13,081	13,081	—	—	—
Total	\$ 63,543	\$ 35,551	\$ 9,911	\$ 9,858	\$ 8,223

(1) See Note 7 to these Condensed Consolidated Financial Statements and Note 13 in the 2003 Annual Report for additional details.

Other Commitments

Merrill Lynch also obtains commercial letters of credit from issuing banks to satisfy various counterparty collateral requirements in lieu of depositing cash or securities collateral. Commercial letters of credit aggregated \$551 million and \$507 million at September 24, 2004 and December 26, 2003, respectively.

Merrill Lynch had commitments to purchase partnership interests, primarily related to private equity investing activities, of \$367 million and \$426 million at September 24, 2004 and December 26, 2003, respectively. Merrill Lynch also has entered into agreements with providers of market data, communications, and systems consulting services. At September 24, 2004 and December 26, 2003 minimum fee commitments over the remaining life of these agreements aggregated \$506 million and \$503 million, respectively. Merrill Lynch had entered into other purchasing commitments totaling \$3.7 billion and \$7.4 billion at September 24, 2004 and December 26, 2003, respectively.

Leases

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

In 1999 and 2000, Merrill Lynch established two SPEs to finance its Hopewell, New Jersey campus and an aircraft. Merrill Lynch leased the facilities and the aircraft from the SPEs. The total amount of funds raised by the SPEs to finance these transactions was \$383 million. These SPEs were not consolidated by Merrill Lynch pursuant to accounting guidance. In the second quarter of 2003, the facilities and aircraft owned by these SPEs were acquired by a newly created limited partnership, which is unaffiliated with Merrill Lynch. The limited partnership acquired the assets subject to the leases with Merrill Lynch as well as the existing indebtedness incurred by the original SPEs. The proceeds from the sale of the assets to the limited partnership, net of the debt assumed by the limited partnership, were used to repay the equity investors in the original SPEs. After the transaction was completed, the original SPEs were dissolved. The limited partnership has also entered into leases with third parties unrelated to Merrill Lynch.

The leases with the limited partnership mature in 2005 and 2006, and each lease has a renewal term to 2008. In addition, Merrill Lynch has entered into guarantees with the limited partnership, whereby if Merrill Lynch does not renew the lease or purchase the assets under its lease at the end of either the initial or the renewal lease term, the underlying assets will be sold to a third party, and Merrill Lynch has guaranteed that the proceeds of such sale will amount to at least 84% of the adjusted acquisition price, as defined. The maximum exposure to Merrill Lynch as a result of this residual value guarantee was approximately \$325 million as of September 24, 2004. As of September 24, 2004, the carrying value of the liability on the Condensed Consolidated Financial Statements was \$28 million. Merrill Lynch's residual value guarantee does not comprise more than half of the limited partnership's assets.

The limited partnership does not meet the definition of a variable interest entity as defined in FIN 46R, and Merrill Lynch does not have a partnership or other interest in the limited partnership. Accordingly, Merrill Lynch is not required to consolidate the limited partnership in its financial statements. The leases with the limited partnership are accounted for as operating leases.

Guarantees

Merrill Lynch issues various guarantees to counterparties in connection with certain leasing, securitization and other transactions. In addition, Merrill Lynch enters into certain derivative contracts

that meet the accounting definition of a guarantee under FIN 45. FIN 45 defines guarantees to include derivative contracts that contingently require a guarantor to make payment to a guaranteed party based on changes in an underlying (such as changes in the value of interest rates, security prices, currency rates, commodity prices, indices, etc.) that relate to an asset, liability or equity security of a guaranteed party. Derivatives that meet the FIN 45 definition of guarantees include certain written options and credit default swaps (contracts that require Merrill Lynch to pay the counterparty the par value of a referenced security if that referenced security defaults). Merrill Lynch does not track, for accounting purposes, whether its clients enter into these derivative contracts for speculative or hedging purposes. Accordingly, Merrill Lynch has disclosed information about all credit default swaps and certain types of written options that can potentially be used by clients to protect against changes in an underlying, regardless of how the contracts are used by the client.

For certain derivative contracts such as written interest rate caps and written currency options, the maximum payout is not quantifiable, because, for example, the rise in interest rates or changes in foreign exchange rates could theoretically be unlimited. In addition, Merrill Lynch does not monitor its exposure to derivatives in this manner. As such, rather than including the maximum payout, the notional value of these contracts has been included to provide information about the magnitude of involvement with these types of contracts. However, it should be noted that the notional value may overstate Merrill Lynch's exposure to these contracts.

Merrill Lynch records all derivative transactions at fair value on its Condensed Consolidated Balance Sheets. A risk framework is used to define risk tolerances and establish limits to ensure that certain risk-related losses occur within acceptable, predefined limits. Merrill Lynch economically hedges its exposure to these contracts by entering into a variety of offsetting derivative contracts and security positions. See the Derivatives section of Note 1 in the 2003 Annual Report for further discussion of risk management of derivatives.

Merrill Lynch also provides guarantees to SPEs in the form of liquidity facilities, credit default protection and residual value guarantees for equipment leasing entities.

The liquidity facilities and credit default protection relate primarily to municipal bond securitization SPEs. Merrill Lynch acts as liquidity provider to municipal bond securitization SPEs. Specifically, the holders of beneficial interests issued by these SPEs have the right to tender their interests for purchase by Merrill Lynch on specified dates at a specified price. If the beneficial interests are not successfully remarketed, the holders of beneficial interests are paid from funds drawn under a standby facility issued by Merrill Lynch (or by third party financial institutions where Merrill Lynch has agreed to reimburse the financial institution if a draw occurs). If the standby facility is drawn, Merrill Lynch may claim the underlying assets held by the SPEs. In general, standby facilities that are not coupled with default protection are not exercisable in the event of a downgrade below investment grade or default of the assets held by the SPEs. In addition, the value of the assets held by the SPE plus any additional collateral pledged to Merrill Lynch exceeds the amount of beneficial interests issued, which provides additional support to Merrill Lynch in the event that the standby facility is drawn. As of September 24, 2004, the maximum payout if the standby facilities are drawn was \$16.7 billion and the value of the municipal bond assets to which Merrill Lynch has recourse in the event of a draw was \$20.4 billion. However, it should be noted that these two amounts are not directly comparable as the assets to which Merrill Lynch has recourse are on a deal-by-deal basis and are not part of a cross collateralized pool.

In certain instances, Merrill Lynch also provides default protection in addition to liquidity facilities. Specifically, in the event that an issuer of a municipal bond held by the SPE defaults on any payment of principal and/or interest when due, the payments on the bonds will be made to beneficial interest holders from an irrevocable guarantee by Merrill Lynch (or by third party financial institutions where

Merrill Lynch has agreed to reimburse the financial institution if losses occur). If the default protection is drawn, Merrill Lynch may claim the underlying assets held by the SPEs. As of September 24, 2004, the maximum payout if an issuer defaults was \$3.0 billion, and the value of the assets to which Merrill Lynch has recourse in the event that an issuer of a municipal bond held by the SPE defaults on any payment of principal and/or interest when due, was \$3.9 billion; however, as described in the preceding paragraph, these two amounts are not directly comparable as the assets to which Merrill Lynch has recourse are not part of a cross collateralized pool.

Further, to protect against declines in the value of the assets held by SPEs for which Merrill Lynch provides either liquidity facilities or default protection, Merrill Lynch economically hedges its exposure through derivative positions that principally offset the risk of loss arising from these guarantees.

Merrill Lynch also provides residual value guarantees to leasing SPEs where either Merrill Lynch or a third party is the lessee. For transactions where Merrill Lynch is not the lessee, the guarantee provides loss coverage for any shortfalls in the proceeds from asset sales greater than 75 — 90% of the adjusted acquisition price, as defined. As of September 24, 2004, the value of the assets for which Merrill Lynch provides residual value guarantees and is not the lessee was \$733 million. Where Merrill Lynch is the lessee, it provides a guarantee that any proceeds from the sale of the assets will amount to at least 84% of the adjusted acquisition price, as defined.

Merrill Lynch also enters into reimbursement agreements in conjunction with sales of loans originated under its Mortgage 100SM program. Under this program, borrowers can pledge marketable securities in lieu of making a cash down payment. Upon sale of these mortgage loans, purchasers may require a surety bond that reimburses for certain shortfalls in the borrowers' securities accounts. Merrill Lynch provides this reimbursement through a financial intermediary. Merrill Lynch requires borrowers to meet daily collateral calls to ensure that the securities pledged as down payment are sufficient at all times. Merrill Lynch believes that its potential for loss under these arrangements is remote. Accordingly, no liability is recorded in the Condensed Consolidated Financial Statements.

In addition, Merrill Lynch makes guarantees to counterparties in the form of standby letters of credit. Merrill Lynch holds marketable securities of \$532 million as collateral to secure these guarantees. In addition, standby letters of credit include \$257 million of financial guarantees for which Merrill Lynch has recourse to the guaranteed party upon draw down.

Further, in conjunction with certain principal-protected mutual funds, Merrill Lynch guarantees the return of the initial principal investment at the termination date of the fund. These funds are generally managed based on a formula that requires the fund to hold a combination of general investments and highly liquid risk-free assets that, when combined, will result in the return of principal at the maturity date unless there is a significant market downturn. At September 24, 2004 Merrill Lynch's maximum potential exposure to loss with respect to these guarantees was \$547 million assuming that the funds are invested exclusively in other general investments (i.e., the funds hold no risk-free assets), and that those other general investments suffer a total loss. As such, this measure significantly overstates Merrill Lynch's exposure or expected loss at September 24, 2004. These transactions met the SFAS No. 149 definition of derivatives and, as such, were carried as a liability with a fair value of \$13 million at September 24, 2004.

These guarantees and their expiration are summarized at September 24, 2004 as follows:

(dollars in millions)

	Maximum Payout/ Notional	Less than 1 Year	1 – 3 Years	3+ – 5 Years	Over 5 Years	Carrying Value
Derivative contracts ⁽¹⁾	\$1,094,642	\$372,867	\$289,736	\$247,496	\$184,543	\$ 20,889
Liquidity facilities with SPEs ⁽²⁾	16,735	13,941	2,794	—	—	76
Liquidity and default facilities with SPEs	3,044	2,234	522	1	287	76
Residual value guarantees ⁽³⁾⁽⁴⁾	2,152	58	14	491	1,589	35
Standby letters of credit and other performance guarantees ⁽⁵⁾	1,456	797	56	49	554	16

(1) As noted above, the notional value of derivative contracts is provided rather than the maximum payout amount, although the notional value should not be considered as a substitute for maximum payout.

(2) Amounts relate primarily to facilities provided to municipal bond securitization SPEs. Includes \$3.1 billion of guarantees provided to SPEs by third party financial institutions where Merrill Lynch has agreed to reimburse the financial institution if losses occur, and has up to one year to fund losses.

(3) Includes residual value guarantees associated with the Hopewell campus and aircraft leases of \$325 million.

(4) Includes \$1.1 billion of reimbursement agreements with the Mortgage 100SM program.

(5) Includes guarantees related to principal-protected mutual funds.

See Note 13 in the 2003 Annual Report for additional information on guarantees.

Note 12. Employee Benefit Plans

Merrill Lynch provides retirement and other postemployment benefits to its employees worldwide through defined contribution and defined benefit pension plans and other postretirement benefit plans. These plans vary based on the country and local practices. Merrill Lynch reserves the right to amend or terminate these plans at any time. Refer to Note 14 in the 2003 Annual Report for a complete discussion of employee benefit plans.

Defined Benefit Pension Plans

Pension cost for the three and nine month periods ended September 24, 2004 and September 26, 2003, for Merrill Lynch's defined benefit pension plans, included the following components:

(dollars in millions)

	Three Months Ended		Nine Months Ended	
	Sept. 24, 2004	Sept. 26, 2003	Sept. 24, 2004	Sept. 26, 2003
Service cost	\$ 8	\$ 10	\$ 25	\$ 32
Interest cost	38	37	113	108
Expected return on plan assets	(35)	(34)	(106)	(103)
Amortization of unrecognized items and other	5	—	14	2
Total defined benefit pension cost	\$ 16	\$ 13	\$ 46	\$ 39

Merrill Lynch disclosed in its 2003 Annual Report that it expected to contribute \$57 million to its defined benefit pension plans in 2004. Merrill Lynch periodically updates these estimates, and currently expects to contribute \$31 million to its defined benefit pension plans in 2004. The defined benefit plan service costs for the first nine months of 2004 were reduced by \$7 million due primarily to the U.K. pension plan, which was frozen as of the end of the second quarter of 2004. Affected employees will receive future benefits under Merrill Lynch's defined contribution plan.

Postretirement Benefits Other Than Pensions

Other postretirement benefits cost for the three and nine month periods ended September 24, 2004 and September 26, 2003, included the following components:

(dollars in millions)

	Three Months Ended		Nine Months Ended	
	Sept. 24, 2004	Sept. 26, 2003	Sept. 24, 2004	Sept. 26, 2003
Service cost	\$ 5	\$ 3	\$ 13	\$ 11
Interest cost	7	8	23	24
Other	1	3	6	8
Total other postretirement benefits cost	\$ 13	\$ 14	\$ 42	\$ 43

Merrill Lynch disclosed in its 2003 Annual Report that it expected to contribute \$19 million to its postretirement benefit plans in 2004. Merrill Lynch does not expect contributions to differ significantly from amounts previously disclosed.

Note 13. Regulatory Requirements

Certain U.S. and non-U.S. subsidiaries are subject to various securities and banking regulations and capital adequacy requirements promulgated by the regulatory and exchange authorities of the countries in which they operate. 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 and futures commission merchant, is subject to the net capital requirements of Rule 15c3-1 under the Securities Exchange Act of 1934 and the capital requirements of the Commodities Futures Trading Commission ("CFTC"). Under the alternative method permitted by Rule 15c3-1, the minimum required net capital, as defined, shall not be less than 2% of aggregate debit items ("ADI") arising from customer transactions. The CFTC also requires that minimum net capital should not be less than 4% of segregated and secured requirements. At September 24, 2004, MLPF&S's regulatory net capital of \$2,910 million was approximately 19.2% of ADI, and its regulatory net capital in excess of the minimum required was \$2,527 million at 2% of ADI.

Merrill Lynch International ("MLI"), a U.K. regulated investment firm, is subject to capital requirements of the Financial Services Authority ("FSA"). Financial resources, as defined, must exceed the total financial resources requirement of the FSA. At September 24, 2004, MLI's financial resources were \$8,047 million, exceeding the minimum requirement by \$1,322 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 September 24, 2004, MLGSI’s liquid capital of \$1,763 million was 246% of its total market and credit risk, and liquid capital in excess of the minimum required was \$901 million.

Banking Regulation

Two subsidiaries of ML & Co., Merrill Lynch Bank USA (“MLBUSA”) and Merrill Lynch Bank & Trust Co. (“MLB&T”) are required to maintain capital levels that at least equal minimum capital levels specified in U.S. federal banking laws and regulations. Failure to meet the minimum levels will result in certain mandatory, and possibly additional discretionary, actions by the regulators that, if undertaken, could have a direct material effect on the banks. The capital levels, defined as the Tier 1 leverage ratio, the Tier 1 risk-based capital ratio, and the Total risk-based capital ratio, are calculated as (i) Tier 1 Capital or Total Capital to (ii) average assets or risk-weighted assets. MLBUSA and MLB&T each exceed the minimum bank regulatory requirement for classification as a well-capitalized bank for the Tier 1 leverage ratio — 5%, the Tier 1 risk-based capital ratio — 6% and the Total risk-based capital ratio — 10%. The following table represents the actual capital ratios and amounts for MLBUSA and MLB&T at September 24, 2004 and December 26, 2003.

(dollars in millions)

	Sept. 24, 2004		Dec. 26, 2003	
	Actual Ratio	Amount	Actual Ratio	Amount
Tier I leverage (to average assets)				
MLBUSA	7.32%	\$ 4,972	6.47%	\$ 4,480
MLB&T	6.33	838	6.00	857
Tier I capital (to risk-weighted assets)				
MLBUSA	10.76	4,972	10.73	4,480
MLB&T	20.29	838	19.18	857
Total capital (to risk-weighted assets)				
MLBUSA	11.33	5,236	11.28	4,706
MLB&T	20.31	839	19.20	858

Merrill Lynch Capital Markets Bank Limited (“MLCMB”), an Ireland-based regulated bank, is subject to the capital requirements of the Irish Financial Services Regulatory Authority (“IFSRA”), as well as to those of the State of New York Banking Department (“NYSBD”), as the consolidated supervisor of its indirect parent, Merrill Lynch International Finance Corporation (“MLIFC”). MLCMB is required to meet minimum regulatory capital requirements under EU banking law as implemented in Ireland by IFSRA. At September 24, 2004, MLCMB’s capital ratio was above the minimum requirement at 11.1% and its financial resources, as defined, were \$2,050 million.

Merrill Lynch International Bank Limited (“MLIB”), a U.K.-based regulated bank, is subject to the capital requirements of the FSA as well as those of the NYSBD as part of the MLIFC group. MLIB is required to meet minimum regulatory capital requirements under EU banking law as implemented in the U.K. MLIB’s consolidated capital ratio (including its subsidiary Merrill Lynch Bank (Suisse) S.A.), is above the minimum capital requirements established by the FSA. At September 24, 2004, MLIB’s consolidated capital ratio was 13.9% and its consolidated financial resources were \$2,477 million.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

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 September 24, 2004, and the related condensed consolidated statements of earnings for the three-month and nine-month periods ended September 24, 2004 and September 26, 2003, and the condensed consolidated statements of cash flows for the nine-month periods ended September 24, 2004 and September 26, 2003. These interim financial statements are the responsibility of Merrill Lynch's management.

We conducted our reviews in accordance with standards of the Public Company Accounting Oversight Board (United States). A review of interim financial information consists principally of applying analytical procedures and making inquiries of persons responsible for financial and accounting matters. It is substantially less in scope than an audit conducted in accordance with standards of the Public Company Accounting Oversight Board (United States), 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 reviews, we are not aware of any material modifications that should be made to such condensed consolidated interim 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 standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheet of Merrill Lynch as of December 26, 2003, 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 March 1, 2004 (May 4, 2004 as to Note 2), we expressed an unqualified opinion on those consolidated financial statements and included explanatory paragraphs for the change in accounting method in 2002 for goodwill amortization to conform to Statement of Financial Accounting Standards ("SFAS") No. 142, *Goodwill and Other Intangible Assets*, and for the change in accounting method in 2004 for stock-based compensation to conform to SFAS No. 123, *Accounting for Stock-Based Compensation*, as amended by SFAS No. 148, *Accounting for Stock-Based Compensation — Transition and Disclosure*, by retroactively restating its 2003, 2002 and 2001 consolidated financial statements. In our opinion, the information set forth in the accompanying condensed consolidated balance sheet as of December 26, 2003 is fairly stated, in all material respects, in relation to the restated consolidated balance sheet from which it has been derived.

/s/ Deloitte & Touche LLP

New York, New York
November 1, 2004

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, "Merrill Lynch") is a holding company that, through its subsidiaries, provides broker-dealer, investment banking, financing, wealth management, advisory, asset management, insurance, lending, and related products and services on a global basis. In addition, Merrill Lynch engages in market-making activities on behalf of its clients and for its own account, as well as in private equity and other principal investment activities. The financial services industry, in which Merrill Lynch is a leading participant, is extremely competitive and highly regulated. This industry and the global financial markets are influenced by numerous unpredictable factors. These factors include economic conditions, monetary and fiscal policies, the liquidity of global markets, international and regional political events, acts of war or terrorism, changes in applicable laws and regulations, the competitive environment, and investor sentiment. In addition to these factors, Merrill Lynch and other financial services companies may be affected by regulatory and legislative initiatives that may affect the conduct of their business, including increased regulation, and by the outcome of legal and regulatory investigations and proceedings. These conditions or events can significantly affect the volatility of the financial markets as well as the volumes and revenues in businesses such as brokerage, trading, investment banking, wealth management and asset management. Revenues and net earnings may vary significantly from period to period due to the unpredictability of these factors and the resulting market volatility and trading volumes.

The financial services industry continues to be affected by an intensifying competitive environment, as demonstrated by consolidation through mergers, competition from new and established competitors, and diminishing margins in many mature products and services. Commercial and investment bank consolidations have also increased the competition for investment banking and capital markets business, due in part to the extension of credit in conjunction with investment banking and capital raising activities.

The financial services industry is also impacted by the regulatory and legislative environment. In 2003 and 2004, additional aspects of the Sarbanes-Oxley Act of 2002 were implemented as rules relating to corporate governance (including Board member and Board Committee independence), auditor independence, research analyst conflicts of interest, and disclosure became effective and/or were adopted in their final form. Various federal and state securities regulators, self-regulatory organizations (including the New York Stock Exchange and the National Association of Securities Dealers) and industry participants also continued to review and, in many cases, adopt changes to their established rules and policies in areas such as corporate governance, research analyst conflicts of interest and certifications, practices related to the initial public offering of equity securities, mutual fund trading, mutual fund distribution practices, disclosure practices and auditor independence. Changing requirements for research, on a global basis, may continue to affect the cost structure for such services. Regulatory actions affecting the trading practices and pricing structure of mutual funds have changed the manner in which business is conducted by the asset management industry. Both inside and outside the United States, there is continued focus by regulators and legislators on regulatory supervision of both commercial and investment banks as an industry and on an individual basis, especially in the areas of capital and risk management.

On June 8, 2004 the Securities and Exchange Commission ("SEC") adopted rule amendments under the Securities Exchange Act of 1934 that establish a voluntary, alternative method of computing deductions to net capital for certain broker-dealers. These amendments are intended to reduce regulatory capital costs for broker-dealers by allowing very highly capitalized firms that have developed comprehensive internal controls and risk management practices to use their mathematical risk models to calculate certain regulatory capital charges. Further, these amendments establish

consolidated supervision of the broker-dealer's holding company on an affiliate group-wide basis. The rule amendments respond to international developments, where affiliates of certain U.S. broker-dealers that conduct business in the European Union must demonstrate that they are subject to consolidated supervision at the ultimate holding company level and comply with the European Union Financial Groups Directive published February 11, 2003.

Merrill Lynch, Pierce, Fenner & Smith Incorporated, the firm's principal U.S. broker-dealer, submitted a draft application to the SEC to qualify under these rule amendments in the third quarter of 2004. If approved by the SEC, Merrill Lynch, Pierce, Fenner & Smith will be able to use alternative methods of computing market and credit risk capital charges. As a condition of using the alternative capital method, Merrill Lynch must consent to group-wide supervision by the SEC. This SEC supervision would require Merrill Lynch to undertake to compute allowable capital and allowances thereto; permit the SEC to examine the books and records of the holding company and any affiliate that does not have a principal regulator; and impose various SEC reporting, record keeping, and notification requirements. Merrill Lynch would be referred to as a Consolidated Supervised Entity ("CSE") under these rule amendments.

Merrill Lynch expects that becoming a CSE will impact its decisions relative to monitoring capital adequacy and is likely to impose additional costs. Merrill Lynch continues to work closely with regulators to anticipate the impact of compliance with both the new CSE rules and the related new Basel II capital standards, which the Basel Committee on Banking Supervision adopted in June 2004.

Forward Looking Statements

Certain statements contained in this report may be considered forward-looking, including those about management expectations, strategic objectives, business prospects, investment banking backlogs, anticipated expense levels and financial results, the impact of off balance sheet arrangements, significant contractual obligations, anticipated results of litigation and regulatory investigations and proceedings, and other similar matters. These forward-looking statements represent only Management's expectations regarding future performance, which is inherently uncertain. There are a variety of factors, many of which are beyond Merrill Lynch's control, which affect its operations, performance, business strategy and results and could cause its actual results and experience to differ materially from the expectations and objectives expressed in any forward-looking statements. These factors include, but are not limited to, the factors listed in the previous paragraphs, as well as financial market volatility, actions and initiatives taken by both current and potential competitors, general economic conditions, the effects of current, pending and future legislation, regulation and regulatory actions, and the other risks and uncertainties detailed in Merrill Lynch's Annual Report on Form 10-K for the year ended December 26, 2003, and the following sections. Accordingly, readers are cautioned not to place undue reliance on forward-looking statements, which speak only as of the dates on which they are made. Merrill Lynch does not undertake to update forward-looking statements to reflect the impact of circumstances or events that arise after the dates they are made. The reader should, however, consult any further disclosures Merrill Lynch may make in future filings of its Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K.

Business Environment

The global financial markets continued to be challenging in the third quarter of 2004 amid continued concerns about the pace of economic growth, the outcome of the U.S. presidential election, rising oil prices and the geopolitical climate. Global equity markets fell throughout July into mid-August but staged a rally in late August and early September, pulling back in late September after failing to reach beginning of quarter levels. Trading volumes were down and volatility remained at low levels. The U.S. Federal Reserve System's Federal Open Market Committee raised the federal funds rate twice

during the quarter to 1.75%. However, long-term interest rates, as measured by the yield on the 10-year U.S. Treasury note, fell to 4.125%, from 4.59% as of the end of the second quarter, resulting in a flatter yield curve.

U.S. equity indexes finished the third quarter sequentially lower. The Dow Jones Industrial Average was down 3.4% sequentially and 3.6% in the first nine months of 2004. The Nasdaq Composite Index was down 7.4% sequentially and 5.3% year-to-date. The Standard and Poor's 500 stock index decreased 2.3% in the third quarter and was essentially unchanged from the beginning of 2004.

Global equity indices were lower or unchanged from beginning of quarter levels. The Dow Jones World Index (which excludes the United States) ended the third quarter essentially unchanged, but was up 3.6% in the first nine months. The Dow Jones Euro Stoxx index ended the quarter down 2.1%. The Nikkei Stock Average declined 8.7% during the quarter, erasing most of the gains from the first half of the year. Emerging markets, led by Brazil and Venezuela with sequential gains of 23.0% and 18.4%, respectively, turned in the best performances of the quarter.

Third quarter global debt and equity underwriting volumes decreased slightly to \$1.24 trillion from \$1.29 trillion in the second quarter and \$1.26 trillion in the year-ago quarter, according to Thomson Financial Securities Data. Underwriting fees for both equities and debt increased 5% to \$3.4 billion from the year-ago quarter, due in part to increased initial public offering ("IPO") activity. IPO volumes improved substantially, with 63 IPOs in the third quarter, raising \$13.29 billion, as compared to 58 IPOs raising \$9.49 billion in the second quarter, and 21 IPOs raising \$4.16 billion in the 2003 third quarter.

The value of global announced mergers and acquisitions rose to \$392 billion, up 24% from the year-ago quarter according to Thomson Financial Securities Data. In the United States, the value of announced deals increased to \$154 billion from \$131 billion last year. Completed merger and acquisition activity totaled \$429 billion in the third quarter, up 45% from the 2003 third quarter and 10% from the second quarter of 2004.

Merrill Lynch continually evaluates its businesses for profitability, performance, and client service for alignment with its long-term strategic objectives under varying market and competitive conditions. The strategy of maintaining long-term client relationships, closely monitoring costs and risks, diversifying revenue sources, and growing fee-based revenues all continue as objectives to mitigate the effects of a volatile market environment on Merrill Lynch's business as a whole.

Results of Operations

	For the Three Months Ended		For the Nine Months Ended	
	Sept. 24, 2004	Sept. 26, 2003	Sept. 24, 2004	Sept. 26, 2003
<i>(dollars in millions, except per share amounts)</i>				
Net Revenues				
Asset management and portfolio service fees	\$ 1,340	\$ 1,184	\$ 4,012	\$ 3,465
Commissions	1,092	1,099	3,619	3,185
Principal transactions	390	704	2,066	2,856
Investment banking	666	678	2,267	1,869
Other	438	311	1,120	810
Subtotal	3,926	3,976	13,084	12,185
Interest and dividend revenues	3,669	2,872	9,858	8,876
Less interest expense	2,755	1,850	6,731	6,011
Net interest profit	914	1,022	3,127	2,865
Total net revenues	4,840	4,998	16,211	15,050
Non-interest expenses				
Compensation and benefits	2,273	2,448	7,907	7,758
Communications and technology	363	352	1,061	1,112
Occupancy and related depreciation	219	226	638	663
Brokerage, clearing, and exchange fees	213	188	631	527
Professional fees	163	146	503	430
Advertising and market development	127	89	381	323
Office supplies and postage	47	46	147	154
Other	231	118	648	502
Net recoveries related to September 11	—	(21)	—	(82)
Total non-interest expenses	3,636	3,592	11,916	11,387
Earnings before income taxes	\$ 1,204	\$ 1,406	\$ 4,295	\$ 3,663
Net earnings	\$ 920	\$ 1,003	\$ 3,250	\$ 2,623
Earnings per common share:				
Basic	\$ 1.01	\$ 1.10	\$ 3.51	\$ 2.89
Diluted	0.93	1.00	3.21	2.68
Annualized return on average common stockholders' equity	12.4%	15.2%	14.6%	13.7%
Pre-tax profit margin	24.9	28.1	26.5	24.3
Compensation and benefits as a percentage of net revenues	47.0%	49.0%	48.8%	51.5%
Non-compensation expenses as a percentage of net revenues	28.1	22.9	24.7	24.2

Quarterly Results of Operations

Merrill Lynch's net earnings were \$920 million for the 2004 third quarter, a decrease of 8% from \$1.0 billion in the third quarter of 2003. Earnings per common share were \$1.01 basic and \$0.93 diluted, compared with \$1.10 basic and \$1.00 diluted in the 2003 third quarter. The 2004 third quarter pre-tax margin was 24.9%, down from 28.1% in the prior-year quarter. Third quarter 2003 net earnings included \$13 million attributable to a September 11-related net insurance recovery.

Net revenues were \$4.8 billion in the third quarter of 2004, down 3% from the third quarter of 2003. Asset management and portfolio service fees were \$1.3 billion, up 13% from the third quarter of 2003 largely as a result of higher portfolio servicing fees, a large portion of which are calculated on beginning-of-period asset values, as well as increased investment and fund management fees. Commission revenues were \$1.1 billion, essentially unchanged from the 2003 third quarter, as lower equity commissions were offset by higher mutual fund and insurance commissions. Principal transactions revenues were \$390 million, 45% lower than the third quarter of 2003, reflecting significantly lower equity trading revenues driven principally by decreases in U.S. secondary cash equity trading and in global equity-linked trading. Investment banking revenues were \$666 million, 2% lower than the 2003 third quarter. These revenues included underwriting revenues of \$537 million and

strategic advisory revenues of \$129 million, both of which decreased marginally from the year-ago quarter. Other revenues were \$438 million, up \$127 million from the 2003 third quarter due principally to a write-down of \$114 million in 2003 of certain available-for-sale securities considered to be impaired on an other-than-temporary basis. Net interest profit was \$914 million, down 11% from the 2003 third quarter, due primarily to changes in the balance sheet mix and additional credit provisions related to small and middle-market lending in Global Private Client (“GPC”). For additional information, see GPC results of operations — Net interest profit.

Compensation and benefits expenses were \$2.3 billion in the third quarter of 2004, a decrease of 7% from the year-ago quarter due primarily to lower incentive compensation accruals. Compensation and benefits expenses were 47.0% of net revenues for the third quarter of 2004, compared to 49.0% in the year-ago quarter.

Non-compensation expenses were \$1.4 billion in the third quarter of 2004, up \$219 million, or 19%, from the year-ago quarter (17% excluding the September 11-related net recovery in 2003). Brokerage, clearing and exchange fees were \$213 million, up 13% from the 2003 third quarter, due in part to the acquisition of a clearing business. Professional fees increased 12% from the third quarter of 2003, to \$163 million, due principally to higher consulting fees and employment service fees. Advertising and market development expenses were \$127 million, up 43% from the 2003 third quarter, due primarily to increased promotional costs, travel, and recognition programs. Other expenses were \$231 million in the third quarter of 2004, up from \$118 million in the year-ago quarter, reflecting higher litigation provisions in GPC and the impact of the consolidation of certain private equity investments.

The September 11-related net recovery in the third quarter of 2003 included a partial pre-tax insurance reimbursement of \$25 million, offset by September 11-related costs of \$4 million. For the first nine months of 2003, recoveries totaled \$100 million, offset by September 11-related costs of \$18 million. These insurance recoveries represented partial business interruption settlements for the Global Markets and Investment Banking Group (“GMI”) and were recorded as a reduction of expenses in that segment. The costs were related to ongoing refurbishment of the World Financial Center and were recorded in the Corporate segment.

Year-to-date Results of Operations

For the first nine months of 2004, net earnings were \$3.3 billion, up 24% from \$2.6 billion from the corresponding period in 2003, on net revenues that grew 8%, to \$16.2 billion. Compensation and benefits expenses for the first nine months of 2004 were \$7.9 billion, up 2% from the year-ago period. Non-compensation expenses totaled \$4.0 billion for the first nine months of 2004, up 10% from the year-ago period (8% excluding the September 11-related net insurance recoveries in 2003). Year-to-date earnings per common share were \$3.51 basic and \$3.21 diluted, compared with \$2.89 basic and \$2.68 diluted in the first nine months of 2003. The pre-tax profit margin for the first nine months of 2004 was 26.5%, up from 24.3% in the year-ago period. Annualized return on average common stockholders’ equity was 14.6% for the first nine months of 2004 compared to 13.7% for the comparable period in 2003.

Merrill Lynch’s year-to-date effective tax rate was 24.3%, down from the full year 2003 effective tax rate of 26.5%. The tax rate reflects the utilization of Japanese net operating loss carryforwards and the decline in the tax rate reflects the current business mix and settlements with tax authorities recorded in the second quarter.

Business Segments

Merrill Lynch reports its results in three business segments: GMI, GPC, and Merrill Lynch Investment Managers (“MLIM”). GMI provides capital markets and investment banking services to corporate, institutional, and governmental clients around the world. GPC provides global wealth management products and services to individuals, small- to mid-size businesses, and employee benefit plans. MLIM provides asset management services to individual, institutional and corporate clients.

Certain MLIM and GMI products are distributed through GPC distribution channels, and, to a lesser extent, certain MLIM products are distributed through GMI. Revenues and expenses associated with these inter-segment activities are recognized in each segment and eliminated at the corporate level. In addition, revenue and expense sharing agreements for shared activities between segments are in place and the results of each segment reflect the agreed-upon portion of these activities. The following segment results represent the information that is relied upon by management in its decision-making processes. These results exclude items reported in the Corporate segment. Business segment results are restated to reflect reallocations of revenues and expenses, which result from changes in Merrill Lynch’s business strategy and structure.

Global Markets and Investment Banking

GMI’s Results of Operations

	For the Three Months Ended			For the Nine Months Ended		
	Sept. 24, 2004	Sept. 26 2003	% Inc. (Dec.)	Sept. 24, 2004	Sept. 26 2003	% Inc. (Dec.)
<i>(dollars in millions)</i>						
Global Markets						
Debt	\$ 1,023	\$ 1,151	(11)	\$ 3,878	\$ 4,034	(4)
Equity	652	769	(15)	2,329	2,247	4
Total Global Markets net revenues	1,675	1,920	(13)	6,207	6,281	(1)
Investment banking						
Origination						
Debt	252	190	33	792	594	33
Equity	195	232	(16)	715	531	35
Strategic Advisory Services	128	133	(4)	432	395	9
Total Investment Banking net revenues	575	555	4	1,939	1,520	28
Total net revenues	2,250	2,475	(9)	8,146	7,801	4
Non-interest expenses	1,479	1,489	(1)	5,270	4,994	6
Pre-tax earnings	\$ 771	\$ 986	(22)	\$ 2,876	\$ 2,807	2
Pre-tax profit margin	34.3%	39.8%		35.3%	36.0%	

GMI experienced a challenging business environment in the third quarter of 2004. Oil prices, interest rates, low volatility and geopolitical uncertainty continued to affect the markets, and the slowing of activity typical of the summer months was more pronounced than in recent years.

GMI’s pre-tax earnings were \$771 million in the 2004 third quarter, 22% lower than the year-ago quarter, on net revenues that declined 9%, to \$2.3 billion. The 2003 third quarter results included a \$25 million September 11-related partial pre-tax insurance reimbursement, which was recorded as a reduction of non-interest expenses. GMI’s pre-tax profit margin was 34.3%, down from 39.8% in the year-ago quarter, reflecting the decline in revenues, as non-interest expenses were essentially

unchanged from the year-ago period. Excluding the September 11 recovery in the year-ago period, the third quarter 2003 pre-tax profit margin was 38.8%.

For the first nine months of 2004, GMI pre-tax earnings were \$2.9 billion, up 2% from the prior year period, on net revenues that rose 4%, to \$8.1 billion. The year-to-date pre-tax profit margin was 35.3%, compared with 36.0% in the same period last year (34.7% excluding the \$100 million in year-to-date 2003 September 11-related recoveries).

A detailed discussion of GMI's revenues follows:

Debt Markets

Debt markets net revenues, which include principal transactions and net interest profit, commissions, and other revenues, were \$1.0 billion in the 2004 third quarter, 11% lower than in the year-ago quarter driven primarily by lower credit products revenues. Credit products revenues reflected lower net trading revenues as compared to the year-ago period resulting from low market volatility and lower trading volume. These declines were partially offset by increased revenues from principal investments, secured financing and interest rate trading. During the third quarter and nine months periods of 2004, Debt markets revenues included \$97 million and \$220 million of net revenues related to equity method investments. Such revenues totaled \$111 million and \$94 million for the three-month and nine-month periods of 2003. This year-to-date increase is due primarily to increased revenues from private equity investments. Net revenues related to equity method investments are included in Other revenues on the Condensed Consolidated Statements of Earnings. In addition, Debt markets revenues for the third quarter of 2003 included a write-down of \$114 million for certain available-for-sale securities considered to be impaired on an other-than-temporary basis.

Year-to-date Debt markets net revenues were \$3.9 billion, down 4% from the year-ago period as lower revenues from the Global credit products business was partially offset by increased revenues from Global principal investments and the secured financing business.

Acquisition

During the third quarter, Merrill Lynch announced that it entered into a definitive agreement to acquire the energy trading businesses of Entergy-Koch L.P., for total consideration of \$800 million, plus an amount equal to net working capital and net assets from trading activities. This transaction closed on November 1, 2004.

Equity Markets

Equity markets net revenues, which include commissions, principal transactions and net interest profit, and other revenues, declined 15% from the year ago quarter to \$652 million. This decrease was attributable primarily to lower cash equity trading revenues, which continued to be impacted by lower global equity trading volumes. Equity markets net revenues were also reduced by a decline in equity-linked revenues resulting from low volatility. These declines were partially offset by higher revenues from the equity financing and services business, resulting primarily from the acquisition of a clearing business. During the third quarter and nine months periods of 2004, Equity markets revenues included \$58 million and \$125 million of net revenues related to equity method investments. In addition, Equity markets revenues for the third quarter and first nine months of 2003 included \$71 million and \$130 million of net revenues related to a privately-held equity investment, which was held by a Merrill Lynch broker-dealer and adjusted to fair market value by utilizing a discounted cash flow method. In 2003, this item was reflected in Principal transactions revenues on the Condensed Consolidated Statement of Earnings.

For the first nine months of 2004, Equity markets net revenues were \$2.3 billion, 4% higher than in the same period last year driven primarily by higher revenues from cash equity trading, as volumes increased from the comparable period of 2003, and higher revenues from the equity financing and services business.

Investment Banking

Underwriting

Underwriting revenues represent fees earned from the underwriting of debt and equity and equity-linked securities as well as loan syndication and commitment fees.

Underwriting revenues in the 2004 third quarter were \$447 million, up 6% from the \$422 million recorded in the year-ago quarter, reflecting higher debt underwriting revenues resulting from increases in higher margin transactions, partially offset by lower equity underwriting revenues, which reflected market conditions for the quarter, which in turn was partially offset by increased market share. Year-to-date underwriting revenues increased 34% to \$1.5 billion from \$1.1 billion in the first nine months of 2003, as equity and debt underwriting revenues increased by 35% and 33%, respectively.

Merrill Lynch's underwriting market share information based on transaction value follows:

	For the Three Months Ended			
	Sept. 24, 2004		Sept. 26, 2003	
	Market Share	Rank	Market Share	Rank
Global proceeds				
Debt and Equity	5.9%	7	7.8%	3
Debt	5.4	7	7.9	4
Equity and equity-linked	11.2	1	7.7	6
U.S. proceeds				
Debt and Equity	7.1%	5	9.3%	4
Debt	7.0	6	9.4	4
Equity and equity-linked	8.1	6	6.5	5

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

	For the Nine Months Ended			
	Sept. 24, 2004		Sept. 26, 2003	
	Market Share	Rank	Market Share	Rank
Global proceeds				
Debt and Equity	6.7%	4	7.2%	4
Debt	6.6	6	7.1	4
Equity and equity-linked	8.5	4	7.7	5
U.S. proceeds				
Debt and Equity	8.8%	4	9.0%	5
Debt	8.8	3	8.9	4
Equity and equity-linked	7.5	6	10.3	5

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

Strategic Advisory Services

Strategic advisory services revenues, which include merger and acquisition and other advisory fees, were \$128 million in the third quarter of 2004, down 4% from the year-ago quarter due to a higher proportion of large transactions which typically yield lower percentage fees. Year-to-date strategic advisory services revenues increased 9% from the year-ago period, to \$432 million on higher activity.

Merrill Lynch's merger and acquisition market share information based on transaction value is as follows:

	For the Three Months Ended			
	Sept. 24, 2004		Sept. 26, 2003	
	Market Share	Rank	Market Share	Rank
Completed transactions				
Global	25.8%	4	20.7%	3
U.S.	10.9	9	10.2	8
Announced transactions				
Global	18.1%	4	15.3%	5
U.S.	7.6	11	11.7	7

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

	For the Nine Months Ended			
	Sept. 24, 2004		Sept. 26, 2003	
	Market Share	Rank	Market Share	Rank
Completed transactions				
Global	18.9%	4	15.2%	6
U.S.	15.1	8	14.1	6
Announced transactions				
Global	23.1%	3	17.6%	3
U.S.	20.7	5	21.0	2

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

For additional information on GMI's segment results, refer to Note 4 to the Condensed Consolidated Financial Statements.

Global Private Client

GPC's Results of Operations

	For the Three Months Ended			For the Nine Months Ended		
	Sept. 24, 2004	Sept. 26, 2003	% Inc. (Dec.)	Sept. 24, 2004	Sept. 26, 2003	% Inc. (Dec.)
<i>(dollars in millions)</i>						
Fee-based revenues	\$ 1,187	\$ 1,039	14	\$ 3,555	\$ 2,958	20
Transactional and origination revenues	713	778	(8)	2,392	2,239	7
Net interest profit	303	352	(14)	941	1,009	(7)
Other revenues	110	145	(24)	337	353	(5)
Total net revenues	2,313	2,314	—	7,225	6,559	10
Non-interest expenses	1,904	1,859	2	5,858	5,534	6
Pre-tax earnings	\$ 409	\$ 455	(10)	\$ 1,367	\$ 1,025	33
Pre-tax profit margin	17.7%	19.7%		18.9%	15.6%	

GPC's third quarter 2004 pre-tax earnings were \$409 million, down 10% from the 2003 third quarter, on net revenues that remained essentially unchanged at \$2.3 billion. Compared with the 2003 third quarter, higher asset values and annuitized asset flows drove fee-based revenues significantly higher, essentially offsetting the market-driven decline in transaction-based revenues and lower net interest profit, which reflected increased credit provisions related to small and middle-market lending. GPC's pre-tax margin was 17.7%, down from 19.7% in the year-ago quarter. Non-interest expenses were \$1.9 billion in the third quarter of 2004, 2% higher than in the year-ago quarter, due in part to higher litigation-related costs. Litigation costs may continue to remain at similar levels in the near term.

GPC's year-to-date net revenues were \$7.2 billion, up 10% from the corresponding period of 2003. Pre-tax earnings were \$1.4 billion, up 33% from the first nine months of 2003. Non-interest expenses were \$5.9 billion, up 6% from the year-ago period. Non-interest expenses for the first nine months of 2004 included a \$45 million expense related to the adoption of SOP 03-1, which provides guidance on the accounting for guaranteed minimum death benefits in variable annuity products, recorded during the first quarter, as well as higher litigation costs. GPC's year-to-date pre-tax margin was 18.9%, up from 15.6% in the year-ago period.

GPC employed approximately 14,100 Financial Advisors at the end of the 2004 third quarter, a net increase of approximately 700 from the end of the year-ago quarter.

A detailed discussion of GPC's revenues follows:

Fee-based revenues

Fee-based revenues are comprised of asset management and portfolio service fees, including portfolio fees from fee-based accounts such as Unlimited AdvantageSM and Merrill Lynch Consults[®], as well as fees from taxable and tax-exempt money market funds. Also included in fee-based revenues are servicing fees related to these accounts, commissions related to distribution fees on mutual fund sales, and certain other account-related fees.

Fee-based revenues totaled \$1.2 billion, up 14% from the \$1.0 billion recorded in the third quarter of 2003. On a year-to-date basis, fee-based revenues totaled \$3.6 billion, up 20% from the year-ago period. These increases reflect higher portfolio service fees, a large portion of which are calculated on beginning-of-period asset values, and increased distribution fees related to mutual fund sales.

An analysis of changes in assets in GPC accounts from September 26, 2003 to September 24, 2004 is detailed below:

(dollars in billions)	Sept. 26, 2003	Net Changes Due To			Sept. 24, 2004
		New Money(1)	Asset Appreciation	Other(2)	
Assets in GPC accounts	\$ 1,185	\$ 22	\$ 82	\$ (1)	\$ 1,288

(1) GPC net new money excludes flows associated with the Institutional Advisory Division which serves certain small and middle-market companies.

(2) Includes the divestiture of the German retail business and flows associated with the Institutional Advisory Division.

Total assets in GPC accounts were \$1.3 trillion at September 24, 2004, up from \$1.2 trillion at the end of the 2003 third quarter as a result of market-driven increases in asset values and net new money of \$22 billion. Total assets in asset-priced accounts were \$244 billion at the end of the 2004 third quarter, up 18% from \$206 billion at the end of the 2003 third quarter.

Transactional and origination revenues

Transactional and origination revenues include certain commissions revenues, such as those that arise from agency transactions in listed and over-the-counter equity securities, insurance products, and options. Also included are principal transactions and new issue revenues which primarily represent bid-offer revenues in over-the-counter equity securities, government bonds and municipal securities, as well as selling concessions on underwriting of debt and equity products.

Transactional and origination revenues decreased 8% to \$713 million in the third quarter of 2004 from \$778 million in the year-ago quarter due principally to lower revenue from U.S. debt products and from non-U.S. clients. Transactional and origination revenues for the first nine months of 2004 were \$2.4 billion, 7% higher than the comparable period of 2003. These increases were due primarily to increased commissions revenues on equity securities and insurance.

Net interest profit

GPC's net interest profit was \$303 million in the third quarter of 2004, down 14% from \$352 million in the 2003 third quarter. The reduction in net interest profit was primarily the result of increased credit provisions, including a provision of approximately \$65 million associated with secured business loans extended to small- and middle-market businesses, which was \$53 million higher than in the third quarter of 2003. These loans are primarily in the portfolio of Merrill Lynch Business Financial Services, Inc., a subsidiary of Merrill Lynch Bank USA. At September 24, 2004, this \$5.5 billion portfolio included approximately \$150 million of non-accrual loans, net of applicable credit reserves. The additional credit provision in the 2004 third quarter was due primarily to a decline in credit quality in a small portion of this \$5.5 billion portfolio during the quarter. Based on management's evaluation of the credit quality of the portfolio at September 24, 2004, the reserve for credit losses was deemed adequate. The underwriting and portfolio management practices related to this portfolio were strengthened in the second quarter, and an enhanced process is in place to review the credit quality of this portfolio on an ongoing basis. Future credit provisions for this portfolio will be taken as necessary as part of the ongoing portfolio management process, and may be higher in the 2004 fourth quarter than in the fourth quarter of 2003. On a year-to-date basis, GPC's net interest profit was \$941 million, 7% lower than the comparable period of 2003. GPC's net interest profit in the first nine months of 2004 and 2003 included approximately \$140 million and \$46 million, respectively, of credit provisions related to the small- and middle-market business loan portfolio.

Other revenues

GPC's other revenues were \$110 million in the third quarter of 2004, compared to \$145 million in the year-ago period, due primarily to lower mortgage lending related revenues. Other revenues for the first nine months of 2004 decreased to \$337 million from \$353 million in the same period in 2003, also reflecting lower mortgage lending-related revenue.

For additional information on GPC's segment results, refer to Note 4 to the Condensed Consolidated Financial Statements.

Merrill Lynch Investment Managers

MLIM's Results of Operations

	For the Three Months Ended			For the Nine Months Ended		
	Sept. 24, 2004	Sept. 26, 2003	% Inc. (Dec.)	Sept. 24, 2004	Sept. 26, 2003	% Inc. (Dec.)
<i>(dollars in millions)</i>						
Asset management fees	\$ 339	\$ 314	8	\$ 1,029	\$ 904	14
Commissions	25	33	(24)	89	98	(9)
Other revenues	9	(9)	200	37	(18)	306
Total net revenues	373	338	10	1,155	984	17
Non-interest expenses	263	269	(2)	824	819	1
Pre-tax earnings	\$ 110	\$ 69	59	\$ 331	\$ 165	101
Pre-tax profit margin	29.5%	20.4%		28.7%	16.8%	

MLIM continued to demonstrate strong relative investment performance for the 1-, 3- and 5-year periods ended September 2004. For each of these periods, more than 70% of MLIM's global assets under management were ahead of their benchmark or category median.

MLIM's pre-tax earnings in the 2004 third quarter were \$110 million, up 59% from \$69 million in the 2003 third quarter. Net revenues increased 10% from the year ago period to \$373 million, driven primarily by higher average asset values and an increased proportion of higher-yielding assets. Non-interest expenses were \$263 million, down 2% from the third quarter of 2003. The pre-tax margin was 29.5% in the third quarter of 2004, up 9 percentage points from 20.4% in the year-ago quarter.

Year-to-date, MLIM's pre-tax earnings were \$331 million, more than double the first nine months of 2003 on net revenues that increased 17%, to \$1.2 billion. MLIM's year-to-date pre-tax margin was 28.7%, compared with 16.8% for the same period last year as non-interest expenses were essentially unchanged from the year-ago period.

A detailed discussion of MLIM's revenues follows:

Asset management fees

Asset management fees primarily consist of fees earned from the management and administration of funds and separately managed accounts. In some cases, separately managed accounts also generate performance fees. Asset management fees were \$339 million, up 8% from \$314 million in the third quarter of 2003 due primarily to higher average asset values and an increased proportion of higher yielding assets. At the end of the third quarter of 2004, firmwide assets under management totaled \$478 billion, a 1% increase from \$473 billion at the end of the year-ago quarter, due primarily to market-driven appreciation and the positive impact of foreign exchange, partially offset by net new money outflows of \$25 billion. The net new money outflows were principally in short-term

institutional liquidity products, largely the result of increases in short-term interest rates. On a year-to-date basis, asset management fees increased 14% to \$1.0 billion.

An analysis of changes in firmwide assets under management from September 26, 2003 to September 24, 2004 is as follows:

(dollars in billions)	Sept. 26, 2003	Net Changes Due To			Sept. 24, 2004(2)
		New Money	Asset Appreciation	Other(1)	
Assets under management	\$ 473	\$ (25)	\$ 17	\$ 13	\$ 478

(1) Includes the impact of foreign exchange movements, reinvested dividends, net outflows of retail money market funds and other changes.

(2) Includes \$5 billion of International Private Investors assets managed by GPC.

Commissions

Commissions for MLIM principally consist of distribution fees and contingent deferred sales charges (“CDSC”) related to mutual funds. The distribution fees represent revenues earned for promoting and distributing mutual funds (“12b-1 fees”). The CDSC represents fees earned when a shareholder redeems shares prior to the required holding period. Commissions revenues were \$25 million for the third quarter of 2004, down 24% from the year-ago quarter. Year-to-date commissions declined 9% from a year-ago, to \$89 million. These declines reflect lower levels of distribution fee and CDSC revenue as compared to the year-ago periods.

Other Revenues

Other revenues, which primarily include net interest profit and investment gains and losses, totaled \$9 million and \$(9) million for the third quarter of 2004 and 2003, respectively. Other revenues for the first nine months of 2004 were \$37 million compared to \$(18) million for the first nine months of 2003. Other revenues in the third quarter and year-to-date periods of 2004 reflect the impact of certain investments consolidated in accordance with FIN 46R, during 2004. Other revenues in the third quarter and year-to-date periods of 2003 reflect the write-down of certain assets.

For additional information on MLIM’s segment results, refer to Note 4 to the Condensed Consolidated Financial Statements.

Consolidated Balance Sheets

Management continually monitors and evaluates the size and composition of the Consolidated Balance Sheet. The following table summarizes the September 24, 2004 and December 26, 2003 period-end balance sheets, and the first nine months of 2004 and full-year 2003 average balance sheets:

<i>(dollars in billions)</i>	Sept. 24, 2004	2004 Nine Month Average(1)	Dec. 26, 2003	2003 Full Year Average(1)
Assets				
Trading-Related				
Securities financing assets	\$ 191.8	\$ 170.6	\$ 126.4	\$ 145.0
Trading assets	162.6	155.9	134.3	135.9
Other trading-related receivables	52.6	52.9	46.5	50.5
	<u>407.0</u>	<u>379.4</u>	<u>307.2</u>	<u>331.4</u>
Non-Trading-Related				
Cash	29.6	27.1	25.3	24.6
Investment securities	73.2	82.3	74.8	78.5
Loans, notes, and mortgages	55.2	54.0	51.0	44.8
Other non-trading assets	41.7	42.8	38.0	41.4
	<u>199.7</u>	<u>206.2</u>	<u>189.1</u>	<u>189.3</u>
Total assets	<u>\$ 606.7</u>	<u>\$ 585.6</u>	<u>\$ 496.3</u>	<u>\$ 520.7</u>
Liabilities				
Trading-Related				
Securities financing liabilities	\$ 182.0	\$ 175.0	\$ 116.4	\$ 137.7
Trading liabilities	100.7	99.4	89.3	93.7
Other trading-related payables	59.5	57.0	49.2	55.5
	<u>342.2</u>	<u>331.4</u>	<u>254.9</u>	<u>286.9</u>
Non-Trading-Related				
Commercial paper and other short-term borrowings	6.0	6.2	5.0	4.9
Deposits	77.3	77.5	79.5	81.2
Long-term borrowings	102.6	96.6	83.3	80.3
Long-term debt issued to TOPrSM partnerships	3.1	3.2	3.2	3.2
Other non-trading liabilities	45.4	40.8	41.4	38.0
	<u>234.4</u>	<u>224.3</u>	<u>212.4</u>	<u>207.6</u>
Total liabilities	<u>576.6</u>	<u>555.7</u>	<u>467.3</u>	<u>494.5</u>
Total stockholders' equity	<u>30.1</u>	<u>29.9</u>	<u>29.0</u>	<u>26.2</u>
Total liabilities and stockholders' equity	<u>\$ 606.7</u>	<u>\$ 585.6</u>	<u>\$ 496.3</u>	<u>\$ 520.7</u>

(1) Averages represent management's daily balance sheet estimates, which may not fully reflect netting and other adjustments included in period-end balances. Balances for certain assets and liabilities are not revised on a daily basis.

Total assets at September 24, 2004 increased 22% from year-end 2003, to \$606.7 billion. On an average basis, for the nine months ended 2004, total assets increased 12% over the full year 2003 average, to \$585.6 billion. These increases reflect higher levels of securities financing assets, including increased client matched-book activity.

Off Balance Sheet Arrangements

As a part of its normal operations, Merrill Lynch enters into various off balance sheet arrangements that may require future payments. The table below outlines the significant off balance sheet arrangements, as well as the future expiration as of September 24, 2004:

(dollars in millions)

	Total	Expiration			
		Less Than 1 Year	1 – 3 Years	3+ – 5 Years	Over 5 Years
Liquidity facilities with SPEs ⁽¹⁾	\$ 16,735	\$ 13,941	\$ 2,794	\$ –	\$ –
Liquidity and default facilities with SPEs ⁽¹⁾	3,044	2,234	522	1	287
Residual value guarantees ^{(2) (3)}	2,152	58	14	491	1,589
Standby letters of credit and other performance guarantees	1,456	797	56	49	554
Contractual agreements ⁽⁴⁾	42,028	8,219	11,739	6,378	15,692
Commitments to extend credit	42,185	18,488	8,168	8,754	6,775
Resale agreements	13,081	13,081	–	–	–

(1) Amounts relate primarily to facilities provided to municipal bond securitization SPEs.

(2) Includes residual value guarantees associated with the Hopewell campus and aircraft leases of \$325 million.

(3) Includes \$1.1 billion of reimbursement agreements with the Mortgage 100SM program.

(4) Represents the liability balance of contractual agreements at September 24, 2004.

In April 2004, Merrill Lynch entered into a commitment to extend a 5.3 billion Euro loan to Sanofi-Synthelabo, a large French pharmaceutical company, in connection with its acquisition of Aventis. This commitment replaced the previously reported 4.0 billion Euro commitment entered into in January 2004. As of November 1, 2004, Merrill Lynch had syndicated out 4.6 billion Euro of this commitment.

Refer to Note 11 to the Condensed Consolidated Financial Statements for additional information on Commitments, Contingencies and Guarantees.

Contractual Obligations

In the normal course of business, Merrill Lynch enters into various contractual obligations that may require future cash payments. The accompanying table summarizes Merrill Lynch's contractual obligations by remaining maturity at September 24, 2004. Excluded from this table are obligations recorded on the Condensed Consolidated Balance Sheet that are generally short-term in nature, including securities financing transactions, trading liabilities, deposits, commercial paper and other short-term borrowings and other payables. Also excluded are obligations that are liabilities of insurance subsidiaries, which are subject to significant variability, and separate accounts liabilities, which fund separate accounts assets. The majority of Merrill Lynch's long-term borrowings are

variable rate obligations, or fixed rate obligations swapped to variable rates, and accordingly, interest payments are not included in the following table.

	Expiration				
		Less Than 1 Year	1 – 3 Years	3+– 5 Years	Over 5 Years
<i>(dollars in millions)</i>	Total				
Long-term borrowings(1)	\$ 105,674	\$ 17,565	\$ 27,561	\$ 28,173	\$ 32,375
Purchasing and other commitments	4,583	3,440	724	275	144
Operating lease commitments	3,694	542	1,019	829	1,304

(1) Includes Long-term debt issued to TOPrSM partnerships.

From time to time, Merrill Lynch may, in the ordinary course of business, provide indicative financing proposals to its corporate clients primarily in connection with its Investment Banking business. Such proposals are subject to customary terms and conditions and are not considered to be commitments.

Capital Adequacy and Funding

The primary objectives of Merrill Lynch's capital structure and funding policies are to support the successful execution of the firm's business strategies while ensuring:

- sufficient equity capital to absorb losses and,
- 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 2003 Annual Report.

Capital Adequacy

At September 24, 2004, Merrill Lynch's equity capital was comprised of \$29.7 billion in common equity, \$425 million in preferred stock, and \$2.5 billion of Long-term debt issued to TOPrSM partnerships (net of related investments). Based on the risks and equity needs of its businesses, Merrill Lynch believes that its equity capital base of \$32.7 billion is adequate.

Asset-to-equity leverage ratios are commonly used to assess a company's capital adequacy. Merrill Lynch believes that a leverage ratio adjusted to exclude certain assets considered to have a low risk profile provides a more meaningful measure of balance sheet leverage in the securities industry than an unadjusted ratio. Merrill Lynch's unadjusted and adjusted leverage ratios are shown below. When assessing its capital adequacy, Merrill Lynch considers the risk profile of assets, the impact of hedging, off balance sheet exposures, operational risk and other considerations, and does not emphasize leverage ratios, which are not risk sensitive.

The following table provides calculations of Merrill Lynch's leverage ratios:

<i>(dollars in millions)</i>	September 24, 2004	December 26, 2003
Total assets	\$ 606,681	\$ 496,316
Less:		
Receivables under resale agreements	125,714	71,756
Receivables under securities borrowed transactions	57,834	45,472
Securities received as collateral	8,292	9,156
Adjusted assets	\$ 414,841	\$ 369,932
Stockholders' equity	\$ 30,121	\$ 28,950
Long-term debt issued to TOPrS SM partnerships, net of related investments ⁽¹⁾	2,544	2,639
Equity capital	\$ 32,665	\$ 31,589
Leverage ratio ⁽²⁾	18.6x	15.7x
Adjusted leverage ratio ⁽³⁾	12.7x	11.7x

(1) Due to the perpetual nature of TOPrSSM and other considerations, Merrill Lynch views the long-term debt issued to TOPrSSM partnerships (net of related investments) as a component of equity capital. However, the Long-term debt issued to TOPrSSM partnerships is reported as a liability for accounting purposes. TOPrSSM related investments were \$548 million at September 24, 2004 and \$564 million at December 26, 2003.

(2) Total assets divided by equity capital.

(3) Adjusted assets divided by equity capital.

As part of Merrill Lynch's capital management, Merrill Lynch repurchased 17.8 million shares of its common stock during the third quarter of 2004 at an average price of \$50.28 per share. For the nine months ended September 24, 2004, Merrill Lynch repurchased a cumulative total of 47.7 million shares of common stock at a cost of \$2.6 billion, completing the \$2 billion repurchase authorized in February 2004 and utilizing \$619 million of the additional \$2 billion repurchase authorized in July 2004. For more information on the share repurchase plan see Part II — Item 2.

On November 1, 2004 Merrill Lynch issued \$630 million of floating rate, non-cumulative preferred stock.

Funding

Commercial paper outstanding totaled \$5.1 billion at September 24, 2004 and \$4.6 billion at December 26, 2003, which were approximately 5% of total unsecured borrowings at both September 24, 2004 and year-end 2003, respectively. Deposits at Merrill Lynch's banking subsidiaries totaled \$77.3 billion at September 24, 2004, down from \$79.5 billion at year-end 2003. Of the \$77.3 billion of deposits in Merrill Lynch banking subsidiaries as of September 24, 2004, \$63.5 billion were in U.S. banks. Outstanding Long-term borrowings, including Long-term debt issued to TOPrSSM partnerships, increased to \$105.7 billion at September 24, 2004 from \$86.5 billion at December 26, 2003. The increase in Long-term borrowings supported higher asset levels and was consistent with Merrill Lynch's liquidity practices. For capital management purposes, Merrill Lynch views TOPrSSM as a component of equity capital. However, the Long-term debt issued to TOPrSSM partnerships is reported as a liability for accounting purposes. For additional information on the accounting for TOPrSSM, refer to Note 6 of the Condensed Consolidated Financial Statements. Major

components of the change in Long-term borrowings during the first nine months of 2004 are as follows:

(dollars in billions)

Balance at December 26, 2003	\$ 86.5
Issuances	35.6
Maturities	(17.4)
Other, net	1.0
Balance at September 24, 2004 ⁽¹⁾	<u>\$105.7</u>

(1) At September 24, 2004, \$88.1 billion of long-term borrowings had maturity dates beyond one year.

In October 2004, Merrill Lynch repurchased outstanding LYONs® with a face value of \$1.0 billion.

Total borrowings outstanding at September 24, 2004 were issued in the following currencies:

(USD equivalent in millions)

USD	\$ 77,192	70%
EUR	17,394	16
JPY	10,151	9
GBP	2,578	2
CAD	1,401	1
AUD	1,356	1
Other	1,602	1
Total	<u>\$ 111,674</u>	<u>100%</u>

As a part of its overall liquidity risk management practices, Merrill Lynch seeks to ensure availability of sufficient alternative funding sources to enable the repayment of all unsecured debt obligations maturing within one year without issuing new unsecured debt or requiring liquidation of business assets. The main alternative funding sources to unsecured borrowings are repurchase agreements, securities loaned, and other secured borrowings, which require pledging unencumbered securities held for trading or investment purposes.

Merrill Lynch also maintains a separate liquidity portfolio of U.S. Government and agency obligations and other instruments of high credit quality that is funded with debt with a weighted average maturity greater than one year. The carrying value of this portfolio, net of related hedges, was \$14.4 billion and \$14.6 billion at September 24, 2004 and December 26, 2003, respectively. These assets may be sold or pledged to provide immediate liquidity to ML & Co. to repay maturing debt obligations. In addition to this portfolio, the firm monitors the extent to which other unencumbered assets are available to ML & Co. as a source of funds considering that some subsidiaries are restricted in their ability to upstream unencumbered collateral to ML & Co. In addition, Merrill Lynch periodically has temporary cash balances. When this occurs, the firm seeks to invest these cash balances in ways that maintain liquidity. Included among investment alternatives are short-term bank or money market deposits and receivables under resale agreements.

Merrill Lynch also maintains a committed, multi-currency, unsecured bank credit facility that totaled \$3.0 billion at September 24, 2004 and December 26, 2003. The facility, which was renewed on May 6, 2004, expires in 364 days. At September 24, 2004 and December 26, 2003, there were no borrowings under this credit facility, although ML & Co. may borrow from this facility from time to time.

Credit Ratings

The cost and availability of unsecured funding are impacted by credit ratings and market conditions. In addition, credit ratings are important when competing in certain markets and when seeking to engage in long-term transactions including over-the-counter derivatives. Factors that influence Merrill Lynch's credit ratings include the rating agencies' assessment of the general operating environment, Merrill Lynch's relative positions in the markets in which it competes, reputation, level and volatility of earnings, risk management policies, liquidity and capital management.

Merrill Lynch's senior long-term debt and preferred stock were rated by several recognized credit rating agencies at November 1, 2004 as indicated below. These ratings do not reflect outlooks that may be expressed by the rating agencies from time to time, which are currently stable.

Rating Agency	Senior Debt Ratings	Preferred Stock Ratings
Dominion Bond Rating Service Ltd	AA (low)	Not Rated
Fitch Ratings	AA-	A+
Moody's Investors Service, Inc.	Aa3	A2
Rating and Investment Information, Inc. ⁽¹⁾	AA	A+
Standard & Poor's Ratings Services	A+	A-

(1) Located in Japan

Risk Management

Risk-taking is an integral part of Merrill Lynch's core business activities. In the course of conducting its business operations, Merrill Lynch is exposed to a variety of risks. These risks include market, credit, liquidity, process, and other risks that are material and require comprehensive controls and management. The responsibility and accountability for these risks remain primarily with the individual business units. For a full discussion of Merrill Lynch's risk management framework, see the 2003 Annual Report.

Market Risk

Value-at-risk ("VaR") is an estimate within a specified degree of confidence of the amount that Merrill Lynch's present portfolios could lose over a given time interval. Merrill Lynch's overall VaR 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 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 the methodology and measurement 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 VaR across several confidence levels and holding periods. Sensitivities to market risk factors are aggregated and combined with a database of historical weekly changes in market factors to simulate a series of profits and losses. The level of loss that is exceeded in that series 5% of the time is used as the estimate for the 95% confidence level VaR. The tables below show VaR using a 95% confidence level and a weekly

holding period for trading and non-trading portfolios. In addition to the overall VaR, which reflects diversification in the portfolio, VaR amounts are presented for 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 September 24, 2004, June 25, 2004, and December 26, 2003 as well as daily average VaR for the three months ended September 24, 2004 and June 25, 2004, and full year 2003.

<i>(dollars in millions)</i>	Sept. 24, 2004	June 25, 2004	Dec. 26, 2003	High 3Q04	Low 3Q04	Daily Average 3Q04	Daily Average 2Q04	Daily Average 2003
Trading value-at-risk ⁽¹⁾								
Interest rate and credit spread	\$ 51	\$ 46	\$ 68	\$ 72	\$ 38	\$ 53	\$ 57	\$ 56
Equity	30	36	34	43	21	31	33	30
Commodity	4	1	1	4	1	2	1	1
Currency	—	1	2	8	—	1	2	2
Volatility	33	35	36	34	20	27	25	26
	118	119	141			114	118	115
Diversification benefit	(75)	(62)	(62)			(53)	(54)	(54)
Overall ⁽²⁾	<u>\$ 43</u>	<u>\$ 57</u>	<u>\$ 79</u>	<u>\$ 75</u>	<u>\$ 43</u>	<u>\$ 61</u>	<u>\$ 64</u>	<u>\$ 61</u>

(1) Based on a 95% confidence level and a one-week holding period.

(2) Overall VaR using a 95% confidence level and a one-day holding period was \$18 million at September 24, 2004, \$24 million at June 25, 2004, and \$30 million at year-end 2003.

Based on Merrill Lynch's view of the prevailing market opportunities in the third quarter, it reduced certain risk taking activities, including in equity securities, and it increased long option positions in certain asset classes, including interest rates and currencies, which contributed to a reduction in overall Trading VaR.

If market conditions warrant, Merrill Lynch may increase its risk taking in the future in a number of growth areas, including certain lending businesses, proprietary trading activities and principal investments. These activities provide growth opportunities while also increasing the loss potential under certain market conditions. Corporate Risk Management monitors these risk levels on a daily basis to ensure they remain within corporate risk guidelines and tolerance levels.

The following table presents Merrill Lynch's VaR for its non-trading portfolios, including Merrill Lynch's U.S. banks, certain middle-market lending activities, Merrill Lynch's LYONs® and TOPrSSM liabilities:

<i>(dollars in millions)</i>	Sept. 24, 2004	June 25, 2004	Dec. 26, 2003
Non-trading value-at-risk ⁽¹⁾			
Interest rate and credit spread	\$ 97	\$ 100	\$ 94
Equity	55	54	56
Currency	21	19	14
Volatility	26	17	21
	199	190	185
Diversification benefit	(67)	(41)	(67)
Overall	<u>\$ 132</u>	<u>\$ 149</u>	<u>\$ 118</u>

(1) Based on a 95% confidence level and a one-week holding period.

Non-trading VaR declined due to a change in the modeling of credit spread sensitivities on certain middle-market lending businesses.

Credit Risk

Merrill Lynch enters into International Swaps and Derivatives Association, Inc. master agreements or their equivalent (“master netting agreements”) with substantially all of its derivative counterparties as soon as possible. The agreements are negotiated with each counterparty and are complex in nature. While every effort is taken to execute such agreements, it is possible that a counterparty may be unwilling to sign such an agreement, and as a result, would subject Merrill Lynch to additional credit risk. 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 Condensed Consolidated Balance Sheets, providing for a more meaningful balance sheet presentation of credit exposure. However, the enforceability of master netting agreements under bankruptcy laws in certain countries or in certain industries is not free from doubt and receivables and payables with counterparties in these countries or industries are accordingly recorded on a gross basis.

In addition, to reduce default risk, Merrill Lynch requires collateral, principally cash and U.S. Government and agency 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 \$11.2 billion of collateral) of OTC trading derivatives in a gain position by maturity at September 24, 2004. (Please note that the following table is inclusive of credit exposure from derivative transactions only and does not include other material credit exposures).

(dollars in millions)

Credit Rating(1)	Years to Maturity				Cross-Maturity Netting(2)	Total
	0-3	3+ - 5	5+ - 7	Over 7		
AAA	\$ 2,372	\$ 459	\$ 448	\$ 2,171	\$ (1,821)	\$ 3,629
AA	2,832	578	1,252	1,972	(1,905)	4,729
A	1,623	959	907	1,506	(1,608)	3,387
BBB	1,126	471	464	2,731	(672)	4,120
Other	1,269	286	186	357	(392)	1,706
Total	\$ 9,222	\$ 2,753	\$ 3,257	\$ 8,737	\$ (6,398)	\$ 17,571

(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 of its derivative contracts.

Non-Investment Grade Holdings and Highly Leveraged Transactions

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 that these risks are inherent in the business and may employ 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.

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 lower than BBB, 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 may seek to mitigate these risks in certain circumstances 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 may syndicate 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:

(dollars in millions)

	Sept. 24, 2004	Dec. 26, 2003
Trading assets:		
Cash instruments	\$ 11,251	\$ 8,331
Derivatives	4,359	4,124
Trading liabilities — cash instruments	(3,145)	(2,024)
Collateral on derivative assets	(2,653)	(2,335)
Net trading asset exposure	\$ 9,812	\$ 8,096

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 September 24, 2004, the carrying value of such debt and equity securities totaled \$533 million, of which 36% resulted from Merrill Lynch's market-making activities in such securities. This compared with \$259 million at December 26, 2003, of which

18% related to market-making activities. Also included are distressed bank loans totaling \$143 million at both September 24, 2004 and December 26, 2003.

Non-Trading Exposures

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

(dollars in millions)

	Sept. 24, 2004	Dec. 26, 2003
Investment securities	\$ 349	\$ 183
Loans, notes, and mortgages of commercial ⁽¹⁾⁽²⁾	10,673	8,344
Other investments ⁽³⁾ :		
Partnership interests	906	902
Other equity investments ⁽⁴⁾	702	716

(1) Includes accrued interest. Net of allowance for loan losses.

(2) Includes \$9.8 billion and \$7.7 billion of secured loans at September 24, 2004 and December 26, 2003, respectively.

(3) Includes a total of \$466 million and \$508 million in investments at September 24, 2004 and December 26, 2003, respectively, related to deferred compensation plans, for which a portion of the default risk of the investments rests with the participating employees.

(4) Includes investments in 200 and 204 enterprises at September 24, 2004 and December 26, 2003, respectively.

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

(dollars in millions)

	Sept. 24, 2004	Dec. 26, 2003
Additional commitments to invest in partnerships ⁽¹⁾	\$ 367	\$ 426
Unutilized revolving lines of credit and other lending commitments	8,923	4,423

(1) Includes \$118 million and \$150 million at September 24, 2004 and December 26, 2003, respectively, related to deferred compensation plans.

Critical Accounting Policies and Estimates

The following is a summary of Merrill Lynch's critical accounting policies. For a full description of these and other accounting policies see Note 1 of the 2003 Annual Report.

Use of Estimates

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

- certain trading inventory valuations
- the outcome of litigation
- the carrying amount of goodwill
- the allowance for loan losses
- the realization of deferred tax assets

- taxes payable
- insurance reserves and recovery of insurance deferred acquisition costs
- cash flow projections used in determining whether variable interest entities (“VIEs”) should be consolidated
- interim compensation accruals, particularly cash incentive awards and Financial Advisor compensation, and
- other matters that affect the reported amounts and disclosure of contingencies in the financial statements.

Estimates, by their nature, are based on judgment and available information. Therefore, actual results could differ from those estimates and could have a material impact on the Condensed Consolidated Financial Statements, and it is possible that such changes could occur in the near term. For more information regarding the specific methodologies used in determining estimates, refer to Use of Estimates in Note 1 of the 2003 Annual Report.

Valuation of Financial Instruments

Fair values for exchange traded securities and certain exchange-traded derivatives, principally futures and certain options, are based on quoted market prices. Fair values for OTC derivative financial instruments, principally forwards, options, and swaps, represent amounts estimated to be received from or paid to a third party in settlement of these instruments. These derivatives are valued using pricing models based on the net present value of estimated future cash flows, and directly observed prices from exchange-traded derivatives, other OTC trades, or external pricing services, while taking into account the counterparty’s credit ratings, or Merrill Lynch’s own credit ratings, as appropriate.

New and/or complex instruments may have immature or limited markets. As a result, the pricing models used for valuation often incorporate significant estimates and assumptions, which may impact the level of precision in the financial statements. For long-dated and illiquid contracts, extrapolation methods are applied to observed market data in order to estimate inputs and assumptions that are not directly observable. This enables Merrill Lynch to mark all positions consistently when only a subset of prices is directly observable. Values for non-exchange-traded derivatives are verified using observed information about the costs of hedging out the risk and other trades in the market. As the markets for these products develop, Merrill Lynch continually refines its pricing models based on experience to correlate more closely to the market risk of these instruments. Obtaining the fair value for OTC derivative contracts requires the use of management judgment and estimates. Unrealized gains for these instruments are not recognized unless the valuation model incorporates significant observable market inputs.

Merrill Lynch holds investments that may have quoted market prices but that are subject to restrictions (e.g., consent of other investors to sell) that may limit Merrill Lynch’s ability to realize the quoted market price. Accordingly, Merrill Lynch estimates the fair value of these securities based on management’s best estimate which incorporates pricing models based on projected cash flows, earnings multiples, comparisons based on similar market transactions and/or review of underlying financial conditions and other market factors.

Merrill Lynch also has investments in certain non-U.S. GAAP entities, which are accounted for under the equity method of accounting. U.S. GAAP requires that management make certain estimates in determining income recognition. In addition, management makes judgments regarding the allocation of the cost basis of certain investments to the underlying assets in determining valuation of these investments. Merrill Lynch recorded approximately \$346 million of net revenues related to equity method investments for the first nine months of 2004.

Valuation adjustments are an integral component of the mark-to-market process and are taken for individual positions where either the sheer size of the trade or other specific features of the trade or particular market (such as counterparty credit quality, concentration or market liquidity) requires more than the simple application of the pricing models.

Assets and liabilities recorded on the balance sheet can therefore be broadly categorized as follows:

1. highly liquid cash and derivative instruments, primarily carried at fair value, for which quoted market prices are readily available (for example, exchange-traded equity securities, derivatives, such as listed options, and U.S. Government securities)
2. liquid instruments, primarily carried at fair value, including
 - a) cash instruments for which quoted prices are available but which may trade less frequently such that there is not complete pricing transparency for these instruments across all market cycles (for example, corporate and municipal bonds);
 - b) derivative instruments that are valued using a model, where inputs to the model are directly observable in the market (for example, U.S. dollar interest rate swaps);
 - c) instruments that are priced with reference to financial instruments whose parameters can be directly observed; and
3. less liquid instruments that are valued using management's best estimate of fair value, and instruments which are valued using a model, where either the inputs to the model and/or the models themselves require significant judgment by management (for example, private equity investments, long dated or complex derivatives such as certain foreign exchange options and credit default swaps, distressed debt and aged inventory positions).

Merrill Lynch continually refines the process used to determine the appropriate categorization of its assets and liabilities. At September 24, 2004 and December 26, 2003, assets and liabilities on the Condensed Consolidated Balance Sheets can be categorized as follows:

September 24, 2004

(dollars in millions)

	Category 1	Category 2	Category 3	Total
Assets				
Trading assets, excluding contractual agreements	\$ 64,409	\$ 60,314	\$ 1,554	\$126,277
Contractual agreements	7,305	26,023	2,965	36,293
Investment securities	9,372	58,371	5,466	73,209
Liabilities				
Trading liabilities, excluding contractual agreements	\$ 47,344	\$ 10,136	\$ 1,241	\$ 58,721
Contractual agreements	9,029	28,931	4,068	42,028

December 26, 2003
(dollars in millions)

	Category 1	Category 2	Category 3	Total
Assets				
Trading assets, excluding contractual agreements	\$ 49,072	\$ 46,448	\$ 1,593	\$ 97,113
Contractual agreements	4,969	28,555	3,672	37,196
Investment securities	10,478	59,603	4,728	74,809
Liabilities				
Trading liabilities, excluding contractual agreements	\$ 36,290	\$ 8,485	\$ 1,205	\$ 45,980
Contractual agreements	6,942	32,605	3,806	43,353

In addition, other trading-related assets recorded in the Condensed Consolidated Balance Sheet at September 24, 2004 and December 26, 2003 include \$183.5 billion and \$117.2 billion, respectively, of securities financing transactions (receivables under resale agreements and receivables under securities borrowed transactions) which are recorded at their contractual amounts plus accrued interest and for which little or no estimation is required by management.

Changes in Estimates
Litigation

Merrill Lynch is involved in a significant number of lawsuits, arbitrations and investigations, including major cases as described in Item 3 of the 2003 Form 10-K. Given the number of these matters, some are likely to result in adverse judgments, settlements, penalties, injunctions, fines, or other relief. Merrill Lynch believes it has strong defenses to, and where appropriate, will vigorously contest many of these matters. In accordance with SFAS No. 5, Accounting for Contingencies, when resolution of cases is both probable and estimable, Merrill Lynch will accrue a liability. In many lawsuits and arbitrations, including the class action lawsuits disclosed in Item 3 of the 2003 Form 10-K, it is not possible to determine whether a liability has been incurred or to estimate the ultimate or minimum amount of that liability until the case is close to resolution, in which case no accrual is made until that time. In view of the inherent difficulty of predicting the outcome of such matters, particularly in cases in which claimants seek substantial or indeterminate damages, Merrill Lynch often cannot predict what the eventual loss or range of loss related to such matters will be. GPC's third quarter 2004 litigation provision includes cases that involve amounts under \$250,000. Merrill Lynch continues to assess these matters and believes, based on information available to it, that the resolution of these matters will not have a material adverse effect on the financial condition of Merrill Lynch as set forth in the Condensed Consolidated Financial Statements, but may be material to Merrill Lynch's operating results or cash flows for any particular period and may impact ML & Co.'s credit ratings.

Trading Inventory Valuations

During the third quarter of 2004, as part of the review of valuation models relating to debt derivatives, Merrill Lynch refined parameters in certain models, which resulted in an increase in GMI's net revenues of \$16 million. In equity derivatives, Merrill Lynch made certain enhancements within the overall credit reserve relating to collateral and changed certain forward volatility model assumptions, which decreased GMI's net revenues by \$12 million.

Compensation and Employee Benefits

Merrill Lynch determines its quarterly compensation accrual based on a full-year process that requires management judgment in determining the full year compensation expense to be incurred. As part of this process, estimates, including the ratio of compensation and employee benefits expense to net revenues, the mix of cash and stock to be paid to employees and Financial Advisor variable compensation, are updated on a quarterly basis.

During the third quarter of 2004, based on actual employee turnover statistics, Merrill Lynch changed its estimates of employee turnover used in determining expenses related to its U.S. defined contribution pension plan and its 401(k) plan. In addition, U.S. healthcare plan expense accrual rates were adjusted to conform with a revised actuarial analysis of expected healthcare plan expenses based on updated claim trends. Primarily as a result of these changes, compensation and benefits expenses in the third quarter of 2004 were reduced by \$29 million.

Income Taxes

A valuation allowance for deferred taxes was established in 2001 related to net operating losses and other temporary differences in Japan. The third quarter review of this valuation allowance did not result in any adjustment to the allowance. Merrill Lynch's fourth quarter review of the allowance may result in a reduction in income tax expense in the fourth quarter, depending on developments in Merrill Lynch's Japanese businesses.

New Accounting Pronouncements

On September 30, 2004, the Emerging Issues Task Force ("EITF") affirmed its previous consensus regarding Issue 04-8, *The Effect of Contingently Convertible Debt on Diluted Earnings Per Share*. The guidance in this Issue requires that contingently convertible instruments be included in diluted earnings per share computations (if dilutive) regardless of whether the market price trigger has been met. The effective date of this consensus is expected to be for reporting periods ending after December 15, 2004. Retroactive restatement of earnings per share amounts is required for contingent convertible debt issuances that are outstanding at the effective date. Merrill Lynch currently has two contingently convertible debt issuance outstanding (see Note 8 to the Condensed Consolidated Financial Statements for additional information on LYONs®) and estimates that the inclusion of these instruments in the earnings per share computation for the third quarter of 2004 would have resulted in an increase in diluted shares of approximately 6% and a reduction in diluted earnings per share of 3%.

On December 15, 2003, the FASB issued an Exposure Draft, *Earnings Per Share, an Amendment of FASB Statement No. 128* (the "Amendment"). The proposed Amendment requires, in part, that for contracts that can be settled in either cash or shares, issuing entities should assume share settlement for purposes of computing diluted earnings per share. The FASB subsequently decided that retroactive restatement of earnings per share is not required for those contracts that are appropriately modified prior to the effective date of the Amendment. This Amendment is expected to be finalized in the fourth quarter of 2004 and effective for reporting periods ending after December 15, 2004. Currently, Merrill Lynch has two debt issuances outstanding for which Merrill Lynch has the right to elect cash or share settlement in the event that holders of LYONs® require Merrill Lynch to repurchase the securities. (see Note 8 to the Condensed Consolidated Financial Statements for additional information on LYONs®). On November 1, 2004, Merrill Lynch entered into supplemental indentures pursuant to which it surrendered the right to elect to pay such amounts in common stock and instead will be obligated to pay such amounts when and if required in cash. As a result, the proposed Amendment, if finalized based on the decisions of the Board reached to date, would have no impact on Merrill Lynch's diluted earnings per share.

On June 30, 2004, the EITF reached a consensus on Issue 02-14, *Whether the Equity Method of Accounting Applies When an Investor Does Not Have an Investment in Voting Stock of an Investee but Exercises Significant Influence through Other Means*. The consensus reached indicates that in situations where an investor has the ability to exercise significant influence over the investee, an investor should apply the equity method of accounting only when it has either common stock or "in-substance" common stock of a corporation. The guidance prohibits the application of the equity method in instances where an investment is neither common stock nor "in-substance" common stock. Merrill Lynch will adopt the new guidance in the fourth quarter of 2004 on a prospective basis, and as a result will adopt the cost method of accounting for certain investments to which the equity method of accounting had previously been applied. Under the equity method of accounting, Merrill Lynch recognized cumulative \$320 million in Other Revenues related to one of these investments over the period from the third quarter of 2003 to the third quarter of 2004. Under the cost method of accounting, Merrill Lynch will record income when dividends are declared by the investee.

On May 19, 2004, the Financial Accounting Standards Board ("FASB") issued a final FASB Staff Position ("FSP") 106-2, *Accounting and Disclosure Requirements Related to the Medicare Prescription Drug, Improvement and Modernization Act of 2003*, which supersedes FSP 106-1 of the same title issued in January 2004. FSP 106-2 provides guidance on accounting for the effects of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 ("the Act") that was

signed into law on December 8, 2003. The Act allows for a tax-free government subsidy to employers providing “actuarially equivalent” prescription drug benefits to its Medicare eligible retirees. Management concluded that the benefits provided under Merrill Lynch’s plan are “actuarially equivalent” to Medicare Part D and qualify for the subsidy provided by the Act. Effective for the third quarter of 2004, Merrill Lynch adopted FSP 106-2 using the prospective application method. As a result, Merrill Lynch’s accumulated postretirement benefit obligation has been reduced by approximately \$43 million and the net periodic postretirement benefit cost for the third quarter of 2004 has decreased by \$1.3 million.

In March 2004, the EITF reached a final consensus on Issue 03-1, *The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments*. EITF 03-1 requires that when the fair value of an investment security is less than its carrying value, an impairment exists for which the determination must be made as to whether the impairment is other-than-temporary. The EITF 03-1 impairment model applies to all investment securities accounted for under SFAS No. 115, *Accounting for Certain Investments in Debt and Equity Securities* and to investment securities accounted for under the cost method to the extent an impairment indicator exists. Under the guidance, the determination of whether an impairment is other than temporary and therefore would result in a recognized loss depends on market conditions and management’s intent and ability to hold the securities with unrealized losses. In September 2004, the FASB approved FSP EITF 03-1 which defers the effective date for recognition and measurement guidance contained in EITF 03-1 until certain issues are resolved. Merrill Lynch expects that the issues will be resolved in the fourth quarter and will adopt the guidance at the time it is issued. Merrill Lynch previously implemented the disclosure requirements of EITF 03-1 in its December 26, 2003 Consolidated Financial Statements.

On December 23, 2003, the FASB issued SFAS No. 132 (revised 2003), *Employers’ Disclosures about Pensions and Other Postretirement Benefits*. The revised SFAS No. 132 retains the disclosure requirements in the original statement and requires additional disclosures about pension plan assets, benefit obligations, cash flows, benefit costs and other relevant information. Merrill Lynch adopted the provisions of SFAS No. 132 as of December 26, 2003. See Note 12 to the Condensed Consolidated Financial Statements for these disclosures.

In December of 2003, the American Institute of Certified Public Accountants (“AICPA”) issued Statement of Position (“SOP”) 03-3, *Accounting for Certain Loans or Debt Securities Acquired in a Transfer*. SOP 03-3 addresses revenue recognition and impairment assessments for certain loans and debt securities that were purchased at a discount that was at least in part due to credit quality. SOP 03-3 states that where expected cash flows from the loan or debt security can be reasonably estimated, the difference between the purchase price and the expected cash flows (i.e., the “accretable yield”) should be accreted into income. In addition, the SOP prohibits the recognition of a reserve for impairment on the purchase date. Further, the SOP requires that the allowance for loan losses be supported through a cash flow analysis, on either an individual or on a pooled basis, for all loans that fall within the scope of the guidance. Merrill Lynch will adopt SOP 03-3 as of the beginning of fiscal year 2005 and is currently assessing the potential impact on the Condensed Consolidated Financial Statements.

On July 7, 2003, the AICPA issued SOP 03-1, *Accounting and Reporting by Insurance Enterprises for Certain Nontraditional Long-Duration Contracts and for Separate Accounts*. The SOP was effective for financial statements for Merrill Lynch beginning in 2004. The SOP required the establishment of a liability for contracts that contain death or other insurance benefits using a specified reserve methodology that is different from the methodology that Merrill Lynch previously employed. The adoption of SOP 03-1 resulted in an additional \$45 million of pre-tax expense in the first quarter of 2004.

On January 17, 2003, the FASB issued FASB Interpretation No. 46 (“FIN 46”), which clarifies when an entity should consolidate entities that are considered VIEs, and on December 24, 2003 the FASB issued a revised standard (“FIN 46R”). A VIE is an entity in which equity investors do not have the

characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties, and may include many types of Special Purpose Entities (“SPEs”). FIN 46R requires that an entity consolidate a VIE if that enterprise has a variable interest that will absorb a majority of the VIE’s expected losses, receive a majority of the VIE’s expected residual returns, or both. FIN 46R does not apply to qualifying special purpose entities (“QSPEs”), the accounting for which is governed by SFAS No. 140. As permitted by the transition guidance in FIN 46R, Merrill Lynch adopted the revised standard on an entity-by-entity basis. At December 26, 2003, Merrill Lynch applied FIN 46R to all VIEs with which it is involved, with the exception of those VIEs that issue Merrill Lynch Trust Originated Preferred Securities (“TOPrSSM”). The adoption of FIN 46R at December 26, 2003 was reported as a cumulative effect of a change in accounting principle and did not have a material effect on the Consolidated Financial Statements. As of March 26, 2004, Merrill Lynch applied FIN 46R to those VIEs that issue TOPrSSM. As a result, these VIEs were deconsolidated. The deconsolidation of TOPrSSM did not have a material impact on the Condensed Consolidated Financial Statements of Merrill Lynch and was reported by retroactively restating prior period financial statements. See Note 6 to the Condensed Consolidated Financial Statements for additional FIN 46R disclosure.

On December 31, 2002 the FASB issued SFAS No. 148, *Accounting for Stock-Based Compensation — Transition and Disclosure, an amendment of FASB Statement No. 123, Accounting for Stock-Based Compensation*. Effective for the first quarter of 2004, Merrill Lynch adopted the fair value method of accounting for stock-based accounting under SFAS No. 123, using the retroactive restatement method described in SFAS No. 148. Under the fair value recognition provisions of SFAS No. 123, stock-based compensation cost is measured at the grant date based on the value of the award and is recognized as expense over the vesting period. The December 26, 2003 Condensed Consolidated Balance Sheet has been restated for the retroactive adoption of the fair value recognition provisions of SFAS No. 123. Accordingly, the December 26, 2003 Condensed Consolidated Balance Sheet reflects a \$4.0 billion increase in paid-in capital, a \$2.7 billion decrease in retained earnings, and a \$1.3 billion increase in deferred income taxes. See Note 15 to the 2003 Annual Report for additional information related to stock-based compensation.

Statistical Data

	3rd Qtr. 2003	4th Qtr. 2003	1st Qtr. 2004	2nd Qtr. 2004	3rd Qtr. 2004
Client Assets (dollars in billions)					
GPC:					
U.S.	\$ 1,093	\$ 1,165	\$ 1,187	\$ 1,176	\$ 1,179
Non-U.S.	92	97	105	105	109
Total GPC Assets	1,185	1,262	1,292	1,281	1,288
MLIM direct sales ⁽¹⁾	202	222	229	213	199
Total Client Assets ⁽¹⁾	<u>\$ 1,387</u>	<u>\$ 1,484</u>	<u>\$ 1,521</u>	<u>\$ 1,494</u>	<u>\$ 1,487</u>
Assets in Asset-Priced Accounts	\$ 206	\$ 226	\$ 235	\$ 237	\$ 244
Assets Under Management:					
Retail	\$ 194	\$ 207	\$ 212	\$ 211	\$ 208
Institutional	241	253	259	235	228
Private Investors ⁽²⁾	38	40	42	42	42
U.S.	327	337	349	330	322
Non-U.S.	146	163	164	158	156
Equity	202	225	229	229	223
Fixed-income	125	132	146	137	134
Money market	146	143	138	122	121
Underwriting (dollars in billions)⁽¹⁾:					
Global Equity and Equity-Linked:					
Volume	\$ 8	\$ 11	\$ 12	\$ 7	\$ 11
Market share	7.7%	8.3%	8.4%	6.0%	11.2%
Global Debt:					
Volume	\$ 90	\$ 82	\$ 122	\$ 75	\$ 62
Market share	7.9%	7.3%	7.9%	6.0%	5.4%
Full-Time Employees:					
U.S.	37,800	38,200	38,400	39,400	39,800
Non-U.S.	10,000	9,900	9,800	9,900	10,100
Total	<u>47,800</u>	<u>48,100</u>	<u>48,200</u>	<u>49,300</u>	<u>49,900</u>
Private Client Financial Advisors	13,400	13,500	13,700	14,000	14,100
Balance Sheet (dollars in millions, except per share amounts)					
Total assets	\$487,564	\$ 496,316	\$ 524,997	\$ 548,435	\$606,681
Total stockholders' equity	\$ 27,376	\$ 28,950	\$ 30,187	\$ 29,884	\$ 30,121
Book value per common share	\$ 28.59	\$ 30.03	\$ 30.75	\$ 31.04	\$ 31.83
Share Information (in thousands)					
Weighted-average shares outstanding:					
Basic	904,829	913,260	930,155	923,014	903,216
Diluted	991,947	1,009,889	1,019,651	1,012,773	981,793
Common shares outstanding	942,637	949,907	967,731	948,937	932,887

(1) Certain prior period amounts have been restated to conform to the current period presentation.

(2) Represents segregated portfolios for individuals, small corporations and institutions. At September 24, 2004 approximately \$5 billion of these assets were managed by GPC.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

The information under the caption Item 2. “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Risk Management” above in this Report is incorporated herein by reference.

Item 4. Controls and Procedures

In 2002, ML & Co. formed a Disclosure Committee to assist with the monitoring and evaluation of our disclosure controls and procedures. ML & Co.’s Chief Executive Officer, Chief Financial Officer and Disclosure Committee have evaluated the effectiveness of ML & Co.’s disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934) as of the end of the period covered by this Report. Based on that evaluation, ML & Co.’s Chief Executive Officer and Chief Financial Officer have concluded that ML & Co.’s disclosure controls and procedures are effective.

In addition, no change in ML & Co.’s internal control over financial reporting (as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934) occurred during the third fiscal quarter of 2004 that has materially affected, or is reasonably likely to materially affect, ML & Co.’s internal control over financial reporting.

PART II — OTHER INFORMATION

Item 1. Legal Proceedings

The following information supplements the discussion in Part I, Item 3 “Legal Proceedings” in ML & Co.’s Annual Report on Form 10-K for the fiscal year ended December 26, 2003 and in Part II, Item 1 “Legal Proceedings” in ML & Co.’s Form 10-Q for the quarterly period ended March 26, 2004 and June 25, 2004.

IPO Allocation

In re Initial Public Offering Securities Litigation: On October 13, 2004, the district court issued an order allowing certain cases to proceed as class actions against the underwriters. The underwriters, including Merrill Lynch, are appealing this decision to the court of appeals.

Other:

Merrill Lynch has been named as a defendant in various other legal actions, including arbitrations, class actions, and other litigation arising in connection with its activities as a global diversified financial services institution. The general decline of equity securities prices between 2000 and 2003 resulted in increased legal actions against many firms, including Merrill Lynch, and has resulted in higher professional fees and litigation expenses than those incurred in the past.

Some of the legal actions include claims for substantial compensatory and/or punitive damages or claims for indeterminate amounts of damages. In some cases, the issuers that would otherwise be the primary defendants in such cases are bankrupt or otherwise in financial distress. Merrill Lynch is also involved in investigations and/or proceedings by governmental and self-regulatory agencies. The number of these investigations has also increased in recent years with regard to many firms, including Merrill Lynch.

Given the number of these matters, some are likely to result in adverse judgments, settlements, penalties, injunctions, fines, or other relief. Merrill Lynch believes it has strong defenses to, and where appropriate, will vigorously contest many of these matters. In accordance with SFAS No. 5, *Accounting for Contingencies*, when resolution of cases is both probable and estimable Merrill Lynch will accrue a liability. In many lawsuits and arbitrations, including the class action lawsuits disclosed in Item 3 of the 2003 Form 10-K, it is not possible to determine whether a liability has been incurred or to estimate the ultimate or minimum amount of that liability until the case is close to resolution, in which case no accrual is made until that time. In view of the inherent difficulty of predicting the outcome of such matters, particularly in cases in which claimants seek substantial or indeterminate damages, Merrill Lynch often cannot predict what the eventual loss or range of loss related to such matters will be. Merrill Lynch continues to assess these cases and believes, based on information available to it, that the resolution of these matters will not have a material adverse effect on the financial condition of Merrill Lynch as set forth in the Condensed Consolidated Financial Statements, but may be material to Merrill Lynch’s operating results or cash flows for any particular period and may impact ML & Co.’s credit ratings.

Item 2. Unregistered Sales of Equity Securities, Use of Proceeds and Issuer Purchases of Equity Securities

The table below sets forth the information with respect to purchases made by or on behalf of Merrill Lynch or any “affiliated purchaser” (as defined in Rule 10b-18(a)(3) under the Securities Exchange Act of 1934), of our common stock during the quarter ended September 24, 2004.

ISSUER PURCHASES OF EQUITY SECURITIES

(dollars in millions, except per share amounts)

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Program	Approximate Dollar Value of Shares that May Yet be Purchased Under the Program(1)
Month #1 (Jun. 26 — Jul. 30)				
Capital Management Program	10,564,600	\$ 50.76	10,564,600	\$ 1,738
Employee Transactions	571,050	50.48	N/A	N/A
Month #2 (Jul. 31 — Aug. 27)				
Capital Management Program	6,000,000	49.19	6,000,000	\$ 1,443
Employee Transactions	705,575	49.66	N/A	N/A
Month #3 (Aug. 28 — Sept. 24)				
Capital Management Program	1,200,000	51.54	1,200,000	\$ 1,381
Employee Transactions	172,488	51.80	N/A	N/A
Total, September 24, 2004				
Capital Management Program	17,764,600	\$ 50.28	17,764,600	\$ 1,381
Employee Transactions(2)	1,449,113	50.24	N/A	N/A

(1) At period-end. As part of Merrill Lynch's capital management, the board of directors authorized the repurchase of up to \$2 billion of outstanding common shares under a program announced on February 10, 2004. Share repurchases under the program were made pursuant to open-market purchases, Rule 10b5-1 plans or privately negotiated transactions as market conditions warranted and at prices Merrill Lynch deemed appropriate. On July 13, 2004, the Board of Directors authorized the repurchase of an additional \$2 billion of Merrill Lynch outstanding common shares

(2) Included in the total number of shares purchased are: (A) 945,782 shares purchased during the period by participants in the Merrill Lynch 401(k) Savings and Investment Plan (“401(k)”) and the Merrill Lynch Retirement Accumulation Plan (“RAP”). Purchases under the 401(k) and the RAP are executed at the market price of Merrill Lynch's common stock at the time the transaction occurs. (B) 503,331 Restricted Shares withheld (under the terms of grants under employee stock compensation plans) to offset tax withholding obligations that occur upon vesting and release of Restricted Shares during the quarter. ML & Co.'s employee stock compensation plans provide that the value of the shares delivered or attested, or withheld, shall be the average of the high and low price of ML & Co.'s common stock (Fair Market Value) on the date the relevant transaction occurs.

Item 5. Other Information

The 2005 Annual Meeting of Shareholders will be held at 9:30 a.m. on Friday, April 22, 2005 at the Merrill Lynch Conference and Training Center, 800 Scudders Mill Road, Plainsboro, New Jersey. Any shareholder of record entitled to vote generally for the election of directors may nominate one or more

persons for election at the Annual Meeting only if proper written notice, as set forth in ML & Co.'s Certificate of Incorporation, has been given to the Secretary of ML & Co., 222 Broadway, 17th Floor, New York, New York 10038, no earlier than February 6, 2005 and no later than March 3, 2005. In addition, any shareholder intending to bring any other business before the meeting must provide proper written notice, as set forth in ML & Co.'s By-Laws, to the Secretary of ML & Co. on or before March 3, 2005. In order to be included in ML & Co.'s proxy statement, shareholder proposals must be received by ML & Co. no later than November 10, 2004.

Item 6. Exhibits

- 3.1 Restated Certificate of Incorporation of Merrill Lynch & Co., Inc., effective as of May 3, 2001.
- 3.2 Certificate of Designations for Merrill Lynch & Co., Inc. Floating Rate Non-Cumulative Preferred Stock, Series 1, par value \$1.00 per share, effective as of October 25, 2004.
- 4.1 Form of certificate representing Merrill Lynch & Co., Inc. Floating Rate Non-Cumulative Preferred Stock, Series 1, par value \$1.00 per share (Exhibit 3 to Form 8-A dated October 26, 2004).
- 4.2 Form of Deposit Agreement dated as of November 1, 2004 among Merrill Lynch & Co., Inc., JPMorgan Chase Bank, as Depositary, and the holders from time to time of the Depositary Receipts (Exhibit 2 to Form 8-A dated October 26, 2004).
- 4.3 Form of Depositary Receipt evidencing a Depositary Share, each representing a 1/1200th interest in a share of Merrill Lynch & Co., Inc. Floating Rate Non-Cumulative Preferred Stock, Series 1, par value \$1.00 per share (Exhibit 4 to Form 8-A dated October 26, 2004).
- 4.4 Indenture between Merrill Lynch & Co., Inc. and JP Morgan Chase Bank (formerly known as The Chase Manhattan Bank), dated as of May 23, 2001 ("2001 Indenture").
- 4.5 First Supplemental Indenture, dated as of November 1, 2004, to the 2001 Indenture.
- 4.6 Indenture between Merrill Lynch & Co., Inc. and JP Morgan Chase Bank, dated as of March 13, 2002 ("2002 Indenture").
- 4.7 First Supplemental Indenture, dated as of November 1, 2004, to the 2002 Indenture.
- 4.8 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.
- 10.1 Form of grant document for executive officers under the Merrill Lynch & Co., Inc. Long-Term Incentive Compensation Plan.
- 10.2 Form of Restricted Covenant Agreement between Merrill Lynch & Co., Inc. and its executive officers (Exhibit 10 to Form 8-K dated September 17, 2004).
- 10.3 Merrill Lynch & Co., Inc. 2005 Deferred Compensation Plan for a Select Group of Eligible Employees (Exhibit 10 to Form 8-K dated October 8, 2004).
- 12 Statement re: computation of ratios.
- 15 Letter re: unaudited interim financial information.
- 31.1 Rule 13a-14(a) Certification of the Chief Executive Officer.
- 31.2 Rule 13a-14(a) Certification of the Chief Financial Officer.
- 32.1 Certification Pursuant to 18 U.S.C. Section 1350, as adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification Pursuant to 18 U.S.C. Section 1350, as adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

SIGNATURES

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

MERRILL LYNCH & CO., INC.

(Registrant)

By: Ahmass L. Fakahany

/s/

Ahmass L. Fakahany
Executive Vice President and
Chief Financial Officer

By: John J. Fosina

/s/

John J. Fosina
Controller
Principal Accounting Officer

Dated: November 1, 2004

INDEX TO EXHIBITS

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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
Andrea L. Dulberg
Secretary

CORPORATE SEAL

Attest: /s/ Michael A. LaMaina
By: Michael A. LaMaina
Assistant Secretary

**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**

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

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.

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.”

MERRILL LYNCH & CO., INC.

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

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.”

MERRILL LYNCH & CO., INC.

CERTIFICATE OF DESIGNATIONS

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

FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 1

(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 Finance 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 Finance 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 June 7, 2004:

1. The Board of Directors on June 7, 2004 adopted the following resolutions authorizing the Finance Committee of the Board of Directors, or if designated by the Finance Committee, a sub-committee thereof consisting of at least two members, to act on behalf of the Board of Directors in connection with the designation, issuance and sale of up to 700,000 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"), upon such terms as may be deemed appropriate by the Finance Committee, or a sub-committee thereof, 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 \$7 billion), 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 authorizes the Finance Committee, or if designated by the Finance Committee, a sub-committee thereof consisting of at least two members, (the “Committee”) to take all such actions as may be necessary or appropriate for the issuance and sale of up to 700,000 shares of the Corporation’s Preferred Stock, par value \$1.00 per share (the “Preferred Stock”), or depositary shares representing interests therein, in one or more series; provided that the aggregate liquidation preference of such Preferred Stock shall not exceed \$7 billion; and further provided that the aggregate liquidation preference of any one or more series of such Preferred Stock that are denominated in foreign currencies for purposes of the foregoing limit shall be calculated using the U.S. dollar equivalent thereof as determined on the date of sale;”

“FURTHER RESOLVED, that the Committee may approve the issuance of the Preferred Stock and fix all the designations and any of the preferences or rights of such Preferred Stock, including, but not limited to, those designations or preferences relating to voting rights, dividends, redemption, dissolution, any distribution of assets of the Corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation or fix the number of shares of any series of stock or authorize the increase or decrease of shares of any series of such Preferred Stock.”

2. The Finance Committee of the Board of Directors, on October 25, 2004, adopted the following resolution pursuant to the authority conferred upon the Finance Committee by the resolution of the Board of Directors set forth in paragraph 1 above and pursuant to Article IV, 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:

FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 1

(1) Number of Shares and Designation. 50,000 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 Floating Rate Non-Cumulative Preferred Stock, Series 1 (hereinafter called the “Preferred Stock, Series 1”).

(2) Dividends. (a) The holders of shares of the Preferred Stock, Series 1, 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 under Delaware law for the payment of dividends, non-cumulative cash dividends at the rate set forth below in this Section (2) applied to the amount of \$30,000 per share. Such dividends shall be payable

quarterly, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized Committee thereof), on February 28, May 28, August 28 and November 28 (the "Payment Dates") commencing on February 28, 2005; provided that if any such Payment Date is not a New York Business Day and London Business Day, dividends (if declared) on the Preferred Stock, Series 1, will be paid on the immediately succeeding New York Business Day and London Business Day, without interest, unless such day falls in the next calendar month, in which case the Payment Date will be the immediately preceding New York Business Day and London Business Day. Each such dividend shall be payable to the holders of record of shares of the Preferred Stock, Series 1, as they appear on the stock register of the Corporation on such record dates, which shall be a date not more than 30 nor less than 10 days preceding the applicable Payment Dates, as shall be fixed by the Board of Directors of the Corporation (or a duly authorized Committee thereof). "London Business Day" means a day other than a Saturday or Sunday on which dealings in deposits in U.S. dollars are transacted, or with respect to any future date are expected to be transacted, in the London interbank market. A "New York Business Day" means any day that is not a Saturday or Sunday and that, in New York City, is not a day on which banking institutions generally are authorized or obligated by law or executive order to be closed.

(b) (i) Dividend periods ("Dividend Periods") shall commence on each Payment Date (other than the initial Dividend Period which shall commence on the date of original issue of the Preferred Stock, Series 1) 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 1, for the period from the date of original issue thereof to and including February 28, 2005 shall be 3.00% per annum, and for each Dividend Period thereafter shall be a floating rate per annum equal to three-month U.S. dollar LIBOR plus 0.75%, but in no event will the rate be less than 3.00% per annum, of the \$30,000 liquidation preference per share of Preferred Stock, Series 1.

LIBOR, with respect to a Dividend Period, means the rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three month period that normally appears on Moneyline Telerate Page 3750, as displayed on page "BBAM" (British Bankers Association Official BBA LIBOR Fixings) in the Bloomberg Professional Service (or any other service that may replace Moneyline Telerate, Inc. on page BBAM or any other page that may replace page BBAM on the Bloomberg Professional Service or a successor service, in each case, for the purpose of displaying London interbank offered rates of major banks) as of 11:00 a.m. (London time) on the second London Business Day immediately preceding the first day of such Dividend Period.

If LIBOR cannot be determined as described above, the Corporation will select four major banks in the London interbank market. The Corporation will request that the principal London offices of those four selected banks provide their offered quotations to prime banks in the London interbank market at approximately 11:00 a.m., London time, on the second London Business Day immediately preceding the first day of such Dividend Period. These quotations will be for deposits in U.S. dollars for a three month period. Offered quotations must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time.

If two or more quotations are provided, LIBOR for the Dividend Period will be the arithmetic mean of the quotations. If fewer than two quotations are provided, the Corporation

will select three major banks in New York City and will then determine LIBOR for the Dividend Period as the arithmetic mean of rates quoted by those three major banks in New York City to leading European banks at approximately 3:00 p.m., New York City time, on the second London Business Day immediately preceding the first day of such Dividend Period. The rates quoted will be for loans in U.S. dollars, for a three month period. Rates quoted must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time. If fewer than three New York City banks selected by the Corporation are quoting rates, LIBOR for the applicable period will be the same as for the immediately preceding Dividend Period.

(ii) The amount of dividends payable for each full Dividend Period for the Preferred Stock, Series 1, shall (if and when declared, as herein provided) be computed by dividing the dividend rate 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 \$30,000 per share. The amount of dividends payable for the initial Dividend Period on the Preferred Stock, Series 1, or any other period shorter than a full Dividend Period on the Preferred Stock, Series 1, shall (if and when declared, as herein provided) 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 1, 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 1 are outstanding, the Corporation may not declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to the preferred stock of the Corporation of any series and any other stock of the Corporation ranking, as to dividends, on a parity with the Preferred Stock, Series 1 unless for such Dividend Period full dividends on all outstanding shares of Preferred Stock, Series 1 have been declared, paid or set aside for payment. When dividends are not paid in full, as aforesaid, upon the shares of the Preferred Stock, Series 1, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends with the Preferred Stock, Series 1, all dividends declared upon shares of the Preferred Stock, Series 1, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends (whether cumulative or non-cumulative) shall be declared pro rata so that the amount of dividends declared per share on the Preferred Stock, Series 1, and all such other stock of the Corporation shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Preferred Stock, Series 1 (but without, in the case of any non-cumulative preferred stock, accumulation of unpaid dividends for prior Dividend Periods) and all such other stock bear to each other.

(d) So long as any shares of the Preferred Stock, Series 1 are outstanding, the Corporation may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any Common Stock or any other stock of the Corporation ranking as to dividends or distribution of assets junior to the Preferred Stock, Series 1 unless full dividends on all outstanding shares of Preferred Stock, Series 1 has been declared, paid or set aside for payment for the immediately preceding Dividend Period (except for (x) dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 1 as to dividends and distribution of assets

upon dissolution, liquidation or winding up of the Corporation, (y) redemptions or purchases of any rights pursuant to the Amended and Restated Rights Agreement, adopted on December 2, 1997 or any agreement that replaces such Amended and Restated Rights Agreement, or by conversion or exchange for the Corporation's capital stock ranking junior to Preferred Stock, Series 1 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation and (z) purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such capital stock); provided, however, that the foregoing dividend preference shall not be cumulative and shall not in any way create any claim or right in favor of the holders of Preferred Stock, Series 1 in the event that dividends have not been declared or paid on the Preferred Stock, Series 1 in respect of any prior Dividend Period. If the full dividend on the Preferred Stock, Series 1 is not paid for any Dividend Period, the holders of Preferred Stock, Series 1 will have no claim in respect of the unpaid amount so long as no dividend (other than those referred to above) is paid on the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 1 as to dividends and dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation.

(e) No dividends may be declared or paid or set aside for payment on any shares of Preferred Stock, Series 1 if at the same time any arrears exists in the payment of dividends on any outstanding class or series of stock of the Corporation ranking, as to the payment of dividends, prior to the Preferred Stock, Series 1.

(f) Holders of shares of the Preferred Stock, Series 1, shall not be entitled to any dividends, whether payable in cash, property or stock, in excess of full dividends, as herein provided, on the Preferred Stock, Series 1. 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 1, which may be in arrears.

(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 1, upon liquidation, dissolution, or winding up, the holders of the shares of the Preferred Stock, Series 1, shall be entitled to receive \$30,000 per share plus an amount equal to declared and unpaid dividends, without accumulation of undeclared dividends. 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 1, 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 1, then such assets, or the proceeds thereof, shall be distributed among the holders of shares of Preferred Stock, Series 1, and any such other preferred stock ratably in accordance with the respective amounts which would be payable on such shares of Preferred Stock, Series 1, and any such other preferred stock if all amounts payable thereon were paid in full. For the purposes of this Section (3), neither the sale, lease or exchange (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation, nor the consolidation, merger or

combination of the Corporation into or with one or more corporations or the consolidation, merger or combination of any other corporation or entity into or with the Corporation, shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation for purposes of this Section (3).

(b) After payment shall have been made in full to the holders of Preferred Stock, Series 1, as provided in this Section (3), the holders of Preferred Stock, Series 1 will not be entitled to any further participation in any distribution of assets of the Corporation. 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 1, 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 1, as provided in this Section (3), but not prior thereto, any other series or class or classes of stock ranking junior to the Preferred Stock, Series 1, 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 1, shall not be entitled to share therein.

(4) Redemption. (a) The Preferred Stock, Series 1, may not be redeemed prior to November 28, 2009. On and after November 28, 2009, the Corporation, at its option, may redeem shares of the Preferred Stock, Series 1, as a whole at any time or in part from time to time, at a redemption price of \$30,000 per share, together in each case with declared and unpaid dividends, without accumulation of any undeclared dividends. The Chief Financial Officer or the Treasurer may exercise the Corporation's right to redeem the Preferred Stock, Series 1 as a whole at any time without further action of the Board of Directors or a duly authorized committee thereof. The Corporation may only elect to redeem the Preferred Stock, Series 1 in part pursuant to a resolution by the Board of Directors or a duly authorized committee thereof.

(b) In the event the Corporation shall redeem shares of Preferred Stock, Series 1, 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 1, 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; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price. 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) 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 1, 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 1, 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 1, 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 1, 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.

The Preferred Stock, Series 1 will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Preferred Stock, Series 1 will have no right to require redemption of any shares of Preferred Stock, Series 1.

(5) Terms Dependent on Regulatory Changes. If, (a) after the date of the issuance of the Preferred Stock, Series 1, the Corporation (by election or otherwise) becomes subject to any law, rule, regulation or guidance (together, "Regulations") relating to its capital adequacy which Regulation (x) provides for a type or level of capital characterized as "Tier 1" in, or pursuant to Regulations of any governmental agency, authority or body having regulatory jurisdiction over the Corporation and implementing, the capital standards published by the Basel Committee on Banking Supervision, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, or any other United States national governmental agency, authority or body, or (y) provides for a type or level of capital that in the judgment of the Committee (or any other committee of the Board of Directors then serving the functions of the Committee) after consultation with legal counsel of recognized standing is substantially equivalent to such "Tier 1" capital (such capital described in either (x) or (y) is referred to below as "Tier 1 Capital"), and (b) the Committee (or any other committee of the Board of Directors then serving the functions of the Committee) affirmatively elects to qualify the Preferred Stock, Series 1 for such Tier 1 Capital treatment without any sublimit or other quantitative restrictions on the inclusion of such Preferred Stock, Series 1 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) under such Regulations, then, upon such affirmative election, the terms of the Preferred Stock, Series 1 shall automatically be amended to reflect the following modifications (without any action or consent by the holders of the Preferred Stock, Series 1 or any other vote of stockholders of the Corporation):

(i) If and to the extent such modification is a Required Unrestricted Tier 1 Provision (as defined below), the Corporation's right to redeem the Preferred Stock, Series 1 on and after November 28, 2009 pursuant to Section 4 hereof shall be restricted (such restrictions including but not limited to any requirement that the Corporation receive prior approval for such

redemption from any applicable governmental agency, authority or body or that such redemption be prohibited);

(ii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, the Corporation's right to make distributions with respect to, or redeem, purchase or acquire or make payments on, securities junior to the Preferred Stock, Series 1 (upon a non-payment of dividends on the Preferred Stock, Series 1) shall become subject to additional restrictions (other than those set forth in Section 2(d) hereof) pursuant to the terms of the Preferred Stock, Series 1; and

(iii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, any other new provisions or terms shall be added to the Preferred Stock, Series 1, or existing terms shall be modified; provided, however, that no such provision or term shall be added, and no such modification shall be made pursuant to the terms of this Section 5(iii), if it would alter or change the rights, powers or preferences of the shares of the Preferred Stock, Series 1 so as to affect the shares of the Preferred Stock, Series 1 adversely.

As used above, the term "Required Unrestricted Tier 1 Provision" means a term which is, in the written opinion of legal counsel of recognized standing and delivered to the Corporation, required for the Preferred Stock, Series 1 to be treated as Tier 1 Capital of the Corporation without any sublimit or other quantitative restriction on the inclusion of such Preferred Stock, Series 1 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) pursuant to the applicable Regulations. The Corporation shall provide notice to holders of any Preferred Stock, Series 1 of any such changes in the terms of the Preferred Stock, Series 1 made pursuant to the terms of this Section 5 on or about the date of effectiveness of any such modification and shall maintain a copy of such notice on file at the principal offices of the Corporation. A copy of the relevant Regulations shall also be on file at the principal offices of the Corporation and, upon request, will be made available to such holders.

(6) Voting Rights. The Preferred Stock, Series 1, 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 1, have not been declared or paid for such number of Dividend Periods, whether or not consecutive, which in the aggregate is equivalent to six Dividend Periods (a "Nonpayment"), the holders of outstanding shares of the Preferred Stock, Series 1, 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 1, 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 the extent such other series of preferred stock are entitled to vote pursuant to the terms thereof), 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 1, shall be entitled to three votes for each share of Preferred Stock, Series 1 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 1, (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 1, 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 dividends on such shares of Preferred Stock, Series 1, shall have been paid in full for at least four Dividend Periods following the Nonpayment. 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 Nonpayment in the payment of dividends as aforesaid.

Upon termination of the right of the holders of the Preferred Stock, Series 1, 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 1, remain outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares of the Preferred Stock, Series 1, outstanding at the time (voting as a class with all other series of preferred stock ranking on a parity with the Preferred Stock, Series 1, 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 1, 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 1, which would adversely affect any right, preference, privilege or voting power of the Preferred Stock, Series 1, or of the holders thereof;

provided, however, that any increase in the amount of issued Preferred Stock, Series 1 or authorized preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of preferred stock, in each case ranking on a parity with or junior to the Preferred Stock, Series 1, with respect to the payment of dividends (whether such dividends were cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such rights, preferences, privileges or voting powers.

Without the consent of the holders of the Preferred Stock, Series 1, so long as such action does not adversely affect the interests of holders of Preferred Stock, Series 1, the Corporation may amend, alter, supplement or repeal any terms of the Preferred Stock, Series 1:

(i) to cure any ambiguity, or to cure, correct or supplement any provision contained in a Certificate of Designations for such Preferred Stock, Series 1 that may be defective or inconsistent; or

(ii) to make any provision with respect to matters or questions arising with respect to the Preferred Stock, Series 1 that is not inconsistent with the provisions of a Certificate of Designations for such Preferred Stock, Series 1.

The rules and procedures for calling and conducting any meeting of the holders of Preferred Stock, Series 1 (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents, and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors of the Corporation, or a duly authorized committee thereof, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of any national securities exchange on which the Preferred Stock, Series 1 are listed at the time.

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 1, 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 1, 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 1, 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 1, if the holders of such class of stock and the Preferred Stock, Series 1, 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 (whether cumulative or non-cumulative) or liquidation prices, without preference or priority one over the other; and

(ii) junior to the Preferred Stock, Series 1, 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 1, 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.

(iii) the Shares of Preferred Stock of the Corporation designated “9% Cumulative Preferred Stock, Series A” shall be deemed to rank on a parity with the shares of the Preferred Stock, Series 1, as to dividends and distribution of assets upon the liquidation, dissolution or winding up of the Corporation.

(8) Exclusion of Other Rights. Unless otherwise required by law, shares of Preferred Stock, Series 1, 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.”

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, does hereby affirm, under penalties of perjury, that this certificate is the act and deed of the Corporation and that the facts herein stated are true, and accordingly has hereunto set her hand this 25th day of October, 2004.

MERRILL LYNCH & CO., INC.

By: /s/ Judith A. Witterschein
 Judith A. Witterschein
 Secretary

MERRILL LYNCH & CO., INC.

(a Delaware corporation)

**Liquid Yield Option™ Notes due 2031
(Zero Coupon — Senior)**

INDENTURE

Dated as of May 23, 2001

**THE CHASE MANHATTAN BANK,
Trustee**

™ Trademark of Merrill Lynch & Co., Inc.

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CROSS-REFERENCE TABLE*

TIA Section	Indenture Section
310(a)(1)	7.09
(a)(2)	N.A.
(a)(3)	N.A.
(a)(4)	N.A.
(b)(1)	7.09
(c)	N.A.
311(a)	7.10
(b)	7.10
(c)	N.A.
312(a)	2.05
(b)	13.03
(c)	13.03
313(a)	7.05
(b)	7.05
(c)	N.A.
(d)	N.A.
314(a)	4.02
(b)	N.A.
(c)(1)	N.A.
(c)(2)	N.A.
(c)(3)	N.A.
(d)	N.A.
(e)	N.A.
(f)	4.04
315(a)	7.01
(b)	7.04
(c)	6.11
316(a)(last sentence)	2.08
(a)(1)(A)	6.05
(a)(1)(B)	6.04
(a)(2)	N.A.
(b)	N.A.
317(a)(1)	N.A.
(a)(2)	N.A.
(b)	2.04
318(a)	N.A.

N.A. means Not Applicable. _____

* Note: This Cross Reference Table shall not, for any purpose, be deemed to be part of the Indenture.

INDENTURE, dated as of May 23, 2001, between Merrill Lynch & Co., Inc., a Delaware corporation (the “Company”), and The Chase Manhattan Bank, a banking corporation organized and existing under the laws of the State of New York, as trustee (the “Trustee”).

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders of the Company’s Liquid Yield Option™ Notes due 2031 (Zero Coupon — Senior) (the “Securities”):

Article I

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01. Definitions.

“**Accrued Original Issue Discount**” of any Security represents the accrued portion of the total Original Issue Discount. The total discount is the excess of the Principal Amount per Security over the Issue Price. Accrued Original Issue Discount will be calculated on a daily basis at the yield of the Securities, on a semi-annual bond equivalent basis, using a 360-day year composed of twelve 30-day months, beginning on the Issue Date.

“**Affiliate**” of any specified person means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For the purposes of this definition, “control”, when used with respect to any specified person, means the power to direct or cause the direction of the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Average Sale Price**” means the average of the Sale Prices of the Common Stock for the shorter of (1) 30 consecutive Trading Days ending on the last full Trading Day prior to the Time of Determination with respect to the rights, warrants or options or distribution in respect of which the Average Sale Price is being calculated, or (2) the period (x) commencing on the date next succeeding the first public announcement of (a) the issuance of rights, warrants or options or (b) the distribution, in each case, in respect of which the Average Sale Price is being calculated and (y) proceeding through the last full Trading Day prior to the Time of Determination with respect to the rights, warrants or options or distribution in respect of which the Average Sale Price is being calculated (excluding days within such period, if any, which are not Trading Days), or (3) the period, if any, (x) commencing on the date next succeeding the Ex-Dividend Time with respect to the next preceding (a) issuance of rights, warrants or options or (b) distribution, in each case, for which an adjustment is required by the provisions of Section 11.06(d) or 11.07 and (y) proceeding through the last full Trading Day prior to the Time of Determination with respect to the rights, warrants or options or distribution in respect of which the Average Sale Price is being calculated (excluding days within such period, if any, which are not Trading Days).

In the event that the Ex-Dividend Time (or in the case of a subdivision, combination or reclassification, the effective date with respect thereto) with respect to a dividend, subdivision, combination or reclassification to which Section 11.06(a), (b), (c) or (d) applies occurs during the period applicable for calculating “Average Sale Price” pursuant to the definition in the preceding sentence, “Average Sale Price” shall be calculated for such period in a manner determined by the Board of Directors of the Company to reflect the impact of such dividend, subdivision, combination or reclassification on the Sale Price of the Common Stock during such period.

“**Bankruptcy Law**” means Title 11, United States Code, or any similar Federal or state law for the relief of debtors.

“**Board of Directors**” or “**Board**” means, with respect to any matter, either the board of directors of the Company or any committee of such board duly authorized, with respect to such matter, to exercise the powers of such board.

“**Business Day**” means each week day of the year other than a Saturday or Sunday on which banking institutions in The City of New York are not authorized or obligated to close.

“**Cash**” or “**cash**” means such coin or currency of The United States of America as at any time of payment is legal tender for the payment of public and private debts.

“**Common Stock**” means the Common Stock, par value \$1.33⅓ per share, including the Rights attached thereto of the Company, as it exists on the date of this Indenture or any other shares of capital stock of the Company into which such common stock shall be reclassified or changed.

“**Company**” means the party named as the “Company” in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor. The foregoing sentence shall likewise apply to any subsequent such successor or successors.

“**Company Request**” or “**Company Order**” means a written request or order signed in the name of the Company by either of its Chairman or Vice Chairman of the Board, its President, any Vice President or its Treasurer, and by an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

“**Controlled Subsidiary**” means any corporation more than 80% of the outstanding Voting Stock, except for qualifying shares, of which shall at the time be owned directly or indirectly by the Company.

“**corporation**” includes corporations, associations, companies and business trusts.

“**Custodian**” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

“Default” means any event that is, or after notice or passage of time or both would be, an Event of Default.

“Depositary” means, with respect to the Securities issuable or issued in whole or in part in global form, the person specified in Section 2.03 as the Depositary with respect to the Securities, until a successor shall have been appointed and become such pursuant to the applicable provision of this Indenture, and, thereafter, “Depositary” shall mean or include such successor. The foregoing sentence shall likewise apply to any subsequent such successor or successors.

“Global Securities” means Securities that are in the form of the Securities attached hereto as Exhibit A.

“Holder” or **“Securityholder”** means a person in whose name a Security is registered on the Registrar’s books.

“Indenture” means this Indenture as amended or supplemented from time to time in accordance with the terms hereof, including the provisions of the TIA that are deemed to be a part hereof.

“Issue Date” of any Security means the date on which the Security was originally issued or deemed issued as set forth on the face of the Security.

“Issue Price” of any Security means, in connection with the original issuance of such Security, the initial issue price at which the Security is sold as set forth on the face of the Security.

“Market Price” means the average of the Sale Prices of the Common Stock for the five Trading Day period ending on and including (if the third Business Day prior to the applicable Purchase Date is a Trading Day, or if not, then on the last Trading Day prior to) the third Business Day immediately prior to, but not including, the applicable Purchase Date, appropriately adjusted to take into account the actual occurrence, during the period commencing on the first of such Trading Days during such five Trading Day period and ending on such Purchase Date, of any event described in Section 11.06, 11.07 or 11.08; subject, however, to the conditions set forth in Sections 11.09 and 11.10.

“MLPF&S” means Merrill Lynch, Pierce, Fenner & Smith Incorporated, a Delaware corporation.

“Officer” means Chairman of the Board, the President, any Vice President, the Treasurer, the Secretary, any Assistant Treasurer or Assistant Secretary of the Company.

“Officers’ Certificate” means a written certificate containing the information specified in Sections 13.04 and 13.05, if applicable, signed in the name of the Company by Chairman of the Board, the President, a Vice President or the Treasurer and by an Assistant Treasurer, the Secretary or an Assistant Secretary, and delivered to the Trustee.

“Opinion of Counsel” means a written opinion containing the information specified in Sections 13.04 and 13.05, if applicable, rendered by legal counsel who may be (i) an employee of, or counsel to, the Company or (ii) other counsel designated by the Company and acceptable in the reasonable judgment of the Trustee.

“Original Issue Discount” of any Security means the difference between the Issue Price and the Principal Amount of the Security as set forth on the face of the Security.

“Person” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other entity.

“Principal”, “Principal Amount” or **“principal amount”** of a Security means the principal amount due at the Stated Maturity of the Security as set forth on the face of the Security.

“Redemption” or **“redemption”** shall have the meaning set forth in Section 3.01.

“Redemption Date” or **“redemption date”** shall mean the date specified for redemption of any of the Securities in accordance with the terms of the Securities and this Indenture.

“Redemption Price” or **“redemption price”** shall have the meaning set forth in paragraph 6 of the Securities.

“Regular cash dividends” means quarterly or other periodic cash dividends on the Common Stock as declared by the Board as part of its cash dividend payment practices and that are not designated by the Board as extraordinary or special or other nonrecurring dividends.

“Rights” means the preferred stock purchase rights issued pursuant to the Amended and Restated Rights Agreement of the Company adopted on December 2, 1997, as amended or restated from time to time.

“Sale Price” of a single share of Common Stock on any Trading Day means the closing per share sale price for the Common Stock (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on such Trading Day as reported on The New York Stock Exchange or other principal United States securities exchange on which the Common Stock is traded or, if the Common Stock is not listed on a United States national or regional stock exchange, as reported by the National Association of Securities Dealers Automated Quotation System or by the National Quotation Bureau Incorporated. In the absence of a quotation, the Company will determine the Sale Price on the basis of such quotations as it considers appropriate.

“SEC” means the Securities and Exchange Commission.

“Securities” means any of the Company’s Liquid Yield Option™ Notes due 2031 (Zero Coupon – Senior), as amended or supplemented from time to time in accordance with the terms hereof, issued under this Indenture.

“Securityholder” or **“Holder”** means a person in whose name a Security is registered on the Registrar’s books.

“Stated Maturity”, when used with respect to any Security, means the date specified in such Security as the final fixed date on which the Principal of such Security is due and payable.

“Subsidiary” means any corporation of which at the time of determination the Company and/or one or more Subsidiaries owns or controls directly or indirectly more than 50% of the shares of Voting Stock. **“Wholly-owned”**, when used with reference to a Subsidiary, means a Subsidiary of which all of the outstanding capital stock (except for qualifying shares) is owned by the Company or by one or more wholly-owned Subsidiaries.

“Tax Original Issue Discount” means the amount of ordinary interest income on a Security that must be accrued as original issue discount for United States Federal income tax purposes.

“TIA” means the Trust Indenture Act of 1939, as amended by the Trust Indenture Reform Act of 1990, and as in effect on the date of this Indenture.

“Time of Determination” means the time and date of the determination of stockholders entitled to receive rights, warrants, options or a distribution, in each case, to which Sections 11.07 or 11.08 apply.

“Trading Day” means a day during which trading in securities generally occurs on The New York Stock Exchange or, if the Common Stock is not listed on The New York Stock Exchange, on the principal other national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not listed on a national or regional securities exchange, on the National Association of Securities Dealers Automated Quotation system or, if the Common Stock is not quoted on the National Association of Securities Dealers Automated Quotation System, on the principal other market on which the Common Stock is then traded.

“Trust Officer” means any officer of the Trustee assigned by the Trustee to administer its corporate trust matters.

“Trustee” means the party named as the “Trustee” in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor.

“Voting Stock” means stock of the class or classes having general voting power under ordinary circumstances to elect at least a majority of the board of directors, managers or trustees of such corporation provided that, for the purposes hereof, stock which carries only the right to

vote conditionally on the happening of an event shall not be considered voting stock whether or not such event shall have happened.

Section 1.02. Other Definitions.

Term	Defined in Section
<u>"Agent Members"</u>	2.11
<u>"Associate"</u>	3.09(a)
<u>"Bankruptcy Law"</u>	6.01
<u>"Bid Solicitation Agent"</u>	2.03
<u>"Change in Control"</u>	3.09(a)
<u>"Change in Control Purchase Date"</u>	3.09(a)
<u>"Change in Control Purchase Notice"</u>	3.09(c)
<u>"Change in Control Purchase Price"</u>	3.09(a)
<u>"Company Notice"</u>	3.08(e)
<u>"Company Notice Date"</u>	3.08(c)
<u>"Common Stock Record Date"</u>	10.01
<u>"Contingent Interest Payment Date"</u>	10.02
<u>"Conversion Agent"</u>	2.03
<u>"Conversion Date"</u>	11.02
<u>"Conversion Rate"</u>	11.01
<u>"Defaulted Interest"</u>	12.02
<u>"DTC"</u>	2.03
<u>"Event of Default"</u>	6.01
<u>"Exchange Act"</u>	3.08(d)
<u>"Ex-Dividend Measurement Period"</u>	11.08
<u>"Ex-Dividend Time"</u>	11.01
<u>"Extraordinary Cash Dividend"</u>	11.08
<u>"LYONs Market Price"</u>	10.01
<u>"Measurement Period"</u>	10.01
<u>"Notice of Default"</u>	6.01
<u>"Paying Agent"</u>	2.03
<u>"Purchase Date"</u>	3.08(a)
<u>"Purchase Notice"</u>	3.08(a)
<u>"Purchase Price"</u>	3.08(a)
<u>"Registrar"</u>	2.03
<u>"Regular Record Date"</u>	12.01
<u>"Relevant Value"</u>	10.01
<u>"Securities Act"</u>	3.08(d)
<u>"Semiannual Period"</u>	10.01
<u>"Time of Determination"</u>	11.01

Whenever this Indenture refers to a provision of the TIA, such provision is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

"Commission" means the SEC.

“indenture securities” means the Securities.

“indenture security holder” means a Securityholder.

“indenture to be qualified” means this Indenture.

“indenture trustee” or “institutional trustee” means the Trustee.

“obligor” on the indenture securities means the Company.

All other TIA terms used in this Indenture that are defined by the TIA or defined by TIA reference to another statute or regulation have the meanings assigned to them by such definitions.

Section 1.03. Rules of Construction. Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with generally accepted accounting principles as in effect from time to time in The United States of America;
- (c) “or” is not exclusive;
- (d) “including” means including, without limitation; and
- (e) words in the singular include the plural, and words in the plural include the singular.

Section 1.04. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by their agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “Act” of Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgements of deeds,

certifying that the individual signing such instrument or writing acknowledged to such officer the execution thereof. Where such execution is by a signer acting in a capacity other than such signer's individual capacity, such certificate or affidavit shall also constitute sufficient proof of such signer's authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The ownership of Securities shall be proved by the register for the Securities or by a certificate of the Registrar (as defined below).

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

(e) If the Company shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, by or pursuant to a resolution of the Board of Directors, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notices, consent, waiver or other Act, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for purposes of determining whether Holders of the requisite proportion of outstanding Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the outstanding Securities shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

Article II

THE SECURITIES

Section 2.01. Form and Dating. The Securities and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A, which is a part of this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule or usage (provided that any such notation, legend or endorsement required by usage is in a form acceptable to the Company and the Trustee). Each Security shall be dated the date of its authentication.

The Securities shall be issued, initially in the form of one or more global Securities, which shall be deposited with DTC or the nominee thereof, duly executed by the Company and authenticated by the Trustee as hereinafter provided.

Each global Security shall represent such of the outstanding Securities as shall be specified therein and each shall provide that it shall represent the aggregate amount of outstanding Securities from time to time endorsed thereon and that the aggregate amount of outstanding Securities represented thereby may from time to time be reduced to reflect conversions, repurchases and redemptions. Any endorsement of a global Security to reflect the amount of any decrease in the amount of outstanding Securities represented thereby shall be made by the Trustee in accordance with instructions given by the Holder thereof as required by Section 2.11.

Section 2.02. Execution and Authentication. The Securities shall be executed by the Company by either of its Chairman or Vice Chairman of the Board, its President, its Treasurer or one of its Vice Presidents. The signature of any of these officers on the Securities may be manual or facsimile.

Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the Issue Date of such Securities.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein duly executed by the Trustee by manual signature of an authorized officer, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder.

The Trustee shall authenticate and deliver Securities for original issue in an aggregate Principal Amount of \$4,600,000,000 upon a Company Order without any further action by the Company. The aggregate Principal Amount of Securities outstanding at any time may not exceed the amount set forth in the foregoing sentence, subject to the proviso set forth therein, except as provided in Section 2.07.

Section 2.03. Registrar, Paying Agent, Conversion Agent and Depositary. The Company shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange ("Registrar"), an office or agency where Securities may be presented for purchase or payment ("Paying Agent") and an office or agency where Securities may be presented for conversion ("Conversion Agent"). The Company shall also appoint a bid solicitation agent (the "Bid Solicitation Agent") to act pursuant to paragraph 5 of the Security. None of the Company or any Subsidiary or Affiliate of either may act as Bid Solicitation Agent. The Registrar shall keep a register of the Securities and of their transfer and exchange. The Company may have one or more co-registrars, one or more additional paying agents and one or more additional conversion agents. The term Paying Agent includes any additional paying agent. The term Conversion Agent includes any additional conversion agent.

The Company shall enter into an appropriate agency agreement with any Registrar, Paying Agent, Conversion Agent or co-registrar other than the Trustee. The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee and the Holders of the name and address of any such agent and of any change in the office or agency referred to in Section 4.05. If the Company fails to maintain a Registrar, Paying Agent or Conversion Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.06. The Company or any Subsidiary or an Affiliate of either of them may act as Paying Agent, Registrar, Conversion Agent or co-registrar.

The Company initially appoints the Trustee as Registrar, Conversion Agent and Paying Agent in connection with the Securities.

The Company initially appoints The Depository Trust Company ("DTC") to act as Depository with respect to the global Securities.

Section 2.04. Paying Agent To Hold Money and Securities in Trust. In accordance with Section 4.05 and except as otherwise provided herein, prior to or on each due date of payments in respect of any Security, the Company shall deposit with the Paying Agent a sum of money or, if permitted by the terms hereof, securities sufficient to make such payments when so becoming due. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that the Paying Agent shall hold in trust for the benefit of Securityholders or the Trustee all money and securities held by the Paying Agent for the making of payments in respect of the Securities and shall notify the Trustee of any default by the Company in making any such payment. At any time during the continuance of any default by the Company in making any payments in respect of the Securities, the Paying Agent shall, upon the written request of the Trustee, forthwith pay to the Trustee all money and securities so held in trust. If the Company, a Subsidiary or an Affiliate of either of them acts as Paying Agent, it shall segregate the money and securities held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money and securities held by it to the Trustee and to account for any money and securities disbursed by it. Upon doing so, the Paying Agent shall have no further liability for the money and securities.

Section 2.05. Securityholder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders. If the Trustee is not the Registrar, the Company shall furnish or cause to be furnished to the Trustee (i) at least semiannually on May 15 and November 15 a list of the names and addresses of Securityholders dated within 15 days of the date on which the list is furnished and (ii) at such other times as the Trustee may request in writing a list, in such form and as of such date as the Trustee may reasonably require, of the names and addresses of Securityholders.

Section 2.06. Transfer and Exchange. Upon surrender for registration of transfer of any Security, together with a written instrument of transfer reasonably satisfactory to the Trustee duly executed by the Securityholder or such Securityholder's attorney duly authorized in writing, at the office or agency of the Company designated as Registrar or co-registrar pursuant to Section 2.03 or at the office or agency referred to in Section 4.05, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or

transferees, one or more new Securities of any authorized denomination or denominations, of a like aggregate Principal Amount. The Company shall not charge a service charge for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges that may be imposed in connection with the transfer or exchange of the Securities from the Securityholder requesting such transfer or exchange (other than any exchange of a temporary Security for a definitive Security not involving any change in ownership).

At the option of the Holder, Securities may be exchanged for other Securities of any authorized denomination or denominations, of a like aggregate Principal Amount, upon surrender of the Securities to be exchanged, together with a written instrument of transfer reasonably satisfactory to the Registrar duly executed by the Securityholder or such Securityholder's attorney duly authorized in writing, at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

The Company shall not be required to make, and the Registrar need not register, transfers or exchanges of (a) Securities selected for redemption (except, in the case of Securities to be redeemed in part, the portion thereof not to be redeemed), (b) any Securities in respect of which a Purchase Notice or a Change in Control Purchase Notice has been given and not withdrawn by the Holder thereof in accordance with the terms of this Indenture (except, in the case of Securities to be purchased in part, the portion thereof not to be purchased) or (c) any Securities for a period of 15 days before the mailing of a notice of redemption.

Notwithstanding any provision to the contrary herein, so long as a global Security remains outstanding and is held by or on behalf of the Depositary, transfers of a global Security, in whole or in part, shall be made only in accordance with Section 2.11 and this Section 2.06. Transfers of a global Security shall be limited to transfers of such global Security in whole, or in part, to nominees of the Depositary or to a successor of the Depositary or such successor's nominee.

Section 2.07. Replacement Securities. If (a) any mutilated Security is surrendered to the Company or the Trustee, or (b) the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Security, and there is delivered to the Company and the Trustee such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute, and upon its written request the Trustee shall authenticate and deliver, in exchange for any such mutilated Security or in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and Principal Amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, or is about to be purchased by the Company pursuant to Article 3 hereof, the Company in its discretion may, instead of issuing a new Security, pay or purchase such Security, as the case may be.

Upon the issuance of any new Securities under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) in connection therewith.

Every new Security issued pursuant to this Section in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

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

Section 2.08. Outstanding Securities; Determinations of Holders' Action. Securities outstanding at any time are all the Securities authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation, mutilated, destroyed, lost or stolen Securities for which the Trustee has authenticated and delivered a new Security in lieu thereof pursuant to Section 2.07, those paid pursuant to Section 2.07, and those described in this Section 2.08 as not outstanding. A Security does not cease to be outstanding because the Company or an Affiliate thereof holds the Security; provided, however, that in determining whether the Holders of the requisite Principal Amount of Securities have given or concurred in any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities beneficially owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor, other than Securities purchased in connection with the distribution or trading thereof, shall be disregarded and deemed not to be outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which the Trustee knows to be so owned shall be so disregarded. Subject to the foregoing, only Securities outstanding at the time of such determination shall be considered in any such determination (including, without limitation, determinations pursuant to Articles 6 and 9).

If a Security is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Trustee receives proof reasonably satisfactory to it that the replaced Security is held by a bona fide purchaser.

If the Paying Agent holds, in accordance with this Indenture, on a Redemption Date, or on the Business Day following a Purchase Date, or on the Business Day following a Change in Control Purchase Date, or at Stated Maturity, money or, if permitted by the terms hereof, securities sufficient to pay the Securities payable on that date, then on and after that date such Securities shall cease to be outstanding and Original Issue Discount and contingent interest (if any) on such Securities shall cease to accrue and all other rights of the Holder shall terminate (other than the right to receive the applicable Redemption Price, Purchase Price or Change in Control Purchase Price, as the case may be, upon delivery of the Security in accordance with the terms of this Indenture); provided, that if such Securities are to be redeemed, notice of such

redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made.

If a Security is converted in accordance with Article 11, then from and after the Conversion Date such Security shall cease to be outstanding and Original Issue Discount and contingent interest (if any) shall cease to accrue on such Security.

Section 2.09. Temporary Securities. Pending the preparation of definitive Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Officers executing such Securities may determine, as conclusively evidenced by their execution of such Securities.

If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities at the office or agency of the Company designated for such purpose pursuant to Section 2.03 or 4.05, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like Principal Amount of definitive Securities of authorized denominations. Until so exchanged the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

Section 2.10. Cancellation. All Securities surrendered for payment, redemption or purchase by the Company pursuant to Article 3, conversion pursuant to Article 11, registration of transfer or exchange shall, if surrendered to any person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Securities held by the Trustee shall be disposed of by the Trustee in accordance with its standard procedures unless the Company directs by Company Order that the Trustee deliver cancelled Securities to the Company.

Section 2.11. Global Securities.

(a) Transfer and Exchange of Global Securities. A Global Security deposited with the Depositary pursuant to Section 2.01 shall be transferred to the beneficial owners thereof only if such transfer complies with Section 2.06 and (i) the Depositary notifies the Company that it is unwilling or unable to continue as depositary for such Global Security or if at any time ceases to be a "clearing agency" registered under the Exchange Act and a successor depositary is not appointed by the Company within 60 days after such notice, or (ii) an Event of Default has occurred and is continuing with respect to the Securities or (iii) the Company executes and

delivers to the Trustee a Company Order to the effect that the global Securities shall be exchangeable. In any case, the Company will promptly make available to the Trustee a reasonable supply of Securities in definitive, fully registered form without interest coupons in accordance with the provisions of this Article 2.

Any Global Security that is transferable to the beneficial owners thereof pursuant to this Section 2.11 shall be surrendered by the Depositary to the Trustee located in the Borough of Manhattan, The City of New York, to be so transferred, in definitive form, in whole or from time to time in part, in denominations of \$1,000 and integral multiples of \$1,000, without charge, and the Trustee shall authenticate and deliver, upon such transfer of each portion of such Global Security, an equal aggregate Principal Amount at Stated Maturity of Securities of authorized denominations. Any portion of a Global Security transferred pursuant to this Section 2.11 shall be executed, authenticated and delivered only in the denominations specified in the form of Security attached as Exhibit A hereto and registered in such names as the Depositary shall direct.

Members of, or participants in, the Depositary (“Agent Members”) shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depositary or under the Global Security, and the Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall (A) prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or (B) impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a holder of any Security.

Subject to the provisions of this Section 2.11(a), the Holder may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities.

(b) Transfer and Exchange of Securities. Subject to the provisions of Section 2.11(a), when Securities are presented by a Holder to the Registrar with a request:

(1) to register the transfer of the Securities; or

(2) to exchange such Securities for an equal principal amount of Securities of other authorized denominations,

the Registrar shall register the transfer or make the exchange as requested; provided, however, that the Securities presented or surrendered for register of transfer or exchange shall be duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by such Holder’s attorney, duly authorized in writing.

Section 2.12. CUSIP Numbers. The Company in issuing the Securities may use “CUSIP” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP” numbers in notices of redemption as a convenience to Holders; provided that any such notice may state

that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the CUSIP numbers.

Article III

REDEMPTION AND PURCHASES

Section 3.01. Right to Redeem; Notices to Trustee.

The Company, at its option, may redeem the Securities in accordance with the provisions of paragraphs 6 and 8 of the Securities. If the Company elects to redeem Securities pursuant to paragraph 6 of the Securities, it shall notify the Trustee in writing of the Redemption Date, the Principal Amount of Securities to be redeemed and the Redemption Price.

The Company shall give the notice to the Trustee provided for in this Section 3.01 by a Company Order at least 60 days before the Redemption Date (unless a shorter notice shall be satisfactory to the Trustee). If fewer than all the Securities are to be redeemed, the record date relating to such redemption shall be selected by the Company and given to the Trustee, which record date shall not be less than ten days after the date of notice to the Trustee.

Section 3.02. Selection of Securities to Be Redeemed.

If less than all the Securities are to be redeemed, the Trustee shall select the Securities to be redeemed pro rata based on ownership thereof or by lot or by any other method the Trustee considers fair and appropriate (so long as such method is not prohibited by the rules of any stock exchange on which the Securities are then listed). The Trustee shall make the selection at least 15 days but not more than 60 days before the Redemption Date from outstanding Securities not previously called for redemption. The Trustee may select for redemption portions of the Principal Amount of Securities that have denominations larger than \$1,000.

Securities and any portions thereof that the Trustee selects shall be in Principal Amounts of \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption. The Trustee shall notify the Company promptly of the Securities or portions of Securities to be redeemed.

If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted during a selection of Securities to be redeemed may be treated by the Trustee as outstanding for the purpose of such selection.

Nothing in this Section 3.02 shall affect the right of any Holder to convert any Security pursuant to Article 11 before the termination of the conversion right with respect thereto.

Section 3.03. Notice of Redemption.

At least 30 days but not more than 60 days before a Redemption Date, the Company shall give notice of redemption to each Holder of Securities to be redeemed in the manner provided in Section 13.02.

The notice shall identify the Securities to be redeemed and shall state:

- (a) the Redemption Date;
- (b) the Redemption Price;
- (c) the Conversion Rate;
- (d) the name and address of the Paying Agent and Conversion Agent and of the office or agency referred to in Section 4.05;
- (e) that Securities called for redemption may be converted at any time before the close of business on the second Business Day immediately preceding the Redemption Date, even if not otherwise convertible at such time;
- (f) that Holders who want to convert Securities must satisfy the requirements set forth in paragraph 9 of the Securities;
- (g) that Securities called for redemption must be surrendered to the Paying Agent or at the office or agency referred to in Section 4.05 to collect the Redemption Price;
- (h) if fewer than all the outstanding Securities are to be redeemed, the certificate numbers and Principal Amounts of the particular Securities to be redeemed;
- (i) that, unless the Company defaults in making payment of such Redemption Price on Securities called for redemption, Original Issue Discount and contingent interest (if any) will cease to accrue on and after the Redemption Date; and
- (j) the CUSIP number of the Securities.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at the Company's expense, provided that the Company makes such request at least 15 days (unless a shorter period shall be acceptable to the Trustee) prior to the date such notice of redemption must be mailed.

Section 3.04. Effect of Notice of Redemption. Once notice of redemption is given, Securities called for redemption become due and payable on the Redemption Date and at the

Redemption Price stated in the notice except for Securities which are converted in accordance with the terms of this Indenture. Upon surrender to the Paying Agent, such Securities shall be paid at the Redemption Price stated in the notice.

Section 3.05. Deposit of Redemption Price. Prior to 10:00 a.m. (New York City time), on the Redemption Date, the Company shall deposit with the Paying Agent (or if the Company or a Subsidiary of the Company or an Affiliate of any of them is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the Redemption Price of all Securities to be redeemed on that date other than Securities or portions of Securities called for redemption which on or prior thereto have been delivered by the Company to the Trustee for cancellation or have been converted. The Paying Agent shall as promptly as practicable return to the Company any money not required for that purpose because of conversion of Securities pursuant to Article 11. If such money is then held by the Company or a Subsidiary or an Affiliate of the Company in trust and is not required for such purpose it shall be discharged from such trust.

Section 3.06. Securities Redeemed in Part. Upon surrender of a Security that is redeemed in part, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Security in an authorized denomination equal in Principal Amount to the unredeemed portion of the Security surrendered.

Section 3.07. [Reserved].

Section 3.08. Purchase of Securities at the Option of the Holder. (a) General. If a Holder exercises its right to require the Company to repurchase the Securities, the Securities shall be purchased by the Company on May 23, 2004, May 23, 2005, May 23, 2006, May 23, 2011, May 23, 2016, May 23, 2021, and May 23, 2026 (each, a "Purchase Date"), at the purchase price of:

- \$546.56 per \$1,000 of Principal Amount on May 23, 2004;
- \$558.93 per \$1000 of Principal Amount on May 23, 2005;
- \$571.58 per \$1,000 of Principal Amount on May 23, 2006;
- \$639.23 per \$1,000 of Principal Amount on May 23, 2011;
- \$714.90 per \$1,000 Principal Amount on May 23, 2016;
- \$799.52 per \$1,000 Principal Amount on May 23, 2021; and
- \$894.16 per \$1,000 Principal Amount on May 23, 2026 (each, a "Purchase Price", as applicable), at the option of the Holder thereof, upon:

(1) delivery to the Paying Agent, by the Holder, of a written notice of purchase (a "Purchase Notice") at any time from the opening of business on the date that

is at least 20 Business Days prior to a Purchase Date until the close of business on the Business Day immediately preceding such Purchase Date stating:

(A) the certificate number of the Security which the Holder will deliver to be purchased,

(B) the portion of the Principal Amount of the Security which the Holder will deliver to be purchased, which portion must be a Principal Amount of \$1,000 or an integral multiple thereof,

(C) that such Security shall be purchased as of the Purchase Date pursuant to the terms and conditions specified in the Securities, and

(D) in the event the Company elects, pursuant to Section 3.08(b), to pay the Purchase Price to be paid as of such Purchase Date, in whole or in part, in shares of Common Stock but such portion of the Purchase Price shall ultimately be payable to such Holder entirely in cash because any of the conditions to payment of the Purchase Price (or a portion thereof) in Common Stock is not satisfied prior to the close of business on such Purchase Date, as set forth in Section 3.08(d), whether such Holder elects (i) to withdraw such Purchase Notice as to some or all of the Securities to which such Purchase Notice relates (stating the Principal Amount and certificate numbers of the Securities as to which such withdrawal shall relate), or (ii) to receive cash in respect of the entire Purchase Price for all Securities (or portions thereof) to which such Purchase Notice relates; and

(2) delivery of such Security to the Paying Agent prior to, on or after the Purchase Date (together with all necessary endorsements) at the offices of the Paying Agent, such delivery being a condition to receipt by the Holder of the Purchase Price therefor; provided, however, that such Purchase Price shall be so paid pursuant to this Section 3.08 only if the Security so delivered to the Paying Agent shall conform in all respects to the description thereof in the related Purchase Notice, as determined by the Company.

If a Holder, in such Holder's Purchase Notice and in any written notice of withdrawal delivered by such Holder pursuant to the terms of Section 3.10, fails to indicate such Holder's choice with respect to the election set forth in clause (D) of Section 3.08(a)(1), such Holder shall be deemed to have elected to receive cash in respect of the Purchase Price for all Securities subject to such Purchase Notice in the circumstances set forth in such clause (D).

The Company shall purchase from the Holder thereof, pursuant to this Section 3.08, a portion of a Security if the Principal Amount of such portion is \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to the purchase of all of a Security also apply to the purchase of such portion of such Security.

Any purchase by the Company contemplated pursuant to the provisions of this Section 3.08 shall be consummated by the delivery of the consideration to be received by the Holder as promptly as practicable following the later of the Purchase Date and the time of delivery of the Security.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent or the office or agency referred to in Section 4.05 the Purchase Notice contemplated by this Section 3.08(a) shall have the right to withdraw such Purchase Notice at any time prior to the close of business on the Purchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.10.

The Paying Agent shall promptly notify the Company of the receipt by it of any Purchase Notice or written notice of withdrawal thereof.

(b) Company's Right to Elect Manner of Payment of Purchase Price. The Securities to be purchased pursuant to Section 3.08(a) may be paid for, at the election of the Company, in cash or Common Stock, or in any combination of cash and Common Stock, subject to the conditions set forth in Sections 3.08(c) and (d). The Company shall designate, in the Company Notice delivered pursuant to Section 3.08(e), whether the Company will purchase the Securities for cash or Common Stock, or, if a combination thereof, the percentages of the Purchase Price of Securities in respect of which it will pay in cash or Common Stock; provided that the Company will pay cash for fractional interests in Common Stock. For purposes of determining the existence of potential fractional interests, all Securities subject to purchase by the Company held by a Holder shall be considered together (no matter how many separate certificates are to be presented). Each Holder whose Securities are purchased pursuant to this Section 3.08 shall receive the same percentage of cash or Common Stock in payment of the Purchase Price for such Securities, except (i) as provided in Section 3.08(d) with regard to the payment of cash in lieu of fractional shares of Common Stock and (ii) in the event that the Company is unable to purchase the Securities of a Holder or Holders for Common Stock because any of the conditions specified in Section 3.08(d) have not been satisfied, the Company may purchase the Securities of such Holder or Holders for cash. The Company may not change its election with respect to the consideration (or components or percentages of components thereof) to be paid once the Company has given its Company Notice to Securityholders except pursuant to this Section 3.08(b) or pursuant to Section 3.08(d) in the event of a failure to satisfy, prior to the close of business on the Purchase Date, any condition to the payment of the Purchase Price, in whole or in part, in Common Stock.

At least three Business Days before the Company Notice Date, the Company shall deliver an Officers' Certificate to the Trustee specifying:

- (i) the manner of payment selected by the Company,
- (ii) the information required by Section 3.08(e),

(iii) if the Company elects to pay the Purchase Price, or a specified percentage thereof, in Common Stock, that the conditions to such manner of payment set forth in Section 3.08(d) have been or will be complied with, and

(iv) whether the Company desires the Trustee to give the Company Notice required by Section 3.08(e).

(c) Purchase with Cash. On each Purchase Date, at the option of the Company, the Purchase Price of Securities in respect of which a Purchase Notice pursuant to Section 3.08(a) has been given, or a specified percentage thereof, may be paid by the Company with cash equal to the aggregate Purchase Price of such Securities.

(d) Payment by Issuance of Common Stock. On each Purchase Date, at the option of the Company, the Purchase Price of Securities in respect of which a Purchase Notice pursuant to Section 3.08(a) has been given, or a specified percentage thereof, may be paid by the Company by the issuance of a number of shares of Common Stock equal to the quotient obtained by dividing (i) the amount of cash to which the Securityholders would have been entitled had the Company elected to pay all or such specified percentage, as the case may be, of the Purchase Price of such Securities in cash by (ii) the Market Price of a share of Common Stock, subject to the next succeeding paragraph.

The Company will not issue a fractional share of Common Stock in payment of the Purchase Price. Instead the Company will pay cash for the current market value of the fractional share. The current market value of a fraction of a share shall be determined by multiplying the Market Price by such fraction and rounding the product to the nearest whole cent. It is understood that if a Holder elects to have more than one Security purchased, the number of shares of Common Stock shall be based on the aggregate amount of Securities to be purchased.

Upon a payment by Common Stock pursuant to the terms hereof, that portion of Accrued Original Issue Discount and accrued Tax Original Issue Discount attributable to the period from the Issue Date to the Purchase Date with respect to the purchased Security shall not be cancelled, extinguished or forfeited but rather shall be deemed paid in full to the Holder through the delivery of the Common Stock in exchange for the Security being purchased pursuant to the terms hereof, and the fair market value of such Common Stock (together with any cash payments in lieu of fractional shares of Common Stock) shall be treated as issued, to the extent thereof, first in exchange for the Accrued Original Issue Discount and Tax Original Issue Discount accrued through the Purchase Date, and the balance, if any, of the fair market value of such shares of Common Stock shall be treated as issued in exchange for the Issue Price of the Security being purchased pursuant to the provisions hereof. If the Company elects to purchase the Securities by the issuance of shares of Common Stock, the Company Notice, as provided in Section 3.08(e), shall be sent to the Holders (and to beneficial owners as required by applicable law) not later than the Company Notice Date.

The Company's right to exercise its election to purchase the Securities pursuant to Section 3.08 through the issuance of shares of Common Stock shall be conditioned upon:

(1) the Company's not having given a Company Notice stating its election to pay entirely in cash for the Securities and its giving of timely Company Notice of election to purchase all or a specified percentage of the Securities with Common Stock as provided herein;

(2) the shares of Common Stock having been admitted for listing or admitted for listing subject to notice of issuance on the principal United States securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a national or regional securities exchange, admitted for quotation on the National Association of Securities Dealers Automated Quotation System;

(3) the registration of the shares of Common Stock to be issued in respect of the payment of the Purchase Price under the Securities Act of 1933, as amended (the "Securities Act"), and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), in each case, if required;

(4) any necessary qualification or registration of the Common Stock under applicable state securities laws or the availability of an exemption from such qualification and registration; and

(5) the receipt by the Trustee of an Officers' Certificate and an Opinion of Counsel each stating that (A) the terms of the issuance of the Common Stock are in conformity with this Indenture and (B) the shares of Common Stock to be issued by the Company in payment of the Purchase Price in respect of Securities have been duly authorized and, when issued and delivered pursuant to the terms of this Indenture in payment of the Purchase Price in respect of the Securities, will be validly issued, fully paid and nonassessable and shall be free of any preemptive rights and any lien or adverse claim (provided that such Opinion of Counsel may state that, insofar as it relates to the absence of such preemptive rights, liens and adverse claims, it is given upon the best knowledge of such counsel), and, in the case of such Officers' Certificate, stating that conditions (1), (2), (3) and (4) above and the condition set forth in the second succeeding sentence have been satisfied and, in the case of such Opinion of Counsel, stating that conditions (2), (3) and (4) above have been satisfied.

Such Officers' Certificate shall also set forth the number of shares of Common Stock to be issued for each \$1,000 Principal Amount of Securities and the Sale Price of a share of Common Stock on each Trading Day during the period for which the Market Price is calculated. The Company may pay the Purchase Price (or any portion thereof) in Common Stock only if the information necessary to calculate the Market Price is published in a daily newspaper of national circulation or by other appropriate means. If the foregoing conditions are not satisfied with respect to a Holder or Holders prior to the close of business on the Purchase Date and the Company has elected to purchase the Securities pursuant to this Section 3.08 through the issuance of shares of Common Stock, the Company shall pay the entire Purchase Price of the Securities of such Holder or Holders in cash.

(e) Notice of Election. The Company's notice of election to purchase with cash or Common Stock or any combination thereof shall be sent to the Holders (and to beneficial owners as required by applicable law) in the manner provided in Section 13.02 (the "Company Notice"). The Company Notice shall be sent to the Holders (and to beneficial owners as required by applicable law) not less than 20 Business Days prior to the applicable Purchase Date (the "Company Notice Date"). Such Company Notice shall state the manner of payment elected and shall contain the following information:

In the event the Company has elected to pay the Purchase Price (or a specified percentage thereof) with Common Stock, the Company Notice shall:

(1) state that each Holder will receive Common Stock with a Market Price determined as of a specified date prior to the Purchase Date equal to such specified percentage of the Purchase Price of the Securities held by such Holder (except any cash amount to be paid in lieu of fractional shares);

(2) set forth the method of calculating the Market Price of the Common Stock; and

(3) state that because the Market Price of Common Stock will be determined prior to the Purchase Date, Holders will bear the market risk with respect to the value of the Common Stock to be received from the date such Market Price is determined to the Purchase Date.

In any case, each Company Notice shall include a form of Purchase Notice to be completed by a Securityholder that wishes to exercise its option to have the Company repurchase the Securities and shall state:

(i) the Purchase Price, the Conversion Rate and, to the extent known at the time of such notice, the amount of contingent interest, if any, that will be accrued and payable with respect to the Securities as of the Purchase Date;

(ii) whether the Company will pay the Purchase Price in cash or in Common Stock or any combination thereof, specifying the percentage of each;

(iii) the name and address of the Paying Agent and the Conversion Agent and of the office or agency referred to in Section 4.05;

(iv) that Securities as to which a Purchase Notice has been given may be converted pursuant to Article 11 hereof only if any applicable Purchase Notice has been withdrawn in accordance with the terms of this Indenture;

(v) that Securities must be surrendered to the Paying Agent or to the office or agency referred to in Section 4.05 to collect payment of the Purchase Price;

(vi) that the Purchase Price for any Security as to which a Purchase Notice has been given and not withdrawn will be paid as promptly as practicable following the later of the Purchase Date and the time of surrender of such Security as described in (v);

(vii) the procedures the Holder must follow to exercise rights under Section 3.08 and a brief description of those rights;

(viii) briefly, the conversion rights of the Securities and that Holders who want to convert Securities must satisfy the requirements set forth in paragraph 9 of the Securities;

(ix) the procedures for withdrawing a Purchase Notice (including, without limitation, for a conditional withdrawal pursuant to the terms of Section 3.08(a)(1)(D) or Section 3.10);

(x) that, unless the Company defaults in making payment of such Purchase Price on Securities surrendered for purchase, Original Issue Discount and contingent interest, if any, will cease to accrue on and after the Purchase Date; and

(xi) the CUSIP number of the Securities.

At the Company's request and upon being provided with a copy of such Company Notice, the Trustee shall give such Company Notice in the Company's name and at the Company's expense, provided that the Company makes such request at least 15 days (unless a shorter period shall be acceptable to the Trustee) prior to the date such Company Notice must be mailed; and provided, further, that, in all cases, the text of such Company Notice shall be prepared by the Company.

Upon determination of the actual number of shares of Common Stock to be issued for each \$1,000 Principal Amount of Securities, the Company will issue a press release and publish such determination on the Company's web site or, at the Company's option, otherwise publicly disclose such information.

(f) Covenants of the Company. All shares of Common Stock delivered upon purchase of the Securities shall be newly issued shares or treasury shares, shall be duly authorized, validly issued, fully paid and nonassessable and shall be free from preemptive rights and free of any lien or adverse claim, and the Common Stock will be entitled to the benefits of the Amended and Restated Rights Agreement adopted December 2, 1997 equally with other shares of Common Stock.

The Company shall use its reasonable efforts to list or cause to have quoted any shares of Common Stock to be issued to purchase Securities on the principal United States securities exchange or over-the-counter or other domestic market on which any other shares of the Common Stock are then listed or quoted. The Company will promptly inform the Trustee in writing of any such listing.

(g) Procedure upon Purchase. On or before the Purchase Date, the Company shall deposit cash (in respect of a cash purchase under Section 3.08(c) or for fractional interests, as applicable) or shares of Common Stock, or a combination thereof, as applicable, at the time and in the manner as provided in Section 3.11, sufficient to pay the aggregate Purchase Price of all Securities to be purchased pursuant to this Section 3.08. As soon as practicable after the Purchase Date, the Company shall deliver to each Holder entitled to receive Common Stock through the Paying Agent, a certificate for the number of full shares of Common Stock issuable in payment of the Purchase Price and cash in lieu of any fractional interests. The person in whose name the certificate for Common Stock is registered shall be treated as a holder of record of shares of Common Stock on the Business Day following the Purchase Date. Subject to Section 3.08(d), no payment or adjustment will be made for dividends on the Common Stock the record date for which occurred on or prior to the Purchase Date.

(h) Taxes. If a Holder of a Security is paid in Common Stock, the Company shall pay any documentary, stamp or similar issue or transfer tax due on such issue of shares of Common Stock. However, the Holder shall pay any such tax which is due because the Holder requests the shares of Common Stock to be issued in a name other than the Holder's name. The Paying Agent may refuse to deliver the certificates representing the Common Stock being issued in a name other than the Holder's name until the Paying Agent receives a sum sufficient to pay any tax which will be due because the shares of Common Stock are to be issued in a name other than the Holder's name. Nothing herein shall preclude the Company from withholding or directing the withholding of any tax required by law or regulations.

Section 3.09. Purchase of Securities at Option of the Holder upon Change in Control.

(a) If on or prior to May 23, 2006 there shall have occurred a Change in Control, Securities shall be purchased by the Company, at the option of the Holder thereof, at a purchase price specified in paragraph 7 of the Securities (the "Change in Control Purchase Price"), as of the date that is 35 Business Days after the occurrence of the Change in Control (the "Change in Control Purchase Date"), subject to satisfaction by or on behalf of the Holder of the requirements set forth in Section 3.09(c).

A "Change in Control" shall be deemed to have occurred at such time as either of the following events shall occur:

(1) any person, including any Affiliate or Associate of the Company, other than the Company, its Subsidiaries, or their employee benefit plans, files a Schedule

13D or Schedule TO (or any successor schedule, form or report under the Exchange Act) disclosing that such person has become the beneficial owner of 50% or more of the aggregate voting power of the Common Stock and other Capital Stock with equivalent voting rights, or other capital stock into which the Common Stock is reclassified or changed, provided, however, that a person shall not be deemed a beneficial owner of, or to own beneficially, (A) any securities tendered pursuant to a tender or exchange offer made by or on behalf of such person or any of such person's Affiliates or Associates until such tendered securities are accepted for purchase or exchange thereunder, or (B) any securities if such beneficial ownership (1) arises solely as a result of a revocable proxy delivered in response to a proxy or consent solicitation made pursuant to the applicable rules and regulations under the Exchange Act, and (2) is not also then reportable on Schedule 13D (or any successor schedule) under the Exchange Act; or

(2) there shall be consummated any share exchange, consolidation or merger of the Company pursuant to which the Common Stock would be converted into cash, securities or other property in which the holders of the Common Stock and other Capital Stock with equivalent voting rights immediately prior to such share exchange, consolidation or merger, have, directly or indirectly, less than a majority of the total voting power in the aggregate of all classes of Capital Stock of the continuing and surviving corporation immediately after such share exchange, consolidation or merger of the Company.

Notwithstanding the foregoing provisions of this Section 3.09, a Change in Control shall not be deemed to have occurred by virtue of the Company, any Subsidiary, any employee stock ownership plan or any other employee benefit plan of the Company or any Subsidiary, or any person holding Common Stock for or pursuant to the terms of any such employee benefit plan, filing or becoming obligated to file a report under or in response to Schedule 13D or Schedule TO (or any successor schedule, form or report) under the Exchange Act disclosing beneficial ownership by it of shares of Common Stock, whether in excess of 50% or otherwise.

"Associate" shall have the meaning ascribed to such term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date hereof.

(b) Within 15 Business Days after the occurrence of a Change in Control, the Company shall mail a written notice of Change in Control by first-class mail to the Trustee and to each Holder (and to beneficial owners as required by applicable law). The notice shall include a form of Change in Control Purchase Notice to be completed by the Securityholder and shall state:

- (1) briefly, the events causing a Change in Control and the date of such Change in Control;
- (2) the date by which the Change in Control Purchase Notice pursuant to this Section 3.09 must be given;
- (3) the Change in Control Purchase Date;

(4) the Change in Control Purchase Price;

(5) the name and address of the Paying Agent and the Conversion Agent and of the office or agency referred to in Section 4.05;

(6) the Conversion Rate and any adjustments thereto;

(7) that Securities as to which a Change in Control Purchase Notice is given by the Holder may be converted, if otherwise convertible, only if the Change in Control Purchase Notice has been withdrawn in accordance with the terms of this Indenture;

(8) that Securities must be surrendered to the Paying Agent or the office or agency referred to in Section 4.05 to collect payment of the Change in Control Purchase Price;

(9) that the Change in Control Purchase Price for any Security as to which a Change in Control Purchase Notice has been duly given and not withdrawn will be paid as promptly as practicable following the later of the Change in Control Purchase Date and the time of surrender of such Security as described in clause (8), above;

(10) the procedures the Holder must follow to exercise rights under this Section 3.09 and a brief description of those rights;

(11) briefly, the conversion rights of the Securities (including whether the Securities are then currently convertible);

(12) the procedures for withdrawing a Change in Control Purchase Notice;

(13) that, unless the Company defaults in making payment of such Change in Control Purchase Price on Securities surrendered for purchase, Original Issue Discount and contingent interest, if any, will cease to accrue on and after the Change in Control Purchase Date; and

(14) the CUSIP number of the Securities.

(c) A Holder may exercise its rights specified in Section 3.09(a) upon delivery of a written notice of purchase (a "Change in Control Purchase Notice") to the Paying Agent or to the office or agency referred to in Section 4.05 at any time prior to the close of business on the Change in Control Purchase Date, stating:

(1) the certificate number of the Security which the Holder will deliver to be purchased;

(2) the portion of the Principal Amount of the Securities which the Holder will deliver to be purchased, which portion must be \$1,000 or an integral multiple thereof; and

(3) that such Security shall be purchased pursuant to the terms and conditions specified in the Securities.

The delivery of such Security to the Paying Agent prior to, on or after the Change in Control Purchase Date (together with all necessary endorsements) at the offices of the Paying Agent or to the office or agency referred to in Section 4.05 shall be a condition to the receipt by the Holder of the Change in Control Purchase Price therefor; provided, however, that such Change in Control Purchase Price shall be so paid pursuant to this Section 3.09 only if the Security so delivered to the Paying Agent or such office or agency shall conform in all respects to the description thereof set forth in the related Change in Control Purchase Notice and such Change in Control Purchase Notice shall not be validly withdrawn by the Holder.

The Company shall purchase from the Holder thereof, pursuant to this Section 3.09, a portion of a Security if the Principal Amount of such portion is \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to the purchase of all of a Security also apply to the purchase of such portion of such Security.

Any purchase by the Company contemplated pursuant to the provisions of this Section 3.09 shall be consummated by the delivery of the consideration to be received by the Holder as promptly as practicable following the later of the Change in Control Purchase Date and the time of delivery of the Security to the Paying Agent or to the office or agency referred to in Section 4.05 in accordance with this Section 3.09.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent or to the office or agency referred to in Section 4.05 the Change in Control Purchase Notice contemplated by this Section 3.09(c) shall have the right to withdraw such Change in Control Purchase Notice at any time prior to the close of business on the Change in Control Purchase Date by delivery of a written notice of withdrawal to the Paying Agent or to the office or agency referred to in Section 4.05 in accordance with Section 3.10.

The Paying Agent shall promptly notify the Company of the receipt by it of any Change in Control Purchase Notice or written withdrawal thereof.

Section 3.10. Effect of Purchase Notice or Change in Control Purchase Notice. Upon receipt by the Paying Agent of the Purchase Notice or Change in Control Purchase Notice specified in Section 3.08(a) or Section 3.09(c), as applicable, the Holder of the Security in respect of which such Purchase Notice or Change in Control Purchase Notice, as the case may be, was given shall (unless such Purchase Notice or Change in Control Purchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Purchase Price or Change in Control Purchase Price, as the case may be, with respect to such Security to the Purchase Date or Change in Control Purchase Date, as the case may be. Such Purchase Price or Change in Control Purchase Price shall be paid to such Holder, subject to

receipts of funds and/or Common Stock by the Paying Agent, as promptly as practicable following the later of (x) the Purchase Date or the Change in Control Purchase Date, as the case may be, with respect to such Security (provided the conditions in Section 3.08(a) or Section 3.09(c), as applicable, have been satisfied) and (y) the time of delivery of such Security to the Paying Agent by the Holder thereof in the manner required by Section 3.08(a) or Section 3.09(c), as applicable. Securities in respect of which a Purchase Notice or Change in Control Purchase Notice, as the case may be, has been given by the Holder thereof may not be converted pursuant to Article 11 hereof on or after the date of the delivery of such Purchase Notice or Change in Control Purchase Notice, as the case may be, unless such Purchase Notice or Change in Control Purchase Notice, as the case may be, has first been validly withdrawn as specified in the following two paragraphs.

A Purchase Notice or Change in Control Purchase Notice, as the case may be, may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent or to the office or agency referred to in Section 4.05 in accordance with the Purchase Notice or Change in Control Purchase Notice, as the case may be, at any time prior to the close of business on the Purchase Date or the Change in Control Purchase Date, as the case may be, specifying:

- (1) the Principal Amount of the Securities with respect to which such notice of withdrawal is being submitted,
- (2) the certificate number of the Securities in respect of which such notice of withdrawal is being submitted, and
- (3) the Principal Amount, if any, of any such Securities which remain subject to the original Purchase Notice or Change in Control Purchase Notice, as the case may be, and which has been or will be delivered for purchase by the Company.

A written notice of withdrawal of a Purchase Notice may be in the form set forth in the preceding paragraph or may be in the form of (i) a conditional withdrawal contained in a Purchase Notice pursuant to the terms of Section 3.08(a)(1)(D) or (ii) a conditional withdrawal containing the information set forth in Section 3.08(a)(1)(D) and the preceding paragraph and contained in a written notice of withdrawal delivered to the Paying Agent as set forth in the preceding paragraph.

There shall be no purchase of any Securities pursuant to Section 3.08 (other than through the issuance of Common Stock in payment of the Purchase Price, including cash in lieu of fractional shares) or 3.09 if there has occurred (prior to, on or after, as the case may be, the giving, by the Holders of such Securities, of the required Purchase Notice or Change in Control Purchase Notice, as the case may be) and is continuing an Event of Default (other than a default in the payment of the Purchase Price or Change in Control Purchase Price, as the case may be, with respect to such Securities). The Paying Agent will promptly return to the respective Holders thereof any Securities (x) with respect to which a Purchase Notice or Change in Control Purchase Notice, as the case may be, has been withdrawn in compliance with this Indenture, or (y) held by it during the continuance of an Event of Default (other than a default in the payment

of the Purchase Price or Change in Control Purchase Price, as the case may be, with respect to such Securities) in which case, upon such return, the Purchase Notice or Change in Control Purchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 3.11. Deposit of Purchase Price or Change in Control Purchase Price. Prior to 10:00 a.m. New York City time on the Business Day following the Purchase Date or the Change in Control Purchase Date, as the case may be, the Company shall deposit with the Trustee or with the Paying Agent (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.04) an amount of money (in immediately available funds if deposited on such Business Day) or Common Stock, if permitted hereunder, sufficient to pay the aggregate Purchase Price or Change in Control Purchase Price, as the case may be, of all the Securities or portions thereof which are to be purchased as of the Purchase Date or Change in Control Purchase Date, as the case may be. After the Purchase Date or the Change in Control Purchase Date, Original Issue Discount, Tax Original Issue Discount, and contingent interest, if any, shall cease to accrue on such Security, whether or not such Security is delivered to the Paying Agent.

Section 3.12. Securities Purchased in Part. Any Security which is to be purchased only in part shall be surrendered at the office of the Paying Agent or to the office or agency referred to in Section 4.05 (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security, without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder in aggregate Principal Amount equal to, and in exchange for, the portion of the Principal Amount of the Security so surrendered which is not purchased.

Section 3.13. Covenant to Comply With Securities Laws Upon Purchase of Securities. In connection with any offer to purchase or purchase of Securities under Section 3.08 or 3.09 hereof (provided that such offer or purchase constitutes an "issuer tender offer" for purposes of Rule 13e-4 (which term, as used herein, includes any successor provision thereto) under the Exchange Act at the time of such offer or purchase), the Company shall (i) comply with Rule 13e-4 and Rule 14e-1 under the Exchange Act and any other then applicable tender offer rules, (ii) file the related Schedule TO (or any successor schedule, form or report) under the Exchange Act, and (iii) otherwise comply with all Federal and state securities laws so as to permit the rights and obligations under Sections 3.08 and 3.09 to be exercised in the time and in the manner specified in Sections 3.08 and 3.09.

Section 3.14. Repayment to the Company. The Trustee and the Paying Agent shall return to the Company any cash or shares of Common Stock that remain unclaimed as provided in paragraph 14 of the Securities, together with interest or dividends, if any, thereon (subject to the provisions of Section 7.01(f)), held by them for the payment of the Purchase Price or Change in Control Purchase Price, as the case may be; provided, however, that to the extent that the aggregate amount of cash or shares of Common Stock deposited by the Company pursuant to Section 3.11 exceeds the aggregate Purchase Price or Change in Control Purchase Price, as the

case may be, of the Securities or portions thereof which the Company is obligated to purchase as of the Purchase Date or Change in Control Purchase Date, as the case may be, then as promptly as practicable after the Business Day following the Purchase Date or Change in Control Purchase Date, as the case may be, the Trustee shall return any such excess to the Company together with interest or dividends, if any, thereon (subject to the provisions of Section 7.01(f)).

Notwithstanding anything in this Indenture to the contrary, all moneys delivered to the Trustee (in any capacity) for payment to Holders shall remain uninvested unless otherwise agreed to in writing between the Company and the Trustee.

Article IV

COVENANTS

Section 4.01. Payment of Securities. The Company shall promptly make all payments in respect of the Securities on the dates and in the manner provided in the Securities or pursuant to this Indenture. Principal Amount, Issue Price, Accrued Original Issue Discount, Tax Original Issue Discount, Redemption Price, Purchase Price, Change in Control Purchase Price and contingent interest, if any, shall be considered paid on the applicable date due if on such date the Trustee or the Paying Agent holds, in accordance with this Indenture, cash or securities, if expressly permitted hereunder, sufficient to pay all such amounts then due.

The Company shall, to the extent permitted by law, pay interest on overdue amounts at the per annum rate of interest set forth in paragraph 1 of the Securities, compounded semi-annually, which interest on overdue amounts (to the extent payment of such interest shall be legally enforceable) shall accrue from the date such overdue amounts were originally due and payable.

Section 4.02. SEC Reports. The Company shall file with the Trustee, within 15 days after it files such annual and quarterly reports, information, documents and other reports with the SEC, copies of its annual and quarterly reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act (or any such successor provisions thereto). The Company also shall comply with the other provisions of TIA Section 314(a), to the extent such provisions are applicable.

Section 4.03. Compliance Certificate; Notice of Defaults.

(a) The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2001) a certificate of the principal executive officer, the principal financial officer or the principal accounting officer of the Company stating whether or not, to the knowledge of the signer, the Company has complied with all conditions and covenants on its part contained in this Indenture and, if the signer has obtained knowledge of any default by the Company in the performance, observance or fulfillment of any such condition or

covenant, specifying each such default and the nature thereof. For the purpose of this Section 4.03, compliance shall be determined without regard to any grace period or requirement of notice provided pursuant to the terms of this Indenture.

(b) The Company shall file with the Trustee written notice of the occurrence of any Default or Event of Default within five Business Days of its becoming aware of such Default or Event of Default.

Section 4.04. Further Instruments and Acts. Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

Section 4.05. Maintenance of Office or Agency. The Company will maintain in the Borough of Manhattan, The City of New York, in such location as may be required by the rules of any securities exchange or quotation system on which the Securities may from time to time be listed, an office or agency where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer, exchange, purchase, redemption or conversion and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The office of the Trustee in The City of New York, which office on the date hereof is located at 450 West 33rd Street, New York, New York 10001, shall be such office or agency for all of the aforesaid purposes unless the Company shall maintain some other office or agency for such purposes and shall give prompt written notice to the Trustee of the location, and any change of location, of such other office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee set forth in Section 13.02.

The Company may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in The City of New York, for such purposes.

Section 4.06. Calculation of Accrued Original Issue Discount and Tax Original Issue Discount. The Company shall file with the Trustee, within 30 days following the end of each calendar year, a written notice specifying (i) the amount of Accrued Original Issue Discount and Tax Original Issue Discount (including the daily rates and accrual periods) accrued on outstanding Securities as of the end of such year and (ii) such other specific information relating to such Accrued Original Issue Discount and Tax Original Issue Discount as may then be relevant under the Internal Revenue Code of 1986, as amended from time to time.

Section 4.07. Limitation Upon Creation of Liens on Voting Stock of Certain Subsidiaries.

The Company will not, and it will not permit any subsidiary at any time directly or indirectly to, create, assume, incur or permit to exist any indebtedness for borrowed money secured by a pledge, lien or other encumbrance (any pledge, lien or other encumbrance being hereinafter in this Section referred to as a "lien") on the Voting Stock of any Subsidiary (other than a Subsidiary which, at the time of incurrence of such secured indebtedness, has a net worth, as determined in accordance with generally accepted accounting principles, of less than \$3,000,000) without making effective provision whereby the outstanding securities (and, if the Company so elects, any other indebtedness ranking on a parity with the Securities), shall be secured equally and ratably with such secured indebtedness so long as such other indebtedness shall be so secured; provided, however, that the foregoing covenant shall not be applicable to liens for taxes or assessments or governmental charges or levies not then due and delinquent or the validity of which is being contested in good faith or which are less than \$1,000,000 in amount, liens created by or resulting from any litigation or legal proceeding which is currently being contested in good faith by appropriate proceedings or which involve claims of less than \$1,000,000, or deposits to secure (or in lieu of) surety, stay, appeal or customs bonds.

If the Company shall hereafter be required to secure the Securities equally and ratably with any other indebtedness pursuant to this Section, (i) the Company will promptly deliver to the Trustee an Officers' Certificate stating that the foregoing covenant has been complied with, and an Opinion of Counsel stating that in the opinion of such counsel the foregoing covenant has been complied with and that any instruments executed by the Company or any Subsidiary in the performance of the foregoing covenant comply with the requirements of the foregoing covenant and (ii) the Trustee is hereby authorized to enter into an indenture of agreement supplemental hereto and to take such action, if any, as it may deem advisable to enable it to enforce the rights of the holders of the Securities so secured.

Section 4.08. Limitation on Disposition of Voting Stock of, and Merger and Sale of Assets by, MLPF&S.

The Company will not:

(a) sell, transfer or otherwise dispose of any shares of Voting Stock of MLPF&S or permit MLPF&S to issue, sell, or otherwise dispose of any shares of its Voting Stock, unless, after giving effect to any such transaction, MLPF&S remains a Controlled Subsidiary; or

(b) permit MLPF&S to

(1) merge or consolidate, unless the surviving company is a Controlled Subsidiary; or

(2) convey or transfer its properties and assets substantially as an entirety to any Person, except to one or more Controlled Subsidiaries.

Section 4.09. Waiver of Certain Covenants.

The Company may omit in any particular instance to comply with any term, provision or condition set forth in Sections 4.07 or 4.08 with respect to the Securities if before the time for such compliance the Holders of at least a majority in principal amount of the Outstanding Securities shall by Act of such Holders either waive such compliance in such instance or generally waive compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

Article V

SUCCESSOR CORPORATION

Section 5.01. When Company May Merge or Transfer Assets. The Company may consolidate with, or sell, lease or convey all or substantially all of its properties and assets to, or merge with or into any other Person, provided that in any such case:

(a) either the Company shall be the continuing corporation or the successor Person shall be a Person organized and existing under the laws of the United States or any State thereof and such successor Person shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of all amounts payable with respect to all the Securities, according to their terms, and the due and punctual performance and observance of all of the covenants, conditions and obligations to be performed by the Company under the Securities and this Indenture; and

(b) immediately after giving effect to such merger or consolidation or such sale, lease or conveyance, and the assumption contemplated above, the Company or such successor Person shall not be in default in the performance of any such covenant, condition or obligation.

In the case of any such consolidation, merger, sale, lease or conveyance and upon any such assumption by the successor Person, such successor Person shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor had been named as the Company herein; and thereafter, except in the case of a lease of its properties and assets substantially as an entirety, the Company shall be relieved of any further obligation under this Indenture and the Securities. Such successor Person thereupon may cause to be signed, and may issue either in its own name or in the name of the Company, any or all of the Securities issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor Person, instead of the Company, and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities which previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Securities which such successor Person thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Securities so issued shall in all

respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution hereof.

In case of any such consolidation, merger, sale, lease or conveyance, such changes in phraseology and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

The Trustee, subject to Section 7.01, may receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, lease or conveyance, and any such assumption, complies with the provisions of this Article.

Article VI

DEFAULTS AND REMEDIES

Section 6.01. Events of Default. An "Event of Default" means any one of the following events:

(a) a default in the payment of the Principal Amount, Redemption Price, Purchase Price or Change in Control Purchase Price on any Security when the same becomes due and payable pursuant to the terms hereof;

(b) failure of the Company to make any payment of contingent interest when the same becomes due and payable pursuant to the terms of Article 10 hereof for a period of 30 days;

(c) the Company fails to comply with any of its agreements in the Securities or this Indenture (other than those referred to in clauses (a) or (b) above) upon the receipt of notice of such default from the Trustee or from Holders of not less than 25% in aggregate Principal Amount of the Securities then outstanding and such failure (or the failure to obtain a waiver thereof) continues for 60 days after receipt by the Company of a Notice of Default;

(d) the Company pursuant to or under or within the meaning of any Bankruptcy Law:

(1) commences a voluntary case or proceeding;

(2) consents to the entry of an order for relief against it in an involuntary case or proceeding or the commencement of any case against it;

(3) consents to the appointment of a Custodian of it or for any substantial part of its property;

(4) makes a general assignment for the benefit of its creditors;

(5) files a petition in bankruptcy or answer or consent seeking reorganization or relief; or

(6) consents to the filing of such petition or the appointment of or taking possession by a Custodian; or

(e) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(1) is for relief against the Company in an involuntary case or proceeding, or adjudicates the Company insolvent or bankrupt;

(2) appoints a Custodian of the Company or for any substantial part of its property; or

(3) orders the winding up or liquidation of the Company and the order or decree remains unstayed and in effect for 60 days.

“Bankruptcy Law” means Title 11, United States Code, or any similar Federal or state law for the relief of debtors.

“Custodian” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

Notwithstanding anything herein to the contrary, a Default is not an Event of Default until the Trustee notifies the Company or the Holders of at least 25% in aggregate Principal Amount of the Securities at the time outstanding notify the Company and the Trustee, of the Default and the Company does not cure such Default (and such Default is not waived) within the time specified in clause (b) or clause (c) above after actual receipt of such notice. Any such notice must specify the Default, demand that it be remedied and state that such notice is a “Notice of Default”.

The Company shall deliver to the Trustee, within five (5) days after it becomes aware of the occurrence thereof, written notice of any event which with the giving of notice or the lapse of time, or both, would become an Event of Default under clause (b) or clause (c) above, its status and what action the Company is taking or proposes to take with respect thereto.

Section 6.02. Acceleration. If an Event of Default (other than an Event of Default specified in Section 6.01(d) or (e)) occurs and is continuing, the Trustee by Notice to the Company or the Holders of at least 25% in aggregate Principal Amount of the Securities at the time outstanding by notice to the Company and the Trustee, may declare the Issue Price plus Accrued Original Issue Discount through the date of such declaration, and any accrued and unpaid contingent interest through the date of such declaration, on all the Securities to be immediately due and payable. Upon such a declaration, such Issue Price plus Accrued Original Issue Discount, and such accrued and unpaid contingent interest, if any, shall be due and payable immediately. If an Event of Default specified in Section 6.01(d) or (e) occurs and is continuing,

the Issue Price plus Accrued Original Issue Discount, and any accrued and unpaid contingent interest, on all the Securities to the date of the occurrence of such Event of Default shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Securityholders. The Holders of a majority in aggregate Principal Amount of the Securities at the time outstanding, by notice to the Trustee (and without notice to any other Securityholder) may rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived except nonpayment of the Issue Price plus Accrued Original Issue Discount and any accrued and unpaid contingent interest that have become due solely as a result of acceleration and if all amounts due to the Trustee under Section 7.06 have been paid. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

Section 6.03. Other Remedies. If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of the Issue Price plus Accrued Original Issue Discount on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if the Trustee does not possess any of the Securities or does not produce any of the Securities in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of, or acquiescence in, the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 6.04. Waiver of Past Defaults. The Holders of a majority in aggregate Principal Amount of the Securities at the time outstanding, by notice to the Trustee (and without notice to any other Securityholder), may waive an existing Default and its consequences except (1) an Event of Default described in Section 6.01(a), (2) a Default in respect of a provision that under Section 9.02 cannot be amended without the consent of each Securityholder affected or (3) a Default which constitutes a failure to convert any Security in accordance with the terms of Article 11. When a Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or impair any consequent right. This Section 6.04 shall be in lieu of Section 316(a)1(B) of the TIA and such Section 316(a)1(B) is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 6.05. Control by Majority. The Holders of a majority in aggregate Principal Amount of the Securities at the time outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines in good faith is unduly prejudicial to the rights of other Securityholders or would involve the Trustee in personal liability unless the Trustee is offered indemnity satisfactory to it. This Section 6.05 shall be in lieu of Section 316(a)1(A) of the TIA and such Section 316(a)1(A) is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 6.06. Limitation on Suits. A Securityholder may not pursue any remedy with respect to this Indenture or the Securities unless:

- (a) the Holder gives to the Trustee written notice stating that an Event of Default is continuing;
- (b) the Holders of at least 25% in aggregate Principal Amount of the Securities at the time outstanding make a written request to the Trustee to pursue the remedy;
- (c) such Holder or Holders offer to the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;
- (d) the Trustee does not comply with the request within 60 days after receipt of such notice, request and offer of security or indemnity; and
- (e) the Holders of a majority in aggregate Principal Amount of the Securities at the time outstanding do not give the Trustee a direction inconsistent with the request during such 60-day period.

A Securityholder may not use this Indenture to prejudice the rights of any other Securityholder or to obtain a preference or priority over any other Securityholder.

Section 6.07. Rights of Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of the Principal Amount, Issue Price plus Accrued Original Issue Discount, Redemption Price, Purchase Price, Change in Control Purchase Price or contingent interest, if any, in respect of the Securities held by such Holder, on or after the respective due dates expressed in the Securities or any Redemption Date, and to convert the Securities in accordance with Article 11, or to bring suit for the enforcement of any such payment on or after such respective dates or the right to convert, shall not be impaired or affected adversely without the consent of such Holder.

Section 6.08. Collection Suit by Trustee. If an Event of Default described in Section 6.01(a) or (b) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount owing with respect to the Securities and the amounts provided for in Section 7.06.

Section 6.09. Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or its creditors, the Trustee (irrespective of whether the Principal Amount, Issue Price plus Accrued Original Issue Discount, Redemption Price, Purchase Price, Change in Control Purchase Price or contingent interest, if any, in respect of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on

the Company for the payment of any such amount) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of the Principal Amount, Issue Price plus Accrued Original Issue Discount, Redemption Price, Purchase Price, Change in Control Purchase Price or contingent interest, if any, and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel or any other amounts due the Trustee under Section 7.06) and of the Holders allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.06.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10. Priorities. If the Trustee collects any money pursuant to this Article 6, it shall pay out the money in the following order:

FIRST: to the Trustee for amounts due under Section 7.06;

SECOND: to Securityholders for amounts due and unpaid on the Securities for the Principal Amount, Issue Price plus Accrued Original Issue Discount, Redemption Price, Purchase Price, Change in Control Purchase Price or contingent interest, if any, as the case may be, ratably, without preference or priority of any kind, according to such amounts due and payable on the Securities; and

THIRD: the balance, if any, to the Company.

The Trustee may fix a record date and payment date for any payment to Securityholders pursuant to this Section 6.10. At least 15 days before such record date, the Trustee shall mail to each Securityholder and the Company a notice that states the record date, the payment date and the amount to be paid.

Section 6.11. Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant (other than the Trustee) in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in aggregate Principal Amount of the Securities at the time outstanding. This Section 6.11 shall be in lieu of Section 315(e) of the TIA and such Section 315(e) is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 6.12. Waiver of Stay, Extension or Usury Laws. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury or other law wherever enacted, now or at any time hereafter in force, which would prohibit or forgive the Company from paying all or any portion of the Principal Amount, Issue Price plus Accrued Original Issue Discount, Redemption Price, Purchase Price, Change in Control Purchase Price or contingent interest, if any, delivering Common Stock upon a conversion pursuant to Article 11 or paying the cash equivalent thereof, in respect of Securities, or any interest on such amounts, as contemplated herein, or which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Article VII

TRUSTEE

Section 7.01. Rights of Trustee.

(a) The Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper person and shall incur no liability in its reliance thereon. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel.

(c) The Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers.

(e) The Trustee may refuse to perform any duty or exercise any right or power or extend or risk its own funds or otherwise incur any financial liability unless it receives indemnity satisfactory to it against any loss, liability or expense.

(f) Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee (acting in any capacity hereunder) shall be under no liability for interest on any money received by it hereunder.

All rights and immunities granted to the Trustee under this Indenture shall include the Trustee acting in any capacity under this Indenture.

Section 7.02. Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, Conversion Agent or co-registrar may do the same with like rights. However, the Trustee must comply with Sections 7.09 and 7.10.

Section 7.03. Trustee's Disclaimer. The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Company's use of the proceeds from the Securities, it shall not be responsible for any statement in the registration statement for the Securities under the Securities Act or in the Indenture or the Securities (other than its certificate of authentication), or the determination as to which beneficial owners are entitled to receive any notices hereunder.

Section 7.04. Notice of Defaults. The Trustee shall, within 90 days after the occurrence of any Default, mail to all Holders of Securities, as the names and addresses of such Holders appear on the books of registry of the Company, notice of all Defaults of which the Trustee shall be aware, unless such Defaults shall have been cured or waived before the giving of such notice; provided that, except in the case of a Default described in Section 6.01(a) or 6.01(b), the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors or Trust Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of Securities.

Section 7.05. Reports by Trustee to Holders. Within 60 days after each May 15 beginning with the May 15 following the date of this Indenture, the Trustee shall mail to each Securityholder a brief report dated as of such May 15 that complies with TIA Section 313(a), if required by said Section. The Trustee also shall comply with TIA Section 313(b).

A copy of each report at the time of its mailing to Securityholders shall be provided to the Company and shall be submitted to the SEC and each stock exchange on which the Securities are listed. The Company agrees promptly to notify the Trustee whenever the Securities become listed on any stock exchange and of any delisting thereof.

Section 7.06. Compensation and Indemnity. The Company agrees:

(a) to pay to the Trustee from time to time such reasonable compensation for all services rendered by it hereunder (which compensation shall not (to the extent permitted by law) be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) to reimburse the Trustee upon its request and, if required by the Company, submission of reasonable documentation for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses, advances and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

(c) to indemnify each of the Trustee, its officers, directors, employees and agents, or any predecessor Trustee for, and to hold it harmless against, any and all loss, liability, damage, claim or expense, including taxes (other than taxes based upon, measured or determined by the income of the Trustee), incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this trust, including the reasonable costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

The Trustee shall give the Company notice of any claim or liability for which the Trustee might be entitled to indemnification under subparagraph (c) of this Section 7.06, within a reasonable amount of time after a Trust Officer of the Trustee becomes aware of such claim or liability. To secure the Company's payment obligations in this Section 7.06, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee.

The Company's payment obligations pursuant to this Section 7.06 shall survive the discharge of this Indenture. When the Trustee incurs expenses after the occurrence of a Default specified in Section 6.01(d) or (e), the expenses are intended to constitute expenses of administration under the Bankruptcy Law. The provisions of this Section shall survive the termination of this Indenture.

Section 7.07. Replacement of Trustee. The Trustee may resign by so notifying the Company; provided, however, no such resignation shall be effective until a successor Trustee has accepted its appointment pursuant to this Section 7.07. The Holders of a majority in aggregate Principal Amount of the Securities at the time outstanding may remove the Trustee by so notifying the Trustee and may appoint a successor Trustee (subject to the consent of the Company, such consent not to be unreasonably withheld). The Company shall remove the Trustee if:

(a) the Trustee fails to comply with Section 7.09;

(b) the Trustee is adjudged bankrupt or insolvent;

(c) a receiver or other public officer takes charge of the Trustee or its property; or

(d) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint, by resolution of its Board of Directors, a successor Trustee that meets the requirements of Section 7.09.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Securityholders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.06.

If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of a majority in aggregate Principal Amount of the Securities at the time outstanding may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.09, any Securityholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Section 7.08. Successor Trustee by Merger. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another Person, the resulting, surviving or transferee Person without any further act shall be the successor Trustee.

Section 7.09. Eligibility; Disqualification. The Trustee shall at all times satisfy the requirements of TIA Sections 310(a)(1) and 310(b). The Trustee shall have a combined capital and surplus of at least \$100,000,000 as set forth in its most recent published annual report of condition. In determining whether the Trustee has conflicting interests as defined in TIA Section 310(b)(1), the provisions contained in the proviso to TIA Section 310(b)(1) shall be deemed incorporated herein.

Section 7.10. Preferential Collection of Claims Against Company. The Trustee shall comply with TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

Article VIII

DISCHARGE OF INDENTURE

Section 8.01. Discharge of Liability on Securities. When (i) the Company delivers to the Trustee all outstanding Securities (other than Securities replaced pursuant to Section 2.07) for cancellation or (ii) all outstanding Securities have become due and payable and the Company deposits with the Trustee cash or, if expressly permitted by the terms hereof, securities sufficient to pay at the Stated Maturity, the Purchase Date, the Change in Control Purchase or the Redemption Date, the Principal Amount, the Purchase Price or contingent interest (if any shall be due and unpaid), the Change in Control Purchase Price or the Redemption Price, as the case may be, of all outstanding Securities (other than Securities replaced pursuant to Section 2.07), and if, in either case, the Company has paid all other sums payable hereunder by the Company (including, without limitation, sums payable by delivery of shares of Common Stock pursuant to Section 3.08), then this Indenture shall, subject to Section 7.06, cease to be of further effect. The Trustee shall join in the execution of a document prepared by the Company acknowledging satisfaction and discharge of this Indenture on demand of the Company accompanied by an Officers' Certificate and Opinion of Counsel and at the cost and expense of the Company.

Section 8.02. Repayment to the Company. The Trustee and the Paying Agent shall return to the Company any money or securities held by them for the payment of any amount with respect to the Securities that remains unclaimed for two years; provided, however, that the Trustee or such Paying Agent, before being required to make any such return, may, at the expense of the Company, cause to be published once in The Wall Street Journal or another daily newspaper of national circulation or mail to each such Holder notice that such money or securities remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such mailing, any unclaimed money or securities then remaining will be returned to the Company. After return to the Company, Holders entitled to the money or securities must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person, and the Trustee and the Paying Agent shall have no further liability with respect to such money or securities for that period commencing after the return thereof.

Article IX

AMENDMENTS

Section 9.01. Without Consent of Holders. The Company and the Trustee may amend this Indenture or the Securities without the consent of any Securityholder:

(a) to cure any ambiguity, omission, defect or inconsistency; provided, however, that such amendment does not materially adversely affect the rights of any Securityholder;

(b) to comply with Article 5 or Section 11.14;

(c) to provide for uncertificated Securities in addition to or in place of certificated Securities so long as such action shall not adversely affect the interests of the Holders of the Securities in any material respect;

(d) to make any change that does not materially adversely affect the rights of any Securityholder;

(e) to add to the covenants or obligations of the Company hereunder or to surrender any right, power or option herein conferred upon the Company;

(f) to secure the Company's obligations under the Securities and this Indenture; or

(g) increase the contingent interest to be paid to Holders; or

(h) make any change to the Principal Amount of Securities whose Holders must consent to an amendment or supplement to this Indenture.

(i) to make any change to comply with the TIA, or any amendment thereafter, or any requirement of the SEC in connection with the qualification of this Indenture under the TIA or any amendment thereof.

Section 9.02. With Consent of Holders. With the written consent of the Holders of at least a majority in aggregate Principal Amount of the Securities at the time outstanding, the Company and the Trustee may amend this Indenture or the Securities. However, without the consent of each Securityholder affected, an amendment or supplement to this Indenture or the Securities may not:

(a) make any reduction on the amount or rate of accrual of Original Issue Discount or contingent interest on any Security;

(b) make any Security payable in money or securities other than that stated in the Security;

(c) make any reduction in the Principal Amount, Accrued Original Issue Discount, Redemption Price, Purchase Price or Change in Control Purchase Price with respect to any Security;

(d) make any change that adversely affects the right to convert any Security (including the right to receive cash in lieu of Common Stock except as set forth in Section 9.01(e));

(e) make any change that adversely affects the right to require the Company to purchase the Securities pursuant to Sections 3.08 and 3.09 hereof;

(f) impair the right of a Holder to institute a suit for the enforcement of any payment with respect to, or conversion of, the Securities;

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof.

After an amendment under this Section 9.02 becomes effective, the Company shall mail to each Holder a notice briefly describing the amendment.

Section 9.03. Compliance with Trust Indenture Act. Every supplemental indenture executed pursuant to this Article shall comply with the TIA as then in effect.

Section 9.04. Revocation and Effect of Consents, Waivers and Actions. Until an amendment or waiver becomes effective, a consent to it or any other action by a Holder of a Security hereunder is a continuing consent by the Holder and every subsequent Holder of that Security or portion of the Security that evidences the same obligation as the consenting Holder's Security, even if notation of the consent, waiver or action is not made on the Security. However, any such Holder or subsequent Holder may revoke the consent, waiver or action as to such Holder's Security or portion of the Security if the Trustee receives the notice of revocation before the date the amendment, waiver or action becomes effective. After an amendment, waiver or action becomes effective, it shall bind every Securityholder, except as provided in Section 9.02.

Section 9.05. Notation on or Exchange of Securities. Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for outstanding Securities.

Section 9.06. Trustee to Sign Supplemental Indentures. The Trustee shall sign any supplemental indenture authorized pursuant to this Article 9 if the amendment does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign it. In signing such amendment the Trustee shall be entitled to receive, and (subject to the provisions of Section 7.01) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that such amendment is authorized or permitted by this Indenture.

Section 9.07. Effect of Supplemental Indentures. Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Article X

CONTINGENT INTEREST

Section 10.01. Contingent Interest. Commencing on June 1, 2006, the Company shall make contingent interest payments to the holders of Securities, as set forth in Section 10.02 below, during any six month period from June 1 to November 30 and from December 1 to May 31 (each a “Semiannual Period”) if, but only if, the LYONs Market Price of one Security during the relevant Measurement Period equals or exceeds 120% of the Relevant Value of such Security. During any Semiannual Period when contingent interest is payable pursuant to this section, each contingent interest payment due and payable on each \$1,000 Principal Amount of Security shall be calculated for each of the first three months and the second three months of the applicable Semiannual Period, and in each instance shall equal the greater of (i) the sum of all regular cash dividends paid by the Company per share on the Common Stock during the applicable three months of such Semiannual Period multiplied by the Conversion Rate or (ii) \$0.16 multiplied by 5.6787.

As used in this Article 10 “Measurement Period” means the five Trading Days ending on the third scheduled Trading Day immediately preceding the start of the relevant Semiannual Period. “Relevant Value” means the sum of the Issue Price and the Accrued Original Issue Discount of one Security having a Principal Amount of \$1,000 as of the May 31st or November 30th preceding the relevant Semiannual Period. Notwithstanding the above definition of Relevant Value, if the Company should declare a dividend for which the record date for such dividend (the “Common Stock Record Date”) falls prior to the first day of a Semiannual Period, but the payment date for such dividend falls within such Semiannual Period, then the “Measurement Period” shall mean the five Trading Days ending on the third Trading Day immediately preceding such Common Stock Record Date. “LYONs Market Price”, means, as of any date of determination, the average of the secondary market bid quotations per \$1,000 Principal Amount of Securities obtained by the Bid Solicitation Agent for \$10 million Principal Amount of Securities at approximately 4:00 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers (none of which shall be an Affiliate of the Company) selected by the Company; provided, however, if (a) at least three such bids are not obtained by the Bid Solicitation Agent or (b) in the Company’s reasonable judgment, the bid quotations are not indicative of the secondary market value of the Securities as of such determination date, then the LYON Market Price for such determination date shall equal the product of (i) the Conversion Rate in effect as of such determination date multiplied by (ii) the average Sale Price of the Common Stock for the five trading days ending on such determination date, appropriately adjusted to take into account the occurrence, during the period commencing on the first of such trading days during such five trading day period and ending on such determination date, of any event described in Section 11.06, 11.07 or 11.08 (subject to the conditions set forth in Sections 11.09 and 11.10) hereof.

The Original Issue Discount of the Securities will continue to accrue at the yield to Stated Maturity whether or not contingent interest payments are made.

Section 10.02. Payment of Contingent Interest; Contingent Interest Rights Preserved.

If payable, contingent interest shall be paid on the payment date for the related Common Stock dividend or, if the Company does not pay a regular cash dividend on its Common Stock during a Semiannual Period, on the last day of such Semiannual Period (in each case, a “Contingent Interest Payment Date”). Contingent Interest payments on any Security that are payable, and are punctually paid or duly provided for, on any Contingent Interest Payment Date shall be paid to the person who is the holder of that Security at the close of business on the relevant Common Stock Record Date or, if the Company does not pay a regular cash dividend on its Common Stock during a Semiannual Period, to the person who is the holder of that Security on the 15th day preceding the last day of such Semiannual Period (each, a “Contingent Interest Record Date”). Each payment of contingent interest on any Security shall be paid in same-day funds by transfer to an account maintained by the payee located inside the United States. In the case of a global Security, interest payable on any Contingent Interest Payment Date will be paid to the Depositary for the purpose of permitting DTC to credit the interest received by it in respect of such global Security to the accounts of the beneficial owners thereof.

Upon determination that Holders of Securities will be entitled to receive contingent interest during a Semiannual Period, on or prior to the start of such Semiannual Period, the Company will issue a press release and publish such information on its website for a period of not less than 120 days or, at the Company’s option, otherwise publicly disclose such information.

Section 10.03. Bid Solicitation Agent.

The Bid Solicitation Agent shall solicit bids from securities dealers which the Company indicates are willing to bid for the Securities. The Company initially appoints the Trustee to act as the Bid Solicitation Agent. The Company may change the Bid Solicitation Agent at its discretion, provided, however, the Bid Solicitation Agent may not be an Affiliate of the Company.

Article XI

CONVERSION

Section 11.01. Conversion Privilege. A Holder of a Security may convert such Security into shares of Common Stock at any time during the period stated in paragraph 9 of the Securities, subject to the provisions of this Article 11. The number of shares of Common Stock issuable upon conversion of a Security per \$1,000 of Principal Amount thereof shall be determined in accordance with the provisions of paragraph 9 in the Securities. The number of Shares issuable upon conversion of a Security per \$1,000 of Principal Amount thereof shall equal 5.6787, subject to conversion.

A Holder may convert a portion of the Principal Amount of a Security if the portion is \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to conversion of all of a Security also apply to conversion of a portion of a Security.

“Time of Determination” means the time and date of the earlier of (i) the determination of stockholders entitled to receive rights, warrants or options or a distribution, in each case, to which Section 11.07 or 11.08 applies and (ii) the time (“Ex-Dividend Time”) immediately prior to the commencement of “ex-dividend” trading for such rights, warrants or options or distribution on the New York Stock Exchange or such other national or regional exchange or market on which the Common Stock is then listed or quoted.

Section 11.02. Conversion Procedure. To convert a Security, a Holder must satisfy the requirements in paragraph 9 of the Securities. The date on which the Holder satisfies all those requirements is the conversion date (the “Conversion Date”). As soon as practicable after the Conversion Date, the Company shall deliver to the Holder, through the Conversion Agent, a certificate for the number of full shares of Common Stock issuable upon the conversion and cash in lieu of any fractional share determined pursuant to Section 11.03. The Company shall determine such full number of shares and the amounts of the required cash with respect to any fractional share, and shall set forth such information in a certificate delivered to the Conversion Agent. The Conversion Agent shall have no duties under this paragraph unless and until it has received such certificate.

The person in whose name the certificate is registered shall be treated as a stockholder of record on and after the Conversion Date; provided, however, that no surrender of a Security on any date when the stock transfer books of the Company shall be closed shall be effective to constitute the person or persons entitled to receive the shares of Common Stock upon such conversion as the record holder or holders of such shares of Common Stock on such date, but such surrender shall be effective to constitute the person or persons entitled to receive such shares of Common Stock as the record holder or holders thereof for all purposes at the close of business on the next succeeding day on which such stock transfer books are open; such conversion shall be at the Conversion Rate in effect on the date that such Security shall have been surrendered for conversion, as if the stock transfer books of the Company had not been closed. Upon conversion of a Security, such person shall no longer be a Holder of such Security.

Holders may surrender a Security for conversion by means of book-entry delivery in accordance with paragraph 9 of the Securities and the regulations of the applicable book entry facility.

No payment or adjustment will be made for dividends on, or other distributions with respect to, any Common Stock except as provided in this Article 11. On conversion of a Security, that portion of accrued Tax Original Issue Discount and Accrued Original Issue Discount attributable to the period from the Issue Date of the Security through the Conversion Date and (except as provided below) accrued contingent interest, if any, with respect to the converted Security shall not be cancelled, extinguished or forfeited, but rather shall be deemed to be paid in full to the Holder thereof through delivery of the Common Stock (together with the cash payment, if any, in lieu of fractional shares) in exchange for the Security being converted pursuant to the provisions hereof; and the fair market value of such shares of Common Stock (together with any such cash payment in lieu of fractional shares) shall be treated as issued, to the extent thereof, first in exchange for Tax Original Issue Discount and Original Issue Discount

accrued through the Conversion Date and accrued contingent interest, and the balance, if any, of such fair market value of such Common Stock (and any such cash payment) shall be treated as issued in exchange for the Issue Price of the Security being converted pursuant to the provisions hereof.

If the Holder converts more than one Security at the same time, the number of shares of Common Stock issuable upon the conversion shall be based on the total Principal Amount of the Securities converted.

A Security surrendered for conversion based on (a) the Common Stock price may be surrendered for conversion until the close of business on the Business Day immediately proceeding May 23, 2031, (b) a credit downgrade may be surrendered for conversion until the close of business on any Business Day during the period of the credit downgrade as more fully described in paragraph 9 of the Security, (c) the Security being called for redemption may be surrendered for conversion at any time prior to the close of business on the second Business Day immediately preceding the Redemption Date, and (d) upon the occurrence of certain corporate transactions more fully described in paragraph 9 of the Security may be surrendered for conversion at any time from and after the date which is 15 days prior to the anticipated effective date of such transaction until 15 days after the actual date of such transaction, and if such day is not a Business Day, the next occurring Business Day following such day.

Upon surrender of a Security that is converted in part, the Company shall execute, and the Trustee shall authenticate and deliver to the Holder, a new Security in an authorized denomination equal in Principal Amount to the unconverted portion of the Security surrendered.

Section 11.03. Fractional Shares. The Company will not issue a fractional share of Common Stock upon conversion of a Security. Instead, the Company will deliver cash for the current market value of the fractional share. The current market value of a fractional share shall be determined, to the nearest 1/1,000th of a share, by multiplying the Sale Price of the Common Stock, on the last Trading Day prior to the Conversion Date, of a full share by the fractional amount and rounding the product to the nearest whole cent.

Section 11.04. Taxes on Conversion. If a Holder converts a Security, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of Common Stock upon the conversion. However, the Holder shall pay any such tax which is due because the Holder requests the shares to be issued in a name other than the Holder's name. The Conversion Agent may refuse to deliver the certificates representing the Common Stock being issued in a name other than the Holder's name until the Conversion Agent receives a sum sufficient to pay any tax which will be due because the shares are to be issued in a name other than the Holder's name. Nothing herein shall preclude the Company from any tax withholding or directing the withholding of any tax required by law or regulations.

Section 11.05. Company to Provide Stock. The Company shall, prior to issuance of any Securities under this Article 11, and from time to time as may be necessary, reserve out of its authorized but unissued Common Stock a sufficient number of shares of Common Stock to permit the conversion of the Securities.

All shares of Common Stock delivered upon conversion of the Securities shall be newly issued shares or treasury shares, shall be duly and validly issued and fully paid and nonassessable and shall be free from preemptive rights and free of any lien or adverse claim.

The Company will endeavor promptly to comply with all Federal and state securities laws regulating the offer and delivery of shares of Common Stock upon conversion of Securities, if any, and will list or cause to have quoted such shares of Common Stock on each national securities exchange or in the over-the-counter market or such other market on which the Common Stock is then listed or quoted.

Section 11.06. Adjustment for Change in Capital Stock. If, after the Issue Date of the Securities, the Company:

- (a) pays a dividend or makes a distribution on its Common Stock in shares of its Common Stock or shares of other Capital Stock;
- (b) subdivides its outstanding shares of Common Stock into a greater number of shares;
- (c) combines its outstanding shares of Common Stock into a smaller number of shares;
- (d) issues by reclassification of its Common Stock any shares of its Capital Stock (other than rights, warrants or options for its Capital Stock);
- (e) makes a distribution to all holders of its Common Stock rights to Purchase its Common Stock for a period expiring within 60 days at less than the sale price at the time of the distribution; or
- (f) makes a distribution to the holders of its Common Stock of its assets or debt securities or certain rights to purchase the Securities (excluding cash dividends or other Cash Distributions from current or retained earnings other than Extraordinary Cash Dividends);

then the conversion privilege and the Conversion Rate in effect immediately prior to such action shall be adjusted so that the Holder of a Security thereafter converted may receive the number of shares or other units of Capital Stock of the Company which such Holder would have owned immediately following such action if such Holder had converted the Security immediately prior to such action.

The adjustment shall become effective immediately after the record date in the case of a dividend or distribution and immediately after the effective date in the case of a subdivision, combination or reclassification.

If after an adjustment a Holder of a Security upon conversion of such Security may receive shares or other units of two or more classes of Capital Stock of the Company, the

Conversion Rate shall thereafter be subject to adjustment upon the occurrence of an action taken with respect to any such class or series of Capital Stock as is contemplated by this Article 11 with respect to the Common Stock, on terms comparable to those applicable to Common Stock in this Article 11.

Section 11.07. Adjustment for Rights Issue.

If after the Issue Date, the Company distributes any rights, warrants or options to all holders of its Common Stock entitling them, for a period expiring within 60 days after the record date for such distribution, to purchase shares of Common Stock at a price per share less than the Sale Price of the Common Stock as of the Time of Determination, the Conversion Rate shall be adjusted in accordance with the formula:

$$R' = R \times \frac{(O + N)}{(O + [(N \times P)/M])}$$

where:

R' = the adjusted Conversion Rate.

R = the current Conversion Rate.

O = the number of shares of Common Stock outstanding on the record date for the distribution to which this Section 11.07 is being applied.

N = the number of additional shares of Common Stock offered pursuant to the distribution.

P = the offering price per share of the additional shares.

M = the Average Sale Price, minus, in the case of (i) a distribution to which Section 11.06(d) applies or (ii) a distribution to which Section 11.08 applies, for which, in each case, (x) the record date shall occur on or before the record date for the distribution to which this Section 11.07 applies and (y) the Ex-Dividend Time shall occur on or after the date of the Time of Determination for the distribution to which this Section 11.07 applies, the fair market value (on the record date for the distribution to which this Section 11.07 applies) of:

(1) the Capital Stock of the Company distributed in respect of each share of Common Stock in such Section 11.06(d) distribution; and

(2) the assets of the Company or debt securities or any rights, warrants or options to purchase securities of the Company distributed in respect of each share of Common Stock in such Section 11.08 distribution.

The Board of Directors shall determine fair market values for the purposes of this Section 11.07.

The adjustment shall become effective immediately after the record date for the determination of shareholders entitled to receive the rights, warrants or options to which this Section 11.07 applies. If all of the shares of Common Stock subject to such rights, warrants or options have not been issued when such rights, warrants or options expire, then the Conversion Rate shall promptly be readjusted to the Conversion Rate which would then be in effect had the adjustment upon the issuance of such rights, warrants or options been made on the basis of the actual number of shares of Common Stock issued upon the exercise of such rights, warrants or options.

No adjustment shall be made under this Section 11.07 if the application of the formula stated above in this Section 11.07 would result in a value of R' that is equal to or less than the value of R.

Section 11.08. Adjustment for Other Distributions. Subject to 11.08(b), if, after the Issue Date of the Securities, the Company distributes to all holders of its Common Stock any of its assets excluding distributions of Capital Stock or debt securities or any rights, warrants or options to purchase securities of the Company (including securities or cash, but excluding (x) distributions of Capital Stock referred to in Section 11.06 and distributions of rights, warrants or options referred to in Section 11.07 and (y) cash dividends or other cash distributions that are paid out of consolidated current net earnings or earnings retained in the business as shown on the books of the Company unless such cash dividends or other cash distributions are Extraordinary Cash Dividends) the Conversion Rate shall be adjusted, subject to the provisions of Section 11.08(c), in accordance with the formula:

$$R' = \frac{R \times M}{M - F}$$

where:

R' = the adjusted Conversion Rate.

R = the current Conversion Rate.

M = the Average Sale Price, minus, in the case of a distribution to which Section 11.06(d) applies, for which (i) the record date shall occur on or before the record date for the distribution to which this Section 11.08 applies and (ii) the Ex-Dividend Time shall occur on or after the date of the Time of Determination for the distribution to which this Section 11.08 applies, the fair market value (on the record date for the distribution to which this Section 11.08 applies) of any Capital Stock of the Company distributed in respect of each share of Common Stock in such Section 11.06(d) distribution.

F = the fair market value (on the record date for the distribution to which this Section 11.08 applies) of the assets, securities, rights, warrants or options to be distributed in respect of each share of Common Stock in the distribution to which this Section 11.08 is being applied (including, in the case of cash dividends or other cash distributions giving rise to an adjustment, all such cash distributed concurrently).

The Board of Directors shall determine fair market values for the purposes of this Section 11.08.

The adjustment shall become effective immediately after the record date for the determination of shareholders entitled to receive the distribution to which this Section 11.08 applies.

For purposes of this Section 11.08, the term “Extraordinary Cash Dividend” shall mean any cash dividend or distribution with respect to the Common Stock the amount of which, together with the aggregate amount of cash dividends on the Common Stock to be aggregated with such cash dividend in accordance with the provisions of this paragraph, equals or exceeds the threshold percentage set forth in item (i) below. For purposes of item (i) below, the “Ex-Dividend Measurement Period” with respect to a cash dividend on the Common Stock shall mean the 365 consecutive day period ending on the date prior to the Ex-Dividend Time with respect to such cash dividend, and the “Relevant Cash Dividends” with respect to a cash dividend on the Common Stock shall mean the cash dividends on the Common Stock with Ex-Dividend Times occurring in the Measurement Period.

(i) If, upon the date prior to the Ex-Dividend Time with respect to a cash dividend on the Common Stock, the aggregate amount of such cash dividend together with the amounts of all Relevant Cash Dividends equals or exceeds on a per share basis the sum of (a) 5% of the Sale Price of the Common Stock on the last Trading Day preceding the date of declaration by the Board of Directors of the cash dividend or distribution with respect to which this provision is being applied, and (b) the quotient of the amount of any contingent interest paid on a Security during the Ex-Dividend Measurement Period and divided by the conversion rate in effect on the payment date of such relevant Contingent Interest Payment Date, then such cash dividend together with all Relevant Cash Dividends, shall be deemed to be an Extraordinary Cash Dividend and for purposes of applying the formula set forth above in this Section 11.08, the value of “F” shall be equal to (y) the aggregate amount of such cash dividend together with the amount of all Relevant Cash Dividends, minus (z) the aggregate amount of all Relevant Cash Dividends for which a prior adjustment in the Conversion Rate was previously made under this Section 11.08.

In making the determinations required by item (i) above, the amount of cash dividends paid on a per share basis and the amount of any Relevant Cash Dividends specified in item (i) above, shall be appropriately adjusted to reflect the occurrence during such period of any event described in Section 11.06.

(a) If, after the Issue Date, the Company pays a dividend or makes a distribution to all holders of its Common Stock consisting of Capital Stock of any class or series, or similar equity interests, of or relating to a Subsidiary or other business unit of the Company, the Conversion Rate shall be adjusted in accordance with the formula:

$$R' = R \times (1 + F/M)$$

where:

R' = the adjusted Conversion Rate.

R = the current Conversion Rate.

M = the average of the Sale Prices of the Common Stock for the ten (10) Trading Days commencing on and including the fifth Trading Day after the date on which “ex-dividend trading” commences for such dividend or distribution on The New York Stock Exchange or such other national or regional exchange or market which such securities are then listed or quoted (the “Ex-Dividend Date”).

F = the fair market value of the securities distributed in respect of each share of Common Stock for which this Section 11.08(a) applies shall mean the number of securities distributed in respect of each share of Common Stock multiplied by the average of the Sale Prices of those securities distributed for the ten (10) Trading Days commencing on and including the fifth Trading Day after the effectiveness of the Ex-Dividend Date.

(b) In the event that, with respect to any distribution to which Section 11.08(a) or (b) would otherwise apply, the difference between “ $M-F$ ” is less than \$1.00 or “ F ” is equal to or greater than “ M ”, then the adjustment provided by Section 11.08(a) shall not be made and in lieu thereof the provisions of Section 11.14 shall apply to such distribution.

Section 11.09. When Adjustment May Be Deferred. No adjustment in the Conversion Rate need be made unless the adjustment would require an increase or decrease of at least 1% in the Conversion Rate. Any adjustments that are not made shall be carried forward and taken into account in any subsequent adjustment.

All calculations under this Article 11 shall be made to the nearest cent or to the nearest 1/1,000th of a share, as the case may be.

Section 11.10. When No Adjustment Required. No adjustment need be made for a transaction referred to in Section 11.06, 11.07, 11.08 or 11.14 if Securityholders are to participate in the transaction on a basis and with notice that the Board of Directors determines to be fair and appropriate in light of the basis and notice on which holders of Common Stock participate in the transaction. Such participation by Securityholders may include participation upon conversion provided that an adjustment shall be made at such time as the Securityholders are no longer entitled to participate.

No adjustment need be made for rights to purchase Common Stock pursuant to a Company plan for reinvestment of dividends or interest.

No adjustment need be made for a change in the par value or no par value of the Common Stock.

To the extent the Securities become convertible pursuant to this Article 11 into cash, no adjustment need be made thereafter as to the cash. Interest will not accrue on the cash.

Notwithstanding any provision to the contrary in this Indenture, no adjustment shall be made in the Conversion Rate to the extent, but only to the extent, such adjustment results in the following quotient being less than the par value of the Common Stock: (i) the Issue Price plus accrued Accrued Original Issue Discount as of the date such adjustment would otherwise be effective divided by (ii) the Conversion Rate as so adjusted.

No adjustment will be made pursuant to this Section 11 which would result, through the application of two or more provisions hereof, in the duplication of any adjustment.

Section 11.11. Notice of Adjustment. Whenever the Conversion Rate is adjusted, the Company shall promptly mail to Securityholders a notice of the adjustment. The Company shall file with the Trustee and the Conversion Agent such notice and a certificate from the Company's independent public accountants briefly stating the facts requiring the adjustment and the manner of computing it. Upon receipt by it of such notice, the Conversion Agent will promptly mail such notice to Securityholders at the Company's expense. The certificate shall be conclusive evidence that the adjustment is correct. Neither the Trustee nor any Conversion Agent shall be under any duty or responsibility with respect to any such certificate except to exhibit the same to any Holder desiring inspection thereof.

Section 11.12. Voluntary Increase. The Company from time to time may increase the Conversion Rate by any amount for any period of time. Whenever the Conversion Rate is increased, the Company shall mail to Securityholders and file with the Trustee and the Conversion Agent a notice of the increase. The Company shall mail the notice at least 15 days before the date the increased Conversion Rate takes effect. The notice shall state the increased Conversion Rate and the period it will be in effect.

A voluntary increase of the Conversion Rate does not change or adjust the Conversion Rate otherwise in effect for purposes of Section 11.06, 11.07 or 11.08.

Section 11.13. Notice of Certain Transactions. If:

(a) the Company takes any action that would require an adjustment in the Conversion Rate pursuant to Section 11.06, 11.07 or 11.08 (unless no adjustment is to occur pursuant to Section 11.10); or

(b) the Company takes any action that would require a supplemental indenture pursuant to Section 11.14; or

(c) there is a liquidation or dissolution of the Company;

then the Company shall mail to Securityholders and file with the Trustee and the Conversion Agent a notice stating the proposed record date for a dividend or distribution or the proposed effective date of a subdivision, combination, reclassification, consolidation, merger, binding

share exchange, transfer, liquidation or dissolution. The Company shall file and mail the notice at least 15 days before such date. Failure to file or mail the notice or any defect in it shall not affect the validity of the transaction.

Section 11.14. Reorganization of Company; Special Distributions. If the Company is a party to a transaction subject to Section 5.01 (other than a sale of all or substantially all of the assets of the Company in a transaction in which the holders of Common Stock immediately prior to such transaction do not receive securities, cash, property or other assets of the Company or any other person) or a merger or binding share exchange which reclassifies or changes its outstanding Common Stock, the person obligated to deliver securities, cash or other assets upon conversion of Securities shall enter into a supplemental indenture. If the issuer of securities deliverable upon conversion of Securities is an Affiliate of the successor Company, that issuer shall join in the supplemental indenture.

The supplemental indenture shall provide that the Holder of a Security may convert it into the kind and amount of securities, cash or other assets which such Holder would have received immediately after the consolidation, merger, binding share exchange or transfer if such Holder had converted the Security immediately before the effective date of the transaction, assuming (to the extent applicable) that such Holder (i) was not a constituent person or an Affiliate of a constituent person to such transaction; (ii) made no election with respect thereto; and (iii) was treated alike with the plurality of non-electing Holders. The supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practical to the adjustments provided for in this Article 11. The successor Company shall mail to Securityholders a notice briefly describing the supplemental indenture.

If this Section applies, neither Section 11.06 nor 11.07 applies.

If the Company makes a distribution to all holders of its Common Stock of any of its assets, or debt securities or any rights, warrants or options to purchase securities of the Company that, but for the provisions of Section 11.08(c), would otherwise result in an adjustment in the Conversion Rate pursuant to the provisions of Section 11.08, then, from and after the record date for determining the holders of Common Stock entitled to receive the distribution, a Holder of a Security that converts such Security in accordance with the provisions of this Indenture shall upon such conversion be entitled to receive, in addition to the shares of Common Stock into which the Security is convertible, the kind and amount of securities, cash or other assets comprising the distribution that such Holder would have received if such Holder had converted the Security immediately prior to the record date for determining the holders of Common Stock entitled to receive the distribution.

Section 11.15. Company Determination Final. Any determination that the Company or the Board of Directors must make pursuant to Section 11.03, 11.06, 11.07, 11.08, 11.09, 11.10, 11.14 or 11.17 is conclusive.

Section 11.16. Trustee's Adjustment Disclaimer. The Trustee has no duty to determine when an adjustment under this Article 11 should be made, how it should be made or what it should be. The Trustee has no duty to determine whether a supplemental indenture under

Section 11.14 need be entered into or whether any provisions of any supplemental indenture are correct. The Trustee shall not be accountable for and makes no representation as to the validity or value of any securities or assets issued upon conversion of Securities. The Trustee shall not be responsible for the Company's failure to comply with this Article 11. Each Conversion Agent (other than the Company or an Affiliate of the Company) shall have the same protection under this Section 11.16 as the Trustee.

Section 11.17. Simultaneous Adjustments. In the event that this Article 11 requires adjustments to the Conversion Rate under more than one of Sections 11.06(d), 11.07 or 11.08, and the record dates for the distributions giving rise to such adjustments shall occur on the same date, then such adjustments shall be made by applying, first, the provisions of Section 11.06, second, the provisions of Section 11.08 and, third, the provisions of Section 11.07.

Section 11.18. Successive Adjustments. After an adjustment to the Conversion Rate under this Article 11, any subsequent event requiring an adjustment under this Article 11 shall cause an adjustment to the Conversion Rate as so adjusted.

Section 11.19. Rights Issued in Respect of Common Stock Issued Upon Conversion. Each share of Common Stock issued upon conversion of Securities pursuant to this Article 11 shall be entitled to receive the appropriate number of Rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any shareholder rights agreement adopted by the Company, as the same may be amended from time to time (in each case, a "Rights Agreement"). Provided that such Rights Agreement requires that each share of Common Stock issued upon conversion of Securities at any time prior to the distribution of separate certificates representing the Rights be entitled to receive such Rights, then, notwithstanding anything else to the contrary in this Article 11, there shall not be any adjustment to the conversion privilege or Conversion Rate as a result of the issuance of Rights, the distribution of separate certificates representing the Rights, the exercise or redemption of such Rights in accordance with any such Rights Agreement, or the termination or invalidation of such Rights.

Article XII

PAYMENT OF CONTINGENT INTEREST

Section 12.01. Contingent Interest Payments. If applicable, contingent interest on any Security that is payable, and is punctually paid or duly provided for, on any Contingent Interest Payment Date shall be paid to the person in whose name that Security is registered at the close of business on the record date specified in Section 10.02 ("Regular Record Date") at the office or agency of the Company maintained for such purpose. Each installment of contingent interest on any Security shall be paid in same-day funds by transfer to an account maintained by the payee located inside the United States. In the case of a Global Security, contingent interest payable on any applicable payment date will be paid to the Depositary, with respect to that portion of such Global Security held for its account by Cede & Co. for the purpose of permitting such party to credit the interest received by it in respect of such Global Security to the accounts of the beneficial owners thereof.

Section 12.02. Defaulted Interest. Any contingent interest on any Security that is payable, but is not punctually paid or duly provided for, within 30 days following any Contingent Interest Payment Date (herein called "Defaulted Interest", which term shall include any accrued and unpaid interest that has accrued on such defaulted amount in accordance with paragraph 1 of the Securities), shall forthwith cease to be payable to the registered Holder thereof on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company at its election in each case, as provided in clause (a) or (b) below:

(a) The Company may elect to make payment of any Defaulted Interest to the persons in whose names the Securities are registered at the close of business on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security and the date of the proposed payment (which shall not be less than 20 days after such notice is received by the Trustee), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a special record date (the "Special Record Date") for the payment of such Defaulted Interest which shall be not more than 15 days and not less than ten (10) days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of Securities at his address as it appears on the list of Securityholders maintained pursuant to Section 2.05 not less than 10 days prior to such Special Record Date. The Trustee may, in its discretion, in the name and at the expense of the Company, cause a similar notice to be published at least once in The Wall Street Journal, but such publications shall not be a condition precedent to the establishment of such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names the Securities are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (b).

(b) The Company may make payment of any Defaulted Interest on the Securities in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 12.03. Interest Rights Preserved. Subject to the foregoing provisions of this Article 12 and Section 2.06, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to contingent interest accrued and unpaid, which were carried by such other Security.

Article XIII

MISCELLANEOUS

Section 13.01. Trust Indenture Act Controls. If any provision of this Indenture limits, qualifies or conflicts with another provision which is required or deemed to be included in this Indenture by the TIA, the required or deemed provision shall control.

Section 13.02. Notices. Any notice or communication shall be in writing and delivered in person or mailed by first-class mail, postage prepaid, addressed as follows:

if to the Company:

Merrill Lynch & Co., Inc.
222 Broadway, 17th Floor
New York, New York 10038
Attention: Secretary

with a copy to:

Merrill Lynch & Co., Inc.
2 World Financial Center, 5th Floor
New York, New York 10281-6100
Attention: Treasurer

if to the Trustee:

The Chase Manhattan Bank
450 West 33rd Street
New York, New York 10001
Attention: Institutional Trust Services

The Company or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication given to a Securityholder shall be mailed by first-class mail to the Securityholder at the Securityholder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed.

Failure to mail a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not received by the addressee.

If the Company mails a notice or communication to the Securityholders, it shall mail a copy to the Trustee and each Registrar, Paying Agent, Conversion Agent or co-registrar.

Section 13.03. Communication by Holders with Other Holders. Securityholders may communicate pursuant to TIA Section 312(b) with other Securityholders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar, the Paying Agent, the Conversion Agent and anyone else shall have the protection of TIA Section 312(c).

Section 13.04. Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

- (a) an Officers' Certificate stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and
- (b) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 13.05. Statements Required in Certificate or Opinion. Each Officers' Certificate or Opinion of Counsel with respect to compliance with a covenant or condition provided for in this Indenture shall include:

- (a) a statement that each person making such Officers' Certificate or Opinion of Counsel has read such covenant or condition;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such Officers' Certificate or Opinion of Counsel are based;
- (c) a statement that, in the opinion of each such person, he has made such examination or investigation as is necessary to enable such person to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement that, in the opinion of such person, such covenant or condition has been complied with.

Section 13.06. Separability Clause. In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 13.07. Rules By Trustee, Paying Agent, Conversion Agent and Registrar. The Trustee may make reasonable rules for action by or a meeting of the Securityholders. The Registrar, Conversion Agent and the Paying Agent may make reasonable rules for their functions.

Section 13.08. [Reserved].

Section 13.09. Governing Law. THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AS APPLIED TO CONTRACTS MADE AND PERFORMED WITHIN THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

Section 13.10. No Recourse Against Others. A director, Officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Securities.

Section 13.11. Successors. All agreements of the Company in this Indenture and the Securities shall bind its successor. All agreements of the Trustee in this Indenture shall bind its successor.

Section 13.12. Multiple Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture.

Section 13.13. References. All section references are to sections of this Indenture unless specified otherwise.

Section 13.14. Calculations. The Company shall be solely responsible for making all calculations called for under the Securities and this Indenture. Such calculations include, but are not limited to, the calculations under Articles 3, 6 and 10 hereof. The Company covenants to make all such calculations in good faith. Absent manifest error, such calculations shall be final and binding on Holders. The Company shall promptly provide a schedule of all its calculations to the Trustee. The Trustee shall always be entitled to assume that the Company has acted in good faith, and may rely on and shall be fully protected and shall incur no liability in relying on any calculation performed by the Company under or pursuant to the Indenture.

Section 13.15. Tax Matters.

(a) Tax Treatment. The parties hereto hereby agree, and each Holder by its purchase of a Security hereby agrees:

(1) to treat the Securities as indebtedness of the Company for all tax purposes;

(2) to treat the Securities as indebtedness that are subject to the special regulations governing contingent payment debt instruments that are contained in U.S. Treasury Regulation section 1.1275-4; and

(3) to treat any payment to and receipt by a Holder of Common Stock upon conversion of a Security, or upon a redemption of a Security where the Company elects to pay in Common Stock, as a contingent payment under Treasury Regulation section 1.1275-4(b) that will result in an adjustment under Treasury Regulation section 1.1275-4(b)(3)(iv) and Treasury Regulation section 1.1275-4(b)(6).

(b) Comparable Yield and Projected Payment Schedule. Solely for purposes of applying Treasury Regulation section 1.1275-4 to the Securities:

(1) for United States Federal income tax purposes, the Company shall accrue interest with respect to outstanding Securities as original issue discount according to the “noncontingent bond method,” as set forth in Treasury Regulation Section 1.1275-4(b);

(2) the Company has determined that the comparable yield, as defined in Treasury Regulation section 1.1275-4(b)(4)(i), for the Securities is 6.23%, compounded semiannually;

(3) the Company has determined that the projected payment schedule, as defined in Treasury Regulation section 1.1275-4(b)(4)(iii), for the Securities consists of the projected payment schedule referred to in (iv) below;

(4) the Company acknowledges and agrees, and each Holder and any beneficial holder of a Security, by its purchase of a Security shall be deemed to acknowledge and agree, that (i) the comparable yield and the projected payment schedule are determined on the basis of an assumption of linear growth of stock price and a constant dividend yield, (ii) the comparable yield and the projected payment schedule are not determined for any purpose other than for the purpose of applying Treasury Regulation section 1.1275-4(b)(4) to the Securities and (iii) the comparable yield and the projected payment schedule do not constitute a projection or representation regarding the actual amounts payable on the Securities; and

(5) the projected payment schedule, as defined in Treasury Regulation section 1.1275-4(b)(4)(ii) for the Securities is set forth in Annex 1 hereto.

SIGNATURES

IN WITNESS WHEREOF, the undersigned, being duly authorized, have executed this Indenture on behalf of the respective parties hereto as of the date first above written.

MERRILL LYNCH & CO., INC.

By: /s/ John C. Stomber
Name: John C. Stomber
Title: Senior Vice President and
Treasurer

THE CHASE MANHATTAN BANK

By: /s/ Natalie B. Pesce
Name: Natalie B. Pesce
Title: Trust Officer

ANNEX 1

Projected Payment Schedule*

Quarterly Period Ending	Projected Payment per LYON
June 1, 2001	
September 1, 2001	
December 1, 2001	
March 1, 2002	
June 1, 2002	
September 1, 2002	
December 1, 2002	
March 1, 2003	
June 1, 2003	
September 1, 2003	
December 1, 2003	
March 1, 2004	
June 1, 2004	
September 1, 2004	
December 1, 2004	
March 1, 2005	
June 1, 2005	
September 1, 2005	
December 1, 2005	
March 1, 2006	
June 1, 2006	
September 1, 2006	
December 1, 2006	
March 1, 2007	
June 1, 2007	
September 1, 2007	
December 1, 2007	
March 1, 2008	
June 1, 2008	
September 1, 2008	
December 1, 2008	
March 1, 2009	
June 1, 2009	

* The comparable yield and the schedule of projected payments are determined on the basis of an assumption of constant growth rate of the stock price and a constant dividend growth rate and are not determined for any purpose other than for the determination of interest accruals and adjustments thereof in respect of the Securities for United States federal income tax purposes. The comparable yield and the schedule of projected payments do not constitute a projection or representation regarding the amounts payable as Securities.

Quarterly Period Ending	Projected Payment per LYON
June 1, 2009	
September 1, 2009	
December 1, 2009	
March 1, 2010	
June 1, 2010	
September 1, 2010	
December 1, 2010	
March 1, 2011	
June 1, 2011	
September 1, 2011	
December 1, 2011	1.3831
March 1, 2012	1.3966
June 1, 2012	1.4111
September 1, 2012	1.4253
December 1, 2012	1.4394
March 1, 2013	1.4535
June 1, 2013	1.4686
September 1, 2013	1.4834
December 1, 2013	1.4981
March 1, 2014	1.5128
June 1, 2014	1.5285
September 1, 2014	1.5438
December 1, 2014	1.5591
March 1, 2015	1.5744
June 1, 2015	1.5907
September 1, 2015	1.6067
December 1, 2015	1.6227
March 1, 2016	1.6386
June 1, 2016	1.6556
September 1, 2016	1.6722
December 1, 2016	1.6888
March 1, 2017	1.7053
June 1, 2017	1.7230
September 1, 2017	1.7403
December 1, 2017	1.7576
March 1, 2018	1.7748
June 1, 2018	1.7933
September 1, 2018	1.8112
December 1, 2018	1.8292
March 1, 2019	1.8472
June 1, 2019	1.8663
September 1, 2019	1.8851
December 1, 2019	1.9038

Quarterly Period Ending	Projected Payment per LYON
March 1, 2020	1.9224
June 1, 2020	1.9424
September 1, 2020	1.9619
December 1, 2020	1.9813
March 1, 2021	2.0008
June 1, 2021	2.0215
September 1, 2021	2.0418
December 1, 2021	2.0621
March 1, 2022	2.0823
June 1, 2022	2.1039
September 1, 2022	2.1250
December 1, 2022	2.1461
March 1, 2023	2.1672
June 1, 2023	2.1896
September 1, 2023	2.2116
December 1, 2023	2.2336
March 1, 2024	2.2555
June 1, 2024	2.2789
September 1, 2024	2.3017
December 1, 2024	2.3246
March 1, 2025	2.3474
June 1, 2025	2.3717
September 1, 2025	2.3955
December 1, 2025	2.4193
March 1, 2026	2.4430
June 1, 2026	2.4684
September 1, 2026	2.4932
December 1, 2026	2.5179
March 1, 2027	2.5426
June 1, 2027	2.5690
September 1, 2027	2.5947
December 1, 2027	2.6205
March 1, 2028	2.6462
June 1, 2028	2.6737
September 1, 2028	2.7005
December 1, 2028	2.7273
March 1, 2029	2.7540
June 1, 2029	2.7826
September 1, 2029	2.8105
December 1, 2029	2.8384
March 1, 2030	2.8663
June 1, 2030	2.8960
September 1, 2030	2.9251

<u>Quarterly Period Ending</u>	<u>Projected Payment per LYON</u>
December 1, 2030	2.9541
March 1, 2031	2.9831
May 23, 2031	2,846.7651

A-1-4

EXHIBIT A

[FORM OF FACE OF GLOBAL SECURITY]

FOR PURPOSES OF SECTIONS 1273 AND 1275 OF THE INTERNAL REVENUE CODE, THIS SECURITY IS ISSUED WITH AN INDETERMINATE AMOUNT OF ORIGINAL ISSUE DISCOUNT FOR UNITED STATES FEDERAL INCOME TAX PURPOSES. THE ISSUE DATE IS MAY 23, 2001, AND THE YIELD TO MATURITY FOR PURPOSES OF ACCRUING ORIGINAL ISSUE DISCOUNT IS 6.23% PER ANNUM. THE HOLDER OF THIS SECURITY MAY OBTAIN THE PROJECTED PAYMENT SCHEDULE BY SUBMITTING A WRITTEN REQUEST FOR SUCH INFORMATION TO: MERRILL LYNCH & CO., INC., CORPORATE SECRETARY'S OFFICE, 222 BROADWAY, 17TH FLOOR, NEW YORK, NEW YORK 10038.

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF THE DEPOSITARY. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR THE INDIVIDUAL DEBT SECURITIES REPRESENTED HEREBY, THIS GLOBAL SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), MERRILL LYNCH & CO., INC. OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

[FORM OF REVERSE SIDE OF LYON]
MERRILL LYNCH & CO., INC.
Liquid Yield Option™ Note due 2031
(Zero Coupon—Senior)

No. R-
Issue Date: May 23, 2001
Initial Issue Price: \$511.08
(for each \$1,000 Principal
Amount at Stated Maturity)

CUSIP: 590188 A65
Original Issue Discount: \$488.92
(for each \$1,000 Principal
Amount at Stated Maturity)

MERRILL LYNCH & CO., INC., a Delaware corporation, promises to pay to Cede & Co. or registered assigns, the Principal Amount ("Principal Amount") of FIVE HUNDRED MILLION DOLLARS (\$500,000,000) on May 23, 2031.

This Security shall not bear interest except as specified on the reverse side of this Security. Original Issue Discount will accrue as specified on the reverse side of this Security. This Security is convertible as specified on the reverse side of this Security.

Additional provisions of this Security are set forth on the reverse side of this Security.

Dated: May 23, 2001

MERRILL LYNCH & CO., INC.

By: _____
Title:

TRUSTEE'S CERTIFICATE OF

AUTHENTICATION

THE CHASE MANHATTAN BANK,
as Trustee, certifies that this
is one of the Securities referred
to in the within-mentioned Indenture.

By: _____
Authorized Signatory

Dated: May 23, 2001

Liquid Yield Option™ Note due 2031
(Zero Coupon-Senior)

1. Interest.

This Security shall not bear interest, except as specified in this paragraph or in paragraph 5 hereof. If the Principal Amount hereof or any portion of such Principal Amount is not paid when due (whether upon acceleration pursuant to Section 6.02 of the Indenture, upon the date set for payment of the Redemption Price pursuant to paragraph 6 hereof, upon the date set for payment of the Purchase Price or Change in Control Purchase Price pursuant to paragraph 7 hereof or upon the Stated Maturity of this Security) or if contingent interest, if any, due hereon or any portion of such contingent interest is not paid when due in accordance with paragraph 5 hereof, then in each such case the overdue amount shall, to the extent permitted by law, bear interest at the rate of 2.25% per annum, compounded semi-annually, which interest shall accrue from the date such overdue amount was originally due to the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand. The accrual of such interest on overdue amounts shall be in lieu of, and not in addition to, the continued accrual of Original Issue Discount.

Original Issue Discount (the difference between the Issue Price and the Principal Amount of the Security), in the period during which a Security remains outstanding, shall accrue at 2.25% per annum, on a semi-annual bond equivalent basis using a 360-day year comprised of twelve 30-day months, from the Issue Date of this Security.

2. Method of Payment.

Subject to the terms and conditions of the Indenture, the Company will make payments in respect of Redemption Prices, Purchase Price, Change in Control Purchase Prices and at Stated Maturity to Holders who surrender Securities to a Paying Agent to collect such payments in respect of the Securities. In addition, the Company will pay contingent interest, if any. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts. However, the Company may make such cash payments by check payable in such money.

3. Paying Agent, Conversion Agent, Registrar and Bid Solicitation Agent.

Initially, The Chase Manhattan Bank, a banking corporation organized and existing under the laws of the State of New York, (the "Trustee"), will act as Paying Agent, Conversion Agent, Registrar and Bid Solicitation Agent. The Company may appoint and change any Paying Agent, Conversion Agent, Registrar or co-registrar or Bid Solicitation Agent without notice, other than notice to the Trustee, except that the Company will maintain at least one Paying Agent in the State of New York, City of New York, Borough of Manhattan, which shall initially be an office or agency of the Trustee. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Conversion Agent, Registrar or co-registrar. None of the Company, any of its Subsidiaries or any of their Affiliates shall act as Bid Solicitation Agent.

4. Indenture.

The Company has issued the Securities under an Indenture dated as of May 23, 2001 (the “Indenture”), between the Company and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Securities themselves and the Trust Indenture Act of 1939, as in effect from time to time (the “TIA”). Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Securities are subject to all such terms, and Securityholders are referred to the Indenture and the TIA for a statement of those terms.

The Securities are unsecured and unsubordinated obligations of the Company limited to \$4,600,000,000 aggregate Principal Amount (subject to Section 2.07 of the Indenture) and will rank equally in right of payment to all the Company’s present and future unsecured and unsubordinated indebtedness. The Indenture does not limit other indebtedness of the Company, secured or unsecured.

5. Contingent Interest.

Subject to the conditions of the Indenture and the accrual and record date provisions specified in this paragraph 5, the Company shall pay contingent interest to the Holders during any six-month period (a “Contingent Interest Period”) from June 1 to November 30 and from December 1 to May 31, with the initial six-month period commencing after June 1, 2006, if the average LYON Market Price for the Measurement Period with respect to such Contingent Interest Period equals 120% or more of the sum of the Issue Price of a Security and Original Issue Discount accrued thereon to the day immediately preceding the first day of the relevant Contingent Interest Period.

Contingent interest, if any, will accrue and be payable on such days and to holders of this Security as of such record dates as provided in Section 10.02 of the Indenture. Original Issue Discount will continue to accrue at 2.25% whether or not contingent interest is paid.

The amount of contingent interest payable per \$1,000 Principal Amount hereof in respect of either the first three-month period or the second three-month period any Contingent Interest Period shall equal the greater of (x) \$0.16 multiplied by 5.6787 and (y) the sum of all Regular Cash Dividends paid by the Company per share of Common Stock during that three-month period of the applicable Contingent Interest Period multiplied by the number of shares of Common Stock into which \$1,000 Principal Amount hereof is convertible pursuant to paragraph 9 hereof as of the accrual date for such contingent interest.

Upon determination that Holders will be entitled to receive contingent interest during a Contingent Interest Period the Company shall issue a press release and publish such information on its web site on the World Wide Web for a period of not less than 120 days or, at the Company’s option, otherwise publicly disclose such information.

6. Redemption at the Option of the Company.

No sinking fund is provided for the Securities. The Securities are redeemable as a whole, or from time to time in part, at any time at the option of the Company at the Redemption Prices set forth below, provided that the Securities are not redeemable prior to May 23, 2006.

The table below shows Redemption Prices of a Security per \$1,000 Principal Amount on the dates shown below and at Stated Maturity, which prices reflect the Issue Price plus accrued Original Issue Discount calculated to each such date. The Redemption Price of a Security redeemed between such dates shall include an additional amount reflecting the additional Original Issue Discount accrued since the next preceding date in the table.

Redemption Date	(1) LYON Issue Price	(2) Accrued Original Issue Discount	(3) Redemption Price (1) + (2)
May 23: 2006	\$ 511.08	\$ 60.50	\$ 571.58
2007	511.08	73.43	584.51
2008	511.08	86.65	597.73
2009	511.08	100.18	611.26
2010	511.08	114.01	625.09
2011	511.08	128.15	639.23
2012	511.08	142.62	653.70
2013	511.08	157.41	668.49
2014	511.08	172.53	683.61
2015	511.08	188.00	699.08
2016	511.08	203.82	714.90
2017	511.08	219.99	731.07
2018	511.08	236.54	747.62
2019	511.08	253.45	764.53
2020	511.08	270.75	781.83
2021	511.08	288.44	799.52
2022	511.08	306.53	817.61
2023	511.08	325.03	836.11
2024	511.08	343.95	855.03
2025	511.08	363.30	874.38
2026	511.08	383.08	894.16
2027	511.08	403.31	914.39
2028	511.08	424.00	935.08
2029	511.08	445.16	956.24
2030	511.08	466.79	977.87
At Stated Maturity	511.08	488.92	1,000.00

7. Purchase by the Company at the Option of the Holder.

Subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase, at the option of the Holder, the Securities held by such Holder on the following Purchase Dates and at the following Purchase Prices per \$1,000 Principal Amount, upon delivery of a Purchase Notice containing the information set forth in the Indenture, at any time from the opening of business on the date that is at least 20 Business Days prior to such Purchase Date until the close of business on the Business Day immediately preceding such Purchase Date and upon delivery of the Securities to the Paying Agent by the Holder as set forth in the Indenture.

<u>Purchase Date</u>	<u>Purchase Price</u>
May 23, 2004	\$546.56
May 23, 2005	\$558.93
May 23, 2006	\$571.58
May 23, 2011	\$639.23
May 23, 2016	\$714.90
May 23, 2021	\$799.52
May 23, 2026	\$894.16

The Purchase Price may be paid, at the option of the Company, in cash or by the issuance and delivery of shares of Common Stock of the Company, or in any combination thereof.

At the option of the Holder and subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase all or a portion of the Securities in integral multiples of \$1,000 Principal Amount held by such Holder no later than 35 Business Days after the occurrence of a Change in Control of the Company occurring on or prior to May 23, 2006 for a Change in Control Purchase Price for each \$1,000 Principal Amount of such Securities equal to the Issue Price plus accrued Original Issue Discount to the Change in Control Purchase Date, which Change in Control Purchase Price shall be paid in cash.

Holders have the right to withdraw any Purchase Notice or Change in Control Purchase Notice, as the case may be, by delivering to the Paying Agent a written notice of withdrawal within the times and otherwise in accordance with the provisions of the Indenture.

If cash (and/or securities if permitted under the Indenture) sufficient to pay the Purchase Price or Change in Control Purchase Price, as the case may be, of all Securities or portions thereof to be purchased as of the Purchase Date or the Change in Control Purchase Date, as the case may be, is deposited with the Paying Agent on the Purchase

Date or the Change in Control Purchase Date, as the case may be, Original Issue Discount and contingent interest, if any, shall cease to accrue on such Securities (or portions thereof) immediately after such Purchase Date or Change in Control Purchase Date, as the case may be, and the Holder thereof shall have no other rights as such (other than the right to receive the Purchase Price or Change in Control Purchase Price, as the case may be, if any, upon surrender of such Security).

8. Notice of Redemption.

Notice of redemption will be mailed at least 30 days but not more than 60 days before the Redemption Date to each Holder of Securities to be redeemed at the Holder's registered address. If money sufficient to pay the Redemption Price of all Securities (or portions thereof) to be redeemed on the Redemption Date is deposited with the Paying Agent prior to or on the Redemption Date, immediately after such Redemption Date, Original Issue Discount and contingent interest, if any, shall cease to accrue on such Securities or portions thereof. Securities in denominations larger than \$1,000 of Principal Amount may be redeemed in part but only in integral multiples of \$1,000 of Principal Amount.

9. Conversion.

Subject to the provisions of this paragraph 9 and the terms of the Indenture and notwithstanding the fact that any other condition to conversion has not been satisfied, Holders may surrender this Security for conversion into shares of Common Stock at any time at their option until the close of business on the Business Day immediately preceding May 23, 2031 if, as of the last day of any calendar quarter beginning with the quarter ending on September 30, 2001, the Sale Price of the Common Stock for at least 20 Trading Days in a period of 30 consecutive Trading Days ending on the last Trading Day of such quarter is more than the conversion trigger price. The "conversion trigger price" is a reference percentage beginning at 120% and declining .08474% per quarter thereafter to approximately 110% on the last day of the quarter ending March 31, 2031, of the accreted conversion price per share of Common Stock on the last day of such quarter. Securities subject to conversion pursuant to the condition to conversion contained in this paragraph will remain convertible notwithstanding changes to the Sale Price of the Common Stock after such Securities are deemed convertible.

The "accreted conversion price" per share of Common Stock as of any day equals the quotient of:

- the Issue Price plus accrued Original Issue Discount to that day, divided by
- the number of shares of Common Stock issuable upon conversion of \$1,000 Principal Amount of Securities on that day.

The table below shows the conversion trigger price per share of Common Stock in respect of each of the first 20 calendar quarters. These prices reflect the accreted conversion price per share of Common Stock (assuming that no events occurred requiring an adjustment to the initial Conversion Rate of 5.6787 shares of Common Stock per \$1,000 Principal Amount of Maturity) multiplied by the applicable percentage for the respective calendar quarter. Thereafter, the accreted conversion price per share of Common Stock increases each calendar quarter by the accrued Original Issue Discount for the quarter and the applicable percentage declines by 0.08474% per quarter. The conversion trigger price for the calendar quarter beginning April 1, 2031 is \$193.08.

Quarter	(1) Accreted Conversion Price	(2) Applicable Percentage	(3) Conversion Trigger Price (1)x(2)
2001			
Fourth Quarter	\$ 90.72	120.00000%	108.86
2002			
First Quarter	91.23	119.91526%	109.40
Second Quarter	91.74	119.83052%	109.93
Third Quarter	92.25	119.74578%	110.47
Fourth Quarter	92.77	119.66104%	111.01
2003			
First Quarter	93.29	119.57630%	111.56
Second Quarter	93.82	119.49156%	112.10
Third Quarter	94.34	119.40682%	112.65
Fourth Quarter	94.87	119.32208%	113.20
2004			
First Quarter	95.40	119.23734%	113.76
Second Quarter	95.94	119.15260%	114.31
Third Quarter	96.48	119.06786%	114.87
Fourth Quarter	97.02	118.98312%	115.43
2005			
First Quarter	97.56	118.89838%	116.00
Second Quarter	98.11	118.81364%	116.57
Third Quarter	98.66	118.72890%	117.14
Fourth Quarter	99.21	118.64416%	117.71
2006			
First Quarter	99.77	118.55942%	118.29
Second Quarter	100.33	118.47468%	118.86
Third Quarter	100.89	118.38994%	119.45

Subject to the provisions of this paragraph 9 and the Indenture and notwithstanding the fact any other condition to conversion has not been satisfied, Holders may convert the Securities into Common Stock on a Conversion Date during any period in which the credit rating assigned to the Securities by a Rating Agency is reduced to or below the Applicable Rating. “Rating Agency” means (1) Moody’s Investors Service, Inc. and its successors (“Moody’s”), (2) Standard & Poor’s Credit Market Services, a division of The McGraw-Hill Companies Inc., and its successors (“Standard & Poor’s”) and (3) Fitch, Inc. (“Fitch”) and its successors. “Applicable Rating” means (1) Baa1, in the case of Moody’s (or its equivalent under any successor ratings categories of Moody’s), (2) BBB+, in the case of Standard & Poor’s (or its equivalent under any successor ratings categories of Standard & Poor’s), (3) BBB+ in the case of Fitch (or its

equivalent under any successor ratings categories of Fitch) or (4) the equivalent in respect of ratings categories of any Rating Agencies which are successors to Moody's, Standard & Poor's or Fitch.

Subject to the provisions of this paragraph 9 and the Indenture and notwithstanding the fact that any other condition to conversion has not been satisfied, a Holder may convert into Common Stock a Security or portion of a Security which has been called for redemption pursuant to paragraph 6 hereof, even if the Security, or any portion thereof, is not subject to conversion by the Holder, provided such Securities are surrendered for conversion prior to the close of business on the second Business Day immediately preceding the Redemption Date.

Subject to the provisions of this paragraph 9 and the Indenture and notwithstanding the fact that any other condition to conversion has not been satisfied, in the event that the Company declares a dividend or distribution described in Section 11.07 of the Indenture, or a dividend or a distribution described in Section 11.08 of the Indenture where the fair market value of such dividend or distribution per share of Common Stock, as determined in the Indenture, exceeds 15% of the Sale Price of the Common Stock on the Trading Day immediately preceding the date of declaration for such dividend or distribution, the Securities may be surrendered for conversion beginning on the date the Company gives notice to the Holders of such right, which shall not be less than 20 days prior to the Ex-Dividend Time for such dividend or distribution, and Securities may be surrendered for conversion at any time thereafter until the close of business on the Business Day prior to the Ex-Dividend Time or until the Company announces that such dividend or distribution will not take place.

Subject to the provisions of this paragraph 9 and the Indenture and notwithstanding the fact that any other condition to conversion has not been satisfied, in the event the Company is a party to a consolidation, merger or binding share exchange pursuant to which the Common Stock would be converted into cash, securities or other property as set forth in Section 11.14 of the Indenture, the Securities may be surrendered for conversion at any time from and after the date which is 15 days prior to the date of the anticipated effective time of such transaction announced by the Company until 15 days after the actual effective date of such transaction, and at the effective time of such transaction the right to convert a Security into Common Stock will be deemed to have changed into a right to convert it into the kind and amount of cash, securities or other property which the holder would have received if the holder had converted its Security immediately prior to the transaction.

A Security in respect of which a Holder has delivered a Purchase Notice or Change in Control Purchase Notice exercising the option of such Holder to require the Company to purchase such Security may be converted only if such notice of exercise is withdrawn in accordance with the terms of the Indenture.

The initial Conversion Rate is 5.6787 shares of Common Stock per \$1,000 Principal Amount, subject to adjustment for certain events described in the Indenture or

this paragraph 9. The Company will deliver cash or a check in lieu of any fractional share of Common Stock.

Contingent interest, if any, will not be paid on Securities that are converted; provided, however that Securities surrendered for conversion during the period from the close of business on any date on which contingent interest accrues to the opening of business on the date on which such contingent interest is payable shall be entitled to receive such contingent interest payable on such Securities on the date on which such contingent interest is payable and (except Securities with respect to which the Company has mailed a notice of redemption) Securities surrendered for conversion during such periods must be accompanied by payment of an amount equal to the contingent interest with respect thereto that the registered Holder is to receive.

To convert a Security, a Holder must (1) complete and manually sign the conversion notice below (or complete and manually sign a facsimile of such notice) and deliver such notice to the Conversion Agent, (2) surrender the Security to the Conversion Agent, (3) furnish appropriate endorsements and transfer documents if required by the Conversion Agent, the Company or the Trustee and (4) pay any transfer or similar tax, if required.

A Holder may only convert a portion of a Security pursuant to the terms of this paragraph 9 and in accordance with the Indenture if the Principal Amount of such portion is \$1,000 or an integral multiple of \$1,000. No payment or adjustment will be made for dividends on the Common Stock except as provided herein and in the Indenture. On conversion of a Security, that portion of accrued Tax Original Issue Discount and accrued Original Issue Discount attributable to the period from the Issue Date through the Conversion Date and (except as provided above) accrued contingent interest with respect to the converted Security shall not be cancelled, extinguished or forfeited, but rather shall be deemed to be paid in full to the Holder thereof through the delivery of the Common Stock (together with the cash payment, if any, in lieu of fractional shares) in exchange for the Security being converted pursuant to the terms hereof; and the fair market value of such shares of Common Stock (together with any such cash payment in lieu of fractional shares) shall be treated as issued, to the extent thereof, first in exchange for Tax Original Issue Discount and Original Issue Discount accrued through the Conversion Date and accrued contingent interest, and the balance, if any, of such fair market value of such Common Stock (and any such cash payment) shall be treated as issued in exchange for the Issue Price of the Security being converted pursuant to the provisions hereof.

Pursuant to the terms and conditions of the Indenture, the Conversion Rate will be adjusted for dividends or distributions on Common Stock payable in Common Stock or other Capital Stock; subdivisions, combinations or certain reclassifications of Common Stock; distributions to all holders of Common Stock of certain rights to purchase Common Stock for a period expiring within 60 days at less than the Sale Price of the Common Stock at the Time of Determination; and distributions to such holders of assets or debt securities of the Company

or certain rights to purchase securities of the Company (excluding certain cash dividends or distributions). However, no adjustment need be made if Securityholders may participate in the transaction or in certain other cases. The Company from time to time may voluntarily increase the Conversion Rate.

If the Company is a party to a consolidation, merger or binding share exchange or a transfer of all or substantially all of its assets, or upon certain distributions described in the Indenture, the right to convert a Security into Common Stock may be changed into a right to convert it into securities, cash or other assets of the Company or another person.

The Conversion Rate will not be adjusted for accrued Original Issue Discount or any contingent interest.

10. [Reserved.]

11. Defaulted Interest.

Except as otherwise specified with respect to the Securities, any contingent interest on any Security shall forthwith cease to be payable to the registered Holder thereof on the relevant Regular Record Date or accrual date, as the case may be, by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company as provided for in Section 12.02 of the Indenture.

12. Denominations; Transfer; Exchange.

The Securities are in fully registered form, without coupons, in denominations of \$1,000 of Principal Amount and integral multiples of \$1,000. A Holder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not transfer or exchange any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of the Security not to be redeemed) or any Securities in respect of which a Purchase Notice or Change in Control Purchase Notice has been given and not withdrawn (except, in the case of a Security to be purchased in part, the portion of the Security not to be purchased) or any Securities for a period of 15 days before the mailing of a notice of redemption of Securities to be redeemed.

13. Persons Deemed Owners.

The registered Holder of this Security may be treated as the owner of this Security for all purposes.

14. Unclaimed Money or Securities.

The Trustee and the Paying Agent shall return to the Company upon written request any money or securities held by them for the payment of any amount with respect to the Securities that remains unclaimed for two years, subject to applicable unclaimed property laws. After return to the Company, Holders entitled to the money or securities must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

15. Amendment; Waiver.

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Securities may be amended with the written consent of the Holders of at least a majority in aggregate Principal Amount of the Securities at the time outstanding and (ii) certain Defaults may be waived with the written consent of the Holders of a majority in aggregate Principal Amount of the Securities at the time outstanding. Subject to certain exceptions set forth in the Indenture, without the consent of any Securityholder, the Company and the Trustee may amend the Indenture or the Securities to cure any ambiguity, omission, defect or inconsistency, or to comply with Article 5 or Section 11.14 of the Indenture, to secure the Company's obligations under this Security or to add to the Company's covenants for the benefit of the Securityholders or to surrender any right or power conferred, or to comply with any requirement of the SEC in connection with the qualification of the Indenture under the TIA, or as necessary in connection with the registration of the Securities under the Securities Act.

16. Defaults and Remedies.

If an Event of Default occurs and is continuing, the Trustee, or the Holders of at least 25% in aggregate Principal Amount of the Securities at the time outstanding, may declare all the Securities to be due and payable immediately. Certain events of bankruptcy or insolvency are Events of Default which will result in the Securities becoming due and payable immediately upon the occurrence of such Events of Default.

Securityholders may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Securities unless it receives indemnity or security reasonably satisfactory to it. Subject to certain limitations, Holders of a majority in aggregate Principal Amount of the Securities at the time outstanding may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Securityholders notice of any continuing Default (except a Default in payment of amounts specified in clause (i) or (ii) above) if it determines that withholding notice is in their interests.

17. Trustee Dealings with the Company.

Subject to certain limitations imposed by the TIA, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of

Securities and may otherwise deal with and collect obligations owed to it by the Company or its respective Affiliates and may otherwise deal with the Company or its respective Affiliates with the same rights it would have if it were not Trustee.

18. No Recourse Against Others.

A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

19. Authentication.

This Security shall not be valid until an authorized signatory of the Trustee manually signs the Trustee's Certificate of Authentication on the other side of this Security.

20. Abbreviations.

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with right of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

22. GOVERNING LAW.

THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE INDENTURE AND THIS SECURITY.

The Company will furnish to any Securityholder upon written request and without charge a copy of the Indenture.

Merrill Lynch & Co., Inc.
222 Broadway, 17th Floor
New York, New York 10038
Attention: Secretary

with a copy to:

Merrill Lynch & Co., Inc.
2 World Financial Center, 5th Floor
New York, New York 10281-6100
Attention: Treasurer

ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

(Insert assignee's soc. Sec. or tax ID no.)

(Print or type assignee's name, address
and zip code)

and irrevocably appoint _____ agent to
transfer this Security on the books of the Company.
The agent may substitute another to act for him.

Date: _____

CONVERSION NOTICE

To convert this Security into Common Stock of the
Company, check the box: ☐

To convert only part of this Security, state the
Principal Amount to be converted (which must be
\$1,000 or an integral multiple of \$1,000): \$

If you want the stock certificate made out in another
person's name, fill in the form below:

(Insert other person's soc. sec. or tax ID no.)

(Print or type other person's name, address
and zip code)

Your

Signature: _____ *

(Sign exactly as your name appears on the
other side of this Security)

* Your signature must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Trustee, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Trustee in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

MERRILL LYNCH & CO., INC.

(a Delaware corporation)

**Liquid Yield Option™ Notes due 2031
(Zero Coupon — Senior)**

FIRST SUPPLEMENTAL INDENTURE

Dated as of November 1, 2004

**JPMORGAN CHASE BANK,
Trustee**

™ Trademark of Merrill Lynch & Co., Inc.

FIRST SUPPLEMENTAL INDENTURE, dated as of November 1, 2004, between Merrill Lynch & Co., Inc., a Delaware corporation (the “Company”), and JPMorgan Chase Bank, a banking corporation organized and existing under the laws of the State of New York, as trustee (the “Trustee”), to that certain Indenture, dated as of May 23, 2001 (the “Original Indenture”).

W I T N E S S E T H:

WHEREAS, the parties hereto are parties to the Original Indenture; and

WHEREAS, the parties hereto desire to amend the Original Indenture and the Company’s Liquid Yield Option™ Notes due 2031 (Zero Coupon — Senior) (the “Securities”) pursuant to Section 9.01(e) of the Original Indenture as more fully set forth below;

NOW, THEREFORE, in consideration of the mutual promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each party agrees for the benefit of the other party and for the equal and ratable benefit of the Holders of the Securities as follows:

Article I

DEFINITIONS

Unless otherwise defined herein, capitalized terms used herein shall have the respective meanings assigned thereto in the Original Indenture.

Article II

AMENDMENT

Section 2.01. Amendment of the Original Indenture. On and after the Amendment Effective Date (as defined below), the Original Indenture is hereby amended as follows:

(a) The form of the Securities attached to the Original Indenture as Exhibit A is deleted in its entirety and a new Exhibit A in the form attached hereto is substituted therefor.

(b) The definition of “*Officers’ Certificate*” in Section 1.01 is hereby deleted in its entirety and amended as follows:

“*Officers’ Certificate*” means a written certificate containing the information specified in Sections 13.04 and 13.05, if applicable, signed in the name of the Company by Chairman of the Board, the President, a Vice President, the Treasurer or an Assistant Treasurer and by the Secretary or an Assistant Secretary, and delivered to the Trustee.”

(c) Section 1.02 is hereby deleted in its entirety and amended as follows:

“Section 1.02. Other Definitions.

Term	Defined in Section
"Agent Members"	2.11
"Associate"	3.09(a)
"Bankruptcy Law"	6.01
"Bid Solicitation Agent"	2.03
"Change in Control"	3.09(a)
"Change in Control Purchase Date"	3.09(a)
"Change in Control Purchase Notice"	3.09(c)
"Change in Control Purchase Price"	3.09(a)
"Company Notice"	3.08(e)
"Company Notice Date"	3.08(c)
"Common Stock Record Date"	10.01
"Contingent Interest Payment Date"	10.02
"Conversion Agent"	2.03
"Conversion Date"	11.02
"Conversion Rate"	11.01
"Defaulted Interest"	12.02
"DTC"	2.03
"Event of Default"	6.01
"Exchange Act"	2.11(a)
"Ex-Dividend Measurement Period"	11.08
"Ex-Dividend Time"	11.01
"Extraordinary Cash Dividend"	11.08
"LYONs Market Price"	10.01
"Measurement Period"	10.01
"Notice of Default"	6.01
"Paying Agent"	2.03
"Purchase Date"	3.08(a)
"Purchase Notice"	3.08(a)
"Purchase Price"	3.08(a)
"Registrar"	2.03
"Regular Record Date"	12.01
"Relevant Value"	10.01
"Securities Act"	7.03
"Semiannual Period"	10.01
"Time of Determination"	11.01

Whenever this Indenture refers to a provision of the TIA, such provision is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

"Commission" means the SEC.

"indenture securities" means the Securities.

"indenture security holder" means a Securityholder.

"indenture to be qualified" means this Indenture.

“indenture trustee” or “institutional trustee” means the Trustee.

“obligor” on the indenture securities means the Company.

All other TIA terms used in this Indenture that are defined by the TIA or defined by TIA reference to another statute or regulation have the meanings assigned to them by such definitions.”

(d) The first paragraph of Section 2.02 is hereby deleted in its entirety and amended as follows:

“Section 2.02 Execution and Authentication. The Securities shall be executed by the Company by either of its Chairman or Vice Chairman of the Board, its President, its Treasurer, its Assistant Treasurer or one of its Vice Presidents. The signature of any of these officers on the Securities may be manual or facsimile.”

(e) The first paragraph of Section 2.11 is hereby deleted in its entirety and amended as follows:

“(a) Transfer and Exchange of Global Securities. A Global Security deposited with the Depositary pursuant to Section 2.01 shall be transferred to the beneficial owners thereof only if such transfer complies with Section 2.06 and (i) the Depositary notifies the Company that it is unwilling or unable to continue as depositary for such Global Security or if at any time ceases to be a “clearing agency” registered under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and a successor depositary is not appointed by the Company within 60 days after such notice, or (ii) an Event of Default has occurred and is continuing with respect to the Securities or (iii) the Company executes and delivers to the Trustee a Company Order to the effect that the global Securities shall be exchangeable. In any case, the Company will promptly make available to the Trustee a reasonable supply of Securities in definitive, fully registered form without interest coupons in accordance with the provisions of this Article 2.”

(f) Section 3.08 is hereby deleted in its entirety and amended as follows:

“Section 3.08. Purchase of Securities at the Option of the Holder. (a) General. If a Holder exercises its right to require the Company to repurchase the Securities, the Securities shall be purchased by the Company on May 23, 2004, May 23, 2005, May 23, 2006, May 23, 2011, May 23, 2016, May 23, 2021, and May 23, 2026 (each, a “Purchase Date”), at the purchase price of:

- \$546.56 per \$1,000 of Principal Amount on May 23, 2004;
- \$558.93 per \$1000 of Principal Amount on May 23, 2005;
- \$571.58 per \$1,000 of Principal Amount on May 23, 2006;
- \$639.23 per \$1,000 of Principal Amount on May 23, 2011;

- \$714.90 per \$1,000 Principal Amount on May 23, 2016;
- \$799.52 per \$1,000 Principal Amount on May 23, 2021; and
- \$894.16 per \$1,000 Principal Amount on May 23, 2026 (each, a “Purchase Price”, as applicable), at the option of the Holder thereof, upon:

(1) delivery to the Paying Agent, by the Holder, of a written notice of purchase (a “Purchase Notice”) at any time from the opening of business on the date that is at least 20 Business Days prior to a Purchase Date until the close of business on the Business Day immediately preceding such Purchase Date stating:

(A) the certificate number of the Security which the Holder will deliver to be purchased,

(B) the portion of the Principal Amount of the Security which the Holder will deliver to be purchased, which portion must be a Principal Amount of \$1,000 or an integral multiple thereof, and

(C) that such Security shall be purchased as of the Purchase Date pursuant to the terms and conditions specified in the Securities, and

(2) delivery of such Security to the Paying Agent prior to, on or after the Purchase Date (together with all necessary endorsements) at the offices of the Paying Agent, such delivery being a condition to receipt by the Holder of the Purchase Price therefor; provided, however, that such Purchase Price shall be so paid pursuant to this Section 3.08 only if the Security so delivered to the Paying Agent shall conform in all respects to the description thereof in the related Purchase Notice, as determined by the Company.

The Company shall purchase from the Holder thereof, pursuant to this Section 3.08, a portion of a Security if the Principal Amount of such portion is \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to the purchase of all of a Security also apply to the purchase of such portion of such Security.

Any purchase by the Company contemplated pursuant to the provisions of this Section 3.08 shall be consummated by the delivery of the consideration to be received by the Holder as promptly as practicable following the later of the Purchase Date and the time of delivery of the Security.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent or the office or agency referred to in Section 4.05 the Purchase Notice contemplated by this Section 3.08(a) shall have the right to withdraw such Purchase Notice at any time prior to the close of business on the Purchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.10.

The Paying Agent shall promptly notify the Company of the receipt by it of any Purchase Notice or written notice of withdrawal thereof.

(b) Purchase with Cash. On each Purchase Date the Purchase Price of Securities in respect of which a Purchase Notice pursuant to Section 3.08(a) has been given, or a specified percentage thereof, will be paid by the Company with cash equal to the aggregate Purchase Price of such Securities.

(c) Company Notice. The Company shall send a notice (the “Company Notice”) to the Holders (and to beneficial owners as required by applicable law), in the manner provided in Section 13.02, not less than 20 Business Days prior to the applicable Purchase Date (the “Company Notice Date”) which shall include a form of Purchase Notice to be completed by a Securityholder that wishes to exercise its option to have the Company repurchase the Securities and shall state:

(i) the Purchase Price, the Conversion Rate and, to the extent known at the time of such notice, the amount of contingent interest, if any, that will be accrued and payable with respect to the Securities as of the Purchase Date;

(ii) the name and address of the Paying Agent and the Conversion Agent and of the office or agency referred to in Section 4.05;

(iii) that Securities as to which a Purchase Notice has been given may be converted pursuant to Article 11 hereof only if any applicable Purchase Notice has been withdrawn in accordance with the terms of this Indenture;

(iv) that Securities must be surrendered to the Paying Agent or to the office or agency referred to in Section 4.05 to collect payment of the Purchase Price;

(v) that the Purchase Price for any Security as to which a Purchase Notice has been given and not withdrawn will be paid as promptly as practicable following the later of the Purchase Date and the time of surrender of such Security as described in (iv);

(vi) the procedures the Holder must follow to exercise rights under Section 3.08 and a brief description of those rights;

(vii) briefly, the conversion rights of the Securities and that Holders who want to convert Securities must satisfy the requirements set forth in paragraph 9 of the Securities;

(viii) the procedures for withdrawing a Purchase Notice (including, without limitation, for a conditional withdrawal pursuant to the terms of Section 3.10);

(ix) that, unless the Company defaults in making payment of such Purchase Price on Securities surrendered for purchase, the Contingent Principal Amount will cease to increase and contingent interest, if any, will cease to accrue on and after the Purchase Date; and

(x) the CUSIP number of the Securities.

At the Company's request and upon being provided with a copy of such Company Notice, the Trustee shall give such Company Notice in the Company's name and at the Company's expense, provided that the Company makes such request at least 15 days (unless a shorter period shall be acceptable to the Trustee) prior to the date such Company Notice must be mailed; and provided, further, that, in all cases, the text of such Company Notice shall be prepared by the Company.

(d) Procedure upon Purchase. On or before the Purchase Date, the Company shall deposit cash, at the time and in the manner as provided in Section 3.11, sufficient to pay the aggregate Purchase Price of all Securities to be purchased pursuant to this Section 3.08.

(e) Taxes. Nothing herein shall preclude the Company from withholding or directing the withholding of any tax required by law or regulations."

(g) Section 3.10 is hereby deleted in its entirety and amended as follows:

"Section 3.10. Effect of Purchase Notice or Change in Control Purchase Notice. Upon receipt by the Paying Agent of the Purchase Notice or Change in Control Purchase Notice specified in Section 3.08(a) or Section 3.09(c), as applicable, the Holder of the Security in respect of which such Purchase Notice or Change in Control Purchase Notice, as the case may be, was given shall (unless such Purchase Notice or Change in Control Purchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Purchase Price or Change in Control Purchase Price, as the case may be, with respect to such Security to the Purchase Date or Change in Control Purchase Date, as the case may be. Such Purchase Price or Change in Control Purchase Price shall be paid to such Holder, subject to receipts of funds by the Paying Agent, as promptly as practicable following the later of (x) the Purchase Date or the Change in Control Purchase Date, as the case may be, with respect to such Security (provided the conditions in Section 3.08(a) or Section 3.09(c), as applicable, have been satisfied) and (y) the time of delivery of such Security to the Paying Agent by the Holder thereof in the manner required by Section 3.08(a) or Section 3.09(c), as applicable. Securities in respect of which a Purchase Notice or Change in Control Purchase Notice, as the case may be, has been given by the Holder thereof may not be converted pursuant to Article 11 hereof on or after the date of the delivery of such Purchase Notice or Change in Control Purchase Notice, as the case may be, unless such Purchase Notice or Change in Control Purchase Notice, as the case may be, has first been validly withdrawn as specified in the following two paragraphs.

A Purchase Notice or Change in Control Purchase Notice, as the case may be, may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent or to the office or agency referred to in Section 4.05 in accordance with the Purchase Notice or Change in Control Purchase Notice, as the case may be, at any time prior to the close of business on the Purchase Date or the Change in Control Purchase Date, as the case may be, specifying:

(1) the Principal Amount of the Securities with respect to which such notice of withdrawal is being submitted,

(2) the certificate number of the Securities in respect of which such notice of withdrawal is being submitted, and

(3) the Principal Amount, if any, of any such Securities which remain subject to the original Purchase Notice or Change in Control Purchase Notice, as the case may be, and which has been or will be delivered for purchase by the Company.

There shall be no purchase of any Securities pursuant to Section 3.08 or 3.09 if there has occurred (prior to, on or after, as the case may be, the giving, by the Holders of such Securities, of the required Purchase Notice or Change in Control Purchase Notice, as the case may be) and is continuing an Event of Default (other than a default in the payment of the Purchase Price or Change in Control Purchase Price, as the case may be, with respect to such Securities). The Paying Agent will promptly return to the respective Holders thereof any Securities (x) with respect to which a Purchase Notice or Change in Control Purchase Notice, as the case may be, has been withdrawn in compliance with this Indenture, or (y) held by it during the continuance of an Event of Default (other than a default in the payment of the Purchase Price or Change in Control Purchase Price, as the case may be, with respect to such Securities) in which case, upon such return, the Purchase Notice or Change in Control Purchase Notice with respect thereto shall be deemed to have been withdrawn.”

(h) Section 3.11 is hereby deleted in its entirety and amended as follows:

“Section 3.11. Deposit of Purchase Price or Change in Control Purchase Price. Prior to 10:00 a.m. New York City time on the Business Day following the Purchase Date or the Change in Control Purchase Date, as the case may be, the Company shall deposit with the Trustee or with the Paying Agent (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.04) an amount of money (in immediately available funds if deposited on such Business Day) sufficient to pay the aggregate Purchase Price or Change in Control Purchase Price, as the case may be, of all the Securities or portions thereof which are to be purchased as of the Purchase Date or Change in Control Purchase Date, as the case may be. After the Purchase Date or the Change in Control Purchase Date, the Original Issue Discount, Tax Original Issue Discount, and contingent interest, if any, shall cease to accrue on such Security, whether or not such Security is delivered to the Paying Agent.”

(i) Section 3.14 is hereby deleted in its entirety and amended as follows:

“Section 3.14. Repayment to the Company. The Trustee and the Paying Agent shall return to the Company any cash that remains unclaimed as provided in paragraph 14 of the Securities, together with interest or dividends, if any, thereon (subject to the provisions of Section 7.01(f)), held by them for the payment of the Purchase Price or Change in Control Purchase Price, as the case may be; provided, however, that to the extent that the aggregate amount of cash deposited by the Company pursuant to Section 3.11 exceeds the aggregate Purchase Price or Change in Control Purchase Price, as the case may be, of the Securities or portions thereof which the Company is obligated to purchase as of the Purchase Date or Change in Control Purchase Date, as the case may be, then as promptly as practicable after the Business

Day following the Purchase Date or Change in Control Purchase Date, as the case may be, the Trustee shall return any such excess to the Company together with interest or dividends, if any, thereon (subject to the provisions of Section 7.01(f)).

Notwithstanding anything in this Indenture to the contrary, all moneys delivered to the Trustee (in any capacity) for payment to Holders shall remain uninvested unless otherwise agreed to in writing between the Company and the Trustee.”

(j) Section 7.03 is hereby deleted in its entirety and amended as follows:

“Section 7.03. Trustee’s Disclaimer. The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Company’s use of the proceeds from the Securities, it shall not be responsible for any statement in the registration statement for the Securities under the Securities Act of 1933, as amended (the “Securities Act”), or in the Indenture or the Securities (other than its certificate of authentication), or the determination as to which beneficial owners are entitled to receive any notices hereunder.”

(k) Section 8.01 is hereby deleted in its entirety and amended as follows:

“Section 8.01. Discharge of Liability on Securities. When (i) the Company delivers to the Trustee all outstanding Securities (other than Securities replaced pursuant to Section 2.07) for cancellation or (ii) all outstanding Securities have become due and payable and the Company deposits with the Trustee cash sufficient to pay at the Stated Maturity, the Purchase Date, the Change in Control Purchase or the Redemption Date, the Principal Amount, the Purchase Price or contingent interest (if any shall be due and unpaid), the Change in Control Purchase Price or the Redemption Price, as the case may be, of all outstanding Securities (other than Securities replaced pursuant to Section 2.07), and if, in either case, the Company has paid all other sums payable hereunder by the Company, then this Indenture shall, subject to Section 7.06, cease to be of further effect. The Trustee shall join in the execution of a document prepared by the Company acknowledging satisfaction and discharge of this Indenture on demand of the Company accompanied by an Officers’ Certificate and Opinion of Counsel and at the cost and expense of the Company.”

Article III

MISCELLANEOUS

Section 3.01. Effectiveness. This First Supplemental Indenture shall become effective as of the date (the “Amendment Effective Date”) when each of the parties hereto shall have received counterparts hereof signed by the other party hereto. Upon the effectiveness hereof, all references in the Original Indenture to “this Indenture” or the like shall refer to the Original Indenture as further amended hereby.

Section 3.02. Governing Law. THIS FIRST SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AS APPLIED TO CONTRACTS MADE AND PERFORMED

WITHIN THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

Section 3.03. Multiple Originals. The parties may sign any number of copies of this First Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture.

SIGNATURES

IN WITNESS WHEREOF, the undersigned, being duly authorized, have executed this First Supplemental Indenture on behalf of the respective parties hereto as of the date first above written.

MERRILL LYNCH & CO., INC.

By: /s/ John N. Laws
Name: John N. Laws
Title: Assistant Treasurer

JPMORGAN CHASE BANK

By: /s/ Albert Mari, Jr.
Name: Albert Mari, Jr.
Title: Vice President

EXHIBIT A

[FORM OF FACE OF GLOBAL SECURITY]

FOR PURPOSES OF SECTIONS 1273 AND 1275 OF THE INTERNAL REVENUE CODE, THIS SECURITY IS ISSUED WITH AN INDETERMINATE AMOUNT OF ORIGINAL ISSUE DISCOUNT FOR UNITED STATES FEDERAL INCOME TAX PURPOSES. THE ISSUE DATE IS MAY 23, 2001, AND THE YIELD TO MATURITY FOR PURPOSES OF ACCRUING ORIGINAL ISSUE DISCOUNT IS 6.23% PER ANNUM. THE HOLDER OF THIS SECURITY MAY OBTAIN THE PROJECTED PAYMENT SCHEDULE BY SUBMITTING A WRITTEN REQUEST FOR SUCH INFORMATION TO: MERRILL LYNCH & CO., INC., CORPORATE SECRETARY'S OFFICE, 222 BROADWAY, 17TH FLOOR, NEW YORK, NEW YORK 10038.

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF THE DEPOSITARY. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR THE INDIVIDUAL DEBT SECURITIES REPRESENTED HEREBY, THIS GLOBAL SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), MERRILL LYNCH & CO., INC. OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

MERRILL LYNCH & CO., INC.
Liquid Yield Option™ Note due 2031
(Zero Coupon—Senior)

No. R-
Issue Date: May 23, 2001
Initial Issue Price: \$511.08
(for each \$1,000 Principal
Amount at Stated Maturity)

CUSIP: 590188 A65
Original Issue Discount: \$488.92
(for each \$1,000 Principal
Amount at Stated Maturity)

MERRILL LYNCH & CO., INC., a Delaware corporation, promises to pay to Cede & Co. or registered assigns, the Principal Amount (“Principal Amount”) of FIVE HUNDRED MILLION DOLLARS (\$500,000,000) on May 23, 2031.

This Security shall not bear interest except as specified on the reverse side of this Security. Original Issue Discount will accrue as specified on the reverse side of this Security. This Security is convertible as specified on the reverse side of this Security.

Additional provisions of this Security are set forth on the reverse side of this Security.

Dated: May 23, 2001

MERRILL LYNCH & CO., INC.

By: _____
Title:

TRUSTEE'S CERTIFICATE OF
AUTHENTICATION

JPMORGAN CHASE BANK,
as Trustee, certifies that this
is one of the Securities referred
to in the within-mentioned Indenture.

By: _____

Authorized Signature

Dated: May 23, 2001

[FORM OF REVERSE OF SECURITY]
Liquid Yield Option™ Note due 2031
(Zero Coupon-Senior)

1. Interest.

This Security shall not bear interest, except as specified in this paragraph or in paragraph 5 hereof. If the Principal Amount hereof or any portion of such Principal Amount is not paid when due (whether upon acceleration pursuant to Section 6.02 of the Indenture, upon the date set for payment of the Redemption Price pursuant to paragraph 6 hereof, upon the date set for payment of the Purchase Price or Change in Control Purchase Price pursuant to paragraph 7 hereof or upon the Stated Maturity of this Security) or if contingent interest, if any, due hereon or any portion of such contingent interest is not paid when due in accordance with paragraph 5 hereof, then in each such case the overdue amount shall, to the extent permitted by law, bear interest at the rate of 2.25% per annum, compounded semi-annually, which interest shall accrue from the date such overdue amount was originally due to the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand. The accrual of such interest on overdue amounts shall be in lieu of, and not in addition to, the continued accrual of Original Issue Discount.

Original Issue Discount (the difference between the Issue Price and the Principal Amount of the Security), in the period during which a Security remains outstanding, shall accrue at 2.25% per annum, on a semi-annual bond equivalent basis using a 360-day year comprised of twelve 30-day months, from the Issue Date of this Security.

2. Method of Payment.

Subject to the terms and conditions of the Indenture, the Company will make payments in respect of Redemption Prices, Purchase Price, Change in Control Purchase Prices and at Stated Maturity to Holders who surrender Securities to a Paying Agent to collect such payments in respect of the Securities. In addition, the Company will pay contingent interest, if any. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts. However, the Company may make such cash payments by check payable in such money.

3. Paying Agent, Conversion Agent, Registrar and Bid Solicitation Agent.

Initially, JPMorgan Chase Bank, a banking corporation organized and existing under the laws of the State of New York, (the "Trustee"), will act as Paying Agent, Conversion Agent, Registrar and Bid Solicitation Agent. The Company may appoint and change any Paying Agent, Conversion Agent, Registrar or co-registrar or Bid Solicitation Agent without notice, other than notice to the Trustee, except that the Company will maintain at least one Paying Agent in the State of New York, City of New York, Borough of Manhattan, which shall initially be an office or agency of the Trustee. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Conversion Agent, Registrar or co-registrar. None of the Company, any of its Subsidiaries or any of their Affiliates shall act as Bid Solicitation Agent.

4. Indenture.

The Company has issued the Securities under an Indenture dated as of May 23, 2001, as amended (the “Indenture”), between the Company and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Securities themselves and the Trust Indenture Act of 1939, as in effect from time to time (the “TIA”). Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Securities are subject to all such terms, and Securityholders are referred to the Indenture and the TIA for a statement of those terms.

The Securities are unsecured and unsubordinated obligations of the Company limited to \$4,600,000,000 aggregate Principal Amount (subject to Section 2.07 of the Indenture) and will rank equally in right of payment to all the Company’s present and future unsecured and unsubordinated indebtedness. The Indenture does not limit other indebtedness of the Company, secured or unsecured.

5. Contingent Interest.

Subject to the conditions of the Indenture and the accrual and record date provisions specified in this paragraph 5, the Company shall pay contingent interest to the Holders during any six-month period (a “Contingent Interest Period”) from June 1 to November 30 and from December 1 to May 31, with the initial six-month period commencing after June 1, 2006, if the average LYON Market Price for the Measurement Period with respect to such Contingent Interest Period equals 120% or more of the sum of the Issue Price of a Security and Original Issue Discount accrued thereon to the day immediately preceding the first day of the relevant Contingent Interest Period.

Contingent interest, if any, will accrue and be payable on such days and to holders of this Security as of such record dates as provided in Section 10.02 of the Indenture. Original Issue Discount will continue to accrue at 2.25% whether or not contingent interest is paid.

The amount of contingent interest payable per \$1,000 Principal Amount hereof in respect of either the first three-month period or the second three-month period any Contingent Interest Period shall equal the greater of (x) \$0.16 multiplied by 5.6787 and (y) the sum of all Regular Cash Dividends paid by the Company per share of Common Stock during that three-month period of the applicable Contingent Interest Period multiplied by the number of shares of Common Stock into which \$1,000 Principal Amount hereof is convertible pursuant to paragraph 9 hereof as of the accrual date for such contingent interest.

Upon determination that Holders will be entitled to receive contingent interest during a Contingent Interest Period the Company shall issue a press release and publish such information on its web site on the World Wide Web for a period of not less than 120 days or, at the Company’s option, otherwise publicly disclose such information.

6. Redemption at the Option of the Company.

No sinking fund is provided for the Securities. The Securities are redeemable as a whole, or from time to time in part, at any time at the option of the Company at the Redemption Prices set forth below, provided that the Securities are not redeemable prior to May 23, 2006.

The table below shows Redemption Prices of a Security per \$1,000 Principal Amount on the dates shown below and at Stated Maturity, which prices reflect the Issue Price plus accrued Original Issue Discount calculated to each such date. The Redemption Price of a Security redeemed between such dates shall include an additional amount reflecting the additional Original Issue Discount accrued since the next preceding date in the table.

Redemption Date	(1) LYON Issue Price	(2) Accrued Original Issue Discount	(3) Redemption Price (1) + (2)
May 23:			
2006	\$511.08	\$60.50	\$571.58
2007	511.08	73.43	584.51
2008	511.08	86.65	597.73
2009	511.08	100.18	611.26
2010	511.08	114.01	625.09
2011	511.08	128.15	639.23
2012	511.08	142.62	653.70
2013	511.08	157.41	668.49
2014	511.08	172.53	683.61
2015	511.08	188.00	699.08
2016	511.08	203.82	714.90
2017	511.08	219.99	731.07
2018	511.08	236.54	747.62
2019	511.08	253.45	764.53
2020	511.08	270.75	781.83
2021	511.08	288.44	799.52
2022	511.08	306.53	817.61
2023	511.08	325.03	836.11
2024	511.08	343.95	855.03
2025	511.08	363.30	874.38
2026	511.08	383.08	894.16
2027	511.08	403.31	914.39
2028	511.08	424.00	935.08
2029	511.08	445.16	956.24
2030	511.08	466.79	977.87
At Stated Maturity	511.08	488.92	1,000.00

7. Purchase by the Company at the Option of the Holder.

Subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase, at the option of the Holder, the Securities held by such Holder on the following Purchase Dates and at the following Purchase Prices per \$1,000 Principal Amount, upon delivery of a Purchase Notice containing the information set forth in the Indenture, at any time from the opening of business on the date that is at least 20 Business Days prior to such Purchase Date until the close of business on the Business Day immediately preceding such Purchase Date and upon delivery of the Securities to the Paying Agent by the Holder as set forth in the Indenture.

Purchase Date	Purchase Price
May 23, 2004	\$546.56
May 23, 2005	\$558.93
May 23, 2006	\$571.58
May 23, 2011	\$639.23
May 23, 2016	\$714.90
May 23, 2021	\$799.52
May 23, 2026	\$894.16

At the option of the Holder and subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase all or a portion of the Securities in integral multiples of \$1,000 Principal Amount held by such Holder no later than 35 Business Days after the occurrence of a Change in Control of the Company occurring on or prior to May 23, 2006 for a Change in Control Purchase Price for each \$1,000 Principal Amount of such Securities equal to the Issue Price plus accrued Original Issue Discount to the Change in Control Purchase Date, which Change in Control Purchase Price shall be paid in cash.

Holders have the right to withdraw any Purchase Notice or Change in Control Purchase Notice, as the case may be, by delivering to the Paying Agent a written notice of withdrawal within the times and otherwise in accordance with the provisions of the Indenture.

If cash sufficient to pay the Purchase Price or Change in Control Purchase Price, as the case may be, of all Securities or portions thereof to be purchased as of the Purchase Date or the Change in Control Purchase Date, as the case may be, is deposited with the Paying Agent on the Purchase Date or the Change in Control Purchase Date, as the case may be, Original Issue Discount and contingent interest, if any, shall cease to accrue on such Securities (or portions thereof) immediately after such Purchase Date or Change in Control Purchase Date, as the case may be, and the Holder thereof shall have no other rights as such (other than the right to receive the Purchase Price or Change in Control Purchase Price, as the case may be, if any, upon surrender of such Security).

8. Notice of Redemption.

Notice of redemption will be mailed at least 30 days but not more than 60 days before the Redemption Date to each Holder of Securities to be redeemed at the Holder's registered address.

If money sufficient to pay the Redemption Price of all Securities (or portions thereof) to be redeemed on the Redemption Date is deposited with the Paying Agent prior to or on the Redemption Date, immediately after such Redemption Date, Original Issue Discount and contingent interest, if any, shall cease to accrue on such Securities or portions thereof. Securities in denominations larger than \$1,000 of Principal Amount may be redeemed in part but only in integral multiples of \$1,000 of Principal Amount.

9. Conversion.

Subject to the provisions of this paragraph 9 and the terms of the Indenture and notwithstanding the fact that any other condition to conversion has not been satisfied, Holders may surrender this Security for conversion into shares of Common Stock at any time at their option until the close of business on the Business Day immediately preceding May 23, 2031 if, as of the last day of any calendar quarter beginning with the quarter ending on September 30, 2001, the Sale Price of the Common Stock for at least 20 Trading Days in a period of 30 consecutive Trading Days ending on the last Trading Day of such quarter is more than the conversion trigger price. The “conversion trigger price” is a reference percentage beginning at 120% and declining .08474% per quarter thereafter to approximately 110% on the last day of the quarter ending March 31, 2031, of the accreted conversion price per share of Common Stock on the last day of such quarter. Securities subject to conversion pursuant to the condition to conversion contained in this paragraph will remain convertible notwithstanding changes to the Sale Price of the Common Stock after such Securities are deemed convertible.

The “accreted conversion price” per share of Common Stock as of any day equals the quotient of:

- the Issue Price plus accrued Original Issue Discount to that day, divided by
- the number of shares of Common Stock issuable upon conversion of \$1,000 Principal Amount of Securities on that day.

The table below shows the conversion trigger price per share of Common Stock in respect of each of the first 20 calendar quarters. These prices reflect the accreted conversion price per share of Common Stock (assuming that no events occurred requiring an adjustment to the initial Conversion Rate of 5.6787 shares of Common Stock per \$1,000 Principal Amount of Maturity) multiplied by the applicable percentage for the respective calendar quarter. Thereafter, the accreted conversion price per share of Common Stock increases each calendar quarter by the accrued Original Issue Discount for the quarter and the applicable percentage declines by 0.08474% per quarter. The conversion trigger price for the calendar quarter beginning April 1, 2031 is \$193.08.

Quarter	(1) Accreted Conversion Price	(2) Applicable Percentage	(3) Conversion Trigger Price (1)x(2)
2001			
Fourth Quarter	\$90.72	120.00000%	108.86
2002			
First Quarter.	91.23	119.91526%	109.40
Second Quarter	91.74	119.83052%	109.93
Third Quarter.	92.25	119.74578%	110.47
Fourth Quarter	92.77	119.66104%	111.01
2003			
First Quarter.	93.29	119.57630%	111.56
Second Quarter	93.82	119.49156%	112.10
Third Quarter.	94.34	119.40682%	112.65
Fourth Quarter	94.87	119.32208%	113.20
2004			
First Quarter.	95.40	119.23734%	113.76
Second Quarter	95.94	119.15260%	114.31
Third Quarter.	96.48	119.06786%	114.87
Fourth Quarter	97.02	118.98312%	115.43
2005			
First Quarter.	97.56	118.89838%	116.00
Second Quarter	98.11	118.81364%	116.57
Third Quarter.	98.66	118.72890%	117.14
Fourth Quarter	99.21	118.64416%	117.71
2006			
First Quarter.	99.77	118.55942%	118.29
Second Quarter	100.33	118.47468%	118.86
Third Quarter.	100.89	118.38994%	119.45

Subject to the provisions of this paragraph 9 and the Indenture and notwithstanding the fact any other condition to conversion has not been satisfied, Holders may convert the Securities into Common Stock on a Conversion Date during any period in which the credit rating assigned to the Securities by a Rating Agency is reduced to or below the Applicable Rating. “Rating Agency” means (1) Moody’s Investors Service, Inc. and its successors (“Moody’s”), (2) Standard & Poor’s Credit Market Services, a division of The McGraw-Hill Companies Inc., and its successors (“Standard & Poor’s”) and (3) Fitch, Inc. (“Fitch”) and its successors. “Applicable Rating” means (1) Baa1, in the case of Moody’s (or its equivalent under any successor ratings categories of Moody’s), (2) BBB+, in the case of Standard & Poor’s (or its equivalent under any successor ratings categories of Standard & Poor’s), (3) BBB+ in the case of Fitch (or its equivalent under any successor ratings categories of Fitch) or (4) the equivalent in respect of

ratings categories of any Rating Agencies which are successors to Moody's, Standard & Poor's or Fitch.

Subject to the provisions of this paragraph 9 and the Indenture and notwithstanding the fact that any other condition to conversion has not been satisfied, a Holder may convert into Common Stock a Security or portion of a Security which has been called for redemption pursuant to paragraph 6 hereof, even if the Security, or any portion thereof, is not subject to conversion by the Holder, provided such Securities are surrendered for conversion prior to the close of business on the second Business Day immediately preceding the Redemption Date.

Subject to the provisions of this paragraph 9 and the Indenture and notwithstanding the fact that any other condition to conversion has not been satisfied, in the event that the Company declares a dividend or distribution described in Section 11.07 of the Indenture, or a dividend or a distribution described in Section 11.08 of the Indenture where the fair market value of such dividend or distribution per share of Common Stock, as determined in the Indenture, exceeds 15% of the Sale Price of the Common Stock on the Trading Day immediately preceding the date of declaration for such dividend or distribution, the Securities may be surrendered for conversion beginning on the date the Company gives notice to the Holders of such right, which shall not be less than 20 days prior to the Ex-Dividend Time for such dividend or distribution, and Securities may be surrendered for conversion at any time thereafter until the close of business on the Business Day prior to the Ex-Dividend Time or until the Company announces that such dividend or distribution will not take place.

Subject to the provisions of this paragraph 9 and the Indenture and notwithstanding the fact that any other condition to conversion has not been satisfied, in the event the Company is a party to a consolidation, merger or binding share exchange pursuant to which the Common Stock would be converted into cash, securities or other property as set forth in Section 11.14 of the Indenture, the Securities may be surrendered for conversion at any time from and after the date which is 15 days prior to the date of the anticipated effective time of such transaction announced by the Company until 15 days after the actual effective date of such transaction, and at the effective time of such transaction the right to convert a Security into Common Stock will be deemed to have changed into a right to convert it into the kind and amount of cash, securities or other property which the holder would have received if the holder had converted its Security immediately prior to the transaction.

A Security in respect of which a Holder has delivered a Purchase Notice or Change in Control Purchase Notice exercising the option of such Holder to require the Company to purchase such Security may be converted only if such notice of exercise is withdrawn in accordance with the terms of the Indenture.

The initial Conversion Rate is 5.6787 shares of Common Stock per \$1,000 Principal Amount, subject to adjustment for certain events described in the Indenture or this paragraph 9. The Company will deliver cash or a check in lieu of any fractional share of Common Stock.

Contingent interest, if any, will not be paid on Securities that are converted; provided, however that Securities surrendered for conversion during the period from the close of business on any date on which contingent interest accrues to the opening of business on the date on which

such contingent interest is payable shall be entitled to receive such contingent interest payable on such Securities on the date on which such contingent interest is payable and (except Securities with respect to which the Company has mailed a notice of redemption) Securities surrendered for conversion during such periods must be accompanied by payment of an amount equal to the contingent interest with respect thereto that the registered Holder is to receive.

To convert a Security, a Holder must (1) complete and manually sign the conversion notice below (or complete and manually sign a facsimile of such notice) and deliver such notice to the Conversion Agent, (2) surrender the Security to the Conversion Agent, (3) furnish appropriate endorsements and transfer documents if required by the Conversion Agent, the Company or the Trustee and (4) pay any transfer or similar tax, if required.

A Holder may only convert a portion of a Security pursuant to the terms of this paragraph 9 and in accordance with the Indenture if the Principal Amount of such portion is \$1,000 or an integral multiple of \$1,000. No payment or adjustment will be made for dividends on the Common Stock except as provided herein and in the Indenture. On conversion of a Security, that portion of accrued Tax Original Issue Discount and accrued Original Issue Discount attributable to the period from the Issue Date through the Conversion Date and (except as provided above) accrued contingent interest with respect to the converted Security shall not be cancelled, extinguished or forfeited, but rather shall be deemed to be paid in full to the Holder thereof through the delivery of the Common Stock (together with the cash payment, if any, in lieu of fractional shares) in exchange for the Security being converted pursuant to the terms hereof; and the fair market value of such shares of Common Stock (together with any such cash payment in lieu of fractional shares) shall be treated as issued, to the extent thereof, first in exchange for Tax Original Issue Discount and Original Issue Discount accrued through the Conversion Date and accrued contingent interest, and the balance, if any, of such fair market value of such Common Stock (and any such cash payment) shall be treated as issued in exchange for the Issue Price of the Security being converted pursuant to the provisions hereof.

Pursuant to the terms and conditions of the Indenture, the Conversion Rate will be adjusted for dividends or distributions on Common Stock payable in Common Stock or other Capital Stock; subdivisions, combinations or certain reclassifications of Common Stock; distributions to all holders of Common Stock of certain rights to purchase Common Stock for a period expiring within 60 days at less than the Sale Price of the Common Stock at the Time of Determination; and distributions to such holders of assets or debt securities of the Company or certain rights to purchase securities of the Company (excluding certain cash dividends or distributions). However, no adjustment need be made if Securityholders may participate in the transaction or in certain other cases. The Company from time to time may voluntarily increase the Conversion Rate.

If the Company is a party to a consolidation, merger or binding share exchange or a transfer of all or substantially all of its assets, or upon certain distributions described in the Indenture, the right to convert a Security into Common Stock may be changed into a right to convert it into securities, cash or other assets of the Company or another person.

The Conversion Rate will not be adjusted for accrued Original Issue Discount or any contingent interest.

10. [Reserved.]

11. Defaulted Interest.

Except as otherwise specified with respect to the Securities, any contingent interest on any Security shall forthwith cease to be payable to the registered Holder thereof on the relevant Regular Record Date or accrual date, as the case may be, by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company as provided for in Section 12.02 of the Indenture.

12. Denominations; Transfer; Exchange.

The Securities are in fully registered form, without coupons, in denominations of \$1,000 of Principal Amount and integral multiples of \$1,000. A Holder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not transfer or exchange any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of the Security not to be redeemed) or any Securities in respect of which a Purchase Notice or Change in Control Purchase Notice has been given and not withdrawn (except, in the case of a Security to be purchased in part, the portion of the Security not to be purchased) or any Securities for a period of 15 days before the mailing of a notice of redemption of Securities to be redeemed.

13. Persons Deemed Owners.

The registered Holder of this Security may be treated as the owner of this Security for all purposes.

14. Unclaimed Money or Securities.

The Trustee and the Paying Agent shall return to the Company upon written request any money or securities held by them for the payment of any amount with respect to the Securities that remains unclaimed for two years, subject to applicable unclaimed property laws. After return to the Company, Holders entitled to the money or securities must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

15. Amendment; Waiver.

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Securities may be amended with the written consent of the Holders of at least a majority in aggregate Principal Amount of the Securities at the time outstanding and (ii) certain Defaults may be waived with the written consent of the Holders of a majority in aggregate Principal Amount of the Securities at the time outstanding. Subject to certain exceptions set forth in the Indenture, without the consent of any Securityholder, the Company and the Trustee may amend the Indenture or the Securities to cure any ambiguity, omission, defect or inconsistency, or to comply with Article 5 or Section 11.14 of the Indenture, to secure the Company's obligations

under this Security or to add to the Company's covenants for the benefit of the Securityholders or to surrender any right or power conferred, or to comply with any requirement of the SEC in connection with the qualification of the Indenture under the TIA, or as necessary in connection with the registration of the Securities under the Securities Act.

16. Defaults and Remedies.

If an Event of Default occurs and is continuing, the Trustee, or the Holders of at least 25% in aggregate Principal Amount of the Securities at the time outstanding, may declare all the Securities to be due and payable immediately. Certain events of bankruptcy or insolvency are Events of Default which will result in the Securities becoming due and payable immediately upon the occurrence of such Events of Default.

Securityholders may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Securities unless it receives indemnity or security reasonably satisfactory to it. Subject to certain limitations, Holders of a majority in aggregate Principal Amount of the Securities at the time outstanding may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Securityholders notice of any continuing Default (except a Default in payment of amounts specified in clause (i) or (ii) above) if it determines that withholding notice is in their interests.

17. Trustee Dealings with the Company.

Subject to certain limitations imposed by the TIA, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Company or its respective Affiliates and may otherwise deal with the Company or its respective Affiliates with the same rights it would have if it were not Trustee.

18. No Recourse Against Others.

A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

19. Authentication.

This Security shall not be valid until an authorized signatory of the Trustee manually signs the Trustee's Certificate of Authentication on the other side of this Security.

20. Abbreviations.

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with right of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

22. GOVERNING LAW.

THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE INDENTURE AND THIS SECURITY.

The Company will furnish to any Securityholder upon written request and without charge a copy of the Indenture.

Merrill Lynch & Co., Inc.
222 Broadway, 17th Floor
New York, New York 10038
Attention: Secretary

with a copy to:

Merrill Lynch & Co., Inc.
2 World Financial Center, 5th Floor
New York, New York 10281-6100
Attention: Treasurer

ASSIGNMENT FORM

To assign this Security, fill in the form below:
I or we assign and transfer this Security to

(Insert assignee's Soc. Sec. or tax ID no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____ agent to
transfer this Security on the books of the Company. The
agent may substitute another to act for him.

Date:

CONVERSION NOTICE

To convert this Security into Common Stock of the
Company, check the box: ☐

To convert only part of this Security, state the Principal
Amount to be converted (which must be \$1,000 or an
integral multiple of \$1,000): \$

If you want the stock certificate made out in another
person's name, fill in the form below:

(Insert other person's soc. sec. or tax ID no.)

(Print or type other person's name, address and zip code)

Your

Signature: _____

*

(Sign exactly as your name appears on the other side of this
Security)

* Your signature must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Trustee, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Trustee in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

MERRILL LYNCH & CO., INC.

(a Delaware corporation)

**Liquid Yield Option™ Notes due 2032
(Zero Coupon – Floating Rate – Senior)**

INDENTURE

Dated as of March 13, 2002

**JPMORGAN CHASE BANK,
Trustee**

™ Trademark of Merrill Lynch & Co., Inc.

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310(a)(1)	7.09
(a)(2)	N.A.
(a)(3)	N.A.
(a)(4)	N.A.
(b)(1)	7.09
(c)	N.A.
311(a)	7.10
(b)	7.10
(c)	N.A.
312(a)	2.05
(b)	13.03
(c)	13.03
313(a)	7.05
(b)	7.05
(c)	N.A.
(d)	N.A.
314(a)	4.02
(b)	N.A.
(c)(1)	N.A.
(c)(2)	N.A.
(c)(3)	N.A.
(d)	N.A.
(e)	N.A.
(f)	4.04
315(a)	7.01
(b)	7.04
(c)	6.11
316(a)(last sentence)	2.08
(a)(1)(A)	6.05
(a)(1)(B)	6.04
(a)(2)	N.A.
(b)	N.A.
317(a)(1)	N.A.
(a)(2)	N.A.
(b)	2.04
318(a)	N.A.

N.A. means Not Applicable. _____

* Note: This Cross Reference Table shall not, for any purpose, be deemed to be part of the Indenture.

INDENTURE, dated as of March 13, 2002, between Merrill Lynch & Co., Inc., a Delaware corporation (the “Company”), and JPMorgan Chase Bank, a banking corporation organized and existing under the laws of the State of New York, as trustee (the “Trustee”).

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders of the Company’s Liquid Yield Option™ Notes due 2032 (Zero Coupon — Floating Rate — Senior) (the “Securities”):

Article I

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01. Definitions.

“**Affiliate**” of any specified person means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For the purposes of this definition, “**control**”, when used with respect to any specified person, means the power to direct or cause the direction of the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “**controlling**” and “**controlled**” have meanings correlative to the foregoing.

“**Average Sale Price**” means the average of the Sale Prices of the Common Stock or other security for which the Average Sale Price is to be determined for the shorter of (1) 30 consecutive Trading Days ending on the last full Trading Day prior to the Time of Determination with respect to the rights, warrants or options or distribution in respect of which the Average Sale Price is being calculated, or (2) the period (x) commencing on the date next succeeding the first public announcement of (a) the issuance of rights, warrants or options or (b) the distribution, in each case, in respect of which the Average Sale Price is being calculated and (y) proceeding through the last full Trading Day prior to the Time of Determination with respect to the rights, warrants or options or distribution in respect of which the Average Sale Price is being calculated (excluding days within such period, if any, which are not Trading Days), or (3) the period, if any, (x) commencing on the date next succeeding the Ex-Dividend Time with respect to the next preceding (a) issuance of rights, warrants or options or (b) distribution, in each case, for which an adjustment is required by the provisions of Section 11.06(d) or 11.07 and (y) proceeding through the last full Trading Day prior to the Time of Determination with respect to the rights, warrants or options or distribution in respect of which the Average Sale Price is being calculated (excluding days within such period, if any, which are not Trading Days).

In the event that the Ex-Dividend Time (or in the case of a subdivision, combination or reclassification, the effective date with respect thereto) with respect to a dividend, subdivision, combination or reclassification to which Section 11.06(a), (b), (c) or (d) applies occurs during the period applicable for calculating “Average Sale Price” pursuant to the definition in the preceding sentence, “Average Sale Price” shall be calculated for such period in a manner determined by the Board of Directors of the Company to reflect the impact of such dividend, subdivision, combination or reclassification on the Sale Price of the Common Stock or such other security during such period.

“Bankruptcy Law” means Title 11, United States Code, or any similar Federal or state law for the relief of debtors.

“Board of Directors” or **“Board”** means, with respect to any matter, either the board of directors of the Company or any committee of such board duly authorized, with respect to such matter, to exercise the powers of such board.

“Business Day” means any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which commercial banks are authorized or required by law, regulation or executive order to close in The City of New York.

“Cash” or **“cash”** means such coin or currency of The United States of America as at any time of payment is legal tender for the payment of public and private debts.

“Common Stock” means the Common Stock, par value \$1.33 ⅓ per share, including the Rights attached thereto of the Company, as it exists on the date of this Indenture or any other shares of capital stock of the Company into which such common stock shall be reclassified or changed.

“Company” means the party named as the “Company” in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor. The foregoing sentence shall likewise apply to any subsequent such successor or successors.

“Company Request” or **“Company Order”** means a written request or order signed in the name of the Company by either of its Chairman or Vice Chairman of the Board, its President, any Vice President or its Treasurer, and by an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

“Contingent Principal Amount” of a Security means the Original Principal Amount increased daily by the applicable Yield. The Contingent Principal Amount will accrue daily at the applicable Yield applied to the Contingent Principal Amount of the Security as of the day immediately preceding the most recent Yield Reset Date.

“Controlled Subsidiary” means any corporation more than 80% of the outstanding Voting Stock, except for qualifying shares, of which shall at the time be owned directly or indirectly by the Company.

“corporation” includes corporations, associations, companies and business trusts.

“Custodian” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

“Default” means any event that is, or after notice or passage of time or both would be, an Event of Default.

“Depository” means, with respect to the Securities issuable or issued in whole or in part in global form, the person specified in Section 2.03 as the Depository with respect to the Securities, until a successor shall have been appointed and become such pursuant to the applicable provision of this Indenture, and, thereafter, “Depository” shall mean or include such successor. The foregoing sentence shall likewise apply to any subsequent such successor or successors.

“Global Securities” means Securities that are in the form of the Securities attached hereto as Exhibit A.

“Holder” or **“Securityholder”** means a person in whose name a Security is registered on the Registrar’s books.

“Indenture” means this Indenture as amended or supplemented from time to time in accordance with the terms hereof, including the provisions of the TIA that are deemed to be a part hereof.

“Issue Date” of any Security means the date on which the Security was originally issued or deemed issued as set forth on the face of the Security.

“Issue Price” of each Security means, in connection with the original issuance of such Security, the initial issue price at which the Security is sold as set forth on the face of the Security.

“London Banking Day” means a day on which commercial banks are open for business, including dealings in United States dollars, in London.

“Market Price” means the average of the Sale Prices of the Common Stock or other security for which the Market Price is to be determined for the five Trading Day period ending on (if the third Business Day prior to the applicable Purchase Date is a Trading Day, or if not, then on the last Trading Day prior to) the third Business Day immediately prior to, but not including, the applicable Purchase Date, appropriately adjusted to take into account the actual occurrence, during the period commencing on the first of such Trading Days during such five Trading Day period and ending on such Purchase Date, of any event described in Section 11.06, 11.07 or 11.08 that would result in an adjustment to the Conversion Rate; subject, however, to the conditions set forth in Sections 11.09 and 11.10.

“MLPF&S” means Merrill Lynch, Pierce, Fenner & Smith Incorporated, a Delaware corporation.

“Moneyline Telerate Page 3750” means the display on Moneyline Telerate (or any successor service) on such page (or any other page as may replace such page on such service) for the purpose of displaying the London interbank rates of major banks for United States dollars.

“Officer” means Chairman of the Board, the President, any Vice President, the Treasurer, the Secretary, any Assistant Treasurer or Assistant Secretary of the Company.

“Officers’ Certificate” means a written certificate containing the information specified in Sections 13.04 and 13.05, if applicable, signed in the name of the Company by the Chairman of the Board, the President, a Vice President or the Treasurer and by an Assistant Treasurer, the Secretary or an Assistant Secretary, and delivered to the Trustee.

“Opinion of Counsel” means a written opinion containing the information specified in Sections 13.04 and 13.05, if applicable, rendered by legal counsel who may be (i) an employee of, or counsel to, the Company or (ii) other counsel designated by the Company and acceptable in the reasonable judgment of the Trustee.

“Original Principal Amount” of each Security means the original principal amount as set forth on the face of the Security.

“Person” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other entity.

“Principal”, “Principal Amount” or “principal amount” of a Security on any date means the Contingent Principal Amount of such Security on such date.

“Purchase Date” shall mean each of March 13, 2005, March 13, 2007, March 13, 2012, March 13, 2017, March 13, 2022 and March 13, 2027.

“Purchase Price” of a Security means the Contingent Principal Amount of the Security on the applicable Purchase Date.

“Redemption” or “redemption” shall have the meaning set forth in Section 3.01.

“Redemption Date” or “redemption date” shall mean the date specified for redemption of any of the Securities in accordance with the terms of the Securities and this Indenture.

“Redemption Price” or “redemption price” shall have the meaning set forth in paragraph 6 of the Securities.

“Regular cash dividends” means quarterly or other periodic cash dividends on the Common Stock as declared by the Board as part of its cash dividend payment practices and that are not designated by the Board as extraordinary or special or other nonrecurring dividends.

“Rights” means the preferred stock purchase rights issued pursuant to the Amended and Restated Rights Agreement of the Company adopted on December 2, 1997, as amended or restated from time to time.

“Sale Price” of a single share of Common Stock or unit of any other security for which the Sale Price is to be determined on any Trading Day means the closing per share sale price for the Common Stock or such other security (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on such Trading Day as reported on The New York Stock Exchange or other

principal United States securities exchange on which the Common Stock or such other security is traded or, if the Common Stock or such other security is not listed on a United States national or regional stock exchange, as reported by the National Association of Securities Dealers Automated Quotation System or by the National Quotation Bureau Incorporated. In the absence of a quotation, the Company will determine the Sale Price on the basis of such quotations as it considers appropriate.

“**SEC**” means the Securities and Exchange Commission.

“**Securities**” means any of the Company’s Liquid Yield Option™ Notes due 2032 (Zero Coupon — Floating Rate — Senior), as amended or supplemented from time to time in accordance with the terms hereof, issued under this Indenture.

“**Securityholder**” or “**Holder**” means a person in whose name a Security is registered on the Registrar’s books.

“**Stated Maturity**”, when used with respect to any Security, means the date specified in such Security as the final fixed date on which the Contingent Principal Amount of such Security is due and payable.

“**Subsidiary**” means any corporation of which at the time of determination the Company and/or one or more Subsidiaries owns or controls directly or indirectly more than 50% of the shares of Voting Stock. “**Wholly-owned**”, when used with reference to a Subsidiary, means a Subsidiary of which all of the outstanding capital stock (except for qualifying shares) is owned by the Company or by one or more wholly-owned Subsidiaries.

“**Tax Original Issue Discount**” means the amount of ordinary interest income on a Security that must be accrued as original issue discount for United States Federal income tax purposes.

“**3-month LIBOR**” means the rate determined on the Yield Determination Date next preceding the related Yield Reset Date as:

(a) the rate for 3-month deposits in United States dollars commencing on the related Yield Reset Date, that appears on the Moneyline Telerate Page 3750 as of 11:00 A.M., London time, on the Yield Determination Date, or

(b) if fewer than two offered rates appear, or no rate appears, as the case may be, on the particular Yield Determination Date on the Moneyline Telerate Page 3750, the rate calculated by the Company of at least two offered quotations obtained by the Company after requesting the principal London offices of each of four major reference banks (which shall not include Affiliates of the Company) in the London interbank market to provide the Company with its offered quotation for deposits in United States dollars for the period of three months, commencing on the related Yield Reset Date, to prime banks in the London interbank market at approximately 11.00 A.M., London time, on that Yield Determination Date and in a principal amount that is representative for a single transaction in United States dollars in that market at that time, or

(c) if fewer than two offered quotations referred to in clause (b) are provided as requested, the rate calculated by the Company as the arithmetic mean of the rates quoted at approximately 11:00 A.M., New York time, on the particular Yield Determination Date by three major banks (which shall not include Affiliates of the Company) in The City of New York selected by the Company for loans in United States dollars to leading European banks for a period of three months and in a principal amount that is representative for a single transaction in United States dollars in that market at that time, or

(d) if the banks so selected by the Company are not quoting as mentioned in clause (c), LIBOR in effect on the particular Yield Determination Date.

“TIA” means the Trust Indenture Act of 1939, as amended by the Trust Indenture Reform Act of 1990, and as in effect on the date of this Indenture.

“Time of Determination” means the time and date of the determination of stockholders entitled to receive rights, warrants, options or a distribution, in each case, to which Sections 11.07 or 11.08 apply.

“Trading Day” means a day during which trading in securities generally occurs on The New York Stock Exchange or, if the Common Stock is not listed on The New York Stock Exchange, on the principal other national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not listed on a national or regional securities exchange, on the National Association of Securities Dealers Automated Quotation system or, if the Common Stock is not quoted on the National Association of Securities Dealers Automated Quotation System, on the principal other market on which the Common Stock is then traded.

“Trust Officer” means any officer of the Trustee assigned by the Trustee to administer its corporate trust matters.

“Trustee” means the party named as the “Trustee” in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor.

“Voting Stock” means stock of the class or classes having general voting power under ordinary circumstances to elect at least a majority of the board of directors, managers or trustees of such corporation provided that, for the purposes hereof, stock which carries only the right to vote conditionally on the happening of an event shall not be considered voting stock whether or not such event shall have happened.

“Yield” from the Issue Date through and including June 12, 2002 will equal 0% per annum and will be reset quarterly effective on each Yield Reset Date to 3-month LIBOR minus 2.0% per annum. Regardless of the level of 3-month LIBOR, the Yield shall never be less than zero and, after March 13, 2007, the Yield shall not exceed 5.5% per annum. The Yield shall be calculated using the actual number of days elapsed between the Yield Reset Dates divided by 360.

“Yield Determination Date” means the second London Banking Day preceding the related Yield Reset Date.

“Yield Reset Date” means each March 13, June 13, September 13 and December 13 of each year, commencing on June 13, 2002; provided, however, that if any Yield Reset Date would otherwise be a day that is not a Business Day, that Yield Reset Date will be postponed to the next succeeding Business Day, except if that Business Day falls in the next succeeding calendar month, that Yield Reset Date will be the immediately preceding Business Day.

Section 1.02. Other Definitions.

Term	Defined in Section
<u>“Agent Members”</u>	2.11
<u>“Associate”</u>	3.09(a)
<u>“Bankruptcy Law”</u>	6.01
<u>“Bid Solicitation Agent”</u>	2.03
<u>“Change in Control”</u>	3.09(a)
<u>“Change in Control Purchase Date”</u>	3.09(a)
<u>“Change in Control Purchase Notice”</u>	3.09(c)
<u>“Change in Control Purchase Price”</u>	3.09(a)
<u>“Company Notice”</u>	3.08(e)
<u>“Company Notice Date”</u>	3.08(c)
<u>“Common Stock Record Date”</u>	10.01
<u>“Contingent Interest Payment Date”</u>	10.02
<u>“Conversion Agent”</u>	2.03
<u>“Conversion Date”</u>	11.02
<u>“Conversion Rate”</u>	11.01
<u>“Defaulted Interest”</u>	12.02
<u>“DTC”</u>	2.03
<u>“Event of Default”</u>	6.01
<u>“Exchange Act”</u>	3.08(d)
<u>“Ex-Dividend Measurement Period”</u>	11.08
<u>“Ex-Dividend Time”</u>	11.01
<u>“Extraordinary Cash Dividend”</u>	11.08
<u>“LYONs Market Price”</u>	10.01
<u>“Measurement Period”</u>	10.01
<u>“Notice of Default”</u>	6.01
<u>“Paying Agent”</u>	2.03
<u>“Purchase Notice”</u>	3.08(a)
<u>“Registrar”</u>	2.03
<u>“Regular Record Date”</u>	12.01
<u>“Relevant Value”</u>	10.01
<u>“Securities Act”</u>	3.08(d)
<u>“Semiannual Period”</u>	10.01
<u>“Time of Determination”</u>	11.01

Whenever this Indenture refers to a provision of the TIA, such provision is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

“Commission” means the SEC.

“indenture securities” means the Securities.

“indenture security holder” means a Securityholder.

“indenture to be qualified” means this Indenture.

“indenture trustee” or “institutional trustee” means the Trustee.

“obligor” on the indenture securities means the Company.

All other TIA terms used in this Indenture that are defined by the TIA or defined by TIA reference to another statute or regulation have the meanings assigned to them by such definitions.

Section 1.03. Rules of Construction. Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with generally accepted accounting principles as in effect from time to time in The United States of America;
- (c) “or” is not exclusive;
- (d) “including” means including, without limitation; and
- (e) words in the singular include the plural, and words in the plural include the singular.

Section 1.04. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by their agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “Act” of Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and

conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgements of deeds, certifying that the individual signing such instrument or writing acknowledged to such officer the execution thereof. Where such execution is by a signer acting in a capacity other than such signer's individual capacity, such certificate or affidavit shall also constitute sufficient proof of such signer's authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The ownership of Securities shall be proved by the register for the Securities or by a certificate of the Registrar (as defined below).

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

(e) If the Company shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, by or pursuant to a resolution of the Board of Directors, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notices, consent, waiver or other Act, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for purposes of determining whether Holders of the requisite proportion of outstanding Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the outstanding Securities shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

Article II

THE SECURITIES

Section 2.01. **Form and Dating.** The Securities and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A, which is a part of this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange

rule or usage (provided that any such notation, legend or endorsement required by usage is in a form acceptable to the Company and the Trustee). Each Security shall be dated the date of its authentication.

The Securities shall be issued, initially in the form of one or more global Securities, which shall be deposited with DTC or the nominee thereof, duly executed by the Company and authenticated by the Trustee as hereinafter provided.

Each global Security shall represent such of the outstanding Securities as shall be specified therein and each shall provide that it shall represent the aggregate amount of outstanding Securities from time to time endorsed thereon and that the aggregate amount of outstanding Securities represented thereby may from time to time be reduced to reflect conversions, repurchases and redemptions. Any endorsement of a global Security to reflect the amount of any decrease in the amount of outstanding Securities represented thereby shall be made by the Trustee in accordance with instructions given by the Holder thereof as required by Section 2.11.

Section 2.02. Execution and Authentication. The Securities shall be executed by the Company by either of its Chairman or Vice Chairman of the Board, its President, its Treasurer or one of its Vice Presidents. The signature of any of these officers on the Securities may be manual or facsimile.

Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the Issue Date of such Securities.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein duly executed by the Trustee by manual signature of an authorized officer, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder.

The Trustee shall authenticate and deliver Securities for original issue in an aggregate Original Principal Amount of \$2,300,000,000 upon a Company Order without any further action by the Company. The aggregate Original Principal Amount of Securities outstanding at any time may not exceed the amount set forth in the foregoing sentence, subject to the proviso set forth therein, except as provided in Section 2.07.

Section 2.03. Registrar, Paying Agent, Conversion Agent and Depositary. The Company shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange ("Registrar"), an office or agency where Securities may be presented for purchase or payment ("Paying Agent") and an office or agency where Securities may be presented for conversion ("Conversion Agent"). The Company shall also appoint a bid solicitation agent (the "Bid Solicitation Agent") to act pursuant to paragraph 5 of the Security. None of the Company or any Subsidiary or Affiliate of either may act as Bid Solicitation Agent. The Registrar shall keep a register of the Securities and of their transfer and exchange. The

Company may have one or more co-registrars, one or more additional paying agents and one or more additional conversion agents. The term Paying Agent includes any additional paying agent. The term Conversion Agent includes any additional conversion agent.

The Company shall enter into an appropriate agency agreement with any Registrar, Paying Agent, Conversion Agent or co-registrar other than the Trustee. The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee and the Holders of the name and address of any such agent and of any change in the office or agency referred to in Section 4.05. If the Company fails to maintain a Registrar, Paying Agent or Conversion Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.06. The Company or any Subsidiary or an Affiliate of either of them may act as Paying Agent, Registrar, Conversion Agent or co-registrar.

The Company initially appoints the Trustee as Registrar, Conversion Agent and Paying Agent in connection with the Securities.

The Company initially appoints The Depository Trust Company ("DTC") to act as Depository with respect to the global Securities.

Section 2.04. Paying Agent To Hold Money and Securities in Trust. In accordance with Section 4.05 and except as otherwise provided herein, prior to or on each due date of payments in respect of any Security, the Company shall deposit with the Paying Agent a sum of money or, if permitted by the terms hereof, securities sufficient to make such payments when so becoming due. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that the Paying Agent shall hold in trust for the benefit of Securityholders or the Trustee all money and securities held by the Paying Agent for the making of payments in respect of the Securities and shall notify the Trustee of any default by the Company in making any such payment. At any time during the continuance of any default by the Company in making any payments in respect of the Securities, the Paying Agent shall, upon the written request of the Trustee, forthwith pay to the Trustee all money and securities so held in trust. If the Company, a Subsidiary or an Affiliate of either of them acts as Paying Agent, it shall segregate the money and securities held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money and securities held by it to the Trustee and to account for any money and securities disbursed by it. Upon doing so, the Paying Agent shall have no further liability for the money and securities.

Section 2.05. Securityholder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders. If the Trustee is not the Registrar, the Company shall furnish or cause to be furnished to the Trustee (i) at least semiannually on May 15 and November 15 a list of the names and addresses of Securityholders dated within 15 days of the date on which the list is furnished and (ii) at such other times as the Trustee may request in writing a list, in such form and as of such date as the Trustee may reasonably require, of the names and addresses of Securityholders.

Section 2.06. Transfer and Exchange. Upon surrender for registration of transfer of any Security, together with a written instrument of transfer reasonably satisfactory to the Trustee

duly executed by the Securityholder or such Securityholder's attorney duly authorized in writing, at the office or agency of the Company designated as Registrar or co-registrar pursuant to Section 2.03 or at the office or agency referred to in Section 4.05, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denomination or denominations, of a like aggregate Contingent Principal Amount. The Company shall not charge a service charge for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges that may be imposed in connection with the transfer or exchange of the Securities from the Securityholder requesting such transfer or exchange (other than any exchange of a temporary Security for a definitive Security not involving any change in ownership).

At the option of the Holder, Securities may be exchanged for other Securities of any authorized denomination or denominations, of a like aggregate Contingent Principal Amount, upon surrender of the Securities to be exchanged, together with a written instrument of transfer reasonably satisfactory to the Registrar duly executed by the Securityholder or such Securityholder's attorney duly authorized in writing, at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

The Company shall not be required to make, and the Registrar need not register, transfers or exchanges of (a) Securities selected for redemption (except, in the case of Securities to be redeemed in part, the portion thereof not to be redeemed), (b) any Securities in respect of which a Purchase Notice or a Change in Control Purchase Notice has been given and not withdrawn by the Holder thereof in accordance with the terms of this Indenture (except, in the case of Securities to be purchased in part, the portion thereof not to be purchased) or (c) any Securities for a period of 15 days before the mailing of a notice of redemption.

Notwithstanding any provision to the contrary herein, so long as a global Security remains outstanding and is held by or on behalf of the Depositary, transfers of a global Security, in whole or in part, shall be made only in accordance with Section 2.11 and this Section 2.06. Transfers of a global Security shall be limited to transfers of such global Security in whole, or in part, to nominees of the Depositary or to a successor of the Depositary or such successor's nominee.

Section 2.07. Replacement Securities. If (a) any mutilated Security is surrendered to the Company or the Trustee, or (b) the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Security, and there is delivered to the Company and the Trustee such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute, and upon its written request the Trustee shall authenticate and deliver, in exchange for any such mutilated Security or in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and Contingent Principal Amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, or is about to be purchased by the Company pursuant to Article 3 hereof, the Company in its discretion may, instead of issuing a new Security, pay or purchase such Security, as the case may be.

Upon the issuance of any new Securities under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) in connection therewith.

Every new Security issued pursuant to this Section in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

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

Section 2.08. Outstanding Securities: Determinations of Holders' Action. Securities outstanding at any time are all the Securities authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation, mutilated, destroyed, lost or stolen Securities for which the Trustee has authenticated and delivered a new Security in lieu therefor pursuant to Section 2.07, those paid pursuant to Section 2.07, and those described in this Section 2.08 as not outstanding. A Security does not cease to be outstanding because the Company or an Affiliate thereof holds the Security; provided, however, that in determining whether the Holders of the requisite Principal Amount of Securities have given or concurred in any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities beneficially owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor, other than Securities purchased in connection with the distribution or trading thereof, shall be disregarded and deemed not to be outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which the Trustee knows to be so owned shall be so disregarded. Subject to the foregoing, only Securities outstanding at the time of such determination shall be considered in any such determination (including, without limitation, determinations pursuant to Articles 6 and 9).

If a Security is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Trustee receives proof reasonably satisfactory to it that the replaced Security is held by a bona fide purchaser.

If the Paying Agent holds, in accordance with this Indenture, on a Redemption Date, or on the Business Day following a Purchase Date, or on the Business Day following a Change in Control Purchase Date, or at Stated Maturity, money or, if permitted by the terms hereof, securities sufficient to pay the Securities payable on that date, then on and after that date such

Securities shall cease to be outstanding and the Contingent Principal Amount of the Securities, will cease to increase, and contingent interest (if any) on such Securities shall cease to accrue and all other rights of the Holder shall terminate (other than the right to receive the applicable Redemption Price, Purchase Price or Change in Control Purchase Price, as the case may be, upon delivery of the Security in accordance with the terms of this Indenture); provided, that if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made.

If a Security is converted in accordance with Article 11, then from and after the Conversion Date such Security shall cease to be outstanding and the Contingent Principal Amount of the Securities, will cease to increase, and contingent interest (if any) shall cease to accrue on such Security.

Section 2.09. Temporary Securities. Pending the preparation of definitive Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Officers executing such Securities may determine, as conclusively evidenced by their execution of such Securities.

If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities at the office or agency of the Company designated for such purpose pursuant to Section 2.03 or 4.05, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like Contingent Principal Amount of definitive Securities of authorized denominations. Until so exchanged the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

Section 2.10. Cancellation. All Securities surrendered for payment, redemption or purchase by the Company pursuant to Article 3, conversion pursuant to Article 11, registration of transfer or exchange shall, if surrendered to any person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Securities held by the Trustee shall be disposed of by the Trustee in accordance with its standard procedures unless the Company directs by Company Order that the Trustee deliver cancelled Securities to the Company.

Section 2.11. Global Securities.

(a) Transfer and Exchange of Global Securities. A Global Security deposited with the Depositary pursuant to Section 2.01 shall be transferred to the beneficial owners thereof only if such transfer complies with Section 2.06 and (i) the Depositary notifies the Company that it is unwilling or unable to continue as depositary for such Global Security or if at any time ceases to be a “clearing agency” registered under the Exchange Act and a successor depositary is not appointed by the Company within 60 days after such notice, or (ii) an Event of Default has occurred and is continuing with respect to the Securities or (iii) the Company executes and delivers to the Trustee a Company Order to the effect that the global Securities shall be exchangeable. In any case, the Company will promptly make available to the Trustee a reasonable supply of Securities in definitive, fully registered form without interest coupons in accordance with the provisions of this Article 2.

Any Global Security that is transferable to the beneficial owners thereof pursuant to this Section 2.11 shall be surrendered by the Depositary to the Trustee located in the Borough of Manhattan, The City of New York, to be so transferred, in definitive form, in whole or from time to time in part, in denominations of \$1,000 Original Principal Amount and integral multiples of \$1,000 Original Principal Amount, without charge, and the Trustee shall authenticate and deliver, upon such transfer of each portion of such Global Security, an equal aggregate Original Principal Amount of Securities of authorized denominations. Any portion of a Global Security transferred pursuant to this Section 2.11 shall be executed, authenticated and delivered only in the denominations specified in the form of Security attached as Exhibit A hereto and registered in such names as the Depositary shall direct.

Members of, or participants in, the Depositary (“Agent Members”) shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depositary or under the Global Security, and the Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall (A) prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or (B) impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a holder of any Security.

Subject to the provisions of this Section 2.11(a), the Holder may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities.

(b) Transfer and Exchange of Securities. Subject to the provisions of Section 2.11(a), when Securities are presented by a Holder to the Registrar with a request:

(1) to register the transfer of the Securities; or

(2) to exchange such Securities for an equal Original Principal Amount of Securities of other authorized denominations,

the Registrar shall register the transfer or make the exchange as requested; provided, however, that the Securities presented or surrendered for register of transfer or exchange shall be duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by such Holder's attorney, duly authorized in writing.

Section 2.12. CUSIP Numbers. The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the CUSIP numbers.

Article III

REDEMPTION AND PURCHASES

Section 3.01. Right to Redeem; Notices to Trustee.

The Company, at its option, may redeem the Securities in accordance with the provisions of paragraphs 6 and 8 of the Securities. If the Company elects to redeem Securities pursuant to paragraph 6 of the Securities, it shall notify the Trustee in writing of the Redemption Date, the Original Principal Amount of Securities to be redeemed and the Redemption Price.

The Company shall give the notice to the Trustee provided for in this Section 3.01 by a Company Order at least 60 days before the Redemption Date (unless a shorter notice shall be satisfactory to the Trustee). If fewer than all the Securities are to be redeemed, the record date relating to such redemption shall be selected by the Company and given to the Trustee, which record date shall not be less than ten days after the date of notice to the Trustee.

Section 3.02. Selection of Securities to Be Redeemed.

If less than all the Securities are to be redeemed, the Trustee shall select the Securities to be redeemed pro rata based on ownership thereof or by lot or by any other method the Trustee considers fair and appropriate (so long as such method is not prohibited by the rules of any stock exchange on which the Securities are then listed). The Trustee shall make the selection at least 30 days but not more than 60 days before the Redemption Date from outstanding Securities not previously called for redemption. The Trustee may select for redemption portions of the Original Principal Amount of Securities that have denominations larger than \$1,000.

Securities and any portions thereof that the Trustee selects shall be in Original Principal Amounts of \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption. The Trustee shall notify the Company promptly of the Securities or portions of Securities to be redeemed.

If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted during a selection of Securities to be redeemed may be treated by the Trustee as outstanding for the purpose of such selection.

Nothing in this Section 3.02 shall affect the right of any Holder to convert any Security pursuant to Article 11 before the termination of the conversion right with respect thereto.

Section 3.03. Notice of Redemption.

At least 30 days but not more than 60 days before a Redemption Date, the Company shall give notice of redemption to each Holder of Securities to be redeemed in the manner provided in Section 13.02.

The notice shall identify the Securities to be redeemed and shall state:

- (a) the Redemption Date;
- (b) the Redemption Price;
- (c) the Conversion Rate;
- (d) the name and address of the Paying Agent and Conversion Agent and of the office or agency referred to in Section 4.05;
- (e) that Securities called for redemption may be converted at any time before the close of business on the second Business Day immediately preceding the Redemption Date, even if not otherwise convertible at such time;
- (f) that Holders who want to convert Securities must satisfy the requirements set forth in paragraph 9 of the Securities;
- (g) that Securities called for redemption must be surrendered to the Paying Agent or at the office or agency referred to in Section 4.05 to collect the Redemption Price;
- (h) if fewer than all the outstanding Securities are to be redeemed, the certificate numbers and Original Principal Amounts of the particular Securities to be redeemed;

(i) that, unless the Company defaults in making payment of such Redemption Price on Securities called for redemption, the Contingent Principal Amount will cease to increase and contingent interest (if any) will cease to accrue on and after the Redemption Date; and

(j) the CUSIP number of the Securities.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at the Company's expense, provided that the Company makes such request at least 15 days (unless a shorter period shall be acceptable to the Trustee) prior to the date such notice of redemption must be mailed.

Section 3.04. Effect of Notice of Redemption. Once notice of redemption is given, Securities called for redemption become due and payable on the Redemption Date and at the Redemption Price stated in the notice except for Securities which are converted in accordance with the terms of this Indenture. Upon surrender to the Paying Agent, such Securities shall be paid at the Redemption Price stated in the notice.

Section 3.05. Deposit of Redemption Price. Prior to 10:00 a.m. (New York City time), on the Redemption Date, the Company shall deposit with the Paying Agent (or if the Company or a Subsidiary of the Company or an Affiliate of any of them is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the Redemption Price of all Securities to be redeemed on that date other than Securities or portions of Securities called for redemption which on or prior thereto have been delivered by the Company to the Trustee for cancellation or have been converted. The Paying Agent shall as promptly as practicable return to the Company any money not required for that purpose because of conversion of Securities pursuant to Article 11. If such money is then held by the Company or a Subsidiary or an Affiliate of the Company in trust and is not required for such purpose it shall be discharged from such trust.

Section 3.06. Securities Redeemed in Part. Upon surrender of a Security that is redeemed in part, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Security in an authorized denomination equal in Original Principal Amount to the unredeemed portion of the Security surrendered.

Section 3.07. [Reserved].

Section 3.08. Purchase of Securities at the Option of the Holder. (a) General. If a Holder exercises its right to require the Company to repurchase the Securities, the Securities shall be purchased by the Company on the applicable Purchase Date, at a purchase price equal to the Contingent Principal Amount of the Securities on the applicable Purchase Date, at the option of the Holder thereof, upon:

(1) delivery to the Paying Agent, by the Holder, of a written notice of purchase (a "Purchase Notice") at any time from the opening of business on the date that is at least 20 Business Days prior to a Purchase Date until the close of business on the Business Day immediately preceding such Purchase Date stating:

(A) the certificate number of the Security which the Holder will deliver to be purchased,

(B) the portion of the Original Principal Amount of the Security which the Holder will deliver to be purchased, which portion must be an Original Principal Amount of \$1,000 or an integral multiple thereof,

(C) that such Security shall be purchased as of the Purchase Date pursuant to the terms and conditions specified in the Securities, and

(D) in the event the Company elects, pursuant to Section 3.08(b), to pay the Purchase Price to be paid as of such Purchase Date, in whole or in part, in shares of Common Stock but such portion of the Purchase Price shall ultimately be payable to such Holder entirely in cash because any of the conditions to payment of the Purchase Price (or a portion thereof) in Common Stock is not satisfied prior to the close of business on such Purchase Date, as set forth in Section 3.08(d), whether such Holder elects (i) to withdraw such Purchase Notice as to some or all of the Securities to which such Purchase Notice relates (stating the Original Principal Amount and certificate numbers of the Securities as to which such withdrawal shall relate), or (ii) to receive cash in respect of the entire Purchase Price for all Securities (or portions thereof) to which such Purchase Notice relates; and

(2) delivery of such Security to the Paying Agent prior to, on or after the Purchase Date (together with all necessary endorsements) at the offices of the Paying Agent, such delivery being a condition to receipt by the Holder of the Purchase Price therefor; provided, however, that such Purchase Price shall be so paid pursuant to this Section 3.08 only if the Security so delivered to the Paying Agent shall conform in all respects to the description thereof in the related Purchase Notice, as determined by the Company.

If a Holder, in such Holder's Purchase Notice and in any written notice of withdrawal delivered by such Holder pursuant to the terms of Section 3.10, fails to indicate such Holder's choice with respect to the election set forth in clause (D) of Section 3.08(a)(1), such Holder shall be deemed to have elected to receive cash in respect of the Purchase Price for all Securities subject to such Purchase Notice in the circumstances set forth in such clause (D).

The Company shall purchase from the Holder thereof, pursuant to this Section 3.08, a portion of a Security if the Original Principal Amount of such portion is \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to the purchase of all of a Security also apply to the purchase of such portion of such Security.

Any purchase by the Company contemplated pursuant to the provisions of this Section 3.08 shall be consummated by the delivery of the consideration to be received by the Holder as promptly as practicable following the later of the Purchase Date and the time of delivery of the Security.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent or the office or agency referred to in Section 4.05 the Purchase Notice contemplated by this Section 3.08(a) shall have the right to withdraw such Purchase Notice at any time prior to the close of business on the Purchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.10.

The Paying Agent shall promptly notify the Company of the receipt by it of any Purchase Notice or written notice of withdrawal thereof.

(b) Company's Right to Elect Manner of Payment of Purchase Price. The Securities to be purchased pursuant to Section 3.08(a) may be paid for, at the election of the Company, in cash or Common Stock, or in any combination of cash and Common Stock, subject to the conditions set forth in Sections 3.08(c) and (d). The Company shall designate, in the Company Notice delivered pursuant to Section 3.08(e), whether the Company will purchase the Securities for cash or Common Stock, or, if a combination thereof, the percentages of the Purchase Price of Securities in respect of which it will pay in cash or Common Stock; provided that the Company will pay cash for fractional interests in Common Stock. For purposes of determining the existence of potential fractional interests, all Securities subject to purchase by the Company held by a Holder shall be considered together (no matter how many separate certificates are to be presented). Each Holder whose Securities are purchased pursuant to this Section 3.08 shall receive the same percentage of cash or Common Stock in payment of the Purchase Price for such Securities, except (i) as provided in Section 3.08(d) with regard to the payment of cash in lieu of fractional shares of Common Stock and (ii) in the event that the Company is unable to purchase the Securities of a Holder or Holders for Common Stock because any of the conditions specified in Section 3.08(d) have not been satisfied, the Company may purchase the Securities of such Holder or Holders for cash. The Company may not change its election with respect to the consideration (or components or percentages of components thereof) to be paid once the Company has given its Company Notice to Securityholders except pursuant to this Section 3.08(b) or pursuant to Section 3.08(d) in the event of a failure to satisfy, prior to the close of business on the Purchase Date, any condition to the payment of the Purchase Price, in whole or in part, in Common Stock.

At least three Business Days before the Company Notice Date, the Company shall deliver an Officers' Certificate to the Trustee specifying:

- (i) the manner of payment selected by the Company,
- (ii) the information required by Section 3.08(e),
- (iii) if the Company elects to pay the Purchase Price, or a specified percentage thereof, in Common Stock, that the conditions to such manner of payment set forth in Section 3.08(d) have been or will be complied with, and

(iv) whether the Company desires the Trustee to give the Company Notice required by Section 3.08(e).

(c) Purchase with Cash. On each Purchase Date, at the option of the Company, the Purchase Price of Securities in respect of which a Purchase Notice pursuant to Section 3.08(a) has been given, or a specified percentage thereof, may be paid by the Company with cash equal to the aggregate Purchase Price of such Securities.

(d) Payment by Issuance of Common Stock. On each Purchase Date, at the option of the Company, the Purchase Price of Securities in respect of which a Purchase Notice pursuant to Section 3.08(a) has been given, or a specified percentage thereof, may be paid by the Company by the issuance of a number of shares of Common Stock equal to the quotient obtained by dividing (i) the amount of cash to which the Securityholders would have been entitled had the Company elected to pay all or such specified percentage, as the case may be, of the Purchase Price of such Securities in cash by (ii) the Market Price of a share of Common Stock, subject to the next succeeding paragraph.

The Company will not issue a fractional share of Common Stock in payment of the Purchase Price. Instead the Company will pay cash for the current market value of the fractional share. The current market value of a fraction of a share shall be determined by multiplying the Market Price by such fraction and rounding the product to the nearest whole cent. It is understood that if a Holder elects to have more than one Security purchased, the number of shares of Common Stock shall be based on the aggregate amount of Securities to be purchased.

Upon a payment by Common Stock pursuant to the terms hereof, the Original Principal Amount and increases in the Contingent Principal Amount and accrued Tax Original Issue Discount attributable to the period from the Issue Date to the Purchase Date with respect to the purchased Security shall not be cancelled, extinguished or forfeited but rather shall be deemed paid in full to the Holder through the delivery of the Common Stock in exchange for the Security being purchased pursuant to the terms hereof, and the fair market value of such Common Stock (together with any cash payments in lieu of fractional shares of Common Stock) shall be treated as issued, to the extent thereof, first in exchange for increases in the Contingent Principal Amount and Tax Original Issue Discount accrued through the Purchase Date, and the balance, if any, of the fair market value of such shares of Common Stock shall be treated as issued in exchange for the Issue Price of the Security being purchased pursuant to the provisions hereof. If the Company elects to purchase the Securities by the issuance of shares of Common Stock, the Company Notice, as provided in Section 3.08(e), shall be sent to the Holders (and to beneficial owners as required by applicable law) not later than the Company Notice Date.

The Company's right to exercise its election to purchase the Securities pursuant to Section 3.08 through the issuance of shares of Common Stock shall be conditioned upon:

(1) the Company's not having given a Company Notice stating its election to pay entirely in cash for the Securities and its giving of timely Company Notice of election to purchase all or a specified percentage of the Securities with Common Stock as provided herein;

(2) the shares of Common Stock having been admitted for listing or admitted for listing subject to notice of issuance on the principal United States securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a national or regional securities exchange, admitted for quotation on the National Association of Securities Dealers Automated Quotation System;

(3) the registration of the shares of Common Stock to be issued in respect of the payment of the Purchase Price under the Securities Act of 1933, as amended (the “Securities Act”), and the Securities Exchange Act of 1934, as amended (the “Exchange Act”), in each case, if required;

(4) any necessary qualification or registration of the Common Stock under applicable state securities laws or the availability of an exemption from such qualification and registration; and

(5) the receipt by the Trustee of an Officers’ Certificate and an Opinion of Counsel each stating that (A) the terms of the issuance of the Common Stock are in conformity with this Indenture and (B) the shares of Common Stock to be issued by the Company in payment of the Purchase Price in respect of Securities have been duly authorized and, when issued and delivered pursuant to the terms of this Indenture in payment of the Purchase Price in respect of the Securities, will be validly issued, fully paid and nonassessable and shall be free of any preemptive rights and any lien or adverse claim (provided that such Opinion of Counsel may state that, insofar as it relates to the absence of such preemptive rights, liens and adverse claims, it is given upon the best knowledge of such counsel), and, in the case of such Officers’ Certificate, stating that conditions (1), (2), (3) and (4) above and the condition set forth in the second succeeding sentence have been satisfied and, in the case of such Opinion of Counsel, stating that conditions (2), (3) and (4) above have been satisfied.

Such Officers’ Certificate shall also set forth the number of shares of Common Stock to be issued for each \$1,000 Original Principal Amount of Securities and the Sale Price of a share of Common Stock on each Trading Day during the period for which the Market Price is calculated. The Company may pay the Purchase Price (or any portion thereof) in Common Stock only if the information necessary to calculate the Market Price is published in a daily newspaper of national circulation or by other appropriate means. If the foregoing conditions are not satisfied with respect to a Holder or Holders prior to the close of business on the Purchase Date and the Company has elected to purchase the Securities pursuant to this Section 3.08 through the issuance of shares of Common Stock, the Company shall pay the entire Purchase Price of the Securities of such Holder or Holders in cash.

(e) Notice of Election. The Company’s notice of election to purchase with cash or Common Stock or any combination thereof shall be sent to the Holders (and to beneficial owners as required by applicable law) in the manner provided in Section 13.02 (the “Company Notice”). The Company Notice shall be sent to the Holders (and to beneficial owners as required by applicable law) not less than 20 Business Days prior to

the applicable Purchase Date (the “Company Notice Date”). Such Company Notice shall state the manner of payment elected and shall contain the following information:

In the event the Company has elected to pay the Purchase Price (or a specified percentage thereof) with Common Stock, the Company Notice shall:

(1) state that each Holder will receive Common Stock with a Market Price determined as of a specified date prior to the Purchase Date equal to such specified percentage of the Purchase Price of the Securities held by such Holder (except any cash amount to be paid in lieu of fractional shares);

(2) set forth the method of calculating the Market Price of the Common Stock; and

(3) state that because the Market Price of Common Stock will be determined prior to the Purchase Date, Holders will bear the market risk with respect to the value of the Common Stock to be received from the date such Market Price is determined to the Purchase Date.

In any case, each Company Notice shall include a form of Purchase Notice to be completed by a Securityholder that wishes to exercise its option to have the Company repurchase the Securities and shall state:

(i) the Purchase Price, the Conversion Rate and, to the extent known at the time of such notice, the amount of contingent interest, if any, that will be accrued and payable with respect to the Securities as of the Purchase Date;

(ii) whether the Company will pay the Purchase Price in cash or in Common Stock or any combination thereof, specifying the percentage of each;

(iii) the name and address of the Paying Agent and the Conversion Agent and of the office or agency referred to in Section 4.05;

(iv) that Securities as to which a Purchase Notice has been given may be converted pursuant to Article 11 hereof only if any applicable Purchase Notice has been withdrawn in accordance with the terms of this Indenture;

(v) that Securities must be surrendered to the Paying Agent or to the office or agency referred to in Section 4.05 to collect payment of the Purchase Price;

(vi) that the Purchase Price for any Security as to which a Purchase Notice has been given and not withdrawn will be paid as

promptly as practicable following the later of the Purchase Date and the time of surrender of such Security as described in (v);

(vii) the procedures the Holder must follow to exercise rights under Section 3.08 and a brief description of those rights;

(viii) briefly, the conversion rights of the Securities and that Holders who want to convert Securities must satisfy the requirements set forth in paragraph 9 of the Securities;

(ix) the procedures for withdrawing a Purchase Notice (including, without limitation, for a conditional withdrawal pursuant to the terms of Section 3.08(a)(1)(D) or Section 3.10);

(x) that, unless the Company defaults in making payment of such Purchase Price on Securities surrendered for purchase, the Contingent Principal Amount will cease to increase and contingent interest, if any, will cease to accrue on and after the Purchase Date; and

(xi) the CUSIP number of the Securities.

At the Company's request and upon being provided with a copy of such Company Notice, the Trustee shall give such Company Notice in the Company's name and at the Company's expense, provided that the Company makes such request at least 15 days (unless a shorter period shall be acceptable to the Trustee) prior to the date such Company Notice must be mailed; and provided, further, that, in all cases, the text of such Company Notice shall be prepared by the Company.

Upon determination of the actual number of shares of Common Stock to be issued for each \$1,000 Original Principal Amount of Securities, the Company will issue a press release and publish such determination on the Company's web site or, at the Company's option, otherwise publicly disclose such information.

(f) Covenants of the Company. All shares of Common Stock delivered upon purchase of the Securities shall be newly issued shares or treasury shares, shall be duly authorized, validly issued, fully paid and nonassessable and shall be free from preemptive rights and free of any lien or adverse claim, and the Common Stock will be entitled to the benefits of the Amended and Restated Rights Agreement adopted December 2, 1997 equally with other shares of Common Stock.

The Company shall use its reasonable efforts to list or cause to have quoted any shares of Common Stock to be issued to purchase Securities on the principal United States securities exchange or over-the-counter or other domestic market on which any other shares of the Common Stock are then listed or quoted. The Company will promptly inform the Trustee in writing of any such listing.

(g) Procedure upon Purchase. On or before the Purchase Date, the Company shall deposit cash (in respect of a cash purchase under Section 3.08(c) or for fractional interests, as applicable) or shares of Common Stock, or a combination thereof, as applicable, at the time and in the manner as provided in Section 3.11, sufficient to pay the aggregate Purchase Price of all Securities to be purchased pursuant to this Section 3.08. As soon as practicable after the Purchase Date, the Company shall deliver to each Holder entitled to receive Common Stock through the Paying Agent, a certificate for the number of full shares of Common Stock issuable in payment of the Purchase Price and cash in lieu of any fractional interests. The person in whose name the certificate for Common Stock is registered shall be treated as a holder of record of shares of Common Stock on the Business Day following the Purchase Date. Subject to Section 3.08(d), no payment or adjustment will be made for dividends on the Common Stock the record date for which occurred on or prior to the Purchase Date.

(h) Taxes. If a Holder of a Security is paid in Common Stock, the Company shall pay any documentary, stamp or similar issue or transfer tax due on such issue of shares of Common Stock. However, the Holder shall pay any such tax which is due because the Holder requests the shares of Common Stock to be issued in a name other than the Holder's name. The Paying Agent may refuse to deliver the certificates representing the Common Stock being issued in a name other than the Holder's name until the Paying Agent receives a sum sufficient to pay any tax which will be due because the shares of Common Stock are to be issued in a name other than the Holder's name. Nothing herein shall preclude the Company from withholding or directing the withholding of any tax required by law or regulations.

Section 3.09. Purchase of Securities at Option of the Holder upon Change in Control.

(a) If on or prior to March 13, 2007 there shall have occurred a Change in Control, Securities shall be purchased by the Company, at the option of the Holder thereof, at a purchase price specified in paragraph 7 of the Securities (the "Change in Control Purchase Price"), as of the date that is no later than 35 Business Days after the occurrence of the Change in Control (the "Change in Control Purchase Date"), subject to satisfaction by or on behalf of the Holder of the requirements set forth in Section 3.09(c).

A "Change in Control" shall be deemed to have occurred at such time as either of the following events shall occur:

(1) any person, including any Affiliate or Associate of the Company, other than the Company, its Subsidiaries, or their employee benefit plans, files a Schedule 13D or Schedule TO (or any successor schedule, form or report under the Exchange Act) disclosing that such person has become the beneficial owner of 50% or more of the aggregate voting power of the Common Stock and other capital stock with equivalent voting rights, or other capital stock into which the Common Stock is reclassified or changed, provided, however, that a person shall not be deemed a beneficial owner of, or to own beneficially, (A) any securities tendered pursuant to a tender or exchange offer

made by or on behalf of such person or any of such person's Affiliates or Associates until such tendered securities are accepted for purchase or exchange thereunder, or (B) any securities if such beneficial ownership (1) arises solely as a result of a revocable proxy delivered in response to a proxy or consent solicitation made pursuant to the applicable rules and regulations under the Exchange Act, and (2) is not also then reportable on Schedule 13D (or any successor schedule) under the Exchange Act; or

(2) there shall be consummated any share exchange, consolidation or merger of the Company pursuant to which the Common Stock would be converted into cash, securities or other property in which the holders of the Common Stock and other capital stock with equivalent voting rights immediately prior to such share exchange, consolidation or merger, have, directly or indirectly, less than a majority of the total voting power in the aggregate of all classes of capital stock of the continuing and surviving corporation immediately after such share exchange, consolidation or merger of the Company.

Notwithstanding the foregoing provisions of this Section 3.09, a Change in Control shall not be deemed to have occurred by virtue of the Company, any Subsidiary, any employee stock ownership plan or any other employee benefit plan of the Company or any Subsidiary, or any person holding Common Stock for or pursuant to the terms of any such employee benefit plan, filing or becoming obligated to file a report under or in response to Schedule 13D or Schedule TO (or any successor schedule, form or report) under the Exchange Act disclosing beneficial ownership by it of shares of Common Stock, whether in excess of 50% or otherwise.

"Associate" shall have the meaning ascribed to such term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date hereof.

(b) Within 15 Business Days after the occurrence of a Change in Control, the Company shall mail a written notice of Change in Control by first-class mail to the Trustee and to each Holder (and to beneficial owners as required by applicable law). The notice shall include a form of Change in Control Purchase Notice to be completed by the Securityholder and shall state:

- (1) briefly, the events causing a Change in Control and the date of such Change in Control;
- (2) the date by which the Change in Control Purchase Notice pursuant to this Section 3.09 must be given;
- (3) the Change in Control Purchase Date;
- (4) the Change in Control Purchase Price;
- (5) the name and address of the Paying Agent and the Conversion Agent and of the office or agency referred to in Section 4.05;
- (6) the Conversion Rate and any adjustments thereto;

(7) that Securities as to which a Change in Control Purchase Notice is given by the Holder may be converted, if otherwise convertible, only if the Change in Control Purchase Notice has been withdrawn in accordance with the terms of this Indenture;

(8) that Securities must be surrendered to the Paying Agent or the office or agency referred to in Section 4.05 to collect payment of the Change in Control Purchase Price;

(9) that the Change in Control Purchase Price for any Security as to which a Change in Control Purchase Notice has been duly given and not withdrawn will be paid as promptly as practicable following the later of the Change in Control Purchase Date and the time of surrender of such Security as described in clause (8), above;

(10) the procedures the Holder must follow to exercise rights under this Section 3.09 and a brief description of those rights;

(11) briefly, the conversion rights of the Securities (including whether the Securities are then currently convertible);

(12) the procedures for withdrawing a Change in Control Purchase Notice;

(13) that, unless the Company defaults in making payment of such Change in Control Purchase Price on Securities surrendered for purchase, the Contingent Principal Amount will cease to increase and contingent interest, if any, will cease to accrue on and after the Change in Control Purchase Date; and

(14) the CUSIP number of the Securities.

(c) A Holder may exercise its rights specified in Section 3.09(a) upon delivery of a written notice of purchase (a "Change in Control Purchase Notice") to the Paying Agent or to the office or agency referred to in Section 4.05 at any time prior to the close of business on the Change in Control Purchase Date, stating:

(1) the certificate number of the Security which the Holder will deliver to be purchased;

(2) the portion of the Original Principal Amount of the Securities which the Holder will deliver to be purchased, which portion must be \$1,000 or an integral multiple thereof; and

(3) that such Security shall be purchased pursuant to the terms and conditions specified in the Securities.

The delivery of such Security to the Paying Agent prior to, on or after the Change in Control Purchase Date (together with all necessary endorsements) at the offices of the Paying

Agent or to the office or agency referred to in Section 4.05 shall be a condition to the receipt by the Holder of the Change in Control Purchase Price therefor; provided, however, that such Change in Control Purchase Price shall be so paid pursuant to this Section 3.09 only if the Security so delivered to the Paying Agent or such office or agency shall conform in all respects to the description thereof set forth in the related Change in Control Purchase Notice and such Change in Control Purchase Notice shall not be validly withdrawn by the Holder.

The Company shall purchase from the Holder thereof, pursuant to this Section 3.09, a portion of a Security if the Original Principal Amount of such portion is \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to the purchase of all of a Security also apply to the purchase of such portion of such Security.

Any purchase by the Company contemplated pursuant to the provisions of this Section 3.09 shall be consummated by the delivery of the consideration to be received by the Holder as promptly as practicable following the later of the Change in Control Purchase Date and the time of delivery of the Security to the Paying Agent or to the office or agency referred to in Section 4.05 in accordance with this Section 3.09.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent or to the office or agency referred to in Section 4.05 the Change in Control Purchase Notice contemplated by this Section 3.09(c) shall have the right to withdraw such Change in Control Purchase Notice at any time prior to the close of business on the Change in Control Purchase Date by delivery of a written notice of withdrawal to the Paying Agent or to the office or agency referred to in Section 4.05 in accordance with Section 3.10.

The Paying Agent shall promptly notify the Company of the receipt by it of any Change in Control Purchase Notice or written withdrawal thereof.

Section 3.10. Effect of Purchase Notice or Change in Control Purchase Notice. Upon receipt by the Paying Agent of the Purchase Notice or Change in Control Purchase Notice specified in Section 3.08(a) or Section 3.09(c), as applicable, the Holder of the Security in respect of which such Purchase Notice or Change in Control Purchase Notice, as the case may be, was given shall (unless such Purchase Notice or Change in Control Purchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Purchase Price or Change in Control Purchase Price, as the case may be, with respect to such Security to the Purchase Date or Change in Control Purchase Date, as the case may be. Such Purchase Price or Change in Control Purchase Price shall be paid to such Holder, subject to receipts of funds and/or Common Stock by the Paying Agent, as promptly as practicable following the later of (x) the Purchase Date or the Change in Control Purchase Date, as the case may be, with respect to such Security (provided the conditions in Section 3.08(a) or Section 3.09(c), as applicable, have been satisfied) and (y) the time of delivery of such Security to the Paying Agent by the Holder thereof in the manner required by Section 3.08(a) or Section 3.09(c), as applicable. Securities in respect of which a Purchase Notice or Change in Control Purchase Notice, as the case may be, has been given by the Holder thereof may not be converted pursuant to Article 11 hereof on or after the date of the delivery of such Purchase Notice or Change in Control

Purchase Notice, as the case may be, unless such Purchase Notice or Change in Control Purchase Notice, as the case may be, has first been validly withdrawn as specified in the following two paragraphs.

A Purchase Notice or Change in Control Purchase Notice, as the case may be, may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent or to the office or agency referred to in Section 4.05 in accordance with the Purchase Notice or Change in Control Purchase Notice, as the case may be, at any time prior to the close of business on the Purchase Date or the Change in Control Purchase Date, as the case may be, specifying:

- (1) the Original Principal Amount of the Securities with respect to which such notice of withdrawal is being submitted,
- (2) the certificate number of the Securities in respect of which such notice of withdrawal is being submitted, and
- (3) the Original Principal Amount, if any, of any such Securities which remain subject to the original Purchase Notice or Change in Control Purchase Notice, as the case may be, and which has been or will be delivered for purchase by the Company.

A written notice of withdrawal of a Purchase Notice may be in the form set forth in the preceding paragraph or may be in the form of (i) a conditional withdrawal contained in a Purchase Notice pursuant to the terms of Section 3.08(a)(1)(D) or (ii) a conditional withdrawal containing the information set forth in Section 3.08(a)(1)(D) and the preceding paragraph and contained in a written notice of withdrawal delivered to the Paying Agent as set forth in the preceding paragraph.

There shall be no purchase of any Securities pursuant to Section 3.08 (other than through the issuance of Common Stock in payment of the Purchase Price, including cash in lieu of fractional shares) or 3.09 if there has occurred (prior to, on or after, as the case may be, the giving, by the Holders of such Securities, of the required Purchase Notice or Change in Control Purchase Notice, as the case may be) and is continuing an Event of Default (other than a default in the payment of the Purchase Price or Change in Control Purchase Price, as the case may be, with respect to such Securities). The Paying Agent will promptly return to the respective Holders thereof any Securities (x) with respect to which a Purchase Notice or Change in Control Purchase Notice, as the case may be, has been withdrawn in compliance with this Indenture, or (y) held by it during the continuance of an Event of Default (other than a default in the payment of the Purchase Price or Change in Control Purchase Price, as the case may be, with respect to such Securities) in which case, upon such return, the Purchase Notice or Change in Control Purchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 3.11. Deposit of Purchase Price or Change in Control Purchase Price. Prior to 10:00 a.m. New York City time on the Business Day following the Purchase Date or the Change in Control Purchase Date, as the case may be, the Company shall deposit with the Trustee or with the Paying Agent (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.04) an amount of money (in immediately available funds if deposited on such Business Day) or

Common Stock, if permitted hereunder, sufficient to pay the aggregate Purchase Price or Change in Control Purchase Price, as the case may be, of all the Securities or portions thereof which are to be purchased as of the Purchase Date or Change in Control Purchase Date, as the case may be. After the Purchase Date or the Change in Control Purchase Date, the Contingent Principal Amount shall cease to increase, Tax Original Issue Discount, and contingent interest, if any, shall cease to accrue on such Security, whether or not such Security is delivered to the Paying Agent.

Section 3.12. Securities Purchased in Part. Any Security which is to be purchased only in part shall be surrendered at the office of the Paying Agent or to the office or agency referred to in Section 4.05 (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security, without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder in aggregate Original Principal Amount equal to, and in exchange for, the portion of the Original Principal Amount of the Security so surrendered which is not purchased.

Section 3.13. Covenant to Comply With Securities Laws Upon Purchase of Securities. In connection with any offer to purchase or purchase of Securities under Section 3.08 or 3.09 hereof (provided that such offer or purchase constitutes an "issuer tender offer" for purposes of Rule 13e-4 (which term, as used herein, includes any successor provision thereto) under the Exchange Act at the time of such offer or purchase), the Company shall (i) comply with Rule 13e-4 and Rule 14e-1 under the Exchange Act and any other then applicable tender offer rules, (ii) file the related Schedule TO (or any successor schedule, form or report) under the Exchange Act, and (iii) otherwise comply with all Federal and state securities laws so as to permit the rights and obligations under Sections 3.08 and 3.09 to be exercised in the time and in the manner specified in Sections 3.08 and 3.09.

Section 3.14. Repayment to the Company. The Trustee and the Paying Agent shall return to the Company any cash or shares of Common Stock that remain unclaimed as provided in paragraph 14 of the Securities, together with interest or dividends, if any, thereon (subject to the provisions of Section 7.01(f)), held by them for the payment of the Purchase Price or Change in Control Purchase Price, as the case may be; provided, however, that to the extent that the aggregate amount of cash or shares of Common Stock deposited by the Company pursuant to Section 3.11 exceeds the aggregate Purchase Price or Change in Control Purchase Price, as the case may be, of the Securities or portions thereof which the Company is obligated to purchase as of the Purchase Date or Change in Control Purchase Date, as the case may be, then as promptly as practicable after the Business Day following the Purchase Date or Change in Control Purchase Date, as the case may be, the Trustee shall return any such excess to the Company together with interest or dividends, if any, thereon (subject to the provisions of Section 7.01(f)).

Notwithstanding anything in this Indenture to the contrary, all moneys delivered to the Trustee (in any capacity) for payment to Holders shall remain uninvested unless otherwise agreed to in writing between the Company and the Trustee.

Article IV
COVENANTS

Section 4.01. Payment of Securities. The Company shall promptly make all payments in respect of the Securities on the dates and in the manner provided in the Securities or pursuant to this Indenture. Original Principal Amount, Contingent Principal Amount, Tax Original Issue Discount, Redemption Price, Purchase Price, Change in Control Purchase Price and contingent interest, if any, shall be considered paid on the applicable date due if on such date the Trustee or the Paying Agent holds, in accordance with this Indenture, cash or securities, if expressly permitted hereunder, sufficient to pay all such amounts then due.

The Company shall, to the extent permitted by law, pay interest on overdue amounts at the per annum rate of interest set forth in paragraph 1 of the Securities, compounded semi-annually, which interest on overdue amounts (to the extent payment of such interest shall be legally enforceable) shall accrue from the date such overdue amounts were originally due and payable.

Section 4.02. SEC Reports. The Company shall file with the Trustee, within 15 days after it files such annual and quarterly reports, information, documents and other reports with the SEC, copies of its annual and quarterly reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act (or any such successor provisions thereto). The Company also shall comply with the other provisions of TIA Section 314(a), to the extent such provisions are applicable.

Section 4.03. Compliance Certificate; Notice of Defaults.

(a) The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2001) a certificate of the principal executive officer, the principal financial officer or the principal accounting officer of the Company stating whether or not, to the knowledge of the signer, the Company has complied with all conditions and covenants on its part contained in this Indenture and, if the signer has obtained knowledge of any default by the Company in the performance, observance or fulfillment of any such condition or covenant, specifying each such default and the nature thereof. For the purpose of this Section 4.03, compliance shall be determined without regard to any grace period or requirement of notice provided pursuant to the terms of this Indenture.

(b) The Company shall file with the Trustee written notice of the occurrence of any Default or Event of Default within five Business Days of its becoming aware of such Default or Event of Default.

Section 4.04. Further Instruments and Acts. Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

Section 4.05. Maintenance of Office or Agency. The Company will maintain in the Borough of Manhattan, The City of New York, in such location as may be required by the rules of any securities exchange or quotation system on which the Securities may from time to time be listed, an office or agency where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer, exchange, purchase, redemption or conversion and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The office of the Trustee in The City of New York, which office on the date hereof is located at 450 West 33rd Street, New York, New York 10001, shall be such office or agency for all of the aforesaid purposes unless the Company shall maintain some other office or agency for such purposes and shall give prompt written notice to the Trustee of the location, and any change of location, of such other office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee set forth in Section 13.02.

The Company may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in The City of New York, for such purposes.

Section 4.06. Calculation of Certain Amounts. (a) The Company shall file with the Trustee, within 30 days following the end of each calendar year, a written notice specifying (i) the amount of Tax Original Issue Discount (including the daily rates and accrual periods) accrued on outstanding Securities as of the end of such year and (ii) such other specific information relating to such Tax Original Issue Discount as may then be relevant under the Internal Revenue Code of 1986, as amended from time to time and (b) the Company, promptly after each Yield Determination Date, shall file with the Trustee a written notice specifying the Yield that will be applicable on the next succeeding Yield Reset Date.

Section 4.07. Limitation Upon Creation of Liens on Voting Stock of Certain Subsidiaries.

The Company will not, and it will not permit any subsidiary at any time directly or indirectly to, create, assume, incur or permit to exist any indebtedness for borrowed money secured by a pledge, lien or other encumbrance (any pledge, lien or other encumbrance being hereinafter in this Section referred to as a “lien”) on the Voting Stock of any Subsidiary (other than a Subsidiary which, at the time of incurrence of such secured indebtedness, has a net worth, as determined in accordance with generally accepted accounting principles, of less than \$3,000,000) without making effective provision whereby the outstanding securities (and, if the Company so elects, any other indebtedness ranking on a parity with the Securities), shall be secured equally and ratably with such secured indebtedness so long as such other indebtedness shall be so secured; provided, however, that the foregoing covenant shall not be applicable to liens for taxes or assessments or governmental charges or levies not then due and delinquent or the validity of which is being contested in good faith or which are less than \$1,000,000 in

amount, liens created by or resulting from any litigation or legal proceeding which is currently being contested in good faith by appropriate proceedings or which involve claims of less than \$1,000,000, or deposits to secure (or in lieu of) surety, stay, appeal or customs bonds.

If the Company shall hereafter be required to secure the Securities equally and ratably with any other indebtedness pursuant to this Section, (i) the Company will promptly deliver to the Trustee an Officers' Certificate stating that the foregoing covenant has been complied with, and an Opinion of Counsel stating that in the opinion of such counsel the foregoing covenant has been complied with and that any instruments executed by the Company or any Subsidiary in the performance of the foregoing covenant comply with the requirements of the foregoing covenant and (ii) the Trustee is hereby authorized to enter into an indenture of agreement supplemental hereto and to take such action, if any, as it may deem advisable to enable it to enforce the rights of the holders of the Securities so secured.

Section 4.08. Limitation on Disposition of Voting Stock of, and Merger and Sale of Assets by, MLPF&S.

The Company will not:

(a) sell, transfer or otherwise dispose of any shares of Voting Stock of MLPF&S or permit MLPF&S to issue, sell, or otherwise dispose of any shares of its Voting Stock, unless, after giving effect to any such transaction, MLPF&S remains a Controlled Subsidiary; or

(b) permit MLPF&S to

(1) merge or consolidate, unless the surviving company is a Controlled Subsidiary; or

(2) convey or transfer its properties and assets substantially as an entirety to any Person, except to one or more Controlled Subsidiaries.

Section 4.09. Waiver of Certain Covenants.

The Company may omit in any particular instance to comply with any term, provision or condition set forth in Sections 4.07 or 4.08 with respect to the Securities if before the time for such compliance the Holders of at least a majority in principal amount of the Outstanding Securities shall by Act of such Holders either waive such compliance in such instance or generally waive compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

Article V

SUCCESSOR CORPORATION

Section 5.01. When Company May Merge or Transfer Assets. The Company may consolidate with, or sell, lease or convey all or substantially all of its properties and assets to, or merge with or into any other Person, provided that in any such case:

(a) either the Company shall be the continuing corporation or the successor Person shall be a Person organized and existing under the laws of the United States or any State thereof and such successor Person shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of all amounts payable with respect to all the Securities, according to their terms, and the due and punctual performance and observance of all of the covenants, conditions and obligations to be performed by the Company under the Securities and this Indenture; and

(b) immediately after giving effect to such merger or consolidation or such sale, lease or conveyance, and the assumption contemplated above, the Company or such successor Person shall not be in default in the performance of any such covenant, condition or obligation.

In the case of any such consolidation, merger, sale, lease or conveyance and upon any such assumption by the successor Person, such successor Person shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor had been named as the Company herein; and thereafter, except in the case of a lease of its properties and assets substantially as an entirety, the Company shall be relieved of any further obligation under this Indenture and the Securities. Such successor Person thereupon may cause to be signed, and may issue either in its own name or in the name of the Company, any or all of the Securities issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor Person, instead of the Company, and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities which previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Securities which such successor Person thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution hereof.

In case of any such consolidation, merger, sale, lease or conveyance, such changes in phraseology and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

The Trustee, subject to Section 7.01, may receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, lease or conveyance, and any such assumption, complies with the provisions of this Article.

Article VI

DEFAULTS AND REMEDIES

Section 6.01. Events of Default. An "Event of Default" means any one of the following events:

(a) a default in the payment of the Contingent Principal Amount, Redemption Price, Purchase Price or Change in Control Purchase Price on any Security when the same becomes due and payable pursuant to the terms hereof;

(b) failure of the Company to make any payment of contingent interest when the same becomes due and payable pursuant to the terms of Article 10 hereof for a period of 30 days;

(c) the Company fails to comply with any of its agreements in the Securities or this Indenture (other than those referred to in clauses (a) or (b) above) upon the receipt of notice of such default from the Trustee or from Holders of not less than 25% in aggregate Original Principal Amount of the Securities then outstanding and such failure (or the failure to obtain a waiver thereof) continues for 60 days after receipt by the Company of a Notice of Default;

(d) the Company pursuant to or under or within the meaning of any Bankruptcy Law:

(1) commences a voluntary case or proceeding;

(2) consents to the entry of an order for relief against it in an involuntary case or proceeding or the commencement of any case against it;

(3) consents to the appointment of a Custodian of it or for any substantial part of its property;

(4) makes a general assignment for the benefit of its creditors;

(5) files a petition in bankruptcy or answer or consent seeking reorganization or relief; or

(6) consents to the filing of such petition or the appointment of or taking possession by a Custodian; or

(e) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(1) is for relief against the Company in an involuntary case or proceeding, or adjudicates the Company insolvent or bankrupt;

(2) appoints a Custodian of the Company or for any substantial part of its property; or

(3) orders the winding up or liquidation of the Company and the order or decree remains unstayed and in effect for 60 days.

“Bankruptcy Law” means Title 11, United States Code, or any similar Federal or state law for the relief of debtors.

“Custodian” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

Notwithstanding anything herein to the contrary, a Default is not an Event of Default until the Trustee notifies the Company or the Holders of at least 25% in aggregate Original Principal Amount of the Securities at the time outstanding notify the Company and the Trustee, of the Default and the Company does not cure such Default (and such Default is not waived) within the time specified in clause (b) or clause (c) above after actual receipt of such notice. Any such notice must specify the Default, demand that it be remedied and state that such notice is a “Notice of Default”.

The Company shall deliver to the Trustee, within five (5) days after it becomes aware of the occurrence thereof, written notice of any event which with the giving of notice or the lapse of time, or both, would become an Event of Default under clause (b) or clause (c) above, its status and what action the Company is taking or proposes to take with respect thereto.

Section 6.02. Acceleration. If an Event of Default (other than an Event of Default specified in Section 6.01(d) or (e)) occurs and is continuing, the Trustee by Notice to the Company or the Holders of at least 25% in aggregate Original Principal Amount of the Securities at the time outstanding by notice to the Company and the Trustee, may declare the Contingent Principal Amount through the date of such declaration, and any accrued and unpaid contingent interest through the date of such declaration, on all the Securities to be immediately due and payable. Upon such a declaration, such Contingent Principal Amount, and such accrued and unpaid contingent interest, if any, shall be due and payable immediately. If an Event of Default specified in Section 6.01(d) or (e) occurs and is continuing, the Contingent Principal Amount, and any accrued and unpaid contingent interest, on all the Securities to the date of the occurrence of such Event of Default shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Securityholders. The Holders of a majority in aggregate Original Principal Amount of the Securities at the time outstanding, by notice to the Trustee (and without notice to any other Securityholder) may rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived except nonpayment of the Contingent Principal Amount and any accrued and unpaid contingent interest that have become due solely as a result of acceleration and if all amounts due to the Trustee under Section 7.06

have been paid. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

Section 6.03. Other Remedies. If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of the Contingent Principal Amount on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if the Trustee does not possess any of the Securities or does not produce any of the Securities in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of, or acquiescence in, the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 6.04. Waiver of Past Defaults. The Holders of a majority in aggregate Original Principal Amount of the Securities at the time outstanding, by notice to the Trustee (and without notice to any other Securityholder), may waive an existing Default and its consequences except (1) an Event of Default described in Section 6.01(a), (2) a Default in respect of a provision that under Section 9.02 cannot be amended without the consent of each Securityholder affected or (3) a Default which constitutes a failure to convert any Security in accordance with the terms of Article 11. When a Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or impair any consequent right. This Section 6.04 shall be in lieu of Section 316(a)1(B) of the TIA and such Section 316(a)1(B) is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 6.05. Control by Majority. The Holders of a majority in aggregate Original Principal Amount of the Securities at the time outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines in good faith is unduly prejudicial to the rights of other Securityholders or would involve the Trustee in personal liability unless the Trustee is offered indemnity satisfactory to it. This Section 6.05 shall be in lieu of Section 316(a)1(A) of the TIA and such Section 316(a)1(A) is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 6.06. Limitation on Suits. A Securityholder may not pursue any remedy with respect to this Indenture or the Securities unless:

- (a) the Holder gives to the Trustee written notice stating that an Event of Default is continuing;
- (b) the Holders of at least 25% in aggregate Original Principal Amount of the Securities at the time outstanding make a written request to the Trustee to pursue the remedy;

(c) such Holder or Holders offer to the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;

(d) the Trustee does not comply with the request within 60 days after receipt of such notice, request and offer of security or indemnity; and

(e) the Holders of a majority in aggregate Original Principal Amount of the Securities at the time outstanding do not give the Trustee a direction inconsistent with the request during such 60-day period.

A Securityholder may not use this Indenture to prejudice the rights of any other Securityholder or to obtain a preference or priority over any other Securityholder.

Section 6.07. Rights of Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of the Contingent Principal Amount, Redemption Price, Purchase Price, Change in Control Purchase Price or contingent interest, if any, in respect of the Securities held by such Holder, on or after the respective due dates expressed in the Securities or any Redemption Date, and to convert the Securities in accordance with Article 11, or to bring suit for the enforcement of any such payment on or after such respective dates or the right to convert, shall not be impaired or affected adversely without the consent of such Holder.

Section 6.08. Collection Suit by Trustee. If an Event of Default described in Section 6.01(a) or (b) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount owing with respect to the Securities and the amounts provided for in Section 7.06.

Section 6.09. Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or its creditors, the Trustee (irrespective of whether the Contingent Principal Amount, Redemption Price, Purchase Price, Change in Control Purchase Price or contingent interest, if any, in respect of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of any such amount) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of the Contingent Principal Amount, Redemption Price, Purchase Price, Change in Control Purchase Price or contingent interest, if any, and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel or any other amounts due the Trustee under Section 7.06) and of the Holders allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.06.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10. Priorities. If the Trustee collects any money pursuant to this Article 6, it shall pay out the money in the following order:

FIRST: to the Trustee for amounts due under Section 7.06;

SECOND: to Securityholders for amounts due and unpaid on the Securities for the Contingent Principal Amount, Redemption Price, Purchase Price, Change in Control Purchase Price or contingent interest, if any, as the case may be, ratably, without preference or priority of any kind, according to such amounts due and payable on the Securities; and

THIRD: the balance, if any, to the Company.

The Trustee may fix a record date and payment date for any payment to Securityholders pursuant to this Section 6.10. At least 15 days before such record date, the Trustee shall mail to each Securityholder and the Company a notice that states the record date, the payment date and the amount to be paid.

Section 6.11. Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant (other than the Trustee) in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in aggregate Original Principal Amount of the Securities at the time outstanding. This Section 6.11 shall be in lieu of Section 315(e) of the TIA and such Section 315(e) is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 6.12. Waiver of Stay, Extension or Usury Laws. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury or other law wherever enacted, now or at any time hereafter in force, which would prohibit or forgive the Company from paying all or any portion of the Contingent Principal

Amount, Redemption Price, Purchase Price, Change in Control Purchase Price or contingent interest, if any, delivering Common Stock upon a conversion pursuant to Article 11 or paying the cash equivalent thereof, in respect of Securities, or any interest on such amounts, as contemplated herein, or which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Article VII

TRUSTEE

Section 7.01. Rights of Trustee.

(a) The Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper person and shall incur no liability in its reliance thereon. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel.

(c) The Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers.

(e) The Trustee may refuse to perform any duty or exercise any right or power or extend or risk its own funds or otherwise incur any financial liability unless it receives indemnity satisfactory to it against any loss, liability or expense.

(f) Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee (acting in any capacity hereunder) shall be under no liability for interest on any money received by it hereunder.

All rights and immunities granted to the Trustee under this Indenture shall include the Trustee acting in any capacity under this Indenture.

Section 7.02. Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, Conversion Agent or co-registrar may do the same with like rights. However, the Trustee must comply with Sections 7.09 and 7.10.

Section 7.03. Trustee's Disclaimer. The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Company's use of the proceeds from the Securities, it shall not be responsible for any statement in the registration statement for the Securities under the Securities Act or in the Indenture or the Securities (other than its certificate of authentication), or the determination as to which beneficial owners are entitled to receive any notices hereunder.

Section 7.04. Notice of Defaults. The Trustee shall, within 90 days after the occurrence of any Default, mail to all Holders of Securities, as the names and addresses of such Holders appear on the books of registry of the Company, notice of all Defaults of which the Trustee shall be aware, unless such Defaults shall have been cured or waived before the giving of such notice; provided that, except in the case of a Default described in Section 6.01(a) or 6.01(b), the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors or Trust Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of Securities.

Section 7.05. Reports by Trustee to Holders. Within 60 days after each May 15 beginning with the May 15 following the date of this Indenture, the Trustee shall mail to each Securityholder a brief report dated as of such May 15 that complies with TIA Section 313(a), if required by said Section. The Trustee also shall comply with TIA Section 313(b).

A copy of each report at the time of its mailing to Securityholders shall be provided to the Company and shall be submitted to the SEC and each stock exchange on which the Securities are listed. The Company agrees promptly to notify the Trustee whenever the Securities become listed on any stock exchange and of any delisting thereof.

Section 7.06. Compensation and Indemnity. The Company agrees:

(a) to pay to the Trustee from time to time such reasonable compensation for all services rendered by it hereunder (which compensation shall not (to the extent permitted by law) be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) to reimburse the Trustee upon its request and, if required by the Company, submission of reasonable documentation for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses, advances and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

(c) to indemnify each of the Trustee, its officers, directors, employees and agents, or any predecessor Trustee for, and to hold it harmless against, any and all loss, liability, damage, claim or expense, including taxes (other than taxes based upon, measured or determined by the income of the Trustee), incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this trust, including the reasonable costs and expenses of defending itself against any

claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

The Trustee shall give the Company notice of any claim or liability for which the Trustee might be entitled to indemnification under subparagraph (c) of this Section 7.06, within a reasonable amount of time after a Trust Officer of the Trustee becomes aware of such claim or liability. To secure the Company's payment obligations in this Section 7.06, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee.

The Company's payment obligations pursuant to this Section 7.06 shall survive the discharge of this Indenture. When the Trustee incurs expenses after the occurrence of a Default specified in Section 6.01(d) or (e), the expenses are intended to constitute expenses of administration under the Bankruptcy Law. The provisions of this Section shall survive the termination of this Indenture.

Section 7.07. Replacement of Trustee. The Trustee may resign by so notifying the Company; provided, however, no such resignation shall be effective until a successor Trustee has accepted its appointment pursuant to this Section 7.07. The Holders of a majority in aggregate Original Principal Amount of the Securities at the time outstanding may remove the Trustee by so notifying the Trustee and may appoint a successor Trustee (subject to the consent of the Company, such consent not to be unreasonably withheld). The Company shall remove the Trustee if:

- (a) the Trustee fails to comply with Section 7.09;
- (b) the Trustee is adjudged bankrupt or insolvent;
- (c) a receiver or other public officer takes charge of the Trustee or its property; or
- (d) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint, by resolution of its Board of Directors, a successor Trustee that meets the requirements of Section 7.09.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Securityholders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.06.

If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of a majority in aggregate Original Principal Amount of the Securities at the time outstanding may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.09, any Securityholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Section 7.08. Successor Trustee by Merger. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another Person, the resulting, surviving or transferee Person without any further act shall be the successor Trustee.

Section 7.09. Eligibility; Disqualification. The Trustee shall at all times satisfy the requirements of TIA Sections 310(a)(1) and 310(b). The Trustee shall have a combined capital and surplus of at least \$100,000,000 as set forth in its most recent published annual report of condition. In determining whether the Trustee has conflicting interests as defined in TIA Section 310(b)(1), the provisions contained in the proviso to TIA Section 310(b)(1) shall be deemed incorporated herein.

Section 7.10. Preferential Collection of Claims Against Company. The Trustee shall comply with TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

Article VIII

DISCHARGE OF INDENTURE

Section 8.01. Discharge of Liability on Securities. When (i) the Company delivers to the Trustee all outstanding Securities (other than Securities replaced pursuant to Section 2.07) for cancellation or (ii) all outstanding Securities have become due and payable and the Company deposits with the Trustee cash or, if expressly permitted by the terms hereof, securities sufficient to pay at the Stated Maturity, the Purchase Date, the Change in Control Purchase or the Redemption Date, the Contingent Principal Amount, the Purchase Price or contingent interest (if any shall be due and unpaid), the Change in Control Purchase Price or the Redemption Price, as the case may be, of all outstanding Securities (other than Securities replaced pursuant to Section 2.07), and if, in either case, the Company has paid all other sums payable hereunder by the Company (including, without limitation, sums payable by delivery of shares of Common Stock pursuant to Section 3.08), then this Indenture shall, subject to Section 7.06, cease to be of further effect. The Trustee shall join in the execution of a document prepared by the Company acknowledging satisfaction and discharge of this Indenture on demand of the Company accompanied by an Officers' Certificate and Opinion of Counsel and at the cost and expense of the Company.

Section 8.02. Repayment to the Company. The Trustee and the Paying Agent shall return to the Company any money or securities held by them for the payment of any amount with respect to the Securities that remains unclaimed for two years; provided, however, that the Trustee or such Paying Agent, before being required to make any such return, may, at the expense of the Company, cause to be published once in The Wall Street Journal or another daily

newspaper of national circulation or mail to each such Holder notice that such money or securities remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such mailing, any unclaimed money or securities then remaining will be returned to the Company. After return to the Company, Holders entitled to the money or securities must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person, and the Trustee and the Paying Agent shall have no further liability with respect to such money or securities for that period commencing after the return thereof.

Article IX

AMENDMENTS

Section 9.01. Without Consent of Holders. The Company and the Trustee may amend this Indenture or the Securities without the consent of any Securityholder:

- (a) to cure any ambiguity, omission, defect or inconsistency; provided, however, that such amendment does not materially adversely affect the rights of any Securityholder;
- (b) to comply with Article 5 or Section 11.14;
- (c) to provide for uncertificated Securities in addition to or in place of certificated Securities so long as such action shall not adversely affect the interests of the Holders of the Securities in any material respect;
- (d) to make any change that does not materially adversely affect the rights of any Securityholder;
- (e) to add to the covenants or obligations of the Company hereunder or to surrender any right, power or option herein conferred upon the Company;
- (f) to secure the Company's obligations under the Securities and this Indenture; or
- (g) increase the contingent interest to be paid to Holders; or
- (h) make any change to the Original Principal Amount of Securities whose Holders must consent to an amendment or supplement to this Indenture.
- (i) to make any change to comply with the TIA, or any amendment thereafter, or any requirement of the SEC in connection with the qualification of this Indenture under the TIA or any amendment thereof.

Section 9.02. With Consent of Holders. With the written consent of the Holders of at least a majority in aggregate Original Principal Amount of the Securities at the time

outstanding, the Company and the Trustee may amend this Indenture or the Securities. However, without the consent of each Securityholder affected, an amendment or supplement to this Indenture or the Securities may not:

- (a) alter the manner or rate of accrual or payment of the Contingent Principal Amount or contingent interest on any Security;
- (b) make any Security payable in money or securities other than that stated in the Security;
- (c) make any reduction in the Original Principal Amount, Contingent Principal Amount, Redemption Price, Purchase Price or Change in Control Purchase Price with respect to any Security;
- (d) make any change that adversely affects the right to convert any Security (including the right to receive cash in lieu of Common Stock except as set forth in Section 9.01(e));
- (e) make any change that adversely affects the right to require the Company to purchase the Securities pursuant to Sections 3.08 and 3.09 hereof;
- (f) impair the right of a Holder to institute a suit for the enforcement of any payment with respect to, or conversion of, the Securities;

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof.

After an amendment under this Section 9.02 becomes effective, the Company shall mail to each Holder a notice briefly describing the amendment.

Section 9.03. Compliance with Trust Indenture Act. Every supplemental indenture executed pursuant to this Article shall comply with the TIA as then in effect.

Section 9.04. Revocation and Effect of Consents, Waivers and Actions. Until an amendment or waiver becomes effective, a consent to it or any other action by a Holder of a Security hereunder is a continuing consent by the Holder and every subsequent Holder of that Security or portion of the Security that evidences the same obligation as the consenting Holder's Security, even if notation of the consent, waiver or action is not made on the Security. However, any such Holder or subsequent Holder may revoke the consent, waiver or action as to such Holder's Security or portion of the Security if the Trustee receives the notice of revocation before the date the amendment, waiver or action becomes effective. After an amendment, waiver or action becomes effective, it shall bind every Securityholder, except as provided in Section 9.02.

Section 9.05. Notation on or Exchange of Securities. Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and

shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for outstanding Securities.

Section 9.06. Trustee to Sign Supplemental Indentures. The Trustee shall sign any supplemental indenture authorized pursuant to this Article 9 if the amendment does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign it. In signing such amendment the Trustee shall be entitled to receive, and (subject to the provisions of Section 7.01) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that such amendment is authorized or permitted by this Indenture.

Section 9.07. Effect of Supplemental Indentures. Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Article X

CONTINGENT INTEREST

Section 10.01. Contingent Interest. Commencing on June 1, 2007, the Company shall make contingent interest payments to the holders of Securities, as set forth in Section 10.02 below, during any six month period from June 1 to November 30 and from December 1 to May 31 (each a "Semiannual Period") if, but only if, the LYONs Market Price of one Security during the relevant Measurement Period equals or exceeds 120% of the Contingent Principal Amount of such Security as of the May 31st or November 30th preceding the relevant Semiannual Period. During any Semiannual Period when contingent interest is payable pursuant to this section, each contingent interest payment due and payable on each \$1,000 Original Principal Amount of Security shall be calculated for each of the first three months and the second three months of the applicable Semiannual Period, and in each instance shall equal the greater of (i) the sum of all regular cash dividends paid by the Company per share on the Common Stock during the applicable three months of such Semiannual Period multiplied by the Conversion Rate or (ii) \$0.16 multiplied by 13.8213.

As used in this Article 10 "Measurement Period" means the five Trading Days ending on the third scheduled Trading Day immediately preceding the start of the relevant Semiannual Period. Notwithstanding the above, if the Company should declare a dividend for which the record date for such dividend (the "Common Stock Record Date") falls prior to the first day of a Semiannual Period, but the payment date for such dividend falls within such Semiannual Period, then the "Measurement Period" shall mean the five Trading Days ending on the third Trading Day immediately preceding such Common Stock Record Date. "LYONs Market Price", means,

as of any date of determination, the average of the secondary market bid quotations per \$1,000 Original Principal Amount of Securities obtained by the Bid Solicitation Agent for \$10 million Original Principal Amount of Securities at approximately 4:00 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers (none of which shall be an Affiliate of the Company) selected by the Company; provided, however, if (a) at least three such bids are not obtained by the Bid Solicitation Agent or (b) in the Company's reasonable judgment, the bid quotations are not indicative of the secondary market value of the Securities as of such determination date, then the LYON Market Price for such determination date shall equal the product of (i) the Conversion Rate in effect as of such determination date multiplied by (ii) the Average Sale Price of the Common Stock for the five trading days ending on such determination date, appropriately adjusted to take into account the occurrence, during the period commencing on the first of such trading days during such five trading day period and ending on such determination date, of any event described in Section 11.06, 11.07 or 11.08 (subject to the conditions set forth in Sections 11.09 and 11.10) hereof.

The Contingent Principal Amount of the Securities will continue to accrue at the applicable Yield whether or not contingent interest payments are made.

Section 10.02. Payment of Contingent Interest; Contingent Interest Rights Preserved.

If payable, contingent interest shall be paid on the payment date for the related Common Stock dividend or, if the Company does not pay a regular cash dividend on its Common Stock during a Semiannual Period, on the last day of such Semiannual Period (in each case, a "Contingent Interest Payment Date"). Contingent Interest payments on any Security that are payable, and are punctually paid or duly provided for, on any Contingent Interest Payment Date shall be paid to the person who is the holder of that Security at the close of business on the relevant Common Stock Record Date or, if the Company does not pay a regular cash dividend on its Common Stock during a Semiannual Period, to the person who is the holder of that Security on the 15th day preceding the last day of such Semiannual Period (each, a "Contingent Interest Record Date"). Each payment of contingent interest on any Security shall be paid in same-day funds by transfer to an account maintained by the payee located inside the United States. In the case of a global Security, interest payable on any Contingent Interest Payment Date will be paid to the Depositary for the purpose of permitting DTC to credit the interest received by it in respect of such global Security to the accounts of the beneficial owners thereof.

Upon determination that Holders of Securities will be entitled to receive contingent interest during a Semiannual Period, on or prior to the start of such Semiannual Period, the Company will issue a press release and publish such information on its website for a period of not less than 120 days or, at the Company's option, otherwise publicly disclose such information.

Section 10.03. Bid Solicitation Agent.

The Bid Solicitation Agent shall solicit bids from securities dealers which the Company indicates are willing to bid for the Securities. The Company initially appoints the Trustee to act as the Bid Solicitation Agent. The Company may change the Bid Solicitation Agent at its

discretion, provided, however, the Bid Solicitation Agent may not be an Affiliate of the Company.

Article XI

CONVERSION

Section 11.01. Conversion Privilege. A Holder of a Security may convert such Security into shares of Common Stock at any time during the period stated in paragraph 9 of the Securities, subject to the provisions of this Article 11. The number of shares of Common Stock issuable upon conversion of a Security per \$1,000 of Original Principal Amount thereof shall be determined in accordance with the provisions of paragraph 9 in the Securities. The number of Shares issuable upon conversion of a Security per \$1,000 of Original Principal Amount thereof shall equal 13.8213, subject to adjustment.

A Holder may convert a portion of a Security if the portion is \$1,000 Original Principal Amount or an integral multiple of \$1,000 Original Principal Amount. Provisions of this Indenture that apply to conversion of all of a Security also apply to conversion of a portion of a Security.

“Time of Determination” means the time and date of the earlier of (i) the determination of stockholders entitled to receive rights, warrants or options or a distribution, in each case, to which Section 11.07 or 11.08 applies and (ii) the time (“Ex-Dividend Time”) immediately prior to the commencement of “ex-dividend” trading for such rights, warrants or options or distribution on the New York Stock Exchange or such other national or regional exchange or market on which the Common Stock is then listed or quoted.

Section 11.02. Conversion Procedure. To convert a Security, a Holder must satisfy the requirements in paragraph 9 of the Securities. The date on which the Holder satisfies all those requirements is the conversion date (the “Conversion Date”). As soon as practicable after the Conversion Date, the Company shall deliver to the Holder, through the Conversion Agent, a certificate for the number of full shares of Common Stock issuable upon the conversion and cash in lieu of any fractional share determined pursuant to Section 11.03. The Company shall determine such full number of shares and the amounts of the required cash with respect to any fractional share, and shall set forth such information in a certificate delivered to the Conversion Agent. The Conversion Agent shall have no duties under this paragraph unless and until it has received such certificate.

The person in whose name the certificate is registered shall be treated as a stockholder of record on and after the Conversion Date; provided, however, that no surrender of a Security on any date when the stock transfer books of the Company shall be closed shall be effective to constitute the person or persons entitled to receive the shares of Common Stock upon such conversion as the record holder or holders of such shares of Common Stock on such date, but such surrender shall be effective to constitute the person or persons entitled to receive such shares of Common Stock as the record holder or holders thereof for all purposes at the close of business on the next succeeding day on which such stock transfer books are open; such

conversion shall be at the Conversion Rate in effect on the date that such Security shall have been surrendered for conversion, as if the stock transfer books of the Company had not been closed. Upon conversion of a Security, such person shall no longer be a Holder of such Security.

Holders may surrender a Security for conversion by means of book-entry delivery in accordance with paragraph 9 of the Securities and the regulations of the applicable book entry facility.

No payment or adjustment will be made for dividends on, or other distributions with respect to, any Common Stock except as provided in this Article 11. On conversion of a Security, that portion of accrued Tax Original Issue Discount and increases in the Contingent Principal Amount attributable to the period from the Issue Date of the Security through the Conversion Date and (except as provided below) accrued contingent interest, if any, with respect to the converted Security shall not be cancelled, extinguished or forfeited, but rather shall be deemed to be paid in full to the Holder thereof through delivery of the Common Stock (together with the cash payment, if any, in lieu of fractional shares) in exchange for the Security being converted pursuant to the provisions hereof; and the fair market value of such shares of Common Stock (together with any such cash payment in lieu of fractional shares) shall be treated as issued, to the extent thereof, first in exchange for accrued Tax Original Issue Discount and the increase in Contingent Principal Amount from the Issue Date through the Conversion Date and accrued contingent interest, and the balance, if any, of such fair market value of such Common Stock (and any such cash payment) shall be treated as issued in exchange for the Issue Price of the Security being converted pursuant to the provisions hereof.

If the Holder converts more than one Security at the same time, the number of shares of Common Stock issuable upon the conversion shall be based on all Securities converted.

A Security surrendered for conversion based on (a) the Common Stock price may be surrendered for conversion until the close of business on the Business Day immediately proceeding March 13, 2032, (b) a credit downgrade may be surrendered for conversion until the close of business on any Business Day during the period of the credit downgrade as more fully described in paragraph 9 of the Security, (c) the Security being called for redemption may be surrendered for conversion at any time prior to the close of business on the second Business Day immediately preceding the Redemption Date, and (d) upon the occurrence of certain corporate transactions more fully described in paragraph 9 of the Security may be surrendered for conversion at any time from and after the date which is 15 days prior to the anticipated effective date of such transaction until 15 days after the actual date of such transaction, and if such day is not a Business Day, the next occurring Business Day following such day.

Upon surrender of a Security that is converted in part, the Company shall execute, and the Trustee shall authenticate and deliver to the Holder, a new Security in an authorized denomination equal in Principal Amount to the unconverted portion of the Security surrendered.

Section 11.03. Fractional Shares. The Company will not issue a fractional share of Common Stock upon conversion of a Security. Instead, the Company will deliver cash for the current market value of the fractional share. The current market value of a fractional share shall

be determined, to the nearest 1/1,000th of a share, by multiplying the Sale Price of the Common Stock, on the last Trading Day prior to the Conversion Date, of a full share by the fractional amount and rounding the product to the nearest whole cent.

Section 11.04. Taxes on Conversion. If a Holder converts a Security, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of Common Stock upon the conversion. However, the Holder shall pay any such tax which is due because the Holder requests the shares to be issued in a name other than the Holder's name. The Conversion Agent may refuse to deliver the certificates representing the Common Stock being issued in a name other than the Holder's name until the Conversion Agent receives a sum sufficient to pay any tax which will be due because the shares are to be issued in a name other than the Holder's name. Nothing herein shall preclude the Company from any tax withholding or directing the withholding of any tax required by law or regulations.

Section 11.05. Company to Provide Stock. The Company shall, prior to issuance of any Securities under this Article 11, and from time to time as may be necessary, reserve out of its authorized but unissued Common Stock a sufficient number of shares of Common Stock to permit the conversion of the Securities.

All shares of Common Stock delivered upon conversion of the Securities shall be newly issued shares or treasury shares, shall be duly and validly issued and fully paid and nonassessable and shall be free from preemptive rights and free of any lien or adverse claim.

The Company will endeavor promptly to comply with all Federal and state securities laws regulating the offer and delivery of shares of Common Stock upon conversion of Securities, if any, and will list or cause to have quoted such shares of Common Stock on each national securities exchange or in the over-the-counter market or such other market on which the Common Stock is then listed or quoted.

Section 11.06. Adjustment for Change in Capital Stock. If, after the Issue Date of the Securities, the Company:

- (a) pays a dividend or makes a distribution on its Common Stock in shares of its Common Stock or shares of other capital stock of the Company;
- (b) subdivides its outstanding shares of Common Stock into a greater number of shares;
- (c) combines its outstanding shares of Common Stock into a smaller number of shares; or
- (d) issues by reclassification of its Common Stock any shares of its capital stock (other than rights, warrants or options for its capital stock);

then the conversion privilege and the Conversion Rate in effect immediately prior to such action shall be adjusted so that the Holder of a Security thereafter converted may receive the number of shares or other units of capital stock of the Company which such Holder would have owned

immediately following such action if such Holder had converted the Security immediately prior to such action.

The adjustment shall become effective immediately after the record date in the case of a dividend or distribution and immediately after the effective date in the case of a subdivision, combination or reclassification.

If after an adjustment a Holder of a Security upon conversion of such Security may receive shares or other units of two or more classes of capital stock of the Company, the Conversion Rate shall thereafter be subject to adjustment upon the occurrence of an action taken with respect to any such class or series of capital stock as is contemplated by this Article 11 with respect to the Common Stock, on terms comparable to those applicable to Common Stock in this Article 11.

Section 11.07. Adjustment for Rights Issue.

If after the Issue Date, the Company distributes any rights, warrants or options to all holders of its Common Stock entitling them, for a period expiring within 60 days after the record date for such distribution, to purchase shares of Common Stock at a price per share less than the Sale Price of the Common Stock as of the Time of Determination, the Conversion Rate shall be adjusted in accordance with the formula:

$$R' = R \times \frac{(O + N)}{(O + [(N \times P)/M])}$$

where:

R' = the adjusted Conversion Rate.

R = the current Conversion Rate.

O = the number of shares of Common Stock outstanding on the record date for the distribution to which this Section 11.07 is being applied.

N = the number of additional shares of Common Stock offered pursuant to the distribution.

P = the offering price per share of the additional shares.

M = the Average Sale Price, minus, in the case of (i) a distribution to which Section 11.06(d) applies or (ii) a distribution to which Section 11.08 applies, for which, in each case, (x) the record date shall occur on or before the record date for the distribution to which this Section 11.07 applies and (y) the Ex-Dividend Time shall occur on or after the date of the Time of Determination for the distribution to which this Section 11.07 applies, the fair market value (on the record date for the distribution to which this Section 11.07 applies) of:

(1) the capital stock of the Company distributed in respect of each share of Common Stock in such Section 11.06(d) distribution; and

(2) the assets of the Company or debt securities or any rights, warrants or options to purchase securities of the Company distributed in respect of each share of Common Stock in such Section 11.08 distribution.

The Board of Directors shall determine fair market values for the purposes of this Section 11.07.

The adjustment shall become effective immediately after the record date for the determination of shareholders entitled to receive the rights, warrants or options to which this Section 11.07 applies. If all of the shares of Common Stock subject to such rights, warrants or options have not been issued when such rights, warrants or options expire, then the Conversion Rate shall promptly be readjusted to the Conversion Rate which would then be in effect had the adjustment upon the issuance of such rights, warrants or options been made on the basis of the actual number of shares of Common Stock issued upon the exercise of such rights, warrants or options.

No adjustment shall be made under this Section 11.07 if the application of the formula stated above in this Section 11.07 would result in a value of R' that is equal to or less than the value of R.

Section 11.08. Adjustment for Other Distributions. Subject to 11.08(b), if, after the Issue Date of the Securities, the Company distributes to all holders of its Common Stock any of its assets excluding distributions of capital stock or debt securities or any rights, warrants or options to purchase securities of the Company (including securities or cash, but excluding (x) distributions of capital stock referred to in Section 11.06 and distributions of rights, warrants or options referred to in Section 11.07 and (y) cash dividends or other cash distributions that are paid out of consolidated current net earnings or earnings retained in the business as shown on the books of the Company unless such cash dividends or other cash distributions are Extraordinary Cash Dividends) the Conversion Rate shall be adjusted, subject to the provisions of Section 11.08(c), in accordance with the formula:

$$R' = \frac{R \times M}{M - F}$$

where:

R' = the adjusted Conversion Rate.

R = the current Conversion Rate.

M = the Average Sale Price, minus, in the case of a distribution to which Section 11.06(d) applies, for which (i) the record date shall occur on or before the record date for the distribution to which this Section 11.08 applies and (ii) the Ex-Dividend Time shall occur on or after the date of the Time of Determination for the distribution to which this Section 11.08

applies, the fair market value (on the record date for the distribution to which this Section 11.08 applies) of any capital stock of the Company distributed in respect of each share of Common Stock in such Section 11.06(d) distribution.

F = the fair market value (on the record date for the distribution to which this Section 11.08 applies) of the assets, securities, rights, warrants or options to be distributed in respect of each share of Common Stock in the distribution to which this Section 11.08 is being applied (including, in the case of cash dividends or other cash distributions giving rise to an adjustment, all such cash distributed concurrently).

The Board of Directors shall determine fair market values for the purposes of this Section 11.08.

The adjustment shall become effective immediately after the record date for the determination of shareholders entitled to receive the distribution to which this Section 11.08 applies.

For purposes of this Section 11.08, the term “Extraordinary Cash Dividend” shall mean the amount of any cash dividend or distribution with respect to the Common Stock that, together with the aggregate amount of other cash dividends on the Common Stock to be aggregated with such cash dividend in accordance with the provisions of this paragraph, equals or exceeds the threshold percentage set forth in item (i) below. For purposes of item (i) below, the “Ex-Dividend Measurement Period” with respect to a cash dividend on the Common Stock shall mean the 365 consecutive day period ending on the date prior to the Ex-Dividend Time with respect to such cash dividend, and the “Relevant Cash Dividends” with respect to a cash dividend on the Common Stock shall mean the cash dividends on the Common Stock with Ex-Dividend Times occurring in the Measurement Period.

(i) If, upon the date prior to the Ex-Dividend Time with respect to a cash dividend on the Common Stock, the aggregate amount of such cash dividend together with the amounts of all Relevant Cash Dividends equals or exceeds on a per share basis the sum of (a) 5% of the Sale Price of the Common Stock on the last Trading Day preceding the date of declaration by the Board of Directors of the cash dividend or distribution with respect to which this provision is being applied, and (b) the quotient of the amount of any contingent interest paid on a Security during the Ex-Dividend Measurement Period and divided by the conversion rate in effect on the payment date of such relevant Contingent Interest Payment Date, then such cash dividend together with all Relevant Cash Dividends, shall be deemed to be an Extraordinary Cash Dividend and for purposes of applying the formula set forth above in this Section 11.08, the value of “F” shall be equal to (y) the aggregate amount of such cash dividend together with the amount of all Relevant Cash Dividends, minus (z) the aggregate amount of all Relevant Cash Dividends for which a prior adjustment in the Conversion Rate was previously made under this Section 11.08.

In making the determinations required by item (i) above, the amount of cash dividends paid on a per share basis and the amount of any Relevant Cash Dividends specified in item (i) above, shall be appropriately adjusted to reflect the occurrence during such period of any event described in Section 11.06.

(a) If, after the Issue Date, the Company pays a dividend or makes a distribution to all holders of its Common Stock consisting of capital stock of any class or series, or similar equity interests, of or relating to a Subsidiary or other business unit of the Company, the Conversion Rate shall be adjusted in accordance with the formula:

$$R' = R \times (1 + F/M)$$

where:

R' = the adjusted Conversion Rate.

R = the current Conversion Rate.

M = the average of the Sale Prices of the Common Stock for the ten (10) Trading Days commencing on and including the fifth Trading Day after the date on which "ex-dividend trading" commences for such dividend or distribution on The New York Stock Exchange or such other national or regional exchange or market which such securities are then listed or quoted (the "Ex-Dividend Date").

F = the fair market value of the securities distributed in respect of each share of Common Stock for which this Section 11.08(a) applies shall mean the number of securities distributed in respect of each share of Common Stock multiplied by the average of the Sale Prices of those securities distributed for the ten (10) Trading Days commencing on and including the fifth Trading Day after the effectiveness of the Ex-Dividend Date.

(b) In the event that, with respect to any distribution to which Section 11.08(a) or (b) would otherwise apply, the difference between "M-F" is less than \$1.00 or "F" is equal to or greater than "M", then the adjustment provided by Section 11.08(a) shall not be made and in lieu thereof the provisions of Section 11.14 shall apply to such distribution.

Section 11.09. When Adjustment May Be Deferred. No adjustment in the Conversion Rate need be made unless the adjustment would require an increase or decrease of at least 1% in the Conversion Rate. Any adjustments that are not made shall be carried forward and taken into account in any subsequent adjustment.

All calculations under this Article 11 shall be made to the nearest cent or to the nearest 1/1,000th of a share, as the case may be.

Section 11.10. When No Adjustment Required. No adjustment need be made for a transaction referred to in Section 11.06, 11.07, 11.08 or 11.14 if Securityholders are to participate in the transaction on a basis and with notice that the Board of Directors determines to

be fair and appropriate in light of the basis and notice on which holders of Common Stock participate in the transaction. Such participation by Securityholders may include participation upon conversion provided that an adjustment shall be made at such time as the Securityholders are no longer entitled to participate.

No adjustment need be made for rights to purchase Common Stock pursuant to a Company plan for reinvestment of dividends or interest.

No adjustment need be made for a change in the par value or no par value of the Common Stock.

To the extent the Securities become convertible pursuant to this Article 11 into cash, no adjustment need be made thereafter as to the cash. Interest will not accrue on the cash.

Notwithstanding any provision to the contrary in this Indenture, no adjustment shall be made in the Conversion Rate to the extent, but only to the extent, such adjustment results in the following quotient being less than the par value of the Common Stock: (i) the Contingent Principal Amount as of the date such adjustment would otherwise be effective divided by (ii) the Conversion Rate as so adjusted.

No adjustment will be made pursuant to this Section 11 which would result, through the application of two or more provisions hereof, in the duplication of any adjustment.

Section 11.11. Notice of Adjustment. Whenever the Conversion Rate is adjusted, the Company shall promptly mail to Securityholders a notice of the adjustment. The Company shall file with the Trustee and the Conversion Agent such notice and a certificate from the Company's independent public accountants briefly stating the facts requiring the adjustment and the manner of computing it. Upon receipt by it of such notice, the Conversion Agent will promptly mail such notice to Securityholders at the Company's expense. The certificate shall be conclusive evidence that the adjustment is correct. Neither the Trustee nor any Conversion Agent shall be under any duty or responsibility with respect to any such certificate except to exhibit the same to any Holder desiring inspection thereof.

Section 11.12. Voluntary Increase. The Company from time to time may increase the Conversion Rate by any amount for any period of time. Whenever the Conversion Rate is increased, the Company shall mail to Securityholders and file with the Trustee and the Conversion Agent a notice of the increase. The Company shall mail the notice at least 15 days before the date the increased Conversion Rate takes effect. The notice shall state the increased Conversion Rate and the period it will be in effect.

A voluntary increase of the Conversion Rate does not change or adjust the Conversion Rate otherwise in effect for purposes of Section 11.06, 11.07 or 11.08.

Section 11.13. Notice of Certain Transactions. If:

(a) the Company takes any action that would require an adjustment in the Conversion Rate pursuant to Section 11.06, 11.07 or 11.08 (unless no adjustment is to occur pursuant to Section 11.10); or

(b) the Company takes any action that would require a supplemental indenture pursuant to Section 11.14; or

(c) there is a liquidation or dissolution of the Company;

then the Company shall mail to Securityholders and file with the Trustee and the Conversion Agent a notice stating the proposed record date for a dividend or distribution or the proposed effective date of a subdivision, combination, reclassification, consolidation, merger, binding share exchange, transfer, liquidation or dissolution. The Company shall file and mail the notice at least 15 days before such date. Failure to file or mail the notice or any defect in it shall not affect the validity of the transaction.

Section 11.14. Reorganization of Company; Special Distributions. If the Company is a party to a transaction subject to Section 5.01 (other than a sale of all or substantially all of the assets of the Company in a transaction in which the holders of Common Stock immediately prior to such transaction do not receive securities, cash, property or other assets of the Company or any other person) or a merger or binding share exchange which reclassifies or changes its outstanding Common Stock, the person obligated to deliver securities, cash or other assets upon conversion of Securities shall enter into a supplemental indenture. If the issuer of securities deliverable upon conversion of Securities is an Affiliate of the successor Company, that issuer shall join in the supplemental indenture.

The supplemental indenture shall provide that the Holder of a Security may convert it into the kind and amount of securities, cash or other assets which such Holder would have received immediately after the consolidation, merger, binding share exchange or transfer if such Holder had converted the Security immediately before the effective date of the transaction, assuming (to the extent applicable) that such Holder (i) was not a constituent person or an Affiliate of a constituent person to such transaction; (ii) made no election with respect thereto; and (iii) was treated alike with the plurality of non-electing Holders. The supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practical to the adjustments provided for in this Article 11. The successor Company shall mail to Securityholders a notice briefly describing the supplemental indenture.

If this Section applies, neither Section 11.06 nor 11.07 applies.

If the Company makes a distribution to all holders of its Common Stock of any of its assets, or debt securities or any rights, warrants or options to purchase securities of the Company that, but for the provisions of Section 11.08(c), would otherwise result in an adjustment in the Conversion Rate pursuant to the provisions of Section 11.08, then, from and after the record date for determining the holders of Common Stock entitled to receive the distribution, a Holder of a Security that converts such Security in accordance with the provisions of this Indenture shall

upon such conversion be entitled to receive, in addition to the shares of Common Stock into which the Security is convertible, the kind and amount of securities, cash or other assets comprising the distribution that such Holder would have received if such Holder had converted the Security immediately prior to the record date for determining the holders of Common Stock entitled to receive the distribution.

Section 11.15. Company Determination Final. Any determination that the Company or the Board of Directors must make pursuant to Section 11.03, 11.06, 11.07, 11.08, 11.09, 11.10, 11.14 or 11.17 is conclusive.

Section 11.16. Trustee's Adjustment Disclaimer. The Trustee has no duty to determine when an adjustment under this Article 11 should be made, how it should be made or what it should be. The Trustee has no duty to determine whether a supplemental indenture under Section 11.14 need be entered into or whether any provisions of any supplemental indenture are correct. The Trustee shall not be accountable for and makes no representation as to the validity or value of any securities or assets issued upon conversion of Securities. The Trustee shall not be responsible for the Company's failure to comply with this Article 11. Each Conversion Agent (other than the Company or an Affiliate of the Company) shall have the same protection under this Section 11.16 as the Trustee.

Section 11.17. Simultaneous Adjustments. In the event that this Article 11 requires adjustments to the Conversion Rate under more than one of Sections 11.06(d), 11.07 or 11.08, and the record dates for the distributions giving rise to such adjustments shall occur on the same date, then such adjustments shall be made by applying, first, the provisions of Section 11.06, second, the provisions of Section 11.08 and, third, the provisions of Section 11.07.

Section 11.18. Successive Adjustments. After an adjustment to the Conversion Rate under this Article 11, any subsequent event requiring an adjustment under this Article 11 shall cause an adjustment to the Conversion Rate as so adjusted.

Section 11.19. Rights Issued in Respect of Common Stock Issued Upon Conversion. Each share of Common Stock issued upon conversion of Securities pursuant to this Article 11 shall be entitled to receive the appropriate number of Rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the Rights or by the terms of any other shareholder rights agreement adopted by the Company, as the same may be amended from time to time (in each case, a "Rights Agreement"). Provided that such Rights Agreement requires that each share of Common Stock issued upon conversion of Securities at any time prior to the distribution of separate certificates representing the Rights be entitled to receive such Rights, then, notwithstanding anything else to the contrary in this Article 11, there shall not be any adjustment to the conversion privilege or Conversion Rate as a result of the issuance of Rights, the distribution of separate certificates representing the Rights, the exercise or redemption of such Rights in accordance with any such Rights Agreement, or the termination or invalidation of such Rights.

Article XII

PAYMENT OF CONTINGENT INTEREST

Section 12.01. Contingent Interest Payments. If applicable, contingent interest on any Security that is payable, and is punctually paid or duly provided for, on any Contingent Interest Payment Date shall be paid to the person in whose name that Security is registered at the close of business on the record date specified in Section 10.02 (“Regular Record Date”) at the office or agency of the Company maintained for such purpose. Each installment of contingent interest on any Security shall be paid in same-day funds by transfer to an account maintained by the payee located inside the United States. In the case of a Global Security, contingent interest payable on any applicable payment date will be paid to the Depositary, with respect to that portion of such Global Security held for its account by Cede & Co. for the purpose of permitting such party to credit the interest received by it in respect of such Global Security to the accounts of the beneficial owners thereof.

Section 12.02. Defaulted Interest. Any contingent interest on any Security that is payable, but is not punctually paid or duly provided for, within 30 days following any Contingent Interest Payment Date (herein called “Defaulted Interest”, which term shall include any accrued and unpaid interest that has accrued on such defaulted amount in accordance with paragraph 1 of the Securities), shall forthwith cease to be payable to the registered Holder thereof on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company at its election in each case, as provided in clause (a) or (b) below:

(a) The Company may elect to make payment of any Defaulted Interest to the persons in whose names the Securities are registered at the close of business on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security and the date of the proposed payment (which shall not be less than 20 days after such notice is received by the Trustee), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a special record date (the “Special Record Date”) for the payment of such Defaulted Interest which shall be not more than 15 days and not less than ten (10) days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of Securities at his address as it appears on the list of Securityholders maintained pursuant to Section 2.05 not less than 10 days prior to such Special Record Date. The Trustee may, in its discretion, in the name and at the expense of the Company, cause a similar notice to be published at least once in The Wall Street Journal, but such

publications shall not be a condition precedent to the establishment of such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names the Securities are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (b).

(b) The Company may make payment of any Defaulted Interest on the Securities in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 12.03. Interest Rights Preserved. Subject to the foregoing provisions of this Article 12 and Section 2.06, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to contingent interest accrued and unpaid, which were carried by such other Security.

Article XIII

MISCELLANEOUS

Section 13.01. Trust Indenture Act Controls. If any provision of this Indenture limits, qualifies or conflicts with another provision which is required or deemed to be included in this Indenture by the TIA, the required or deemed provision shall control.

Section 13.02. Notices. Any notice or communication shall be in writing and delivered in person or mailed by first-class mail, postage prepaid, addressed as follows:

if to the Company:

Merrill Lynch & Co., Inc.
222 Broadway, 17th Floor
New York, New York 10038
Attention: Secretary

with a copy to:

Merrill Lynch & Co., Inc.
4 World Financial Center, 18th Floor
New York, New York 10080
Attention: Treasurer

if to the Trustee:

JPMorgan Chase Bank
450 West 33rd Street
New York, New York 10001
Attention: Institutional Trust Services

The Company or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication given to a Securityholder shall be mailed by first-class mail to the Securityholder at the Securityholder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed.

Failure to mail a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not received by the addressee.

If the Company mails a notice or communication to the Securityholders, it shall mail a copy to the Trustee and each Registrar, Paying Agent, Conversion Agent or co-registrar.

Section 13.03. Communication by Holders with Other Holders. Securityholders may communicate pursuant to TIA Section 312(b) with other Securityholders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar, the Paying Agent, the Conversion Agent and anyone else shall have the protection of TIA Section 312(c).

Section 13.04. Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

- (a) an Officers' Certificate stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and
- (b) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 13.05. Statements Required in Certificate or Opinion. Each Officers' Certificate or Opinion of Counsel with respect to compliance with a covenant or condition provided for in this Indenture shall include:

- (a) a statement that each person making such Officers' Certificate or Opinion of Counsel has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such Officers' Certificate or Opinion of Counsel are based;

(c) a statement that, in the opinion of each such person, he has made such examination or investigation as is necessary to enable such person to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement that, in the opinion of such person, such covenant or condition has been complied with.

Section 13.06. Separability Clause. In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 13.07. Rules By Trustee, Paying Agent, Conversion Agent and Registrar. The Trustee may make reasonable rules for action by or a meeting of the Securityholders. The Registrar, Conversion Agent and the Paying Agent may make reasonable rules for their functions.

Section 13.08. [Reserved].

Section 13.09. Governing Law. THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AS APPLIED TO CONTRACTS MADE AND PERFORMED WITHIN THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

Section 13.10. No Recourse Against Others. A director, Officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Securities.

Section 13.11. Successors. All agreements of the Company in this Indenture and the Securities shall bind its successor. All agreements of the Trustee in this Indenture shall bind its successor.

Section 13.12. Multiple Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture.

Section 13.13. References. All section references are to sections of this Indenture unless specified otherwise.

Section 13.14. Calculations. The Company shall be solely responsible for making all calculations called for under the Securities and this Indenture. Such calculations include, but are not limited to, the calculations under Articles 3, 4, 6, 10, 11 and 12 hereof. The Company covenants to make all such calculations in good faith. Absent manifest error, such calculations shall be final and binding on Holders. The Company shall promptly provide a schedule of all its calculations to the Trustee. The Trustee shall always be entitled to assume that the Company has acted in good faith, and may rely on and shall be fully protected and shall incur no liability in relying on any calculation performed by the Company under or pursuant to the Indenture.

Section 13.15. Tax Matters.

(a) Tax Treatment. The parties hereto hereby agree, and each Holder by its purchase of a Security hereby agrees:

- (1) to treat the Securities as indebtedness of the Company for all tax purposes;
- (2) to treat the Securities as indebtedness that are subject to the special regulations governing contingent payment debt instruments that are contained in U.S. Treasury Regulation section 1.1275-4; and
- (3) to treat any payment to and receipt by a Holder of Common Stock upon conversion of a Security, or upon a redemption of a Security where the Company elects to pay in Common Stock, as a contingent payment under Treasury Regulation section 1.1275-4(b) that will result in an adjustment under Treasury Regulation section 1.1275-4(b)(3)(iv) and Treasury Regulation section 1.1275-4(b)(6).

(b) Comparable Yield and Projected Payment Schedule. Solely for purposes of applying Treasury Regulation section 1.1275-4 to the Securities:

- (1) for United States Federal income tax purposes, the Company shall accrue interest with respect to outstanding Securities as original issue discount according to the “noncontingent bond method,” as set forth in Treasury Regulation Section 1.1275-4(b);
- (2) the Company has determined that the comparable yield, as defined in Treasury Regulation section 1.1275-4(b)(4)(i), for the Securities is 5.714%, compounded semiannually;
- (3) the Company has determined that the projected payment schedule, as defined in Treasury Regulation section 1.1275-4(b)(4)(ii), for the Securities consists of the projected payment schedule referred to in (5) below;
- (4) the Company acknowledges and agrees, and each Holder and any beneficial holder of a Security, by its purchase of a Security shall be deemed to acknowledge and agree, that (i) the comparable yield and the projected payment schedule are determined on the basis of an assumption of linear growth of stock price and a

constant dividend yield, (ii) the comparable yield and the projected payment schedule are not determined for any purpose other than for the purpose of applying Treasury Regulation section 1.1275-4(b)(4) to the Securities and (iii) the comparable yield and the projected payment schedule do not constitute a projection or representation regarding the actual amounts payable on the Securities; and

(5) the projected payment schedule, as defined in Treasury Regulation section 1.1275-4(b)(4)(ii) for the Securities is set forth in Annex 1 hereto.

SIGNATURES

IN WITNESS WHEREOF, the undersigned, being duly authorized, have executed this Indenture on behalf of the respective parties hereto as of the date first above written.

MERRILL LYNCH & CO., INC.

By: /s/ John C. Stomber
Name: John C. Stomber
Title: Senior Vice President and
Treasurer

JPMORGAN CHASE BANK

By: /s/ Natalie B. Pesce
Name: Natalie B. Pesce
Title: Trust Officer

ANNEX 1

Projected Payment Schedule*

Quarterly Period Ending	Projected Payment per LYON
June 1, 2002	—
September 1, 2002	—
December 1, 2002	—
March 1, 2003	—
June 1, 2003	—
September 1, 2003	—
December 1, 2003	—
March 1, 2004	—
June 1, 2004	—
September 1, 2004	—
December 1, 2004	—
March 1, 2005	—
June 1, 2005	—
September 1, 2005	—
December 1, 2005	—
March 1, 2006	—
June 1, 2006	—
September 1, 2006	—
December 1, 2006	—
March 1, 2007	—
June 1, 2007	—
September 1, 2007	—
December 1, 2007	—
March 1, 2008	—
June 1, 2008	—
September 1, 2008	—
December 1, 2008	—
March 1, 2009	—
June 1, 2009	—
September 1, 2009	—
December 1, 2009	—
March 1, 2010	—
June 1, 2010	—

* The comparable yield and the schedule of projected payments are determined on the basis of an assumption of constant growth rate of the stock price and a constant dividend growth rate and are not determined for any purpose other than for the determination of interest accruals and adjustments thereof in respect of the Securities for United States federal income tax purposes. The comparable yield and the schedule of projected payments do not constitute a projection or representation regarding the amounts payable on Securities.

Quarterly Period Ending	Projected Payment per LYON
September 1, 2010	—
December 1, 2010	—
March 1, 2011	—
June 1, 2011	—
September 1, 2011	—
December 1, 2011	—
March 1, 2012	—
June 1, 2012	—
September 1, 2012	—
December 1, 2012	—
March 1, 2013	—
June 1, 2013	—
September 1, 2013	—
December 1, 2013	—
March 1, 2014	—
June 1, 2014	—
September 1, 2014	—
December 1, 2014	—
March 1, 2015	—
June 1, 2015	—
September 1, 2015	—
December 1, 2015	—
March 1, 2016	5.13
June 1, 2016	5.45
September 1, 2016	5.45
December 1, 2016	5.45
March 1, 2017	5.45
June 1, 2017	5.78
September 1, 2017	5.78
December 1, 2017	5.78
March 1, 2018	5.78
June 1, 2018	6.14
September 1, 2018	6.14
December 1, 2018	6.14
March 1, 2019	6.14
June 1, 2019	6.52
September 1, 2019	6.52
December 1, 2019	6.52
March 1, 2020	6.52
June 1, 2020	6.92
September 1, 2020	6.92
December 1, 2020	6.92
March 1, 2021	6.92

Quarterly Period Ending	Projected Payment per LYON
June 1, 2021	7.35
September 1, 2021	7.35
December 1, 2021	7.35
March 1, 2022	7.35
June 1, 2022	7.81
September 1, 2022	7.81
December 1, 2022	7.81
March 1, 2023	7.81
June 1, 2023	8.29
September 1, 2023	8.29
December 1, 2023	8.29
March 1, 2024	8.29
June 1, 2024	8.81
September 1, 2024	8.81
December 1, 2024	8.81
March 1, 2025	8.81
June 1, 2025	9.35
September 1, 2025	9.35
December 1, 2025	9.35
March 1, 2026	9.35
June 1, 2026	9.93
September 1, 2026	9.93
December 1, 2026	9.93
March 1, 2027	9.93
June 1, 2027	10.55
September 1, 2027	10.55
December 1, 2027	10.55
March 1, 2028	10.55
June 1, 2028	11.20
September 1, 2028	11.20
December 1, 2028	11.20
March 1, 2029	11.20
June 1, 2029	11.89
September 1, 2029	11.89
December 1, 2029	11.89
March 1, 2030	11.89
June 1, 2030	12.63
September 1, 2030	12.63
December 1, 2030	12.63
March 1, 2031	12.63
June 1, 2031	13.41
September 1, 2031	13.41
December 1, 2031	13.41
March 1, 2032	13.41
March 13, 2032	4,559.34

EXHIBIT A

[FORM OF FACE OF GLOBAL SECURITY]

FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, THIS SECURITY IS ISSUED WITH AN INDETERMINATE AMOUNT OF ORIGINAL ISSUE DISCOUNT FOR UNITED STATES FEDERAL INCOME TAX PURPOSES. THE ISSUE DATE IS MARCH 13, 2002, AND THE YIELD TO MATURITY FOR PURPOSES OF ACCRUING ORIGINAL ISSUE DISCOUNT IS 5.714% PER ANNUM. THE HOLDER OF THIS SECURITY MAY OBTAIN THE PROJECTED PAYMENT SCHEDULE BY SUBMITTING A WRITTEN REQUEST FOR SUCH INFORMATION TO: MERRILL LYNCH & CO., INC., CORPORATE SECRETARY'S OFFICE, 222 BROADWAY, 17TH FLOOR, NEW YORK, NEW YORK 10038.

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF THE DEPOSITARY. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR THE INDIVIDUAL DEBT SECURITIES REPRESENTED HEREBY, THIS GLOBAL SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), MERRILL LYNCH & CO., INC. OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

[FORM OF REVERSE SIDE OF LYON]
MERRILL LYNCH & CO., INC.
Liquid Yield Option™ Note due 2032
(Zero Coupon-Floating Rate-Senior)

No. R-
Issue Date: March 13, 2002
Original Principal Amount: \$
Issue Price: \$1,000.00 for each \$1,000 Original
Principal Amount

CUSIP: 590188 A73

MERRILL LYNCH & CO., INC., a Delaware corporation, promises to pay to Cede & Co. or registered assigns, on March 13, 2032 the Contingent Principal Amount of this Security on such date. This Security is issued with an Original Principal Amount of MILLION DOLLARS (\$).

This Security shall not bear interest except as specified on the reverse side of this Security. The Contingent Principal Amount of this Security, will accrue as specified on the reverse side of this Security. This Security is convertible as specified on the reverse side of this Security.

Additional provisions of this Security are set forth on the reverse side of this Security.

Dated: March 13, 2002

MERRILL LYNCH & CO., INC.

By: _____
Title:

TRUSTEE'S CERTIFICATE OF

AUTHENTICATION

JPMORGAN CHASE BANK,
as Trustee, certifies that this
is one of the Securities referred
to in the within-mentioned Indenture.

By: _____
Authorized Signatory

Dated: March 13, 2002

Liquid Yield Option™ Note due 2032
(Zero Coupon-Floating Rate-Senior)

1. Interest.

This Security shall not bear interest, except as specified in paragraph 5 hereof. At Stated Maturity, the Holder of this Security will receive the Contingent Principal Amount of this Security on such date, which for each \$1,000 Original Principal Amount will be equal to such Original Principal Amount of \$1,000 per Security increased daily by the applicable Yield as provided in the Indenture. If the Contingent Principal Amount hereof or any portion of such Contingent Principal Amount is not paid when due (whether upon acceleration pursuant to Section 6.02 of the Indenture, upon the date set for payment of the Redemption Price pursuant to paragraph 6 hereof, upon the date set for payment of the Purchase Price or Change in Control Purchase Price pursuant to paragraph 7 hereof or upon the Stated Maturity of this Security) or if contingent interest, if any, due hereon or any portion of such contingent interest is not paid when due in accordance with paragraph 5 hereof, then in each such case the overdue amount shall, to the extent permitted by law, bear interest at the then applicable Yield, compounded semi-annually, which interest shall accrue from the date such overdue amount was originally due to the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand. The accrual of such interest on overdue amounts shall be in lieu of, and not in addition to any subsequent increase in the Contingent Principal Amount.

The Contingent Principal Amount of each Security will accrue daily at the applicable Yield applied to the Contingent Principal Amount as of the day preceding the most recent Yield Reset Date, commencing on June 13, 2002. Regardless of the level of 3-month LIBOR, the Yield will never be less than zero and, after March 13, 2007, the Yield will not exceed 5.5% per annum. The Yield will be calculated using the actual number of days elapsed between the Yield Reset Dates divided by 360.

2. Method of Payment.

Subject to the terms and conditions of the Indenture, the Company will make payments in respect of Contingent Principal Amount, Redemption Prices, Purchase Price, Change in Control Purchase Prices and at Stated Maturity to Holders who surrender Securities to a Paying Agent to collect such payments in respect of the Securities. In addition, the Company will pay contingent interest, if any. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts. However, the Company may make such cash payments by check payable in such money.

3. Paying Agent, Conversion Agent, Registrar and Bid Solicitation Agent.

Initially, JPMorgan Chase Bank, a banking corporation organized and existing under the laws of the State of New York, (the "Trustee"), will act as Paying Agent, Conversion Agent, Registrar and Bid Solicitation Agent. The Company may appoint and change any Paying Agent,

Conversion Agent, Registrar or co-registrar or Bid Solicitation Agent without notice, other than notice to the Trustee, except that the Company will maintain at least one Paying Agent in the State of New York, City of New York, Borough of Manhattan, which shall initially be an office or agency of the Trustee. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Conversion Agent, Registrar or co-registrar. None of the Company, any of its Subsidiaries or any of their Affiliates shall act as Bid Solicitation Agent.

4. Indenture.

The Company has issued the Securities under an Indenture dated as of March 13, 2002 (the “Indenture”), between the Company and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Securities themselves and the Trust Indenture Act of 1939, as in effect from time to time (the “TIA”). Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Securities are subject to all such terms, and Securityholders are referred to the Indenture and the TIA for a statement of those terms.

The Securities are unsecured and unsubordinated obligations of the Company limited to \$2,300,000,000 aggregate Original Principal Amount (subject to Section 2.07 of the Indenture) and will rank equally in right of payment to all the Company’s present and future unsecured and unsubordinated indebtedness. The Indenture does not limit other indebtedness of the Company, secured or unsecured.

5. Contingent Interest.

Subject to the conditions of the Indenture and the accrual and record date provisions specified in this paragraph 5, the Company shall pay contingent interest to the Holders during any six-month period (a “Contingent Interest Period”) from June 1 to November 30 and from December 1 to May 31, with the initial six-month period commencing after June 1, 2007, if the average LYON Market Price for the Measurement Period with respect to such Contingent Interest Period equals 120% or more of the Contingent Principal Amount of a Security accrued thereon to the day immediately preceding the first day of the relevant Contingent Interest Period.

Contingent interest, if any, will accrue and be payable on such days and to holders of this Security as of such record dates as provided in Section 10.02 of the Indenture. The Contingent Principal Amount will continue to increase at the applicable Yield whether or not contingent interest is paid.

The amount of contingent interest payable per \$1,000 Original Principal Amount hereof in respect of either the first three-month period or the second three-month period any Contingent Interest Period shall equal the greater of (x) \$0.16 multiplied by 13.8213 and (y) the sum of all Regular Cash Dividends paid by the Company per share of Common Stock during that three-month period of the applicable Contingent Interest Period multiplied by the number of shares of Common Stock into which \$1,000 Original Principal Amount of a Security is convertible pursuant to paragraph 9 hereof as of the accrual date for such contingent interest.

Upon determination that Holders will be entitled to receive contingent interest during a Contingent Interest Period the Company shall issue a press release and publish such information on its web site on the World Wide Web for a period of not less than 120 days or, at the Company's option, otherwise publicly disclose such information.

6. Redemption at the Option of the Company.

No sinking fund is provided for the Securities. The Securities are redeemable as a whole, or from time to time in part, at any time at the option of the Company at a Redemption Price equal to the Contingent Principal Amount of the Securities on the Redemption Date, provided that the Securities are not redeemable prior to March 13, 2007.

7. Purchase by the Company at the Option of the Holder.

Subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase, at the option of the Holder, the Securities held by such Holder on March 13, 2005, 2007, 2012, 2017, 2022 and 2027 at a price equal to the Contingent Principal Amount of the Securities on the Purchase Date, upon delivery of a Purchase Notice containing the information set forth in the Indenture, at any time from the opening of business on the date that is at least 20 Business Days prior to such Purchase Date until the close of business on the Business Day immediately preceding such Purchase Date and upon delivery of the Securities to the Paying Agent by the Holder as set forth in the Indenture.

The Purchase Price may be paid, at the option of the Company, in cash or by the issuance and delivery of shares of Common Stock of the Company, or in any combination thereof.

At the option of the Holder and subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase all or a portion of the Securities in integral multiples of \$1,000 Original Principal Amount held by such Holder no later than 35 Business Days after the occurrence of a Change in Control of the Company occurring on or prior to March 13, 2007 for a Change in Control Purchase Price for each \$1,000 Original Principal Amount of such Securities equal to the Contingent Principal Amount on the Change in Control Purchase Date, which Change in Control Purchase Price shall be paid in cash.

Holders have the right to withdraw any Purchase Notice or Change in Control Purchase Notice, as the case may be, by delivering to the Paying Agent a written notice of withdrawal within the times and otherwise in accordance with the provisions of the Indenture.

If cash (and/or securities if permitted under the Indenture) sufficient to pay the Purchase Price or Change in Control Purchase Price, as the case may be, of all Securities or portions thereof to be purchased as of the Purchase Date or the Change in Control Purchase Date, as the case may be, is deposited with the Paying Agent on the Purchase Date or the Change in Control Purchase Date, as the case may be, the Contingent Principal Amount shall cease to increase, and contingent interest, if any, shall cease to accrue on such Securities (or portions thereof) immediately after such Purchase Date or Change in Control Purchase Date, as the case may be, and the Holder thereof shall have no other rights as such (other than the right to receive the

Purchase Price or Change in Control Purchase Price, as the case may be, if any, upon surrender of such Security).

8. Notice of Redemption.

Notice of redemption will be mailed at least 30 days but not more than 60 days before the Redemption Date to each Holder of Securities to be redeemed at the Holder's registered address. If money sufficient to pay the Redemption Price of all Securities (or portions thereof) to be redeemed on the Redemption Date is deposited with the Paying Agent prior to or on the Redemption Date, immediately after such Redemption Date, the Contingent Principal Amount shall cease to increase, and contingent interest, if any, shall cease to accrue on such Securities or portions thereof. Securities in denominations larger than \$1,000 of Original Principal Amount may be redeemed in part but only in integral multiples of \$1,000 of Original Principal Amount.

9. Conversion.

Subject to the provisions of this paragraph 9 and the terms of the Indenture and notwithstanding the fact that any other condition to conversion has not been satisfied, Holders may surrender this Security for conversion into shares of Common Stock at any time at their option until the close of business on the Business Day immediately preceding March 13, 2032 if, as of the last day of any calendar quarter beginning with the quarter ending on June 30, 2002, the Sale Price of the Common Stock for at least 20 Trading Days in a period of 30 consecutive Trading Days ending on the last Trading Day of such quarter is more than 120% of the accreted conversion price per share of Common Stock on the last day of such quarter. Securities subject to conversion pursuant to the condition to conversion contained in this paragraph will remain convertible notwithstanding changes to the Sale Price of the Common Stock after such Securities are deemed convertible.

The "accreted conversion price" per share of Common Stock as of any day equals the quotient of:

- the Contingent Principal Amount of \$1,000 Original Principal Amount of Securities on that day, divided by
- the number of shares of Common Stock issuable upon conversion of \$1,000 Original Principal Amount of Securities on that day.

Subject to the provisions of this paragraph 9 and the Indenture and notwithstanding the fact any other condition to conversion has not been satisfied, Holders may convert the Securities into Common Stock on a Conversion Date during any period in which the credit rating assigned to the Securities by a Rating Agency is reduced to or below the Applicable Rating. "Rating Agency" means (1) Moody's Investors Service, Inc. and its successors ("Moody's"), (2) Standard & Poor's Credit Market Services, a division of The McGraw-Hill Companies Inc., and its successors ("Standard & Poor's") and (3) Fitch, Inc. ("Fitch") and its successors. "Applicable Rating" means (1) Baa1, in the case of Moody's (or its equivalent under any successor ratings categories of Moody's), (2) BBB+, in the case of Standard & Poor's (or its equivalent under any

successor ratings categories of Standard & Poor's), (3) BBB+ in the case of Fitch (or its equivalent under any successor ratings categories of Fitch) or (4) the equivalent in respect of ratings categories of any Rating Agencies which are successors to Moody's, Standard & Poor's or Fitch.

Subject to the provisions of this paragraph 9 and the Indenture and notwithstanding the fact that any other condition to conversion has not been satisfied, a Holder may convert into Common Stock a Security or portion of a Security which has been called for redemption pursuant to paragraph 6 hereof, even if the Security, or any portion thereof, is not subject to conversion by the Holder, provided such Securities are surrendered for conversion prior to the close of business on the second Business Day immediately preceding the Redemption Date.

Subject to the provisions of this paragraph 9 and the Indenture and notwithstanding the fact that any other condition to conversion has not been satisfied, in the event that the Company declares a dividend or distribution described in Section 11.07 of the Indenture, or a dividend or a distribution described in Section 11.08 of the Indenture where the fair market value of such dividend or distribution per share of Common Stock, as determined in the Indenture, exceeds 15% of the Sale Price of the Common Stock on the Trading Day immediately preceding the date of declaration for such dividend or distribution, the Securities may be surrendered for conversion beginning on the date the Company gives notice to the Holders of such right, which shall not be less than 20 days prior to the Ex-Dividend Time for such dividend or distribution, and Securities may be surrendered for conversion at any time thereafter until the close of business on the Business Day prior to the Ex-Dividend Time or until the Company announces that such dividend or distribution will not take place. No adjustment to the Conversion Rate or the ability of the Holders to convert this Security will be made if the Company provides, as permitted in the Indenture, for Holders to participate in the transaction without conversion or in other cases specified in the Indenture.

Subject to the provisions of this paragraph 9 and the Indenture and notwithstanding the fact that any other condition to conversion has not been satisfied, in the event the Company is a party to a consolidation, merger or binding share exchange pursuant to which the Common Stock would be converted into cash, securities or other property as set forth in Section 11.14 of the Indenture, the Securities may be surrendered for conversion at any time from and after the date which is 15 days prior to the date of the anticipated effective time of such transaction announced by the Company until 15 days after the actual effective date of such transaction, and at the effective time of such transaction the right to convert a Security into Common Stock will be deemed to have changed into a right to convert it into the kind and amount of cash, securities or other property which the holder would have received if the holder had converted its Security immediately prior to the transaction.

A Security in respect of which a Holder has delivered a Purchase Notice or Change in Control Purchase Notice exercising the option of such Holder to require the Company to purchase such Security may be converted only if such notice of exercise is withdrawn in accordance with the terms of the Indenture.

The initial Conversion Rate is 13.8213 shares of Common Stock per \$1,000 Original Principal Amount, subject to adjustment for certain events described in the Indenture or this paragraph 9. The Company will deliver cash or a check in lieu of any fractional share of Common Stock due to a Holder, taking into account all Securities converted by a Holder at the same time.

Contingent interest, if any, will not be paid on Securities that are converted; provided, however that Securities surrendered for conversion during the period from the close of business on the applicable record date to the opening of business on the date on which such contingent interest is payable shall be entitled to receive such contingent interest payable on such Securities on the date on which such contingent interest is payable and (except Securities with respect to which the Company has mailed a notice of redemption) Securities surrendered for conversion during such periods must be accompanied by payment of an amount equal to the contingent interest with respect thereto that the registered Holder is to receive.

To convert a Security, a Holder must (1) complete and manually sign the conversion notice below (or complete and manually sign a facsimile of such notice) and deliver such notice to the Conversion Agent, (2) surrender the Security to the Conversion Agent, (3) furnish appropriate endorsements and transfer documents if required by the Conversion Agent, the Company or the Trustee and (4) pay any transfer or similar tax, if required.

A Holder may only convert a portion of a Security pursuant to the terms of this paragraph 9 and in accordance with the Indenture if the Original Principal Amount of such portion is \$1,000 or an integral multiple of \$1,000. No payment or adjustment will be made for dividends on the Common Stock except as provided herein and in the Indenture. On conversion of a Security, increases in the Contingent Principal Amount attributable to the period from the Issue Date through the Conversion Date, accrued Tax Original Issue Discount and (except as provided above) accrued contingent interest with respect to the converted Security shall not be cancelled, extinguished or forfeited, but rather shall be deemed to be paid in full to the Holder thereof through the delivery of the Common Stock (together with the cash payment, if any, in lieu of fractional shares) in exchange for the Security being converted pursuant to the terms hereof; and the fair market value of such shares of Common Stock (together with any such cash payment in lieu of fractional shares) shall be treated as issued, to the extent thereof, first in exchange for the increases in the Contingent Principal Amount accrued through the Conversion Date, accrued Tax Original Issue Discount and accrued contingent interest, and the balance, if any, of such fair market value of such Common Stock (and any such cash payment) shall be treated as issued in exchange for the Issue Price of the Security being converted pursuant to the provisions hereof.

Pursuant to the terms and conditions of the Indenture, the Conversion Rate will be adjusted for dividends or distributions on Common Stock payable in Common Stock or other capital stock of the Company; subdivisions, combinations or certain reclassifications of Common Stock; distributions to all holders of Common Stock of certain rights to purchase Common Stock for a period expiring within 60 days at less than the Sale Price of the Common Stock at the Time of Determination; and distributions to such holders of assets or debt securities of the Company or certain rights to purchase securities of the Company (excluding certain cash dividends or

distributions). However, no adjustment need be made if Securityholders may participate in the transaction or in certain other cases. The Company from time to time may voluntarily increase the Conversion Rate.

If the Company is a party to a consolidation, merger or binding share exchange or a transfer of all or substantially all of its assets, or upon certain distributions described in the Indenture, the right to convert a Security into Common Stock may be changed into a right to convert it into securities, cash or other assets of the Company or another person.

The Conversion Rate will not be adjusted for increases in the Contingent Principal Amount or any contingent interest.

10. [Reserved.]

11. Defaulted Interest.

Except as otherwise specified with respect to the Securities, any contingent interest on any Security shall forthwith cease to be payable to the registered Holder thereof on the relevant Regular Record Date or accrual date for contingent interest, as the case may be, by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company as provided for in Section 12.02 of the Indenture.

12. Denominations; Transfer; Exchange.

The Securities are in fully registered form, without coupons, in denominations of \$1,000 of Original Principal Amount and integral multiples of \$1,000 Original Principal Amount. A Holder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not transfer or exchange any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of the Security not to be redeemed) or any Securities in respect of which a Purchase Notice or Change in Control Purchase Notice has been given and not withdrawn (except, in the case of a Security to be purchased in part, the portion of the Security not to be purchased) or any Securities for a period of 15 days before the mailing of a notice of redemption of Securities to be redeemed.

13. Persons Deemed Owners.

The registered Holder of this Security may be treated as the owner of this Security for all purposes.

14. Unclaimed Money or Securities.

The Trustee and the Paying Agent shall return to the Company upon written request any money or securities held by them for the payment of any amount with respect to the Securities that remains unclaimed for two years, subject to applicable unclaimed property laws. After

return to the Company, Holders entitled to the money or securities must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

15. Amendment; Waiver.

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Securities may be amended with the written consent of the Holders of at least a majority in aggregate Original Principal Amount of the Securities at the time outstanding and (ii) certain Defaults may be waived with the written consent of the Holders of a majority in aggregate Original Principal Amount of the Securities at the time outstanding. Subject to certain exceptions set forth in the Indenture, without the consent of any Securityholder, the Company and the Trustee may amend the Indenture or the Securities to cure any ambiguity, omission, defect or inconsistency, or to comply with Article 5 or Section 11.14 of the Indenture, to secure the Company's obligations under this Security or to add to the Company's covenants for the benefit of the Securityholders or to surrender any right or power conferred, or to comply with any requirement of the SEC in connection with the qualification of the Indenture under the TIA, or as necessary in connection with the registration of the Securities under the Securities Act.

16. Defaults and Remedies.

If an Event of Default occurs and is continuing, the Trustee, or the Holders of at least 25% in aggregate Original Principal Amount of the Securities at the time outstanding, may declare all the Securities to be due and payable immediately. Certain events of bankruptcy or insolvency are Events of Default which will result in the Securities becoming due and payable immediately upon the occurrence of such Events of Default.

Securityholders may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Securities unless it receives indemnity or security reasonably satisfactory to it. Subject to certain limitations, Holders of a majority in aggregate Original Principal Amount of the Securities at the time outstanding may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Securityholders notice of any continuing Default (except a Default in payment of amounts specified in clause (i) or (ii) above) if it determines that withholding notice is in their interests.

17. Trustee Dealings with the Company.

Subject to certain limitations imposed by the TIA, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Company or its respective Affiliates and may otherwise deal with the Company or its respective Affiliates with the same rights it would have if it were not Trustee.

18. No Recourse Against Others.

A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

19. Authentication.

This Security shall not be valid until an authorized signatory of the Trustee manually signs the Trustee's Certificate of Authentication on the other side of this Security.

20. Abbreviations.

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with right of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

22. GOVERNING LAW.

THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE INDENTURE AND THIS SECURITY.

The Company will furnish to any Securityholder upon written request and without charge a copy of the Indenture.

Merrill Lynch & Co., Inc.
222 Broadway, 17th Floor
New York, New York 10038
Attention: Secretary

with a copy to:

Merrill Lynch & Co., Inc.
4 World Financial Center 18th Floor
New York, New York 10080
Attention: Treasurer

ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

(Insert assignee's soc. Sec. or tax ID no.)

(Print or type assignee's name, address
and zip code)

and irrevocably appoint _____ agent to
transfer this Security on the books of the Company.
The agent may substitute another to act for him.

Date: _____

CONVERSION NOTICE

To convert this Security into Common Stock of the
Company, check the box: ☐

To convert only part of this Security, state the
Principal Amount to be converted (which must be
\$1,000 or an integral multiple of \$1,000): \$

If you want the stock certificate made out in another
person's name, fill in the form below:

(Insert other person's soc. sec. or tax ID no.)

(Print or type other person's name, address
and zip code)

Your

Signature: _____ *

(Sign exactly as your name appears on the
other side of this Security)

* Your signature must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Trustee, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Trustee in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

MERRILL LYNCH & CO., INC.

(a Delaware corporation)

**Liquid Yield Option™ Notes due 2032
(Zero Coupon — Floating Rate — Senior)**

FIRST SUPPLEMENTAL INDENTURE

Dated as of November 1, 2004

**JPMORGAN CHASE BANK,
Trustee**

™ Trademark of Merrill Lynch & Co., Inc.

FIRST SUPPLEMENTAL INDENTURE, dated as of November 1, 2004, between Merrill Lynch & Co., Inc., a Delaware corporation (the “Company”), and JPMorgan Chase Bank, a banking corporation organized and existing under the laws of the State of New York, as trustee (the “Trustee”), to that certain Indenture, dated as of March 13, 2002 (the “Original Indenture”).

W I T N E S S E T H:

WHEREAS, the parties hereto are parties to the Original Indenture; and

WHEREAS, the parties hereto desire to amend the Original Indenture and the Company’s Liquid Yield Option™ Notes due 2032 (Zero Coupon — Floating Rate — Senior) (the “Securities”) pursuant to Section 9.01(e) of the Original Indenture as more fully set forth below;

NOW, THEREFORE, in consideration of the mutual promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each party agrees for the benefit of the other party and for the equal and ratable benefit of the Holders of the Securities as follows:

ARTICLE I

DEFINITIONS

Unless otherwise defined herein, capitalized terms used herein shall have the respective meanings assigned thereto in the Original Indenture.

ARTICLE II

AMENDMENT

Section 2.01. Amendment of the Original Indenture. On and after the Amendment Effective Date (as defined below), the Original Indenture is hereby amended as follows:

(a) The form of the Securities attached to the Original Indenture as Exhibit A is deleted in its entirety and a new Exhibit A in the form attached hereto is substituted therefor.

(b) The definition of “*Officers’ Certificate*” in Section 1.01 is hereby deleted in its entirety and amended as follows:

“*Officers’ Certificate*” means a written certificate containing the information specified in Sections 13.04 and 13.05, if applicable, signed in the name of the Company by Chairman of the Board, the President, a Vice President, the Treasurer or an Assistant Treasurer and by the Secretary or an Assistant Secretary, and delivered to the Trustee.”

(c) Section 1.02 is hereby deleted in its entirety and amended as follows:

“Section 1.02. Other Definitions.

Term	Defined in Section
“Agent Members”	2.11
“Associate”	3.09(a)
“Bankruptcy Law”	6.01
“Bid Solicitation Agent”	2.03
“Change in Control”	3.09(a)
“Change in Control Purchase Date”	3.09(a)
“Change in Control Purchase Notice”	3.09(c)
“Change in Control Purchase Price”	3.09(a)
“Company Notice”	3.08(e)
“Company Notice Date”	3.08(c)
“Common Stock Record Date”	10.01
“Contingent Interest Payment Date”	10.02
“Conversion Agent”	2.03
“Conversion Date”	11.02
“Conversion Rate”	11.01
“Defaulted Interest”	12.02
“DTC”	2.03
“Event of Default”	6.01
“Exchange Act”	2.11(a)
“Ex-Dividend Measurement Period”	11.08
“Ex-Dividend Time”	11.01
“Extraordinary Cash Dividend”	11.08
“LYONs Market Price”	10.01
“Measurement Period”	10.01
“Notice of Default”	6.01
“Paying Agent”	2.03
“Purchase Notice”	3.08(a)
“Registrar”	2.03
“Regular Record Date”	12.01
“Relevant Value”	10.01
“Securities Act”	7.03
“Semiannual Period”	10.01
“Time of Determination”	11.01

Whenever this Indenture refers to a provision of the TIA, such provision is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

“Commission” means the SEC.

“indenture securities” means the Securities.

“indenture security holder” means a Securityholder.

“indenture to be qualified” means this Indenture.

“indenture trustee” or “institutional trustee” means the Trustee.

“obligor” on the indenture securities means the Company.

All other TIA terms used in this Indenture that are defined by the TIA or defined by TIA reference to another statute or regulation have the meanings assigned to them by such definitions.”

(d) The first paragraph of Section 2.02 is hereby deleted in its entirety and amended as follows:

“Section 2.02 Execution and Authentication. The Securities shall be executed by the Company by either of its Chairman or Vice Chairman of the Board, its President, its Treasurer, its Assistant Treasurer or one of its Vice Presidents. The signature of any of these officers on the Securities may be manual or facsimile.”

(e) The first paragraph of Section 2.11 is hereby deleted in its entirety and amended as follows:

“(a) Transfer and Exchange of Global Securities. A Global Security deposited with the Depositary pursuant to Section 2.01 shall be transferred to the beneficial owners thereof only if such transfer complies with Section 2.06 and (i) the Depositary notifies the Company that it is unwilling or unable to continue as depositary for such Global Security or if at any time ceases to be a “clearing agency” registered under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and a successor depositary is not appointed by the Company within 60 days after such notice, or (ii) an Event of Default has occurred and is continuing with respect to the Securities or (iii) the Company executes and delivers to the Trustee a Company Order to the effect that the global Securities shall be exchangeable. In any case, the Company will promptly make available to the Trustee a reasonable supply of Securities in definitive, fully registered form without interest coupons in accordance with the provisions of this Article 2.”

(f) Section 3.08 is hereby deleted in its entirety and amended as follows:

“Section 3.08. Purchase of Securities at the Option of the Holder. (a) General. If a Holder exercises its right to require the Company to repurchase the Securities, the Securities shall be purchased by the Company on the applicable Purchase Date, at a purchase price equal to the Contingent Principal Amount of the Securities on the applicable Purchase Date, at the option of the Holder thereof, upon:

(1) delivery to the Paying Agent, by the Holder, of a written notice of purchase (a “Purchase Notice”) at any time from the opening of business on the date that is at least 20 Business Days prior to a Purchase Date until the close of business on the Business Day immediately preceding such Purchase Date stating:

(A) the certificate number of the Security which the Holder will deliver to be purchased,

(B) the portion of the Original Principal Amount of the Security which the Holder will deliver to be purchased, which portion must be an Original Principal Amount of \$1,000 or an integral multiple thereof, and

(C) that such Security shall be purchased as of the Purchase Date pursuant to the terms and conditions specified in the Securities; and

(2) delivery of such Security to the Paying Agent prior to, on or after the Purchase Date (together with all necessary endorsements) at the offices of the Paying Agent, such delivery being a condition to receipt by the Holder of the Purchase Price therefor; provided, however, that such Purchase Price shall be so paid pursuant to this Section 3.08 only if the Security so delivered to the Paying Agent shall conform in all respects to the description thereof in the related Purchase Notice, as determined by the Company.

The Company shall purchase from the Holder thereof, pursuant to this Section 3.08, a portion of a Security if the Original Principal Amount of such portion is \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to the purchase of all of a Security also apply to the purchase of such portion of such Security.

Any purchase by the Company contemplated pursuant to the provisions of this Section 3.08 shall be consummated by the delivery of the consideration to be received by the Holder as promptly as practicable following the later of the Purchase Date and the time of delivery of the Security.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent or the office or agency referred to in Section 4.05 the Purchase Notice contemplated by this Section 3.08(a) shall have the right to withdraw such Purchase Notice at any time prior to the close of business on the Purchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.10.

The Paying Agent shall promptly notify the Company of the receipt by it of any Purchase Notice or written notice of withdrawal thereof.

(b) Purchase with Cash. On each Purchase Date the Purchase Price of Securities in respect of which a Purchase Notice pursuant to Section 3.08(a) has been given, or a specified percentage thereof, will be paid by the Company with cash equal to the aggregate Purchase Price of such Securities.

(c) Company Notice. The Company shall send a notice (the “Company Notice”) to the Holders (and to beneficial owners as required by applicable law), in the manner provided in Section 13.02, not less than 20 Business Days prior to the applicable Purchase Date (the “Company Notice Date”) which shall include a form of Purchase Notice to be completed by a Securityholder that wishes to exercise its option to have the Company repurchase the Securities and shall state:

(i) the Purchase Price, the Conversion Rate and, to the extent known at the time of such notice, the amount of contingent interest, if any, that will be accrued and payable with respect to the Securities as of the Purchase Date;

(ii) the name and address of the Paying Agent and the Conversion Agent and of the office or agency referred to in Section 4.05;

(iii) that Securities as to which a Purchase Notice has been given may be converted pursuant to Article 11 hereof only if any applicable Purchase Notice has been withdrawn in accordance with the terms of this Indenture;

(iv) that Securities must be surrendered to the Paying Agent or to the office or agency referred to in Section 4.05 to collect payment of the Purchase Price;

(v) that the Purchase Price for any Security as to which a Purchase Notice has been given and not withdrawn will be paid as promptly as practicable following the later of the Purchase Date and the time of surrender of such Security as described in (iv);

(vi) the procedures the Holder must follow to exercise rights under Section 3.08 and a brief description of those rights;

(vii) briefly, the conversion rights of the Securities and that Holders who want to convert Securities must satisfy the requirements set forth in paragraph 9 of the Securities;

(viii) the procedures for withdrawing a Purchase Notice (including, without limitation, for a conditional withdrawal pursuant to the terms of Section 3.10);

(ix) that, unless the Company defaults in making payment of such Purchase Price on Securities surrendered for purchase, the Contingent Principal Amount will cease to increase and contingent interest, if any, will cease to accrue on and after the Purchase Date; and

(x) the CUSIP number of the Securities.

At the Company's request and upon being provided with a copy of such Company Notice, the Trustee shall give such Company Notice in the Company's name and at the Company's expense, provided that the Company makes such request at least 15 days (unless a shorter period shall be acceptable to the Trustee) prior to the date such Company Notice must be mailed; and provided, further, that, in all cases, the text of such Company Notice shall be prepared by the Company.

(d) Procedure upon Purchase. On or before the Purchase Date, the Company shall deposit cash, at the time and in the manner as provided in Section 3.11, sufficient to pay the aggregate Purchase Price of all Securities to be purchased pursuant to this Section 3.08.

(e) Taxes. Nothing herein shall preclude the Company from withholding or directing the withholding of any tax required by law or regulations.”

(g) Section 3.10 is hereby deleted in its entirety and amended as follows:

“Section 3.10. Effect of Purchase Notice or Change in Control Purchase Notice. Upon receipt by the Paying Agent of the Purchase Notice or Change in Control Purchase Notice specified in Section 3.08(a) or Section 3.09(c), as applicable, the Holder of the Security in respect of which such Purchase Notice or Change in Control Purchase Notice, as the case may be, was given shall (unless such Purchase Notice or Change in Control Purchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Purchase Price or Change in Control Purchase Price, as the case may be, with respect to such Security to the Purchase Date or Change in Control Purchase Date, as the case may be. Such Purchase Price or Change in Control Purchase Price shall be paid to such Holder, subject to receipts of funds by the Paying Agent, as promptly as practicable following the later of (x) the Purchase Date or the Change in Control Purchase Date, as the case may be, with respect to such Security (provided the conditions in Section 3.08(a) or Section 3.09(c), as applicable, have been satisfied) and (y) the time of delivery of such Security to the Paying Agent by the Holder thereof in the manner required by Section 3.08(a) or Section 3.09(c), as applicable. Securities in respect of which a Purchase Notice or Change in Control Purchase Notice, as the case may be, has been given by the Holder thereof may not be converted pursuant to Article 11 hereof on or after the date of the delivery of such Purchase Notice or Change in Control Purchase Notice, as the case may be, unless such Purchase Notice or Change in Control Purchase Notice, as the case may be, has first been validly withdrawn as specified in the following two paragraphs.

A Purchase Notice or Change in Control Purchase Notice, as the case may be, may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent or to the office or agency referred to in Section 4.05 in accordance with the Purchase Notice or Change in Control Purchase Notice, as the case may be, at any time prior to the close of business on the Purchase Date or the Change in Control Purchase Date, as the case may be, specifying:

(1) the Original Principal Amount of the Securities with respect to which such notice of withdrawal is being submitted,

(2) the certificate number of the Securities in respect of which such notice of withdrawal is being submitted, and

(3) the Original Principal Amount, if any, of any such Securities which remain subject to the original Purchase Notice or Change in Control Purchase Notice, as the case may be, and which has been or will be delivered for purchase by the Company.

There shall be no purchase of any Securities pursuant to Section 3.08 or 3.09 if there has occurred (prior to, on or after, as the case may be, the giving, by the Holders of such Securities, of the required Purchase Notice or Change in Control Purchase Notice, as the case may be) and is continuing an Event of Default (other than a default in the payment of the Purchase Price or Change in Control Purchase Price, as the case may be, with respect to such Securities). The Paying Agent will promptly return to the respective Holders thereof any Securities (x) with respect to which a Purchase Notice or Change in Control Purchase Notice, as the case may be, has been withdrawn in compliance with this Indenture, or (y) held by it during the continuance of an Event of Default (other than a default in the payment of the Purchase Price or Change in Control Purchase Price, as the case may be, with respect to such Securities) in which case, upon such return, the Purchase Notice or Change in Control Purchase Notice with respect thereto shall be deemed to have been withdrawn.”

(h) Section 3.11 is hereby deleted in its entirety and amended as follows:

“Section 3.11. Deposit of Purchase Price or Change in Control Purchase Price. Prior to 10:00 a.m. New York City time on the Business Day following the Purchase Date or the Change in Control Purchase Date, as the case may be, the Company shall deposit with the Trustee or with the Paying Agent (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.04) an amount of money (in immediately available funds if deposited on such Business Day) sufficient to pay the aggregate Purchase Price or Change in Control Purchase Price, as the case may be, of all the Securities or portions thereof which are to be purchased as of the Purchase Date or Change in Control Purchase Date, as the case may be. After the Purchase Date or the Change in Control Purchase Date, the Contingent Principal Amount shall cease to increase, Tax Original Issue Discount, and contingent interest, if any, shall cease to accrue on such Security, whether or not such Security is delivered to the Paying Agent.”

(i) Section 3.14 is hereby deleted in its entirety and amended as follows:

“Section 3.14. Repayment to the Company. The Trustee and the Paying Agent shall return to the Company any cash that remains unclaimed as provided in paragraph 14 of the Securities, together with interest or dividends, if any, thereon (subject to the provisions of Section 7.01(f)), held by them for the payment of the Purchase Price or Change in Control Purchase Price, as the case may be; provided, however, that to the extent that the aggregate amount of cash deposited by the Company pursuant to Section 3.11 exceeds the aggregate Purchase Price or Change in Control Purchase Price, as the case may be, of the Securities or portions thereof which the Company is obligated to purchase as of the Purchase Date or Change in Control Purchase Date, as the case may be, then as promptly as practicable after the Business Day following the Purchase Date or Change in Control Purchase Date, as the case may be, the Trustee shall return any such excess to the Company together with interest or dividends, if any, thereon (subject to the provisions of Section 7.01(f)).

Notwithstanding anything in this Indenture to the contrary, all moneys delivered to the Trustee (in any capacity) for payment to Holders shall remain uninvested unless otherwise agreed to in writing between the Company and the Trustee.”

(j) Section 7.03 is hereby deleted in its entirety and amended as follows:

“Section 7.03. Trustee’s Disclaimer. The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Company’s use of the proceeds from the Securities, it shall not be responsible for any statement in the registration statement for the Securities under the Securities Act of 1933, as amended (the “Securities Act”), or in the Indenture or the Securities (other than its certificate of authentication), or the determination as to which beneficial owners are entitled to receive any notices hereunder.”

(k) Section 8.01 is hereby deleted in its entirety and amended as follows:

“Section 8.01. Discharge of Liability on Securities. When (i) the Company delivers to the Trustee all outstanding Securities (other than Securities replaced pursuant to Section 2.07) for cancellation or (ii) all outstanding Securities have become due and payable and the Company deposits with the Trustee cash sufficient to pay at the Stated Maturity, the Purchase Date, the Change in Control Purchase or the Redemption Date, the Contingent Principal Amount, the Purchase Price or contingent interest (if any shall be due and unpaid), the Change in Control Purchase Price or the Redemption Price, as the case may be, of all outstanding Securities (other than Securities replaced pursuant to Section 2.07), and if, in either case, the Company has paid all other sums payable hereunder by the Company, then this Indenture shall, subject to Section 7.06, cease to be of further effect. The Trustee shall join in the execution of a document prepared by the Company acknowledging satisfaction and discharge of this Indenture on demand of the Company accompanied by an Officers’ Certificate and Opinion of Counsel and at the cost and expense of the Company.”

ARTICLE III

MISCELLANEOUS

Section 3.01. Effectiveness. This First Supplemental Indenture shall become effective as of the date (the “Amendment Effective Date”) when each of the parties hereto shall have received counterparts hereof signed by the other party hereto. Upon the effectiveness hereof, all references in the Original Indenture to “this Indenture” or the like shall refer to the Original Indenture as further amended hereby.

Section 3.02. Governing Law. THIS FIRST SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AS APPLIED TO CONTRACTS MADE AND PERFORMED WITHIN THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

Section 3.03. Multiple Originals. The parties may sign any number of copies of this First Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture.

SIGNATURES

IN WITNESS WHEREOF, the undersigned, being duly authorized, have executed this First Supplemental Indenture on behalf of the respective parties hereto as of the date first above written.

MERRILL LYNCH & CO., INC.

By: /s/ John N. Laws
Name: John N. Laws
Title: Assistant Treasurer

JPMORGAN CHASE BANK

By: /s/ Albert Mari, Jr.
Name: Albert Mari, Jr.
Title: Vice President

EXHIBIT A

[FORM OF FACE OF GLOBAL SECURITY]

FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, THIS SECURITY IS ISSUED WITH AN INDETERMINATE AMOUNT OF ORIGINAL ISSUE DISCOUNT FOR UNITED STATES FEDERAL INCOME TAX PURPOSES. THE ISSUE DATE IS MARCH 13, 2002, AND THE YIELD TO MATURITY FOR PURPOSES OF ACCRUING ORIGINAL ISSUE DISCOUNT IS 5.714% PER ANNUM. THE HOLDER OF THIS SECURITY MAY OBTAIN THE PROJECTED PAYMENT SCHEDULE BY SUBMITTING A WRITTEN REQUEST FOR SUCH INFORMATION TO: MERRILL LYNCH & CO., INC., CORPORATE SECRETARY'S OFFICE, 222 BROADWAY, 17TH FLOOR, NEW YORK, NEW YORK 10038.

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF THE DEPOSITARY. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR THE INDIVIDUAL DEBT SECURITIES REPRESENTED HEREBY, THIS GLOBAL SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), MERRILL LYNCH & CO., INC. OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

MERRILL LYNCH & CO., INC.
Liquid Yield Option™ Note due 2032
(Zero Coupon-Floating Rate-Senior)

No. R-
Issue Date: March 13, 2002
Original Principal Amount: \$
Issue Price: \$1,000.00 for each \$1,000
Original Principal Amount

CUSIP: 590188 A73

MERRILL LYNCH & CO., INC., a Delaware corporation, promises to pay to Cede & Co. or registered assigns, on March 13, 2032 the Contingent Principal Amount of this Security on such date. This Security is issued with an Original Principal Amount of MILLION DOLLARS (\$).

This Security shall not bear interest except as specified on the reverse side of this Security. The Contingent Principal Amount of this Security, will accrue as specified on the reverse side of this Security. This Security is convertible as specified on the reverse side of this Security.

Additional provisions of this Security are set forth on the reverse side of this Security.

Dated:

MERRILL LYNCH & CO., INC.

By: _____
Title:

TRUSTEE'S CERTIFICATE OF
AUTHENTICATION
JPMORGAN CHASE BANK,
as Trustee, certifies that this
is one of the Securities referred
to in the within-mentioned Indenture.

By: _____

Authorized Signature

Dated:

[FORM OF REVERSE OF SECURITY]

Liquid Yield Option™ Note due 2032
(Zero Coupon-Floating Rate-Senior)

1. Interest.

This Security shall not bear interest, except as specified in paragraph 5 hereof. At Stated Maturity, the Holder of this Security will receive the Contingent Principal Amount of this Security on such date, which for each \$1,000 Original Principal Amount will be equal to such Original Principal Amount of \$1,000 per Security increased daily by the applicable Yield as provided in the Indenture. If the Contingent Principal Amount hereof or any portion of such Contingent Principal Amount is not paid when due (whether upon acceleration pursuant to Section 6.02 of the Indenture, upon the date set for payment of the Redemption Price pursuant to paragraph 6 hereof, upon the date set for payment of the Purchase Price or Change in Control Purchase Price pursuant to paragraph 7 hereof or upon the Stated Maturity of this Security) or if contingent interest, if any, due hereon or any portion of such contingent interest is not paid when due in accordance with paragraph 5 hereof, then in each such case the overdue amount shall, to the extent permitted by law, bear interest at the then applicable Yield, compounded semi-annually, which interest shall accrue from the date such overdue amount was originally due to the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand. The accrual of such interest on overdue amounts shall be in lieu of, and not in addition to any subsequent increase in the Contingent Principal Amount.

The Contingent Principal Amount of each Security will accrue daily at the applicable Yield applied to the Contingent Principal Amount as of the day preceding the most recent Yield Reset Date, commencing on June 13, 2002. Regardless of the level of 3-month LIBOR, the Yield will never be less than zero and, after March 13, 2007, the Yield will not exceed 5.5% per annum. The Yield will be calculated using the actual number of days elapsed between the Yield Reset Dates divided by 360.

2. Method of Payment.

Subject to the terms and conditions of the Indenture, the Company will make payments in respect of Contingent Principal Amount, Redemption Prices, Purchase Price, Change in Control Purchase Prices and at Stated Maturity to Holders who surrender Securities to a Paying Agent to collect such payments in respect of the Securities. In addition, the Company will pay contingent interest, if any. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts. However, the Company may make such cash payments by check payable in such money.

3. Paying Agent, Conversion Agent, Registrar and Bid Solicitation Agent.

Initially, JPMorgan Chase Bank, a banking corporation organized and existing under the laws of the State of New York, (the “Trustee”), will act as Paying Agent, Conversion Agent, Registrar and Bid Solicitation Agent. The Company may appoint and change any Paying Agent, Conversion Agent, Registrar or co-registrar or Bid Solicitation Agent without notice, other than notice to the Trustee, except that the Company will maintain at least one Paying Agent in the State of New York, City of New York, Borough of Manhattan, which shall initially be an office or agency of the Trustee. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Conversion Agent, Registrar or co-registrar. None of the Company, any of its Subsidiaries or any of their Affiliates shall act as Bid Solicitation Agent.

4. Indenture.

The Company has issued the Securities under an Indenture dated as of March 13, 2002, as amended (the “Indenture”), between the Company and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Securities themselves and the Trust Indenture Act of 1939, as in effect from time to time (the “TIA”). Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Securities are subject to all such terms, and Securityholders are referred to the Indenture and the TIA for a statement of those terms.

The Securities are unsecured and unsubordinated obligations of the Company limited to \$2,300,000,000 aggregate Original Principal Amount (subject to Section 2.07 of the Indenture) and will rank equally in right of payment to all the Company’s present and future unsecured and unsubordinated indebtedness. The Indenture does not limit other indebtedness of the Company, secured or unsecured.

5. Contingent Interest.

Subject to the conditions of the Indenture and the accrual and record date provisions specified in this paragraph 5, the Company shall pay contingent interest to the Holders during any six-month period (a “Contingent Interest Period”) from June 1 to November 30 and from December 1 to May 31, with the initial six-month period commencing after June 1, 2007, if the average LYON Market Price for the Measurement Period with respect to such Contingent Interest Period equals 120% or more of the Contingent Principal Amount of a Security accrued thereon to the day immediately preceding the first day of the relevant Contingent Interest Period.

Contingent interest, if any, will accrue and be payable on such days and to holders of this Security as of such record dates as provided in Section 10.02 of the Indenture. The Contingent Principal Amount will continue to increase at the applicable Yield whether or not contingent interest is paid.

The amount of contingent interest payable per \$1,000 Original Principal Amount hereof in respect of either the first three-month period or the second three-month period any Contingent Interest Period shall equal the greater of (x) \$0.16 multiplied by 13.8213 and (y) the sum of all Regular Cash Dividends paid by the Company per share of Common Stock during that three-month period of the applicable Contingent Interest Period multiplied by the number of shares of

Common Stock into which \$1,000 Original Principal Amount of a Security is convertible pursuant to paragraph 9 hereof as of the accrual date for such contingent interest.

Upon determination that Holders will be entitled to receive contingent interest during a Contingent Interest Period the Company shall issue a press release and publish such information on its web site on the World Wide Web for a period of not less than 120 days or, at the Company's option, otherwise publicly disclose such information.

6. Redemption at the Option of the Company.

No sinking fund is provided for the Securities. The Securities are redeemable as a whole, or from time to time in part, at any time at the option of the Company at a Redemption Price equal to the Contingent Principal Amount of the Securities on the Redemption Date, provided that the Securities are not redeemable prior to March 13, 2007.

7. Purchase by the Company at the Option of the Holder.

Subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase, at the option of the Holder, the Securities held by such Holder on March 13, 2005, 2007, 2012, 2017, 2022 and 2027 at a price equal to the Contingent Principal Amount of the Securities on the Purchase Date, upon delivery of a Purchase Notice containing the information set forth in the Indenture, at any time from the opening of business on the date that is at least 20 Business Days prior to such Purchase Date until the close of business on the Business Day immediately preceding such Purchase Date and upon delivery of the Securities to the Paying Agent by the Holder as set forth in the Indenture. The Purchase Price shall be paid in cash.

At the option of the Holder and subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase all or a portion of the Securities in integral multiples of \$1,000 Original Principal Amount held by such Holder no later than 35 Business Days after the occurrence of a Change in Control of the Company occurring on or prior to March 13, 2007 for a Change in Control Purchase Price for each \$1,000 Original Principal Amount of such Securities equal to the Contingent Principal Amount on the Change in Control Purchase Date, which Change in Control Purchase Price shall be paid in cash.

Holders have the right to withdraw any Purchase Notice or Change in Control Purchase Notice, as the case may be, by delivering to the Paying Agent a written notice of withdrawal within the times and otherwise in accordance with the provisions of the Indenture.

If cash sufficient to pay the Purchase Price or Change in Control Purchase Price, as the case may be, of all Securities or portions thereof to be purchased as of the Purchase Date or the Change in Control Purchase Date, as the case may be, is deposited with the Paying Agent on the Purchase Date or the Change in Control Purchase Date, as the case may be, the Contingent Principal Amount shall cease to increase, and contingent interest, if any, shall cease to accrue on such Securities (or portions thereof) immediately after such Purchase Date or Change in Control Purchase Date, as the case may be, and the Holder thereof shall have no other rights as such

(other than the right to receive the Purchase Price or Change in Control Purchase Price, as the case may be, if any, upon surrender of such Security).

8. Notice of Redemption.

Notice of redemption will be mailed at least 30 days but not more than 60 days before the Redemption Date to each Holder of Securities to be redeemed at the Holder's registered address. If money sufficient to pay the Redemption Price of all Securities (or portions thereof) to be redeemed on the Redemption Date is deposited with the Paying Agent prior to or on the Redemption Date, immediately after such Redemption Date, the Contingent Principal Amount shall cease to increase, and contingent interest, if any, shall cease to accrue on such Securities or portions thereof. Securities in denominations larger than \$1,000 of Original Principal Amount may be redeemed in part but only in integral multiples of \$1,000 of Original Principal Amount.

9. Conversion.

Subject to the provisions of this paragraph 9 and the terms of the Indenture and notwithstanding the fact that any other condition to conversion has not been satisfied, Holders may surrender this Security for conversion into shares of Common Stock at any time at their option until the close of business on the Business Day immediately preceding March 13, 2032 if, as of the last day of any calendar quarter beginning with the quarter ending on June 30, 2002, the Sale Price of the Common Stock for at least 20 Trading Days in a period of 30 consecutive Trading Days ending on the last Trading Day of such quarter is more than 120% of the accreted conversion price per share of Common Stock on the last day of such quarter. Securities subject to conversion pursuant to the condition to conversion contained in this paragraph will remain convertible notwithstanding changes to the Sale Price of the Common Stock after such Securities are deemed convertible.

The "accreted conversion price" per share of Common Stock as of any day equals the quotient of:

- the Contingent Principal Amount of \$1,000 Original Principal Amount of Securities on that day, divided by
- the number of shares of Common Stock issuable upon conversion of \$1,000 Original Principal Amount of Securities on that day.

Subject to the provisions of this paragraph 9 and the Indenture and notwithstanding the fact any other condition to conversion has not been satisfied, Holders may convert the Securities into Common Stock on a Conversion Date during any period in which the credit rating assigned to the Securities by a Rating Agency is reduced to or below the Applicable Rating. "Rating Agency" means (1) Moody's Investors Service, Inc. and its successors ("Moody's"), (2) Standard & Poor's Credit Market Services, a division of The McGraw-Hill Companies Inc., and its successors ("Standard & Poor's") and (3) Fitch, Inc. ("Fitch") and its successors. "Applicable Rating" means (1) Baa1, in the case of Moody's (or its equivalent under any successor ratings categories of Moody's), (2) BBB+, in the case of Standard & Poor's (or its equivalent under any

successor ratings categories of Standard & Poor's), (3) BBB+ in the case of Fitch (or its equivalent under any successor ratings categories of Fitch) or (4) the equivalent in respect of ratings categories of any Rating Agencies which are successors to Moody's, Standard & Poor's or Fitch.

Subject to the provisions of this paragraph 9 and the Indenture and notwithstanding the fact that any other condition to conversion has not been satisfied, a Holder may convert into Common Stock a Security or portion of a Security which has been called for redemption pursuant to paragraph 6 hereof, even if the Security, or any portion thereof, is not subject to conversion by the Holder, provided such Securities are surrendered for conversion prior to the close of business on the second Business Day immediately preceding the Redemption Date.

Subject to the provisions of this paragraph 9 and the Indenture and notwithstanding the fact that any other condition to conversion has not been satisfied, in the event that the Company declares a dividend or distribution described in Section 11.07 of the Indenture, or a dividend or a distribution described in Section 11.08 of the Indenture where the fair market value of such dividend or distribution per share of Common Stock, as determined in the Indenture, exceeds 15% of the Sale Price of the Common Stock on the Trading Day immediately preceding the date of declaration for such dividend or distribution, the Securities may be surrendered for conversion beginning on the date the Company gives notice to the Holders of such right, which shall not be less than 20 days prior to the Ex-Dividend Time for such dividend or distribution, and Securities may be surrendered for conversion at any time thereafter until the close of business on the Business Day prior to the Ex-Dividend Time or until the Company announces that such dividend or distribution will not take place. No adjustment to the Conversion Rate or the ability of the Holders to convert this Security will be made if the Company provides, as permitted in the Indenture, for Holders to participate in the transaction without conversion or in other cases specified in the Indenture.

Subject to the provisions of this paragraph 9 and the Indenture and notwithstanding the fact that any other condition to conversion has not been satisfied, in the event the Company is a party to a consolidation, merger or binding share exchange pursuant to which the Common Stock would be converted into cash, securities or other property as set forth in Section 11.14 of the Indenture, the Securities may be surrendered for conversion at any time from and after the date which is 15 days prior to the date of the anticipated effective time of such transaction announced by the Company until 15 days after the actual effective date of such transaction, and at the effective time of such transaction the right to convert a Security into Common Stock will be deemed to have changed into a right to convert it into the kind and amount of cash, securities or other property which the holder would have received if the holder had converted its Security immediately prior to the transaction.

A Security in respect of which a Holder has delivered a Purchase Notice or Change in Control Purchase Notice exercising the option of such Holder to require the Company to purchase such Security may be converted only if such notice of exercise is withdrawn in accordance with the terms of the Indenture.

The initial Conversion Rate is 13.8213 shares of Common Stock per \$1,000 Original Principal Amount, subject to adjustment for certain events described in the Indenture or this paragraph 9. The Company will deliver cash or a check in lieu of any fractional share of Common Stock due to a Holder, taking into account all Securities converted by a Holder at the same time.

Contingent interest, if any, will not be paid on Securities that are converted; provided, however that Securities surrendered for conversion during the period from the close of business on the applicable record date to the opening of business on the date on which such contingent interest is payable shall be entitled to receive such contingent interest payable on such Securities on the date on which such contingent interest is payable and (except Securities with respect to which the Company has mailed a notice of redemption) Securities surrendered for conversion during such periods must be accompanied by payment of an amount equal to the contingent interest with respect thereto that the registered Holder is to receive.

To convert a Security, a Holder must (1) complete and manually sign the conversion notice below (or complete and manually sign a facsimile of such notice) and deliver such notice to the Conversion Agent, (2) surrender the Security to the Conversion Agent, (3) furnish appropriate endorsements and transfer documents if required by the Conversion Agent, the Company or the Trustee and (4) pay any transfer or similar tax, if required.

A Holder may only convert a portion of a Security pursuant to the terms of this paragraph 9 and in accordance with the Indenture if the Original Principal Amount of such portion is \$1,000 or an integral multiple of \$1,000. No payment or adjustment will be made for dividends on the Common Stock except as provided herein and in the Indenture. On conversion of a Security, increases in the Contingent Principal Amount attributable to the period from the Issue Date through the Conversion Date, accrued Tax Original Issue Discount and (except as provided above) accrued contingent interest with respect to the converted Security shall not be cancelled, extinguished or forfeited, but rather shall be deemed to be paid in full to the Holder thereof through the delivery of the Common Stock (together with the cash payment, if any, in lieu of fractional shares) in exchange for the Security being converted pursuant to the terms hereof; and the fair market value of such shares of Common Stock (together with any such cash payment in lieu of fractional shares) shall be treated as issued, to the extent thereof, first in exchange for the increases in the Contingent Principal Amount accrued through the Conversion Date, accrued Tax Original Issue Discount and accrued contingent interest, and the balance, if any, of such fair market value of such Common Stock (and any such cash payment) shall be treated as issued in exchange for the Issue Price of the Security being converted pursuant to the provisions hereof.

Pursuant to the terms and conditions of the Indenture, the Conversion Rate will be adjusted for dividends or distributions on Common Stock payable in Common Stock or other capital stock of the Company; subdivisions, combinations or certain reclassifications of Common Stock; distributions to all holders of Common Stock of certain rights to purchase Common Stock for a period expiring within 60 days at less than the Sale Price of the Common Stock at the Time of Determination; and distributions to such holders of assets or debt securities of the Company or certain rights to purchase securities of the Company (excluding certain cash dividends or

distributions). However, no adjustment need be made if Securityholders may participate in the transaction or in certain other cases. The Company from time to time may voluntarily increase the Conversion Rate.

If the Company is a party to a consolidation, merger or binding share exchange or a transfer of all or substantially all of its assets, or upon certain distributions described in the Indenture, the right to convert a Security into Common Stock may be changed into a right to convert it into securities, cash or other assets of the Company or another person.

The Conversion Rate will not be adjusted for increases in the Contingent Principal Amount or any contingent interest.

10. [Reserved.]

11. Defaulted Interest.

Except as otherwise specified with respect to the Securities, any contingent interest on any Security shall forthwith cease to be payable to the registered Holder thereof on the relevant Regular Record Date or accrual date for contingent interest, as the case may be, by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company as provided for in Section 12.02 of the Indenture.

12. Denominations; Transfer; Exchange.

The Securities are in fully registered form, without coupons, in denominations of \$1,000 of Original Principal Amount and integral multiples of \$1,000 Original Principal Amount. A Holder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not transfer or exchange any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of the Security not to be redeemed) or any Securities in respect of which a Purchase Notice or Change in Control Purchase Notice has been given and not withdrawn (except, in the case of a Security to be purchased in part, the portion of the Security not to be purchased) or any Securities for a period of 15 days before the mailing of a notice of redemption of Securities to be redeemed.

13. Persons Deemed Owners.

The registered Holder of this Security may be treated as the owner of this Security for all purposes.

14. Unclaimed Money or Securities.

The Trustee and the Paying Agent shall return to the Company upon written request any money or securities held by them for the payment of any amount with respect to the Securities that remains unclaimed for two years, subject to applicable unclaimed property laws. After

return to the Company, Holders entitled to the money or securities must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

15. Amendment; Waiver.

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Securities may be amended with the written consent of the Holders of at least a majority in aggregate Original Principal Amount of the Securities at the time outstanding and (ii) certain Defaults may be waived with the written consent of the Holders of a majority in aggregate Original Principal Amount of the Securities at the time outstanding. Subject to certain exceptions set forth in the Indenture, without the consent of any Securityholder, the Company and the Trustee may amend the Indenture or the Securities to cure any ambiguity, omission, defect or inconsistency, or to comply with Article 5 or Section 11.14 of the Indenture, to secure the Company's obligations under this Security or to add to the Company's covenants for the benefit of the Securityholders or to surrender any right or power conferred, or to comply with any requirement of the SEC in connection with the qualification of the Indenture under the TIA, or as necessary in connection with the registration of the Securities under the Securities Act.

16. Defaults and Remedies.

If an Event of Default occurs and is continuing, the Trustee, or the Holders of at least 25% in aggregate Original Principal Amount of the Securities at the time outstanding, may declare all the Securities to be due and payable immediately. Certain events of bankruptcy or insolvency are Events of Default which will result in the Securities becoming due and payable immediately upon the occurrence of such Events of Default.

Securityholders may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Securities unless it receives indemnity or security reasonably satisfactory to it. Subject to certain limitations, Holders of a majority in aggregate Original Principal Amount of the Securities at the time outstanding may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Securityholders notice of any continuing Default (except a Default in payment of amounts specified in clause (i) or (ii) above) if it determines that withholding notice is in their interests.

17. Trustee Dealings with the Company.

Subject to certain limitations imposed by the TIA, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Company or its respective Affiliates and may otherwise deal with the Company or its respective Affiliates with the same rights it would have if it were not Trustee.

18. No Recourse Against Others.

A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

19. Authentication.

This Security shall not be valid until an authorized signatory of the Trustee manually signs the Trustee's Certificate of Authentication on the other side of this Security.

20. Abbreviations.

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with right of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

21. GOVERNING LAW.

THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE INDENTURE AND THIS SECURITY.

The Company will furnish to any Securityholder upon written request and without charge a copy of the Indenture.

Merrill Lynch & Co., Inc.
222 Broadway, 17th Floor
New York, New York 10038
Attention: Secretary

with a copy to:

Merrill Lynch & Co., Inc.
4 World Financial Center 18th Floor
New York, New York 10080
Attention: Treasurer

ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

(Insert assignee's Soc. Sec. or tax ID no.)

(Print or type assignee's name, address
and zip code)

and irrevocably appoint _____ agent to transfer
this Security on the books of the Company. The
agent may substitute another to act for him.

Date:

CONVERSION NOTICE

To convert this Security into Common Stock of the
Company, check the box: ☐

To convert only part of this Security, state the
Original Principal Amount to be converted (which
must be \$1,000 Original Principal Amount or an
integral multiple of \$1,000 Original Principal
Amount): \$

If you want the stock certificate made out in another
person's name, fill in the form below:

(Insert other person's Soc. Sec. or tax ID no.)

(Print or type other person's name, address and zip
code)

Your Signature: _____ *

(Sign exactly as your name appears on the other side
of this Security)

• Your signature must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Trustee, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Trustee in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

This **Grant Document** sets forth the terms and conditions of your year-end grant of stock-based compensation under the Merrill Lynch & Co., Inc. (“ML&Co.”) Long-Term Incentive Compensation Plan (the “**Plan**”).

1. The Plan.

This grant is made under the Plan, the terms of which are incorporated into this Grant Document. Capitalized terms used in this Grant Document that are not defined, shall have the meanings as used or defined in the Plan. References in this Grant Document to any specific Plan provision shall not be construed as limiting that provision or the applicability of any other Plan provision.

2. Grant Conditions.

By accepting this grant, you acknowledge that you understand that the grant is subject to all of the terms and conditions contained in the Plan and in this Grant Document and that you consent to all grant conditions, including without limitation, the conditions set forth in paragraphs 3, 4 and 6.

RESTRICTED SHARES

- (a) **General.** A Restricted Share is a share of ML&Co. Common Stock that is beneficially owned by you but held by ML&Co. on your behalf until the end of the Vesting Period described below. Your Restricted Shares have voting rights and pay quarterly dividends.
 - (b) **Vesting Period.** Except as described in paragraph 3, Restricted Shares will be forfeited if you terminate employment or otherwise violate any of the terms and conditions of your grant during the four-year Vesting Period ending on the date specified in your grant as the Vesting Date. Restricted Shares may not be sold, transferred, assigned, pledged or otherwise encumbered during the Vesting Period. Thereafter, Restricted Shares will be distributed to you, subject to reduction in the number of shares to be delivered necessary to satisfy applicable tax withholding requirements.
 - (c) **Termination of Your Rights to Restricted Shares under Certain Circumstances.** Unless the Committee otherwise determines, and except as provided in paragraph 3 hereof, (1) if your employment terminates for any reason other than Retirement or Disability or as a result of a Reduction in Force (as more fully described in paragraph 4) or (2) you violate any of the conditions outlined in paragraph 4 hereof, your right to the Restricted Shares that have not yet become vested prior to your date of termination or the date of the violation of the conditions outlined in paragraph 4 shall terminate and the Restricted Shares shall not be delivered to you.
 - (d) **Delivery — Merrill Lynch Account Designation.**
 - (i) As a participant in the Plan, you need to designate a Merrill Lynch account into which shares of ML&Co. Common Stock will be deposited when they are released
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to you. This account cannot be a Trust Account, Individual Retirement Account or other tax-deferred account. You may use a joint account if you are the primary owner of the account. Account designations can be made on the Payroll Self Service Web Site at <http://hr.worldnet.ml.com/edf2>. (From the HR Intranet homepage, click on Payroll Self Service.)

- (ii) Once your Restricted Shares have vested in accordance with the terms of this Grant Document, you will be entitled to have those shares delivered as soon as practicable (but in no case more than 30 days after the Vesting Date) to the Merrill Lynch account you have designated.

STOCK OPTIONS

- (a) **General.** Upon payment of the Exercise Price, and applicable federal, state, local or other tax withholding due on exercise, you will receive shares of ML&Co. Common Stock.
- (b) **Exercisability.** Stock Options become exercisable at a rate of 25% per year beginning on the first anniversary date of the award. Once exercisable, Stock Options remain exercisable until the expiration date of the award, provided that you comply with the covenants contained in paragraph 4 and remain employed by Merrill Lynch. Termination of Employment rules that govern whether or not you may continue to exercise your options after your employment has terminated are set forth under the heading Termination of Employment that follows.
- (c) **Exercise Price.** The Exercise Price of your Stock Options is the price at which you have the right to purchase a share of ML & Co. Common Stock. The Exercise Price is reflected on the Certificate of Grant.

Your option exercise choices are described on the Human Resources section of the Merrill Lynch WorldNet at <http://hr.worldnet.ml.com:1180/WN/index/1,,3465,00.html>

- (d) **Termination of Your Rights to Exercise Stock Options under Certain Circumstances.** Unless the Committee otherwise determines, and except as provided in paragraph 3 hereof, (1) if your employment terminates for any reason other than Retirement or Disability or as a result of a Reduction in Force (as more fully described in paragraph 3) or (2) you violate any of the conditions outlined in paragraph 4 hereof, your right to Stock Options that have not been exercised prior to your date of termination or the date of the violation of the conditions outlined in paragraph 4 shall terminate and the Stock Options shall be no longer exercisable and shall be cancelled.
- (e) **Transferability.** Stock Options may not be assigned, pledged or otherwise transferred in whole or in part except as noted below or, in the event of death, to a beneficiary designated on the Designation of Beneficiary Form. A beneficiary may include a charity or trust.

All or a portion of the Stock Options awarded to employees receiving a stock bonus of US\$300,000 or more may be transferred at any time after the grant date to children and grandchildren and to trusts for their benefit. This feature offers estate and gift tax planning flexibility for U.S. taxpayers and may not be applicable to employees resident

outside of the U.S. Please contact your tax or financial advisor for advice on transferring Stock Options. Please contact the Corporate Secretary's Office for more details.

In the U.S., the Internal Revenue Service has indicated that the transfer of a stock option is not considered complete for U.S. gift tax purposes until it is no longer subject to forfeiture. You should consult with your tax or financial advisor for advice on any such gift.

3. Effect of Termination of Employment.

In general, if, prior to the end of the Vesting Period for your grant, your employment terminates or you fail to comply with the covenants contained in paragraph 4 of this Grant Document, your rights to your unvested Restricted Shares and unexercised Stock Options will cease and they will be forfeited. In the case of termination of employment, if your termination occurs in connection with the limited circumstances outlined below your grant will continue to vest notwithstanding termination, provided that you continue to satisfy the conditions described below – if you fail to comply with the conditions your rights to your Restricted Shares will cease and they will be forfeited:

- (a) **Death:** If you die: (1) your Restricted Shares will vest immediately and shares will be distributed to your designated beneficiary or estate as soon as possible; and (2) any unexercised Stock Options will be immediately exercisable by your designated beneficiary or your estate.
- (b) **Disability or Career Retirement:** If your employment is terminated as a result of Disability or if you qualify for Career Retirement (as defined below) your Restricted Shares will continue to vest and your Stock Options will continue to be and become exercisable, notwithstanding your termination provided that, (1) you do not compete with, or recruit employees from, Merrill Lynch and (2) do not violate the covenants contained in paragraph 4. If you compete with or recruit employees from Merrill Lynch or violate the covenants contained in paragraph 4 during the Vesting Period for your Restricted Shares or the exercisability period for your Stock Options, your rights to your unvested Restricted Shares and unexercised Stock Options will terminate and they will be forfeited.

To be eligible for “**Career Retirement**” treatment, you must fulfill the following requirements:

- Your employment must have been terminated other than for cause, and
 - You must have completed at least 5 years of service with Merrill Lynch, and
 - Your age and service computed as full years and completed months total at least 45, or
 - At the request of Merrill Lynch, you become an employee (upon termination with ML) of a non-consolidated joint venture of ML & Co., a spin-off or a new venture
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company in which ML&Co. has made a substantial investment and that is expressly approved by the Head of Human Resources for Career Retirement treatment.

- After your termination, you must not engage in any business that is in competition with the business of Merrill Lynch, recruit any Merrill Lynch employees or violate any of the covenants contained in paragraph 4 hereof.

“Disability,” under the Plan is defined as a physical or mental condition that, in the opinion of the Head of Human Resources of Merrill Lynch (or his or her functional successor), renders you incapable of engaging in any employment or occupation for which he or she is suited by reason of education or training.

- (c) **Termination of Employment Due to Reduction in Force:** If your employment is terminated in connection with a reduction in force, provided that, you sign and return an Agreement and Release and you comply thereafter with its terms:
- (i) your Restricted Shares will continue to vest until their Vesting Date,
 - (ii) your Stock Options will continue to be and become exercisable until a date which is 30 days after the last date on which all Stock Options that have been awarded to you become 100% exercisable.

NOTE: The effect of this provision will be that your Stock Options will have an exercise period that may be considerably shorter than their original term.

- (d) **Termination of Employment for Other Reasons (including cause):** In the event your employment is terminated for any other reason, including if your employment is terminated by Merrill Lynch for cause, your rights to your unvested Restricted Shares and unexercisable Stock Options shall terminate and they will be forfeited. You will have 90 days (but in no event beyond the expiration date of the award) to fully exercise all exercisable Stock Options – after such 90 period has lapsed, your rights to any unexercised Stock Options shall terminate, and they shall be forfeited.

4. Conditions.

- (a) **Notice Period.** You agree that for the remainder of your employment, you shall provide ML&Co. with at least six months advance written notice (the **“Notice Period”**) prior to the termination of your employment. During this Notice Period, you shall remain employed by Merrill Lynch (and receive base salary and certain benefits, but will not receive any payments or distributions or accrue any rights to a bonus or any payments or distributions under the Variable Incentive Compensation Program, pro-rata or otherwise) and shall not commence employment with any other employer. You further agree that during the Notice Period, you shall not directly or indirectly induce or solicit any client of Merrill Lynch to terminate or modify its relationship with Merrill Lynch.
- (b) **Employment by a Competitor.** You agree that, during the period beginning on the date of the termination of your employment and ending on the date of vesting of your Restricted Shares or Stock Options, you will not, without prior written consent from ML&Co., engage in any employment, accept or maintain any directorship or other
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position, own an interest in, or, as principal, agent, employee, consultant or otherwise, provide any services to anyone, whether or not for compensation, in any business that is engaged in competition with the business of the ML&Co. or its affiliates (a “**Competitive Business**”).

- (c) **Non-Solicitation.** You agree that you will not directly or indirectly solicit for employment any person who is or was an employee of ML&Co. or any of its affiliates at any time during the six-month period immediately preceding the date of such solicitation.
 - (d) **No Hire.** You agree that during a period of six months following your termination, you will not hire or otherwise engage, directly or indirectly (including, without limitation, through an entity with which the you are associated), as an employee or independent contractor, any person who is or was an employee of the ML&Co. or any of its affiliates and who, as of the date of your termination of employment, had the title First Vice President or Managing Director or higher and reported directly to the Executive or to the Chief Executive Officer or President of the Company (“Executive, CEO or President Direct Reports”) or any person with the title First Vice President or Managing Director or higher who, at the time of your termination, reported directly to the Executive, CEO or President Direct Reports, *provided, however*, that this paragraph 4(iv) shall not apply to you, if at the time of your termination you are not a direct report to the CEO, or, the President, if any, of ML&Co. and *provided further* that the hiring of any person whose employment was involuntarily terminated by ML&Co. or any of its affiliates shall not be a violation of this covenant.
 - (e) **Non-Disparagement.** You agree that you will not disparage, portray in a negative light, or make any statement which would be harmful to, or lead to unfavorable publicity for, ML&Co. or any of its affiliates, or any of its or their current or former directors, officers or employees, including without limitation, in any and all interviews, oral statements, written materials, electronically displayed materials and materials or information displayed on internet- or intranet-related sites; provided however, that this Grant Document will not apply to the extent you are making truthful statements required by law or by order of a court or other legal body having jurisdiction or when responding to any inquiry from any governmental agency or regulatory or self-regulatory organization.
 - (f) **Confidential Information.** You agree that following any termination of employment, you will not without prior written consent or as otherwise required by law, disclose or publish (directly or indirectly) any Confidential Information (as defined below) to any person or copy, transmit or remove or attempt to use, copy, transmit or remove any Confidential Information for any purpose. “Confidential Information” means any information concerning ML&Co. or any of its affiliates’ business or affairs which is not generally known to the public and includes, but is not limited to, any file, document, book, account, list, process, patent, specification, drawing, design, computer program or file, computer disk, method of operation, recommendation, report, plan, survey, data, manual, strategy, financial data, client information or data, or contract which comes to your knowledge in the course of your employment or which is generated by you in the course of performing your obligations whether alone or with others.
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- (g) **Confidentiality.** You also agree that in the event your employment is terminated you will not disclose the circumstances of your termination to any other party, except that you may make such disclosure: on a confidential basis to your tax, financial or legal advisors, your immediate family members, or any prospective employer or business partner, *provided that*, in each case, such third party agrees to keep such circumstances confidential.
- (h) **Cooperation.** You agree to (i) provide truthful and reasonable cooperation, including but not limited to your appearance at interviews and depositions, in all legal matters, including but not limited to regulatory and litigation proceedings relating to your employment or area of responsibility at Merrill Lynch or its affiliates, whether or not such matters have already been commenced and through the conclusion of such matters or proceedings, and (ii) to provide Merrill Lynch's counsel all documents in your possession or control relating to such regulatory or litigation matters.
- (i) **Injunctive Relief.** Without limiting any remedies available, you acknowledge and agree that a breach of the covenants contained in subparagraphs (a) – (d), (f) and (g) of this paragraph 4 will result in material and irreparable injury to Merrill Lynch and its affiliates for which there is no adequate remedy at law and that it will not be possible to measure damages for such injuries precisely. Therefore, you agree that, in the event of such a breach or threat thereof, Merrill Lynch shall be entitled to seek a temporary restraining order and a preliminary and permanent injunction, without bond or other security, restraining him or her from engaging in activities prohibited by subparagraphs (a) – (d), (f) and (g) of this paragraph 4 or such other relief as may be required specifically to enforce any of the covenants in subparagraphs (a) – (d), (f) and (g) of this paragraph 4, *provided however*, that Merrill Lynch shall be entitled to seek injunctive relief for violations of subparagraph (c) of this paragraph 4 only during the period beginning on the date of your termination of employment and ending on the first anniversary of that date.

5. Effect of a Change in Control of ML&Co.

If a Change of Control of ML&Co. (as defined in the Plan) occurs **and** your employment terminates without Cause (as defined in the Plan), or for Good Reason (as defined in the Plan), you will be paid the Fair Market Value of all of your Restricted Shares and unexercised Stock Options in cash.

6. How to Exercise Stock Options.

Your option exercise choices are described on the Human Resources section of the Merrill Lynch *WorldNet* at <http://hr.worldnet.ml.com:1180/WN/index/1,,3465.00.html> Stock Options are exercisable through the Retirement Services Group (RSG). You must open a Limited Individual Investor Account to exercise. You may submit exercise requests virtually 24 hours a day, seven days a week through the Interactive Voice Response Service (IVR) at 1-[877-637-6767]. Alternatively, participant service representatives are available to help you from at least 8:00 a.m. to 7:00 p.m. Eastern Time, on any day the New York Stock Exchange is open. Outside of the United States, you can call [609-818-8885] collect to speak to a

participant service representative from 8 a.m. to Midnight Eastern Time on any day the New York Stock Exchange is open.

You may also exercise your Stock Options by visiting the Benefits On Line Web-site.

If you are a restricted person under ML&Co. policies, you request clearance from the Corporate Secretary's Office for any exercise of Stock Options and will be prohibited from exercising your Stock Options within a blackout period. This may affect your ability to exercise Stock Options just prior to the expiration date. If you have questions regarding your status as a restricted person and the applicable blackout periods applicable to you, please contact the Corporate Secretary's Office.

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		For the Nine Months Ended	
	Sept. 24, 2004	Sept. 26, 2003(a)	Sept. 24, 2004	Sept. 26, 2003(a)
Pre-tax earnings(b)	\$ 1,050	\$ 1,298	\$ 3,949	\$ 3,580
Add: Fixed charges (excluding capitalized interest and preferred security dividend requirements of subsidiaries)	2,793	1,896	6,851	6,141
Pre-tax earnings before fixed charges	<u>3,843</u>	<u>3,194</u>	<u>10,800</u>	<u>9,721</u>
Fixed charges:				
Interest	2,746	1,847	6,710	5,994
Other(c)	<u>47</u>	<u>49</u>	<u>141</u>	<u>147</u>
Total fixed charges	<u>2,793</u>	<u>1,896</u>	<u>6,851</u>	<u>6,141</u>
Preferred stock dividend requirements	<u>13</u>	<u>13</u>	<u>38</u>	<u>40</u>
Total combined fixed charges and preferred stock dividends	<u>\$ 2,806</u>	<u>\$ 1,909</u>	<u>\$ 6,889</u>	<u>\$ 6,181</u>
Ratio of earnings to fixed charges	1.38	1.68	1.58	1.58
Ratio of earnings to combined fixed charges and preferred stock dividends	1.37	1.67	1.57	1.57

(a) Prior period amounts have been restated to reflect the retroactive adoption of the fair value recognition provisions of SFAS No. 123, *Accounting for Stock-Based Compensation*, as discussed in Note 2.

(b) Excludes undistributed earnings (loss) from equity investees.

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

November 1, 2004

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

We have made a review, in accordance with standards of the Public Company Accounting Oversight Board (United States), of the unaudited interim condensed consolidated financial information of Merrill Lynch & Co., Inc. and subsidiaries ("Merrill Lynch") as of September 24, 2004 and for the three-month and nine-month periods ended September 24, 2004 and September 26, 2003, as indicated in our report dated November 1, 2004; 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 September 24, 2004, is incorporated by reference in the following Registration Statements, 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)

Registration Statement No. 333-64676 (1986 Employee Stock Purchase Plan)

Registration Statement No. 333-64674 (Long-Term Incentive Compensation Plan for Managers and Producers)

Registration Statement No. 333-68330 (2002 Deferred Compensation Plan for a Select Group of Eligible Employees)

Registration Statement No. 333-99105 (2003 Deferred Compensation Plan for a Select Group of Eligible Employees)

Registration Statement No. 333-108296 (2004 Deferred Compensation Plan for a Select Group of Eligible Employees)

Registration Statement No. 333-109236 (Employee Stock Compensation Plan)

Registration Statement No. 333-118615 (2005 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

Registration Statement No. 333-83374

Registration Statement No. 333-97937

Registration Statement No. 333-105098

Registration Statement No. 333-109802

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 a 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.

/s/ Deloitte & Touche LLP

New York, New York

Certification

I, E. Stanley O'Neal, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Merrill Lynch & Co., Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ E. Stanley O'Neal

E. Stanley O'Neal
Chairman of the Board and
Chief Executive Officer

Dated: November 1, 2004

Certification

I, Ahmass L. Fakahany, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Merrill Lynch & Co., Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Ahmass L. Fakahany
Ahmass L. Fakahany
Executive Vice President and Chief
Financial Officer

Dated: November 1, 2004

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Merrill Lynch & Co., Inc. (the "Company") on Form 10-Q for the period ended September 24, 2004 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, E. Stanley O'Neal, Chairman of the Board and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ E. Stanley O'Neal

E. Stanley O'Neal
Chairman of the Board and Chief
Executive Officer

Dated: November 1, 2004

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Merrill Lynch & Co., Inc. (the "Company") on Form 10-Q for the period ended September 24, 2004 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Ahmass L. Fakahany, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Ahmass L. Fakahany

Ahmass L. Fakahany
Executive Vice President and
Chief Financial Officer

Dated: November 1, 2004