

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-8**

Registration Statement  
under  
THE SECURITIES ACT OF 1933

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

(Exact name of registrant as specified in its charter)

**DELAWARE**  
(State or other jurisdiction  
of incorporation or organization)

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

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

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

**MERRILL LYNCH & CO., INC. 2005 DEFERRED COMPENSATION PLAN  
FOR A SELECT GROUP OF ELIGIBLE EMPLOYEES**

(Full title of the plan)

**Richard Alsop, Esq.  
Merrill Lynch & Co., Inc.  
222 Broadway – 17th Floor  
New York, New York 10038  
(212) 670-0180**

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

**CALCULATION OF REGISTRATION FEE**

<b>Title of securities to be registered</b>	<b>Amount to be registered</b>	<b>Proposed maximum offering price per obligation</b>	<b>Proposed maximum aggregate offering price(2)</b>	<b>Amount of registration fee</b>
Deferred Compensation Obligations(1)	\$75,000,000	100%	\$ 75,000,000	\$ 9,502

(1) The Deferred Compensation Obligations are unsecured obligations of Merrill Lynch & Co., Inc. to pay deferred compensation in the future in accordance with the terms of the Merrill Lynch & Co., Inc. 2005 Deferred Compensation Plan for a Select Group of Eligible Employees.

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

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**PART I**

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

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

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

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

The Annual Report of Merrill Lynch & Co., Inc. (the "Company") on Form 10-K for the fiscal year ended December 26, 2003, Quarterly Reports on Form 10-Q for the quarters ended March 26, 2004 and June 25, 2004 and Current Reports on Form 8-K dated January 15, 2004, January 21, 2004, February 6, 2004, February 10, 2004, February 11, 2004, February 20, 2004, February 25, 2004, March 1, 2004 (2 reports), March 5, 2004, March 16, 2004, March 29, 2004, March 30, 2004 (3 reports), April 13, 2004, May 4, 2004, May 5, 2004 (4 reports), May 14, 2004, May 21, 2004, June 1, 2004 (4 reports), June 4, 2004, June 29, 2004 (3 reports), July 2, 2004, July 13, 2004, July 15, 2004, July 30, 2004, August 2, 2004 (3 reports), August 4, 2004 (2 reports) and August 25, 2004, filed pursuant to Section 13 of the Securities Exchange Act of 1934 (the "Exchange Act"), are incorporated by reference herein. Information furnished under Item 9 of Form 8-K is not incorporated by reference herein.

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

**ITEM 4. DESCRIPTION OF SECURITIES.**

Under the Merrill Lynch & Co., Inc. 2005 Deferred Compensation Plan for a Select Group of Eligible Employees (the "Plan"), the Company will provide eligible employees the opportunity to agree to the deferral of a specified percentage of their cash compensation. The obligations of the Company under such agreements (the "Obligations") will be unsecured general obligations of the Company to pay the deferred compensation in the future in accordance with the terms of the Plan, and will rank *pari passu* with other unsecured and unsubordinated indebtedness of the Company from time to time outstanding. However, because the Company is a holding company, the right of the Company, and hence the right of creditors of the Company (including participants in the Plan), to participate in any distribution of the assets of any subsidiary upon its liquidation or reorganization or otherwise is necessarily subject to the prior claims of creditors of the subsidiary, except to the extent that claims of the Company itself as a creditor of the subsidiary may be recognized. In addition, dividends, loans and advances from certain subsidiaries, including Merrill Lynch, Pierce, Fenner & Smith Incorporated, to the Company are restricted by net capital requirements under the Exchange Act, and under rules of certain exchanges and other regulatory bodies.

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

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Return Options, including any appreciation or depreciation. The Obligations will be denominated and payable in United States dollars.

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

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

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

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

None.

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

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

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

The directors and officers of the Company are insured under policies of insurance maintained by the Company, subject to the limits of the policies, against certain losses arising from any claims made against them by reason of being or having been such directors or officers. Like indemnification, insurance is also provided to those employees of the Company who serve as administrators of the Plan. In addition, the Company has entered into contracts with all of its directors providing for indemnification of such persons by the Company to the full extent authorized or permitted by law, subject to certain limited exceptions.

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

Not Applicable.

**ITEM 8. EXHIBITS.**

5	Opinion of Sidley Austin Brown & Wood LLP.
15	Letter re: unaudited interim financial information.
23(a)	Consent of Sidley Austin Brown & Wood LLP (included as part of Exhibit 5).
23(b)	Consent of Deloitte & Touche LLP.
24	Power of Attorney (included on page 5).

**ITEM 9. UNDERTAKINGS.**

The undersigned registrant hereby undertakes:

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

- (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
- (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement;
- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

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

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

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

(b) That, for the purpose of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at the time shall be deemed to be the initial *bona fide* offering hereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions referred to in Item 6 of this registration statement, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.



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<u>Signature</u>	<u>Title</u>
/s/ John D. Finnegan	Director
(John D. Finnegan)	
/s/ Heinz-Joachim Neubürger	Director
(Heinz-Joachim Neubürger)	
/s/ David K. Newbigging	Director
(David K. Newbigging)	
/s/ Aulana L. Peters	Director
(Aulana L. Peters)	
/s/ Joseph W. Prueher	Director
(Joseph W. Prueher)	

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<u>Exhibit No.</u>	<u>Description</u>	<u>Page</u>
* 5	Opinion of Sidley Austin Brown & Wood LLP.	8
* 15	Letter re: unaudited interim financial information.	9
* 23(a)	Consent of Sidley Austin Brown & Wood LLP (included as part of Exhibit 5).	
* 23(b)	Consent of Deloitte & Touche LLP.	10
* 24	Power of Attorney (included on page 5).	
* Filed herewith.		



August 27, 2004

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

Dear Sirs:

We have acted as counsel for Merrill Lynch & Co., Inc., a Delaware corporation (the "Company"), in connection with the proposed filing with the Securities and Exchange Commission expected to be made on or about August 27, 2004 under the Securities Act of 1933, as amended, of a Registration Statement on Form S-8 (the "Registration Statement") for the purpose of registering \$75,000,000 of Deferred Compensation Obligations, which represent unsecured obligations of the Company to pay deferred compensation in the future in accordance with the terms of the Merrill Lynch & Co., Inc. 2005 Deferred Compensation Plan for a Select Group of Eligible Employees (the "Plan"). In such capacity, we have examined the Restated Certificate of Incorporation and By-Laws of the Company, the Plan, and such other documents of the Company as we have deemed necessary or appropriate for the purposes of the opinion expressed herein.

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

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

Very truly yours,

/s/ Sidley Austin Brown & Wood LLP

August 27, 2004

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

We have made reviews, in accordance with standards of the Public Company Accounting Oversight Board (United States), of the unaudited interim condensed consolidated financial statements of Merrill Lynch & Co., Inc. and subsidiaries for the three-month periods ended March 26, 2004 and March 28, 2003 and the three-month and six-month periods ended June 25, 2004 and June 27, 2003, as indicated in our reports dated May 4, 2004 and August 2, 2004; because we did not perform audits, we expressed no opinions on that information.

We are aware that our reports referred to above, which were included in your Quarterly Reports on Form 10-Q for the quarters ended March 26, 2004 and June 25, 2004, are incorporated by reference in this Registration Statement.

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

/s/ Deloitte & Touche LLP

August 27, 2004  
New York, New York

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement of Merrill Lynch & Co., Inc. on Form S-8 related to the Merrill Lynch & Co., Inc. 2005 Deferred Compensation Plan for a Select Group of Eligible Employees of our reports dated March 1, 2004 (May 4, 2004 as to Note 2) (which express unqualified opinions and which report on the consolidated financial statements includes explanatory paragraphs for the change in accounting method in 2002 for goodwill amortization to conform to Statement of Financial Accounting Standards ("SFAS") No. 142, *Goodwill and Other Intangible Assets*, and for the change in accounting method in 2004 for stock-based compensation to conform to SFAS No. 123, *Accounting for Stock-Based Compensation*, as amended by SFAS No. 148, *Accounting for Stock-Based Compensation — Transition and Disclosure*, by retroactively restating its 2003, 2002 and 2001 consolidated financial statements), included or incorporated by reference in the Current Report on Form 8-K dated May 4, 2004 of Merrill Lynch & Co., Inc. and subsidiaries containing the restated consolidated financial statements and related restated financial statement schedule as of December 26, 2003 and for the three years then ended.

/s/ Deloitte & Touche LLP

August 27, 2004  
New York, New York