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

# FORM 10-Q

(Mark One)

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

**For the quarterly period ended September 26, 2008**

**OR**

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

**For the transition period from ________ to ________**

**Commission file number 1-7182**

**MERRILL LYNCH & CO., INC.**

(Exact name of Registrant as specified in its charter)

| | |
|---|---|
| **Delaware** | **13-2740599** |
| (State or Other Jurisdiction of Incorporation or Organization) | (I.R.S. Employer Identification No.) |
| **4 World Financial Center, New York, New York** | **10080** |
| (Address of Principal Executive Offices) | (Zip Code) |

**(212) 449-1000**

Registrant's telephone number, including area code:

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

X YES __ NO

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large Accelerated Filer X Accelerated Filer __ Non-Accelerated Filer __ Smaller Reporting Company __
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

__ YES X NO

**APPLICABLE ONLY TO CORPORATE ISSUERS:**

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

1,599,731,906 shares of Common Stock and 1,436,244 Exchangeable Shares as of the close of business on October 27, 2008. 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 26, 2008
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**Available Information**

We file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission ("SEC"). You may read and copy any document we file with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Room 1580, Washington, DC 20549. Please call the SEC at 1-800-SEC-0330 for information on the Public Reference Room. The SEC maintains an internet site that contains annual, quarterly and current reports, proxy and information statements and other information that we file electronically with the SEC. The SEC's internet site is www.sec.gov.

Our internet address is www.ml.com, and the investor relations section of our website can be accessed directly at www.ir.ml.com. We make 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. These reports are available through our website as soon as reasonably practicable after such reports are electronically filed with, or furnished to, the SEC. We have also posted on our website corporate governance materials including our Guidelines for Business Conduct, Code of Ethics for Financial Professionals, Director Independence Standards, Corporate Governance Guidelines, Related Party Transactions Policy and charters for the committees of our Board of Directors. In addition, our website (through a link to the SEC's website) includes information on purchases and sales of our equity securities by our executive officers and directors, as well as disclosures relating to certain non-GAAP financial measures (as defined in the SEC's Regulation G) that we may make public orally, telephonically, by webcast, by broadcast or by similar means from time to time.

We will post on our website amendments to our Guidelines for Business Conduct and Code of Ethics for Financial Professionals and any waivers that are required to be disclosed by the rules of either the SEC or the New York Stock Exchange. You can obtain printed copies of these documents, free of charge, upon written request to Judith A. Witterschein, Corporate Secretary, Merrill Lynch & Co., Inc., 222 Broadway, 17th Floor, New York, NY 10038 or by email at corporate_secretary@ml.com. The information on our website is not incorporated by reference into this Report.

## PART I. FINANCIAL INFORMATION

## ITEM 1. Financial Statements

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

| *(In millions, except per share amounts)* | For the Three Months Ended Sept. 26, 2008 | Sept. 28, 2007 |
|---|---|---|
| **Revenues** | | |
| Principal transactions | $ (6,573) | $ (5,761) |
| Commissions | 1,745 | 1,860 |
| Managed accounts and other fee-based revenues | 1,395 | 1,392 |
| Investment banking | 845 | 1,277 |
| Earnings from equity method investments | 4,401 | 412 |
| Other | (2,986) | (1,114) |
| Subtotal | (1,173) | (1,934) |
| Interest and dividend revenues | 9,019 | 15,636 |
| Less interest expense | 7,830 | 13,322 |
| Net interest profit | 1,189 | 2,314 |
| **Revenues, net of interest expense** | 16 | 380 |
| **Non-interest expenses** | | |
| Compensation and benefits | 3,483 | 1,979 |
| Communications and technology | 546 | 499 |
| Brokerage, clearing, and exchange fees | 348 | 364 |
| Occupancy and related depreciation | 314 | 295 |
| Professional fees | 242 | 245 |
| Advertising and market development | 159 | 181 |
| Office supplies and postage | 48 | 54 |
| Other | 588 | 401 |
| Payment related to price reset on common stock offering | 2,500 | - |
| Restructuring charge | 39 | - |
| **Total non-interest expenses** | 8,267 | 4,018 |
| **Pre-tax loss from continuing operations** | (8,251) | (3,638) |
| Income tax benefit | (3,131) | (1,258) |
| **Net loss from continuing operations** | (5,120) | (2,380) |
| **Discontinued operations:** | | |
| Pre-tax (loss)/earnings from discontinued operations | (53) | 211 |
| Income tax (benefit)/expense | (21) | 72 |
| Net (loss)/earnings from discontinued operations | (32) | 139 |
| **Net loss** | $ (5,152) | $ (2,241) |
| Preferred stock dividends | 2,319 | 73 |
| **Net loss applicable to common stockholders** | $ (7,471) | $ (2,314) |
| Basic loss per common share from continuing operations | $ (5.56) | $ (2.99) |
| Basic (loss)/earnings per common share from discontinued operations | (0.02) | 0.17 |
| **Basic loss per common share** | $ (5.58) | $ (2.82) |
| Diluted loss per common share from continuing operations | $ (5.56) | $ (2.99) |
| Diluted (loss)/earnings per common share from discontinued operations | (0.02) | 0.17 |
| **Diluted loss per common share** | $ (5.58) | $ (2.82) |
| **Dividend paid per common share** | $ 0.35 | $ 0.35 |
| **Average shares used in computing earnings per common share** | | |
| Basic | 1,339.0 | 821.6 |
| Diluted | 1,339.0 | 821.6 |

See Notes to Condensed Consolidated Financial Statements

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

| *(In millions, except per share amounts)* | For the Nine Months Ended Sept. 26, 2008 | Sept. 28, 2007 |
|---|---|---|
| **Revenues** | | |
| Principal transactions | $(13,074) | $ 529 |
| Commissions | 5,445 | 5,360 |
| Managed accounts and other fee-based revenues | 4,249 | 4,025 |
| Investment banking | 2,920 | 4,315 |
| Earnings from equity method investments | 4,943 | 1,096 |
| Other | (6,310) | 114 |
| Subtotal | (1,827) | 15,439 |
| Interest and dividend revenues | 28,415 | 42,804 |
| Less interest expense | 25,754 | 38,801 |
| Net interest profit | 2,661 | 4,003 |
| **Revenues, net of interest expense** | 834 | 19,442 |
| **Non-interest expenses** | | |
| Compensation and benefits | 11,170 | 11,564 |
| Communications and technology | 1,667 | 1,460 |
| Brokerage, clearing, and exchange fees | 1,105 | 1,020 |
| Occupancy and related depreciation | 951 | 833 |
| Professional fees | 747 | 716 |
| Advertising and market development | 501 | 536 |
| Office supplies and postage | 160 | 169 |
| Other | 1,212 | 1,055 |
| Payment related to price reset on common stock offering | 2,500 | - |
| Restructuring charge | 484 | - |
| **Total non-interest expenses** | 20,497 | 17,353 |
| **Pre-tax (loss)/earnings from continuing operations** | (19,663) | 2,089 |
| Income tax (benefit)/expense | (7,940) | 429 |
| **Net (loss)/earnings from continuing operations** | (11,723) | 1,660 |
| **Discontinued operations:** | | |
| Pre-tax (loss)/earnings from discontinued operations | (110) | 602 |
| Income tax (benefit)/expense | (65) | 206 |
| **Net (loss)/earnings from discontinued operations** | (45) | 396 |
| **Net (loss)/earnings** | $(11,768) | $ 2,056 |
| Preferred stock dividends | 2,730 | 197 |
| **Net (loss)/earnings applicable to common stockholders** | $(14,498) | $ 1,859 |
| Basic (loss)/earnings per common share from continuing operations | $ (13.16) | $ 1.75 |
| Basic (loss)/earnings per common share from discontinued operations | (0.04) | 0.48 |
| **Basic (loss)/earnings per common share** | $ (13.20) | $ 2.23 |
| Diluted (loss)/earnings per common share from continuing operations | $ (13.16) | $ 1.60 |
| Diluted (loss)/earnings per common share from discontinued operations | (0.04) | 0.43 |
| **Diluted (loss)/earnings per common share** | $ (13.20) | $ 2.03 |
| **Dividend paid per common share** | $ 1.05 | $ 1.05 |
| **Average shares used in computing earnings per common share** | | |
| Basic | 1,098.6 | 832.2 |
| Diluted | 1,098.6 | 916.3 |

See Notes to Condensed Consolidated Financial Statements

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

| *(dollars in millions, except per share amounts)* | **Sept. 26, 2008** | **Dec. 28, 2007** |
|---|---|---|
| **ASSETS** | | |
| **Cash and cash equivalents** | $ 36,406 | $ 41,346 |
| **Cash and securities segregated for regulatory purposes or deposited with clearing organizations** | 22,801 | 22,999 |
| **Securities financing transactions** | | |
| Receivables under resale agreements (includes $104,315 in 2008 and $100,214 in 2007 measured at fair value in accordance with SFAS No. 159) | 164,466 | 221,617 |
| Receivables under securities borrowed transactions (includes $271 in 2008 measured at fair value in accordance with SFAS No. 159) | 99,596 | 133,140 |
| | 264,062 | 354,757 |
| **Trading assets, at fair value** (includes securities pledged as collateral that can be sold or repledged of $27,074 in 2008 and $45,177 in 2007) | | |
| Derivative contracts | 74,106 | 72,689 |
| Equities and convertible debentures | 34,311 | 60,681 |
| Corporate debt and preferred stock | 38,998 | 37,849 |
| Mortgages, mortgage-backed, and asset-backed | 19,130 | 28,013 |
| Non-U.S. governments and agencies | 8,998 | 15,082 |
| U.S. Government and agencies | 6,903 | 11,219 |
| Municipals, money markets and physical commodities | 6,912 | 9,136 |
| | 189,358 | 234,669 |
| **Investment securities** (includes $4,045 in 2008 and $4,685 in 2007 measured at fair value in accordance with SFAS No. 159) (includes securities pledged as collateral that can be sold or repledged of $7,152 in 2008 and $16,124 in 2007) | 72,182 | 82,532 |
| **Securities received as collateral, at fair value** | 47,654 | 45,245 |
| **Other receivables** | | |
| Customers (net of allowance for doubtful accounts of $97 in 2008 and $24 in 2007) | 84,077 | 70,719 |
| Brokers and dealers | 33,552 | 22,643 |
| Interest and other | 35,894 | 33,487 |
| | 153,523 | 126,849 |
| **Loans, notes, and mortgages** (net of allowances for loan losses of $852 in 2008 and $533 in 2007) (includes $1,237 in 2008 and $1,149 in 2007 measured at fair value in accordance with SFAS No. 159) | 75,737 | 94,992 |
| **Equipment and facilities** (net of accumulated depreciation and amortization of $5,882 in 2008 and $5,518 in 2007) | 3,082 | 3,127 |
| **Goodwill and other intangible assets** | 4,989 | 5,091 |
| **Other assets** | 5,986 | 8,443 |
| **Total Assets** | $875,780 | $1,020,050 |

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

| *(dollars in millions, except per share amount)* | Sept. 26, 2008 | Dec. 28, 2007 |
|---|---|---|
| **LIABILITIES** | | |
| **Securities financing transactions** | | |
| Payables under repurchase agreements (includes $72,962 in 2008 and $89,733 in 2007 measured at fair value in accordance with SFAS No. 159) | $172,023 | $ 235,725 |
| Payables under securities loaned transactions | 45,220 | 55,906 |
| | 217,243 | 291,631 |
| **Short-term borrowings** (includes $3,079 in 2008 measured at fair value in accordance with SFAS No. 159) | 25,693 | 24,914 |
| **Deposits** | 90,001 | 103,987 |
| **Trading liabilities, at fair value** | | |
| Derivative contracts | 55,613 | 73,294 |
| Equities and convertible debentures | 19,302 | 29,652 |
| Non-U.S. governments and agencies | 5,595 | 9,407 |
| U.S. Government and agencies | 3,828 | 6,135 |
| Corporate debt and preferred stock | 1,577 | 4,549 |
| Municipals, money markets and other | 830 | 551 |
| | 86,745 | 123,588 |
| **Obligation to return securities received as collateral, at fair value** | 47,654 | 45,245 |
| **Other payables** | | |
| Customers | 69,387 | 63,582 |
| Brokers and dealers | 27,897 | 24,499 |
| Interest and other | 40,277 | 44,545 |
| | 137,561 | 132,626 |
| **Long-term borrowings** (includes $71,886 in 2008 and $76,334 in 2007 measured at fair value in accordance with SFAS No. 159) | 227,326 | 260,973 |
| **Junior subordinated notes (related to trust preferred securities)** | 5,202 | 5,154 |
| **Total Liabilities** | 837,425 | 988,118 |
| **COMMITMENTS AND CONTINGENCIES** | | |
| **STOCKHOLDERS' EQUITY** | | |
| **Preferred Stockholders' Equity** (liquidation preference of $30,000 per share; issued: 2008 — 244,100 shares; 2007 — 155,000 shares; liquidation preference of $1,000 per share; issued: 2008 and 2007 — 115,000 shares; liquidation preference of $100,000 per share; issued: 2008 — 17,000 shares) | 8,605 | 4,383 |
| **Common Stockholders' Equity** | | |
| Shares exchangeable into common stock | 39 | 39 |
| Common stock (par value $1.33⅓ per share; authorized: 3,000,000,000 shares; issued: 2008 — 2,030,675,842 shares; 2007 — 1,354,309,819 shares) | 2,707 | 1,805 |
| Paid-in capital | 47,754 | 27,163 |
| Accumulated other comprehensive loss (net of tax) | (4,334) | (1,791) |
| Retained earnings | 7,960 | 23,737 |
| | 54,126 | 50,953 |
| Less: Treasury stock, at cost (2008 — 432,167,085 shares; 2007 — 418,270,289 shares) | 24,376 | 23,404 |
| **Total Common Stockholders' Equity** | 29,750 | 27,549 |
| **Total Stockholders' Equity** | 38,355 | 31,932 |
| **Total Liabilities and Stockholders' Equity** | $875,780 | $1,020,050 |

See Notes to Condensed Consolidated Financial Statements

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

| *(dollars in millions)* | For the Nine Months Ended Sept. 26, 2008 | Sept. 28, 2007 As Restated See Note 16 |
|---|---|---|
| **Cash flows from operating activities:** | | |
| Net (loss)/earnings | $(11,768) | $ 2,056 |
| Adjustments to reconcile net (loss)/earnings to cash provided by (used for) operating activities | | |
| Depreciation and amortization | 671 | 633 |
| Share-based compensation expense | 1,787 | 1,220 |
| Payment related to price reset on common stock offering | 2,500 | - |
| Deferred taxes | (5,571) | (1,380) |
| Gain on sale of Bloomberg L.P. | (4,296) | - |
| Earnings from equity method investments | (146) | (814) |
| Other | 6,140 | 1,920 |
| Changes in operating assets and liabilities: | | |
| Trading assets | 45,311 | (54,449) |
| Cash and securities segregated for regulatory purposes or deposited with clearing organizations | 658 | (6,500) |
| Receivables under resale agreements | 57,151 | (41,479) |
| Receivables under securities borrowed transactions | 33,544 | (53,869) |
| Customer receivables | (13,359) | (11,977) |
| Brokers and dealers receivables | (10,905) | (7,574) |
| Proceeds from loans, notes, and mortgages held for sale | 18,550 | 57,797 |
| Other changes in loans, notes, and mortgages held for sale | (1,264) | (71,534) |
| Trading liabilities | (37,082) | 27,949 |
| Payables under repurchase agreements | (63,702) | 75,961 |
| Payables under securities loaned transactions | (10,686) | 3,469 |
| Customer payables | 5,805 | 13,495 |
| Brokers and dealers payables | 3,398 | 744 |
| Trading investment securities | 942 | 3,339 |
| Other, net | (14,708) | 3,961 |
| Cash provided by (used for) operating activities | 2,970 | (57,032) |
| **Cash flows from investing activities:** | | |
| Proceeds from (payments for): | | |
| Maturities of available-for-sale securities | 5,978 | 10,511 |
| Sales of available-for-sale securities | 27,218 | 25,830 |
| Purchases of available-for-sale securities | (29,121) | (43,633) |
| Proceeds from the sale of discontinued operations | 12,576 | - |
| Equipment and facilities, net | (593) | (364) |
| Loans, notes, and mortgages held for investment | (11,240) | 4,830 |
| Other investments | 1,909 | (6,711) |
| Acquisitions, net of cash | - | (1,826) |
| Cash provided by (used for) investing activities | 6,727 | (11,363) |
| **Cash flows from financing activities:** | | |
| Proceeds from (payments for): | | |
| Commercial paper and short-term borrowings | 779 | 8,480 |
| Issuance and resale of long-term borrowings | 64,851 | 137,235 |
| Settlement and repurchases of long-term borrowings | (83,353) | (60,620) |
| Deposits | (13,986) | 874 |
| Derivative financing transactions | 554 | (4) |
| Issuance of common stock | 9,885 | 760 |
| Issuance of preferred stock, net | 9,281 | 1,494 |
| Common stock repurchases | - | (5,272) |
| Other common stock transactions | (822) | 670 |
| Excess tax benefits related to share-based compensation | 39 | 643 |
| Dividends | (1,865) | (1,124) |
| Cash (used for) provided by financing activities | (14,637) | 83,136 |
| (Decrease) increase in cash and cash equivalents | (4,940) | 14,741 |
| Cash and cash equivalents, beginning of period | 41,346 | 32,109 |
| Cash and cash equivalents, end of period | $ 36,406 | $ 46,850 |
| **Supplemental Disclosure of Cash Flow Information:** | | |
| Income taxes paid | $ 422 | $ 1,391 |
| Interest paid | 26,529 | 38,078 |

**Non-cash investing and financing activities:**
As a result of the conversion of $6.6 billion of Merrill Lynch's mandatory convertible preferred stock, series 1, the Company recorded additional preferred dividends of $2.1 billion in the third quarter of 2008. The preferred dividends were paid in additional shares of common and preferred stock.

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

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

See Notes to Condensed Consolidated Financial Statements

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

| *(dollars in millions)* | For the Three Months Ended Sept. 26, 2008 | For the Three Months Ended Sept. 28, 2007 | For the Nine Months Ended Sept. 26, 2008 | For the Nine Months Ended Sept. 28, 2007 |
|---|---|---|---|---|
| Net (loss)/earnings | $(5,152) | $(2,241) | $(11,768) | $2,056 |
| Other comprehensive income/(loss), net of tax: | | | | |
| Foreign currency translation adjustment | (141) | (9) | (189) | 15 |
| Net unrealized loss on investment securities available-for-sale | (544) | (741) | (2,358) | (765) |
| Net deferred gain/(loss) on cash flow hedges | 37 | 46 | (3) | 19 |
| Defined benefit pension and postretirement plans | (1) | 4 | 5 | 13 |
| Total other comprehensive loss, net of tax | (649) | (700) | (2,545) | (718) |
| Comprehensive (loss)/income | $(5,801) | $(2,941) | $(14,313) | $1,338 |

See Notes to Condensed Consolidated Financial Statements

## Note 1. Summary of Significant Accounting Policies

For a complete discussion of significant accounting policies, refer to the Audited Consolidated Financial Statements included in Merrill Lynch & Co. Inc.'s ("ML&Co.") Annual Report on Form 10-K for the year-ended December 28, 2007 ("2007 Annual Report").

On September 15, 2008, ML&Co. entered into an Agreement and Plan of Merger (the "Merger Agreement") with Bank of America Corporation ("Bank of America"). The Merger Agreement provides that, upon the terms and subject to the conditions set forth in the Merger Agreement, a wholly owned subsidiary of Bank of America will merge with and into ML&Co. with ML&Co. continuing as the surviving corporation and as a wholly owned subsidiary of Bank of America. The merger has been approved by the board of directors of each of ML&Co. and Bank of America and is subject to shareholder votes at both companies.

Upon completion of the merger, each outstanding share of ML&Co. common stock will be converted into the right to receive 0.8595 shares of Bank of America common stock, and the Bank of America board of directors will be expanded to include three existing directors of ML&Co. The Merger Agreement contains certain termination rights for both ML&Co. and Bank of America and is subject to customary closing conditions, including standard regulatory approvals. The transaction is expected to close on December 31, 2008 or earlier subject to shareholder approval, customary closing conditions and regulatory approvals. In light of the pending transaction with Bank of America, ML&Co. is no longer pursuing the previously announced proposed sale of Financial Data Services, Inc. ("FDS").

### Basis of Presentation

The Condensed Consolidated Financial Statements include the accounts of ML&Co. and subsidiaries (collectively, "Merrill Lynch" or the "Company"). The Condensed Consolidated Financial Statements are presented in accordance with U.S. Generally Accepted Accounting Principles, which include industry practices. Intercompany transactions and balances have been eliminated. 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 presentation 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 2007 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. Certain reclassifications have been made to the prior period financial statements to conform to the current period presentation.

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

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

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

**Discontinued Operations**

On August 13, 2007, Merrill Lynch announced a strategic business relationship with AEGON, N.V. ("AEGON") in the areas of insurance and investment products. As part of this relationship, Merrill Lynch sold Merrill Lynch Life Insurance Company and ML Life Insurance Company of New York (together "Merrill Lynch Insurance Group" or "MLIG") to AEGON for $1.3 billion in the fourth quarter of 2007, which resulted in an after-tax gain of approximately $316 million. The gain along with the financial results of MLIG, have been reported within discontinued operations for all periods presented. Merrill Lynch previously reported the results of MLIG in the Global Wealth Management ("GWM") business segment. Refer to Note 15 for additional information.

On December 24, 2007 Merrill Lynch announced that it had reached an agreement with GE Capital to sell Merrill Lynch Capital, a wholly-owned middle-market commercial finance business. The sale included substantially all of Merrill Lynch Capital's operations, including its commercial real estate division. This transaction closed on February 4, 2008. Merrill Lynch has included results of Merrill Lynch Capital within discontinued operations for all periods presented. Merrill Lynch previously reported results of Merrill Lynch Capital in the Global Markets and Investment Banking ("GMI") business segment. Refer to Note 15 for additional information.

**Consolidation Accounting Policies**

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

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

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

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

QSPEs — QSPEs are passive entities with significantly limited permitted activities. QSPEs are generally used as securitization vehicles and are limited in the type of assets they may hold, the derivatives that they can enter into and the level of discretion they may exercise through servicing activities. In accordance with SFAS No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities* ("SFAS No. 140"), and FIN 46R, Merrill Lynch does not consolidate QSPEs.

**Securitization Activities**

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

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

**Revenue Recognition**

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

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

Managed accounts and other fee-based revenues primarily consist of asset-priced portfolio service fees earned from the administration of separately managed accounts and other investment accounts for retail investors, annual account fees, and certain other account-related fees.

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

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

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

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

**Use of Estimates**

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

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

- Other matters that affect the reported amounts and disclosure of contingencies in the financial statements.

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

**Fair Value Measurement**

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

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

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

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

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

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

*Liquidity*

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

*Counterparty Credit Risk*

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

SFAS No. 157 also requires that Merrill Lynch consider its own creditworthiness when determining the fair value of an instrument, including OTC derivative instruments. The approach to measuring the impact of Merrill Lynch's credit risk on an instrument is done in the same manner as for third party credit risk. The impact of Merrill Lynch's credit risk is incorporated into the fair value, even when credit risk is not readily observable, of an instrument such as in OTC derivatives contracts. OTC derivative liabilities are valued based on the net counterparty exposure as described above.

**Legal Reserves**

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

### Income Taxes

Merrill Lynch provides for income taxes on all transactions that have been recognized in the Condensed Consolidated Financial Statements in accordance with SFAS No. 109, *Accounting for Income Taxes* ("SFAS No. 109"). Accordingly, deferred taxes are adjusted to reflect the tax rates at which future taxable amounts will likely be settled or realized. The effects of tax rate changes on future deferred tax liabilities and deferred tax assets, as well as other changes in income tax laws, are recognized in net earnings in the period during which such changes are enacted. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized. Merrill Lynch assesses its ability to realize deferred tax assets primarily based on the earnings history and other factors of the legal entities through which the deferred tax assets will be realized as discussed in SFAS No. 109. See Note 13 for further discussion of income taxes.

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

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

### Securities Financing Transactions

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

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

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

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

Substantially all repurchase and resale activities are transacted under master netting agreements that give Merrill Lynch the right, in the event of default, to liquidate collateral held and to offset receivables and payables with the same counterparty. Merrill Lynch offsets certain repurchase and resale agreement balances with the same counterparty on the Condensed Consolidated Balance Sheets.

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

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

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

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

**Trading Assets and Liabilities**

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

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

**Derivatives**

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

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

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

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

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

1. Merrill Lynch routinely issues debt in a variety of maturities and currencies to achieve the lowest cost financing possible. In addition, Merrill Lynch's regulated bank entities accept time deposits of varying rates and maturities. Merrill Lynch enters into derivative transactions to hedge these liabilities. Derivatives used most frequently include swap agreements that:

    - Convert fixed-rate interest payments into variable-rate interest payments;
    - Change the underlying interest rate basis or reset frequency; and
    - Change the settlement currency of a debt instrument.

2. Merrill Lynch enters into hedges on marketable investment securities to manage the interest rate risk, currency risk, and net duration of its investment portfolios.

3. Merrill Lynch has fair value hedges of long-term fixed rate resale and repurchase agreements to manage the interest rate risk of these assets and liabilities. Subsequent to the adoption of SFAS No. 159, Merrill Lynch elects to account for these instruments on a fair value basis rather than apply hedge accounting.

4. Merrill Lynch uses foreign-exchange forward contracts, foreign-exchange options, currency swaps, and foreign-currency-denominated debt to hedge its net investments in foreign operations. These derivatives and cash instruments are used to mitigate the impact of changes in exchange rates.

5. Merrill Lynch enters into futures, swaps, options and forward contracts to manage the price risk of certain commodity inventory.

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

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

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

2. A hedge of the variability of cash flows to be received or paid related to a recognized asset or liability ("cash flow" hedge). Changes in the fair value of derivatives that are designated and qualify as effective cash flow hedges are recorded in accumulated other comprehensive loss until earnings are affected by the variability of cash flows of the hedged asset or liability (e.g., when periodic interest accruals on a variable-rate asset or liability are recorded in earnings).

3. A hedge of a net investment in a foreign operation. Changes in the fair value of derivatives that are designated and qualify as hedges of a net investment in a foreign operation are recorded in the foreign currency translation adjustment account within accumulated other comprehensive loss.

   Changes in the fair value of the hedge instruments that are associated with the difference between the spot translation rate and the forward translation rate are recorded in current period earnings in other revenues.

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

As noted above, Merrill Lynch enters into fair value and cash flow hedges of interest rate exposure associated with certain investment securities and debt issuances. Merrill Lynch uses interest rate swaps to hedge this exposure. Hedge effectiveness testing is required for certain of these hedging relationships on a quarterly basis. For fair value hedges, Merrill Lynch assesses effectiveness on a prospective basis by comparing the expected change in the price of the hedge instrument to the expected change in the value of the hedged item under various interest rate shock scenarios. For cash flow hedges, Merrill Lynch assesses effectiveness on a prospective basis by comparing the present value of the projected cash flows on the variable leg of the hedge instrument against the present value of the projected cash flows of the hedged item (the "change in variable cash flows" method) under various interest rate, prepayment and credit shock scenarios. In addition, Merrill Lynch assesses effectiveness on a retrospective basis using the dollar-offset ratio approach. When assessing hedge effectiveness, there are no attributes of the derivatives used to hedge the fair value exposure that are excluded from the assessment. Ineffectiveness associated with these hedges was immaterial for all periods presented.

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

*Netting of Derivative Contracts*

Where Merrill Lynch has entered into a legally enforceable netting agreement with counterparties, it reports derivative assets and liabilities, and any related cash collateral, net in the Condensed Consolidated Balance Sheets in accordance with FIN No. 39, *Offsetting Amounts Related to Certain Contracts* ("FIN No. 39"). Derivative assets and liabilities are presented net of cash collateral of approximately $24.0 billion and $43.7 billion, respectively, at September 26, 2008 and $13.5 billion and $39.7 billion, respectively, at December 28, 2007.

*Derivatives that Contain a Significant Financing Element*

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

**Investment Securities**

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

*Marketable Investments*

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

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

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

Merrill Lynch's impairment review generally includes:

- Identifying securities with indicators of possible impairment;
- Analyzing individual securities with fair value less than amortized cost for specific factors including:
    - An adverse change in cash flows
    - The estimated length of time to recover from fair value to amortized cost
    - The severity and duration of the fair value decline from amortized cost
    - Evaluating the financial condition of the issuer;
- Discussing evidential matter, including an evaluation of the factors that could cause individual securities to qualify as having other-than-temporary impairment;
- Determining whether management intends to hold the security through to recovery. Absent other indicators of possible impairment, to the extent that Merrill Lynch has the ability and intent to hold the securities, no impairment charge will be recognized; and
- Documenting the analysis and conclusions.

*Non-Qualifying Investments*

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

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

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

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

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

**Loans, Notes, and Mortgages, Net**

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

Loans held for investment are carried at amortized cost, less an allowance for loan losses. The provision for loan losses is based on management's estimate of the amount necessary to maintain the allowance for loan losses at a level adequate to absorb probable incurred loan losses and is included in interest revenue in the Condensed Consolidated Statements of (Loss)/Earnings. Management's estimate of loan losses is influenced by many factors, including adverse situations that may affect the borrower's ability to repay, current economic conditions, prior loan loss experience, and the estimated fair value of any underlying collateral. The fair value of collateral is generally determined by third-party appraisals in the case of residential mortgages, quoted market prices for securities, or other types of estimates for other assets.

Management's estimate of loan losses includes judgment about collectibility based on available information at the balance sheet date, and the uncertainties inherent in those underlying assumptions.

While management has based its estimates on the best information available, future adjustments to the allowance for loan losses may be necessary as a result of changes in the economic environment or variances between actual results and the original assumptions.

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

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

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

**New Accounting Pronouncements**

In September 2008, the FASB issued FSP FAS 133-1 and FIN 45-4, *Disclosures about Credit Derivatives and Certain Guarantees: An Amendment of FASB Statement No. 133 and FASB Interpretation No. 45; and Clarification of the Effective Date of FASB Statement No. 161* ("FSP FAS 133-1 and FIN 45-4"), which amends SFAS No. 133 to require expanded disclosures regarding the potential effect of credit derivative instruments on an entity's financial position, financial performance and cash flows. FSP FAS 133-1 and FIN 45-4 applies to credit derivative instruments where Merrill Lynch is the seller of protection. This includes freestanding credit derivative instruments as well as credit derivatives that are embedded in hybrid instruments. FSP FAS 133-1 and FIN 45-4 additionally amends FASB Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* ("FIN 45") to require an additional disclosure about the current status of the payment/performance risk of guarantees. FSP FAS 133-1 and FIN 45-4 is effective prospectively for financial statements issued for fiscal years and interim periods ending after November 15, 2008.

In June 2008, the FASB issued FSP EITF 03-6-1, *Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities* ("FSP EITF 03-6-1"), which addresses whether instruments granted in share-based payment transactions are participating securities prior to vesting and, therefore, need to be included in the computation of earnings per share under the two-class method described in SFAS No. 128, *Earnings per Share*. FSP EITF 03-6-1, which will apply to Merrill Lynch because it grants instruments to employees in share-based payment transactions that meet the definition of participating securities, is effective retrospectively for financial statements issued for fiscal years and interim periods beginning after December 15, 2008. Merrill Lynch is currently evaluating the impact of FSP EITF 03-6-1 on the Condensed Consolidated Financial Statements.

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

In March 2008, the FASB issued SFAS No. 161, *Disclosure about Derivative Instruments and Hedging Activities, an Amendment of FASB Statement No. 133* ("SFAS No. 161"). SFAS No. 161 is intended to improve transparency in financial reporting by requiring enhanced disclosures of an entity's derivative instruments and hedging activities and their effects on the entity's financial position, financial performance, and cash flows. SFAS No. 161 applies to all derivative instruments within the scope of SFAS No. 133. It also applies to non-derivative hedging instruments and all hedged items designated and qualifying as hedges under SFAS No. 133. SFAS No. 161 amends the current qualitative and quantitative disclosure requirements for derivative instruments and hedging activities set forth in SFAS No. 133 and generally increases the level of disaggregation that will be required in an entity's financial statements. SFAS No. 161 requires qualitative disclosures about objectives and strategies for using derivatives, quantitative disclosures about fair value amounts of gains and losses on derivative instruments, and disclosures about credit-risk related contingent features in derivative agreements.

SFAS No. 161 is effective prospectively for financial statements issued for fiscal years and interim periods beginning after November 15, 2008.

In February 2008, the FASB issued FSP FAS 140-3, *Accounting for Transfers of Financial Assets and Repurchase Financing Transactions*. Under the guidance in FSP FAS 140-3, there is a presumption that the initial transfer of a financial asset and subsequent repurchase financing involving the same asset are considered part of the same arrangement (i.e. a linked transaction) under SFAS No. 140. However, if certain criteria are met, the initial transfer and repurchase financing will be evaluated as two separate transactions under SFAS No. 140. FSP FAS 140-3 is effective for new transactions entered into in fiscal years beginning after November 15, 2008. Early adoption is prohibited. Merrill Lynch is currently evaluating the impact of FSP FAS 140-3 on the Condensed Consolidated Financial Statements.

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

In December 2007, the FASB issued SFAS No. 141R, *Business Combinations* ("SFAS No. 141R"), which significantly changes the financial accounting and reporting for business combinations. SFAS No. 141R will require:

- More assets and liabilities to be measured at fair value as of the acquisition date,
- Liabilities related to contingent consideration to be remeasured at fair value in each subsequent reporting period with changes reflected in earnings and not goodwill, and
- All acquisition-related costs to be expensed as incurred by the acquirer.

SFAS No. 141R is required to be adopted on a prospective basis concurrently with SFAS No. 160 and is effective for business combinations beginning in fiscal 2009. Early adoption is prohibited. Merrill Lynch is currently evaluating the impact of SFAS No. 141R on the Condensed Consolidated Financial Statements.

In June 2007, the Accounting Standards Executive Committee of the AICPA issued Statement of Position 07-1, *Clarification of the Scope of the Audit and Accounting Guide Investment Companies and Accounting by Parent Companies and Equity Method Investors for Investments in Investment Companies* ("SOP 07- 1"). The intent of SOP 07-1 is to clarify which entities are within the scope of the AICPA Audit and Accounting Guide, Investment Companies (the "Guide"). For those entities that are investment companies under SOP 07-1, the SOP also addresses whether the specialized industry accounting principles of the Guide (referred to as "investment company accounting") should be retained by the parent company in consolidation or by an investor that accounts for the investment under the equity method because it has significant influence over the investee. On October 17, 2007, the FASB proposed an indefinite delay of the effective dates of SOP 07-1 to allow the Board to address certain implementation issues that have arisen and possibly revise SOP 07-1.

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

In February 2007, the FASB issued SFAS No. 159, which provides a fair value option election that allows companies to irrevocably elect fair value as the initial and subsequent measurement attribute for certain financial assets and liabilities. Changes in fair value for assets and liabilities for which the election is made will be recognized in earnings as they occur. SFAS No. 159 permits the fair value option election on an instrument-by-instrument basis at initial recognition of an asset or liability or upon an event that gives rise to a new basis of accounting for that instrument. SFAS No. 159 is effective as of the beginning of an entity's first fiscal year that begins after November 15, 2007. Early adoption is permitted. Merrill Lynch early adopted SFAS No. 159 in the first quarter of 2007. In connection with this adoption management reviewed its treasury liquidity portfolio and determined that Merrill Lynch should decrease its economic exposure to interest rate risk by eliminating long-term fixed rate assets from the portfolio and replacing them with floating rate assets. The fixed rate assets had been classified as available-for-sale and the unrealized losses related to such assets had been recorded in accumulated other comprehensive loss. As a result of the adoption of SFAS No. 159, the loss related to these assets was removed from accumulated other comprehensive loss and a loss of approximately $185 million, net of tax, primarily related to these assets, was recorded as a cumulative-effect adjustment to beginning retained earnings, with no material impact to total stockholders' equity. Refer to Note 3 to the 2007 Annual Report for additional information.

In September 2006, the FASB issued SFAS No. 157. SFAS No. 157 defines fair value, establishes a framework for measuring fair value, establishes a fair value hierarchy based on the quality of inputs used to measure fair value and enhances disclosure about fair value measurements. SFAS No. 157 nullifies the guidance provided by EITF 02-3 that prohibits recognition of day one gains or losses on derivative transactions where model inputs that significantly impact valuation are not observable. In addition, SFAS No. 157 prohibits the use of block discounts for large positions of unrestricted financial instruments that trade in an active market and requires an issuer to incorporate changes in its own credit spreads when determining the fair value of its liabilities. SFAS No. 157 is effective for fiscal years beginning after November 15, 2007 with early adoption permitted provided that the entity has not yet issued financial statements for that fiscal year, including any interim periods. The provisions of SFAS No. 157 are to be applied prospectively, except that the provisions related to block discounts and existing derivative financial instruments measured under EITF 02-3 are to be applied as a one-time cumulative effect adjustment to opening retained earnings in the year of adoption. Merrill Lynch early adopted SFAS No. 157 in the first quarter of 2007. The cumulative-effect adjustment to beginning retained earnings was an increase of approximately $53 million, net of tax, primarily representing the difference between the carrying amounts and fair value of derivative contracts valued using the guidance in EITF 02-3. The impact of adopting SFAS No. 157 was not material to the Condensed Consolidated Statement of (Loss)/Earnings. Refer to Note 3 to the 2007 Annual Report for additional information.

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

In June 2006, the FASB issued FIN 48. FIN 48 clarifies the accounting for uncertainty in income taxes recognized in a company's financial statements and prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure and transition. Merrill Lynch adopted FIN 48 in the first quarter of 2007. The impact of the adoption of FIN 48 resulted in a decrease to beginning retained earnings and an increase to the liability for unrecognized tax benefits of approximately $66 million. See Note 14 to the 2007 Annual Report for further information.

In March 2006, the FASB issued SFAS No. 156, *Accounting for Servicing of Financial Assets* ("SFAS No. 156"). SFAS No. 156 amends SFAS No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities,* to require all separately recognized servicing assets and servicing liabilities to be initially measured at fair value, if practicable. SFAS No. 156 also permits servicers to subsequently measure each separate class of servicing assets and liabilities at fair value rather than at the lower of amortized cost or market. For those companies that elect to measure their servicing assets and liabilities at fair value, SFAS No. 156 requires the difference between the carrying value and fair value at the date of adoption to be recognized as a cumulative-effect adjustment to retained earnings as of the beginning of the fiscal year in which the election is made. Prior to adoption of SFAS No. 156 Merrill Lynch accounted for servicing assets and servicing liabilities at the lower of amortized cost or market. Merrill Lynch adopted SFAS No. 156 on December 30, 2006. Merrill Lynch has not elected to subsequently fair value those mortgage servicing rights ("MSR") held as of the date of adoption or those MSRs acquired or retained after December 30, 2006. The adoption of SFAS No. 156 did not have a material impact on the Condensed Consolidated Financial Statements.

In February 2006, the FASB issued SFAS No. 155, *Accounting for Certain Hybrid Financial Instruments an amendment of FASB Statements No. 133 and 140* ("SFAS No. 155"). SFAS No. 155 clarifies the bifurcation requirements for certain financial instruments and permits hybrid financial instruments that contain a bifurcatable embedded derivative to be accounted for as a single financial instrument at fair value with changes in fair value recognized in earnings. This election is permitted on an instrument-by-instrument basis for all hybrid financial instruments held, obtained, or issued as of the adoption date. At adoption, any difference between the total carrying amount of the individual components of the existing bifurcated hybrid financial instruments and the fair value of the combined hybrid financial instruments is recognized as a cumulative-effect adjustment to beginning retained earnings. Merrill Lynch adopted SFAS No. 155 on a prospective basis beginning in the first quarter of 2007. Since SFAS No. 159 incorporates accounting and disclosure requirements that are similar to SFAS No. 155, Merrill Lynch applies SFAS No. 159, rather than SFAS No. 155, to its fair value elections for hybrid financial instruments.

## Note 2. Segment and Geographic Information

### Segment Information

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

Merrill Lynch also records revenues and expenses within a "Corporate" category. Corporate results primarily include gains and losses related to ineffective interest rate hedges on certain qualifying debt and the impact of certain hybrid financing instruments accounted for under SFAS No. 159. In addition, Corporate results for the three and nine month periods ended September 26, 2008 included expenses of $2.5 billion related to the payment to affiliates and transferees of Temasek Holdings (Private) Limited ("Temasek") (refer to Note 10 for further information) and $425 million (which includes a fine of $125 million) associated with the auction rate securities ("ARS") repurchase program and the associated settlement with regulators (refer to Note 11 for further information). Net revenues and pre-tax losses recorded within Corporate for the third quarter of 2008 were negative $56 million and $3.0 billion, respectively as compared with net revenues and pre-tax earnings of $20 million and $21 million, respectively, in the prior year period.

Net revenues and pre-tax losses recorded within Corporate for the nine months ended September 26, 2008 were negative $187 million and $3.1 billion, as compared with negative net revenues of $149 million and pre-tax losses of $159 million in the prior year period.

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

*(dollars in millions)*

| | GMI | GWM | Corporate | Total |
|---|---|---|---|---|
| **Three months Ended Sept. 26, 2008** | | | | |
| Non-interest revenues | $ (3,382) | $ 2,666 | $ (457) | $ (1,173) |
| Net interest profit[1] | 219 | 569 | 401 | 1,189 |
| Revenues, net of interest expense | (3,163) | 3,235 | (56) | 16 |
| Non-interest expenses[2] | 2,851 | 2,482 | 2,934 | 8,267 |
| Pre-tax (loss)/earnings from continuing operations[3] | $ (6,014) | $ 753 | $(2,990) | $ (8,251) |
| Quarter-end total assets | $777,994 | $ 97,360 | $ 426 | $ 875,780 |
| **Three months Ended Sept. 28, 2007** | | | | |
| Non-interest revenues | $ (4,311) | $ 2,965 | $ (588) | $ (1,934) |
| Net interest profit[1] | 1,133 | 573 | 608 | 2,314 |
| Revenues, net of interest expense | (3,178) | 3,538 | 20 | 380 |
| Non-interest expenses | 1,434 | 2,585 | (1) | 4,018 |
| Pre-tax earnings/(loss) from continuing operations[3] | $ (4,612) | $ 953 | $ 21 | $ (3,638) |
| Quarter-end total assets[4] | $990,518 | $106,243 | $ 427 | $1,097,188 |
| **Nine months Ended Sept. 26, 2008** | | | | |
| Non-interest revenues | $ (8,897) | $ 8,375 | $(1,305) | $ (1,827) |
| Net interest (loss)/profit[1] | (275) | 1,818 | 1,118 | 2,661 |
| Revenues, net of interest expense | (9,172) | 10,193 | (187) | 834 |
| Non-interest expenses[2] | 9,448 | 8,116 | 2,933 | 20,497 |
| Pre-tax (loss)/earnings from continuing operations[3] | $ (18,620) | $ 2,077 | $(3,120) | $ (19,663) |
| **Nine months Ended Sept. 28, 2007** | | | | |
| Non-interest revenues | $ 7,411 | $ 8,680 | $ (652) | $ 15,439 |
| Net interest profit[1] | 1,754 | 1,746 | 503 | 4,003 |
| Revenues, net of interest expense | 9,165 | 10,426 | (149) | 19,442 |
| Non-interest expenses | 9,633 | 7,710 | 10 | 17,353 |
| Pre-tax (loss)/earnings from continuing operations[3] | $ (468) | $ 2,716 | $ (159) | $ 2,089 |

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

*(2) Includes restructuring charges recorded in the three and nine month periods ended September 26, 2008 of $18 million and $329 million for GMI, respectively, and $21 million and $155 million for GWM, respectively. See Note 17 for further information.*

*(3) See Note 15 to the Condensed Consolidated Financial Statements for further information on discontinued operations.*

*(4) Amounts have been restated to reflect goodwill balances in the respective business segments. Such amounts ($4,516 million in GMI and $375 million in GWM) were previously included in Corporate.*

**Geographic Information**

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

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

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

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

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

*(dollars in millions)*

| | For the Three Months Ended | | For the Nine Months Ended | |
|---|---|---|---|---|
| | **Sept. 26, 2008** | **Sept. 28, 2007** | **Sept. 26, 2008** | **Sept. 28, 2007** |
| **Revenues, net of interest expense** | | | | |
| Europe, Middle East, and Africa | $(1,339) | $ 1,233 | $ 1,061 | $ 5,454 |
| Pacific Rim | 311 | 1,481 | 1,858 | 4,160 |
| Latin America | 325 | 378 | 1,191 | 1,128 |
| Canada | 22 | 77 | 155 | 369 |
| Total Non-U.S | (681) | 3,169 | 4,265 | 11,111 |
| United States(1)(2)(3) | 697 | (2,789) | (3,431) | 8,331 |
| **Total revenues, net of interest expense** | $ 16 | $ 380 | $ 834 | $19,442 |
| **Pre-tax earnings from continuing operations** | | | | |
| Europe, Middle East, and Africa | $(2,410) | $ 144 | $ (2,583) | $ 1,631 |
| Pacific Rim | (275) | 783 | 46 | 2,073 |
| Latin America | 104 | 189 | 473 | 553 |
| Canada | (12) | 37 | 16 | 213 |
| Total Non-U.S | (2,593) | 1,153 | (2,048) | 4,470 |
| United States(1)(2)(3) | (5,658) | (4,791) | (17,615) | (2,381) |
| **Total pre-tax (loss) earnings from continuing operations(4)** | $(8,251) | $(3,638) | $(19,663) | $ 2,089 |

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

*(2) U.S. net revenues for the three and nine months ended September 26, 2008 include net losses of $10.2 billion and $26.1 billion, respectively, related to U.S. ABS CDOs, credit valuation adjustments related to hedges with financial guarantors, losses in the investment portfolio of Merrill Lynch's U.S. banks, losses from other residential mortgage exposures, and losses from commercial real estate exposures. Losses for the three and nine months ended September 26, 2008 were partially offset by gains of $2.8 and $5.0 billion, respectively, that resulted from the widening of Merrill Lynch's credit spreads on the carrying value of certain of our long-term liabilities, and a $4.3 billion net gain related to the sale of Merrill Lynch's ownership stake in Bloomberg L.P. (see Note 5).*

*(3) U.S. net revenues for the three and nine months ended September 28, 2007 include net losses of $7.9 billion related to sub-prime residential mortgage-related securities and U.S. ABS CDOs.*

*(4) See Note 15 for further information on discontinued operations.*

## Note 3. Fair Value

### Fair Value Measurements

*Fair Value Hierarchy*

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

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

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

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

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

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

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

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

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

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

A review of fair value hierarchy classifications is conducted on a quarterly basis. Changes in the observability of valuation inputs may result in a reclassification for certain financial assets or liabilities. Reclassifications impacting Level 3 of the fair value hierarchy are reported as transfers in/out of the Level 3 category as of the beginning of the quarter in which the reclassifications occur. Refer to the recurring and non-recurring sections within this Note for further information on the net transfers in and out during the quarter.

**Recurring Fair Value**

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

*(dollars in millions)*

| | Fair Value Measurements on a Recurring Basis as of Sept. 26, 2008 | | | | |
|---|---|---|---|---|---|
| | **Level 1** | **Level 2** | **Level 3** | **Netting Adj[(1)]** | **Total** |
| **Assets:** | | | | | |
| Securities segregated for regulatory purposes or deposited with clearing organizations | $ 2,216 | $ 6,001 | $ - | $ - | $ 8,217 |
| Receivables under resale agreements | - | 104,315 | - | - | 104,315 |
| Receivables under securities borrowed transactions | - | 271 | - | - | 271 |
| Trading assets, excluding derivative contracts | 42,472 | 54,957 | 17,823 | - | 115,252 |
| Derivative contracts | 6,249 | 637,168 | 32,535 | (601,846) | 74,106 |
| Investment securities | 3,166 | 41,396 | 4,202 | - | 48,764 |
| Securities received as collateral | 42,572 | 5,082 | - | - | 47,654 |
| Loans, notes and mortgages | - | 682 | 721 | - | 1,403 |
| Other assets[(2)] | 22 | 1,910 | - | - | 1,932 |
| **Liabilities:** | | | | | |
| Payables under repurchase agreements | $ - | $ 72,962 | $ - | $ - | $ 72,962 |
| Short-term borrowings | - | 3,064 | 15 | - | 3,079 |
| Trading liabilities, excluding derivative contracts | 27,673 | 3,431 | 28 | - | 31,132 |
| Derivative contracts | 5,507 | 642,533 | 28,835 | (621,262) | 55,613 |
| Obligation to return securities received as collateral | 42,572 | 5,082 | - | - | 47,654 |
| Long-term borrowings[(3)] | - | 60,855 | 11,535 | - | 72,390 |
| Other payables — interest and other[(2)] | - | 570 | - | (82) | 488 |

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

Level 3 trading assets primarily include U.S. ABS CDOs of $4.0 billion, corporate bonds and loans of $10.8 billion and auction rate securities of $1.0 billion.

Level 3 derivative contracts (assets) primarily relate to derivative positions on U.S. ABS CDOs of $7.5 billion, $17.6 billion of other credit derivatives that incorporate unobservable correlation, and $7.4 billion of equity, currency, interest rate and commodity derivatives that are long-dated and/or have unobservable correlation.

Level 3 investment securities relate to certain private equity and principal investment positions of $4.2 billion.

Level 3 derivative contracts (liabilities) primarily relate to derivative positions on U.S. ABS CDOs of $8.5 billion, $13.1 billion of other credit derivatives that incorporate unobservable correlation, and $7.2 billion of equity and currency derivatives that are long-dated and/or have unobservable correlation.

Level 3 long-term borrowings primarily relate to structured notes with embedded equity and commodity derivatives of $8.8 billion that are long-dated and/or have unobservable correlation and $1.1 billion related to certain long-term borrowings issued by consolidated special purpose entities ("SPEs").

*(dollars in millions)*

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

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

*Level 3 Assets and Liabilities as of December 28, 2007*

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

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

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

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

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

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

*(dollars in millions)*

| | Level 3 Financial Assets and Liabilities Three Months Ended Sept. 26, 2008 | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | Total Realized and Unrealized Gains or (Losses) included in Income | | | | | | |
| | Beginning Balance | Principal Transactions | Other Revenue | Interest | Total Realized and Unrealized Gains or (Losses) included in Income | Purchases, Issuances and Settlements | Transfers in (out) | Ending Balance |
| **Assets:** | | | | | | | | |
| Securities segregated for regulatory purposes or deposited with clearing organizations | $ - | $ - | $ - | $ - | $ - | $ - | $ - | - |
| Trading assets | 20,190 | 303 | - | 5 | 308 | (3,374) | 699 | 17,823 |
| Derivative contracts, net | (1,292) | (8,792) | - | - | (8,792) | 13,348 | 436 | 3,700 |
| Investment securities | 4,589 | (147) | (304) | - | (451) | 61 | 3 | 4,202 |
| Loans, notes and mortgages | 172 | (6) | (18) | 1 | (23) | 557 | 15 | 721 |
| **Liabilities:** | | | | | | | | |
| Trading liabilities | $ - | $ 1 | $ - | $ - | $ 1 | $ - | $ 29 | 28 |
| Short-term borrowings | 34 | - | - | - | - | (19) | - | 15 |
| Long-term borrowings | 12,749 | 3,788 | 271 | - | 4,059 | (30) | 2,875 | 11,535 |

Net losses in principal transactions during the quarter ended September 26, 2008 were due primarily to losses of $5.7 billion related to U.S. ABS CDOs and the termination and potential settlement of related hedges with monoline guarantor counterparties, of which $4.9 billion was realized due to the sale of these assets to an affiliate of Lone Star Funds ("Lone Star"). In addition, principal transactions also included $2.3 billion of losses related to net commodity derivative contracts. These losses were partially offset by $2.2 billion of gains related to long term borrowings with commodity related embedded derivatives.

The decrease in Level 3 trading assets due to purchases, issuances and settlements primarily resulted from the sale of U.S. ABS CDO sub-prime related assets to Lone Star. The majority of the decrease was offset by a loan to Lone Star, which is classified as trading assets, that financed approximately 75% of the U.S. ABS CDO assets purchased by Lone Star. In addition, the deconsolidation of certain Level 3 trading assets that were initially recognized as a result of consolidating certain SPEs contributed to the decrease in trading assets. As a result of the Lone Star transaction, certain total return swaps that were in liability positions at the beginning of the quarter were terminated, resulting in an increase in purchases, issuances and settlements for derivative contracts, net.

The Level 3 net transfers in for long-term borrowings were primarily due to decreased observability of inputs on certain long-dated equity-linked notes.

*(dollars in millions)*

| | Level 3 Financial Assets and Liabilities Nine Months Ended Sept. 26, 2008 | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | Total Realized and Unrealized Gains or (Losses) included in Income | | | | | | |
| | Beginning Balance | Principal Transactions | Other Revenue | Interest | Total Realized and Unrealized Gains or (Losses) included in Income | Purchases, Issuances and Settlements | Transfers in (out) | Ending Balance |
| **Assets:** | | | | | | | | |
| Securities segregated for regulatory purposes or deposited with clearing organizations | $ 84 | $ - | $ - | $ 1 | $ 1 | $ (79) | $ (6) | $ - |
| Trading assets | 9,773 | (2,744) | - | 86 | (2,658) | 7,025 | 3,683 | 17,823 |
| Derivative contracts, net | (9,069) | (9,849) | - | 5 | (9,844) | 25,467 | (2,854) | 3,700 |
| Investment securities | 5,491 | (895) | (291) | - | (1,186) | 159 | (262) | 4,202 |
| Loans, notes and mortgages | 63 | (6) | (19) | (2) | (27) | 676 | 9 | 721 |
| **Liabilities:** | | | | | | | | |
| Trading liabilities | $ - | $ 1 | $ - | $ - | $ 1 | $ - | $ 29 | $ 28 |
| Short-term borrowings | - | - | - | - | - | 15 | - | 15 |
| Long-term borrowings | 4,765 | 2,171 | 285 | - | 2,456 | 1,435 | 7,791 | 11,535 |

Net losses in principal transactions for the nine months ended September 26, 2008 were due primarily to losses of $14.7 billion related to U.S. ABS CDOs and the termination and potential settlement of related hedges with monoline guarantor counterparties, of which $4.9 billion was related to the sale of these assets to Lone Star. These losses were partially offset by $3.1 billion in gains on other credit derivatives that incorporate unobservable correlation.

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

The Level 3 net transfers in for trading assets primarily relates to decreased observability of inputs on certain corporate bonds and loans. The Level 3 net transfers in for long-term borrowings were primarily due to decreased observability of inputs on certain long-dated equity linked notes.

*(dollars in millions)*

| | Level 3 Financial Assets and Liabilities Three Months Ended Sept. 28, 2007 | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | Total Realized and Unrealized Gains or (Losses) included in Income | | | | | | |
| | Beginning Balance | Principal Transactions | Other Revenue | Interest | Total Realized and Unrealized Gains or (Losses) included in Income | Purchases, Issuances and Settlements | Transfers in (out) | Ending Balance |
| **Assets:** | | | | | | | | |
| Trading assets | $3,648 | $(1,938) | $ - | $ 6 | $(1,932) | $1,608 | $6,409 | $ 9,733 |
| Derivative contracts, net | 229 | (4,032) | (2) | 11 | (4,023) | 139 | 81 | (3,574) |
| Investment securities | 5,784 | (974) | 4 | - | (970) | 938 | (99) | 5,653 |
| Loans, notes and mortgages | 4 | - | (4) | - | (4) | (2) | 9 | 7 |
| **Liabilities:** | | | | | | | | |
| Long-term borrowings | $ 282 | $ 280 | $ - | $ - | $ 280 | $ 81 | $ 529 | $ 612 |

*(dollars in millions)*

| | Level 3 Financial Assets and Liabilities Nine Months Ended Sept. 28, 2007 | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | Total Realized and Unrealized Gains or (Losses) included in Income | | | | | | |
| | Beginning Balance | Principal Transactions | Other Revenue | Interest | Total Realized and Unrealized Gains or (Losses) included in Income | Purchases, Issuances and Settlements | Transfers in (out) | Ending Balance |
| **Assets:** | | | | | | | | |
| Trading assets | $ 2,021 | $(1,685) | $ - | $34 | $(1,651) | $2,111 | $7,252 | $ 9,733 |
| Derivative contracts, net | (2,030) | (3,461) | 3 | 17 | (3,441) | 946 | 951 | (3,574) |
| Investment securities | 5,117 | (1,404) | 484 | 5 | (915) | 2,142 | (691) | 5,653 |
| Loans, notes and mortgages | 7 | - | (13) | - | (13) | (4) | 17 | 7 |
| **Liabilities:** | | | | | | | | |
| Long-term borrowings | $ - | $ 280 | $ - | $ - | $ 280 | $ 81 | $ 811 | $ 612 |

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

*(dollars in millions)*

| | Unrealized Gains or (Losses) for Level 3 Assets and Liabilities Still Held at Sept. 26, 2008 | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Three Months Ended Sept. 26, 2008 | | | | Nine Months Ended Sept. 26, 2008 | | | |
| | Principal Transactions | Other Revenue | Interest | Total | Principal Transactions | Other Revenue | Interest | Total |
| **Assets:** | | | | | | | | |
| Securities segregated for regulatory purposes or deposited with clearing organizations | $ - | $ - | $ - | $ - | $ - | $ - | $ 1 | $ 1 |
| Trading assets | 293 | - | (29) | 264 | (2,753) | - | 74 | (2,679) |
| Derivative contracts, net | (3,979) | - | - | (3,979) | 2,611 | - | 5 | 2,616 |
| Investment securities | (102) | (304) | - | (406) | (822) | (295) | - | (1,117) |
| Loans, notes, and mortgages | (6) | (15) | 1 | (20) | (6) | (9) | (2) | (17) |
| **Liabilities:** | | | | | | | | |
| Long-term borrowings | $ 3,811 | $ 271 | $ - | $ 4,082 | $ 2,236 | $ 285 | $ - | $ 2,521 |

Net unrealized losses in principal transactions for the three months ended September 26, 2008 were primarily due to $2.3 billion of losses related to net commodity derivative contracts and approximately $800 million of net losses on U.S. ABS CDO related assets and liabilities. These losses were partially offset by $2.2 billion of gains related to long term borrowings with commodity related embedded derivatives.

For the nine months ended September 26, 2008, net unrealized gains in principal transactions primarily relate to certain equity-linked structured notes.

*(dollars in millions)*

| | Unrealized Gains or (Losses) for Level 3 Assets and Liabilities Still Held at Sept. 28, 2007 | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Three Months Ended Sept. 28, 2007 | | | | Nine Months Ended Sept. 28, 2007 | | | |
| | Principal Transactions | Other Revenue | Interest | Total | Principal Transactions | Other Revenue | Interest | Total |
| **Assets:** | | | | | | | | |
| Trading assets | $(1,956) | $ - | $ 6 | $(1,950) | $(1,719) | $ - | $34 | $(1,685) |
| Derivative contracts, net | (4,088) | (2) | 11 | (4,079) | (3,589) | (2) | 17 | (3,574) |
| Investment securities | (974) | (6) | - | (980) | (1,404) | 393 | 7 | (1,004) |
| Loans, notes, and mortgages | - | 1 | - | 1 | - | 4 | - | 4 |
| **Liabilities:** | | | | | | | | |
| Long-term borrowings | $ 280 | $ - | $ - | $ 280 | $ 280 | $ - | $ - | $ 280 |

## Non-recurring Fair Value

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

*(dollars in millions)*

| | Non-Recurring Basis as of Sept. 26, 2008 | | | | Gains / (Losses) Three Months Ended Sept. 26, 2008 | Gains / (Losses) Nine Months Ended Sept. 26, 2008 |
|---|---|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total | | |
| **Assets:** | | | | | | |
| Loans, notes, and mortgages | $- | $11,297 | $5,750 | $17,047 | $(2,577) | $(3,645) |
| **Liabilities:** | | | | | | |
| Other liabilities | $- | $ 705 | $ 14 | $ 719 | $ (77) | $ (59) |

*(dollars in millions)*

| | Non-Recurring Basis as of December 28, 2007 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| **Assets:** | | | | |
| Loans, notes, and mortgages | $- | $32,594 | $7,157 | $39,751 |
| **Liabilities:** | | | | |
| Other liabilities | $- | $ 666 | $ - | $ 666 |

Loans, notes, and mortgages include held for sale loans that are carried at the lower of cost or fair value and for which the fair value was below the cost basis at September 26, 2008 and/or December 28, 2007. It also includes certain impaired held for investment loans where an allowance for loan losses has been calculated based upon the fair value of the loans or collateral. Level 3 assets as of September 26, 2008 primarily relate to United Kingdom ("U.K.") residential and commercial real estate loans of $4.3 billion that are classified as held for sale where there continues to be significant illiquidity in the securitization market. The losses on the Level 3 loans were calculated primarily by a fundamental cash flow valuation analysis. This cash flow analysis includes cumulative loss and prepayment assumptions derived from multiple inputs including mortgage remittance reports, property prices and other market data. Level 3 assets as of December 28, 2007 primarily related to residential and commercial real estate loans that are classified as held for sale in the U.K. of $4.1 billion.

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

## Fair Value Option

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

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

*(dollars in millions)*

| | Changes in Fair Value For the Three Months Ended Sept. 26, 2008, for Items Measured at Fair Value Pursuant to Fair Value Option | | | Changes in Fair Value For the Nine Months Ended Sept. 26, 2008, for Items Measured at Fair Value Pursuant to Fair Value Option | | |
|---|---|---|---|---|---|---|
| | Gains/ (losses) Principal Transactions | Gains/ (losses) Other Revenues | Total Changes in Fair Value | Gains/ (losses) Principal Transactions | Gains/ (losses) Other Revenues | Total Changes in Fair Value |
| **Assets:** | | | | | | |
| Receivables under resale agreements | $ 139 | $ - | $ 139 | $ (70) | $ - | $ (70) |
| Investment securities | (588) | (212) | (800) | (671) | (251) | (922) |
| Loans, notes and mortgages | (40) | - | (40) | (37) | 12 | (25) |
| **Liabilities:** | | | | | | |
| Payables under repurchase agreements | $ (100) | $ - | $ (100) | $ (52) | $ - | $ (52) |
| Short-term borrowings | (367) | - | (367) | (185) | - | (185) |
| Long-term borrowings(1) | 8,632 | 846 | 9,478 | 12,578 | 1,715 | 14,293 |

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

*(dollars in millions)*

| | Changes in Fair Value For the Three Months Ended Sept. 28, 2007, for Items Measured at Fair Value Pursuant to Fair Value Option | | | Changes in Fair Value For the Nine Months Ended Sept. 28, 2007, for Items Measured at Fair Value Pursuant to Fair Value Option | | |
|---|---|---|---|---|---|---|
| | Gains/ (losses) Principal Transactions | Gains/ (losses) Other Revenues | Total Changes in Fair Value | Gains/ (losses) Principal Transactions | Gains/ (losses) Other Revenues | Total Changes in Fair Value |
| **Assets:** | | | | | | |
| Receivables under resale agreements | $ 62 | $ - | $ 62 | $ 67 | $ - | $ 67 |
| Investment securities | (68) | (1) | (69) | 142 | 20 | 162 |
| Loans, notes and mortgages | (3) | 20 | 17 | (1) | 60 | 59 |
| **Liabilities:** | | | | | | |
| Payables under repurchase agreements | $ (10) | $ - | $ (10) | $ 7 | $ - | $ 7 |
| Long-term borrowings | 576 | - | 576 | 1,417 | - | 1,417 |

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

Resale and repurchase agreements:

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

Securities borrowed transactions:

Merrill Lynch elected the fair value option for certain Japanese government bond borrowing transactions during the second quarter of 2008. Fair value changes related to such transactions were immaterial for the three and nine months ended September 26, 2008.

Investment securities:

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

Loans, notes, and mortgages:

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

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

Short-term and long-term borrowings:

Merrill Lynch elected the fair value option for certain short-term and long-term borrowings that are risk managed on a fair value basis, including structured notes, and for which hedge accounting under SFAS No. 133 had been difficult to obtain. The changes in the fair value of liabilities for which the fair value option was elected that was attributable to changes in Merrill Lynch credit spreads were estimated gains of $2.8 billion and $5.0 billion for the three and nine months ended September 26, 2008, respectively. The changes in the fair value of liabilities for which the fair value option was elected that were attributable to changes in Merrill Lynch credit spreads were estimated gains of $609 million and $628 million for the three and nine months ended September 28, 2007. Changes in Merrill Lynch specific credit risk are derived by isolating fair value changes due to changes in Merrill Lynch's credit spreads as observed in the secondary cash market.

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

The following tables present the difference between fair values and the aggregate contractual principal amounts of receivables under resale agreements, receivables under securities borrowed transactions, loans, notes, and mortgages, payables under repurchase agreements, short-term and long-term borrowings for which the fair value option has been elected as of September 26, 2008 and December 28, 2007, respectively.

*(dollars in millions)*

| | Fair Value at September 26, 2008 | Principal Amount Due Upon Maturity | Difference |
|---|---|---|---|
| **Assets:** | | | |
| Receivables under resale agreements | $104,315 | $104,102 | $ 213 |
| Receivables under securities borrowed transactions | 271 | 271 | - |
| Loans, notes and mortgages | 1,237 | 1,321 | (84) |
| **Liabilities:** | | | |
| Payables under repurchase agreements | $ 72,962 | $ 72,902 | $ 60 |
| Short-term borrowings | 3,079 | 3,071 | 8 |
| Long-term borrowings(1) | 71,886 | 76,183 | (4,297) |

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

*(dollars in millions)*

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

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

## Trading Risk Management

Trading activities subject Merrill Lynch to market and credit risks. These risks are managed in accordance with established risk management policies and procedures. Specifically, the independent risk and control groups work to ensure that these risks are properly identified, measured, monitored, and managed throughout Merrill Lynch. Refer to Note 3 of the 2007 Annual Report for further information on trading risk management.

### Concentration of Risk to the Mortgage Markets

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

- Net exposures of $34.6 billion in U.S. Prime residential mortgage-related positions and $5.0 billion in other residential mortgage-related positions, excluding Merrill Lynch's U.S. banks investment securities portfolio;
- Net exposure of $15.7 billion in Merrill Lynch's U.S. banks investment securities portfolio;
- Net exposure of $12.8 billion in commercial real estate related positions, excluding First Republic, and $2.9 billion in First Republic commercial real estate related positions; and
- Net exposure of $1.1 billion in U.S. super senior ABS CDO exposures.

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

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

### Concentration of Risk to Monoline Financial Guarantors

To economically hedge certain U.S. super senior ABS CDOs and U.S. sub-prime mortgage positions, Merrill Lynch entered into credit derivatives with various counterparties, including financial guarantors. At the end of the third quarter of 2008, the carrying value of hedges with financial guarantors related to U.S. super senior ABS CDOs was $1.4 billion, reduced from $2.9 billion at the end of the second quarter. The carrying value of hedges with financial guarantors related to other asset classes outside of U.S. super senior ABS CDOs increased from $3.6 billion at the end of the second quarter to $4.5 billion at the end of the third quarter of 2008, resulting from gains in the market value of these hedges.

During the third quarter of 2008, credit valuation adjustments related to Merrill Lynch's remaining hedges with financial guarantors, including those related to U.S. super senior ABS CDOs, were not significant.

## Note 4. Securities Financing Transactions

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

Under these transactions, Merrill Lynch either receives or provides collateral, including U.S. Government and agencies, asset-backed, corporate debt, equity, and non-U.S. governments and agencies securities. Merrill Lynch receives collateral in connection with resale agreements, securities borrowed transactions, customer margin loans, and other loans. Under many agreements, Merrill Lynch is permitted to sell or repledge the securities received (e.g., use the securities to secure repurchase agreements, enter into securities lending transactions, or deliver to counterparties to cover short positions). At September 26, 2008 and December 28, 2007, the fair value of securities received as collateral where Merrill Lynch is permitted to sell or repledge the securities was $676 billion and $853 billion, respectively, and the fair value of the portion that has been sold or repledged was $535 billion and $675 billion, respectively. Merrill Lynch may use securities received as collateral for resale agreements to satisfy regulatory requirements such as Rule 15c3-3 of the SEC. The fair value of collateral used for this purpose was $14.9 billion and $19.3 billion at September 26, 2008 and December 28, 2007, respectively.

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

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

*(dollars in millions)*

| | **Sept. 26, 2008** | **Dec. 28, 2007** |
|---|---|---|
| **Trading asset category** | | |
| Mortgages, mortgage-backed, and asset-backed securities | $16,746 | $11,873 |
| U.S. Government and agencies | 6,027 | 11,110 |
| Corporate debt and preferred stock | 12,918 | 17,144 |
| Non-U.S. governments and agencies | 1,656 | 2,461 |
| Equities and convertible debentures | 16,179 | 9,327 |
| Municipals and money markets | 2,622 | 450 |
| **Total** | $56,148 | $52,365 |

Additionally, Merrill Lynch has pledged approximately $5.6 billion of loans and $12.5 billion of investment securities to counterparties at September 26, 2008, where those counterparties do not have the right to sell or repledge those assets.

## Note 5. Investment Securities

Investment securities on the Condensed Consolidated Balance Sheets include:

- SFAS No. 115 investments held by ML & Co. and certain of its non-broker-dealer entities, including Merrill Lynch banks. SFAS No. 115 investments consist of:
  - Debt securities, including debt held for investment and liquidity and collateral management purposes that are classified as available-for-sale, debt securities held for trading purposes, and debt securities that Merrill Lynch intends to hold until maturity;
  - Marketable equity securities, which are generally classified as available-for-sale.
- Non-qualifying investments are those that do not fall within the scope of SFAS No. 115. Non-qualifying investments consist principally of:
  - Equity investments, including investments in partnerships and joint ventures. Included in equity investments are investments accounted for under the equity method of accounting, which consist of investments in (i) partnerships and certain limited liability corporations where Merrill Lynch has more than minor influence (i.e. generally defined as greater than a three percent interest) and (ii) corporate entities where Merrill Lynch has the ability to exercise significant influence over the investee (i.e. generally defined as ownership and voting interest of 20% to 50%). For information related to our investments accounted for under the equity method, please refer to Note 5 of the 2007 Annual Report. Also included in equity investments are private equity investments that Merrill Lynch holds for capital appreciation and/or current income and which are accounted for at fair value in accordance with the Investment Company Guide, as well as private equity investments accounted for at fair value under the fair value option election in

SFAS No. 159. The carrying value of private equity investments reflects expected exit values based upon market prices or other valuation methodologies including discounted expected cash flows and market comparables of similar companies.

- Deferred compensation hedges, which are investments economically hedging deferred compensation liabilities and are accounted for at fair value.

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

*(dollars in millions)*

| | **Sept. 26, 2008** | **Dec. 28, 2007** |
|---|---|---|
| **Investment securities** | | |
| Available-for-sale(1) | $40,206 | $50,922 |
| Trading | 3,407 | 5,015 |
| Held-to-maturity | 4,581 | 267 |
| Non-qualifying(2) | | |
| Equity investments(3) | 27,892 | 29,623 |
| Deferred compensation hedges(4) | 1,565 | 1,710 |
| Investments in trust preferred securities and other investments | 435 | 438 |
| **Total** | $78,086 | $87,975 |

*(1) At September 26, 2008 and December 28, 2007, includes $5.9 billion and $5.4 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) Includes Merrill Lynch's investment in BlackRock.*

*(4) Represents investments that economically hedge deferred compensation liabilities.*

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

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

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

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

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

Other-than-temporary impairments related to Merrill Lynch's U.S. banks investment securities portfolio, which are recorded within other revenues on the Condensed Consolidated Statement of (Loss)/ Earnings, have been recognized for the three and nine month periods ended September 26, 2008 as follows:

*(dollars in millions)*

| | **Three Months Ended Sept. 26, 2008** | **Nine Months Ended Sept. 26, 2008** |
|---|---|---|
| **Security Description** | | |
| Prime | $ 58 | $ 255 |
| Alt A | 628 | 2,202 |
| Sub-prime | 110 | 204 |
| CDOs | 51 | 272 |
| **Total** | $847 | $2,933 |

The cumulative pre-tax balance in other comprehensive loss related to the U.S. banks investment securities portfolio was approximately negative $5.5 billion as of September 26, 2008.

**Bloomberg, L.P.**

The Company had a 20% ownership stake in Bloomberg L.P., which was accounted for under the equity method of accounting. On July 17, 2008, Merrill Lynch announced and completed the sale of its ownership stake in Bloomberg, L.P. to Bloomberg Inc., for $4.4 billion. The sale resulted in a $4.3 billion net pre-tax gain.

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

**Securitizations**

In the normal course of business, Merrill Lynch securitizes commercial and residential mortgage loans, municipal, government, and corporate bonds, and other types of financial assets. SPEs, often referred to as VIEs are often used when entering into or facilitating securitization transactions. Merrill Lynch's involvement with SPEs used to securitize financial assets includes: structuring and/or establishing

SPEs; selling assets to SPEs; managing or servicing assets held by 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, or for the benefit of, SPEs.

Merrill Lynch securitized assets of approximately $20.9 billion and $154.4 billion for the nine months ended September 26, 2008 and September 28, 2007, respectively. For the nine months ended September 26, 2008 and September 28, 2007, Merrill Lynch received $22.2 billion and $156.8 billion, respectively, of proceeds, and other cash inflows, from securitization transactions, and recognized net securitization gains of $11 million and $287 million, respectively, in Merrill Lynch's Condensed Consolidated Statements of (Loss)/Earnings.

The table below summarizes the cash inflows received by Merrill Lynch from securitization transactions related to the following underlying asset types:

*(dollars in millions)*

| | Nine Months Ended | |
|---|---|---|
| | **Sept. 26, 2008** | **Sept. 28, 2007** |
| **Asset category** | | |
| Residential mortgage loans | $13,258 | $ 92,558 |
| Municipal bonds | 5,867 | 46,358 |
| Commercial loans and corporate bonds | 2,834 | 13,502 |
| Other | 196 | 4,430 |
| **Total** | $22,155 | $156,848 |

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

Retained interests are recorded in the Condensed Consolidated Balance Sheets at fair value. To obtain fair values, observable market prices are used if available. Where observable market prices are unavailable, Merrill Lynch generally estimates fair value initially and on an ongoing basis based on the present value of expected future cash flows using management's best estimates of credit losses, prepayment rates, forward yield curves, and discount rates, commensurate with the risks involved. Retained interests are either held as trading assets, with changes in fair value recorded in the Condensed Consolidated Statements of (Loss)/Earnings, or as securities available-for-sale, with changes in fair value included in accumulated other comprehensive loss. Retained interests held as available-for-sale are reviewed periodically for impairment.

Retained interests in securitized assets were approximately $3.0 billion and $6.1 billion at September 26, 2008 and December 28, 2007, respectively, which related primarily to residential mortgage-related assets, municipal bond, and commercial-related assets and corporate bond securitization transactions. The majority of these retained interests include mortgage-backed securities that Merrill Lynch had expected to sell to investors in the normal course of its underwriting activity. However, the timing of any sale is subject to current and future market conditions.

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 26, 2008 arising from Merrill Lynch's residential mortgage-related assets, municipal bond, and commercial-related assets and corporate bond securitization transactions. The pre-tax sensitivities of the current fair value of the retained interests to immediate 10% and 20% adverse changes in assumptions and parameters are also shown.

*(dollars in millions)*

| | Residential Mortgage-Related Assets | Municipal Bonds | Commercial-Related Assets and Corporate Bonds |
|---|---|---|---|
| Retained interest amount | $1,048 | $558 | $1,401 |
| Weighted average credit losses (rate per annum)(1) | 0.7% | 0.0% | 2.0% |
| Impact on fair value of 10% adverse change | $ (1) | $ - | $ (3) |
| Impact on fair value of 20% adverse change | $ (3) | $ - | $ (7) |
| Weighted average discount rate | 7.9% | 7.1% | 6.6% |
| Impact on fair value of 10% adverse change | $ (31) | $ (15) | $ (15) |
| Impact on fair value of 20% adverse change | $ (61) | $ (27) | $ (29) |
| Weighted average life (in years) | 7.1 | 8.9 | 5.7 |
| Weighted average prepayment speed (CPR)(2) | 14.9% | 0.0% | 24.4% |
| Impact on fair value of 10% adverse change | $ (9) | $ - | $ (4) |
| Impact on fair value of 20% adverse change | $ (18) | $ - | $ (8) |

*CPR=Constant Prepayment Rate*

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

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

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

The weighted average assumptions and parameters used initially to value retained interests relating to securitizations that were still held by Merrill Lynch as of September 26, 2008 are as follows:

| | Residential Mortgage-Related Assets | Municipal Bonds | Commercial-Related Assets and Corporate Bonds |
|---|---|---|---|
| Credit losses (rate per annum)(1) | 0.2% | 0.0% | 1.5% |
| Weighted average discount rate | 6.4% | 5.2% | 4.4% |
| Weighted average life (in years) | 6.8 | 10.9 | 6.3 |
| Prepayment speed assumption (CPR)(2) | 15.7% | 0.0% | 16.6% |

*CPR = Constant Prepayment Rate*

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

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

For residential mortgage-related assets and commercial-related assets and corporate bond securitizations, the investors and the securitization trust generally have no recourse to Merrill Lynch upon the event of a borrower default. See Note 11 to the Condensed Consolidated Financial Statements for information related to representations and warranties.

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 facility issued by Merrill Lynch.

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

**Mortgage Servicing Rights**

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

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

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

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

*(dollars in millions)*

| | Carrying Value |
|---|---|
| **Mortgage servicing rights, December 28, 2007** (fair value is $476) | $ 389 |
| Additions | 5 |
| Amortization | (100) |
| Valuation allowance adjustments | (63) |
| **Mortgage servicing rights, Sept. 26, 2008** (fair value is $267) | $ 231 |

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

*(dollars in millions)*

| | For the Three Months Ended | | For the Nine Months Ended | |
|---|---|---|---|---|
| | Sept. 26, 2008 | Sept. 28, 2007 | Sept. 26, 2008 | Sept. 28, 2007 |
| Servicing fees | $82 | $ 96 | $284 | $262 |
| Ancillary and late fees | 12 | 17 | 44 | 47 |
| Total | $94 | $113 | $328 | $309 |

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

*(dollars in millions)*

| | |
|---|---|
| Fair value of capitalized MSRs | $ 267 |
| Weighted average prepayment speed (CPR) | 24.4% |
| Impact on fair value of 10% adverse change | $ (15) |
| Impact on fair value of 20% adverse change | $ (32) |
| Weighted average discount rate | 17.2% |
| Impact on fair value of 10% adverse change | $ (9) |
| Impact on fair value of 20% adverse change | $ (17) |

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

**Variable Interest Entities**

FIN 46(R) requires an entity to consolidate a VIE if that enterprise has a variable interest that will absorb a majority of the variability of the VIE's expected losses, receive a majority of the variability of the VIE's expected residual returns, or both. The entity required to consolidate a VIE is known as the primary beneficiary. A QSPE is a type of VIE that holds financial instruments and distributes cash flows to investors based on preset terms. QSPEs are commonly used in mortgage and other securitization transactions. In accordance with SFAS No. 140 and FIN 46(R), Merrill Lynch typically does not consolidate QSPEs. Information regarding QSPEs can be found in the Securitization section of this Note and the Guarantees section in Note 11 to the Condensed Consolidated Financial Statements.

Where an entity is a significant variable interest holder, FIN 46(R) 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.

The following tables summarize Merrill Lynch's involvement with certain VIEs as of September 26, 2008 and December 28, 2007, respectively. The table below does not include information on QSPEs or those VIEs where Merrill Lynch is the primary beneficiary and holds a majority of the voting interests in the entity.

*(dollars in millions)*

| | Primary Beneficiary | | Significant Variable Interest Holder | |
|---|---|---|---|---|
| | Net Asset Size(4) | Recourse to Merrill Lynch(5) | Total Asset Size(6) | Maximum Exposure |
| **September 26, 2008** | | | | |
| Loan and real estate VIEs | $ 7,201 | $2,689 | $ - | $ - |
| Guaranteed and other funds(1) | 1,516 | 344 | 122 | 64 |
| Credit-linked note and other VIEs(2) | 191 | 246 | - | - |
| Tax planning VIEs(3) | 1 | 45 | 151 | 5 |
| **December 28, 2007** | | | | |
| Loan and real estate VIEs | $15,420 | $ - | $ 307 | $ 232 |
| Guaranteed and other funds(1) | 4,655 | 928 | 246 | 23 |
| Credit-linked note and other VIEs(2) | 83 | - | 5,438 | 9,081 |
| Tax planning VIEs(3) | 1 | - | 483 | 15 |

*(1) The maximum exposure for guaranteed and other funds is the fair value of Merrill Lynch's investments, derivatives entered into with the VIEs if they are in an asset position, and liquidity and credit facilities with certain VIEs.*

*(2) The maximum exposure for credit-linked note and other VIEs is the notional amount of total return swaps that Merrill Lynch has entered into with the VIEs. This assumes a total loss on the referenced assets underlying the total return swaps. The maximum exposure may be different than the total asset size due to the netting of certain derivatives in the VIE.*

*(3) The maximum exposure for tax planning VIEs reflects indemnifications made by Merrill Lynch to investors in the VIEs.*

*(4) This column reflects the size of the assets held in the VIE after accounting for intercompany eliminations and any balance sheet netting of assets and liabilities as permitted by FIN 39.*

*(5) This column reflects the extent, if any, to which investors have recourse to Merrill Lynch beyond the assets held in the VIE. For certain loan and real estate VIEs, recourse to Merrill Lynch represents the notional amount of derivatives that Merrill Lynch has on the assets in the VIEs.*

*(6) This column reflects the total size of the assets held in the VIE.*

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:

## Loan and Real Estate VIEs

- Merrill Lynch has investments in VIEs that hold loans or real estate. Merrill Lynch may be either the primary beneficiary which would result in consolidation of the VIE, or may be a significant variable interest holder. These VIEs include entities that are primarily designed to provide financing to clients, to invest in real estate or obtain exposure to mortgage related assets. These VIEs include securitization vehicles that Merrill Lynch is required to consolidate because QSPE status has not been met and Merrill Lynch is the primary beneficiary as it retains the residual interests. This was a result of Merrill Lynch's inability to sell mortgage related securities because of the illiquidity in the securitization markets. Merrill Lynch's inability to sell certain securities disqualified the VIEs as QSPEs thereby resulting in Merrill Lynch's consolidation of the VIEs. Depending upon the continued illiquidity in the securitization market, these transactions and future transactions that could fail QSPE status may require consolidation and related disclosures. Merrill Lynch also is the primary beneficiary for certain VIEs as a result of total return swaps over the assets (primarily mortgage related) in the VIE.

For consolidated VIEs that hold loans or mortgage related assets, the assets of the VIEs are recorded in trading assets-mortgages, mortgage-backed and asset-backed, other assets, or loans, notes, and mortgages in the Condensed Consolidated Balance Sheets. For consolidated VIEs that hold real estate investments, these real estate investments are included in other assets in the Condensed Consolidated Balance Sheets. In certain instances, 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. However, investors have recourse to Merrill Lynch in instances where Merrill Lynch retains all the exposure to the assets in the VIE through total return swaps. These transactions resulted in an increase in recourse to Merrill Lynch at September 26, 2008 as compared to year end 2007. The net assets of loan and real estate VIEs decreased as Merrill Lynch sold mortgage-related securities, resulting in the associated VIEs qualifying as QSPEs; therefore, Merrill Lynch no longer consolidates these securitization vehicles.

Guaranteed and Other Funds

- Merrill Lynch is the sponsor of funds that provide a guaranteed return to investors at the maturity of the VIE. This guarantee may include a guarantee of the return of an initial investment or of the initial investment plus an agreed upon return depending on the terms of the VIE. Investors in certain of these VIEs have recourse to Merrill Lynch to the extent that the value of the assets held by the VIEs at maturity is less than the guaranteed amount. In some instances, Merrill Lynch is the primary beneficiary and must consolidate the fund. Assets held in these VIEs are primarily classified in trading assets. In instances where Merrill Lynch is not the primary beneficiary, the guarantees related to these funds are further discussed in Note 11 to the Condensed Consolidated Financial Statements.

- Merrill Lynch has made certain investments in alternative investment fund structures that are VIEs. Merrill Lynch is the primary beneficiary of these funds as a result of its substantial investment in the vehicles. Merrill Lynch records the assets in these VIEs in investment securities in the Condensed Consolidated Balance Sheets. The decrease in net assets was a result of redemptions of investments in certain funds.

- Merrill Lynch had established two asset-backed commercial paper conduits ("Conduits"), one of which remained active until July 2008. Merrill Lynch had variable interests in these Conduits in the form of 1) a liquidity facility that protected commercial paper holders against short term changes in the fair value of the assets held by the Conduit in the event of a disruption in the commercial paper market, and 2) a credit facility to the Conduit that protected commercial paper investors against credit losses for up to a certain percentage of the portfolio of assets held by the Conduit. Merrill Lynch also provided a liquidity facility with a third Conduit that it did not establish and Merrill Lynch had purchased all the assets from this Conduit at December 28, 2007.

The remaining Conduit became inactive in July 2008 as Merrill Lynch purchased the assets of this Conduit. Merrill Lynch does not intend to utilize this or the other Conduits discussed above in the future. At September 26, 2008, Merrill Lynch has no liquidity and credit facilities outstanding or maximum exposure to loss as these Conduits are no longer active.

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

Credit-Linked Note and Other VIEs

- Merrill Lynch has entered into transactions with VIEs where Merrill Lynch typically purchases credit protection from the VIE in the form of a derivative in order to synthetically expose investors to a specific credit risk. These are commonly known as credit-linked note VIEs. Merrill Lynch also takes synthetic exposure to the underlying investment grade collateral held in these VIEs, which primarily includes super senior U.S. sub-prime ABS CDOs, through total return swaps. As a result of a reconsideration event during the first quarter of 2008, Merrill Lynch's exposure to these vehicles declined such that Merrill Lynch no longer holds a significant variable interest in these vehicles. The decrease in Total Asset Size and Maximum Exposure as compared to year end 2007 is due to Merrill Lynch no longer holding a significant variable interest in these vehicles. Merrill Lynch recorded its transactions with these VIEs as trading assets/liabilities-derivative contracts in the Condensed Consolidated Financial Statements.

- In 2004, Merrill Lynch entered into a transaction with a VIE whereby Merrill Lynch arranged for additional protection for directors and employees to indemnify them against certain losses that they may incur as a result of claims against them. Merrill Lynch is the primary beneficiary and consolidates the VIE because its employees benefit from the indemnification arrangement. As of September 26, 2008 and December 28, 2007 the assets of the VIE totaled approximately $16 million, representing a purchased credit default agreement, which is recorded in other assets on the Condensed Consolidated Balance Sheets. In the event of a Merrill Lynch insolvency, proceeds of $140 million will be received by the VIE to fund any claims. Neither Merrill Lynch nor its creditors have any recourse to the assets of the VIE.

Tax Planning VIEs

- Merrill Lynch has entered into transactions with VIEs that are used, in part, to provide tax planning strategies to investors and/or Merrill Lynch through an enhanced yield investment security. These structures typically provide financing to Merrill Lynch and/or the investor at enhanced rates. Merrill Lynch may be either the primary beneficiary of and consolidate the VIE, or may be a significant variable interest holder in the VIE.

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

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

- Consumer loans, which are substantially secured, including residential mortgages, home equity loans, and other loans to individuals for household, family, or other personal expenditures.

- Commercial loans including corporate and institutional loans (including corporate and financial sponsor, non-investment grade lending commitments), commercial mortgages, asset-based loans, small- and middle-market business loans, and other loans to businesses.

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

*(dollars in millions)*

| | Loans | | Commitments(1) | |
|---|---|---|---|---|
| | **Sept. 26, 2008** | **Dec. 28, 2007** | **Sept. 26, 2008(2)(3)** | **Dec. 28, 2007(3)** |
| **Consumer:** | | | | |
| Mortgages | $30,027 | $26,939 | $ 9,154 | $ 7,023 |
| Other | 2,573 | 5,392 | 2,484 | 3,298 |
| **Commercial and small- and middle-market business:** | | | | |
| Investment grade | 14,684 | 18,917 | 33,842 | 36,921 |
| Non-investment grade | 29,305 | 44,277 | 10,818 | 30,990 |
| | 76,589 | 95,525 | 56,298 | 78,232 |
| Allowance for loan losses | (852) | (533) | - | - |
| Reserve for lending-related commitments | - | - | (1,668) | (1,408) |
| Total, net | $75,737 | $94,992 | $54,630 | $76,824 |

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

*(2) See Note 11 to the Condensed Consolidated Financial Statements for a maturity profile of these commitments.*

*(3) In addition to the loan origination commitments included in the table above, at September 26, 2008, Merrill Lynch entered into agreements to purchase $395 million of loans that, upon settlement of the commitment, will be classified in loans held for investment and loans held for sale. Similar loan purchase commitments totaled $330 million at December 28, 2007. See Note 11 to the Condensed Consolidated Financial Statements for additional information.*

Activity in the allowance for loan losses is presented below:

*(dollars in millions)*

| | Nine Months Ended | |
|---|---|---|
| | **Sept. 26, 2008** | **Sept. 28, 2007** |
| Allowance for loan losses, at beginning of period | $ 533 | $478 |
| Provision for loan losses | 538 | 96 |
| Charge-offs | (233) | (53) |
| Recoveries | 9 | 25 |
| Net charge-offs | (224) | (28) |
| Other | 5 | 42 |
| Allowance for loan losses, at end of period | $ 852 | $588 |

Consumer loans, which are substantially secured, consisted of approximately 317,000 individual loans at September 26, 2008. Commercial loans consisted of approximately 14,000 separate loans. The principal balance of non-accrual loans was $1.2 billion at September 26, 2008 and $607 million at December 28, 2007. The investment grade and non-investment grade categorization is determined using the credit rating agency equivalent of internal credit ratings. Non-investment grade counterparties are those rated lower than the BBB− category. In some cases Merrill Lynch enters into single name and index credit default swaps to mitigate credit exposure related to funded and unfunded commercial loans. The notional value of these swaps totaled $13.5 billion and $16.1 billion at September 26, 2008 and December 28, 2007, respectively. For information on credit risk management see Note 3 of the 2007 Annual Report.

The above amounts include $18.9 billion and $49.0 billion of loans held for sale at September 26, 2008 and December 28, 2007, respectively. Loans held for sale are loans that management expects to sell prior to maturity. At September 26, 2008, such loans consisted of $5.7 billion of consumer loans, primarily residential mortgages and automobile loans, and $13.2 billion of commercial loans, approximately 11% of which are to investment grade counterparties. At December 28, 2007, such loans consisted of $11.6 billion of consumer loans, primarily residential mortgages and automobile loans, and $37.4 billion of commercial loans, approximately 19% of which were to investment grade counterparties.

## Note 8. Goodwill and Intangibles

### Goodwill

Goodwill is the cost of an acquired company in excess of the fair value of identifiable net assets at acquisition date. Goodwill is tested annually (or more frequently under certain conditions) for impairment at the reporting unit level in accordance with SFAS No. 142, *Goodwill and Other Intangible Assets*. At September 26, 2008, Merrill Lynch conducted an annual goodwill impairment test. The test was performed for the Fixed Income, Currencies and Commodities ("FICC"), Equity Markets, Investment Banking, and GWM reporting units and compared the fair value of each reporting unit to its carrying value, including goodwill. Based on this analysis, Merrill Lynch determined that there was no impairment of goodwill.

The following table sets forth the changes in the carrying amount of Merrill Lynch's goodwill by business segment for the nine months ended September 26, 2008:

*(dollars in millions)*

| | GMI | GWM | Total |
|---|---|---|---|
| **Goodwill:** | | | |
| **December 28, 2007** | $2,970 | $1,620 | $4,590 |
| Translation adjustment and other | (21) | (1) | (22) |
| **September 26, 2008** | $2,949 | $1,619 | $4,568 |

### Intangible Assets

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

The gross carrying amounts of intangible assets were $631 million and $644 million as of September 26, 2008 and December 28, 2007, respectively. Accumulated amortization of other intangible assets amounted to $210 million and $143 million at September 26, 2008 and December 28, 2007, respectively.

Amortization expense for the three and nine months ended September 26, 2008 was $20 million and $73 million, respectively. Amortization expense for the three and nine months ended September 28, 2007 was $128 million and $171 million, respectively, which included a $107 million write-off of identifiable intangible assets related to First Franklin mortgage broker relationships in the third quarter of 2007.

## Note 9. Borrowings and Deposits

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

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

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

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

*(dollars in millions)*

| | Sept. 26, 2008 | Dec. 28, 2007 |
|---|---|---|
| Senior debt issued by ML & Co. | $137,077 | $148,190 |
| Senior debt issued by subsidiaries — guaranteed by ML & Co. | 9,862 | 14,878 |
| Senior structured notes issued by ML & Co. | 38,130 | 45,133 |
| Senior structured notes issued by subsidiaries — guaranteed by ML & Co. | 30,883 | 31,401 |
| Subordinated debt issued by ML & Co. | 12,725 | 10,887 |
| Junior subordinated notes (related to trust preferred securities) | 5,202 | 5,154 |
| Other subsidiary financing — non-recourse[1] and/or not guaranteed by ML & Co. | 24,342 | 35,398 |
| Total | $258,221 | $291,041 |

*(1) Other subsidiary financing — non-recourse is primarily attributable to debt issued to third parties by consolidated entities that are VIEs. Additional information regarding VIEs is provided in Note 6 to the Condensed Consolidated Financial Statements.*

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

*(dollars in millions)*

| | Sept. 26, 2008 | Dec. 28, 2007 |
|---|---|---|
| **Short-term borrowings** | | |
| Commercial paper | $ 4,423 | $ 12,908 |
| Promissory notes | - | 2,750 |
| Secured short-term borrowings[(1)] | 13,809 | 4,851 |
| Other unsecured short-term borrowings | 7,461 | 4,405 |
| Total | $ 25,693 | $ 24,914 |
| **Long-term borrowings[(2)]** | | |
| Fixed-rate obligations[(3)] | $106,440 | $102,020 |
| Variable-rate obligations[(4)(5)] | 119,254 | 156,743 |
| Zero-coupon contingent convertible debt (LYONs®) | 1,599 | 2,210 |
| Other Zero-coupon obligations | 33 | - |
| Total | $227,326 | $260,973 |
| **Deposits** | | |
| U.S. | $ 70,022 | $ 76,634 |
| Non U.S. | 19,979 | 27,353 |
| Total | $ 90,001 | $103,987 |

*(1) Consisted primarily of borrowings from Federal Home Loan Banks for both periods, and as of September 26, 2008, also included borrowings under a secured bank credit facility.*
*(2) Excludes junior subordinated notes (related to trust preferred securities).*
*(3) Fixed-rate obligations are generally swapped to floating rates.*
*(4) Variable interest rates are generally based on rates such as LIBOR, the U.S. Treasury Bill Rate, or the Federal Funds Rate.*
*(5) Included are various equity-linked, credit-linked or other indexed instruments.*

At September 26, 2008, long-term borrowings mature as follows:

*(dollars in millions)*

| | | |
|---|---|---|
| Less than 1 year | $ 62,647 | 28% |
| 1 - 2 years | 32,218 | 14 |
| 2+ - 3 years | 14,877 | 7 |
| 3+ - 4 years | 26,679 | 12 |
| 4+ - 5 years | 16,420 | 7 |
| Greater than 5 years | 74,485 | 32 |
| Total | $227,326 | 100% |

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

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

Except for the $1.6 billion of aggregate principal amount of floating rate zero-coupon contingently convertible liquid yield option notes ("LYONs®") that were outstanding at September 26, 2008, the $4.0 billion credit facility described below, the $7.5 billion secured short-term credit facility described below and the $10 billion short-term unsecured credit facility described in Note 18, senior and subordinated debt obligations issued by ML & Co. and senior debt issued by subsidiaries and 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 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.

On March 13, 2008, approximately $0.6 billion of LYONs® were submitted to Merrill Lynch for repurchase at an accreted price of $1,089.05, resulting in no gain or loss to Merrill Lynch. Following the repurchase, $1.6 billion of LYONs® remain outstanding. Merrill Lynch amended the terms of its outstanding LYONs® in March 2008 to include the following:

- An increase in the number of shares into which the LYONs® convert from 14.0915 shares to 16.5 shares; in August 2008, the conversion rate was adjusted to 16.6771 shares due to the payment of quarterly cash dividends in excess of $0.16 per share,

- An extension of the call protection in the LYONs®, which would otherwise have terminated on March 13, 2008, through March 13, 2014,

- The inclusion of two additional dates, September 13, 2010 and March 13, 2014, on which investors can require Merrill Lynch to repurchase the LYONs®.

The modified conversion price (and the accreted conversion price) for LYONs® as of March 28, 2008 is $66. Shares will not be included in diluted earnings per share until Merrill Lynch's share price exceeds the accreted conversion price. All other features of the LYONs® remain unchanged (see Note 9 of Merrill Lynch's 2007 Annual Report for further information). In accordance with EITF Issue No. 06-6, Debtor's Accounting for Modification (or Exchange) of Convertible Debt Instruments, the change to the terms of Merrill Lynch's outstanding LYONs® resulted in a debt extinguishment and a new issuance of long-term borrowings in the first quarter of 2008. The amount of the loss on the debt extinguishment was not material to Merrill Lynch's Condensed Consolidated Statements of (Loss)/ Earnings.

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

| | **Sept. 26, 2008** | **Dec. 28, 2007** |
|---|---|---|
| Short-term borrowings | 3.07% | 4.64% |
| Long-term borrowings | 4.91 | 4.35 |
| Junior subordinated notes (related to trust preferred securities) | 6.82 | 6.91 |

See Note 9 of the 2007 Annual Report for additional information on Borrowings.

Merrill Lynch also obtains standby letters of credit from issuing banks to satisfy various counterparty collateral requirements, in lieu of depositing cash or securities collateral. Such standby letters of credit aggregated $4.4 billion and $5.8 billion at September 26, 2008 and December 28, 2007, respectively.

**Committed Credit Facilities**

Merrill Lynch maintains credit facilities that are available to cover regular and contingent funding needs. Merrill Lynch maintains a committed, three-year multi-currency, unsecured bank credit facility that totaled $4.0 billion as of September 26, 2008 and which expires in April 2010. Merrill Lynch borrows regularly from this facility as an additional funding source to conduct normal business activities. At both September 26, 2008 and December 28, 2007, Merrill Lynch had $1.0 billion of borrowings outstanding under this facility. This facility requires Merrill Lynch to maintain a minimum consolidated net worth, which it significantly exceeded.

Merrill Lynch also maintains two committed, secured credit facilities which totaled $5.7 billion and $6.5 billion, respectively, at September 26, 2008 and December 28, 2007. One of these facilities matures in May 2009, and the other in December 2008. Both facilities include a one-year term-out feature that allows ML & Co., at its option, to extend borrowings under the facilities for an additional year beyond their respective expiration dates. The secured facilities permit borrowings by ML & Co. and select subsidiaries, secured by a broad range of collateral. At September 26, 2008 and December 28, 2007, Merrill Lynch had no borrowings outstanding under either facility.

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

In September 2008, Merrill Lynch established an additional $7.5 billion bilateral secured credit facility with Bank of America. This facility permits borrowings by Merrill Lynch and select subsidiaries which can be collateralized by a variety of assets, including corporate and commercial real estate loans. The facility matures on the earlier of March 26, 2009 or the completion or termination date of the pending acquisition of Merrill Lynch by Bank of America. This facility requires Merrill Lynch to maintain a minimum consolidated net worth, which it significantly exceeded. As of September 26, 2008, there was $3.0 billion outstanding under this facility.

Consistent with industry conventions, Merrill Lynch has historically financed a portion of its financial assets through short-term and secured funding. As a result of the prevailing challenging conditions, many financial institutions, including Merrill Lynch, have found it increasingly difficult to obtain such financing on commercially reasonable terms. Any inability of Merrill Lynch to obtain such financing on commercially reasonable terms could adversely affect Merrill Lynch's financial condition or results of operations.

## Note 10. Stockholders' Equity and Earnings Per Share

**Preferred Stock Issuance**

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

**Mandatory Convertible Preferred Stock Issuance**

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

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

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

If not converted earlier, the new convertible preferred stock will automatically convert into Merrill Lynch common stock on October 15, 2010, based on the 20 consecutive trading day volume weighted average price of Merrill Lynch common stock ending the day immediately preceding the mandatory conversion date ("the current stock price"). The number of shares of Merrill Lynch common stock that a holder of the new convertible preferred stock will receive upon conversion will be determined based on the current stock price on the mandatory conversion date relative to the respective minimum conversion price and threshold appreciation price on the mandatory conversion date.

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

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

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

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

The new convertible preferred stock is reported in Preferred Stockholders' Equity in the Condensed Consolidated Balance Sheet.

**Common Stock Issuance**

On December 24, 2007, Merrill Lynch reached agreements with each of Temasek and Davis Selected Advisors LP ("Davis") to sell an aggregate of 116.7 million shares of newly issued common stock, par value $1.33⅓ per share, at $48.00 per share, for an aggregate purchase price of approximately $5.6 billion.

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

In connection with the Temasek transaction, Merrill Lynch agreed that if it were to sell any common stock (or equity securities convertible into common stock) within one year of the closing of the initial Temasek purchase at a purchase, conversion or reference price per share less than $48.00, then it must make a payment to Temasek to compensate Temasek for the aggregate excess amount per share paid by Temasek, which is settled in cash or common stock at Merrill Lynch's option.

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

**Earnings Per Share**

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

*(dollars in millions, except per share amounts)*

| | Three Months Ended | | Nine Months Ended | |
|---|---|---|---|---|
| | Sept. 26, 2008 | Sept. 28, 2007 | Sept. 26, 2008 | Sept. 28, 2007 |
| Net (loss)/earnings from continuing operations | $ (5,120) | $ (2,380) | $ (11,723) | $ 1,660 |
| Net (loss)/earnings from discontinued operations | (32) | 139 | (45) | 396 |
| Preferred stock dividends | (2,319) | (73) | (2,730) | (197) |
| Net (loss)/earnings applicable to common stockholders — for basic and diluted EPS[(1)] | $ (7,471) | $ (2,314) | $ (14,498) | $ 1,859 |
| *(shares in thousands)* | | | | |
| Weighted-average basic shares outstanding[(2)] | 1,338,963 | 821,565 | 1,098,630 | 832,222 |
| Effect of dilutive instruments: | | | | |
| Employee stock options[(3)] | - | - | - | 36,764 |
| FACAAP shares[(3)] | - | - | - | 20,552 |
| Restricted shares and units[(3)] | - | - | - | 23,524 |
| Convertible LYONs®[(4)] | - | - | - | 3,213 |
| ESPP shares[(3)] | - | - | - | 11 |
| Dilutive potential common shares | - | - | - | 84,064 |
| Diluted Shares[(5)(6)(7)] | 1,338,963 | 821,565 | 1,098,630 | 916,286 |
| Basic EPS from continuing operations | $ (5.56) | $ (2.99) | $ (13.16) | $ 1.75 |
| Basic EPS from discontinued operations | (0.02) | 0.17 | (0.04) | 0.48 |
| Basic EPS | $ (5.58) | $ (2.82) | $ (13.20) | $ 2.23 |
| Diluted EPS from continuing operations | $ (5.56) | $ (2.99) | $ (13.16) | $ 1.60 |
| Diluted EPS from discontinued operations | (0.02) | 0.17 | (0.04) | 0.43 |
| Diluted EPS | $ (5.58) | $ (2.82) | $ (13.20) | $ 2.03 |
| Common shares outstanding at period end | 1,600,100 | 855,375 | 1,600,100 | 855,375 |

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

*(2) Includes shares exchangeable into common stock.*

*(3) See Note 13 of the 2007 Annual Report for a description of these instruments.*

*(4) See Note 9 to the Condensed Consolidated Financial Statements and Note 9 of the 2007 Annual Report for additional information on LYONs®.*

*(5) Due to the net loss for the three months ended September 28, 2007, the Diluted EPS calculation excludes 112 million of employee stock options, 37 million of FACAAP shares, 43 million of restricted shares and units, and 183 thousand of ESPP shares, as they were antidilutive.*

*(6) Excludes 10 million of instruments for the nine month period ended September 28, 2007, that were considered antidilutive and thus were not included in the above calculations.*

*(7) Due to the net loss for the three and nine months ended September 26, 2008, the Diluted EPS calculation excludes 304 million of non-employee stock options, 59 million of incremental shares related to the mandatory convertible preferred stock, 124 million of employee stock options, 40 million of FACAAP shares, 42 million of restricted shares and units, and 457 thousand of ESPP shares, as they were antidilutive.*

## 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 in connection with its activities as a global diversified financial services institution.

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.

Merrill Lynch believes it has strong defenses to, and where appropriate, will vigorously contest many of these matters. Given the number of these matters, some are likely to result in adverse judgments, penalties, injunctions, fines, or other relief. Merrill Lynch may explore potential settlements before a case is taken through trial because of the uncertainty, risks, and costs inherent in the litigation process. In accordance with SFAS No. 5, *Accounting for Contingencies*, Merrill Lynch will accrue a liability when it is probable of being incurred and the amount of the loss can be reasonably estimated. In many lawsuits and arbitrations, including almost all of the class action lawsuits, it is not possible to determine whether a liability has been incurred or to estimate the ultimate or minimum amount of that liability until the 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 cannot predict or estimate 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 26, 2008, Merrill Lynch's commitments had the following expirations:

*(dollars in millions)*

| | | Commitment expiration | | | |
|---|---|---|---|---|---|
| | Total | Less than 1 year | 1 - 3 years | $3^{+}$- 5 years | Over 5 years |
| Commitments to extend credit | $56,298 | $18,056 | $13,397 | $18,639 | $6,206 |
| Purchasing and other commitments | 8,768 | 3,692 | 1,224 | 1,250 | 2,602 |
| Operating leases | 3,831 | 653 | 1,213 | 955 | 1,010 |
| Commitments to enter into forward dated resale and securities borrowing agreements | 60,095 | 59,609 | 486 | - | - |
| Commitments to enter into forward dated repurchase and securities lending agreements | 48,014 | 47,941 | 73 | - | - |

*Commitments to Extend Credit*

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

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

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

*Purchasing and Other Commitments*

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

Merrill Lynch had commitments to purchase partnership interests, primarily related to private equity and principal investing activities, of $1.7 billion and $3.1 billion at September 26, 2008 and December 28, 2007, respectively. Merrill Lynch also has entered into agreements with providers of market data, communications, systems consulting, and other office-related services, including Bloomberg Inc. At September 26, 2008 and December 28, 2007, minimum fee commitments over the remaining life of these agreements totaled $2.3 billion and $453 million, respectively. This increase in commitments primarily relates to agreements entered into with Bloomberg Inc. Merrill Lynch entered into commitments to purchase loans of $4.1 billion (which upon settlement of the commitment will be included in trading assets, loans held for investment or loans held for sale) at September 26, 2008. Such commitments totaled $3.0 billion at December 28, 2007. Other purchasing commitments amounted to $0.7 billion and $0.9 billion at September 26, 2008 and December 28, 2007, respectively.

In the normal course of business, Merrill Lynch enters into commitments for underwriting transactions. Settlement of these transactions as of September 26, 2008 would not have a material effect on the consolidated financial condition of Merrill Lynch.

In connection with trading activities, Merrill Lynch enters into commitments to enter into resale and securities borrowing and also repurchase and securities lending agreements that are primarily secured by collateral.

*Operating Leases*

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

**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 FASB Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indebtedness of Others* ("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. These guarantees and their maturity at September 26, 2008 are summarized as follows:

*(dollars in millions)*

| | Maximum Payout / Notional | Less than 1 year | 1 - 3 years | $3^{+}$- 5 years | Over 5 years | Carrying Value |
|---|---|---|---|---|---|---|
| Derivative contracts | $3,777,375 | $486,039 | $991,776 | $1,368,410 | $931,150 | $235,974 |
| Standby liquidity facilities | 13,328 | 9,813 | - | 3,494 | 21 | 348 |
| Residual value guarantees | 844 | 104 | 323 | 303 | 114 | 10 |
| Standby letters of credit and other guarantees | 43,290 | 1,510 | 1,620 | 810 | 39,350 | 626 |
| Auction rate security guarantees | 9,970 | 9,970 | - | - | - | 300 |

*Derivative Contracts*

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

Merrill Lynch records all derivative transactions at fair value on its Condensed Consolidated Balance Sheets. As previously noted, Merrill Lynch does not monitor its exposure to derivative contracts in terms of maximum payout. Instead, a risk framework is used to define risk tolerances and establish limits to help 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 for further discussion of risk management of derivatives. Merrill Lynch also funds selected assets, including CDOs and CLOs, via derivative contracts with third party structures, the majority of which are not consolidated on its balance sheet. Of the total notional amount of these total return swaps, approximately $9 billion is term financed through facilities provided by commercial banks, $19 billion of long term funding is provided by third party special purpose vehicles and $1 billion is financed with asset backed commercial paper conduits. In certain circumstances, Merrill Lynch may be required to purchase these assets, which would not result in additional gain or loss to the Company as such exposure is already reflected in the fair value of the derivative contracts.

*Standby Liquidity Facilities*

Merrill Lynch acts as liquidity provider to certain municipal bond securitization SPEs and provides both liquidity and credit default protection through derivatives (included in Derivative contracts in the table above) to certain other municipal bond securitization SPEs. As of September 26, 2008, the value of the assets held by the SPEs plus any additional collateral pledged to Merrill Lynch exceeded the amount of beneficial interests issued, which provides additional support to Merrill Lynch in the event that the standby facilities are drawn. In certain of these facilities, Merrill Lynch is generally required to provide liquidity support within seven days, while the remainder have third-party liquidity support for between 30 and 364 days before Merrill Lynch is required to provide liquidity. A significant portion of the facilities where Merrill Lynch is required to provide liquidity support within seven days are "net liquidity" facilities where upon draw Merrill Lynch may direct the trustee for the SPE to collapse the SPE trusts and liquidate the municipal bonds, and Merrill Lynch would only be required to fund any difference between par and the sale price of the bonds. "Gross liquidity" facilities require Merrill Lynch to wait up to 30 days before directing the trustee to liquidate the municipal bonds. Beginning in the second half of 2007, Merrill Lynch began reducing facilities that require liquidity in seven days, and the total amount of such facilities was $7.2 billion as of September 26, 2008. Details of these facilities as of September 26, 2008, are illustrated in the table below:

*(dollars in millions)*

| | Merrill Lynch Liquidity Facilities Can Be Drawn: | | | | Municipal Bonds to Which Merrill Lynch Has Recourse if Facilities Are Drawn |
|---|---|---|---|---|---|
| | In 7 Days with "Net Liquidity" | In 7 Days with "Gross Liquidity" | After Up to 364 Days(1) | Total | |
| Merrill Lynch provides standby liquidity facilities | $5,016 | $2,181 | $5,717 | $12,914 | $13,327 |

*(1) Initial liquidity support within 7 days is provided by third parties for a maximum of 364 days.*

In addition, Merrill Lynch, through a U.S. bank subsidiary has provided liquidity and credit facilities to three Conduits. The assets in these Conduits included loans and asset-backed securities. In the event of a disruption in the commercial paper market, the Conduits were able to draw upon their liquidity facilities and sell certain assets held by the respective Conduits to Merrill Lynch, thereby protecting commercial paper holders against certain changes in the fair value of the assets held by the Conduits. The credit facilities protected commercial paper investors against credit losses for up to a certain percentage of the portfolio of assets held by the respective Conduits. In July 2008, the last remaining Conduit became inactive as Merrill Lynch purchased the assets. Merrill Lynch does not intend to utilize these Conduits in the future.

Refer to Note 6 to the Condensed Consolidated Financial Statements for more information on Conduits.

*Residual Value Guarantees*

Residual value guarantees include amounts associated with the Hopewell, NJ campus and aircraft leases of $322 million at September 26, 2008.

*Stand-by Letters of Credit and Other Guarantees*

Merrill Lynch provides guarantees to counterparties in the form of standby letters of credit in the amount of $2.6 billion. At September 26, 2008, Merrill Lynch held marketable securities of $462 million as collateral to secure these guarantees and a liability of $10 million was recorded on the Condensed Consolidated Balance Sheets.

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. At September 26, 2008, Merrill Lynch's maximum potential exposure to loss with respect to these guarantees is $328 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 26, 2008. These transactions met the SFAS No. 133 definition of derivatives and, as such, were carried as a liability with a fair value of approximately $6 million at September 26, 2008.

Merrill Lynch also provides indemnifications related to the U.S. tax treatment of certain foreign tax planning transactions. The maximum exposure to loss associated with these transactions at September 26, 2008 is $167 million; however, Merrill Lynch believes that the likelihood of loss with respect to these arrangements is remote, and therefore has not recorded any liabilities in respect of these guarantees.

In connection with residential mortgage loan and other securitization transactions, Merrill Lynch typically makes representations and warranties about the underlying assets. If there is a material breach of any such representation or warranty, Merrill Lynch may have an obligation to repurchase assets or indemnify the purchaser against any loss. For residential mortgage loan and other securitizations, the maximum potential amount that could be required to be repurchased is the current outstanding asset balance. Specifically related to First Franklin activities, there is currently approximately $39 billion (including loans serviced by others) of outstanding loans that First Franklin sold in various asset sales and securitization transactions where management believes we may have an obligation to repurchase the asset or indemnify the purchaser against the loss if claims are made and it is ultimately determined that there has been a material breach related to such loans. Merrill Lynch has recognized a repurchase reserve liability of approximately $560 million at September 26, 2008 arising from these First Franklin residential mortgage sales and securitization transactions.

*Auction Rate Security Guarantees*

Under the terms of its announced purchase program, as augmented by the global agreement reached with the New York Attorney General, the Securities and Exchange Commission, the Massachusetts Securities Division and other state securities regulators, Merrill Lynch agreed to purchase at par auction rate securities, or ARS, from its retail clients, including individual, not-for-profit, and small business clients. Certain retail clients with less than $4 million in assets with Merrill Lynch as of February 13, 2008 were eligible to sell eligible ARS to Merrill Lynch starting on October 1, 2008. Other eligible retail clients meeting specified asset requirements may sell eligible ARS to Merrill Lynch beginning on January 2, 2009. The final date of the ARS purchase program is January 15, 2010. Under the ARS purchase program, the eligible ARS held in accounts of eligible retail clients at Merrill

Lynch as of September 26, 2008 was $10.0 billion. As of October 31, 2008 Merrill Lynch had purchased $2.75 billion of ARS from eligible clients. In addition, under the ARS purchase program, Merrill Lynch has agreed to purchase ARS from retail clients who purchased their securities from the Company and transferred their accounts to other brokers prior to February 13, 2008. At September 26, 2008, a liability of $300 million has been recorded for the Company's estimated exposure related to these ARS commitments.

See Note 11 of the 2007 Annual Report for additional information on guarantees.

## Note 12. Employee Benefit Plans

Merrill Lynch provides pension and other postretirement benefits to its employees worldwide through defined contribution pension, defined benefit pension, and other postretirement plans. These plans vary based on the country and local practices. Merrill Lynch reserves the right to amend or terminate these plans at any time. Refer to Note 12 of the 2007 Annual Report for a complete discussion of employee benefit plans.

*Defined Benefit Pension Plans*

Pension cost for the three and nine months ended September 26, 2008 and September 28, 2007, for Merrill Lynch's defined benefit pension plans, included the following components:

*(dollars in millions)*

| | Three Months Ended | | | | | |
|---|---|---|---|---|---|---|
| | September 26, 2008 | | | September 28, 2007 | | |
| | U.S. Plans | Non-U.S. Plans | Total | U.S. Plans | Non-U.S. Plans | Total |
| Service cost | $ - | $ 7 | $ 7 | $ - | $ 7 | $ 7 |
| Interest cost | 24 | 21 | 45 | 24 | 20 | 44 |
| Expected return on plan assets | (29) | (21) | (50) | (29) | (21) | (50) |
| Amortization of net (gains)/losses, prior service costs and other | - | 3 | 3 | (1) | 7 | 6 |
| Total defined benefit pension cost | $ (5) | $ 10 | $ 5 | $ (6) | $ 13 | $ 7 |

*(dollars in millions)*

| | Nine Months Ended | | | | | |
|---|---|---|---|---|---|---|
| | September 26, 2008 | | | September 28, 2007 | | |
| | U.S. Plans | Non-U.S. Plans | Total | U.S. Plans | Non-U.S. Plans | Total |
| Service cost | $ - | $ 21 | $ 21 | $ - | $ 21 | $ 21 |
| Interest cost | 72 | 64 | 136 | 72 | 60 | 132 |
| Expected return on plan assets | (88) | (64) | (152) | (87) | (60) | (147) |
| Amortization of net (gains)/losses, prior service costs and other | - | 9 | 9 | (3) | 22 | 19 |
| Total defined benefit pension cost | $(16) | $ 30 | $ 14 | $(18) | $ 43 | $ 25 |

Merrill Lynch disclosed in its 2007 Annual Report that it expected to pay $1 million of benefit payments to participants in the U.S. non-qualified pension plan and Merrill Lynch expected to contribute $11 million and $74 million respectively to its U.S. and non-U.S. defined benefit pension plans in 2008. Merrill Lynch periodically updates these estimates, and currently expects to contribute $96 million to its U.S. defined benefit pension plan. The increase in estimated contributions was primarily related to market conditions and changes in the retiree population.

*Postretirement Benefits Other Than Pensions*

Other postretirement benefit cost for the three and nine months ended September 26, 2008 and September 28, 2007, included the following components:

*(dollars in millions)*

| | Three Months Ended | | Nine Months Ended | |
|---|---|---|---|---|
| | **September 26, 2008** | **September 28, 2007** | **September 26, 2008** | **September 28, 2007** |
| Service cost | $ 1 | $ 2 | $ 4 | $ 5 |
| Interest cost | 4 | 4 | 11 | 12 |
| Amortization of net (gains)/losses, prior service costs and other | (3) | (2) | (13) | (5) |
| Total other postretirement benefits cost | $ 2 | $ 4 | $ 2 | $12 |

Approximately 86% of the postretirement benefit cost components for the period relate to the U.S. postretirement plan.

## Note 13. Income Taxes

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

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

At December 28, 2007, Merrill Lynch had a U.K. net operating loss carryforward of approximately $13.5 billion. The estimated U.K. net operating loss carryforward at the end of the third quarter of 2008 increased to approximately $28 billion primarily as a result of significant losses related to certain FICC positions in 2008. The U.K. net operating loss is denoted in British Pounds and the dollar equivalent will fluctuate based on exchange rate movements. The Company has entered into foreign exchange contracts to economically hedge the currency exposure related to the deferred tax asset associated with the net operating loss carryforward. The loss has an unlimited carryforward period and a tax benefit has been recognized for the deferred tax asset with no valuation allowance.

## Note 14. Regulatory Requirements

Effective January 1, 2005, Merrill Lynch became a consolidated supervised entity ("CSE") as defined by the SEC. As a CSE, Merrill Lynch is subject to voluntary group-wide supervision and examination by the SEC as well as to minimum consolidated capital requirements. Although the SEC has rescinded the CSE program we are still required to report under the CSE standards.

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

### Securities Regulation

As a registered broker-dealer, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S") is subject to the net capital requirements of Rule 15c3-1 under the Securities Exchange Act of 1934 ("the Rule"). Under the alternative method permitted by the Rule, the minimum required net capital, as defined, shall be the greater of 2% of aggregate debit items ("ADI") arising from customer transactions or $500 million in accordance with Appendix E of the Rule. At September 26, 2008, MLPF&S's regulatory net capital of $4,705 million was approximately 19.4% of ADI, and its regulatory net capital in excess of the SEC minimum required was $4,172 million.

As a futures commission merchant, MLPF&S is also subject to the capital requirements of the Commodity Futures Trading Commission ("CFTC"), which requires that minimum net capital should not be less than 8% of the total customer risk margin requirement plus 4% of the total non-customer risk margin requirement. MLPF&S regulatory net capital of $4,705 million exceeded the CFTC minimum requirement of $685 million by $4,020 million.

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 set by the FSA. At September 26, 2008, MLI's financial resources were $17,721 million, exceeding the minimum requirement by $3,332 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 26, 2008, MLGSI's liquid capital of $2,153 million was

237% of its total market and credit risk, and liquid capital in excess of the minimum required was $1,063 million.

Merrill Lynch Japan Securities Co. Ltd. ("MLJS"), a Japan-based regulated broker-dealer, is subject to capital requirements of the Japanese Financial Services Agency ("JFSA"). Net capital, as defined, must exceed 120% of the total risk equivalents requirement of the JFSA. At September 26, 2008, MLJS's net capital was $1,452 million, exceeding the minimum requirement by $914 million.

### Banking Regulation

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

*(dollars in millions)*

| | Well Capitalized Minimum | MLBUSA | | MLBT-FSB | |
|---|---|---|---|---|---|
| | | Actual Ratio | Actual Amount | Actual Ratio | Actual Amount |
| Tier 1 leverage | 5% | 10.26% | $5,940 | 7.95% | $2,683 |
| Tier 1 capital | 6% | 12.36% | 5,940 | 10.93% | 2,683 |
| Total capital | 10% | 14.65% | 7,043 | 11.41% | 2,801 |

As a result of its ownership of MLBT-FSB, ML & Co. is registered with the OTS as a savings and loan holding company ("SLHC") and is subject to regulation and examination by the OTS as a SLHC. ML & Co. is classified as a unitary SLHC, and will continue to be so classified as long as it and MLBT-FSB continue to comply with certain conditions. Unitary SLHCs are exempt from the material restrictions imposed upon the activities of SLHCs that are not unitary SLHCs. SLHCs other than unitary SLHCs are generally prohibited from engaging in activities other than conducting business as a savings association, managing or controlling savings associations, providing services to subsidiaries or engaging in activities permissible for bank holding companies. Should ML & Co. fail to continue to qualify as a unitary SLHC, in order to continue its present businesses that would not be permissible for a SLHC, ML & Co. could be required to divest control of MLBT-FSB.

Merrill Lynch International Bank Limited ("MLIB"), an Ireland-based regulated bank, is subject to the capital requirements of the Irish Financial Services Regulatory Authority ("IFSRA"). MLIB is required to meet minimum regulatory capital requirements under the European Union ("EU") banking law as implemented in Ireland by the IFSRA. At September 26, 2008, MLIB's financial resources were $12,069 million, exceeding the minimum requirement by $2,418 million.

## Note 15. Discontinued Operations

On August 13, 2007, Merrill Lynch announced a strategic business relationship with AEGON in the areas of insurance and investment products. As part of this relationship, Merrill Lynch sold MLIG to AEGON for $1.3 billion in the fourth quarter of 2007, which resulted in an after-tax gain of

$316 million. The gain, along with the financial results of MLIG, have been reported within discontinued operations for all periods presented and the assets and liabilities were not considered material for separate presentation. Merrill Lynch previously reported the results of MLIG in the GWM business segment.

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

Net losses from discontinued operations for the three and nine months ended September 26, 2008 were $32 million and $45 million, respectively, compared with net earnings of $139 million and $396 million for the three and nine months ended September 28, 2007, respectively.

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

*(dollars in millions)*

| | For the Three Months Ended | | For the Nine Months Ended | |
|---|---|---|---|---|
| | **Sept. 26, 2008** | **Sept. 28, 2007** | **Sept. 26, 2008** | **Sept. 28, 2007** |
| **Total revenues, net of interest expense** | $ - | $261 | $ 28 | $781 |
| (Losses) / earnings before income taxes | (53) | 211 | (110) | 602 |
| Income tax (benefit) /expense | (21) | 72 | (65) | 206 |
| **Net (loss) / earnings from discontinued operations** | $(32) | $139 | $ (45) | $396 |

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

*(dollars in millions)*

| | **Sept. 26, 2008** | **Dec. 28, 2007** |
|---|---|---|
| **Assets:** | | |
| Loans, notes and mortgages | $176 | $12,995 |
| Other assets | 13 | 332 |
| Total Assets | $189 | $13,327 |
| **Liabilities:** | | |
| Other payables, including interest | - | 489 |
| Total Liabilities | $ - | $ 489 |

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

## Note 16. Cash Flow Restatement

Subsequent to the issuance of the Company's Condensed Consolidated Financial Statements for the quarter ended September 28, 2007, the Company determined that its previously issued Condensed Consolidated Statements of Cash Flows for the nine months ended September 28, 2007 contained an error resulting from the reclassification of certain cash flows from trading liabilities into derivative financing transactions. This error resulted in an overstatement of cash used for operating activities and a corresponding overstatement of cash provided by financing activities for the period described above.

This adjustment to the Condensed Consolidated Statements of Cash Flows does not affect the Company's Condensed Consolidated Statements of (Loss)/Earnings, Condensed Consolidated Balance Sheets, and Condensed Consolidated Statements of Comprehensive (Loss)/Income, or cash and cash equivalents. These adjustments also do not affect the Company's compliance with any financial covenants under its borrowing facilities.

A summary presentation of this cash flow restatement for the nine months ended September 28, 2007 is presented below.

*(dollars in millions)*

| | As Previously Presented | Adjustments | As Restated |
|---|---|---|---|
| **For the nine months ended Sept. 28, 2007(1)** | | | |
| Trading liabilities | $ 5,096 | $ 22,853 | $ 27,949 |
| **Cash used for operating activities** | (79,885) | 22,853 | (57,032) |
| Derivative financing transactions | 22,849 | (22,853) | (4) |
| **Cash provided by financing activities** | 105,989 | (22,853) | 83,136 |

*(1) There was no change in cash and cash equivalents for the period restated.*

## Note 17. Restructuring

In connection with its previously announced expense reduction initiative, the Company recorded a pre-tax restructuring charge of approximately $39 million ($25 million after-tax) and $484 million ($315 million after-tax) for the three and nine months ended September 26, 2008, respectively. This charge was comprised of severance costs of $37 million and $346 million for the three and nine months ended September 26, 2008, respectively, and expenses related to the accelerated amortization of previously granted equity-based compensation awards of $2 million and $138 million for the three and nine months ended September 26, 2008, respectively. These charges were recorded within the GMI and GWM operating segments. For GMI, these expenses were $18 million and $329 million for the three and nine months ended September 26, 2008, respectively. For GWM these expenses were $21 million and $155 million for the three and nine months ended September 26, 2008, respectively.

At the end of the second quarter of 2008, the remaining liability balance relating to severance costs was $241 million. During the third quarter of 2008, the Company recorded additional severance accruals and adjustments of $32 million and made cash payments of $150 million, resulting in a remaining liability balance of approximately $123 million as of September 26, 2008, a majority of which will be settled by the end of 2008. This liability is recorded in other payables on the Condensed Consolidated Balance Sheet at September 26, 2008.

## Note 18. Subsequent Events

### Emergency Economic Stabilization Act of 2008

On October 3, 2008, President Bush signed into law the Emergency Economic Stabilization Act of 2008 (the "EESA"). Pursuant to the EESA, the United States Department of the Treasury (the "U.S. Treasury") has the authority to, among other things, invest in financial institutions and purchase mortgages, mortgage-backed securities and certain other financial instruments from financial institutions, in an aggregate up to $700 billion, for the purpose of stabilizing and providing liquidity to the U.S. financial markets. On October 14, 2008, the U.S. Treasury announced a plan (the "Capital Purchase Program" or "CPP") to invest up to $250 billion of this $700 billion in certain eligible U.S. financial institutions in the form of non-voting, preferred stock initially paying quarterly dividends at a 5% annual rate. In the event the U.S. Treasury makes any such preferred stock investment in any company it will also receive 10-year warrants to acquire common shares of the company having an aggregate market price of 15% of the amount of the preferred stock investment.

On October 26, 2008, Merrill Lynch entered into a securities purchase agreement with the U.S. Treasury setting forth the terms upon which Merrill Lynch would issue a new series of preferred stock and warrants to the U.S. Treasury (the "TARP Purchase Agreement"). In view of the pending merger agreement with Bank of America, Merrill Lynch has determined that it will not sell securities to the U.S. Treasury under the CPP at this time, but may do so in the future under certain circumstances. The TARP Purchase Agreement provides for delayed settlement of a sale of $10 billion of a new series of Merrill Lynch preferred stock and warrants to purchase 64,991,334 shares of Merrill Lynch Common Stock at an exercise price of $23.08 per share. The TARP Purchase Agreement provides that the closing will take place on the earlier of (i) the second business day following a termination of the merger agreement with Bank of America and (ii) a date during the period beginning on January 2, 2009 and ending on January 31, 2009 if the merger agreement is still in effect but the merger has not been completed by the specified date, but, in the case of either (i) or (ii), in no event later than January 31, 2009. In addition, prior to January 2, 2009, if the merger agreement is still in effect but the merger has not been completed, Merrill Lynch has the right, after consultation with the Federal Reserve and Bank of America, to request that the U.S. Treasury consummate the CPP investment on or prior to January 1, 2009. The TARP Purchase Agreement will terminate at 12:01 a.m. on February 1, 2009 if the investment has not been made by that date.

Completion of the CPP investment prior to the termination of the merger agreement is subject to Bank of America's approval. Bank of America has agreed that it will not unreasonably withhold or delay its consent. After January 1, 2009, Bank of America may not withhold its consent if, after consulting with Bank of America, Merrill Lynch reasonably determines that the failure to obtain the CPP investment would have a material adverse impact on Merrill Lynch. On or after January 30, 2009 until 12:01 a.m. on February 1, 2009, Merrill Lynch will have the unilateral right to obtain the CPP investment and Bank of America has consented in advance to the investment at such time if the merger has not been completed at that date.

Additionally, in October 2008, the Federal Reserve announced the creation of the Commercial Paper Funding Facility, which will provide a liquidity backstop to U.S. issuers of commercial paper through a special purpose vehicle that will purchase three-month unsecured and asset-backed commercial paper directly from eligible issuers. Merrill Lynch is eligible for the Commercial Paper Funding Facility and began utilizing this program in October 2008 as an additional source of funding. Also, on October 14, 2008, the Federal Deposit Insurance Corporation ("FDIC") announced a new program, the Temporary Liquidity Guarantee Program, under which specific categories of newly issued senior unsecured debt issued by eligible financial institutions on or before June 30, 2009 would be guaranteed until June 30, 2012. This program also provides deposit insurance for funds in non-interest bearing transaction deposit accounts at FDIC-insured institutions. Merrill Lynch has agreed to participate in this FDIC program.

On October 29, 2008, Merrill Lynch entered into a $10 billion committed unsecured bank revolving credit facility with Bank of America, N.A. with borrowings guaranteed under the FDIC's guarantee program. This facility will be available to Merrill Lynch until January 30, 2009 but may expire at an earlier date if the merger with Bank of America is terminated or consummated prior to January 30, 2009 or Merrill Lynch elects to participate in the CPP. This facility requires Merrill Lynch to maintain a minimum consolidated net worth, which we significantly exceed. If Merrill Lynch participates in the CPP, the proceeds received from the U.S. Treasury will be used to repay in full any outstanding amounts owed under this facility. For additional information on our other credit facilities see Note 9.

## 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 26, 2008, and the related condensed consolidated statements of (loss)/earnings and comprehensive (loss)/income for the three-month and nine-month periods ended September 26, 2008 and September 28, 2007, and the related condensed consolidated statements of cash flows for the nine-month periods ended September 26, 2008 and September 28, 2007. These interim financial statements are the responsibility of Merrill Lynch's management.

We conducted our reviews in accordance with the 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 the 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.

As discussed in Note 1, Merrill Lynch entered into an agreement and plan of merger with Bank of America Corporation on September 15, 2008.

As discussed in Note 16, the condensed consolidated statement of cash flows for the nine-month period ended September 28, 2007 has been restated.

As discussed in Note 18, Merrill Lynch entered into a securities purchase agreement with the U.S. Treasury pursuant to the Emergency Economic Stabilization Act of 2008, and is participating in the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program and the Federal Reserve's Commercial Paper Funding Facility.

We have previously audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheet of Merrill Lynch as of December 28, 2007, and the related consolidated statements of (loss)/earnings, changes in stockholders' equity, comprehensive (loss)/income and cash flows for the year then ended (not presented herein); and in our report dated February 25, 2008, we expressed an unqualified opinion on those financial statements and included an explanatory paragraph regarding the change in accounting method in 2007 relating to the adoption of Statement of Financial Accounting Standards No. 157, *"Fair Value Measurements,"* Statement of Financial Accounting Standards No. 159, *"The Fair Value Option for Financial Assets and Financial Liabilities — Including an amendment of FASB Statement No. 115,"* and FASB Interpretation No. 48, *"Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109."* In our opinion, the information set forth in the accompanying condensed consolidated balance sheet as of December 28, 2007 is fairly stated, in all material respects, in relation to the consolidated balance sheet from which it has been derived.

/s/ Deloitte & Touche LLP

New York, New York
November 4, 2008

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

### Forward-Looking Statements and Non-GAAP Financial Measures

We have included certain statements in this report which may be considered forward-looking, including those about management expectations and intentions, announced but not completed transactions (including transactions disclosed in this report), strategic objectives, growth opportunities, business prospects, anticipated financial results, the impact of off-balance sheet exposures, significant contractual obligations, anticipated results of litigation and regulatory investigations and proceedings, risk management policies and other similar matters. These forward-looking statements represent only Merrill Lynch & Co., Inc.'s ("ML & Co." and, together with its subsidiaries, "Merrill Lynch", the "Company", "we", "our" or "us") beliefs regarding future performance, which is inherently uncertain. There are a variety of factors, many of which are beyond our control, which affect our operations, performance, business strategy and results and could cause our 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, actions and initiatives taken by both current and potential competitors and counterparties, general economic conditions, market conditions, the effects of current, pending and future legislation, regulation and regulatory actions, the actions of rating agencies and the other risks and uncertainties detailed in this report. See "Risk Factors" in Part I, Item 1A and "Risk Factors that Could Affect Our Business" in the Annual Report on Form 10-K for the year ended December 28, 2007 ("2007 Annual Report"). 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. We do 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 further disclosures we may make in future filings of our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K.

From time to time, we may also disclose financial information on a non-GAAP basis where management uses this information and believes this information will be valuable to investors in gauging the quality of our financial performance, identifying trends in our results and providing more meaningful period-to-period comparisons.

### Introduction

Merrill Lynch was formed in 1914 and became a publicly traded company on June 23, 1971. In 1973, we created the holding company, ML & Co., a Delaware corporation that, through its subsidiaries, is one of the world's leading capital markets, advisory and wealth management companies with offices in 40 countries and territories and total client assets of approximately $1.5 trillion at September 26, 2008. As an investment bank, we are a leading global trader and underwriter of securities and derivatives across a broad range of asset classes, and we serve as a strategic advisor to corporations, governments, institutions and individuals worldwide. In addition, we own a 45% voting interest and approximately half of the economic interest of BlackRock, Inc. ("BlackRock"), one of the world's largest publicly traded investment management companies with approximately $1.3 trillion in assets under management at September 30, 2008.

On September 15, 2008, we entered into an Agreement and Plan of Merger (the "Merger Agreement") with Bank of America Corporation ("Bank of America"). The Merger Agreement provides that, upon the terms and subject to the conditions set forth in the Merger Agreement, a wholly owned subsidiary of Bank of America will merge with and into ML&Co. with ML&Co. continuing as the surviving corporation and as a wholly owned subsidiary of Bank of America. The merger has been approved by the board of directors of each of ML&Co. and Bank of America and is subject to shareholder votes at both companies.

Upon completion of the merger, each outstanding share of ML&Co. common stock will be converted into the right to receive 0.8595 shares of Bank of America common stock, and the Bank of America board of directors will be expanded to include three existing directors of ML&Co. The Merger Agreement contains certain termination rights for both ML&Co. and Bank of America and is subject to customary closing conditions, including standard regulatory approvals. The transaction is expected to close on December 31, 2008 or earlier subject to shareholder approval, customary closing conditions and regulatory approvals. In light of the pending transaction with Bank of America, we are no longer pursuing the previously announced proposed sale of Financial Data Services, Inc. ("FDS").

Our activities are conducted through two business segments: Global Markets and Investment Banking ("GMI") and Global Wealth Management ("GWM"). The following is a description of our business segments:

| | GMI | GWM |
|---|---|---|
| ***Clients*** | Corporations, financial institutions, institutional investors, and governments | Individuals, small- to mid-size businesses, and employee benefit plans |
| ***Products and businesses*** | *Global Markets (comprised of Fixed Income, Currencies & Commodities ("FICC") & Equity Markets)*<br>• Facilitates client transactions and makes markets in securities, derivatives, currencies, commodities and other financial instruments to satisfy client demands<br>• Provides clients with financing, securities clearing, settlement, and custody services<br>• Engages in principal and private equity investing, including managing investment funds, and certain proprietary trading activities<br><br>*Investment Banking*<br>• Provides a wide range of securities origination services for issuer clients, including underwriting and placement of public and private equity, debt and related securities, as well as lending and other financing activities for clients globally<br>• Advises clients on strategic issues, valuation, mergers, acquisitions and restructurings | *Global Private Client ("GPC")*<br>• Delivers products and services primarily through our Financial Advisors ("FAs")<br>• Commission and fee-based investment accounts<br>• Banking, cash management, and credit services, including consumer and small business lending and Visa® cards<br>• Trust and generational planning<br>• Retirement services<br>• Insurance products<br><br>*Global Investment Management ("GIM")*<br>• Creates and manages hedge funds and other alternative investment products for GPC clients<br>• Includes net earnings from our ownership positions in other investment management companies, including our investment in BlackRock |
| ***Strategic priorities*** | • Disciplined expansion globally<br>• Optimize amount of capital allocated to businesses<br>• Enhance risk management capabilities<br>• Strengthen linkages with our GWM business<br>• Continue to invest in technology to enhance productivity and efficiency<br>• Manage non-compensation expenses to be in line with business activity | • Continued growth in client assets<br>• Hire additional FAs<br>• Focus on client segmentation and increased annuitization of revenues through fee-based products<br>• Diversify revenues by adding products and services<br>• Continue to invest in technology to enhance productivity and efficiency<br>• Disciplined expansion globally<br>• Strengthen linkages with our GMI business<br>• Manage non-compensation expenses to be in line with business activity |

## Executive Overview

### Company Results

We reported a net loss from continuing operations for the third quarter of 2008 of $5.1 billion, or $5.56 per diluted share, compared with a net loss from continuing operations of $2.4 billion, or $2.99

per diluted share for the third quarter of 2007. Our net loss for the third quarter of 2008 was $5.2 billion, or $5.58 per diluted share, compared with a net loss of $2.2 billion, or $2.82 per diluted share, for the year-ago quarter. Revenues, net of interest expense ("net revenues") for the third quarter of 2008 were $16 million, compared with $380 million in the prior-year period, while the pre-tax loss from continuing operations was $8.3 billion for the third quarter of 2008 compared with pre-tax losses from continuing operations of $3.6 billion for the prior-year period.

Net revenues and net earnings during the third quarter of 2008 were materially impacted by a number of significant items, including the following:

- Net write-downs of $5.7 billion resulting from the previously announced sale of U.S. asset-backed collateralized debt obligations ("ABS CDOs") and the termination and potential settlement of related hedges with monoline guarantor counterparties;
- Net gain of $4.3 billion from the previously announced sale of our 20% ownership stake in Bloomberg, L.P.;
- Net write-downs of $3.8 billion, principally from severe market dislocations in September, including real estate-related asset write-downs and losses related to certain government sponsored entities and major U.S. broker-dealers, as well as the default of a major U.S. broker-dealer;
- Net gains of $2.8 billion due to the impact of the widening of Merrill Lynch's credit spreads on the carrying value of certain of our long-term debt liabilities, which was similarly impacted by the severe market movements in September;
- Net losses of $2.6 billion resulting primarily from completed and planned asset sales across residential and commercial mortgage exposures;
- A $2.5 billion non-tax deductible payment to affiliates and transferees of Temasek Holdings (Private) Limited ("Temasek") related to our July common stock offering; and
- A $425 million expense, including a $125 million fine, arising from Merrill Lynch's previously announced offer to repurchase auction rate securities ("ARS") from our private clients and the associated settlement with regulators.

The net loss from continuing operations for the first nine months of 2008 was $11.7 billion, or $13.16 per diluted share, compared with net earnings from continuing operations of $1.7 billion, or $1.60 per diluted share, in the prior-year period. The net loss for the first nine months of 2008 and loss per diluted share were $11.8 billion and $13.20, respectively, compared with net earnings of $2.1 billion, or $2.03 per diluted share, for the prior-year period. The net revenues for the first nine months of 2008 were $834 million compared with $19.4 billion in the prior-year period. The significant decline in our net revenues for the first nine months of 2008 included net losses related to U.S. ABS CDOs of $9.8 billion; credit valuation adjustments related to hedges with financial guarantors of $7.2 billion; net losses related to certain residential mortgage exposures of $4.3 billion; net losses related to the investment securities portfolio of Merrill Lynch's U.S. Banks of $2.9 billion; net losses of $2.1 billion related to U.S. broker-dealers and certain government sponsored entities; and leveraged finance commitment write-downs of $1.8 billion. These losses were partially offset by the net gain of $4.3 billion from the sale of our ownership stake in Bloomberg, L.P. as well as a net benefit of $5.0 billion related to credit spread widening on certain of our long-term debt liabilities.

Our net loss applicable to common shareholders for the third quarter and first nine months of 2008 included $2.1 billion of additional preferred dividends associated with the previously announced exchange of the mandatory convertible preferred stock. See Capital and Funding for further information.

### Global Markets and Investment Banking (GMI)

GMI recorded net revenues of negative $3.2 billion and a pre-tax loss of $6.0 billion for the third quarter of 2008, as the challenging market conditions resulted in net losses in FICC and lower revenues in Investment Banking compared with the prior-year period. GMI's third quarter net revenues included a net benefit of approximately $2.8 billion (approximately $2.0 billion in FICC and $0.8 billion in Equity Markets) due to the impact of the widening of Merrill Lynch's credit spreads on the carrying value of certain of our long-term debt liabilities. Net revenues from GMI's three major business lines were as follows:

*FICC* net revenues were negative $9.9 billion for the quarter, as strong revenues from rates and currencies were more than offset by net losses related to the ABS CDO sale and the termination and potential settlement of related hedges with monoline guarantor counterparties, completed and planned sales of real estate-related assets, and net losses from credit spreads widening across most asset classes to significantly higher levels at the end of the quarter. FICC recorded significant losses as a result of severe market dislocations in September, including credit spread volatility and the default of a major U.S. broker-dealer. In addition, net revenues for other FICC businesses declined from the third quarter of 2007, as the environment for those businesses was materially worse than the year-ago quarter.

*Equity Markets* net revenues for the third quarter of 2008, which included the $4.3 billion Bloomberg gain and a net gain related to changes in the carrying value of certain of our long-term debt liabilities, were $6.0 billion compared with $1.6 billion in the prior-year period. Global equity-linked products revenues increased approximately 14% from the prior-year period, driven by increased trading activity and heightened market volatility. These increases were more than offset by declines from our cash equities business, which experienced adverse market conditions, as well as global markets financing and services, which experienced declines in average balances, particularly in September. Private equity net losses were $289 million for the third quarter of 2008 compared with net losses of $61 million for the prior year quarter.

*Investment Banking* net revenues were $750 million for the third quarter of 2008, down 25% from $1.0 billion in the 2007 third quarter. Equity origination, debt origination and advisory revenues all declined, reflecting significantly lower industry-wide underwriting and deal volumes compared with the year-ago period.

### Global Wealth Management (GWM)

GWM's third quarter 2008 net revenues were $3.2 billion, down 9% from the strong third quarter of 2007. The decrease in net revenues was primarily due to declines in transactional and origination revenues resulting from reduced client and issuer activity amidst increasingly challenging market conditions. The revenue decline was partially offset by a reduction in compensation and non-compensation expenses, resulting in pre-tax earnings of $753 million ($774 million excluding $21 million of expenses associated with a restructuring charge in the third quarter discussed below). GWM's pre-tax profit margin was 23.3% (23.9% excluding the restructuring charge), compared with 26.9% in the prior-year period. Net revenues from GWM's major business lines were as follows:

*GPC* net revenues for the third quarter of 2008 were $3.0 billion, down 8% from the prior-year period driven by lower transactional and origination revenues resulting from reduced client and origination activity in a challenging environment. Fee-based revenues also declined due to lower asset levels associated with difficult market conditions.

*GIM* third quarter 2008 net revenues were $241 million, an 11% decline from the third quarter of 2007, due to lower revenues from our investment in BlackRock and alternative investment management companies.

**Discontinued Operations**

On August 13, 2007, we announced a strategic business relationship with AEGON, N.V. ("AEGON") in the areas of insurance and investment products. As part of this relationship, we sold Merrill Lynch Life Insurance Company and ML Life Insurance Company of New York (together "Merrill Lynch Insurance Group" or "MLIG") to AEGON for $1.3 billion in the fourth quarter of 2007. We have included the results of MLIG within discontinued operations for all periods presented. We previously reported the results of MLIG in the GWM business segment.

On December 24, 2007, we announced that we had reached an agreement with GE Capital to sell Merrill Lynch Capital, a wholly-owned middle-market commercial finance business. The sale included substantially all of Merrill Lynch Capital's operations, including its commercial real estate division and closed on February 4, 2008. We have included the results of Merrill Lynch Capital within discontinued operations for all periods presented. We previously reported results of Merrill Lynch Capital in the GMI business segment.

Net losses for discontinued operations for the three and nine months ended September 26, 2008 were $32 million and $45 million, respectively, compared with net earnings of $139 million and $396 million for the three and nine months ended September 28, 2007, respectively. Refer to Note 15 to the Condensed Consolidated Financial Statements for additional information.

**Restructuring Charge**

In the third quarter of 2008 Merrill Lynch recorded a pre-tax restructuring charge of $39 million, primarily related to severance costs and the accelerated amortization of previously granted stock awards associated with headcount reduction initiatives, primarily in technology. The restructuring charge for the nine month period was $484 million. Refer to Note 17 to the Condensed Consolidated Financial Statements for additional information.

**Common Stock Offering and Early Conversion of Mandatory Convertible Preferred**

On July 28, 2008, we announced a public offering of 437 million shares of common stock (including the exercise of the over-allotment option) at a price of $22.50 per share, for an aggregate amount of $9.8 billion.

In satisfaction of our obligations under the reset provisions contained in the investment agreement with Temasek, we paid Temasek $2.5 billion, which is recorded as a non-tax deductible expense in the Condensed Consolidated Statement of (Loss)/Earnings during the third quarter of 2008.

As previously disclosed, concurrent with the $9.8 billion common stock offering, holders of $4.9 billion of the $6.6 billion of our mandatory convertible preferred stock agreed to exchange their preferred stock for approximately 177 million shares of common stock, plus $65 million in cash. Holders of the remaining $1.7 billion of mandatory convertible preferred stock agreed to exchange their preferred stock for new mandatory convertible preferred stock. The price reset feature for all securities exchanged was eliminated. In connection with the elimination of the price reset feature of the $6.6 billion of preferred stock, we recorded additional preferred dividends of $2.1 billion in the third quarter of 2008.

### CDO Sale and Termination of Monoline Hedges

On July 28, 2008, we agreed to sell $30.6 billion gross notional amount of U.S. super senior ABS CDOs to an affiliate of Lone Star Funds ("Lone Star") for a purchase price of $6.7 billion. The transaction closed on September 18, 2008. In addition to the ABS CDO sale, we announced the termination and potential settlement of certain hedges with monoline financial guarantors related to U.S. super senior ABS CDOs. We recorded net write-downs of $5.7 billion during the third quarter of 2008 as a result of this sale of U.S. super senior ABS CDOs and the termination and potential settlement of related hedges with monoline guarantor counterparties.

### Bloomberg, L.P

On July 17, 2008, we announced and completed the sale of our 20% ownership stake in Bloomberg, L.P. to Bloomberg Inc., for $4.4 billion. The sale resulted in a $4.3 billion net pre-tax gain. As consideration for the sale of our interest in Bloomberg L.P., we received notes issued by Bloomberg Inc. (the general partner and owner of substantially all of Bloomberg L.P.) with an aggregate face amount of approximately $4.3 billion and cash in the amount of approximately $110 million. The notes represent senior unsecured obligations of Bloomberg Inc.

### Auction Rate Securities

On August 21, 2008, we announced that we had reached a global agreement with the New York Attorney General, the Securities and Exchange Commission, the Massachusetts Securities Division and other state securities regulators relating to sales of ARS. Under this agreement, eligible retail clients of Merrill Lynch will have a 12-month or 15-month period, depending on the level of assets held at Merrill Lynch by such client, in which to sell certain eligible ARS to Merrill Lynch at par. Merrill Lynch's offer to purchase such ARS from those of its eligible clients or purchasers will remain open through January 15, 2010. In connection with this agreement, we recorded a charge of $425 million, which includes a fine of $125 million. The charge is recorded within Other expenses in the Condensed Consolidated Statement of (Loss)/Earnings.

### Subsequent Events

*Emergency Economic Stabilization Act of 2008*

On October 3, 2008, President Bush signed into law the Emergency Economic Stabilization Act of 2008 (the "EESA"). Pursuant to the EESA, the United States Department of the Treasury (the "U.S. Treasury") has the authority to, among other things, invest in financial institutions and purchase mortgages, mortgage-backed securities and certain other financial instruments from financial institutions, in an aggregate up to $700 billion, for the purpose of stabilizing and providing liquidity to the U.S. financial markets. On October 14, 2008, the U.S. Treasury announced a plan (the "Capital Purchase Program" or "CPP") to invest up to $250 billion of this $700 billion in certain eligible U.S. financial institutions in the form of non-voting, preferred stock initially paying quarterly dividends at a 5% annual rate. In the event the U.S. Treasury makes any such preferred stock investment in any company it will also receive 10-year warrants to acquire common shares of the company having an aggregate market price of 15% of the amount of the preferred stock investment.

On October 26, 2008, we entered into a securities purchase agreement with the U.S. Treasury setting forth the terms upon which we would issue a new series of preferred stock and warrants to the U.S. Treasury (the "TARP Purchase Agreement"). In view of the pending merger agreement with Bank of America, we have determined that we will not sell securities to the U.S. Treasury under the CPP at this time, but may do so in the future under certain circumstances. The TARP Purchase Agreement provides for delayed settlement of a sale of $10 billion of a new series of Merrill Lynch preferred stock and warrants to purchase 64,991,334 shares of Merrill Lynch Common Stock at an exercise price of $23.08 per share. The TARP Purchase Agreement provides that the closing will take place on the earlier of (i) the second business day following a termination of the merger agreement with Bank of America and (ii) a date during the period beginning on January 2, 2009 and ending on January 31, 2009 if the merger agreement is still in effect but the merger has not been completed by the specified date, but, in the case of either (i) or (ii), in no event later than January 31, 2009. In addition, prior to January 2, 2009, if the merger agreement is still in effect but the merger has not been completed, we have the right, after consultation with the Federal Reserve and Bank of America, to request that the U.S. Treasury consummate the CPP investment on or prior to January 1, 2009. The TARP Purchase Agreement will terminate at 12:01 a.m. on February 1, 2009 if the investment has not been made by that date.

Completion of the CPP investment prior to the termination of the merger agreement is subject to Bank of America's approval. Bank of America has agreed that it will not unreasonably withhold or delay its consent. After January 1, 2009, Bank of America may not withhold its consent if, after consulting with Bank of America, we reasonably determine that the failure to obtain the CPP investment would have a material adverse impact on Merrill Lynch. On or after January 30, 2009 until 12:01 a.m. on February 1, 2009, we will have the unilateral right to obtain the CPP investment and Bank of America has consented in advance to the investment at such time if the merger has not been completed at that date.

Additionally, in October 2008, the Federal Reserve announced the creation of the Commercial Paper Funding Facility, which will provide a liquidity backstop to U.S. issuers of commercial paper through a special purpose vehicle that will purchase three-month unsecured and asset-backed commercial paper directly from eligible issuers. We are eligible for the Commercial Paper Funding Facility and began utilizing this program in October 2008 as an additional source of funding. Also, on October 14, 2008, the Federal Deposit Insurance Corporation ("FDIC") announced a new program, the Temporary Liquidity Guarantee Program, under which specific categories of newly issued senior unsecured debt issued by eligible financial institutions on or before June 30, 2009 would be guaranteed until June 30, 2012. This program also provides deposit insurance for funds in non-interest bearing transaction deposit accounts at FDIC-insured institutions. Merrill Lynch has agreed to participate in this FDIC program.

On October 29, 2008, we entered into a $10 billion committed unsecured bank revolving credit facility with Bank of America, N.A. with borrowings guaranteed under the FDIC's guarantee program. This facility will be available to Merrill Lynch until January 30, 2009 but may expire at an earlier date if the merger with Bank of America is terminated or consummated prior to January 30, 2009 or we elect to participate in the CPP. This facility requires us to maintain a minimum consolidated net worth, which we significantly exceed. If we participate in the CPP, the proceeds received from the U.S. Treasury will be used to repay in full any outstanding amounts owed under this facility. For additional information on our other credit facilities see "Risk Management — Liquidity Risk — Committed Credit Facilities."

The challenging conditions that existed in the global financial markets during the first half of the year continued during the third quarter of 2008. This adverse market environment intensified towards the end of the quarter, particularly in September, and was characterized by increased illiquidity in the credit markets, wider credit spreads, lower business and consumer confidence, and concerns about corporate earnings and the solvency of many financial institutions. During the third quarter of 2008, major U.S. and global equity market indices declined sharply, while oil and other commodity prices also declined. The difficult market conditions that existed during the quarter also impacted the level of investment banking transaction activity during the quarter. Global announced merger and acquisition volumes for the third quarter of 2008 were $981 billion, a decrease of 2% from the second quarter of 2008 and a decrease of 3% from the prior year period. Global completed merger and acquisition volumes for the third quarter of 2008 were $811 billion, an increase of 6% from the second quarter of 2008 but a decrease of 34% from the prior year period. Global debt and equity underwriting volumes during the third quarter of 2008 were $890 billion, a decrease of 54% from the second quarter of 2008 and a decrease of 29% from the prior-year period.

In the United States, economic activity continued to weaken, driven in part by the difficult conditions in the credit and residential housing markets. Consumer and business confidence also declined and the rate of unemployment continued to rise, which adversely affected the level of domestic spending. Conditions in the financial services industry were particularly difficult. During the quarter, the U.S. government assumed a conservatorship role over two large government sponsored entities (“GSEs”), a major U.S. broker-dealer filed for bankruptcy, and consolidations occurred throughout the industry. The U.S. dollar rallied during the quarter as it strengthened 12% versus the Euro and the British pound. The U.S. Federal Reserve Board (the “Fed”) left the federal funds target rate at 2.00% at the end of the third quarter but reduced the rate by an aggregate of 1.0% in October 2008 to 1.0% as part of a coordinated effort by global central banks to ease worldwide monetary conditions. In addition, in October 2008, and in connection with the EESA, the U.S. Treasury announced the Troubled Asset Relief Program (“TARP”), which allows the U.S. Treasury to purchase senior preferred stock of financial firms. The FDIC also announced its Temporary Liquidity Guarantee Program, under which it will guarantee senior unsecured debt of eligible institutions, and provide full deposit insurance coverage for non-interest bearing deposit transaction amounts in FDIC-insured institutions.

Economic growth in Europe also slowed during the quarter due to the disruption in the global financial markets and increasing evidence of slower growth worldwide. The European Central Bank raised its benchmark interest rate by 0.25% to 4.25% in July 2008 in an effort to moderate inflation; however, it then reduced this rate by 0.50% in October 2008 as part of a global coordinated rate cut as risks concerning the economic slowdown outweighed those associated with inflationary pressures. In the United Kingdom, the Bank of England maintained its official bank rate at 5.00% during the third quarter but cut the rate by 0.50% to 4.50% in October 2008 as part of a global coordinated response to concerns over weak economic growth and declining consumer confidence.

Economic growth continued to slow in Japan, reflecting weaker business investment and consumer consumption as well as increased illiquidity in the credit markets. The Bank of Japan left interest rates unchanged during the quarter but lowered its benchmark interest rate by 0.2% to 0.3% in October 2008. Growth in China’s economy has moderated due to lower export demand as a result of weaker global economic conditions. For the first time in six years, the People’s Bank of China cut its benchmark lending rate. The deposit and lending rates were cut by 0.27% in September 2008 and by an additional 0.54% in October 2008.

*(1) Debt and equity underwriting and merger and acquisition volumes were obtained from Dealogic.*

Turbulent market conditions in the short and medium-term will continue to have an adverse impact on our core businesses. Dislocation in the credit markets has been severe, resulting in a loss of investor confidence and an unprecedented freeze in the lending markets. This lack of liquidity has made it difficult for consumers and institutions to obtain financing. In response to such conditions, the Fed and other central banks around the world have responded with aggressive policy interventions in an effort to inject liquidity into the financial system, although these actions will likely not have an immediate impact on market conditions. The near-term risk of spread-widening and the threat of additional ratings agency downgrades of structured securities, as well as the closure and consolidation of certain financial services institutions, continues to impact the industry. Globally, the macro environment is one of instability, economic slow-down, and potential deflation in some markets. As a result of these factors, our businesses must contend with extreme volatility and continued de-leveraging in the market. Within GMI, the recent reductions in asset values and redemptions at hedge funds and other asset managers, combined with the reduction in leverage associated with the current credit environment, may affect our lending and margin businesses in the near-term. The Rates and Credit businesses may be impacted by decreased customer flows, decreased business volume, and a lack of market liquidity, while Commodities is facing a downward slide in prices. Corporate advisory activity is likely to continue to be negatively impacted by the decline in corporate confidence and the reduction in availability of acquisition financing. We expect our origination business to continue to contract in the near term due to the impact of market volatility on the level of equity and debt issuances. Within GWM, declining consumer confidence and lower asset values may affect the level of revenue generation across the business.

## Consolidated Results of Operations

*(dollars in millions, except per share amounts)*

| | For the Three Months Ended | | | For the Nine Months Ended | | |
|---|---|---|---|---|---|---|
| | Sept. 26, 2008 | Sept. 28, 2007 | % Change | Sept. 26, 2008 | Sept. 28, 2007 | % Change |
| Revenues | | | | | | |
| Principal transactions | $(6,573) | $ (5,761) | N/M% | $(13,074) | $ 529 | N/M% |
| Commissions | 1,745 | 1,860 | (6) | 5,445 | 5,360 | 2 |
| Managed account and other fee-based revenues | 1,395 | 1,392 | 0 | 4,249 | 4,025 | 6 |
| Investment banking | 845 | 1,277 | (34) | 2,920 | 4,315 | (32) |
| Earnings from equity method investments | 4,401 | 412 | N/M | 4,943 | 1,096 | N/M |
| Other | (2,986) | (1,114) | N/M | (6,310) | 114 | N/M |
| Subtotal | (1,173) | (1,934) | N/M | (1,827) | 15,439 | N/M |
| Interest and dividend revenues | 9,019 | 15,636 | (42) | 28,415 | 42,804 | (34) |
| Less interest expense | 7,830 | 13,322 | (41) | 25,754 | 38,801 | (34) |
| Net interest profit | 1,189 | 2,314 | (49) | 2,661 | 4,003 | (34) |
| Revenues, net of interest expense | 16 | 380 | (96) | 834 | 19,442 | (96) |
| Non-interest expenses: | | | | | | |
| Compensation and benefits | 3,483 | 1,979 | 76 | 11,170 | 11,564 | (3) |
| Communications and technology | 546 | 499 | 9 | 1,667 | 1,460 | 14 |
| Brokerage, clearing, and exchange fees | 348 | 364 | (4) | 1,105 | 1,020 | 8 |
| Occupancy and related depreciation | 314 | 295 | 6 | 951 | 833 | 14 |
| Professional fees | 242 | 245 | (1) | 747 | 716 | 4 |
| Advertising and market development | 159 | 181 | (12) | 501 | 536 | (7) |
| Office supplies and postage | 48 | 54 | (11) | 160 | 169 | (5) |
| Other | 588 | 401 | 47 | 1,212 | 1,055 | 15 |
| Payment related to price reset on common stock offering | 2,500 | - | N/M | 2,500 | - | N/M |
| Restructuring charge | 39 | - | N/M | 484 | - | N/M |
| Total non-interest expenses | 8,267 | 4,018 | 106 | 20,497 | 17,353 | 18 |
| Pre-tax (loss)/earnings from continuing operations | (8,251) | (3,638) | N/M | (19,663) | 2,089 | N/M |
| Income tax (benefit)/expense | (3,131) | (1,258) | N/M | (7,940) | 429 | N/M |
| Net (loss)/earnings from continuing operations | (5,120) | (2,380) | N/M | (11,723) | 1,660 | N/M |
| Discontinued operations: | | | | | | |
| Pre-tax (loss)/earnings from discontinued operations | (53) | 211 | N/M | (110) | 602 | N/M |
| Income tax (benefit)/expense | (21) | 72 | N/M | (65) | 206 | N/M |
| Net (loss)/earnings from discontinued operations | (32) | 139 | N/M | (45) | 396 | N/M |
| Net (loss)/earnings | $(5,152) | $ (2,241) | N/M | $(11,768) | $ 2,056 | N/M |
| Preferred stock dividends | $ 2,319 | $ 73 | N/M | $ 2,730 | $ 197 | N/M |
| Net (loss)/earnings applicable to common stockholders | $(7,471) | $ (2,314) | N/M | $(14,498) | $ 1,859 | N/M |
| Basic (loss)/earnings per common share from continuing operations | $ (5.56) | $ (2.99) | N/M | $ (13.16) | $ 1.75 | N/M |
| Basic (loss)/earnings per common share from discontinued operations | (0.02) | 0.17 | N/M | (0.04) | 0.48 | N/M |
| Basic (loss)/earnings per common share | $ (5.58) | $ (2.82) | N/M | $ (13.20) | $ 2.23 | N/M |
| Diluted (loss)/earnings per common share from continuing operations | $ (5.56) | $ (2.99) | N/M | $ (13.16) | $ 1.60 | N/M |
| Diluted (loss)/earnings per common share from discontinued operations | (0.02) | 0.17 | N/M | (0.04) | 0.43 | N/M |
| Diluted (loss)/earnings per common share | $ (5.58) | $ (2.82) | N/M | $ (13.20) | $ 2.03 | N/M |
| Book value per share | $ 18.59 | $ 39.60 | (53) | $ 18.59 | $ 39.60 | (53) |

*Note: Certain prior period amounts have been reclassified to conform to the current period presentation.*

*N/M = Not Meaningful*

**Quarterly Consolidated Results of Operations**

Our net loss from continuing operations for the third quarter of 2008 was $5.1 billion compared with a net loss from continuing operations of $2.4 billion in the third quarter of 2007. Our net revenues were $16 million compared with $380 million for the year-ago quarter. The revenue decline was driven primarily by: net write-downs of $5.7 billion resulting from the sale of U.S. super senior ABS CDOs and the termination and potential settlement of related hedges with monoline guarantor counterparties; net write-downs of $3.8 billion principally from severe market dislocations in September, including real estate asset write-downs and losses related to certain GSEs and major U.S. broker-dealers as well as the default of a major U.S. broker-dealer; and net losses of $2.6 billion resulting primarily from completed and planned asset sales across residential and commercial mortgage exposures. These losses were partially offset by a net pre-tax gain of $4.3 billion from the sale of our 20% ownership stake in Bloomberg, L.P., and net gains of $2.8 billion due to the impact of the widening of credit spreads on the carrying value of certain of our long-term debt liabilities.

Losses per diluted share from continuing operations were $5.56 for the third quarter of 2008 and $2.99 for the year-ago quarter. The net loss from discontinued operations was $32 million in the third quarter of 2008 compared with net earnings of $139 million in the third quarter of 2007.

Principal transactions revenues include both realized and unrealized gains and losses on trading assets and trading liabilities and investment securities classified as trading investments. Principal transactions revenues were negative $6.6 billion in the third quarter of 2008 compared with negative $5.8 billion in the year-ago quarter. The negative revenues in 2008 were driven primarily by net losses within FICC related to the ABS CDO sale and the termination and potential settlement of related monoline hedges, net losses associated with real estate-related assets, and net losses from credit spreads widening across most asset classes to significantly higher levels at the end of the quarter. FICC recorded net losses as a result of severe market dislocations in September, which included the impact of a default of a major U.S. broker-dealer and the U.S. government's conservatorship of certain GSEs. These losses were partially offset by strong net revenues for the quarter generated from our interest rate and currencies and commodities businesses, as well as gains arising from the impact of the widening of Merrill Lynch's credit spreads on the carrying value of certain of our long-term debt liabilities. Principal transactions revenues are primarily reported in our GMI business segment. Refer to the FICC and Equity Markets discussions within the GMI business segment results for additional details.

Net interest profit is a function of (i) the level and mix of total assets and liabilities, including trading assets owned, deposits, financing and lending transactions, and trading strategies associated with our businesses, and (ii) the prevailing level, term structure and volatility of interest rates. Net interest profit is an integral component of trading activity. In assessing the profitability of our client facilitation and trading activities, we view principal transactions and net interest profit in the aggregate as net trading revenues. Changes in the composition of trading inventories and hedge positions can cause the mix of principal transactions and net interest profit to fluctuate from period to period. Net interest profit was $1.2 billion in the third quarter of 2008, down 49% from the year-ago quarter, primarily due to decreased net interest revenues generated as a result of lower asset levels in our GMI businesses as well as increased funding costs. Net interest profit is reported in both our GMI and GWM business segments.

Commissions revenues primarily arise from agency transactions in listed and OTC equity securities and commodities, insurance products and options. Commissions revenues also include distribution fees for promoting and distributing mutual funds and hedge funds. Commissions revenues were $1.7 billion in the third quarter of 2008, down 6% from the year-ago quarter, driven primarily by lower revenues from insurance sales and mutual funds within GWM due to challenging market conditions. Commissions revenues are generated by our GMI and GWM business segments.

Managed accounts and other fee-based revenues primarily consist of asset-priced portfolio service fees earned from the administration of separately managed and other investment accounts for retail investors, annual account fees, and certain other account-related fees. Managed accounts and other fee-based revenues were $1.4 billion in the third quarter of 2008, essentially unchanged from the year-ago quarter, as higher revenues from the global markets financing and services and real estate principal investment businesses within GMI were offset by lower fee-based revenues in GWM due to lower asset levels as a result of difficult market conditions. Managed accounts and other fee-based revenues are primarily generated by our GWM business segment. Refer to the GWM business segment discussion for additional details.

Investment banking revenues include (i) origination revenues representing fees earned from the underwriting of debt, equity and equity-linked securities, as well as loan syndication and commitment fees and (ii) strategic advisory services revenues including merger and acquisition and other investment banking advisory fees. Investment banking revenues were $845 million in the third quarter of 2008, down 34% from the year-ago quarter, driven by lower net revenues from equity origination, debt origination and M&A advisory revenues, reflecting significantly lower industry-wide underwriting and deal volumes compared with the year-ago period. Investment banking revenues are primarily reported in our GMI business segment but also include origination revenues in GWM. Refer to the Investment Banking discussion within the GMI business segment results for additional details.

Earnings from equity method investments include our pro rata share of income and losses associated with investments accounted for under the equity method of accounting. Earnings from equity method investments were $4.4 billion in the third quarter of 2008, which includes a net pre-tax gain of $4.3 billion from the sale of our 20% ownership stake in Bloomberg, L.P.. Excluding this gain, earnings from equity method investments were $105 million, down from $412 million for the year-ago quarter due largely to lower revenues from certain investments, including alternative investment management companies. Earnings from equity method investments are reported in both our GMI and GWM business segments. Refer to Note 5 of the 2007 Annual Report for further information on equity method investments.

Other revenues include gains and losses on investment securities, including certain available-for-sale securities, gains and losses on private equity investments that are held for capital appreciation and/or current income, and gains and losses on loans and other miscellaneous items. Other revenues were negative $3.0 billion in the third quarter of 2008, compared with negative $1.1 billion in the year-ago quarter. The negative revenues for 2008 were primarily due to net losses from completed and planned asset sales across residential and commercial mortgage exposures, other-than-temporary impairment charges on available-for-sale securities within our U.S. banks investment securities portfolio, write-downs on our leveraged finance commitments, and a decrease in the value of our private equity investments due primarily to the decline in value of certain non-public investments.

Compensation and benefits expenses were $3.5 billion for the third quarter of 2008. In the third quarter of 2007, primarily as a result of a reversal of previously accrued 2007 compensation costs, compensation and benefits expenses were $2.0 billion. The quarterly year over year increase reflects the reversal of the accruals in 2007, partially offset by lower costs in 2008 as a result of reduced headcount levels.

Non-compensation expenses were $4.8 billion, including the $2.5 billion non-tax deductible payment to Temasek related to the July common stock offering and the $425 million expense, including a $125 million fine, arising from Merrill Lynch's offer to repurchase ARS from our private clients and the associated settlement with regulators. Excluding the aforementioned items, non-compensation expenses were $1.9 billion, down 9% from the year-ago quarter. Communication and technology costs were $546 million, up 9% due primarily to costs related to ongoing technology investments and system development initiatives, including continued investment in GWM platforms and workstations. Advertising and market development costs were $159 million, down 12% due primarily to lower travel and entertainment expenses. Other expenses were $588 million, which includes $425 million related to the ARS settlement previously discussed. Excluding this item, other expenses were $163 million, down 59% due primarily to the write-off of approximately $100 million of identifiable intangible assets related to First Franklin in the prior-year quarter and lower minority interest expenses associated with private equity investments. Non-compensation expenses also included a restructuring charge of $39 million, primarily related to severance costs and the accelerated amortization of previously granted stock awards associated with headcount reduction initiatives, primarily in technology.

Income tax benefits from continuing operations were a net credit of $3.1 billion in the third quarter of 2008, reflecting tax benefits associated with the firm's pre-tax losses. The effective tax rate was 37.9% compared with 34.6% for the year-ago quarter. The increase in the effective tax rate reflected changes in the firm's geographic mix of earnings and the impact of tax benefits on net operating losses.

We performed an annual impairment analysis of goodwill for our reporting units at the end of the third quarter of 2008, which did not result in an impairment charge. However, given the continued challenging conditions in the financial markets and the related impact on the market value of financial institutions, we will perform an interim impairment test for goodwill in the fourth quarter of 2008, which could result in an impairment charge.

**Year-to-Date Consolidated Results of Operations**

For the first nine months of 2008, our net loss from continuing operations was $11.7 billion or $13.16 per diluted share, compared with net earnings from continuing operations of $1.7 billion, or $1.60 per diluted share, in the prior-year period. Net revenues for the first nine months of 2008 were $834 million compared with $19.4 billion in the prior-year period. The decrease in net revenues was due primarily to net losses related to U.S. ABS CDOs of $9.8 billion, credit valuation adjustments related to hedges with monoline financial guarantors of $7.2 billion, net losses related to certain residential and commercial mortgage exposures of $5.1 billion, net losses related to the investment securities portfolio of Merrill Lynch's U.S. banks of $2.9 billion, net losses of $2.1 billion related to major U.S. broker-dealers and certain GSEs, and leveraged finance commitment write-downs of $1.8 billion, partially offset by a net gain of $5.0 billion due to the impact of the widening of credit spreads on the carrying value of certain of our long-term debt liabilities and a net pre-tax gain from the sale of our 20% ownership stake in Bloomberg, L.P. of $4.3 billion.

Compensation and benefits expenses for the first nine months of 2008 were $11.2 billion, down 3% from $11.6 billion in the first nine months of 2007, primarily due to a decline in compensation expense accruals reflecting lower net revenues and reductions in headcount.

Non-compensation expenses for the first nine months of 2008 were $9.3 billion, including the $2.5 billion Temasek payment and the $425 million ARS-related expense incurred in the third quarter of 2008; excluding the aforementioned items, non-compensation expenses were $6.4 billion, up 11% from $5.8 billion in the first nine months of 2007. Communication and technology costs were $1.7 billion, up 14% due primarily to costs related to ongoing technology investments and system development initiatives, higher market data information costs, as well as the inclusion of First Republic Bank ("First Republic"), which was acquired on September 21, 2007. Occupancy and related depreciation costs were $951 million, up 14% due principally to higher office rental expenses associated with data center growth and increased office space, including the impact of First Republic. Other expenses were $1.2 billion, including the $425 million ARS-related expense as previously discussed. Excluding this item, other expenses were $787 million, down 25% due primarily to lower minority interest expenses associated with private equity investments and the write-off of approximately $100 million of identifiable intangible assets related to First Franklin in the prior-year period. Non-compensation expenses for the nine-month period also included a restructuring charge of $484 million related to headcount reduction initiatives conducted during the year.

Income taxes from continuing operations for the first nine months of 2008 were a net credit of $7.9 billion, reflecting tax benefits associated with our pre-tax losses. Our year-to-date effective tax rate was 40.4% compared with 20.5% in the prior-year period. The increase in the effective tax rate primarily reflected changes in the geographic mix of earnings and the impact of tax benefits on net operating losses.

**U.S. ABS CDO and Other Mortgage-Related Activities**

The challenging market conditions that have existed since the second half of 2007, particularly those relating to the credit markets, continued through the third quarter of 2008. Although the greatest impact to date had been on U.S. ABS CDOs and the U.S. sub-prime residential mortgage products, the adverse conditions in the credit markets have also affected other products, including U.S. Alt-A, Non-U.S. residential mortgages and commercial real estate. In addition, these conditions also negatively affected the value of leveraged lending transactions and our exposure to monoline financial guarantors. At September 26, 2008, we maintained exposures to these markets through securities, derivatives, loans and loan commitments. The following discussion details our activities and net exposures as of September 26, 2008.

*Residential Mortgage-Related Activities (excluding U.S. banks investment securities portfolio)*

U.S. Prime: We had net exposures of $34.6 billion at September 26, 2008, which consisted primarily of prime mortgage whole loans, including approximately $31 billion of prime loans originated with GWM clients (of which $14.5 billion were originated by First Republic, an operating division of Merrill Lynch Bank & Trust Co., FSB ("MLBT-FSB")). Net exposures related to U.S. prime residential mortgages increased 3% during the quarter as a result of loan originations within GWM's high net worth client base.

In addition to our U.S. prime related net exposures, we also had net exposures related to other residential mortgage-related activities. These activities consist of the following:

U.S. Sub-prime: We define sub-prime mortgages as single-family residential mortgages that have more than one high risk characteristic, such as: (i) the borrower has a low FICO score (generally below 660); (ii) the mortgage has a high loan-to-value ("LTV") ratio (LTV greater than 80% without borrower paid mortgage insurance); (iii) the borrower has a high debt-to-income ratio (greater than 45%); or (iv) the mortgage was underwritten based on stated/limited income documentation. Sub-prime mortgage-related securities are those securities that derive more than 50% of their value from sub-prime mortgages.

We had net exposures of $295 million at September 26, 2008, down 71% from June 27, 2008 primarily due to $392 million in net losses and increased short positions. Our U.S. Sub-prime exposures consisted primarily of non-performing loans (valued using discounted liquidation values) and secondary trading exposures related to our residential mortgage-backed securities business, which consist of trading activity including credit default swaps ("CDS") on single names and indices. We value residential mortgage-backed securities based on observable prices and where prices are not observable, values are based on modeling the present value of projected cash flows that we expect to receive, based on the actual and projected performance of the mortgages underlying a particular securitization. Key determinants affecting our estimates of future cash flows include estimates for borrower prepayments, delinquencies, defaults, and loss severities.

U.S. Alt-A: We define Alt-A mortgages as single-family residential mortgages that are generally higher credit quality than sub-prime loans but have characteristics that would disqualify the borrower from a traditional prime loan. Alt-A lending characteristics may include one or more of the following:

(i) limited documentation; (ii) high combined-loan-to-value ("CLTV") ratio (CLTV greater than 80%); (iii) loans secured by non-owner occupied properties; or (iv) debt-to-income ratio above normal limits.

We had net exposures of $25 million at September 26, 2008, down 98% from June 27, 2008 due to sales of approximately $1.0 billion and net losses of $492 million. Our U.S. Alt-A exposures consisted primarily of residential mortgage-backed securities collateralized by Alt-A residential mortgages. These net exposures resulted from secondary market trading activity or were retained from our securitizations of Alt-A residential mortgages, which were purchased from third-party mortgage originators.

We value residential mortgage-backed securities ("RMBS") based on observable prices and where prices are not observable, values are based on modeling the present value of projected cash flows that we expect to receive, based on the actual and projected performance of the mortgages underlying a particular securitization. Key determinants affecting our estimates of future cash flows include estimates for borrower prepayments, delinquencies, defaults, and loss severities.

Non-U.S.: We had net exposures of $4.6 billion at September 26, 2008, which consisted primarily of residential mortgage whole loans originated in the United Kingdom, as well as through mortgage originators in the Pacific Rim and asset-based lending facilities backed by residential whole loans. Non-U.S. net exposures decreased 38% during the quarter due primarily to net losses of $1.3 billion, paydowns of principal and sales of mortgage-backed securities. Held for sale loans are carried at the lower of cost or market value; for those loans carried at market value, given the significant illiquidity in the securitization market, values are based on modeling the present value of projected cash flows that we expect to receive, based on the actual and projected performance of the mortgages. Key determinants affecting our estimates of future cash flows include estimates for borrower prepayments, delinquencies, defaults, and loss severities.

The following table provides a summary of our residential mortgage-related net exposures and losses, excluding net exposures to residential mortgage-backed securities held in our U.S. banks for investment purposes, which is described in the *U.S. Banks Investment Securities Portfolio* section below.

*(dollars in millions)*

| | Net Exposures as of Jun. 27, 2008 | Net Gains/(Losses) Reported in Income | Other Net Changes in Net Exposures[1] | Net Exposures as of Sep. 26, 2008 | 3Q08 vs. 2Q08 Percent Inc/(Dec) |
|---|---|---|---|---|---|
| **Residential Mortgage-Related (excluding U.S. Banks' investment securities portfolio):** | | | | | |
| U.S. Prime | $33,718 | $ (123) | $ 1,042 | $34,637 | 3% |
| Other Residential: | | | | | |
| U.S. Sub-prime | $ 1,012 | $ (392) | $ (325) | $ 295 | (71)% |
| U.S. Alt-A | 1,542 | (492) | (1,025) | 25 | (98)% |
| Non-U.S | 7,448 | (1,282) | (1,522) | 4,644 | (38)% |
| Total Other Residential[2] | $10,002 | $(2,166) | $(2,872) | $ 4,964 | (50)% |

*(1) Represents U.S. Prime originations, sales, foreign exchange revaluations, hedges, paydowns, changes in loan commitments and related funding.*

*(2) Includes warehouse lending, whole loans and residential mortgage-backed securities.*

*U.S. ABS CDO Activities*

In addition to our U.S. sub-prime residential mortgage-related exposures, we have exposure to U.S. ABS CDOs, which are securities collateralized by a pool of asset-backed securities ("ABS"), for which the underlying collateral is primarily sub-prime residential mortgage loans.

We engaged in the underwriting and sale of U.S. ABS CDOs, which involved the following steps: (i) determining investor interest or responding to inquiries or mandates received; (ii) engaging a CDO collateral manager who is responsible for selection of the ABS securities that will become the underlying collateral for the U.S. ABS CDO securities; (iii) obtaining credit ratings from one or more rating agencies for U.S. ABS CDO securities; (iv) securitizing and pricing the various tranches of the U.S. ABS CDO at representative market rates; and (v) distributing the U.S. ABS CDO securities to investors or retaining them for Merrill Lynch. As a result of the continued deterioration in the sub-prime mortgage market, we currently are not underwriting U.S. ABS CDOs.

Our U.S. ABS CDO net exposure primarily consists of our super senior ABS CDO portfolio, as well as secondary trading exposures related to our ABS CDO business.

U.S. Super Senior ABS CDO Portfolio

Super senior positions represent our exposure to the senior most tranche in an ABS CDO's capital structure. This tranche's claims have priority to the proceeds from liquidated cash ABS CDO assets.

Our exposure to super senior ABS CDOs includes the following securities, which are primarily held as derivative positions in the form of total return swaps:

- High-grade super senior positions, which are issued by ABS CDOs with underlying collateral having an average credit rating of Aa3/A1 at inception of the underwriting by Moody's Investor Services; and
- Mezzanine super senior positions, which are issued by ABS CDOs with underlying collateral having an average credit rating of Baa2/Baa3 at inception of the underwriting by Moody's Investor Services.

At the end of the third quarter, net exposures to U.S. super senior ABS CDOs were $1.1 billion, down from $4.3 billion at the end of the second quarter. The remaining net exposure is predominantly comprised of U.S. super senior ABS CDOs based on mezzanine underlying collateral.

The aggregate U.S. super senior ABS CDO long exposures were $6.4 billion, substantially reduced from $19.9 billion at the end of the second quarter. The reduction predominantly resulted from the sale of ABS CDOs to an affiliate of Lone Star Funds ("Lone Star") discussed below, which decreased long exposures by $11.1 billion. The long exposure was further reduced during the quarter by $2.4 billion resulting from mark-to-market adjustments, amortization and liquidations.

At quarter-end, the super senior ABS CDO long exposure was hedged with an aggregate of $5.3 billion of short exposure, which was down $10.3 billion from the end of the second quarter. Of this reduction, $8.4 billion was due to the termination and potential settlement of related monoline hedges and $1.9 billion was primarily due to mark-to-market gains, amortization and liquidations. The remaining short position predominantly reflects contracts with highly-rated, non-monoline counterparties with strong collateral servicing agreements.

The following table provides an overview of changes to our U.S. super senior ABS CDO net exposures from June 27, 2008 to September 26, 2008.

*(dollars in billions)*

| U.S. Super Senior ABS CDO Exposure | Long | Short | Net |
|---|---|---|---|
| **June 27, 2008** | $ 19.9 | $(15.6) | $ 4.3 |
| Sale of CDOs: | | | |
| Sale Price of CDOs | (6.7) | - | (6.7) |
| Loss on CDOs | (4.4) | - | (4.4) |
| Total Reduction in Exposure from Sale | (11.1) | - | (11.1) |
| Termination of XL Hedges(1) | - | 1.2 | 1.2 |
| Settlement of Monoline Hedges on Long Position Sold(2) | - | 7.2 | 7.2 |
| Total Increase in Exposure | - | 8.4 | 8.4 |
| **Total Exposure (As Reported in our Press Release Dated 7/28/08)** | $ 8.8 | $ (7.2) | $ 1.6 |
| 3Q Exposure Changes: | | | |
| Gains/(Losses) | $ (1.9) | $ 1.6 | $ (0.3) |
| Liquidations/Amortization | (0.5) | 0.3 | (0.2) |
| **September 26, 2008** | $ 6.4 | $ (5.3) | $ 1.1 |

*(1) We terminated all of our CDO-related hedges with XL, which at June 27, 2008 had a carrying value of $1,029 million in exchange for an upfront payment of $500 million. This termination resulted in a net loss of approximately $529 million.*

*(2) This includes both settled and potentially settled monoline hedges.*

Merrill Lynch's secondary trading exposure related to its ABS CDO business was $227 million at June 27, 2008. As of September 26, 2008, secondary trading exposure was $(273) million. The exposure change was driven by liquidations, unwinds, and gains / (losses) recognized.

On July 28, 2008, we agreed to sell $30.6 billion gross notional amount of U.S. super senior ABS CDOs (the "Portfolio") to Lone Star for a purchase price of $6.7 billion. The transaction closed on September 18, 2008. In connection with this sale we recorded a pre-tax write-down of $4.4 billion in the third quarter of 2008. We are providing financing to the purchaser for approximately 75% of the purchase price. The recourse on this loan is limited to the assets of the purchaser, which consist solely of the Portfolio. All cash flows and distributions from the Portfolio (including sale proceeds) will be applied in accordance with a specified priority of payments. The loan is carried at fair value. Events of default under the loan are customary events of default, including failure to pay interest when due and failure to pay principal at maturity.

*Monoline Financial Guarantors*

We hedge a portion of our long exposures of U.S. super senior ABS CDOs with various market participants, including financial guarantors. We define financial guarantors as monoline insurance companies that provide credit support for a security either through a financial guaranty insurance policy on a particular security or through an instrument such as a credit default swap ("CDS"). Under a CDS, the financial guarantor generally agrees to compensate the counterparty to the swap for the deterioration in the value of the underlying security upon an occurrence of a credit event, such as a failure by the underlying obligor on the security to pay principal and/or interest.

We hedged a portion of our long exposures to U.S. super senior ABS CDOs with certain financial guarantors through the execution of CDS that are structured to replicate standard financial guaranty insurance policies, which provide for timely payment of interest and/or ultimate payment of principal at their scheduled maturity date. CDS gains and losses are based on the fair value of the referenced ABS CDOs. Depending upon the creditworthiness of the financial guarantor hedge counterparties, we may record credit valuation adjustments in estimating the fair value of the CDS.

At September 26, 2008, the carrying value of our hedges with financial guarantors related to U.S. super senior ABS CDOs was $1.4 billion, reduced from $2.9 billion at June 27, 2008. The decrease was due to the termination and potential settlement of monoline hedges partially offset by modest gains in the market value of the remaining hedges. We also have credit derivatives with financial guarantors on other referenced assets. The carrying value of hedges with financial guarantors related to other asset classes outside of U.S. super senior ABS CDOs increased from $3.6 billion at the end of the second quarter to $4.5 billion at the end of the third quarter 2008, resulting from gains in the market value of these hedges.

During the third quarter of 2008, credit valuation adjustments related to our remaining hedges with financial guarantors, including those related to U.S. super senior ABS CDOs, were not significant.

The following table provides a summary of our total financial guarantor exposures for U.S. super senior ABS CDOs as of September 26, 2008.

*(dollars in millions)*

| Credit Default Swaps with Financial Guarantors on U.S. Super Senior ABS CDOs | Notional of CDS | Net Exposure | Mark-to-Market Prior to Credit Valuation Adjustments | Life-to-Date Credit Valuation Adjustments | Carrying Value |
|---|---|---|---|---|---|
| **June 27, 2008** | $(18.7) | $(9.6) | $ 9.1 | $(6.2) | $ 2.9 |
| Termination of XL Hedges[1] | 3.7 | 1.2 | (2.5) | 1.5 | (1.0) |
| Settlement of Monoline Hedges on Long Position Sold[2] | 12.1 | 7.2 | (4.9) | 4.1 | (0.8) |
| **Total (As Reported in Press Release Dated 7/28/08)** | $ (2.9) | $(1.2) | $ 1.7 | $(0.6) | $ 1.1 |
| 3Q Activity | 0.0 | 0.3 | 0.3 | (0.0) | 0.3 |
| **September 26, 2008** | $ (2.9) | $(0.9) | $ 2.0 | $(0.6) | $ 1.4 |

*(1) We terminated all of our CDO-related hedges with XL, which had an aggregate carrying value at June 27, 2008 of $1,029 million, in exchange for an upfront payment of $500 million. This termination resulted in a net loss of approximately $529 million.*
*(2) This includes both settled and potentially settled monoline hedges.*

### *U.S. Banks Investment Securities Portfolio*

The investment securities portfolio of Merrill Lynch Bank USA ("MLBUSA") and MLBT-FSB includes investment securities comprising various asset classes. The cumulative pre-tax balance in other comprehensive (loss)/income related to this portfolio was approximately negative $5.5 billion as of September 26, 2008. We regularly (at least quarterly) evaluate each security whose value has declined below amortized cost to assess whether the decline in fair value is other-than-temporary. Within the investment securities portfolio of our U.S. banks, net pre-tax losses of approximately $852 million were recognized through the statement of earnings during the third quarter of 2008. These net losses primarily reflected the other-than-temporary impairment in the value of certain securities, primarily U.S. Alt-A residential mortgage-backed securities.

We value residential mortgage-backed securities ("RMBS") based on observable prices and where prices are not observable, values are based on modeling the present value of projected cash flows that we expect to receive, based on the actual and projected performance of the mortgages underlying a particular securitization. Key determinants affecting our estimates of future cash flows include estimates for borrower prepayments, delinquencies, defaults, and loss severities.

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

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

Refer to Note 5 to the Condensed Consolidated Financial Statements for additional information.

The following table provides a summary of our U.S. banks investment securities portfolio net exposures and losses.

*(dollars in millions)*

| | Net Exposures as of Jun. 27, 2008 | Net Gains/(Losses) Reported in Income[2] | Unrealized Gains/(Losses) Included in OCI (pre-tax) | Other Net Changes in Net Exposures[3] | Net Exposures as of Sep. 26, 2008 | Percent Inc/(Dec) |
|---|---|---|---|---|---|---|
| **U.S. Banks' Investment Securities Portfolio:** | | | | | | |
| Sub-prime residential mortgage-backed securities | $ 2,901 | $(116) | $ 24 | $(107) | $ 2,702 | (7)% |
| Alt-A residential mortgage-backed securities | 4,338 | (622) | (135) | (83) | 3,498 | (19)% |
| Commercial mortgage-backed securities | 5,376 | 6 | (370) | 28 | 5,040 | (6)% |
| Prime residential mortgage-backed securities | 3,114 | (82) | (152) | (371) | 2,509 | (19)% |
| Non-residential asset-backed securities | 831 | (8) | (40) | (60) | 723 | (13)% |
| Non-residential CDOs | 745 | (30) | (181) | (48) | 486 | (35)% |
| Agency residential asset-backed securities | 505 | - | - | (13) | 492 | (3)% |
| Other | 226 | - | (28) | 9 | 207 | (8)% |
| Total[1] | $18,036 | $(852) | $(882) | $(645) | $15,657 | (13)% |

*(1) The September 26, 2008 net exposures include investment securities of approximately $140 million recorded in a non-U.S. Bank legal entity.*

*(2) Primarily represents losses on certain securities deemed to be other-than-temporarily impaired.*

*(3) Primarily represents principal paydowns and sales.*

The continued adverse market environment and its potential impact on the financial condition of issuers could result in further other-than-temporary impairments in our U.S. banks investment securities portfolio in the fourth quarter of 2008.

*Commercial Real Estate*

As of September 26, 2008, net exposures related to commercial real estate, excluding First Republic, totaled approximately $12.8 billion, down 14% from June 27, 2008, due primarily to asset sales, particularly for whole loan/conduit exposures in the U.S. and Europe. Net exposures related to First Republic Bank were $2.9 billion at the end of the third quarter, up 10% from the second quarter primarily due to new originations.

The following table provides a summary of our Commercial Real Estate portfolio net exposures and losses.

*(dollars in millions)*

| | Net Exposures as of Jun. 27, 2008 | Net Gains/(Losses) Reported in Income | Other Net Changes in Net Exposures(1) | Net Exposures as of Sep. 26, 2008 | 3Q08 vs. 2Q08 Percent Inc/(Dec) |
|---|---|---|---|---|---|
| **Commercial Real Estate:** | | | | | |
| Whole Loans/Conduits | $ 7,872 | $(838) | $ (906) | $ 6,128 | (22)% |
| Securities and Derivatives | 575 | (10) | (10) | 555 | (3)% |
| Real Estate Investments(2) | 6,454 | (6) | (312) | 6,136 | (5)% |
| **Total Commercial Real Estate, excluding First Republic Bank** | $14,901 | $(854) | $(1,228) | $12,819 | (14)% |
| **First Republic Bank** | $ 2,670 | $ 22 | $ 241 | $ 2,933 | 10% |

*(1) Primarily represents sales, paydowns and foreign exchange revaluations.*

*(2) We make equity and debt investments in entities whose underlying assets are real estate. We consolidate those entities in which we are the primary beneficiary in accordance with FIN 46(R), Consolidation of Variable Interest Entities (revised December 2003) — an interpretation of ARB No. 51. We do not have economic exposure to the total underlying assets in those entities. The amounts presented are our net investments and therefore exclude the amounts that have been consolidated but for which we do not have economic exposure.*

## Business Segments

Our operations are organized into two business segments: GMI and GWM. We also record revenues and expenses within a “Corporate” category. Corporate results primarily include gains and losses related to ineffective interest rate hedges on certain qualifying debt, and the impact of certain hybrid financing instruments accounted for under SFAS No. 159. In addition, Corporate results for three- and nine-month periods ended September 26, 2008 included expenses of $2.5 billion related to the payment to Temasek and $425 million associated with the ARS repurchase program and the associated settlement with regulators. Net revenues and pre-tax losses recorded within Corporate for the third quarter of 2008 were negative $56 million and $3.0 billion, respectively, as compared with net revenues and pre-tax earnings of $20 million and $21 million, respectively, in the prior year period.

Net revenues and pre-tax losses recorded within Corporate for the nine months ended September 26, 2008 were negative $187 million and $3.1 billion, as compared with negative net revenues of $149 million and pre-tax losses of $159 million in the prior year period. The increase in the pre-tax losses in 2008 was primarily attributable to the Temasek payment and the ARS expense recorded in the third quarter of 2008.

The following segment results represent the information that is relied upon by management in its decision-making processes. Revenues and expenses associated with inter-segment activities are recognized in each segment. In addition, revenue and expense sharing agreements for joint activities between segments are in place, and the results of each segment reflect their agreed-upon apportionment of revenues and expenses associated with these activities. See Note 2 of the 2007 Annual Report for further information. Segment results are presented from continuing operations and exclude results from discontinued operations. Refer to Note 15 to the Condensed Consolidated Financial Statements for additional information on discontinued operations.

## *Global Markets and Investment Banking*

### GMI Results of Operations

*(dollars in millions)*

| | For the Three Months Ended | | | For the Nine Months Ended | | |
|---|---|---|---|---|---|---|
| | Sept. 26, 2008 | Sept. 28, 2007 | % Change | Sept. 26, 2008 | Sept. 28, 2007 | % Change |
| Global Markets | | | | | | |
| FICC | $(9,943) | $(5,764) | N/M | $(21,389) | $ (718) | N/M |
| Equity Markets | 6,030 | 1,581 | 281 | 9,640 | 6,115 | 58 |
| Total Global Markets revenues, net of interest expense | (3,913) | (4,183) | N/M | (11,749) | 5,397 | N/M |
| Investment Banking | | | | | | |
| Origination: | | | | | | |
| Debt | 182 | 276 | (34) | 780 | 1,333 | (41) |
| Equity | 214 | 344 | (38) | 751 | 1,254 | (40) |
| Strategic Advisory Services | 354 | 385 | (8) | 1,046 | 1,181 | (11) |
| Total Investment Banking revenues, net of interest expense | 750 | 1,005 | (25) | 2,577 | 3,768 | (32) |
| **Total GMI revenues, net of interest expense** | (3,163) | (3,178) | N/M | (9,172) | 9,165 | N/M |
| Non-interest expenses, before restructuring charge | 2,833 | 1,434 | 98 | 9,119 | 9,633 | (5) |
| Restructuring charge | 18 | - | N/M | 329 | - | N/M |
| **Pre-tax (loss)/earnings from continuing operations** | $(6,014) | $(4,612) | N/M | $(18,620) | $ (468) | N/M |
| Pre-tax (loss)/earnings from continuing operations, before restructuring charge | $(5,996) | $(4,612) | N/M | $(18,291) | $ (468) | N/M |

*N/M = Not Meaningful*

GMI recorded negative net revenues and a pre-tax loss from continuing operations for the third quarter of 2008 of $3.2 billion and $6.0 billion, respectively, as challenging market conditions, particularly in September, resulted in net losses in FICC and lower revenues in Investment Banking, offset by significantly higher net revenues in Equity Markets, resulting from the gain on sale of our Bloomberg investment. GMI's third quarter net revenues included a net gain of $2.8 billion due to the impact of the widening of Merrill Lynch's credit spreads on the carrying value of certain of our long-term debt liabilities.

For the first nine months of 2008, GMI recorded a pre-tax loss of $18.6 billion on net revenues of negative $9.2 billion, due primarily to net losses in FICC that were partially offset by revenues in Equity Markets and Investment Banking. Excluding the impact of the $329 million restructuring charge, GMI's pre-tax loss for the first nine months of 2008 was $18.3 billion. GMI recorded a net gain of approximately $5.0 billion during the first nine months of 2008 due to the impact of the widening of Merrill Lynch's credit spreads on the carrying value of certain of our long-term debt liabilities.

*Fixed Income, Currencies and Commodities (FICC)*

FICC net revenues include principal transactions and net interest profit (which we believe should be viewed in the aggregate to assess trading results), commissions, revenues from principal investments and other revenues.

During the third quarter of 2008, FICC net revenues were negative $9.9 billion. FICC recorded significant losses as a result of severe market dislocations in September which included the default of a major U.S. broker-dealer and conservatorship of certain GSEs. FICC recorded net losses of approximately $4.8 billion primarily related to the previously announced sale of U.S. super senior ABS CDOs. In addition, as a result of the deteriorating environment for financial guarantors, FICC also recorded losses of $1.3 billion related to the termination and potential settlement of monoline hedges. FICC net revenues were also impacted by net losses related to our U.S. banks investment securities portfolio of $852 million and certain of our U.S. sub-prime, U.S. Alt-A and Non-U.S. residential mortgage-related exposures aggregating approximately $2.2 billion. FICC also recognized net write-downs related to our leveraged finance commitments of approximately $546 million and net losses of $2.1 billion related to major U.S. broker-dealers and certain GSEs. In addition, net revenues for most other FICC businesses declined from the third quarter of 2007, as the environment for those businesses was materially worse than the year-ago quarter. Partially offsetting these declines was a net gain of approximately $2.0 billion related to the impact of the widening of our credit spreads on the carrying value of certain of our long-term debt liabilities.

For the first nine months of 2008, FICC net revenues were negative $21.4 billion as strong revenues from rates and currencies were more than offset by: net losses related to U.S. super senior ABS CDOs of $9.8 billion; credit valuation adjustments related to hedges with financial guarantors of $7.2 billion; net losses related to the investment securities portfolio of Merrill Lynch's U.S. banks of $2.9 billion; net losses related to certain residential mortgage exposures of $4.3 billion; net losses of $2.1 billion related to major U.S. broker-dealers and certain GSEs; and net write-downs related to leveraged finance commitments of $1.8 billion. FICC's first nine months of 2008 net revenues also included a net gain of approximately $3.4 billion related to the impact of the widening of our credit spreads on the carrying value of certain of our long-term debt liabilities. For the first nine months of 2008, our rates and currencies businesses achieved record revenues, up 27% from the prior-year period, benefiting from strong client flows in interest rate swaps and options and increases in both market and interest rate volatility. Most other FICC businesses declined from the first nine months of 2007, as the environment for those businesses was materially worse than the year-ago period.

*Equity Markets*

Equity Markets net revenues include commissions, principal transaction revenues and net interest profit (which we believe should be viewed in the aggregate to assess trading results), revenues from certain equity method investments, changes in the fair value of private equity investments and other revenues.

Equity Markets net revenues for the third quarter of 2008, which included the gain on sale of our Bloomberg investment and a net gain related to changes in the carrying value of certain of our long-term debt liabilities, were $6.0 billion compared with $1.6 billion in the prior-year period. Global equity-linked products revenues increased approximately 14% from the prior-year period, driven by increased trading activity and heightened market volatility. These increases were more than offset by declines from the cash equities business, which experienced adverse market conditions, as well as from global markets financing and services, which experienced declines in average balances, particularly in September. Net losses from the private equity business were $289 million compared with net losses of $61 million for the prior-year quarter, primarily due to decreases in the fair value of certain non-public investments in its private equity investment portfolio. Equity Markets net revenues for the third quarter of 2008 also included a net gain of approximately $830 million related to the impact of the widening of our credit spreads on the carrying value of certain of our long-term debt liabilities.

For the first nine months of 2008, Equity Markets net revenues were $9.6 billion, up 58% from the year-ago period, primarily due to the $4.3 billion net gain from the Bloomberg sale. Net revenues from the private equity business and equity-linked trading decreased but were partially offset by higher revenues from global markets financing and services. Equity Markets net revenues for the first nine months of 2008 included a net gain of approximately $1.5 billion related to the impact of the widening of our credit spreads on the carrying value of certain of our long-term debt liabilities.

### *Investment Banking*

Investment Banking net revenues for the third quarter of 2008 were $750 million, down 25% from the year-ago quarter due to lower net revenues from debt and equity origination activities and strategic advisory services, reflecting significantly lower industry-wide underwriting and deal volumes compared with the year-ago period.

For the first nine months of 2008, Investment Banking net revenues were $2.6 billion, down 32% from $3.8 billion in the prior-year period, primarily driven by lower deal volumes across all product lines.

#### *Origination*

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

Origination net revenues in the third quarter of 2008 were $396 million, down 36% from the year-ago quarter. Debt origination revenues were down 34% from the year-ago quarter, primarily due to decreased activity levels for leveraged finance, high-grade debt and preferred stock issuances. Equity origination net revenues were down 38% from the prior-year period, resulting from lower transaction volumes.

For the first nine months of 2008, origination revenues were $1.5 billion, down 41% from the year-ago period. Debt and equity originations were down 41% and 40%, respectively, compared with the first nine months of 2007 primarily reflecting lower transaction volumes in the first nine months of 2008.

#### *Strategic Advisory Services*

Strategic advisory services net revenues, which include merger and acquisition and other advisory fees, were $354 million in the third quarter of 2008, a decrease of 8% from the year-ago quarter. Year-to-date strategic advisory services revenues decreased 11% from the year-ago period, to $1.0 billion. The decrease in quarterly and year-to-date revenues was primarily due to lower industry-wide transaction activity.

For additional information on GMI's segment results, refer to Note 2 to the Condensed Consolidated Financial Statements.

## GWM Results of Operations

*(dollars in millions)*

| | For the Three Months Ended | | | For the Nine Months Ended | | |
|---|---|---|---|---|---|---|
| | Sept. 26, 2008 | Sept. 28, 2007 | % Change | Sept. 26, 2008 | Sept. 28, 2007 | % Change |
| GPC | | | | | | |
| Fee-based revenues | $ 1,568 | $ 1,605 | (2) | $ 4,784 | $ 4,622 | 4 |
| Transactional and origination revenues | 729 | 989 | (26) | 2,552 | 2,915 | (12) |
| Net interest profit and related hedges(1) | 587 | 584 | 1 | 1,829 | 1,753 | 4 |
| Other revenues | 110 | 90 | 22 | 295 | 300 | (2) |
| Total GPC revenues, net of interest expense | 2,994 | 3,268 | (8) | 9,460 | 9,590 | (1) |
| GIM | | | | | | |
| Total GIM revenues, net of interest expense | 241 | 270 | (11) | 733 | 836 | (12) |
| Total GWM revenues, net of interest expense | 3,235 | 3,538 | (9) | 10,193 | 10,426 | (2) |
| Non-interest expenses, before restructuring charge | 2,461 | 2,585 | (5) | 7,961 | 7,710 | 3 |
| Restructuring charge | 21 | - | N/M | 155 | - | N/M |
| Pre-tax earnings from continuing operations | $ 753 | $ 953 | (21) | $ 2,077 | $ 2,716 | (24) |
| Pre-tax earnings from continuing operations, before restructuring charge | $ 774 | $ 953 | (19) | $ 2,232 | $ 2,716 | (18) |
| Pre-tax profit margin | 23.3% | 26.9% | | 20.4% | 26.1% | |
| Pre-tax profit margin, before restructuring charge | 23.9% | 26.9% | | 21.9% | 26.1% | |
| Total Financial Advisors | 16,850 | 16,610 | | 16,850 | 16,610 | |

*N/M = Not Meaningful*

*(1) Includes the interest component of non-qualifying derivatives, which are included in other revenues on the Condensed Consolidated Statements of (Loss)/Earnings.*

GWM generated net revenues of $3.2 billion for the third quarter of 2008, down 9% from the strong third quarter of 2007, primarily due to declines in transactional and origination revenues. The revenue decline was partially offset by a net gain of approximately $44 million related to the impact of the widening of our credit spreads on the carrying value of certain of our long-term debt liabilities. GWM's third quarter 2008 pre-tax earnings of $753 million were down 21% from the prior-year period while the pre-tax profit margin was 23.3%, down from 26.9% in the prior-year period. Excluding the impact of the $21 million restructuring charge recorded by GWM in the third quarter of 2008, GWM's third quarter 2008 pre-tax earnings of $774 million were down 19% from the year-ago quarter. On the same basis, the pre-tax profit margin was 23.9%, compared with 26.9% in the year-ago quarter.

For the first nine months of 2008, GWM's net revenues were $10.2 billion, down 2% from the prior-year period. GWM recorded pre-tax earnings of $2.1 billion, down 24% from the year-ago period, primarily due to higher non-interest expenses, including the restructuring charge. The revenue decline was partially offset by a net gain of approximately $66 million related to the impact of the widening of our credit spreads on the carrying value of certain of our long-term debt liabilities. The pre-tax profit margin was 20.4%, down from 26.1% in the prior-year period. Excluding the impact of the restructuring charge, pre-tax earnings were $2.2 billion, down 18% from the year-ago period. On the same basis, the pre-tax profit margin was 21.9%, down from 26.1% in the prior-year period.

### *Global Private Client*

GPC's third quarter 2008 net revenues were $3.0 billion, down 8% from the year-ago period, driven by lower transactional and origination revenues, resulting from reduced client and origination activity in a challenging market environment. For the first nine months of 2008, GPC's net revenues decreased to $9.5 billion from $9.6 billion in the year-ago quarter.

Financial Advisor headcount was 16,850 at the end of the third quarter of 2008, an increase of 160 FAs during the quarter and 240 from the third quarter of 2007, as GWM continued to successfully execute its strategy for recruiting and training high-quality FAs.

A detailed discussion of GPC's revenues follows:

*Fee-Based Revenues*

Fee-based revenues primarily consist of portfolio service fees that are derived from accounts that charge an annual fee based on net asset value (generally billed quarterly in advance based on beginning of quarter asset values), such as Merrill Lynch Consults®, a separately managed account product. Fee-based revenues also include commissions related to distribution fees on mutual funds, asset-based commissions from insurance products and taxable and tax-exempt money market funds, and fixed annual account fees and other account-related fees. These commissions are included in commissions revenues on the Condensed Consolidated Statements of (Loss)/Earnings.

GPC's fee-based revenues were $1.6 billion in the third quarter of 2008, down 2% from the year-ago quarter, primarily due to lower asset levels in annuitized fee-based products resulting from market declines. On a year-to-date basis fee based revenues increased 4% from the year-ago period to $4.8 billion, partially due to the inclusion of fee-based accounts from First Republic as well as higher fees across various fee-based products.

The value of client assets in GWM accounts at September 26, 2008 and December 28, 2007 were as follows:

*(dollars in billions)*

| | As of Sept. 26, 2008 | As of Dec. 28, 2007 |
|---|---|---|
| Assets in client accounts | | |
| U.S | $1,333 | $1,586 |
| Non — U.S | 142 | 165 |
| Total | $1,475 | $1,751 |
| Assets in annuitized-revenue products | $ 580 | $ 655 |

GWM's net inflows of client assets into annuitized-revenue products were $2 billion for the third quarter of 2008 and $21 billion for the first nine months of 2008. Total net new money was negative $3 billion for the third quarter of 2008 and negative $2 billion for the first nine months of 2008. Total net new money during the third quarter of 2008 was adversely affected by client reaction to persistent volatility and significantly negative market movements during the quarter. Total client assets in GWM accounts were $1.5 trillion, down from $1.8 trillion at year-end. Assets in annuitized-revenue products ended the quarter at $580 billion, down from $655 billion at year-end. The decrease in total client assets and assets in annuitized-revenue products in GWM accounts during the first nine months of 2008 was primarily due to market depreciation.

*Transactional and Origination Revenues*

Transactional and origination revenues include certain commission revenues, such as those that arise from agency transactions in listed and OTC equity securities, mutual funds, and insurance products. These revenues also include principal transactions, which primarily represent bid-offer revenues on government bonds and municipal securities, as well as new issue revenues, which include selling concessions on newly issued debt and equity securities, including shares of closed-end funds.

Transactional and origination revenues were $729 million in the third quarter of 2008, down 26% from the year-ago quarter due to lower client transaction and origination volumes amidst increasingly challenging market conditions. Year-to-date transaction and origination revenues were $2.6 billion, down 12% from the year-ago period, also primarily due to decreased client transaction and origination activity in a challenging business environment.

*Net Interest Profit and Related Hedges*

Net interest profit (interest revenues less interest expenses) and related hedges include GPC's allocation of the interest spread earned in our banking subsidiaries for deposits, as well as interest earned, net of provisions for loan losses, on securities-based loans, mortgages, small- and middle-market business and other loans, corporate funding allocations, and the interest component of non-qualifying derivatives.

GPC's net interest profit and related hedges were $587 million in the third quarter of 2008, up from $584 million in the year-ago quarter. On a year-to-date basis, GPC's net interest profit and related hedge revenues were up 4% to $1.8 billion. This increase reflects higher net interest revenue from deposits and the inclusion of revenues from First Republic, which we acquired on September 21, 2007.

*Other Revenues*

GPC's other revenues were $110 million in the third quarter of 2008, up 22% from the year-ago quarter, primarily due to the impact of the widening of our credit spreads on the carrying value of certain of our long-term debt liabilities. For the first nine months of 2008, other revenues were down 2% to $295 million, primarily due to foreign exchange transaction losses, lower gains on sales of mortgages and markdowns on certain alternative investments.

***Global Investment Management***

GIM includes revenues from the creation and management of hedge fund and other alternative investment products for clients, as well as our share of net earnings from our ownership positions in other investment management companies, including BlackRock. Under the equity method of accounting, an estimate of the net earnings associated with our approximately 50% economic ownership interest in BlackRock is recorded in the GIM portion of the GWM segment.

GIM's third quarter 2008 revenues of $241 million were down 11% from the year-ago quarter. For the first nine months of 2008, GIM's revenues were $733 million, down 12% from the year-ago period.

The decreases in both periods were primarily due to lower revenues from our investment in BlackRock and certain alternative investment management companies.

## GEOGRAPHIC INFORMATION

Our operations are organized into five regions which include: the United States; Europe, Middle East, and Africa ("EMEA"); Pacific Rim; Latin America; and Canada. Revenues and expenses are generally recorded based on the location of the employee generating the revenue or incurring the expense without regard to legal entity. The information that follows, in management's judgment, provides a reasonable representation of each region's contribution to the consolidated revenues, net of interest expense:

*(dollars in millions)*

| | For the Three Months Ended | | | For the Nine Months Ended | | |
|---|---|---|---|---|---|---|
| | **Sept. 26, 2008** | **Sept. 28, 2007** | **% Change** | **Sept. 26, 2008** | **Sept. 28, 2007** | **% Change** |
| **Revenues, net of interest expense** | | | | | | |
| Europe, Middle East, and Africa | $(1,339) | $ 1,233 | N/M% | $ 1,061 | $ 5,454 | (81)% |
| Pacific Rim | 311 | 1,481 | (79) | 1,858 | 4,160 | (55) |
| Latin America | 325 | 378 | (14) | 1,191 | 1,128 | 6 |
| Canada | 22 | 77 | (71) | 155 | 369 | (58) |
| Total Non-U.S | (681) | 3,169 | N/M | 4,265 | 11,111 | (62) |
| United States(1)(2)(3) | 697 | (2,789) | N/M | (3,431) | 8,331 | N/M |
| Total | $ 16 | $ 380 | N/M | $ 834 | $19,442 | N/M |

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

*(2) U.S. net revenues for the three and nine months ended September 26, 2008 include net losses of $10.2 billion and $26.1 billion, respectively, related to U.S. ABS CDOs, credit valuation adjustments related to hedges with financial guarantors, losses in the investment portfolio of Merrill Lynch's U.S. banks, losses from other residential mortgage exposures, and losses from commercial real estate exposures. Losses for the three and nine months ended September 26, 2008 were partially offset by gains of $2.8 and $5.0 billion, respectively, that resulted from the widening of Merrill Lynch's credit spreads on the carrying value of certain of our long-term debt liabilities, and a $4.3 billion net gain related to the sale of our ownership stake in Bloomberg L.P.*

*(3) U.S. net revenues for the three and nine months ended September 28, 2007 include net losses of $7.9 billion related to U.S. sub-prime residential mortgage-related securities and U.S. ABS CDOs.*

Non-U.S. net revenues in the 2008 third quarter decreased to negative $681 million, down from $3.2 billion in the prior year period, reflecting decreases across all regions and all businesses. For GWM, non-U.S. net revenues decreased 13% from the 2007 third quarter and represented 11% of the total GWM net revenues.

Net revenues in EMEA were negative $1.3 billion in the 2008 third quarter, compared to $1.2 billion in the 2007 third quarter. The decrease from the prior year quarter was driven by lower net revenues from GMI, mainly within our FICC business primarily driven by decreases from our global mortgage, commercial real estate, structured finance and investment activities, which were partially offset by an increase in global rates and currencies. GWM net revenues decreased 12% in the 2008 third quarter as compared with the prior year quarter.

Net revenues in the Pacific Rim were $311 million in the 2008 third quarter, a decrease of 79% from the 2007 third quarter. These results reflected decreases across multiple businesses and activities within GMI. Lower net revenues in FICC were primarily driven by decreases in our credit and rates and currency activities. In Equity Markets, lower net revenues were primarily driven by decreases from cash and equity linked products, while in Investment Banking, lower net revenues were driven by decreases in debt origination and global leveraged finance activities. GWM net revenues decreased $29 million, or 24%, as compared with the prior year quarter.

Net revenues in Latin America decreased 14% in the 2008 third quarter. The decrease from the prior year quarter was driven by lower net revenues from GMI, mainly within our Investment Banking business. Within Investment Banking, lower net revenues were driven by decreased debt and equity origination activities. GWM net revenues decreased 5% in the 2008 third quarter as compared with the prior year quarter.

Net revenues in Canada decreased 71% in the 2008 third quarter, primarily due to lower net revenues from our FICC and Equity Markets businesses within GMI. Within FICC, lower net revenues were driven by our global rates and currency and commercial real estate activities, while the lower net revenues in our Equity Markets business were driven by decreases in equity-linked and cash trading activities.

For the nine months ended September 26, 2008, non-U.S. net revenues decreased to $4.3 billion, down 62% from the first nine months of 2007. We experienced lower net revenues in all non-U.S. regions as compared with the first nine months of 2007, except for Latin America, which increased 6%. Lower net revenues in EMEA, the Pacific Rim and Canada primarily reflected decreases across multiple businesses and activities within GMI, and include approximately $3.0 billion of losses related to residential mortgage exposures. Within GMI, lower net revenues in FICC were driven by decreases in our global mortgage, commercial real estate, structured finance and credit activities, which were partially offset by increases in our global rates and currency and commodities activities. In Equity Markets, lower net revenues were driven primarily by our equity linked and cash equities trading activities. In the Investment Banking business, lower net revenues were driven by decreases in leveraged finance and equity origination activities. For GWM, net revenues remained relatively unchanged as compared to the first nine months of 2007.

U.S. net revenues were $697 million in the third quarter 2008, up from negative $2.8 billion in the third quarter 2007. The increase was mainly driven by the net gain of $4.3 billion on the sale of our 20% ownership stake in Bloomberg and the impact of the widening of credit spreads on the carrying value of certain of our long-term liabilities, partially offset by lower net revenues in FICC of $2.5 billion. See the GMI results of operations section for further information. For GWM, net revenues decreased 10% from the 2007 third quarter, primarily reflecting lower transactional and origination revenues resulting from reduced client and issuer activity amidst increasingly challenging market conditions.

For the nine months ended September 26, 2008, U.S. net revenues were negative $3.4 billion compared with net revenues of $8.3 billion in the prior year period. The decreases from the prior year period were mainly driven by lower net revenues across multiple businesses and activities within GMI, specifically FICC and Investment Banking. See the GMI results of operations section for further information. For GWM, net revenues decreased 2% from the first nine months of 2007.

We continuously monitor and evaluate the size and composition of the Condensed Consolidated Balance Sheet. The following table summarizes the balance sheets as of September 26, 2008 and December 28, 2007:

*(dollars in millions)*

| | Sept. 26, 2008 | 2008 Nine Month Average(1) | Dec. 28, 2007 | 2007 Average(1) |
|---|---|---|---|---|
| **Assets** | | | | |
| **Trading-Related** | | | | |
| Securities financing assets | $311,716 | $ 419,516 | $ 400,002 | $ 490,729 |
| Trading assets | 189,358 | 243,851 | 234,669 | 254,421 |
| Other trading-related receivables | 119,136 | 110,242 | 95,753 | 93,556 |
| | 620,210 | 773,609 | 730,424 | 838,706 |
| **Non-Trading-Related** | | | | |
| Cash and cash equivalents | 59,207 | 74,650 | 64,345 | 54,068 |
| Investment securities | 72,182 | 76,701 | 82,532 | 85,982 |
| Loans, notes, and mortgages, net | 75,737 | 80,024 | 94,992 | 81,704 |
| Other non-trading assets | 48,444 | 44,890 | 47,757 | 52,150 |
| | 255,570 | 276,265 | 289,626 | 273,904 |
| **Total assets** | $875,780 | $1,049,874 | $1,020,050 | $1,112,610 |
| **Liabilities Trading-Related** | | | | |
| Securities financing liabilities | $264,897 | $ 378,386 | $ 336,876 | $ 459,827 |
| Trading liabilities | 86,745 | 144,009 | 123,588 | 146,073 |
| Other trading-related payables | 99,978 | 106,092 | 91,550 | 107,198 |
| | 451,620 | 628,487 | 552,014 | 713,098 |
| **Non-Trading-Related** | | | | |
| Short-term borrowings | 25,693 | 16,753 | 24,914 | 20,231 |
| Deposits | 90,001 | 101,088 | 103,987 | 88,319 |
| Long-term borrowings | 227,326 | 243,611 | 260,973 | 211,118 |
| Junior subordinated notes (related to trust preferred securities) | 5,202 | 5,179 | 5,154 | 4,263 |
| Other non-trading liabilities | 37,583 | 17,593 | 41,076 | 36,180 |
| | 385,805 | 384,224 | 436,104 | 360,111 |
| **Total liabilities** | 837,425 | 1,012,711 | 988,118 | 1,073,209 |
| **Total stockholders' equity** | 38,355 | 37,163 | 31,932 | 39,401 |
| **Total liabilities and stockholders' equity** | $875,780 | $1,049,874 | $1,020,050 | $1,112,610 |

*(1) Averages represent our 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 26, 2008 were $876 billion, a decrease of $144 billion from December 28, 2007. The decrease in total assets was primarily due to a decrease in securities financing assets, trading assets, investment securities and loans, notes and mortgages, which was driven by our efforts to reduce the size of our balance sheet and lower the risk profile of our assets. In addition, the decrease in loans, notes and mortgages was primarily due to the sale of Merrill Lynch Capital, which was completed in February 2008.

## Off-Balance Sheet Exposures

As a part of our normal operations, we enter into various off-balance sheet arrangements that may require future payments. The table below outlines our significant off-balance sheet arrangements, as well as the future expirations, as of September 26, 2008:

*(dollars in millions)*

| | | Expiration | | | |
|---|---|---|---|---|---|
| | Total | Less than 1 Year | 1 - 3 Years | $3^{+}$ - 5 Years | Over 5 Years |
| Standby liquidity facilities | $13,328 | $9,813 | $ - | $3,494 | $ 21 |
| Residual value guarantees | 844 | 104 | 323 | 303 | 114 |
| Standby letters of credit and other guarantees | 43,290 | 1,510 | 1,620 | 810 | 39,350 |
| Auction rate security guarantees | 9,970 | 9,970 | - | - | - |

### Standby Liquidity Facilities

We provide guarantees to special purpose entities ("SPEs") in the form of standby liquidity facilities. These facilities relate primarily to municipal bond securitization SPEs, whose assets are comprised of municipal bonds. To protect against declines in value of the assets held by the SPEs for which we provide these facilities, we may economically hedge our exposure through derivative positions that principally offset the risk of loss of these facilities. See Notes 6 and 11 to the Condensed Consolidated Financial Statements for further information.

### Residual Value Guarantees

Residual value guarantees are primarily related to leasing SPEs where either Merrill Lynch or a third-party is the lessee, and includes residual value guarantees associated with our Hopewell, NJ campus and aircraft leases of $322 million. At September 26, 2008, a liability of $10 million was recorded on the Condensed Consolidated Balance Sheet for these guarantees.

### Standby Letters of Credit

We also make guarantees to counterparties in the form of standby letters of credit. At September 26, 2008, we held $462 million of marketable securities as collateral to secure these guarantees and a liability of $10 million was recorded on the Condensed Consolidated Balance Sheet.

### Other Guarantees

In conjunction with certain structured investment funds, we guarantee 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 event. At September 26, 2008, a liability of $6 million was recorded on the Condensed Consolidated Balance Sheet for these guarantees.

We also provide indemnifications related to the U.S. tax treatment of certain foreign tax planning transactions. The maximum exposure to loss associated with these transactions is $167 million; however, we believe that the likelihood of loss with respect to these arrangements is remote. At September 26, 2008, no liabilities were recorded on the Condensed Consolidated Balance Sheet for these guarantees.

In connection with residential mortgage loan and other securitization transactions, we typically make representations and warranties about the underlying assets. If there is a material breach of any such representation or warranty, we may have an obligation to repurchase assets or indemnify the purchaser against any loss. For residential mortgage loan and other securitizations, the maximum potential amount that could be required to be repurchased is the current outstanding asset balance. Specifically related to First Franklin activities, there is currently approximately $39 billion (including loans serviced by others) of outstanding loans that First Franklin sold in various asset sales and securitization transactions where management believes we may have an obligation to repurchase the asset or indemnify the purchaser against the loss if claims are made and it is ultimately determined that there has been a material breach related to such loans. We have recognized a repurchase reserve liability of approximately $560 million at September 26, 2008 arising from these First Franklin residential mortgage sales and securitization transactions.

**Auction Rate Security Guarantees**

Under the terms of its announced purchase program as augmented by the global agreement reached with the New York Attorney General, the Securities and Exchange Commission, the Massachusetts Securities Division and other state securities regulators, Merrill Lynch agreed to purchase at par auction rate securities, or ARS, from its retail clients, including individual, not-for-profit, and small business clients. Certain retail clients with less than $4 million in assets with Merrill Lynch as of February 13, 2008 were eligible to sell eligible ARS to Merrill Lynch starting on October 1, 2008. Other eligible retail clients meeting specified asset requirements may sell eligible ARS to Merrill Lynch beginning on January 2, 2009. The final date of the ARS purchase program is January 15, 2010. Under the ARS purchase program, the eligible ARS held in accounts of eligible retail clients at Merrill Lynch as of September 26, 2008 was $10.0 billion. As of October 31, 2008 Merrill Lynch had purchased $2.75 billion of ARS from eligible clients. In addition, under the ARS purchase program, Merrill Lynch has agreed to purchase ARS from retail clients who purchased their securities from the Company and transferred their accounts to other brokers prior to February 13, 2008. At September 26, 2008, a liability of $300 million has been recorded for the Company's estimated exposure related to these ARS commitments.

**Derivatives**

We record all derivative transactions at fair value on our Condensed Consolidated Balance Sheets. We do not monitor our exposure to derivatives based on the theoretical maximum payout (notional value) because that measure does not take into consideration the probability of the occurrence. Additionally, the notional value is not a relevant indicator of our exposure to these contracts, as it is not indicative of the amount that we would owe on the contract. Instead, a risk framework is used to define risk tolerances and establish limits to help to ensure that certain risk-related losses occur within acceptable, predefined limits. Since derivatives are recorded on the Condensed Consolidated Balance Sheets at fair value and the disclosure of the notional amounts is not a relevant indicator of risk, notional amounts are not provided for the off-balance sheet exposure on derivatives. Derivatives that meet the definition of a guarantee under FIN 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indebtedness of Others*, are included in Note 11 to the Condensed Consolidated Financial Statements.

We also fund selected assets, including CDOs and Collateralized Loan Obligations ("CLOs"), via derivative contracts with third-party structures, the majority of which are not consolidated on our balance sheets. Of the total notional amount of these total return swaps, approximately $9 billion is term financed through facilities provided by commercial banks, $19 billion is financed by long term funding provided by third party special purpose vehicles, and $1 billion is financed with asset-backed commercial paper conduits. In certain circumstances, we may be required to purchase these assets, which would not result in additional gain or loss to us as such exposure is already reflected in the fair value of our derivative contracts.

In order to facilitate client demand for structured credit products, we sell protection on high-grade collateral to, and buy protection on lesser grade collateral from, certain SPEs, which then issue structured credit notes.

Acting in our market making capacity, we enter into other derivatives with SPEs, both Merrill Lynch and third party sponsored, including interest rate swaps, credit default swaps and other derivative instruments.

*Involvement with SPEs*

We transact with SPEs in a variety of capacities, including those that we help establish as well as those initially established by third parties. Our involvement with SPEs can vary and, depending upon the accounting definition of the SPE (i.e., voting rights entity ("VRE"), variable interest entity ("VIE") or qualified special purpose entity ("QSPE")), we may be required to reassess prior consolidation and disclosure conclusions. An interest in a VRE requires reconsideration when our equity interest or management influence changes, an interest in a VIE requires reconsideration when an event occurs that was not originally contemplated (e.g., a purchase of the SPE's assets or liabilities), and an interest in a QSPE requires reconsideration if the entity no longer meets the definition of a QSPE. Refer to Note 1 to the Condensed Consolidated Financial Statements for a discussion of our consolidation accounting policies. Types of SPEs with which we transact include:

- **Municipal bond securitization SPEs:** SPEs that issue medium-term paper, purchase municipal bonds as collateral and purchase a guarantee to enhance the creditworthiness of the collateral.

- **Asset-backed securities SPEs:** SPEs that issue different classes of debt, from super senior to subordinated, and equity and purchase assets as collateral, including residential mortgages, commercial mortgages, auto leases and credit card receivables.

- **ABS CDOs:** SPEs that issue different classes of debt, from super senior to subordinated, and equity and purchase asset-backed securities collateralized by residential mortgages, commercial mortgages, auto leases and credit card receivables.

- **Synthetic CDOs:** SPEs that issue different classes of debt, from super senior to subordinated, and equity, purchase high-grade assets as collateral and enter into a portfolio of credit default swaps to synthetically create the credit risk of the issued debt.

- **Credit-linked note SPEs:** SPEs that issue notes linked to the credit risk of a company, purchase high-grade assets as collateral and enter into credit default swaps to synthetically create the credit risk to pay the return on the notes.

- **Tax planning SPEs:** SPEs are sometimes used to legally isolate transactions for the purpose of obtaining a particular tax treatment for our clients as well as ourselves. The assets and capital structure of these entities vary for each structure.

- **Trust preferred security SPEs:** These SPEs hold junior subordinated debt issued by ML & Co. or our subsidiaries, and issue preferred stock on substantially the same terms as the junior subordinated debt to third party investors. We also provide a parent guarantee, on a junior subordinated basis, of the distributions and other payments on the preferred stock to the extent that the SPEs have funds legally available. The debt we issue into the SPE is classified as long-term borrowings on our Condensed Consolidated Balance Sheets. The ML & Co. parent guarantees of its own subsidiaries are not required to be recorded in the Condensed Consolidated Financial Statements.

- **Conduits:** Generally, entities that issue commercial paper and subordinated capital, purchase assets, and enter into total return swaps or repurchase agreements with higher-rated counterparties, particularly banks. The Conduits generally have a liquidity and/or credit facility to further enhance the credit quality of the commercial paper issuance. A single seller conduit will execute total return swaps, repurchase agreements, and liquidity and credit facilities with one financial institution. A multi-seller conduit will execute total return swaps, repurchase agreements, and liquidity and credit facilities with numerous financial institutions. Refer to Notes 6 and 11 to the Condensed Consolidated Financial Statements for additional information on Conduits.

Our involvement with SPEs includes off-balance sheet arrangements discussed above, as well as the following activities:

- **Holder of Issued Debt and Equity:** Merrill Lynch invests in debt of third party securitization vehicles that are SPEs and also invests in SPEs that we establish. In Merrill Lynch formed SPEs, we may be the holder of debt and equity of an SPE. These holdings will be classified as trading assets, loans, notes and mortgages or investment securities. Such holdings may change over time at our discretion and rarely are there contractual obligations that require us to purchase additional debt or equity interests. Significant obligations are disclosed in the off-balance sheet arrangements table above.

- **Warehousing of Loans and Securities:** Warehouse loans and securities represent amounts maintained on our balance sheet that are intended to be sold into a trust for the purposes of securitization. We may retain these loans and securities on our balance sheet for the benefit of a CDO managed by a third party. Warehoused loans are carried as held for sale and warehoused securities are carried as trading assets.

- **Securitizations:** In the normal course of business, we securitize: commercial and residential mortgage loans; municipal, government, and corporate bonds; and other types of financial assets. Securitizations involve the selling of assets to SPEs, which in turn issue debt and equity securities ("tranches") with those assets as collateral. We may retain interests in the securitized financial assets through holding tranches of the securitization. See Note 6 to the Condensed Consolidated Financial Statements.

- **Structured Investment Vehicles ("SIVs"):** SIVs are leveraged investment programs that purchase securities and issue asset-backed commercial paper and medium-term notes. These SPEs are characterized by low equity levels with partial liquidity support facilities and the assets are actively managed by the SIV investment manager. We have not been the sponsor or equity investor of any SIV, though we have acted as a commercial paper or medium-term note placement agent for various SIVs.

## Contractual Obligations

In the normal course of business, we enter into various contractual obligations that may require future cash payments. The accompanying table summarizes our contractual obligations by remaining maturity at September 26, 2008. Excluded from this table are obligations recorded on the Condensed Consolidated Balance Sheets that are: (i) generally short-term in nature, including securities financing transactions, trading liabilities, derivative contracts, commercial paper and other short-term borrowings and other payables; and (ii) deposits.

*(dollars in millions)*

| | | Expiration | | | |
|---|---|---|---|---|---|
| | Total | Less than 1 Year | 1 - 3 Years | $3^{+}$ - 5 Years | Over 5 Years |
| Long-term borrowings | $227,326 | $62,647 | $47,095 | $43,099 | $74,485 |
| Contractual interest payments(1) | 59,138 | 7,053 | 11,300 | 8,605 | 32,180 |
| Purchasing and other commitments | 8,768 | 3,692 | 1,224 | 1,250 | 2,602 |
| Junior subordinated notes (related to trust preferred securities) | 5,202 | - | - | - | 5,202 |
| Operating lease commitments | 3,831 | 653 | 1,213 | 955 | 1,010 |

*(1) Relates to estimates of future interest payments associated with long-term borrowings based upon applicable interest rates as of September 26, 2008. Includes stated coupons, if any, on structured notes.*

We issue U.S. dollar and non-U.S. dollar-denominated long-term borrowings with both variable and fixed interest rates, as part of our overall funding strategy. For further information on funding and long-term borrowings, see the Capital and Funding section below and Note 9 to the Condensed Consolidated Financial Statements. In the normal course of business, we enter into various noncancellable long-term operating lease agreements, various purchasing commitments, commitments to extend credit and other commitments. For detailed information regarding these commitments, see Note 11 to the Condensed Consolidated Financial Statements.

We had unrecognized tax benefits as of December 28, 2007 of approximately $1.5 billion in accordance with FIN 48. Of this total, approximately $1.2 billion (net of federal benefit of state issues, competent authority and foreign tax credit offsets) represented the amount of unrecognized tax benefits that, if recognized, would favorably affect the effective tax rate in future periods. As indicated in Note 14 of the 2007 Annual Report, unrecognized tax benefits with respect to the U.S. Tax Court case and the Japanese assessment, while paid, have been included in the $1.5 billion and the $1.2 billion amounts above. Due to the uncertainty of the amounts to be ultimately paid as well as the timing of such payments, all FIN 48 liabilities that have not been paid have been excluded from the Contractual Obligations table.

## Commitments

At September 26, 2008, our commitments had the following expirations:

*(dollars in millions)*

| | | Expiration | | | |
|---|---|---|---|---|---|
| | Total | Less than 1 Year | 1 - 3 Years | $3^{+}$ - 5 Years | Over 5 Years |
| Commitments to extend credit[1] | $56,298 | $18,056 | $13,397 | $18,639 | $6,206 |
| Commitments to enter into forward dated resale and securities borrowing agreements | 60,095 | 59,609 | 486 | - | - |
| Commitments to enter into forward dated repurchase and securities lending agreements | 48,014 | 47,941 | 73 | - | - |

*(1) See Note 7 and Note 11 to the Condensed Consolidated Financial Statements.*

## Capital and Funding

The primary objectives of our capital management and funding strategies are as follows:

- Maintain sufficient long-term capital to support the execution of our business strategies and to achieve our financial performance objectives;
- Ensure liquidity across market cycles and through periods of financial stress; and
- Comply with regulatory capital requirements.

During the third quarter of 2008, and particularly in September, the credit and equity markets continued to experience significant deterioration, as spreads across the financial services sector widened dramatically and equity valuations fell, significantly increasing the cost and decreasing the availability of both funding and capital. Amidst these challenging conditions, Merrill Lynch continued to actively and flexibly manage its capital and liquidity positions, including executing an asset sale and a common stock offering to generate equity capital, continuing to reduce the size and risk of its balance sheet, and taking a variety of actions to maintain significant excess liquidity.

### Long-Term Capital

Our long-term capital sources include equity capital, long-term borrowings and certain deposits in bank subsidiaries that we consider to be long-term or stable in nature.

At September 26, 2008 and December 28, 2007, total long-term capital consisted of the following:

*(dollars in millions)*

| | Sept. 26, 2008 | Dec. 28, 2007 |
|---|---|---|
| Common equity | $ 29,750 | $ 27,549 |
| Preferred stock | 8,605 | 4,383 |
| Trust preferred securities(1) | 4,773 | 4,725 |
| Equity capital | 43,128 | 36,657 |
| Subordinated long-term debt obligations | 12,725 | 10,887 |
| Senior long-term debt obligations(2) | 146,518 | 156,370 |
| Deposits(3) | 76,680 | 85,035 |
| Total long-term capital | $279,051 | $288,949 |

*(1) Represents junior subordinated notes (related to trust preferred securities), net of related investments. The related investments are reported as investment securities and were $429 million at September 26, 2008 and December 28, 2007, respectively.*

*(2) Excludes junior subordinated notes (related to trust preferred securities), the current portion of long-term borrowings and the long-term portion of other subsidiary financing that is non-recourse to or not guaranteed by ML & Co. Borrowings that mature in more than one year, but contain provisions whereby the holder has the option to redeem the obligations within one year, are reflected as the current portion of long-term borrowings and are not included in long-term capital.*

*(3) Includes $65,654 million and $11,026 million of deposits in U.S. and non-U.S. banking subsidiaries, respectively, at September 26, 2008, and $70,246 million and $14,789 million of deposits in U.S. and non-U.S. banking subsidiaries, respectively, at December 28, 2007 that we consider to be long-term based on our liquidity models.*

At September 26, 2008, our long-term capital sources of $279.1 billion exceeded our estimated long-term capital requirements. See Risk Management — Liquidity Risk for additional information.

**Equity Capital**

At September 26, 2008, equity capital, as defined by Merrill Lynch, was $43.1 billion, comprising $29.8 billion of common equity, $8.6 billion of preferred stock, and $4.8 billion of trust preferred securities. We define equity capital more broadly than stockholders' equity under U.S. generally accepted accounting principles, as we include other capital instruments with equity-like characteristics such as trust preferred securities. We view trust preferred securities as equity capital because they are either perpetual or have maturities of at least 50 years at issuance. These trust preferred securities represent junior subordinated notes, net of related investments. Junior subordinated notes (related to trust preferred securities) are reported on the Condensed Consolidated Balance Sheets as liabilities for accounting purposes. The related investments are reported as investment securities on the Condensed Consolidated Balance Sheets.

We regularly assess the adequacy of our equity capital base relative to the estimated risks and needs of our businesses, the regulatory and legal capital requirements of our subsidiaries, standards required by the SEC's consolidated supervised entity ("CSE") rules and capital adequacy methodologies of rating agencies. Although the SEC has rescinded the CSE program, we are still required to report under the CSE standards. At September 26, 2008 Merrill Lynch was in compliance with applicable CSE standards. Refer to "Consolidated Regulatory Capital Requirements" in this section and Note 14 to the Condensed Consolidated Financial Statements for additional information on regulatory requirements. We also assess the impact of our capital structure on financial performance metrics.

We have developed economic capital models to determine the amount of equity capital we need to cover potential losses arising from market, credit and operational risks. These models align closely with our regulatory capital requirements. We developed these statistical risk models in conjunction with our risk management practices, and they allow us to attribute an amount of equity to each of our businesses that reflects the risks of that business, both on- and off-balance sheet. We regularly review and periodically refine models and other tools used to estimate risks, as well as the assumptions used in those models and tools to provide a reasonable and conservative assessment of our risks across a stressed market cycle. We also assess the need for equity capital to support risks that we believe may not be adequately measured through these risk models.

In addition, we consider how much equity capital we may need to support normal business growth and strategic initiatives. In the event that we generate common equity capital beyond our estimated needs, we seek to return that capital to shareholders through share repurchases and dividends, considering the impact on our financial performance metrics. Likewise, we will seek to raise additional equity capital to the extent we determine it necessary.

**Preferred Stock Issuance**

On various dates in January and February 2008, we issued an aggregate of 66,000 shares of newly issued 9% Non-Voting Mandatory Convertible Non-Cumulative Preferred Stock, Series 1, par value $1.00 per share and liquidation preference $100,000 per share, to several long-term investors at a price of $100,000 per share, for an aggregate purchase price of approximately $6.6 billion.

As a result of the announced public offering of common stock on July 28, 2008, holders of $4.9 billion of the $6.6 billion of outstanding mandatory convertible preferred stock agreed to exchange their preferred stock for approximately 177 million shares of common stock, plus $65 million in cash. Holders of the remaining $1.7 billion of outstanding mandatory convertible preferred stock agreed to exchange their preferred stock for new mandatory convertible preferred stock. The price reset feature for all securities exchanged has been eliminated.

In connection with the reset feature of the $6.6 billion of outstanding preferred stock, we recorded additional preferred dividends of $2.1 billion in the third quarter of 2008. See Note 10 to the Condensed Consolidated Financial Statements for additional information.

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

**Common Stock**

On December 24, 2007, we reached agreements with each of Temasek and Davis Selected Advisors LP (“Davis”), on behalf of various investors, to sell an aggregate of 116.7 million shares of newly issued common stock at a price of $48.00 per share, for aggregate proceeds of approximately $5.6 billion. Temasek purchased 55 million shares in December 2007 and the remaining 36.7 million shares in January 2008. In addition, Temasek and its assignees exercised options to purchase an additional 12.5 million shares of our common stock at a purchase price of $48.00 per share in February 2008. Davis purchased 25 million shares in December 2007. See Note 10 to the Condensed Consolidated Financial Statements for additional information.

In connection with our July 28, 2008 announced initiative to enhance our capital position, we issued 437 million shares of common stock through a public offering for $9.8 billion. See Note 10 to the Condensed Consolidated Financial Statements for additional information.

Major components of the changes in our equity capital, which includes both cash and non-cash transactions, for the first nine months of 2008 are as follows:

| *(dollars in millions)* | |
|---|---|
| Balance at December 28, 2007 | $ 36,657 |
| Net loss | (11,768) |
| Issuance of common stock | 14,489 |
| Issuance of preferred stock, net of repurchases and re-issuances | 9,122 |
| Common and preferred stock dividends | (4,003) |
| Other comprehensive loss | (2,545) |
| Net effect of employee stock transactions and other | 1,176 |
| Balance at September 26, 2008 | $ 43,128 |

**Balance Sheet Leverage**

Assets-to-equity leverage ratios are among the metrics commonly used to assess a company's capital adequacy. We believe that a leverage ratio adjusted to exclude certain assets considered to have low risk profiles and assets in customer accounts financed primarily by customer liabilities provides a more meaningful measure of balance sheet leverage in the securities industry than an unadjusted ratio. We calculate adjusted assets by reducing total assets by (1) securities financing transactions and securities received as collateral and (2) segregated cash and securities, and increasing total assets by trading liabilities excluding derivative contracts.

As leverage ratios are not risk sensitive, we do not rely on them to measure capital adequacy. When we assess our capital adequacy, we consider more sophisticated measures that capture the risk profiles of the assets, the impact of hedging, off-balance sheet exposures, operational risk, economic and regulatory capital requirements, and other considerations.

The following table provides calculations of our leverage ratios at September 26, 2008 and December 28, 2007:

*(dollars in millions)*

| | Sept. 26, 2008 | Dec. 28, 2007 |
|---|---|---|
| Total assets | $875,780 | $1,020,050 |
| Less: | | |
| Receivables under resale agreements | 164,466 | 221,617 |
| Receivables under securities borrowed transactions | 99,596 | 133,140 |
| Securities received as collateral | 47,654 | 45,245 |
| Add: | | |
| Trading liabilities, at fair value, excluding derivative contracts | 31,132 | 50,294 |
| Sub-total | 595,196 | 670,342 |
| Less: | | |
| Segregated cash and securities balances | 22,801 | 22,999 |
| Adjusted assets | 572,395 | 647,343 |
| Less: | | |
| Goodwill and other intangible assets | 4,989 | 5,091 |
| Tangible adjusted assets | $567,406 | $ 642,252 |
| Stockholders' equity | $ 38,355 | $ 31,932 |
| Add: | | |
| Trust preferred securities(1) | 4,773 | 4,725 |
| Equity capital | $ 43,128 | $ 36,657 |
| Tangible equity capital(2) | $ 38,139 | $ 31,566 |
| Leverage ratio(3) | 20.3x | 27.8x |
| Adjusted leverage ratio(4) | 13.3x | 17.7x |
| Tangible adjusted leverage ratio(5) | 14.9x | 20.3x |

*(1) Represents junior subordinated notes (related to trust preferred securities), net of related investments. The related investments are reported as investment securities and were $429 million at September 26, 2008 and December 28, 2007.*

*(2) Equity capital less goodwill and other intangible assets.*

*(3) Total assets divided by equity capital.*

*(4) Adjusted assets divided by equity capital.*

*(5) Tangible adjusted assets divided by tangible equity capital.*

**Consolidated Regulatory Capital Requirements**

Effective January 1, 2005, Merrill Lynch became a CSE as defined by the SEC. As a CSE, Merrill Lynch is subject to voluntary group-wide supervision and examination by the SEC as well as to minimum consolidated capital requirements. Although the SEC has rescinded the CSE program we are still required to report under the CSE standards. Capital requirements are measured as a ratio of allowable capital to risk weighted assets ("RWAs") for credit, market and operational risks. In accordance with the CSE requirements, our approach for calculating allowable capital and RWAs is approved by the SEC and is consistent with the Basel II Framework published in June 2006 (as adopted by the Basel Committee on Banking Supervision). Merrill Lynch is required to notify the SEC in the event that the Total Capital Ratio falls or is expected to fall below 10%. At September 26, 2008 we were in compliance with the rule with a Total Capital Ratio of 14.24%. Although we are not subject to a Tier 1 Capital requirement, as of September 26, 2008 our Tier 1 Capital Ratio was 8.73%. These ratios increased from the ratios at June 27, 2008, due principally to a significant reduction in RWAs.

The following table presents our allowable capital and RWAs at September 26, 2008 and June 27, 2008:

*(dollars in millions)*

| **Tier 1 Composition:** | **Sept. 26, 2008** | **Jun. 27, 2008** |
|---|---|---|
| Common stockholders' equity | $ 29,750 | $ 21,112 |
| Qualifying cumulative and non-cumulative preferred stock | 8,605 | 13,666 |
| Trust preferred securities | 4,725 | 4,725 |
| Minority interests | 418 | 470 |
| Less: Goodwill and other intangibles | (4,989) | (5,058) |
| Less: Disallowed deferred tax assets | (11,609) | (8,393) |
| Less: Gains on fair valuation of own debt | (4,190) | (2,485) |
| Add: Losses on available for sale debt securities | 3,867 | 3,323 |
| (Gain)/loss on cash flow hedges | 21 | 112 |
| (Gain)/loss from accounting change on defined benefit plans | (65) | (65) |
| **Tier 1 Capital** | 26,533 | 27,407 |
| **Tier 2 Composition:** | | |
| Qualifying subordinated debt | 12,725 | 12,944 |
| Qualifying senior debt | 541 | 760 |
| Excess of eligible credit reserves over total expected credit losses | 1,268 | 1,400 |
| Allowable gains on equity investments | 2,233 | 1,541 |
| **Total Allowable Capital** | $ 43,300 | $ 44,052 |
| **Risk Weighted Assets** | | |
| Credit risk | $ 204,831 | $ 222,683 |
| Market risk | 71,923 | 99,641 |
| Operational risk | 27,264 | 36,563 |
| **Total** | $ 304,018 | $ 358,887 |
| **Tier 1 Capital Ratio (Tier 1 Capital /Risk Weighted Assets)** | 8.73% | 7.64% |
| **Total Capital Ratio (Total Allowable Capital /Risk Weighted Assets)** | 14.24% | 12.27% |

### *Composition of Tier 1 and Total Allowable Capital*

*Tier 1 Capital*

Tier 1 Capital consists primarily of common stockholders' equity. Tier 1 Capital also includes non-cumulative preferred stock and trust preferred securities (subject to a combined limit of 25% of the elements of Tier 1 Capital). Certain minority interests are also included.

The elements of Tier 1 Capital are adjusted to exclude certain items, including goodwill and other intangible assets. Also, deferred tax assets ("DTA") are excluded to the extent that they exceed the sum of (1) those DTAs that may be utilized to offset current or prior-period income and (2) a portion of DTA dependent on future earnings and subject to a 10% cap based on Tier 1 Capital. Further adjustments reverse the impact of unrealized gains and losses on available-for-sale investment securities which are included, net of taxes, in stockholders' equity as part of accumulated other comprehensive (loss)/income. Also excluded are life-to-date after-tax fair value adjustments reflecting the change in credit spreads on the Company's long-term debt liabilities that have been included in the Condensed Consolidated Statement of (Loss)/Earnings, and other adjustments.

*Total Allowable Capital*

Total allowable capital includes Tier 1 Capital and Tier 2 Capital. Tier 2 Capital consists of qualifying unsecured senior and subordinated notes that have a remaining maturity greater than five years, up to a limit of 50% of the amount of Tier 1 Capital. Total Allowable Capital also includes excess credit reserves and allowable unrealized gains on certain equity investments carried below fair value. Merrill Lynch's allowable gains on equity investments consists of a portion of any unrealized gain over the carrying value of its investment in BlackRock.

### *Capital Requirement by Risk Type*

In determining banking and trading book positions, we account for all transactions that follow fair value accounting as trading book and all transactions that follow accrual accounting as banking book. Our computation of market risk RWAs includes trading book positions. Our calculation of RWAs for credit risk includes banking book positions and counterparty exposure associated with OTC derivatives.

*Credit Risk*
The credit risk components for the regulatory capital requirement calculation encompass traditional banking book activity, including traditional lending activities, commitments and guarantees, banking book principal investments, counterparty risk associated with OTC derivatives and securities financing transactions. The calculation of RWAs for credit risk captures the unexpected losses that may be incurred due to counterparty default. We use the Advanced Internal Risk Based ("AIRB") approach of the Basel II Framework to determine RWAs. This methodology is based on internal counterparty ratings which are associated with a probability of default ("PD") over a one year period, the estimates of loss given default ("LGD"), which is the loss that would be incurred in the event of a default and the maturity of the exposure. Internal models provide measures of credit risk exposures on OTC derivatives and securities financing transactions.

*Market Risk*
The market risk components for the regulatory capital calculation encompass the trading book activity. The calculation of RWAs for market risk captures the unexpected loss from financial market events, including movements in credit spreads, equity prices, foreign exchange rates, commodity prices and implied volatility. For trading book positions, we have implemented the provisions of *The Application of Basel II Trading Activities and the Treatment of Double Default Effects (July 2005),* which has been incorporated in the *International Convergence of Capital Measurement and Capital Standards: A Revised Framework.* These provisions include additional capital charges to capture default and event risks not fully captured by the specific risk VaR framework.

*Operational Risk*
We hold capital against operational risks for unexpected losses that may arise from inadequate controls or business disruptions related to failed processes or systems, litigation, human error or external events. We calculate the RWAs for operational risk under the Basel II Standardized approach. For each business line, average three-year net revenues are multiplied by factors ranging from 12% to 18% to determine the capital charge. The RWAs are then calculated as 12.5 times the sum of the capital charges for each business line.

## Funding

We fund our assets primarily with a mix of secured and unsecured liabilities through a globally coordinated funding strategy. We fund a portion of our trading assets with secured liabilities, including repurchase agreements, securities loaned and other short-term secured borrowings, which are less sensitive to our credit ratings due to the underlying collateral. Refer to Note 9 to the Condensed Consolidated Financial Statements for additional information regarding our borrowings.

We use unsecured liabilities to fund certain trading assets, as well as other long-dated assets not funded with equity. Our unsecured liabilities consist of the following:

*(dollars in millions)*

| | **Sept. 26, 2008** | **Dec. 28, 2007** |
|---|---|---|
| Commercial paper | $ 4,423 | $ 12,908 |
| Promissory notes | - | 2,750 |
| Other unsecured short-term borrowings(1)(2) | 6,671 | 1,229 |
| Current portion of long-term borrowings(3) | 55,426 | 63,307 |
| Total unsecured short-term borrowings | $ 66,520 | $ 80,194 |
| Senior long-term borrowings(4) | $146,518 | $156,370 |
| Subordinated long-term borrowings | 12,725 | 10,887 |
| Total unsecured long-term borrowings | $159,243 | $167,257 |
| Deposits | $ 90,001 | $103,987 |

*(1) Excludes $13.8 billion and $4.9 billion of secured short-term borrowings at September 26, 2008 and December 28, 2007, respectively; these consisted primarily of borrowings from Federal Home Loan Banks for both periods, and as of September 26, 2008, also included borrowings under a secured bank credit facility.*

*(2) Excludes $0.8 billion and $3.2 billion of other unsecured short-term borrowings that is non-recourse or not guaranteed by ML & Co. at September 26, 2008 and December 28, 2007, respectively.*

*(3) Excludes $7.2 billion and $1.7 billion of the current portion of other subsidiary financing that is non-recourse or not guaranteed by ML & Co. at September 26, 2008 and December 28, 2007, respectively.*

*(4) Excludes junior subordinated notes (related to trust preferred securities), current portion of long-term borrowings, secured long-term borrowings, and the long-term portion of other subsidiary financing that is non-recourse or not guaranteed by ML & Co.*

Our primary funding objectives are maintaining sufficient funding sources to support our existing business activities and future growth while ensuring that we have liquidity across market cycles and through periods of financial stress. To achieve our objectives, we have established a set of funding strategies that are described below:

- Diversify funding sources;
- Maintain sufficient long-term borrowings;
- Concentrate unsecured funding at ML & Co. (parent company);
- Use deposits as a source of funding; and
- Adhere to prudent governance principles.

*Diversification of Funding Sources*

We strive to diversify and expand our funding globally across programs, markets, currencies and investor bases. We issue debt through syndicated U.S. registered offerings, U.S. registered and unregistered medium-term note programs, non-U.S. medium-term note programs, non-U.S. private placements, U.S. and non-U.S. commercial paper and through other methods. We distribute a significant portion of our debt offerings through our retail and institutional sales forces to a large, diversified global investor base. Maintaining relationships with our investors is an important aspect of our funding strategy. We also make markets in our debt instruments to provide liquidity for investors.

At September 26, 2008 and December 28, 2007, our total short- and long-term borrowings were issued in the following currencies:

*(USD equivalent in millions)*

| | Sept. 26, 2008 | Percentage of Total | Dec. 28, 2007 | Percentage of Total |
|---|---|---|---|---|
| USD | 134,804 | 52% | $165,285 | 57% |
| EUR | 75,052 | 30 | 74,207 | 26 |
| JPY | 12,602 | 5 | 16,879 | 6 |
| GBP | 14,095 | 6 | 9,303 | 3 |
| AUD | 4,857 | 2 | 5,455 | 2 |
| CAD | 4,472 | 2 | 5,953 | 2 |
| CHF | 1,501 | 1 | 2,283 | 1 |
| INR | 838 | 0 | 1,964 | 1 |
| Other(1) | 4,798 | 2 | 4,558 | 2 |
| Total(2) | $253,019 | 100% | $285,887 | 100% |

*(1) Includes various other foreign currencies, none of which individually exceed 1% of total issuances.*
*(2) Excludes junior subordinated notes (related to trust preferred securities).*

We also diversify our funding sources by issuing various types of debt instruments, including structured notes. Structured notes are debt obligations with returns that are linked to other debt or equity securities, indices, currencies or commodities. We typically hedge these notes with positions in derivatives and/or in the underlying instruments. We could be required to immediately settle certain structured note obligations for cash or other securities under certain circumstances, which we take into account for liquidity planning purposes. Structured notes outstanding were $69.0 billion and $76.5 billion at September 26, 2008 and December 28, 2007, respectively.

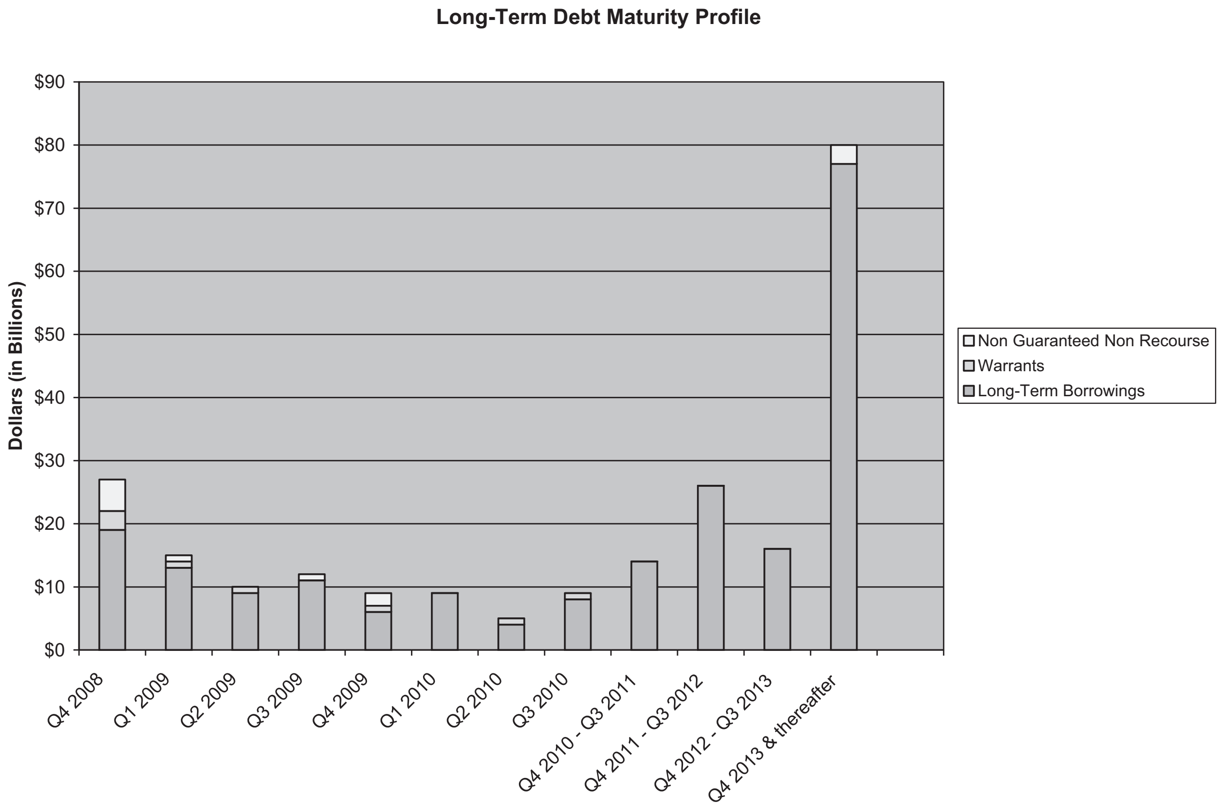
Extendible notes are debt obligations that provide the holder an option to extend the note monthly but not beyond the stated final maturity date. These notes are included in long-term borrowings as the original maturity is greater than one year. There were no extendible notes outstanding at September 26, 2008 and $1.8 billion were outstanding at December 28, 2007.

*Maintenance of Sufficient Long-Term Borrowings*

An important objective of our asset-liability management is maintaining sufficient long-term borrowings to meet our long-term capital requirements. As such, we routinely issue debt in a variety of maturities and currencies to achieve cost efficient funding and an appropriate maturity profile. While the cost and availability of unsecured funding may be negatively impacted by general market conditions or by matters specific to the financial services industry or Merrill Lynch, we seek to mitigate this refinancing risk by actively managing the amount of our borrowings that we anticipate will mature within any one month or quarter. During the third quarter of 2008, the cost of issuing unsecured funding for Merrill Lynch, and financial services firms in general, increased significantly, and we reduced issuance activity.

At September 26, 2008, excluding junior subordinated notes, other subsidiary financing and the current portion of long-term debt, the weighted average maturity of our long-term unsecured borrowings was approximately 6.5 years based on contractual maturity dates. Including the current portion and assuming certain structured notes with contingent early redemption features are redeemed at the earliest possible date, the weighted average maturity was approximately 4.7 years.

The following chart presents our consolidated long-term borrowings maturity profile as of September 26, 2008 (quarterly for two years and annually thereafter):




See Note 9 to the Condensed Consolidated Financial Statements for additional information on our long-term borrowings.

The $62.6 billion of long-term debt maturing within the next twelve months consists of the following:

| *(dollars in billions)* | |
|---|---|
| Consolidated unsecured long-term debt maturities within twelve months | $62.6 |
| Less: non-recourse debt and debt not guaranteed by ML & Co. | 7.2 |
| Less: warrant maturities(1) | 4.5 |
| ML & Co. maximum long-term debt maturities within twelve months | 50.9 |
| Less: ML & Co. debt that may potentially mature within twelve months, final maturity beyond twelve months(2) | 8.3 |
| ML & Co. contractual long-term debt maturities within twelve months | $42.6 |

*(1) Warrants are fully funded customer facilitation trades.*

*(2) Consists of structured notes that are callable based on certain market triggers. See Note 9 to the Condensed Consolidated Financial Statements for further information on our structured notes.*

Major components of the change in long-term borrowings, excluding junior subordinated debt (related to trust preferred securities), for the nine months ended September 26, 2008 were as follows:

| *(dollars in billions)* | |
|---|---|
| Balance December 28, 2007 | $261.0 |
| Issuance and resale | 64.9 |
| Settlement and repurchase | (83.4) |
| Other(1) | (15.2) |
| Balance September 26, 2008(2) | $227.3 |

*(1) Primarily relates to fair value changes and foreign exchange movements.*

*(2) See Note 9 to the Condensed Consolidated Financial Statements for the long-term borrowings maturity schedule.*

Subordinated debt is an important component of our long-term borrowings. All of ML & Co.'s subordinated debt is junior in right of payment to ML & Co.'s senior indebtedness.

At September 26, 2008, senior and subordinated debt issued by ML & Co. or by subsidiaries and guaranteed by ML & Co., including short-term borrowings, totaled $228.7 billion. Except for the $1.6 billion of zero-coupon contingent convertible debt (Liquid Yield Option Notes or "LYONs®") outstanding at September 26, 2008 and the three-year multi-currency, unsecured bank facility discussed in *Committed Credit Facilities*, senior and subordinated debt obligations issued by ML & Co. and senior debt issued by subsidiaries and 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 stock price, trigger a requirement for an early repayment, additional collateral support, changes in terms, acceleration of maturity, or the creation of an additional financial obligation. See Note 9 to the Condensed Consolidated Financial Statements for additional information.

We use derivative transactions to more closely match the duration of borrowings to the duration of the assets being funded, thereby enabling interest rate risk to be within limits set by our Global Risk Management group. Interest rate swaps also serve to convert our interest expense and effective borrowing rate principally to floating rate. We also enter into currency swaps to hedge assets that are not financed through debt issuance in the same currency. We hedge investments in subsidiaries in non-U.S. dollar currencies in whole or in part to mitigate foreign exchange translation adjustments in accumulated other comprehensive loss. See Notes 1 and 3 to the Condensed Consolidated Financial Statements for further information.

*Concentration of Unsecured Funding at ML & Co.*

ML & Co. is the primary issuer of all unsecured, non-deposit financing instruments that we use predominantly to fund assets in subsidiaries, some of which are regulated. The primary benefits of this strategy are greater control, reduced funding costs, wider name recognition by investors, and greater flexibility to meet variable funding requirements of subsidiaries. Where regulations, time zone differences, or other business considerations make this impractical, certain subsidiaries enter into their own financing arrangements.

*Deposit Funding*

At September 26, 2008, our global bank subsidiaries had $90 billion in customer deposits, which provide a diversified and stable base for funding assets within those entities. Our U.S. deposit base of $70 billion includes an estimated $52 billion of FDIC-insured deposits, which we believe are less sensitive to our credit ratings. We predominantly source deposit funding from our customer base in the form of our bank sweep programs and time deposits. In addition, the acquisition of First Republic has further diversified and enhanced our bank subsidiaries deposit funding base.

Deposits are not available as a source of funding to ML & Co. See *Liquidity Risk* in the *Risk Management* section for more information regarding our deposit liabilities.

*Prudent Governance*

We manage the growth and composition of our assets and set limits on the overall level of unsecured funding. Funding activities are subject to regular senior management review and control through Asset/Liability Committee meetings with treasury management and other independent risk and control groups. Our funding strategy and practices are reviewed by the Regulatory Oversight and Controls Committee, our executive management and the Finance Committee of the Board of Directors.

**Credit Ratings**

Our credit ratings affect the cost and availability of our unsecured funding, and it is our objective to maintain high quality credit ratings. In addition, credit ratings are important when we compete in certain markets and when we seek to engage in certain long-term transactions, including OTC derivatives. Factors that influence our credit ratings include the credit rating agencies' assessment of the general operating environment, our relative positions in the markets in which we compete, our reputation, our liquidity position, the level and volatility of our earnings, our corporate governance and risk management policies, and our capital management practices. Management maintains an active dialogue with the major credit rating agencies.

Following the announcement on September 15, 2008 of our agreement to be acquired by Bank of America, Moody's Investors Service, Inc. placed our ratings on Review for Upgrade. Both Standard & Poor's Ratings Services and Dominion Bond Rating Service Ltd. placed our ratings under review with Developing Implications. Fitch Ratings placed our ratings on Rating Watch Evolving. Ratings & Investment Information, Inc. (Japan) placed our ratings on Rating Monitor with a view to Upgrading. The ratings and watch/review status did not change following the release of our third quarter earnings on October 16, 2008.

The following table sets forth ML & Co.'s unsecured credit ratings as of October 27, 2008.

| Rating Agency | Senior Debt Ratings | Subordinated Debt Ratings | Preferred Stock Ratings | Commercial Paper Ratings | Rating Outlook |
|---|---|---|---|---|---|
| Dominion Bond Rating Service Ltd. | A(high) | A | A(low) | R-1 (middle) | Developing Implications |
| Fitch Ratings | A+ | A | A | F1 | Rating Watch Evolving |
| Moody's Investors Service, Inc. | A2 | A3 | Baa1 | P-1 | Review for Upgrade |
| Rating & Investment Information, Inc. (Japan) | A+ | A | Not Rated | a-1 | Rating Monitor with a view to Upgrading |
| Standard & Poor's Ratings Services | A | A- | BBB+ | A-1 | Developing Implications |

In connection with certain OTC derivatives transactions and other trading agreements, we could be required to provide additional collateral to or terminate transactions with certain counterparties in the event of a downgrade of the senior debt ratings of ML & Co. The amount of additional collateral required depends on the contract and is usually a fixed incremental amount and/or the market value of the exposure. At September 26, 2008, the amount of additional collateral and termination payments that would be required for such derivatives transactions and trading agreements was approximately $1.9 billion in the event of a downgrade to mid single-A by all credit agencies. A further downgrade of ML & Co.'s long-term senior debt credit rating to the A- or equivalent level would require approximately an additional $0.6 billion. Our liquidity risk analysis considers the impact of additional collateral outflows due to changes in ML & Co. credit ratings, as well as for collateral that is owed by us and is available for payment, but has not been called for by our counterparties.

### Cash Flows

Our previously issued Condensed Consolidated Statements of Cash Flows for the nine months ended September 28, 2007 were restated to correct an overstatement of cash used for operating activities and a corresponding overstatement of cash provided by financing activities. Refer to Note 16 to the Condensed Consolidated Financial Statements for further information. This restatement has been reflected in the following discussion.

Cash and cash equivalents of $36.4 billion at September 26, 2008 decreased by $4.9 billion from December 28, 2007. Cash provided by operating activities was $3.0 billion for the nine months ended September 26, 2008, primarily due to net cash provided by resale agreements of $57.2 billion and net cash provided by trading assets of $45.3 billion, partially offset by net cash used for repurchase agreements of $63.7 billion and net cash used for trading liabilities of $37.1 billion. Cash provided by investing activities was $6.7 billion and was primarily due to proceeds from the sale of Merrill Lynch Capital of $12.6 billion and net cash provided by our available-for-sale investment securities of $4.1 billion, partially offset by net cash used for loans, notes and mortgages held for investment of $11.2 billion. Cash used for financing activities was $14.6 billion and was primarily attributable to net cash used for settlements and repurchases of long-term borrowings, net of issuances and resales of $18.5 billion, net cash used for deposits of $14.0 billion and net cash used for dividend payments of $1.9 billion, partially offset by net cash provided by the issuances of preferred and common stock of $19.2 billion.

## RISK MANAGEMENT

### Risk Management Philosophy

Risk taking is integral to the core businesses in which we operate. In the course of conducting our business operations, we are exposed to a variety of risks including market, credit, liquidity, operational and other risks that are material and require comprehensive controls and ongoing oversight. Senior managers of our core businesses are responsible and accountable for management of the risks associated with their business activities. In addition, independent risk groups monitor market risk, credit risk, liquidity risk and operational risk.

We have taken a number of steps to reinforce a culture of disciplined risk-taking. First, in September 2007, we integrated the independent control functions of market and credit risk in the new Global Risk Management group under a single Chief Risk Officer, the former head of Global Credit and Commitments, who now reports directly to the Chief Executive Officer. Within Global Risk Management, we have combined the Credit and Market Risk teams in order to take a more integrated approach to the risks of each business. In addition, we hired a senior, experienced risk professional who joined Merrill Lynch in March 2008 as co-Chief Risk Officer. The co-Chief Risk Officers report jointly to the Chief Executive Officer. Global Treasury, which manages liquidity risk, and the

Operational Risk Group, which manages operational risk, continues to fall under the management responsibility of our Chief Financial Officer.

Second, in January 2008, our Chief Executive Officer established a weekly risk meeting attended by the heads of the trading businesses, the Chief Risk Officers, the Chief Financial Officer, and a Vice Chairman (the "Weekly Risk Review"). At this Weekly Risk Review the businesses and Global Risk Management provide updates on risk-related matters and report on a suite of risk measures and metrics.

**Market Risk**

We define market risk as the potential change in value of financial instruments caused by fluctuations in interest rates, exchange rates, equity and commodity prices, credit spreads, and/or other risks.

Global Risk Management and other independent risk and control groups are responsible for approving the products and markets in which we transact and take risk. Moreover, Global Risk Management is responsible for identifying the risks to which these business units will be exposed in these approved products and markets. Global Risk Management uses a variety of quantitative methods to assess the risk of our positions and portfolios. In particular, Global Risk Management quantifies the sensitivities of our current portfolios to changes in market variables. These sensitivities are then utilized in the context of historical data to estimate earnings and loss distributions that our current portfolios would have incurred throughout the historical period. From these distributions, Global Risk Management derives a number of useful risk statistics, including value at risk ("VaR"), which are used to measure and monitor market risk exposures in our trading portfolios.

VaR is a statistical indicator of the potential losses in fair value of a portfolio due to adverse movements in underlying risk factors. We have a Risk Framework that is designed to define and communicate our market risk tolerance and broad overall limits across Merrill Lynch by defining and constraining exposure to specific asset classes, market risk factors and VaR.

The Trading VaR disclosed in the accompanying table (which excludes U.S. ABS CDO net exposures) is a measure of risk based on a degree of confidence that the current portfolio could lose at least a certain dollar amount, over a given period of time. To calculate VaR, we aggregate sensitivities to market risk factors and combine them with a database of historical market factor movements to simulate a series of profits and losses. The level of loss that is exceeded in that series 5% of the time (i.e., one day in 20) is used as the estimate for the 95% confidence level VaR. The overall VaR amounts are presented across major risk categories, which include exposure to volatility risk found in certain products, such as options.

The calculation of VaR requires numerous assumptions and thus VaR should not be viewed as a precise measure of risk. Rather, it should be evaluated in the context of known limitations. These limitations include, but are not limited to, the following:

- VaR measures do not convey the magnitude of extreme events;
- Historical data that forms the basis of VaR may fail to predict current and future market volatility; and
- VaR does not reflect the effects of market illiquidity (i.e., the inability to sell or hedge a position over a relatively long period).

To complement VaR and in recognition of its inherent limitations, we use a number of additional risk measurement methods and tools as part of our overall market risk management process. These include stress testing and event risk analysis, which examine portfolio behavior under significant adverse market conditions, including scenarios that may result in material losses for Merrill Lynch. As a result of the unprecedented credit market environment during 2007 and the first nine-months of 2008, in particular the extreme dislocation that affected U.S. sub-prime residential mortgage-related and ABS CDO positions, VaR, stress testing and other risk measures significantly underestimated the magnitude of actual loss. These ABS CDO securities were AAA rated and no category of AAA rated securities (including ABS CDO) had ever experienced such significant volatility or loss of value. We are committed to the continuous development of additional risk measurement methods and plan to continue our investment in their development in light of recent market experience. Nevertheless, we also recognize that no risk metrics will exhaust the range of potential market stress events and, therefore, management will engage in a process of continuous re-evaluation of our approaches to risk management based on experience and judgment.

The table that follows presents our average and ending VaR for trading instruments for the second and third quarters of 2008 and the full-year 2007. Additionally, high and low VaR for the third quarter of 2008 is presented independently for each risk category and overall. Because high and low VaR numbers for these risk categories may have occurred on different days, high and low numbers for diversification benefit would not be meaningful.

The aggregate VaR for our trading portfolios is less than the sum of the VaRs for individual risk categories because movements in different risk categories occur at different times and, historically, extreme movements have not occurred in all risk categories simultaneously. Thus, 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 table and may be viewed as a measure of the diversification within our portfolios.

**Trading Value at Risk**

*(dollars in millions)*

| | Sept. 26 2008 | Jun. 27 2008 | Dec. 28 2007 | High 3Q08 | Low 3Q08 | Daily Average 3Q08 | Daily Average 2Q08 | Daily Average 2007 |
|---|---|---|---|---|---|---|---|---|
| Trading Value-at-Risk(1) | | | | | | | | |
| Interest rate and credit spread | $ 43 | $ 37 | $ 52 | $47 | $28 | $ 35 | $ 59 | $ 52 |
| Equity | 12 | 20 | 26 | 23 | 12 | 16 | 20 | 28 |
| Commodity | 13 | 28 | 15 | 30 | 12 | 18 | 21 | 18 |
| Currency | 4 | 2 | 5 | 8 | - | 3 | 7 | 5 |
| Subtotal(2) | 72 | 87 | 98 | | | 72 | 107 | 103 |
| Diversification benefit | (28) | (38) | (33) | | | (33) | (50) | (38) |
| Overall | $ 44 | $ 49 | $ 65 | $52 | $30 | $ 39 | $ 57 | $ 65 |

*(1) Based on a 95% confidence level and a one-day holding period.*
*(2) Subtotals are not provided for highs and lows as they are not meaningful.*

Trading VaR was lower on September 26, 2008 as compared with June 27, 2008 primarily due to reduced equity risk, driven by reductions in exposures combined with the purchase of material equity market protection, and reduced commodity exposures. These reductions were partially offset by an increase in interest rate and credit spread risks, as a result of increased market volatility.

Daily average trading VaR for the third quarter of 2008 decreased compared to the second quarter average due to decreased risks across all risk categories.

We continue to enhance our VaR model to better reflect the risks of the portfolio. We have introduced material enhancements to the VaR model for purposes of internal risk management and for calculation of regulatory capital ratios. The enhanced, supplemental VaR model is designed to capture issuer-specific risks in credit and equity instruments. Under the issuer-specific risk model, one-day 95% trading VaR was $75 million on September 26, 2008, compared with $69 million on June 27, 2008. This increase was driven primarily by an increase in credit markets volatility to which our Specific Risk VaR model is more sensitive.

**Non-Trading Market Risk**

Non-trading market risk includes the risks associated with certain non-trading activities, including investment securities, securities financing transactions and certain equity and principal investments. Interest rate risks related to funding activities are also included; however, potential gains and losses due to changes in credit spreads on the firm's own funding instruments are excluded. Risks related to lending activities are covered separately in the *Counterparty Credit Risk* section below.

The primary market risk of non-trading investment securities and repurchase and reverse repurchase agreements is expressed as sensitivity to changes in the general level of credit spreads, which are defined as the differences in the yields on debt instruments from relevant LIBOR/Swap rates. Non-trading investment securities include securities that are classified as available-for-sale and held-to-maturity. At September 26, 2008, the total credit spread sensitivity of these instruments was a pre-tax loss of $21 million in economic value for an increase of one basis point, which is one one-hundredth of a percent, in credit spreads, compared with $23 million at June 27, 2008. This change in economic value is a measurement of economic risk which may differ significantly in magnitude and timing from the actual profit or loss that would be realized under generally accepted accounting principles.

The interest rate risk associated with the non-trading positions, together with funding activities, is expressed as sensitivity to changes in the general level of interest rates. Our funding activities include LYONs®, trust preferred securities and other long-term debt issuances together with interest rate hedges. At September 26, 2008 the net interest rate sensitivity of these positions is a pre-tax loss in economic value of $1 million for a parallel one basis point increase in interest rates across all yield curves, compared to a pre-tax gain of $2 million at June 27, 2008. This change in economic value is a measurement of economic risk which may differ significantly in magnitude and timing from the actual profit or loss that would be realized under generally accepted accounting principles.

Other non-trading equity investments include direct private equity interests, private equity fund investments, hedge fund interests, certain direct and indirect real estate investments and other principal investments. These investments are broadly sensitive to general price levels in the equity or commercial real estate markets as well as to specific business, financial and credit factors which influence the performance and valuation of each investment uniquely. Refer to Note 5 to the Condensed Consolidated Financial Statements for additional information on these investments.

*Counterparty Credit Risk*

We define counterparty credit risk as the potential for loss that can occur as a result of an individual, counterparty, or issuer being unable or unwilling to honor its contractual obligations to us. The Credit Risk Framework is the primary tool that we use to communicate firm-wide credit limits and monitor exposure by constraining the magnitude and tenor of exposure to counterparty and issuer families.

Additionally, we have country risk limits that constrain total aggregate exposure across all counterparties and issuers (including sovereign entities) for a given country within predefined tolerance levels.

Global Risk Management assesses the creditworthiness of existing and potential individual clients, institutional counterparties and issuers, and determines firm-wide credit risk levels within the Credit Risk Framework among other tools. This group reviews and monitors specific transactions as well as portfolio and other credit risk concentrations both within and across businesses. This group is also responsible for ongoing monitoring of credit quality and limit compliance and actively works with all of our business units to manage and mitigate credit risk.

Global Risk Management uses a variety of methodologies to set limits on exposure and potential loss resulting from an individual, counterparty or issuer failing to fulfill its contractual obligations. The group performs analyses in the context of industrial, regional, and global economic trends and incorporates portfolio and concentration effects when determining tolerance levels. Credit risk limits take into account measures of both current and potential exposure as well as potential loss and are set and monitored by broad risk type, product type, and maturity. Credit risk mitigation techniques include, where appropriate, the right to require initial collateral or margin, the right to terminate transactions or to obtain collateral should unfavorable events occur the right to call for collateral when certain exposure thresholds are exceeded, the right to call for third party guarantees and the purchase of credit default protection. With senior management involvement, we conduct regular portfolio reviews, monitor counterparty creditworthiness, and evaluate potential transaction risks with a view toward early problem identification and protection against unacceptable credit-related losses. We continue to invest additional resources to enhance our methods and policies to assist in managing our credit risk and to respond to evolving regulatory requirements.

Senior members of Global Risk Management chair various commitment committees with membership across business, control and support units. These committees review and approve commitments, underwritings and syndication strategies related to debt, syndicated loans, equity, real estate and asset-based finance, among other products and activities.

*Commercial Lending*

Our commercial lending activities consist primarily of corporate and institutional lending, asset-based finance, commercial finance, and commercial real estate related activities. In evaluating certain potential commercial lending transactions, we use a risk-adjusted-return-on-capital model in addition to other methodologies. We typically provide corporate and institutional lending facilities to clients for general corporate purposes, backup liquidity lines, bridge financings, and acquisition-related activities. We often syndicate corporate and institutional loans through assignments and participations to unaffiliated third parties. While these facilities may be supported by credit enhancing arrangements such as property liens or claims on operating assets, we generally expect repayment through other sources including cash flow and/or recapitalization. As part of portfolio management activities, Global Risk Management mitigates certain exposures in the corporate and institutional lending portfolio by purchasing single name and index credit default swaps as well as by evaluating and selectively executing loan sales in the secondary markets.

The following tables present a distribution of commercial loans and closed commitments by credit quality, industry and country as of September 26, 2008, gross of allowances for loan losses and credit valuation adjustments, without considering the impact of purchased credit protection. Closed commitments represent the unfunded portion of existing commitments available for draw down and do not include contingent commitments extended but not yet closed.

*(dollars in millions)*

| By Credit Quality[1] | Loans | Closed Commitments |
|---|---|---|
| AA or above | $ 3,376 | $ 7,743 |
| A | 3,316 | 13,725 |
| BBB | 7,992 | 11,072 |
| BB | 17,950 | 5,900 |
| B or below | 8,761 | 3,371 |
| Unrated | 2,594 | 464 |
| Total | $43,989 | $42,275 |

*(1) Based on credit rating agency equivalent of internal credit ratings.*

| By Industry | Loans | Closed Commitments |
|---|---|---|
| Financial Institutions | 34% | 21% |
| Industrial/Manufacturing | 17 | 27 |
| Real Estate | 20 | 4 |
| Energy/Utilities | 4 | 12 |
| Consumer Goods and Services | 4 | 10 |
| Lodging/Entertainment | 4 | 5 |
| Technology | 1 | 6 |
| All Other | 16 | 15 |
| Total | 100% | 100% |

| By Country | Loans | Closed Commitments |
|---|---|---|
| United States | 58% | 69% |
| United Kingdom | 6 | 12 |
| Germany | 5 | 6 |
| Japan | 4 | 0 |
| France | 3 | 1 |
| All Other | 24 | 12 |
| Total | 100% | 100% |

As of September 26, 2008, our largest commercial lending industry concentration was to financial institutions. Commercial borrowers were predominantly domiciled in the United States or had principal operations tied to the United States or its economy. The majority of all outstanding commercial loan balances had a remaining maturity of less than five years. Additional detail on our commercial lending related activities can be found in Note 7 to the Condensed Consolidated Financial Statements.

*Residential Mortgage Lending*

Certain residential mortgage loans include features that may result in additional credit risk when compared to more traditional types of mortgages. The additional credit risk arising from these mortgages is addressed first through adherence to underwriting guidelines. These guidelines are established within the business units and monitored by Global Risk Management. Credit risk is closely monitored in order to ensure that valuation adjustments are sufficient and valuations are appropriate. For additional information on residential mortgage lending, see the 2007 Annual Report.

*Derivatives*

We enter into International Swaps and Derivatives Association, Inc. ("ISDA") master agreements or their equivalent ("master netting agreements") with almost all of our derivative counterparties. 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 for risk management purposes. Agreements are negotiated bilaterally and can require complex terms. While we make reasonable efforts to execute such agreements, it is possible that a counterparty may be unwilling to sign such an agreement and, as a result, would subject us to additional credit risk. The enforceability of master netting agreements under bankruptcy laws in certain countries or in certain industries is not free from doubt, and receivables and payables with counterparties in these countries or industries are accordingly recorded on a gross basis.

In addition, to reduce the risk of loss, we require collateral, principally cash and U.S. Government and agency securities, on certain derivative transactions. From an economic standpoint, we evaluate risk exposures net of related collateral that meets specified standards.

The following is a summary of counterparty credit ratings for the fair value (net of $28.7 billion of collateral, of which $24.0 billion represented cash collateral) of OTC trading derivative assets by maturity at September 26, 2008.

*(dollars in millions)*

| | Years to Maturity | | | | | |
|---|---|---|---|---|---|---|
| **Credit Rating[1]** | **0 to 3** | **3+ to 5** | **5+ to 7** | **Over 7** | **Maturity Netting[2]** | **Total** |
| AA or above | $ 6,110 | $ 4,745 | $2,821 | $11,279 | $ (6,902) | $18,053 |
| A | 6,910 | 2,242 | 1,566 | 10,326 | (3,052) | 17,992 |
| BBB | 4,036 | 872 | 802 | 3,485 | (1,426) | 7,769 |
| BB | 2,463 | 1,355 | 1,224 | 1,837 | (1,230) | 5,649 |
| B or below | 2,147 | 871 | 304 | 2,326 | (91) | 5,557 |
| Unrated | 1,441 | 194 | 22 | 632 | (171) | 2,118 |
| Total | $23,107 | $10,279 | $6,739 | $29,885 | $(12,872) | $57,138 |

*(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, we attempt to mitigate our default risk on derivatives whenever possible by entering into transactions with provisions that enable us to terminate or reset the terms of our derivative contracts.

## Liquidity Risk

We define liquidity risk as the potential inability to meet financial obligations, on- or off-balance sheet, as they come due. Liquidity risk relates to the ability of a company to repay short-term borrowings with new borrowings or with assets that can be quickly converted into cash while meeting other obligations and continuing to operate as a going concern. This is particularly important for financial services firms. Liquidity risk also includes both the potential inability to raise funding with appropriate maturity, currency and interest rate characteristics and the inability to liquidate assets in a timely manner at a reasonable price. We actively manage the liquidity risks in our business that can arise from asset-liability mismatches, credit sensitive funding, commitments or contingencies.

The Liquidity Risk Management Group is responsible for measuring, monitoring and controlling our liquidity risks. This group establishes methodologies and specifications for measuring liquidity risks, performs scenario analysis and liquidity stress testing, and sets and monitors liquidity limits. The group works with our business units to limit liquidity risk exposures and reviews liquidity risks associated with products and business strategies. The Liquidity Risk Management Group also reviews liquidity risk with other independent risk and control groups and Treasury Management in Asset/Liability Committee meetings.

Our primary liquidity objectives are to ensure liquidity through market cycles and periods of financial stress and to ensure that all funding requirements and unsecured debt obligations that mature within one year can be met without issuing new unsecured debt or requiring liquidation of business assets. In managing liquidity, we place significant emphasis on monitoring the near term cash flow profiles and exposures through extensive scenario analysis and stress testing. To achieve our objectives, we have established a set of liquidity management practices that are outlined below:

- Maintain excess liquidity in the form of unencumbered liquid assets and committed credit facilities;
- Match asset and liability profiles appropriately;
- Perform scenario analysis and stress testing; and
- Maintain a well formulated and documented contingency funding plan, including access to lenders of last resort.

During the third quarter of 2008, and particularly in September, the credit markets continued to experience significant deterioration, as spreads across the financial services sector widened dramatically, significantly increasing the cost and decreasing the availability of both secured and unsecured funding. Amidst these challenging conditions, Merrill Lynch continued to actively and flexibly manage its liquidity position and reduce the size and risk of its balance sheet. Actions Merrill Lynch took in order to maintain significant excess liquidity included monetizing unencumbered assets through both sales and secured financing transactions, replacing a portion of our secured financing with liquidity facilities provided by the U.S. government, and obtaining an additional secured credit facility from Bank of America.

*Excess Liquidity and Unencumbered Assets*

Consistent with our objectives, we maintain excess liquidity at ML & Co. and selected subsidiaries in the form of cash and high quality unencumbered liquid assets, which represent our “Global Liquidity Sources” and serve as our primary source of liquidity risk protection. We maintain these sources of liquidity at levels we believe are sufficient to sustain Merrill Lynch in the event of stressed liquidity conditions. In assessing liquidity, we monitor the extent to which the unencumbered assets are available as a source of funds, taking into consideration any regulatory or other restrictions that may limit the availability of unencumbered assets of subsidiaries to ML & Co. or other subsidiaries.

As of September 26, 2008 and December 28, 2007, the aggregate Global Liquidity Sources were $167 billion and $200 billion, respectively, consisting of the following:

*(dollars in billions)*

| | Sept. 26, 2008 | December 28, 2007 |
|---|---|---|
| Excess liquidity pool | $ 77 | $ 79 |
| Unencumbered assets at bank subsidiaries | 41 | 57 |
| Unencumbered assets at non-bank subsidiaries | 49 | 64 |
| Global Liquidity Sources | $167 | $200 |

The excess liquidity pool is maintained at, or readily available to, ML & Co. and our principal non-U.S. broker-dealer and can be deployed to meet cash outflow obligations under stressed liquidity conditions. The excess liquidity pool includes cash and cash equivalents, investments in short-term money market mutual funds, U.S. government and agency obligations and other liquid securities. At September 26, 2008 and December 28, 2007, the total carrying value of the excess liquidity pool, net of related hedges, was $77 billion and $79 billion, respectively, which included liquidity sources at subsidiaries that we believe are available to ML & Co. We regularly test our ability to access components of our excess liquidity pool. We fund our excess liquidity pool with debt that has an appropriate term maturity structure. Additionally, our policy is to fund at least $15 billion of our excess liquidity pool with debt that has a remaining maturity of at least one year. At September 26, 2008, the amount of our excess liquidity pool funded with debt with a remaining maturity of at least one year exceeded this requirement.

We manage the size of our excess liquidity pool by taking into account the potential impact of unsecured debt maturities, normal business volatility, cash and collateral outflows under various stressed scenarios, and stressed draws for unfunded commitments and contractual obligations. At September 26, 2008, our excess liquidity pool and other liquidity sources including maturing short-term assets and committed credit facilities significantly exceeded short-term obligations and other contractual and contingent cash outflows based on our estimates.

At September 26, 2008 and December 28, 2007, unencumbered liquid assets of $41 billion and $57 billion, respectively, in the form of unencumbered investment grade asset-backed securities and prime residential mortgages were available at our regulated bank subsidiaries to meet potential deposit obligations, business activity demands and stressed liquidity needs of the bank subsidiaries. Our liquidity model conservatively assumes that these unencumbered assets are restricted from transfer and unavailable as a liquidity source to ML & Co. and other non-bank subsidiaries.

At September 26, 2008 and December 28, 2007, our non-bank subsidiaries, including broker-dealer subsidiaries, maintained $49 billion and $64 billion, respectively, of unencumbered securities, including $11 billion of customer margin securities at September 26, 2008 and $10 billion at December 28, 2007. These unencumbered securities are an important source of liquidity for broker-dealer activities and other individual subsidiary financial commitments, and are generally restricted from transfer and therefore unavailable to support liquidity needs of ML & Co. or other subsidiaries. Proceeds from encumbering customer margin securities are further limited to supporting qualifying customer activities.

*Off-Balance Sheet Financing*

We fund selected assets via derivative contracts with third party structures, the majority of which are not consolidated on our balance sheet, to provide financing through both term funding arrangements and asset-backed commercial paper. Certain CDO and CLO positions are funded through these vehicles, predominantly pursuant to long term funding arrangements. In our liquidity models, we assume that under various stress scenarios, financing would be required from ML& Co. and its subsidiaries for certain of these assets. In our models, under a severe stress scenario, we estimate that the amount of potential future required funding would be less than $5 billion. Although the exact timing of any cash outflows is uncertain, we are confident that we can meet potential funding obligations without materially impacting the firm's liquidity position. Additionally, any purchase of these assets would not result in additional gain or loss to the firm as such exposure is already reflected in the fair value of our derivative contracts.

*Committed Credit Facilities*

In addition to the Global Liquidity Sources, we maintain credit facilities that are available to cover regular and contingent funding needs. We maintain a committed, three-year multi-currency, unsecured bank credit facility that totaled $4.0 billion as of September 26, 2008 and which expires in April 2010. We borrow regularly from this facility as an additional funding source to conduct normal business activities. At both September 26, 2008 and December 28, 2007, we had $1.0 billion of borrowings outstanding under this facility. This facility requires us to maintain a minimum consolidated net worth, which we significantly exceeded.

We also maintain two committed, secured credit facilities which totaled $5.7 billion and $6.5 billion, respectively, at September 26, 2008 and December 28, 2007. One of these facilities matures in May 2009, and the other in December 2008. Both facilities include a one-year term-out feature that allows ML & Co., at its option, to extend borrowings under the facilities for an additional year beyond their respective expiration dates. The secured facilities permit borrowings by ML & Co. and select subsidiaries, secured by a broad range of collateral. At September 26, 2008 and December 28, 2007, we had no borrowings outstanding under either facility.

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

In September 2008, we established an additional $7.5 billion bilateral secured credit facility with Bank of America. This facility permits borrowings by Merrill Lynch and select subsidiaries which can be collateralized by a variety of assets, including corporate and commercial real estate loans. The facility matures on the earlier of March 26, 2009 or the completion or termination date of the pending acquisition of Merrill Lynch by Bank of America. This facility requires us to maintain a minimum consolidated net worth, which we significantly exceeded. As of September 26, 2008, there was $3.0 billion outstanding under this facility.

On October 29, 2008, we entered into a $10 billion committed unsecured bank revolving credit facility with Bank of America, N.A. with borrowings guaranteed under the FDIC's guarantee program. This facility will be available to Merrill Lynch until January 30, 2009 but may expire at an earlier date if the merger with Bank of America is terminated or consummated prior to January 30, 2009 or we elect to participate in the CPP. This facility requires us to maintain a minimum consolidated net worth, which we significantly exceed. If we participate in the CPP, the proceeds received from the U.S. Treasury will be used to repay in full any outstanding amounts owed under this facility.

*Asset-Liability Management*

We manage the profiles of our assets and liabilities and the relationships between them with the objective of ensuring that we maintain sufficient liquidity to meet our funding obligations in all environments, including periods of financial stress. This asset-liability management involves maintaining the appropriate amount and mix of financing related to the underlying asset profiles and liquidity characteristics, while monitoring the relationship between cash flow sources and uses. Our asset-liability management takes into account restrictions at the subsidiary level with coordinated and centralized oversight at ML & Co. We consider a legal entity focus essential in view of the regulatory, tax and other considerations that can affect the transfer and availability of liquidity between legal entities. We assess the availability of cash flows to fund maturing liability obligations when due under stressed market liquidity conditions in time frames from overnight through one year, with an emphasis on the near term periods during which liquidity risk is considered to be the greatest.

An important objective of our asset-liability management is ensuring that sufficient funding is available for our long-term assets and other long-term capital requirements. Long-term capital requirements are determined using a long-term capital model that takes into account:

- The portion of assets that cannot be self-funded in the secured financing markets, considering stressed market conditions, including illiquid and less liquid assets;
- Subsidiaries' regulatory capital;
- Collateral on derivative contracts that may be required in the event of changes in our credit ratings or movements in the underlying instruments;
- Portions of commitments to extend credit based on our estimate of the probability of draws on these commitments; and
- Other contingencies based on our estimates.

In assessing the appropriateness of our long-term capital, we seek to: (1) ensure sufficient matching of our assets based on factors such as holding period, contractual maturity and regulatory restrictions and (2) limit the amount of liabilities maturing in any particular period. We also consider liquidity needs for business growth and circumstances that might cause contingent liquidity obligations. Our policy is to operate with an excess of long-term capital sources of at least $15 billion over our long-term capital requirements. At September 26, 2008, our long-term capital sources of $279.1 billion exceeded our estimated long-term capital requirements by more than $15 billion.

Our regulated bank subsidiaries maintain strong liquidity positions and manage the liquidity profile of their assets, liabilities and commitments so that they can appropriately balance cash flows and meet all of their deposit and other funding obligations when due. This asset-liability management includes: projecting cash flows, monitoring balance sheet liquidity ratios against internal and regulatory requirements, monitoring depositor concentrations, and maintaining liquidity and contingency plans. In managing liquidity, our bank subsidiaries place emphasis on a stable and diversified retail deposit base, which serves as a reliable source of liquidity. The banks' liquidity models use behavioral and statistical approaches to measure and monitor the liquidity characteristics of the deposits.

Our asset-liability management process also focuses on maintaining diversification and an appropriate mix of borrowings through application and monitoring of internal concentration limits and guidelines on various factors, including debt instrument types, maturities, currencies, and single investors.

### Scenario Analysis and Stress Testing

Scenario analysis and stress testing is an important part of our liquidity management process. Our Liquidity Risk Management Group performs regular scenario-based stress tests covering credit rating downgrades and stressed market conditions both market-wide and in specific market segments. We run scenarios covering crisis durations ranging from as short as one week through as long as one year. Some scenarios assume that normal business is not interrupted.

In our scenario analysis, we assume loss of access to unsecured funding markets during periods of financial stress. Various levels of severity are assessed through sensitivity analysis around key liquidity risk drivers and assumptions. Key assumptions that are stressed include diminished access to the secured financing markets, run-off in deposits, draws on liquidity facilities, cash outflows due to the loss of funding from off-balance sheet third party structures including asset-backed commercial paper conduits, derivative collateral outflows and changes in our credit ratings. In our modeling we evaluate all sources of funds that can be accessed during a stress event with particular focus on matching by legal entity locally available sources with corresponding liquidity requirements.

Management judgment is applied in scenario modeling. The Liquidity Risk Management Group works with Global Risk Management to incorporate the results of their judgment and analytics where credit or market risk implications exist. We assess the cash flow exposures under the various scenarios and use the results to refine liquidity assumptions, size our excess liquidity pools and/or adjust the asset-liability profiles.

### Contingency Funding Plan

We maintain a contingency funding plan that outlines our responses to liquidity stress events of various levels of severity. The plan includes the funding action steps, potential funding strategies and a range of communication procedures that we will implement in the event of stressed liquidity conditions. We periodically review and test the contingency funding plan to achieve ongoing validity and readiness. In the challenging credit environment of 2008, we have successfully enacted elements of our contingency funding plan.

Our U.S. bank subsidiaries also retain access to contingency funding through the Federal Reserve discount window and Federal Home Loan Banks, while certain non-U.S. subsidiaries have access to the central banks for the jurisdictions in which they operate. While we do not rely on these sources in our liquidity modeling, we maintain the policies, procedures and governance processes that would enable us to access these sources.

### U.S. Government Liquidity Facilities

On March 11, 2008, the Federal Reserve announced an expansion of its securities lending program to promote liquidity in the financing markets for Treasury securities and other collateral. Under the Term Securities Lending Facility (“TSLF”), the Federal Reserve lends Treasury securities to primary dealers secured for a term of 28 days (rather than overnight, as in the existing program) by a pledge of other securities, including U.S. Treasuries and Agencies and a range of investment grade corporate securities, municipal securities, mortgage-backed securities, and asset-backed securities. In September 2008, the Federal Reserve increased the frequency of auctions and expanded the range of acceptable collateral that can be pledged. We regularly participate in the TSLF auctions.

On March 16, 2008, the Federal Reserve announced that the Federal Reserve Bank of New York has been granted the authority to establish a Primary Dealer Credit Facility (“PDCF”). The PDCF provides overnight funding to primary dealers in exchange for collateral that may include U.S. Treasuries and Agencies and a broad range of debt and equity securities. In September 2008, the Federal Reserve expanded access to the PDCF to include our principal non-U.S. broker-dealer and to those of two other financial institutions. Following the further credit market disruptions in September, we began utilizing the PDCF as an additional source of funding.

The Federal Reserve will operate the TSLF and PDCF through January 30, 2009 and may grant further extensions based on market conditions.

Additionally, in October 2008, the Federal Reserve announced the creation of the Commercial Paper Funding Facility, which will provide a liquidity backstop to U.S. issuers of commercial paper through a special purpose vehicle that will purchase three-month unsecured and asset-backed commercial paper directly from eligible issuers. Also in October 2008, the FDIC announced a new program, the Temporary Liquidity Guarantee Program, that would guarantee newly issued senior unsecured debt of banks, thrifts, and certain holding companies and provide full FDIC insurance coverage of non-interest bearing deposit transaction accounts, regardless of dollar amount. We are eligible for both the Commercial Paper Funding Facility and the Temporary Liquidity Guarantee Program and we began utilizing these programs in October 2008 as additional sources of funding.

### Other Risks

We encounter a variety of other risks, which could have the ability to impact the viability, profitability, and cost-effectiveness of present or future transactions. Such risks include political, tax, and regulatory risks that may arise due to changes in local laws, regulations, accounting standards, or tax statutes. To assist in the mitigation of such risks, we rigorously review new and pending legislation and regulations. Additionally, we employ professionals in jurisdictions in which we operate to actively follow issues of potential concern or impact to Merrill Lynch and to participate in related interest groups.

## Critical Accounting Policies and Estimates

### Use of Estimates

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

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

Estimates, by their nature, are based on judgment and available information. Therefore, actual results could differ from those estimates and could have a material impact on the 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 2007 Annual Report.

Of Merrill Lynch's significant accounting policies (see Note 1 in the 2007 Annual Report), the following involve a higher degree of judgment and complexity.

**Valuation of Financial Instruments**

Proper valuation of financial instruments is a critical component of our financial statement preparation. We account for a significant portion of our financial instruments at fair value or consider fair value in our measurement. We account for certain financial assets and liabilities at fair value under various accounting literature, including SFAS No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities* and SFAS No. 159, *Fair Value Option for Certain Financial Assets and Liabilities* ("SFAS No. 159"). We also account for certain assets at fair value under applicable industry guidance, namely broker-dealer and investment company accounting guidance.

In presenting the Condensed Consolidated Financial Statements, management makes estimates regarding valuations of assets and liabilities requiring fair value measurements. These assets and liabilities include:

- Trading inventory and investment securities;
- Private equity and principal investments;
- Certain receivables under resale agreements and payables under repurchase agreements;
- Loans and allowance for loan losses and liabilities recorded for unrealized losses on unfunded commitments; and
- Certain long-term borrowings, primarily structured debt.

See further discussion in Note 1 to the Condensed Consolidated Financial Statements.

We early adopted the provisions of SFAS No. 157 *Fair Value Measurements* ("SFAS No. 157") in the first quarter of 2007. SFAS No. 157 defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between marketplace participants at the measurement date (i.e., the exit price). An exit price notion does not assume that the transaction price is the same as the exit price and thus permits the recognition of inception gains and losses on a transaction in certain circumstances. An exit price notion requires the valuation to consider what a marketplace participant would pay to buy an asset or receive to assume a liability. Therefore, we must rely upon observable market data before we can utilize internally derived valuations.

Merrill Lynch is an active participant in the majority of the markets in which it conducts business and is a market maker in many of these markets. As such, Merrill Lynch has multiple sources of pricing data available to it including transactions executed in the markets, quotes from other market participants, client inquiry, broker quotes, exchange pricing information and pricing services. The trading units are responsible for determining the fair value of their positions. In determining fair value, the trading units apply their professional judgment to determine the relative weighting of different sources of price information, with broker quotes and pricing services being two potential components of this information.

Fair values for exchange-traded securities and certain exchange-traded derivatives, principally certain options contracts, are based on quoted market prices. Fair values for OTC derivatives, principally forwards, options, and swaps, represent amounts estimated to be received from or paid to a market participant 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 and other inputs such as quoted interest and currency indices, while taking into account the counterparty's credit rating, or our own credit rating 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 that market participants would use in pricing the instrument, which may impact the results of operations reported in the Condensed Consolidated Financial Statements. For example, on long-dated and illiquid contracts we apply extrapolation methods to observed market data in order to estimate inputs and assumptions that are not directly observable. This enables us to mark to fair value all positions consistently when only a subset of prices is directly observable. Values for OTC derivatives are verified using observed information about the costs of hedging the risk and other trades in the market. As the markets for these products develop, we continually refine our pricing models to correlate more closely to the market price of these instruments. Obtaining the fair value for OTC derivative contracts requires the use of management judgment and estimates. In addition, during periods of market illiquidity, the valuation of certain cash products can also require significant judgment and the use of estimates by management. Examples of specific instruments and inputs that require significant judgment are discussed below under Level 3.

Prior to adoption of SFAS No. 157, we followed the provisions of EITF 02-3, *Issues Involved in Accounting for Derivative Contracts Held for Trading Purposes and Contracts Involved in Energy Trading and Risk Management Activities* ("EITF 02-3"). Under EITF 02-3, recognition of day one gains and losses on derivative transactions was prohibited when model inputs that significantly impacted valuation were not observable. Day one gains and losses deferred at inception under EITF 02-3 were recognized at the earlier of when the valuation of such derivative became observable or at the termination of the contract. SFAS No. 157 nullifies this guidance in EITF 02-3. Although this guidance in EITF 02-3 has been nullified, the recognition of significant inception gains and losses that incorporate unobservable inputs are reviewed by management to ensure such gains and losses are derived from observable inputs and/or incorporate reasonable assumptions about the unobservable component, such as implied bid-offer adjustments.

*Valuation Controls*

Given the prevalence of fair value measurement in our financial statements, the control functions related to the fair valuation process are a critical component of our business operations. Prices and model inputs provided by our trading units are verified to observable market data through external pricing sources whenever possible. Similarly, valuation models created by our trading units are independently verified and tested. These control functions are independent of the trading units and include Business Unit Finance, the Product Valuation Group and Global Risk Management. Similar valuation controls are also utilized in connection with the valuation of private equity and other principal investments.

In order to validate the values provided by the trading units, Business Unit Finance and the Product Valuation Group, generally on a monthly basis, employ independent valuation procedures using market information sourced directly from relevant third parties.

- For listed instruments, pricing data from the relevant exchange or trade reporting service will typically be used.
- For plain vanilla OTC derivative positions, data about the market levels for relevant pricing parameters (e.g., volatility, correlation) are obtained from brokers active in the relevant markets.

- For more complex OTC derivative positions and cash instruments, pricing data is sourced from broad-based consensus pricing services to which many peer-group firms contribute their pricing data, indicative (non-transactional) quotes supplied by brokers, and prices from independent data vendors that are based upon the relevant vendor's proprietary models and expert opinion. When relying on non-transactional data, multiple sources of information are compared, if available.

If this validation process identifies significant differences from the trading units' valuation, discussions are held with the respective trading units and differences are either resolved or escalated for senior management review.

*Valuation Adjustments*

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

*Liquidity*

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

*Counterparty Credit Risk*

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

SFAS No. 157 also requires that we consider our own creditworthiness when determining the fair value of an instrument, including OTC derivative instruments. The approach to measuring the impact of our credit risk on an instrument is done in the same manner as for third party credit risk. The impact of our credit risk is incorporated into the fair value, even when credit risk is not readily observable, of an instrument such as in OTC derivatives contracts. OTC derivative liabilities are valued based on the net counterparty exposure as described above.

*SFAS 157 Hierarchy*

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

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

*Level 1*

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

*Level 2*

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

a) Quoted prices for similar assets or liabilities in active markets (for example, restricted stock);
b) Quoted prices for identical or similar assets or liabilities in non-active markets (examples include corporate and municipal bonds, which trade infrequently);
c) Pricing models whose inputs are observable for substantially the full term of the asset or liability (examples include most over-the-counter derivatives including interest rate and currency swaps); and
d) Pricing models whose inputs are derived principally from or corroborated by observable market data through correlation or other means for substantially the full term of the asset or liability (examples include certain residential and commercial mortgage related assets, including loans, securities and derivatives).

*Level 3*

Financial assets and liabilities whose values are based on prices or valuation techniques that require inputs that are both unobservable and significant to the overall fair value measurement. These inputs reflect management's own assumptions about the assumptions a market participant would use in pricing the asset or liability.

Valuation-related issues confronted by credit market participants, including Merrill Lynch, since the second half of 2007 include uncertainty resulting from a drastic decline in market activity for certain credit products; significant increase in dependence on model-related assumptions and/or unobservable model inputs; doubts about the quality of the market information used as inputs; and significant downgrades of structured products by rating agencies.

Provided below are the percentage of level 3 assets and liabilities to total assets and liabilities, respectively.

*(dollars in millions)*

| | **September 26, 2008** | **June 27, 2008** | **December 28, 2007** |
|---|---|---|---|
| Level 3 assets[(1)] | $61,031 | $64,195 | $48,606 |
| Level 3 assets as a percentage of total assets | 7% | 7% | 5% |
| Level 3 liabilities[(1)] | $40,427 | $47,202 | $39,872 |
| Level 3 liabilities as a percentage of total liabilities | 5% | 5% | 4% |

*(1) Includes assets measured at fair value on both a recurring and non-recurring basis.*

Level 3 assets as of September 26, 2008 are primarily comprised of:

- U.S. ABS CDOs of $4.0 billion and derivative assets of $7.5 billion;
- United Kingdom ("U.K.") residential and commercial real estate loans measured at fair value on a non-recurring basis of $4.3 billion;
- credit derivatives of $17.6 billion that incorporate unobservable correlation;
- corporate bonds and loans within trading assets of $11.8 billion (including $1.0 billion of auction rate securities);
- private equity and principal investment positions of $4.2 billion within investment securities; and
- equity, currency, interest rate and commodity derivative contracts of $7.4 billion that are long-dated and/or have unobservable correlation.

Level 3 liabilities as of September 26, 2008 are primarily comprised of:

- derivative liabilities on U.S. ABS CDOs of $8.5 billion;
- credit derivatives of $13.1 billion that incorporate unobservable correlation;
- equity and currency derivative contracts of $7.2 billion that are long-dated and/or have unobservable correlation;
- structured notes classified as long term borrowings of $8.8 billion with embedded equity and commodity derivatives that are long-dated and/or have unobservable correlation; and
- long term borrowings of $1.1 billion related to certain long-term borrowings issued by consolidated SPEs.

Level 3 assets decreased during the third quarter of 2008 as compared to the second quarter of 2008. The decrease resulted from the sale of U.S. ABS CDOs to Lone Star. The majority of the decrease was offset by a loan to Lone Star that financed approximately 75% of the U.S. ABS CDO assets purchased by Lone Star. In addition, the deconsolidation of certain Level 3 assets that were initially recognized as a result of consolidating certain SPEs contributed to the decrease.

As a result of the termination of certain derivative liabilities (total return swaps on U.S. ABS CDOs) in connection with the Lone Star sale, Level 3 liabilities decreased during the third quarter of 2008.

The following outlines the valuation methodologies for the most significant Level 3 assets:

*Mortgage related positions*

In the most liquid markets, readily available or observable prices are used in valuing mortgage related positions. In less liquid markets, such as those that we have encountered since the second half of 2007, the lack of securitization activity and related pricing necessitates the use of other available information and modeling techniques to approximate the fair value for some of these positions, including whole loans, derivatives, and securities.

*U.S. ABS CDOs*

The valuation for certain of our U.S. super senior ABS CDO positions is based on cash flow analysis including cumulative loss assumptions. These assumptions are derived from multiple inputs including mortgage remittance reports, housing prices and other market data. Relevant ABX indices are also analyzed as part of the overall valuation process.

*Residential mortgages*

For certain U.K. residential mortgages, we employ a fundamental cash flow valuation approach. To determine fair value for these instruments, we use assumptions and inputs derived from multiple sources including mortgage remittance reports, prepayment rates, delinquency rates, collateral valuation reports and other market data where available.

*Corporate debt and loans*

Certain corporate debt and loans have limited price transparency, particularly those related to emerging market, leveraged and distressed companies. Where credit spread pricing is unavailable for a particular company, recent trades as well as proxy credit spreads and trends may be considered in the valuation. For leveraged loans, we may also refer to certain credit indices.

*Private equity and principal investments*

For certain private equity and principal investments held, valuation methodologies include discounted cash flows, publicly traded comparables derived by multiplying a key performance metric (e.g. earnings before interest, taxes, depreciation and amortization) of the portfolio company by the relevant valuation multiple observed for comparable companies, acquisition comparables, or entry level multiples, and are subject to appropriate discounts for lack of liquidity or marketability. Certain factors which may influence changes to the fair value include, but are not limited to, recapitalizations, subsequent rounds of financing, and offerings in the equity or debt capital markets.

*Derivatives and structured notes with significant unobservable correlation*

We enter into a number of derivative contracts and issue structured notes where the performance is wholly or partly dependent on the relative performance of two or more assets. In these transactions, referred to as correlation trades, correlation between the assets can be a significant factor in the valuation. Examples of this type of transaction include: equity or foreign exchange baskets, constant maturity swap spreads (i.e., options where the performance is determined based upon the fluctuations between two benchmark interest rates), and commodity spread trades. Many correlations are available through external pricing services. Where external pricing information is not available, management uses estimates based on historical data, calibrated to more liquid market information. Unobservable credit correlation, such as that influencing the valuation of complex structured CDOs, is calibrated using a proxy approach (e.g., using implied correlation from traded credit index tranches as a proxy for calibrating correlation for a basket of single-name corporate investment grade credits that are infrequently traded).

*Derivatives and structured notes with significant unobservable volatility*

We enter into a number of derivative contracts and issue structured notes whose values are dependent on volatilities for which market observable values are not available. These volatilities correspond to options with long-dated expiration dates, strikes significantly in or out of the money, and/or in the case of interest rate underlyings, a large tenor (i.e., an underlying interest rate reference that itself is long-dated). We use model-based extrapolation, proxy techniques, or historical analysis to derive the unobservable volatility. These methods are selected based on available market information and are used across all asset classes. Volatility estimation can have a significant impact on valuations.

See Note 3 to the Condensed Consolidated Financial Statements for additional information.

### Litigation

We have been named as a defendant in various legal actions, including arbitrations, class actions, and other litigation arising in connection with our activities as a global diversified financial services institution. We are also involved in investigations and/or proceedings by governmental and self-regulatory agencies. In accordance with SFAS No. 5, *Accounting for Contingencies*, we will accrue a liability when it is probable of being incurred, and the amount of the loss can be reasonably estimated. In many lawsuits and arbitrations, including almost all of the class action lawsuits, it is not possible to determine whether a liability has been incurred or to estimate the ultimate or minimum amount of that liability until the 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, we cannot predict or estimate what the eventual loss or range of loss related to such matters will be. See Note 11 to the Condensed Consolidated Financial Statements and Other Information — Legal Proceedings for further information.

### Variable Interest Entities and Qualified Special Purpose Entities

In the normal course of business, we enter into a variety of transactions with VIEs. The applicable accounting guidance requires us to perform a qualitative and/or quantitative analysis of each new VIE at inception to determine whether we must consolidate the VIE. In performing this analysis, we make assumptions regarding future performance of assets held by the VIE, taking into account estimates of credit risk, estimates of the fair value of assets, timing of cash flows, and other significant factors. Although a VIE's actual results may differ from projected outcomes, a revised consolidation analysis is not required subsequent to the initial assessment unless a reconsideration event occurs. If a VIE meets the conditions to be considered a QSPE, it is typically not required to be consolidated by us. A QSPE is a passive entity whose activities must be significantly limited. A servicer of the assets held by a QSPE may have discretion in restructuring or working out assets held by the QSPE, as long as that discretion is significantly limited and the parameters of that discretion are fully described in the legal documents that established the QSPE. Determining whether the activities of a QSPE and its servicer meet these conditions requires management judgment.

### Income Taxes

Tax laws are complex and subject to different interpretations by us and various taxing authorities. We regularly assess the likelihood of assessments in each of the taxing jurisdictions by making judgments and interpretations about the application of these complex tax laws and estimating the impact to our financial statements.

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

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

During 2007, we adopted FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109* ("FIN 48"). We believe that the estimate of the level of unrecognized tax benefits is in accordance with FIN 48 and is appropriate in relation to the potential for additional assessments. We adjust the level of unrecognized tax benefits when there is more information available, or when an event occurs requiring a change. The reassessment of unrecognized tax benefits could have a material impact on our effective tax rate in the period in which it occurs.

At December 28, 2007, we had a U.K. net operating loss carryforward of approximately $13.5 billion. The estimated U.K. net operating loss carryforward at the end of the third quarter of 2008 increased to approximately $28 billion primarily as a result of significant losses related to certain FICC positions in 2008. The U.K. net operating loss is denoted in British Pounds and the dollar equivalent will fluctuate based on exchange rate movements. The Company has entered into foreign exchange contracts to economically hedge the currency exposure related to the deferred tax asset associated with the net operating loss carryforward. The loss has an unlimited carryforward period and a tax benefit has been recognized for the deferred tax asset with no valuation allowance.

## Recent Accounting Developments

Please refer to Note 1, New Accounting Pronouncements, in the Condensed Consolidated Financial Statements for a description of the following recent accounting developments:

- FSP FAS 133-1 and FIN 45-4, *Disclosures about Credit Derivatives and Certain Guarantees: An Amendment of FASB Statement 133 and FASB Interpretation No. 45; and Clarification of the Effective Date of FASB Statement No. 161;*

- FSP EITF 03-6-1, *Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities;*

- FSP APB 14-1, *Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement);*

- SFAS No. 161, *Disclosure about Derivative Instruments and Hedging Activities, an Amendment of FASB Statement No. 133;*

- SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements-an amendment of ARB No. 51;*

- FSP FAS 140-3, *Accounting for Transfers of Financial Assets and Repurchase Financing Transactions;*

- SFAS No. 141R, *Business Combinations;*

- Statement of Position 07-1, *Clarification of the Scope of the Audit and Accounting Guide Investment Companies and Accounting by Parent Companies and Equity Method Investors for Investments in Investment Companies;*

- FSP No. FIN 39-1, *Amendment of FASB Interpretation No. 39;*

- SFAS No. 159, *Fair Value Option for Certain Financial Assets and Liabilities*;

- SFAS No. 157, *Fair Value Measurements;*

- SFAS No. 158, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106 and 132R;*

- Interpretation No. 48, *Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109*;

- SFAS No. 156, *Accounting for Servicing of Financial Assets; and*

- SFAS No. 155, *Accounting for Certain Hybrid Financial Instruments an amendment of FASB Statements No. 133 and 140.*

**Transfers of Financial Assets and Consolidation**

In September 2008, the FASB issued for comment revisions to SFAS 140 and FIN 46(R). The FASB voted to eliminate QSPEs from the guidance in SFAS 140 and to remove the scope exception for QSPEs from FIN 46(R). This will require entities previously accounted for as unconsolidated QSPEs to be analyzed for possible consolidation under FIN 46(R). Additionally, the requirements for a transfer of financial assets to be accounted for as a sale will also be modified. While the revised standards are not finalized, this change may affect Merrill Lynch's Condensed Consolidated Financial Statements as Merrill Lynch may be required to consolidate entities previously not consolidated. Although it is unclear what changes the final standards will contain and when they will be finalized, the proposed revisions represent a significant change in current practice and may be effective as early as January 2010. Merrill Lynch will evaluate the impact of these changes on its financial statements once the changes to the standards are finalized. In connection with the proposed revisions to SFAS 140 and FIN 46(R), the FASB also issued for comment additional disclosure requirements. These disclosures may be required for year end 2008.

**Fair Value in Inactive Markets**

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

### ASF Framework

In December 2007, the American Securitization Forum ("ASF") issued the "Streamlined Foreclosure and Loss Avoidance Framework for Securitized Subprime Adjustable Rate Mortgage ("ARM") Loans" (the "ASF Framework"). The ASF Framework provides guidance for servicers to streamline borrower evaluation procedures and to facilitate the use of foreclosure and loss prevention efforts (including refinancings, forbearances, workout plans, loan modifications, deeds-in-lieu and short sales or short payoffs). The ASF Framework attempts to reduce the number of U.S. subprime residential mortgage borrowers who might default because the borrowers cannot afford to pay the increased interest rate on their loans after their subprime residential mortgage variable loan rate resets.

The ASF Framework is focused on U.S. subprime first-lien adjustable-rate residential mortgages that have an initial fixed interest rate period of 36 months or less, were originated between January 1, 2005 and July 31, 2007, have an initial or subsequent interest rate reset date between January 1, 2008 and July 31, 2010, and are included in securitized pools (these loans are referred to as "subprime ARM loans" within the ASF Framework). The ASF Framework requires a borrower and its U.S. subprime residential mortgage variable rate loan to meet specific conditions to qualify for a fast track loan modification under which the qualifying borrower's interest rate will be kept at the existing initial rate, generally for five years following the upcoming reset.

In January 2008, the SEC's Office of Chief Accountant (the "OCA") issued a letter (the "OCA Letter") addressing accounting issues that may be raised by the ASF Framework. The OCA Letter expressed the view that if a Segment 2 subprime ARM loan (as defined by the ASF Framework) is modified pursuant to the ASF Framework and that loan could legally be modified, the OCA will not object to the continued status of the transferee as a QSPE under SFAS No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities (a replacement of FASB Statement No. 125)* ("SFAS No. 140"). The OCA requested the FASB to immediately address the issues that have arisen in the application of the QSPE guidance in SFAS No. 140.

We adopted the ASF Framework during the first quarter of 2008, but through the end of the third quarter of 2008 a relatively low volume of loans has been modified using the ASF Framework. We do not expect that our application of the ASF Framework will impact the off-balance sheet status of Company-sponsored QSPEs that hold Segment 2 subprime ARM loans. The total amount of assets owned by Company-sponsored QSPEs that hold subprime ARM loans originated between January 1, 2005 and July 31, 2007 (including those loans that we do not service) as of September 26, 2008, was approximately $36 billion. Of this amount, approximately $22 billion relates to subprime ARM loans we service. Our retained interests in Company-sponsored QSPEs that hold subprime ARM loans totaled approximately $21 million as of September 26, 2008.

In addition, certain loans held off-balance sheet were modified outside of the ASF Framework. For these loans, an analysis was performed by the servicer to demonstrate that default on the loan was imminent or reasonably foreseeable.

## 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

ML & Co.'s Disclosure Committee assists with implementing, monitoring and evaluating 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 2008 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 our Annual Report on Form 10-K for the fiscal year ended December 28, 2007 and Part II, Item 1 "Legal Proceedings" in our Quarterly Reports on Form 10-Q for the quarters ended March 28, 2008 and June 27, 2008. In each of the cases described below, Merrill Lynch is vigorously defending itself in the litigation.

*Merger-Related Litigation:* On September 15, 2008, Merrill Lynch and Bank of America Corporation entered into an Agreement and Plan of Merger that provides that, upon the terms and subject to the conditions set forth in the Merger Agreement, a wholly owned subsidiary of Bank of America will merge with and into Merrill Lynch with Merrill Lynch continuing as the surviving corporation and as a wholly owned subsidiary of Bank of America (the "Merger"). Since the date of the announcement, actions have been filed in state court in New York and Delaware and the U.S. District Court for the Southern District of New York challenging the Merger. The complaints allege, among other things, that the price to be paid for Merrill Lynch is too low and that the merger should not be consummated.

*In re Merrill Lynch & Co., Inc. Securities, Derivative, and ERISA Litigation (S.D.N.Y.):* In an order dated October 23, 2008, the Court stated that it will decide the motions to dismiss no later than February 17, 2009. The Court further stated that if the cases are not dismissed, discovery must be completed by October 20, 2009, and the trial will begin sometime in February 2010.

*Louisiana Sheriffs' Pension & Relief Fund v. Conway, et al.:* On October 3, 2008, the Louisiana Sheriffs' Pension & Relief Fund and the Louisiana Municipal Police Employees' Retirement System filed a class action against Merrill Lynch & Co., certain of its officers and directors, its underwriters, and its outside auditors in New York Supreme Court. The complaint seeks relief on behalf of all persons who purchased or otherwise acquired Merrill Lynch debt securities issued pursuant to a shelf registration statement dated March 31, 2006. The complaint alleges that Merrill Lynch's prospectuses misstated Merrill Lynch's financial condition and failed to disclose its exposures to losses from investments tied to subprime and other mortgages, as well as its significant liability arising from its participation in the market for auction rate securities.

Auction Rate Regulatory Matters and Litigation:

*Settlement of Regulatory Matters:* Merrill Lynch has entered into agreements in principle to settle regulatory actions related to its sale of auction rate securities ("ARS"). As part of these settlements, Merrill Lynch has agreed to offer to purchase ARS held by certain GWM individuals, charities, and non-profit corporations and to pay a fine of $125 million.

*Mayor and City Council of Baltimore Maryland v. Citigroup, Inc., et al. and Russell Mayfield, et al. v. Citigroup, Inc., et al.:* On September 4, 2008, plaintiffs filed two purported class actions under the antitrust laws against over a dozen defendants in the U.S. District Court for the Southern District of New York. One seeks to represent a class of issuers of auction rate securities underwritten by the defendants between May 12, 2003 and February 13, 2008. The other seeks to represent a class of persons who acquired auction rate securities directly from defendants and who held those securities as of February 13, 2008. Plaintiffs allege that the defendants colluded in connection with their auction rate securities practices. Merrill Lynch intends to move to dismiss or file an answer denying the principal allegations in the complaint.

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

*Carroll v. American International, Group, Inc., et al.:* On October 9, 2008, a class action was filed in the U.S. District Court for the Southern District of New York against American International Group, Inc. ("AIG"), its officers and directors, and its underwriters, including Merrill Lynch, in connection with the AIG's public offering of 7.70% Series A-5 Junior Subordinated Debentures on December 11, 2007. The complaint alleges that the prospectus was false and misleading because, among other things, it allegedly failed to reveal AIG's significant exposure to the subprime market as the largest underwriter of U.S. mortgage bonds and the risk of its failing as a going-concern. The complaint alleges that the defendant, including the underwriters, failed to conduct adequate due diligence regarding AIG's disclosures. The complaint seeks damages in an unspecified amount. On October 24, 2008, a nearly identical complaint, captioned *Bernstein v. American International Group, Inc., et al.*, was filed in the same court.

*Lehman Brothers, Inc., Securities Litigation:* Beginning in September 2008, multiple class actions were filed in the U.S. District Court for the Southern District of New York and New York Supreme Court against officers and directors of Lehman Brothers and its underwriters, including Merrill Lynch, in connection with the sale of securities issued by Lehman Brothers. On September 15, 2008, Lehman Brothers filed a voluntary petition to reorganize under Chapter 11 of the Federal Bankruptcy Code. The complaints allege that the representations made in Lehman Brothers' prospectuses were materially false and misleading because, among other things, they allegedly failed to disclose Lehman's marketing of risky products linked to sub-prime mortgages and its alleged failure to adequately write down commercial and residential mortgage and real estate assets. The complaints allege that the defendants, including the underwriters, failed to conduct adequate due diligence regarding Lehman's disclosures. The complaints seek damages in an unspecified amount.

*Fannie Mae Securities Litigation:* Beginning in September 2008, multiple class actions were filed in New York Supreme Court and the U.S. District Court for the Southern District of New York against the Federal National Mortgage Association ("Fannie Mae"), its officers and directors, and its underwriters, including Merrill Lynch, in connection with the sale of securities issued by Fannie Mae. The complaints allege that the prospectuses were false and misleading because, among other things, they allegedly overstated Fannie Mae's capitalization and asserted that management believed that the current securities offerings would be adequate to fund Fannie Mae through the end of the year. The complaints allege that the defendants, including the underwriters, failed to conduct adequate due diligence regarding Fannie Mae's disclosures. The complaints seek damages in an unspecified amount.

*McReynolds. v. Merrill Lynch:* On October 24, 2008, a class action was filed in the U.S. District Court for the Northern District of Illinois on behalf of African-American and female Financial Advisors. The complaint alleges that a retention bonus procedure recently announced by Merrill Lynch and Bank of America disadvantages African Americans and women because it is based on the amount of the Financial Advisers' production and that, allegedly as a result of discrimination, African-American and female Financial Advisors have lower production than white males. The complaint seeks, among other relief, the value of compensation and benefits that plaintiffs have lost and will lose as a result of defendants' allegedly unlawful conduct.

*Sales Practice Litigation.* In April 2008, Merrill Lynch commenced an action in New York state court against various personal holding companies owned by the Nasser family, and the individuals who established these companies, to collect unsecured debts in excess of $78 million arising primarily from losses incurred selling put options on Bear Stearns stock prior to the collapse of Bear Stearns in March

2008. Defendants have now filed counterclaims against the Company claiming $312 million in damages and alleging that the Company engaged in various negligent and/or fraudulent activities and failed to supervise employees who handled the Nasser-related accounts.

*Opes Prime/Lift Capital:* Merrill Lynch acted as prime broker for both Opes Prime and Lift Capital, two Australian margin lending and stockbroking firms that defaulted on loans in 2008. When these firms defaulted on margin loans, Merrill Lynch sold hundreds of millions of dollars of securities that had been pledged to it as collateral. A class action and numerous other actions have been filed against Merrill Lynch in Australia and Hong Kong claiming that Merrill Lynch did not have the right to liquidate the collateral.

*Mediafiction Litigation:* In October 2008, the bankruptcy section of the Court of Rome provided Merrill Lynch a half-page "clerk's notice" stating that the Court of Rome had granted Mediafiction S.p.A.'s counter-claim against Merrill Lynch International Bank Limited ("MLIB") in the amount of $137 million. The counter-claim alleges that, in connection with an offering in 1998, Mediafiction's agreement to make certain payments to MLIB was void under Italian law and that, therefore, MLIB has to return the payments made. Merrill Lynch believes that the decision is wrong and plans to appeal it to the Court of Appeals of the Court of Rome.

**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. 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 by governmental and self-regulatory agencies.

Merrill Lynch believes it has strong defenses to, and where appropriate, will vigorously contest, many of these matters. Given the number of these matters, some are likely to result in adverse judgments, penalties, injunctions, fines, or other relief. Merrill Lynch may explore potential settlements before a case is taken through trial because of the uncertainty, risks, and costs inherent in the litigation process. In accordance with SFAS No. 5, Merrill Lynch will accrue a liability when it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. In many lawsuits, arbitrations, and investigations, including most of the lawsuits specifically disclosed in its public filings, it is not possible to determine whether a liability has been incurred or to estimate the ultimate or minimum amount of that liability until the matter is close to resolution, in which case no accrual is made until that time. 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 cannot predict what the eventual loss or range of loss related to such matters will be. Subject to the foregoing, 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 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 1A. Risk Factors

In addition to the other information set forth in this report, you should carefully consider the factors discussed in Part I, "Item 1A. Risk Factors" in the Annual Report on Form 10-K for the year ended December 28, 2007, which could materially affect our business, financial condition or future results. The risks described in our Annual Report on Form 10-K are not the only risks facing Merrill Lynch.

Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition and/or operating results.

The following additional risks and uncertainties should also be considered:

***Merrill Lynch's business may be adversely affected if, as a result of general market conditions, the actions of market participants, credit rating agencies or otherwise, Merrill Lynch is unable to access short term and secured funding at commercially reasonable costs.***

Consistent with industry conventions, Merrill Lynch has historically financed a portion of its financial assets through short-term and secured funding. As a result of the prevailing challenging conditions, many financial institutions, including Merrill Lynch, have found it increasingly difficult to obtain such financing on commercially reasonable terms. Any inability of Merrill Lynch to obtain such financing on commercially reasonable terms could adversely affect Merrill Lynch's financial condition, prospects or results of operations.

In addition, credit rating agencies have recently suggested the possibility of credit rating downgrades with respect to financial services companies that suffer severe short-term declines in the trading price of their common stock. If one or more credit rating agencies were to take such rating actions with respect to Merrill Lynch, or if market participants concluded that credit rating agencies were likely to take such action or that trading prices reflected impaired liquidity, Merrill Lynch's financial condition, prospects or results of operations could be affected. Both of these risks could have more pronounced effects in the event that Merrill Lynch does not consummate the Bank of America transaction.

***Merrill Lynch's business may be adversely affected by recent and prospective proposals that may result in increased regulatory oversight.***

As a result of recent market conditions, and the responses of regulators, legislative authorities and others to these conditions, U.S. federal, state and international legislative and regulatory authorities have announced that they are evaluating the current regulatory oversight over financial industry participants, including Merrill Lynch. It is possible that one or more of these regulators will continue to review and or adopt changes to their established rules and policies. In addition, if as a result of the occurrence of the factors described above or otherwise, Merrill Lynch obtains any material amounts of secured funding from, or sells any material amounts of mortgage-related or other illiquid assets to, the Federal Reserve Bank of New York, any U.S. federal agency or other regulators, such entities could require increased regulatory oversight over Merrill Lynch, including the imposition of enhanced capital requirements. Any new laws, regulations or increased regulatory oversight or enhanced capital requirements may adversely affect Merrill Lynch's financial condition, prospects or results of operations.

***Merrill Lynch's business may be adversely affected as a result of the competitive environment for financial professionals and clients.***

Merrill Lynch's business is substantially dependent on its continuing ability to compete effectively to attract and retain qualified employees, including successful FAs, investment bankers, trading and risk management professionals and other revenue-producing or support personnel, and to attract and retain clients. If Merrill Lynch were unable to attract or retain such employees or clients as a result of perceived uncertainty regarding the Bank of America transaction, Merrill Lynch's business may be adversely affected.

**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" of Merrill Lynch's common stock during the quarter ended September 26, 2008.

*(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(1) | Approximate Dollar Value of Shares that May Yet be Purchased Under the Program |
|---|---|---|---|---|
| Month #1 (Jun. 28, 2008 — Aug. 1, 2008) | | | | |
| Capital Management Program | - | $ - | - | $3,971 |
| Employee Transactions(2) | 2,865,812 | $27.57 | N/A | N/A |
| Month #2 (Aug. 2, 2008 — Aug. 29, 2008) | | | | |
| Capital Management Program | - | $ - | - | $3,971 |
| Employee Transactions(2) | 1,095,492 | $26.65 | N/A | N/A |
| Month #3 (Aug. 30, 2008 — Sept. 26, 2008) | | | | |
| Capital Management Program | - | $ - | - | $3,971 |
| Employee Transactions(2) | 2,236,504 | $22.06 | N/A | N/A |
| Third Quarter 2008 (Jun. 28, 2008 — Sept. 26, 2008) | | | | |
| Capital Management Program | - | $ - | - | $3,971 |
| Employee Transactions(2) | 6,197,808 | $25.42 | N/A | N/A |

*(1) No repurchases were made for the quarter ended September 26, 2008.*

*(2) Included in the total number of shares purchased are: (1) 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"), (2) shares delivered or attested to in satisfaction of the exercise price by holders of ML & Co. employee stock options (granted under employee stock compensation plans) and (3) 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. ML & Co.'s employee stock compensation plans provide that the value of the shares delivered, 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. See Notes 12 and 13 to the 2007 Annual Report for additional information on these plans.*

On July 28, 2008, we agreed with the holders of an aggregate of 49,000 shares of our existing 9.00% Non-Voting Mandatory Convertible Non-Cumulative Preferred Stock, Series 1, par value $1.00 per share and liquidation preference $100,000 per share (the "Series 1 Securities"), to exchange their outstanding securities for approximately 177.3 million shares of common stock and $64.5 million in cash. There are no reset provisions associated with the shares of common stock issued in the exchange.

On July 28, 2008, we agreed with a holder of 12,000 shares of the Series 1 Securities to exchange such securities for 12,000 shares of newly issued 9.00% Non-Voting Mandatory Convertible Non-Cumulative Preferred Stock, Series 2, par value $1.00 per share and liquidation preference $100,000 per share (the "Series 2 Securities"). The Series 2 Securities are convertible into shares of common stock at the option of the holder at any time until October 15, 2010, at which time any outstanding Series 2 Securities will convert into common stock. There are no reset provisions associated with the Series 2 Securities.

On July 29, 2008, we agreed with holders of 5,000 shares of the Series 1 Securities to exchange such securities for 5,000 shares of newly issued 9.00% Non-Voting Mandatory Convertible Non-Cumulative Preferred Stock, Series 3, par value $1.00 per share and liquidation preference $100,000 per share (the "Series 3 Securities"). The Series 3 Securities are convertible into shares of common stock at the option of the holder at any time until October 15, 2010, at which time any outstanding Series 3 Securities will convert into common stock. There are no reset provisions associated with the Series 3 Securities.

The Series 2 Securities have a reference price of $33.00 per common share and are convertible to a maximum of 36.4 million shares of common stock. The Series 3 Securities have a reference price of $22.50 per common share and are convertible into a maximum of 22.2 million shares of common stock. Series 2 Securities and Series 3 Securities are subject to customary antidilution provisions under certain circumstances. An aggregate of 26.1 million incremental shares of common stock would be issuable upon conversion of all of the shares of the Series 2 and Series 3 Securities beyond the maximum amount that would have been issuable upon conversion of a similar amount Series 1 Securities.

The securities issued pursuant to these transactions were issued in private placements to accredited investors pursuant to Section 4(2) of the Securities Act of 1933, with the purchasers receiving customary registration rights for their respective shares of common stock not previously registered with the SEC. Of the 177.3 million shares of common stock issued as described above, approximately 130 million shares were previously registered for resale pursuant to the fourth post-effective amendment to our Form S-3 Registration Statement filed with the Securities and Exchange Commission (the "SEC") on February 26, 2008. The remaining shares (including the additional incremental shares of common stock underlying the Series 2 and Series 3 Securities) were registered with the SEC pursuant to a resale prospectus filed with the SEC on October 30, 2008. All of the above-mentioned investors will remain passive investors in us and none of the investors will have any rights of control or role in our governance.

On October 26, 2008, we entered into a securities purchase agreement with the U.S. Treasury setting forth the terms upon which we would issue a new series of preferred stock and warrants to the U.S. Treasury as part of the CPP. In view of the pending merger with Bank of America, we have determined that we will not sell securities to the U.S. Treasury under the CPP at this time, but may do so in the future under certain circumstances. Refer to Note 18 of the Condensed Consolidated Financial Statements for further information.

**Item 6. Exhibits**

An exhibit index has been filed as part of this report and is incorporated herein by reference.

## 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: /s/ Nelson Chai

Nelson Chai
Executive Vice President and
Chief Financial Officer

By: /s/ Gary Carlin

Gary Carlin
Vice President, Controller and Chief
Accounting Officer

Date: November 4, 2008

## INDEX TO EXHIBITS

| Exhibit Number | Exhibit |
|---|---|
| 2.1 | Agreement and Plan of Merger, dated as of September 15, 2008, by and between Merrill Lynch & Co., Inc. and Bank of America Corporation (incorporated by reference to Exhibit 2.1 to Merrill Lynch's Current Report on Form 8-K dated September 19, 2008). |
| 4 | Instruments defining the rights of security holders, including indentures: |
| | ML & Co. hereby undertakes to furnish to the Securities and Exchange Commission, upon request, copies of the instruments that have not been filed which define 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. Such instruments have not been filed pursuant to Item 601(b)(4)(iii)(A) of Regulation S-K. |
| 10.1* | Form of Waiver of Rights under Benefit Plans and Compensation Arrangements (included as Annex B to Exhibit 10.2). |
| 10.2* | Letter Agreement, dated October 26, 2008, between the United States Department of the Treasury and Merrill Lynch & Co., Inc. |
| 10.3* | Form of Consent to entry by Merrill Lynch into agreement with United States Department of the Treasury. |
| 12* | Statement re: computation of ratios. |
| 15* | Letter of awareness from Deloitte & Touche LLP, dated November 4, 2008, concerning unaudited interim financial information. |
| 31.1* | Rule 13a-14(a) Certification. |
| 31.2* | Rule 13a-14(a) Certification. |
| 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. |
| 99.1 | Reconciliation of Non-GAAP Measures (Filed as Exhibit 99.2 to ML & Co.'s Report on Form 8-K dated October 16, 2008). |
| 99.2 | Stock Option Agreement, dated September 15, 2008, between Merrill Lynch & Co., Inc. and Bank of America Corporation (incorporated by reference to Exhibit 99.1 to Merrill Lynch's Current Report on Form 8-K dated September 19, 2008). |

* Filed Herewith

**Exhibit 10.2**

**UNITED STATES DEPARTMENT OF THE TREASURY**
**1500 PENNSYLVANIA AVENUE, NW**
**WASHINGTON, D.C. 20220**

Dear Ladies and Gentlemen:

The company set forth on the signature page hereto (the *"Company"*) intends to issue in a private placement the number of shares of a series of its preferred stock set forth on Schedule A hereto (the *"Preferred Shares"*) and a warrant to purchase the number of shares of its common stock set forth on Schedule A hereto (the *"Warrant"* and, together with the Preferred Shares, the *"Purchased Securities"*) and the United States Department of the Treasury (the *"Investor"*) intends to purchase from the Company the Purchased Securities.

The purpose of this letter agreement is to confirm the terms and conditions of the purchase by the Investor of the Purchased Securities. Except to the extent supplemented or superseded by the terms set forth herein or in the Schedules hereto, the provisions contained in the Securities Purchase Agreement — Standard Terms attached hereto as Exhibit A (the *"Securities Purchase Agreement"*) are incorporated by reference herein. Terms that are defined in the Securities Purchase Agreement are used in this letter agreement as so defined. In the event of any inconsistency between this letter agreement and the Securities Purchase Agreement, the terms of this letter agreement shall govern.

Each of the Company and the Investor hereby agrees that the Closing shall take place on the earlier of (i) the second business day following the termination of the Agreement and Plan of Merger (the *"Merger Agreement"*), dated as of September 15, 2008, by and between the Company and Bank of America Corporation (*"Bank of America"*) and (ii) a date during the period beginning on January 2, 2009 and ending on January 31, 2009 specified by the Company on no less than three business days' prior notice to the Investor, if the Merger Agreement is still in effect but the closing of the transactions contemplated by the Merger Agreement (the *"Merger Closing"*) has not occurred by such specified date, but, in the case of either clauses (i) or (ii), in no event later than January 31, 2009. Notwithstanding the foregoing sentence, prior to January 2, 2009, if the Merger Agreement is still in effect but the Merger Closing has not occurred the Company shall have the right, after consultation with the Federal Reserve and Bank of America, to request that the Investor consummate the Purchase on or prior to January 1, 2009 and, if the Investor so agrees, the Closing shall occur at such place, time and date as shall be agreed between the Company and the Investor. The Company agrees that the Investor will have no obligation to purchase any Purchased Securities from the Company pursuant to clause (ii) of the first sentence of this paragraph or the second sentence of this paragraph if the issuance and sale of such Purchased Securities by the Company would be in breach of its obligations and covenants under the Merger Agreement, as modified by that certain letter agreement, dated the date hereof, between the Company and Bank of America (a copy of which has been provided to the Investor).

If the Merger Closing occurs prior to the Closing, this letter agreement shall automatically terminate upon the Merger Closing without any further action by the parties hereto and this letter agreement shall forthwith become void and there shall be no liability on the part of either party hereto except that nothing herein shall relieve either party from liability for any breach of this letter agreement. If Closing has not occurred by January 31, 2009, this letter agreement shall automatically terminate at 12:01 a.m., New York time, on February 1, 2009, without any further action by the parties hereto and this letter agreement shall forthwith become void and there shall be no liability on the part of either party hereto except that nothing herein shall relieve either party from liability for any breach of this letter agreement.

For the avoidance of doubt, the parties agree that the restrictions set forth in Sections 4.8 and 4.10 of the Securities Purchase Agreement shall apply to the Company as if the Closing had occurred on October 28, 2008 and the Investor had acquired the Purchased Securities as of such date. In addition, the Company shall take all actions necessary to satisfy the conditions set forth in Sections 1.2(d)(iv) and (v) of the Securities Purchase Agreement by October 28, 2008 as fully as if the purchase of the Purchased Securities shall have occurred on such date. For purposes of Section 4.4 of the Securities Purchase Agreement, issuances of capital stock to Bank of America or any of its Affiliates shall not be considered a Qualified Equity Offering. For purposes of Section 1.2(d)(i)(A) of the Securities Purchase Agreement, the representations and warranties set forth in Sections 2.2(g) and 2.2(l) thereof shall be deemed made as of October 28, 2008, provided that the Company has, at or prior to the Closing, provided the Investor with written notice of any events, changes or developments which constitute an exception thereto.

Each of the Company and the Investor hereby confirms its agreement with the other party with respect to the issuance by the Company of the Purchased Securities and the purchase by the Investor of the Purchased Securities pursuant to this letter agreement and the Securities Purchase Agreement on the terms specified on Schedule A hereto.

This letter agreement (including the Schedules hereto) and the Securities Purchase Agreement (including the Annexes thereto) and the Warrant constitute the entire agreement, and supersede all other prior agreements, understandings, representations and warranties, both written and oral, between the parties, with respect to the subject matter hereof. This letter agreement constitutes the "Letter Agreement" referred to in the Securities Purchase Agreement.

This letter agreement may be executed in any number of separate counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts will together constitute the same agreement. Executed signature pages to this letter agreement may be delivered by facsimile and such facsimiles will be deemed as sufficient as if actual signature pages had been delivered.

* * *

In witness whereof, this letter agreement has been duly executed and delivered by the duly authorized representatives of the parties hereto as of the date written below.

UNITED STATES DEPARTMENT OF THE TREASURY

By: ______________________________

Name:
Title:

COMPANY: MERRILL LYNCH & CO., INC.

By: ______________________________

Name:
Title:

Date: ____________________

**EXHIBIT A**

# SECURITIES PURCHASE AGREEMENT

## STANDARD TERMS

## TABLE OF CONTENTS

LIST OF ANNEXES

## INDEX OF DEFINED TERMS

## SECURITIES PURCHASE AGREEMENT — STANDARD TERMS

**Recitals:**

WHEREAS, the United States Department of the Treasury (the *"Investor"*) may from time to time agree to purchase shares of preferred stock and warrants from eligible financial institutions which elect to participate in the Troubled Asset Relief Program Capital Purchase Program (*"CPP"*);

WHEREAS, an eligible financial institution electing to participate in the CPP and issue securities to the Investor (referred to herein as the *"Company"*) shall enter into a letter agreement (the *"Letter Agreement"*) with the Investor which incorporates this Securities Purchase Agreement — Standard Terms;

WHEREAS, the Company agrees to expand the flow of credit to U.S. consumers and businesses on competitive terms to promote the sustained growth and vitality of the U.S. economy;

WHEREAS, the Company agrees to work diligently, under existing programs, to modify the terms of residential mortgages as appropriate to strengthen the health of the U.S. housing market;

WHEREAS, the Company intends to issue in a private placement the number of shares of the series of its Preferred Stock (*"Preferred Stock"*) set forth on Schedule A to the Letter Agreement (the *"Preferred Shares"*) and a warrant to purchase the number of shares of its Common Stock (*"Common Stock"*) set forth on Schedule A to the Letter Agreement (the *"Initial Warrant Shares"*) (the *"Warrant"* and, together with the Preferred Shares, the *"Purchased Securities"*) and the Investor intends to purchase (the *"Purchase"*) from the Company the Purchased Securities; and

WHEREAS, the Purchase will be governed by this Securities Purchase Agreement — Standard Terms and the Letter Agreement, including the schedules thereto (the *"Schedules"*), specifying additional terms of the Purchase. This Securities Purchase Agreement — Standard Terms (including the Annexes hereto) and the Letter Agreement (including the Schedules thereto) are together referred to as this "Agreement". All references in this Securities Purchase Agreement — Standard Terms to "Schedules" are to the Schedules attached to the Letter Agreement.

**NOW, THEREFORE**, in consideration of the premises, and of the representations, warranties, covenants and agreements set forth herein, the parties agree as follows:

### Article I

### Purchase; Closing

1.1 Purchase. On the terms and subject to the conditions set forth in this Agreement, the Company agrees to sell to the Investor, and the Investor agrees to purchase from the Company, at the Closing (as hereinafter defined), the Purchased Securities for the price set forth on Schedule A (the *"Purchase Price"*).

1.2 Closing.

(a) On the terms and subject to the conditions set forth in this Agreement, the closing of the Purchase (the *"Closing"*) will take place at the location specified in Schedule A, at the time and on the date set forth in Schedule A or as soon as practicable thereafter, or at such other place, time and date as shall be agreed between the Company and the Investor. The time and date on which the Closing occurs is referred to in this Agreement as the *"Closing Date"*.

(b) Subject to the fulfillment or waiver of the conditions to the Closing in this Section 1.2, at the Closing the Company will deliver the Preferred Shares and the Warrant, in each case as evidenced by one or more certificates dated the Closing Date and bearing appropriate legends as hereinafter provided for, in exchange for payment in full of the Purchase Price by wire transfer of immediately available United States funds to a bank account designated by the Company on Schedule A.

(c) The respective obligations of each of the Investor and the Company to consummate the Purchase are subject to the fulfillment (or waiver by the Investor and the Company, as applicable) prior to the Closing of the conditions that (i) any approvals or authorizations of all United States and other governmental, regulatory or judicial authorities (collectively, *"Governmental Entities"*) required for the consummation of the Purchase shall have been obtained or made in form and substance reasonably satisfactory to each party and shall be in full force and effect and all waiting periods required by United States and other applicable law, if any, shall have expired and (ii) no provision of any applicable United States or other law and no judgment, injunction, order or decree of any Governmental Entity shall prohibit the purchase and sale of the Purchased Securities as contemplated by this Agreement.

(d) The obligation of the Investor to consummate the Purchase is also subject to the fulfillment (or waiver by the Investor) at or prior to the Closing of each of the following conditions:

(i) (A) the representations and warranties of the Company set forth in (x) Section 2.2(g) of this Agreement shall be true and correct in all respects as though made on and as of the Closing Date, (y) Sections 2.2(a) through (f) shall be true and correct in all material respects as though made on and as of the Closing Date (other than representations and warranties that by their terms speak as of another date, which representations and warranties shall be true and correct in all material respects as of such other date) and (z) Sections 2.2(h) through (v) (disregarding all qualifications or limitations set forth in such representations and warranties as to "materiality", "Company Material Adverse Effect" and words of similar import) shall be true and correct as though made on and as of the Closing Date (other than representations and warranties that by their terms speak as of another date, which representations and warranties shall be true and correct as of such other date), except to the extent that the failure of such representations and warranties referred to in this Section 1.2(d)(i)(A)(z) to be so true and correct, individually or in the aggregate, does not have and would not reasonably be expected to have a Company Material Adverse Effect and (B) the Company shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing;

(ii) the Investor shall have received a certificate signed on behalf of the Company by a senior executive officer certifying to the effect that the conditions set forth in Section 1.2(d)(i) have been satisfied;

(iii) the Company shall have duly adopted and filed with the Secretary of State of its jurisdiction of organization or other applicable Governmental Entity the amendment to its certificate or articles of incorporation, articles of association, or similar organizational document (*"Charter"*) in substantially the form attached hereto as Annex A (the *"Certificate of Designations"*) and such filing shall have been accepted;

(iv) (A) the Company shall have effected such changes to its compensation, bonus, incentive and other benefit plans, arrangements and agreements (including golden parachute, severance and employment agreements) (collectively, *"Benefit Plans"*) with respect to its Senior Executive Officers (and to the extent necessary for such changes to be legally enforceable, each of its Senior Executive Officers shall have duly consented in writing to such changes), as may be necessary, during the period that the Investor owns any debt or equity securities of the Company acquired pursuant to this Agreement or the Warrant, in order to comply with Section 111(b) of the

Emergency Economic Stabilization Act of 2008 (*"EESA"*) as implemented by guidance or regulation thereunder that has been issued and is in effect as of the Closing Date, and (B) the Investor shall have received a certificate signed on behalf of the Company by a senior executive officer certifying to the effect that the condition set forth in Section 1.2(d)(iv)(A) has been satisfied;

(v) each of the Company's Senior Executive Officers shall have delivered to the Investor a written waiver in the form attached hereto as Annex B releasing the Investor from any claims that such Senior Executive Officers may otherwise have as a result of the issuance, on or prior to the Closing Date, of any regulations which require the modification of, and the agreement of the Company hereunder to modify, the terms of any Benefit Plans with respect to its Senior Executive Officers to eliminate any provisions of such Benefit Plans that would not be in compliance with the requirements of Section 111(b) of the EESA as implemented by guidance or regulation thereunder that has been issued and is in effect as of the Closing Date;

(vi) the Company shall have delivered to the Investor a written opinion from counsel to the Company (which may be internal counsel), addressed to the Investor and dated as of the Closing Date, in substantially the form attached hereto as Annex C;

(vii) the Company shall have delivered certificates in proper form or, with the prior consent of the Investor, evidence of shares in book-entry form, evidencing the Preferred Shares to Investor or its designee(s); and

(viii) the Company shall have duly executed the Warrant in substantially the form attached hereto as Annex D and delivered such executed Warrant to the Investor or its designee(s).

1.3 Interpretation. When a reference is made in this Agreement to "Recitals," "Articles," "Sections," or "Annexes" such reference shall be to a Recital, Article or Section of, or Annex to, this Securities Purchase Agreement — Standard Terms, and a reference to "Schedules" shall be to a Schedule to the Letter Agreement, in each case, unless otherwise indicated. The terms defined in the singular have a comparable meaning when used in the plural, and vice versa. References to "herein", "hereof", "hereunder" and the like refer to this Agreement as a whole and not to any particular section or provision, unless the context requires otherwise. The table of contents and headings contained in this Agreement are for reference purposes only and are not part of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed followed by the words "without limitation." No rule of construction against the draftsperson shall be applied in connection with the interpretation or enforcement of this Agreement, as this Agreement is the product of negotiation between sophisticated parties advised by counsel. All references to "$" or "dollars" mean the lawful currency of the United States of America. Except as expressly stated in this Agreement, all references to any statute, rule or regulation are to the statute, rule or regulation as amended, modified, supplemented or replaced from time to time (and, in the case of statutes, include any rules and regulations promulgated under the statute) and to any section of any statute, rule or regulation include any successor to the section. References to a *"business day"* shall mean any day except Saturday, Sunday and any day on which banking institutions in the State of New York generally are authorized or required by law or other governmental actions to close.

Article II

**Representations and Warranties**

2.1 Disclosure.

(a) *"Company Material Adverse Effect"* means a material adverse effect on (i) the business, results of operation or financial condition of the Company and its consolidated subsidiaries taken as a whole; *provided*, *however*, that Company Material Adverse Effect shall not be deemed to include the effects of (A) changes after the date of the Letter Agreement (the *"Signing Date"*) in general business, economic or market conditions (including changes generally in prevailing interest rates, credit availability and liquidity, currency exchange rates and price levels or trading volumes in the United States or foreign securities or credit markets), or any outbreak or escalation of hostilities, declared or undeclared acts of war or terrorism, in each case generally affecting the industries in which the Company and its subsidiaries operate, (B) changes or proposed changes after the Signing Date in generally accepted accounting principles in the United States (*"GAAP"*) or regulatory accounting requirements, or authoritative interpretations thereof, (C) changes or proposed changes after the Signing Date in securities, banking and other laws of general applicability or related policies or interpretations of Governmental Entities (in the case of each of these clauses (A), (B) and (C), other than changes or occurrences to the extent that such changes or occurrences have or would reasonably be expected to have a materially disproportionate adverse effect on the Company and its consolidated subsidiaries taken as a whole relative to comparable U.S. banking or financial services organizations), or (D) changes in the market price or trading volume of the Common Stock or any other equity, equity-related or debt securities of the Company or its consolidated subsidiaries (it being understood and agreed that the exception set forth in this clause (D) does not apply to the underlying reason giving rise to or contributing to any such change); or (ii) the ability of the Company to consummate the Purchase and the other transactions contemplated by this Agreement and the Warrant and perform its obligations hereunder or thereunder on a timely basis.

(b) *"Previously Disclosed"* means information set forth or incorporated in the Company's Annual Report on Form 10-K for the most recently completed fiscal year of the Company filed with the Securities and Exchange Commission (the *"SEC"*) prior to the Signing Date (the *"Last Fiscal Year"*) or in its other reports and forms filed with or furnished to the SEC under Sections 13(a), 14(a) or 15(d) of the Securities Exchange Act of 1934 (the *"Exchange Act"*) on or after the last day of the Last Fiscal Year and prior to the Signing Date.

2.2 Representations and Warranties of the Company. Except as Previously Disclosed, the Company represents and warrants to the Investor that as of the Signing Date and as of the Closing Date (or such other date specified herein):

(a) Organization, Authority and Significant Subsidiaries. The Company has been duly incorporated and is validly existing and in good standing under the laws of its jurisdiction of organization, with the necessary power and authority to own its properties and conduct its business in all material respects as currently conducted, and except as has not, individually or in the aggregate, had and would not reasonably be expected to have a Company Material Adverse Effect, has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification; each subsidiary of the Company that is a "significant subsidiary" within the meaning of Rule 1-02(w) of Regulation S-X under the Securities Act of 1933 (the *"Securities Act"*) has been duly organized and is validly existing in good standing under the laws of its jurisdiction of organization. The Charter and bylaws of the Company, copies of which have been provided to the Investor prior to the Signing Date, are true, complete and correct copies of such documents as in full force and effect as of the Signing Date.

(b) Capitalization. The authorized capital stock of the Company, and the outstanding capital stock of the Company (including securities convertible into, or exercisable or exchangeable for, capital stock of the Company) as of the most recent fiscal month-end preceding the Signing Date (the *"Capitalization Date"*) is set forth on Schedule B. The outstanding shares of capital stock of the Company have been duly authorized and are validly issued and outstanding, fully paid and nonassessable, and subject to no preemptive rights (and were not issued in violation of any preemptive rights). Except as provided in the Warrant, as of the Signing Date, the Company does not have outstanding any securities or other obligations providing the holder the right to acquire Common Stock that is not reserved for issuance as specified on Schedule B, and the Company has not made any other commitment to authorize, issue or sell any Common Stock. Since the Capitalization Date, the Company has not issued any shares of Common Stock, other than (i) shares issued upon the exercise of stock options or delivered under other equity-based awards or other convertible securities or warrants which were issued and outstanding on the Capitalization Date and disclosed on Schedule B and (ii) shares disclosed on Schedule B.

(c) Preferred Shares. The Preferred Shares have been duly and validly authorized, and, when issued and delivered pursuant to this Agreement, such Preferred Shares will be duly and validly issued and fully paid and non-assessable, will not be issued in violation of any preemptive rights, and will rank *pari passu* with or senior to all other series or classes of Preferred Stock, whether or not issued or outstanding, with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Company.

(d) The Warrant and Warrant Shares. The Warrant has been duly authorized and, when executed and delivered as contemplated hereby, will constitute a valid and legally binding obligation of the Company enforceable against the Company in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity (*"Bankruptcy Exceptions"*). The shares of Common Stock issuable upon exercise of the Warrant (the *"Warrant Shares"*) have been duly authorized and reserved for issuance upon exercise of the Warrant and when so issued in accordance with the terms of the Warrant will be validly issued, fully paid and non-assessable, subject, if applicable, to the approvals of its stockholders set forth on Schedule C.

(e) Authorization, Enforceability.

(i) The Company has the corporate power and authority to execute and deliver this Agreement and the Warrant and, subject, if applicable, to the approvals of its stockholders set forth on Schedule C, to carry out its obligations hereunder and thereunder (which includes the issuance of the Preferred Shares, Warrant and Warrant Shares). The execution, delivery and performance by the Company of this Agreement and the Warrant and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of the Company and its stockholders, and no further approval or authorization is required on the part of the Company, subject, in each case, if applicable, to the approvals of its stockholders set forth on Schedule C. This Agreement is a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to the Bankruptcy Exceptions.

(ii) The execution, delivery and performance by the Company of this Agreement and the Warrant and the consummation of the transactions contemplated hereby and thereby and compliance by the Company with the provisions hereof and thereof, will not (A) violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration of, or result in the creation of, any lien, security interest, charge or encumbrance upon any of the properties or assets of the Company or any Company Subsidiary under any of the terms, conditions or provisions of (i) subject, if applicable, to the approvals of the Company's stockholders set forth on Schedule C, its organizational documents or (ii) any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which the Company or any Company Subsidiary is a party or by which it or any Company Subsidiary may be bound, or to which the Company or any Company Subsidiary or any of the properties or assets of the Company or any Company Subsidiary may be subject, or (B) subject to compliance with the statutes and regulations referred to in the next paragraph, violate any statute, rule or regulation or any judgment, ruling, order, writ, injunction or decree applicable to the Company or any Company Subsidiary or any of their respective properties or assets except, in the case of clauses (A)(ii) and (B), for those occurrences that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect.

(iii) Other than the filing of the Certificate of Designations with the Secretary of State of its jurisdiction of organization or other applicable Governmental Entity, any current report on Form 8-K required to be filed with the SEC, such filings and approvals as are required to be made or obtained under any state "blue sky" laws, the filing of any proxy statement contemplated by Section 3.1 and such as have been made or obtained, no notice to, filing with, exemption or review by, or authorization, consent or approval of, any Governmental Entity is required to be made or obtained by the Company in connection with the consummation by the Company of the Purchase except for any such notices, filings, exemptions, reviews, authorizations, consents and approvals the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(f) Anti-takeover Provisions and Rights Plan. The Board of Directors of the Company (the *"Board of Directors"*) has taken all necessary action to ensure that the transactions contemplated by this Agreement and the Warrant and the consummation of the transactions contemplated hereby and thereby, including the exercise of the Warrant in accordance with its terms, will be exempt from any anti-takeover or similar provisions of the Company's Charter and bylaws, and any other provisions of any applicable "moratorium", "control share", "fair price", "interested stockholder" or other anti-takeover laws and regulations of any jurisdiction. The Company has taken all actions necessary to render any stockholders' rights plan of the Company inapplicable to this Agreement and the Warrant and the consummation of the transactions contemplated hereby and thereby, including the exercise of the Warrant by the Investor in accordance with its terms.

(g) No Company Material Adverse Effect. Since the last day of the last completed fiscal period for which the Company has filed a Quarterly Report on Form 10-Q or an Annual Report on Form 10-K with the SEC prior to the Signing Date, no fact, circumstance, event, change, occurrence, condition or development has occurred that, individually or in the aggregate, has had or would reasonably be expected to have a Company Material Adverse Effect.

(h) Company Financial Statements. Each of the consolidated financial statements of the Company and its consolidated subsidiaries (collectively the *"Company Financial Statements"*) included or incorporated by reference in the Company Reports filed with the SEC since December 31, 2006, present fairly in all material respects the consolidated financial position of the Company and its consolidated subsidiaries as of the dates indicated therein (or if amended prior to the Signing Date, as of the date of such amendment) and the consolidated results of their operations for the periods specified therein; and except as stated therein, such financial statements (A) were prepared in conformity with GAAP applied on a consistent basis (except as may be noted therein), (B) have been prepared from, and are in accordance with, the books and records of the Company and the Company Subsidiaries and (C) complied as to form, as of their respective dates of filing with the SEC, in all material respects with the applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto.

(i) Reports.

(i) Since December 31, 2006, the Company and each subsidiary of the Company (each a *"Company Subsidiary"* and, collectively, the *"Company Subsidiaries"*) has timely filed all reports, registrations, documents, filings, statements and submissions, together with any amendments thereto, that it was required to file with any Governmental Entity (the foregoing, collectively, the *"Company Reports"*) and has paid all fees and assessments due and payable in connection therewith, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. As of their respective dates of filing, the Company Reports complied in all material respects with all statutes and applicable rules and regulations of the applicable Governmental Entities. In the case of each such Company Report filed with or furnished to the SEC, such Company Report (A) did not, as of its date or if amended prior to the Signing Date, as of the date of such amendment, contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading, and (B) complied as to form in all material respects with the applicable requirements of the Securities Act and the Exchange Act. With respect to all other Company Reports, the Company Reports were complete and accurate in all material respects as of their respective dates. No executive officer of the Company or any Company Subsidiary has failed in any respect to make the certifications required of him or her under Section 302 or 906 of the Sarbanes-Oxley Act of 2002.

(ii) The records, systems, controls, data and information of the Company and the Company Subsidiaries are recorded, stored, maintained and operated under means (including any electronic, mechanical or photographic process, whether computerized or not) that are under the exclusive ownership and direct control of the Company or the Company Subsidiaries or their accountants (including all means of access thereto and therefrom), except for any non-exclusive ownership and non-direct control that would not reasonably be expected to have a material adverse effect on the system of internal accounting controls described below in this Section 2.2(i)(ii). The Company (A) has implemented and maintains disclosure controls and procedures (as defined in Rule 13a-15(e) of the Exchange Act) to ensure that material information relating to the Company, including the consolidated Company Subsidiaries, is made known to the chief executive officer and the chief financial officer of the Company by others within those entities, and (B) has disclosed, based on its most recent evaluation prior to the Signing Date, to the Company's outside auditors and the audit committee of the Board of Directors (x) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) that are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting.

(j) No Undisclosed Liabilities. Neither the Company nor any of the Company Subsidiaries has any liabilities or obligations of any nature (absolute, accrued, contingent or otherwise) which are not properly reflected or reserved against in the Company Financial Statements to the extent required to be so reflected or reserved against in accordance with GAAP, except for (A) liabilities that have arisen since the last fiscal year end in the ordinary and usual course of business and consistent with past practice and (B) liabilities that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect.

(k) Offering of Securities. Neither the Company nor any person acting on its behalf has taken any action (including any offering of any securities of the Company under circumstances which would require the integration of such offering with the offering of any of the Purchased Securities under the Securities Act, and the rules and regulations of the SEC promulgated thereunder), which might subject the offering, issuance or sale of any of the Purchased Securities to Investor pursuant to this Agreement to the registration requirements of the Securities Act.

(l) Litigation and Other Proceedings. Except (i) as set forth on Schedule D or (ii) as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, there is no (A) pending or, to the knowledge of the Company, threatened, claim, action, suit, investigation or proceeding, against the Company or any Company Subsidiary or to which any of their assets are subject nor is the Company or any Company Subsidiary subject to any order, judgment or decree or (B) unresolved violation, criticism or exception by any Governmental Entity with respect to any report or relating to any examinations or inspections of the Company or any Company Subsidiaries.

(m) Compliance with Laws. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, the Company and the Company Subsidiaries have all permits, licenses, franchises, authorizations, orders and approvals of, and have made all filings, applications and registrations with, Governmental Entities that are required in order to permit them to own or lease their properties and assets and to carry on their business as presently conducted and that are material to the business of the Company or such Company Subsidiary. Except as set forth on Schedule E, the Company and the Company Subsidiaries have complied in all respects and are not in default or violation of, and none of them is, to the knowledge of the Company, under investigation with respect to or, to the knowledge of the Company, have been threatened to be charged with or given notice of any violation of, any applicable domestic (federal, state or local) or foreign law, statute, ordinance, license, rule, regulation, policy or guideline, order, demand, writ, injunction, decree or judgment of any Governmental Entity, other than such noncompliance, defaults or violations that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. Except for statutory or regulatory restrictions of general application or as set forth on Schedule E, no Governmental Entity has placed any restriction on the business or properties of the Company or any Company Subsidiary that would, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(n) Employee Benefit Matters. Except as would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect: (A) each "employee benefit plan" (within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (*"ERISA"*)) providing benefits to any current or former employee, officer or director of the Company or any member of its *"Controlled Group"* (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Internal Revenue Code of 1986, as amended (the *"Code"*)) that is sponsored, maintained or contributed to by the Company or any member of its Controlled Group and for which the Company or any member of its Controlled Group would have any liability, whether actual or contingent (each, a *"Plan"*) has been maintained in compliance with its terms and with the requirements of all applicable statutes, rules and regulations, including ERISA and the Code; (B) with respect to each Plan subject to Title IV of ERISA (including, for purposes of this clause (B), any plan subject to Title IV of ERISA that the Company or any member of its Controlled Group previously maintained or contributed to in the six years prior to the Signing Date), (1) no "reportable event" (within the meaning of Section 4043(c) of ERISA), other than a reportable event for which the notice period referred to in Section 4043(c) of ERISA has been waived, has occurred in the three years prior to the Signing Date or is reasonably expected to occur, (2) no "accumulated funding deficiency" (within the meaning of Section 302 of ERISA or Section 412 of the Code), whether or not waived, has occurred in the three years prior to the Signing Date or is reasonably expected to occur, (3) the fair market value of the assets under each Plan exceeds the present value of all benefits accrued under such Plan (determined based on the assumptions used to fund such Plan) and (4) neither the Company nor any member of its Controlled Group has incurred in the six years prior to the Signing Date, or reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the PBGC in the ordinary course and without default) in respect of a Plan (including any Plan that is a "multiemployer plan", within the meaning of Section 4001(c)(3) of ERISA); and (C) each Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service with respect to its qualified status that has not been revoked, or such a determination letter has been timely applied for but not received by the Signing Date, and nothing has occurred, whether by action or by failure to act, which could reasonably be expected to cause the loss, revocation or denial of such qualified status or favorable determination letter.

(o) Taxes. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, (i) the Company and the Company Subsidiaries have filed all federal, state, local and foreign income and franchise Tax returns required to be filed through the Signing Date, subject to permitted extensions, and have paid all Taxes due thereon, and (ii) no Tax deficiency has been determined adversely to the Company or any of the Company Subsidiaries, nor does the Company have any knowledge of any Tax deficiencies. *"Tax"* or *"Taxes"* means any federal, state, local or foreign income, gross receipts, property, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add on minimum, ad valorem, transfer or excise tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, imposed by any Governmental Entity.

(p) Properties and Leases. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, the Company and the Company Subsidiaries have good and marketable title to all real properties and all other properties and assets owned by them, in each case free from liens, encumbrances, claims and defects that would affect the value thereof or interfere with the use made or to be made thereof by them. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, the Company and the Company Subsidiaries hold all leased real or personal property under valid and enforceable leases with no exceptions that would interfere with the use made or to be made thereof by them.

(q) Environmental Liability. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect:

(i) there is no legal, administrative, or other proceeding, claim or action of any nature seeking to impose, or that would reasonably be expected to result in the imposition of, on the Company or any Company Subsidiary, any liability relating to the release of hazardous substances as defined under any local, state or federal environmental statute, regulation or ordinance, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, pending or, to the Company's knowledge, threatened against the Company or any Company Subsidiary;

(ii) to the Company's knowledge, there is no reasonable basis for any such proceeding, claim or action; and

(iii) neither the Company nor any Company Subsidiary is subject to any agreement, order, judgment or decree by or with any court, Governmental Entity or third party imposing any such environmental liability.

(r) Risk Management Instruments. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, all derivative instruments, including, swaps, caps, floors and option agreements, whether entered into for the Company's own account, or for the account of one or more of the Company Subsidiaries or its or their customers, were entered into (i) only in the ordinary course of business, (ii) in accordance with prudent practices and in all material respects with all applicable laws, rules, regulations and regulatory policies and (iii) with counterparties believed to be financially responsible at the time; and each of such instruments constitutes the valid and legally binding obligation of the Company or one of the Company Subsidiaries, enforceable in accordance with its terms, except as may be limited by the Bankruptcy Exceptions. Neither the Company or the Company Subsidiaries, nor, to the knowledge of the Company, any other party thereto, is in breach of any of its obligations under any such agreement or arrangement other than such breaches that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(s) Agreements with Regulatory Agencies. Except as set forth on Schedule F, neither the Company nor any Company Subsidiary is subject to any material cease-and-desist or other similar order or enforcement action issued by, or is a party to any material written agreement, consent agreement or memorandum of understanding with, or is a party to any commitment letter or similar undertaking to, or is subject to any capital directive by, or since December 31, 2006, has adopted any board resolutions at the request of, any Governmental Entity (other than the Appropriate Federal Banking Agencies with jurisdiction over the Company and the Company Subsidiaries) that currently restricts in any material respect the conduct of its business or that in any material manner relates to its capital adequacy, its liquidity and funding policies and practices, its ability to pay dividends, its credit, risk management or compliance policies or procedures, its internal controls, its management or its operations or business (each item in this sentence, a *"Regulatory Agreement"*), nor has the Company or any Company Subsidiary been advised since December 31, 2006 by any such Governmental Entity that it is considering issuing, initiating, ordering, or requesting any such Regulatory Agreement. The Company and each Company Subsidiary are in compliance in all material respects with each Regulatory Agreement to which it is party or subject, and neither the Company nor any Company Subsidiary has received any notice from any Governmental Entity indicating that either the Company or any Company Subsidiary is not in compliance in all material respects with any such Regulatory Agreement. *"Appropriate Federal Banking Agency"* means the "appropriate Federal banking agency" with respect to the Company or such Company Subsidiaries, as applicable, as defined in Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(q)).

(t) Insurance. The Company and the Company Subsidiaries are insured with reputable insurers against such risks and in such amounts as the management of the Company reasonably has determined to be prudent and consistent with industry practice. The Company and the Company Subsidiaries are in material compliance with their insurance policies and are not in default under any of the material terms thereof, each such policy is outstanding and in full force and effect, all premiums and other payments due under any material policy have been paid, and all claims thereunder have been filed in due and timely fashion, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(u) Intellectual Property. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, (i) the Company and each Company Subsidiary owns or otherwise has the right to use, all intellectual property rights, including all trademarks, trade dress, trade names, service marks, domain names, patents, inventions, trade secrets, know-how, works of authorship and copyrights therein, that are used in the conduct of their existing businesses and all rights relating to the plans, design and specifications of any of its branch facilities ("*Proprietary Rights*") free and clear of all liens and any claims of ownership by current or former employees, contractors, designers or others and (ii) neither the Company nor any of the Company Subsidiaries is materially infringing, diluting, misappropriating or violating, nor has the Company or any or the Company Subsidiaries received any written (or, to the knowledge of the Company, oral) communications alleging that any of them has materially infringed, diluted, misappropriated or violated, any of the Proprietary Rights owned by any other person. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, to the Company's knowledge, no other person is infringing, diluting, misappropriating or violating, nor has the Company or any or the Company Subsidiaries sent any written communications since January 1, 2006 alleging that any person has infringed, diluted, misappropriated or violated, any of the Proprietary Rights owned by the Company and the Company Subsidiaries.

(v) Brokers and Finders. No broker, finder or investment banker is entitled to any financial advisory, brokerage, finder's or other fee or commission in connection with this Agreement or the Warrant or the transactions contemplated hereby or thereby based upon arrangements made by or on behalf of the Company or any Company Subsidiary for which the Investor could have any liability.

Article III

**Covenants**

3.1 Commercially Reasonable Efforts.

(a) Subject to the terms and conditions of this Agreement, each of the parties will use its commercially reasonable efforts in good faith to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or desirable, or advisable under applicable laws, so as to permit consummation of the Purchase as promptly as practicable and otherwise to enable consummation of the transactions contemplated hereby and shall use commercially reasonable efforts to cooperate with the other party to that end.

(b) If the Company is required to obtain any stockholder approvals set forth on Schedule C, then the Company shall comply with this Section 3.1(b) and Section 3.1(c). The Company shall call a special meeting of its stockholders, as promptly as practicable following the Closing, to vote on proposals (collectively, the "*Stockholder Proposals*") to (i) approve the exercise of the Warrant for Common Stock for purposes of the rules of the national security exchange on which the Common Stock is listed and/or (ii) amend the Company's Charter to increase the number of authorized shares of Common Stock to at least such number as shall be sufficient to permit the full exercise of the Warrant for Common Stock and comply with the other provisions of this Section 3.1(b) and Section 3.1(c). The Board of Directors shall recommend to the Company's stockholders that such stockholders vote in favor of the Stockholder Proposals. In connection with such meeting, the Company shall prepare (and the Investor will reasonably cooperate with the Company to prepare) and file with the SEC as promptly as practicable (but in no event more than ten business days after the Closing) a preliminary proxy statement, shall use its reasonable best efforts to respond to any comments of the SEC or its staff thereon and to cause a definitive proxy statement related to such stockholders' meeting to be mailed to the Company's stockholders not more than five business days after clearance thereof by the SEC, and shall use its reasonable best efforts to solicit proxies for such stockholder approval of the Stockholder Proposals. The Company shall notify the Investor promptly of the receipt of any comments from the SEC or its staff with respect to the proxy statement and of any request by the SEC or its staff for amendments or supplements to such proxy statement or for additional information and will supply the Investor with copies of all correspondence between the Company or any of its representatives, on the one hand, and the SEC or its staff, on the other hand, with respect to such proxy statement. If at any time prior to such stockholders' meeting there shall occur any event that is required to be set forth in an amendment or supplement to the proxy statement, the Company shall as promptly as practicable prepare and mail to its stockholders such an amendment or supplement. Each of the Investor and the Company agrees promptly to correct any information provided by it or on its behalf for use in the proxy statement if and to the extent that such information shall have become false or misleading in any material respect, and the Company shall as promptly as practicable prepare and mail to its stockholders an amendment or supplement to correct such information to the extent required by applicable laws and regulations. The Company shall consult with the Investor prior to filing any proxy statement, or any amendment or supplement thereto, and provide the Investor with a reasonable opportunity to comment thereon. In the event that the approval of any of the Stockholder Proposals is not obtained at such special stockholders meeting, the Company shall include a proposal to approve (and the Board of Directors shall recommend approval of) each such proposal at a meeting of its stockholders no less than once in each subsequent six-month period beginning on January 1, 2009 until all such approvals are obtained or made.

(c) None of the information supplied by the Company or any of the Company Subsidiaries for inclusion in any proxy statement in connection with any such stockholders meeting of the Company will, at the date it is filed with the SEC, when first mailed to the Company's stockholders and at the time of any stockholders meeting, and at the time of any amendment or supplement thereof, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

3.2 Expenses. Unless otherwise provided in this Agreement or the Warrant, each of the parties hereto will bear and pay all costs and expenses incurred by it or on its behalf in connection with the transactions contemplated under this Agreement and the Warrant, including fees and expenses of its own financial or other consultants, investment bankers, accountants and counsel.

3.3 Sufficiency of Authorized Common Stock; Exchange Listing.

(a) During the period from the Closing Date (or, if the approval of the Stockholder Proposals is required, the date of such approval) until the date on which the Warrant has been fully exercised, the Company shall at all times have reserved for issuance, free of preemptive or similar rights, a sufficient number of authorized and unissued Warrant Shares to effectuate such exercise. Nothing in this Section 3.3 shall preclude the Company from satisfying its obligations in respect of the exercise of the Warrant by delivery of shares of Common Stock which are held in the treasury of the Company. As soon as reasonably practicable following the Closing, the Company shall, at its expense, cause the Warrant Shares to be listed on the same national securities exchange on which the Common Stock is listed, subject to official notice of issuance, and shall maintain such listing for so long as any Common Stock is listed on such exchange.

(b) If requested by the Investor, the Company shall promptly use its reasonable best efforts to cause the Preferred Shares to be approved for listing on a national securities exchange as promptly as practicable following such request.

3.4 Certain Notifications Until Closing. From the Signing Date until the Closing, the Company shall promptly notify the Investor of (i) any fact, event or circumstance of which it is aware and which would reasonably be expected to cause any representation or warranty of the Company contained in this Agreement to be untrue or inaccurate in any material respect or to cause any covenant or agreement of the Company contained in this Agreement not to be complied with or satisfied in any material respect and (ii) except as Previously Disclosed, any fact, circumstance, event, change, occurrence, condition or development of which the Company is aware and which, individually or in the aggregate, has had or would reasonably be expected to have a Company Material Adverse Effect; *provided*, *however*, that delivery of any notice pursuant to this Section 3.4 shall not limit or affect any rights of or remedies available to the Investor; *provided*, *further*, that a failure to comply with this Section 3.4 shall not constitute a breach of this Agreement or the failure of any condition set forth in Section 1.2 to be satisfied unless the underlying Company Material Adverse Effect or material breach would independently result in the failure of a condition set forth in Section 1.2 to be satisfied.

3.5 Access, Information and Confidentiality.

(a) From the Signing Date until the date when the Investor holds an amount of Preferred Shares having an aggregate liquidation value of less than 10% of the Purchase Price, the Company will permit the Investor and its agents, consultants, contractors and advisors (x) acting through the Appropriate

Federal Banking Agency, to examine the corporate books and make copies thereof and to discuss the affairs, finances and accounts of the Company and the Company Subsidiaries with the principal officers of the Company, all upon reasonable notice and at such reasonable times and as often as the Investor may reasonably request and (y) to review any information material to the Investor's investment in the Company provided by the Company to its Appropriate Federal Banking Agency. Any investigation pursuant to this Section 3.5 shall be conducted during normal business hours and in such manner as not to interfere unreasonably with the conduct of the business of the Company, and nothing herein shall require the Company or any Company Subsidiary to disclose any information to the Investor to the extent (i) prohibited by applicable law or regulation, or (ii) that such disclosure would reasonably be expected to cause a violation of any agreement to which the Company or any Company Subsidiary is a party or would cause a risk of a loss of privilege to the Company or any Company Subsidiary (*provided* that the Company shall use commercially reasonable efforts to make appropriate substitute disclosure arrangements under circumstances where the restrictions in this clause (ii) apply).

(b) The Investor will use reasonable best efforts to hold, and will use reasonable best efforts to cause its agents, consultants, contractors and advisors to hold, in confidence all non-public records, books, contracts, instruments, computer data and other data and information (collectively, "*Information*") concerning the Company furnished or made available to it by the Company or its representatives pursuant to this Agreement (except to the extent that such information can be shown to have been (i) previously known by such party on a non-confidential basis, (ii) in the public domain through no fault of such party or (iii) later lawfully acquired from other sources by the party to which it was furnished (and without violation of any other confidentiality obligation)); *provided* that nothing herein shall prevent the Investor from disclosing any Information to the extent required by applicable laws or regulations or by any subpoena or similar legal process.

Article IV

**Additional Agreements**

4.1 Purchase for Investment. The Investor acknowledges that the Purchased Securities and the Warrant Shares have not been registered under the Securities Act or under any state securities laws. The Investor (a) is acquiring the Purchased Securities pursuant to an exemption from registration under the Securities Act solely for investment with no present intention to distribute them to any person in violation of the Securities Act or any applicable U.S. state securities laws, (b) will not sell or otherwise dispose of any of the Purchased Securities or the Warrant Shares, except in compliance with the registration requirements or exemption provisions of the Securities Act and any applicable U.S. state securities laws, and (c) has such knowledge and experience in financial and business matters and in investments of this type that it is capable of evaluating the merits and risks of the Purchase and of making an informed investment decision.

4.2 Legends.

(a) The Investor agrees that all certificates or other instruments representing the Warrant and the Warrant Shares will bear a legend substantially to the following effect:

"THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS."

(b) The Investor agrees that all certificates or other instruments representing the Warrant will also bear a legend substantially to the following effect:

"THIS INSTRUMENT IS ISSUED SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A SECURITIES PURCHASE AGREEMENT BETWEEN THE ISSUER OF THESE SECURITIES AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE ISSUER. THE SECURITIES REPRESENTED BY THIS INSTRUMENT MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SAID AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SAID AGREEMENT WILL BE VOID."

(c) In addition, the Investor agrees that all certificates or other instruments representing the Preferred Shares will bear a legend substantially to the following effect:

"THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE NOT SAVINGS ACCOUNTS, DEPOSITS OR OTHER OBLIGATIONS OF A BANK AND ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY.

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS. EACH PURCHASER OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT IS NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. ANY TRANSFEREE OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THE SECURITIES REPRESENTED BY THIS INSTRUMENT EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT WHICH IS THEN EFFECTIVE UNDER THE SECURITIES ACT, (B) FOR SO LONG AS THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO THE ISSUER OR (D) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND."

(d) In the event that any Purchased Securities or Warrant Shares (i) become registered under the Securities Act or (ii) are eligible to be transferred without restriction in accordance with Rule 144 or another exemption from registration under the Securities Act (other than Rule 144A), the Company shall issue new certificates or other instruments representing such Purchased Securities or Warrant Shares, which shall not contain the applicable legends in Sections 4.2(a) and (c) above; *provided* that the Investor surrenders to the Company the previously issued certificates or other instruments. Upon Transfer of all or a portion of the Warrant in compliance with Section 4.4, the Company shall issue new certificates or other instruments representing the Warrant, which shall not contain the applicable legend in Section 4.2(b) above; *provided* that the Investor surrenders to the Company the previously issued certificates or other instruments.

4.3 Certain Transactions. The Company will not merge or consolidate with, or sell, transfer or lease all or substantially all of its property or assets to, any other party unless the successor, transferee or lessee party (or its ultimate parent entity), as the case may be (if not the Company), expressly assumes the due and punctual performance and observance of each and every covenant, agreement and condition of this Agreement to be performed and observed by the Company.

4.4 Transfer of Purchased Securities and Warrant Shares; Restrictions on Exercise of the Warrant. Subject to compliance with applicable securities laws, the Investor shall be permitted to transfer, sell, assign or otherwise dispose of ("*Transfer*") all or a portion of the Purchased Securities or Warrant Shares at any time, and the Company shall take all steps as may be reasonably requested by the Investor to facilitate the Transfer of the Purchased Securities and the Warrant Shares; *provided* that the Investor shall not Transfer a portion or portions of the Warrant with respect to, and/or exercise the Warrant for, more than one-half of the Initial Warrant Shares (as such number may be adjusted from time to time pursuant to Section 13 thereof) in the aggregate until the earlier of (a) the date on which the Company (or any successor by Business Combination) has received aggregate gross proceeds of not less than the Purchase Price (and the purchase price paid by the Investor to any such successor for securities of such successor purchased under the CPP) from one or more Qualified Equity Offerings (including Qualified Equity Offerings of such successor) and (b) December 31, 2009. "*Qualified Equity Offering*" means the sale and issuance for cash by the Company to persons other than the Company or any of the Company Subsidiaries after the Closing Date of shares of perpetual Preferred Stock, Common Stock or any combination of such stock, that, in each case, qualify as and may be included in Tier 1 capital of the Company at the time of issuance under the applicable risk-based capital guidelines of the Company's Appropriate Federal Banking Agency (other than any such sales and issuances made pursuant to agreements or arrangements entered into, or pursuant to financing plans which were publicly announced, on or prior to October 13, 2008). "*Business Combination*" means a merger, consolidation, statutory share exchange or similar transaction that requires the approval of the Company's stockholders.

4.5 Registration Rights.

(a) Registration.

(i) Subject to the terms and conditions of this Agreement, the Company covenants and agrees that as promptly as practicable after the Closing Date (and in any event no later than 30 days after the Closing Date), the Company shall prepare and file with the SEC a Shelf Registration Statement covering all Registrable Securities (or otherwise designate an existing Shelf Registration Statement filed with the SEC to cover the Registrable Securities), and, to the extent the Shelf Registration Statement has not theretofore been declared effective or is not automatically effective upon such filing, the Company shall use reasonable best efforts to cause such Shelf Registration Statement to be declared or become effective and to keep such Shelf Registration Statement continuously effective and in compliance with the Securities Act and usable for resale of such Registrable Securities for a period from the date of its initial effectiveness until such time as there are no Registrable Securities remaining (including by refiling such Shelf Registration Statement (or a new Shelf Registration Statement) if the initial Shelf Registration Statement expires). So long as the Company is a well-known seasoned issuer (as defined in Rule 405 under the Securities Act) at the time of filing of the Shelf Registration Statement with the SEC, such Shelf Registration Statement shall be designated by the Company as an automatic Shelf Registration Statement. Notwithstanding the foregoing, if on the Signing Date the Company is not eligible to file a registration statement on Form S-3, then the Company shall not be obligated to file a Shelf Registration Statement unless and until requested to do so in writing by the Investor.

(ii) Any registration pursuant to Section 4.5(a)(i) shall be effected by means of a shelf registration on an appropriate form under Rule 415 under the Securities Act (a "*Shelf Registration Statement*"). If the Investor or any other Holder intends to distribute any Registrable Securities by means of an underwritten offering it shall promptly so advise the Company and the Company shall take all reasonable steps to facilitate such distribution, including the actions required pursuant to Section 4.5(c); *provided* that the Company shall not be required to facilitate an underwritten offering of Registrable Securities unless the expected gross proceeds from such offering exceed (i) 2% of the initial aggregate liquidation preference of the Preferred Shares if such initial aggregate liquidation preference is less than $2 billion and (ii) $200 million if the initial aggregate liquidation preference of the Preferred Shares is equal to or greater than $2 billion. The lead underwriters in any such distribution shall be selected by the Holders of a majority of the Registrable Securities to be distributed; *provided* that to the extent appropriate and permitted under applicable law, such Holders shall consider the qualifications of any broker-dealer Affiliate of the Company in selecting the lead underwriters in any such distribution.

(iii) The Company shall not be required to effect a registration (including a resale of Registrable Securities from an effective Shelf Registration Statement) or an underwritten offering pursuant to Section 4.5(a): (A) with respect to securities that are not Registrable Securities; or (B) if the Company has notified the Investor and all other Holders that in the good faith judgment of the Board of Directors, it would be materially detrimental to the Company or its securityholders for such registration or underwritten offering to be effected at such time, in which event the Company shall have the right to defer such registration for a period of not more than 45 days after receipt of the request of the Investor or any other Holder; *provided* that such right to delay a registration or underwritten offering shall be exercised by the Company (1) only if the Company has generally exercised (or is concurrently exercising) similar black-out rights against holders of similar securities that have registration rights and (2) not more than three times in any 12-month period and not more than 90 days in the aggregate in any 12-month period.

(iv) If during any period when an effective Shelf Registration Statement is not available, the Company proposes to register any of its equity securities, other than a registration pursuant to Section 4.5(a)(i) or a Special Registration, and the registration form to be filed may be used for the registration or qualification for distribution of Registrable Securities, the Company will give prompt written notice to the Investor and all other Holders of its intention to effect such a registration (but in no event less than ten days prior to the anticipated filing date) and will include in such registration all Registrable Securities with respect to which the Company has received written requests for inclusion therein within ten business days after the date of the Company's notice (a "*Piggyback Registration*"). Any such person that has made such a written request may withdraw its Registrable Securities from such Piggyback Registration by giving written notice to the Company and the managing underwriter, if any, on or before the fifth business day prior to the planned effective date of such Piggyback Registration. The Company may terminate or withdraw any registration under this Section 4.5(a)(iv) prior to the effectiveness of such registration, whether or not Investor or any other Holders have elected to include Registrable Securities in such registration.

(v) If the registration referred to in Section 4.5(a)(iv) is proposed to be underwritten, the Company will so advise Investor and all other Holders as a part of the written notice given pursuant to Section 4.5(a)(iv). In such event, the right of Investor and all other Holders to registration pursuant to Section 4.5(a) will be conditioned upon such persons' participation in such underwriting and the inclusion of such person's Registrable Securities in the underwriting if such securities are of the same class of securities as the securities to be offered in the underwritten offering, and each such person will (together with the Company and the other persons distributing their securities through such underwriting) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Company; *provided* that the Investor (as opposed to other Holders) shall not be required to indemnify any person in connection with any registration. If any participating person disapproves of the terms of the underwriting, such person may elect to withdraw therefrom by written notice to the Company, the managing underwriters and the Investor (if the Investor is participating in the underwriting).

(vi) If either (x) the Company grants "piggyback" registration rights to one or more third parties to include their securities in an underwritten offering under the Shelf Registration Statement pursuant to Section 4.5(a)(ii) or (y) a Piggyback Registration under Section 4.5(a)(iv) relates to an underwritten offering on behalf of the Company, and in either case the managing underwriters advise the Company that in their reasonable opinion the number of securities requested to be included in such offering exceeds the number which can be sold without adversely affecting the marketability of such offering (including an adverse effect on the per share offering price), the Company will include in such offering only such number of securities that in the reasonable opinion of such managing underwriters can be sold without adversely affecting the marketability of the offering (including an adverse effect on the per share offering price), which securities will be so included in the following order of priority: (A) first, in the case of a Piggyback Registration under Section 4.5(a)(iv), the securities the Company proposes to sell, (B) then the Registrable Securities of the Investor and all other Holders who have requested inclusion of Registrable Securities pursuant to Section 4.5(a)(ii) or Section 4.5(a)(iv), as applicable, *pro rata* on the basis of the aggregate number of such securities or shares owned by each such person and (C) lastly, any other securities of the Company that have been requested to be so included, subject to the terms of this Agreement; *provided, however,* that if the Company has, prior to the Signing Date, entered into an agreement with respect to its securities that is inconsistent with the order of priority contemplated hereby then it shall apply the order of priority in such conflicting agreement to the extent that it would otherwise result in a breach under such agreement.

(b) Expenses of Registration. All Registration Expenses incurred in connection with any registration, qualification or compliance hereunder shall be borne by the Company. All Selling Expenses incurred in connection with any registrations hereunder shall be borne by the holders of the securities so registered *pro rata* on the basis of the aggregate offering or sale price of the securities so registered.

(c) Obligations of the Company. The Company shall use its reasonable best efforts, for so long as there are Registrable Securities outstanding, to take such actions as are under its control to not become an ineligible issuer (as defined in Rule 405 under the Securities Act) and to remain a well-known seasoned issuer (as defined in Rule 405 under the Securities Act) if it has such status on the Signing Date or becomes eligible for such status in the future. In addition, whenever required to effect the registration of any Registrable Securities or facilitate the distribution of Registrable Securities pursuant to an effective Shelf Registration Statement, the Company shall, as expeditiously as reasonably practicable:

(i) Prepare and file with the SEC a prospectus supplement with respect to a proposed offering of Registrable Securities pursuant to an effective registration statement, subject to Section 4.5(d), keep such registration statement effective and keep such prospectus supplement current until the securities described therein are no longer Registrable Securities.

(ii) Prepare and file with the SEC such amendments and supplements to the applicable registration statement and the prospectus or prospectus supplement used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement.

(iii) Furnish to the Holders and any underwriters such number of copies of the applicable registration statement and each such amendment and supplement thereto (including in each case all exhibits) and of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned or to be distributed by them.

(iv) Use its reasonable best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders or any managing underwriter(s), to keep such registration or qualification in effect for so long as such registration statement remains in effect, and to take any other action which may be reasonably necessary to enable such seller to consummate the disposition in such jurisdictions of the securities owned by such Holder; *provided* that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(v) Notify each Holder of Registrable Securities at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the applicable prospectus, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing.

(vi) Give written notice to the Holders:

(A) when any registration statement filed pursuant to Section 4.5(a) or any amendment thereto has been filed with the SEC (except for any amendment effected by the filing of a document with the SEC pursuant to the Exchange Act) and when such registration statement or any post-effective amendment thereto has become effective;

(B) of any request by the SEC for amendments or supplements to any registration statement or the prospectus included therein or for additional information;

(C) of the issuance by the SEC of any stop order suspending the effectiveness of any registration statement or the initiation of any proceedings for that purpose;

(D) of the receipt by the Company or its legal counsel of any notification with respect to the suspension of the qualification of the Common Stock for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(E) of the happening of any event that requires the Company to make changes in any effective registration statement or the prospectus related to the registration statement in order to make the statements therein not misleading (which notice shall be accompanied by an instruction to suspend the use of the prospectus until the requisite changes have been made); and

(F) if at any time the representations and warranties of the Company contained in any underwriting agreement contemplated by Section 4.5(c)(x) cease to be true and correct.

(vii) Use its reasonable best efforts to prevent the issuance or obtain the withdrawal of any order suspending the effectiveness of any registration statement referred to in Section 4.5(c)(vi)(C) at the earliest practicable time.

(viii) Upon the occurrence of any event contemplated by Section 4.5(c)(v) or 4.5(c)(vi)(E), promptly prepare a post-effective amendment to such registration statement or a supplement to the related prospectus or file any other required document so that, as thereafter delivered to the Holders and any underwriters, the prospectus will not contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holders in accordance with Section 4.5(c)(vi)(E) to suspend the use of the prospectus until the requisite changes to the prospectus have been made, then the Holders and any underwriters shall suspend use of such prospectus and use their reasonable best efforts to return to the Company all copies of such prospectus (at the Company's expense) other than permanent file copies then in such Holders' or underwriters' possession. The total number of days that any such suspension may be in effect in any 12-month period shall not exceed 90 days.

(ix) Use reasonable best efforts to procure the cooperation of the Company's transfer agent in settling any offering or sale of Registrable Securities, including with respect to the transfer of physical stock certificates into book-entry form in accordance with any procedures reasonably requested by the Holders or any managing underwriter(s).

(x) If an underwritten offering is requested pursuant to Section 4.5(a)(ii), enter into an underwriting agreement in customary form, scope and substance and take all such other actions reasonably requested by the Holders of a majority of the Registrable Securities being sold in connection therewith or by the managing underwriter(s), if any, to expedite or facilitate the underwritten disposition of such Registrable Securities, and in connection therewith in any underwritten offering (including making members of management and executives of the Company available to participate in "road shows", similar sales events and other marketing activities), (A) make such representations and warranties to the Holders that are selling stockholders and the managing underwriter(s), if any, with respect to the business of the Company and its subsidiaries, and the Shelf Registration Statement, prospectus and documents, if any, incorporated or deemed to be incorporated by reference therein, in each case, in customary form, substance and scope, and, if true, confirm the same if and when requested, (B) use its reasonable best efforts to furnish the underwriters with opinions of counsel to the Company, addressed to the managing underwriter(s), if any, covering the matters customarily covered in such opinions requested in underwritten offerings, (C) use its reasonable best efforts to obtain "cold comfort" letters from the independent certified public accountants of the Company (and, if necessary, any other independent certified public accountants of any business acquired by the Company for which financial statements and financial data are included in the Shelf Registration Statement) who have certified the financial statements included in such Shelf Registration Statement, addressed to each of the managing underwriter(s), if any, such letters to be in customary form and covering matters of the type customarily covered in "cold comfort" letters, (D) if an underwriting agreement is entered into, the same shall contain indemnification provisions and procedures customary in underwritten offerings (provided that the Investor shall not be obligated to provide any indemnity), and (E) deliver such documents and certificates as may be reasonably requested by the Holders of a majority of the Registrable Securities being sold in connection therewith, their counsel and the managing underwriter(s), if any, to evidence the continued validity of the representations and warranties made pursuant to clause (i) above and to evidence compliance with any customary conditions contained in the underwriting agreement or other agreement entered into by the Company.

(xi) Make available for inspection by a representative of Holders that are selling stockholders, the managing underwriter(s), if any, and any attorneys or accountants retained by such Holders or managing underwriter(s), at the offices where normally kept, during reasonable business hours, financial and other records, pertinent corporate documents and properties of the Company, and cause the officers, directors and employees of the Company to supply all information in each case reasonably requested (and of the type customarily provided in connection with due diligence conducted in connection with a registered public offering of securities) by any such representative, managing underwriter(s), attorney or accountant in connection with such Shelf Registration Statement.

(xii) Use reasonable best efforts to cause all such Registrable Securities to be listed on each national securities exchange on which similar securities issued by the Company are then listed or, if no similar securities issued by the Company are then listed on any national securities exchange, use its reasonable best efforts to cause all such Registrable Securities to be listed on such securities exchange as the Investor may designate.

(xiii) If requested by Holders of a majority of the Registrable Securities being registered and/or sold in connection therewith, or the managing underwriter(s), if any, promptly include in a prospectus supplement or amendment such information as the Holders of a majority of the Registrable Securities being registered and/or sold in connection therewith or managing underwriter(s), if any, may reasonably request in order to permit the intended method of distribution of such securities and make all required filings of such prospectus supplement or such amendment as soon as practicable after the Company has received such request.

(xiv) Timely provide to its security holders earning statements satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder.

(d) Suspension of Sales. Upon receipt of written notice from the Company that a registration statement, prospectus or prospectus supplement contains or may contain an untrue statement of a material fact or omits or may omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that circumstances exist that make inadvisable use of such registration statement, prospectus or prospectus supplement, the Investor and each Holder of Registrable Securities shall forthwith discontinue disposition of Registrable Securities until the Investor and/or Holder has received copies of a supplemented or amended prospectus or prospectus supplement, or until the Investor and/or such Holder is advised in writing by the Company that the use of the prospectus and, if applicable, prospectus supplement may be resumed, and, if so directed by the Company, the Investor and/or such Holder shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in the Investor and/or such Holder's possession, of the prospectus and, if applicable, prospectus supplement covering such Registrable Securities current at the time of receipt of such notice. The total number of days that any such suspension may be in effect in any 12-month period shall not exceed 90 days.

(e) Termination of Registration Rights. A Holder's registration rights as to any securities held by such Holder (and its Affiliates, partners, members and former members) shall not be available unless such securities are Registrable Securities.

(f) Furnishing Information.

(i) Neither the Investor nor any Holder shall use any free writing prospectus (as defined in Rule 405) in connection with the sale of Registrable Securities without the prior written consent of the Company.

(ii) It shall be a condition precedent to the obligations of the Company to take any action pursuant to Section 4.5(c) that Investor and/or the selling Holders and the underwriters, if any, shall furnish to the Company such information regarding themselves, the Registrable Securities held by them and the intended method of disposition of such securities as shall be required to effect the registered offering of their Registrable Securities.

(g) Indemnification.

(i) The Company agrees to indemnify each Holder and, if a Holder is a person other than an individual, such Holder's officers, directors, employees, agents, representatives and Affiliates, and each Person, if any, that controls a Holder within the meaning of the Securities Act (each, an "*Indemnitee*"), against any and all losses, claims, damages, actions, liabilities, costs and expenses (including reasonable fees, expenses and disbursements of attorneys and other professionals incurred in connection with investigating, defending, settling, compromising or paying any such losses, claims, damages, actions, liabilities, costs and expenses), joint or several, arising out of or based upon any untrue statement or alleged untrue statement of material fact contained in any registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto or any documents incorporated therein by reference or contained in any free writing prospectus (as such term is defined in Rule 405) prepared by the Company or authorized by it in writing for use by such Holder (or any amendment or supplement thereto); or any omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; *provided*, that the Company shall not be liable to such Indemnitee in any such case to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of or is based upon (A) an untrue statement or omission made in such registration statement, including any such preliminary prospectus or final prospectus contained therein or any such amendments or supplements thereto or contained in any free writing prospectus (as such term is defined in Rule 405) prepared by the Company or authorized by it in writing for use by such Holder (or any amendment or supplement thereto), in reliance upon and in conformity with information regarding such Indemnitee or its plan of distribution or ownership interests which was furnished in writing to the Company by such Indemnitee for use in connection with such registration statement, including any such preliminary prospectus or final prospectus contained therein or any such amendments or supplements thereto, or (B) offers or sales effected by or on behalf of such Indemnitee "by means of" (as defined in Rule 159A) a "free writing prospectus" (as defined in Rule 405) that was not authorized in writing by the Company.

(ii) If the indemnification provided for in Section 4.5(g)(i) is unavailable to an Indemnitee with respect to any losses, claims, damages, actions, liabilities, costs or expenses referred to therein or is insufficient to hold the Indemnitee harmless as contemplated therein, then the Company, in lieu of indemnifying such Indemnitee, shall contribute to the amount paid or payable by such Indemnitee as a result of such losses, claims, damages, actions, liabilities, costs or expenses in such proportion as is appropriate to reflect the relative fault of the Indemnitee, on the one hand, and the Company, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, actions, liabilities, costs or expenses as well as any other relevant equitable considerations. The relative fault of the Company, on the one hand, and of the Indemnitee, on the other hand, shall be determined by reference to, among other factors, whether the untrue statement of a material fact or omission to state a material fact relates to information supplied by the Company or by the Indemnitee and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; the Company and each Holder agree that it would not be just and equitable if contribution pursuant to this Section 4.5(g)(ii) were determined by *pro rata* allocation or by any other method of allocation that does not take account of the equitable considerations referred to in Section 4.5(g)(i). No Indemnitee guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from the Company if the Company was not guilty of such fraudulent misrepresentation.

(h) Assignment of Registration Rights. The rights of the Investor to registration of Registrable Securities pursuant to Section 4.5(a) may be assigned by the Investor to a transferee or assignee of Registrable Securities with a liquidation preference or, in the case of Registrable Securities other than

Preferred Shares, a market value, no less than an amount equal to (i) 2% of the initial aggregate liquidation preference of the Preferred Shares if such initial aggregate liquidation preference is less than $2 billion and (ii) $200 million if the initial aggregate liquidation preference of the Preferred Shares is equal to or greater than $2 billion; *provided*, *however*, the transferor shall, within ten days after such transfer, furnish to the Company written notice of the name and address of such transferee or assignee and the number and type of Registrable Securities that are being assigned. For purposes of this Section 4.5(h), "market value" per share of Common Stock shall be the last reported sale price of the Common Stock on the national securities exchange on which the Common Stock is listed or admitted to trading on the last trading day prior to the proposed transfer, and the "market value" for the Warrant (or any portion thereof) shall be the market value per share of Common Stock into which the Warrant (or such portion) is exercisable less the exercise price per share.

(i) Clear Market. With respect to any underwritten offering of Registrable Securities by the Investor or other Holders pursuant to this Section 4.5, the Company agrees not to effect (other than pursuant to such registration or pursuant to a Special Registration) any public sale or distribution, or to file any Shelf Registration Statement (other than such registration or a Special Registration) covering, in the case of an underwritten offering of Common Stock or Warrants, any of its equity securities or, in the case of an underwritten offering of Preferred Shares, any Preferred Stock of the Company, or, in each case, any securities convertible into or exchangeable or exercisable for such securities, during the period not to exceed ten days prior and 60 days following the effective date of such offering or such longer period up to 90 days as may be requested by the managing underwriter for such underwritten offering. The Company also agrees to cause such of its directors and senior executive officers to execute and deliver customary lock-up agreements in such form and for such time period up to 90 days as may be requested by the managing underwriter. "*Special Registration*" means the registration of (A) equity securities and/or options or other rights in respect thereof solely registered on Form S-4 or Form S-8 (or successor form) or (B) shares of equity securities and/or options or other rights in respect thereof to be offered to directors, members of management, employees, consultants, customers, lenders or vendors of the Company or Company Subsidiaries or in connection with dividend reinvestment plans.

(j) Rule 144; Rule 144A. With a view to making available to the Investor and Holders the benefits of certain rules and regulations of the SEC which may permit the sale of the Registrable Securities to the public without registration, the Company agrees to use its reasonable best efforts to:

(i) make and keep public information available, as those terms are understood and defined in Rule 144(c)(1) or any similar or analogous rule promulgated under the Securities Act, at all times after the Signing Date;

(ii) (A) file with the SEC, in a timely manner, all reports and other documents required of the Company under the Exchange Act, and (B) if at any time the Company is not required to file such reports, make available, upon the request of any Holder, such information necessary to permit sales pursuant to Rule 144A (including the information required by Rule 144A(d)(4) under the Securities Act);

(iii) so long as the Investor or a Holder owns any Registrable Securities, furnish to the Investor or such Holder forthwith upon request: a written statement by the Company as to its compliance with the reporting requirements of Rule 144 under the Securities Act, and of the Exchange Act; a copy of the most recent annual or quarterly report of the Company; and such other reports and documents as the Investor or Holder may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any such securities to the public without registration; and

(iv) take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act.

(k) As used in this Section 4.5, the following terms shall have the following respective meanings:

(i) "*Holder*" means the Investor and any other holder of Registrable Securities to whom the registration rights conferred by this Agreement have been transferred in compliance with Section 4.5(h) hereof.

(ii) "*Holders' Counsel*" means one counsel for the selling Holders chosen by Holders holding a majority interest in the Registrable Securities being registered.

(iii) "*Register*," "*registered*," and "*registration*" shall refer to a registration effected by preparing and (A) filing a registration statement in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or ordering of effectiveness of such registration statement or (B) filing a prospectus and/or prospectus supplement in respect of an appropriate effective registration statement on Form S-3.

(iv) "*Registrable Securities*" means (A) all Preferred Shares, (B) the Warrant (subject to Section 4.5(p)) and (C) any equity securities issued or issuable directly or indirectly with respect to the securities referred to in the foregoing clauses (A) or (B) by way of conversion, exercise or exchange thereof, including the Warrant Shares, or share dividend or share split or in connection with a combination of shares, recapitalization, reclassification, merger, amalgamation, arrangement, consolidation or other reorganization, *provided* that, once issued, such securities will not be Registrable Securities when (1) they are sold pursuant to an effective registration statement under the Securities Act, (2) except as provided below in Section 4.5(o), they may be sold pursuant to Rule 144 without limitation thereunder on volume or manner of sale, (3) they shall have ceased to be outstanding or (4) they have been sold in a private transaction in which the transferor's rights under this Agreement are not assigned to the transferee of the securities. No Registrable Securities may be registered under more than one registration statement at any one time.

(v) "*Registration Expenses*" mean all expenses incurred by the Company in effecting any registration pursuant to this Agreement (whether or not any registration or prospectus becomes effective or final) or otherwise complying with its obligations under this Section 4.5, including all registration, filing and listing fees, printing expenses, fees and disbursements of counsel for the Company, blue sky fees and expenses, expenses incurred in connection with any "road show", the reasonable fees and disbursements of Holders' Counsel, and expenses of the Company's independent accountants in connection with any regular or special reviews or audits incident to or required by any such registration, but shall not include Selling Expenses.

(vi) "*Rule 144*", "*Rule 144A*", "*Rule 159A*", "*Rule 405*" and "*Rule 415*" mean, in each case, such rule promulgated under the Securities Act (or any successor provision), as the same shall be amended from time to time.

(vii) "*Selling Expenses*" mean all discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities and fees and disbursements of counsel for any Holder (other than the fees and disbursements of Holders' Counsel included in Registration Expenses).

(l) At any time, any holder of Securities (including any Holder) may elect to forfeit its rights set forth in this Section 4.5 from that date forward; *provided*, that a Holder forfeiting such rights shall nonetheless be entitled to participate under Section 4.5(a)(iv) — (vi) in any Pending Underwritten Offering to the same extent that such Holder would have been entitled to if the holder had not withdrawn; and *provided*, *further*, that no such forfeiture shall terminate a Holder's rights or obligations under Section 4.5(f) with respect to any prior registration or Pending Underwritten Offering. "*Pending Underwritten Offering"* means, with respect to any Holder forfeiting its rights pursuant to this Section 4.5(l), any underwritten offering of Registrable Securities in which such Holder has advised the Company of its intent to register its Registrable Securities either pursuant to Section 4.5(a)(ii) or 4.5(a)(iv) prior to the date of such Holder's forfeiture.

(m) Specific Performance. The parties hereto acknowledge that there would be no adequate remedy at law if the Company fails to perform any of its obligations under this Section 4.5 and that the Investor and the Holders from time to time may be irreparably harmed by any such failure, and accordingly agree that the Investor and such Holders, in addition to any other remedy to which they may be entitled at law or in equity, to the fullest extent permitted and enforceable under applicable law shall be entitled to compel specific performance of the obligations of the Company under this Section 4.5 in accordance with the terms and conditions of this Section 4.5.

(n) No Inconsistent Agreements. The Company shall not, on or after the Signing Date, enter into any agreement with respect to its securities that may impair the rights granted to the Investor and the Holders under this Section 4.5 or that otherwise conflicts with the provisions hereof in any manner that may impair the rights granted to the Investor and the Holders under this Section 4.5. In the event the Company has, prior to the Signing Date, entered into any agreement with respect to its securities that is inconsistent with the rights granted to the Investor and the Holders under this Section 4.5 (including agreements that are inconsistent with the order of priority contemplated by Section 4.5(a)(vi)) or that may otherwise conflict with the provisions hereof, the Company shall use its reasonable best efforts to amend such agreements to ensure they are consistent with the provisions of this Section 4.5.

(o) Certain Offerings by the Investor. In the case of any securities held by the Investor that cease to be Registrable Securities solely by reason of clause (2) in the definition of "Registrable Securities," the provisions of Sections 4.5(a)(ii), clauses (iv), (ix) and (x)-(xii) of Section 4.5(c), Section 4.5(g) and Section 4.5(i) shall continue to apply until such securities otherwise cease to be Registrable Securities. In any such case, an "underwritten" offering or other disposition shall include any distribution of such securities on behalf of the Investor by one or more broker-dealers, an "underwriting agreement" shall include any purchase agreement entered into by such broker-dealers, and any "registration statement" or "prospectus" shall include any offering document approved by the Company and used in connection with such distribution.

(p) Registered Sales of the Warrant. The Holders agree to sell the Warrant or any portion thereof under the Shelf Registration Statement only beginning 30 days after notifying the Company of any such sale, during which 30-day period the Investor and all Holders of the Warrant shall take reasonable steps to agree to revisions to the Warrant to permit a public distribution of the Warrant, including entering into a warrant agreement and appointing a warrant agent.

4.6 Voting of Warrant Shares. Notwithstanding anything in this Agreement to the contrary, the Investor shall not exercise any voting rights with respect to the Warrant Shares.

4.7 Depositary Shares. Upon request by the Investor at any time following the Closing Date, the Company shall promptly enter into a depositary arrangement, pursuant to customary agreements reasonably satisfactory to the Investor and with a depositary reasonably acceptable to the Investor, pursuant to which the Preferred Shares may be deposited and depositary shares, each representing a fraction of a Preferred Share as specified by the Investor, may be issued. From and after the execution of any such depositary arrangement, and the deposit of any Preferred Shares pursuant thereto, the depositary shares issued pursuant thereto shall be deemed “Preferred Shares” and, as applicable, “Registrable Securities” for purposes of this Agreement.

4.8 Restriction on Dividends and Repurchases.

(a) Prior to the earlier of (x) the third anniversary of the Closing Date and (y) the date on which the Preferred Shares have been redeemed in whole or the Investor has transferred all of the Preferred Shares to third parties which are not Affiliates of the Investor, neither the Company nor any Company Subsidiary shall, without the consent of the Investor:

(i) declare or pay any dividend or make any distribution on the Common Stock (other than (A) regular quarterly cash dividends of not more than the amount of the last quarterly cash dividend per share declared or, if lower, publicly announced an intention to declare, on the Common Stock prior to October 14, 2008, as adjusted for any stock split, stock dividend, reverse stock split, reclassification or similar transaction, (B) dividends payable solely in shares of Common Stock and (C) dividends or distributions of rights or Junior Stock in connection with a stockholders’ rights plan); or

(ii) redeem, purchase or acquire any shares of Common Stock or other capital stock or other equity securities of any kind of the Company, or any trust preferred securities issued by the Company or any Affiliate of the Company, other than (A) redemptions, purchases or other acquisitions of the Preferred Shares, (B) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock, in each case in this clause (B) in connection with the administration of any employee benefit plan in the ordinary course of business (including purchases to offset the Share Dilution Amount (as defined below) pursuant to a publicly announced repurchase plan) and consistent with past practice; *provided* that any purchases to offset the Share Dilution Amount shall in no event exceed the Share Dilution Amount, (C) purchases or other acquisitions by a broker-dealer subsidiary of the Company solely for the purpose of market-making, stabilization or customer facilitation transactions in Junior Stock or Parity Stock in the ordinary course of its business, (D) purchases by a broker-dealer subsidiary of the Company of capital stock of the Company for resale pursuant to an offering by the Company of such capital stock underwritten by such broker-dealer subsidiary, (E) any redemption or repurchase of rights pursuant to any stockholders’ rights plan, (F) the acquisition by the Company or any of the Company Subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of any other persons (other than the Company or any other Company Subsidiary), including as trustees or custodians, and (G) the exchange or conversion of Junior Stock for or into other Junior Stock or of Parity Stock or trust preferred securities for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, in each case set forth in this clause (G), solely to the extent required pursuant to binding contractual agreements entered into prior to the Signing Date or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for Common Stock (clauses (C) and (F), collectively, the “*Permitted Repurchases*”). “*Share Dilution Amount*” means the increase in the number of diluted shares outstanding (determined in accordance with GAAP, and as measured from the date of the Company’s most recently filed Company Financial Statements prior to the Closing Date) resulting from the grant, vesting or exercise of equity-based compensation to employees and equitably adjusted for any stock split, stock dividend, reverse stock split, reclassification or similar transaction.

(b) Until such time as the Investor ceases to own any Preferred Shares, the Company shall not repurchase any Preferred Shares from any holder thereof, whether by means of open market purchase, negotiated transaction, or otherwise, other than Permitted Repurchases, unless it offers to repurchase a ratable portion of the Preferred Shares then held by the Investor on the same terms and conditions.

(c) "*Junior Stock"* means Common Stock and any other class or series of stock of the Company the terms of which expressly provide that it ranks junior to the Preferred Shares as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Company. "*Parity Stock"* means any class or series of stock of the Company the terms of which do not expressly provide that such class or series will rank senior or junior to the Preferred Shares as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Company (in each case without regard to whether dividends accrue cumulatively or non-cumulatively).

4.9 Repurchase of Investor Securities.

(a) Following the redemption in whole of the Preferred Shares held by the Investor or the Transfer by the Investor of all of the Preferred Shares to one or more third parties not affiliated with the Investor, the Company may repurchase, in whole or in part, at any time any other equity securities of the Company purchased by the Investor pursuant to this Agreement or the Warrant and then held by the Investor, upon notice given as provided in clause (b) below, at the Fair Market Value of the equity security.

(b) Notice of every repurchase of equity securities of the Company held by the Investor shall be given at the address and in the manner set forth for such party in Section 5.6. Each notice of repurchase given to the Investor shall state: (i) the number and type of securities to be repurchased, (ii) the Board of Director's determination of Fair Market Value of such securities and (iii) the place or places where certificates representing such securities are to be surrendered for payment of the repurchase price. The repurchase of the securities specified in the notice shall occur as soon as practicable following the determination of the Fair Market Value of the securities.

(c) As used in this Section 4.9, the following terms shall have the following respective meanings:

(i) "*Appraisal Procedure*" means a procedure whereby two independent appraisers, one chosen by the Company and one by the Investor, shall mutually agree upon the Fair Market Value. Each party shall deliver a notice to the other appointing its appraiser within 10 days after the Appraisal Procedure is invoked. If within 30 days after appointment of the two appraisers they are unable to agree upon the Fair Market Value, a third independent appraiser shall be chosen within 10 days thereafter by the mutual consent of such first two appraisers. The decision of the third appraiser so appointed and chosen shall be given within 30 days after the selection of such third appraiser. If three appraisers shall be appointed and the determination of one appraiser is disparate from the middle determination by more than twice the amount by which the other determination is disparate from the middle determination, then the determination of such appraiser shall be excluded, the remaining two determinations shall be averaged and such average shall be binding and conclusive upon the Company and the Investor; otherwise, the average of all three determinations shall be binding upon the Company and the Investor. The costs of conducting any Appraisal Procedure shall be borne by the Company.

(ii) "*Fair Market Value*" means, with respect to any security, the fair market value of such security as determined by the Board of Directors, acting in good faith in reliance on an opinion of a nationally recognized independent investment banking firm retained by the Company for this purpose and certified in a resolution to the Investor. If the Investor does not agree with the Board of Director's determination, it may object in writing within 10 days of receipt of the Board of Director's determination. In the event of such an objection, an authorized representative of the Investor and the chief executive officer of the Company shall promptly meet to resolve the objection and to agree upon the Fair Market Value. If the chief executive officer and the authorized representative are unable to agree on the Fair Market Value during the 10-day period following the delivery of the Investor's objection, the Appraisal Procedure may be invoked by either party to determine the Fair Market Value by delivery of a written notification thereof not later than the 30th day after delivery of the Investor's objection.

4.10 Executive Compensation. Until such time as the Investor ceases to own any debt or equity securities of the Company acquired pursuant to this Agreement or the Warrant, the Company shall take all necessary action to ensure that its Benefit Plans with respect to its Senior Executive Officers comply in all respects with Section 111(b) of the EESA as implemented by any guidance or regulation thereunder that has been issued and is in effect as of the Closing Date, and shall not adopt any new Benefit Plan with respect to its Senior Executive Officers that does not comply therewith. "*Senior Executive Officers*" means the Company's "senior executive officers" as defined in subsection 111(b)(3) of the EESA and regulations issued thereunder, including the rules set forth in 31 C.F.R. Part 30.

## Article V

## **Miscellaneous**

5.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by either the Investor or the Company if the Closing shall not have occurred by the 30th calendar day following the Signing Date; *provided*, *however*, that in the event the Closing has not occurred by such 30th calendar day, the parties will consult in good faith to determine whether to extend the term of this Agreement, it being understood that the parties shall be required to consult only until the fifth day after such 30th calendar day and not be under any obligation to extend the term of this Agreement thereafter; *provided*, *further*, that the right to terminate this Agreement under this Section 5.1(a) shall not be available to any party whose breach of any representation or warranty or failure to perform any obligation under this Agreement shall have caused or resulted in the failure of the Closing to occur on or prior to such date; or

(b) by either the Investor or the Company in the event that any Governmental Entity shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and nonappealable; or

(c) by the mutual written consent of the Investor and the Company.

In the event of termination of this Agreement as provided in this Section 5.1, this Agreement shall forthwith become void and there shall be no liability on the part of either party hereto except that nothing herein shall relieve either party from liability for any breach of this Agreement.

5.2 Survival of Representations and Warranties. All covenants and agreements, other than those which by their terms apply in whole or in part after the Closing, shall terminate as of the Closing. The representations and warranties of the Company made herein or in any certificates delivered in connection with the Closing shall survive the Closing without limitation.

5.3 Amendment. No amendment of any provision of this Agreement will be effective unless made in writing and signed by an officer or a duly authorized representative of each party; *provided* that the Investor may unilaterally amend any provision of this Agreement to the extent required to comply with any changes after the Signing Date in applicable federal statutes. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative of any rights or remedies provided by law.

5.4 Waiver of Conditions. The conditions to each party's obligation to consummate the Purchase are for the sole benefit of such party and may be waived by such party in whole or in part to the extent permitted by applicable law. No waiver will be effective unless it is in a writing signed by a duly authorized officer of the waiving party that makes express reference to the provision or provisions subject to such waiver.

5.5 **Governing Law: Submission to Jurisdiction, Etc. This Agreement will be governed by and construed in accordance with the federal law of the United States if and to the extent such law is applicable, and otherwise in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State. Each of the parties hereto agrees (a) to submit to the exclusive jurisdiction and venue of the United States District Court for the District of Columbia and the United States Court of Federal Claims for any and all actions, suits or proceedings arising out of or relating to this Agreement or the Warrant or the transactions contemplated hereby or thereby, and (b) that notice may be served upon (i) the Company at the address and in the manner set forth for notices to the Company in Section 5.6 and (ii) the Investor in accordance with federal law. To the extent permitted by applicable law, each of the parties hereto hereby unconditionally waives trial by jury in any legal action or proceeding relating to this Agreement or the Warrant or the transactions contemplated hereby or thereby.**

5.6 Notices. Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally, or by facsimile, upon confirmation of receipt, or (b) on the second business day following the date of dispatch if delivered by a recognized next day courier service. All notices to the Company shall be delivered as set forth in Schedule A, or pursuant to such other instruction as may be designated in writing by the Company to the Investor. All notices to the Investor shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the Investor to the Company.

If to the Investor:

United States Department of the Treasury
1500 Pennsylvania Avenue, NW, Room 2312
Washington, D.C. 20220
Attention: Assistant General Counsel
(Banking and Finance)
Facsimile: (202) 622-1974

5.7 Definitions

(a) When a reference is made in this Agreement to a subsidiary of a person, the term "*subsidiary*" means any corporation, partnership, joint venture, limited liability company or other entity (x) of which such person or a subsidiary of such person is a general partner or (y) of which a majority of the voting securities or other voting interests, or a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the board of directors or persons performing similar functions with respect to such entity, is directly or indirectly owned by such person and/or one or more subsidiaries thereof.

(b) The term "*Affiliate*" means, with respect to any person, any person directly or indirectly controlling, controlled by or under common control with, such other person. For purposes of this definition, "*control*" (including, with correlative meanings, the terms "*controlled by*" and "*under common control with*") when used with respect to any person, means the possession, directly or indirectly, of the power to cause the direction of management and/or policies of such person, whether through the ownership of voting securities by contract or otherwise.

(c) The terms "*knowledge of the Company*" or "*Company's knowledge*" mean the actual knowledge after reasonable and due inquiry of the "*officers*" (as such term is defined in Rule 3b-2 under the Exchange Act, but excluding any Vice President or Secretary) of the Company.

5.8 Assignment. Neither this Agreement nor any right, remedy, obligation nor liability arising hereunder or by reason hereof shall be assignable by any party hereto without the prior written consent of the other party, and any attempt to assign any right, remedy, obligation or liability hereunder without such consent shall be void, except (a) an assignment, in the case of a Business Combination where such party is not the surviving entity, or a sale of substantially all of its assets, to the entity which is the survivor of such Business Combination or the purchaser in such sale and (b) as provided in Section 4.5.

5.9 Severability. If any provision of this Agreement or the Warrant, or the application thereof to any person or circumstance, is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it has been held invalid or unenforceable, will remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination, the parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the parties.

5.10 No Third Party Beneficiaries. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person or entity other than the Company and the Investor any benefit, right or remedies, except that the provisions of Section 4.5 shall inure to the benefit of the persons referred to in that Section.

* * *

ANNEX A

**FORM OF CERTIFICATE OF DESIGNATIONS**

[SEE ATTACHED]

ANNEX B

## FORM OF WAIVER

In consideration for the benefits I will receive as a result of my employer's participation in the United States Department of the Treasury's TARP Capital Purchase Program, I hereby voluntarily waive any claim against the United States or my employer for any changes to my compensation or benefits that are required to comply with the regulation issued by the Department of the Treasury as published in the Federal Register on October 20, 2008.

I acknowledge that this regulation may require modification of the compensation, bonus, incentive and other benefit plans, arrangements, policies and agreements (including so-called "golden parachute" agreements) that I have with my employer or in which I participate as they relate to the period the United States holds any equity or debt securities of my employer acquired through the TARP Capital Purchase Program.

This waiver includes all claims I may have under the laws of the United States or any state related to the requirements imposed by the aforementioned regulation, including without limitation a claim for any compensation or other payments I would otherwise receive, any challenge to the process by which this regulation was adopted and any tort or constitutional claim about the effect of these regulations on my employment relationship.

## FORM OF OPINION

(a) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the state of its incorporation.

(b) The Preferred Shares have been duly and validly authorized, and, when issued and delivered pursuant to the Agreement, the Preferred Shares will be duly and validly issued and fully paid and non-assessable, will not be issued in violation of any preemptive rights, and will rank *pari passu* with or senior to all other series or classes of Preferred Stock issued on the Closing Date with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Company.

(c) The Warrant has been duly authorized and, when executed and delivered as contemplated hereby, will constitute a valid and legally binding obligation of the Company enforceable against the Company in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity.

(d) The shares of Common Stock issuable upon exercise of the Warrant have been duly authorized and reserved for issuance upon exercise of the Warrant and when so issued in accordance with the terms of the Warrant will be validly issued, fully paid and non-assessable **[*insert, if applicable:*** , subject to the approvals of the Company's stockholders set forth on Schedule C**]**.

(e) The Company has the corporate power and authority to execute and deliver the Agreement and the Warrant and **[*insert, if applicable:*** , subject to the approvals of the Company's stockholders set forth on Schedule C,**]** to carry out its obligations thereunder (which includes the issuance of the Preferred Shares, Warrant and Warrant Shares).

(f) The execution, delivery and performance by the Company of the Agreement and the Warrant and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate action on the part of the Company and its stockholders, and no further approval or authorization is required on the part of the Company **[*insert, if applicable:*** , subject, in each case, to the approvals of the Company's stockholders set forth on Schedule C**]**.

(g) The Agreement is a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity; *provided*, *however*, such counsel need express no opinion with respect to Section 4.5(g) or the severability provisions of the Agreement insofar as Section 4.5(g) is concerned.

ANNEX D

## FORM OF WARRANT

[SEE ATTACHED]

**SCHEDULE A**

## ADDITIONAL TERMS AND CONDITIONS

Company Information:

| | |
|---|---|
| Name of the Company: | Merrill Lynch & Co., Inc. |
| Corporate or other organizational form: | Corporation |
| Jurisdiction of Organization: | Delaware |
| Appropriate Federal Banking Agency: | Office of Thrift Supervision |
| Notice Information: | Merrill Lynch & Co., Inc.<br>4 World Financial Center<br>250 Vesey Street<br>New York, NY 10080<br>Attention: Rosemary T. Berkery<br>Vice-Chairman and General Counsel<br><br>For notices prior to termination of the Merger Agreement, provide a copy to:<br><br>Bank of America Corporation<br>Bank of America Corporate Center<br>100 North Tryon Street<br>Charlotte, NC 28255<br>Attention: Timothy J. Mayopoulos<br>Executive Vice President and<br>General Counsel<br>Facsimile: (704) 370-3515 |

Terms of the Purchase:

| | |
|---|---|
| Series of Preferred Stock Purchased: | Fixed Rate Cumulative Perpetual Preferred Stock, Series T |
| Per Share Liquidation Preference of Preferred Stock: | $25,000 |
| Number of Shares of Preferred Stock Purchased: | 400,000 |
| Dividend Payment Dates on the Preferred Stock: | February 15, May 15, August 15, November 15 |
| Number of Initial Warrant Shares: | 64,991,334 |
| Exercise Price of the Warrant: | $23.08 |
| Purchase Price: | $10,000,000,000 |

Closing:

| | |
|---|---|
| Location of Closing: | Simpson Thacher & Bartlett LLP<br>425 Lexington Avenue<br>New York, NY 10017 |
| Time of Closing: | As determined pursuant to the Letter Agreement. |
| Date of Closing: | As determined pursuant to the Letter Agreement. |
| **Wire Information for Closing**: | To be advised in notice of Closing. |

**Exhibit 10.3**

Merrill Lynch

Human Resources
4 World Financial Center
$31^{st}$ Floor
New York, New York 10080

[Date]

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

Dear [Officer],

**Merrill Lynch & Co., Inc** (the *"Company"*) has entered into a Securities Purchase Agreement, dated October 26, 2008 (the *"Participation Agreement"*), with the United States Department of Treasury (*"Treasury"*) that provides for the Company's participation in the Treasury's TARP Capital Purchase Program (the *"CPP"*).

For the Company to participate in the CPP and as a condition to the closing of the investment contemplated by the Participation Agreement, the Company is required to establish specified standards for incentive compensation to its senior executive officers and to make changes to its compensation arrangements. To comply with these requirements, and in consideration of the benefits that you will receive as a result of the Company's participation in the CPP, you agree as follows:

(1) *No Golden Parachute Payments*. The Company is prohibiting any golden parachute payment to you during any "CPP Covered Period". A *"CPP Covered Period"* is any period during which (A) you are a senior executive officer and (B) Treasury holds an equity or debt position acquired from the Company in the CPP.

(2) *Recovery of Bonus and Incentive Compensation.* Any bonus and incentive compensation paid to you during a CPP Covered Period is subject to recovery or "clawback" by the Company if the payments were based on materially inaccurate financial statements or any other materially inaccurate performance metric criteria.

(3) *Compensation Program Amendments.* Each of the Company's compensation, bonus, incentive and other benefit plans, arrangements and agreements (including golden parachute, severance and employment agreements) (collectively, *"Benefit Plans"*) with respect to you is hereby amended to the extent necessary to give effect to provisions (1) and (2).

In addition, the Company is required to review its Benefit Plans to ensure that they do not encourage senior executive officers to take unnecessary and excessive risks that threaten the value of the Company. To the extent any such review requires revisions to any Benefit Plan with respect to you, you and the Company agree to execute such additional documents as the Company deems necessary to effect such revisions.

(4) *Definitions and Interpretation*. This letter shall be interpreted as follows:

- "Senior executive officer" means the Company's "senior executive officers" as defined in subsection 111(b)(3) of EESA.

- “Golden parachute payment” is used with the same meaning as in subsection 111(b)(2)(C) of EESA.

- “EESA” means the Emergency Economic Stabilization Act of 2008 as implemented by guidance or regulation that has been issued and is in effect as of the “Closing Date” as defined in the Participation Agreement.

- The term “Company” includes any entities treated as a single employer with the Company under 31 C.F.R. §30.1(b) (as in effect on the Closing Date). You are also delivering a waiver pursuant to the Participation Agreement, and, as between the Company and you, the term “employer” in that waiver will be deemed to mean the Company as used in this letter.

- The term “CPP Covered Period” shall be limited by, and interpreted in a manner consistent with, 31 C.F.R. §30.11 (as in effect on the Closing Date).

- Provisions (1) and (2) of this letter are intended to, and will be interpreted, administered and construed to, comply with Section 111 of EESA and, to the maximum extent consistent with the preceding, to permit operation of the Benefit Plans in accordance with their terms before giving effect to this letter.

- This agreement will be governed by New York law.

* * *

The Board appreciates the concessions you are making and looks forward to your continued leadership during these financially turbulent times.

Very truly yours,

**MERRILL LYNCH & CO., INC.**

By: ______________________________

Name:

Title:

Intending to be legally bound, I agree with and accept the foregoing terms.

______________________________

**[Officer]**

**EXHIBIT 12**

# MERRILL LYNCH & CO., INC. AND SUBSIDIARIES
## COMPUTATION OF RATIOS OF EARNINGS TO FIXED CHARGES AND COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS

| | For the Three Months Ended | For the Nine Months Ended | Year Ended Last Friday in December | | | | |
|---|---|---|---|---|---|---|---|
| | Sept. 26, 2008 | Sept. 26, 2008 | 2007 (52 weeks) | 2006 (52 weeks) | 2005 (52 weeks) | 2004 (53 weeks) | 2003 (52 weeks) |
| Pre-tax earnings (loss)[(a)] | $(12,455) | $(23,868) | $(13,723) | $ 9,313 | $ 6,335 | $ 5,106 | $ 4,894 |
| Add: Fixed charges (excluding capitalized interest and preferred security dividend requirements of subsidiaries) | 7,904 | 25,971 | 51,683 | 35,719 | 21,764 | 10,591 | 8,016 |
| Pre-tax (losses)/earnings before fixed charges | (4,551) | 2,103 | 37,960 | 45,032 | 28,099 | 15,697 | 12,910 |
| Fixed charges: | | | | | | | |
| Interest | 7,831 | 25,754 | 51,425 | 35,499 | 21,549 | 10,387 | 7,823 |
| Other[(b)] | 73 | 217 | 258 | 220 | 215 | 204 | 193 |
| Total fixed charges | 7,904 | 25,971 | 51,683 | 35,719 | 21,764 | 10,591 | 8,016 |
| Preferred stock dividend requirements | 3,851 | 4,698 | 401 | 259 | 99 | 54 | 52 |
| Total combined fixed charges and preferred stock dividends | $ 11,755 | $ 30,669 | $ 52,084 | $35,978 | $21,863 | $10,645 | $ 8,068 |
| **Ratio of earnings to fixed charges** | * | * | * | **1.26** | **1.29** | **1.48** | **1.61** |
| **Ratio of earnings to combined fixed charges and preferred stock dividends** | * | * | * | **1.25** | **1.29** | **1.47** | **1.60** |

(a) *Excludes undistributed earnings (loss) from equity investments and earnings from discontinued operations.*

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

* *The earnings for the three- and nine-months periods ended September 26, 2008, and for the year ended 2007 were inadequate to cover total fixed charges and total fixed charges and preferred stock dividends. The coverage deficiencies for total fixed charges for the three- and nine-months periods ended September 26, 2008, and for the year ended 2007 were $12,455, $23,868 and $13,723 respectively. The coverage deficiencies for total fixed charges and preferred stock dividends for the three- and nine-months periods ended September 26, 2008, and for the year ended 2007 were $16,306, $28,566 and 14,124 respectively.*

**Exhibit 15**

November 4, 2008

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

We have reviewed, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the unaudited condensed consolidated interim financial information of Merrill Lynch & Co., Inc. and subsidiaries ("Merrill Lynch") as of September 26, 2008 and for the three-month and nine-month periods ended September 26, 2008 and September 28, 2007, and have issued our report thereon dated November 4, 2008. As indicated in such report (which report includes explanatory paragraphs relating to (1) the agreement and plan of merger with Bank of America Corporation on September 15, 2008 as discussed in Note 1 to the unaudited condensed consolidated interim financial statements, (2) the restatement discussed in Note 16 to the unaudited condensed consolidated interim financial statements, and (3) Merrill Lynch's securities purchase agreement with the U.S. Treasury pursuant to the Emergency Economic Stabilization Act of 2008, its participation in the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program, and its participation in the Federal Reserve's Commercial Paper Funding Facility as discussed in Note 18 to the unaudited condensed consolidated interim financial statements), 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 26, 2008, 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. 333-15009 (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. 333-85421 (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)

Registration Statement No. 333-125109 (2006 Deferred Compensation Plan for a Select Group of Eligible Employees)

Registration Statement No. 333-125181 (Deferred Stock Unit Plan for Non-Employee Directors)

Registration Statement No. 333-134065 (2007 Deferred Compensation Plan for a Select Group of Eligible Employees)

Registration Statement No. 333-142962 (2008 Deferred Compensation Plan for a Select Group of Eligible Employees)

Registration Statement No. 333-151241 (2009 Deferred Compensation Plan for a Select Group of Eligible Employees)

Filed on Form S-3:

Debt Securities, Warrants, Common Stock, Preferred Securities, and/or Depositary 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
Registration Statement No. 333-122639
Registration Statement No. 333-132911

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)

Registration Statement No. 333-142690 (First Republic Merger)

Registration Statement No. 333-146204 (First Republic Bank Amended and Restated Employee Stock Purchase Plan)

We also are 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

**Exhibit 31.1**

Certification

I, John A. Thain 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) 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

(d) 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/ John A. Thain

John A. Thain
Chairman of the Board and
Chief Executive Officer

Dated: November 4, 2008

**Exhibit 31.2**

Certification

I, Nelson Chai, 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) 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

(d) 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/ Nelson Chai

Nelson Chai
Executive Vice President and
Chief Financial Officer

Dated: November 4, 2008

**Exhibit 32.1**

**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 26, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John A. Thain, 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/ John A. Thain

John A. Thain
Chairman of the Board and
Chief Executive Officer

Dated: November 4, 2008

**Exhibit 32.2**

**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 26, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Nelson Chai, 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/ Nelson Chai

Nelson Chai
Executive Vice President and
Chief Financial Officer

Dated: November 4, 2008