

**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)

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

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

**Merrill Lynch & Co., Inc. Deferred Stock Unit Plan  
for Non-Employee Directors**

(Full title of the plan)

**CALCULATION OF REGISTRATION FEE**

<b>Title of securities to be registered</b>	<b>Amount to be registered</b>	<b>Proposed maximum offering price per share</b>	<b>Proposed maximum aggregate offering price(2)</b>	<b>Amount of registration fee</b>
Common Stock, par value \$1.33- 1/3 per share, (including Preferred Stock Purchase Rights) (1)	1,027,605	\$ 54.12	\$ 55,613,982	\$ 6,545.76

- (1) Prior to the occurrence of certain events, the Preferred Stock Purchase Rights will not be evidenced separately from the Common Stock; value attributable to such Rights, if any, is reflected in the market price of the Common Stock.
- (2) Calculated in accordance with Rule 457(c), based on the average of the high and low prices of the Common Stock reported in the consolidated reporting system on May 17, 2005.

## TABLE OF CONTENTS

### PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

### PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

ITEM 4. DESCRIPTION OF SECURITIES.

ITEM 5. INTERESTS OF EXPERTS AND COUNSEL.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

ITEM 8. EXHIBITS.

ITEM 9. UNDERTAKINGS.

SIGNATURES

EXHIBIT INDEX

Ex-5: OPINION OF SIDLEY AUSTIN BROWN & WOOD LLP

EX-10: DEFERRED STOCK UNIT PLAN FOR NON-EMPLOYEES

EX-15: LETTER RE: UNAUDITED INTERIM FINANCIAL INFORMATION

EX-23.B: CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

---

## **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 directors as specified by Rule 428(b)(1) of the Securities Act of 1933, as amended. Such documents and the documents incorporated by reference herein pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act of 1933, as amended.

## **PART II**

### **INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

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

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

All documents filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date hereof and prior to the termination of the offering of the securities registered pursuant to this Registration Statement 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 Company's restated certificate of incorporation, the Company is authorized to issue up to 3,000,000,000 shares of common stock, par value \$1.33-1/3 per share. As of December 31, 2004, there were 928,036,749 shares of common stock and 2,782,712 exchangeable shares outstanding. The exchangeable shares 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. Under the Company's Restated Certificate of Incorporation, the Company is authorized to issue up to 25,000,000 shares of preferred stock, par value \$1.00 per share, issuable in series ("Preferred Stock"). The common stock will be, when issued against payment therefore, fully paid and non-assessable.

Holders of shares of common stock will have no preemptive rights to subscribe for any additional securities which may be issued by the Company. The rights of a holder of common stock will be subject to, and may be adversely affected by, the rights of holders of any Preferred Stock that has been issued and may be issued in the future.

Wells Fargo Bank, N.A. is the recordkeeping transfer agent for the common stock of the Company.

Because the Company is a holding company, its rights, and the rights of holders of its securities, including the holders of common stock to participate in the distribution of assets of any subsidiary of the Company upon the subsidiary's liquidation or recapitalization will be subject to the prior claims of the subsidiary's creditors and preferred stockholders, except to the extent that the Company may itself be a creditor with recognized claims against the subsidiary or holder of preferred stock of the subsidiary.

The Company may pay dividends on the common stock out of funds legally available for the payment of dividends as, if and when declared by the Board of Directors of the Company or a duly authorized committee of the Board of Directors.

Upon any voluntary or involuntary liquidation, dissolution, or winding up of the Company, the holders of its common stock will be entitled to receive, after payment of all of its debts, liabilities and of all sums to which holders of any preferred stock may be entitled, all of the remaining assets of the Company.

Except voting rights of the exchangeable shares and voting rights of any outstanding series of Preferred Stock, the holders of the common stock currently possess exclusive voting rights in the Company. The Board of Directors of the Company may, however, give voting power to any Preferred Stock which may be issued in the future. Each holder of common stock is entitled to one vote for each share with respect to all matters. There is no cumulative voting in the election of directors. Actions requiring approval of shareholders generally require approval of a majority vote of outstanding shares.

Under the Amended and Restated Rights Agreement, adopted on December 2, 1997 (the "Rights Agreement"), preferred purchase rights were distributed to holders of common stock. The preferred purchase rights are attached to each outstanding share of common stock and will attach to all subsequently issued shares, including common stock that may be issued under the Merrill Lynch & Co., Inc. Deferred Stock Unit Plan for Non-Employee Directors (the "Plan"). The preferred purchase rights entitle the holder to purchase fractions of a share ("Units") of Series A junior Preferred Stock at an exercise price of \$300 per Unit, subject to adjustment from time to time as provided in the Rights Agreement. The exercise price and the number of Units issuable are subject to adjustment to prevent dilution.

The Board of Directors of the Company, without further action by stockholders, has the authority to issue shares of Preferred Stock from time to time in one or more series and to fix the number of shares and the rights, preferences, privileges, qualifications, restrictions and limitations of each series. As of December 31, 2004, the Company had 24,957,500 shares of Preferred Stock available for issuance. The Company has authorized the issuance of Series A junior Preferred Stock, par value \$1.00 per share, of the Company upon exercise of preferred share purchase rights associated with each share of common stock outstanding described above.

#### **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 he or she 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 him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her 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. Similar indemnification and insurance is also provided to those employees of the Company who serve as administrators of the Plan. In addition, the Company has entered into contracts with all of its directors providing for indemnification of such persons by the Company to the fullest extent authorized or permitted by law, subject to certain limited exceptions. The Company has established trusts to fund its obligations, up to the amount of the trust assets, that may arise under these agreements and also to directors, officers and employees under the provisions of the General Corporation Law of the State of Delaware and the Company's Restated Certificate of Incorporation.

---

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

Not Applicable.

**ITEM 8. EXHIBITS.**

- 4(a) Restated Certificate of Incorporation of the Company, dated May 3, 2001 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K dated March 10, 2005).
- 4(b) By-Laws of the Company, effective as of April 28, 2003 (incorporated by reference to Exhibit 3 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 28, 2003 (File No. 1-7182)).
- 4(c) Form of Amended and Restated Rights Agreement, dated as of December 16, 1987, between the Company and Wells Fargo Bank, N.A. (successor to Mellon Investor Services, L.L.C., as rights agent (incorporated by reference to Exhibit 4 to the Company's Current report on Form 8-K dated December 3, 1997).
- 4(d) Certificate of Designation of the Company establishing the rights, preferences, privileges, qualifications, restrictions and limitations relating to the Company's Floating Rate Non-Cumulative Preferred Stock, Series 2, par value \$1.00 per share effective as of October 25, 2004. (incorporated by reference to Exhibit 3.2 and 4.1 to the Company's Current Report on Form 8-K dated March 10, 2005).
- 4(e) Certificate of Designation of the Company establishing the rights, preferences, privileges, qualifications, restrictions and limitations relating to the Company's Floating Rate Non-Cumulative Preferred Stock, Series 2, par value \$1.00 per share effective as of March 9, 2005. (incorporated by reference to Exhibit 3.3 and 4.2 to the Company's Current Report on Form 8-K dated March 10, 2005).
- 4(f) Certificate of Designation of the Company establishing the rights, preferences, privileges, qualifications, restrictions and limitations relating to the Company's Series A Junior Preferred Stock (incorporated by reference to Exhibit 3(f) to the Company's Registration Statement on Form S-3 (File No. 33-19975)).
- 5 Opinion of Sidley Austin Brown & Wood LLP.
- 10 Merrill Lynch & Co., Inc. Deferred Stock Unit Plan for Non-Employee Directors.
- 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 6).

**ITEM 9. UNDERTAKINGS.**

The undersigned registrant hereby undertakes:

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

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

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

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this 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 by the registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this Registration Statement.

---

## [Table of Contents](#)

(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 the time shall be deemed to be the initial *bona fide* offering thereof.

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

---

**SIGNATURES**

**Pursuant to the requirements of the Securities Act of 1933, the Company certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York and State of New York on the 24th day of May, 2005.**

MERRILL LYNCH & CO., INC.

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

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

**Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities indicated on the 24th day of May, 2005.**

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

---

[Table of Contents](#)

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

---

**EXHIBIT INDEX**

- 4(a) Restated Certificate of Incorporation of the Company, dated May 3, 2001 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K dated March 10, 2005).
- 4(b) By-Laws of the Company, effective as of April 28, 2003 (incorporated by reference to Exhibit 3 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 28, 2003 (File No. 1-7182)).
- 4(c) Form of Amended and Restated Rights Agreement, dated as of December 16, 1987, between the Company and Wells Fargo Bank, N.A. (successor to Mellon Investor Services, L.L.C., as rights agent (incorporated by reference to Exhibit 4 to the Company's Current report on Form 8-K dated December 3, 1997).
- 4(d) Certificate of Designation of the Company establishing the rights, preferences, privileges, qualifications, restrictions and limitations relating to the Company's Floating Rate Non-Cumulative Preferred Stock, Series 2, par value \$1.00 per share effective as of October 25, 2004. (incorporated by reference to Exhibit 3.2 and 4.1 to the Company's Current Report on Form 8-K dated March 10, 2005).
- 4(e) Certificate of Designation of the Company establishing the rights, preferences, privileges, qualifications, restrictions and limitations relating to the Company's Floating Rate Non-Cumulative Preferred Stock, Series 2, par value \$1.00 per share effective as of March 9, 2005. (incorporated by reference to Exhibit 3.3 and 4.2 to the Company's Current Report on Form 8-K dated March 10, 2005).
- 4(f) Certificate of Designation of the Company establishing the rights, preferences, privileges, qualifications, restrictions and limitations relating to the Company's Series A Junior Preferred Stock (incorporated by reference to Exhibit 3(f) to the Company's Registration Statement on Form S-3 (File No. 33-19975)).
- \*5 Opinion of Sidley Austin Brown & Wood LLP.
- \*10 Merrill Lynch & Co., Inc. Deferred Stock Unit Plan for Non-Employee Directors.
- \*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 Independent Registered Public Accounting Firm.
- \*24 Power of Attorney (included on page 5).

---

\* Filed herewith

Sidley Austin Brown & Wood LLP

**Exhibit 5**

May 24, 2005

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

Dear Sirs:

We have acted as counsel for Merrill Lynch & Co., Inc., a Delaware corporation (the "Company"), in connection with the proposed filing with the Securities and Exchange Commission expected to be made on or about May 24, 2005 under the Securities Act of 1933, as amended, of a Registration Statement on Form S-8 (the "Registration Statement") for the purpose of registering 1,027,605 shares of Common Stock, par value \$1.33 1/3 per share (including Preferred Stock Purchase Rights (the "Common Stock") of Merrill Lynch & Co. Inc. that may be sold in accordance with the terms and conditions of the Merrill Lynch & Co., Inc. Deferred Stock Unit Plan for Non-Employee Directors (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, the shares of Common Stock sold in connection with the Plan will be legally issued, fully paid and nonassessable.

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

Very truly yours,

/s/ Sidley Austin Brown & Wood LLP

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

**Article I — General**

**Section 1.1 Purposes.**

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

**Section 1.2 Definitions.**

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

“Account” means a notional account recording a grant of Deferred Stock Units under the Plan. The Company shall maintain a separate Account for each grant of Deferred Stock Units to a Participant.

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

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

“Annual Meeting” means the Annual Meeting of Stockholders of ML & Co.

“Board of Directors” or “Board” shall mean the Board of Directors of ML & Co.

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

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

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

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

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

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

---

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

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

“Continuing Director” means, with respect to any Annual Meeting, a Director who is reelected to the Board at the Annual Meeting.

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

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

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

“Director” means a member of the Board.

“Disability” means any medically determinable physical or mental condition that renders a Director incapable of engaging in any substantial gainful activity and can be expected to result in death or to last for a continuous period of at least 12 months.

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

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Holding Period” has the meaning specified in Section 2.2.

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

“Junior Preferred Stock” means ML & Co.’s Series A Junior Preferred Stock, par value \$1.00 per share.

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

“Participant” means each Non-Employee Director to whom a grant of Deferred Stock Units is made under the Plan.

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

---

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

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

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

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

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

### **Section 1.3 Shares Subject to the Plan.**

The total number of shares of Common Stock that shall be reserved for delivery in payment of Deferred Stock Units under the Plan shall be 500,000, subject to automatic adjustment for changes in capitalization of ML & Co. as provided in Section 3.1 hereof. Shares of Common Stock distributed under the Plan may be authorized but unissued shares or shares that shall have been or may be acquired by ML & Co. in the open market, in private transactions or otherwise. The number of shares reserved for delivery in payment of Deferred Stock Units shall be increased by the number of shares remaining available under the Merrill Lynch & Co., Inc. Deferred Stock Unit Plan for Non-Employee Directors on the date that the Board of Directors determination to permit no further awards under such plan shall become effective.

## **Article II Deferred Stock Units; Optional Deferral of Payment**

### **Section 2.1 Deferred Stock Unit Grants.**

(a) **Regular Grants.** Each Non-Employee Director shall, without any further action by the Board of Directors, receive as of the date of every Annual Meeting for which he or she is a Continuing Director, the number of Deferred Stock Units obtained by dividing \$185,000 by the Daily Market Price per share of Common Stock on such date and rounding the result upwards to the nearest whole Deferred Stock Unit. If sufficient shares of Common Stock do not remain available under Section 1.3 for each eligible Non-Employee Director to receive the full number of Deferred Stock Units calculated pursuant to the preceding sentence, then the number of Deferred Stock Units granted to each eligible Non-Employee Director will be proportionately reduced so that the Section 1.3 limit is not exceeded.

(b) **Prorated Mid-Year Regular Grants.** A Non-Employee Director who joins the Board after the date of an Annual Meeting, shall, without any further action by the Board of Directors, receive a pro-rated regular grant. The value of such grant shall be computed by multiplying \$185,000 by a fraction the numerator of which shall be the number of full or partial calendar months (beginning with the month that follows the month in which the most recent Annual Meeting occurred) that remain until the Corporation’s Annual Meeting and the denominator of which shall be 12; if the date of the next Annual Meeting has not been fixed at the time a Non-Employee Director joins the Board, it shall be assumed to be the first anniversary of the most recent Annual Meeting. The number of Deferred Stock Units to be granted shall be determined by dividing the dollar value obtained from the calculation in the previous sentence by the Daily Market Price per share of Common Stock

---

on the date of his or her appointment to the Board. If sufficient shares of Common Stock do not remain available under Section 1.3 for the Non-Employee Director to receive the full number of Deferred Stock Units calculated pursuant to the preceding two sentences, then the number of Deferred Stock Units granted to the Non-Employee Director will be reduced so that the Section 1.3 limit is not exceeded.

### **Section 2.2 Payment of Awards Upon Expiration of the Holding Period**

Unless deferred at the option of the Participant in accordance with Section 2.3(a) hereof, Deferred Stock Units will become payable upon the expiration of the holding period applicable thereto (the "Holding Period"), which shall expire on the earlier of: (i) the date of the fifth Annual Meeting following the date the Deferred Stock Units were granted, and (ii) a Participant's End of Service Date. Deferred Stock Units will be paid in shares of Common Stock as soon as practicable following the end of the applicable Holding Period. One share of Common Stock will be delivered for each Deferred Stock Unit to be paid, after rounding any fractional unit upwards to the nearest whole share.

### **Section 2.3 Optional Deferral of Payment.**

(a) **Optional Deferral of Payment.** A Participant shall have the option to defer the payment of all or a portion of any Deferred Stock Unit grant upon the expiration of the relevant Holding Period in accordance with this Section 2.3 by submitting to the Administrator or his or her designee such forms as the Administrator shall prescribe by no later than the last day of the calendar year before the year in which will occur the Annual Meeting in connection with which such Deferred Stock Units will be granted; *provided, however*, that with respect to Deferred Stock Units granted pursuant to Section 2.1(b), such election may be made within 30 days of the Participant's initial appointment or election to the Board. In addition, the Administrator may permit further deferrals of the receipt of Deferred Stock Units for a period that shall not be shorter than five years from the date of the expiration of the Holding Period for such Deferred Stock Units in accordance with regulations promulgated under the American Jobs Creation Act of 2004.

(b) **Irrevocability of Deferral Election.** Except as provided in Sections 2.3(c) or Section 2.5, an election to defer the payment of all or a portion of a Participant's Deferred Stock Units made pursuant to Section 2.3(a) shall be irrevocable once submitted to the Administrator or his or her designee.

(c) **Rescission of Deferral Election Caused by an Adverse Tax Determination.** Notwithstanding the provisions of Section 2.3(a), a deferral election may be rescinded at any time if (i) a final determination is made by a court or other governmental body of competent jurisdiction that the election was ineffective to defer income for purposes of U.S. Federal, state, local or foreign income taxation and the time for appeal from this determination has expired, and (ii) the Administrator, in his or her sole discretion, decides, upon the Participant's request and upon evidence of the occurrence of the events described in clause (i) hereof that he or she finds persuasive, to rescind the election. Upon such rescission, the relevant Deferred Stock Units will be paid to the Participant as soon as practicable as provided herein.

### **Section 2.4 Payment of Units Optionally Deferred.**

(a) **Regular Payment Elections.** ML & Co. will pay Deferred Stock Units granted to a Participant who has made an optional deferral election pursuant to Section 2.3(a) as elected by the Participant at the time of his or her optional deferral election, either in a single payment to be made, or in the number of annual installment payments (not to exceed 15) chosen by the Participant to commence, (i) in the month following the month of the Participant's End of Service Date or death, (ii) in any month and year selected by the Participant after the scheduled expiration of the Holding Period (i.e., without taking into account the possibility of death, Disability or an End of Service Date occurring before the expiration of the Holding Period), or (iii) in any month in the calendar year following the Participant's End of Service Date, but in no event may the date elected under clause (i), (ii) or (iii) result in the payment (in the case of a single payment) or commencement of payments (in the case of installment payments) later than the month following the Participant's 72nd birthday.

---

The amount of each annual installment payment, if applicable, shall be determined by multiplying the number of Deferred Stock Units credited to the Participant's Account as of the last day of the month immediately preceding the month in which the payment is to be made by a fraction, the numerator of which is one and the denominator of which is the number of remaining installment payments (including the installment payment to be made) and rounding the result to the nearest whole Deferred Stock Unit or cent, as the case may be.

(b) **Form of Payment.** Deferred Stock Units payable pursuant to this Section 2.4 will be paid in shares of Common Stock. One share of Common Stock will be delivered for each unit to be paid, after rounding any fractional unit upwards to the nearest whole share.

(c) **Death Prior to Payment.** If the Participant dies prior to payment of any or all Deferred Stock Units optionally deferred, then the unpaid Deferred Stock Units will be paid to the Participant's beneficiary in accordance with the Participant's election of either installment payments, or a single payment, provided, however, that, in the event that the Participant's beneficiary is the Participant's estate or is otherwise not a natural person, then (i) if the Participant has elected a regular payment election pursuant to Section 2.4(a), the applicable portion of the Deferred Stock Units will be paid in a single payment to such beneficiary, and (ii) if the Participant has elected installment payments, the applicable portion of the Deferred Stock Units will continue to be paid as installment payments, but only to a single person consisting of the administrator or executor of the Participant's estate or another person lawfully designated by the administrator or executor (and in the event no such person is designated within a reasonable time, payment will be made in a lump sum).

(d) **Hardship Distributions.** ML & Co. may pay to the Participant, on such terms and conditions as the Administrator may establish, such part or all of the Participant's Deferred Stock Units, as the Administrator may, in his or her sole discretion based upon substantial evidence submitted by the Participant, determine necessary to alleviate severe financial hardship to the Participant caused by an unanticipated emergency. Such payment will be made only at the Participant's written request and with the express approval of the Administrator and will be made on the date selected by the Administrator in his or her sole discretion. The balance of the Account, if any, will continue to be governed by the terms of this Plan. Payment pursuant to this Section 2.4(d) may be made only upon a showing of severe financial hardship resulting from an illness or accident of the Participant, the Participant's spouse or a dependent (as defined in Section 152(a) of the Code) of the Participant, loss of the Participant's property due to casualty or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.. The amount paid pursuant to this Section 2.4(d) shall not exceed the amount necessary to satisfy such unanticipated emergency plus amount necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which the severe financial hardship to the Participant is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the Participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship).

## **Section 2.5 Beneficiary.**

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

(b) **Change in Beneficiary.** The Participant may change his or her beneficiary or contingent beneficiary (without the consent of any prior beneficiary) in a writing delivered to the Administrator or his or her designee before the Participant's death. Unless the Participant states otherwise in writing, any change in beneficiary or contingent beneficiary will automatically revoke such prior designations of the Participant's

---

beneficiary or of the Participant's contingent beneficiary, as the case may be, under this Plan only; and any designations under other deferral agreements or plans of the Company will remain unaffected.

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

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

#### **Section 2.6 Domestic Relations Orders.**

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

#### **Section 2.7 Withholding of Taxes.**

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

### **Article III — Adjustment of Accounts**

#### **Section 3.1 Adjustment of Accounts.**

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

(b) **Changes in Capitalization.** Any other provision of the Plan to the contrary notwithstanding, if any change shall occur in or affect shares of Common Stock (or the Rights or Junior Preferred Stock) on account of a merger, consolidation, reorganization, stock dividend, stock split or combination, reclassification, recapitalization, or distribution to holders of shares of Common Stock (other than cash dividends), including, without limitation, a merger or other reorganization event in which the shares of Common Stock cease to exist,

---

then appropriate adjustments shall be made, without any action by the Board of Directors, to the Deferred Stock Units as shall be necessary to maintain the proportionate interest of the Participants and to preserve, without increasing, the value of the Deferred Stock Units. In the event of a change in the presently authorized shares of Common Stock that is limited to a change in the designation thereof or a change of authorized shares with par value into the same number of shares with a different par value or into the same number of shares without par value, the shares resulting from any such change shall be deemed to be shares of Common Stock within the meaning of the Plan.

#### **Article IV — Status of Accounts**

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

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

##### **Section 4.2 Non-Assignability.**

Except as provided in Section 2.6, a Participant's right or the right of any other person to his or her Deferred Stock units or to any Account to which they are credited or any other benefits hereunder cannot be assigned, alienated, sold, garnished, transferred, pledged, or encumbered except by a written designation of beneficiary under this Plan, by written will, or by the laws of descent and distribution.

#### **Article V — Change in Control**

##### **Section 5.1 Payment upon Change in Control.**

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

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

#### **Article VI — Administration of the Plan**

##### **Section 6.1 Powers of the Administrator.**

The Administrator has full power and authority to interpret, construe, and administer this Plan. The Administrator's interpretations and construction hereof, and actions hereunder, including any determinations regarding the amount or recipient of any payments, will be binding and conclusive on all persons for all purposes. The Administrator will not be liable to any person for any action taken or omitted in connection with

---

the interpretation and administration of this Plan unless attributable to his or her willful misconduct or lack of good faith. The Administrator may designate persons to carry out the specified responsibilities of the Administrator and shall not be liable for any act or omission of a person as designated.

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

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

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

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

**Article VII — Miscellaneous Provisions**

**Section 7.1 Litigation.**

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

**Section 7.2 Headings Are Not Controlling.**

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

**Section 7.3 Governing Law.**

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

**Section 7.4 Amendment and Termination.**

The Board of Directors may amend or terminate this Plan at any time, provided that no amendment or termination may be made that would adversely affect the right of a Participant to his or her Deferred Stock Units as of the date of such amendment or termination.

**Article VIII — Effective Date**

The Plan shall become effective upon its adoption by the Board of Directors, subject to its approval by the stockholders of ML & Co.

**Exhibit 15**

May 20, 2005

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

We have made a review, in accordance with the standards of the Public Company Accounting Oversight Board (United States), of the unaudited interim condensed consolidated financial information of Merrill Lynch & Co., Inc. and subsidiaries for the three-month periods ended April 1, 2005 and March 26, 2004, and have issued our report dated May 6, 2005. As indicated in such report, because we did not perform an audit, we expressed no opinion on that information.

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

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

/s/ Deloitte & Touche LLP

New York, New York

Exhibit 23(b)

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. Deferred Stock Unit Plan for Non-Employee Directors of our reports dated March 2, 2005, relating to the consolidated financial statements, the related financial statement schedule and management's report on the effectiveness of internal control over financial reporting appearing in and incorporated by reference in the Annual Report on Form 10-K of Merrill Lynch & Co., Inc. for the year ended December 31, 2004.

/s/ Deloitte & Touche LLP

New York, New York  
May 20, 2005