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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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FORM S-8

Registration Statement  
under  
THE SECURITIES ACT OF 1933

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MERRILL LYNCH & CO., INC.

(Exact name of registrant as specified in its charter)

DELAWARE  
(State or other jurisdiction  
of incorporation or organization)

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

4 World Financial Center  
New York, New York 10080  
(212) 449-1000

(Address, including zip code, and telephone number, including area code, of registrant's  
principal executive offices)

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MERRILL LYNCH & CO., INC. 2006 DEFERRED COMPENSATION PLAN  
FOR A SELECT GROUP OF ELIGIBLE EMPLOYEES

(Full title of the plan)

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Richard Alsop, Esq.  
Merrill Lynch & Co., Inc.  
222 Broadway — 17<sup>th</sup> Floor  
New York, New York 10038  
(212) 670-0180

(Name, address, including zip code, and telephone number, including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered	Proposed maximum offering price per obligation	Proposed maximum aggregate offering price (2)	Amount of registration fee
Deferred Compensation Obligations (1)	\$50,000,000	100%	\$ 50,000,000	\$ 5,885

(1) The Deferred Compensation Obligations are unsecured obligations of Merrill Lynch & Co., Inc. to pay deferred compensation in the future in accordance with the terms of the Merrill Lynch & Co., Inc. 2006 Deferred Compensation Plan for a Select Group of Eligible Employees.

(2) Estimated solely for the purpose of determining the registration fee.

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## PART I

### INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The document(s) containing the information specified in Part I of Form S-8 will be sent or given to participating employees as specified by Rule 428(b)(1) of the Securities Act of 1933, as amended. These document(s) and the documents incorporated by reference herein pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act of 1933, as amended.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The Annual Report of Merrill Lynch & Co., Inc. (the "Company") on Form 10-K for the fiscal year ended December 31, 2004, Quarterly Report on Form 10-Q for the quarter ended April 1, 2005 and Current Reports on Form 8-K dated January 3, 2005, January 25, 2005, February 3, 2005, February 4, 2005 (2 reports), February 11, 2005, March 8, 2005, March 11, 2005, March 14, 2005, March 15, 2005 (3 reports), March 29, 2005, April 12, 2005, April 19, 2005, April 25, 2005, May 9, 2005 and May 10, 2005, filed pursuant to Section 13 of the Securities Exchange Act of 1934 (the "Exchange Act"), are incorporated by reference herein. Information furnished under Item 9 of Form 8-K is not incorporated by reference herein.

All documents filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date hereof and prior to the filing of a post-effective amendment that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part hereof.

#### ITEM 4. DESCRIPTION OF SECURITIES.

Under the Merrill Lynch & Co., Inc. 2006 Deferred Compensation Plan for a Select Group of Eligible Employees (the "Plan"), the Company will provide eligible employees the opportunity to agree to the deferral of a specified percentage of their cash compensation. The obligations of the Company under such agreements (the "Obligations") will be unsecured general obligations of the Company to pay the deferred compensation in the future in accordance with the terms of the Plan, and will rank *pari passu* with other unsecured and unsubordinated indebtedness of the Company from time to time outstanding. However, because the Company is a holding company, the right of the Company, and hence the right of creditors of the Company (including participants in the Plan), to participate in any distribution of the assets of any subsidiary upon its liquidation or reorganization or otherwise is necessarily subject to the prior claims of creditors of the subsidiary, except to the extent that claims of the Company itself as a creditor of the subsidiary may be recognized. In addition, dividends, loans and advances from certain subsidiaries, including Merrill Lynch, Pierce, Fenner & Smith Incorporated, to the Company are restricted by net capital requirements under the Exchange Act, and under rules of certain exchanges and other regulatory bodies.

The amount of compensation to be deferred by each participating employee (each a "Participant") will be determined in accordance with the terms of the Plan based on elections by each Participant. Each Obligation will be payable on a date selected by each Participant in accordance with the terms of the Plan. The Obligations will be indexed to one or more Benchmark Return Options individually chosen by each Participant from a list of investment media. Each Participant's Obligation will be adjusted to reflect the investment experience, whether positive or negative, of the Selected Benchmark Return Options, including any appreciation or depreciation. The Obligations will be denominated and payable in United States dollars.

A Participant's right or the right of any other person to the Obligations cannot be assigned, alienated, sold, garnished, transferred, pledged, or encumbered except by a written designation of a beneficiary under the Plan, by written will or by the laws of descent and distribution.

The Obligations are not subject to redemption, in whole or in part, prior to the individual payment dates specified by each Participant, at the option of the Company or through operation of a mandatory or optional sinking fund or analogous provision. However, the Company reserves the right to amend or terminate the Plan at any time, except that no such amendment or termination shall adversely affect the right of the Participant to the balance of his or her deferred account as of the date of such amendment or termination.

The Obligations are not convertible into another security of the Company. The Obligations will not have the benefit of a negative pledge or any other affirmative or negative covenant on the part of the Company. Other than any trustee under the grantor trust, no trustee has been appointed having the authority to take action with respect to the Obligations and each Participant will be responsible for acting independently with respect to, among other things, the giving of notices, responding to any requests for consents, waivers or amendments pertaining to the Obligations, enforcing covenants and taking action upon default.

**ITEM 5. INTERESTS OF EXPERTS AND COUNSEL.**

None.

**ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.**

Section 145 of the General Corporation Law of the State of Delaware, as amended, provides that under certain circumstances a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director, officer, employee or agent of the Company or is or was serving at its request in such capacity in another corporation or business association, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal action or proceeding, has no reasonable cause to believe such person's conduct was unlawful.

Article XIII, Section 2 of the Restated Certificate of Incorporation of the Company provides in effect that, subject to certain limited exceptions, the Company shall indemnify its directors and officers to the extent authorized or permitted by the General Corporation Law of the State of Delaware.

The directors and officers of the Company are insured under policies of insurance maintained by the Company, subject to the limits of the policies, against certain losses arising from any claims made against them by reason of being or having been such directors or officers. Like indemnification, insurance is also provided to those employees of the Company who serve as administrators of the Plan. In addition, the Company has entered into contracts with all of its directors providing for indemnification of such persons by the Company to the fullest extent authorized or permitted by law, subject to certain limited exceptions. The Company has established trusts to fund its obligations, up to the amount of the trust assets, that may arise under these agreements and also to directors, officers and employees under the provisions of the General Corporation Law of the State of Delaware and the Company's Restated Certificate of Incorporation.

**ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.**

Not Applicable.

**ITEM 8. EXHIBITS.**

5	Opinion of Sidley Austin Brown & Wood LLP.
10	Merrill Lynch & Co., Inc. 2006 Deferred Compensation Plan for a Select Group of Eligible Employees
15	Letter re: unaudited interim financial information.
23(a)	Consent of Sidley Austin Brown & Wood LLP (included as part of Exhibit 5).
23(b)	Consent of Deloitte & Touche LLP.
24	Power of Attorney (included on page 5).

**ITEM 9. UNDERTAKINGS.**

The undersigned registrant hereby undertakes:

(a)(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if this Registration Statement is on Form S-8 and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Securities Exchange Commission by the registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933 (the "Securities Act"), each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration, by means of a post-effective amendment, any of the securities being registered which remain unsold at the termination of the offering.

(b) That, for the purpose of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act, that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at the time shall be deemed to be the initial *bona fide* offering hereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions referred to in Item 6 of this Registration Statement, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Company certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York and State of New York on the 20<sup>th</sup> day of May, 2005.

MERRILL LYNCH & CO., INC.

By: s/s E. Stanley O'Neal  
E. Stanley O'Neal  
*(Chairman of the Board and Chief Executive Officer)*

Each person whose signature appears below appoints E. Stanley O'Neal, Rosemary T. Berkery and Jeffrey N. Edwards, individually, as true and lawful attorneys-in-fact and agents, with full power of substitution to sign any amendments (including post-effective amendments) to this Registration Statement and to each registration statement amended hereby, and to file the same, with all exhibits and other related documents, with the Securities and Exchange Commission, with full power and authority to perform any necessary or appropriate act in connection with the amendment(s).

**Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities indicated on the 20<sup>th</sup> day of May, 2005.**

<u>Signature</u>	<u>Title</u>
<u>s/s E. Stanley O'Neal</u> (E. Stanley O'Neal)	Director, Chairman of the Board and Chief Executive Officer (Principal Executive Officer)
<u>s/s Jeffrey N. Edwards</u> (Jeffrey N. Edwards)	Senior Vice President, Chief Financial Officer (Principal Financial Officer)
<u>s/s Laurence A. Tosi</u> (Laurence A. Tosi)	Finance Director (Principal Accounting Officer)
<u>s/s Jill K. Conway</u> (Jill K. Conway)	Director
<u>s/s Alberto Cribiore</u> (Alberto Cribiore)	Director

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<u>Signature</u>	<u>Title</u>
<hr/> s/s John D. Finnegan (John D. Finnegan)	Director
<hr/> s/s Heinz-Joachim Neubürger (Heinz-Joachim Neubürger)	Director
<hr/> s/s David K. Newbigging (David K. Newbigging)	Director
<hr/> s/s Aulana L. Peters (Aulana L. Peters)	Director
<hr/> s/s Joseph W. Prueher (Joseph W. Prueher)	Director
<hr/> s/s Ann N. Reese (Ann N. Reese)	Director
<hr/> s/s Charles O. Rossotti (Charles O. Rossotti)	Director

**EXHIBIT INDEX**

<u>Exhibit No.</u>	<u>Description</u>
* 5	Opinion of Sidley Austin Brown & Wood LLP.
* 10	Merrill Lynch & Co., Inc. 2006 Deferred Compensation Plan for a Select Group of Eligible Employees
* 15	Letter re: unaudited interim financial information.
* 23(a)	Consent of Sidley Austin Brown & Wood LLP (included as part of Exhibit 5).
* 23(b)	Consent of Deloitte & Touche LLP.
* 24	Power of Attorney (included on page 5).

\* Filed herewith.



May 20, 2005

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

Dear Sirs:

We have acted as counsel for Merrill Lynch & Co., Inc., a Delaware corporation (the "Company"), in connection with the proposed filing with the Securities and Exchange Commission expected to be made on or about May 20, 2005 under the Securities Act of 1933, as amended, of a Registration Statement on Form S-8 (the "Registration Statement") for the purpose of registering \$50,000,000 of Deferred Compensation Obligations, which represent unsecured obligations of the Company to pay deferred compensation in the future in accordance with the terms of the Merrill Lynch & Co., Inc. 2006 Deferred Compensation Plan for a Select Group of Eligible Employees (the "Plan"). In such capacity, we have examined the Restated Certificate of Incorporation and By-Laws of the Company, the Plan, and such other documents of the Company as we have deemed necessary or appropriate for the purposes of the opinion expressed herein.

Based upon the foregoing, we advise you that, in our opinion, when issued in accordance with the provisions of the Plan, the Deferred Compensation Obligations will be valid and binding obligations of the Company, enforceable in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency or other laws of general applicability relating to or affecting enforcement of creditors' rights or by general equity principles.

We consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of our name wherever appearing in the Registration Statement and any amendment thereto.

Very truly yours,

/s/ Sidley Austin Brown & Wood LLP

**MERRILL LYNCH & CO., INC.**  
**2006 DEFERRED COMPENSATION PLAN**  
**FOR A SELECT GROUP OF ELIGIBLE EMPLOYEES**  
**DATED AS OF MAY 23, 2005**

**THIS DOCUMENT CONSTITUTES PART OF A PROSPECTUS COVERING SECURITIES THAT  
HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933.**

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**MERRILL LYNCH & CO., INC.**  
**2006 DEFERRED COMPENSATION PLAN**  
**FOR A SELECT GROUP OF ELIGIBLE EMPLOYEES**

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**MERRILL LYNCH & CO., INC.**  
**2006 DEFERRED COMPENSATION PLAN**  
**FOR A SELECT GROUP OF ELIGIBLE EMPLOYEES**

**ARTICLE I**  
**GENERAL**

**1.1 Purpose and Intent.**

The purpose of the Plan is to encourage the employees who are integral to the success of the business of the Company to continue their employment by providing them with flexibility in meeting their future income needs. This Plan is unfunded and maintained primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees within the meaning of Title I of ERISA, and all decisions concerning who is to be considered a member of that select group and how this Plan shall be administered and interpreted shall be consistent with this intention.

**1.2 Definitions.**

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

“Account” means the notional account established on the books and records of ML & Co. for each Participant to record the Participant’s interest under the Plan.

“Account Balance” means, as of any date, the Deferred Amounts credited to a Participant’s Account, adjusted in accordance with Section 3.4 to reflect the performance of the Participant’s Selected Benchmark Return Options, the Annual Charge, the Debit Balance (if any), any adjustments in the event of a Capital Call Default, and any payments made from the Account under Article V to the Participant prior to that date.

“Adjusted Compensation” means the financial advisor incentive compensation, account executive incentive compensation or estate planning and business insurance specialist incentive compensation, in each case exclusive of base salary, earned by a Participant during the Fiscal Year ending in 2006, and payable after January 1, 2006, as a result of the Participant’s production credit level, or such other similar items of compensation as the Administrator shall designate as “Adjusted Compensation” for purposes of this Plan.

“Administrator” means the Head of Rewards and Recognition Planning for ML & Co., or his or her functional successor, or any other person or committee designated as Administrator of the Plan by the Administrator or the MDCC.

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

“Annual Charge” means the charge to a Participant’s Account provided for in Section 3.4(g).

“Applicable Federal Rate” means the applicable federal rate for short-term (0-3 years) obligations of the United States Treasury as determined initially in the month of closing of ML Ventures and thereafter in January of each subsequent year.

“Available Balance” means amounts in a Participant’s Account that are indexed to Benchmark Return Options with daily liquidity after the Account’s Debit Balance has been reduced to zero.

“Average Leveraged Principal Amount” means, for each Participant, for any period, the sum of the Leveraged Principal Amounts outstanding at the end of each day in the period divided by the number of days in such period.

“Benchmark Return Options” means such investment vehicles as the Administrator may from time to time designate for the purpose of indexing Accounts hereunder. In the event a Benchmark Return Option ceases to exist or is no longer to be a Benchmark Return Option, the Administrator may designate a substitute Benchmark Return Option for such discontinued option.

“Board of Directors” means the Board of Directors of ML & Co.

“Capital Call” means the periodic demands for funds from a Participant’s Account that will be equal to and occur simultaneously with capital calls made by private equity funds (including ML Ventures) chosen as a return option by the Participant.

“Capital Call Default” means that there is an insufficient Liquid Balance in the Participant’s Account to fund a Capital Call.

“Capital Demand Default Adjustment” means the negative adjustment described in Section 3.4 in the number of “units” (including units acquired by “Leverage”) attributed to a Private Equity Fund Return Options that will be the result of a Capital Call Default.

“Cash Compensation” means (1) (for VICP eligible employees) salary in the reference year plus VICP earned in the reference year and paid in January or February of the next calendar year or (2) (for Financial Advisors and other employees receiving Adjusted Compensation) base salary plus Adjusted Compensation paid in the reference year.

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

“Company” means ML & Co. and all of its Affiliates.

“Compensation” means, as relevant, a Participant’s Adjusted Compensation, Variable Incentive Compensation and/or Sign-On Bonus, or such other items or items of compensation as the Administrator, in his or her sole discretion, may specify in a particular instance.

“Debit Balance” means, as of any date, the dollar amount, if any, representing each of: (1) the aggregate Annual Charge, accrued in accordance with Section 3.4(g)(i); and (2) any Leveraged Principal Amount (together with any pro rata Interest Amounts determined in accordance with Section 3.4(g)(ii), if applicable), as reduced by any distributions recorded from ML Ventures Units recorded in a Participant’s Account in accordance with Section 3.4(e).

“Deferral Percentage” means the percentage (which, unless the Administrator, in his or her sole discretion, determines otherwise, shall be in whole percentage increments and not more than 90%) specified by the Participant to be the percentage of each payment of Compensation he or she wishes to defer under the Plan.

“Deferred Amounts” means, except as provided in Section 5.6, the amounts of Compensation actually deferred by the Participant under this Plan.

“Election Year” means the 2005 calendar year.

“Eligible Compensation” means (1) for persons eligible for the Variable Incentive Compensation Program or other similar programs: (A) a Participant’s 2004 base earnings plus (B) any cash bonus awarded in early 2006, and (2) for persons ineligible for such bonus programs, a Participant’s 2006 Adjusted Compensation.

“Eligible Employee” means an employee eligible to defer amounts under this Plan, as determined under Section 2.1 hereof.

“ERISA” means the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time.

“Fiscal Month” means the monthly period used by ML & Co. for financial accounting purposes.

“Fiscal Year” means the annual period used by ML & Co. for financial accounting purposes.

“Full-Time Domestic Employee” means a full-time employee of the Company paid from the Company’s domestic based payroll (other than any U.S. citizen or “green card” holder who is employed outside the United States).

“Full-Time Expatriate Employee” means a U.S. citizen or “green card” holder employed by the Company outside the United States and selected by the Administrator as eligible to participate in the Plan (subject to the other eligibility criteria).

“Initial Leveraged Amount” means the initial dollar amount by which a Participant’s deferral into ML Ventures Units is leveraged as determined in accordance with Section 3.4(c).

“Interest” means the hypothetical interest accruing on a Participant’s Average Leveraged Principal Amount at the Applicable Federal Rate.

“Interest Amounts” means, for any Participant, as of any date, the amount of Interest that has accrued to such date on such Participant’s Average Leveraged Principal Amount, from the date on which a Participant’s Leveraged Principal Amount is established, or from the most recent date that Interest Amounts were added to the Leveraged Principal Amount.

“Leveraged or Unleveraged Distributions” means the distributions to a Participant’s Account attributable to the leveraged or unleveraged portion (as the case may be) of a Participant’s ML Ventures Units.

“Leverage-Eligible Participants” means persons who (1) are accredited investors within the meaning of the Securities Act of 1933, and (2) received Cash Compensation of at least \$300,000 in 2002, and (3) received Cash Compensation of at least \$200,000 in 2001 and otherwise qualify, in accordance with standards determined by the Administrator, to select a ML Ventures Return Option on a leverage basis.

“Leveraged Principal Amount” means a Participant’s Initial Leveraged Amount, if any, as adjusted to reflect the addition of Interest Amounts (or any pro rata Interest Amounts).

“Leverage Percentage” means the percentage of leverage chosen by a Leverage-Eligible Participant, which percentage shall not exceed 200%.

“Liquid Balance” means, as of any date, the Deferred Amounts credited to a Participant’s Account, not including amounts that represent future commitments to Private Equity Funds, including ML Ventures, adjusted (either up or down) to reflect: (1) the performance of the Participant’s Mutual Fund Return Balances as provided in Section 3.4(f); (2) distributions with respect to ML Ventures Units made in accordance with Section 3.4(d); (3) reduction of any Debit Balance as provided in Section 3.4(e); and (4) any payments to the Participant under Article V hereof.

“Maximum Deferral” means the whole dollar amount specified by the Participant to be the amount of Compensation he or she elects to be deferred under the Plan.

“MDCC” means the Management Development and Compensation Committee of the Board of Directors.

“ML & Co.” means Merrill Lynch & Co., Inc.

“ML Ventures Return Option” means the option of indexing returns hereunder to the performance of a ML Ventures limited partnership, on a leveraged or unleveraged basis.

“ML Ventures Units” means the record-keeping units credited to the Accounts of Participants who have chosen the ML Ventures Return Option.

“Mutual Fund Return Options” means the mutual funds chosen as Benchmark Return Options by the Administrator.

“Net Asset Value” means, with respect to each Benchmark Return Option that is a mutual fund or other commingled investment vehicle for which such values are determined in the normal course of business, the net asset value, on the date in question, of the vehicle for which such value is being determined.

“Participant” means an Eligible Employee who has elected to defer Compensation under the Plan.

“Plan” means this Merrill Lynch & Co., Inc. 2006 Deferred Compensation Plan for a Select Group of Eligible Employees.

“Plan Year” means the Fiscal Year ending in 2006.

“Private Fund Return Option(s)” means one or more private funds that are chosen by the Administrator to be offered — with such limitations as may be required — to eligible Participants as Benchmark Return Options.

“Private Fund Unit(s)” means the record-keeping units credited to the Accounts of Participants who have chosen one or more Private Fund Return Options.

“Retirement” means a Participant’s (i) termination of employment with the Company for reasons other than for cause on or after the Participant’s 65th birthday, or (ii) termination of employment on or after the Participant’s 55th birthday if the Participant has at least 10 years of service.

“Rule of 45” means a Participant’s termination of employment with the Company for reasons other than cause (1) on or after (A) having completed at least five (5) years of service and (B) reaching any age, that, when



added to service with the Company (in each case, expressed as completed years and completed months), equals at least 45; or (2) as the result of (A) becoming employed by an unconsolidated affiliate of the Company (as specified by the Head of Human Resources) or (B) being a part of a divestiture or spin-off designated by the Head of Human Resources as eligible, provided that, a Participant shall not qualify for the Rule of 45 if he or she engages in a business which the Administrator, in his or her sole discretion, determines to be in competition with the business of the Company.

“Remaining Deferred Amounts” means the product of a Participant’s Deferred Amounts times a fraction equal to the number of remaining installment payments divided by the total number of installment payments.

“Selected Benchmark Return Option” means a Benchmark Return Option selected by the Participant in accordance with Section 3.4.

“Sign-On Bonus” means a single-sum amount paid or payable to a new Eligible Employee during the Plan Year upon commencement of employment, in addition to base pay and other Compensation, to induce him or her to become an employee of the Company, or any similar item of compensation as the Administrator shall designate as “Sign-On Bonus” for purposes of this Plan.

“Undistributed Deferred Amounts” means, as of any date on which the Annual Charge is determined, a Participant’s Deferred Amounts (exclusive of any appreciation or depreciation) minus, for each distribution to a Participant prior to such date, an amount equal to the product of the Deferred Amounts and a fraction the numerator of which is the amount of such distribution and the denominator of which is the combined Net Asset Value (prior to distribution) of the Participant’s Account as of the date of the relevant distribution.

“Variable Incentive Compensation” means the variable incentive compensation or office manager incentive compensation that is paid in cash to certain employees of the Company generally in January or February of the Plan Year with respect to the prior Fiscal Year, which for purposes of this Plan is considered earned during the Plan Year regardless of when it is actually paid to the Participant, or such other similar items of compensation as the Administrator shall designate as “Variable Incentive Compensation” for purposes of this Plan.

“401(k) Plan” means the Merrill Lynch & Co., Inc. 401(k) Savings & Investment Plan.

## **ARTICLE II ELIGIBILITY**

### **2.1 Eligible Employees.**

(a) **General Rule.** An individual is an Eligible Employee if he or she (i) is a Full-Time Domestic Employee or a Full-Time Expatriate Employee, (ii) has at least \$300,000 of Eligible Compensation for the year prior to the Election Year, and (iii) has attained the title of Vice President or higher.

(b) **Individuals First Employed During Election Year or Plan Year.** Subject to the approval of the Administrator in his or her sole discretion, an individual who is first employed by the Company during the Election Year or the Plan Year is an Eligible Employee if his or her Eligible Compensation, together, if applicable, with the amount of any Variable Incentive Compensation that will be payable to such individual in the next annual bonus cycle pursuant to a written bonus guarantee, is greater than \$300,000, and he or she is employed as or is to be

nominated for the title of Vice President or higher at the first opportunity following his or her commencement of employment with the Company.

(c) **Disqualifying Factors.** An individual shall not be an Eligible Employee if either (i) as of the deadline for submission of elections specified in Section 3.1(a), the individual's wages have been attached or are being garnished or are otherwise restrained pursuant to legal process, or (ii) within 13 months prior to the deadline for submission of elections specified in Section 3.1(a), the individual has made a hardship withdrawal of Elective 401(k) Deferrals as defined under the 401(k) Plan.

### ARTICLE III DEFERRAL ELECTIONS; ACCOUNTS

#### 3.1 Deferral Elections.

(a) **Timing and Manner of Making of Elections.** An election to defer Compensation for payment in accordance with Article V shall be made by submitting to the Administrator such forms as the Administrator may prescribe in whatever manner that the Administrator directs. Each election submitted must specify a Maximum Deferral and a Deferral Percentage with respect to each category of Compensation to be deferred. All elections by a Participant to defer Compensation under the Plan must be received by the Administrator or such person as he or she may designate for the purpose by no later than June 30 of the Election Year (or such later date as the Administrator, in his or her sole discretion, may specify in any particular instance) or, in the event such date is not a business day, the immediately preceding business day; provided, however, that (1) an Eligible Employee's election to defer a Sign-On Bonus must be part of such Eligible Employee's terms and conditions of employment agreed to prior to the Eligible Employee's first day of employment with the Company and (2) an Eligible Employee's election to defer pursuant to Section 2.1(b) must occur no later than 30 days after his or her first day of employment with the Company.

(b) **Irrevocability of Deferral Election.** Except as provided in Section 5.5, an election to defer the receipt of any Compensation made under Section 3.1(a) is irrevocable once submitted to the Administrator or his or her designee. The Administrator's acceptance of an election to defer Compensation shall not, however, affect the contingent nature of such Compensation under the plan or program under which such Compensation is payable.

(c) **Application of Election.** The Participant's Deferral Percentage will be applied to each payment of Compensation to which the Participant's deferral election applies, provided that the aggregate of the Participant's Deferred Amounts shall not exceed the Participant's Maximum Deferral. If a Participant has made deferral elections with respect to more than one category of Compensation, this Section 3.1(c) shall be applied separately with respect to each such category.

#### 3.2 Crediting to Accounts.

(a) **Initial Deferrals.** A Participant's Deferred Amounts will be credited to the Participant's Account as soon as practicable (but in no event later than the end of the following month) after the last day of the Fiscal Month during which such Deferred Amounts would, but for deferral, have been paid and will be accounted for in accordance with Section 3.4. No interest will accrue, nor will any adjustment be made to an Account, for the period until the Deferred Amounts are credited.

(b) **Private Fund Return Options.** Upon the closing of any Private Return Option, a Participant's Account will be credited with a number of units determined by dividing by \$1,000 the sum of the following:

(1) the portion of the Account Balance that the Participant has elected to allocate to the Private Return Option, as of the day prior to the closing date; and (in the case of ML Ventures only) (2) the Participant's Initial Leveraged Amount (computed in accordance with Section 3.4(c)).

### 3.3 Minimum Requirements for Deferral.

Notwithstanding any other provision of this Plan, no deferral will be effected under this Plan with respect to a Participant if:

- (i) the Participant is not an Eligible Employee as of December 31, 2005, or
- (ii) the Participant's election as applied to the Participant's Variable Incentive Compensation (determined by substituting the Election Year for the Plan Year) or Adjusted Compensation (determined by substituting the Fiscal Year immediately prior to the Fiscal Year ending in the Election Year for the Fiscal Year ending in the Plan Year) would have resulted in an annual deferral of less than \$15,000;

provided, that any Participant who first becomes an employee of the Company during the Plan Year shall not be required to satisfy conditions (i) and (ii). Condition (ii) does not require a Participant's elections to result in an actual deferral of at least \$15,000.

### 3.4 Return Options; Adjustment of Accounts.

(a) **Selection of Private Fund Return Options.** In any year that a Private Fund partnership is offered as a return option, an eligible Participant may select the Private Fund Return Option, provided that the selection of such return option is consistent with the Participant's payment election under the terms of the Plan and applicable law. **Upon the closing of a selected Private Fund Return Option, the selecting Participant will not be able to change his or her selection of such return option. In addition, upon a Capital Call Default with respect to certain Private Fund Return Options, the defaulting Participant may be penalized by having his or her Account adjusted downward in accordance with Section 3.4 (d).**

(b) **Selection of Mutual Fund Return Options.** Coincident with the Participant's election to defer Compensation, the Participant must select the percentage of the Participant's Account to be adjusted to reflect the performance of Mutual Fund Return Options, for use when a Participant's Account has a Liquid Balance. All elections shall be in multiples of 1%. A Participant may, by complying with such procedures as the Administrator may prescribe on a uniform and nondiscriminatory basis, including procedures specifying the frequency with respect to which such changes may be effected (but not more than 12 times in any calendar year), change the Selected Benchmark Return Options to be applicable with respect to his or her Account.

(c) **Selection of the ML Ventures Leverage Percentage by Eligible Participants.** In any year that a ML Ventures Return Option is offered as a return option, an eligible Participant may select the ML Ventures Return Option, provided that the selection of such return option is consistent with the Participant's payment election under the terms of the Plan and applicable law. Prior to the closing of the offering of an ML Ventures partnership, Leverage-Eligible Participants who select the ML Ventures Return Option on a leveraged basis must choose their Leverage Percentage, in accordance with standards determined by the Administrator, by submitting such forms as the Administrator shall prescribe. Prior to the closing of an ML Ventures partnership, the Administrator will

determine each Leverage-Eligible Participant's Initial Leveraged Amount by applying such Participant's Leverage Percentage to the dollar value of the portion of the Participant's Account Balance allocated to the ML Ventures Return Option. The Initial Leveraged Amount will be recorded as the Leveraged Principal Amount, to which amount Interest Amounts will be added annually in accordance with Section 3.4(e).

**(d) Adjustments of ML Ventures and other Private Fund Return Options.**

- (i) Whenever a distribution is paid on an actual unit of an ML Ventures partnership or other Private Fund Return Option, an amount equal to such per unit distribution times the number of units in the Participant's Account will first be applied against any Debit Balance, as provided in Section 3.4(e), and then, if any portion of such distribution remains after the Debit Balance is reduced to zero, be credited to the Participant's Account to be indexed initially to ML Retirement Reserves and then to the Mutual Fund Return Option(s) chosen by the Participant.
- (ii) In the event of a Capital Call Default, a Participant's notional investment in the relevant fund will be capped. If this occurs, the number of units represented by the return option (including, in the case of ML Ventures, any leveraged units) will be adjusted downward to reflect a smaller investment and resulting lower leverage.
- (iii) The ML Ventures Units and the Debit Balance will also be adjusted in accordance with Section 5.2 hereof in the event of a Participant's termination.

**(e) Adjustment of Debit Balance.** Any Debit Balance shall be reduced as soon as possible by any distributions relating to ML Ventures Units. Reductions of the Debit Balance, as provided in the foregoing sentence, shall be applied first to reduce the Debit Balance attributable to accrued Annual Charges and then, after all such accrued Annual Charges have been satisfied, to reduce any Leveraged Principal Amount. As of the last day of each Fiscal Year, Interest Amounts computed by the Administrator shall be added to the Leveraged Principal Amount. If on any date the Leveraged Principal Amount would be discharged completely as a result of distributions or chargeoffs, Interest Amounts will be computed through such date and added to the Leveraged Principal Amount as of such date.

**(f) Adjustment of Mutual Fund Return Balances.** While the Participant's Balances do not represent the Participant's ownership of, or any ownership interest in, any particular assets, the Balances attributable to Mutual Fund Return Options shall be adjusted to reflect credits or debits relating to distributions from any Private Fund Return Options or chargeoffs against the Debit Balance and to reflect the investment experience of the Participant's Mutual Fund Return Options in the same manner as if investments or dispositions in accordance with the Participant's elections had actually been made through the ML Benefit Services Platform and ML II Core Recordkeeping System, or any successor system used for keeping records of Participants' Accounts (the "ML II System"). In adjusting Accounts, the Participant will give instructions to the ML Benefit Services Platform which will be reflected as credits or debits as of the weekly processing of such instructions through the ML II System. This processing shall control the timing and pricing of the notional investments in the Participant's Mutual Fund Return Options in accordance with the rules of operation of the ML II System and its requirements for placing corresponding investment orders, as if orders to make corresponding investments or dispositions were actually to be made on the transaction processing date. In connection with the crediting of Deferred Amounts or distributions to the Participant's Account and distributions from or debits to the Account, appropriate deferral allocation instructions shall be treated as received from the Participant prior to the close of transactions through the ML II

System on the relevant transaction processing date. Each Mutual Fund Return Option shall be valued using the Net Asset Value of the Mutual Fund Return Option as of the relevant transaction processing date; provided, that, in valuing a Mutual Fund Return Option for which a Net Asset Value is not computed, the value of the security involved for determining Participants' rights under the Plan shall be the price reported for actual transactions in that security through the ML II System on the relevant transaction processing date, without giving effect to any transaction charges or costs associated with such transactions; provided, further, that, if there are no such transactions effected through the ML II System on the relevant day, the value of the security shall be:

- (i) if the security is listed for trading on one or more national securities exchanges, the average of the high and low sale prices for that day on the principal exchange for such security, or if such security is not traded on such principal exchange on that day, the average of the high and low sales prices on such exchange on the first day prior thereto on which such security was so traded;
- (ii) if the security is not listed for trading on a national securities exchange but is traded in the over-the-counter market, the average of the highest and lowest bid prices for such security on the relevant day; or
- (iii) if neither clause (i) nor (ii) applies, the value determined by the Administrator by whatever means he considers appropriate in his or her sole discretion.

All debits and charges against the Account shall be applied as a pro rata reduction of the portion of the Account Balance indexed to each of the Participant's Mutual Fund Return Options.

(g) **Annual Charge.** As of the last day of each Fiscal Year or such earlier day in December as the Administrator shall determine, an Annual Charge of 2.0% of the Participant's Original Deferred Amounts (exclusive of any appreciation or depreciation determined under Section 3.4 (f)) shall be applied to reduce the Account Balance.

- (i) In the event that all or any portion of the Account Balance is indexed to a Benchmark Return Option with less than daily liquidity, the Annual Charge will accrue as a Debit Balance and be paid out of future amounts credited to the Account Balance.
- (ii) In the event that the Participant elects to have the Account Balance paid in installments, the Annual Charge will be charged on the Remaining Deferred Amounts after giving effect to the installment payments.
- (iii) In the event that the Account Balance is paid out completely during a Fiscal Year prior to the date upon which the Annual Charge is assessed, a pro rata Annual Charge will be deducted from amounts to be paid to the Participant to cover that fraction of the Fiscal Year that Deferred Amounts (or Remaining Deferred Amounts in the case of installment payments) were maintained hereunder. The Annual Charge shall be applied as a pro rata reduction of the portion of the Account Balance indexed to each of the Participant's Selected Benchmark Return Options. In applying the Annual Charge, the pricing principles set forth in Section 3.4(f) will be followed.

(h) **Rollover Option.** In the discretion of the Administrator or a designee, additional Benchmark Return Options, including Return Options with less than daily liquidity, may be offered to all Participants under the Plan or to a more limited group of Participants. In such event, Participants will be allowed, in such manner as the Administrator shall determine, to elect that all or a portion of Account Balances be indexed to such Benchmark Return Options.

- (i) With respect to Benchmark Return Options that do not provide daily liquidity: (A) except as otherwise provided under the Plan and applicable law, payments under Article V will be made in accordance with a Participant's election at the time of the Participant's original deferral; (B) Participants may be limited in their ability to elect, change or continue their Benchmark Return Options in accordance with such terms and conditions as the Administrator or a designee may determine; and (C) the Annual Charge shall be accrued and paid, when possible, upon liquidation of all or any portion of the Benchmark Return Option, provided that no payment shall be made to a Participant under Article V hereof until all accrued Annual Charges have been paid.
- (ii) In the event that such limited liquidity options include future ML Ventures Partnerships, the designated amounts shall be credited to such Participant, accounted for, adjusted and paid out to such Participant in accordance with the terms and conditions of this Plan and applicable law as they relate to the ML Ventures Return Option.

**ARTICLE IV  
STATUS OF DEFERRED AMOUNTS AND ACCOUNT**

**4.1 No Trust or Fund Created; General Creditor Status.**

Nothing contained herein and no action taken pursuant hereto will be construed to create a trust or separate fund of any kind or a fiduciary relationship between ML & Co. and any Participant, the Participant's beneficiary or estate, or any other person. Title to and beneficial ownership of any funds represented by the Account Balance will at all times remain in ML & Co.; such funds will continue for all purposes to be a part of the general funds of ML & Co. and may be used for any corporate purpose. No person will, by virtue of the provisions of this Plan, have any interest whatsoever in any specific assets of the Company. TO THE EXTENT THAT ANY PERSON ACQUIRES A RIGHT TO RECEIVE PAYMENTS FROM ML & CO. UNDER THIS PLAN, SUCH RIGHT WILL BE NO GREATER THAN THE RIGHT OF ANY UNSECURED GENERAL CREDITOR OF ML & CO.

**4.2 Non-Assignability.**

The Participant's right or the right of any other person to the Account Balance or any other benefits hereunder cannot be assigned, alienated, sold, garnished, transferred, pledged, or encumbered except by a written designation of beneficiary under this Plan, by written will, or by the laws of descent and distribution.

**4.3 Effect of Deferral on Benefits Under Pension and Welfare Benefit Plans.**

The effect of deferral on pension and welfare benefit plans in which the Participant may participate will depend upon the provisions of each such plan, as amended from time to time.

**ARTICLE V**  
**PAYMENT OF ACCOUNT**

**5.1 Manner of Payment.**

A Participant's Account Balance will be paid by the Company, as elected by the Participant at the time of his or her deferral election, either in a single payment to be made, or in the number of annual installments (not to exceed 15) chosen by the Participant to commence, (i) in the month following the month of the Participant's Retirement or death, (ii) in any month and year selected by the Participant after the end of 2006, or (iii) in any month in the calendar year following the Participant's Retirement; provided that, if a Participant's election would result in payment (in the case of a single payment) or commencement of payment (in the case of installment payments) after the Participant's 70th birthday, then, notwithstanding the Participant's elections, the Company will pay, or commence payment of, the Participant's Account Balance in the month following the Participant's 70th birthday unless the Participant continues to be an active full time employee at such time, in which case the Company will pay, or commence payment of, the Participant's Account Balance in the month following the Participant's cessation of active service (to the extent payment has not already been made or commenced). The amount of each annual installment, if applicable, shall be determined by multiplying the Account Balance as of the last day of the month immediately preceding the month in which the payment is to be made by a fraction, the numerator of which is one and the denominator of which is the number of remaining installment payments (including the installment payment to be made).

**5.2 Termination of Employment.**

(a) **Death, Retirement, Rule of 45.** Subject to Section 5.2(b)(2), upon a Participant's death or Retirement (as defined in this Plan), or termination when the Participant complies with the Rule of 45 (as defined in this Plan) prior to payment, the Account Balance will be paid, in accordance with the Participant's elections and as provided in Section 5.1, to the Participant or to the Participant's beneficiary (in the event of death); provided, however, that (1) in the event that the Participant enters into competition with the business of Merrill Lynch, he or she will not be eligible for Retirement or Rule of 45 treatment under this Section 5.2 (a), and (2) in the event that a beneficiary of the Participant's Account is the Participant's estate or is otherwise not a natural person, the applicable portion of the Account Balance will promptly be paid in a single payment to such beneficiary notwithstanding any election of installment payments.

**(b) Other Termination of Employment; Treatment of Key Employees; Forfeiture of Leverage.**

(1) Subject to Section 5.2(b)(2), if a Participant's employment terminates at any time for any other reason than those described in Section 5.2(a), then, notwithstanding the Participant's elections hereunder, any Available Balance will be paid to the Participant in a single payment in the month following the month of the Participant's termination.

(2) If a Participant's employment terminates at any time while the Participant constitutes a specified employee within the meaning of section 409A of the Code, then, notwithstanding the Participant's elections hereunder, any Available Balance will be paid to the Participant (or to the Participant's beneficiary, in the event of death) in a single payment in the month following the earlier of (i) the six-month anniversary of the Participant's termination or (ii) the month of the Participant's death.

(3) In the event that a Participant's employment terminates at any time for any reason other than death, disability or the Participant's qualification for Retirement under this Plan, such Participant will forfeit all rights to the unvested leveraged portion of such Participant's ML Ventures Units, including any future Leveraged Distributions, unless the Administrator, in his or her sole discretion, determines that such forfeiture would

be detrimental to Merrill Lynch; provided, however, that such forfeiture will not occur if (a) the Participant is terminated by ML & Co. as the result of a reduction in staff, (b) the Participant delivers to ML & Co. a release of claims (in a form approved by the Administrator and counsel) he or she may have against the corporation or any of its subsidiaries, and (3) such Participant complies with the terms of such release. In the event of such forfeiture, the Participant's Account Balance and Debit Balance will be restated, as of the date of termination, to reflect what such balances would have been had the Participant selected no leverage under Section 3.4(c). To the extent necessary, the Participant's Account Balance will also be adjusted, as of the date of the termination, to credit the Participant with the amount of any Unleveraged Distributions that were previously applied to the repayment of the Leveraged Principal Amount and any Interest Amounts and, to the extent necessary, any Leveraged Distributions paid out to the Participant will be restated as a Debit Balance. Leveraged and Unleveraged Distributions shall be deemed to have been applied and distributed proportionately. All calculations hereunder shall be made by the Administrator and shall be final and conclusive.

(c) **Leave of Absence, Transfer or Disability.** The Participant's employment will not be considered as terminated if the Participant (1) is on an approved leave of absence; (2) transfers or is transferred but remains in the employ of the Company or an unconsolidated affiliate; or (3) is eligible to receive disability payments under the ML & Co. Basic Long-Term Disability Plan.

### **5.3 Withholding of Taxes.**

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

### **5.4 Beneficiary.**

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

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

(c) **Default Beneficiary.** In the event that a Participant does not designate a beneficiary, or no designated beneficiary survives the Participant, the Participant's beneficiary shall be the Participant's surviving spouse, if the Participant is married at the time of his or her death and not subject to a court-approved agreement or court decree of separation, or otherwise the person or persons designated to receive benefits on account of the Participant's



death under the ML & Co. Basic Group Life Insurance Plan (the "Life Insurance Plan"). However, if an unmarried Participant does not have coverage in effect under the Life Insurance Plan, or the Participant has assigned his or her death benefit under the Life Insurance Plan, any amounts payable to the Participant's beneficiary under the Plan will be paid to the Participant's estate.

(d) **If the Beneficiary Dies During Payment.** If a beneficiary who is receiving or is entitled to receive payments hereunder dies after the Participant dies, but before all the payments have been made, the portion of the Account Balance to which that beneficiary was entitled will be paid as soon as practicable in one lump sum to such beneficiary's estate and not to any contingent beneficiary the Participant may have designated.

#### **5.5 Distributions Upon Unforeseeable Emergency.**

ML & Co. has the sole discretion, but shall not be required, to pay to the Participant, on such terms and conditions as the Administrator may establish, such part or all of the Participant's Account Balance as the Administrator determines, based upon substantial evidence submitted by the Participant, is necessary to alleviate an unforeseeable emergency of the Participant. An unforeseeable emergency is defined as a severe financial hardship to the Participant (i) resulting from an illness or accident of the Participant, the Participant's spouse, or a dependent (as defined in section 152(a) of the Code, (ii) loss of the Participant's property due to casualty, or (iii) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The amount of the distribution shall not exceed the amount needed to satisfy the emergency plus taxes reasonably anticipated as a result of the distribution. A distribution shall not be allowed to the extent that the hardship may be relieved through reimbursement or compensation by insurance or otherwise, or by liquidation of the Participant's assets (to the extent such liquidation would not itself cause a severe financial hardship). Such payment will be made only at the Participant's written request and with the express approval of the Administrator and will be made on the date selected by the Administrator in his or her sole discretion. The balance of the Account, if any, will continue to be governed by the terms of this Plan.

#### **5.6 Domestic Relations Orders.**

Notwithstanding the Participant's elections hereunder, ML & Co. will pay to, or to the Participant for the benefit of, the Participant's spouse or former spouse the portion of the Participant's Account Balance specified in a valid court order entered in a domestic relations proceeding involving the Participant's divorce or legal separation. Such payment will be made in a lump sum net of any amounts the Company may be required to withhold under applicable federal, state or local law. After such payment, references herein to the Participant's "Deferred Amounts" (including, without limitation, for purposes of determining the Annual Charge applicable to any remaining Account Balance) shall mean the Participant's original Deferred Amounts times an amount equal to one minus a fraction, the numerator of which is the gross amount (prior to withholding) paid pursuant to the order, and the denominator of which is the Participant's Account Balance immediately prior to payment.

#### **5.7 No Actions Permitted that Would Cause Constructive Receipt or Violate Section 409A of the Code.**

Notwithstanding any provision of the Plan to the contrary, no deferral election, payment election, modification of any election under the Plan or other action with respect to the Plan shall be permitted to the extent that such election, modification or other action would violate any requirement of Section 409A of the Code or would cause any Participant or Beneficiary to be in constructive receipt of any amount hereunder.

**ARTICLE VI  
ADMINISTRATION OF THE PLAN**

**6.1 Powers of the Administrator.**

The Administrator has full power and authority to interpret, construe and administer this Plan so as to ensure that it provides deferred compensation for the Participants as members of a select group of management or highly compensated employees within the meaning of Title I of ERISA. The Administrator's interpretations and construction hereof, and actions hereunder, including any determinations regarding the amount or recipient of any payments, will be binding and conclusive on all persons for all purposes. The Administrator will not be liable to any person for any action taken or omitted in connection with the interpretation and administration of this Plan unless attributable to his or her willful misconduct or lack of good faith. The Administrator may designate persons to carry out the specified responsibilities of the Administrator and shall not be liable for any act or omission of a person as designated.

**6.2 Grantor Trust.**

**Creation of Trust.** The Administrator shall be empowered (but shall not be required) to create a grantor trust to hold assets representing the amounts deferred under this Plan on such terms and conditions as the Administrator shall approve. The trustee of the grantor trust shall be a party unaffiliated with the Company.

**6.3 Payments on Behalf of an Incompetent.**

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

**6.4 No Right of Set-Off.**

Unless specifically authorized by a Participant, the Company shall have no right of set-off with respect to any Participant's Account Balances or Account under the Plan and unless so authorized, the Company shall not withhold any sums owed to a Participant under the Plan.

**6.5 Corporate Books and Records Controlling.**

The books and records of the Company will be controlling in the event that a question arises hereunder concerning the amount of Adjusted Compensation, Incentive Compensation, Sign-On Bonus, Eligible Compensation, the Deferred Amounts, the Account Balance, the designation of a beneficiary, or any other matters.

**ARTICLE VII  
MISCELLANEOUS PROVISIONS**

**7.1 Litigation.**

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

**7.2 Headings Are Not Controlling.**

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

**7.3 Governing Law.**

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

**7.4 Amendment and Termination.**

ML & Co., through the Administrator, reserves the right to amend or terminate this Plan at any time, except that no such amendment or termination shall adversely affect the right of a Participant to his or her Account Balance (as reduced by the Annual Charge, the Debit Balance or the Leveraged Principal Amount and Interest thereon, as set forth in Section 3.4) as of the date of such amendment or termination.

May 20, 2005

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

We have made a review, in accordance with the 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 for the three-month periods ended April 1, 2005 and March 26, 2004, and have issued our report dated May 6, 2005. As indicated in such report, because we did not perform an audit, we expressed no opinion on that information.

We are aware that our report referred to above, which was included in your Quarterly Report on Form 10-Q for the quarter ended April 1, 2005, is incorporated by reference in this Registration Statement.

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

/s/ Deloitte & Touche LLP

New York, New York

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement of Merrill Lynch & Co., Inc. on Form S-8 related to the Merrill Lynch & Co., Inc. 2006 Deferred Compensation Plan for a Select Group of Eligible Employees of our reports dated March 2, 2005, relating to the consolidated financial statements, the related financial statement schedule and management's report on the effectiveness of internal control over financial reporting appearing in and incorporated by reference in the Annual Report on Form 10-K of Merrill Lynch & Co., Inc. for the year ended December 31, 2004.

/s/ Deloitte & Touche LLP

New York, New York  
May 20, 2005