Registration No. 333-[•]

As filed with the Securities and Exchange Commission on May 7, 2007

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

Form S-4

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

MERRILL LYNCH & CO., INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	6211	13-2740599
(State or Other Jurisdiction of Incorporation or Organization)	*(Primary Standard Industrial Classification Code Number)*	*(IRS Employer Identification Number)*

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.
General Counsel Corporate Law
Merrill Lynch & Co., Inc.
222 Broadway — 17th Floor
New York, New York 10038
(212) 449-1000
(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

Copies to:

Edward J. Dobranski, Esq.	Mitchell S. Eitel, Esq.	John M. Reiss, Esq.
General Counsel	Sullivan & Cromwell LLP	Laura Sizemore, Esq.
First Republic Bank	125 Broad Street	White & Case LLP
111 Pine Street, 2nd Floor	New York, New York 10004	1155 Avenue of the Americas
San Francisco, California 94111	(212) 558-4000	New York, New York 10036
(415) 392-1400		(212) 819-8200

APPROXIMATE DATE OF COMMENCEMENT OF THE PROPOSED SALE OF THE SECURITIES TO THE PUBLIC: As soon as practicable after this Registration Statement becomes effective and upon completion of the transaction described in the enclosed proxy statement/prospectus.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, as amended ("Securities Act"), check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value $1.33 1/3 per share (including preferred share purchase rights)(1)	12,000,000 shares(2)	N/A	$895,559,426(3)	$27,493.67(4)
Preferred Stock, par value $1.00 per share	115,000 shares(5)	N/A	$115,000,000(6)	$3,530.50(4)

(1) Prior to the occurrence of certain events, the preferred share purchase rights will not be evidenced separately from the Common Stock. The value attributable to such rights, if any, is reflected in the market price of the Common Stock.

(2) Represents the maximum number of shares of common stock of the registrant, Merrill Lynch & Co., Inc., estimated to be deliverable upon completion of the merger of First Republic Bank with and into Merrill Lynch Bank & Trust Co., FSB, a wholly owned subsidiary of the registrant.

(3) Estimated solely for the purpose of calculating the registration fee required by Section 6(b) of the Securities Act and calculated in accordance with Rules 457(c), (f)(1) and (f)(3) under the Securities Act. The proposed maximum aggregate offering price of the registrant's common stock was calculated based upon the market value of shares of First Republic Bank common stock in accordance with Rule 457(c) under the Securities Act as follows: (A) the product of (1) $54.23, the average of the high and low prices of First Republic Bank common stock as reported on the New York Stock Exchange on May 4, 2007 and (2) 33,028,192, the maximum number of shares of First Republic Bank common stock expected to be exchanged in connection with the merger (which is the sum of (x) 31,151,848 issued and outstanding shares of First Republic Bank common stock and (y) 1,876,344 shares of First Republic Bank common stock issuable under various plans and options, as of April 30, 2007), less (B) $895,559,426, the estimated cash portion of the consideration to be paid by the registrant in exchange for shares of First Republic Bank common stock.

(4) Determined in accordance with Section 6(b) of the Securities Act at a rate equal to $30.70 per $1,000,000 of the proposed maximum aggregate offering price.

(5) Represents the maximum number of shares of preferred stock of the registrant, Merrill Lynch & Co., Inc., estimated to be deliverable upon completion of the merger of First Republic Bank with and into Merrill Lynch Bank & Trust Co., FSB, a wholly owned subsidiary of the registrant.

(6) Estimated solely for the purpose of calculating the registration fee required by Section 6(b) of the Securities Act and calculated in accordance with Rule 457(f)(2) under the Securities Act. The proposed maximum aggregate offering price of the registrant's preferred stock was calculated based upon book value per share of First Republic preferred stock as of May 4, 2007.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

The information contained in this proxy statement/prospectus is not complete and may be changed. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This proxy statement/prospectus is not an offer to sell these securities, and is not soliciting an offer to buy these securities, nor shall there be any sale of these securities, in any jurisdiction where such offer, solicitation or sale is not permitted or would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

PRELIMINARY DRAFT DATED MAY 7, 2007, SUBJECT TO COMPLETION

Proxy Statement for First Republic Bank Special Meeting

Prospectus for Merrill Lynch & Co., Inc.

First Republic Bank

PROPOSED MERGER — YOUR VOTE IS VERY IMPORTANT

Merrill Lynch & Co., Inc., or Merrill Lynch, and First Republic Bank, or First Republic, are proposing a merger transaction in which First Republic will be merged with and into Merrill Lynch's wholly owned federal savings bank subsidiary, Merrill Lynch Bank & Trust Co., FSB, or ML Bank. ML Bank will be the surviving entity in the merger. The board of directors of First Republic has unanimously adopted the plan of merger contained in the Agreement and Plan of Merger, or merger agreement, dated as of January 29, 2007, among Merrill Lynch, First Republic and ML Bank.

If the merger is completed, you will be entitled to receive, at your election (but subject to proration and adjustment as provided in the merger agreement), cash or Merrill Lynch common stock, in either case having a value equal to $55.00 for each share of First Republic common stock you own immediately prior to completion of the merger. As explained in more detail in this document, the value of the consideration that you will receive upon completion of the merger will be approximately the same regardless of whether you make a cash election or a stock election based on the Merrill Lynch stock price used to calculate the merger consideration. If you elected to receive Merrill Lynch common stock for your shares of First Republic common stock, you would receive, based on the closing price of Merrill Lynch common stock on **[•]**, 2007, 0.**[•]** shares of Merrill Lynch common stock for each of your shares of First Republic common stock. On January 26, 2007, the last trading day before the merger was publicly announced, the closing price of Merrill Lynch common stock was $94.53, which, based on the closing price on that date, if you elected to receive Merrill Lynch common stock, would entitle you to receive 0.5818 shares of Merrill Lynch common stock for each of your shares of First Republic common stock. The shares of Merrill Lynch common stock to be issued in the merger will be listed on the New York Stock Exchange under the symbol "MER." Based on the current number of shares of First Republic common stock outstanding and reserved for issuance under employee benefit plans and other arrangements, Merrill Lynch expects to issue approximately **[•]** shares of common stock to First Republic stockholders in the aggregate upon completion of the transaction. However, any increase or decrease in the number of shares of First Republic common stock outstanding or any increase or decrease in the market price of Merrill Lynch common stock that occurs for any reason prior to completion of the merger would cause the actual number of shares issued in the merger to change.

At First Republic's special meeting of its stockholders, or the Special Meeting, you will have the opportunity to vote on the approval of the plan of merger contained in the merger agreement, and you are cordially invited to attend the Special Meeting at **[•]**, on **[•]**, **[•]**, 2007, at **[•]**, local time. **The First Republic board of directors unanimously recommends that holders of First Republic common stock vote "FOR" the approval of the plan of merger contained in the merger agreement.**

Your Vote Is Very Important. Approval of the plan of merger contained in the merger agreement requires the affirmative vote of a majority of the voting power of First Republic stockholders entitled to vote at the First Republic Special Meeting. Whether or not you plan to attend the Special Meeting, please take the time to vote by completing and mailing the enclosed proxy card to us. We urge you to vote, because if a First Republic stockholder fails to vote or abstains, this will have the same effect as a vote **against** approval of the plan of merger. If your shares are held in "street name," you must instruct your broker in order to vote.

This proxy statement/prospectus contains detailed information about the Special Meeting, the proposed merger, documents related to the merger and other related matters, and we urge you to read it carefully, including the section entitled "Risk Factors" beginning on page 21. In addition, you may obtain information about Merrill Lynch and First Republic from documents that each has filed with the Securities and Exchange Commission, or SEC, and the Federal Deposit Insurance Corporation, or FDIC, respectively. You should also obtain current market quotations for both Merrill Lynch and First Republic common stock. The common stock of both Merrill Lynch and First Republic is listed on the New York Stock Exchange, under the symbols "MER" and "FRC," respectively.

NONE OF THE SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR THE FEDERAL DEPOSIT INSURANCE CORPORATION HAS APPROVED OR DISAPPROVED THE MERRILL LYNCH COMMON STOCK TO BE ISSUED TO FIRST REPUBLIC STOCKHOLDERS IN THE MERGER OR DETERMINED IF THIS PROXY STATEMENT/ PROSPECTUS IS ACCURATE OR ADEQUATE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The securities to be issued in the merger are not savings or deposit accounts and are not insured by the Federal Deposit Insurance Corporation or any other governmental agency.

The date of this proxy statement/prospectus is **[•]**, 2007, and it is first being mailed or otherwise delivered to First Republic stockholders on or about **[•]**, 2007.

ADDITIONAL INFORMATION

This proxy statement/prospectus incorporates important business and financial information about Merrill Lynch and First Republic from documents that are not included in or delivered with this document. This information is available to you without charge upon your written or oral request. With respect to Merrill Lynch, you can obtain documents incorporated by reference into this document through the SEC's website at *http://www.sec.gov.* With respect to First Republic, you can obtain documents incorporated by reference into this document through the FDIC's offices or, in some cases, through First Republic's website at *http://www.firstrepublic.com.* Except for the documents specifically incorporated by reference into this proxy statement/prospectus, information contained on Merrill Lynch's or First Republic's website or that can be accessed through their respective websites is not incorporated by reference into this proxy statement/prospectus. You can also obtain documents incorporated by reference by requesting them in writing or by telephone from the appropriate company:

MERRILL LYNCH & CO., INC
222 Broadway — 17th Floor
New York, New York 10038
Attention: Judith A. Witterschein
Corporate Secretary
Tel: (212) 670-0432
Email: corporate_secretary@ml.com

FIRST REPUBLIC BANK
111 Pine Street, 2nd Floor
San Francisco, California 94111
Attention: Willis H. Newton, Jr.
Chief Financial Officer
Tel: (415) 392-1400
Email: investorrelations@firstrepublic.com

Please note that copies of the documents provided to you will not include exhibits, unless exhibits are specifically incorporated by reference in the documents or this proxy statement/prospectus.

If you would like to request documents, please do so by **[•]**, 2007 in order to receive them before the Special Meeting.

In addition, if you have questions about the merger or the Special Meeting, need additional copies of this document or wish to obtain proxy cards or other information related to the proxy solicitation, you may contact the individual listed below. You will not be charged for any of these documents that you request.

Attention: Frederick J. Marquardt
Morrow & Co., Inc.
470 West Avenue
Stamford, Connecticut 06902
Tel: (203) 658-9400

For additional information about documents incorporated by reference into this proxy statement/prospectus, please see the section entitled "Where You Can Find More Information" beginning on page 93.

FIRST REPUBLIC BANK

111 Pine Street
San Francisco, California 94111
(415) 392-1400

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS TO BE HELD [•], 2007

To The Stockholders of First Republic Bank

NOTICE IS HEREBY GIVEN that a Special Meeting of stockholders of First Republic Bank, a Nevada banking corporation, or First Republic, will be held at **[•]** [am/pm] local time on **[•]**, **[•]**, 2007, at the **[•]** for the following purposes:

- For holders of common stock to approve the plan of merger contained in the Agreement and Plan of Merger, dated as of January 29, 2007, among Merrill Lynch & Co., Inc., or Merrill Lynch, First Republic and Merrill Lynch Bank & Trust Co., FSB, or ML Bank, a wholly owned subsidiary of Merrill Lynch, as it may be amended from time to time, pursuant to which First Republic will be merged with and into ML Bank, as more fully described in the enclosed proxy statement/prospectus. A copy of the merger agreement is included as **Annex A** to the proxy statement/prospectus; and
- To transact such other business as may properly come before the meeting or any adjournment or postponement of the meeting, if necessary, including to solicit additional proxies.

In the merger, a holder of common stock will be entitled to receive, at his, her or its election (but subject to proration and adjustment as provided in the merger agreement), cash or Merrill Lynch common stock, in either case having a value equal to $55.00 for each share of First Republic common stock owned immediately prior to completion of the merger. As explained in more detail in the proxy statement/prospectus, the value of the consideration that you will receive upon completion of the merger will be approximately the same regardless of whether you make a cash election or a stock election is made based on the Merrill Lynch stock price used to calculate the merger consideration.

Please review the proxy statement/prospectus accompanying this notice for more detailed information regarding the merger and the First Republic Special Meeting.

Pursuant to First Republic's Bylaws, the First Republic board of directors has fixed the close of business on May 7, 2007 as the record date for the determination of stockholders entitled to receive notice of and, in the case of common stockholders, to vote at the Special Meeting. Only First Republic stockholders of record at the close of business on that date are entitled to notice of, and, in the case of common stockholders, to vote at, the Special Meeting and any adjournments or postponements of the Special Meeting. Holders of a majority of the outstanding shares of First Republic's common stock must be present either in person or by proxy in order for the Special Meeting to be held and it is important that your shares be represented at the Special Meeting regardless of the number of common shares that you hold. Abstentions and broker non-votes will be counted towards the presence of a quorum.

In order for the plan of merger to be approved by First Republic stockholders, a majority of the voting power of First Republic stockholders entitled to vote must be voted in favor of approving the plan of merger. Abstentions, failures to vote and broker non-votes will have the same effect as a vote against approval of the plan of merger. All First Republic stockholders entitled to notice of, and to vote at, the Special Meeting are cordially invited to attend the Special Meeting in person. **However, if you are a common stockholder, to ensure your representation at the Special Meeting, please submit your proxy by mail, by telephone or through the Internet, in each case, with voting instructions.** The submission of a proxy will not prevent a holder of common stock from voting in person. Any holder of First Republic common stock entitled to vote

who is present at the Special Meeting may vote in person instead of by proxy, thereby canceling any previous proxy. In any event, a proxy may be revoked in writing at any time before the vote is taken at the Special Meeting. If you are a holder of common stock, wish to attend the Special Meeting and your shares are held in the name of a broker, trust, bank or other nominee, you must bring with you a proxy or letter from the broker, trustee, bank or nominee to confirm your beneficial ownership of the shares.

Holders of First Republic preferred stock and holders of depositary shares representing First Republic preferred stock are not, as such, entitled to and are not being requested to vote at the Special Meeting.

Holders of shares of First Republic preferred stock may be entitled to assert dissenters' rights under provisions of Nevada law, the text of which are included as **Annex C** to the proxy statement/prospectus.

The list of the stockholders entitled to vote at the Special Meeting will be available during ordinary business hours at First Republic's principal business offices, located at 111 Pine Street, San Francisco, California 94111, beginning on **[•]**, 2007. The stockholder list will also be available at the Special Meeting.

The above matters are described in more detail in the accompanying proxy statement/prospectus.

By Order of the Board of Directors

James H. Herbert, II, President

San Francisco, California
[•], 2007

YOUR VOTE IS IMPORTANT REGARDLESS OF THE NUMBER OF COMMON SHARES YOU OWN. WHETHER OR NOT YOU PLAN TO ATTEND THE SPECIAL MEETING IN PERSON, PLEASE VOTE YOUR PROXY BY TELEPHONE OR THROUGH THE INTERNET, AS DESCRIBED ON THE ENCLOSED PROXY CARD, OR COMPLETE, DATE, SIGN AND RETURN THE ENCLOSED PROXY CARD IN THE ENCLOSED ENVELOPE (WHICH REQUIRES NO POSTAGE IF MAILED IN THE UNITED STATES). IF YOU DO ATTEND THE SPECIAL MEETING, AS A HOLDER OF COMMON STOCK YOU MAY VOTE ON THE APPROVAL OF THE PLAN OF MERGER IN PERSON IF YOU WISH, EVEN IF YOU HAVE PREVIOUSLY RETURNED YOUR PROXY CARD OR VOTED BY TELEPHONE OR THROUGH THE INTERNET. PLEASE VOTE AT YOUR FIRST OPPORTUNITY.

FIRST REPUBLIC'S BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT HOLDERS OF FIRST REPUBLIC COMMON STOCK VOTE "FOR" THE APPROVAL OF THE PLAN OF MERGER.

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SUMMARY

This summary highlights material information from this proxy statement/prospectus. It may not contain all of the information that may be important to you. You should read carefully the entire document and the other documents to which we refer you in order to fully understand the proposed merger. In addition, we incorporate by reference into this document important business and financial information about Merrill Lynch and First Republic. You may obtain the information incorporated by reference into this document without charge by following the instructions in the section entitled "Where You Can Find More Information" beginning on page 93. Each item in this summary includes a page reference directing you to a more complete description of that item.

Who We Are

Merrill Lynch & Co., Inc.
4 World Financial Center
New York, New York 10080
(212) 449-1000

Merrill Lynch is one of the world's leading wealth management, capital markets and advisory companies with offices in 37 countries and territories and total client assets of approximately $1.6 trillion. As an investment bank, Merrill Lynch is a leading global trader and underwriter of securities and derivatives across a broad range of asset classes and serves as a strategic advisor to corporations, governments, institutions and individuals worldwide. Merrill Lynch owns approximately half of the economic interest of BlackRock, Inc., one of the world's largest publicly traded investment management companies with more than $1 trillion in assets under management.

First Republic Bank
111 Pine Street, 2nd Floor
San Francisco, California 94111
(415) 392-1400

First Republic is a New York Stock Exchange-traded, private bank and wealth management firm. First Republic and its subsidiaries specialize in providing personalized, relationship-based wealth management services, including private banking, private business banking, investment management, trust, brokerage and real estate lending. As of December 31, 2006, First Republic and its subsidiaries had total assets and other assets managed and serviced totaling $34.2 billion. First Republic provides access to its services online and through preferred banking or trust offices in 10 metropolitan areas: San Francisco, Los Angeles, Santa Barbara, Newport Beach, San Diego, Las Vegas, Portland, Seattle, Boston and New York City.

Merrill Lynch Bank & Trust Co., FSB
4 World Financial Center
New York, New York 10080
(212) 449-1000

ML Bank is part of the Merrill Lynch Global Bank Group, which provides the management platform for Merrill Lynch's banking products and services. ML Bank is an FDIC-insured federal savings bank and is a retail bank for purposes of the Community Reinvestment Act of 1977, as amended, or the CRA, and offers certificates of deposit, transaction accounts and money market deposit accounts and issues Visa® debit cards. ML Bank, through its subsidiaries Merrill Lynch Credit Corporation and Financial Freedom Mortgage Corporation, offers residential mortgage financing throughout the United States, enabling clients to purchase and refinance their homes as well as to manage their other personal credit needs. On December 30, 2006, ML Bank acquired the First Franklin mortgage origination franchise and related servicing platform from National City Corporation.

The Merger

We propose a merger of First Republic into ML Bank, a wholly owned subsidiary of Merrill Lynch. First Republic will retain its current management structure, its San Francisco headquarters and will continue to operate its business separately as the First Republic Bank Division, a new division of ML Bank.

Merrill Lynch and First Republic currently expect to complete the merger in the third quarter of 2007, subject, among other things, to receipt of required stockholder and regulatory approvals.

We encourage you to read the merger agreement, which is attached as **Annex A**, in its entirety.

Holders of First Republic Common Stock Will Receive Cash or Shares of Merrill Lynch Common Stock in the Merger Depending on Your Election and Subject to the Proration Provisions of the Merger Agreement (page 29)

For each share of First Republic common stock you hold immediately prior to completion of the merger, you will receive, at your election, either $55.00 in cash or $55.00 in Merrill Lynch common stock, but subject to certain proration procedures designed to ensure that the aggregate consideration to be paid by Merrill Lynch will be, as nearly as practicable, 50% cash and 50% common stock. If you elect to receive Merrill Lynch common stock for your First Republic shares, the number of shares of Merrill Lynch common stock you receive for each share of First Republic common stock will be equal to (1) $55.00 divided by (2) the average of the last reported sales prices of Merrill Lynch common stock for the last five trading days prior to the date on which the merger is completed.

You may make different elections with respect to different shares that you hold (if, for example, you own 100 First Republic shares, you could make a cash election with respect to 50 shares and a stock election with respect to the other 50 shares). If you do not submit a properly completed form of election prior to the election deadline, you will be allocated Merrill Lynch common stock or cash pursuant to the procedures described in the section entitled "The Merger — Consideration; Election Procedures — Non-Election" beginning on page 30.

In the event of proration, you may receive a portion of your merger consideration in a form other than that which you elected. For a summary of the circumstances under which proration may occur, please see the section entitled "The Merger — Consideration; Election Procedures — Adjustment Generally" beginning on page 30. The form of election will give you the option to designate the order of priority for the allocation of cash consideration to particular blocks of your First Republic shares in the event that the proration requirements in the merger agreement result in either Merrill Lynch common stock or cash not being available in the full amount elected.

Based on the formula used to calculate the number of shares of Merrill Lynch common stock to be exchanged for shares of First Republic common stock for those so electing, First Republic stockholders may be entitled to fractional shares of Merrill Lynch common stock in exchange for their First Republic shares. However, Merrill Lynch will not issue any fractional shares of common stock in the merger. Instead, a First Republic stockholder who would receive a fraction of a share of Merrill Lynch common stock will instead receive an amount in cash (without interest) equal to the fraction of a share of Merrill Lynch common stock multiplied by the average of the last reported sale prices of Merrill Lynch common stock for the last five trading days prior to the date on which the merger is completed.

Set forth below is a table showing a hypothetical range of prices for shares of Merrill Lynch common stock and the corresponding consideration that a First Republic common stockholder would receive in a stock election and in a cash election in the merger. The table does not reflect the fact that Merrill Lynch will not issue fractional shares in the merger, and will instead pay cash.

Hypothetical Price of Merrill Lynch Common Stock	Hypothetical per Share Stock Consideration for First Republic Common Stockholders	Hypothetical per Share Cash Consideration for First Republic Common Stockholders
$86.00	0.6395	$ 55.00
$90.00	0.6111	$ 55.00
$94.00	0.5851	$ 55.00
$98.00	0.5612	$ 55.00

The amounts set forth above are hypothetical and are intended only to demonstrate the calculation of consideration payable under the merger agreement. The actual market prices of Merrill Lynch and First Republic common stock will fluctuate prior to completion of the merger. You should obtain current stock price quotations from a newspaper, over the Internet or by calling your broker.

Treatment of First Republic Preferred Stock (page 33)

Upon completion of the merger, (i) each share of First Republic 6.70% Noncumulative Perpetual Preferred Series A Shares issued and outstanding immediately prior to completion of the merger will be exchanged for one share of Merrill Lynch 6.70% Noncumulative Perpetual Preferred Stock, Series 6 and (ii) each share of First Republic 6.25% Noncumulative Perpetual Preferred Series B Shares issued and outstanding immediately prior to completion of the merger will be exchanged for one share of Merrill Lynch 6.25% Noncumulative Perpetual Preferred Stock, Series 7. The terms of the Merrill Lynch 6.70% Noncumulative Perpetual Preferred Stock, Series 6 and the Merrill Lynch 6.25% Noncumulative Perpetual Preferred Stock, Series 7 will be substantially identical to the terms of the corresponding series of First Republic preferred stock. We sometimes refer to the Merrill Lynch 6.70% Noncumulative Perpetual Preferred Stock, Series 6 and the 6.25% Merrill Lynch Noncumulative Perpetual Preferred Stock, Series 7 collectively as the "New Merrill Lynch Preferred Stock." Any shares of First Republic preferred stock as to which preferred stockholders have perfected their dissenters' rights pursuant to Nevada law will not exchanged for New Merrill Lynch Preferred Stock.

Each outstanding share of First Republic preferred stock is presently represented by depositary shares, or First Republic Depositary Shares, that are listed on the New York Stock Exchange and represent a one-fortieth interest in a share of First Republic preferred stock. Upon completion of the merger, Merrill Lynch will assume the obligations of First Republic under the Deposit Agreement, dated as of January 8, 2004, between First Republic, Mellon Investor Services LLC, as depositary, and the Holders from Time to Time of Depositary Receipts (relating to the First Republic 6.70% Noncumulative Perpetual Preferred Series A Shares), and the Deposit Agreement, dated as of March 18, 2005, between First Republic, Mellon Investor Services LLC, as depositary, and the Holders from Time to Time of Depositary Receipts (relating to the First Republic 6.25% Noncumulative Perpetual Preferred Series B Shares). Merrill Lynch will instruct Mellon Investor Services LLC, or the Depositary, as depositary under each of the deposit agreements, or Deposit Agreements, to treat the shares of New Merrill Lynch Preferred Stock received by it in exchange for shares of First Republic preferred stock as newly deposited securities under the applicable Deposit Agreement. In accordance with the terms of the relevant Deposit Agreement, the First Republic Depositary Shares will thereafter represent the shares of the relevant series of New Merrill Lynch Preferred Stock. Such depositary shares will continue to be listed on the New York Stock Exchange upon completion of the merger under a new name and traded under a new symbol.

Holders of First Republic preferred stock and First Republic Depositary Shares are not entitled to vote on the merger or at the Special Meeting.

In Order to Make an Election, First Republic Common Stockholders Must Properly Complete and Deliver an Election Form (page 32)

At least 35 days prior to the anticipated completion date of the merger (or on such other date as Merrill Lynch and First Republic mutually agree), a form of election and customary transmittal materials will be mailed to all First Republic common stockholders of record as of the fifth business day prior to such mailing date. You must properly complete and deliver to the exchange agent the election materials along with your stock certificates (or customary affidavits and indemnification regarding the loss or destruction of such certificates or the guaranteed delivery of such certificates). Please do not send your stock certificates or your form of election for stock consideration or cash consideration with your proxy card.

Forms of election and stock certificates (or customary affidavits and indemnification regarding the loss or destruction of such certificates or the guaranteed delivery of such certificates) must be received by the exchange agent by the election deadline, which will be 5:00 p.m., Pacific Time, on the 30th day following the date on which the forms of election are mailed to First Republic common stockholders (or on such other date as Merrill Lynch and First Republic mutually agree).

If you fail to submit a properly completed form of election, together with your stock certificates (or customary affidavits and indemnification regarding the loss or destruction of such certificates or the guaranteed delivery of such certificates), prior to the election deadline, you will be deemed not to have made an election. As a non-electing holder, you will receive consideration valued at $55.00 for each of your First Republic shares, but you may be paid all in cash, all in Merrill Lynch common stock, or part in cash and part in Merrill Lynch common stock, depending on the remaining pool of cash and Merrill Lynch common stock available for paying the merger consideration after honoring the cash elections and stock elections that other stockholders have made.

If your shares are held in a brokerage or other custodial account, you should receive instructions from the entity where your shares are held advising you of the procedures for making your election and delivering your stock certificates.

Material U.S. Federal Income Tax Consequences (page 52)

The merger is intended to constitute a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended, or the Internal Revenue Code. Accordingly, holders of First Republic common stock who receive Merrill Lynch common stock, or Merrill Lynch common stock and cash, in the merger generally will not recognize gain on the receipt of Merrill Lynch common stock and generally will only recognize gain (but not loss) in an amount not to exceed any cash received as part of the merger consideration for U.S. federal income tax purposes as a result of the merger, including any cash received in lieu of fractional share interests. Holders of First Republic common stock who receive only cash in the merger generally will recognize gain or loss equal to the difference between the amount of cash received by a holder and such holder's tax basis in its shares. For a discussion of the material U.S. federal income tax consequences to holders of First Republic preferred stock (including holders of First Republic Depositary Shares) who either receive Merrill Lynch preferred stock in the merger or who receive cash for First Republic preferred stock as a result of the exercise of appraisal rights, please see the section entitled "The Merger — Material U.S. Federal Income Tax Consequences." In certain circumstances, gain recognized as a result of the merger, or the amount of cash received in the merger, could be taxable as a dividend rather than as gain from the sale of a capital asset. Neither Merrill Lynch nor First Republic will be required to complete the merger unless it receives a legal opinion to the effect that the merger will be treated as a "reorganization" for United States federal income tax purposes.

For a more detailed discussion of the United States federal income tax consequences of the merger to U.S. holders of First Republic stock, please see the section entitled "The Merger — Material U.S. Federal Income Tax Consequences."

Tax matters are very complicated and the consequences of the merger to any particular stockholder will depend on that stockholder's particular facts and circumstances. You are urged to consult your own tax advisors to determine your own tax consequences from the merger.

First Republic's Board of Directors Unanimously Recommends that Holders of First Republic Common Stock Vote "FOR" the Approval of the Plan of Merger (page 40)

First Republic's board of directors has determined that the merger and the merger agreement are advisable and in the best interests of First Republic and its stockholders, and has unanimously adopted the plan of merger contained in the merger agreement. For the factors considered by the First Republic board of directors in reaching its decision to adopt the plan of merger, please see the section entitled "The Merger — First Republic's Reasons for the Merger; Recommendation of First Republic's Board of Directors." **First Republic's board of directors unanimously recommends that First Republic common stockholders vote "FOR" the approval of the plan of merger.**

Opinion of First Republic's Financial Advisor (page 41)

In connection with the merger, the First Republic board of directors received a written opinion from Morgan Stanley & Co. Incorporated, or Morgan Stanley, as to the fairness, from a financial point of view, of the merger consideration to be received by the holders of First Republic common stock. The full text of Morgan Stanley's written opinion, dated January 28, 2007, is attached to this proxy statement/prospectus as **Annex B.** You are encouraged to read this opinion carefully in its entirety for a description of the assumptions made, procedures followed, matters considered and limitations on the review undertaken. Morgan Stanley's opinion was provided to the First Republic board of directors in its evaluation of the merger consideration. Morgan Stanley's opinion does not address any other aspect of the merger or any related transaction and does not constitute a recommendation to any First Republic stockholder with respect to any matters relating to the proposed merger. Morgan Stanley's opinion will not reflect any developments that may occur or may have occurred after the date of the opinion and prior to completion of the merger. First Republic does not currently expect to request an updated opinion from Morgan Stanley.

First Republic Stockholder Vote Required to Approve the Plan of Merger (page 27)

Approval of the plan of merger requires the affirmative vote of a majority of the voting power of First Republic stockholders entitled to vote at the First Republic Special Meeting. Abstentions, failures to vote and broker non-votes will have the same effect as a vote against approval of the plan of merger. The First Republic board of directors has set May 7, 2007 as the record date for the Special Meeting of First Republic stockholders. As of the record date, **[•]** shares of First Republic's common stock were outstanding and therefore entitled to receive notice of and to vote at the Special Meeting. Common stockholders will be entitled to one vote for each share of common stock held by them of record at the close of business on the record date on any matter that may be presented for consideration and action by the stockholders at the Special Meeting. Holders of First Republic preferred stock and First Republic Depository Shares are not, as such, entitled to and are not being requested to vote at the Special Meeting.

As of the record date, First Republic's executive officers and directors and their affiliates, as a group, beneficially owned approximately **[•]**% of the common stock of First Republic. These individuals have indicated that they intend to vote their shares in favor of the proposal to approve the plan of merger. As of the record date, Merrill Lynch's executive officers and directors and their affiliates, as a group, beneficially owned less than **[•]**% of the common stock of First Republic.

First Republic Officers and Directors Have Financial Interests in the Merger that Are Different from or in Addition to Their Interests as Stockholders (page 48)

Officers and directors of First Republic may have financial interests in the merger that are in addition to, or different from, their interests as stockholders of First Republic. The First Republic board of directors was aware of these interests and considered them, among other matters, in adopting the plan of merger contained

in the merger agreement. These interests include the retention agreements between Merrill Lynch and each of James H. Herbert, II and Katherine August-deWilde, which were entered into as an inducement and condition to Merrill Lynch's willingness to enter into the merger agreement, the establishment of a non-governance advisory board of the First Republic Bank Division with current members of the First Republic board of directors upon completion of the merger and a retention plan for First Republic officers and employees. To review these interests in greater detail, please see the section entitled "The Merger — Interests of Certain Persons in the Merger."

Consideration of Third-Party Acquisition Proposals (page 66)

First Republic has agreed not to initiate, solicit or encourage proposals from third parties regarding any acquisition of First Republic. First Republic also agreed not to engage in negotiations with or provide confidential information to a third party relating to an acquisition proposal. If, however, First Republic receives an unsolicited acquisition proposal from a third party prior to the Special Meeting, it can participate in negotiations with and provide confidential information to the third party if, among other steps, First Republic's board of directors concludes in good faith that the proposal is reasonably likely to be a "superior proposal" to the merger, as such term is defined in the merger agreement, and the failure to take such actions would be more likely than not to result in a violation of the board of directors' fiduciary duties. For further details on restrictions on First Republic's ability to consider third-party acquisition proposals, please see the section entitled "The Merger Agreement — No Solicitation of Alternative Proposals" beginning on page 66.

Accounting Treatment (page 58)

The merger will be accounted for by Merrill Lynch as a purchase transaction in accordance with generally accepted accounting principles in the United States.

Completion of the Merger is Subject to Certain Conditions (page 62)

Completion of the merger is subject to the satisfaction or waiver of various conditions, including the approval of the plan of merger by First Republic stockholders, as well as receipt of all required regulatory approvals. Although it is anticipated that all of these conditions will be satisfied, there can be no assurance as to whether or when all of the conditions will be satisfied or, where permissible, waived. For further details on these conditions, please see the section entitled "The Merger Agreement — Conditions to Completion of the Merger."

We Have Not Yet Obtained All Regulatory Approvals (page 56)

The merger cannot be completed without obtaining the prior approval of the Office of Thrift Supervision, or the OTS, and the Nevada Department of Business and Industry, Division of Financial Institutions. In addition, filings with various other federal and state regulatory or other authorities need to be made. Merrill Lynch and First Republic have either filed or intend to file promptly after the date of this proxy statement/prospectus all required applications and notices with applicable regulatory authorities in connection with the merger.

There can be no assurance that regulatory approvals will be obtained, that such approvals will be received on a timely basis, or that such approvals will not impose conditions or requirements that, individually or in the aggregate, would or could reasonably be expected to have a material adverse effect on the financial condition, results of operations, assets or business of Merrill Lynch or ML Bank following completion of the merger. If any such condition or requirement is imposed, Merrill Lynch or First Republic may, in certain circumstances, elect not to consummate the merger. If approval is denied, either Merrill Lynch or First Republic may elect not to consummate the merger.

The Merger May Be Terminated Prior to Completion (page 68)

The merger may be terminated at any time prior to completion of the merger:

- by mutual consent of the parties;

- by either Merrill Lynch or First Republic if:
  - the merger is not completed by October 31, 2007, unless the terminating party failed to comply with any provision of the merger agreement and thereby caused, or materially contributed to, the failure of the merger to occur by that date;
  - the First Republic common stockholders vote against approval of the plan of merger contained in the merger agreement;
  - there exists any final nonappealable legal prohibition on completion of the merger by a governmental authority, unless the terminating party failed to comply with any provision of the merger agreement and thereby caused, or materially contributed to, such prohibition; or
  - the other party materially breaches any of its representations, warranties, covenants or other agreements contained in the merger agreement, and the breach results in the failure of the applicable merger condition and is not cured within 30 days after written notice of the breach is given by the terminating party;
- by Merrill Lynch if the First Republic board of directors submits the plan of merger to First Republic stockholders without a recommendation for approval or withdraws or adversely modifies its recommendation (or discloses its intention to withdraw or adversely modify its recommendation); or the First Republic board of directors recommends (or discloses its intention to recommend) to its stockholders an acquisition proposal other than the merger; or the First Republic board of directors negotiates or authorizes the conduct of negotiations (and ten days have elapsed without such negotiations being discontinued) with a third party regarding an acquisition proposal other than the merger; or
- by First Republic, if the First Republic board of directors withdraws or adversely modifies its recommendation to the First Republic stockholders after giving Merrill Lynch written notice and at least five business days to respond.

First Republic Must Pay Merrill Lynch a Termination Fee Under Limited Circumstances (page 69)

First Republic must pay Merrill Lynch $65,000,000 if:

- the merger agreement is terminated:
  - by either Merrill Lynch or First Republic if the First Republic stockholders vote against approval of the plan of merger;
  - by Merrill Lynch if the First Republic board of directors submits the plan of merger to the First Republic stockholders without a recommendation for approval or otherwise withdraws or adversely modifies its recommendation (or discloses its intention to withdraw or adversely modify its recommendation); or the First Republic board of directors negotiates or authorizes the conduct of negotiations (and ten days have elapsed without such negotiations being discontinued) with a third party regarding an acquisition proposal other than the merger; or
  - by First Republic if the First Republic board of directors withdraws or adversely modifies its recommendation to the First Republic stockholders after giving Merrill Lynch written notice and at least five business days to respond; AND
- at any time prior to the vote of the First Republic common stockholders, a bona fide acquisition proposal with respect to First Republic has been made public and not withdrawn or abandoned; AND
- within 15 months from the date of such termination, an acquisition proposal with respect to First Republic is consummated or a definitive agreement is entered into by First Republic with respect to an acquisition proposal with respect to First Republic, but only if such acquisition proposal is consummated.

First Republic must also pay Merrill Lynch $65,000,000 if:

- the merger agreement is terminated:
  - by Merrill Lynch if First Republic materially breaches any of its representations, warranties, covenants or other agreements contained in the merger agreement, and the breach results in the failure of the applicable merger condition and is not cured within 30 days after written notice of the breach is given by Merrill Lynch; or
  - by either Merrill Lynch or First Republic if the merger is not completed by October 31, 2007, unless the terminating party failed to comply with any provision of the agreement and thereby caused, or materially contributed to, the failure of the merger to occur by that date; AND
- at any time prior to such termination, a bona fide acquisition proposal with respect to First Republic has been made public and not withdrawn or abandoned, and following the announcement of such acquisition proposal, First Republic has breached any of its representations, warranties, covenants or agreements set forth in the merger agreement and (i) such breach was a willful and material breach of certain designated provisions of the merger agreement or (ii) such breach was not a willful and material breach of certain designated provisions and an acquisition proposal with respect to First Republic is consummated or a definitive agreement with respect to such an acquisition proposal is entered into within 15 months from the date of such termination, but only if such acquisition proposal is consummated.

Possible Alternative Merger Structure (page 70)

The merger agreement provides that, before completion of the merger and subject to certain restrictions, the parties may mutually agree to revise the structure of the merger and related transactions. For a further discussion of these restrictions, please see the section entitled "The Merger Agreement — Possible Alternative Merger Structure."

Comparative Market Prices and Share Information (page 89)

Merrill Lynch common stock is listed on the New York Stock Exchange under the symbol "MER." First Republic common stock is listed on the New York Stock Exchange under the symbol "FRC." The following table sets forth the closing sale prices per share of Merrill Lynch common stock and First Republic common stock in each case as reported on the New York Stock Exchange on January 26, 2007, the last trading day before Merrill Lynch and First Republic announced the merger, and on **[•]**, 2007, the last practicable trading day before the distribution of this document.

	Merrill Lynch Common Stock Closing Price	First Republic Stock Closing Price
January 26, 2007	$ 94.53	$ 38.30
[•], 2007	$ **[•]**	$ **[•]**

First Republic Special Meeting (page 26)

The First Republic Special Meeting will be held at **[•]** local time on **[•]**, 2007, at **[•].** At the Special Meeting, First Republic common stockholders will be asked to consider and vote on the following proposals:

- to approve the plan of merger contained in the merger agreement; and
- to transact such other business as may properly come before the meeting or any adjournment or postponement of the meeting, if necessary, including to solicit additional proxies.

Record Date. First Republic stockholders may cast one vote at the Special Meeting for each share of First Republic common stock that was owned at the close of business on May 7, 2007. At that date, there were **[•]** shares of First Republic common stock entitled to be voted at the Special Meeting.

As of the First Republic record date, directors and executive officers of First Republic and their affiliates had the right to vote **[•]** shares of First Republic common stock, or **[•]**% of the outstanding First Republic common stock entitled to be voted at the Special Meeting. As of the record date, Merrill Lynch's executive officers and directors and their affiliates, as a group, beneficially owned less than **[•]**% of the common stock of First Republic.

Required Vote. Approval of the plan of merger requires the affirmative vote of a majority of the voting power of First Republic stockholders entitled to vote at the First Republic Special Meeting. Only holders of First Republic common stock are entitled to vote at the Special Meeting. Holders of First Republic preferred stock and First Republic Depositary Shares are not, as such, entitled to vote at the Special Meeting. Abstentions, failures to vote and broker non-votes will have the same effect as a vote against approval of the plan of merger. Abstentions, failures to vote and broker non-votes will have no effect on the vote to approve the proposal relating to adjournment or postponement to be considered at the Special Meeting.

Holders of First Republic Common Stock Do Not Have Appraisal or Dissenters' Rights in the Merger (page 59)

First Republic is organized under the laws of the State of Nevada. Under Nevada law, no holder of shares of First Republic common stock is entitled to appraisal or dissenters' rights or similar rights to a court valuation of the fair value of their shares in connection with the merger because such shares are listed on the New York Stock Exchange and such holder will be entitled to cash or shares of Merrill Lynch common stock that will be listed on the New York Stock Exchange.

Holders of First Republic Preferred Stock Have Dissenters' Rights in the Merger (page 59)

Under Nevada law, record holders and beneficial owners of shares of First Republic preferred stock (including holders of First Republic Depositary Shares to the extent of the interest in such preferred stock represented thereby) have dissenters' rights in the merger. If the merger is completed and a holder of record or beneficial owner of shares of First Republic preferred stock (including a holder of First Republic Depositary Shares to the extent of the interest in such preferred stock represented thereby) files a written objection to the merger with First Republic before the Special Meeting and then complies with the other requirements of the relevant provisions of Nevada law described in this proxy statement/prospectus, that holder may elect to receive, in cash, the judicially determined fair value of each of their shares of First Republic preferred stock, with interest, in lieu of the exchange of such shares into a share of Merrill Lynch preferred stock having substantially identical terms. A copy of the full text of the relevant provisions of Nevada law is attached as **Annex C**, and any description in this proxy statement/prospectus of those provisions is qualified in its entirety by reference to **Annex C.**

Merrill Lynch Stockholder Approval (page 60)

Merrill Lynch stockholders are not required to approve the plan of merger or the use of shares of Merrill Lynch common stock as part of the merger consideration.

Risk Factors (page 21)

In evaluating the merger and the merger agreement and before deciding how to vote your shares of First Republic common stock at the Special Meeting, you should read this proxy statement/prospectus carefully and especially consider the factors, risks and uncertainties discussed in the section entitled "Risk Factors" beginning on page 21.

SELECTED HISTORICAL FINANCIAL AND OTHER DATA OF MERRILL LYNCH

Set forth below are selected historical financial and other data of Merrill Lynch as of and for the years ended on the last Friday of 2002 through 2006, which are derived from Merrill Lynch's consolidated financial statements and related notes included in Merrill Lynch's Annual Reports on Form 10-K for those years, and selected historical financial and other data as of and for the three months ended the last Friday in March of 2007 and 2006, which are derived from Merrill Lynch's unaudited consolidated financial statements for those three months. Merrill Lynch's Annual Report on Form 10-K for the fiscal year ended December 29, 2006 is incorporated by reference into this proxy statement/prospectus. For more information, please see the section entitled "Where You Can Find More Information" beginning on page 93.

	At and For the Three Months Ended Last Friday in March		At and For the Twelve Months Ended Last Friday in December				
	2007	2006(1)	2006	2005	2004	2003	2002
(Dollars in millions, except per share amounts)							
Results of Operations							
Total revenues	**$ 21,475**	$ 15,571	**$ 70,591**	$ 47,796	$ 32,619	$ 27,924	$ 28,361
Less interest expense	**11,621**	7,599	**35,932**	21,774	10,560	8,024	9,990
Net revenues	**9,854**	7,972	**34,659**	26,022	22,059	19,900	18,371
Non-interest expenses	**6,759**	7,379	**24,233**	18,791	16,223	14,680	16,059
Earnings before income taxes	**3,095**	593	**10,426**	7,231	5,836	5,220	2,312
Income tax expense	**937**	118	**2,927**	2,115	1,400	1,384	604
Net earnings	**$ 2,158**	$ 475	**$ 7,499**	$ 5,116	$ 4,436	$ 3,836	$ 1,708
Net earnings applicable to common stockholders(2)	**$ 2,106**	$ 432	**$ 7,311**	$ 5,046	$ 4,395	$ 3,797	$ 1,670
Financial Position							
Total assets	**$ 981,814**	$ 732,240	**$ 841,299**	$ 681,015	$ 628,098	$ 480,233	$ 440,252
Short-term borrowings(3)	**20,171**	14,354	**284,226**	221,389	180,058	111,727	98,371
Deposits	**84,896**	81,119	**84,124**	80,016	79,746	79,457	81,842
Long-term borrowings	**205,422**	134,712	**181,400**	132,409	119,513	85,178	79,788
Junior Subordinated Notes (related to trust preferred securities)	**3,452**	3,092	**3,813**	3,092	3,092	3,203	3,188
Total stockholders' equity	**41,707**	37,825	**39,038**	35,600	31,370	28,884	24,081
Common Share Data							
(In thousands, except per share amounts)							
Earnings Per Share:							
Basic	**$ 2.50**	$ 0.49	**$ 8.42**	$ 5.66	$ 4.81	$ 4.22	$ 1.94
Diluted	**$ 2.26**	$ 0.44	**$ 7.59**	$ 5.16	$ 4.38	$ 3.87	$ 1.77
Weighted-average shares outstanding:							
Basic	**841,299**	883,737	**868,095**	890,744	912,935	900,711	862,318
Diluted	**930,227**	981,085	**962,962**	977,736	1,003,779	980,947	947,282
Shares outstanding at year-end	**876,880**	933,443	**867,972**	919,201	931,826	949,907	873,780
Book value per share	**$ 42.25**	$ 37.19	**$ 41.35**	$ 35.82	$ 32.99	$ 29.96	$ 27.07
Dividends paid per share	**$ 0.35**	$ 0.25	**$ 1.00**	$ 0.76	$ 0.64	$ 0.64	$ 0.64

(Dollars in millions, except per share amounts)	At and For the Three Months Ended Last Friday in March		At and For the Twelve Months Ended Last Friday in December				
	2007	**2006(1)**	**2006**	**2005**	**2004**	**2003**	**2002**
Financial Ratios							
Pre-tax profit margin	**31.4%**	7.4%	**30.1%**	27.8%	26.5%	26.2%	12.6%
Common dividend payout ratio	**14.0%**	51.0%	**11.9%**	13.4%	13.3%	15.2%	33.0%
Return on average assets(5)	**1.0%**	0.9%	**0.9%**	0.7%	0.8%	0.8%	0.4%
Return on average common stockholders' equity(5)	**23.2%**	5.1%	**21.3%**	16.0%	14.9%	14.8%	7.5%
Other Statistics							
Full-time employees:							
U.S.	**47,200**	43,400	**43,700**	43,200	40,200	38,200	40,000
Non-U.S.	**13,100**	12,100	**12,500**	11,400	10,400	9,900	10,900
Total(4)	**60,300**	55,500	**56,200**	54,600	50,600	48,100	50,900
Private client financial advisors	**15,930**	15,350	**15,880**	15,160	14,140	13,530	14,010
Private client assets (dollars in billions)	**$ 1,648**	$ 1,502	**$ 1,619**	$ 1,458	$ 1,359	$ 1,267	$ 1,098

(1) First quarter 2006 earnings before income taxes include the impact of $1.8 billion of one-time compensation expenses incurred in connection with the adoption of SFAS 123(R).

(2) Net earnings less preferred stock dividends.

(3) Consists of payables under repurchase agreements and securities loaned transactions and short-term borrowings.

(4) Excludes 100, 200, 100, 200, and 1,500 full-time employees on salary continuation severance at year-end 2006, 2005, 2004, 2003 and 2002, respectively, and 200 and 300 full time employees on salary continuation severance at March 30, 2007 and March 31, 2006, respectively.

(5) For the three months ended, return on average assets and return on average common stockholders' equity were calculated based on annualized figures.

SELECTED HISTORICAL FINANCIAL AND OTHER DATA OF FIRST REPUBLIC

Set forth below are selected historical financial and other data of First Republic as of and for the years ended December 31, 2002 through 2006, which are derived from First Republic's consolidated financial statements and related notes included in First Republic's Annual Reports on Form 10-K for those years, and selected historical financial and other data as of and for the three months ended March 31, 2007 and 2006, which are derived from First Republic's unaudited consolidated financial statements for those three months. First Republic's Annual Report on Form 10-K for the fiscal year ended December 31, 2006 is incorporated by reference into this proxy statement/prospectus. For more information, please see the section entitled "Where You Can Find More Information" beginning on page 93.

	At and For the Three Months Ended March 31,		At and For the Twelve Months Ended December 31,				
	2007	2006	2006	2005	2004	2003	2002
(Dollars in thousands, except per share and ratio data)							
Selected Financial Data							
Interest income	**$ 172,873**	$ 129,545	**$ 598,324**	$ 423,423	$ 289,812	$ 249,983	$ 244,840
Interest expense	**90,951**	58,742	**307,556**	169,773	87,758	85,210	102,471
Net interest income	**81,922**	70,803	**290,768**	253,650	202,054	164,773	142,369
Provision for loan and lease losses	—	—	—	4,000	5,000	7,000	6,500
Net interest income after provision for loan and lease losses	**81,922**	70,803	**290,768**	249,650	197,054	157,773	135,869
Noninterest income	**23,623**	19,340	**87,369**	72,913	61,944	64,176	45,300
Noninterest expense	**93,809**	61,915	**271,446**	216,616	172,914	148,999	131,448
Net income	**2,976**	17,220	**69,172**	60,827	46,499	37,050	26,401
Net income available to common stockholders	**$ 1,106**	$ 15,350	**$ 61,692**	$ 54,015	$ 42,543	$ 37,050	$ 26,401
Share and Per Share Data							
Common shares outstanding	**31,111**	26,613	**30,962**	26,359	24,675	23,346	21,812
Weighted average diluted shares	**31,270**	26,967	**28,009**	26,029	24,841	23,221	23,519
Book value per common shares	**$ 21.42**	$ 18.06	**$ 21.74**	$ 17.80	$ 15.73	$ 14.21	$ 12.98
Dividends paid per common share	**$ 0.15**	$ 0.125	**$ 0.575**	$ 0.475	$ 0.367	$ 0.25	$ —
Selected Operating Ratios							
Return on average assets	**0.10%**	0.74%	**0.67%**	0.73%	0.69%	0.68%	0.58%
Return on average common stockholders equity	**0.65%**	13.03%	**11.64%**	12.63%	11.81%	12.07%	10.01%
Net interest margin	**3.13%**	3.31%	**3.15%**	3.33%	3.24%	3.21%	3.25%

	At and For the Three Months Ended March 31,		At and For the Twelve Months Ended December 31,				
	2007	2006	2006	2005	2004	2003	2002
Selected Balance Sheet Data							
Total assets	**$ 11,698,247**	$ 9,579,684	**$ 11,634,534**	$ 9,319,910	$ 7,422,997	$ 6,002,943	$ 4,854,695
Cash and investment securities	**2,516,782**	2,002,919	**2,604,411**	1,791,496	954,967	807,535	822,135
Total loans	**8,318,434**	6,786,417	**8,209,198**	6,656,334	5,461,878	4,481,170	3,707,149
Customer deposits	**9,460,594**	8,053,639	**8,920,721**	7,019,048	5,604,582	4,582,896	3,626,149
Federal Home Loan Bank advances and other borrowings	**1,136,751**	639,500	**1,590,331**	1,429,500	1,068,000	829,000	740,500
Subordinated debentures and notes	**63,770**	63,770	**63,770**	63,770	63,770	63,770	70,237
Minority interest in subsidiaries	**148,590**	148,590	**148,590**	148,590	148,590	148,740	89,000
Total stockholders' equity	**$ 781,299**	$ 595,727	**$ 788,185**	$ 584,120	$ 453,094	$ 331,669	$ 283,179
Selected Asset Quality Ratios							
Nonperforming assets to total assets	**0.10%**	0.10%	**0.10%**	0.08%	0.25%	0.22%	0.33%
Allowance for loan and lease losses to total loans	**0.62%**	0.64%	**0.63%**	0.60%	0.65%	0.70%	0.77%
Net recoveries (charge-offs) to average total loans	**0.01%**	0.22%	**0.06%**	0.02%	(0.01)%	(0.10)%	(0.01)%
Capital Ratios							
Leverage ratio	**6.52%**	7.09%	**6.55%**	7.17%	6.90%	6.11%	5.98%
Tier 1 risk-based capital ratio	**9.72%**	10.91%	**9.63%**	11.06%	10.19%	9.18%	9.59%
Total risk-based capital ratio	**11.15%**	12.71%	**11.16%**	12.83%	12.71%	13.21%	13.45%

COMPARATIVE PER SHARE DATA

The following table sets forth certain historical, unaudited pro forma and unaudited pro forma-equivalent per share financial information for Merrill Lynch common stock and First Republic common stock. The pro forma and pro forma-equivalent per share information gives effect to the merger (i) with respect to the book value data presented, as if it had become effective on, in the case of Merrill Lynch, December 29, 2006 and March 30, 2007, and in the case of First Republic, December 31, 2006 and March 31, 2007 and (ii) with respect to the net income and dividends declared data presented, as if the merger had become effective on January 1, 2006 and March 31, 2007. The pro forma data in the tables assume that the merger is accounted for as a purchase transaction. For more information, please see the section entitled "The Merger — Accounting Treatment" beginning on page 53. The information in the following table is based on, and should be read together with, the historical financial information that Merrill Lynch and First Republic have presented in their prior filings with the SEC and FDIC, respectively. For more information, please see the section entitled "Where You Can Find More Information" beginning on page 93.

The information listed as pro forma equivalent for First Republic was obtained by multiplying the pro forma amounts for Merrill Lynch by 0.5818, which is the fraction of a share of Merrill Lynch common stock that First Republic stockholders who receive Merrill Lynch common stock in the merger would receive for each share of First Republic common stock, assuming no proration and assuming the average of the last reported sales prices of Merrill Lynch common stock for the last five trading days prior to the date on which the merger is completed, was $94.53, which was the closing price of Merrill Lynch common stock on January 26, 2007, the last trading day before announcement of the merger. The actual fraction of a share of Merrill Lynch common stock that First Republic stockholders who receive Merrill Lynch common stock in the merger will receive may differ depending on the average of the last reported sales prices of Merrill Lynch common stock for the last five trading days prior to the date on which the merger is completed. It is also assumed, for purposes of calculating the pro forma information only, that Merrill Lynch's annual dividend for 2006 would have remained $1.00 per share even if the merger had been completed on January 1, 2006.

The pro forma information, although helpful in illustrating the financial characteristics of the combined company under one set of assumptions, does not reflect the benefits of expected cost savings, opportunities to earn additional revenue, the impact of restructuring and merger-related costs, the amortization of certain intangibles, acquisition financing costs or other factors that may result as a consequence of the merger and, accordingly, does not attempt to predict or suggest future results. It also does not necessarily reflect what the historical results of Merrill Lynch and First Republic would have been had First Republic been combined with Merrill Lynch during these periods.

Merrill Lynch & Co., Inc.

	At or For the Three Months Ended March 30, 2007	At or For the Twelve Months Ended December 29, 2006
Basic earnings per share		
Historical	$ 2.50	$ 8.42
Pro forma (unaudited)	$ 2.48	$ 8.41
Diluted earnings per share		
Historical	$ 2.26	$ 7.59
Pro forma (unaudited)	$ 2.24	$ 7.59
Dividends per share		
Historical	$ 0.35	$ 1.00
Pro forma (unaudited)	$ 0.35	$ 1.00
Book value per share		
Historical	$ 42.25	$ 41.35
Pro forma (unaudited)	$ 42.78	$ 41.90

First Republic Bank

	At or For the Three Months Ended March 31, 2007	At or For the Twelve Months Ended December 31, 2006
Basic earnings per share		
Historical	$ 0.04	$ 2.33
Pro forma equivalent (unaudited)	$ 1.44	$ 4.89
Diluted earnings per share		
Historical	$ 0.04	$ 2.21
Pro forma equivalent (unaudited)	$ 1.31	$ 4.41
Dividends per share		
Historical	$ 0.15	$ 0.58
Pro forma equivalent (unaudited)	$ 0.20	$ 0.58
Book value per share		
Historical	$ 21.42	$ 21.74
Pro forma equivalent (unaudited)	$ 24.72	$ 24.38

QUESTIONS AND ANSWERS ABOUT THE MERGER

Q: WHAT AM I BEING ASKED TO VOTE ON AS A HOLDER OF FIRST REPUBLIC COMMON STOCK?

A: Merrill Lynch and First Republic have entered into a merger agreement pursuant to which Merrill Lynch has agreed to acquire First Republic. You are being asked to vote to approve the plan of merger contained in the merger agreement through which First Republic will merge with and into ML Bank. After the merger, ML Bank will be the surviving entity and a wholly owned subsidiary of Merrill Lynch, and First Republic will no longer be a separate company, but a new division of ML Bank.

In addition, you are being asked to vote to approve a proposal to adjourn the Special Meeting, if necessary, including to solicit additional proxies in the event that there are not sufficient votes at the time of the Special Meeting to approve the plan of merger.

Q: WHEN WILL THE FIRST REPUBLIC ANNUAL MEETING BE HELD AND WHAT MATTERS WILL BE CONSIDERED AT THE ANNUAL MEETING?

A: First Republic normally holds its annual meetings in May of each year. At such annual meetings, matters including the election of directors and ratification of the selection of First Republic's independent auditors are normally voted upon. Due to the proposed merger, First Republic has decided to postpone its annual meeting until later in 2007, following the Special Meeting to approve the plan of merger. If the merger with Merrill Lynch is completed before First Republic is required to hold its annual meeting, First Republic will not hold an annual meeting in 2007 or thereafter.

Q: IF THE MERGER IS COMPLETED, WHAT WILL I RECEIVE IN EXCHANGE FOR MY SHARES?

A: For each share of First Republic common stock you hold immediately prior to completion of the merger, you will receive, at your election but subject to certain proration procedures designed to ensure that the aggregate consideration to be paid by Merrill Lynch will be, as nearly as practicable, 50% cash and 50% common stock, either $55.00 in cash or $55.00 in Merrill Lynch common stock.

You may make different elections with respect to different shares that you hold (if, for example, you own 100 First Republic shares, you could make a cash election with respect to 50 shares and a stock election with respect to the other 50 shares). If you do not submit a properly completed form of election prior to the election deadline, you will be allocated Merrill Lynch common stock or cash pursuant to the procedures described in the section entitled "The Merger — Consideration; Election Procedures — Non-Election" beginning on page 30. The form of election will give you the option to designate the order of priority for the allocation of cash consideration to particular blocks of your First Republic shares in the event that the proration requirements in the merger agreement result in either Merrill Lynch common stock or cash not being available in the full amount elected.

Q: WHEN AND WHERE IS THE SPECIAL MEETING?

A: The First Republic Special Meeting will take place on **[•]**, 2007. The time and location of the meeting are specified on the cover page of this proxy statement/prospectus.

Q: WHO IS ENTITLED TO VOTE AT THE SPECIAL MEETING?

A: Holders of record of First Republic common stock as of the close of business on May 7, 2007, referred to as the record date, are entitled to vote at the Special Meeting. Each stockholder has one vote for each share of First Republic common stock that the stockholder owns on the record date. Holders of First Republic preferred stock and First Republic Depositary Shares are not, as such, entitled to and are not being requested to vote at the Special Meeting.

Q: WILL I HAVE APPRAISAL OR DISSENTERS' RIGHTS AS A RESULT OF THE MERGER?

A: First Republic is organized under the laws of the State of Nevada. Under Nevada law, no holder of shares of First Republic common stock is entitled to appraisal or dissenters' rights or similar rights to a court valuation of the fair value of their shares in connection with the merger because such shares are listed on the New York Stock Exchange and such holder will be entitled to cash or shares of Merrill Lynch common stock that will be listed on the New York Stock Exchange.

Each currently outstanding First Republic Depositary Share is listed on the New York Stock Exchange and represents a one-fortieth interest in a share of First Republic preferred stock. As listed securities, the First Republic Depositary Shares are not entitled to appraisal or dissenter's rights under Nevada law. As a beneficial owner of a whole share or whole shares of the underlying First Republic preferred stock, however, you may assert such rights to the extent of your beneficial ownership of an entire share of First Republic preferred stock (i.e., 40 First Republic Depositary Shares equaling beneficial ownership of one share of First Republic preferred stock). To dissent from the merger and seek the fair value of the relevant shares of First Republic preferred stock, you must follow the procedures established under Nevada law, including delivery of notice of demand for appraisal prior to the Special Meeting and continuing to hold the relevant Depositary Shares (or the related shares of First Republic preferred stock) through completion of the merger.

These procedures are described in **Annex C** of this proxy statement/prospectus and are summarized in the section entitled "The Merger — Appraisal or Dissenters' Rights" beginning on page 59. Failure to follow the applicable procedures will result in the loss of appraisal rights.

Q: WHAT DO I NEED TO DO NOW?

A: After you have carefully read this entire document, please vote your shares of First Republic common stock. You may do this either by completing, signing, dating and mailing the enclosed proxy card or by submitting your proxy by telephone or through the Internet, as explained in this proxy statement/prospectus. This will enable your shares to be represented and voted at the First Republic Special Meeting.

Q: WILL I BE TAXED ON THE CONSIDERATION THAT I RECEIVE IN EXCHANGE FOR MY SHARES OF FIRST REPUBLIC STOCK?

A: The merger is intended to constitute a reorganization within the meaning of Section 368(a) of the Internal Revenue Code. Accordingly, holders of First Republic common stock who receive Merrill Lynch common stock, or Merrill Lynch common stock and cash, in the merger generally will not recognize gain on the receipt of Merrill Lynch common stock and generally will only recognize gain (but not loss) in an amount not to exceed any cash received as part of the merger consideration for U.S. federal income tax purposes as a result of the merger, including any cash received in lieu of fractional share interests. Holders of First Republic common stock who receive only cash in the merger generally will recognize gain or loss equal to the difference between the amount of cash received by a holder and such holder's tax basis in its shares. For a discussion of the material U.S. federal income tax consequences to holders of First Republic preferred stock (including holders of First Republic Depositary Shares) who either receive Merrill Lynch preferred stock in the merger or who receive cash for First Republic preferred stock as a result of the exercise of appraisal rights, please see the section entitled "The Merger — Material U.S. Federal Income Tax Consequences." In certain circumstances, gain recognized as a result of the merger, or the amount of cash received in the merger, could be taxable as a dividend rather than as gain from the sale of a capital asset. Neither Merrill Lynch nor First Republic will be required to complete the merger unless it receives a legal opinion to the effect that the merger will be treated as a "reorganization" for United States federal income tax purposes.

For a more detailed discussion of the United States federal income tax consequences of the merger to U.S. holders of First Republic stock, please see the section entitled "The Merger — Material U.S. Federal Income Tax Consequences" beginning on page 52.

Tax matters are very complicated and the consequences of the merger to any particular stockholder will depend on that stockholder's particular facts and circumstances. You are urged to consult your own tax advisors to determine your own tax consequences from the merger.

Q: HOW DOES FIRST REPUBLIC'S BOARD OF DIRECTORS RECOMMEND HOLDERS OF FIRST REPUBLIC COMMON STOCK VOTE ON THE MERGER?

A: The First Republic board of directors unanimously recommends that holders of First Republic common stock vote **"FOR"** the approval of the plan of merger.

Q: WHY IS MY VOTE IMPORTANT?

A: Approval of the plan of merger requires the affirmative vote of a majority of the voting power of First Republic stockholders entitled to vote at the First Republic Special Meeting. We urge you to vote, because if a First Republic common stockholder fails to vote or abstains, this will have the same effect as a vote **against** approval of the plan of merger.

Q: IF MY COMMON SHARES ARE HELD IN STREET NAME BY MY BROKER, WILL MY BROKER AUTOMATICALLY VOTE MY COMMON SHARES FOR ME?

A: **No.** Without instructions from you, your broker will not be able to vote your common shares. You must instruct your broker to vote your common shares, following the directions your broker provides. Please check the voting form used by your broker to see if it offers telephone or Internet voting.

Q: WHAT IF I FAIL TO INSTRUCT MY BROKER?

A: If you fail to instruct your broker to vote common shares held in "street name," the resulting broker non-vote will have the same effect as a vote **against** approval of the plan of merger.

Q: CAN I CHANGE MY VOTE?

A: Yes. If you have not voted through your broker, you may change your vote at any time before your proxy is voted at the Special Meeting. There are three ways you can change your vote after you have submitted your proxy (whether by mail, phone or through the Internet):

- First, you can send a written notice to the Secretary of First Republic at the address listed below, stating that you would like to revoke the proxy that you submitted in connection with the approval of the plan of merger.

First Republic Bank
111 Pine Street, 2nd Floor
San Francisco, California 94111
Attention: Edward J. Dobranski, Secretary

- Second, you can complete and submit a new proxy card or vote again by telephone or through the Internet. Your latest vote actually received by First Republic before the Special Meeting will be counted, and any earlier votes will be revoked.
- Third, you can attend the First Republic Special Meeting and vote in person. Any earlier proxy will thereby be revoked. However, simply attending the meeting without voting will not revoke an earlier proxy.

If you have instructed a broker to vote your common shares, you must follow the directions you receive from your broker in order to change or revoke your vote.

Q: SHOULD I SEND IN MY STOCK CERTIFICATES NOW?

A: No. Please do **NOT** send in your stock certificates at this time. We will provide you at a later date with instructions regarding the surrender of your stock certificates. You should then, in accordance with those instructions, send your First Republic common stock certificates to the exchange agent.

Q: WHEN DO YOU EXPECT TO COMPLETE THE MERGER?

A: We currently expect to complete the merger in the third quarter of 2007. However, we cannot assure you when or if the merger will be completed. Among other things, we must first obtain the approval of the First Republic stockholders at the Special Meeting and all necessary regulatory approvals.

Q: WHOM SHOULD I CALL WITH QUESTIONS?

A: If you are a First Republic stockholder and you have questions about the merger or the First Republic Special Meeting or you need additional copies of this document, or if you have questions about the process for voting or if you need a replacement proxy card, you should contact:

Attention: Frederick J. Marquardt
Morrow & Co., Inc.
470 West Avenue
Stamford, Connecticut 06902
Tel: 203-658-9400

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This proxy statement/prospectus, including information incorporated by reference into this document, may contain forward-looking statements, including, for example, statements about management expectations, strategic objectives, growth opportunities, business prospects, regulatory proceedings, transaction synergies and other benefits of the merger, and other similar matters. These forward-looking statements are not statements of historical facts and represent only Merrill Lynch's and/or First Republic's beliefs regarding future performance, which is inherently uncertain. There are a variety of factors, many of which are beyond Merrill Lynch's and First Republic's control, which affect operations, performance, business strategy and results and could cause actual results and experience to differ materially from the expectations and objectives expressed in any forward-looking statements. These factors include, but are not limited to, the following:

- those factors set forth in Merrill Lynch's Form 10-K, Form 10-Q and other filings with the SEC;
- those factors set forth in First Republic's Form 10-K, Form 10-Q and other filings with the FDIC;
- the parties' ability to obtain the regulatory and other approvals required for the merger on the terms and within the time expected;
- the risk that Merrill Lynch will not be able to integrate successfully the businesses of First Republic or that such integration will be more time consuming or costly than expected;
- the risk that expected synergies and benefits of the merger will not be realized within the expected time frame or at all; and
- the risk of deposit attrition, increased operating costs, customer loss, employee loss and business disruption following the merger.

We caution you not to place undue reliance on the forward-looking statements, which speak only as of the date of this proxy statement/prospectus, in the case of forward-looking statements contained in this proxy statement/prospectus, or the dates of the documents incorporated by reference into this proxy statement/prospectus, in the case of forward-looking statements made in those incorporated documents.

Except to the extent required by applicable law or regulation, Merrill Lynch and First Republic undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this proxy statement/prospectus or to reflect the occurrence of unanticipated events.

For additional information about factors that could cause actual results to differ materially from those described in the forward-looking statements, please see the section entitled "Risk Factors" beginning on page 21 and the reports that Merrill Lynch and First Republic have filed with the SEC and the FDIC, respectively. These reports are described in the section entitled "Where You Can Find More Information" beginning on page 93, including the Annual Report on Form 10-K for the year ended December 29, 2006 of Merrill Lynch and for the year ended December 31, 2006 of First Republic.

All subsequent written or oral forward-looking statements concerning the merger or other matters addressed in this proxy statement/prospectus and attributable to Merrill Lynch and First Republic or any person acting on their behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section.

RISK FACTORS

In addition to the other information included or incorporated by reference into this proxy statement/prospectus, you should carefully read and consider the following factors in deciding how to vote on the plan of merger and in deciding whether to elect to receive cash or shares of Merrill Lynch common stock in the merger. Please also refer to the additional risk factors identified in the periodic reports and other documents of Merrill Lynch and First Republic incorporated by reference into this proxy statement/prospectus and listed in the section entitled "Where You Can Find More Information" beginning on page 93.

The market price of Merrill Lynch's common stock after the merger will be affected by factors different from those currently affecting the shares of First Republic common stock or Merrill Lynch common stock.

The businesses of Merrill Lynch and First Republic differ significantly, and, accordingly, the results of operations of the combined company and the market price of Merrill Lynch common stock after the merger will be affected by factors different from those currently affecting the independent results of operations of Merrill Lynch and the market price of Merrill Lynch common stock. Further, Merrill Lynch operates globally across a broad range of asset classes and services which First Republic has not historically operated in. Accordingly, the results of operations of the combined company and the market price of Merrill Lynch common stock may be affected by factors different from those currently affecting the results of operations of First Republic and market price of First Republic common stock. For a discussion of the businesses of Merrill Lynch and First Republic and of the most recent set of risk factors related to the business of Merrill Lynch, please see the documents incorporated by reference into this proxy statement/prospectus and referred to in the section entitled "Where You Can Find More Information" beginning on page 93.

First Republic common stockholders may receive a form of consideration different from what they elect.

The right of First Republic common stockholders to elect to receive cash or Merrill Lynch common stock in the merger is subject to proration procedures designed to ensure that the aggregate consideration to be paid by Merrill Lynch will be, as nearly as practicable, 50% cash and 50% common stock. As a result, if either the aggregate cash or stock elections exceed the maximum amount available, and you choose a consideration election that exceeds the maximum amount available, you may receive all or a portion of your consideration in a form different from what you elected. Accordingly, if you make a cash election, it is possible that you will receive Merrill Lynch common stock. Conversely, if you elect to receive Merrill Lynch common stock, it is possible that you will receive cash.

If you tender shares of First Republic common stock to make an election (or follow the procedures for guaranteed delivery), you will not be able to sell those shares, unless you revoke your election prior to the election deadline.

After the Special Meeting, each First Republic common stockholder will receive an election form and other materials relating to the stockholder's right to elect the form of merger consideration under the merger agreement and will be requested to send to the exchange agent your First Republic stock certificates (or follow the procedures for guaranteed delivery) together with the properly completed election form. If you want to make a cash or stock election, you must deliver your stock certificates (or follow the procedures for guaranteed delivery) and a properly completed and signed form of election to the exchange agent by the deadline. The deadline for doing this will be set forth on the election form. You will not be able to sell any shares of First Republic common stock that you have delivered, unless you revoke your election before the deadline by providing written notice to the exchange agent. If you do not revoke your election, you will not be able to liquidate your investment in First Republic common stock for any reason until you receive cash or Merrill Lynch common stock in the merger. In the time between delivery of your shares and the completion of the merger, the trading price of First Republic or Merrill Lynch common stock may decrease, and you might otherwise want to sell your shares of First Republic to gain access to cash, make other investments, or reduce the potential for a decrease in the value of your investment.

The date that you will receive your merger consideration depends on the completion date of the merger, which is uncertain. The completion date of the merger might be later than expected due to unforeseen events, such as delays in obtaining regulatory approvals.

The merger agreement limits First Republic's ability to pursue alternatives to the merger.

The merger agreement contains provisions that make it more difficult for First Republic to sell its business to a party other than Merrill Lynch. These provisions include a general prohibition on First Republic soliciting any acquisition proposal or offer for a competing transaction and the requirement that First Republic pay a termination fee of $65 million if the merger agreement is terminated in specified circumstances and thereafter an alternative transaction is entered into or completed. For further information, please see the section entitled "The Merger Agreement — Termination of the Merger Agreement" beginning on page 68.

Merrill Lynch required First Republic to agree to these provisions as a condition to Merrill Lynch's willingness to enter into the merger agreement. These provisions, however, might discourage a third party that might have an interest in acquiring all or a significant part of First Republic from considering or proposing an acquisition, even if that party were prepared to pay consideration with a higher per share market price than the current proposed merger consideration. Furthermore, the termination fee may result in a potential competing acquiror proposing to pay a lower per share price to acquire First Republic than it might otherwise have proposed to pay.

The shares of Merrill Lynch common stock to be received by First Republic stockholders as a result of the merger will have different rights from the shares of First Republic common stock.

The rights associated with First Republic common stock are different from the rights associated with Merrill Lynch common stock. Please see the section entitled "Comparison of Stockholder Rights" beginning on page 79 for a discussion of the different rights associated with Merrill Lynch common stock.

Combining our two companies may be more difficult, costly or time-consuming than we expect.

Although Merrill Lynch has agreed to allow the existing management personnel of First Republic substantial autonomy to make strategic business decisions and generally to operate the business of First Republic and its subsidiaries consistent with past practice as a separate division of ML Bank, such autonomy and decision making is subject to compliance with Merrill Lynch and ML Bank governance policies applicable to subsidiaries of Merrill Lynch and ML Bank and subject to regulatory and compliance requirements applicable to the operations of ML Bank. It is possible that the integration process could result in the loss of key employees or disruption of each company's ongoing business or inconsistencies in standards, controls, procedures and policies that adversely affect First Republic's ability to continue to operate consistent with past practice, maintain relationships with clients and employees or achieve the anticipated benefits of the merger. If Merrill Lynch is not able to integrate First Republic's operations successfully and timely, the expected benefits of the merger may not be realized.

Some of the directors and executive officers of First Republic may have interests and arrangements that may have influenced their decisions to support or recommend that you approve the merger.

The interests of some of the directors and executive officers of First Republic may be different from those of First Republic stockholders, and some directors and officers of First Republic may be participants in arrangements that are different from, or in addition to, those of First Republic stockholders. These interests are described in more detail in the section entitled "The Merger — Interests of Certain Persons in the Merger" beginning on page 48.

If the merger is not consummated by October 31, 2007, either Merrill Lynch or First Republic may choose not to proceed with the merger.

Either Merrill Lynch or First Republic may terminate the merger agreement if the merger has not been completed by October 31, 2007, unless the terminating party failed to comply with any provision of the

agreement and thereby caused, or materially contributed to, the failure of the merger to occur by that date. Please see the section entitled "The Merger Agreement — Termination of the Merger Agreement" beginning on page 68.

Merrill Lynch and First Republic must obtain regulatory approvals to complete the merger, which, if delayed, not granted, or granted with unacceptable conditions, may jeopardize or postpone the completion of the merger, result in additional expenditures of money and resources or reduce the anticipated benefits of the merger.

Merrill Lynch and First Republic must obtain certain approvals in a timely manner from governmental agencies, including the OTS and the Nevada Department of Business & Industry, Division of Financial Institutions prior to completion of the merger. If Merrill Lynch and First Republic do not receive these approvals, or do not receive them on terms that satisfy the conditions set forth in the merger agreement, then neither party will be obligated, or in some cases permitted, to complete the merger. The governmental agencies from which Merrill Lynch and First Republic will seek these approvals have broad discretion in administering the governing statutes and regulations. As a condition to approval of the merger, these agencies may impose requirements, limitations or costs that could negatively affect the way the combined companies conduct business. These requirements, limitations or costs could jeopardize or delay the completion of the merger. Neither Merrill Lynch nor First Republic is obligated to complete the merger if a governmental entity imposes a term or condition that would have or be reasonably likely to have a material adverse effect on the financial condition, results of operations, assets or business of Merrill Lynch or its respective subsidiaries. Please see the section entitled "The Merger — Regulatory Matters" beginning on page 56.

If the conditions to the merger are not met, the merger may not occur.

Specified conditions set forth in the merger agreement must be satisfied or waived to complete the merger. For a more complete discussion of the conditions to the merger, please see the section entitled "The Merger Agreement — Conditions to Completion of the Merger" beginning on page 62. The following conditions, in addition to other customary closing conditions, must be satisfied or waived, if permissible, before Merrill Lynch and First Republic are obligated to complete the merger:

- the approval of the plan of merger by the holders of a majority of the outstanding shares of the common stock of First Republic;
- receipt of all requisite regulatory approvals (which must remain in full force and effect through the completion of the merger) and expiration of all statutory waiting periods in respect thereof without imposition of a condition on such approval that could have a material adverse effect on the combined company;
- the absence of any statute, rule, regulation, judgment, decree, injunction or other order which prohibits or makes illegal the completion of the merger;
- effectiveness of the registration statement of which this proxy statement/prospectus is a part;
- the shares of Merrill Lynch common stock to be received by First Republic stockholders in the merger are listed on the New York Stock Exchange;
- receipt by each of Merrill Lynch and First Republic of an opinion to the effect that the merger will be treated as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code;
- subject to specified materiality standards, the representations and warranties made by the other party (or parties) in the merger agreement must be true and correct; and
- each party must have performed in all material respects all obligations required to be performed by it under the merger agreement at or before the completion of the merger.

Merrill Lynch and First Republic may waive one or more of the conditions to the merger without resoliciting stockholder approval for the merger.

Each of the conditions to Merrill Lynch's and First Republic's obligations to complete the merger may be waived, in whole or in part, to the extent permitted by applicable law, by agreement of Merrill Lynch and First Republic if the condition is a condition to both Merrill Lynch's and First Republic's obligation to complete the merger, or by the party for which such condition is a condition of its obligation to complete the merger. The boards of directors of Merrill Lynch and First Republic may evaluate the materiality of any such waiver to determine whether amendment of this proxy statement/prospectus and resolicitation of proxies are necessary. However, Merrill Lynch and First Republic generally do not expect any such waiver to be significant enough to require resolicitation of stockholders. In the event that any such waiver is not determined to be significant enough to require resolicitation of stockholders, the companies will have the discretion to complete the merger without seeking further stockholder approval.

INFORMATION ABOUT THE COMPANIES

Merrill Lynch & Co., Inc.
4 World Financial Center
New York, New York 10080
(212) 449-1000

Merrill Lynch is one of the world's leading wealth management, capital markets and advisory companies with offices in 37 countries and territories and total client assets of approximately $1.6 trillion. As an investment bank, Merrill Lynch is a leading global trader and underwriter of securities and derivatives across a broad range of asset classes and serves as a strategic advisor to corporations, governments, institutions and individuals worldwide. Merrill Lynch owns approximately half of the economic interest of BlackRock, Inc., one of the world's largest publicly traded investment management companies, with more than $1 trillion in assets under management.

Additional information about Merrill Lynch and its subsidiaries is included in documents incorporated by reference into this document. For more information, please see the section entitled "Where You Can Find More Information" beginning on page 93.

First Republic Bank
111 Pine Street, 2nd Floor
San Francisco, California 94111
(415) 392-1400

First Republic is a New York Stock Exchange-traded, private bank and wealth management firm. First Republic and its subsidiaries specialize in providing personalized, relationship-based wealth management services, including private banking, private business banking, investment management, trust, brokerage and real estate lending. As of December 31, 2006, First Republic and its subsidiaries had total assets and other assets managed and serviced totaling $34.2 billion. First Republic provides access to its services online and through preferred banking or trust offices in 10 metropolitan areas: San Francisco, Los Angeles, Santa Barbara, Newport Beach, San Diego, Las Vegas, Portland, Seattle, Boston and New York City.

First Republic is an FDIC-insured publicly owned commercial bank chartered by the State of Nevada. First Republic and its subsidiaries are subject to the supervision, examination and reporting requirements of the FDIC and the Nevada Department of Business & Industry, Division of Financial Institutions.

Additional information about First Republic and its subsidiaries is included in documents incorporated by reference into this document. For more information, please see the section entitled "Where You Can Find More Information" beginning on page 93.

Merrill Lynch Bank & Trust Co., FSB
4 World Financial Center
New York, New York 10080
(212) 449-1000

ML Bank is part of the Merrill Lynch Global Bank Group, which provides the management platform for Merrill Lynch's banking products and services. ML Bank is an FDIC-insured federal savings bank and is a retail bank for CRA purposes and offers certificates of deposit, transaction accounts and money market deposit accounts and issues Visa® debit cards. ML Bank, through its subsidiaries Merrill Lynch Credit Corporation and Financial Freedom Mortgage Corporation, offers residential mortgage financing throughout the United States, enabling clients to purchase and refinance their homes as well as to manage their other personal credit needs. On December 30, 2006, ML Bank acquired the First Franklin mortgage origination franchise and related servicing platform from National City Corporation.

FIRST REPUBLIC SPECIAL MEETING

*This section contains information for First Republic stockholders about the Special Meeting. First Republic has called to allow its common stockholders to consider and approve the plan of merger contained in the merger agreement. First Republic is mailing this proxy statement/prospectus to its stockholders on or about **[•]**, 2007. Together with this proxy statement/prospectus, First Republic is sending a notice of the Special Meeting and a form of proxy that First Republic's board of directors is soliciting for use at the Special Meeting and at any adjournments or postponements of the meeting.*

Date, Time and Place

The First Republic Special Meeting will be held on **[•]**, 2007 at **[•]** local time at **[•].**

Matters to be Considered

At the First Republic Special Meeting, First Republic common stockholders will be asked to:

- approve the plan of merger contained in the merger agreement; and
- transact such other business as may properly come before the meeting or any adjournment or postponement of the meeting, if necessary, including to solicit additional proxies.

Proxies

If you are a First Republic common stockholder, you should complete and return the proxy card accompanying this proxy statement/prospectus to ensure that your vote is counted at the First Republic Special Meeting, regardless of whether you plan to attend the First Republic Special Meeting. If you are a registered common stockholder (that is, you hold stock certificates registered in your own name), you may also vote by telephone or through the Internet by following the instructions described on your proxy card. If your shares are held in nominee or "street name," you will receive separate voting instructions from your broker or nominee with your proxy materials. Although most brokers and nominees offer telephone and Internet voting, availability and specific processes will depend on their voting arrangements. You can revoke a proxy at any time before the vote is taken at the First Republic Special Meeting by submitting to First Republic's Secretary written notice of revocation or a properly executed proxy of a later date, or by attending the First Republic Special Meeting and voting in person. Written notices of revocation and other communications about revoking First Republic proxies should be addressed to:

First Republic Bank
111 Pine Street, 2nd Floor
San Francisco, California 94111
Attention: Edward J. Dobranski, Secretary

If your shares are held in street name, you should follow the instructions of your broker regarding the revocation of proxies.

All shares represented by valid proxies that First Republic receives through this solicitation, and that are not revoked, will be voted in accordance with the instructions on the proxy card. If you make no specification on your proxy card as to how you want your shares voted before signing and returning it, your proxy will be voted "**FOR**" the approval of the plan of merger and "**FOR**" the proposal to adjourn or postpone the Special Meeting, if necessary, including to solicit additional proxies. First Republic's board of directors is currently unaware of any other matters that may be presented for action at the First Republic Special Meeting. If other matters properly come before the First Republic Special Meeting, or at any adjournment or postponement of the meeting, First Republic intends that shares represented by properly submitted proxies will be voted, or not voted, by and in accordance with the best judgment of the persons named as proxies on the proxy card.

Solicitation of Proxies

First Republic will bear the entire cost of soliciting proxies from its stockholders. In addition to solicitation of proxies by mail, First Republic will request that banks, brokers and other record holders send

proxies and proxy material to the beneficial owners of First Republic common stock and secure their voting instructions, if necessary. First Republic will reimburse the record holders for their reasonable expenses in taking those actions.

First Republic has also made arrangements with Morrow & Co., Inc. to assist in soliciting proxies in connection with approval of the plan of merger and in communicating with stockholders and has agreed to pay it $10,000 plus reasonable expenses for these services. Proxies may also be solicited by directors, officers and regular employees of First Republic in person or by telephone or other means for which such persons will receive no special compensation.

Record Date

First Republic's board of directors has fixed the close of business on May 7, 2007 as the record date for determining the First Republic stockholders entitled to receive notice of, and in the case of common stockholders, to vote at the First Republic Special Meeting. At that time, **[•]** shares of First Republic common stock were outstanding, held by approximately **[•]** holders of record. As of the record date, directors and executive officers of First Republic and their affiliates had the right to vote **[•]** shares of First Republic common stock, representing approximately **[•]** percent of the shares entitled to vote at the First Republic Special Meeting. First Republic currently expects that its directors and executive officers will vote such shares "**FOR**" the approval of the plan of merger and "**FOR**" the proposal to adjourn or postpone the Special Meeting, if necessary, including to solicit additional proxies.

Quorum and Vote Required

The presence, in person or by properly executed proxy, of the holders of a majority of the outstanding shares of First Republic common stock is necessary to constitute a quorum at the Special Meeting. Abstentions and broker non-votes will be counted towards the presence of a quorum.

Approval of the plan of merger requires the affirmative vote of a majority of the voting power of First Republic stockholders entitled to vote at the First Republic Special Meeting. Only First Republic common stockholders are entitled to vote at the Special Meeting. Holders of First Republic preferred stock and First Republic Depositary Shares are not, as such, entitled to vote at the Special Meeting. Approval of the proposal relating to the adjournment or postponement of the Special Meeting, if necessary, including to solicit additional proxies, requires the affirmative vote of a majority of the votes cast by First Republic stockholders entitled to vote at the First Republic Special Meeting. You are entitled to one vote for each share of First Republic common stock you held as of the record date.

First Republic's board of directors urges First Republic common stockholders to complete, date and sign the accompanying proxy card and return it promptly in the enclosed postage paid envelope, or to vote by telephone or through the Internet.

Abstentions, failures to vote and broker non-votes will have the same effect as a vote against approval of the plan of merger. Abstentions, failures to vote and broker non-votes will have no effect on the vote to approve the proposal relating to adjournment or postponement to be considered at the Special Meeting.

Participants in Employee Stock Ownership Plans

If you own shares of First Republic common stock in the First Republic Employee Stock Ownership or the Bank of Walnut Creek Employee Stock Ownership Plan, such shares will be voted solely by the trustee of such plan pursuant to the terms of such plan and the instructions received by the trustee from plan participants. The trustees of such plans will not disclose the confidential voting directions of any individual participant or beneficiary to First Republic. If you own shares of First Republic common stock in either of such plans, you will be receiving a separate letter from the trustee of such plan explaining the voting process with respect to such shares and you will be provided with voting instructions with respect to those shares.

Voting by Telephone or Through the Internet

Many stockholders of First Republic have the option to submit their proxies or voting instructions electronically by telephone or through the Internet instead of submitting proxies by mail on the enclosed proxy card. Please note that there are separate arrangements for using the telephone and the Internet depending on whether your shares are registered in First Republic's stock records in your name or in the name of a brokerage firm or bank. You should check your proxy card or the voting instruction form forwarded by your broker, bank or other holder of record to see which options are available.

First Republic holders of record may submit proxies:

- by telephone, by calling the toll-free number indicated on their proxy card and following the recorded instructions; or
- through the Internet, by visiting the website indicated on their proxy card and following the instructions.

Delivery of Proxy Materials

To reduce the expenses of delivering duplicate proxy materials to First Republic stockholders, First Republic is relying upon SEC rules that permit us to deliver only one proxy statement/prospectus to multiple stockholders who share an address unless we receive contrary instructions from any stockholder at that address. If you share an address with another stockholder and have received only one proxy statement/prospectus, you may write or call us as specified below to request a separate copy of this document and we will promptly send it to you at no cost to you: Edward J. Dobranski, Secretary, First Republic Bank, 111 Pine Street, 2nd Floor, San Francisco, California 94111, or by telephoning us at 415-392-1400.

Recommendations of First Republic's Board of Directors

FIRST REPUBLIC'S BOARD OF DIRECTORS HAS ADOPTED THE PLAN OF MERGER. THE BOARD OF DIRECTORS BELIEVES THAT THE MERGER AND THE MERGER AGREEMENT ARE ADVISABLE AND IN THE BEST INTERESTS OF FIRST REPUBLIC AND ITS STOCKHOLDERS, AND UNANIMOUSLY RECOMMENDS THAT FIRST REPUBLIC COMMON STOCKHOLDERS VOTE "FOR" THE APPROVAL OF THE PLAN OF MERGER AND "FOR" ANY PROPOSAL TO ADJOURN OR POSTPONE THE SPECIAL MEETING, IF NECESSARY, INCLUDING TO SOLICIT ADDITIONAL PROXIES.

THE MERGER

*The following discussion summarizes material aspects of the merger. This discussion is a summary only, may not contain all of the information that is important to you and is qualified in its entirety by reference to the merger agreement and the financial advisor opinion attached as **Annex A** and **Annex B**, respectively, to this proxy statement/prospectus and incorporated herein by reference. We encourage you to read carefully the merger agreement and the financial advisor opinion, each in their entirety, in addition to the discussion in this proxy statement/prospectus.*

Structure of the Merger

Upon completion of the merger, First Republic will merge with and into ML Bank, with ML Bank as the surviving entity. Thereafter, First Republic will continue to operate its business as the First Republic Bank Division, a new division of ML Bank. While First Republic's common stock will be cancelled, Merrill Lynch's common stock will continue to be listed on the New York Stock Exchange under the symbol "MER."

In order for the merger to be treated as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code, ML Bank must be a direct, wholly owned subsidiary of Merrill Lynch at the time the merger is completed. At present, ML Bank is an indirect, wholly owned subsidiary of Merrill Lynch. In the merger agreement, Merrill Lynch has agreed to cause ML Bank to become a direct, wholly owned subsidiary of Merrill Lynch prior to completion of the merger.

Consideration; Election Procedures

For each share of First Republic common stock you hold immediately prior to completion of the merger, you will receive, at your election, either $55.00 in cash or $55.00 in Merrill Lynch common stock, but subject to certain proration procedures designed to ensure that the aggregate consideration to be paid by Merrill Lynch will be, as nearly as practicable, 50% cash and 50% common stock. If you elect to receive Merrill Lynch common stock for your shares of First Republic common stock, the number of shares of Merrill Lynch common stock you will receive for each share of First Republic common stock will be equal to (1) $55.00 divided by (2) the average of the last reported sales prices of Merrill Lynch common stock for the last five trading days prior to the date on which the merger is completed. We sometimes refer to the number of shares of Merrill Lynch common stock derived from this calculation as the "conversion number." Merrill Lynch will not issue any fractional shares in the merger, but will instead pay a cash amount (without interest) equal to the fraction of a share of Merrill Lynch common stock that holders of First Republic common stock would receive based on the conversion number multiplied by the average of the last reported sale prices of Merrill Lynch common stock for the last five trading days prior to the date on which the merger is completed.

You may make different elections with respect to different shares of common stock that you hold (if, for example, you own 100 shares of First Republic common stock, you could make a cash election with respect to 50 shares and a stock election with respect to the other 50 shares). In the event of proration, you may receive a portion of your merger consideration in a form other than that which you elected. The form of election will give you the option to designate the order of priority for the allocation of cash consideration to particular blocks of your First Republic shares in the event that the proration requirements in the merger agreement result in either Merrill Lynch common stock or cash not being available in the full amount elected.

Set forth below is a table showing a hypothetical range of prices for shares of Merrill Lynch common stock and the corresponding consideration that a First Republic common stockholder would receive in a stock election and in a cash election in the merger. The table does not reflect the fact that Merrill Lynch will not issue fractional shares in the merger, and will instead pay cash.

Hypothetical Price of Merrill Lynch Common Stock	Hypothetical per Share Stock Consideration for First Republic Common Stockholders	Per Share Cash Consideration for First Republic Common Stockholders
$86.00	0.6395	$ 55.00
$90.00	0.6111	$ 55.00
$94.00	0.5851	$ 55.00
$98.00	0.5612	$ 55.00

The amounts set forth above are hypothetical and are intended only to demonstrate the calculation of consideration payable under the merger agreement. The actual market prices of Merrill Lynch and First Republic common stock will fluctuate prior to completion of the merger. You should obtain current stock price quotations from a newspaper, over the Internet or by calling your broker.

Cash Election

The merger agreement provides that each First Republic common stockholder who makes a valid cash election will have the right to receive, in exchange for each share of First Republic common stock, $55.00 in cash, subject to proration and adjustment as described below. We sometimes refer to this cash amount as the "cash consideration" and the shares of First Republic common stock for which valid cash elections are made as "cash election shares."

Stock Election

The merger agreement provides that each First Republic common stockholder who makes a valid stock election will have the right to receive, in exchange for each share of First Republic common stock, a fraction of a share of Merrill Lynch common stock equal to (1) $55.00 divided by (2) the average of the last reported sales prices of Merrill Lynch common stock for the last five trading days prior to the date on which the merger is completed, subject to proration and adjustment as described below. We sometimes refer to Merrill Lynch common stock received and cash received in lieu of fractional shares of Merrill Lynch common stock as consideration in the merger as the "stock consideration" and the shares of First Republic common stock for which valid stock elections are made as "stock election shares."

Non-Election

First Republic stockholders who make no election to receive cash or shares of Merrill Lynch common stock in the merger, whose elections are not received by the exchange agent by the election deadline, or whose forms of election are improperly completed and/or are not signed will be deemed not to have made an election. Common stockholders not making an election may be paid in cash, Merrill Lynch common stock or a mix of cash and shares of Merrill Lynch common stock depending on, and after giving effect to, the number of valid cash elections and stock elections that have been made by other First Republic common stockholders using the adjustment mechanism described below.

Adjustment Generally

Your right to elect to receive cash or Merrill Lynch common stock as consideration in the merger is subject to certain proration procedures designed to ensure that the aggregate consideration to be paid by Merrill Lynch will be, as nearly as practicable, 50% cash and 50% common stock. If proration is necessary to ensure this allocation of overall consideration, you may receive a portion of the merger consideration in a form other than that which you elected. The form of election will give you the option to designate the order of priority for the allocation of cash consideration to particular blocks of your First Republic common shares in

the event that the proration requirements in the merger agreement result in either Merrill Lynch common stock or cash not being available in the full amount elected.

Adjustment if Cash Election is Oversubscribed

Stock may be issued to First Republic common stockholders who make cash elections if cash elections are oversubscribed such that the aggregate cash amount that would otherwise be paid in the merger is greater than 50% of the total consideration payable by Merrill Lynch for shares of First Republic common stock in the merger.

If the cash election is oversubscribed, then:

- each First Republic common stockholder making a stock election, no election or an invalid election will receive the stock consideration for each share of First Republic common stock as to which he, she or it made a stock election, no election or an invalid election;
- the exchange agent will select from among the cash election shares, by a pro rata selection process, a sufficient number of shares to receive the stock consideration such that the aggregate cash amount that would otherwise be paid in the merger equals as closely as practicable 50% of the total consideration payable by Merrill Lynch in the merger, and the shares so selected will be converted into the right to receive the stock consideration; and
- cash election shares not so selected will be converted into the right to receive the cash consideration.

Example A. Oversubscription of Cash Elections

Assuming that:

- the total consideration payable by Merrill Lynch for shares of First Republic common stock in the merger is $1,800,000,000, as a result of which only $900,000,000 may be paid in cash consideration, and
- the cash consideration that would be payable based on the number of cash election shares is $1,000,000,000,

then a First Republic common stockholder making a cash election with respect to 1,000 shares of First Republic common stock would receive the cash consideration with respect to 900 shares of First Republic common stock and the stock consideration with respect to the remaining 100 shares of First Republic common stock.

Adjustment if the Stock Election is Oversubscribed

Cash may be issued to First Republic common stockholders who make stock elections if stock elections are oversubscribed such that the aggregate value of Merrill Lynch common stock that would otherwise be issued in the merger is more than 50% of the total consideration payable by Merrill Lynch for shares of First Republic common stock in the merger.

If the stock election is oversubscribed, then:

- each First Republic common stockholder making a cash election, no election or an invalid election will receive the cash consideration for each share of First Republic common stock as to which he, she or it made a cash election, no election or an invalid election;
- the exchange agent will select from among the stock election shares, by a pro rata selection process, a sufficient number of shares to receive the cash consideration such that the aggregate cash amount that would otherwise be paid in the merger equals as closely as practicable 50% of the total consideration payable by Merrill Lynch in the merger, and the shares so selected will be converted into the right to receive the cash consideration; and
- stock election shares not so selected will be converted into the right to receive the stock consideration.

Example B. Oversubscription of Stock Elections

Assuming that:

- the total consideration payable by Merrill Lynch for shares of First Republic common stock in the merger is $1,800,000,000, as a result of which only $900,000,000 may be paid in stock consideration, and
- the stock consideration that would be payable based on the number of stock election shares is $1,000,000,000,

then a First Republic common stockholder making a stock election with respect to 1,000 shares of First Republic common stock would receive the stock consideration with respect to 900 shares of First Republic common stock and the cash consideration with respect to the remaining 100 shares of First Republic common stock.

Adjustment if the Cash Election is Sufficiently Subscribed

If the aggregate cash amount that would otherwise be paid to First Republic common stockholders in the merger based on valid elections is equal or nearly equal to 50% of the total consideration payable by Merrill Lynch for shares of First Republic common stock in the merger, then:

- each First Republic common stockholder making a cash election will receive the cash consideration with respect to each share of First Republic common stock as to which he, she or it made a cash election;
- each First Republic common stockholder making a stock election will receive the stock consideration with respect to each share of First Republic common stock as to which he, she or it made a stock election; and
- each First Republic common stockholder making no election or an invalid election will receive the stock consideration with respect to each share of First Republic common stock as to which he, she or it made no election or an invalid election.

Election Procedures

The merger agreement provides that a form of election and other appropriate and customary transmittal materials will be mailed 35 days before the anticipated completion date of the merger (or on such other date as Merrill Lynch and First Republic mutually agree) to all First Republic common stockholders of record as of the fifth business day prior to such mailing date. Each form of election will allow the holder to make a cash election, a stock election, a mixed election or no election with respect to some or all of their First Republic shares. The form of election will give you the option to designate the order of priority for the allocation of cash consideration to particular blocks of your First Republic shares in the event that the proration requirements in the merger agreement result in either Merrill Lynch common stock or cash not being available in the full amount elected. Merrill Lynch will also make available forms of election to holders of First Republic common stock who request the form of election prior to the election deadline.

Holders of First Republic common stock who wish to elect the type of merger consideration they will receive in the merger should carefully review and follow the instructions set forth in the form of election. First Republic stockholders who hold their shares of common stock in “street name” should follow their broker’s instructions for making an election with respect to their shares. First Republic stockholders who hold their shares of common stock in the First Republic Employee Stock Ownership Plan or the Bank of Walnut Creek Employee Stock Ownership Plan should follow their respective trustee’s instructions for making an election with respect to their shares.

To make an election, a holder of First Republic common stock must submit a properly completed form of election so that it is actually received by the exchange agent at or prior to the election deadline in accordance with the instructions on the form of election. The election deadline will be 5:00 p.m., Pacific Time, on the

30th day following the date on which the forms of election are mailed to First Republic common stockholders (or on such other date as Merrill Lynch and First Republic mutually agree), which will be set forth in the election materials. A form of election will be properly completed only if accompanied by certificates representing all shares of First Republic common stock covered by the form of election (or customary affidavits and indemnification regarding the loss or destruction of such certificates or the guaranteed delivery of such certificates), together with duly executed transmittal materials included in the form of election.

Generally, an election may be revoked or changed, but only by written notice received by the exchange agent prior to the election deadline. If an election is revoked and unless a subsequent properly executed form of election is actually received by the exchange agent at or prior to the election deadline, the holder who revoked the election will be deemed to have made no election with respect to his or her shares of First Republic common stock, and Merrill Lynch will cause those certificates to be returned to the stockholder who submitted those certificates without charge upon the holder's written request.

First Republic common stockholders will not be entitled to revoke or change their elections following the election deadline. As a result, stockholders who have made elections will be unable to revoke their elections or sell their shares of First Republic common stock during the interval between the election deadline and the date of completion of the merger.

Shares of First Republic common stock as to which the holder has not made a valid election prior to the election deadline, to be set forth in the election form, will be treated as though no election has been made. If it is determined that any purported cash election or stock election was not properly made, the purported election will be deemed to be of no force or effect and the holder making the purported election will be deemed not to have made an election for these purposes, unless a proper election is subsequently made on a timely basis.

Treatment of First Republic Preferred Stock

Upon completion of the merger, (i) each share of First Republic 6.70% Noncumulative Perpetual Preferred Series A Shares issued and outstanding immediately prior to completion of the merger will be exchanged for one share of Merrill Lynch 6.70% Noncumulative Perpetual Preferred Stock, Series 6 and (ii) each share of First Republic 6.25% Noncumulative Perpetual Preferred Series B Shares issued and outstanding immediately prior to completion of the merger will be exchanged for one share of Merrill Lynch 6.25% Noncumulative Perpetual Preferred Stock, Series 7. The terms of the Merrill Lynch 6.70% Noncumulative Perpetual Preferred Stock, Series 6 and the Merrill Lynch 6.25% Noncumulative Perpetual Preferred Stock, Series 7 will be substantially identical to the terms of the corresponding series of First Republic preferred stock. Any shares of First Republic preferred stock as to which preferred stockholders have perfected their dissenters' rights pursuant to Nevada law will not be exchanged for New Merrill Lynch Preferred Stock.

Each outstanding share of First Republic preferred stock is presently represented by First Republic Depositary Shares that are listed on the New York Stock Exchange and represent a one-fortieth interest in a share of First Republic preferred stock. Upon completion of the merger, Merrill Lynch will assume the obligations of First Republic under the relevant Deposit Agreement pursuant to which First Republic preferred stock has been deposited. Merrill Lynch will instruct the Depositary to treat the shares of New Merrill Lynch Preferred Stock received by it in exchange for shares of First Republic preferred stock as newly deposited securities under the applicable Deposit Agreement. In accordance with the terms of the relevant Deposit Agreement, the First Republic Depositary Shares will thereafter represent the shares of the relevant series of New Merrill Lynch Preferred Stock. Such depositary shares will continue to be listed on the New York Stock Exchange upon completion of the merger under a new name and will be traded under a new symbol.

Shares of preferred stock issued by First Republic's subsidiaries will remain issued and outstanding following completion of the merger, and the terms of those preferred shares will generally be unaffected by

the merger. Holders of First Republic preferred stock, First Republic Depositary Shares or preferred stock issued by First Republic's subsidiaries are not entitled to vote on the merger or at the Special Meeting.

THE DEPOSITARY IS THE ONLY HOLDER OF RECORD OF SHARES OF FIRST REPUBLIC PREFERRED STOCK, WHICH ARE REPRESENTED BY DEPOSITARY SHARES. ALL HOLDERS OF FIRST REPUBLIC DEPOSITARY SHARES SHOULD FOLLOW THE INSTRUCTIONS GIVEN TO THEM BY THEIR BROKER.

Background of the Merger

The First Republic board of directors regularly discusses with First Republic's management the company's financial performance and prospects, and also considers First Republic's strategy and future outlook. Issues of strategic planning are regularly addressed as part of these discussions. Between January and March 2006, in connection with certain expressions of interest made by potential financial partners, First Republic's management and board of directors met with representatives of Morgan Stanley, its financial advisor, and had discussions regarding First Republic's long-term prospects, including its long-term financial plan, as a stand-alone company, as well as the types of strategic alternatives that might be available to First Republic. These included niche acquisitions to gain capabilities, strategic acquisitions of other financial institutions, stock repurchases and the sale of First Republic to financial partners. During this time, the expressions of interest made by potential financial partners never resulted in a binding offer being made by any such party.

As directed by First Republic's management, Morgan Stanley continued to investigate the various strategic alternatives that might be available to First Republic and, from time to time, had further discussions with First Republic's senior management team.

On October 2, 2006, Mr. Terry Laughlin, Senior Vice President — Head of Strategic Growth Opportunities of Merrill Lynch, contacted Mr. James H. Herbert, II, President of First Republic, to arrange an introductory meeting. The meeting was arranged for October 13, 2006. Until October 2006, there had not been any discussions between First Republic and Merrill Lynch in the prior two years about any possible strategic transaction between the companies.

On October 13, 2006, Mr. Laughlin and Mr. H. McIntyre Gardner, Senior Vice President — Head of Global Private Client Americas Region and Global Bank of Merrill Lynch, met with Mr. Herbert to discuss, very generally, the businesses of Merrill Lynch and First Republic. No detailed discussion of any possible strategic transaction took place at this meeting.

On November 14, 2006, Mr. Laughlin called Mr. Herbert to suggest a meeting with Mr. E. Stanley O'Neal, Chief Executive Officer of Merrill Lynch. This meeting was subsequently scheduled for December 11, 2006.

On December 11, 2006, Mr. Herbert met with Mr. O'Neal. There was a general discussion of Merrill Lynch's private client services, in particular the operations of its private banking and investment group and how First Republic might interact with this group. Mr. O'Neal suggested that a business combination transaction could be structured to maintain First Republic's brand identity separately from the Merrill Lynch brand and keep the management team of First Republic in place to continue to run First Republic's business as it had in the past. Discussions continued to take place between Merrill Lynch and First Republic from December 11, 2006 until early January 2007.

In addition, in early October 2006, two other potential strategic partners independently contacted First Republic directly to initiate discussions about a possible strategic transaction. At the same time that First Republic's senior management was having continued discussions and meetings with Merrill Lynch regarding a possible strategic transaction, during the fourth quarter of 2006 and early January 2007 the senior management team of First Republic was also having discussions and meetings with the other two potential strategic partners.

On January 9, 2007, Mr. Robert J. McCann, Vice Chairman and President of the Global Private Client Group of Merrill Lynch, Mr. Gardner, Mr. Laughlin and other members of Merrill Lynch's private client services management team met with Mr. Herbert, Ms. Auguste-deWilde and another member of First Republic's management team to discuss each company's business segments, strategic goals and competitive landscape based on publicly available information. The meeting concluded with a discussion of next steps to be taken with respect to a possible strategic transaction between Merrill Lynch and First Republic.

On January 9 and 10, 2007, the same members of First Republic's senior management team held similar meetings with each of the potential strategic partners. Each of these meetings concluded with a discussion of next steps to be taken with respect to a possible strategic transaction.

On January 11, 2007, the First Republic board of directors conducted a special telephonic meeting. Mr. Herbert and a representative of Morgan Stanley, First Republic's financial advisor, advised the board of directors of the three unsolicited contacts by potential strategic partners and the current status of the discussions with Merrill Lynch and the other two potential strategic partners. Mr. Herbert emphasized his belief that none of these potential strategic partners were aware of the others having contacted First Republic or that First Republic was having discussions with any of them. During this meeting, the First Republic board of directors unanimously authorized First Republic to enter into confidentiality agreements with each of the three potential strategic partners (including Merrill Lynch) to share additional information and to proceed with further, more detailed discussions.

In mid-January 2007, each of Merrill Lynch and the other two potential strategic partners entered into a confidentiality agreement with First Republic. Thereafter, First Republic's senior management provided to each potential strategic partner certain product and additional information and an overview of preliminary financial results for the fourth quarter of 2006. Each potential strategic partner was given an opportunity to ask questions.

During the two-week period following the execution of the confidentiality agreements, each party continued to review a possible strategic transaction with First Republic.

On January 16-17, 2007, Merrill Lynch's and First Republic's senior management teams met again in a series of meetings, including a one-on-one meeting between Mr. McCann and Mr. Herbert, to discuss further details of a possible strategic transaction between the two companies.

On the afternoon of January 18, 2007, Mr. McCann and Mr. Gardner met with Mr. Herbert and Ms. Auguste-deWilde and indicated to First Republic that Merrill Lynch would be willing to pay a fixed price of $55.00 per share for all of the issued and outstanding shares of First Republic common stock to be paid in a form acceptable to First Republic, subject to satisfactory completion of due diligence and the negotiation of a mutually acceptable definitive agreement. First Republic expressed to Merrill Lynch that it wanted to accommodate the option of a tax-free exchange for its stockholders. Merrill Lynch proposed that the aggregate consideration to be paid by Merrill Lynch be, as nearly as practicable, 50% cash and 50% common stock and that a First Republic common stockholder have the right to elect to receive for each share of common stock held by such stockholder, either $55.00 in cash or $55.00 in Merrill Lynch common stock.

On January 21, 2007, the First Republic board of directors conducted a special telephonic board meeting during which they discussed the possible strategic transactions. Mr. Herbert updated the First Republic board of directors on the discussions to date with Merrill Lynch and the other two potential strategic partners. Mr. Herbert conveyed to the board of directors Merrill Lynch's proposal of $55.00 per share. Mr. Herbert and representatives of Morgan Stanley also explained to the board of directors that the price of $55.00 per share would be a fixed price, with 50% payable in cash and 50% payable in Merrill Lynch common stock and that a First Republic common stockholder would have the right to elect to receive for each share of common stock held by such stockholder, either $55.00 in cash or $55.00 in Merrill Lynch common stock. Mr. Herbert explained that Merrill Lynch had agreed, should a merger occur, to operate First Republic Bank as a separate division of ML Bank.

The board of directors was also informed that Mr. Herbert and Ms. Katherine August-deWilde, Executive Vice President and Chief Operating Officer of First Republic, would each be required to enter into three-year

retention agreements with Merrill Lynch to become effective upon the completion of the proposed strategic transaction. A number of questions were raised by the directors of First Republic with respect to Merrill Lynch and its corporate structure. Mr. Herbert noted that Merrill Lynch's desire to consummate the proposed strategic transaction was driven by its desire to enter the high net worth banking business through an existing organization run by a management group that is experienced and has a successful track record in that business. As a result, Merrill Lynch's objective would be to retain First Republic's management team, employees, locations and clients. Also present at the meeting were representatives of White & Case LLP, First Republic's outside legal counsel. A representative of White & Case LLP reviewed with First Republic's board of directors the legal and fiduciary considerations relating to the board of directors' consideration of a possible merger if discussions proceeded to that point. The First Republic board of directors unanimously authorized Mr. Herbert and his executive management team to continue negotiations with Merrill Lynch and the other two potential strategic partners.

Between January 17, 2007 and January 23, 2007, an additional potential financial partner and the other two potential strategic partners, other than Merrill Lynch, discussed potential strategic transactions with First Republic, including general financial terms. In each case, the indicated merger consideration discussed with the three additional potential partners was below the merger consideration Merrill Lynch had discussed with First Republic.

During the week of January 22, 2007, Merrill Lynch and its legal advisors conducted their due diligence investigation with respect to First Republic's business and legal, tax, regulatory and other matters. First Republic, with the assistance of its legal and financial advisors, conducted a simultaneous due diligence investigation with respect to Merrill Lynch's business and legal, tax, regulatory and other matters.

On January 23, 2007, Merrill Lynch's outside legal counsel, Sullivan & Cromwell LLP, provided a draft merger agreement to White & Case LLP, and the parties and their respective legal counsels negotiated the terms of the merger agreement through the week of January 22, 2007 while due diligence investigations continued. L. Martin Gibbs, a member of the First Republic board of directors, is a partner at the law firm of White & Case LLP.

A special telephonic meeting of the First Republic board of directors took place on January 26, 2007 to discuss the progress of the discussions and negotiations between First Republic and Merrill Lynch, as well as to discuss the progress of the discussions with the other potential strategic partners. Representatives of Morgan Stanley discussed with First Republic board of directors the valuation of First Republic on a stand-alone basis and as a combined entity with Merrill Lynch pursuant to the proposed terms of the transaction with Merrill Lynch. At that meeting, Mr. Herbert brought the board of directors up to date on discussions with Merrill Lynch. Mr. Herbert indicated that due diligence was on-going but in its final stages (including First Republic's due diligence on Merrill Lynch). Representatives of Morgan Stanley led the board of directors through a detailed analysis of the value of the enterprise. A representative of Morgan Stanley explained to the First Republic board of directors Merrill Lynch's proposed merger consideration of $55.00 per share price (with 50% payable in cash and 50% payable in Merrill Lynch common stock), and compared such terms with First Republic's discussions with the other potential strategic partners. Also at this meeting, Mr. Herbert and Ms. August-deWilde gave an overview of the key terms of their respective retention agreements being negotiated with Merrill Lynch. A representative of White & Case LLP updated the board of directors on the status of the merger agreement, negotiations with Merrill Lynch, certain legal and financial issues raised by the merger agreement and discussed again with the board of directors their fiduciary duties in consideration of the possible merger with Merrill Lynch. First Republic's board of directors expressed to management their belief in the long-term strategic merits of the possible merger with Merrill Lynch and encouraged management to continue discussions and negotiations with Merrill Lynch. The meeting was then adjourned and scheduled to reconvene in the afternoon of January 28, 2007 when a more definitive version of the merger agreement would be available and negotiations between the parties would be further along.

The Merrill Lynch board of directors conducted a special board meeting on the afternoon of January 26, 2007 and were updated on the proposed transaction by Mr. O'Neal. Mr. O'Neal noted that Mr. McCann and the project team had provided the Merrill Lynch board of directors with an informational briefing on the

proposed transaction and discussed the rationale for the proposed transaction at the regular meeting of the Merrill Lynch board of directors on January 22, 2007. At the special board meeting, Mr. O'Neal, Mr. McCann, Mr. Gardner, Mr. Laughlin and Mr. Eric Heaton, a representative of Merrill Lynch's investment banking group who advised senior management in evaluating and negotiating a possible transaction with First Republic, reviewed the progress of the discussions with and the due diligence review of First Republic and outlined the basic terms of the proposed transaction. The board of directors and senior management discussed the key financial terms of the transaction and the strategic rationale for the transaction. A representative of Sullivan & Cromwell LLP reviewed the key terms of the proposed merger agreement. Mr. Steven A. Baronoff, Senior Vice President — Mergers and Acquisitions Group, or M&A Group, of Merrill Lynch, reviewed the findings of M&A Group's Fairness Opinion Committee in determining whether the proposed transaction was fair to Merrill Lynch. After further discussion, the board of directors authorized senior management to complete negotiation of the terms of the transaction and to enter into definitive transaction documentation and related agreements.

From January 26, 2007 through January 28, 2007, senior management of First Republic and Merrill Lynch along with their respective financial advisors and legal counsel continued to discuss and negotiate key financial and legal terms of the transaction.

On the afternoon of January 28, 2007, the First Republic board of directors held a special telephonic meeting. A representative of White & Case LLP gave a comprehensive overview of the terms of the merger agreement, including key terms relating to the structure, covenants, representations and warranties, conditions, termination rights and termination fee and also discussed regulatory and stockholder approvals required to complete the merger. In addition, a representative of White & Case LLP advised the First Republic board of directors regarding certain legal matters related to the proposed transaction, including the First Republic board of directors' fiduciary obligations in connection with their consideration of the proposed merger. Following the White & Case LLP discussion, representatives of Morgan Stanley reviewed the financial aspects of the proposed transaction and rendered its oral opinion (which was subsequently confirmed in writing on that same day) that, as of January 28, 2007 and based on and subject to the assumptions made, procedures followed, matters considered and limitations on the review undertaken described in the opinion, the merger consideration to be received by the holders of First Republic common stock pursuant to the merger agreement was fair, from a financial point of view, to such holders. Following the Morgan Stanley discussion, directors addressed questions to members of First Republic's management, representatives of White & Case LLP and Morgan Stanley and further discussed the proposed transaction. Following a period of discussion and response to director questions, upon motion duly made and seconded, the First Republic board of directors unanimously adopted the merger agreement and authorized the execution thereof, subject to resolution of the outstanding issues in the merger agreement.

Later that day, First Republic, Merrill Lynch and their respective legal counsels resolved the outstanding issues in the merger agreement. Early the next morning, First Republic, Merrill Lynch, and ML Bank executed the merger agreement and First Republic and Merrill Lynch issued a joint press release publicly announcing the transaction.

First Republic's Reasons for the Merger; Recommendation of First Republic's Board of Directors

In deciding to adopt the merger agreement and to recommend approval of the merger to First Republic's stockholders as discussed below, the First Republic board of directors considered a number of factors, including the factors listed below. In view of the number and wide variety of factors considered in connection with its evaluation of the merger, the First Republic board of directors did not attempt to quantify or otherwise assign weights to the information and specific factors it considered in reaching its determination, and individual directors may have given different weights to different information and different factors. The First Republic board of directors viewed its adoption and recommendation as being based on the totality of the information and factors presented to and considered by it. In reaching its decision, the First Republic board of directors consulted with First Republic's management team. The First Republic board of directors also consulted with Morgan Stanley with respect to the financial aspects of the transaction and with First Republic's legal advisors with respect to the merger agreement and related issues. First Republic's board of

directors did not attempt to form any conclusions as to whether any particular line item analysis of Morgan Stanley did or did not by itself support the board of directors' recommendation.

Strategic Alternatives

The First Republic board of directors believes that the value to be received by First Republic stockholders in the merger is greater than that available to First Republic remaining as an independent entity currently and for the foreseeable future. At the end of 2004, 2005 and 2006 and prior to discussions with Merrill Lynch, First Republic considered its long-term prospects, including its long-term financial plan, as a stand-alone company as well as various strategic opportunities. These included niche acquisitions to gain capabilities (such as additional capabilities in the banking industry), strategic acquisitions of other financial institutions, stock repurchases and the sale of First Republic to strategic or financial partners. First Republic's board of directors considered the impact to First Republic and its stockholders of remaining as a stand-alone entity and determined that a sale of First Republic to Merrill Lynch at a significant premium of more than 40% to the then current market price of First Republic's common stock would be a better alternative.

Financial Terms of the Merger

The First Republic board of directors believes that the per share merger consideration is fair to the stockholders based upon First Republic's current financial condition and future prospects, as well as Merrill Lynch's current financial condition and future prospects and the board of directors' perception of the future prospects of the combined company. In arriving at this conclusion, the First Republic board of directors, together with First Republic's senior management and legal and financial advisors, evaluated the strategic alternatives available to First Republic. The First Republic board of directors also took into account the expectation that the merger should result in economies of scale and efficiencies for the combined company as discussed below. In addition, the First Republic board of directors recognized that the merger consideration represents a significant premium over the historical average trading price of First Republic common stock during recent periods. In this regard, the First Republic board of directors considered the information presented by, and the opinion of, Morgan Stanley, First Republic's financial advisor. Please see the section entitled "The Merger — Opinion of First Republic's Financial Advisor" beginning on page 38.

The First Republic board of directors also considered the form of the merger consideration to be received in the merger by the holders of First Republic common stock (the right to elect to receive the per share merger consideration either in cash or Merrill Lynch common stock, subject to proration and adjustment) and the fact that under the fixed price transaction the values of the merger consideration would not rise with increases, or fall with decreases, in the market price of First Republic common stock or Merrill Lynch common stock. The First Republic board of directors considered the certainty of the value of the cash component of the merger consideration, as well as the ability of holders of First Republic common stock to become holders of Merrill Lynch common stock and participate in the future prospects of the combined businesses of First Republic and Merrill Lynch.

Preservation of the First Republic Identity and Culture

The First Republic board of directors considered the post merger organizational structure of First Republic. Under the merger agreement, First Republic would continue to operate its business separately as the First Republic Bank Division, a new division of ML Bank, with virtually no disruption to the current First Republic clients, no branch closings and no deposit divestitures. The existing management team and key client managers of First Republic would continue as part of the First Republic division of ML Bank, with substantial autonomy to make strategic decisions and generally operate the business of First Republic and its subsidiaries consistent with past practices. Also, members of the First Republic board of directors immediately prior to the merger would have the opportunity to serve as members of a non-governance advisory board of the First Republic Bank Division for at least one year. The function of the advisory board will be to advise the management of the First Republic Bank Division with respect to employee matters and strategic business decisions and to assist with the continuity of First Republic client relationships.

The Banking Industry

The First Republic board of directors considered the current environment of the banking industry, including the regulatory uncertainty related to the banking industry generally, and the current national and local market conditions, including the trend toward consolidation in the financial services industry in order to obtain the advantage of scale in developing and delivering services in a cost-effective manner, and the likely impact of these factors on First Republic's potential growth, development, productivity, profitability and strategic options.

Merrill Lynch's Financial Condition, Prospects and Industry Reputation

The First Republic board of directors considered (i) the financial condition and prospects of Merrill Lynch, (ii) the results of First Republic's due diligence review of Merrill Lynch, (iii) Merrill Lynch's access to capital, (iv) Merrill Lynch's interest in increasing the quality and number of financial products and services offered to clients and (v) the financial resources that Merrill Lynch could offer First Republic, including an improved credit rating and increased liquidity, which financial resources could support an accelerated growth of First Republic's business. The First Republic board of directors also took into consideration Merrill Lynch's worldwide reputation in the financial services industry and the breadth of Merrill Lynch's operations and resources.

Expected Synergies

The First Republic board of directors considered the complementary strengths of the businesses of First Republic and Merrill Lynch. First Republic management believes the merger will enable the combined businesses to (i) obtain greater market penetration, (ii) deliver a broad range of asset management products to existing First Republic clients, (iii) provide First Republic banking products to Merrill Lynch's client base, (iv) achieve stronger financial performance as a combined business and (v) enhance stockholder value.

Treatment of First Republic Employees

The First Republic board of directors considered the treatment of First Republic employees contemplated by the merger agreement, including the proposed conversion of options to acquire First Republic common stock into options to acquire Merrill Lynch common stock, the amendment to First Republic's deferred equity plan, the continuation of First Republic employee benefit plans through December 31, 2007 and the provision of employee benefit plans, programs and arrangements that are substantially similar to the covered employees of First Republic as of January 1, 2008 and Merrill Lynch's obligation to provide all covered employees of First Republic with service credit for purposes of eligibility, participation, vesting and levels of benefit.

Certain Terms of the Merger Agreement

The First Republic board of directors considered the terms of the merger agreement, including the nature and scope of the closing conditions and the potential for incurring a termination fee in the event the merger agreement is terminated under certain circumstances, and the fact that the termination fee and other provisions of the merger agreement might discourage third parties from seeking to acquire First Republic and otherwise increase the cost of such an acquisition, but not preclude the First Republic board of directors from evaluating a proposal for an alternative transaction involving First Republic. The First Republic board of directors took into account that the terms of the termination fee were the subject of negotiations between the parties and that the fee would generally be payable only in limited circumstances. The First Republic board of directors also took into account that, as a percentage of the merger consideration, the termination fee was within the range of termination fees provided for in recent comparable acquisition transactions at the time the merger agreement was executed.

Tax-Free Transaction to the Extent Merger Consideration Received is Merrill Lynch Common Stock

With respect to the merger consideration to be received in the form of Merrill Lynch common stock, the First Republic board of directors considered the fact that the merger is intended to qualify as a transaction of a type that is generally tax-free to the holders of First Republic common stock for U.S. federal income tax purposes.

Opinion of First Republic's Financial Advisor

The First Republic board of directors considered the opinion of Morgan Stanley, dated January 28, 2007, to the effect that, as of the date of the opinion and based on and subject to the assumptions made, procedures followed, matters considered and limitations on the review undertaken described in the written opinion, the merger consideration to be received by the holders of First Republic common stock under the merger agreement was fair, from a financial point of view, to such holders. Morgan Stanley's opinion is further described in the section entitled "The Merger — Opinion of First Republic's Financial Advisor" beginning on page 41.

Closing and Integration Risks

The First Republic board of directors considered the risks and costs that the merger might not be completed, the potential impact of the restrictions under the merger agreement on First Republic's ability to take certain actions during the period prior to the closing of the merger, the potential for diversion of management and employee attention and for increased employee attrition during that period and the potential effect of these factors on First Republic's business and its relationships with clients. The First Republic board of directors also took into account the likelihood that the merger would be approved by the appropriate banking and regulatory authorities and the stockholders of First Republic in a timely manner and without unacceptable conditions.

The First Republic board of directors weighed the foregoing advantages and opportunities against the challenges inherent in the combination of two significant business enterprises operating in a highly-regulated industry. The First Republic board of directors realizes that there can be no assurance about future results, including results expected or considered in the factors listed above, such as assumptions regarding long-term value, competitive and financial strength, potential revenue enhancements, synergies and anticipated cost savings. However, the First Republic board of directors concluded that the potential positive factors outweighed the potential risks of completing the merger. This explanation of the First Republic board of directors' reasons for the merger and all other information presented in this section is forward-looking in nature and, therefore, should be read in light of the factors discussed in the section entitled "Cautionary Statement Regarding Forward-Looking Statements" beginning on page 18. The First Republic board of directors also considered the fact that some members of the First Republic board of directors and of First Republic's management may have interests in the merger that are different from those of First Republic stockholders generally. Please see the section entitled "The Merger — Interests of Certain Persons in the Merger" beginning on page 48.

At a meeting held on January 28, 2007, after due consideration and consultation with its financial and legal advisors, the First Republic board of directors unanimously determined that the merger agreement and the transactions contemplated thereby are advisable, fair to and in the best interests of First Republic and its stockholders. The First Republic directors present at the meeting unanimously adopted the merger agreement and unanimously recommended that First Republic common stockholders vote to approve the merger agreement. Accordingly, the First Republic board of directors unanimously recommends that the First Republic common stockholders vote "FOR" the approval of the plan of merger contained in the merger agreement at the First Republic stockholder meeting.

Merrill Lynch's Reasons for the Merger

Merrill Lynch determined to pursue the merger because it believes the merger can enhance the growth of its private client organization by leveraging First Republic's business model and strategy. Merrill Lynch

believes that First Republic will enable ML Bank to accelerate its strategic objective of growing its high net worth client business. Merrill Lynch further intends to provide First Republic with the resources and support necessary for its success in key markets across the country and to benefit from its deep banking expertise. While First Republic will operate as a separate division with its own brand identity and strategic goals, Merrill Lynch expects its entire private client organization to benefit from First Republic's outstanding history, excellent credit and lending capabilities and experienced management team. Merrill Lynch also concluded that First Republic's strong culture of client focus and service sets the standard for excellence in the private banking industry and is consistent with Merrill Lynch's mission and principles.

Opinion of First Republic's Financial Advisor

Pursuant to the terms of an engagement letter dated February 13, 2006, Morgan Stanley was formally engaged to provide financial advisory services to First Republic. First Republic selected Morgan Stanley to act as its financial advisor in connection with strategic alternatives based on Morgan Stanley's qualifications, expertise and reputation, as well as its knowledge of the business and affairs of First Republic, as well as to render its opinion with respect to the fairness, from a financial point of view, to holders of First Republic's common stock of the consideration to be offered to such stockholders in the merger.

On January 28, 2007, Morgan Stanley delivered its oral opinion and subsequently confirmed in writing on the same date to the First Republic board of directors, that based on and subject to the factors, limitations and assumptions set forth in the opinion, the merger consideration to be received by the holders of First Republic common stock pursuant to the merger agreement was fair, from a financial point of view, to such holders.

The full text of Morgan Stanley's written opinion, dated January 28, 2007, which sets forth, among other things, the assumptions made, procedures followed, matters considered and limitations on the review undertaken by Morgan Stanley in rendering its opinion, is attached as Annex B to this proxy statement/prospectus. Holders of First Republic's common stock are urged to, and should, read that opinion carefully and in its entirety in connection with their consideration of the merger. Morgan Stanley's opinion, directed to the First Republic board of directors, addresses only the fairness from a financial point of view of the merger consideration to be received pursuant to the merger agreement by the holders of First Republic common stock, and does not address any other aspect of the merger or constitute a recommendation to any First Republic stockholder as to how to vote or take any other action with respect to the merger. This summary is qualified in its entirety by reference to the full text of the opinion.

In arriving at its opinion, Morgan Stanley, among other things:

- reviewed certain publicly available financial statements and other business and financial information of First Republic and Merrill Lynch, respectively;
- reviewed certain internal financial statements and other financial and operating data concerning First Republic prepared by the management of First Republic, including among other things, financial forecasts and profit plans for First Republic;
- discussed the past and current operations and financial condition and the prospects of each of First Republic and Merrill Lynch with senior executives of First Republic and Merrill Lynch, respectively;
- reviewed the reported prices and trading activity of the common stock of First Republic and the common stock of Merrill Stock, respectively;
- compared the financial performance of First Republic and Merrill Lynch and the prices and trading activity of the common stock of First Republic and the common stock of Merrill Lynch with that of certain other publicly-traded companies comparable with First Republic and Merrill Lynch, respectively, and their respective securities;
- reviewed the financial terms, to the extent publicly available, of certain comparable precedent transactions;

- participated in discussions among representatives of First Republic and Merrill Lynch and their financial and legal advisors;
- reviewed the merger agreement and certain related documents; and
- performed such other analyses and considered such other factors as Morgan Stanley deemed appropriate.

Morgan Stanley assumed and relied upon, without independent verification, the accuracy and completeness of the information made available to Morgan Stanley by First Republic and Merrill Lynch for the purposes of its opinion. With respect to the financial forecasts, profit plans and information regarding First Republic, Morgan Stanley assumed that they were reasonably prepared on bases reflecting the best available estimates and judgments of the future financial performance of First Republic. Morgan Stanley assumed that the merger will be consummated in accordance with the terms of the merger agreement without any waiver, amendment or delay of any terms or conditions, including, among other things, that the merger will be treated as a tax-free reorganization, pursuant to the Internal Revenue Code. Morgan Stanley did not make any independent valuation or appraisal of the assets or liabilities (including any hedge or derivative position) of First Republic and Merrill Lynch, nor was Morgan Stanley furnished with any such appraisals, and Morgan Stanley did not make any independent examination of the loan loss reserves or examine any individual loan credit files of First Republic or Merrill Lynch. In addition, Morgan Stanley assumed that in connection with the receipt of all necessary government, regulatory or other consents and approvals for the merger, no restrictions would be imposed that would have any adverse effect on First Republic or Merrill Lynch or on the benefits expected to be derived from the merger. Morgan Stanley relied upon, without independent verification, the assessment by the managements of Merrill Lynch and First Republic, respectively, of: (i) the strategic, financial and other benefits expected to result from the merger; (ii) the timing and risks associated with the integration of First Republic and Merrill Lynch; (iii) their ability to retain key employees of First Republic and (iv) the validity of, and risks associated with, First Republic and Merrill Lynch's existing and future technologies, intellectual property, products, services and business models. Morgan Stanley is not a legal, tax or regulatory advisor and relied upon, without independent verification, the assessment of First Republic and Merrill Lynch and their legal, tax and regulatory advisors with respect to such matters. Morgan Stanley's opinion was necessarily based on financial, economic, market and other conditions as in effect on, and the information made available to it as of, the date of its opinion. Events occurring after the date of Morgan Stanley's opinion may affect such opinion and the assumptions used in preparing it, and Morgan Stanley does not assume any obligation to update, revise or reaffirm its opinion. In arriving at its opinion, Morgan Stanley was not authorized to solicit, and did not solicit, interest from any party with respect to the acquisition, business combination or other extraordinary transaction, involving First Republic.

The following is a brief summary of the material financial and comparative analyses performed by Morgan Stanley in connection with preparing its oral opinion and its written opinion letter, dated January 28, 2007. Some of these summaries of financial analyses include information presented in tabular format. In order to understand fully the financial analysis used by Morgan Stanley, the tables must be read together with the text of each summary. The tables alone do not constitute a complete description of the financial analyses.

Description of Valuation Analysis of First Republic

Comparable Company Analysis. As part of its analysis, Morgan Stanley compared certain financial information of First Republic with companies that share certain characteristics with First Republic. As part of the comparable company analysis, Morgan Stanley examined market multiples for each company including:

- the market price per share to median estimated 2007 earnings per share;
- the market price per share to median estimated 2008 earnings per share;
- the market price per share to book value per share; and
- the market price per share to tangible book value per share.

The estimated 2007 and 2008 earnings per share information was obtained from the Institutional Brokers Estimate System, or I/B/E/S, and the remaining information was obtained from (or in certain cases estimated based on) publicly available information, including information obtained from the online database of SNL Financial, a recognized data service that collects, standardizes and disseminates relevant corporate, financial, market and mergers and acquisition data for companies in the industries it covers, for the period ended September 30, 2006 or the most recent quarter available. Financial information for First Republic was based on information for the period ended December 31, 2006 obtained from the management of First Republic. The share price data used for this analysis was the closing price on January 24, 2007 for the companies included in this analysis.

Morgan Stanley selected the comparable companies below because their businesses and operating profiles are reasonably similar to that of First Republic. In choosing comparable companies to include in its analysis, Morgan Stanley selected two peer groups: California commercial banks, or the CA Bank Peer Group, and trust banks, or the Trust & Private Bank Peer Group.

The CA Bank Peer Group included:

- City National Corporation;
- Westamerica Bancorporation;
- Pacific Capital Bancorp;
- Greater Bay Bancorp;
- First Community Bancorp; and
- CVB Financial Corp.

The Trust & Private Bank Peer Group included:

- Northern Trust Corporation;
- City National Corporation;
- Wilmington Trust Corporation;
- Wintrust Financial Corporation;
- Boston Private Financial Holdings, Inc.; and
- PrivateBancorp, Inc.

The following table summarizes the results from the comparable company multiple analysis:

	First Republic	CA Bank Peer Group	Trust & Private Bank Peer Group
January 24, 2007 Closing Price to:			
2007 Earnings per Share Estimate	17.1x	14.9x	17.3x
2008 Earnings per Share Estimate	16.0x	13.6x	15.1x
Book Value per Share	1.8x	2.3x	2.4x
Tangible Book Value per Share	2.5x	3.1x	3.8x

The implied range of values for First Republic common stock, derived from the analysis of the market price to 2007 estimated earnings per share for the CA Bank Peer Group and the Trust & Private Bank Peer Group, ranged from approximately $34 to $41 per share. The implied range of values for First Republic common stock, derived from the analysis of the market price to book value per share for the CA Bank Peer Group and the Trust & Private Bank Peer Group, ranged from approximately $39 to $48 per share. Morgan Stanley noted that the closing price of First Republic common stock as of January 24, 2007, was $39.08 and the 52-week trading range for the period ending on January 24, 2007 was $35 to $46 per share.

Additionally, as part of the comparable company analysis, Morgan Stanley examined certain operating performance metrics for each company in the CA Bank Peer Group and the Trust & Private Peer Group, including:

- annualized net income as a percentage of average assets;
- annualized net income as a percentage of average common equity;
- net interest margin;
- operating expense as a percentage of total revenue, or Efficiency Ratio;
- non interest income as a percentage of total revenue; and
- tangible common equity as a percentage of total tangible assets.

Financial information for the comparable companies was based on that for the quarter ended September 30, 2006 or the most recent quarter available. Financial information for First Republic was based on information for the quarter ended September 30, 2006, except for the tangible common equity ratio which was based on information as of December 31, 2006 as obtained from the management of First Republic.

The following table summarizes the results from the comparable company operating metrics analysis:

	First Republic	CA Bank Peer Group	Trust & Private Bank Peer Group
Operating Metric:*			
Return on Assets	0.68%	1.52%	1.13%
Return on Equity	11.4%	14.5%	15.3%
Net Interest Margin	2.96%	4.27%	3.66%
Efficiency Ratio	70.4%	48.7%	59.1%
Fees/Revenue	24.1%	22.8%	39.0%
Tangible Common Equity/Tangible Assets	4.21%	6.49%	5.73%

* In certain cases, the ratios were calculated as defined by SNL Financial and excluding extraordinary income items, nonrecurring items and gain/loss on sale of investment securities.

Dividend Discount Analysis. Morgan Stanley performed a dividend discount analysis to determine a range of present values of First Republic common stock, assuming First Republic continued to operate as a stand-alone entity. The range was determined by adding:

- the present value of an estimated future dividend stream for First Republic over the five-year period from 2007 through 2011; and
- the present value of the "terminal value" of First Republic common stock at the end of 2011 (December 31, 2011).

Morgan Stanley made the following assumptions in performing its analysis:

- a constant tangible common equity/tangible assets ratio of 4.5% for a projected dividend stream;
- earnings projections were based on I/B/E/S estimates with an assumed earnings growth rate of 11% for 2008 through 2011, consistent with the I/B/E/S long-term growth estimate for First Republic;
- "terminal value" of First Republic common stock at the end of the period was determined by applying two price-to-earnings multiples (14x and 16x) to year 2012 projected earnings; and
- the dividend stream and terminal values were discounted to present values using a discount rate of 11%.

Based on the above assumptions, the fully diluted stand-alone value of First Republic common stock ranged from approximately $34 to $38 per share. Morgan Stanley also performed the above analysis based on First Republic's management estimates for earnings per share and asset growth and applied the same

assumptions as above. Based on management's estimates for earnings per share and asset growth, the fully diluted stand-alone value of First Republic common stock ranged from approximately $52 to $59 per share.

Transaction Pricing Multiples. Morgan Stanley noted that the merger consideration provided for in the merger agreement had an implied transaction value to First Republic stockholders of $55.00 per share of First Republic common stock. Morgan Stanley calculated the implied transaction value as a premium to First Republic's closing price per share of common stock on January 24, 2007.

Morgan Stanley also calculated the implied transaction value as a multiple of First Republic's book value and tangible book value at December 31, 2006 and as a multiple of First Republic's estimated earnings for 2007 (based on consensus I/B/E/S earnings estimates for First Republic as of January 24, 2006).

Precedent Transaction Analysis. Morgan Stanley compared the foregoing calculations to similar calculations for selected California bank acquisitions announced since January 1, 2000 that were valued between $250 million and $5 billion, or the Precedent Transactions.

Acquiror	Target
Wells Fargo & Company	Placer Sierra Bancshares
Rabobank Nederland	Mid-State Bancshares
Sterling Financial Corp.	Northern Empire Bancshares
First Community Bancorp	Community Bancorp Inc.
Umpqua Holdings Corp.	Western Sierra Bancorp
Rabobank Nederland	Central Coast Bancorp
Umpqua Holdings Corp.	Humboldt Bancorp
Hanmi Financial Corp.	Pacific Union Bank
Cathay Bancorp Inc.	GBC Bancorp
BNP Paribas Group	United California Bank
Comerica Inc.	Imperial Bancorp

Morgan Stanley also compared the foregoing calculations to similar calculations implied in Bank of America's acquisition of U.S. Trust from Charles Schwab.

For the selected merger transactions listed above, Morgan Stanley used publicly available financial information, including information obtained from the online database of SNL Financial. Morgan Stanley used this financial information to determine the following multiples for each of the selected Precedent Transactions:

- the transaction price per share to the current-year consensus earnings estimates per share at the time of announcement of the transaction;
- the transaction price per share to the book value per share using the acquired companies' most recent financial reports as of the time of announcement of the transaction;
- the transaction price per share to the tangible book value per share using the acquired companies' most recent financial reports as of the time of announcement of the transaction; and
- the premiums per share paid by the acquirer compared to the share price of the target company prevailing one month prior to the announcement of those transactions, or the Unaffected Closing Price.

	First Republic	Median Precedent Transactions	BAC/U.S. Trust Transaction
Implied Transaction Value as a Multiple of:			
Current Year I/B/E/S Estimate	24.0x	20.0x	24.4x*
Book Value per Share	2.8x	2.5x	2.5x
Tangible Book Value per Share	3.9x	3.2x	4.3x
Implied Transaction Value as a Premium to:			
Unaffected Closing Price	40.7%	22.8%	N/A

* Based on U.S. Trust's last quarter annualized net income assuming 35% tax rate.

This analysis suggested an implied value range of approximately $41 to $60 per share of First Republic common stock.

No company or transaction used in the comparable company and precedent transaction analyses above is identical to First Republic or the merger. Accordingly, an analysis of the results of the foregoing necessarily involves complex considerations and judgments concerning financial and operating characteristics of First Republic and other factors that could affect the public trading value of the companies to which they are being compared or the industry or the financial markets in general. Mathematical analysis (such as determining the average or median) is not in itself a meaningful method of using comparable transaction data or comparable company data.

Description of Valuation Analysis of Merrill Lynch

Comparable Company Analysis. As part of its analysis, Morgan Stanley compared certain financial information of Merrill Lynch with companies that share certain characteristics with Merrill Lynch. As part of the comparable company analysis, Morgan Stanley examined market multiples for each company including:

- the market price per share to median estimated 2007 earnings per share;
- the market price per share to median estimated 2008 earnings per share;
- the market price per share to book value per share; and
- the market price per share to tangible book value per share.

The estimated 2007 and 2008 earnings per share were obtained from I/B/E/S and the remaining information was obtained from (or in certain cases estimated based on) publicly available financial information for the period ended December 31, 2006 or the most recent quarter available. The stock price data used for this analysis was the closing price on January 24, 2007 for the companies included in this analysis.

Morgan Stanley selected the comparable companies below because their businesses and operating profiles are reasonably similar to that of Merrill Lynch.

- Citigroup Inc.;
- J.P. Morgan Chase & Co.;
- UBS AG;
- Goldman Sachs, Inc.;
- Morgan Stanley;
- Credit Suisse Group;
- Lehman Brothers Holdings Inc.; and
- Bear Stearns Companies, Inc.

The following table summarizes the results from the comparable company analysis:

	Merrill Lynch	Median of Peers
January 24, 2007 Closing Price to:		
2007 EPS Estimate	12.7x	11.8x
2008 EPS Estimate	11.5x	10.8x
Book Value per Share	2.4x	2.4x
Tangible Book Value per Share	2.6x	3.1x

No company used in the comparable company analysis is identical to Merrill Lynch. Accordingly, an analysis of the results of the foregoing necessarily involves complex considerations and judgments concerning financial and operating characteristics of Merrill Lynch and other factors that could affect the public trading value of the companies to which they are being compared or the industry or the financial markets in general. Mathematical analysis (such as determining the average or median) is not in itself a meaningful method of using comparable transaction data or comparable company data.

Historical Relative Valuation Analysis. Morgan Stanley compared certain historical trading multiples of Merrill Lynch in relation to its peer group as described above. Morgan Stanley compared Merrill Lynch's five year historical trading price as a multiple of its next twelve months earnings per share estimate as provided by I/B/E/S, or NTM P/E, to that of the peer group. Morgan Stanley also compared Merrill Lynch's five year historical trading price as a multiple of its book value per share, or Price/Book, to that of the peer group.

The following table summarizes the results from the relative valuation analysis:

	Merrill Lynch NTM P/E as a Percentage of the Median of the Peer Group's NTM P/E
Historical Period:	
Five-Year Average	107%
Three-Year Average	107%
One-Year Average	111%
January 24, 2007	111%

	Merrill Lynch Price/Book as a Percentage of the Median of the Peer Group's Price/Book
Historical Period:	
Five-Year Average	97%
Three-Year Average	95%
One-Year Average	98%
January 24, 2007	98%

Miscellaneous

In connection with the review of the merger by the First Republic board of directors, Morgan Stanley performed a variety of financial and comparative analyses for the purpose of rendering its opinion. The above summary of these analyses, while describing the material analyses performed by Morgan Stanley, does not purport to be a complete description of the analyses performed by Morgan Stanley in arriving at its opinion. The preparation of a fairness opinion is a complex process and is not necessarily susceptible to a partial analysis or summary description. In arriving at its opinion, Morgan Stanley considered the results of all of its analyses as a whole and did not attribute any particular weight to any particular analysis or factor considered by it. Furthermore, Morgan Stanley believes that selecting any portion of its analyses, without considering all of its analyses, would create an incomplete view of the process underlying its analyses and the opinion. In addition, Morgan Stanley may have given various analyses or factors more or less weight than other analyses and may have deemed various assumptions more or less probable than other assumptions, so that the ranges of valuations resulting from any particular analysis described above should not be taken to be Morgan Stanley's view of the actual value of First Republic or Merrill Lynch.

In performing its analyses, Morgan Stanley made numerous assumptions with respect to industry performance, general business and economic conditions and other matters, many of which are beyond the control of First Republic or Merrill Lynch. Any estimates contained in the analyses performed by Morgan Stanley are not necessarily indicative of future results or actual values, which may be significantly more or less favorable than those suggested by such estimates. Such analyses were prepared solely as a part of Morgan Stanley's analysis of the fairness from a financial point of view of the consideration to be offered to the holders of shares of First Republic common stock pursuant to the merger agreement and were provided to the First Republic board of directors in connection with the delivery of the Morgan Stanley opinion. The analyses do not purport to be

appraisals of value or to reflect the prices at which the stock of First Republic or Merrill Lynch might actually trade. In addition, as described above, the Morgan Stanley opinion was one of the many factors taken into consideration by the First Republic board of directors in making its determination to adopt the plan of merger contained in the merger agreement. The consideration pursuant to the merger agreement was determined through arm's-length negotiations between First Republic and Merrill Lynch and was approved by the First Republic board of directors. Morgan Stanley did not recommend any specific consideration to First Republic or advise that any given consideration constituted the only appropriate consideration for the merger. Consequently, the Morgan Stanley analyses as described above should not be viewed as determinative of the opinion of the First Republic board of directors with respect to the value of First Republic or of whether the First Republic board of directors would have been willing to agree to a different consideration.

Morgan Stanley is an internationally recognized investment banking and advisory firm. Morgan Stanley, as part of its investment banking business, is continuously engaged in the valuation of businesses and their securities in connection with mergers and acquisitions, negotiated underwritings, competitive biddings, secondary distributions of listed and unlisted securities, private placements and valuations for corporate, estate and other purposes. In the past, Morgan Stanley and its affiliates have provided financing services for First Republic and Merrill Lynch and have received fees for the rendering of these services. In the ordinary course of its business, Morgan Stanley and its affiliates may, from time to time, trade in the securities and indebtedness of First Republic or Merrill Lynch for its own accounts or the account of investment funds and other clients under the management of Morgan Stanley and for the account of its customers and, accordingly, may at any time hold a long or short position in such securities or indebtedness for any such account. In addition, Morgan Stanley and its affiliates may from time to time act as a counterparty to either First Republic or Merrill Lynch and have received compensation for such activities.

Pursuant to a letter agreement between First Republic and Morgan Stanley dated as of February 13, 2006, Morgan Stanley was formally retained to provide financial advisory services and a financial fairness opinion in connection with an acquisition, and First Republic agreed to pay Morgan Stanley customary fees for its services in connection with the merger, which fees are contingent upon the completion of the merger. First Republic also agreed to reimburse Morgan Stanley for expenses incurred by Morgan Stanley in performing its services. In addition, First Republic has also agreed to indemnify Morgan Stanley and its affiliates, their respective directors, officers, agents and employees and each person, if any, controlling Morgan Stanley or any of its affiliates against certain liabilities and expenses, including liabilities under the federal securities laws, related to or arising out of Morgan Stanley's engagement pursuant to the letter agreement dated February 13, 2006 and any related transactions.

Interests of Certain Persons in the Merger

The executive officers and directors of First Republic have interests in the merger that are in addition to, or different from, their interests as stockholders. The First Republic board of directors was aware of these interests and considered them, among other matters, in adopting the plan of merger contained in the merger agreement.

First Republic Bank Division Advisory Board

Following completion of the merger, ML Bank will cause those members of the First Republic board of directors who so choose to be appointed as members of a non-governance advisory board of directors for the First Republic Bank Division of ML Bank. The function of the advisory board will be to advise the management of the First Republic Bank Division with respect to employee and strategic business decisions and to assist with the continuity of First Republic client relationships. The advisory board will exist for at least one year following completion of the merger, and thereafter in the sole discretion of ML Bank. Each advisory board member who is not an employee of Merrill Lynch or ML Bank will receive an annual retainer of $50,000 for serving as a member of the advisory board, and each advisory board member will be reimbursed for reasonable travel and other expenses relating to any advisory board meetings attended by such member.

Management Positions

Upon completion of the merger, James H. Herbert, II, currently President and Chief Executive Officer of First Republic, will become Chairman and Chief Executive Officer of the First Republic Bank Division of ML Bank as well as Senior Vice President of Merrill Lynch. Katherine August-deWilde, currently Executive Vice President and Chief Operating Officer of First Republic, will become President and Chief Operating Officer of the First Republic Bank Division of ML Bank and Senior Vice President of Merrill Lynch.

In addition, Merrill Lynch expects to retain the current officers of First Republic to support the operations of the First Republic Bank Division of ML Bank after completion of the merger in the same capacities, and with the same compensation, to which such individuals were entitled immediately prior to the merger.

Executive Employment Arrangements

In connection with the merger agreement, Merrill Lynch entered into retention agreements with two executive officers of First Republic, James H. Herbert, II and Katherine August-deWilde. Under the retention agreements, each of Mr. Herbert and Ms. August-deWilde have guaranteed levels of compensation until January 31, 2010, unless their employment is terminated earlier under the terms of the retention agreements. The retention agreements become effective upon completion of the merger. The following chart summarizes the material terms of the retention agreements with Mr. Herbert and Ms. August-deWilde:

Term	Mr. Herbert	Ms. August-deWilde
Annual Salary	$690,000	$436,000
Guaranteed Bonus Payable in Cash or Restricted Shares Subject to Vesting		
2007	$4,310,000	$3,564,000
2008	$4,810,000	$4,064,000
2009	$5,310,000	$4,564,000
Sign-on Stock Award Subject to Vesting	$5,000,000 in Merrill Lynch Restricted Stock	$5,000,000 in Merrill Lynch Restricted Stock
Contract Acceleration Amount	All Unpaid Annual Salary and Guaranteed Bonus amounts through January 31, 2010	All Unpaid Annual Salary and Guaranteed Bonus amounts through January 31, 2010

Annual Salary and Guaranteed Bonuses. The retention agreements provide for the payment of the annual salary and guaranteed bonuses set forth above to Mr. Herbert and Ms. August-deWilde through January 31, 2010, unless their employment is earlier terminated under the terms of the retention agreements. Guaranteed bonuses payable for 2007, 2008 and 2009 will be granted under Merrill Lynch's Variable Incentive Compensation Program, or VICP, and will be payable either in cash or equity, a significant portion, up to 50%, of bonus payments may be in restricted stock subject to vesting. Any equity portion of a VICP award to Mr. Herbert and Ms. August-deWilde may consist of Merrill Lynch restricted shares, subject to the vesting, exercisability and other provisions applicable to other senior executives of Merrill Lynch and in accordance with the plan under which they are granted. Any equity grants in connection with a VICP award will be subject to the approval of the Merrill Lynch Management Development and Compensation Committee. Prior to vesting, restricted shares are generally subject to forfeiture upon termination of employment (other than termination for death, disability or retirement, termination without cause (as described below) or resignation for good reason (as described below)).

Sign-On Stock Award. The retention agreements provide that Merrill Lynch will recommend the grant of the sign-on stock award (in the form of restricted shares) set forth above to Mr. Herbert and Ms. August-deWilde on the date the merger is completed, which will be subject to the approval of the Merrill Lynch Management Development and Compensation Committee. If Merrill Lynch does not grant the sign-on stock award within three months of the completion of the merger, Merrill Lynch has agreed to make a cash payment equal to the value of the sign-on stock award. With respect to Mr. Herbert, all restricted shares granted in respect of his sign-on stock award will vest on January 31, 2010. With respect to Ms. August-deWilde, three-fifths of the restricted shares granted in respect of her sign-on stock award will vest on January 31, 2010, one-fifth will vest on January 31,

2011 and the remaining one-fifth will vest on January 31, 2012. Prior to vesting, restricted shares are generally subject to forfeiture upon termination of employment (other than termination for death, disability or retirement, termination without cause (as described below) or resignation for good reason (as described below)).

Termination. Under the retention agreements, if Mr. Herbert or Ms. August-deWilde is terminated without cause or resigns for good reason, he or she is entitled to the severance benefits described below. For purposes of the retention agreements, "cause" includes:

- the failure to substantially perform the fundamental duties and responsibilities associated with the executive's position;
- a breach of any applicable laws, rules or regulations;
- gross misconduct;
- failure to comply with the material terms of the retention agreement;
- any indictment for, conviction of, or plea of no contest to, any fraudulent act or criminal offense or any other offense which reflects conduct or character that is inconsistent with continued employment;
- any continued failure to maintain any necessary regulatory licenses;
- any criminal conduct that is a statutory disqualifying event under federal securities laws, rules and regulations; or
- being subject to the prohibitions of Section 19(a)(1) of the Federal Deposit Insurance Act or Section 21C(f) of the Securities Exchange Act of 1934.

For purposes of the retention agreements, "good reason" includes, among other things, the following events:

- Merrill Lynch requires that the executive be relocated more than twenty-five miles from his or her current place of business, other than in connection with a disaster relocation situation;
- Merrill Lynch reduces the executive's annual salary, fails to perform its material obligations under certain provisions of the retention agreements, or fails to timely pay any amounts due under the retention agreements; or
- Merrill Lynch sells all or substantially all of the business of the First Republic Bank Division or sells 100% of ML Bank.

Payments and Benefits Upon Certain Terminations of Employment. Mr. Herbert and Ms. August-deWilde are entitled to certain payments and benefits upon termination in certain circumstances. In the event that, prior to the payment of any guaranteed VICP award, Mr. Herbert or Ms. August-deWilde is terminated by Merrill Lynch other than for cause or either resigns for good reason, he or she is entitled to receive (1) the full amount of guaranteed VICP awards in cash on the dates specified in the retention agreements and (2) all unpaid salary payments through January 31, 2010. In the event that, (i) Mr. Herbert or Ms. August-deWilde is terminated by Merrill Lynch other than for cause or either resigns for good reason, or (ii) Mr. Herbert terminates his employment after January 31, 2010 or Ms. August-deWilde terminates her employment after January 31, 2012, and that termination of employment would otherwise cause the executive to forfeit unvested restricted shares granted as part of a VICP award then Merrill Lynch will take such actions as are necessary to ensure the continued vesting and non-forfeiture of any restricted shares or restricted units portion of any VICP bonus awarded to him or her. Any of the foregoing severance payments are subject to the executive's execution of an agreement and release in a form reasonably acceptable to Merrill Lynch and the executive's continued compliance with certain obligations surviving termination of the retention agreement, including obligations with respect to confidentiality, non-competition and non-solicitation. In the event either of the executives terminates employment under (ii) above, the executive will remain subject to obligations with respect to non-competition and non-solicitation and will be subject to non-disparagement and cooperation obligations until the date all restricted shares granted as part of a VICP award have fully vested and, if the executive violates the non-competition or non-solicitation obligations, the executive will forfeit any then unvested restricted shares.

Benefits. Under the retention agreements, Mr. Herbert and Ms. August-deWilde are entitled to receive all standard health and welfare benefits and other benefits and perquisites available to similarly situated Merrill Lynch senior executives, as well other incidental benefits such as paid vacation, use of company cars and up to 465 hours per year of aircraft travel for business purposes. Merrill Lynch has also agreed to honor existing supplemental executive retirement and endorsement method split-dollar agreements to which Mr. Herbert and Ms. August-deWilde are a party as of the completion of the merger.

Gross Up Payments. The retention agreements also provide for a "gross up" payment to Mr. Herbert and Ms. August-deWilde if any payment or distribution by Merrill Lynch or its affiliates in connection with the merger would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code. Specifically, in the event an excise tax is incurred, Merrill Lynch will pay the executive an additional payment in an amount such that, after payment by the executive of all taxes (including income and excise taxes imposed on such additional payment), the additional payment to the executive will be equal to the excise tax imposed on payments to the executive in connection with the merger. However, if payments to the executive in connection with the merger would result in imposition of an excise tax, but reducing such payment by up to 5% would result in no excise tax being imposed, Merrill Lynch may reduce such payment.

Stock Options

Employees, including officers, of First Republic have received, from time to time, grants of stock options and deferred equity units under applicable equity compensation plans of their employer.

The merger agreement provides that all options on First Republic stock will be converted into options on Merrill Lynch common stock or, with respect to options held by individuals who are not employees of First Republic when the merger closes, converted into the right to receive cash consideration. Individuals who will receive cash, rather than options on Merrill Lynch common stock, in exchange for their options on First Republic common stock include certain non-employee directors of First Republic. We expect that these directors will receive cash payments upon completion of the merger in respect of their options on First Republic common stock as follows:

Name	First Republic Options Held	Average Weighted Exercise Price	Expected Cash Payment
Roger O. Walther	44,379	$ 10.73	$ 1,964,650
Frank J. Fahrenkopf, Jr.	33,063	$ 10.63	$ 1,467,000
James P. Conn	40,280	$ 10.70	$ 1,784,400
L. Martin Gibbs	19,125	$ 10.33	$ 854,300
Thomas J. Barrack, Jr.	12,750	$ 13.52	$ 528,800

For additional information on the treatment of First Republic's equity compensation awards, please see the section entitled "The Merger Agreement — Treatment of Stock Options and Other Equity Awards" beginning on page 61.

Retention Bonus Plan

Merrill Lynch will make available to the First Republic Bank Division of ML Bank shares of Merrill Lynch common stock, which shares of Merrill Lynch common stock will be available for grant, in the form of restricted stock, to officers and employees of First Republic (other than First Republic Bank Division's Chief Executive Officer and Chief Operating Officer). The management of the First Republic Bank Division will have the right to determine, in consultation with Merrill Lynch's management, the terms and conditions of such restricted stock awards, including the recipients, the number of shares granted to each recipient and the vesting conditions associated with each grant.

Indemnification and Insurance

Following completion of the merger, Merrill Lynch will indemnify and hold harmless the directors and officers of First Republic for all actions taken or omissions by them prior to completion of the merger to the

same extent that First Republic currently provides for indemnification of its directors and officers. In addition, for a period of six years following completion of the merger, Merrill Lynch will maintain directors and officers liability insurance for the directors and officers of First Republic with respect to claims arising from facts or events occurring before the completion of the merger; provided that Merrill Lynch is not obligated to make annual premium payments for such insurance to the extent such premiums exceed 250% of First Republic's current premium for such insurance.

Material U.S. Federal Income Tax Consequences

This section describes the anticipated material U.S. federal income tax consequences of the merger to U.S. holders of First Republic stock who exchange shares of First Republic stock for shares of Merrill Lynch stock, cash, or a combination of shares of Merrill Lynch stock and cash pursuant to the merger.

For purposes of this discussion, a U.S. holder is a beneficial owner of First Republic stock who for U.S. federal income tax purposes is:

- a citizen or resident of the United States;
- a corporation, or an entity treated as a corporation, created or organized in or under the laws of the United States or any state or political subdivision thereof;
- a trust that (i) is subject to (a) the primary supervision of a court within the United States and (b) the authority of one or more United States persons to control all substantial decisions of the trust or (ii) has a valid election in effect under applicable Treasury Regulations to be treated as a United States person; or
- an estate that is subject to U.S. federal income tax on its income regardless of its source.

If a partnership (including for this purpose any entity treated as a partnership for U.S. federal income tax purposes) holds First Republic stock, the tax treatment of a partner generally will depend on the status of the partners and the activities of the partnership. If you are a partner of a partnership holding First Republic stock, you should consult your tax advisors.

This discussion addresses only those First Republic stockholders that hold their First Republic stock as a capital asset within the meaning of Section 1221 of the Internal Revenue Code, and does not address all the U.S. federal income tax consequences that may be relevant to particular First Republic stockholders in light of their individual circumstances or to First Republic stockholders that are subject to special rules, such as:

- financial institutions;
- investors in pass-through entities;
- insurance companies;
- tax-exempt organizations;
- dealers in securities or currencies;
- traders in securities that elect to use a mark to market method of accounting;
- persons that hold First Republic stock as part of a straddle, hedge, constructive sale or conversion transaction;
- certain expatriates or persons that have a functional currency other than the U.S. dollar;
- persons who are not U.S. holders; and
- stockholders who acquired their shares of First Republic stock through the exercise of an employee stock option or otherwise as compensation or through a tax-qualified retirement plan.

In addition, this discussion also does not address the tax consequences of the merger to holders of First Republic common stock who also actually or constructively own First Republic preferred stock or First Republic Depositary Shares or holders of First Republic Depositary Shares who actually or constructively own First Republic common stock.

The following discussion is based on the Internal Revenue Code, its legislative history, existing and proposed regulations thereunder and published rulings and decisions, all as currently in effect as of the date hereof, and all of which are subject to change, possibly with retroactive effect. Any such change could affect the continuing validity of this discussion. Tax considerations under state, local and foreign laws, or federal laws other than those pertaining to the income tax, are not addressed in this document. Determining the actual tax consequences of the merger to you may be complex. They will depend on your specific situation and on factors that are not within our control. You should consult with your own tax advisors as to the tax consequences of the merger in your particular circumstances, including the applicability and effect of the alternative minimum tax and any state, local or foreign and other tax laws and of changes in those laws.

Tax Consequences of the Merger Generally

Completion of the merger is conditioned on, among other things, the receipt by each of First Republic and Merrill Lynch of tax opinions from White & Case LLP and Sullivan & Cromwell LLP, respectively, that for U.S. federal income tax purposes the merger will be treated as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code. These opinions will be based on certain assumptions and on representation letters provided by First Republic, Merrill Lynch and ML Bank to be delivered at the time of closing. Neither of these tax opinions will be binding on the Internal Revenue Service. Neither Merrill Lynch nor First Republic intends to request any ruling from the Internal Revenue Service as to the U.S. federal income tax consequences of the merger.

Holders of First Republic Common Stock

If the merger is treated for U.S. federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code, the material U.S. tax consequences of the merger to U.S. holders of First Republic common stock will be as follows:

- gain or loss will be recognized by those holders receiving solely cash for First Republic common stock pursuant to the merger equal to the difference between the amount of cash received by a holder of First Republic common stock and such holder's tax basis in such holder's shares of First Republic common stock;
- no gain or loss will be recognized by those holders receiving solely shares of Merrill Lynch common stock in exchange for shares of First Republic common stock pursuant to the merger (except with respect to any cash received instead of fractional share interests in Merrill Lynch common stock, as discussed in the section entitled " — Cash Received Instead of a Fractional Share of Merrill Lynch Common Stock") beginning on page 56;
- gain (but not loss) will be recognized by those holders who receive shares of Merrill Lynch common stock and cash in exchange for shares of First Republic common stock pursuant to the merger, in an amount equal to the lesser of (1) the amount by which the sum of the fair market value of the Merrill Lynch common stock and cash received by a holder of First Republic common stock exceeds such holder's basis in its First Republic common stock, and (2) the amount of cash received by such holder of First Republic common stock (except with respect to any cash received instead of fractional share interests in Merrill Lynch common stock, as discussed in the section entitled " — Cash Received Instead of a Fractional Share of Merrill Lynch Common Stock" beginning on page 56);
- the aggregate basis of the Merrill Lynch common stock received in the merger will be the same as the aggregate basis of the First Republic common stock for which it is exchanged, decreased by the amount of cash received in the merger (except with respect to any cash received instead of fractional share interests in Merrill Lynch common stock), decreased by any basis attributable to fractional share interests in Merrill Lynch common stock for which cash is received, and increased by the amount of

gain recognized on the exchange (regardless of whether such gain is classified as capital gain, or as ordinary dividend income, as discussed in the section entitled " — Recharacterization of Gain as a Dividend" beginning on page 55, but excluding any gain or loss recognized with respect to fractional share interests in Merrill Lynch common stock for which cash is received); and

- the holding period of Merrill Lynch common stock received in exchange for shares of First Republic common stock will include the holding period of the First Republic common stock for which it is exchanged.

If holders of First Republic common stock acquired different blocks of First Republic common stock at different times or at different prices, any gain or loss will be determined separately with respect to each block of First Republic common stock and such holders' basis and holding period in their shares of Merrill Lynch common stock may be determined with reference to each block of First Republic common stock. Any such holder should consult their own tax advisors regarding the manner in which cash and Merrill Lynch common stock received in the exchange should be allocated among different blocks of First Republic common stock and with respect to identifying the bases or holding periods of the particular shares of Merrill Lynch common stock received in the merger.

Holders of First Republic Preferred Stock

The material U.S. tax consequences of the merger to U.S. holders of First Republic preferred stock (including holders of First Republic Depositary Shares) depend on whether such holders exercise appraisal rights or receive Merrill Lynch preferred stock in the merger.

A holder of First Republic preferred stock that exercises appraisal rights and receives solely cash in exchange for First Republic preferred stock will recognize gain or loss equal to the difference between the amount of cash received by such holder and such holder's tax basis in such holder's shares of First Republic preferred stock.

For holders of First Republic preferred stock who do not exercise appraisal rights, the determination of whether the exchange of First Republic preferred stock for Merrill Lynch preferred stock pursuant to the merger is taxable or nontaxable will depend, amongst other facts, on whether the exchange is for "nonqualified preferred stock" for U.S. federal income tax purposes. Nonqualified preferred stock generally includes preferred stock if the issuer or a related person has the right to redeem or purchase the stock and, as of the issue date, it is more likely than not that the preferred stock would be redeemed within 20 years. Merrill Lynch has made no determination whether, at the time that Merrill Lynch preferred stock is issued pursuant to the merger, it will be more likely than not that the preferred stock will be redeemed within 20 years. It is therefore uncertain whether Merrill Lynch preferred stock would be treated as nonqualified preferred stock.

If the exchange of First Republic preferred stock for Merrill Lynch preferred stock is an exchange of stock that is not nonqualified preferred stock for nonqualified preferred stock, a holder of First Republic preferred stock will recognize gain or loss in the year that the merger closes in an amount equal to the difference between the fair market value of the Merrill Lynch preferred stock received in the exchange and such holder's tax basis in such holder's shares of First Republic preferred stock surrendered in the exchange.

If the exchange of First Republic preferred stock for Merrill Lynch preferred stock is not an exchange for nonqualified preferred stock and the merger is treated as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code for U.S. federal income tax purposes, no gain or loss will be recognized by holders of First Republic preferred stock that receive shares of Merrill Lynch preferred stock in exchange for shares of First Republic preferred stock. The aggregate tax basis in the shares of Merrill Lynch preferred stock received in the merger will equal the aggregate tax basis of a holder of First Republic preferred stock in the First Republic preferred stock surrendered in the merger and such holder's holding period for the shares of Merrill Lynch preferred stock received in the merger will include their holding period for the shares of First Republic preferred stock surrendered in the merger. If a holder of First Republic preferred stock acquired different blocks of First Republic preferred stock at different times or at different prices, such holder's basis and holding period in their shares of Merrill Lynch preferred stock may be determined with reference to each

block of First Republic preferred stock and the holder should consult their own tax advisor with regard to identifying the bases or holding periods of the particular shares of Merrill Lynch preferred stock received in the merger.

Holders of First Republic preferred stock are urged to consult their tax advisors about the tax consequences of the exchange of First Republic preferred stock for Merrill Lynch preferred stock.

Taxation of Capital Gain

Except as described in the section entitled " — Recharacterization of Gain as a Dividend" beginning on page 55, gain that holders of First Republic stock recognize in connection with the merger generally will constitute capital gain and will constitute long-term capital gain if such holders have held (or are treated as having held) their First Republic stock for more than one year as of the date of the merger. For non-corporate holders of First Republic stock, long-term capital gain generally will be taxed at a maximum U.S. federal income tax rate of 15%.

Recharacterization of Gain as a Dividend

All or part of the gain that a particular holder of First Republic stock recognizes (or all or part of the cash received by a holder of First Republic common stock, if such holder receives only cash pursuant to the merger) could be treated as dividend income rather than capital gain if (1) such holder is a significant stockholder of Merrill Lynch or (2) such holder's percentage ownership, taking into account constructive ownership rules, in Merrill Lynch after the merger is not meaningfully reduced from what its percentage ownership would have been if it had received solely shares of Merrill Lynch stock rather than cash or a combination of cash and shares of Merrill Lynch stock in the merger. This recharacterization of gain as dividend income could happen, for example, because of ownership of additional shares of Merrill Lynch stock by such holder of First Republic stock, ownership of shares of Merrill Lynch stock by a person related to such holder or a share repurchase by Merrill Lynch from other holders of Merrill Lynch stock. The Internal Revenue Service has indicated in rulings that any reduction in the interest of a minority stockholder that owns a small number of shares in a publicly and widely held corporation and that exercises no control over corporate affairs would result in capital gain as opposed to dividend treatment. Under the constructive ownership rules, a stockholder may be deemed to own stock that is owned by others, such as a family member, trust, corporation or other entity. For individuals, certain dividends may be subject to reduced rates of taxation, equal to the rates applicable to long-term capital gains. However, individuals who fail to meet a minimum holding period requirement during which they are unprotected from a risk of loss or who elect to treat the dividend income as "investment income" pursuant to Section 163(d)(4)(B) of the Internal Revenue Code will not be eligible for the reduced rates of taxation. Because the possibility of dividend treatment depends primarily upon each holder's particular circumstances, including the application of the constructive ownership rules, holders of First Republic stock should consult their own tax advisors regarding the application of the foregoing rules to their particular circumstances.

Cash Received Instead of a Fractional Share of Merrill Lynch Common Stock

A holder of First Republic common stock who receives cash instead of a fractional share of Merrill Lynch common stock will be treated as having received the fractional share pursuant to the merger and then as having exchanged the fractional share for cash in a redemption by Merrill Lynch. As a result, a holder of First Republic common stock will generally recognize gain or loss equal to the difference between the amount of cash received and the basis in his or her fractional share interest as set forth above. Except as described in the section entitled " — Recharacterization of Gain as a Dividend" beginning on page 55, this gain or loss will generally be capital gain or loss, and will be long-term capital gain or loss if, as of the effective date of the merger, the holding period for such shares is greater than one year. The deductibility of capital losses is subject to limitations.

Miscellaneous

If a holder of First Republic stock receives Merrill Lynch stock in the merger and owned immediately before the merger 5% or more, by vote or value, of the stock of First Republic, the holder will be required to file a statement with its U.S. federal income tax return for the year of the merger. The statement must set forth the holder of First Republic stock's basis in, and the fair market value of, the shares of First Republic stock it surrendered in the merger, the date of the merger, and the name and employer identification number of Merrill Lynch, First Republic, and ML Bank and such holder will be required to retain permanent records of these facts.

Backup Withholding and Information Reporting

Proceeds received by a holder of First Republic stock pursuant to the merger may, under certain circumstances, be subject to information reporting and backup withholding. Backup withholding will not apply if the holder provides proof of an applicable exemption or furnishes its taxpayer identification number, and otherwise complies with all applicable requirements of the backup withholding rules. Any amounts withheld from payments to a holder under the backup withholding rules are not additional tax and will be allowed as a refund or credit against the holder's U.S. federal income tax liability, provided the required information is timely furnished to the Internal Revenue Service. The backup withholding tax rate is currently 28%.

We urge you to consult with your own tax advisors about the particular tax consequences of the merger to you, including the effects of U.S. federal, state or local, or foreign and other tax laws.

Regulatory Matters

Completion of the merger is subject to prior receipt of all approvals and consents required to be obtained from applicable governmental and regulatory authorities that are necessary to complete the merger. These include approval of the OTS and the Nevada Department of Business & Industry, Division of Financial Institutions. Merrill Lynch and First Republic have agreed to cooperate and use all reasonable best efforts to obtain all permits, consents, approvals and authorizations from any governmental or regulatory authority necessary to consummate the transactions contemplated by the merger agreement as promptly as practicable.

There can be no assurance that regulatory approvals will be obtained, that such approvals will be received on a timely basis, or that such approvals will not impose conditions or requirements that, individually or in the aggregate, would or could reasonably be expected to have a material adverse effect on the financial condition, results of operations, assets or business of Merrill Lynch or ML Bank following completion of the merger. If any such condition or requirement is imposed, Merrill Lynch or First Republic may, in certain circumstances, elect not to consummate the merger. If approval is denied, either Merrill Lynch or First Republic may elect not to consummate the merger. Similarly, there can be no assurance that the United States Department of Justice will not attempt to challenge the merger on antitrust grounds or, if such a challenge is made, as to the results of that challenge.

OTS Approval. The merger is subject to the approval of the OTS under the Bank Merger Act, Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(c)). In considering a transaction such as the merger, the OTS considers:

- the effect on the capital of the resulting association;
- the financial and managerial resources of the constituent institutions;
- the future prospects of the constituent institutions;
- the convenience and needs of the community;
- the effectiveness of the depository institutions in combating money laundering activities;
- conformity to applicable law, regulation, and supervisory policy;

- factors relating to fairness of and disclosure concerning the transaction; and
- the effect on competition.

In addition, under the Community Reinvestment Act of 1977, as amended, the OTS must take into account the record of performance of the constituent institutions and their U.S. depository institution subsidiaries in meeting the credit needs of the communities served by such institutions, including low- and moderate-income neighborhoods.

The OTS is prohibited from approving a merger if:

- it would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the business of banking in any part of the United States;
- the transaction's effect in any section of the country would to be to substantially lessen competition or to tend to create a monopoly; or
- the transaction would in any other respect result in a restraint of trade, unless the OTS finds that the anti-competitive effects of the merger are clearly outweighed by the probable effect of the transaction in meeting the convenience and needs of the communities to be served.

The Bank Merger Act and OTS regulations provide for published notice of, and the opportunity for public comment on, the application submitted by ML Bank to the OTS for approval of the merger, and the OTS may hold a public hearing or meeting if it determines that a hearing or meeting would be appropriate. Any hearing or meeting or comments provided by third parties could prolong the period during which the application is under review by the OTS.

Under applicable law and regulations, the merger may not be completed until the 30th day, or with the consent of the OTS and the United States Department of Justice the 15th day, following the date of the OTS approval, during which period the Department of Justice may comment adversely on the merger or may challenge the merger on antitrust grounds. If the Department of Justice commences an antitrust action, that action would stay the effectiveness of OTS approval of the merger, unless a court specifically orders otherwise. In reviewing the merger, the Department of Justice could analyze the merger's effect on competition differently than the OTS, and thus it is possible that the Department of Justice could reach a different conclusion than the OTS regarding the merger's effects on competition.

Other Applications and Notices. The merger of First Republic with and into ML Bank is also subject to review and approval by the Nevada Department of Business & Industry, Division of Financial Institutions as to whether the merger complies with applicable provisions of Nevada law. Other applications and notices are being filed with various regulatory authorities and self-regulatory organizations in connection with the merger, including applications and notices in connection with the indirect change in control, as a result of the merger, of certain other subsidiaries directly or indirectly owned by First Republic, including its securities broker-dealer subsidiary.

Capital Stock Restrictions

Except with respect to the 5.70% Noncumulative Series C Exchangeable Preferred Stock issued by First Republic Preferred Capital Corporation, First Republic has agreed that from the date of the execution of the merger agreement, it will not, and will cause each of its subsidiaries not to, directly or indirectly adjust, split, combine, redeem, reclassify, purchase or otherwise acquire any shares of its stock.

Accounting Treatment

The merger will be accounted for by Merrill Lynch as a purchase transaction in accordance with generally accepted accounting principles in the United States. First Republic will be treated as the acquired entity for such purposes. First Republic's assets, liabilities and other items will be adjusted to their fair market value on the closing date of the merger and combined with the historic book values of the assets and liabilities of Merrill Lynch. The difference between the estimated fair value of the assets, liabilities and other items (adjusted as discussed above) and the purchase price will be recorded as goodwill. Financial statements of

Merrill Lynch issued after completion of the merger will reflect such values and will not be restated retroactively to reflect the historical financial position or results of operations of First Republic.

Exchange of Common Stock Certificates in the Merger

Until one year after completion of the merger, Merrill Lynch will make available on a timely basis or cause to be made available to an exchange agent cash in an amount sufficient to allow the exchange agent to make all payments to First Republic common stockholders that may be required and certificates or evidence of shares in book entry form, representing shares of Merrill Lynch common stock for the benefit of the holders of First Republic common stock in exchange. One year after completion of the merger, any such cash or Merrill Lynch certificates remaining in the possession of the exchange agent (together with any earnings in respect thereof) will be delivered to Merrill Lynch. Any holder of First Republic certificates who has not exchanged his, her or its First Republic certificates will then be entitled to look exclusively to Merrill Lynch, and only as a general creditor thereof, for the consideration to which he, she or it may be entitled upon exchange of his, her or its First Republic certificates.

Promptly after completion of the merger, Merrill Lynch will cause the exchange agent to mail or deliver to each holder of record of First Republic common stock that has not submitted with an election form certificates representing the shares of such holder a form of letter of transmittal for use in exchanging First Republic certificates for Merrill Lynch common stock or cash. Upon receipt of a First Republic certificate for cancellation together with such letter of transmittal or election form, the exchange agent will provide the holder of such First Republic certificate with evidence of shares in book entry form and/or a check. Merrill Lynch is entitled to deduct and withhold, or cause the exchange agent to deduct and withhold, from the consideration otherwise payable such amounts as it may be required to deduct and withhold with respect to the making of such payment under applicable tax laws.

If your First Republic certificate has been lost, stolen or destroyed you may receive Merrill Lynch common stock or cash upon the making of an affidavit of that fact. Merrill Lynch or the exchange agent may require you to post a bond in a reasonable amount as an indemnity against any claim that may be made against Merrill Lynch with respect to the lost, stolen or destroyed First Republic certificate.

No interest will accrue or be paid to First Republic stockholders with respect to any property to be delivered upon surrender of First Republic common stock certificates, even if there is a delay in making the payment.

Resales of Merrill Lynch Common Stock; Stock Transfer Restrictions

This proxy statement/prospectus does not cover any resales of the Merrill Lynch common stock to be received by the stockholders of First Republic upon completion of the merger, and no person is authorized to make use of this proxy statement/prospectus in connection with any such resale.

All shares of Merrill Lynch common stock received by First Republic stockholders in the merger will be freely transferable, except that shares of Merrill Lynch common stock received by persons who are deemed to be “affiliates” of First Republic under the Securities Act at the time of the Special Meeting may be resold by them only in transactions permitted by Rule 145 under the Securities Act or as otherwise permitted under the Securities Act. Persons who may be deemed to be “affiliates” of First Republic for such purposes generally include individuals or entities that control, are controlled by or are under common control with First Republic, as the case may be, and may include directors and executive officers of First Republic. The merger agreement requires First Republic to use its reasonable efforts, prior to the mailing of this proxy statement/prospectus, to cause their respective affiliates to execute and deliver a written agreement to the effect that they will not sell, assign, transfer or otherwise dispose of any of the shares of Merrill Lynch common stock issued to them in the merger in violation of the Securities Act or the related SEC rules.

Stock Exchange Listing

First Republic common stock is currently listed on the New York Stock Exchange under the symbol “FRC.” Merrill Lynch common stock is currently listed on the New York Stock Exchange under the symbol “MER.” Following completion of the merger, shares of common stock of First Republic will no longer be

listed or traded on the New York Stock Exchange, but Merrill Lynch common stock will remain listed on the New York Stock Exchange under the symbol "MER."

Each outstanding share of First Republic preferred stock is represented by First Republic Depositary Shares that are listed on the New York Stock Exchange and represent a one-fortieth interest in a share of First Republic preferred stock. Following the exchange of New Merrill Lynch Preferred Stock for First Republic preferred stock in the merger under the applicable Deposit Agreement, these depositary shares will continue to be listed on the New York Stock Exchange upon completion of the merger under a new name and will be traded under a new symbol.

Fractional Shares

Based on the formula used to calculate the number of shares of Merrill Lynch common stock to be exchanged for shares of First Republic common stock for those so electing, First Republic stockholders may be entitled to fractional shares of Merrill Lynch common stock in exchange for their shares of First Republic common stock. However, Merrill Lynch will not issue any fractional shares of common stock in the merger. Instead, a First Republic stockholder who would receive a fraction of a share of Merrill Lynch common stock will instead receive an amount in cash (without interest) equal to the fractional share of Merrill Lynch multiplied by the average of the last reported sale prices of Merrill Lynch common stock for the last five trading days prior to the date on which the merger is completed.

Appraisal or Dissenters' Rights

Appraisal or dissenters' rights are statutory rights that enable stockholders who object to extraordinary transactions, such as mergers, to demand that the corporation pay the fair value for their shares as determined by a court in a judicial proceeding instead of receiving the consideration offered to stockholders in connection with the extraordinary transaction. Appraisal rights are not available in all circumstances, and exceptions to such rights are set forth in the laws of Nevada, which is the state of incorporation of First Republic.

No Appraisal or Dissenters' Right for Holders of First Republic Common Stock

No holder of shares of First Republic common stock is entitled to appraisal or dissenters' rights or similar rights to a court valuation of the fair value of their shares in connection with the merger because such shares are listed on the New York Stock Exchange and such holder will be entitled to cash or shares of Merrill Lynch common stock that will be listed on the New York Stock Exchange.

Appraisal and Dissenters' Rights for Holders of First Republic Preferred Stock

Record holders and beneficial owners of shares of First Republic preferred stock (including holders of First Republic Depositary Shares to the extent of the interest in such preferred stock represented thereby) have the right to demand payment, in cash, of the statutorily determined fair value of each share of First Republic preferred stock, with interest, in lieu of the exchange of such share into a share of Merrill Lynch preferred stock having substantially identical terms. For that purpose, "fair value" means the value of the shares as of immediately prior to completion of the merger, excluding any appreciation or depreciation in value relating to the proposed merger unless exclusion would be inequitable. The relevant statutory provisions are attached as **Annex C** to this proxy statement/prospectus and the discussion in this proxy statement/prospectus of those provisions is qualified in its entirety by reference to **Annex C**.

Because the right to demand payment of the "fair value" of First Republic preferred stock depends on strict compliance with Nevada law, a holder wishing to exercise that right should review the text of the law included as **Annex C** carefully. In addition, any holder wishing to exercise such dissenters' rights should consider consulting their attorney with respect to compliance with these statutory procedures. A holder of such stock wishing to seek the fair value of their shares must deliver to First Republic, before the vote on the merger is taken at the Special Meeting, written notice of their intention to object to the merger and demand payment if the merger is completed.

The address to which such a notice should be mailed is:

First Republic Bank
111 Pine Street, 2nd Floor
San Francisco, California 94111
(415) 392-1400
Attention: Edward J. Dobranski
General Counsel

Merrill Lynch Stockholder Approval

Merrill Lynch stockholders are not required to approve the plan of merger or the use of shares of Merrill Lynch common stock as part of the merger consideration.

THE MERGER AGREEMENT

*The following discussion summarizes the material provisions of the merger agreement, which is attached as **Annex A** and is incorporated by reference into this document. The rights and obligations of Merrill Lynch and First Republic and their respective stockholders are governed by the express terms and conditions of the merger agreement and not by this summary or any other information contained in this document. We urge you to read the merger agreement carefully and in its entirety.*

Structure and Effective Time of the Merger

Structure of the Merger

The merger agreement provides that First Republic will merge with and into ML Bank, a wholly owned subsidiary of Merrill Lynch. ML Bank will be the surviving entity and the separate legal existence of First Republic will cease. First Republic will become a new division of ML Bank. The effectiveness of the merger will not affect the separate existence of any of Merrill Lynch's, ML Bank's or First Republic's subsidiary entities.

Following the merger, ML Bank will continue its existence as a federal stock savings bank. While the separate corporate existence of First Republic will terminate, the business of First Republic will be operated as a new, separate division of ML Bank, named the First Republic Bank Division.

In order for the merger to be treated as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code, ML Bank must be a direct, wholly owned subsidiary of Merrill Lynch at the time the merger is completed. At present, ML Bank is an indirect, wholly owned subsidiary of Merrill Lynch. In the merger agreement, Merrill Lynch has agreed to cause ML Bank to become a direct, wholly owned subsidiary of Merrill Lynch prior to completion of the merger.

Effective Time of the Merger

We expect the closing date for the merger will be no later than the fifth business day following the satisfaction or waiver of all conditions to completion contained in the merger agreement. We will seek to complete the merger in the third quarter of 2007. However, we cannot assure you when, or if, all of the conditions to completion of the merger will be satisfied or waived. Completion of the merger could be delayed if there is a delay in obtaining the required regulatory approvals or in satisfying any other conditions to the merger. There can be no assurances as to whether, or when, Merrill Lynch, ML Bank and First Republic will be able to obtain the required approvals or complete the merger.

ML Bank and First Republic will execute and deliver articles of combination to the OTS and the merger will become effective upon the date and time specified in the endorsement of the articles of combination by the OTS. Merrill Lynch and First Republic will agree upon a date and time for the merger to become effective and will submit a request to the OTS that such time be the effective time of the merger.

Treatment of Stock Options and Other Equity Awards

Stock Options

Upon completion of the merger, each outstanding option to purchase First Republic common stock held by then current employees will be cancelled and converted automatically into an option to purchase a number of shares of Merrill Lynch common stock equal to the product of (1) the number of shares of First Republic common stock subject to such First Republic stock option and (2) the conversion number, which option will have an exercise price equal to (x) the exercise price of such First Republic stock option divided by (y) the conversion number. Each outstanding option to purchase First Republic common stock held by then current non-employees will be cancelled and automatically converted into the right to receive from Merrill Lynch, subject to any required withholding of taxes, cash equal to the product of (a) the total number of shares of First Republic common stock subject to such stock option and (b) the difference, if any, between $55.00 and the exercise price of such stock option.

As soon as practicable after completion of the merger, Merrill Lynch will file one or more appropriate registration statements with respect to the Merrill Lynch common stock underlying the Merrill Lynch stock options into which First Republic stock options will be converted upon completion of the merger.

Deferred Equity Units

First Republic has agreed to use reasonable best efforts (including amending the First Republic deferred equity unit plan) to provide that, upon completion of the merger, each deferred equity unit awarded under the plan will, as a result of the merger, be deemed to be converted automatically into a deferred amount of $55.00. This amount may be invested in other notional investments in accordance with the terms of the plan. The terms and conditions of the deferred cash award will otherwise remain the same as the terms and conditions applicable to the converted deferred equity units. However, to the extent that the holder of a deferred equity unit has previously elected to receive payment in settlement of such holder's outstanding deferred equity units upon the occurrence of a change of control, such holder will be entitled, subject to any required withholding of taxes, to a payment by Merrill Lynch in cash equal to the product of the number of deferred equity units held and $55.00.

Conditions to Completion of the Merger

Our respective obligations to complete the merger are subject to the fulfillment or waiver of conditions set forth in the merger agreement, including:

- the approval of the plan of merger by the holders of a majority of the outstanding shares of the common stock of First Republic;
- receipt of all requisite regulatory approvals (which must remain in full force and effect through the completion of the merger) and expiration of all statutory waiting periods in respect thereof without imposition of a condition on such approval that could have a material adverse effect on the combined company;
- the absence of any statute, rule, regulation, judgment, decree, injunction or other order which prohibits or makes illegal the completion of the merger;
- effectiveness of the registration statement of which this proxy statement/prospectus is a part;
- the shares of Merrill Lynch common stock to be received by First Republic stockholders in the merger are listed on the New York Stock Exchange;
- receipt by each of Merrill Lynch and First Republic of an opinion to the effect that the merger will be treated as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code;
- subject to specified materiality standards, the representations and warranties made by the other party (or parties) in the merger agreement must be true and correct; and
- each party must have performed in all material respects all obligations required to be performed by it under the merger agreement at or before the completion of the merger.

No assurance can be provided whether, or when, all of the conditions to the merger will be satisfied or waived.

Conduct of Business Prior to Completion of the Merger

With limited exceptions, First Republic has agreed that, until completion of the merger, without the prior written consent of Merrill Lynch, it and its subsidiaries will not:

- conduct its business and the business of its subsidiaries other than in the ordinary and usual course or fail to use reasonable best efforts to preserve intact its business organizations and assets and maintain its rights, franchises and authorizations and their existing relations with customers, suppliers, employees

and business associates, or take any action reasonably likely to materially impair its ability to perform its obligations under the merger agreement or to consummate the merger contemplated thereby;

- enter into any new line of business or materially change any of its or its subsidiaries' lending, investment, underwriting, risk and asset liability management and other banking and operating policies, except as required by applicable law;
- issue, sell or otherwise permit to become outstanding, or dispose of or encumber or pledge, or authorize or propose the creation of, any additional shares of its stock, or permit any additional shares of its stock to become subject to new grants;
- make, declare, pay or set aside for payment any dividend or other distribution on, or redeem, purchase or otherwise acquire, any shares of its capital stock or any securities or obligations convertible into or exercisable or exchangeable for any shares of its capital stock other than the regular quarterly dividends, certain permitted repurchases and other limited exceptions;
- sell, transfer, mortgage, encumber or otherwise dispose of or discontinue any of its assets, deposits, business or properties, except for sales, transfers, mortgages, encumbrances or other dispositions or discontinuances in the ordinary course of business consistent with past practice (which will be deemed to include sales of whole loans and securitizations in the ordinary course of business consistent with past practice) and in a transaction that, together with other such transactions, is not material to it and its subsidiaries, taken as a whole;
- acquire all or any portion of the assets, business, deposits or properties of any other person in an amount that is material to First Republic other than by way of foreclosures, acquisitions of control in a fiduciary capacity and other limited exceptions;
- amend its constitutive documents or other similar governing instruments or those of any of its subsidiaries;
- implement or adopt any change in its financial or regulatory accounting principles, practices or methods or change any actuarial or other assumptions used to calculate funding obligations with respect to any benefit arrangement, other than as may be required by GAAP or applicable regulatory accounting requirements;
- knowingly take, or knowingly omit to take, any action that would, or is reasonably likely to, prevent or impede the merger from qualifying as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code or knowingly take, or knowingly omit to take, any action that is reasonably likely to result in any of the conditions to the merger not being satisfied in a timely manner, except (with prior notice to Merrill Lynch) as may be required by applicable law or regulation;
- incur or guarantee any indebtedness for borrowed money other than in the ordinary course of business consistent with past practice;
- grant any salary or wage increase or increase any employee benefit, including incentive or bonus payments with certain limited exceptions;
- enter into, establish, adopt, amend, modify or renew any benefit arrangement, or any trust agreement related thereto, in respect of any director, officer or employee, take any action to accelerate the vesting or exercisability of First Republic stock options or other compensation or benefits payable under any benefit arrangement, fund or in any other way secure or fund the payment of compensation or benefits under any benefit arrangement, change the manner in which contributions to any benefit arrangement are made or determined, or add any new participants to or increase the principal sum of any non-qualified retirement plans;
- file any amended tax return (except for any amended tax return that is filed solely to claim tax refunds or additional deductions or credits), settle or compromise any tax liability, claim or assessment, enter into any closing agreement, waive or extend any statute of limitations relating to taxes, surrender any right to claim a refund for taxes or make or change any material tax election or change or consent to

any change in its or its subsidiaries' method of accounting for tax purposes except to the extent required by law; or

- enter into any contract with respect to, or agree to take any of the preceding actions.

With limited exceptions, Merrill Lynch and ML Bank have agreed that, until completion of the merger, without the prior written consent of First Republic, each will not:

- amend its constitutive documents in a manner that would materially and adversely affect the rights and privileges of holders of Merrill Lynch common stock or prevent or materially impede or materially delay consummation of the transactions contemplated by the merger agreement;
- knowingly take, or knowingly omit to take, any action that would, or is reasonably likely to, prevent or impede the merger from qualifying as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code or knowingly take, or knowingly omit to take, any action that is reasonably likely to result in any of the conditions to the merger not being satisfied in a timely manner; or
- enter into any contract with respect to, or agree to take any of the preceding actions.

Representations and Warranties

The merger agreement contains representations and warranties of Merrill Lynch and First Republic customary for agreements of this nature with regard to their respective businesses, financial condition and other facts pertinent to the merger. Each of Merrill Lynch and First Republic has made representations and warranties to the other in the merger agreement as to, among other things:

- corporate organization, standing and authority;
- capital stock;
- absence of defaults in any regulatory approvals and other regulatory matters;
- regulatory reports, financial and other reports and material adverse effects;
- litigation;
- regulatory matters;
- compliance with laws;
- reports; and
- insurance.

In addition, First Republic has made representations and warranties to Merrill Lynch in the merger agreement as to, among other things:

- subsidiaries, including investment advisor subsidiaries;
- material contracts;
- benefit arrangements;
- taxes;
- books and records;
- takeover laws and provisions;
- labor matters;
- environmental matters;
- intellectual property;
- properties and leases;

- broker-dealer activities;
- accounting controls;
- risk management;
- fiduciary commitments and duties;
- loan portfolio; and
- financial advisors.

In addition, Merrill Lynch has made representations and warranties to First Republic in the merger agreement as to, among other things, the availability of sufficient funds to pay the cash consideration and the treatment of the merger as a reorganization under the Internal Revenue Code.

With the exception of the representations and warranties relating to events having a materially adverse effect on First Republic or Merrill Lynch, which must be true in all respects, and the representations and warranties relating to Merrill Lynch's and First Republic's capital stock, which must be true in all material respects, no representation or warranty of First Republic or Merrill Lynch will be deemed untrue, and no party will be deemed to have breached a representation or warranty, as a consequence of the existence of any fact, event or circumstance unless such fact, circumstance or event, individually or taken together with all other facts, events or circumstances inconsistent with any representation or warranty, has had or is reasonably likely to have a material adverse effect with respect to First Republic or Merrill Lynch, as the case may be.

The term "material adverse effect," as used with respect to Merrill Lynch or First Republic, means an individual or aggregate effect that (1) has a material adverse effect on the financial condition, results of operations, assets or business of Merrill Lynch or First Republic, as the case may be, and their respective subsidiaries, taken as a whole, or (2) would materially impair the ability of Merrill Lynch or First Republic, as the case may be, to perform its obligations under the merger agreement or to consummate the transactions contemplated by the merger agreement. For these purposes, changes in laws, regulations, GAAP and regulatory accounting requirements, and economic or market conditions that generally affect the banking or financial services industry would not be deemed a material adverse effect. Changes in global or national political conditions, terrorist attacks, natural disasters, the effects of actions or omissions permitted or required by the merger agreement or the announcement or pendancy of the merger agreement or of the transactions contemplated by the merger agreement would not constitute a material adverse effect. Further, a failure by Merrill Lynch or First Republic, as the case may be, to meet projections or forecasts or revenue or earnings predictions, would not constitute a material adverse effect.

The representations and warranties in the merger agreement were made for purposes of the merger agreement and are subject to qualifications and limitations agreed to by the respective parties in connection with negotiating the terms of the merger agreement. In addition, certain representations and warranties were made as of a specific date, may be subject to a contractual standard of materiality different from what might be viewed as material to stockholders, or may have been used for purposes of allocating risk between the respective parties rather than establishing matters as facts. This description of the representations and warranties, and their reproduction in the copy of the merger agreement attached to this document as **Annex A**, are included solely to provide investors with information regarding the terms of the merger agreement. Accordingly, the representations and warranties and other provisions of the merger agreement should not be read alone, but instead should only be read together with the information provided elsewhere in this document and in the documents incorporated by reference into this document, including the periodic and current reports and statements that Merrill Lynch and First Republic file with the SEC and FDIC, respectively. For more information regarding these documents incorporated by reference, please see the section entitled "Where You Can Find More Information" beginning on page 93.

Reasonable Best Efforts to Obtain Required Stockholder Vote

The First Republic board of directors has agreed to submit to its stockholders the plan of merger contained in the merger agreement and any other matters required to be approved or adopted by stockholders in order to carry out the intentions of the merger agreement. In furtherance of that obligation, First Republic will take, in accordance with applicable law and its governing documents, all action necessary to convene a meeting of its stockholders, as promptly as practicable, to consider and vote upon approval of the plan of merger. Subject to the terms and conditions of the merger agreement, the First Republic board of directors will use all reasonable best efforts to obtain from its stockholders a vote approving the plan of merger contained in the merger agreement.

Notwithstanding anything to the contrary in the merger agreement, if the First Republic board of directors, after consultation with outside counsel, determines in good faith that it would be more likely than not to result in a violation of its fiduciary duties under applicable law to continue to recommend the plan of merger set forth in the merger agreement, then the First Republic board of directors may do one or more of the following: (1) because of a conflict of interest or other special circumstances, submit the plan of merger to First Republic's stockholders without recommendation, in which event the First Republic board of directors may communicate the basis for its lack of a recommendation to the stockholders in the proxy statement or an appropriate amendment or supplement thereto to the extent required by law, (2) withdraw or adversely modify its recommendation to the First Republic stockholders and terminate the merger agreement, (3) disclose its intention to withdraw or adversely modify its recommendation to the First Republic stockholders and (4) recommend (or disclose its intention to recommend) to the First Republic stockholders an acquisition proposal other than the merger. However, the First Republic board of directors may not take any particular action described in clauses (1) through (4) above without giving Merrill Lynch written notice of the proposed action and giving Merrill Lynch at least five business days to respond to an acquisition proposal or other circumstances giving rise to such particular proposed action.

No Solicitation of Alternative Proposals

First Republic has agreed that it will not, and will cause its subsidiaries and use its reasonable best efforts to cause its and its subsidiaries' officers, directors, agents, advisors and affiliates not to initiate, solicit, encourage or knowingly facilitate inquiries or proposals with respect to, or engage in any negotiations concerning, or provide any confidential or nonpublic information or data to, or have any discussions with any person relating to any acquisition proposal.

Under the merger agreement, however, if First Republic receives an unsolicited bona fide acquisition proposal, First Republic may furnish and may permit its subsidiaries and its and its subsidiaries' representatives to furnish or cause to be furnished nonpublic information or data and participate in negotiations or discussions if its board of directors concludes, in good faith, (1) that the acquisition proposal constitutes or is reasonably likely to constitute a superior proposal and (2) after considering the advice of outside counsel, that the failure to do so would be more likely than not to result in a violation of its fiduciary duties under applicable law. Before furnishing such nonpublic information or participating in such negotiations or discussions, First Republic must enter into a confidentiality agreement with the third party on terms substantially similar to those of the confidentiality agreement it signed in connection with negotiating the merger agreement (except that First Republic may enter into a confidentiality agreement without a standstill provision or with a standstill provision less favorable to First Republic if it waives or similarly modifies the standstill provision in the confidentiality agreement signed in connection with the merger).

First Republic has agreed to advise Merrill Lynch within two business days following receipt of any acquisition proposal, including describing the substance of the acquisition proposal and the identity of the proposing party, and to keep Merrill Lynch apprised on a current basis of any related material developments, discussions and negotiations.

For purposes of the merger agreement, an acquisition proposal means, other than transactions contemplated by the merger agreement:

- a tender or exchange offer to acquire more than 15% of the voting power in First Republic or any of its subsidiaries;
- a proposal for a merger, consolidation or other business combination involving First Republic or any of its significant subsidiaries; or
- any other proposal or offer to acquire in any manner more than 15% of the voting power in, or more than 15% of the business, assets or deposits of, First Republic or any of its significant subsidiaries.

For purposes of the merger agreement, a superior proposal means a bona fide written acquisition proposal which the First Republic board of directors concludes in good faith, after receiving the advice of its financial advisor, after taking into account the likelihood that such transaction could be completed on its terms, and after taking into account all legal (with the advice of outside counsel), financial (including the financing terms of any such proposal), regulatory and other aspects of such proposal and any other relevant factors permitted under applicable law, is more favorable from a financial point of view to First Republic's stockholders than the merger and the other transactions contemplated by the merger agreement. However, the merger agreement provides that, for purposes of the definition of superior proposal, the term acquisition proposal has the meaning stated above, except that each reference to "15 percent or more" is deemed to be a reference to "25 percent or more."

Other Covenants and Agreements

We have agreed to cooperate with each other and use reasonable best efforts to take, or cause to be taken, in good faith, all actions, and to do, or cause to be done, all things necessary, proper or desirable, or advisable under applicable laws, including to obtain consents of third parties (provided that this will not require First Republic to make any material payment to a third party for such consent unless Merrill Lynch has irrevocably acknowledged that all other conditions to completion of the merger have been satisfied or waived), so as to permit completion of the merger as promptly as practicable and otherwise to enable consummation of the transactions contemplated by the merger agreement, and each of Merrill Lynch and First Republic will cooperate fully with, and furnish information to, the other party to that end.

The merger agreement also contains covenants relating to, among other things, cooperation in the preparation of SEC and FDIC filings, public announcements, access to books and records, confidentiality, exemption from takeover laws, exchange listings, regulatory applications, indemnification, benefit plans and notification to the other party of certain matters reasonably likely to result in a material breach of any of the representations, warranties, covenants or agreements contained in the merger agreement.

Dividends

First Republic Bank has agreed that, until the merger is completed, it will not make, declare, pay or set aside for payment any dividend on or in respect of, or declare or make any distribution on, any shares of its stock except for dividends from its wholly owned subsidiaries to it or another of its wholly owned subsidiaries, regular quarterly dividends on its common stock at a rate equal to the rate paid by it during the fiscal quarter immediately preceding the date of the merger agreement, required dividends on the First Republic preferred stock or on the preferred stock of its subsidiaries or required dividends on the common stock of First Republic Preferred Capital Corporation and First Republic Preferred Capital Corporation II.

Employee Benefit Plans and Retention Plan

From completion of the merger through December 31, 2007, Merrill Lynch has agreed to maintain the First Republic employee benefit plans (except equity-based award plans) for the benefit of the employees of First Republic and its subsidiaries. From and after January 1, 2008, Merrill Lynch has agreed to provide these covered employees with employee benefit plans, programs and arrangements substantially similar to those provided to similarly situated employees of Merrill Lynch and its subsidiaries. Covered employees will also be

entitled to participate in any fully participant paid post-retirement medical plans or programs of Merrill Lynch and/or its subsidiaries, such participation to be on the same basis with respect to employee premiums as similarly situated employees of Merrill Lynch and/or its subsidiaries.

From and after completion of the merger, Merrill Lynch has agreed that the management of the First Republic Bank Division of ML Bank, in consultation with Merrill Lynch's management, will have discretion to provide compensation plans, programs and arrangements (including, without limitation, equity-based award plans) to employees of the First Republic Bank Division of ML Bank consistent with the First Republic Bank Division management's business plan. First Republic has agreed to terminate the First Republic Employee Stock Ownership Plan immediately prior to completion of the merger if requested by Merrill Lynch.

Merrill Lynch will provide all covered employees with service credit for purposes of eligibility, participation, vesting and levels of benefits (but not for benefit accruals under any defined benefit pension plan), under any employee benefit or compensation plan, program or arrangement (with certain exceptions) adopted, maintained or contributed to by Merrill Lynch or any of its subsidiaries in which covered employees are eligible to participate, for all actual periods of employment with First Republic or any of its subsidiaries prior to completion of the merger. In addition, Merrill Lynch will cause any pre-existing conditions, limitations, eligibility waiting periods or required physical examinations under any welfare benefit plans of Merrill Lynch or any of its subsidiaries to be waived with respect to the covered employees and their eligible dependents, subject to certain conditions being met, and will give credit for deductibles and eligible out-of-pocket expenses incurred towards deductibles and out-of-pocket maximums during the portion of the plan year in which the completion of the merger occurs.

From and after completion of the merger, Merrill Lynch has agreed to assume all accrued obligations to, and contractual rights of, current employees of First Republic and its subsidiaries under the First Republic employee benefit plans and other arrangements and take all actions necessary to effectuate its obligations thereunder. Merrill Lynch has also agreed to take all action necessary so that the employees of First Republic or its subsidiaries prior to completion of the merger who become employees of Merrill Lynch or one of its subsidiaries are eligible to participate in the Merrill Lynch Employee Stock Purchase Plan no later than the first offering cycle that begins after completion of the merger.

Merrill Lynch will make available to the First Republic Bank Division of ML Bank shares of Merrill Lynch common stock, which shares of Merrill Lynch common stock will be available for grant, in the form of restricted stock, to officers and employees of First Republic (other than First Republic Bank Division's Chief Executive Officer and Chief Operating Officer). The management of the First Republic Bank Division will have the right to determine, in consultation with Merrill Lynch's management, the terms and conditions of such restricted stock awards, including the recipients, the number of shares granted to each recipient and the vesting conditions associated with each grant.

Termination of the Merger Agreement

The merger may be terminated at any time prior to completion of the merger:

- by mutual consent of the parties;
- by either Merrill Lynch or First Republic if:
  - the merger is not completed by October 31, 2007, unless the terminating party failed to comply with any provision of the merger agreement and thereby caused, or materially contributed to, the failure of the merger to occur by that date;
  - the First Republic stockholders vote against approval of the plan of merger contained in the merger agreement;
  - there exists any final nonappealable legal prohibition on completion of the merger by a governmental authority, unless the terminating party failed to comply with any provision of the merger agreement and thereby caused, or materially contributed to, such prohibition; OR

- the other party materially breaches any of its representations, warranties, covenants or other agreements contained in the merger agreement, and the breach results in the failure of the applicable merger condition and is not cured within 30 days after written notice of the breach is given by the terminating party;

- by Merrill Lynch if the First Republic board of directors submits the plan of merger to First Republic stockholders without a recommendation for approval or withdraws or adversely modifies its recommendation (or discloses its intention to withdraw or adversely modify its recommendation); or the First Republic board of directors recommends (or discloses its intention to recommend) to its stockholders an acquisition proposal other than the merger; or the First Republic board of directors negotiates or authorizes the conduct of negotiations (and ten days have elapsed without such negotiations being discontinued) with a third party regarding an acquisition proposal other than the merger; or

- by First Republic, if the First Republic board of directors withdraws or adversely modifies its recommendation to the First Republic stockholders after giving Merrill Lynch written notice and at least five business days to respond.

Effect of Termination. If the merger agreement is terminated and the merger abandoned, there will be no liability on the part of Merrill Lynch, First Republic or their respective subsidiaries, directors or officers, except that:

- designated provisions of the merger agreement will survive the termination, such as provisions relating to the payment of fees and expenses (including the payment of a termination fee by First Republic in certain cases), the non-survival of the representations and warranties and the confidential treatment of information; and

- termination will not relieve a breaching party from liability for any uncured breach of the merger agreement.

Termination Fee

First Republic must pay Merrill Lynch $65,000,000 if:

- the merger agreement is terminated:

  - by either Merrill Lynch or First Republic if the First Republic stockholders vote against approval of the plan of merger;

  - by Merrill Lynch if the First Republic board of directors submits the plan of merger to the First Republic stockholders without a recommendation for approval or otherwise withdraws or adversely modifies its recommendation (or discloses its intention to withdraw or adversely modify its recommendation); or the First Republic board of directors negotiates or authorizes the conduct of negotiations (and ten days have elapsed without such negotiations being discontinued) with a third party regarding an acquisition proposal other than the merger; or

  - by First Republic if the First Republic board of directors withdraws or adversely modifies its recommendation to the First Republic stockholders after giving Merrill Lynch written notice and at least five business days to respond; AND

- at any time prior to the vote of the First Republic stockholders, a bona fide acquisition proposal with respect to First Republic has been made public and not withdrawn or abandoned; AND

- within 15 months from the date of such termination, an acquisition proposal with respect to First Republic is consummated or a definitive agreement is entered into by First Republic with respect to an acquisition proposal with respect to First Republic, but only if such acquisition proposal is consummated.

First Republic must also pay Merrill Lynch $65,000,000 if:

- the merger agreement is terminated:
  - by Merrill Lynch if First Republic materially breaches any of its representations, warranties, covenants or other agreements contained in the merger agreement, and the breach results in the failure of the applicable merger condition and is not cured within 30 days after written notice of the breach is given by Merrill Lynch; or
  - by either Merrill Lynch or First Republic if the merger is not completed by October 31, 2007, unless the terminating party failed to comply with any provision of the agreement and thereby caused, or materially contributed to, the failure of the merger to occur by that date; AND
- at any time prior to such termination, a bona fide acquisition proposal with respect to First Republic has been made public and not withdrawn or abandoned, and following the announcement of such acquisition proposal, First Republic has breached any of its representations, warranties, covenants or agreements set forth in the merger agreement and (i) such breach was a willful and material breach of certain designated provisions of the merger agreement or (ii) such breach was not a willful and material breach of certain designated provisions and an acquisition proposal with respect to First Republic is consummated or a definitive agreement with respect to such an acquisition proposal is entered into within 15 months from the date of such termination, but only if such acquisition proposal is consummated.

Expenses and Fees

Merrill Lynch and First Republic have agreed that each party will bear all expenses incurred by it in connection with the merger agreement and the transactions contemplated thereby.

Possible Alternative Merger Structure

The merger agreement provides that, before completion of the merger, the parties may mutually agree to revise the structure of the merger and related transactions. However, no revision may be made that:

- changes the amount or form of consideration to be received by the stockholders of First Republic and the holders of options on First Republic common stock and/or deferred equity units;
- adversely affects the tax consequences to the stockholders of First Republic;
- is not reasonably capable of consummation in as timely a manner as the structure contemplated in the merger agreement;
- is reasonably likely to prevent the receipt of an opinion as to the tax treatment of the merger by Merrill Lynch and First Republic; or
- is otherwise prejudicial to the interests of the stockholders of either First Republic or Merrill Lynch.

DESCRIPTION OF MERRILL LYNCH CAPITAL STOCK

The following discussion summarizes the material features and rights of Merrill Lynch capital stock. We urge you to read the applicable provisions of Delaware law and Merrill Lynch's restated certificate of incorporation and bylaws. Copies of Merrill Lynch's restated certificate of incorporation and bylaws are available, without charge, to any person by following the instructions listed in the section entitled "Where You Can Find More Information" beginning on page 93.

Common Stock

Terms of the Common Stock

Under Merrill Lynch's restated certificate of incorporation, Merrill Lynch is authorized to issue up to 3,000,000,000 shares of common stock, par value $1.33 1/3 per share. As of March 30, 2007, there were 874 million shares of common stock and 2.6 million 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. The common stock is traded on the New York Stock Exchange under the symbol "MER" and also on the Chicago Stock Exchange, the London Stock Exchange and the Tokyo Stock Exchange.

Holders of Merrill Lynch common stock have no preemptive rights to subscribe for any additional securities which may be issued by Merrill Lynch. The rights of holders of common stock are 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. Please see the section entitled " — Preferred Stock" beginning on page 74 for a description of Merrill Lynch's preferred stock. Merrill Lynch's board of directors may issue additional shares of preferred stock to obtain additional financing, in connection with acquisitions, to officers, directors and employees of Merrill Lynch and its subsidiaries pursuant to benefit plans or otherwise and for other proper corporate purposes. Additionally, the holders of common stock are subject to, and may be adversely affected by, the rights of holders of trust preferred securities that have been issued and may be issued in the future. For a description of trust preferred securities issued to date, please see Merrill Lynch's 2006 Annual Report on Form 10-K, which is incorporated herein by reference.

Wells Fargo Bank, N.A. is the record keeping transfer agent for the common stock of Merrill Lynch.

Because Merrill Lynch 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 Merrill Lynch 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 Merrill Lynch may itself be a creditor with recognized claims against the subsidiary or a holder of preferred stock of the subsidiary.

Dividends

Merrill Lynch may pay dividends on its common stock out of funds legally available for the payment of dividends as, if and when declared by Merrill Lynch's board of directors or a duly authorized committee thereof. Dividends may be declared or paid upon the shares of Merrill Lynch's capital stock either out of its surplus, determined as provided under the General Corporation Law of the State of Delaware, or DGCL, or in case there is no such surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. There are no restrictions on Merrill Lynch's present ability to pay dividends on common stock, other than its obligation to make payments on its preferred stock and trust preferred securities and regulatory restrictions applicable to Merrill Lynch's subsidiaries' ability to pay dividends. Merrill Lynch's preferred stock and trust preferred securities contains provisions that could restrict Merrill Lynch from declaring or paying dividends and taking other actions with respect to its capital securities, including the common stock.

Liquidation Rights

Upon any voluntary or involuntary liquidation, dissolution, or winding up of Merrill Lynch, 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 Merrill Lynch.

Voting Rights

Except as described in the section entitled " — Preferred Stock" beginning on page 74, the holders of Merrill Lynch common stock currently possess exclusive voting rights in Merrill Lynch. Merrill Lynch's board of directors 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 per share with respect to all matters. There is no cumulative voting in the election of directors. Actions requiring approval of stockholders generally require approval by a majority vote of outstanding shares of common stock.

Merrill Lynch's board of directors is currently comprised of 10 directors, divided into three classes, the precise number of members to be fixed from time to time by the board of directors. The directors of the class elected at each annual election hold office for a term of three years, with the term of each class expiring at successive annual meetings of stockholders.

Rights to Purchase Series A Junior Preferred Stock

Under the Amended and Restated Rights Agreement adopted by Merrill Lynch's board of directors on December 2, 1997, or 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 of common stock. The preferred purchase rights entitle the holder thereof to purchase fractions of a share, or Units, of Series A junior preferred stock at an exercise price as provided in the Rights Agreement. The exercise price and the number of Units issuable are subject to adjustment to prevent dilution. The preferred purchase rights expire on December 2, 2007.

The preferred purchase rights will separate from the common stock ten days following the earlier of:

- an announcement of an acquisition by a person or group of 15% or more of the outstanding common stock of Merrill Lynch; or
- the commencement of a tender or exchange offer for 15% or more of the outstanding common stock of Merrill Lynch.

If, after the preferred purchase rights have separated from the common stock:

- Merrill Lynch is the surviving corporation in a merger with an acquiring party;
- a person becomes the beneficial owner of 15% or more of the outstanding common stock of Merrill Lynch;
- an acquiring party engages in one or more defined "self-dealing" transactions; or
- an event occurs which results in such acquiring party's ownership interest in Merrill Lynch being increased by more than 1%;

then, in each case, each holder of a preferred purchase right will have the right to purchase Units of Series A junior preferred stock having a value equal to two times the exercise price of the preferred purchase right. In addition, preferred purchase rights held by or transferred in certain circumstances by an acquiring party may immediately become void.

In the event that, at any time:

- Merrill Lynch is acquired in a merger or other business combination transaction and Merrill Lynch is not the surviving corporation;

- any person consolidates or merges with Merrill Lynch and all or part of Merrill Lynch's common stock is converted or exchanged for securities, cash or property of any other person; or
- 50% or more of Merrill Lynch's assets or earning power is sold or transferred;

each holder of a preferred purchase right will have the right to purchase common stock of the acquiring party having a value equal to two times the exercise price of the preferred purchase right.

The preferred purchase rights are redeemable at the option of a majority of the independent directors of Merrill Lynch at $.01 per right at any time until the tenth day following an announcement of the acquisition of 15% or more of the outstanding common stock of Merrill Lynch.

The foregoing provisions of the Rights Agreement may have the effect of delaying, deferring or preventing a change in control of Merrill Lynch.

The certificate of designations of the Series A junior preferred stock provides that the holders of Units of the Series A junior preferred stock will be entitled to receive quarterly dividends in an amount to be determined in accordance with the formula set forth in the certificate of designations. These dividend rights are cumulative. The Series A junior preferred stock rank junior in right of payment of dividends to all other preferred stock issued by Merrill Lynch, unless the terms of any other preferred stock provide otherwise. The holders of Units of the Series A junior preferred stock will have one vote per Unit on all matters submitted to the stockholders of Merrill Lynch, subject to adjustment. If at any time dividends on any Units of the Series A junior preferred stock are in arrears for a number of periods, whether or not consecutive, which in the aggregate is equivalent to six calendar quarters, then during that period of default, the holders of all Units, voting separately as a class, will have the right to elect two directors to Merrill Lynch's board of directors. Additionally, whenever quarterly dividends or other dividends or distributions payable on the Series A junior preferred stock are in arrears, Merrill Lynch will not, among other things, declare or pay dividends on or make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares or capital stock of Merrill Lynch which ranks junior in right of payment to the Series A junior preferred stock, including Merrill Lynch common stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of Merrill Lynch, the holders of outstanding Units of the Series A junior preferred stock will be entitled to receive a distribution in an amount to be determined in accordance with the formula set forth in the certificate of designations before the payment of any distribution to the holders of Merrill Lynch common stock. The Units of Series A junior preferred stock are not redeemable. As of the date of this proxy statement/prospectus, there are no shares of Series A junior preferred stock outstanding.

Material Charter Provisions

Merrill Lynch's restated certificate of incorporation provides that, except under specified circumstances, Merrill Lynch may not merge or consolidate with any one or more corporations, joint-stock associations or non-stock corporations or sell, lease or exchange all or substantially all of its property and assets or dissolve without the affirmative vote of two-thirds of Merrill Lynch's entire board of directors and the holders of a majority of the outstanding shares of common stock entitled to vote. Additionally, Merrill Lynch's restated certificate of incorporation provides that specified business combinations involving Merrill Lynch and an interested stockholder or an affiliate or associate of that stockholder must be approved by 80% of the voting power of the outstanding shares of capital stock of Merrill Lynch entitled to vote generally in the election of directors. The vote of 80% of the voting power of the voting stock referred to in the immediately preceding sentence is required for amendment of these provisions. Merrill Lynch's restated certificate of incorporation also provides that only Merrill Lynch's board of directors has the authority to call special stockholder meetings.

The foregoing provisions of Merrill Lynch's restated certificate of incorporation may have the effect of delaying, deferring or preventing a change in control of Merrill Lynch.

Preferred Stock

Merrill Lynch is authorized to issue 25,000,000 shares of undesignated preferred stock, $1.00 par value per share. All shares of currently outstanding preferred stock constitute one and the same class that rank junior to all of Merrill Lynch's indebtedness and have equal rank and priority over common stockholders as to dividends and in the event of liquidation. As of March 30, 2007, 155,000 shares of Merrill Lynch preferred stock were issued and outstanding and had been issued in five series. Merrill Lynch will issue two new series of preferred stock to holders of First Republic preferred stock in connection with the merger.

Floating Rate Non-Cumulative Preferred Stock, Series 1, Series 2, Series 4 and Series 5

On November 1, 2004, Merrill Lynch issued 25,200,000 Depositary Shares, each representing a one-twelve-hundredth interest in a share of Floating Rate Non-Cumulative Preferred Stock, Series 1, liquidation preference of $30,000 per share, or Series 1 Preferred Stock. On March 14, 2005 and April 4, 2005, Merrill Lynch issued 40,800,000 and 3,600,000 Depositary Shares, respectively, each representing a one-twelve-hundredth interest in a share of Floating Rate Non-Cumulative Preferred Stock, Series 2, liquidation preference of $30,000 per share, or Series 2 Preferred Stock. On November 17, 2005, Merrill Lynch issued 9,600,000 Depositary Shares, each representing a one-twelve-hundredth interest in a share of Floating Rate Non-Cumulative Preferred Stock, Series 4, liquidation preference of $30,000 per share, or Series 4 Preferred Stock. On February 28, 2006, Merrill Lynch issued an additional $360 million face value of Perpetual Floating Rate Non-Cumulative Preferred Stock, Series 4 on the same terms as the initial issuance on November 17, 2005. On March 20, 2007, Merrill Lynch issued 60,000,000 Depositary Shares, each representing a one-twelve-hundredth interest in a share of Floating Rate Non-Cumulative Preferred Stock, Series 5, liquidation preference of $30,000 per share, or Series 5 Preferred Stock.

As of March 30, 2007, the Series 1 Preferred Stock consisted of 21,000 shares with an aggregate liquidation preference of $630 million, the Series 2 Preferred Stock consisted of 37,000 shares with an aggregate liquidation preference of $1.1 billion, the Series 4 Preferred Stock consisted of 20,000 shares with an aggregate liquidation preference of $600 million and the Series 5 Preferred Stock consisted of 50,000 shares with an aggregate liquidation preference of $1.5 billion.

Dividends on the Preferred Stock, Series 1, Series 2, Series 4 and Series 5 are non-cumulative and are payable quarterly when, and if, declared by the Merrill Lynch board of directors. The Preferred Stock, Series 1 and Series 2 are perpetual and redeemable on or after November 28, 2009, at the option of Merrill Lynch, in whole or in part, at a redemption price of $30,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends. The Preferred Stock, Series 4 is perpetual and redeemable on or after November 28, 2010, at the option of Merrill Lynch, in whole or in part, at a redemption price of $30,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends. The Preferred Stock, Series 5 is perpetual and redeemable on or after May 21, 2010, at the option of Merrill Lynch, in whole or in part, at a redemption price of $30,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends.

6.375% Non-Cumulative Preferred Stock, Series 3

On November 17, 2005 and December 8, 2005, Merrill Lynch issued 30,000,000 and 2,400,000 Depositary Shares, respectively, each representing a one-twelve-hundredth interest in a share of 6.375% Non-Cumulative Preferred Stock, Series 3, liquidation preference of $30,000 per share, or Series 3 Preferred Stock. As of March 30, 2007, there were 27,000 shares of Series 3 Preferred Stock issued and outstanding with an aggregate liquidation preference of $810 million.

Dividends on the Preferred Stock, Series 3 are non-cumulative and are payable quarterly when, and if, declared by the Merrill Lynch board of directors. The Series 3 Preferred Stock is perpetual and redeemable on or after November 28, 2010, at the option of Merrill Lynch, in whole or in part, at a redemption price of $30,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends.

Dividends on Preferred Stock, Series 1-5

Dividends on shares of Merrill Lynch preferred stock are not mandatory. Holders of shares of Merrill Lynch preferred stock are entitled to receive, if and when declared by Merrill Lynch's board of directors or a duly authorized committee thereof, out of assets of Merrill Lynch legally available under Delaware law for payment, cash dividends, payable quarterly in arrears, at the rate established for such shares of Merrill Lynch preferred stock. Dividends on Merrill Lynch preferred stock are not cumulative. Accordingly, if for any reason Merrill Lynch's board of directors, or a duly authorized committee thereof, does not declare a dividend on Merrill Lynch preferred stock for an applicable dividend period, Merrill Lynch will not pay a dividend for that dividend period on the quarterly payment date or at any future time, whether or not dividends on Merrill Lynch preferred stock are declared for any future dividend period.

Voting Rights of Preferred Stock, Series 1-5

If dividends payable on the Series 1, Series 2, Series 3, Series 4 or Series 5 Preferred Stock have not been declared or paid for a number of quarters, whether or not consecutive, which in the aggregate is equivalent to six quarters, the holders of the outstanding shares of these series of preferred stock, voting as a class, will be entitled to vote for the election of two additional directors of Merrill Lynch.

New Merrill Lynch Preferred Stock to be Issued in the Merger

In connection with the merger, Merrill Lynch will issue preferred stock in two new series, Merrill Lynch 6.70% Noncumulative Perpetual Preferred Stock, Series 6 and Merrill Lynch 6.25% Noncumulative Perpetual Preferred Stock, Series 7, which will be issued to holders of First Republic preferred in exchange for First Republic 6.70% Noncumulative Perpetual Preferred Series A Shares and 6.25% Noncumulative Perpetual Preferred Series B Shares, respectively.

The following summary of the terms and provisions of the New Merrill Lynch Preferred Stock is not complete and is qualified in its entirety by reference to the pertinent sections of the certificates of designation of each series of New Merrill Lynch Preferred Stock.

Ranking. New Merrill Lynch Preferred Stock will rank senior to Merrill Lynch's common stock and equally with Merrill Lynch's existing and future series of preferred stock with respect to payment of distributions or amounts upon Merrill Lynch's liquidation, dissolution or winding up. New Merrill Lynch Preferred Stock will rank equally with Merrill Lynch's authorized but unissued shares of preferred stock.

Distributions. Holders of New Merrill Lynch Preferred Stock will be entitled to receive, if, when and as authorized and declared by Merrill Lynch's board of directors (or a duly authorized committee thereof), out of funds legally available for the payment of distributions, noncumulative cash distributions, payable quarterly, at the rate of (i) with respect to each share of 6.70% Noncumulative Perpetual Preferred Stock, Series 6, 6.70% of the $1,000 liquidation preference per annum (equivalent to $67.00 per annum per share of 6.70% Noncumulative Perpetual Preferred Stock, Series 6 or $1.675 per annum per depositary share) and (ii) with respect to each share of 6.25% Noncumulative Perpetual Preferred Stock, Series 7, 6.25% of the $1,000 liquidation preference per annum (equivalent to $62.50 per annum per share of 6.25% Noncumulative Perpetual Preferred Stock, Series 7 or $1.5625 per annum per depositary share).

Distributions are noncumulative. If Merrill Lynch's board of directors does not authorize or declare a dividend for a dividend period, then the holders of a series of New Merrill Lynch Preferred Stock will have no right to receive a dividend related to that dividend period, and Merrill Lynch will have no obligation to pay a dividend for the related dividend period or to pay any interest, whether or not dividends on such series of New Merrill Lynch Preferred Stock are authorized or declared for any prior or future dividend period.

If full dividends on a series of New Merrill Lynch Preferred Stock have not been declared and paid with respect to any dividend period, or declared and a sum sufficient for the payment for a dividend has not been set apart with respect to any dividend period, the following restrictions will be applicable:

- for the next subsequent dividend period, no dividend or distribution, other than the pro rata payment described in the paragraph following this sentence, may be declared, set aside or paid on any preferred stock ranking on parity with such series of New Merrill Lynch Preferred Stock as to dividends or amounts upon liquidation, dissolution or winding up of the affairs of Merrill Lynch, or Parity Shares, or on any common stock or other capital shares that rank junior to such series of New Merrill Lynch Preferred Stock as to dividends or amounts upon liquidation, dissolution or winding up of the affairs of Merrill Lynch, or Junior Shares; and
- unless dividends on all outstanding New Merrill Lynch Preferred Stock of such series have been paid in full for at least four consecutive dividend periods, no junior shares or parity shares may be redeemed, purchased or otherwise acquired for any consideration, and no monies may be paid to or made available for a sinking fund for the redemption of any junior shares or parity shares, except by conversion into or exchange for other junior shares.

Liquidation Rights. In the event of any liquidation, dissolution or winding up of Merrill Lynch's affairs, the holders of New Merrill Lynch Preferred Stock will be entitled to be paid out of Merrill Lynch's assets legally available for distribution to Merrill Lynch's stockholders liquidating distributions in the amount of $1,000 per share (equivalent to $25 per depositary share), plus any dividends declared on New Merrill Lynch Preferred Stock and not yet paid, before any distribution of assets is made to holders of common stock or any other Junior Shares. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of New Merrill Lynch Preferred Stock will have no right or claim to any of Merrill Lynch's remaining assets.

Conversion Rights. New Merrill Lynch Preferred Stock is not convertible into or exchangeable for any other series of stock or securities of, or any other interests in, Merrill Lynch.

Redemption at Merrill Lynch's Option. Merrill Lynch 6.70% Noncumulative Perpetual Preferred Stock, Series 6 is not redeemable prior to February 3, 2009, and Merrill Lynch 6.25% Noncumulative Perpetual Preferred Stock, Series 7 is not redeemable prior to March 18, 2010. On or after the relevant redemption date, at Merrill Lynch's option, Merrill Lynch may redeem a series of New Merrill Lynch Preferred Stock and thus the depositary shares, in whole or in part, at any time or from time to time, at a redemption price of $1,000 per share (equivalent to $25 per depositary share), plus the amount of any declared dividends. If notice of redemption of a series of New Merrill Lynch Preferred Stock has been given and if the funds necessary for such redemption have been irrevocably deposited with the paying agent identified in such notice, then from and after the date such deposit has been made, such New Merrill Lynch Preferred Stock will no longer be deemed outstanding and all rights of the holders of such shares will terminate, except the right to receive the redemption price, without interest.

Unless full dividends on a series of New Merrill Lynch Preferred Stock in respect of the most recently completed dividend period have been or contemporaneously are declared and paid or full dividends have been declared and a sum sufficient for the payment thereof has been set apart for payment in respect of the most recently completed dividend period, no share of New Merrill Lynch Preferred Stock of such series will be redeemed unless all outstanding shares of such series of New Merrill Lynch Preferred Stock are redeemed, and Merrill Lynch shall not purchase or otherwise acquire any New Merrill Lynch Preferred Stock of such series; provided, however, that Merrill Lynch may purchase or acquire New Merrill Lynch Preferred Stock pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding New Merrill Lynch Preferred Stock of such series.

Voting Rights. Registered owners of New Merrill Lynch Preferred Stock will not have any voting rights, except as set forth below or as otherwise required by law.

In any matter in which New Merrill Lynch Preferred Stock is entitled to vote as a separate series (as described herein or as may be required by law), including any action by written consent, each share of New

Merrill Lynch Preferred Stock will be entitled to 40 votes, each of which may be directed separately by the holder thereof (or by any proxy or proxies of such holder). The holder of each share of New Merrill Lynch Preferred Stock may designate up to 40 proxies, with each such proxy having the right to vote a whole number of votes (totaling 40 votes per share of New Merrill Lynch Preferred Stock). On any matter in which a series of New Merrill Lynch Preferred Stock is entitled to vote as a class with holders of any other capital stock of Merrill Lynch, each share of New Merrill Lynch Preferred Stock will be entitled to one vote. As more fully described in the section entitled "Description of Merrill Lynch Capital Stock — Depositary Shares Representing New Merrill Lynch Preferred Stock," the Depositary, as holder of all shares of a series of New Merrill Lynch Preferred Stock, will grant one proxy per depositary share to the registered owner of each depositary share so that each depositary share will be entitled to exercise its proportionate voting rights.

If, at the time of any annual meeting of stockholders for the election of directors, distributions on a series of New Merrill Lynch Preferred Stock have not been paid, or declared and set aside for payment, for any six dividend periods (whether or not consecutive), holders of such series of New Merrill Lynch Preferred Stock (voting separately as a class with holders of any other shares, including shares of another series of New Merrill Lynch Preferred Stock, upon which like voting rights have been conferred and are exercisable), will be entitled to vote at such annual meeting for the election of two additional directors (unless Merrill Lynch already has two additional directors as a result of prior failures to declare, pay or set aside dividends on other series of preferred stock) to serve on Merrill Lynch's board of directors until all dividends on such series of New Merrill Lynch Preferred Stock are paid in full for at least four Merrill Lynch's consecutive dividend periods.

Merrill Lynch cannot take any of the following actions without the affirmative vote of holders of at least 67% of the outstanding shares of a series of New Merrill Lynch Preferred Stock:

- create any class or series of shares that ranks, as to dividends or distribution of assets, senior to such series of New Merrill Lynch Preferred Stock; or
- alter or change the provisions of Merrill Lynch's restated certificate of incorporation so as to adversely affect the voting powers, preferences or special rights of the holders of such series of New Merrill Lynch Preferred Stock.

Depositary Shares Representing New Merrill Lynch Preferred Stock

Each outstanding share of First Republic preferred stock is presently represented by First Republic Depositary Shares that are listed on the New York Stock Exchange and represent a one-fortieth interest in a share of First Republic preferred stock. Upon completion of the merger, Merrill Lynch will assume the obligations of First Republic under the relevant Deposit Agreement pursuant to which First Republic preferred stock has been deposited. Merrill Lynch will instruct the Depositary to treat the shares of New Merrill Lynch Preferred Stock received by it in exchange for shares of First Republic preferred stock as newly deposited securities under the applicable Deposit Agreement. In accordance with the terms of the relevant Deposit Agreement, the First Republic Depositary Shares will thereafter represent the shares of the relevant series of New Merrill Lynch Preferred Stock. We sometimes refer to these depositary shares after completion of the merger as "Merrill Lynch Depositary Shares." Such depositary shares will continue to be listed on the New York Stock Exchange upon completion of the merger under a new name and will be traded under a new symbol.

Listing. Merrill Lynch Depositary Shares will be listed on the NYSE. New Merrill Lynch Preferred Stock will not be listed, and Merrill Lynch does not expect that there will be any trading market for New Merrill Lynch Preferred Stock except as represented by depositary shares.

Distributions. The Depositary will distribute all cash dividends paid on New Merrill Lynch Preferred Stock to the record holders of Merrill Lynch Depositary Shares. If a distribution is other than in cash and it is feasible for the Depositary to distribute the property it receives, the Depositary, upon written instructions from Merrill Lynch, will distribute the property to the record holders of Merrill Lynch Depositary Shares. If such a distribution is not feasible and Merrill Lynch so directs, the Depositary will sell on behalf of the holders of

Merrill Lynch Depositary Shares the property and distribute the net proceeds from the sale to the holders thereof.

Liquidation Preference. In the event of any liquidation, dissolution or winding up of Merrill Lynch's affairs, the holder of a Merrill Lynch Depositary Share will be entitled to one-fortieth of the liquidation preference accorded each share of New Merrill Lynch Preferred Stock represented thereby.

Redemption. Whenever Merrill Lynch redeems any shares of New Merrill Lynch Preferred Stock held by the Depositary, the Depositary will redeem as of the same date, Merrill Lynch Depositary Shares representing the redeemed New Merrill Lynch Preferred Stock. A notice of the redemption furnished by Merrill Lynch will be mailed by the Depositary, postage prepaid, not less than 30 nor more than 60 days prior to the redemption date, addressed to the respective holders of record of the depositary shares to be redeemed at their respective addresses as they appear on the share transfer records of the Depositary.

Voting. The respective Depositary, as the holder of all shares of the relevant series of New Merrill Lynch Preferred Stock, will grant one proxy per Merrill Lynch Depositary Share to the record owner of such Merrill Lynch Depositary Share so that each can exercise its proportionate voting rights. Promptly upon receipt of notice of any meeting at which the holders of a series of New Merrill Lynch Preferred Stock is entitled to vote, the Depositary will mail the information contained in such notice to the record holders of Merrill Lynch Depositary Shares as of the record date for such meeting. Each such holder will be entitled to instruct the Depositary as to the exercise of the voting rights pertaining to the number of shares of New Merrill Lynch Preferred Stock represented by such holder's depositary shares. The Depositary will vote such New Merrill Lynch Preferred Stock represented by such Merrill Lynch Depositary Shares in accordance with such instructions (and as nearly as possible in the event the holder's depositary shares represent a fractional share of New Merrill Lynch Preferred Stock), and Merrill Lynch will take all action which may be deemed necessary by the Depositary in order to enable the Depositary to do so. The Depositary will abstain from voting any shares of New Merrill Lynch Preferred Stock to the extent that it does not receive specific instructions from the holders of Merrill Lynch Depositary Shares. The Depositary will not be responsible for any failure to carry out any instruction to vote, or for the manner or effect of any vote, as long as any action or nonaction does not result from the gross negligence or willful misconduct of the depositary.

Withdrawal of New Merrill Lynch Preferred Stock. Upon surrender of Merrill Lynch Depositary Shares at the principal office of the Depositary and payment of any unpaid amount due the Depositary, and subject to the terms of the relevant Deposit Agreement, the owner of Merrill Lynch Depositary Shares evidenced thereby is entitled to delivery of the number of whole and/or fractional New Merrill Lynch Preferred Stock and all money and other property, if any, represented by such depositary shares. Holders of New Merrill Lynch Preferred Stock thus withdrawn will not thereafter be entitled to deposit such shares under the relevant Deposit Agreement or to receive depositary shares therefor.

COMPARISON OF STOCKHOLDER RIGHTS

Upon completion of the merger, stockholders of First Republic who receive Merrill Lynch stock as part of their merger consideration will become stockholders of Merrill Lynch. Merrill Lynch is incorporated under the laws of Delaware and, accordingly, the rights of Merrill Lynch stockholders are governed by Merrill Lynch's restated certificate of incorporation, Merrill Lynch's bylaws and the laws of the State of Delaware, including the DGCL. First Republic is incorporated under the laws of Nevada and, accordingly, the rights of First Republic stockholders are governed by First Republic's articles of incorporation, First Republic's bylaws and the laws of the State of Nevada, including the Nevada Revised Statutes, or NRS. As stockholders of Merrill Lynch following the merger, the rights of former First Republic stockholders who become stockholders of Merrill Lynch will be governed by Merrill Lynch's restated certificate of incorporation, Merrill Lynch's bylaws and the laws of the State of Delaware, including the DGCL.

The following chart summarizes the material differences between the rights of Merrill Lynch stockholders and First Republic stockholders. The chart contains a list of the material differences but is not meant to be relied upon as an exhaustive list or a detailed description of the provisions discussed and is qualified in its entirety by reference to the governing instruments of each company. We urge you to read the governing instruments of each company and the provisions of the DGCL and the NRS, which are relevant to a full understanding of the governing instruments, carefully and in their entirety. Copies of the governing instruments are available, without charge, to any person by following the instructions listed in the section entitled "Where You Can Find More Information" beginning on page 93.

	Merrill Lynch	First Republic
Authorized Capital Stock	The authorized capital stock of Merrill Lynch consists of 3 billion shares of common stock, par value $1.33 and 1/3 per share, and 25 million shares of preferred stock, par value $1.00 per share. As of March 30, 2007, there were 874 million shares of common stock and 2.6 million exchangeable shares outstanding. As of March 30, 2007, 155,000 shares of Merrill Lynch preferred stock were issued and outstanding and had been issued in five series.	The authorized capital stock of First Republic consists of 75 million shares of common stock, par value $0.01 per share, and 500,000 shares of preferred stock, par value $0.01 per share. As of March 31, 2007, 31.1 million shares of First Republic common stock were issued and outstanding, and no shares of First Republic common stock were held in treasury. As of March 31, 2007, 115,000 shares of First Republic preferred stock were issued and outstanding, and no shares of First Republic preferred stock were held in treasury.
Number of Directors	Merrill Lynch's bylaws provide that the number of directors may be fixed from time to time by the board of directors, but must not be less than three or more than 30.	First Republic's bylaws provide that the number of directors may be fixed from time to time by the board of directors, but must not be less than five or more than 30. In the absence of a determination by the board of directors, the number of directors is fixed at 18.
Removal of Directors	Merrill Lynch's bylaws provide that, subject to the rights of the holders of any series of preferred stock or any other class of capital stock (other than common stock) then outstanding, any director may be removed from office for cause by the vote of stockholders representing at least 80 percent of the voting power of the	First Republic's articles of incorporation provide that a director may be removed from office for cause by the vote of stockholders representing at least two thirds of the voting power of the issued and outstanding stock entitled to vote. Otherwise, a director may be removed only by the vote of stockholders representing 100 percent of the voting

	Merrill Lynch	First Republic
	issued and outstanding stock entitled to vote.	power of the issued and outstanding stock entitled to vote.
Special Meetings of the Board of Directors	Special meetings of the board of directors may be called by the secretary upon the request of the chairman, the president or a vice chairman of the board of directors or upon the request in writing or by electronic transmission of any three other directors stating the purpose or purposes of such meeting.	Special meetings of the board of directors may be called at any time by the chairman of the board of directors or the president or by any two directors, to be held at the principal office of the corporation, or at such other place or places, within or without the State of Nevada, as the person or persons calling the meeting may designate.
Stockholder Protection Rights Plans	Under 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 of common stock. The preferred purchase rights entitle the holder thereof to purchase Units of Series A junior preferred stock at an exercise price as provided in the Rights Agreement. The exercise price and the number of Units issuable are subject to adjustment to prevent dilution. The preferred purchase rights expire on December 2, 2007. The preferred purchase rights will separate from the common stock 10 days following the earlier of (a) an announcement of an acquisition by a person or group of 15% or more of the outstanding common stock of Merrill Lynch or (b) the commencement of a tender or exchange offer for 15% or more of the outstanding shares of common stock of Merrill Lynch. If, after the preferred purchase rights have separated from the common stock, (a) Merrill Lynch is the surviving corporation in a merger with an acquiring party, (b) a person becomes the beneficial owner of 15% or more of the outstanding common stock of Merrill Lynch, (c) an acquiring party engages in one or more defined “self- dealing” transactions or (d) an event occurs which results in such acquiring party’s ownership interest in Merrill Lynch being increased by more than 1%, then, in each case, each holder of a preferred purchase right will have	First Republic does not have a stockholder protection rights plan.

	Merrill Lynch	First Republic
	the right to purchase Units of Series A junior preferred stock having a value equal to two times the exercise price of the preferred purchase right. In addition, preferred purchase rights held by or transferred in certain circumstances by an acquiring party may immediately become void. In the event that, at any time, (a) Merrill Lynch is acquired in a merger or other business combination transaction and Merrill Lynch is not the surviving corporation, (b) any person consolidates or merges with Merrill Lynch and all or part of Merrill Lynch's common stock is converted or exchanged for securities, cash or property of any other person or (c) 50% or more of Merrill Lynch's assets or earning power is sold or transferred, each holder of a right will have the right to purchase common stock of the acquiring party having a value equal to two times the exercise price of the preferred purchase right. The preferred purchase rights are redeemable at the option of a majority of the independent directors of Merrill Lynch at $.01 per right at any time until the 10th day following an announcement of the acquisition of 15% or more of the outstanding common stock of Merrill Lynch.	
Special Meetings of Stockholders	Special meetings of stockholders may be called by a majority of the entire board of directors.	Special meetings of the stockholders may be called by a majority of the entire board of directors or by the holders of not less than 66 and two thirds percent of the voting power of the issued and outstanding stock entitled to vote.
Amendment of Certificate/Articles of Incorporation and Bylaws	Section 242 of the DGCL provides that an amendment of the certificate of incorporation requires the affirmative vote of the majority of the outstanding stock entitled to vote. Additionally, Merrill Lynch's restated certificate of incorporation provides that an amendment of certain designated provisions (regarding, among other things, the preferred stock, the board of directors, meetings of stockholders and directors, elections of directors,	Section 78.390 of the NRS provides that an amendment of the articles of incorporation requires the affirmative vote of the majority of the outstanding stock entitled to vote. Additionally, First Republic's articles of incorporation provide that an amendment of certain designated provisions (regarding, among other things, the board of directors, interested stockholder transactions and stockholder voting rules) requires the affirmative vote of the holders of

	Merrill Lynch	First Republic
		outstanding shares representing at least 66 and two thirds percent of the votes entitled to be cast by the holders of all then outstanding shares of voting stock. The board of directors, by a vote of a majority of the number of directors then in office, acting at any meeting of the board of directors, has the right without the assent or vote of the stockholders to make, alter, amend, change, add to or repeal the bylaws, and has the right (which, to the extent exercised, is exclusive) to establish the rights, powers, duties, rules and procedures that from time to time will govern the board of directors and each of its members, including, without limitation, the vote required for any action by the board of directors, and that from time to time will affect the directors' powers to manage the business and affairs of the corporation. No bylaws may be adopted by stockholders that impair or impede the implementation of the foregoing. However, the bylaws may be amended or repealed, and new bylaws may be made, by the vote of the holders of not less than 66 and two thirds percent of the total voting power of all outstanding shares of voting stock of the corporation, at an annual meeting of stockholders, without previous notice, or at any special meeting of stockholders, provided that notice of such proposed amendment, modification, repeal or adoption is given in the notice of special meeting.
	corporation books, limitations of director liability and indemnification) requires the affirmative vote of the holders of outstanding shares representing at least 80 percent of the voting power of all of the shares of capital stock of the corporation then entitled to vote generally in the election of directors, unless such amendment is declared advisable by an affirmative vote of at least 75 percent of the entire board of directors. The restated bylaws may be amended at any annual or special meeting of stockholders entitled to vote by a majority vote or by the board of directors at any valid meeting by affirmative vote of a majority of the whole board.	
Anti-Takeover Provisions	Section 203 of the DGCL generally provides that a Delaware corporation such as Merrill Lynch which has not "opted out" of coverage by this section in the prescribed manner may not engage in any ''business combination" with an "interested stockholder" for a period of three years following the date that the stockholder became an " interested stockholder" unless: • prior to that time the board of directors of the corporation approved either the ''business combination" or the transaction which resulted in the stockholder becoming an ''interested stockholder;" • upon consummation of the transaction which resulted in the stockholder	Section 78.411 *et seq.* of the NRS generally provides that a Nevada corporation such as First Republic which has not "'opted out" of coverage by this section in the prescribed manner may not engage in any "combination" with an "interested stockholder" for a period of three years following the date that the stockholder became an "interested stockholder" unless: • prior to that time the board of directors of the corporation approved either the "combination" or the transaction which resulted in the stockholder becoming an "interested stockholder." After expiration of the three-year period, a Nevada corporation may engage in a

Merrill Lynch

becoming an ‘‘interested stockholder,” the ‘‘interested stockholder” owned at least 85 percent of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the “interested stockholder”) those shares owned by persons who are directors and also officers and shares owned by employee stock ownership plans in which employee participants do not have the right to determine confidentially whether the shares held subject to the plan will be tendered in a tender offer or exchange offer; or

• at or subsequent to that time, the ‘‘business combination” is approved by the board of directors and authorized at an annual or special meeting of stockholders by the affirmative vote of at least 66 and two thirds percent of the outstanding voting stock which is not owned by the ‘‘interested stockholder.”

The three-year prohibition on ‘‘business combinations” with an “interested stockholder” does not apply under certain circumstances, including “business combinations” with a corporation which does not have a class of voting stock that is:

• listed on a national security exchange;

• authorized for quotation on the Nasdaq Stock Market; or

• held of record by more than 2,000 stockholders,

unless in each case this result was directly or indirectly caused by the “interested stockholder” or from a transaction in which a person became an ‘‘interested stockholder.‘‘

An “interested stockholder” generally means any person that:

• is the owner of 15 percent or more of the outstanding voting stock of the corporation; or

• is an affiliate or associate of the corporation and was the owner of 15 percent or more of the outstanding voting stock of the corporation at any time within the three-year period immediately prior to the date on which

First Republic

“combination” with an “interested stockholder” only if:

• it is permitted by the articles of incorporation and certain voting requirements specified in Section 78.439 of the NRS are met; or

• the “combination” meets certain fair price criteria specified in Sections 78.441 to 78.444 of the NRS.

The above provisions do not apply to any “combination” of a Nevada corporation:

• which does not, as of the date that a person first becomes an “interested stockholder,” have a class of voting shares registered with the SEC under Section 12 of the Securities Act, unless the articles of incorporation provide otherwise; or

• whose articles of incorporation were amended to provide that the corporation is subject to the above provisions and which did not have a class of voting shares registered with the SEC under Section 12 of the Securities Act on the effective date of such amendment, if the “combination” is with an “interested stockholder” whose date of acquiring shares is before the effective date of such amendment.

An “interested stockholder” generally means any person that:

• is the beneficial owner, directly or indirectly, of 10 percent or more of the voting power of the outstanding voting shares of the corporation; or

• is an affiliate or associate of the corporation and at any time within three years immediately before the date in question was the beneficial owner, directly or indirectly, of 10 percent or more of the voting power of the outstanding shares of the corporation.

The term “combination” is broadly defined to include a variety of transactions, including mergers, consolidations, sales or other dispositions of five percent or more of a corporation’s assets and various other transactions which may benefit an “interested stockholder.”

First Republic’s articles of incorporation do not exempt First Republic from these

	Merrill Lynch	First Republic
	it is sought to be determined whether such person is an "interested stockholder," and the affiliates and associates of such a person. The term "business combination" is broadly defined to include a wide variety of transactions, including mergers, consolidations, sales or other dispositions of 10 percent or more of a corporation's assets and various other transactions which may benefit an "interested stockholder." Merrill Lynch's restated certificate of incorporation does not exempt Merrill Lynch from these restrictions and specifies additional requirements for ''business combinations" with ''interested stockholders" (as defined in the certificate of incorporation). Neither the restrictions set forth in the DGCL nor those specified in Merrill Lynch's restated certificate of incorporation apply to the merger of First Republic with and into ML Bank.	restrictions and even specify additional requirements for "business combinations" with 'interested stockholders" (as defined in the articles of incorporation). Neither the restrictions set forth in the NRS nor those specified in First Republic's articles of incorporation apply to the merger of First Republic with and into ML Bank.
Stockholder Nominations of Director Candidates	Any stockholder of record entitled to vote may nominate one or more persons for election as directors at a meeting if written notice has been provided to the secretary of the corporation not less than 50 days or more than 75 days prior to such meeting.	Any stockholder of record entitled to vote may nominate one or more persons for election as directors at a meeting if written notice has been provided to the secretary of the corporation not less than 10 days prior to such meeting.
Stockholder Proposals	In order to properly bring business before an annual meeting, a stockholder of record has to give written notice to the secretary not less than 50 days nor more than 75 days prior to such meeting, setting forth as to each matter such stockholder proposes a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting, the name and record address of such stockholder, the class or series and number of shares of capital stock of the corporation which are owned beneficially or of record by such stockholder, a description of all arrangements or understandings between such stockholder and any other person or persons (including their names) in connection	No advance notice is required for stockholder proposals at First Republic's stockholder meetings. (Please see, however, above for stockholder nominations of director candidates.)

	Merrill Lynch	First Republic
	with the proposal of such business by such stockholder and any material interest of such stockholder in such business and a representation that such stockholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting.	
Notice of Stockholders' Meetings	Notice of each meeting of stockholders must be given not less than 10 nor more than 60 days before the day of the meeting either by delivering personally, by electronic transmission, or by mailing a written notice to each stockholder of record entitled to vote at the meeting or by providing notice in such other form and by such other method as may be permitted by Delaware law. Every notice must be given in a form approved by the board of directors and must state the purpose or purposes for which the meeting is called as well as the place, date and time of the meeting.	Notice of each meeting of stockholders must be given not less than 10 or more than 60 days before the date of the meeting by delivering a typewritten or printed notice personally, by depositing such notice in the United States mail, or by transmitting such notice by telegraph, cable, courier, or wireless. Every notice must state the purpose or purposes for which the meeting is called as well as the place, date and time of the meeting.
Limitations on Director Liability	Merrill Lynch's certificate of incorporation provides that no member of Merrill Lynch's board of directors is personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except, to the extent provided by applicable law, for liability: • for breach of the director's duty of loyalty to the corporation or its stockholders; • for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; • pursuant to Section 174 of the DGCL; or • for any transaction from which the director derived an improper personal benefit. Should the DGCL be amended to authorize corporate action that further limits or eliminates the personal liability of directors, then the liability of each director of the corporation will be limited or eliminated to the full extent then permitted by the DGCL.	First Republic's articles of incorporation provide that no member of First Republic's board of directors is personally liable to the corporation or its stockholders for damages for breach of fiduciary duty as a director to the fullest extent permitted by Nevada corporation law. Pursuant to Section 78.138 of the NRS, a director is not individually liable to the corporation or its stockholders or creditors for any damages as a result of any act or failure to act in his capacity as a director, except: • for an act or a failure to act that constitutes a breach of the director's fiduciary duties as a director and the breach of those duties involved intentional misconduct, fraud or a knowing violation of law; or • as otherwise provided in Sections 35.230, 90.660, 91.250, 452.200, 452.270, 668.045 and 694A.030 of the NRS.

	Merrill Lynch	First Republic
Indemnification	Merrill Lynch must indemnify any person who is or was a director or officer of Merrill Lynch, or is or was serving at the request of the corporation as a director, officer or trustee of another corporation, trust or other enterprise, with respect to actions taken or omitted by such person in any capacity in which such person serves Merrill Lynch or such other corporation, trust or other enterprise, to the full extent authorized or permitted by law and such indemnification continues as to a person who has ceased to be a director, officer or trustee, as the case may be, and inures to the benefit of such person's heirs, executors and personal and legal representatives. However, except for proceedings to enforce rights to indemnification, Merrill Lynch is not obligated to indemnify any person in connection with a proceeding initiated by such person unless such proceeding was authorized in advance, or unanimously consented to, by the board of directors. Any person who is or was a director or officer of a subsidiary of Merrill Lynch is deemed to be serving in such capacity at the request of Merrill Lynch for purposes of indemnification. Directors and officers of Merrill Lynch have the right to be paid by Merrill Lynch expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition. Merrill Lynch may, to the extent authorized from time to time by the board of directors, advance such expenses to any person who is or was serving at the request of Merrill Lynch as a director, officer or trustee of another corporation, trust or other enterprise.	First Republic must 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 (other than an action by or in the right of First Republic), by reason of the fact that he is or was a director, officer, employee or agent of First Republic, or is or was serving at the request of First Republic as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or as a member of any committee or similar body, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of First Republic, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. First Republic must indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of First Republic to procure judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of First Republic, or is or was serving at the request of First Republic as director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or as a member of any committee or similar body, against expenses (including attorney's fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of First Republic. However, no indemnification has to be made in respect of any claim, issue or matter as to which such person shall have been adjudged liable for negligence or misconduct in his performance of his duty to First Republic unless and only to the extent that the court in which such action or suit was

	Merrill Lynch	First Republic
		brought determines upon application that in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which a court of competent jurisdiction deems proper. The determinations of whether a person is entitled to indemnification in a specific case are made: • by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding; • if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; or • by the stockholders.
Appraisal or Dissenters' Rights	Section 262 of the DGCL provides that stockholders have the right, in some circumstances, to dissent from certain corporate action and to instead demand payment of the fair value of their shares. Stockholders do not have appraisal rights with respect to shares of any class or series of stock if such shares of stock, or depositary receipts in respect thereof, are either: • listed on a national securities exchange; • included in the national market system by the National Association of Securities Dealers, Inc.; or • held by more than 2,000 stockholders of record; unless the stockholders receive in exchange for their shares anything other than shares of stock of the surviving or resulting corporation (or depositary receipts in respect thereof), or of any other corporation that is publicly listed or held by more than 2,000 holders of record, cash in lieu of fractional shares or fractional depositary receipts described above or any combination of the foregoing. Only stockholders of record are entitled to dissenters' rights.	Sections 92A.300 to 92A.500 of the NRS provide that stockholders have the right, in some circumstances, to dissent from certain corporate actions and to instead demand payment of the fair value of their shares. Stockholders do not have appraisal rights with respect to shares of any class or series of stock if such shares of stock are either: • listed on a national securities exchange; • included in the national market system by the National Association of Securities Dealers, Inc.; or • held by at least 2,000 stockholders of record; unless the stockholders receive in exchange for their shares anything other than cash, owner's interests or owner's interests and cash in lieu of fractional shares of the surviving or acquiring entity, or of any other entity that is publicly listed or held by more than 2,000 holders of owner's interests, or a combination of the foregoing. Both stockholders of record and beneficial stockholders are entitled to dissenters' rights.

No Material Difference in Rights of Holders of First Republic Preferred Stock and New Merrill Lynch Preferred Stock

The terms, designations, preferences, limitations, privileges, and relative rights of shares of First Republic preferred stock and the shares of New Merrill Lynch Preferred Stock for which they will be exchanged are identical except for certain non-material technical or format changes to the provisions included in the terms of the New Merrill Lynch Preferred Stock. Please see the section entitled "Description of Merrill Lynch Capital Stock — New Merrill Lynch Preferred Stock to be Issued in the Merger" beginning on page 75.

COMPARATIVE MARKET PRICES AND DIVIDENDS

Merrill Lynch common stock and First Republic common stock are listed on the New York Stock Exchange and trade under the symbols "MER" and "FRC," respectively. The following table sets forth the high and low reported sales prices per share of Merrill Lynch and First Republic common stock on the New York Stock Exchange, and the quarterly cash dividends declared per share for the periods indicated.

Merrill Lynch and First Republic stockholders are advised to obtain current market quotations for Merrill Lynch and First Republic common stock. The market prices of Merrill Lynch and First Republic common stock will fluctuate between the date of this proxy statement/prospectus and completion of the merger. No assurances can be given concerning the market prices of Merrill Lynch or First Republic common stock before the effective date of the registration statement or Merrill Lynch common stock after completion of the merger.

	Merrill Lynch Common Stock			First Republic Common Stock(1)		
	High	Low	Dividend	High	Low	Dividend
2004						
First Quarter	$ 64.89	$ 56.97	$ 0.16	$ 29.20	$ 24.00	$ 0.083
Second Quarter	60.74	51.35	0.16	28.78	23.61	0.083
Third Quarter	54.32	47.35	0.16	31.33	27.33	0.10
Fourth Quarter	61.16	50.01	0.16	35.89	29.83	0.10
2005						
First Quarter	$ 61.99	$ 56.01	$ 0.16	$ 36.55	$ 32.05	$ 0.10
Second Quarter	57.50	52.00	0.20	35.39	30.71	0.125
Third Quarter	61.67	54.36	0.20	39.33	34.22	0.125
Fourth Quarter	69.34	58.64	0.20	40.10	33.76	0.125
2006						
First Quarter	$ 78.82	$ 67.95	$ 0.25	$ 42.03	$ 35.02	$ 0.125
Second Quarter	80.33	65.41	0.25	45.81	37.06	0.15
Third Quarter	79.09	67.49	0.25	45.96	41.09	0.15
Fourth Quarter	93.56	78.44	0.25	41.16	37.98	0.15
2007						
First Quarter	$ 97.53	$ 79.22	$ 0.35	$ 53.85	$ 38.30	$ **[•]**
Second Quarter (through **[•]**, 2007)	$ **[•]**	$ **[•]**	$ **[•]**	$ **[•]**	$ **[•]**	$ **[•]**

(1) Historical market prices and dividend data for First Republic common stock for 2004 and the first quarter of 2005 have been adjusted to give effect to the three-for-two stock split of First Republic common stock that occurred in the form of a stock dividend to stockholders of record at the close of business on March 1, 2005.

The following table sets forth the closing sale prices per share of Merrill Lynch common stock and First Republic common stock in each case as reported on the New York Stock Exchange on January 26, 2007, the last trading day before Merrill Lynch and First Republic announced the merger, and on **[•]**, 2007, the last practicable trading day before the distribution of this document.

	Merrill Lynch Common Stock Closing Price	First Republic Stock Closing Price
January 26, 2007	$ 94.53	$ 38.30
[•], 2007	$ **[•]**	$ **[•]**

Shares of First Republic preferred stock are not traded in any public market and all issued and outstanding shares are held by the Depositary. Each outstanding share of First Republic preferred stock is represented by First Republic Depositary Shares that are listed on the New York Stock Exchange and represent a one-fortieth interest in a share of First Republic preferred stock.

Shares of First Republic preferred stock pay regular quarterly cash dividends at the rate of 6.70% for the First Republic 6.70% Noncumulative Perpetual Preferred Series A Shares and 6.25% for the First Republic 6.25% Noncumulative Perpetual Preferred Series B Shares.

First Republic may only repurchase shares of its stock prior to completion of the merger if such repurchase is in accordance with applicable law and consistent with the terms of the merger agreement.

VALIDITY OF COMMON AND PREFERRED STOCK

The validity of Merrill Lynch common stock and preferred stock to be registered in connection with the merger has been passed upon for Merrill Lynch by Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004. The validity of preferred share purchase rights attaching to Merrill Lynch common stock to be registered in connection with the merger has been passed upon for Merrill Lynch by Richard Alsop, General Counsel Corporate Law of Merrill Lynch, 222 Broadway — 17th Floor, New York, New York 10038.

EXPERTS

The consolidated financial statements, the related financial statement schedule, and management's report on the effectiveness of internal control over financial reporting incorporated in this Registration Statement on Form S-4 by reference from Merrill Lynch's Annual Report on Form 10-K for the year ended December 29, 2006 have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports, which are incorporated herein by reference (which reports (1) expressed an unqualified opinion on the consolidated financial statements and financial statement schedule and included an explanatory paragraph regarding the change in accounting method in 2006 for share-based payments to conform to Statement of Financial Accounting Standard No. 123 (revised 2004), *Share-Based Payment*, (2) expressed an unqualified opinion on management's assessment regarding the effectiveness of internal control over financial reporting, and (3) expressed an unqualified opinion on the effectiveness of internal control over financial reporting) and have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

With respect to the unaudited condensed consolidated interim financial information for the three-month periods ended March 30, 2007 and March 31, 2006 which is incorporated herein by reference, Deloitte & Touche LLP, an independent registered public accounting firm, have applied limited procedures in accordance with the standards of the Public Company Accounting Oversight Board (United States) for the review of such information. However, as stated in their report included in the Company's Quarterly Reports on Form 10-Q for the quarter ended March 30, 2007 (which report included an explanatory paragraph regarding the adoption of Statement of Financial Accounting Standards No. 157, *"Fair Value Measurement,"* 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."*) and incorporated by reference herein, they did not audit and they do not express an opinion on that interim financial information. Accordingly, the degree of reliance on their report on such information should be restricted in light of the limited nature of the review procedures applied. Deloitte & Touche LLP are not subject to the liability provisions of Section 11 of the Securities Act of 1933 for their reports on the unaudited condensed consolidated interim financial information because that report is not a "report" or a "part" of the registration statement prepared or certified by an accountant within the meaning of Sections 7 and 11 of the Act.

The consolidated financial statements of First Republic and subsidiaries as of December 31, 2006 and 2005, and for each of the years in the three-year period ended December 31, 2006, have been incorporated by reference herein in reliance upon the report of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

STOCKHOLDER PROPOSALS

Merrill Lynch

If the merger is completed, First Republic stockholders will become stockholders of Merrill Lynch. If you wish to submit a stockholder proposal to be included in the proxy materials for Merrill Lynch's 2008 annual meeting, you must submit the proposal in writing to the corporate secretary of Merrill Lynch at the address below no later than November 16, 2007.

MERRILL LYNCH & CO., INC.
222 Broadway — 17th Floor
New York, New York 10038
Attention: Judith A. Witterschein
Corporate Secretary

If you wish to submit a proposal or a matter for consideration at Merrill Lynch's 2008 annual meeting, but you do not meet the deadline for inclusion in the proxy materials, Merrill Lynch's bylaws require that the proposal be submitted by the holder of record of the shares and received by the corporate secretary at least 50 days before the date of the 2008 annual meeting. As a general matter, Merrill Lynch holds its annual meeting during the third or fourth week of April. Any proposal also must comply with certain information requirements set forth in Merrill Lynch's bylaws. The bylaws are filed as an exhibit to Merrill Lynch's Current Report on Form 8-K filed with the SEC on December 12, 2006 and may be found on Merrill Lynch's Corporate Governance Website. You also may obtain a copy of the bylaws from Merrill Lynch's Corporate Secretary at the address above. These requirements apply to any matter that a stockholder wishes to raise at the annual meeting other than pursuant to the procedures set forth in Rule 14a-8 of the U.S. Securities Exchange Act of 1934.

First Republic

If the merger is completed before First Republic is required to hold its annual meeting, there will be no First Republic annual meeting of stockholders in 2007 or thereafter. In case the merger is not completed, set forth below is information relevant to a regularly scheduled 2008 annual meeting of First Republic stockholders.

If a stockholder notifies First Republic after February 16, 2008 of an intent to present a proposal at First Republic's 2008 annual meeting, First Republic will have the right to exercise its discretionary voting authority with respect to the proposal, without including information regarding the proposal in its proxy materials. Stockholder proposals to be presented at the 2008 annual meeting must be received by First Republic on or before November 4, 2007 for inclusion in the proxy statement/prospectus and proxy card relating to that meeting. It is requested that such proposals be submitted to the attention of the First Republic's Corporate Secretary at 111 Pine Street, 2nd Floor, San Francisco, California 94111.

WHERE YOU CAN FIND MORE INFORMATION

Merrill Lynch has filed a registration statement with the SEC under the Securities Act that registers the distribution to First Republic stockholders of the shares of its common stock in the merger. The registration statement, including the attached exhibits and schedules, contains additional relevant information about Merrill Lynch and First Republic and the common stock of these companies. The rules and regulations of the SEC allow us to omit some information included in the registration statement from this proxy statement/prospectus.

Merrill Lynch and First Republic file annual, quarterly and current reports, proxy statements and other information with the SEC and the FDIC, respectively. You may read and copy any nonconfidential information filed with the SEC at the Public Reference Room of the SEC at 100 F Street, N.E., Room 1024, Washington, D.C. 20549. You may obtain information on the operation of the SEC's Public Reference Room by calling the SEC at 1-800-SEC-0330. You may read and copy nonconfidential information filed with the FDIC at the Public Information Center of the FDIC at 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226. You may obtain information by calling the FDIC at 1-877-ASK-FDIC (1-877-275-3342).

The SEC also maintains a website that contains reports, proxy statements and other information about issuers, like Merrill Lynch, that file electronically with the SEC. The address of the website is *http://www.sec.gov.* The reports and other information filed by First Republic and Merrill Lynch with the SEC and FDIC, respectively, are also available at Merrill Lynch's and First Republic's websites. The address of Merrill Lynch's website is *http://www.ml.com.* The address of First Republic's website is *http://www.firstrepublic.com.* Except for the documents specifically incorporated by reference into this proxy statement/prospectus, information contained on Merrill Lynch's or First Republic's website or that can be accessed through their respective websites is not incorporated by reference into this proxy statement/prospectus.

The SEC and the FDIC allow Merrill Lynch and First Republic to "incorporate by reference" information into this document. This means that Merrill Lynch and First Republic can disclose important information to you by referring you to another document filed separately with the SEC or the FDIC. The information incorporated by reference into this document is considered to be a part of this document, except for any information that is superseded by information that is included directly in this document.

This document incorporates by reference the documents listed below that Merrill Lynch and First Republic previously filed with the SEC and the FDIC, respectively. They contain important information about these companies and their financial condition.

Merrill Lynch Filings	**Period or Date Filed**
Annual Report on Form 10-K	Year ended December 29, 2006 — filed February 26, 2007
Quarterly Report on Form 10-Q	Quarter ended March 30, 2007 — filed May 7, 2007
Current Reports on Form 8-K	January 5, 2007, January 18, 2007, January 26, 2007, January 30, 2007, February 5, 2007, February 7, 2007, February 23, 2007, February 27, 2007, February 28, 2007, March 1, 2007, March 5, 2007, March 13, 2007(3), March 15, 2007, March 16, 2007, March 21, 2007 (2), March 28, 2007, April 5, 2007 (3), April 9, 2007, April 11, 2007 (2), April 19, 2007, April 25, 2007, April 30, 2007 (2), May 2, 2007, May 3, 2007 and May 4, 2007

The description of Merrill Lynch common stock set forth in the registration statement on Form 8-A filed pursuant to Section 12 of the Exchange Act, including any amendment or report filed with the SEC for the purpose of updating this description.

First Republic Filings	Period or Date Filed
Annual Report on Form 10-K	Year ended December 31, 2006 — filed February 27, 2007
Amendment No. 1 to Annual Report on Form 10-K	Year ended December 31, 2006, — filed April 30, 2007
Current Reports on Form 8-K	January 29, 2007, January 30, 2007, January 31, 2007 and March 15, 2007

The description of First Republic common stock set forth in the registration statement on Form 8-A filed pursuant to Section 12 of the Exchange Act, including any amendment or report filed with the FDIC for the purpose of updating this description.

To the extent that any information contained in any Current Report on Form 8-K, or any exhibit thereto, was furnished to, rather than filed with, the SEC or the FDIC, such information or exhibit is specifically not incorporated by reference into this proxy/statement prospectus.

In addition, this proxy statement/prospectus also incorporates by reference into this document additional documents that either Merrill Lynch or First Republic may file with the SEC or the FDIC, respectively, between the date of this document and the date of the First Republic Special Meeting (other than the portions of those documents not deemed to be filed). These documents include periodic reports, such as Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, as well as proxy statements.

Documents incorporated by reference are available from the companies without charge, excluding any exhibits to those documents unless the exhibit is specifically incorporated by reference as an exhibit into this document. You can obtain documents incorporated by reference into this document by requesting them in writing or by telephone from the appropriate company at the following addresses:

MERRILL LYNCH & CO., INC
222 Broadway — 17th Floor
New York, New York 10038
Attention: Judith A. Witterschein
Corporate Secretary
Tel: (212) 670-0432
E-mail: corporate_secretary@ml.com

FIRST REPUBLIC BANK
111 Pine Street, 2nd Floor
San Francisco, California 94111
Attention: Willis H. Newton, Jr.
Chief Financial Officer
Tel: (415) 392-1400
E-mail: investorrelations@firstrepublic.com

If you would like to request documents, please do so by [•], 2007 in order to receive them before the First Republic special meeting of stockholders.

We have not authorized anyone to give any information or make any representation about the merger, Merrill Lynch or First Republic that is different from, or in addition to, that contained in this proxy statement/prospectus or in any of the materials that we have incorporated into this document. Therefore, if anyone does give you information of this sort, you should not rely on it. If you are in a jurisdiction where offers to exchange or sell, or solicitations of offers to exchange or purchase, the securities offered by this document or the solicitation of proxies is unlawful, or if you are a person to whom it is unlawful to direct these types of activities, then the offer presented in this document does not extend to you. The information contained in this document speaks only as of the date of this document unless the information specifically indicates that another date applies.

ANNEX A

AGREEMENT AND PLAN OF MERGER
Dated as of January 29, 2007
among
MERRILL LYNCH & CO., INC.,
FIRST REPUBLIC BANK
and
MERRILL LYNCH BANK & TRUST CO., FSB

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Agreement and Plan of Merger, dated as of January 29, 2007 (this "Agreement"), among MERRILL LYNCH & CO., INC., a Delaware corporation ("Merrill Lynch"), FIRST REPUBLIC BANK, a Nevada banking corporation ("First Republic") and MERRILL LYNCH BANK & TRUST CO., FSB, a federal stock savings bank ("MLFSB"). The addresses of each party hereto are set forth in Section 9.08.

Recitals

A. *The Proposed Transaction; Structure.* The parties intend to effect a strategic business combination through the merger of First Republic with and into MLFSB, as of the date hereof an indirect, wholly owned subsidiary of Merrill Lynch (the "Merger"), with MLFSB the surviving entity (the "Surviving Entity"). Prior to the Merger, Merrill Lynch intends to cause MLFSB to become a wholly owned direct subsidiary (as determined under U.S. federal income tax law) of Merrill Lynch.

B. *Board Determinations.* The respective boards of directors of Merrill Lynch, First Republic and MLFSB have each determined that the Merger and the other transactions contemplated hereby are consistent with, and will further, their respective business strategies and goals, and are in the best interests of their respective stockholders and, therefore, have approved the Merger, this Agreement and, in the case of First Republic, adopted and recommended to stockholders the plan of merger contained in this Agreement.

C. *Intended Tax Treatment.* The parties intend the Merger to be treated as a reorganization under Section 368(a) of the Code (as defined below) and the Treasury Regulations (as defined below) and intend for this Agreement to constitute a "plan of reorganization" within the meaning of the Code.

D. *Employment Agreements.* As an inducement and condition to Merrill Lynch's willingness to enter into this Agreement, concurrently with the execution and delivery of this Agreement, the executive officers of First Republic set forth on Annex 1 have entered into employment agreements, in form and substance reasonably acceptable to such executive officers and the parties.

Now, Therefore, in consideration of the premises, and of the mutual representations, warranties, covenants and agreements contained in this Agreement, Merrill Lynch, First Republic and MLFSB agree as follows:

ARTICLE I

DEFINITIONS; INTERPRETATION

1.01 *Definitions.* This Agreement uses the following definitions:

"Acquisition Proposal" means a tender or exchange offer to acquire more than 15% of the voting power in First Republic or any of its Subsidiaries, a proposal for a merger, consolidation or other business combination involving First Republic or any of its Significant Subsidiaries or any other proposal or offer to acquire in any manner more than 15% of the voting power in, or more than 15% of the business, assets or deposits of, First Republic or any of its Significant Subsidiaries, other than the transactions contemplated by this Agreement; provided, however, that for purposes of Section 8.03(a), reference in this definition to "more than 15%" shall be deemed to be references to "25% or more".

"Adverse Recommendation" has the meaning assigned in Section 6.02(c).

"Advisory Board" has the meaning assigned in Section 6.18(b).

"Advisory Board Member" has the meaning assigned in Section 6.18(b).

"Advisory Client" has the meaning assigned in Section 5.03(v)(1).

"Advisory Contract" has the meaning assigned in Section 5.03(v)(1).

"Advisory Entities" has the meaning assigned in Section 5.03(v)(1).

"affiliate" means, for any person, any other person that directly or indirectly controls, is controlled by or is under common control with such first person.

"Agreement" has the meaning assigned in the Preamble.

"Articles of Combination" has the meaning assigned in Section 2.03.

"Articles of Merger" has the meaning assigned in Section 2.03.

"Bank Merger Act" means Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(c)).

"Benefit Arrangement" means with respect to First Republic, each "employee benefit plan" (within the meaning of section 3(3) of ERISA), and all stock purchase, stock option, severance, employment, change-in-control, fringe benefit, bonus, incentive, deferred compensation, paid time off benefits and all other employee benefit or compensation plans, agreements, programs, policies or other arrangements, and any amendments thereto, whether or not subject to ERISA, (a) under which any Employee or any of its current or former directors has any present or future right to benefits, (b) sponsored or maintained by it or its Subsidiaries, or (c) under which it or its Subsidiaries has had or has any present or future liability to any Employee or any of its current or former directors.

"Cash Designated Shares" has the meaning assigned in Section 3.01(c)(5)(B)(2).

"Cash Election Shares" has the meaning assigned in Section 3.01(c)(2).

"Closing" has the meaning assigned in Section 2.02.

"Closing Date" has the meaning assigned in Section 2.02.

"Code" means the Internal Revenue Code of 1986.

"Confidentiality Agreement" has the meaning assigned in Section 6.05(b).

"Conversion Number" has the meaning assigned in Section 3.01(a)(1).

"Covered Employees" has the meaning assigned in Section 6.12(a).

"Deferred Cash Award" has the meaning assigned in Section 3.02(b).

"Deferred Equity Units" has the meaning assigned in Section 3.02(b).

"Disclosure Schedule" has the meaning assigned in Section 5.01.

"Effective Time" has the meaning assigned in Section 2.03.

"Election Deadline" has the meaning assigned in Section 3.01(c)(2).

"Election Form" has the meaning assigned in Section 3.01(c)(1).

"Election Form Record Date" has the meaning assigned in Section 3.01(c)(1).

"Employees" means First Republic's current and former employees and those of its Subsidiaries.

"Environmental Laws" means any federal, state or local law, regulation, order, decree, permit, authorization, opinion, common law or agency requirement relating to: (1) the protection or restoration of the environment, health, safety or natural resources; (2) the handling, use, presence, disposal, release or threatened release of, or exposure to, any Hazardous Substance or (3) noise, odor, wetlands, indoor air, pollution, contamination or any injury or threat of injury to persons or property involving any Hazardous Substance.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" has the meaning assigned in Section 5.03(*l*)(3).

"ERISA Plan" has the meaning assigned in Section 5.03(*l*)(2).

"Exchange Act" means the Securities Exchange Act of 1934.

"Exchange Agent" has the meaning assigned in Section 3.01(d).

"FDIC" means the Federal Deposit Insurance Corporation.

"FDIC Rules" means the rules and regulations guidance promulgated by, and the guidance issued by, the FDIC in connection with the publicly traded securities of nonmember insured banks, including the rules and regulations codified at 12 C.F.R. § 335.101, *et seq.* and the "Statement of Policy Regarding Use of Offering Circulars In Connection With Public Distribution of Bank Securities."

"First Republic" has the meaning assigned in the Preamble.

"First Republic Affiliate" has the meaning assigned in Section 6.07.

"First Republic Board" means the Board of Directors of First Republic.

"First Republic Common Stock" means the common stock, par value $0.01 per share, of First Republic.

"First Republic Deferred Plan" has the meaning assigned in Section 3.02(b).

"First Republic Division" has the meaning assigned in Section 6.18(a).

"First Republic Employee Stock Option" has the meaning assigned in Section 3.02(a)(1).

"First Republic Employee Stock Ownership Plan" means the First Republic Employee Stock Ownership Plan.

"First Republic Meeting" has the meaning assigned in Section 6.02(c).

"First Republic Non-Employee Stock Option" has the meaning assigned in Section 3.02(a)(2).

"First Republic Preferred Stock" means (1) the 6.70% Noncumulative Perpetual Series A Preferred Stock, par value $0.01 per share and (2) the 6.25% Noncumulative Perpetual Series B Preferred Stock, par value $0.01 per share.

"First Republic Regulatory Filings" has the meaning assigned in Section 5.03(g)(1).

"First Republic Reports" has the meaning assigned in Section 5.03(r).

"First Republic Stock" means, collectively, the First Republic Common Stock and the First Republic Preferred Stock.

"First Republic Stock Plans" means the plans Previously Disclosed by First Republic.

"First Republic Sub Debt" has the meaning assigned in Section 6.01(b).

"First Republic's Current Premium" has the meaning assigned in Section 6.11(b).

"Form ADV" has the meaning assigned in Section 5.03(v)(6).

"GAAP" means United States generally accepted accounting principles.

"Governing Documents" means the charter, articles or certificate of incorporation and bylaws of a corporation or banking organization, the certificate of partnership and partnership agreement of a general or limited partnership, the certificate of formation and limited liability company agreement of a limited liability company, the trust agreement of a trust and the comparable documents of other entities.

"Governmental Authority" means any court, administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, or any self-regulatory authority.

"Hazardous Substance" means any substance in any concentration that is: (1) listed, classified or regulated pursuant to any Environmental Law; (2) any petroleum or coal product or by-product, friable asbestos-containing material, lead-containing paint, polychlorinated biphenyls, microbial matter which emits mycotoxins that are harmful to human health, radioactive materials or radon; or (3) any other substance that may be the subject of regulatory action by any Governmental Authority or a source of

liability pursuant to any Environmental Law; provided, however, that notwithstanding the foregoing or any other provision in this Agreement to the contrary, the words "Hazardous Substance" shall not mean Hazardous Substances that are naturally occurring in any ambient air, surface water, ground water, land surface or subsurface strata.

"HOLA" means the Home Owners' Loan Act (12 U.S.C. § 1464).

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"Indemnified Party" has the meaning assigned in Section 6.11(a).

"Intellectual Property" shall mean all patents, trademarks, trade names, service marks, domain names, database rights, copyrights, and any applications therefor, mask works, technology, know-how, Trade Secrets, inventory, ideas, algorithms, processes, computer software programs or applications (in both source code and object code form), and tangible or intangible proprietary information or material and all other intellectual property or proprietary rights.

"Investment Advisers Act" has the meaning assigned in Section 5.03(v)(5).

"IRS" has the meaning assigned in Section 5.03(*l*)(2).

"Lien" means any charge, mortgage, pledge, security interest, restriction, claim, lien or encumbrance.

"Loans" means loans, extensions of credit (including guaranties), commitments to extend credit and other similar assets, in each case required to be reflected in the financial statements of First Republic or its Subsidiaries pursuant to applicable regulatory or accounting principles.

"Mailing Date" has the meaning assigned in Section 3.01(c)(1).

"Market Price" means the average of the last reported sale prices of Merrill Lynch Common Stock, as reported by the NYSE Composite Transactions Reporting System (as reported in *The Wall Street Journal* or, if not reported therein, in another authoritative source), for the last five NYSE trading days preceding the Closing Date.

"Material Adverse Effect" means, with respect to Merrill Lynch or First Republic, any effect that (1) has a material adverse effect on the financial condition, results of operations, assets or business of Merrill Lynch or First Republic, as the case may be, and their respective Subsidiaries, taken as a whole, excluding (with respect to each of clause (A) or (C), to the extent that the effect of a change on it is not substantially disproportionate to the effect on comparable U.S. banking or financial services organizations) the impact of (A) changes in banking and other laws of general applicability or changes in the interpretation thereof by Governmental Authorities, (B) changes in GAAP or regulatory accounting requirements applicable to U.S. banking or financial services organizations generally, (C) changes generally affecting the banking or financial services industries, including changes in economic or market conditions or changes in prevailing interest rates, currency exchange rates or price levels or trading volumes in the U.S. or foreign securities markets, (D) changes in global or national political conditions (including the outbreak of war or acts of terrorism) or due to natural disasters, (E) the effects of the actions or omissions expressly required by this Agreement or that are taken with the prior written consent of Merrill Lynch or MLFSB, as the case may be, in connection with the transactions contemplated hereby, (F) the announcement or pendancy of this Agreement and the transactions contemplated hereby or (G) any failure, in and of itself, by Merrill Lynch or First Republic, as the case may be, to meet any internal or published projections, forecasts or revenue or earnings predictions; or (2) would materially impair the ability of Merrill Lynch or First Republic, as the case may be, to perform its obligations under this Agreement or to consummate the transactions contemplated hereby.

"Materials of Environmental Concern" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants, including without limitation those defined or regulated as such under any Environmental Law, and any other substance the presence of which may give rise to liability under Environmental Law.

"Merger" has the meaning assigned in the Recitals.

"Merger Consideration" has the meaning assigned in Section 3.01(a)(2).

"Merrill Lynch" has the meaning assigned in the Preamble.

"Merrill Lynch Board" means the Board of Directors of Merrill Lynch.

"Merrill Lynch Common Stock" means the common stock, par value $1.33 1/3 per share, of Merrill Lynch.

"Merrill Lynch Merger Preferred Stock" has the meaning assigned in Section 3.01(*l*).

"Merrill Lynch Stock" means, collectively, the Merrill Lynch Common Stock and the Merrill Lynch Preferred Stock.

"Merrill Lynch Preferred Stock" means (1) the Floating Rate Non-Cumulative Preferred Stock, Series 1, Series 2 and Series 4, par value $1.00 per share, of Merrill Lynch and (2) the 6.375% Non-Cumulative Preferred Stock, Series 3, par value $1.00 per share, of Merrill Lynch.

"Merrill Lynch Regulatory Filings" has the meaning assigned in Section 5.04(f)(1).

"Merrill Lynch Rights" means rights to purchase shares of Merrill Lynch Stock issued under the Merrill Lynch Rights Agreement.

"Merrill Lynch Rights Agreement" means the Amended and Restated Rights Agreement, dated as of December 2, 1997, between Merrill Lynch and ChaseMellon Shareholder Services, LLC, as Rights Agent.

"Merrill Lynch Stock Option" has the meaning assigned in Section 3.02(a)(1).

"Merrill Lynch Stock Plans" means the plans Previously Disclosed by Merrill Lynch.

"MLFSB" has the meaning assigned in the Preamble.

"MLFSB Bylaws" means the bylaws of MLFSB, as in effect on the date hereof or as amended as provided herein, as the context requires.

"MLFSB Charter" means the federal stock charter of MLFSB, as in effect on the date hereof or as amended as provided herein, as the context requires.

"MLFSB Reports" has the meaning assigned in 5.04(m).

"MLFSB Stock" has the meaning assigned in 5.04(b)(2).

"Multiemployer Plan" has the meaning assigned in Section 5.03(*l*)(2).

"New Certificates" has the meaning assigned in Section 3.01(d).

"No Election Shares" has the meaning assigned in Section 3.01(c)(2).

"NRS" means the Revised Statutes of the State of Nevada.

"NYSE" means the New York Stock Exchange.

"Old Certificate" has the meaning assigned in Section 3.01(b).

"OTS" means the Office of Thrift Supervision.

"OTS Regulations" means the rules and regulations promulgated by, and guidance issued by, the OTS codified at 12 C.F.R. § 500, *et seq.*

"party" means Merrill Lynch, First Republic or MLFSB.

"Pension Plan" has the meaning assigned in Section 5.03(*l*)(2).

"Per Share Cash Consideration" has the meaning assigned in Section 3.01(a)(2).

"Per Share Stock Consideration" has the meaning assigned in Section 3.01(a)(1).

"person" is to be interpreted broadly to include any individual, savings association, bank, trust company, corporation, limited liability company, partnership, association, joint-stock company, business trust or unincorporated organization.

"Previously Disclosed" means information set forth by a party in the applicable paragraph of its Disclosure Schedule, or any other paragraph of its Disclosure Schedule (so long as it is reasonably clear from the context that the disclosure in such other paragraph of its Disclosure Schedule is also applicable to the section of this Agreement in question).

"Proxy Statement" has the meaning assigned in Section 6.03(a).

"Registration Statement" has the meaning assigned in Section 6.03(a).

"Representatives" means, with respect to any person, such person's directors, officers, employees, legal or financial advisors or any representatives of such legal or financial advisors.

"Requisite Regulatory Approvals" has the meaning assigned in Section 6.10(a).

"Rights" means, with respect to any person, securities or obligations convertible into or exercisable or exchangeable for, or giving any other person any right to subscribe for or acquire, or any options, calls or commitments relating to, or any stock appreciation right or other instrument the value of which is determined in whole or in part by reference to the market price or value of, shares of capital stock of such first person.

"Risk Management Contract" has the meaning assigned in Section 5.03(y).

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933.

"Stock Designated Shares" has the meaning assigned in Section 3.01(c)(5)(A)(2).

"Stock Election Shares" has the meaning assigned in Section 3.01(c)(2).

"Subsidiary" and *"Significant Subsidiary"* have the meanings ascribed to those terms in Rule 1-02 of Regulation S-X promulgated by the SEC. Each of the following Subsidiaries of First Republic will be deemed a Significant Subsidiary for purposes of this Agreement: Froley, Revy Investment Company, Inc., Starbuck, Tisdale & Associates and Trainer Wortham & Company, Inc.

"Superior Proposal" means a *bona fide* written Acquisition Proposal which the First Republic Board concludes in good faith to be more favorable from a financial point of view to its stockholders than the Merger and the other transactions contemplated hereby, (1) after receiving the advice of its financial advisor (who shall be a nationally recognized investment banking firm), (2) after taking into account the likelihood of consummation of such transaction on the terms set forth therein (as compared to, and with due regard for, the terms herein) and (3) after taking into account all legal (with the advice of outside counsel), financial (including the financing terms of any such proposal), regulatory and other aspects of such proposal and any other relevant factors permitted under applicable law; provided that for purposes of the definition of "Superior Proposal", the references to "more than 15%" in the definition of "Acquisition Proposal" shall be deemed to be references to "25% or more".

"Surviving Entity" has the meaning assigned in the Recitals.

"Takeover Laws" has the meaning assigned in Section 5.03(o).

"Takeover Provisions" has the meaning assigned in Section 5.03(o).

"Tax" and *"Taxes"* means all federal, state, local or foreign taxes, charges, fees, levies or other assessments, however denominated, including all net income, gross income, gains, gross receipts, sales, use, ad valorem, goods and services, capital, production, transfer, franchise, windfall profits, license, withholding, payroll, employment, disability, employer health, excise, estimated, severance, stamp,

occupation, property, environmental, unemployment or other taxes, custom duties, fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts (including interest in respect of such penalties, additions to tax or additional amounts) imposed by any taxing authority.

"Tax Returns" means any return, amended return or other report (including elections, declarations, disclosures, schedules, estimates and information returns) required to be filed or delivered with respect to any Tax.

"Technology Systems" shall mean the electronic data processing, information, record keeping, communications, telecommunications, hardware, third-party software, networks, peripherals, portfolio trading and computer systems, including any outsourced systems and processes, and Intellectual Property which are used by First Republic and its Subsidiaries.

"Termination Fee" has the meaning assigned in Section 8.03(a).

"Total Cash Amount" has the meaning assigned in Section 3.01(a).

"Trade Secrets" means all trade secrets and confidential information, including know-how, processes, schematics, business methods, formulae, drawings, prototypes, models, designs, customer lists and supplier lists.

"Treasury Regulations" the regulations promulgated by the U.S. Department of the Treasury under the Code.

1.02 *Interpretation.* (a) In this Agreement, except as context may otherwise require, references:

(1) to the Preamble, Recitals, Sections, Exhibits, Annexes or Schedules are to the Preamble to, a Recital or Section of, or Exhibit, Annex or Schedule to, this Agreement;

(2) to this Agreement are to this Agreement, and the Annexes and Schedules to it, taken as a whole;

(3) to any agreement (including this Agreement), contract, statute or regulation are to the agreement, contract, statute or regulation as amended, modified, supplemented or replaced from time to time (in the case of an agreement or contract, to the extent permitted by the terms hereof); and to any section of any statute or regulation are to any successor to the section;

(4) to any statute includes any regulation or rule promulgated thereunder;

(5) to any Governmental Authority include any successor to that Governmental Authority; and

(6) to the date of this Agreement or the date hereof are to January 29, 2007.

(b) The table of contents and article and section headings are for reference purposes only and do not limit or otherwise affect any of the substance of this Agreement.

(c) The words "include," "includes" or "including" are to be deemed followed by the words "without limitation."

(d) The words "herein", "hereof" or "hereunder", and similar terms are to be deemed to refer to this Agreement as a whole and not to any specific Section.

(e) This Agreement is the product of negotiation by the parties, having the assistance of counsel and other advisors. The parties intend that this Agreement not be construed more strictly with regard to one party than with regard to the other.

(f) No provision of this Agreement is to be construed to require, directly or indirectly, any person to take any action, or omit to take any action, to the extent such action or omission would violate applicable law (whether statutory or common law), rule or regulation.

ARTICLE II

THE MERGER

2.01 *The Merger.* Upon the terms and subject to the conditions set forth in this Agreement, First Republic will merge with and into MLFSB at the Effective Time. At the Effective Time, the separate corporate existence of First Republic will terminate. MLFSB will be the Surviving Entity, and will continue its corporate existence under the laws of the United States.

2.02 *Closing.* The closing of the Merger (the "Closing") will take place in the offices of Sullivan & Cromwell LLP, 125 Broad Street, New York, New York, at 10:00 a.m., New York time, on the fifth business day after satisfaction or waiver of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing but subject to the fulfillment or waiver of those conditions) or on such other date as Merrill Lynch and First Republic otherwise agree (the "Closing Date").

2.03 *Effective Time.* Subject to the provisions of this Agreement, in connection with the Closing (1) MLFSB and First Republic will duly execute and deliver articles of merger (the "Articles of Merger") to the Secretary of State of the State of Nevada for filing under Section 92A.200 of the NRS, and (2) First Republic and MLFSB will duly execute and deliver articles of combination (the "Articles of Combination") to the OTS for filing under Section 552.13(j) of the OTS Regulations. The parties will make all other filings or recordings required under the NRS and the OTS Regulations and the Merger will become effective upon the date and time specified in the endorsement of the Articles of Combination by the OTS (the time the Merger becomes effective being the "Effective Time"). The parties will agree upon a date and time for the Merger to become effective and will submit a request to the OTS that such time be the Effective Time.

2.04 *Effects of the Merger.*

(a) As of the Effective Time, the name of the Surviving Entity will be "Merrill Lynch Bank & Trust Co., FSB".

(b) MLFSB shall assume the liquidation account, if any, of First Republic at the Effective Time in accordance with 12 C.F.R. § 563b.475(b) and administer such liquidation account in accordance with 12 C.F.R. §§ 563b.450-563b.485.

(c) As of the Effective Time, all savings accounts of First Republic shall be and become deposit accounts of the Surviving Entity without change in their respective terms, maturity, minimum required balances or withdrawal value. Each deposit account of First Republic shall, as of the Effective Time, be considered, for purposes of any interest declared by the Surviving Entity thereafter, as if it had been a deposit account of the Surviving Entity at the time such deposit account was opened at First Republic and at all times thereafter until such account ceases to be a deposit account of the Surviving Entity. All deposit accounts of MLFSB prior to the Effective Time shall, as of the Effective Time, continue to be deposit accounts in the Surviving Entity without any change whatsoever in any of the provisions of such deposit accounts.

(d) Immediately following the Effective Time, the directors of the Surviving Entity shall consist of the directors of MLFSB duly elected and holding office immediately prior to the Effective Time. The names and residence addresses of the directors are set forth on Annex 2.

(e) Immediately following the Effective Time, the location of the home office and other offices of the Surviving Entity will be as set forth on Annex 3.

(f) The Merger will have such other effects as are prescribed by the OTS Regulations, the NRS and this Agreement.

2.05 *Charter and Bylaws.* (a) The MLFSB Charter, as in effect immediately before the Effective Time, will be the charter of the Surviving Entity as of the Effective Time.

(b) The MLFSB Bylaws, as in effect immediately before the Effective Time, will be the bylaws of the Surviving Entity as of the Effective Time.

ARTICLE III

CONSIDERATION; EXCHANGE AND ELECTION PROCEDURES

3.01 *Conversion or Cancellation of Shares.* At the Effective Time, by virtue of the Merger and without any action on the part of the holder of any shares of First Republic Stock or MLFSB Stock:

(a) *First Republic Common Stock.* Subject to the provisions of this Article III, each share of First Republic Common Stock (whether or not subject to restriction) issued and outstanding immediately prior to the Effective Time will be converted into and constitute the right to receive, at the election of the holder (including the trustee of any employee stock ownership plan, which trustee shall make the election in accordance with any pass-through voting provisions of such plan) thereof, as provided in and subject to the other provisions of this Section 3.01, either:

(1) that fraction of a fully paid and nonassessable share (and the requisite number of Merrill Lynch Rights issued and attached to such shares under the Merrill Lynch Rights Agreement) of Merrill Lynch Common Stock equal to the amount, rounded to the nearest one ten-thousandth (the "Conversion Number") derived by dividing $55.00 by the Market Price (the "Per Share Stock Consideration"); or

(2) an amount in cash equal to $55.00 (the "Per Share Cash Consideration" and, together with the Per Share Stock Consideration, the "Merger Consideration"),

provided that the total amount of cash payable hereunder (the "Total Cash Amount") shall be equal, as nearly as practicable, to the product of (x) the Per Share Cash Consideration, (y) 50%, and (z) the number of shares of First Republic Common Stock issued and outstanding immediately prior to the Effective Time. The calculations required by this Section 3.01(a) shall be prepared jointly by First Republic and Merrill Lynch prior to the Closing Date.

(b) *Rights as Stockholders; Stock Transfers.* At the Effective Time, holders of certificates (each, an "Old Certificate") formerly representing shares of First Republic Common Stock issued and outstanding immediately prior to the Effective Time will cease to be, and will have no rights as, stockholders of First Republic, other than rights to (1) receive any then-unpaid dividend or other distribution with respect to such First Republic Common Stock having a record date before the Effective Time and (2) receive the Merger Consideration provided under this Article III. After the Effective Time, there will be no transfers of shares of First Republic Common Stock on the stock transfer books of First Republic or the Surviving Entity, and shares of First Republic Common Stock presented to Merrill Lynch or the Surviving Entity for any reason will be canceled and exchanged in accordance with this Article III. Notwithstanding anything in this Section 3.01 to the contrary, at the Effective Time and by virtue of the Merger, each share of First Republic Common Stock beneficially owned by Merrill Lynch (other than shares held in a trust, fiduciary, or nominee capacity or as a result of debts previously contracted) or held in First Republic's treasury will be canceled and retired and shall cease to exist and no shares of Merrill Lynch Stock and no Merrill Lynch Rights or other consideration will be issued or paid in exchange therefor.

(c) *Election Procedures.* (1) An election form and other appropriate and customary transmittal materials in such form as Merrill Lynch and First Republic shall mutually agree (the "Election Form") shall be mailed 35 days prior to the anticipated Closing Date or on such other date as Merrill Lynch and First Republic shall mutually agree (the "Mailing Date") to each holder of record of First Republic Common Stock as of the close of business on the fifth business day prior to the Mailing Date (the "Election Form Record Date").

(2) Each Election Form shall permit the holder (or the beneficial owner through appropriate and customary documentation and instructions) to specify (A) the number of shares of such holder's First Republic Common Stock with respect to which such holder elects to receive the Per Share Stock Consideration ("Stock Election Shares"), (B) the number of shares of such holder's First Republic Common Stock with respect to which such holder elects to receive the Per Share Cash Consideration ("Cash Election Shares") or (C) that such holder makes no election with respect to such holder's First

Republic Common Stock ("No Election Shares"). Any First Republic Common Stock with respect to which the Exchange Agent has not received an effective, properly completed Election Form on or before 5:00 p.m., on the 30th day following the Mailing Date (or such other time and date as Merrill Lynch and First Republic may mutually agree) (the "Election Deadline") shall also be deemed to be No Election Shares.

(3) Merrill Lynch shall make available one or more Election Forms as may reasonably be requested from time to time by any person who becomes a holder (or beneficial owner) of First Republic Common Stock between the Election Form Record Date and the close of business on the business day prior to the Election Deadline, and First Republic shall provide to the Exchange Agent all information reasonably necessary for it to perform as specified herein.

(4) Any election shall have been properly made only if the Exchange Agent shall have actually received a properly completed Election Form by the Election Deadline. An Election Form shall be deemed properly completed only if accompanied by one or more Old Certificates (or customary affidavits and indemnification regarding the loss or destruction of such certificates or the guaranteed delivery of such certificates) representing all shares of First Republic Common Stock covered by such Election Form, together with duly executed transmittal materials included in the Election Form. Any Election Form may be revoked or changed by the person submitting such Election Form, only by written notice received by the Exchange Agent prior to the Election Deadline. In the event an Election Form is revoked prior to the Election Deadline, unless a subsequent properly completed Election Form is submitted and actually received by the Exchange Agent by the Election Deadline, the shares of First Republic Common Stock represented by such Election Form shall become No Election Shares and Merrill Lynch shall cause the Old Certificates to be promptly returned without charge to the person submitting the Election Form upon written request to that effect from the holder who submitted the Election Form. Subject to the terms of this Agreement and of the Election Form, the Exchange Agent shall have reasonable discretion to determine whether any election, revocation or change has been properly or timely made and to disregard immaterial defects in the Election Forms, and any good faith decisions of Merrill Lynch regarding such matters shall be binding and conclusive. Neither Merrill Lynch nor the Exchange Agent shall be under any obligation to notify any person of any defect in an Election Form.

(5) Within ten business days after the Effective Time, Merrill Lynch shall cause the Exchange Agent to effect the allocation among the holders of First Republic Common Stock of rights to receive Merrill Lynch Common Stock or cash in the Merger in accordance with the Election Forms as follows:

(A) *Cash Oversubscribed.* If the aggregate cash amount that would otherwise be paid upon the conversion in the Merger of the Cash Election Shares is greater than the Total Cash Amount, then:

(1) all Stock Election Shares and No Election Shares shall be converted into the right to receive the Per Share Stock Consideration,

(2) the Exchange Agent shall then select from among the Cash Election Shares, by a pro rata selection process, a sufficient number of shares to receive the Per Share Stock Consideration ("Stock Designated Shares") such that the aggregate cash amount that will be paid in the Merger equals as closely as practicable the Total Cash Amount, and all Stock Designated Shares shall be converted into the right to receive the Per Share Stock Consideration, and

(3) the Cash Election Shares that are not Stock Designated Shares will be converted into the right to receive the Per Share Cash Consideration.

(B) *Cash Undersubscribed.* If the aggregate cash amount that would be paid upon conversion in the Merger of the Cash Election Shares is less than the Total Cash Amount, then:

(1) all Cash Election Shares shall be converted into the right to receive the Per Share Cash Consideration,

(2) the Exchange Agent shall then select first from among the No Election Shares, by a random selection process, and then (if necessary) from among the Stock Election Shares, by a pro rata selection process, a sufficient number of shares to receive the Per Share Cash Consideration ("Cash Designated Shares") such that the aggregate cash amount that will be paid in the Merger equals as closely as practicable the Total Cash Amount, and all Cash Designated Shares shall be converted into the right to receive the Per Share Cash Consideration, and

(3) the Stock Election Shares and the No Election shares that are not Cash Designated Shares shall be converted into the right to receive the Per Share Stock Consideration.

(C) *Cash Subscriptions Sufficient.* If the aggregate cash amount that would be paid upon conversion in the Merger of the Cash Election Shares is equal or nearly equal (as determined by the Exchange Agent) to the Total Cash Amount, then subparagraphs (A) and (B) above shall not apply and all Cash Election Shares shall be converted into the right to receive the Per Share Cash Consideration and all Stock Election Shares and No Election Shares shall be converted into the right to receive the Per Share Stock Consideration.

The pro rata selection process to be used by the Exchange Agent shall consist of such equitable pro ration processes as shall be mutually determined by First Republic and Merrill Lynch.

(d) *Appointment of Exchange Agent.* Until the date that is 365 days after the Effective Time, Merrill Lynch shall make available on a timely basis or cause to be made available to an exchange agent agreed upon by Merrill Lynch and First Republic (the "Exchange Agent") (1) cash in an amount sufficient to allow the Exchange Agent to make all payments that may be required pursuant to this Article III and (2) certificates, or at Merrill Lynch's option, evidence of shares in book entry form, representing the shares of Merrill Lynch Common Stock ("New Certificates"), each to be given to the holders of First Republic Common Stock in exchange for Old Certificates pursuant to this Article III. Upon such date, any such cash or New Certificates remaining in the possession of the Exchange Agent (together with any earnings in respect thereof) shall be delivered to Merrill Lynch. Any holder of Old Certificates who has not theretofore exchanged his, her or its Old Certificates pursuant to this Article III shall thereafter be entitled to look exclusively to Merrill Lynch, and only as a general creditor thereof, for the consideration to which he, she or it may be entitled upon exchange of such Old Certificates pursuant to this Article III. Notwithstanding the foregoing, neither the Exchange Agent nor any party hereto shall be liable to any holder of Old Certificates for any amount properly delivered to a public official pursuant to applicable abandoned property, escheat or similar laws.

(e) *Exchange Procedures.* Promptly after the Effective Time, but in no event later than ten days thereafter, Merrill Lynch shall cause the Exchange Agent to mail or deliver to each person who was, immediately prior to the Effective Time, a holder of record of First Republic Common Stock and who theretofore has not submitted such holder's Old Certificates with an Election Form, a form of letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to Old Certificates shall pass, only upon proper delivery of such certificates to the Exchange Agent) containing instructions for use in effecting the surrender of Old Certificates in exchange for the consideration to which such person may be entitled pursuant to this Article III. After completion of the allocation procedure set forth in Section 3.01(c) and upon surrender to the Exchange Agent of an Old Certificate for cancellation together with such letter of transmittal or Election Form, as the case may be, duly executed and completed in accordance with the instructions thereto, the holder of such Old Certificate shall promptly be provided in exchange therefor, but in no event later than ten business days after due surrender, a New Certificate and/or a check in the amount to which such holder is entitled pursuant to this Article III, and the Old Certificate so surrendered shall forthwith be canceled. No interest will accrue or be paid with respect to any property to be delivered upon surrender of Old Certificates. Each of Merrill Lynch and the Surviving Entity shall be entitled to deduct and withhold, or cause the Exchange Agent to deduct and withhold, from the consideration otherwise payable pursuant to this Agreement to any holder of First Republic Common Stock such amounts as it may be required to deduct and withhold with respect to the making of such payment under the Code, or any provision of state, local or foreign Tax law. To the extent

that amounts are so withheld by Merrill Lynch, the Surviving Entity or the Exchange Agent, as the case may be, the withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holders of First Republic Common Stock in respect of which the deduction and withholding was made by Merrill Lynch, the Surviving Entity or the Exchange Agent, as the case may be, and such amounts shall be delivered by Merrill Lynch, the Surviving Entity or the Exchange Agent, as the case may be, to the applicable taxing authority.

(f) *Transfer to Holder other than Existing Holder.* If any cash payment is to be made in a name other than that in which the Old Certificate surrendered in exchange therefor is registered, it shall be a condition of such exchange that the person requesting such exchange shall pay any transfer or other Taxes required by reason of the making of such payment of the Per Share Cash Consideration in a name other than that of the registered holder of the Old Certificate surrendered, or required for any other reason relating to such holder or requesting person, or shall establish to the reasonable satisfaction of the Exchange Agent that such tax has been paid or is not payable. If any New Certificate representing shares of Merrill Lynch Common Stock is to be issued in the name of other than the registered holder of the Old Certificate surrendered in exchange therefor, it shall be a condition of the issuance thereof that the Old Certificate so surrendered shall be properly endorsed (or accompanied by an appropriate instrument of transfer) and otherwise in proper form for transfer, and that the person requesting such exchange shall pay to the Exchange Agent in advance any transfer or other Taxes required by reason of the issuance of a certificate representing shares of First Republic Common Stock in a name other than that of the registered holder of the Old Certificate surrendered, or required for any other reason relating to such holder or requesting person, or shall establish to the reasonable satisfaction of the Exchange Agent that such tax has been paid or is not payable.

(g) *Fractional Shares.* Notwithstanding any other provision hereof, no fractional shares of Merrill Lynch Common Stock and no certificates or scrip therefor, or other evidence of ownership thereof, will be issued in the Merger; instead, Merrill Lynch will pay to each holder of First Republic Common Stock who would otherwise be entitled to a fractional share of Merrill Lynch Common Stock (after taking into account all Old Certificates delivered by such holder) an amount in cash (without interest) determined by multiplying such fraction of a share of Merrill Lynch Common Stock by the Market Price.

(h) *Dividends.* No dividends or other distributions with a record date after the Effective Time with respect to Merrill Lynch Common Stock shall be paid to the holder of any unsurrendered Old Certificate until the holder thereof shall surrender such Old Certificate in accordance with this Article III. After the surrender of an Old Certificate in accordance with this Article III, the record holder thereof shall be entitled to receive any such dividends or other distributions, without any interest thereon, which theretofore had become payable with respect to shares of Merrill Lynch Common Stock represented by the New Certificate.

(i) *Lost, Stolen or Destroyed Certificates.* If any Old Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Old Certificate to be lost, stolen or destroyed and, if required by Merrill Lynch or the Exchange Agent, the posting by such person of a bond in such reasonable amount as Merrill Lynch or the Exchange Agent may direct as indemnity against any claim that may be made against it with respect to such Old Certificate, Merrill Lynch or the Exchange Agent shall, in exchange for such lost, stolen or destroyed Old Certificate, pay or cause to be paid the consideration deliverable in respect of the Old Shares formerly represented by such Old Certificate pursuant to this Article III.

(j) *Anti-Dilution Adjustments.* If Merrill Lynch changes (or the Merrill Lynch Board sets a related record date that will occur before the Effective Time for a change in) the number or kind of shares of Merrill Lynch Common Stock outstanding by way of a stock split, stock dividend, recapitalization, reclassification, reorganization or similar transaction, then the Conversion Number (and any other dependent items) will be adjusted proportionately to account for such change.

(k) *Tax*. Notwithstanding any other provision of this Agreement to the contrary, a sufficient number of Cash Election Shares may be converted into the right to receive Per Share Stock Consideration, but only to the extent necessary, to secure the tax opinions required by Sections 7.02(c) and 7.03(c).

(l) *First Republic Preferred Stock*. At the Effective Time, each outstanding share of each series of First Republic Preferred Stock shall be converted into one share of preferred stock of Merrill Lynch having terms identical to those set forth on Annex 4 ("Merrill Lynch Merger Preferred Stock").

(m) *MLFSB Stock*. Each share of MLFSB Stock issued and outstanding immediately prior to the Effective Time will remain issued and outstanding.

3.02 *Equity Compensation.*

(a) *Stock Options*.

(1) At the Effective Time, each outstanding and unexercised option to purchase shares of First Republic Common Stock held by then current employees of First Republic (each, a "First Republic Employee Stock Option") will cease to represent an option to purchase First Republic Common Stock and will be converted automatically into an option to purchase a number of shares of Merrill Lynch Common Stock (each, a "Merrill Lynch Stock Option") equal to the product (rounded down to the nearest whole share) of (A) the number of shares of First Republic Common Stock subject to such First Republic Employee Stock Option and (B) the Conversion Number, at an exercise price per share (rounded up to the nearest whole cent) equal to (i) the exercise price of such First Republic Employee Stock Option divided by (ii) the Conversion Number. Except as specifically provided above, following the Effective Time, each Merrill Lynch Stock Option shall continue to be governed by the same terms and conditions as were applicable under the First Republic Employee Stock Option immediately prior to the Effective Time.

(2) At the Effective Time, each outstanding and unexercised option to purchase shares of First Republic Common Stock held by then current non-employees (including directors) of First Republic (each, a "First Republic Non-Employee Stock Option") shall terminate and be of no further force and effect and shall entitle the holder thereof, in full settlement thereof, to an amount in cash equal to the product of (x) the total number of shares of First Republic Common Stock subject to such First Republic Non-Employee Stock Option and (y) the difference, if any, between (A) the Per Share Cash Consideration and (B) the per share exercise price of such First Republic Non-Employee Stock Option. Each such payment shall be reduced by any required withholding Taxes. To the extent the exercise price per share of a First Republic Non-Employee Stock Option is more than the Per Share Cash Consideration, such First Republic Non-Employee Stock Options shall terminate for no consideration.

(b) *Deferred Equity Units*. First Republic shall take reasonable best efforts to amend the First Republic Deferred Equity Unit Plan (the "First Republic Deferred Plan") and obtain any necessary consents from deferred equity unit holders, to provide that, at the Effective Time, each deferred equity unit (each, a "Deferred Equity Unit") awarded under the First Republic Deferred Plan) shall, by virtue of the Merger and without any further action on the part of First Republic or the holders of Deferred Equity Units, be deemed to be converted automatically into a deferred amount equal to the Per Share Cash Consideration ("Deferred Cash Award"), which Deferred Cash Award may be notionally invested in other notional investments in accordance with the terms of the First Republic Deferred Plan; provided, however, that the terms and conditions of the Deferred Cash Award shall otherwise remain the same as the terms and conditions applicable to the Deferred Equity Units under the plan and award agreements pursuant to which such Deferred Equity Units were granted as in effect immediately prior to the Effective Time. Prior to the Effective Time, the First Republic Compensation Committee shall not amend or otherwise interpret the First Republic Deferred Plan to provide for conversion of Deferred Equity Units into deferred equity units of Merrill Lynch Common Stock. Notwithstanding the foregoing, to the extent that the holder of a Deferred Equity Unit had previously elected to receive payment in settlement of such holder's outstanding Deferred Equity Units immediately upon the occurrence of a change of control, such holder shall be entitled, in settlement therefore, to a payment by Merrill Lynch in cash, at the Effective Time, equal to the product of (x) the total number of Deferred Equity Units held by such holder and (y) the Per Share Cash Consideration. Each such payment shall be reduced by any required withholding Taxes.

(c) Notwithstanding the foregoing, each First Republic Stock Option, whether or not intended to be an "incentive stock option" (as defined in Section 422 of the Code) will be adjusted in accordance with the requirements of Section 424 of the Code. Before the Effective Time, Merrill Lynch will take all corporate action necessary to reserve for issuance a sufficient number of shares of Merrill Lynch Common Stock for delivery upon exercise of Merrill Lynch Stock Options in accordance with this Section 3.02. As soon as practicable after the Effective Time, Merrill Lynch will file one or more appropriate registration statements (on Form S-3 or Form S-8 or any successor or other appropriate forms) with respect to the Merrill Lynch Common Stock underlying the Merrill Lynch Stock Options described in this Section 3.02, and will use all reasonable best efforts to maintain the effectiveness of those registration statements and the current status of the related prospectuses for so long as the First Republic Stock Options remain outstanding.

ARTICLE IV

CONDUCT OF BUSINESS PENDING MERGER

4.01 *Forebearances of First Republic.* First Republic agrees that from the date hereof until the Effective Time, except as expressly contemplated by this Agreement or as Previously Disclosed, without the prior written consent of Merrill Lynch (which consent will not be unreasonably withheld or delayed), it will not, and will cause each of its Subsidiaries not to:

(a) *Ordinary Course.* Conduct its business and the business of its Subsidiaries other than in the ordinary and usual course or fail to use reasonable best efforts to preserve intact its business organizations and assets and maintain its rights, franchises and authorizations and their existing relations with customers, suppliers, employees and business associates, or take any action reasonably likely to materially impair its ability to perform its obligations under this Agreement or to consummate the transactions contemplated hereby.

(b) *Operations.* Enter into any new line of business or materially change its lending, investment, underwriting, risk and asset liability management and other banking and operating policies, except as required by applicable law, regulation or policies imposed by any Governmental Authority.

(c) *Capital Stock.* Other than pursuant to Rights Previously Disclosed and outstanding on the date of this Agreement, (1) issue, sell or otherwise permit to become outstanding, or dispose of or encumber or pledge, or authorize or propose the creation of, any additional shares of its stock, or (2) permit any additional shares of its stock to become subject to new grants.

(d) *Dividends, Distributions, Repurchases.* (1) Make, declare, pay or set aside for payment any dividend on or in respect of, or declare or make any distribution on any shares of its stock, other than (A) dividends from its wholly owned Subsidiaries to it or another of its wholly owned Subsidiaries, (B) regular quarterly dividends on its common stock, provided that any such dividend shall be at a rate equal to the rate paid by it during the fiscal quarter immediately preceding the date hereof, (C) required dividends on the First Republic Preferred Stock or on the preferred stock of its Subsidiaries or (D) required dividends on the common stock of First Republic Preferred Capital Corporation and First Republic Preferred Capital Corporation II, or (2) directly or indirectly adjust, split, combine, redeem, reclassify, purchase or otherwise acquire, any shares of its stock.

(e) *Dispositions.* Sell, transfer, mortgage, encumber or otherwise dispose of or discontinue any of its assets, deposits, business or properties, except for sales, transfers, mortgages, encumbrances or other dispositions or discontinuances in the ordinary course of business consistent with past practice (which shall be deemed to include sales of whole loans and securitizations in the ordinary course of business consistent with past practice) and in a transaction that, together with other such transactions, is not material to it and its Subsidiaries, taken as a whole.

(f) *Acquisitions.* Acquire (other than by way of foreclosures or acquisitions of control in a fiduciary or similar capacity or in satisfaction of debts previously contracted in good faith or otherwise in

the ordinary and usual course of business consistent with past practice) all or any portion of the assets, business, deposits or properties of any other person in an amount that is material to First Republic.

(g) *Governing Documents*. Amend the Governing Documents of it or any of its Subsidiaries.

(h) *Accounting Methods*. Implement or adopt any change in its financial or regulatory accounting principles, practices or methods or change any actuarial or other assumptions used to calculate funding obligations with respect to any Benefit Arrangement, other than (with prior notice to Merrill Lynch) as may be required by GAAP or applicable regulatory accounting requirements.

(i) *Adverse Actions*. Notwithstanding anything herein to the contrary, (1) knowingly take, or knowingly omit to take, any action that would, or is reasonably likely to, prevent or impede the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code or (2) knowingly take, or knowingly omit to take, any action that is reasonably likely to result in any of the conditions to the Merger set forth in Article VII not being satisfied in a timely manner, except (with prior notice to Merrill Lynch) as may be required by applicable law or regulation.

(j) *Indebtedness*. Incur or guarantee any indebtedness for borrowed money other than in the ordinary course of business consistent with past practice.

(k) *Compensation and Benefits*. Grant any salary or wage increase or increase any employee benefit, including incentive or bonus payments (or, with respect to any of the preceding, communicate any intention to take such action), except (1) to make changes that are required by applicable law, (2) to satisfy Previously Disclosed contractual obligations existing as of the date hereof, (3) for merit-based or annual salary increases in the ordinary course of business and in accordance with past practice as Previously Disclosed, but not to exceed, with respect to such salary increases, in the aggregate 6% of the aggregate annual salaries of the employees of First Republic and its Subsidiaries, taken as a whole, and bonuses to the extent accrued as of the date hereof and Previously Disclosed or (4) for employment arrangements for, or grants of awards to, newly-hired employees in the ordinary course and usual course of business consistent with past practices, which grants of awards (together with any grants of awards under Section 4.01(c) hereof), shall not exceed the number of First Republic Common Shares that are reserved for issuance between the date hereof and the Effective Time as set forth in Section 4.01(c) of the First Republic Disclosure Schedule.

(l) *Benefit Plans*. Enter into, establish, adopt, amend, modify (including by way of interpretation) or renew any Benefit Arrangement, or any trust agreement (or similar arrangement) related thereto, in respect of any director, officer or employee, take any action to accelerate the vesting or exercisability of First Republic Stock Options or other compensation or benefits payable under any Benefit Arrangement, fund or in any other way secure or fund the payment of compensation or benefits under any Benefit Arrangement, change the manner in which contributions to any Benefit Arrangement are made or determined, or add any new participants to or increase the principal sum of any non-qualified retirement plans (or, with respect to any of the preceding, communicate any intention to take such action), except (1) as may be required by applicable law, (2) to satisfy Previously Disclosed contractual obligations existing as of the date hereof, including pursuant to the terms of any Benefit Arrangement, (3) amendments that do not increase benefits or result in increased administrative costs or (4) as set forth in Section 4.01(k).

(m) *Taxes*. Make or change any material Tax elections, change or consent to any change in its or its Subsidiaries' method of accounting for Tax purposes (except as required by applicable Tax law), settle or compromise any Tax liability, claim or assessment, enter into any closing agreement, waive or extend any statute of limitations with respect to Taxes, surrender any right to claim a refund for Taxes, or file any amended Tax Return (except for any amended Tax Return that is filed solely to claim Tax refunds or additional deductions or credits).

(n) *Commitments*. Enter into any contract with respect to, or otherwise agree or commit to do, any of the foregoing.

4.02 *Forebearances of Merrill Lynch.* Each of Merrill Lynch and MLFSB agrees that from the date hereof until the Effective Time, except as expressly contemplated by this Agreement or as Previously Disclosed, without the prior written consent of First Republic, it will not, and, in addition in the case of paragraph (b)(1) of this Section 4.02, following the Effective Time, it will not:

(a) *Governing Documents.* In the case of Merrill Lynch, amend its Governing Documents in a manner that would materially and adversely affect the rights and privileges of holders of Merrill Lynch Common Stock or prevent or materially impede or materially delay consummation of the transactions contemplated hereby and, in the case of MLFSB, amend its Governing Documents in any manner or prevent or materially impede or materially delay consummation of the transactions contemplated hereby.

(b) *Adverse Actions.* Notwithstanding anything herein to the contrary, (1) knowingly take, or knowingly omit to take, any action that would, or is reasonably likely to, prevent or impede the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code or (2) knowingly take, or knowingly omit to take, any action that is reasonably likely to result in any of the conditions to the Merger set forth in Article VII not being satisfied in a timely manner, except (with prior notice to First Republic) as may be required by applicable law or regulation.

(c) *Commitments.* Enter into any contract with respect to, or otherwise agree or commit to do, any of the foregoing.

Notwithstanding anything in paragraphs (a), (b) or (c) of this Section 4.02 to the contrary, Merrill Lynch may make dispositions and acquisitions and agree to issue capital stock in connection therewith, provided that such actions do not present a material risk that the Closing Date will be delayed or that the Requisite Regulatory Approvals will be materially more difficult to obtain or would, or be reasonably likely to, prevent or impede the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

5.01 *Disclosure Schedules.* Before entry into this Agreement, Merrill Lynch and MLFSB delivered to First Republic a schedule and First Republic delivered to Merrill Lynch and MLFSB a schedule (respectively, each schedule a "Disclosure Schedule"), setting forth, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision hereof or as an exception to one or more representations or warranties contained in Section 5.03 or Section 5.04, as applicable, or to one or more of its covenants contained in Article IV; provided that (a) no such item is required to be set forth in a Disclosure Schedule as an exception to any representation or warranty of such party if its absence would not result in the related representation or warranty being deemed untrue or incorrect under the standard established by Section 5.02 and (b) the inclusion of an item in a Disclosure Schedule as an exception to a representation or warranty will not by itself be deemed an admission by a party that such item is material or that such item is reasonably likely to result in a Material Adverse Effect with respect to such party or was required to be disclosed therein.

5.02 *Standard.* For all purposes of this Agreement, no representation or warranty of First Republic or Merrill Lynch contained in Section 5.03 or 5.04, as applicable (other than (i) the representations and warranties contained in Sections 5.03(g)(3)(B) and 5.04(f)(2)(B), which shall be true in all respects, and (ii) the representations and warranties contained in Sections 5.03(b) and 5.04(b), which shall be true in all material respects) will be deemed untrue, and no party will be deemed to have breached a representation or warranty, as a consequence of the existence of any fact, event or circumstance unless such fact, circumstance or event, individually or taken together with all other facts, events or circumstances inconsistent with any representation or warranty contained in Sections 5.03 or 5.04, as applicable (except for Sections 5.03(g)(1), 5.04(f)(1) and 5.03(k)(1), read for this purpose without regard to any individual reference to "materiality" or "material adverse effect") has had or is reasonably likely to have a Material Adverse Effect with respect to First Republic or Merrill Lynch, as the case may be.

5.03 *Representations and Warranties of First Republic.* Except as Previously Disclosed, First Republic hereby represents and warrants to Merrill Lynch as follows:

(a) *Organization, Standing and Authority.* It is a banking corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation. It is duly qualified to do business and is in good standing in all jurisdictions where its ownership or leasing of property or assets or its conduct of business requires it to be so qualified.

(b) *First Republic Stock.* The authorized capital stock of First Republic consists of 75,000,000 shares of First Republic Common Stock and 500,000 shares of First Republic Preferred Stock. As of January 28, 2007 no more than 30,990,000 shares of First Republic Common Stock and 115,000 shares of First Republic Preferred Stock were outstanding. As of the date of this Agreement, no more than 3,195,000 shares of First Republic Common Stock were reserved for issuance under the First Republic Stock Plans (of which no more than 2,125,000 were reserved for issuance in respect of awards outstanding as of such date); and no more than 343,600 shares of First Republic Common Stock were reserved for issuance upon conversion of convertible preferred stock. The outstanding shares of First Republic Common Stock 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 set forth above and except for shares issuable pursuant to the First Republic Stock Plans, as of the date of this Agreement, there are no shares of First Republic Stock reserved for issuance, First Republic does not have any Rights outstanding with respect to First Republic Stock, and First Republic does not have any commitment to authorize, issue or sell any First Republic Stock or Rights, except pursuant to this Agreement, outstanding First Republic Stock Options and the First Republic Stock Plans. As of the date of this Agreement, First Republic has no contractual obligations to redeem, repurchase or otherwise acquire, or to register with the FDIC, any shares of First Republic Stock. Each First Republic Stock Option (1) was granted in compliance with all applicable laws and all the terms and conditions of the First Republic Stock Plans pursuant to which it was issued, (2) has an exercise price per share equal to or greater than the fair market value of a share of First Republic Common Stock at the close of business on the date of such grant or the immediately preceding date, (3) has a grant date identical to the date on which the First Republic Stock Option was actually granted, and (4) qualifies for the tax and accounting treatment afforded to such First Republic Stock Option in First Republic's tax returns and First Republic's financial statements, respectively.

(c) *Subsidiaries.* (1)(A) It owns, directly or indirectly, all the outstanding equity securities of each of its Subsidiaries free and clear of any Liens, (B) no equity securities of any of its Subsidiaries are or may become required to be issued (other than to it or its wholly owned Subsidiaries) by reason of any Right or otherwise, (C) there are no contracts, commitments, understandings or arrangements by which any of such Subsidiaries is or may be bound to sell or otherwise transfer any equity securities of any such Subsidiaries (other than to it or its wholly-owned Subsidiaries), (D) there are no contracts, commitments, understandings, or arrangements relating to its rights to vote or to dispose of such securities and (E) all the equity securities of each Subsidiary held by it or its Subsidiaries have been duly authorized and are validly issued and outstanding, fully paid and nonassessable.

(2) Each of its Subsidiaries has been duly organized and is validly existing in good standing under the laws of the jurisdiction of its organization, and is duly qualified to do business and in good standing in all jurisdictions where its ownership or leasing of property or its conduct of business requires it to be so qualified.

(d) *Power.* It and each of its Subsidiaries has the corporate (or comparable) power and authority to carry on its business as it is now being conducted and to own all its properties and assets; and it has the corporate (or comparable) power and authority to execute, deliver and perform its obligations under this Agreement and to consummate the transactions contemplated hereby.

(e) *Authority.* It has duly authorized, executed and delivered this Agreement and has taken all corporate action necessary in order to execute and deliver this Agreement. Subject only to receipt of the affirmative vote of the holders of a majority of the voting power of the holders of First Republic Common

Stock to approve the plan of merger contained in this Agreement, this Agreement and the transactions contemplated hereby have been authorized by all necessary corporate action. This Agreement is its valid and legally binding obligation, enforceable in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar laws of general applicability relating to or affecting creditors' rights or by general equity principles).

(f) *Regulatory Approvals; No Defaults.* (1) No consents or approvals of, or filings or registrations with, any Governmental Authority are required to be made or obtained by it or any of its Subsidiaries in connection with the execution, delivery or performance by it of this Agreement or to consummate the Merger except for (A) filings of applications and notices with, receipt of approvals or nonobjections from, and expiration of related waiting periods required by foreign, federal and state banking authorities, including applications and notices under the Bank Merger Act and HOLA, (B) filing of the Proxy Statement with the FDIC, (C) filings of applications and notices with, and receipt of approvals or nonobjections from, the FDIC, state securities authorities, applicable securities exchanges and self-regulatory organizations, (D) receipt of the applicable stockholder approvals described in Section 6.02, and (E) the filing of the Articles of Merger and Articles of Combination.

(2) Subject to receipt of the regulatory consents and approvals referred to in the preceding paragraph, and the expiration of related waiting periods, and required filings under federal and state securities laws, the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby do not and will not (A) constitute a breach or violation of, or a default under, or give rise to any Lien or any acceleration of remedies, penalty, increase in material benefit payable or right of termination under, any law, rule or regulation or any judgment, decree, order, governmental permit or license, or agreement, indenture or instrument of it or of any of its Subsidiaries or to which it or any of its Subsidiaries or properties is subject or bound, (B) constitute a breach or violation of, or a default under, its Governing Documents or (C) require any consent or approval under any such law, rule, regulation, judgment, decree, order, governmental permit or license, agreement, indenture or instrument.

(3) As of the date hereof, it is not aware of any reason why the necessary regulatory approvals and consents will not be received in order to permit consummation of the Merger on a timely basis.

(g) *Financial Reports and Regulatory Documents; Material Adverse Effect.* (1) Its Annual Reports on Form 10-K for the fiscal years ended December 31, 2003, 2004 and 2005, and all other reports, registration statements, definitive proxy statements or information statements filed by it or any of its Subsidiaries subsequent to December 31, 2003 under the Securities Act and the FDIC Rules, or under Section 12(i), 13(a), 13(c), 14 or 15(d) of the Exchange Act, in the form filed (collectively, "First Republic Regulatory Filings") with the FDIC or the SEC, as the case may be, as of the date filed, (A) complied in all material respects as to form with the applicable requirements under the Securities Act, the Exchange Act or the FDIC Rules, as the case may be, and (B) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and each of the statements of financial position contained in or incorporated by reference into any such First Republic Regulatory Filing (including the related notes and schedules thereto) fairly presented in all material respects its financial position and that of its Subsidiaries on a consolidated basis as of the date of such statement, and each of the statements of income and changes in stockholders' equity and cash flows or equivalent statements in such First Republic Regulatory Filings (including any related notes and schedules thereto) fairly presented in all material respects, the results of operations, changes in stockholders' equity and changes in cash flows, as the case may be, of it and its Subsidiaries on a consolidated basis for the periods to which those statements relate, in each case in accordance with GAAP consistently applied during the periods involved, except in each case as may be noted therein, and subject to normal year-end audit adjustments and as permitted by Form 10-Q in the case of unaudited statements.

(2) Since September 30, 2006, it and its Subsidiaries have not incurred any liability other than in the ordinary course of business consistent with past practice.

(3) Since September 30, 2006, (A) it and its Subsidiaries have conducted their respective businesses in the ordinary and usual course consistent with past practice (excluding the incurrence of expenses related to this Agreement and the transactions contemplated hereby) and (B) no event has occurred or circumstance arisen that, individually or taken together with all other facts, circumstances and events (described in any paragraph of this Section 5.03 or otherwise), has had or is reasonably likely to have a Material Adverse Effect with respect to it.

(h) *Litigation*. There is no suit, action, investigation or proceeding pending or, to its knowledge, threatened against or affecting it or any of its Subsidiaries (and it is not aware of any basis for any such suit, action or proceeding) that, individually or in the aggregate, is (1) reasonably likely to result in injunctive relief or damages exceeding $1,500,000, or (2) reasonably likely to prevent or delay it in any material respect from performing its obligations under, or consummating the transactions contemplated by, this Agreement.

(i) *Regulatory Matters*.

(1) It is a banking corporation organized under the laws of the State of Nevada and the activities conducted by it and its Subsidiaries are permissible for banking corporation organized under the laws of the State of Nevada.

(2) Other than the Advisory Entities and First Republic Securities Company, LLC, neither it nor any of its Subsidiaries is required to be registered as an investment advisor, investment company, commodity trading advisor, commodity pool operator, futures commission merchant, broker-dealer, insurance agent or transfer agent under any law.

(3) Neither it nor any of its Subsidiaries is subject to, or has been advised that it is reasonably likely to become subject to, any special procedures or restrictions imposed by any written order, decree, agreement, memorandum of understanding or similar arrangement with, or a commitment letter or similar submission to, or extraordinary supervisory letter from, or adopted any extraordinary board resolutions at the request of, any Governmental Authority charged with the supervision or regulation of it or any of its Subsidiaries.

(j) *Compliance with Laws*. It and each of its Subsidiaries:

(1) has, since January 1, 2004, conducted its business in compliance with all applicable federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders or decrees applicable thereto (including the rules and regulations of applicable self-regulatory organizations) or to the employees conducting such businesses;

(2) has all permits, licenses, authorizations, orders and approvals of, and has made all filings, applications and registrations with, all Governmental Authorities that are required in order to permit them to own or lease their properties and to conduct their businesses as presently conducted; all such permits, licenses, certificates of authority, orders and approvals are in full force and effect and, to its knowledge, no suspension or cancellation of any of them is threatened;

(3) has received, since January 1, 2004, no written or, to its knowledge, other notification from any Governmental Authority (A) asserting that it or any of its Subsidiaries is not in compliance with any of the statutes, regulations, rules or ordinances which such Governmental Authority enforces or (B) threatening to revoke any license, franchise, permit or governmental authorization;

(4) is not subject to any pending, or to its knowledge, threatened, investigation, review or disciplinary proceedings by any Governmental Authority against either of it or any of its Subsidiaries or any officer, director or employee thereof; and

(5) has no reason to believe that any facts or circumstances exist that would cause it or any of its Subsidiaries to be deemed (A) to be operating in violation of the Bank Secrecy Act, the USA

PATRIOT Act, any other applicable anti-money laundering statute, rule or regulation or any rule or regulation issued by the U.S. Department of the Treasury's Office of Foreign Assets Control; (B) not to be in compliance with the applicable privacy and customer information requirements contained in any applicable law; or (C) to be operating in violation of any fair lending or other discrimination-related statute, rule or regulation.

(k) *Material Contracts; Defaults.*

(1) Except for those agreements and other documents filed as exhibits or incorporated by reference to its Annual Report on Form 10-K for the fiscal year ended December 31, 2005 or filed or incorporated in any other First Republic Regulatory Filing filed since December 31, 2005 and prior to the date hereof, neither it nor any of its Subsidiaries is a party to, bound by or subject to any agreement, contract, arrangement, commitment or understanding (whether written or oral) (A) that is a "material contract" within the meaning of Item 601(b)(10) of the SEC's Regulation S-K, (B) that (i) obligates it or any of its Subsidiaries to conduct business with another person on an exclusive basis or restricts the ability of it or any of its Subsidiaries to conduct business with any person, (ii) limits, contains language that limits or would limit in any respect the manner in which, or the localities in which, any business of it or its affiliates is or could be conducted or the types of business that it or its affiliates conduct or may conduct, (iii) limits, contains language that limits or would limit in any way the ability of it and its Subsidiaries to solicit prospective employees or customers or would so limit or purport to limit the ability of Merrill Lynch or its affiliates to do so or (C) to which any affiliate, officer, director, employee or consultant of it or any of its Subsidiaries is a party or beneficiary (except with respect to Loans to directors, officers and employees entered into in the ordinary course of business).

(2) Neither it nor any of its Subsidiaries is in default under any material contract, agreement, commitment, arrangement, lease, insurance policy or other instrument to which it is a party, by which its respective assets, business, or operations may be bound or affected or under which it or its respective assets, business, or operations receives benefits, and there has not occurred any event that, with the lapse of time or the giving of notice or both, would constitute such a default.

(l) *Benefit Arrangements.* (1) All Benefit Arrangements are Previously Disclosed. True and complete copies of all Benefit Arrangements, including any trust instruments and insurance contracts and, with respect to any employee stock ownership plan, loan agreements forming a part of any Benefit Arrangements, and all amendments thereto have been made available to Merrill Lynch.

(2) All Benefit Arrangements, other than "multiemployer plans" within the meaning of Section 3(37) of ERISA (each, a "Multiemployer Plan") are in substantial compliance, in form and operation, with their terms and ERISA, the Code and other applicable laws (including with respect to non-discrimination requirements, fiduciary duties and required regulatory filings). Each Benefit Arrangement which is subject to ERISA (an "ERISA Plan") that is an "employee pension benefit plan" within the meaning of Section 3(2) of ERISA (a "Pension Plan") intended to be qualified under Section 401(a) of the Code, has received a favorable determination letter from the Internal Revenue Service (the "IRS") covering all tax law changes prior to the Economic Growth and Tax Relief Reconciliation Act of 2001 or has applied to the IRS for such favorable determination letter within the applicable remedial amendment period under Section 401(b) of the Code, and First Republic is not aware of any circumstances reasonably likely to result in the loss of the qualification of any such Pension Plan under Section 401(a) of the Code. Neither First Republic nor any of its Subsidiaries has engaged in a transaction with respect to any ERISA Plan that, assuming the taxable period of such transaction expired as of the date hereof, could subject First Republic or any Subsidiary to a tax or penalty imposed by either Section 4975 of the Code or Section 502(i) of ERISA in an amount which would be material. Neither First Republic nor any of its Subsidiaries has incurred or reasonably expects to incur a material tax or penalty imposed by Section 4980 of the Code or Section 502 of ERISA or any material liability under Section 4071 of ERISA.

(3) No liability under Subtitle C or D of Title IV of ERISA has been or is expected to be incurred by it or any of its Subsidiaries with respect to any ongoing, frozen or terminated "single-employer plan", within the meaning of Section 4001(a)(15) of ERISA, currently or formerly maintained by any of them,

or the single-employer plan of any entity which is considered one employer with First Republic under Section 4001 of ERISA or Section 414 of the Code (an "ERISA Affiliate"). It and its Subsidiaries have not incurred and do not expect to incur any withdrawal liability with respect to a Multiemployer Plan under Subtitle E of Title IV of ERISA (regardless of whether based on contributions of an ERISA Affiliate). No notice of a "reportable event", within the meaning of Section 4043 of ERISA for which the reporting requirement has not been waived or extended has been required to be filed for any Pension Plan or by any ERISA Affiliate within the 12-month period ending on the date hereof or will be required to be filed in connection with the transaction contemplated by this Agreement. No notices have been required to be sent to participants and beneficiaries or the Pension Benefit Guaranty Corporation under Section 302 or 4011 of ERISA or Section 412 of the Code.

(4) All contributions required to be made under each Benefit Arrangement, as of the date hereof, have been timely made or have been reflected in the consolidated financial statements filed with the First Republic Regulatory Filings. Neither any Pension Plan nor any single-employer plan of an ERISA Affiliate has an "accumulated funding deficiency" (whether or not waived) within the meaning of Section 412 of the Code or Section 302 of ERISA and no ERISA Affiliate has an outstanding funding waiver. Neither any Pension Plan nor any single-employer plan of an ERISA Affiliate has been required to file information pursuant to Section 4010 of ERISA for the current or most recently completed plan year. It is not reasonably anticipated that required minimum contributions to any Pension Plan under Section 412 of the Code will be materially increased by application of Section 412(l) of the Code. Neither First Republic nor any of its Subsidiaries has provided, or is required to provide, security to any Pension Plan or to any single-employer plan of an ERISA Affiliate pursuant to Section 401(a)(29) of the Code.

(5) Under each Pension Plan which is a single-employer plan, as of the last day of the most recent plan year ended prior to the date hereof, the actuarially determined present value of all "benefit liabilities", within the meaning of Section 4001(a)(16) of ERISA (as determined on the basis of the actuarial assumptions contained in such Pension Plan's most recent actuarial valuation), did not exceed the then current value of the assets of such Pension Plan, and there has been no material change in the financial condition, whether or not as a result of a change in the funding method, of such Pension Plan since the last day of the most recent plan year.

(6) As of the date hereof, there is no material pending or, to the knowledge of it threatened, litigation relating to the Benefit Arrangements. Neither it nor any of its Subsidiaries has any obligations for retiree health and life benefits under any Benefit Arrangement or collective bargaining agreement. It or its Subsidiaries may amend or terminate any such Benefit Arrangement at any time without incurring any liability thereunder other than in respect of claims incurred prior to such amendment or termination.

(7) There has been no amendment to, announcement by it or any of its Subsidiaries relating to, or change in employee participation or coverage under, any Benefit Arrangement which would increase materially the expense of maintaining such plan above the level of the expense incurred therefor for the most recent fiscal year. Neither the execution of this Agreement, shareholder approval of this Agreement nor the consummation of the transactions contemplated hereby will (w) entitle any employees of it or any of its Subsidiaries to severance pay or any increase in severance pay upon any termination of employment after the date hereof, (x) accelerate the time of payment or vesting or result in any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, increase the amount payable or result in any other material obligation pursuant to, any of the Benefit Arrangements, (y) limit or restrict the right of it or, after the consummation of the transactions contemplated hereby, Merrill Lynch to merge, amend or terminate any of the Benefit Arrangements or (z) result in payments under any of the Benefit Arrangements which would not be deductible under Section 162(m) or Section 280G of the Code.

(8) Effective as of the date hereof, it has amended its Retention Bonus and Insurance Benefits Plan Agreement, as in effect immediately prior to the date hereof, in the manner specified on Schedule 5.03(*l*)(8) of First Republic's Disclosure Schedule.

(m) *Taxes*. (1) All Tax Returns that are required to be filed or delivered (taking into account any extensions of time within which to file or deliver) by or with respect to it and its Subsidiaries have been

duly and timely filed or delivered, and all such Tax Returns are complete and accurate in all respects, (2) all Taxes shown to be due on the Tax Returns referred to in clause (1) or that are otherwise due and payable by it or its Subsidiaries have been paid in full, (3) all Taxes that it or any of its Subsidiaries is obligated to withhold from amounts owing to any employee, creditor or third party have been paid over to the proper Governmental Authority in a timely manner, to the extent due and payable, (4) no extensions or waivers of statutes of limitation for the assessment of Taxes that have not expired have been given by or requested in writing with respect to any of its U.S. federal, state, local or foreign income Taxes or those of its Subsidiaries, (5) none of the Tax Returns referred to in clause (1) are currently under any audit, suit, proceeding, examination or assessment by the IRS or the relevant state, local or foreign taxing authority and neither it nor its Subsidiaries has received written notice from any taxing authority that an audit, suit, proceeding, examination or assessment in respect of such Tax Returns is pending or threatened and (6) no deficiencies have been asserted or assessments made against it or its Subsidiaries by the relevant taxing authorities as a result of any audit or examination of any of the Tax Returns referred to in clause (1). It has made provision in accordance with GAAP, in the financial statements included in the First Republic Regulatory Filings filed before the date hereof, for all Taxes that accrued on or before the end of the most recent period covered by its First Republic Regulatory Filings filed before the date hereof. As of the date hereof, neither it nor any of its Subsidiaries has any reason to believe that any conditions exist that would reasonably be expected to prevent or impede the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code, other than MLFSB not being a wholly owned, direct Subsidiary of Merrill Lynch. No Liens for Taxes exist with respect to any of its assets or properties or those of its Subsidiaries, except for statutory Liens for Taxes not yet due and payable or that are being contested in good faith and fully reserved for in accordance with GAAP. Neither it nor any of its Subsidiaries has been a party to any distribution occurring during the two-year period prior to the date of this Agreement in which the parties to such distribution treated the distribution as one to which Section 355 of the Code applied, except for distributions occurring among members of the same group of affiliated corporations filing a consolidated federal income tax return. Neither it nor any of its Subsidiaries has participated in any "reportable transactions" within the meaning of Treasury Regulations Section 1.6011-4(b)(1), and neither it nor any of its Subsidiaries has been a "material advisor" to any such transaction within the meaning of Section 6111(b)(1) of the Code.

(n) *Books and Records*. Its books and records and those of its Subsidiaries have been fully, properly and accurately maintained in all material respects, and there are no material inaccuracies or discrepancies of any kind contained or reflected therein.

(o) *Takeover Laws and Provisions*. It has taken all action required to be taken by it in order to exempt this Agreement and the transactions contemplated hereby from, and this Agreement and the transactions contemplated hereby are exempt from, the requirements of any "moratorium", "control share", "fair price", "affiliate transaction", "business combination" or other antitakeover laws and regulations of any state (collectively, "Takeover Laws"). It has taken all action required to be taken by it in order to make this Agreement and the transactions contemplated hereby comply with, and this Agreement and the transactions contemplated hereby do comply with, the requirements of any Articles, Sections or provisions of its Governing Documents concerning "business combination", "fair price", "voting requirement", "constituency requirement" or other related provisions (collectively, "Takeover Provisions").

(p) *Labor Matters*. Neither it nor any of its Subsidiaries is a party to, or is bound by, any collective bargaining agreement, contract or other agreement or understanding with a labor union or labor organization, nor is it or any of its Subsidiaries the subject of a proceeding asserting that it or any such Subsidiary has committed an unfair labor practice (within the meaning of the National Labor Relations Act) or seeking to compel it or such Subsidiary to bargain with any labor organization as to wages and conditions of employment, nor is there any strike or other labor dispute involving it or any of its Subsidiaries, pending or, to the best of its knowledge, threatened, nor it is aware, as of the date hereof, of any activity involving it or any of its Subsidiaries' employees seeking to certify a collective bargaining unit or engaging in any other organization activity.

(q) *Environmental Matters*. There are no proceedings, claims, actions, or investigations of any kind, pending or threatened, in any court, agency, or other Governmental Authority or in any arbitral body, arising under any Environmental Law; there is no reasonable basis for any such proceeding, claim, action or investigation; there are no agreements, orders, judgments or decrees by or with any court, regulatory agency or other governmental authority, imposing liability or obligation under or in respect of any Environmental Law; to its knowledge there are and have been no Materials of Environmental Concern or other conditions at any property (owned, operated, or otherwise used by, or the subject of a security interest on behalf of, it or any of its subsidiaries); and to its knowledge there are no reasonably anticipated future events, conditions, circumstances, practices, plans, or legal requirements that could give rise to obligations or liabilities under any Environmental Law.

(r) *Reports*. Since January 1, 2004, it and each of its Subsidiaries has filed all material reports, registrations and statements in a reasonably timely manner, together with any amendments required to be made with respect thereto, that were required to be filed under any applicable law with any applicable Governmental Authority (collectively, the "First Republic Reports"). As of their respective dates, the First Republic Reports complied in all material respects with the applicable statutes, rules, regulations and orders enforced or promulgated by the Governmental Authority with which they were filed. All fees and assessments due and payable in connection with the First Republic Reports have been timely paid.

(s) *Intellectual Property*.

(1) It and its Subsidiaries own, or are licensed or otherwise possess sufficient rights to use, all Intellectual Property (including the Technology Systems) that is used by it and its Subsidiaries in their respective businesses as currently conducted. Neither it nor any of its Subsidiaries has (A) licensed any Intellectual Property owned by it or its Subsidiaries in source code form to any person or (B) entered into any exclusive agreements relating to the licensing of Intellectual Property owned by it or its Subsidiaries.

(2) To the knowledge of First Republic, it and its Subsidiaries have not infringed or otherwise violated the Intellectual Property rights of any third person. There is no claim asserted, or to its knowledge threatened, against it and its Subsidiaries or any indemnitee thereof concerning the ownership, validity, registerability, enforceability, infringement, use or licensed right to use any Intellectual Property.

(3) To the knowledge of First Republic, no third person has infringed, misappropriated or otherwise violated it or its Subsidiaries' Intellectual Property rights. There are no claims asserted or threatened by it or its Subsidiaries, or decided by them to be asserted or threatened, that (A) any person infringed or otherwise violated any of their Intellectual Property rights; or (B) any person's owned or claimed Intellectual Property interferes with, infringes, dilutes or otherwise harms any of their Intellectual Property rights.

(4) It and its Subsidiaries have taken reasonable measures to protect all trade names, trademarks and service marks that are owned, used or held by them.

(t) *Properties; Leases*.

(1) It or one of its Subsidiaries has good and marketable title to all the properties and assets reflected in its latest audited balance sheet included in the First Republic Regulatory Filings as being owned by it or one of its Subsidiaries or acquired after the date thereof which are material to its business on a consolidated basis (except properties sold or otherwise disposed of since the date thereof in the ordinary course of business), free and clear of all Liens.

(2) It or one of its Subsidiaries is the lessee of all leasehold estates reflected in the latest audited financial statements included in the First Republic Regulatory Filings or acquired after the date thereof which are material to its business on a consolidated basis (except for leases that have expired by their terms or been legally terminated by it or one of its Subsidiaries since the date thereof) and is in possession of the properties purported to be leased thereunder, and each such lease is in full force and effect without default thereunder by the lessee or, to its knowledge, the lessor, and lessee has not received any notice of default under any leases.

(u) *Insurance*. It and its Subsidiaries are insured with reputable insurers against such risks and in such amounts as its management, upon consultation with its advisors, reasonably has determined to be reasonably practicable and prudent in accordance with industry practices.

(v) *Investment Adviser Subsidiaries*.

(1) It and certain of its Subsidiaries as set forth on Schedule 5.03(v) of its Disclosure Schedule (the "Advisory Entities") provide investment management, investment advisory and sub-advisory services. For purposes of this Agreement, "Advisory Contract" means each contract for such services provided by an Advisory Entity; "Advisory Client" means each party to an Advisory Contract other than the applicable Advisory Entity.

(2) None of it or its Subsidiaries provide any investment management or investment advisory or sub-advisory services to any Advisory Client that is registered as an investment company under the Investment Company Act of 1940.

(3) Each Advisory Entity has been (since January 1, 2004 or such later date as it became an Advisory Entity) and is in compliance with each Advisory Contract to which it is a party, and each Advisory Contract (A) has been duly authorized, executed and delivered by the applicable Advisory Entity; (B) is a valid and legally binding agreement, enforceable against the Advisory Entity which is a party thereto; and (C) complies in all respects with applicable law.

(4) The accounts of each Advisory Client subject to ERISA have been managed since January 1, 2004 (or such later date as it became an Advisory Client) by the applicable Advisory Entity in compliance with the applicable requirements of ERISA.

(5) Neither it nor any of its Advisory Entities or any "person associated with an investment advisor" (as defined in the Investment Advisers Act of 1940 (the "Investment Advisers Act")) of any of them is ineligible pursuant to Section 203 of the Investment Advisers Act to serve as an investment advisor or as a person associated with a registered investment advisor.

(6) It has made available to Merrill Lynch true and correct copies of the current Uniform Application for Investment Advisor Registration on Form ADV for each of the Advisor Entities ("Form ADV"), and each such Form ADV is in compliance in all material respects with applicable law.

(w) *Broker-Dealer Activities*.

(1) Neither it nor any of its Subsidiaries is, nor is any affiliate of any of them, subject to a "statutory disqualification" as defined in Section 3(a)(39) of the Exchange Act or subject to a disqualification that would be a basis for censure, limitations on the activities, functions or operations of, or suspension or revocation of the registration of any broker-dealer Subsidiary as a broker-dealer, municipal securities dealer, government securities broker or government securities dealer under Section 15, Section 15B or Section 15C of the Exchange Act, or performing similar functions under the Laws of other jurisdictions, and there is no reasonable basis for, or proceeding or written notice of investigation by any Governmental Authority, whether preliminary or otherwise, that is reasonably likely to result in, any such censure, limitation, suspension or revocation.

(2) It has made available to Merrill Lynch true and correct copies of the current Uniform Application for Broker-Dealer Registration on Form BD for First Republic Securities Company, which is in compliance in all material respects with applicable law.

(x) *Accounting Controls*. It and its Subsidiaries have devised and maintained systems of internal accounting controls sufficient to provide reasonable assurance that (1) all material transactions are executed in accordance with management's general or specific authorization; (2) all material transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP and regulatory accounting principles consistently applied, (3) access to the material property and assets of it and its Subsidiaries is permitted only in accordance with management's general or specific authorization;

and (4) the recorded accountability for assets of its and its Subsidiaries is compared with the actual levels at reasonable intervals and appropriate action is taken with respect to any differences.

(y) *Risk Management*. All swaps, caps, floors, option agreements, futures and forward contracts and other similar risk management arrangements, whether entered into for its own account, or for the account of one or more of its Subsidiaries or their respective customers (each a "Risk Management Contract"), were entered into (1) in accordance with prudent business practices and all applicable laws, rules, regulations and regulatory policies and (2) with counterparties believed to be financially responsible at the time; and each of them constitutes the valid and legally binding obligation of it or one of its Subsidiaries, as the case may be, enforceable in accordance with its terms (except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar laws of general applicability relating to or affecting creditors' rights or by general equity principles), and are in full force and effect. Neither it nor its Subsidiaries, nor to its knowledge any other party thereto, is in breach of any of its obligations under any Risk Management Contract.

(z) *Fiduciary Commitments and Duties*. It is empowered and authorized under applicable law to exercise all trust powers necessary to conduct its business. It and its Subsidiaries have performed all of their duties in their capacities as trustee, executor, administrator, registrar, guardian, custodian, escrow agent, receiver or other fiduciary in a fashion which complies with all applicable law, including ERISA, and all orders, agreements, trusts, wills, contracts, appointments, indentures, plans, arrangements, instruments and common law standards.

(aa) *Loan Portfolio*.

(1) Neither it nor any of its Subsidiaries is a party to any written or oral (A) Loans, other than any Loan the unpaid principal balance of which does not exceed $500,000, under the terms of which the obligor was, as of December 31, 2006, over 90 days delinquent in payment of principal or interest or in default of any other provision, or (B) Loans in excess of $500,000 with any director, executive officer or five percent or greater stockholder of the it or any of its Subsidiaries, or to its knowledge, any affiliate of any of the foregoing. It has Previously Disclosed (x) all of the Loans in current principal amount in excess of $500,000 that as of December 31, 2006, were classified by it or any regulatory examiner as "Other Loans Specially Mentioned," "Special Mention," "Substandard," "Doubtful," "Loss," "Classified," "Criticized," "Credit Risk Assets," "Concerned Loans," "Watch List" or words of similar import, together with the principal amount of and accrued and unpaid interest on each such Loan and the identity of the borrower thereunder, (y) by category of Loan (i.e., commercial, consumer, etc.), all of the other Loans of it and its Subsidiaries that as of December 31, 2006 were classified as such, together with the aggregate principal amount of and accrued and unpaid interest on such Loans by category and (z) each asset of it that as of December 31, 2006, was classified as "Other Real Estate Owned" and the book value thereof. First Republic shall provide, on a monthly basis, a schedule of Loans that become classified in the manner described in the previous sentence, or any Loan the classification of which is changed, after the date of this Agreement.

(2) Each Loan in current principal amount in excess of $250,000 (A) is evidenced by notes, agreements or other evidences of indebtedness that are true, genuine and what they purport to be, (B) to the extent carried on the books and records as secured Loans, has been secured by valid Liens which have been perfected and (C) is the legal, valid and binding obligation of the obligor named therein, enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent conveyance and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(3) There are no outstanding Loans made by First Republic or any of its Subsidiaries to any "executive officer" or other "insider" (as each such term is defined in Regulation O promulgated by the Board of Governors of the Federal System) of First Republic or its Subsidiaries, other than loans that are subject to and that were made and continue to be in compliance with Regulation O or that are exempt therefrom.

(bb) *Financial Advisors, Etc.* None of it, its Subsidiaries or any of their officers, directors or employees has employed any broker or finder or incurred any liability for any brokerage fees, commissions or finder's fees in connection with the transactions contemplated herein, except that, in connection with this Agreement, First Republic has retained Morgan Stanley & Co. Incorporated as its financial advisor, the arrangements with which have been disclosed to Merrill Lynch prior to the date hereof. As of the date hereof, First Republic has received a written opinion of Morgan Stanley & Co. Incorporated to the effect that, as of the date of the opinion, the Merger Consideration is fair from a financial point of view to holders of First Republic Common Stock.

5.04 *Representations and Warranties of Merrill Lynch.* Except as Previously Disclosed, Merrill Lynch hereby represents and warrants to First Republic as follows:

(a) *Organization, Standing and Authority.* It is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation. MLFSB is a federal stock savings bank duly organized, validly existing and in good standing under the laws of the United States. Each of Merrill Lynch and MLFSB is duly qualified to do business and is in good standing in all jurisdictions where its ownership or leasing of property or assets or its conduct of business requires it to be so qualified. As of the date of this Agreement, MLFSB is a wholly owned indirect Subsidiary of Merrill Lynch. As of the Closing Date, MLFSB will be a wholly owned direct Subsidiary of Merrill Lynch.

(b) *Capital Stock.*

(1) The authorized capital stock of Merrill Lynch consists of 3,000,000,000 shares of Merrill Lynch Common Stock and 25,000,000 shares of Merrill Lynch Preferred Stock. As of December 29, 2006, no more than 867,972,000 shares of Merrill Lynch Common Stock and 105,000 shares of Merrill Lynch Preferred Stock were outstanding. As of the date of this Agreement, approximately 8,000,000 shares of Merrill Lynch Common Stock were reserved for issuance upon conversion of convertible debt of Merrill Lynch and its Subsidiaries. The outstanding shares of Merrill Lynch Common Stock 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 set forth above or in the Merrill Lynch Rights Agreement and except for shares issuable pursuant to the Merrill Lynch Stock Plans, as of the date of this Agreement, there are no shares of Merrill Lynch Stock reserved for issuance, Merrill Lynch does not have any Rights outstanding with respect to Merrill Lynch Stock, and Merrill Lynch does not have any commitment to authorize, issue or sell any Merrill Lynch Stock or Rights, except pursuant to this Agreement, outstanding Merrill Lynch Stock Options and the Merrill Lynch Stock Plans.

(2) The authorized capital stock of MLFSB consists of 500,000 shares of common stock, par value $100.00 per share ("MLFSB Stock"), of which 211,200 shares are outstanding and held of record by Merrill Lynch Group, Inc., a direct wholly owned subsidiary of Merrill Lynch.

(3) The shares of Merrill Lynch Common Stock and Merrill Lynch Merger Preferred Stock to be issued in the Merger have been duly authorized and, when issued, will be validly issued, fully paid and nonassessable.

(c) *Power.* Each of it and MLFSB has the corporate (or comparable) power and authority to carry on its business as it is now being conducted and to own all its properties and assets; and it has the corporate (or comparable) power and authority to execute, deliver and perform its obligations under this Agreement and to consummate the transactions contemplated hereby and thereby.

(d) *Authority.* Each of it and MLFSB has duly authorized, executed and delivered this Agreement. This Agreement and the transactions contemplated hereby have been authorized by all necessary respective corporate action of it and MLFSB. This Agreement is its and MLFSB's valid and legally binding obligation, enforceable in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar laws of general applicability relating to or affecting creditors' rights or by general equity principles).

(e) *Regulatory Approvals; No Defaults.* (1) No consents or approvals of, or filings or registrations with, any Governmental Authority are required to be made or obtained by it or MLFSB in connection with the execution, delivery or performance by it and MLFSB of this Agreement or to consummate the Merger except for (A) filings of applications and notices with, receipt of approvals or nonobjections from, and expiration of the related waiting period required by foreign, federal and state banking authorities, including applications and notices under HOLA in connection with MLFSB becoming a direct Subsidiary of Merrill Lynch and under the Bank Merger Act, HOLA and the Federal Deposit Insurance Act in connection with the Merger, (B) filing of notices, and expiration of the related waiting period, under the HSR Act, (C) filing of the Registration Statement with the SEC, and declaration by the SEC of the Registration Statement's effectiveness under the Securities Act, (D) filings of applications and notices with, and receipt of approvals or nonobjections from, the SEC, FDIC, OTS, the Nevada Department of Business & Industry, Division of Financial Institutions and any other state Governmental Authorities, and applicable securities exchanges and self-regulatory organizations, and (E) the filing of the Articles of Merger and Articles of Combination.

(2) Subject to receipt of the regulatory consents and approvals referred to in the preceding paragraph, and the expiration of related waiting periods, and required filings under federal and state securities laws, the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby do not and will not (A) constitute a breach or violation of, or a default under, or give rise to any Lien or any acceleration of remedies, penalty, increase in material benefit payable or right of termination under, any law, rule or regulation or any judgment, decree, order, governmental permit or license, or agreement, indenture or instrument of it or MLFSB or to which it or MLFSB or their properties is subject or bound, (B) constitute a breach or violation of, or a default under, its or MLFSB's Governing Documents or (C) require any consent or approval under any such law, rule, regulation, judgment, decree, order, governmental permit or license, agreement, indenture or instrument.

(3) As of the date hereof, it is not aware of any reason why the necessary regulatory approvals and consents will not be received in order to permit consummation of the Merger on a timely basis.

(f) *Financial Reports and Regulatory Documents; Material Adverse Effect.* (1) Its Annual Reports on Form 10-K for the fiscal years ended December 31, 2003, 2004 and 2005, and all other reports, registration statements, definitive proxy statements or information statements filed by it or any of its Significant Subsidiaries (but including MLFSB) subsequent to December 31, 2003 under the Securities Act, or under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, in the form filed (collectively, the "Merrill Lynch Regulatory Filings") with the SEC or the OTS, as the case may be, as of the date filed, (A) complied in all material respects as to form with the applicable requirements under the Securities Act, the Exchange Act and the OTS Rules, and (B) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and each of the statements of financial position contained in or incorporated by reference into any such Merrill Lynch Regulatory Filing (including the related notes and schedules) fairly presented in all material respects its financial position and that of its Subsidiaries as of the date of such statement, and each of the statements of income and changes in stockholders' equity and cash flows or equivalent statements in such Merrill Lynch Regulatory Filings (including any related notes and schedules thereto) fairly presented in all material respects, the results of operations, changes in stockholders' equity and changes in cash flows, as the case may be, of it and its Significant Subsidiaries (but including MLFSB) for the periods to which those statements relate, in each case in accordance with GAAP consistently applied during the periods involved, except in each case as may be noted therein, and subject to normal year-end audit adjustments and as permitted by Form 10-Q in the case of unaudited statements.

(2) Since December 31, 2005, (A) it and its Subsidiaries have conducted their respective businesses in the ordinary and usual course consistent with past practice (excluding the incurrence of expenses related to this Agreement and the transactions contemplated hereby) and (B) no event has occurred or circumstance arisen that, individually or taken together with all other facts, circumstances and events

(described in any paragraph of this Section 5.04 or otherwise), has had or is reasonably likely to have a Material Adverse Effect with respect to it.

(g) *Litigation.* There is no suit, action, investigation or proceeding pending or, to its knowledge, threatened against or affecting it or any of its Significant Subsidiaries (but including MLFSB) (and it is not aware of any basis for any such suit, action or proceeding) that, individually or in the aggregate, is (1) material to it and its Significant Subsidiaries (but including MLFSB), taken as a whole, or (2) that is reasonably likely to prevent or delay it or MLFSB in any material respect from performing its and MLFSB's obligations under, or consummating the transactions contemplated by, this Agreement.

(h) *Aggregate Cash Consideration.* Merrill Lynch has, or will have as of the Effective Time, available to it sufficient funds to pay the Total Cash Amount.

(i) *Financial Advisors, Etc.* None of it, its Subsidiaries or any of their officers, directors or employees has employed any broker or finder or incurred any liability for any brokerage fees, commissions or finder's fees in connection with the transactions contemplated herein.

(j) *Reorganization Treatment.* As of the date hereof, neither it nor any of its Subsidiaries has any reason to believe that any conditions exist that would reasonably be expected to prevent or impede the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code, other than MLFSB not being a wholly owned direct Subsidiary of Merrill Lynch.

(k) *Regulatory Matters.* The activities conducted by MLFSB and its Subsidiaries are permissible for a federal savings bank. Neither it nor any of its Subsidiaries is subject to, or has been advised that it is reasonably likely to become subject to, any special procedures or restrictions imposed by any written order, decree, agreement, memorandum of understanding or similar arrangement with, or a commitment letter or similar submission to, or extraordinary supervisory letter from, or adopted any extraordinary board resolutions at the request of, any Governmental Authority charged with the supervision or regulation of it or any of its Subsidiaries.

(l) *Compliance with Laws.* MLFSB and each of its Subsidiaries:

(1) has, since January 1, 2004, conducted its business in compliance with all applicable federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders or decrees applicable thereto (including the rules and regulations of applicable self-regulatory organizations) or to the employees conducting such businesses;

(2) has all permits, licenses, authorizations, orders and approvals of, and has made all filings, applications and registrations with, all Governmental Authorities that are required in order to permit them to own or lease their properties and to conduct their businesses as presently conducted; all such permits, licenses, certificates of authority, orders and approvals are in full force and effect and, to its knowledge, no suspension or cancellation of any of them is threatened;

(3) has received, since January 1, 2004, no written or, to its knowledge, other notification from any Governmental Authority (A) asserting that it or any of its Subsidiaries is not in compliance with any of the statutes, regulations, rules or ordinances which such Governmental Authority enforces or (B) threatening to revoke any license, franchise, permit or governmental authorization;

(4) is not subject to any pending, or to its knowledge, threatened, investigation, review or disciplinary proceedings by any Governmental Authority against either of it or any of its Subsidiaries or any officer, director or employee thereof; and

(5) has no reason to believe that any facts or circumstances exist that would cause it or any of its Subsidiaries to be deemed (A) to be operating in violation of the Bank Secrecy Act, the USA PATRIOT Act, any other applicable anti-money laundering statute, rule or regulation or any rule or regulation issued by the U.S. Department of the Treasury's Office of Foreign Assets Control; (B) not to be in compliance in any material respect with the applicable privacy and customer information

requirements contained in any applicable law; or (C) to be operating in violation in any material respect of any fair lending or other discrimination-related statute, rule or regulation.

(m) *Reports.* Since January 1, 2004, MLFSB and each of its Subsidiaries has filed all material reports, registrations and statements in a reasonably timely manner, together with any amendments required to be made with respect thereto, that were required to be filed under any applicable law with any applicable Governmental Authority (collectively, the "MLFSB Reports"). As of their respective dates, the MLFSB Reports complied in all material respects with the applicable statutes, rules, regulations and orders enforced or promulgated by the Governmental Authority with which they were filed. All fees and assessments due and payable in connection with the MLFSB Reports have been timely paid.

(n) *Insurance.* MLFSB and its Subsidiaries are insured with reputable insurers against such risks and in such amounts as its management reasonably has determined to be prudent in accordance with industry practices.

ARTICLE VI

COVENANTS

6.01 *Reasonable Best Efforts.* (a) Subject to the terms and conditions of this Agreement, each of Merrill Lynch, MLFSB and First Republic will use reasonable best efforts to take, or cause to be taken, in good faith, all actions, and to do, or cause to be done, all things necessary, proper or desirable, or advisable under applicable laws, including to obtain consents of third parties (provided that this will not require First Republic to make any material payment to a third party for such consent unless Merrill Lynch has irrevocably acknowledged that all other conditions to Closing have been satisfied or waived), so as to permit consummation of the Merger as promptly as practicable and otherwise to enable consummation of the transactions contemplated hereby, and each will cooperate fully with, and furnish information to, the other party to that end.

(b) Merrill Lynch will execute and deliver, or cause to be executed and delivered, by or on behalf of MLFSB, at or prior to the Effective Time, any supplements, amendments or other instruments required for the due assumption of First Republic's outstanding 7 3/4% Subordinated Notes Due 2012, dated September 17, 1997 ("First Republic Sub Debt"), and (to the extent informed of such requirement by First Republic) other agreements to the extent required by the terms of the First Republic Sub Debt.

6.02 *Stockholder Approvals.* (a) The First Republic Board has adopted this Agreement and the plan of merger it contains and adopted resolutions recommending as of the date hereof to First Republic's stockholders approval of the plan of merger contained in this Agreement and any other matters required to be approved or adopted in order to effect the Merger and other transactions contemplated by this Agreement.

(b) The Merrill Lynch Board and the board of directors of MLFSB have approved this Agreement and adopted resolutions approving this Agreement and the transactions contemplated by this Agreement.

(c) The First Republic Board will submit to its stockholders the plan of merger contained in this Agreement and any other matters required to be approved or adopted by stockholders in order to carry out the intentions of this Agreement. In furtherance of that obligation, First Republic will take, in accordance with applicable law and its Governing Documents, all action necessary to convene a meeting of its stockholders (including any adjournment or postponement, the "First Republic Meeting"), as promptly as practicable, to consider and vote upon approval of the plan of merger as well as any other such matters. Subject to the terms and conditions of this Agreement, the First Republic Board will use all reasonable best efforts to obtain from its stockholders a vote approving the plan of merger contained in this Agreement. Notwithstanding anything to the contrary herein, if the First Republic Board, after consultation with outside counsel, determines in good faith that it would be more likely than not to result in a violation of its fiduciary duties under applicable law to continue to recommend the plan of merger set forth in this Agreement, then the First Republic Board may do one or more of the following: (1) because of a conflict of interest or other special circumstances, submit the plan of merger to First Republic's stockholders without recommendation (although the resolutions adopting this Agreement as of the date hereof, described in Section 6.02(a), may not be rescinded or amended), in

which event the First Republic Board may communicate the basis for its lack of a recommendation to the stockholders in the Proxy Statement or an appropriate amendment or supplement thereto to the extent required by law, (2) withdraw or adversely modify its recommendation to the First Republic stockholders (an "Adverse Recommendation") and may terminate this Agreement in accordance with Section 8.01(d), (3) disclose its intention to make an Adverse Recommendation and (4) recommend (or disclose its intention to recommend) to the First Republic stockholders an Acquisition Proposal other than the Merger; provided that the First Republic Board may not take any particular action described in clauses (1) through (4) of this sentence without giving Merrill Lynch written notice of the proposed action and giving Merrill Lynch at least five business days to respond to an Acquisition Proposal or other circumstances giving rise to such particular proposed action (which notice shall include the latest material terms, conditions, and identity of the person making such Acquisition Proposal or describe in reasonable detail such other circumstances).

(d) Prior to the Effective Time, Merrill Lynch shall, or shall cause the sole stockholder of MLFSB to, approve the combination agreement contained in this Agreement as required by OTS regulations.

6.03 *SEC Filings.* (a) Merrill Lynch and First Republic will cooperate in ensuring that all filings required under SEC Rules 165, 425 and 14a-12 are timely and properly made. Merrill Lynch also will prepare a registration statement on Form S-4 or other applicable form (the "Registration Statement") to be filed by Merrill Lynch with the SEC in connection with the issuance of Merrill Lynch Common Stock in the Merger, and the parties will jointly prepare the proxy statement and prospectus and other proxy solicitation materials of First Republic to be filed with the FDIC and included in the Registration Statement (the "Proxy Statement") and all related documents. Each party will cooperate, and will cause its Subsidiaries to cooperate, with the other party, its counsel and its accountants, in the preparation of the Registration Statement and the Proxy Statement, and, provided that both parties and their respective Subsidiaries have cooperated as required above, Merrill Lynch and First Republic agree to file the Registration Statement, including the Proxy Statement in preliminary form, with the SEC and the FDIC as promptly as reasonably practicable. Merrill Lynch will use all reasonable best efforts to cause the Registration Statement to be declared effective under the Securities Act as promptly as reasonably practicable after filing thereof and to maintain the effectiveness of such Registration Statement until the Effective Time. Each party shall cooperate and provide the other party with a reasonable opportunity to review and comment on any amendment or supplement to the Proxy Statement and the Registration Statement prior to filing such with the SEC or the FDIC, as the case may be, and each party will provide the other party with a copy of all such filings with the SEC and the FDIC. Merrill Lynch also agrees to use reasonable best efforts to obtain all necessary state securities law or "Blue Sky" permits and approvals required to carry out the transactions contemplated hereby. Each party agrees to furnish for inclusion in the Registration Statement and the Proxy Statement all information concerning it, its Subsidiaries, officers, directors and stockholders as may be required by applicable law in connection with the foregoing.

(b) Merrill Lynch and First Republic each agrees, as to itself and its Subsidiaries, that none of the information supplied or to be supplied by it for inclusion or incorporation by reference in (1) the Registration Statement will, at the time the Registration Statement and each amendment or supplement thereto, if any, becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and (2) the Proxy Statement and any amendment or supplement thereto will, at the date of mailing to stockholders and at the time of the First Republic Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which such statement was made, not misleading. Merrill Lynch and First Republic each further agrees that if it becomes aware that any information furnished by it would cause any of the statements in the Proxy Statement or the Registration Statement to be false or misleading with respect to any material fact, or to omit to state any material fact necessary to make the statements therein not false or misleading, to promptly inform the other party thereof and to take appropriate steps to correct the Proxy Statement or the Registration Statement.

(c) Merrill Lynch will advise First Republic, promptly after Merrill Lynch receives notice thereof, of the time when the Registration Statement has become effective or any supplement or amendment has been filed, of the issuance of any stop order or the suspension of the qualification of Merrill Lynch Common Stock for

offering or sale in any jurisdiction, of the initiation or threat of any proceeding for any such purpose, or of any request by the SEC or the FDIC for the amendment or supplement of the Registration Statement or the Proxy Statement or for additional information.

6.04 *Press Releases.* Merrill Lynch and First Republic will consult with each other before issuing any press release, written and broadly disseminated employee communication or other written stockholder communication with respect to the Merger or this Agreement that is required to be filed under applicable securities laws and will not issue any such communication or make any such public statement without the prior consent of the other party, which will not be unreasonably withheld or delayed; provided, however, that a party may, without the prior consent of the other party (but after prior consultation, to the extent practicable in the circumstances), issue such communication or make such public statement as may be required by applicable law or securities exchange rules. The parties shall provide to each other any press release, written and broadly disseminated employee communication or other written stockholder communication with respect to the Merger or this Agreement that is not required to be filed under applicable securities laws at or about the time such communication is made. Merrill Lynch and First Republic will cooperate to develop all public communications and make appropriate members of management available at presentations related to the transactions contemplated by this Agreement as reasonably requested by the other party.

6.05 *Access; Information.* (a) Each of Merrill Lynch and MLFSB, on the one hand, and First Republic, on the other hand, agrees that upon reasonable notice and subject to applicable laws relating to the exchange of information, it will (and will cause its Subsidiaries to) afford the other party, and the other party's officers, employees, counsel, accountants and other authorized Representatives, such access during normal business hours throughout the period before the Effective Time to the books, records (including Tax Returns and work papers of independent auditors), properties, personnel and to such other information as the other party may reasonably request and, during such period, it will furnish promptly to such other party (1) a copy of each report, schedule and other document filed by it pursuant to the requirements of federal or state securities or banking laws, and (2) all other information concerning the business, properties and personnel of it as the other may reasonably request. None of Merrill Lynch, MLFSB or First Republic or any of their respective Subsidiaries will be required to afford access or disclose information that would jeopardize attorney-client privilege or contravene any provisions of applicable law or any binding agreement with any third party. The parties will make appropriate substitute arrangements in circumstances where the previous sentence applies.

(b) Each party will hold any information which is nonpublic and confidential to the extent required by, and in accordance with, the confidentiality provisions of the letter agreement, dated January 12, 2007 between Merrill Lynch and First Republic (the "Confidentiality Agreement").

(c) No investigation by any party of the business and affairs of the other party, pursuant to this Section 6.05 or otherwise, will affect or be deemed to modify or waive any representation, warranty, covenant or agreement in this Agreement, or the conditions to any party's obligation to consummate the transactions contemplated by this Agreement.

6.06 *Acquisition Proposals.* (a) First Republic will not, and will cause its Subsidiaries and use its reasonable best efforts to cause its and its Subsidiaries' officers, directors, agents, advisors and affiliates not to, initiate, solicit, encourage or knowingly facilitate inquiries or proposals with respect to, or engage in any negotiations concerning, or provide any confidential or nonpublic information or data to, or have any discussions with, any person relating to, any Acquisition Proposal; provided that, in the event First Republic receives an unsolicited bona fide Acquisition Proposal, from a person other than Merrill Lynch, after the execution of this Agreement, and the First Republic Board concludes in good faith that such Acquisition Proposal constitutes a Superior Proposal or would reasonably be likely to result in a Superior Proposal and, after considering the advice of outside counsel, that failure to take such actions would be more likely than not to result in a violation of the directors' fiduciary duties under applicable law, First Republic may, and may permit its Subsidiaries and its and its Subsidiaries' Representatives to, furnish or cause to be furnished nonpublic information or data and participate in such negotiations or discussions; provided that prior to providing any nonpublic information permitted to be provided pursuant to the foregoing proviso, it shall have entered into a confidentiality agreement with such third party on terms substantially similar to those contained

in the Confidentiality Agreement (except that First Republic may enter into a confidentiality agreement without a standstill provision or with a standstill provision less favorable to First Republic if it waives or similarly modifies the standstill provision in the Confidentiality Agreement). First Republic will immediately cease and cause to be terminated any activities, discussions or negotiations conducted before the date of this Agreement with any persons other than Merrill Lynch with respect to any Acquisition Proposal and will use its reasonable best efforts to enforce any confidentiality or similar agreement relating to an Acquisition Proposal (except that First Republic will not be required to enforce any standstill provision in any confidentiality agreement if it waives or similarly modifies the standstill provision in the Confidentiality Agreement). First Republic will promptly (within two business days) advise Merrill Lynch following receipt of any Acquisition Proposal and the substance thereof (including the identity of the person making such Acquisition Proposal), and will keep Merrill Lynch apprised of any related material developments, discussions and negotiations (including the material terms and conditions of the Acquisition Proposal) on a current basis.

(b) Nothing contained in this Agreement shall prevent First Republic or the First Republic Board from complying with Rule 14d-9 and Rule 14e-2 under the Exchange Act, or other disclosure requirements under applicable law or NYSE rules, with respect to an Acquisition Proposal; provided that such Rules will in no way eliminate or modify the effect that any action pursuant to such Rules would otherwise have under this Agreement.

6.07 *Affiliate Agreements.* Not later than the 15th day before the mailing of the Proxy Statement, First Republic will deliver to Merrill Lynch a schedule of each person that, to the best of its knowledge, is or is reasonably likely to be, as of the date of the First Republic Meeting, deemed to be an "affiliate" of First Republic (each, a "First Republic Affiliate") as that term is used in Rule 145 under the Securities Act. First Republic will use its reasonable best efforts to cause each person who may be deemed to be a First Republic Affiliate to execute and deliver to Merrill Lynch and First Republic on or before the date of mailing of the Proxy Statement an agreement in substantially the form attached hereto as Annex 5.

6.08 *Takeover Laws and Provisions.* No party will take any action that would cause the transactions contemplated by this Agreement to be subject to requirements imposed by any Takeover Law and each of them will take all necessary steps within its control to exempt (or ensure the continued exemption of) those transactions from, or if necessary challenge the validity or applicability of, any applicable Takeover Law, as now or hereafter in effect. No party will take any action that would cause the transactions contemplated by this Agreement not to comply with any Takeover Provisions and each of them will take all necessary steps within its control to make those transactions comply with (or continue to comply with) the Takeover Provisions.

6.09 *Exchange Listing.* Merrill Lynch will use all reasonable best efforts to cause the shares of Merrill Lynch Common Stock and Merrill Lynch Merger Preferred Stock to be issued in the Merger and shares reserved for issuance pursuant to Section 3.02 hereof to be approved for listing on the NYSE, subject to official notice of issuance, as promptly as practicable, and in any event before the Effective Time.

6.10 *Regulatory Applications.* (a) Merrill Lynch and First Republic and their respective Subsidiaries will cooperate and use all reasonable best efforts to prepare as promptly as possible all documentation, to effect all filings and to obtain all permits, consents, approvals and authorizations Governmental Authorities necessary to consummate the transactions contemplated by this Agreement (the "Requisite Regulatory Approvals") and will make all necessary filings in respect of those Requisite Regulatory Approvals as soon as practicable. Each of Merrill Lynch, MLFSB and First Republic will have the right to review in advance, and to the extent practicable each will consult with the other, in each case subject to applicable laws relating to the exchange of information, with respect to all substantive written information submitted to any Governmental Authority in connection with the Requisite Regulatory Approvals. In exercising the foregoing right, each of the parties will act reasonably and as promptly as practicable. Each party agrees that it will consult with the other party with respect to obtaining all material permits, consents, approvals and authorizations of all Governmental Authorities necessary or advisable to consummate the transactions contemplated by this Agreement and each party will keep the other party apprised of the status of material matters relating to completion of the transactions contemplated hereby.

(b) Merrill Lynch and First Republic will, upon request, furnish the other party with all information concerning itself, its Subsidiaries, directors, officers and stockholders and such other matters as may be reasonably necessary or advisable in connection with any filing, notice or application made by or on behalf of such other party or any of its Subsidiaries with or to any Governmental Authority in connection with the transaction contemplated by this Agreement.

6.11 *Indemnification.* (a) Following the Effective Time, Merrill Lynch will indemnify, defend and hold harmless the present and former directors, officers and employees of First Republic and its Subsidiaries (each, an "Indemnified Party") against all costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages, liabilities and settlement amounts as incurred, in connection with any claim, action (whether threatened, pending or contemplated), suit, proceeding or investigation, whether arising before or after the Effective Time and whether civil, criminal, administrative or investigative, arising out of or pertaining to matters existing or actions or omissions occurring at or before the Effective Time (including the transactions contemplated by this Agreement) (and shall advance expenses as incurred to the fullest extent permitted under applicable law provided the Indemnified Party to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined that such Indemnified Party is not entitled to indemnification) (1) without limitation of clause (2), to the same extent as such persons are indemnified or have the right to advancement of expenses pursuant to the Governing Documents and indemnification agreements, if any, in effect on the date of this Agreement with First Republic and its Subsidiaries, and (2) without limitation of clause (1), to the fullest extent permitted by law.

(b) Prior to the Effective Time, First Republic shall, or, if First Republic is unable to, Merrill Lynch shall, as of the Effective Time obtain and fully pay for "tail" insurance policies with a claims period of at least six years from and after the Effective Time with respect to directors' and officers' liability insurance for the present and former officers and directors of First Republic or any of its Subsidiaries with respect to claims against such directors and officers arising from facts or events occurring before the Effective Time (including the transactions contemplated by this Agreement). Such "tail" insurance policy will contain coverage, amounts, terms and conditions, no less advantageous to such officers and directors than the coverage currently provided by First Republic. If First Republic (or Merrill Lynch) for any reason cannot obtain such "tail" insurance policies as of the Effective Time, Merrill Lynch shall obtain comparable insurance for such six-year period with coverage, amounts, terms and conditions no less advantageous to such officers and directors than the coverage currently provided by First Republic; provided, however, that in any case Merrill Lynch will not be obligated to make annual premium payments for any such insurance to the extent such premiums exceed 250% of the premiums paid as of the date hereof by First Republic for such insurance ("First Republic's Current Premium"), and if such premiums for such insurance would at any time exceed 250% of First Republic's Current Premium, then Merrill Lynch will cause to be maintained policies of insurance which, in Merrill Lynch's good faith determination, provide the maximum coverage available at an annual premium equal to 250% of First Republic's Current Premium.

(c) Any Indemnified Party wishing to claim indemnification under Section 6.11(a), upon learning of any claim, action, suit, proceeding or investigation described above, will promptly notify Merrill Lynch; provided that failure so to notify will not affect the obligations of Merrill Lynch under Section 6.11(a) unless and only to the extent that Merrill Lynch is actually and materially prejudiced as a consequence.

(d) If Merrill Lynch or any of its successors or assigns consolidates with or merges into any other entity and is not the continuing or surviving entity of such consolidation or merger or transfers all or substantially all of its assets to any other entity, then and in each case, Merrill Lynch will cause proper provision to be made so that the successors and assigns of Merrill Lynch will assume the obligations set forth in this Section 6.11.

(e) The provisions of this Section 6.11 shall survive the Effective Time and are intended to be for the benefit of, and will be enforceable by, each Indemnified Party and his or her heirs and Representatives.

6.12 *Benefit Plans.* (a) From the Effective Time through December 31, 2007, Merrill Lynch shall, or shall cause MLFSB to continue to maintain the First Republic employee benefit plans (other than equity-based award plans) for the benefit of the employees of First Republic and its Subsidiaries as of the Effective Time (the "Covered Employees"). From and after January 1, 2008, Merrill Lynch shall provide the Covered

Employees with employee benefit plans, programs and arrangements that are substantially similar to those provided to similarly situated employees of Merrill Lynch and its Subsidiaries. From and after the Effective Time, First Republic's management, in consultation with Merrill Lynch's management, shall have the discretion to provide compensation plans, programs and arrangements (including, without limitation, equity-based award plans) to First Republic employees consistent with First Republic management's business plan. The parties agree that, to the extent that any employee benefits and/or compensation plans, programs and arrangements provided by Merrill Lynch or its Subsidiaries are based upon an individual's job title, Covered Employees who were "managing directors" of First Republic or any of its Subsidiaries immediately prior to the Effective Time shall be treated no less favorably than "vice presidents" of Merrill Lynch and/or its Subsidiaries. Notwithstanding anything herein to the contrary, Covered Employees shall be entitled to participate in any fully participant paid post-retirement medical plans or programs of Merrill Lynch and/or its Subsidiaries, such participation to be on the same basis with respect to employee premiums as similarly situated employees of Merrill Lynch and/or its Subsidiaries.

(b) Merrill Lynch shall (1) provide all Covered Employees with service credit for purposes of eligibility, participation, vesting and levels of benefits (but not for benefit accruals under any defined benefit pension plan), under any employee benefit or compensation plan, program or arrangement (other than service credit that relates to eligibility for "retirement" under the Merrill Lynch Employee Stock Compensation Plan and the Merrill Lynch Long-Term Incentive Compensation Plan for Managers and Producers) adopted, maintained or contributed to by Merrill Lynch or any of its Subsidiaries in which Covered Employees are eligible to participate, for all actual periods of employment with First Republic or any of its Subsidiaries (or their predecessor entities) prior to the Effective Time, (2) cause any pre-existing conditions, limitations, eligibility waiting periods or required physical examinations under any welfare benefit plans of Merrill Lynch or any of its Subsidiaries to be waived with respect to the Covered Employees and their eligible dependents, to the extent waived under the corresponding plan (for a comparable level of coverage) in which the applicable Covered Employee participated immediately prior to the Effective Time, and (3) give credit for deductibles and eligible out-of-pocket expenses incurred towards deductibles and out-of-pocket maximums during the portion of the plan year in which the Effective Time occurs.

(c) If requested by Merrill Lynch, First Republic shall terminate the First Republic Employee Stock Ownership Plan immediately prior to the Effective Time.

(d) Notwithstanding anything herein to the contrary, from and after the Effective Time, Merrill Lynch shall assume and honor all accrued obligations to, a contractual rights of, current employees of First Republic and its Subsidiaries under the Benefits Arrangements and take all actions necessary to effectuate its obligations thereunder. If Merrill Lynch or any of its successors or assigns consolidates with or merges into any other entity and is not the continuing or surviving entity under such consolidation or merger or transfers all or substantially all of its assets to any other entity, then and in each case, Merrill Lynch shall cause proper provision to be made so that the successors and assigns of Merrill Lynch shall assume the obligations set forth in this Section 6.12.

(e) First Republic shall take all action to the extent necessary (including amending the First Republic ESPP) such that the First Republic ESPP will terminate prior to the Effective Time and the cash balance then standing to the credit of each First Republic ESPP participant in his or her stock purchase account under the First Republic ESPP shall be applied to the purchase of First Republic Common Stock prior to the Effective Time. Merrill Lynch shall take all action to the extent necessary (including amending the Merrill Lynch ESPP) such that the employees of First Republic or its Subsidiaries prior to the Effective Time who become employees of Merrill Lynch or one of its Subsidiaries after the Effective Time shall be eligible to participate in the Merrill Lynch ESPP no later than the first offering cycle which begins after the Effective Time.

6.13 *Retention Bonus Plan.* Merrill Lynch shall or shall cause the Surviving Entity to take all actions necessary to effectuate the items set forth in Schedule 6.13 of Merrill Lynch's Disclosure Schedule with respect to the establishment of a retention bonus plan for the employees of the First Republic Division.

6.14 *Notification of Certain Matters.* Merrill Lynch and First Republic will give prompt notice to the other of any fact, event or circumstance known to it that (1) is reasonably likely, individually or taken together

with all other facts, events and circumstances known to it, to result in any Material Adverse Effect with respect to it or (2) would cause or constitute a material breach of any of its representations, warranties, covenants or agreements contained herein that reasonably could be expected to give rise, individually or in the aggregate, to the failure of a condition in Article VII.

6.15 *Notice to Series C Preferred Stockholders.* Merrill Lynch acknowledges and agrees that First Republic Preferred Capital Corporation will deliver to each holder of its 5.7% Noncumulative Series C Exchangeable Preferred Stock, par value $0.01 per share, notice of the Merger pursuant to Section 4 of the certificate of designations of such preferred stock, which notice shall be delivered at least 15 days prior to the Effective Time.

6.16 *Certain Modifications; Restructuring Charges.* The parties shall consult with respect to First Republic's and MLFSB's loan, litigation and real estate valuation policies and practices (including loan classifications and levels of reserves) and First Republic shall make such modifications or changes to its policies and practices, if any, and at such date prior to the Effective Time, as may be mutually agreed upon. The parties shall also consult with respect to the character, amount and timing of restructuring charges to be taken by each of them in connection with the transactions contemplated hereby and shall take such charges in accordance with GAAP, as may be mutually agreed upon; provided, however, that if any modification or change is to be made pursuant to the first or second sentence of this Section 6.16, then Merrill Lynch shall irrevocably acknowledge to First Republic in writing that all conditions to Merrill Lynch's and MLFSB's obligations to consummate the Merger under Article VII have been satisfied or, where legally permitted, waived as of the agreed upon date for such actions. No party's representations, warranties and covenants contained in this Agreement shall be deemed to be untrue or breached in any respect for any purpose as a consequence of any modifications or changes to such policies and practices which may be undertaken on account of this Section 6.16.

6.17 *Distribution of MLFSB Shares.* Prior to the Closing Date Merrill Lynch shall cause MLFSB to become a wholly owned direct Subsidiary (as determined under U.S. federal tax income law) of Merrill Lynch.

6.18 *Management and Operations of the First Republic Division.*

(a) Following the Effective Time, Merrill Lynch and MLFSB will allow the existing management personnel of First Republic substantial autonomy to make strategic business decisions and generally to operate the business of First Republic and its Subsidiaries consistent with past practice as a separate division of MLFSB (and any successors thereto), in each case subject to compliance with Merrill Lynch and MLFSB governance policies applicable to Subsidiaries of Merrill Lynch and MLFSB and subject to regulatory and compliance requirements applicable to the operations of MLFSB (the "First Republic Division").

(b) Promptly following the Effective Time, MLFSB will cause the members of the First Republic Board immediately prior to the Effective Time (who are willing to serve) (the "Advisory Board Members") to be appointed as members of an advisory board of directors for the First Republic Division (the "Advisory Board"). The function of the Advisory Board will be to advise the management of the First Republic Division with respect to employee and strategic business decisions and to assist with the continuity of First Republic client relationships. The Advisory Board will exist at least until the first anniversary of the Closing Date, and thereafter in the sole discretion of MLFSB. Each Advisory Board Member who is not an employee shall receive a per annum retainer of $50,000 for serving as a member of the Advisory Board, and each Advisory Board Member shall be reimbursed for reasonable travel and other expenses relating to any Advisory Board meetings attended by such member.

(c) The Advisory Board Members shall be entitled, after the Effective Time, to indemnification (and, if made available to directors and officers of MLFSB in the future, directors' and officers' liability insurance) from MLFSB (or, if MLFSB is not legally permitted to do so, from Merrill Lynch) on the same terms, and subject to the same limitations, as directors of MLFSB are entitled to be indemnified by MLFSB (or, if MLFSB is not legally permitted to do so, from Merrill Lynch).

6.19 *Deposit Rating*. Merrill Lynch shall use its commercially reasonable efforts to promptly, and in no event later than 30 days following the date hereof, cause MLFSB to apply for deposit ratings from at least two nationally recognized credit rating agencies that are reasonably acceptable to First Republic.

6.20 *Advisory Contract Consents*. First Republic shall cause each Advisory Entity to use commercially reasonable efforts to send to each Advisory Client and wrap fee account client a consent request (which consent request, to the extent permitted under applicable law, may be in the form of a negative consent request) to assignment of the applicable Advisory Contract to the extent required by law, which request shall be sent in a reasonably timely manner (but in any event prior to the Closing). First Republic agrees to cause each Advisory Entity to use commercially reasonable efforts to obtain the consents of each Advisory Client and wrap fee account client to any assignment of the applicable Advisory Contract, to take effect upon the Closing.

ARTICLE VII

CONDITIONS TO THE MERGER

7.01 *Conditions to Each Party's Obligation to Effect the Merger*. The respective obligation of each of Merrill Lynch, First Republic and MLFSB to consummate the Merger is subject to the fulfillment or written waiver by Merrill Lynch, MLFSB and First Republic before the Effective Time of each of the following conditions:

(a) *Stockholder Approvals*. The requisite approval of the stockholders of First Republic shall have been received.

(b) *Regulatory Approvals*. All Requisite Regulatory Approvals (1) shall have been obtained and shall remain in full force and effect and all statutory waiting periods in respect thereof shall have expired and (2) shall not have imposed a condition on such approval that would, after the Effective Time, have or be reasonably likely to have a Material Adverse Effect on Merrill Lynch and its Subsidiaries, including MLFSB, taken as a whole; provided, however, that no conditions that relate solely to MLFSB and not First Republic and that are reasonably consistent with the regulations or published guidelines as in effect as of the date of this Agreement (or recent practice prior to the date of this Agreement in connection with comparable transactions) of a Governmental Authority shall be deemed to have or be reasonably likely to have such a Material Adverse Effect.

(c) *No Injunction*. No Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) which is in effect and prohibits consummation of the Merger.

(d) *Registration Statement*. The Registration Statement shall have become effective under the Securities Act and no stop order suspending the effectiveness of the Registration Statement shall have been issued and be in effect and no proceedings for that purpose shall have been initiated by the SEC or the FDIC and not withdrawn.

(e) *Listing*. The shares of Merrill Lynch Common Stock and Merrill Lynch Merger Preferred Stock to be issued in the Merger shall have been approved for listing on the NYSE, subject to official notice of issuance.

7.02 *Conditions to First Republic's Obligation*. First Republic's obligation to consummate the Merger is also subject to the fulfillment or written waiver by First Republic before the Effective Time of each of the following conditions:

(a) *Merrill Lynch's and MLFSB's Representations and Warranties*. The representations and warranties of Merrill Lynch and MLFSB in this Agreement shall be true and correct as of the date of this Agreement and (except to the extent such representations and warranties speak as of an earlier date) as of the Closing Date as though made on and as of the Closing Date subject to the standard set forth in

Section 5.02; and First Republic shall have received a certificate, dated the Closing Date, signed on behalf of Merrill Lynch by a senior executive officer of Merrill Lynch to that effect.

(b) *Performance of Merrill Lynch's Obligations.* Each of Merrill Lynch and MLFSB shall have performed in all material respects all obligations required to be performed by it under this Agreement at or before the Effective Time; and First Republic shall have received a certificate, dated the Closing Date, signed on behalf of Merrill Lynch by a senior executive officer of Merrill Lynch to that effect.

(c) *Opinion of Tax Counsel.* First Republic shall have received an opinion of White & Case LLP, dated the Closing Date and based on facts, representations and assumptions set forth or described in such opinion, to the effect that the Merger will be treated as a reorganization within the meaning of Section 368(a) of the Code. In rendering such opinion, White & Case LLP will be entitled to receive and rely upon customary certificates and representations of officers of Merrill Lynch, MLFSB and First Republic.

7.03 *Conditions to Merrill Lynch's and MLFSB's Obligation.* Each of Merrill Lynch's obligation and MLFSB's obligation to consummate the Merger is also subject to the fulfillment, or written waiver by Merrill Lynch, before the Effective Time of each of the following conditions:

(a) *First Republic's Representations and Warranties.* The representations and warranties of First Republic in this Agreement shall be true and correct as of the date of this Agreement and (except to the extent such representations and warranties speak as of an earlier date) as of the Closing Date as though made on and as of the Closing Date subject to the standard set forth in Section 5.02; and Merrill Lynch shall have received a certificate, dated the Closing Date, signed on behalf of First Republic by the Chief Executive Officer or Chief Financial Officer of First Republic to that effect.

(b) *Performance of First Republic's Obligations.* First Republic shall have performed in all material respects all obligations required to be performed by it under this Agreement at or before the Effective Time; and Merrill Lynch and MLFSB shall have received a certificate, dated the Closing Date, signed on behalf of First Republic by the Chief Executive Officer or Chief Financial Officer of First Republic to that effect.

(c) *Opinion of Tax Counsel.* Merrill Lynch shall have received an opinion of Sullivan & Cromwell LLP, dated the Closing Date and based on facts, representations and assumptions set forth or described in such opinion, to the effect that the Merger will be treated as a reorganization within the meaning of Section 368(a) of the Code. In rendering such opinion, Sullivan & Cromwell LLP will be entitled to receive and rely upon customary certificates and representations of officers of Merrill Lynch, MLFSB and First Republic.

ARTICLE VIII

TERMINATION

8.01 *Termination.* This Agreement may be terminated, and the Merger may be abandoned, at any time before the Effective Time, by Merrill Lynch (and MLFSB) or by First Republic, as applicable:

(a) *Mutual Agreement.* With the mutual agreement of the other party.

(b) *Breach.* Upon 60 days' prior written notice of termination, if there has occurred and is continuing: (1) a breach by the other party of any representation or warranty contained herein, or (2) a breach by the other party of any of the covenants or agreements in this Agreement; provided that such breach (under either clause (1) or (2)) would entitle the non-breaching party not to consummate the Merger under Article VII and such breach cannot be or has not been cured within 30 days after the giving of written notice to the breaching Party of such breach.

(c) *Adverse Action — Merrill Lynch.* By Merrill Lynch, if (1) the First Republic Board submits this Agreement (or the plan of merger contained herein) to its stockholders without a recommendation for approval or the First Republic Board otherwise makes an Adverse Recommendation (or discloses its

intention to make an Adverse Recommendation); or (2)(A) the First Republic Board recommends (or discloses its intention to recommend) to its stockholders an Acquisition Proposal other than the Merger, or (B) the First Republic Board negotiates or authorizes the conduct of negotiations (and ten days have elapsed without such negotiations being discontinued) with a third party (it being understood and agreed that "negotiate" shall not be deemed to include the provision of information to, or the request and receipt of information from, any person that submits an Acquisition Proposal or discussions regarding such information for the sole purpose of ascertaining or clarifying the terms of such Acquisition Proposal and determining whether the First Republic Board will in fact engage in, or authorize, negotiations) regarding an Acquisition Proposal other than the Merger.

(d) *Adverse Action — First Republic.* By First Republic, if the First Republic Board makes an Adverse Recommendation after giving Merrill Lynch at least five business days to respond pursuant to the proviso to the last sentence of Section 6.01.

(e) *Delay.* If the Effective Time has not occurred by the close of business on October 31, 2007; provided, however, that the right to terminate this Agreement under this Section 8.01(e) shall not be available to any party whose failure to comply with any provision of this Agreement has been the cause of, or materially contributed to, the failure of the Effective Time to occur on or before such date.

(f) *Denial of Regulatory Approval.* If the approval of any Governmental Authority required for consummation of the Merger and the other transactions contemplated by this Agreement is denied by final, nonappealable action of such Governmental Authority; provided, however, that the right to terminate this Agreement under this Section 8.01(f) shall not be available to any party whose failure to comply with any provision of this Agreement has been the cause of, or materially contributed to, such action.

(g) *Stockholder Approval.* If the First Republic Meeting shall have been held and concluded and the requisite approval of the First Republic stockholders shall have not been obtained.

8.02 *Effect of Termination and Abandonment.* If this Agreement is terminated and the Merger is abandoned, no party will have any liability or further obligation under this Agreement; provided, however, that, except as set forth in Section 8.03(b), nothing contained herein shall relieve a party from liability for any uncured breach by it of this Agreement and except that Section 6.05(b), this Section 8.02, Section 8.03 and Article IX will survive termination of this Agreement.

8.03 *Termination Fee.* (a) First Republic shall pay to Merrill Lynch, by wire transfer of immediately available funds, $65,000,000 (the "Termination Fee") as follows:

(1) In the event that (A) either Merrill Lynch or First Republic shall terminate this Agreement pursuant to Section 8.01(g), or Merrill Lynch shall terminate this Agreement pursuant to Section 8.01(c)(1) or 8.01(c)(2)(B), or First Republic shall terminate this Agreement pursuant to Section 8.01(d), and (B) at any time after the date of this Agreement and prior to the vote of the First Republic stockholders contemplated by Section 6.02(c), a bona fide Acquisition Proposal with respect to First Republic shall have been made public and not withdrawn or abandoned, and (C) within 15 months from the date of such termination, an Acquisition Proposal with respect to First Republic is consummated or a definitive agreement is entered into by First Republic with respect to an Acquisition Proposal with respect to First Republic, then First Republic shall pay to Merrill Lynch the Termination Fee, only if such Acquisition Proposal is consummated, within five business days after consummation of such Acquisition Proposal.

(2) In the event that (A) Merrill Lynch shall terminate this Agreement pursuant to Section 8.01(b) or either of Merrill Lynch or First Republic shall terminate this Agreement pursuant to Section 8.01(e), and (B) at any time after the date of this Agreement and prior to such termination, a bona fide Acquisition Proposal with respect to First Republic shall have been made public and not withdrawn or abandoned, and (C) following the announcement of such Acquisition Proposal, First Republic shall have breached any of its representations, warranties, covenants or agreements set forth in this Agreement, then First Republic shall pay to Merrill Lynch the Termination Fee (x) if such breach was other than one described in the succeeding clause (y) of this sentence, and only if an Acquisition Proposal with respect to First Republic is consummated or a definitive agreement is entered into by First Republic with respect to an

Acquisition Proposal with respect to First Republic within 15 months from the date of such termination, within five business days after such Acquisition Proposal is consummated, but only if such Acquisition Proposal is consummated, or (y) if such breach was a willful and material breach of Section 6.01(a), 6.02(c), 6.03(a), 6.06(a) or 6.08, on the business day immediately following such termination.

(3) In the event that Merrill Lynch shall terminate this Agreement pursuant to Section 8.01(c)(2)(A), then First Republic shall pay the Termination Fee on the business day immediately following such termination.

(b) First Republic acknowledges that the agreements contained in this Section 8.03 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, Merrill Lynch would not enter into this Agreement. The amounts payable by First Republic pursuant to Section 8.03(a) hereof constitute liquidated damages and not a penalty and shall be the sole monetary remedy of Merrill Lynch in the event of termination of this Agreement on the bases specified in such section. In the event that First Republic fails to pay when due any amounts payable under this Section 8.03, then (1) First Republic shall reimburse Merrill Lynch for all costs and expenses (including disbursements and reasonable fees of counsel) incurred in connection with the collection of such overdue amount, and (2) First Republic shall pay to Merrill Lynch interest on such overdue amount (for the period commencing as of the date that such overdue amount was originally required to be paid and ending on the date that such overdue amount is actually paid in full) at a rate per annum equal to the prime rate published in The Wall Street Journal on the date such payment was required to be made.

(c) In no event shall First Republic be obligated to pay more than one Termination Fee.

ARTICLE IX

MISCELLANEOUS

9.01 *Survival.* The representations, warranties, agreements and covenants contained in this Agreement will not survive the Effective Time (other than Article III, Sections 4.02(b)(1), 6.05(b) and 6.11, 6.12 and 6.18 and this Article IX).

9.02 *Waiver; Amendment.* Before the Effective Time, any provision of this Agreement may be (a) waived by the party benefited by the provision, but only in writing, or (b) amended or modified at any time, but only by a written agreement executed in the same manner as this Agreement, except to the extent that any such amendment would violate Nevada or U.S. law or require resubmission of this Agreement or the plan of merger contained herein to the stockholders of First Republic.

9.03 *Assignment.* Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties, in whole or in part (whether by operation of law or otherwise), without the prior written consent of the other parties, and any attempt to make any such assignment without such consent shall be null and void. This Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

9.04 *Counterparts.* This Agreement may be executed by facsimile and in counterparts, each of which will be deemed to constitute an original.

9.05 ***Governing Law; Waiver of Jury Trial.*** **This Agreement will be governed by and construed in accordance with the law of the State of New York applicable to contracts made and to be performed entirely within that State. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.**

9.06 *Submission to Jurisdiction; Waivers.* Each of Merrill Lynch, First Republic and MLFSB hereby irrevocably agrees that any legal action or proceeding with respect to this Agreement or for recognition and enforcement of any judgment in respect hereof brought by another party hereto or its successors or assigns

shall be brought and determined exclusively in any federal or state court of competent jurisdiction located in the Borough of Manhattan in the State of New York and each part hereto.

9.07 *Expenses.* Subject to Section 8.03(b)(1), each party will bear all expenses incurred by it in connection with this Agreement and the transactions contemplated hereby.

9.08 *Notices.* All notices, requests and other communications given or made under this Agreement must be in writing and will be deemed given when personally delivered, facsimile transmitted (with confirmation) or mailed by registered or certified mail (return receipt requested) to the persons and addresses set forth below or such other place as such party may specify by notice.

If to Merrill Lynch or MLFSB, to:

Merrill Lynch & Co., Inc.
4 World Financial Center- 23rd Floor
New York, New York 10080
Attention: Jonathan N. Santelli, Esq.
Facsimile: (212) 449-7902

with a copy to:

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attention: H. Rodgin Cohen, Esq.
Mitchell S. Eitel, Esq.
Facsimile: (212) 558-3588

If to First Republic, to:

First Republic Bank
111 Pine Street, 2nd Floor
San Francisco, California 94111
Attention: James H. Herbert, II
Edward J. Dobranski
Facsimile: (415) 392-0758

with a copy to:

White & Case LLP
1155 Avenue of the Americas
New York, New York 10036
Attention: Daniel Dufner, Esq.
John Reiss, Esq.
Facsimile: (212) 354-8113

9.09 *Entire Understanding; No Third Party Beneficiaries.* This Agreement represents the entire understanding of Merrill Lynch, First Republic and MLFSB regarding the transactions contemplated hereby and supersede any and all other oral or written agreements previously made or purported to be made, other than the Confidentiality Agreement, which will survive the execution and delivery of this Agreement; provided that it will not impair the rights of Merrill Lynch to make a response or propose amendments or modifications as contemplated by the final proviso to Section 6.02(c). No representation, warranty, inducement, promise, understanding or condition not set forth in this Agreement has been made or relied on by any party in entering into this Agreement. Notwithstanding Section 9.01 or any other provision hereof (other than Section 6.11, which is intended to benefit the Indemnified Parties to the extent stated), nothing expressed or implied in this Agreement is intended to confer any rights, remedies, obligations or liabilities upon any person other than Merrill Lynch, First Republic and MLFSB.

9.10 *Severability.* If any provision of this Agreement or the application thereof to any person (including the officers and directors of Merrill Lynch or First Republic) or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions, 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 will 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 will negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the parties. Prior to the termination of this Agreement in accordance with its terms, the absence of a vote, approval or adoption by the stockholders of First Republic will not render invalid or inoperative any provision hereof not specifically required to be contained in (1) a plan of merger to be adopted by such stockholders pursuant to Section 92A.100 of the NRS or (2) in a combination agreement pursuant to Section 552.13(f) of the OTS Rules.

9.11 *Alternative Structure.* Notwithstanding anything to the contrary contained in this Agreement, before the Effective Time, the parties may mutually agree to revise the structure of the Merger and related transactions, provided that each of the transactions comprising the revised structure (1) does not change the amount or form of consideration to be received by the stockholders of First Republic (whether holding non-restricted or restricted First Republic Common Stock) and the holders of First Republic Stock Options and/or Deferred Equity Units, (2) does not adversely affect the tax consequences to the stockholders of First Republic, (3) is reasonably capable of consummation in as timely a manner as the structure contemplated herein, (4) does not, and is not reasonably likely to, otherwise cause the conditions set forth in Sections 7.02(c) and 7.03(c) to not be capable of being fulfilled and (5) is not otherwise prejudicial to the interests of the stockholders of either First Republic or Merrill Lynch. This Agreement and any related documents will be appropriately amended in order to reflect any such revised structure.

9.12 *Enforcement.* The parties agree that irreparable damage would occur in the event that any of the covenants and agreements in this Agreement were not performed in accordance with their specific terms. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to specific performance of the terms hereof, this being in addition to any other remedy to which they are entitled at law or in equity. For the avoidance of doubt, this Section 9.12 is not intended to limit or affect the application of Sections 9.01 and 9.09.

[THE NEXT PAGE IS A SIGNATURE PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the day and year first written above.

First Republic Bank

By: /s/ James H. Herbert, II
Name: James H. Herbert, II
Title: President

Merrill Lynch & Co., Inc

By: /s/ Robert J. McCann
Name: Robert J. McCann
Title: Executive Vice President

Merrill Lynch Bank & Trust Co., FSB

By: /s/ Terrence P. Laughlin
Name: Terrence P. Laughlin
Title: Chairman

ANNEX B

January 28, 2007

Board of Directors
First Republic Bank
111 Pine St. – 2nd Floor
San Francisco, CA 94111

Members of the Board:

We understand that Merrill Lynch & Co. ("Merrill Lynch" or the "Acquiror"), Merrill Lynch Bank and Trust Co. FSB, an indirect, wholly owned subsidiary of the Acquiror ("ThriftCo") and First Republic Bank ("First Republic" or the "Company") propose to enter into an Agreement and Plan of Merger, substantially in the form of the draft dated January 28, 2007 (the "Merger Agreement") which provides, among other things, for the merger of the Company with and into ThriftCo (the "Merger"). Pursuant to the Merger, the separate corporate existence of the Company shall cease and each outstanding share of common stock, par value $.01 per share, of the Company (the "Company Shares"), other than shares held in treasury or held by the Acquiror, will be converted into the right to receive, at the election of each holder thereof, either: (i) a certain number of shares of common stock, par value 1.33^{1}/_{3}$ per share, of the Acquiror (the "Acquiror Shares"), determined pursuant to a certain formula set forth in the Merger Agreement or (ii) $55.00 per share in cash, subject to an aggregate maximum in cash determined pursuant to a certain formula set forth in the Merger Agreement (together, the "Merger Consideration"). The terms and conditions of the Merger are more fully set forth in the Merger Agreement.

You have asked for our opinion as to whether the Merger Consideration to be received by the holders of the Company Shares pursuant to the Merger Agreement is fair from a financial point of view to such holders.

For purposes of the opinion set forth herein, we have:

i. reviewed certain publicly available financial statements and other business and financial information of First Republic and Merrill Lynch, respectively;

ii. reviewed certain internal financial statements and other financial and operating data concerning First Republic prepared by the management of First Republic, including among other things, financial forecasts and profit plans for First Republic;

iii. discussed the past and current operations and financial condition and the prospects of each of First Republic and Merrill Lynch with senior executives of First Republic and Merrill Lynch, respectively;

iv. reviewed the reported prices and trading activity of the Acquiror Shares and the Company Shares, respectively;

v. compared the financial performance of First Republic and Merrill Lynch and the prices and trading activity of the Acquiror Shares and the Company Shares with that of certain other publicly-traded companies comparable with First Republic and Merrill Lynch, respectively, and their securities;

vi. reviewed the financial terms, to the extent publicly available, of certain comparable precedent transactions;

vii. participated in discussions among representatives of First Republic and Merrill Lynch and their financial and legal advisors;

viii. reviewed the Merger Agreement and certain related documents; and

ix. performed such other analyses and considered such other factors as we have deemed appropriate.

We have assumed and relied upon, without independent verification, the accuracy and completeness of the information supplied or otherwise made available to us by First Republic and Merrill Lynch for the purposes of this opinion. With respect to the financial forecasts, profit plans and information regarding First

Republic, we have assumed that they have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the future financial performance of First Republic. We have assumed that the Merger will be consummated in accordance with the terms set forth in the Merger Agreement without any waiver, amendment or delay of any terms or conditions, including, among other things, that the Merger will be treated as a tax-free reorganization pursuant to the Internal Revenue Code of 1986, as amended. We have not made any independent valuation or appraisal of the assets or liabilities (including any hedge or derivative position) of First Republic and Merrill Lynch, nor have we been furnished with any such appraisals, and we have not made any independent examination of the loan loss reserves or examined any individual loan credit files of First Republic or Merrill Lynch. In addition, we have assumed that in connection with the receipt of all necessary government, regulatory or other consents and approvals for the Merger, no restrictions will be imposed that would have any adverse effect on First Republic or Merrill Lynch or on the benefits expected to be derived from the Merger. We have relied upon, without independent verification, the assessment by the managements of Merrill Lynch and First Republic, respectively, of: (i) the strategic, financial and other benefits expected to result from the Merger; (ii) the timing and risks associated with the integration of First Republic and Merrill Lynch; (iii) their ability to retain key employees of First Republic and (iv) the validity of, and risks associated with, First Republic and Merrill Lynch's existing and future technologies, intellectual property, products, services and business models. We are not legal, tax or regulatory advisors and have relied upon, without independent verification, the assessment of First Republic and Merrill Lynch and their legal, tax and regulatory advisors with respect to such matters. Our opinion is necessarily based on financial, economic, market and other conditions as in effect on, and the information made available to us as of, the date hereof. Events occurring after the date hereof may affect this opinion and the assumptions used in preparing it, and we do not assume any obligation to update, revise or reaffirm this opinion.

In arriving at our opinion, we were not authorized to solicit, and did not solicit, interest from any party with respect to the acquisition, business combination or other extraordinary transaction, involving the Company.

We have acted as financial advisor to the Board of Directors of First Republic in connection with this transaction and will receive a fee for our services which is contingent upon the completion of the Merger. In the past, Morgan Stanley & Co. Incorporated and its affiliates have provided financial advisory and financing services for First Republic and Merrill Lynch and have received fees for the rendering of these services. In the ordinary course of our business, Morgan Stanley and its affiliates may from time to time trade in the securities or indebtedness of First Republic and Merrill Lynch for its own account, the accounts of investment funds and other clients under the management of Morgan Stanley and for the accounts of its customers and, accordingly, may at any time hold a long or short position in such securities or indebtedness for any such account. In addition, Morgan Stanley and its affiliates may from time to time act as a counterparty to each of First Republic or Merrill Lynch and have received compensation for such activities. In addition, Morgan Stanley, its affiliates, directors or officers, including individuals working with First Republic in connection with this transaction, may have committed and may commit in the future to invest in private equity funds managed by Merrill Lynch.

It is understood that this letter is for the information of the Board of Directors of First Republic and may not be used for any other purpose without our prior written consent, except that this opinion may be included in its entirety in any filing made by First Republic in respect of the Merger with the Securities and Exchange Commission. In addition, this opinion does not in any matter address the prices at which the Aqcuiror Shares will trade following the consummation of the Merger, and Morgan Stanley expresses no opinion or recommendation as how the shareholders of First Republic should vote at the shareholders' meeting held in connection with the Merger.

Based on and subject to the foregoing, we are of the opinion on the date hereof that the Merger Consideration to be received by the holders of the Company Shares pursuant to the Merger Agreement is fair from a financial point of view to such holders.

Very truly yours,

MORGAN STANLEY & CO. INCORPORATED

By: /s/ John P. Esposito
John P. Esposito
Managing Director

ANNEX C

PROVISIONS OF NEVADA LAW
CONCERNING DISSENTERS' RIGHTS

NRS 92A.300 Definitions. As used in NRS 92A.300 to 92A.500, inclusive, unless the context otherwise requires, the words and terms defined in NRS 92A.305 to 92A.335, inclusive, have the meanings ascribed to them in those sections. (Added to NRS by 1995, 2086)

NRS 92A.305 "Beneficial stockholder" defined. "Beneficial stockholder" means a person who is a beneficial owner of shares held in a voting trust or by a nominee as the stockholder of record. (Added to NRS by 1995, 2087)

NRS 92A.310 "Corporate action" defined. "Corporate action" means the action of a domestic corporation. (Added to NRS by 1995, 2087)

NRS 92A.315 "Dissenter" defined. "Dissenter" means a stockholder who is entitled to dissent from a domestic corporation's action under NRS 92A.380 and who exercises that right when and in the manner required by NRS 92A.400 to 92A.480, inclusive. (Added to NRS by 1995, 2087; A 1999, 1631)

NRS 92A.320 "Fair value" defined. "Fair value," with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which he objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable. (Added to NRS by 1995, 2087)

NRS 92A.325 "Stockholder" defined. "Stockholder" means a stockholder of record or a beneficial stockholder of a domestic corporation. (Added to NRS by 1995, 2087)

NRS 92A.330 "Stockholder of record" defined. "Stockholder of record" means the person in whose name shares are registered in the records of a domestic corporation or the beneficial owner of shares to the extent of the rights granted by a nominee's certificate on file with the domestic corporation. (Added to NRS by 1995, 2087)

NRS 92A.335 "Subject corporation" defined. "Subject corporation" means the domestic corporation which is the issuer of the shares held by a dissenter before the corporate action creating the dissenter's rights becomes effective or the surviving or acquiring entity of that issuer after the corporate action becomes effective. (Added to NRS by 1995, 2087)

NRS 92A.340 Computation of interest. Interest payable pursuant to NRS 92A.300 to 92A.500, inclusive, must be computed from the effective date of the action until the date of payment, at the average rate currently paid by the entity on its principal bank loans or, if it has no bank loans, at a rate that is fair and equitable under all of the circumstances. (Added to NRS by 1995, 2087)

NRS 92A.350 Rights of dissenting partner of domestic limited partnership. A partnership agreement of a domestic limited partnership or, unless otherwise provided in the partnership agreement, an agreement of merger or exchange, may provide that contractual rights with respect to the partnership interest of a dissenting general or limited partner of a domestic limited partnership are available for any class or group of partnership interests in connection with any merger or exchange in which the domestic limited partnership is a constituent entity. (Added to NRS by 1995, 2088)

NRS 92A.360 Rights of dissenting member of domestic limited-liability company. The articles of organization or operating agreement of a domestic limited-liability company or, unless otherwise provided in the articles of organization or operating agreement, an agreement of merger or exchange, may provide that contractual rights with respect to the interest of a dissenting member are available in connection with any merger or exchange in which the domestic limited-liability company is a constituent entity. (Added to NRS by 1995, 2088)

NRS 92A.370 Rights of dissenting member of domestic nonprofit corporation.

1. Except as otherwise provided in subsection 2, and unless otherwise provided in the articles or bylaws, any member of any constituent domestic nonprofit corporation who voted against the merger may, without prior notice, but within 30 days after the effective date of the merger, resign from membership and is thereby excused from all contractual obligations to the constituent or surviving corporations which did not occur before his resignation and is thereby entitled to those rights, if any, which would have existed if there had been no merger and the membership had been terminated or the member had been expelled.

2. Unless otherwise provided in its articles of incorporation or bylaws, no member of a domestic nonprofit corporation, including, but not limited to, a cooperative corporation, which supplies services described in chapter 704 of NRS to its members only, and no person who is a member of a domestic nonprofit corporation as a condition of or by reason of the ownership of an interest in real property, may resign and dissent pursuant to subsection 1. (Added to NRS by 1995, 2088)

NRS 92A.380 Right of stockholder to dissent from certain corporate actions and to obtain payment for shares.

1. Except as otherwise provided in NRS 92A.370 and 92A.390, any stockholder is entitled to dissent from, and obtain payment of the fair value of his shares in the event of any of the following corporate actions:

(a) Consummation of a conversion or plan of merger to which the domestic corporation is a constituent entity:

(1) If approval by the stockholders is required for the conversion or merger by NRS 92A.120 to 92A.160, inclusive, or the articles of incorporation, regardless of whether the stockholder is entitled to vote on the conversion or plan of merger; or

(2) If the domestic corporation is a subsidiary and is merged with its parent pursuant to NRS 92A.180.

(b) Consummation of a plan of exchange to which the domestic corporation is a constituent entity as the corporation whose subject owner's interests will be acquired, if his shares are to be acquired in the plan of exchange.

(c) Any corporate action taken pursuant to a vote of the stockholders to the extent that the articles of incorporation, bylaws or a resolution of the board of directors provides that voting or nonvoting stockholders are entitled to dissent and obtain payment for their shares.

(d) Any corporate action not described in paragraph (a), (b) or (c) that will result in the stockholder receiving money or scrip instead of fractional shares.

2. A stockholder who is entitled to dissent and obtain payment pursuant to NRS 92A.300 to 92A.500, inclusive, may not challenge the corporate action creating his entitlement unless the action is unlawful or fraudulent with respect to him or the domestic corporation. (Added to NRS by 1995, 2087; A 2001, 1414, 3199; 2003, 3189; 2005, 2204)

NRS 92A.390 Limitations on right of dissent: Stockholders of certain classes or series; action of stockholders not required for plan of merger.

1. There is no right of dissent with respect to a plan of merger or exchange in favor of stockholders of any class or series which, at the record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting at which the plan of merger or exchange is to be acted on, were either listed on a national securities exchange, included in the national market system by the National Association of Securities Dealers, Inc., or held by at least 2,000 stockholders of record, unless:

(a) The articles of incorporation of the corporation issuing the shares provide otherwise; or

(b) The holders of the class or series are required under the plan of merger or exchange to accept for the shares anything except:

(1) Cash, owner's interests or owner's interests and cash in lieu of fractional owner's interests of:

(I) The surviving or acquiring entity; or

(II) Any other entity which, at the effective date of the plan of merger or exchange, were either listed on a national securities exchange, included in the national market system by the National Association of Securities Dealers, Inc., or held of record by a least 2,000 holders of owner's interests of record; or

(2) A combination of cash and owner's interests of the kind described in sub-subparagraphs (I) and (II) of subparagraph (1) of paragraph (b).

2. There is no right of dissent for any holders of stock of the surviving domestic corporation if the plan of merger does not require action of the stockholders of the surviving domestic corporation under NRS 92A.130. (Added to NRS by 1995, 2088)

NRS 92A.400 Limitations on right of dissent: Assertion as to portions only to shares registered to stockholder; assertion by beneficial stockholder.

1. A stockholder of record may assert dissenter's rights as to fewer than all of the shares registered in his name only if he dissents with respect to all shares beneficially owned by any one person and notifies the subject corporation in writing of the name and address of each person on whose behalf he asserts dissenter's rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which he dissents and his other shares were registered in the names of different stockholders.

2. A beneficial stockholder may assert dissenter's rights as to shares held on his behalf only if:

(a) He submits to the subject corporation the written consent of the stockholder of record to the dissent not later than the time the beneficial stockholder asserts dissenter's rights; and

(b) He does so with respect to all shares of which he is the beneficial stockholder or over which he has power to direct the vote. (Added to NRS by 1995, 2089)

NRS 92A.410 Notification of stockholders regarding right of dissent.

1. If a proposed corporate action creating dissenters' rights is submitted to a vote at a stockholders' meeting, the notice of the meeting must state that stockholders are or may be entitled to assert dissenters' rights under NRS 92A.300 to 92A.500, inclusive, and be accompanied by a copy of those sections.

2. If the corporate action creating dissenters' rights is taken by written consent of the stockholders or without a vote of the stockholders, the domestic corporation shall notify in writing all stockholders entitled to assert dissenters' rights that the action was taken and send them the dissenter's notice described in NRS 92A.430. (Added to NRS by 1995, 2089; A 1997, 730)

NRS 92A.420 Prerequisites to demand for payment for shares.

1. If a proposed corporate action creating dissenters' rights is submitted to a vote at a stockholders' meeting, a stockholder who wishes to assert dissenter's rights:

(a) Must deliver to the subject corporation, before the vote is taken, written notice of his intent to demand payment for his shares if the proposed action is effectuated; and

(b) Must not vote his shares in favor of the proposed action.

2. If a proposed corporate action creating dissenters' rights is taken by written consent of the stockholders, a stockholder who wishes to assert dissenters' rights must not consent to or approve the proposed corporate action.

3. A stockholder who does not satisfy the requirements of subsection 1 or 2 and NRS 92A.400 is not entitled to payment for his shares under this chapter. (Added to NRS by 1995, 2089; A 1999, 1631; 2005, 2204)

NRS 92A.430 Dissenter's notice: Delivery to stockholders entitled to assert rights; contents.

1. The subject corporation shall deliver a written dissenter's notice to all stockholders entitled to assert dissenters' rights.

2. The dissenter's notice must be sent no later than 10 days after the effectuation of the corporate action, and must:

(a) State where the demand for payment must be sent and where and when certificates, if any, for shares must be deposited;

(b) Inform the holders of shares not represented by certificates to what extent the transfer of the shares will be restricted after the demand for payment is received;

(c) Supply a form for demanding payment that includes the date of the first announcement to the news media or to the stockholders of the terms of the proposed action and requires that the person asserting dissenter's rights certify whether or not he acquired beneficial ownership of the shares before that date;

(d) Set a date by which the subject corporation must receive the demand for payment, which may not be less than 30 nor more than 60 days after the date the notice is delivered; and

(e) Be accompanied by a copy of NRS 92A.300 to 92A.500, inclusive. (Added to NRS by 1995, 2089; A 2005, 2205)

NRS 92A.440 Demand for payment and deposit of certificates; retention of rights of stockholder.

1. A stockholder to whom a dissenter's notice is sent must:

(a) Demand payment;

(b) Certify whether he or the beneficial owner on whose behalf he is dissenting, as the case may be, acquired beneficial ownership of the shares before the date required to be set forth in the dissenter's notice for this certification; and

(c) Deposit his certificates, if any, in accordance with the terms of the notice.

2. The stockholder who demands payment and deposits his certificates, if any, before the proposed corporate action is taken retains all other rights of a stockholder until those rights are cancelled or modified by the taking of the proposed corporate action.

3. The stockholder who does not demand payment or deposit his certificates where required, each by the date set forth in the dissenter's notice, is not entitled to payment for his shares under this chapter. (Added to NRS by 1995, 2090; A 1997, 730; 2003, 3189)

NRS 92A.450 Uncertificated shares: Authority to restrict transfer after demand for payment; retention of rights of stockholder.

1. The subject corporation may restrict the transfer of shares not represented by a certificate from the date the demand for their payment is received.

2. The person for whom dissenter's rights are asserted as to shares not represented by a certificate retains all other rights of a stockholder until those rights are cancelled or modified by the taking of the proposed corporate action. (Added to NRS by 1995, 2090)

NRS 92A.460 Payment for shares: General requirements.

1. Except as otherwise provided in NRS 92A.470, within 30 days after receipt of a demand for payment, the subject corporation shall pay each dissenter who complied with NRS 92A.440 the amount the subject corporation estimates to be the fair value of his shares, plus accrued interest. The obligation of the subject corporation under this subsection may be enforced by the district court:

(a) Of the county where the corporation's registered office is located; or

(b) At the election of any dissenter residing or having its registered office in this State, of the county where the dissenter resides or has its registered office. The court shall dispose of the complaint promptly.

2. The payment must be accompanied by:

(a) The subject corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, a statement of income for that year, a statement of changes in the stockholders' equity for that year and the latest available interim financial statements, if any;

(b) A statement of the subject corporation's estimate of the fair value of the shares;

(c) An explanation of how the interest was calculated;

(d) A statement of the dissenter's rights to demand payment under NRS 92A.480; and

(e) A copy of NRS 92A.300 to 92A.500, inclusive. (Added to NRS by 1995, 2090)

NRS 92A.470 Payment for shares: Shares acquired on or after date of dissenter's notice.

1. A subject corporation may elect to withhold payment from a dissenter unless he was the beneficial owner of the shares before the date set forth in the dissenter's notice as the date of the first announcement to the news media or to the stockholders of the terms of the proposed action.

2. To the extent the subject corporation elects to withhold payment, after taking the proposed action, it shall estimate the fair value of the shares, plus accrued interest, and shall offer to pay this amount to each dissenter who agrees to accept it in full satisfaction of his demand. The subject corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenters' right to demand payment pursuant to NRS 92A.480. (Added to NRS by 1995, 2091)

NRS 92A.480 Dissenter's estimate of fair value: Notification of subject corporation; demand for payment of estimate.

1. A dissenter may notify the subject corporation in writing of his own estimate of the fair value of his shares and the amount of interest due, and demand payment of his estimate, less any payment pursuant to NRS 92A.460, or reject the offer pursuant to NRS 92A.470 and demand payment of the fair value of his shares and interest due, if he believes that the amount paid pursuant to NRS 92A.460 or offered pursuant to NRS 92A.470 is less than the fair value of his shares or that the interest due is incorrectly calculated.

2. A dissenter waives his right to demand payment pursuant to this section unless he notifies the subject corporation of his demand in writing within 30 days after the subject corporation made or offered payment for his shares. (Added to NRS by 1995, 2091)

NRS 92A.490 Legal proceeding to determine fair value: Duties of subject corporation; powers of court; rights of dissenter.

1. If a demand for payment remains unsettled, the subject corporation shall commence a proceeding within 60 days after receiving the demand and petition the court to determine the fair value of the shares and accrued interest. If the subject corporation does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

2. A subject corporation shall commence the proceeding in the district court of the county where its registered office is located. If the subject corporation is a foreign entity without a resident agent in the State, it shall commence the proceeding in the county where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign entity was located.

3. The subject corporation shall make all dissenters, whether or not residents of Nevada, whose demands remain unsettled, parties to the proceeding as in an action against their shares. All parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

4. The jurisdiction of the court in which the proceeding is commenced under subsection 2 is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have the powers described in the order appointing them, or any amendment thereto. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

5. Each dissenter who is made a party to the proceeding is entitled to a judgment:

(a) For the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the subject corporation; or

(b) For the fair value, plus accrued interest, of his after-acquired shares for which the subject corporation elected to withhold payment pursuant to NRS 92A.470. (Added to NRS by 1995, 2091)

NRS 92A.500 Legal proceeding to determine fair value: Assessment of costs and fees.

1. The court in a proceeding to determine fair value shall determine all of the costs of the proceeding, including the reasonable compensation and expenses of any appraisers appointed by the court. The court shall assess the costs against the subject corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously or not in good faith in demanding payment.

2. The court may also assess the fees and expenses of the counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the subject corporation and in favor of all dissenters if the court finds the subject corporation did not substantially comply with the requirements of NRS 92A.300 to 92A.500, inclusive; or

(b) Against either the subject corporation or a dissenter in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by NRS 92A.300 to 92A.500, inclusive.

3. If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the subject corporation, the court may award to those counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

4. In a proceeding commenced pursuant to NRS 92A.460, the court may assess the costs against the subject corporation, except that the court may assess costs against all or some of the dissenters who are parties to the proceeding, in amounts the court finds equitable, to the extent the court finds that such parties did not act in good faith in instituting the proceeding.

5. This section does not preclude any party in a proceeding commenced pursuant to NRS 92A.460 or 92A.490 from applying the provisions of N.R.C.P. 68 or NRS 17.115. (Added to NRS by 1995, 2092)

IMPORTANT

Your vote is important. Regardless of the number of shares of common stock that you own, please sign, date and promptly mail the enclosed proxy in the accompanying postage-paid envelope. Should you prefer, you may exercise a proxy by telephone or via the Internet. Please refer to the instructions on your proxy card or voting form which accompanied this proxy statement/prospectus.

Instructions for "Street Name" Stockholders

If you own shares of common stock in the name of a broker, bank or other nominee, only it can vote your shares on your behalf and only upon receipt of your instructions. You should sign, date and promptly mail your proxy card, or voting instruction form, when you retrieve it from your broker, bank or nominee. Please do so for each separate account you maintain. Your broker, bank or nominee also may provide for telephone or Internet voting. Please refer to the proxy card, or voting instruction form, which you received with this proxy statement/prospectus.

Please vote by proxy, telephone or via the Internet at your earliest convenience.

If you have any questions or need assistance in voting your shares, please call:

Attention: Frederick J. Marquardt
Morrow & Co., Inc.
470 West Avenue
Stamford, Connecticut 06902
Tel: (203) 658-9400

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 20. ***Indemnification of Directors and Officers.***

Merrill Lynch's restated certificate of incorporation provides that any person who is or was a director or officer of Merrill Lynch, or is or was serving at the request of the corporation as a director, officer or trustee of another corporation, trust or other enterprise, with respect to actions taken or omitted by such person in any capacity in which such person serves Merrill Lynch or such other corporation, trust or other enterprise, shall be indemnified to the full extent authorized or permitted by law and such indemnification shall continue as to a person who has ceased to be a director, officer or trustee, as the case may be, and shall inure to the benefit of such person's heirs, executors and personal and legal representatives. Except for proceedings to enforce rights to indemnification, Merrill Lynch is not obligated to indemnify any person in connection with a proceeding initiated by such person unless such proceeding was authorized in advance, or unanimously consented to, by the board of directors. Any person who is or was a director or officer of a subsidiary of Merrill Lynch is deemed to be serving in such capacity at the request of Merrill Lynch for purposes of indemnification.

Directors and officers of Merrill Lynch have the right to be paid by Merrill Lynch expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition. Merrill Lynch may, to the extent authorized from time to time by the board of directors, advance such expenses to any person who is or was serving at the request of Merrill Lynch as a director, officer or trustee of another corporation, trust or other enterprise.

In addition, Merrill Lynch's restated certificate of incorporation provides that no director of the corporation shall be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except, to the extent provided by applicable law, for liability:

- for breach of the director's duty of loyalty to the corporation or its stockholders;
- for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- pursuant to Section 174 of the Delaware General Corporation Law, or DGCL; or
- for any transaction from which the director derived an improper personal benefit.

Section 145 of the DGCL provides that, subject to certain limitations in the case of suits brought by a corporation and derivative suits brought by a corporation's stockholders in its name, a corporation may indemnify any person who is made a party to any suit or proceeding by reason of the fact that the person is or was a director, officer, employee or agent of the corporation against expenses, including attorney's fees, judgments, fines and amounts paid in settlement reasonably incurred by him in connection with the action, through, among other things, a majority vote of the directors who were not parties to the suit or proceeding, if the person (1) acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and (2) in a criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 145(b) of the DGCL provides that no such indemnification of directors, officers, employees or agents may be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation, unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

ITEM 21. ***Exhibits and Financial Statement Schedules.***

Exhibit Number	Description
2.1	Agreement and Plan of Merger, dated as of January 29, 2007, among Merrill Lynch & Co., Inc., First Republic Bank and Merrill Lynch Bank & Trust Co., FSB (included as Annex A to the proxy statement/prospectus contained in this registration statement)
3.1	Restated Certificate of Incorporation of Merrill Lynch (incorporated by reference to Exhibit 3.1 to Merrill Lynch's Current Report on Form 8-K filed November 14, 2005)
3.2	Restated By-Laws of Merrill Lynch (incorporated by reference to Exhibit 3.1 to Merrill Lynch's Current Report on Form 8-K filed December 12, 2006)
4.1	Form of Amended and Restated Rights Agreement dated as of December 2, 1997, between Merrill Lynch and Wells Fargo Bank, N.A. (successor to Mellon Investor Services, L.L.C.) (incorporated by reference to Exhibit 4 to Merrill Lynch's Current Report on Form 8-K filed December 2, 1997)
4.2	Form of Certificate of Designation of Merrill Lynch 6.70% Noncumulative Perpetual Preferred Stock, Series 6
4.3	Form of Certificate of Designation of Merill Lynch 6.25% Noncumulative Perpetual Preferred Stock, Series 7
4.4	Deposit Agreement, dated as of January 28, 2004, between First Republic Bank, Mellon Investor Services LLC, as depositary, and the Holders from Time to Time of Depositary Receipts
4.5	Deposit Agreement, dated as of March 18, 2005, between First Republic Bank, Mellon Investor Services LLC, as depositary, and the Holders from Time to Time of Depositary Receipts
5.1	Form of Opinion of Sullivan & Cromwell LLP
5.2	Form of Opinion of Richard Alsop
8.1	Form of Opinion of Sullivan & Cromwell LLP
8.2	Form of Opinion of White & Case LLP
15.1	Awareness Letter of Deloitte & Touche LLP
23.1	Consent of Deloitte & Touche LLP
23.2	Consent of KPMG LLP
23.3	Consent of Sullivan & Cromwell LLP (included in the opinion filed as Exhibit 5.1 to this registration statement)
23.4	Consent of Richard Alsop (included in the opinion filed as Exhibit 5.2 to this registration statement)
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23.6	Consent of White & Case LLP (included in the opinion filed as Exhibit 8.2 to this registration statement)
99.1	Consent of Morgan Stanley & Co. Incorporated
99.2	Form of Proxy Card of First Republic Bank

ITEM 22. ***Undertakings.***

(a) The undersigned registrant hereby undertakes:

(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. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if

the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Securities and Exchange Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(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.

(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) The undersigned registrant hereby undertakes that, for purposes 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 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference into the registration statement 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.

(c)(1) The undersigned registrant undertakes as follows: that prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.

(2) The undersigned registrant hereby undertakes that every prospectus (i) that is filed pursuant to paragraph (1) immediately preceding, or (ii) that purports to meet the requirements of Section 10(a)(3) of the Securities Act of 1933 and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes 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.

(d) 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 foregoing provisions, 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 of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

(e) The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Item 4, 10(b), 11 or 13 of this form, within one business

day of receipt of such request, and to send the incorporated documents by first-class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(f) The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, Merrill Lynch & Co., Inc. has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York, on May 7, 2007.

MERRILL LYNCH & CO., INC.

By: /s/ E. Stanley O'Neal
E. Stanley O'Neal
Chairman of the Board, President and
Chief Executive Officer

POWERS OF ATTORNEY

The undersigned directors and officers of Merrill Lynch & Co., Inc. hereby constitute and appoint E. Stanley O'Neal, Ahmass L. Fakahany, Jeffrey N. Edwards, and Rosemary T. Berkery, and each of them, with full power to act without the other, our lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, and with full power to execute in our name, place and stead, in the capacities indicated below, this registration statement, any and all amendments thereto (including post-effective amendments) and to file the same, with all exhibits and schedules thereto, and other documents in connection therewith, with the Securities and Exchange Commission and hereby ratify and confirm all that such attorneys-in-fact and agents, or any of them, or their substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ E. Stanley O'Neal E. Stanley O'Neal	Director, Chairman of the Board and Chief Executive Officer (Principal Executive Officer)	May 7, 2007
/s/ Jeffrey N. Edwards Jeffrey N. Edwards	Senior Vice President and Chief Financial Officer (Principal Financial Officer)	May 7, 2007
/s/ Laurence A. Tosi Laurence A. Tosi	Senior Vice President and Finance Director (Principal Accounting Officer)	May 7, 2007
/s/ Armando M. Codina Armando M. Codina	Director	May 7, 2007
/s/ Virgis W. Colbert Virgis W. Colbert	Director	May 7, 2007
/s/ Alberto Cribiore Alberto Cribiore	Director	May 7, 2007
/s/ John D. Finnegan John D. Finnegan	Director	May 7, 2007
/s/ Judith Mayhew Jonas Judith Mayhew Jonas	Director	May 7, 2007
/s/ Aulana L. Peters Aulana L. Peters	Director	May 7, 2007
/s/ Joseph W. Prueher Joseph W. Prueher	Director	May 7, 2007
/s/ Ann N. Reese Ann N. Reese	Director	May 7, 2007
/s/ Charles O. Rossotti Charles O. Rossotti	Director	May 7, 2007

EXHIBIT INDEX

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Exhibit 4.2

FORM OF CERTIFICATE OF DESIGNATION

6.70% NONCUMULATIVE PERPETUAL PREFERRED STOCK, SERIES 6

RESOLVED, that pursuant to the authority vested in the Board of Directors of Merrill Lynch & Co., Inc., a Delaware corporation (the "Corporation"), by Article IV of the Restated Certificate of Incorporation, as amended, of the Corporation, a series of preferred stock of the Corporation be, and it hereby is, created out of the authorized but unissued shares of the capital stock of the Corporation, such series to be designated 6.70% Noncumulative Perpetual Preferred Stock, Series 6, to consist of 65,000 shares (the "Series 6 Preferred Stock"), par value $1.00 per share, the preferences, relative and other rights, and qualifications, limitations or restrictions of which shall be (in addition to those set forth in the Corporation's Restated Articles of Incorporation, as amended) as follows:

Section 1. *Liquidation Value.* In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of the Series 6 Preferred Stock at the time outstanding will be entitled to receive out of the assets of the Corporation available for distribution to stockholders, before any distribution of assets is made to holders of Common Stock or any other class of stock ranking junior to the Series 6 Preferred Stock in the distribution of assets upon any liquidation, dissolution or winding up of the affairs of the Corporation, liquidating distributions in the amount of $1,000 per share, plus any dividends declared thereon and not yet paid prior to the date of liquidation.

After payment of the full amount of the liquidating distributions to which they are entitled pursuant to the preceding paragraph, the holders of Series 6 Preferred Stock will have no right or claim to any of the remaining assets of the Corporation. In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, the available assets of the Corporation are insufficient to pay the full amount of the liquidating distributions on all outstanding Series 6 Preferred Stock and the corresponding amounts payable on all shares of other classes or series of capital stock of the Corporation ranking on a parity with the Series 6 Preferred Stock in the distribution of assets upon any liquidation, dissolution or winding up of the affairs of the Corporation, then the holders of the Series 6 Preferred Stock and such other classes or series of capital stock shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they otherwise respectively would be entitled.

For the purposes of this Section 1, the consolidation or merger of the Corporation with or into any other entity, or the sale, lease or conveyance of all or substantially all of the property or business of the Corporation, shall not be deemed to constitute the liquidation, dissolution or winding up of the Corporation.

Section 2. *Dividends.*

(a) *Payment of Dividends.* Holders of Series 6 Preferred Stock shall be entitled to receive, if, when and as authorized and declared by the Board Directors (or a duly authorized committee thereof), out of assets of the Corporation legally available therefor, cash dividends at an

annual rate of 6.70% of the $1,000 liquidation preference per share (equivalent to $67.00 per share per annum), and no more. Such noncumulative cash dividends shall be payable, if authorized and declared, quarterly on March 30, June 30, September 30 and December 30 of each year, or, if any such day is not a Business Day (as defined herein), on the preceding Business Day (each such date, "Dividend Payment Date"). Each authorized and declared dividend shall be payable to holders of record of the Series 6 Preferred Stock as they appear on the stock books of the Corporation at the close of business on such record date, not more than 45 calendar days nor less than 10 calendar days preceding the Dividend Payment Date therefor, as may be determined by the Board of Directors (or a duly authorized committee thereof) (each such date, a "Record Date"); provided, however, that if the date fixed for redemption of any of the Series 6 Preferred Stock occurs after a dividend is authorized and declared but before it is paid, such dividend shall be paid as part of the redemption price to the person to whom the redemption price is paid. Quarterly dividend periods (each, a "Dividend Period") shall commence on and include the first day, and shall end on and include the last day, of the quarterly period in which the corresponding Dividend Payment Date occurs.

The amount of dividends payable for the first Dividend Period and for any other Dividend Period which, as to any share of Series 6 Preferred Stock (determined by reference to the issuance date and the redemption or retirement date thereof), is greater or less than a full Dividend Period shall be computed on the basis of the number of days elapsed in the period using a 360-day year composed of twelve 30-day months.

Holders of the Series 6 Preferred Stock shall not be entitled to any interest, or any sum of money in lieu of interest, in respect of any dividend payment or payments on the Series 6 Preferred Stock authorized and declared by the Board of Directors that may be unpaid.

(b) *Dividends Noncumulative*. The right of holders of Series 6 Preferred Stock to receive dividends is noncumulative. Accordingly, if the Board of Directors does not authorize or declare a dividend payable in respect of any Dividend Period, holders of Series 6 Preferred Stock shall have no right to receive a dividend in respect of such Dividend Period and the Corporation shall have no obligation to pay a dividend in respect of such Dividend Period, whether or not dividends are authorized and declared payable in respect of any prior or subsequent Dividend Period.

(c) *Priority as to Dividends; Limitations on Dividends on Junior Equity.* If full dividends on the Series 6 Preferred Stock for a completed Dividend Period shall not have been declared and paid, or declared and a sum sufficient for the payment thereof shall not have been set apart for such payments, no dividends or distributions shall be authorized, declared or paid or set aside for payment (other than as provided in the second paragraph of this Section 2(c)) during the next subsequent Dividend Period with respect to the Common Stock or any other stock of the Corporation ranking junior to the Series 6 Preferred Stock as to dividends or amounts upon liquidation, dissolution or winding up of the affairs of the Corporation (together with the Common Stock, "Junior Equity") or any stock on parity with the Series 6 Preferred Stock as to dividends or amounts upon liquidation, dissolution or winding up of the affairs of the Corporation ("Parity Stock"), nor shall any Junior Equity or Parity

Stock be redeemed, purchased or otherwise acquired for any consideration (or any monies to be paid to or made available for a sinking fund for the redemption of any such stock) by the Corporation (except by conversion into or exchange for other Junior Equity), until such time as dividends on all outstanding Series 6 Preferred Stock for at least four consecutive Dividend Periods have been paid in full.

When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) for any Dividend Period on the Series 6 Preferred Stock, all dividends declared on the Series 6 Preferred Stock and any other series ranking on a parity as to dividends with the Series 6 Preferred Stock shall be declared *pro rata* so that the amount of dividends declared per share on the Series 6 Preferred Stock and each such other series of capital stock shall in all cases bear to each other the same ratio that full dividends, for such Dividend Period, per share of Series 6 Preferred Stock (which shall not include any accumulation in respect of unpaid dividends for prior Dividend Periods) and full dividends, including required or permitted accumulations, if any, on the stock of each other series ranking on a parity as to dividends with the Series 6 Preferred Stock bear to each other.

(d) So long as any share of Series 6 Preferred Stock is outstanding, the Corporation shall not authorize or issue any class or series of stock with a preference as to payment of distributions or amounts upon liquidation, dissolution or winding up that is senior in right to the preferences of the Series 6 Preferred Stock as to payment of distributions or amounts upon liquidation, dissolution or winding up.

(e) Any reference to “dividends” or “distributions” in this Section 2 shall not be deemed to include any distribution made in connection with any voluntary or involuntary dissolution, liquidation or winding up of the Corporation.

Section 3. *Optional Redemption.* The Series 6 Preferred Stock will not be redeemable prior to February 3, 2009. On or after February 3, 2009, the Series 6 Preferred Stock will be redeemable at the option of the Corporation, in whole or in part, at any time or from time to time, at a cash redemption price equal to the sum of the liquidation preference thereof plus the amount of the declared and unpaid dividends thereon from the beginning of the Dividend Period in which the redemption occurs to the date of redemption.

In the event that fewer than all the outstanding shares of Series 6 Preferred Stock are to be redeemed, the number of shares of Series 6 Preferred Stock to be redeemed shall be determined by the Board of Directors (or a duly authorized committee thereof), and the shares to be redeemed shall be determined by lot or *pro rata* as may be determined by the Board of Directors (or a duly authorized committee thereof) or by any other method as may be determined by the Board of Directors (or a duly authorized committee thereof) in its sole discretion to be equitable, provided that such method satisfies any applicable requirements of any securities exchange (if any) on which the shares of Series 6 Preferred Stock are then listed.

Unless full dividends on the Series 6 Preferred Stock in respect of the most recently completed Dividend Period have been or contemporaneously are declared and paid or full dividends have been declared and a sum sufficient for the payment thereof has been set

apart for payment in respect of the most recently completed Dividend Period, no Series 6 Preferred Stock shall be redeemed unless all outstanding shares of Series 6 Preferred Stock are redeemed and the Corporation shall not purchase or otherwise acquire any Series 6 Preferred Stock; *provided*, *however*, that the Corporation may purchase or acquire Series 6 Preferred Stock pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series 6 Preferred Stock.

The Corporation will give notice of redemption of the Series 6 Preferred Stock by publication in a newspaper of general circulation in the City of New York, such publication to be made once a week for two successive weeks commencing not less than 30 nor more than 60 days prior to the redemption date. A failure to give such notice or any defect in the notice or in the Corporation's mailing will not affect the validity of the proceedings for the given redemption of any Series 6 Preferred Stock except as to the holder to whom notice was defective or not given. Each notice shall state: (i) the redemption date; (ii) the redemption price and (iii) the number of shares of Series 6 Preferred Stock to be redeemed.

A notice by the Corporation pursuant to this Section 3 shall be sufficiently given if in writing and mailed, first class postage prepaid, to each record holder of Series 6 Preferred Stock at the holder's address as it appears in the records of the Corporation's transfer agent. In any case where notice is given by mail, neither the failure to mail such notice nor any defect in the notice to any particular holder shall affect the sufficiency of such notice, to any other holder. Any notice mailed to a holder in the manner described above shall be deemed given on the date mailed, whether or not the holder actually receives the notice. A notice of redemption shall be given not less than 30 days and not more than 60 days prior to the date of redemption specified in the notice, and shall specify (i) the redemption date, (ii) the number of Series 6 Preferred Stock to be redeemed, (iii) the redemption price and (iv) the manner in which holders of Series 6 Preferred Stock called for redemption may obtain payment of the redemption price in respect of those shares.

Any shares of Series 6 Preferred Stock that are duly called for redemption pursuant to this Section 3 shall no longer be deemed to be outstanding for any purpose from and after that time that the Corporation shall have irrevocably deposited with the paying agent identified in the notice of redemption funds in an amount equal to the aggregate redemption price. From and after that time, the holders of the Series 6 Preferred Stock so called for redemption shall have no further rights as stockholders of the Corporation and in lieu thereof shall have only the right to receive the redemption price, without interest.

Series 6 Preferred Stock redeemed pursuant to this Section 3 or purchased or otherwise acquired for value of the Corporation shall, after such acquisition, have the status of authorized and unissued shares of Preferred Stock and may be reissued by the Corporation at any time as shares of any series of Preferred Stock other than as Series 6 Preferred Stock.

Section 4. *Voting Rights*.

(a) *General*. Except as expressly provided in this Section 4 and as required by law, holders of Series 6 Preferred Stock shall have no voting rights.

When the holders of Series 6 Preferred Stock are entitled to vote as a separate series, each Series 6 Preferred Stock will be entitled to 40 votes and may designate up to 40 proxies, with each such proxy having the right to vote a whole number of votes, totaling 40 votes per share of Series 6 Preferred Stock. When the holders of Series 6 Preferred Stock are entitled to vote together as a class with any other capital stock of the Corporation, each share of Series 6 Preferred Stock will be entitled to one vote.

(b) *Right to Elect Directors*. If, at the time of any annual meeting of the Corporation's stockholders for the election of directors, the Corporation has failed to pay or declare and set aside for payment all scheduled dividends during any six Dividend Periods (whether or not consecutive) on the Series 6 Preferred Stock, the number of directors then constituting the Board of Directors of the Corporation will be increased by two (if not already increased by two due to failure to pay or declare and set aside dividends on any series of Preferred Stock), and the holders of the Series 6 Preferred Stock, voting separately as a class with all other series of Preferred Stock then entitled by the terms of such Preferred Stock to vote for additional directors, will be entitled to elect such two additional directors to serve on the Corporation's Board of Directors at each such annual meeting. Each director elected by the holders of shares of the Preferred Stock (a "Preferred Director") shall continue to serve as such director until the payment of all dividends on the Preferred Stock for at least four consecutive Dividend Periods, including the Series 6 Preferred Stock. Any Preferred Director may be removed by, and shall not be removed except by, the vote of the holders of record of the outstanding Series 6 Preferred Stock entitled to vote, voting separately as a class with all other holders of all other series of Preferred Stock entitled to vote on the matter, at a meeting of the Corporation's stockholders, or of the holders of the Series 6 Preferred Stock and all other series of Preferred Stock so entitled to vote thereon, called for that purpose. As long as dividends on the Series 6 Preferred Stock shall not have been paid for the preceding quarterly Dividend Period, (i) any vacancy in the office of any Preferred Director may be filled (except as provided in the following clause (ii)) by any instrument in writing signed by the remaining Preferred Director and filed with the Corporation, and (ii) in the case of the removal of any Preferred Director, the vacancy may be filled by the vote of the holders of the outstanding Series 6 Preferred Stock entitled to vote, voting together as a single class with the holders of all other series of Preferred Stock entitled to vote on the matter, at the same meeting at which such removal shall be voted. Each director appointed as aforesaid by the remaining Preferred Director shall be deemed, for all purposes hereof, to be Preferred Director. Any Preferred Director will be deemed to be an Independent Director for purposes of the actions requiring the approval of a majority of the Independent Directors.

(c) *Certain Voting Rights*. The affirmative vote or consent of the holders of at least 67% of the outstanding voting power of each series of Preferred Stock of the Corporation, including the Series 6 Preferred Stock, will be required (i) to create any class or series of stock which shall, as to dividends or distribution of assets, rank prior to any outstanding series of Preferred Stock of the Corporation other than a series which shall not have any right to object to such creation or (ii) alter or change the provisions of the Corporation's Restated Certificate of Incorporation (including the terms of the Series 6 Preferred Stock), including by consolidation or merger, so as to adversely affect the voting powers, preferences or special rights of the holders of a series of Preferred Stock of the Corporation; provided, however, that if such

amendment shall not adversely affect all series of Preferred Stock of the Corporation, such amendment need only be approved by at least 67% of the voting power of each series of Preferred Stock adversely affected thereby. Notwithstanding the foregoing, an alteration or change to the provisions of the Corporation's Restated Certificate of Incorporation shall not be deemed to affect the voting powers, preferences or special rights of the holders of the Series 6 Preferred Stock, provided that: (x) the Series 6 Preferred Stock remain outstanding with the terms thereof unchanged; or (y) the Series 6 Preferred Stock are converted in a merger or consolidation transaction into shares of the surviving or successor corporation or the direct or indirect parent of the surviving or successor corporation having terms identical to the terms of the Series 6 Preferred Stock set forth herein. Additionally, an increase in the amount of the authorized Preferred Stock or the creation or issuance of any other series of Preferred Stock or an increase in the amount of authorized shares of any such series, in each case ranking on a parity with or junior to the Series 6 Preferred Stock with respect to payment of dividends or distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect the voting powers, preferences or special rights of the holders of the Series 6 Preferred Stock.

Section 5. *Independent Directors*.

(a) *Number; Definition*. As long as any Series 6 Preferred Stock are outstanding, at least two directors on the Board of Directors shall be Independent Directors. As used herein, "Independent Director" means any director of the Corporation who is either (i) not a current officer or employee of the Corporation or (ii) a Preferred Director.

(b) *Determination by Independent Directors.* In determining whether any proposed action requiring their consent is in the best interests of the Corporation, the Independent Directors shall consider the interests of holders of both the Common Stock and the Preferred Stock, including, without limitation, the holders of the Series 6 Preferred Stock. In considering the interests of the holders of the Preferred Stock, including, without limitation, holders of the Series 6 Preferred Stock, the Independent Directors shall owe the same duties that the Independent Directors owe with respect to holders of shares of Common Stock.

Section 6. *No Conversion Rights.* The holders of Series 6 Preferred Stock shall not have any rights to convert such shares into shares of any other class or series of stock or into any other securities of, or any interest in, the Corporation.

Section 7. *No Sinking Fund.* No sinking fund shall be established for the retirement or redemption of Series 6 Preferred Stock.

Section 8. *Preemptive or Subscription Rights*. No holder of Series 6 Preferred Stock of the Corporation shall, as such holder, have any preemptive right to purchase or subscribe for any additional shares of stock of the Corporation or any other security of the Corporation that it may issue or sell.

Section 9. *No Other Rights.* The Series 6 Preferred Stock shall not have any designations, preferences or relative, participating, optional or other special rights except as set forth in the Corporation's Restated Certificate of Incorporation or as otherwise required by law.

Section 10. *Compliance with Applicable Law.* Declaration by the Board of Directors (or a duly authorized committee thereof) and payment by the Corporation of dividends to holders of the Series 6 Preferred Stock and repurchase, redemption or other acquisition by the Corporation (or another entity as provided in subsection (a) of Section 3 hereof) of Series 6 Preferred Stock shall be subject in all respects to any and all restrictions and limitations placed on dividends, redemptions or other distributions by the Corporation (or any such other entity) under (i) laws, regulations and regulatory conditions or limitations applicable to or regarding the Corporation (or any such other entity) from time to time and (ii) agreements with federal or state regulatory or banking authorities with respect to the Corporation (or any such other entity) from time to time in effect.

Exhibit 4.3

FORM OF CERTIFICATE OF DESIGNATION

6.25% NONCUMULATIVE PERPETUAL PREFERRED STOCK, SERIES 7

RESOLVED, that pursuant to the authority vested in the Board of Directors of Merrill Lynch & Co., Inc., a Delaware corporation (the "Corporation"), by Article IV of the Restated Certificate of Incorporation, as amended, of the Corporation, a series of preferred stock of the Corporation be, and it hereby is, created out of the authorized but unissued shares of the capital stock of the Corporation, such series to be designated 6.25% Noncumulative Perpetual Preferred Stock, Series 7, to consist of 50,000 shares (the "Series 7 Preferred Stock"), par value $1.00 per share, the preferences, relative and other rights, and qualifications, limitations or restrictions of which shall be (in addition to those set forth in the Corporation's Restated Articles of Incorporation, as amended) as follows:

Section 1. *Liquidation Value.* In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of the Series 7 Preferred Stock at the time outstanding will be entitled to receive out of the assets of the Corporation available for distribution to stockholders, before any distribution of assets is made to holders of Common Stock or any other class of stock ranking junior to the Series 7 Preferred Stock in the distribution of assets upon any liquidation, dissolution or winding up of the affairs of the Corporation, liquidating distributions in the amount of $1,000 per share, plus any dividends declared thereon and not yet paid prior to the date of liquidation.

After payment of the full amount of the liquidating distributions to which they are entitled pursuant to the preceding paragraph, the holders of Series 7 Preferred Stock will have no right or claim to any of the remaining assets of the Corporation. In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, the available assets of the Corporation are insufficient to pay the full amount of the liquidating distributions on all outstanding Series 7 Preferred Stock and the corresponding amounts payable on all shares of other classes or series of capital stock of the Corporation ranking on a parity with the Series 7 Preferred Stock in the distribution of assets upon any liquidation, dissolution or winding up of the affairs of the Corporation, then the holders of the Series 7 Preferred Stock and such other classes or series of capital stock shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they otherwise respectively would be entitled.

For the purposes of this Section 1, the consolidation or merger of the Corporation with or into any other entity, or the sale, lease or conveyance of all or substantially all of the property or business of the Corporation, shall not be deemed to constitute the liquidation, dissolution or winding up of the Corporation.

Section 2. *Dividends.*

(a) *Payment of Dividends.* Holders of Series 7 Preferred Stock shall be entitled to receive, if, when and as authorized and declared by the Board of Directors (or a duly authorized committee thereof), out of assets of the Corporation legally available therefor, cash dividends at an

annual rate of 6.25% of the $1,000 liquidation preference per share (equivalent to $62.50 per share per annum), and no more. Such noncumulative cash dividends shall be payable, if authorized and declared, quarterly on March 30, June 30, September 30 and December 30 of each year, or, if any such day is not a Business Day (as defined herein), on the preceding Business Day (each such date, *"*Dividend Payment Date*"*). Each authorized and declared dividend shall be payable to holders of record of the Series 7 Preferred Stock as they appear on the stock books of the Corporation at the close of business on such record date, not more than 30 calendar days nor less than 10 calendar days preceding the Dividend Payment Date therefor, as may be determined by the Board of Directors (or a duly authorized committee thereof) (each such date, a *"*Record Date*"*); provided, however, that if the date fixed for redemption of any of the Series 7 Preferred Stock occurs after a dividend is authorized and declared but before it is paid, such dividend shall be paid as part of the redemption price to the person to whom the redemption price is paid. Quarterly dividend periods (each, a *"*Dividend Period*"*) shall commence on and include the first day, and shall end on and include the last day, of the quarterly period in which the corresponding Dividend Payment Date occurs.

The amount of dividends payable for the first Dividend Period and for any other Dividend Period which, as to share of any Series 7 Preferred Stock (determined by reference to the issuance date and the redemption or retirement date thereof), is greater or less than a full Dividend Period shall be computed on the basis of the number of days elapsed in the period using a 360-day year composed of twelve 30-day months.

Holders of the Series 7 Preferred Stock shall not be entitled to any interest, or any sum of money in lieu of interest, in respect of any dividend payment or payments on the Series 7 Preferred Stock authorized and declared by the Board of Directors that may be unpaid.

(b) *Dividends Noncumulative*. The right of holders of Series 7 Preferred Stock to receive dividends is noncumulative. Accordingly, if the Board of Directors does not authorize or declare a dividend payable in respect of any Dividend Period, holders of Series 7 Preferred Stock shall have no right to receive a dividend in respect of such Dividend Period and the Corporation shall have no obligation to pay a dividend in respect of such Dividend Period, whether or not dividends are authorized and declared payable in respect of any prior or subsequent Dividend Period.

(c) *Priority as to Dividends; Limitations on Dividends on Junior Equity.* If full dividends on the Series 7 Preferred Stock for a completed Dividend Period shall not have been declared and paid, or declared and a sum sufficient for the payment thereof shall not have been set apart for such payments, no dividends or distributions shall be authorized, declared or paid or set aside for payment (other than as provided in the second paragraph of this Section 2(c)) during the next subsequent Dividend Period with respect to the Common Stock or any other stock of the Corporation ranking junior to the Series 7 Preferred Stock as to dividends or amounts upon liquidation, dissolution or winding up of the affairs of the Corporation (together with the Common Stock, *"*Junior Equity*"*) or any stock on parity with the Series 7 Preferred Stock as to dividends or amounts upon liquidation, dissolution or winding up of the affairs of the Corporation (*"*Parity Stock*"*), nor shall any Junior Equity or

Parity Stock be redeemed, purchased or otherwise acquired for any consideration (or any monies to be paid to or made available for a sinking fund for the redemption of any such stock) by the Corporation (except by conversion into or exchange for other Junior Equity), until such time as dividends on all outstanding Series 7 Preferred Stock for at least four consecutive Dividend Periods have been paid in full.

When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) for any Dividend Period on the Series 7 Preferred Stock, all dividends declared on the Series 7 Preferred Stock and any other series ranking on a parity as to dividends with the Series 7 Preferred Stock shall be distributed *pro rata* so that the amount of dividends declared per share on the Series 7 Preferred Stock and each such other series of capital stock shall in all cases bear to each other the same ratio that full dividends, for such Dividend Period, per share of Series 7 Preferred Stock (which shall not include any accumulation in respect of unpaid dividends for prior Dividend Periods) and full dividends, including required or permitted accumulations, if any, on the stock of each other series ranking on a parity as to dividends with the Series 7 Preferred Stock bear to each other.

(d) So long as any Series 7 Preferred Stock is outstanding, the Corporation shall not authorize or issue any class or series of stock with a preference as to payment of distributions or amounts upon liquidation, dissolution or winding up that is senior in right to the preferences of the Series 7 Preferred Stock as to payment of distributions or amounts upon liquidation, dissolution or winding up.

(e) Any reference to "dividends" or "distributions" in this Section 2 shall not be deemed to include any distribution made in connection with any voluntary or involuntary dissolution, liquidation or winding up of the Corporation.

Section 3. *Optional Redemption.* The Series 7 Preferred Stock will not be redeemable prior to March 18, 2010. On or after March 18, 2010, the Series 7 Preferred Stock will be redeemable at the option of the Corporation, in whole or in part, at any time or from time to time, at a cash redemption price equal to the sum of the liquidation preference thereof plus the amount of the declared and unpaid dividends thereon from the beginning of the Dividend Period in which the redemption occurs to the date of redemption.

In the event that fewer than all the outstanding shares of Series 7 Preferred Stock are to be redeemed, the number of shares of Series 7 Preferred Stock to be redeemed shall be determined by the Board of Directors (or a duly authorized committee thereof), and the shares to be redeemed shall be determined by lot or *pro rata* as may be determined by the Board of Directors (or a duly authorized committee thereof) or by any other method as may be determined by the Board of Directors (or a duly authorized committee thereof) in its sole discretion to be equitable, provided that such method satisfies any applicable requirements of any securities exchange (if any) on which the shares of Series 7 Preferred Stock are then listed.

Unless full dividends on the Series 7 Preferred Stock in respect of the most recently completed Dividend Period have been or contemporaneously are declared and paid or full dividends have been declared and a sum sufficient for the payment thereof has been set

apart for payment in respect of the most recently completed Dividend Period, no Series 7 Preferred Stock shall be redeemed unless all outstanding shares of Series 7 Preferred Stock are redeemed and the Corporation shall not purchase or otherwise acquire any Series 7 Preferred Stock; *provided*, *however*, that the Corporation may purchase or acquire Series 7 Preferred Stock pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series 7 Preferred Stock.

The Corporation will give notice of redemption of the Series 7 Preferred Stock by publication in a newspaper of general circulation in the City of New York, such publication to be made once a week for two successive weeks commencing not less than 30 nor more than 60 days prior to the redemption date. A failure to give such notice or any defect in the notice or in the Corporation's mailing will not affect the validity of the proceedings for the given redemption of any Series 7 Preferred Stock except as to the holder to whom notice was defective or not given. Each notice shall state: (i) the redemption date; (ii) the redemption price and (iii) the number of Series 7 Preferred Stock to be redeemed.

A notice by the Corporation pursuant to this Section 3 shall be sufficiently given if in writing and mailed, first class postage prepaid, to each record holder of Series 7 Preferred Stock at the holder's address as it appears in the records of the Corporation's transfer agent. In any case where notice is given by mail, neither the failure to mail such notice nor any defect in the notice to any particular holder shall affect the sufficiency of such notice, to any other holder. Any notice mailed to a holder in the manner described above shall be deemed given on the date mailed, whether or not the holder actually receives the notice. A notice of redemption shall be given not less than 30 days and not more than 60 days prior to the date of redemption specified in the notice, and shall specify (i) the redemption date, (ii) the number of Series 7 Preferred Stock to be redeemed, (iii) the redemption price and (iv) the manner in which holders of Series 7 Preferred Stock called for redemption may obtain payment of the redemption price in respect of those shares.

Any shares of Series 7 Preferred Stock that are duly called for redemption pursuant to this Section 3 shall no longer be deemed to be outstanding for any purpose from and after that time that the Corporation shall have irrevocably deposited with the paying agent identified in the notice of redemption funds in an amount equal to the aggregate redemption price. From and after that time, the holders of the Series 7 Preferred Stock so called for redemption shall have no further rights as stockholders of the Corporation and in lieu thereof shall have only the right to receive the redemption price, without interest.

Series 7 Preferred Stock redeemed pursuant to this Section 3 or purchased or otherwise acquired for value of the Corporation shall, after such acquisition, have the status of authorized and unissued shares of Preferred Stock and may be reissued by the Corporation at any time as shares of any series of Preferred Stock other than as Series 7 Preferred Stock.

Section 4. *Voting Rights*.

(a) *General*. Except as expressly provided in this Section 4 and as required by law, holders of Series 7 Preferred Stock shall have no voting rights. When the holders of Series 7 Preferred Stock are entitled to vote as a separate series, each Series 7 Preferred Stock will be entitled to 40 votes and may designate up to 40 proxies, with each such proxy having the right to vote a whole number of votes, totaling 40 votes per share of Series 7 Preferred Stock. When the holders of Series 7 Preferred Stock are entitled to vote together as a class with any other capital stock of the Corporation, each share of Series 7 Preferred Stock will be entitled to one vote.

(b) *Right to Elect Directors.* If, at the time of any annual meeting of the Corporation's stockholders for the election of directors, the Corporation has failed to pay or declare and set aside for payment all scheduled dividends during any six Dividend Periods (whether or not consecutive) on the Series 7 Preferred Stock, the number of directors then constituting the Board of Directors of the Corporation will be increased by two (if not already increased by two due to failure to pay or declare and set aside dividends on any series of Preferred Stock), and the holders of the Series 7 Preferred Stock, voting separately as a class with all other series of Preferred Stock then entitled by the terms of such Preferred Stock to vote for additional directors, will be entitled to elect such two additional directors to serve on the Corporation's Board of Directors at each such annual meeting. Each director elected by the holders of shares of the Preferred Stock (a *"*Preferred Director*"*) shall continue to serve as such director until the payment of all dividends on the Preferred Stock for at least four consecutive Dividend Periods, including the Series 7 Preferred Stock. Any Preferred Director may be removed by, and shall not be removed except by, the vote of the holders of record of the outstanding Series 7 Preferred Stock entitled to vote, voting separately as a class with all other holders of all other series of Preferred Stock entitled to vote on the matter, at a meeting of the Corporation's stockholders, or of the holders of the Series 7 Preferred Stock and all other series of Preferred Stock so entitled to vote thereon, called for that purpose. As long as dividends on the Series 7 Preferred Stock shall not have been paid for the preceding quarterly Dividend Period, (i) any vacancy in the office of any Preferred Director may be filled (except as provided in the following clause (ii)) by any instrument in writing signed by the remaining Preferred Director and filed with the Corporation, and (ii) in the case of the removal of any Preferred Director, the vacancy may be filled by the vote of the holders of the outstanding Series 7 Preferred Stock entitled to vote, voting together as a single class with the holders of all other series of Preferred Stock entitled to vote on the matter, at the same meeting at which such removal shall be voted. Each director appointed as aforesaid by the remaining Preferred Director shall be deemed, for all purposes hereof, to be Preferred Director. Any Preferred Director will be deemed to be an Independent Director for purposes of the actions requiring the approval of a majority of the Independent Directors.

(c) *Certain Voting Rights*. The affirmative vote or consent of the holders of at least 67% of the outstanding voting power of each series of Preferred Stock of the Corporation, including the Series 7 Preferred Stock, will be required (i) to create any class or series of stock which shall, as to dividends or distribution of assets, rank prior to any outstanding series of Preferred Stock of the Corporation other than a series which shall not have any right to object to such creation or (ii) alter or change the provisions of the Corporation's Restated Certificate of

Incorporation (including the terms of the Series 7 Preferred Stock), including by consolidation or merger, so as to adversely affect the voting powers, preferences or special rights of the holders of a series of Preferred Stock of the Corporation; provided, however, that if such amendment shall not adversely affect all series of Preferred Stock of the Corporation, such amendment need only be approved by at least 67% of the voting power of each series of Preferred Stock adversely affected thereby. Notwithstanding the foregoing, an alteration or change to the provisions of the Corporation's Restated Certificate of Incorporation shall not be deemed to affect the voting powers, preferences or special rights of the holders of the Series 7 Preferred Stock, provided that: (x) the Series 7 Preferred Stock remain outstanding with the terms thereof unchanged; or (y) the Series 7 Preferred Stock are converted in a merger or consolidation transaction into shares of the surviving or successor corporation or the direct or indirect parent of the surviving or successor corporation having terms identical to the terms of the Series 7 Preferred Stock set forth herein. Additionally, an increase in the amount of the authorized Preferred Stock or the creation or issuance of any other series of Preferred Stock or an increase in the amount of authorized shares of any such series, in each case ranking on a parity with or junior to the Series 7 Preferred Stock with respect to payment of dividends or distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect the voting powers, preferences or special rights of the holders of the Series 7 Preferred Stock.

Section 5. *Independent Directors*.

(a) *Number; Definition*. As long as any Series 7 Preferred Stock are outstanding, at least two directors on the Board of Directors shall be Independent Directors. As used herein, "Independent Director" means any director of the Corporation who is either (i) not a current officer or employee of the Corporation or (ii) a Preferred Director.

(b) *Determination by Independent Directors.* In determining whether any proposed action requiring their consent is in the best interests of the Corporation, the Independent Directors shall consider the interests of holders of both the Common Stock and the Preferred Stock, including, without limitation, the holders of the Series 7 Preferred Stock. In considering the interests of the holders of the Preferred Stock, including, without limitation, holders of the Series 7 Preferred Stock, the Independent Directors shall owe the same duties that the Independent Directors owe with respect to holders of shares of Common Stock.

Section 6. *No Conversion Rights.* The holders of Series 7 Preferred Stock shall not have any rights to convert such shares into shares of any other class or series of stock or into any other securities of, or any interest in, the Corporation.

Section 7. *No Sinking Fund.* No sinking fund shall be established for the retirement or redemption of Series 7 Preferred Stock.

Section 8. *Preemptive or Subscription Rights*. No holder of Series 7 Preferred Stock of the Corporation shall, as such holder, have any preemptive right to purchase or subscribe for any additional shares of stock of the Corporation or any other security of the Corporation that it may issue or sell.

Section 9. *No Other Rights.* The Series 7 Preferred Stock shall not have any designations, preferences or relative, participating, optional or other special rights except as set forth in the Corporation's Restated Certificate of Incorporation or as otherwise required by law.

Section 10. *Compliance with Applicable Law.* Declaration by the Board of Directors (or a duly authorized committee thereof) and payment by the Corporation of dividends to holders of the Series 7 Preferred Stock and repurchase, redemption or other acquisition by the Corporation (or another entity as provided in subsection (a) of Section 3 hereof) of Series 7 Preferred Stock shall be subject in all respects to any and all restrictions and limitations placed on dividends, redemptions or other distributions by the Corporation (or any such other entity) under (i) laws, regulations and regulatory conditions or limitations applicable to or regarding the Corporation (or any such other entity) from time to time and (ii) agreements with federal or state regulatory or banking authorities with respect to the Corporation (or any such other entity) from time to time in effect.

Exhibit 4.4

FIRST REPUBLIC BANK,
MELLON INVESTOR SERVICES LLC,
AS DEPOSITARY,

AND

THE HOLDERS FROM TIME TO TIME OF
THE DEPOSITARY RECEIPTS DESCRIBED HEREIN
RELATING TO
6.70% NONCUMULATIVE PERPETUAL SERIES A PREFERRED SHARES

DEPOSIT AGREEMENT

DATED AS OF JANUARY 28, 2004

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DEPOSIT AGREEMENT

DEPOSIT AGREEMENT, dated as of January 28, 2004, among First Republic Bank, a commercial bank organized under the laws of the State of Nevada (the "Bank"), Mellon Investor Services LLC, a New Jersey limited liability company, as Depositary, and all holders from time to time of Receipts (as hereinafter defined) issued hereunder.

WITNESSETH:

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the deposit of the Bank's Preferred Shares (as hereinafter defined) with the Depositary for the purposes set forth in this Deposit Agreement and for the issuance hereunder of the Receipts evidencing Depositary Shares representing a fractional interest in the Preferred Shares deposited; and

WHEREAS, the Receipts are to be substantially in the form of Exhibit A annexed to this Deposit Agreement, with appropriate insertions, modifications and omissions, as hereinafter provided in this Deposit Agreement;

NOW, THEREFORE, in consideration of the premises contained herein, it is agreed by and among the parties hereto as follows:

ARTICLE I

DEFINITIONS

The following definitions shall apply to the respective terms (in the singular and plural forms of such terms) used in this Deposit Agreement and the Receipts:

SECTION 1.1. "AFFILIATE" shall mean, with respect to any person or entity, any person or entity directly or indirectly controlling, controlled by, or under common control with, such other person or entity. For the purpose of this definition, "controlling," "controlled by" or "under common control with," mean the ownership, direct or indirect, of the power to direct or cause the direction of the operation or management and policies of a person or entity, whether through the ownership or control of voting interests, by contract or otherwise.

SECTION 1.2. "ARTICLES OF INCORPORATION" shall mean the amended and restated articles of incorporation, as amended from time to time, of the Bank.

SECTION 1.3. "BANK" shall mean First Republic Bank, a commercial bank organized under the laws of the State of Nevada.

SECTION 1.4. "CORPORATE OFFICE" shall mean the corporate office of the depositary at which at any particular time its business in respect of matters governed by this Deposit Agreement shall be administered, which at the date of this Deposit Agreement is located at Mellon Investor Services LLC, 235 Montgomery Street, 23rd floor, San Francisco, CA 94104.

SECTION 1.5. "DEPOSIT AGREEMENT" shall mean this agreement, as the same may be amended, modified or supplemented from time to time.

SECTION 1.6. "DEPOSITARY" shall mean Mellon Investor Services LLC a company having its principal office in the United States and any successor as depositary hereunder.

SECTION 1.7. "DEPOSITARY SHARE" shall mean a fractional interest of 1/40 of a Preferred Share deposited with the Depositary hereunder and the same proportionate interest in any and all other property received by the Depositary in respect of such Preferred Share and held under this Deposit Agreement, all as evidenced by the Receipts issued hereunder. Subject to the terms of this Deposit Agreement, each owner of a Depositary Share is entitled, proportionately, to all the rights, preferences and privileges of the Preferred Share represented by such Depositary Share, including the dividend, voting, redemption, conversion and liquidation rights contained in the Designating Amendment.

SECTION 1.8. "DEPOSITARY'S AGENT" shall mean an agent appointed by the Depositary as provided, and for the purposes specified, in section 7.5.

SECTION 1.9. "DESIGNATING AMENDMENT" shall mean the amendment to the Articles of Incorporation in the form of a certificate of designations filed with the Secretary of State of the State of Nevada establishing the Preferred Shares as a series of preferred shares of the Bank.

SECTION 1.10. "DTC" means The Depository Trust Company.

SECTION 1.11. "DTC RECEIPT" has the meaning set forth in Section 2.1.

SECTION 1.12. "PREFERRED SHARES" shall mean the Bank's 6.70% noncumulative perpetual Series A preferred shares, par value $0.01 per share, heretofore validly issued, fully paid and nonassessable.

SECTION 1.13. "RECEIPT" shall mean a depositary receipt issued hereunder to evidence one or more Depositary Shares, whether in definitive or temporary form, substantially in the form set forth as Exhibit A hereto. If the context so requires, the term "Receipt" shall be deemed to include the DTC Receipt (as defined in Section 2.1 hereof).

SECTION 1.14. "RECORD DATE" shall mean the date fixed pursuant to Section 4.4.

SECTION 1.15. "RECORD HOLDER" or "HOLDER" as applied to a receipt shall mean the person in whose name a receipt is registered on the books maintained by the Depositary for such purpose.

SECTION 1.16. "REGISTRAR" shall mean Mellon Investor Services LLC or any bank or trust company appointed to register ownership and transfers of receipts or the deposited Preferred Shares, as the case may be, as herein provided.

SECTION 1.17. "SECURITIES ACT" shall mean the Securities Act of 1933, as amended.

SECTION 1.18. "TRANSFER AGENT" shall mean Mellon Investor Services LLC or any bank or trust company appointed to transfer the receipts or the deposited Preferred Shares, as the case may be, as herein provided.

ARTICLE II

FORM OF RECEIPTS, DEPOSIT OF PREFERRED SHARES, EXECUTION AND DELIVERY, TRANSFER, SURRENDER AND REDEMPTION OF RECEIPTS

SECTION 2.1. FORM AND TRANSFERABILITY OF RECEIPTS. The Bank and the Depositary shall make application to DTC for acceptance of all or a portion of the Receipts for its book-entry settlement system. The Bank hereby appoints the Depositary acting through any authorized officer thereof as its attorney-in-fact, with full power to delegate, for purposes of executing any agreements, certifications or other instruments or documents necessary or desirable in order to effect the acceptance of such Receipts for DTC eligibility. So long as the Receipts are eligible for book-entry settlement with DTC, unless otherwise required by law, all Depositary Shares to be traded on the New York Stock Exchange or any other exchange with book-entry settlement through DTC shall be represented by a single receipt (the "DTC Receipt"), which shall be deposited with DTC (or its designee) evidencing all such Depositary Shares and registered in the name of the nominee of DTC (initially expected to be Cede & Co.). The Depositary or such other entity as is agreed to by DTC may hold the DTC Receipt as custodian for DTC. Ownership of beneficial interests in the DTC Receipt shall be shown on, and the transfer of such ownership shall be effected through, records maintained by (i) DTC or its nominee for such DTC Receipt, or (ii) institutions that have accounts with DTC.

Notwithstanding the foregoing, the DTC Receipt shall be exchangeable for definitive Receipts only if (i) DTC notifies the Bank at any time that it is unwilling or unable to continue to make its book-entry settlement system available for the Receipts and a successor to DTC is not appointed by the Bank within 90 days of the date the Bank is so informed in writing, (ii) DTC notifies the Bank at any time that it has ceased to be a clearing agency registered under applicable law and a successor to DTC is not appointed by the Bank within 90 days of the date the Bank is so informed in writing or (iii) the Bank executes and delivers to DTC, with a copy to the Depositary, a notice to the effect that such DTC Receipt shall be so exchangeable. The Bank shall promptly forward to the Depositary any notice that it receives from DTC as described in the preceding sentence. If the beneficial owners of interests in Depositary Shares are entitled to exchange such interests for definitive Receipts as the result of an event described in clause (i), (ii) or (iii) of the preceding sentence, then without unnecessary delay but in any event not later than the earliest date on which such beneficial interests may be so exchanged, the Depositary shall provide written instructions to DTC to deliver to the Depositary for cancellation the DTC Receipt, and the Bank shall instruct the Depositary to deliver to the beneficial owners of the Depositary Shares previously evidenced by the DTC Receipt definitive Receipts in physical form evidencing such Depositary Shares. Such definitive Receipts shall be in substantially the form

annexed hereto as Exhibit A, with appropriate insertions, modifications and omissions, as hereafter provided.

The holders of Depositary Shares shall not, except as stated above with respect to Depositary Shares in book-entry form issued in exchange for the DTC Receipt, be entitled to receive Receipts in physical, certificated form as herein provided.

Definitive Receipts shall be substantially in the form set forth in Exhibit A annexed to this Deposit Agreement, with appropriate insertions, modifications and omissions, as hereinafter provided (but which do not affect the rights, duties, obligations or immunities of the Depositary as set forth in this Deposit Agreement). The DTC Receipt shall bear such legend or legends as may be required by DTC in order for it to accept the Depositary Shares for its book-entry settlement system (but which do not affect the rights, duties, obligations or immunities of the Depositary as set forth in this Deposit Agreement). Pending the preparation of definitive Receipts, the Depositary, upon the written order of the Bank or any holder of Preferred Shares, as the case may be, delivered in compliance with Section 2.2, shall execute and deliver temporary Receipts which may be printed, lithographed, typewritten, mimeographed or otherwise substantially of the tenor of the definitive Receipts in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Bank may determine, as evidenced by a writing delivered to the Depositary. If temporary Receipts are issued, the Bank will cause definitive Receipts to be prepared without unreasonable delay. After the preparation of definitive Receipts, the temporary Receipts shall be exchangeable for definitive Receipts upon surrender of the temporary Receipts at the Corporate Office or such other offices, if any, as the Depositary may designate, without charge to the holder. Upon surrender for cancellation of any one or more temporary Receipts, the Depositary shall execute and deliver in exchange therefor definitive Receipts representing the same number of Depositary Shares as represented by the surrendered temporary Receipt or Receipts; provided that, the Depositary has been provided with all necessary information that it may request in order to execute and deliver such definitive Receipts. Such exchange shall be made at the Bank's expense and without any charge to the holder. Until so exchanged, the temporary Receipts shall in all respects be entitled to the same benefits under this Deposit Agreement, and with respect to the Preferred Shares deposited, as definitive Receipts.

Receipts shall be executed by the Depositary by the manual or facsimile signature of a duly authorized signatory of the Depositary;provided that if a Registrar (other than the Depositary) shall have been appointed then such Receipts shall also be countersigned by manual signature of a duly authorized signatory of the Registrar. No Receipt shall be entitled to any benefits under this Deposit Agreement or be valid or obligatory for any purpose unless it shall have been executed as provided in the preceding sentence. The Depositary or the Registrar, as applicable, shall record on its books each Receipt executed as provided above and delivered as hereinafter provided.

Except as the Depositary may otherwise determine, Receipts shall be in denominations of any number of whole Depositary Shares. All Receipts shall be dated the date of their issuance.

Receipts may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Deposit Agreement as may be required by the Depositary or required to comply with any applicable law or regulation or with the rules and regulations of any securities exchange upon which the Preferred Shares, the Depositary Shares or the Receipts may be listed or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Receipts are subject (but which do not affect the rights, duties, obligations or immunities of the Depositary as set forth in this Deposit Agreement).

Title to any Receipt (and to the Depositary Shares evidenced by such Receipt), that is properly endorsed or accompanied by a properly executed instrument of transfer or endorsement shall be transferable by delivery with the same effect as in the case of a negotiable instrument; provided, however, that until a Receipt shall be transferred on the books of the Depositary as provided in Section 2.4, the Depositary may, notwithstanding any notice to the contrary, treat the record holder thereof at such time as the absolute owner thereof for the purpose of determining the person entitled to distribution of dividends or other distributions, the exercise of any conversion rights or to any notice provided for in this Deposit Agreement and for all other purposes.

SECTION 2.2. DEPOSIT OF PREFERRED SHARES: EXECUTION AND DELIVERY OF RECEIPTS IN RESPECT THEREOF. Concurrently with the execution of this Deposit Agreement, the Bank is delivering to the Depositary a certificate or certificates, registered in the name of the Depositary and evidencing 65,000 Preferred Shares, accompanied by a duly executed instrument of transfer or endorsement, in form satisfactory to the Depositary, together with (i) all such certifications as may be required by the Depositary in accordance with the provisions of this Deposit Agreement and (ii) a written order of the Bank directing the Depositary to execute and deliver to, or upon the written order of, the person or persons stated in such order a Receipt or Receipts for, and specifying, the Depositary Shares representing such deposited Preferred Shares. The Depositary acknowledges receipt of the deposited Preferred Shares and related documentation and agrees to hold such deposited Preferred Shares in an account to be established by the Depositary at the Corporate Office or at such other office as the Depositary shall determine. The Bank hereby appoints the Depositary as the Registrar and Transfer Agent for Preferred Shares deposited hereunder and the Depositary hereby accepts such appointment and, as such, will reflect changes in the number of shares of deposited Preferred Shares held by it by notation, book-entry or other appropriate method.

If required by the Depositary, Preferred Shares presented for deposit by the Bank at any time, whether or not the register of shareholders of the Bank is closed, shall also be accompanied by an agreement or assignment, or other instrument satisfactory to the Depositary, that will provide for the prompt transfer to the Depositary or its nominee of any dividend or right to subscribe for additional Preferred Shares or to receive other property that any person in whose name the Preferred Shares is or has been registered may thereafter receive upon or in respect of such deposited Preferred Shares, or in lieu thereof such agreement of indemnity or other agreement as shall be satisfactory to the Depositary.

Upon receipt by the Depositary of certificate or certificates for Preferred Shares deposited in accordance with the provisions set forth in this Deposit Agreement, together with

the other documents specified above, and upon registering such Preferred Shares in the name of the Depositary, the Depositary, subject to the terms and conditions of this Deposit Agreement, shall execute and deliver to, or upon the order of, the person or persons named in the written order delivered to the Depositary referred to in the first paragraph of this Section 2.2, a Receipt or Receipts for the number of Depositary Shares representing the Preferred Shares so deposited and registered in such name or names as may be requested by such person or persons. The Depositary shall execute and deliver such Receipt or Receipts at the Corporate Office, except that, at the written request, risk and expense of any person requesting such delivery, such delivery may be made at such other place as may be designated by such person.

Other than in the case of splits, combinations or other reclassifications affecting the Preferred Shares, or in the case of dividends or other distributions of Preferred Shares, if any, there shall be deposited hereunder not more than the number of shares constituting the Preferred Shares as set forth in the Designating Amendment, as such may be amended. The Depositary shall have no duty or obligation to monitor the number of Preferred Shares to be deposited for purposes of this paragraph.

The Bank shall deliver to the Depositary from time to time such quantities of Receipts as shall be necessary to enable the Depositary to perform its obligations under this Deposit Agreement.

SECTION 2.3. OPTIONAL REDEMPTION OF PREFERRED SHARES FOR CASH. Whenever the Bank shall elect to redeem deposited Preferred Shares for cash in accordance with the provisions of the Designating Amendment, it shall (unless otherwise agreed in writing with the Depositary) give the Depositary not less than 60 days' prior written notice of the date of such proposed redemption and of the number of such Preferred Shares held by the Depositary to be redeemed and the applicable redemption price, as set forth in the Designating Amendment. The Depositary shall mail, first-class postage prepaid, notice of the redemption of Preferred Shares and the proposed simultaneous redemption of the Depositary Shares representing the Preferred Shares to be redeemed, not less than 30 and not more than 60 days prior to the date fixed for redemption of such Preferred Shares and Depositary Shares (the "cash redemption date"), to the holders of record on the record date fixed for such redemption pursuant to Section 4.4 hereof of the Receipts evidencing the Depositary Shares to be so redeemed, at the addresses of such holders as the same appear on the records of the Depositary; but neither failure to mail any such notice to one or more such holders nor any defect in any such notice shall affect the sufficiency of the proceedings for redemption as to other holders. This Bank shall provide the Depositary with such notice, and each such notice shall state: the cash redemption date; the cash redemption price; the number of deposited Preferred Shares and Depositary Shares to be redeemed; if fewer than all the Depositary Shares held by any holder are to be redeemed, the number of such Depositary Shares held by such holder to be so redeemed; and the place or places where Receipts evidencing Depositary Shares to be redeemed are to be surrendered for payment of the cash redemption price. If fewer than all the outstanding Depositary Shares are to be redeemed, the Depositary Shares to be redeemed shall be selected by lot or pro rata (as nearly as may be practicable without creating fractional Depositary Shares) or by any other equitable method determined by the Bank (as set forth in a writing given to the Depositary). The Bank shall also cause notice of redemption to be published in a newspaper of general circulation in

The City of New York at least once a week for two successive weeks commencing not less than 30 nor more than 60 days prior to the cash redemption date.

In the event that notice of redemption has been made as described in the immediately preceding paragraph and the Bank has paid in full to the Depositary the cash redemption price (determined pursuant to the Designating Amendment) of the Preferred Shares deposited with the Depositary to be redeemed, the Depositary shall redeem the number of Depositary Shares representing such Preferred Shares so called for redemption by the Bank and from and after the cash redemption date (unless the Bank shall have failed to redeem the Preferred Shares to be redeemed by it as set forth in the Bank's notice provided for in the preceding paragraph), all dividends in respect of the Preferred Shares called for redemption shall cease to accrue, the Depositary Shares called for redemption shall be deemed no longer to be outstanding and all rights of the holders of Receipts evidencing such Depositary Shares (except the right to receive the cash redemption price and any money or other property to which holders of such Receipts were entitled upon such redemption) shall, to the extent of such Depositary Shares, cease and terminate. Upon surrender in accordance with said notice of the Receipts evidencing such Depositary Shares (properly endorsed or assigned for transfer), such Depositary Shares shall be redeemed at a cash redemption price of $25.00 per Depositary Share plus any other money and other property payable in respect of such Preferred Shares. The foregoing shall be further subject to the terms and conditions of the Designating Amendment.

If fewer than all of the Depositary Shares evidenced by a Receipt are called for redemption, the Depositary will deliver to the holder of such Receipt upon its surrender to the Depositary, together with payment of the cash redemption price for and all other amounts payable in respect of the Depositary Shares called for redemption, a new Receipt evidencing the Depositary Shares evidenced by such prior Receipt and not called for redemption.

SECTION 2.4. REGISTRATION OF TRANSFERS OF RECEIPTS. The Bank hereby appoints the Depositary as the Registrar and Transfer Agent for the Receipts and the Depositary hereby accepts such appointment and, as such, shall register on its books from time to time transfers of Receipts upon any surrender thereof by the holder, in person or by a duly authorized attorney, properly endorsed or accompanied by a properly executed instrument of transfer or endorsement, together with evidence of the payment of any taxes or governmental charges as may be required by law. Upon such surrender, the Depositary shall execute a new Receipt or Receipts and deliver the same to or upon the order of the person entitled thereto evidencing the same aggregate number of Depositary Shares evidenced by the Receipt or Receipts surrendered.

SECTION 2.5 COMBINATIONS AND SPLIT-UPS OF RECEIPTS. Upon surrender of a Receipt or Receipts at the Corporate Office or such other office as the Depositary may designate for the purpose of effecting a split-up or combination of Receipts, subject to the terms and conditions of this Deposit Agreement, the Depositary shall execute and deliver a new Receipt or Receipts in the authorized denominations requested evidencing the same aggregate number of Depositary Shares evidenced by the Receipt or Receipts surrendered.

SECTION 2.6. SURRENDER OF RECEIPTS AND WITHDRAWAL OF PREFERRED SHARES. Any holder of a Receipt or Receipts may withdraw any or all of the deposited Preferred Shares represented by the Depositary Shares evidenced by such Receipt or

Receipts and all money and other property, if any, represented by such Depositary Shares by surrendering such Receipt or Receipts at the Corporate Office or at such office as the Depositary may designate for such withdrawals; provided that a holder of a Receipt or Receipts may not withdraw such Preferred Shares (or money and other property, if any, represented thereby) which has previously been called for redemption. After such surrender and upon the receipt of written instructions from the holder of such Receipt or Receipts, without unreasonable delay (provided the Bank has provided the Depositary with all necessary documentation (and a sufficient amount of cash), the Depositary shall deliver to such holder, or to the person or persons designated by such holder as hereinafter provided, the number of shares of such Preferred Shares and all such money and other property, if any, represented by the Depositary Shares evidenced by the Receipt or Receipts so surrendered for withdrawal. Holders of such Preferred Shares will not thereafter be entitled to deposit such Preferred Shares hereunder or to receive Depositary Shares therefor. If the Receipt or Receipts delivered by the holder to the Depositary in connection with such withdrawal shall evidence a number of Depositary Shares in excess of the number of Depositary Shares representing the number of Preferred Shares to be withdrawn, the Depositary shall at the same time, in addition to such number of Preferred Shares and such money and other property, if any, to be withdrawn, deliver to such holder, upon the holder's written order, a new Receipt or Receipts evidencing such excess number of Depositary Shares. Delivery of such Preferred Shares and such money and other property being withdrawn may be made by the delivery of such certificates, documents of title and other instruments as the Depositary may deem appropriate, which shall be properly endorsed or accompanied by proper instruments of transfer.

If the deposited Preferred Shares and the money and other property being withdrawn are to be delivered to a person or persons other than the record holder of the Receipt or Receipts being surrendered for withdrawal of Preferred Shares, such holder shall execute and deliver to the Depositary a written order so directing the Depositary and the Receipt or Receipts surrendered by such holder for withdrawal of such Preferred Shares be properly endorsed in blank or accompanied by a properly executed instrument of transfer or endorsement in blank and that the signature on such instrument of transfer be guaranteed by an eligible guarantor institution pursuant to Rule 17 Ad-15 of the Securities Exchange Act of 1934, as amended.

The Depositary shall deliver the deposited Preferred Shares and the money and other property, if any, represented by the Depositary Shares evidenced by Receipts surrendered for withdrawal at the Corporate Office or such other office as the Depositary may designate for such purpose, except that, at the request, risk and expense of the holder surrendering such Receipt or Receipts and for the account of the holder thereof, such delivery may be made at such other place as may be designated by such holder.

SECTION 2.7. LIMITATIONS ON EXECUTION AND DELIVERY, TRANSFER, SPLIT-UP, COMBINATION, SURRENDER AND EXCHANGE OF RECEIPTS. As a condition precedent to the execution and delivery, transfer, split-up, combination, surrender or exchange of any Receipt, the Depositary, any of the Depositary's Agents or the Bank may require any or all of the following: (i) payment to it of a sum sufficient for the payment (or, in the event that the Bank shall have made such payment, the reimbursement to it) of any tax or other governmental charge with respect thereto (including any such tax or charge with respect to the Preferred Shares being deposited or withdrawn); (ii) the production of proof satisfactory to it as to the identity and genuineness of any signature (or the authority of any signature); and

(iii) compliance with such regulations, if any, as the Depositary or the Bank may establish consistent with the provisions of this Deposit Agreement as may be required by any securities exchange upon which the deposited Preferred Shares, the Depositary Shares or the Receipts may be included for quotation or listed.

The deposit of Preferred Shares may be refused, the delivery of Receipts against Preferred Shares may be suspended, the transfer of Receipts may be refused, and the transfer, split-up, combination, surrender, exchange or redemption of outstanding Receipts may be suspended (i) during any period when the register of shareholders of the Bank is closed or (ii) if any such action is deemed reasonably necessary or advisable by the Depositary, any of the Depositary's Agents or the Bank at any time or from time to time because of any requirement of law or of any government or governmental body or commission or under any provision of this Deposit Agreement.

SECTION 2.8. LOST RECEIPTS, ETC. In case any Receipt shall be mutilated or destroyed or lost or stolen, the Depositary, in its discretion, may execute and deliver a Receipt of like form and tenor in exchange and substitution for such mutilated Receipt or in lieu of and in substitution for such destroyed, lost or stolen Receipt; provided that the holder thereof provides the Depositary with (i) evidence satisfactory to the Depositary of such destruction, loss or theft of such Receipt, of the authenticity thereof and of his ownership thereof, including, without limitation, an affidavit of loss, (ii) indemnification satisfactory to the Depositary and the Bank, including, without limitation, a bond of indemnity, and (iii) payment of any expense (including fees, charges and expenses of the Depositary and its agents and counsel) in connection with such execution and delivery.

SECTION 2.9. CANCELLATION AND DESTRUCTION OF SURRENDERED RECEIPTS. All Receipts surrendered to the depositary or any Depositary's Agent shall be cancelled by the Depositary. Except as prohibited by applicable law or regulation, the Depositary is authorized to destroy such Receipts so cancelled.

ARTICLE III

CERTAIN OBLIGATIONS OF HOLDERS OF RECEIPTS AND THE COMPANY

SECTION 3.1. FILING PROOFS, CERTIFICATES AND OTHER INFORMATION. The Bank, upon presenting Preferred Shares for deposit or any holder of a Receipt may be required from time to time to file such proof of residence or other information, to execute such certificates and to make such representations and warranties as the Depositary or the Bank may deem necessary or proper. The Depositary or the Bank may withhold or delay the delivery of any Receipt, the transfer, redemption or exchange of any Receipt, the withdrawal of the deposited Preferred Shares represented by the Depositary Shares evidenced by any Receipt, the distribution of any dividend or other distribution or the sale of any rights or of the proceeds thereof, until such proof or other information is filed, such certificates are executed or such representations and warranties are made.

SECTION 3.2. PAYMENT OF FEES AND EXPENSES. Holders of Receipts shall be obligated to make payments to the Depositary of certain fees and expenses, as provided

in Section 5.7, or provide evidence satisfactory to the Depositary that such fees and expenses have been paid. Until such payment is made, transfer of any Receipt or any withdrawal of the Preferred Shares or money or other property, if any, represented by the Depositary Shares evidenced by such Receipt may be refused, any dividend or other distribution may be withheld, and any part or all of the Preferred Shares or other property represented by the Depositary Shares evidenced by such Receipt may be sold for the account of the holder thereof (after attempting to notify such holder prior to such sale). Any dividend or other distribution so withheld and the proceeds of any such sale may be applied to any payment of such fees or expenses, the holder of such Receipt remaining liable for any deficiency.

SECTION 3.3. REPRESENTATIONS AND WARRANTIES AS TO PREFERRED SHARES. In the case of the initial deposit of the Preferred Shares hereunder, the Bank and, in the case of subsequent deposits thereof, each person so depositing Preferred Shares under this Deposit Agreement shall be deemed thereby to represent and warrant that such Preferred Shares and each certificate therefor are valid and that the person making such deposit is duly authorized to do so. The Bank hereby further represents and warrants that such Preferred Shares, when issued, will be validly issued, fully paid and nonassessable. Such representations and warranties shall survive the deposit of the Preferred Shares and the issuance of Receipts.

SECTION 3.4. REPRESENTATION AND WARRANTY AS TO RECEIPTS AND DEPOSITARY SHARES. The Bank hereby represents and warrants that the Receipts, when issued, will evidence legal and valid interests in the Depositary Shares and each Depositary Share will represent a legal and valid 1/40 fractional interest in a deposited Preferred Share. Such representation and warranty shall survive the deposit of the Preferred Shares and the issuance of Receipts evidencing the Depositary Shares.

ARTICLE IV

THE PREFERRED SHARES; NOTICES

SECTION 4.1. CASH DISTRIBUTIONS. Whenever the Depositary shall receive any cash dividend or other cash distribution on the deposited Preferred Shares, including any cash received upon redemption of any Preferred Shares pursuant to Section 2.3, the Depositary shall, upon written instructions from the Bank, subject to Section 3.2, distribute to record holders of Receipts on the record date fixed pursuant to Section 4.4 such amounts, as determined by the Bank, of such sum as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts held by such holders; provided, however, that in case the Bank or the Depositary shall be required to and shall withhold from any cash dividend or other cash distribution in respect of the Preferred Shares represented by the Receipts held by any holder an amount on account of taxes, the amount made available for distribution or distributed in respect of Depositary Shares represented by such Receipts subject to such withholding shall be reduced accordingly. The Depositary shall distribute or make available for distribution, as the case may be and in accordance with the Bank's written instructions, only such amount, however, as can be distributed without attributing to any holder of Receipts a fraction of one cent by rounding the amount of any distribution to the record holder of Receipts to the nearest whole cent; provided, however, that in the event the Depositary requires an additional amount in connection with such rounding to avoid the distribution of a fraction of one cent to

any holder, the Depositary shall notify the Bank of the amount necessary and the Bank shall promptly deliver such amount to the Depositary.

SECTION 4.2. DISTRIBUTIONS OTHER THAN CASH. Whenever the Depositary shall receive any distribution other than cash on the deposited Preferred Shares, the Depositary shall, subject to Section 3.2, distribute to record holders of Receipts on the record date fixed pursuant to Section 4.4 such amounts, as determined by the Bank and set forth in writing, of the securities or property received by it as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts held by such holders. If the Bank determines that such distribution cannot be made proportionately among such record holders, or if for any other reason (including any requirement that the Bank or the Depositary withhold an amount on account of taxes) the Bank determines that such distribution is not feasible, then the Bank shall adopt such method as it deems equitable and practicable for the purpose of effecting such distribution, including the sale (at public or private sale) of the securities or property received by the Depositary or any part thereof (on behalf of the holders of Receipts), at such place or places and upon such terms as it may deem proper. The net proceeds of any such sale shall, subject to Section 3.2, be distributed or made available for distribution, as the case may be, by the Depositary to record holders of Receipts as provided by Section 4.1 in the case of a distribution received in cash. The Bank shall not make any distribution of such securities or property to the holders of Receipts unless the Bank shall have provided to the Depositary an opinion of counsel stating that such securities or property have been registered under the Securities Act or do not need to be registered. The Bank shall advise the Depositary in writing of the nature of any property, and if the Depositary in its judgment determines that it may incur liability by reason of being deemed an owner thereof, the Depositary shall have the right to refuse such property, but the Depositary shall assist the Bank in determining an appropriate means of distributing such property.

SECTION 4.3. SUBSCRIPTION RIGHTS, PREFERENCES OR PRIVILEGES. If the Bank shall at any time offer or cause to be offered to the persons in whose names deposited Preferred Shares are registered on the books of the Bank any rights, preferences or privileges to subscribe for or to purchase any securities or any rights, preferences or privileges of any other nature, such rights, preferences or privileges shall in each such instance be made available by the Depositary to the record holders of Receipts in such manner as the Bank shall instruct in writing (including by the issue to such record holders of warrants representing such rights, preferences or privileges); provided, however, that (a) if at the time of issue or offer of any such rights, preferences or privileges the Bank determines upon advice of its legal counsel that it is not lawful or feasible to make such rights, preferences or privileges available to the holders of Receipts (by the issue of warrants or otherwise) or (b) if and to the extent instructed by holders of Receipts who do not desire to exercise such rights, preferences or privileges, the Depositary shall then, if so instructed in writing by the Bank, and if applicable laws or the terms of such rights, preferences or privileges so permit, sell such rights, preferences or privileges of such holders at public or private sale, at such place or places and upon such terms as it may deem proper. The net proceeds of any such sale shall, subject to Section 3.1 and Section 3.2, upon written notice to the Depositary, be distributed by the Depositary to the record holders of Receipts entitled thereto as provided by Section 4.1 in the case of a distribution received in cash. The Bank shall not make any distribution of such rights, preferences or privileges, unless the Bank shall have provided to the Depositary an opinion of counsel stating that the distribution of such rights, preferences or privileges have been registered under the Securities Act or do not need to be registered.

If registration under the Securities Act of the securities to which any rights, preferences or privileges relate is required in order for holders of Receipts to be offered or sold the securities to which such rights, preferences or privileges relate, the Bank agrees that it will promptly file a registration statement pursuant to the Securities Act with respect to such rights, preferences or privileges and securities and use its best efforts and take all steps available to it to cause such registration statement to become effective sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges, and the Bank shall notify the Depositary in writing when such registration statement becomes effective. In no event shall the Depositary make available to the holders of Receipts any right, preference or privilege to subscribe for or to purchase any securities unless and until such a registration statement shall have become effective or unless the offering and sale of such securities to such holders are exempt from registration under the provisions of the Securities Act and the Bank shall have provided to the Depositary an opinion of counsel to such effect.

If any other action under the law of any jurisdiction or any governmental or administrative authorization, consent or permit is required in order for such rights, preferences or privileges to be made available to holders of Receipts, the Bank agrees to use its best efforts to take such action or obtain such authorization, consent or permit sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges.

SECTION 4.4. NOTICE OF DIVIDENDS; FIXING OF RECORD DATE FOR HOLDERS OF RECEIPTS. Whenever any cash dividend or other cash distribution shall become payable, any distribution other than cash shall be made, or any rights, preferences or privileges shall at any time be offered, with respect to the deposited Preferred Shares, or whenever the Depositary shall receive written notice of (i) any meeting at which holders of such Preferred Shares are entitled to vote or of which holders of such Preferred Shares are entitled to notice or (ii) any election on the part of the Bank to redeem any such Preferred Shares, the Depositary shall in each such instance fix a record date (which shall be the same date as the record date fixed by the Bank with respect to the Preferred Shares) for the determination of the holders of Receipts who shall be entitled to receive such dividend, distribution, rights, preferences or privileges or the net proceeds of the sale thereof, to give instructions for the exercise of voting rights at any such meeting or to receive notice of such meeting or whose Depositary Shares are to be so redeemed.

SECTION 4.5. VOTING RIGHTS. Upon receipt of written notice of any meeting at which the holders of deposited Preferred Shares are entitled to vote, the Depositary shall, as soon as practicable thereafter, mail to the record holders of Receipts a notice, which shall be provided by the Bank and which shall contain (i) such information as is contained in such notice of meeting, (ii) a statement that the holders of Receipts at the close of business on a specified record date fixed pursuant to Section 4.4 will be entitled, subject to any applicable provision of law, to instruct the Depositary as to the exercise of the voting rights pertaining to the amount of Preferred Shares represented by their respective Depositary Shares and (iii) a brief statement as to the manner in which such instructions may be given. Upon the written request of a holder of a

Receipt on such record date, the Depositary shall vote or cause to be voted the amount of Preferred Shares represented by the Depositary Shares evidenced by such Receipt in accordance with the instructions (and as nearly as possible in the event the holder's Depositary Shares represent a fractional Preferred Share) set forth in such request. Each Preferred Share, when voting as a separate series, is entitled to 40 votes and, accordingly, each Depositary Share is entitled to one vote. On any matter in which the Preferred Shares are entitled to vote as a class with holders of any other shares upon which like voting rights have been conferred and are exercisable, each Preferred Share will be entitled to one vote. The Bank hereby agrees to take all reasonable action that may be deemed necessary by the Depositary in order to enable the Depositary to vote such Preferred Shares or cause such Preferred Shares to be voted. In the absence of specific instructions from the holder of a Receipt, the Depositary will abstain from voting to the extent of the Preferred Shares represented by the Depositary Shares evidenced by such Receipt. The Depositary shall not be required to exercise discretion in voting any Preferred Shares represented by the Depositary Shares evidenced by such Receipt.

SECTION 4.6. CHANGES AFFECTING PREFERRED SHARES AND RECLASSIFICATIONS, RECAPITALIZATION, ETC. Upon any change in par or stated value, split-up, combination or any other reclassification of preferred shares, or upon any recapitalization, reorganization, merger, amalgamation or consolidation affecting the bank or to which it is a party or sale of all or substantially all of the bank's assets, the depositary shall, upon the written instructions of the bank: (i) make such adjustments in (a) the fraction of an interest represented by one depositary share in one preferred share and (b) the ratio of the redemption price per depositary share to the redemption price of a preferred share, in each case as may be required by or as is consistent with the provisions of the designating amendment to fully reflect the effects of such change in liquidation value, split-up, combination or other reclassification of shares, or of such recapitalization, reorganization, merger, consolidation or sale and (ii) treat any shares or other securities or property (including cash) that shall be received by the depositary in exchange for or upon conversion of or in respect of the preferred shares as new deposited property under this deposit agreement, and receipts then outstanding shall thenceforth represent the proportionate interests of holders thereof or the new deposited property so received in exchange for or upon conversion or in respect of such preferred shares. In any such case the Depositary shall, upon the written instructions of the Bank, execute and deliver additional Receipts, or may call for the surrender of all outstanding Receipts to be exchanged for new Receipts specifically describing such new deposited property. Anything to the contrary herein notwithstanding, holders of Receipts shall have the right from and after the effective date of any such change in par or stated value, split-up, combination or other reclassification of the Preferred Shares or any such recapitalization, reorganization, merger, amalgamation or consolidation or sale of substantially all the assets of the Bank to surrender such Receipts to the Depositary with written instructions to convert, exchange or surrender the Preferred Shares represented thereby only into or for, as the case may be, the kind and amount of shares and other securities and property and cash into which the deposited Preferred Shares evidenced by such Receipts might have been converted or for which such Preferred Shares might have been exchanged or surrendered immediately prior to the effective date of such transaction. The Bank shall cause effective provisions to be included in the charter of the resulting or surviving corporation (if other than the Bank) for protection of such rights as may be applicable upon exchange of the deposited Preferred Shares for securities or property or cash of the surviving corporation in

connection with the transactions set forth above. The Bank shall cause any such surviving corporation (if other than the Bank) expressly to assume the obligations of the Bank hereunder.

SECTION 4.7. INSPECTION OF REPORTS. The Depositary shall make available for inspection by holders of Receipts at the Corporate Office and at such other places as it may from time to time deem advisable during normal business hours any reports and communications received from the Bank that are both received by the Depositary as the holder of deposited Preferred Shares and made generally available to the holders of the Preferred Shares. In addition, the Depositary shall transmit certain notices and reports to the holders of Receipts as provided in Section 5.5.

SECTION 4.8. LISTS OF RECEIPT HOLDERS. Promptly upon written request from time to time by the Bank, the Depositary shall furnish to the Bank a list, as of a recent date specified by the Bank, of the names, addresses and holdings of Depositary Shares of all persons in whose names Receipts are registered on the books of the Depositary.

SECTION 4.9. TAX AND REGULATORY COMPLIANCE. The Depositary shall be responsible for (i) preparation and mailing of form 1099s for all open and closed accounts, (ii) foreign tax withholding, (iii) any withholding required by then applicable law of dividends from eligible holders of Receipts if directed to do so by the Bank or required to do so by applicable law, (iv) mailing W-9 forms to new holders of Receipts without a certified taxpayer identification number, (v) processing certified W-9 forms, (vi) preparation and filing of state information returns and (vii) escheatment services.

SECTION 4.10. WITHHOLDING. Notwithstanding any other provision of this Deposit Agreement, in the event that the Depositary determines that any distribution in property is subject to any tax which the Depositary is obligated by law to withhold, the Depositary may dispose of all or a portion of such property in such amounts and in such manner as the Depositary deems necessary and practicable to pay such taxes, by public or private sale, and the Depositary shall distribute the net proceeds of any such sale or the balance of any such property after deduction of such taxes to the holders of Receipts entitled thereto in proportion to the number of Depositary Shares held by them respectively.

ARTICLE V

THE DEPOSITARY, THE DEPOSITARY'S AGENTS, THE REGISTRAR, THE TRANSFER AGENT AND THE COMPANY

For purposes of this Article V, "Depositary" shall also mean "Registrar" and/or "Transfer Agent", as the case may be.

SECTION 5.1. MAINTENANCE OF OFFICES, AGENCIES AND TRANSFER BOOKS BY THE DEPOSITARY AND THE REGISTRAR The Depositary shall maintain at the Corporate Office facilities for the execution and delivery, transfer, surrender and exchange, split-up, combination and redemption of Receipts and deposit and withdrawal of Preferred Shares and at the offices of the Depositary's Agents, if any, facilities for the delivery, transfer,

surrender and exchange, split-up, combination and redemption of Receipts and deposit and withdrawal of Preferred Shares, all in accordance with the provisions of this Deposit Agreement.

The Depositary shall keep books at the Corporate Office for the registration and transfer of Receipts, which books at all reasonable times during normal business hours shall be open for inspection by the record holders of Receipts as provided by applicable law; provided, that any such holder requesting to exercise such right shall certify to the Depositary that such inspection shall be for a proper purpose reasonably related to such person's interest as an owner of Depositary Shares evidenced by the Receipts. The Depositary may close such books, at any time or from time to time, when deemed expedient by it in connection with the performance of its duties hereunder.

If the Receipts or the Depositary Shares evidenced thereby or the Preferred Shares represented by such Depositary Shares shall be listed on the New York Stock Exchange or any other stock exchange, the Depositary may, with the written approval of the Bank, appoint a Registrar (acceptable to the Bank) for registration of such Receipts or Depositary Shares in accordance with the requirements of such stock exchange. Such Registrar (which may be the Depositary if so permitted by the requirements of such stock exchange) may be removed and a substitute registrar appointed by the Depositary upon the written request or with the written approval of the Bank. If the Receipts, such Depositary Shares or such Preferred Shares are listed on one or more other stock exchanges, the Depositary will, at the written request and expense of the Bank, arrange such facilities for the delivery, transfer, surrender, redemption and exchange of such Receipts, such Depositary Shares or such Preferred Shares as may be required by law or applicable stock exchange regulations.

SECTION 5.2. PREVENTION OR DELAY IN PERFORMANCE BY THE DEPOSITARY, THE DEPOSITARY'S AGENTS, THE REGISTRAR OR THE BANK Neither the Depositary, any Depositary's Agent, any Registrar nor the Bank shall incur any liability to any holder of any Receipt or any beneficial owner, if by reason of any provision of any present or future law or regulation thereunder of the United States of America or of any other governmental authority or, in the case of the Depositary, the Depositary's Agent or any Registrar, by reason of any provision, present or future, of the Articles of Incorporation or the Designating Amendment or, in the case of the Bank, the Depositary, the Depositary's Agent or any Registrar, by reason of any act of God or war or other circumstance beyond the control of the relevant party, the Depositary, the Depositary's Agent, any Registrar or the Bank shall be prevented or forbidden from doing or performing any act or thing that the terms of this Deposit Agreement provide shall be done or performed; nor shall the Depositary, any Depositary's Agent, any Registrar or the Bank incur any liability to any holder of a Receipt or any beneficial owner by reason of any nonperformance or delay, caused as aforesaid, in the performance of any act or thing that the terms of this Deposit Agreement provide shall or may be done or performed, or by reason of any exercise of, or failure to exercise, any discretion provided for in this Deposit Agreement.

SECTION 5.3. OBLIGATIONS OF THE DEPOSITARY, THE DEPOSITARY'S AGENTS, THE REGISTRAR, THE TRANSFER AGENT AND THE BANK Neither the Depositary, any Depositary's Agent, any Registrar, any Transfer Agent nor the Bank assumes any obligation or shall be subject to any liability to the Bank or any other person or entity

(including, without limitation, to holders of Receipts or to beneficial owners) under this Deposit Agreement or any Receipt, other than from acts or omissions arising out of conduct constituting bad faith, gross negligence or willful misconduct (each as finally determined by a court of competent jurisdiction) in the performance of such duties as are specifically set forth in this Deposit Agreement. Under no circumstances shall the Depositary, any Depositary's Agent, any Transfer Agent or any Registrar be liable for any special, punitive, indirect, incidental or consequential loss or damage of any kind whatsoever (including, but not limited to, lost profits), even if they have been advised of the likelihood of such loss or damage and regardless of the form of action.

Neither the Depositary, any Depositary's Agent, any Registrar nor the Bank shall be under any obligation to appear in, prosecute or defend any action, suit or other proceeding with respect to the deposited Preferred Shares, Depositary Shares or Receipts that in its reasonable opinion may involve it in expense or liability unless indemnity reasonably satisfactory to it against all expense and liability be furnished as often as may be required.

Neither the Depositary, any Depositary's Agent, any Registrar nor the Bank shall be liable for any action or any failure to act by it in reliance upon the advice or opinion of legal counsel or accountants, or information provided by any person presenting Preferred Shares for deposit, any holder of a Receipt or any other person believed by it to be competent to give such information. The Depositary, any Depositary's Agent, any Registrar and the Bank may each rely and shall each be fully protected in acting upon any written notice, request, instruction, direction or other document believed by it to be genuine and to have been signed or presented by the proper party or parties.

In the event the Depositary shall receive conflicting claims, requests or instructions from any holders of Receipts, on the one hand, and the Bank, on the other hand, the Depositary shall be entitled to act on such claims, requests or instructions received from the Bank, and shall be entitled to the full indemnification set forth in Section 5.6 hereof in connection with any action so taken. In the event the Depositary believes any ambiguity or uncertainty exists in any notice, instruction, direction, request or other communication, paper or document received by the Depositary from the Bank pursuant hereto, the Depositary will promptly notify the Bank of the details of such alleged ambiguity or uncertainty, and may, in its reasonable discretion, refrain from taking any action, and shall be fully protected and shall not be liable in any way to any person for refraining from taking such action, absent gross negligence or willful misconduct (each as finally determined by a court of competent jurisdiction), unless the Depositary receives written instructions with respect to such matter signed by the Bank which eliminates such ambiguity or uncertainty to the satisfaction of the Depositary.

The Depositary shall not be responsible for any failure to carry out any instruction to vote any of the deposited Preferred Shares or for the manner or effect of any such vote made, as long as any such action or non-action does not result from gross negligence or willful misconduct of the Depositary (each as finally determined by a court of competent jurisdiction). The Depositary undertakes, any Registrar and any Transfer Agent shall be required to undertake to perform such duties and only such duties as are specifically set forth in this Deposit Agreement, and no implied covenants or obligations shall be read into this Agreement or imposed upon the Depositary, any Registrar or any Transfer Agent.

The Depositary, its parent, affiliate, or subsidiaries, any Depositary's Agent, and any Registrar or Transfer Agent may own, buy, sell or deal in any class of securities of the Bank and its affiliates and in Receipts or Depositary Shares or become pecuniarily interested in any transaction in which the Bank or its affiliates may be interested or contract with or lend money to or otherwise act as fully or as freely as if it were not the Depositary or the Depositary's Agent hereunder. The Depositary may also act as transfer agent or registrar of any of the securities of the Bank and its affiliates or act in any other capacity for the Bank or its affiliates.

It is intended that neither the Depositary nor any Depositary's Agent shall be deemed to be an "issuer" of the securities under the federal securities laws or applicable state securities laws, it being expressly understood and agreed that the Depositary and any Depositary's Agent are acting only in a ministerial capacity as Depositary for the deposited Preferred Shares; provided, however, that the Depositary agrees to comply with all information reporting and withholding requirements applicable to it under law or this Deposit Agreement in its capacity as Depositary.

Neither the Depositary (or its officers, directors, employees or agents) nor any Depositary's Agent makes any representation or has any responsibility as to the validity of any registration statement pursuant to which the Depositary Shares may be registered under the Securities Act, the deposited Preferred Shares, the Depositary Shares, the Receipts (except its countersignature thereon) or any instruments referred to therein or herein, or as to the correctness of any statement made in any such registration statement or herein.

The Bank agrees that it will register the deposited Preferred Shares and the Depositary Shares if required by the applicable securities laws, it being agreed that such registration is not required under current rules and regulations.

The Depositary hereunder:

(i) shall have no duties or obligations other than those specifically set forth herein (and no implied duties or obligations), or as may subsequently be agreed to in writing by the parties;

(ii) shall have no obligation to make payment hereunder unless the Bank shall have provided the necessary federal or other immediately available funds or securities or property, as the case may be, to pay in full amounts due and payable with respect thereto;

(iii) shall not be obligated to take any legal or other action hereunder; if, however, the Depositary determines to take any legal or other action hereunder, and, where the taking of such action might in the Depositary's judgment subject or expose it to any expense or liability, the Depositary shall not be required to act unless it shall have been furnished with an indemnity satisfactory to it;

(iv) may rely on and shall be authorized and protected in acting or failing to act upon any certificate, instrument, opinion, notice, letter, telegram, telex, facsimile transmission or other document or security delivered to the Depositary and believed by the Depositary to be genuine and to have been signed by the proper party or parties, and shall have no responsibility for determining the accuracy thereof;

(v) may rely on and shall be authorized and protected in acting or failing to act upon the written, telephonic, electronic and oral instructions, with respect to any matter relating to the Depositary's actions as depositary covered by this Deposit Agreement (or supplementing or qualifying any such actions) of officers of the Bank;

(vi) may consult counsel satisfactory to it, and the advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by the Depositary hereunder in accordance with the advice of such counsel;

(vii) shall not be called upon at any time to advise any person with respect to the Preferred Shares or Receipts;

(viii) shall not be liable or responsible for any recital or statement contained in any documents relating hereto or the Preferred Shares or Receipts; and

(ix) shall not be liable in any respect on account of the identity, authority or rights of the parties (other than with respect to the Depositary) executing or delivering or purporting to execute or deliver this Deposit Agreement or any documents or papers deposited or called for under this Deposit Agreement.

SECTION 5.4. RESIGNATION AND REMOVAL OF THE DEPOSITARY; APPOINTMENT OF SUCCESSOR DEPOSITARY. The Depositary may at any time resign as Depositary hereunder by notice of its election to do so delivered to the Bank, such resignation to take effect upon the appointment of a successor depositary and its acceptance of such appointment as hereinafter provided.

The Depositary may at any time be removed by the Bank by written notice of such removal delivered to the Depositary, such removal to take effect upon the appointment of a successor depositary and its acceptance of such appointment as hereinafter provided.

In case at any time the Depositary acting hereunder shall resign or be removed, the Bank shall, within 60 days after the delivery of the notice of resignation or removal, as the case may be, appoint a successor depositary, which shall be (i) a bank or trust company having its principal office in the United States of America and having a combined capital and surplus of at least $50,000,000 or (ii) an Affiliate of any such bank or trust company. If a successor depositary shall not have been appointed within 60 days of the date of the applicable notice, the resigning Depositary may, at the expense of the Bank, petition a court of competent jurisdiction to appoint a successor depositary. Every successor depositary shall execute and deliver to its predecessor and to the Bank an instrument in writing accepting its appointment hereunder, and thereupon such successor depositary, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor and for all purposes shall be the Depositary under this Deposit Agreement, and such predecessor, upon payment of all sums due it and on the written request of the Bank, shall promptly execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder, shall duly assign, transfer and deliver all rights, title and interest in the deposited Preferred Shares and any moneys or property held hereunder to such successor and shall deliver to such successor a list of

the record holders of all outstanding Receipts. Any successor depositary shall promptly mail notice of its appointment to the record holders of Receipts.

Any entity into or with which the Depositary may be merged, consolidated or converted shall be the successor of such Depositary without the execution or filing of any document or any further act. Such successor depositary may execute the Receipts either in the name of the predecessor depositary or in the name of the successor depositary.

SECTION 5.5. NOTICES. REPORTS AND DOCUMENTS. The Bank agrees that it will deliver to the Depositary, and the depositary will, promptly after receipt thereof, transmit to the record holders of Receipts, in each case at the address recorded in the Depositary's books, copies of all notices and reports (including financial statements) required by law, by the rules of any national securities exchange upon which the Preferred Shares, the Depositary Shares or the Receipts are included for quotation or listed or by the Articles of Incorporation and the Designating Amendment to be furnished by the Bank to holders of the deposited Preferred Shares and, if requested by the holder of any Receipt, a copy of this Deposit Agreement and the form of Receipt. Such transmission will be at the Bank's expense and the Bank will provide the Depositary with such number of copies of such documents as the Depositary may reasonably request. In addition, the Depositary will transmit to the record holders of Receipts at the Bank's expense such other documents as may be requested by the Bank.

SECTION 5.6. INDEMNIFICATION BY THE BANK. The Bank agrees to indemnify the Depositary, any Depositary's Agent, any Transfer Agent and any Registrar against, and hold each of them harmless from and against, any fee, loss, claim, penalty, fine, settlement, judgment, damage liability, cost and expense (including reasonable attorneys' fees and expenses) that may arise out of, or in connection with, its acting as Depositary, Depositary's Agent, Transfer Agent or Registrar, respectively, under this Deposit Agreement and the Receipts, except for any liability arising out of the willful misconduct, gross negligence, or bad faith (each as finally determined by a court of competent jurisdiction) on the part of any such person or persons. The obligations of the Bank set forth in this Section 5.6 shall survive any resignation or removal of any Depositary, Registrar, Transfer Agent or Depositary's Agent or termination of this Deposit Agreement.

SECTION 5.7. FEES. CHARGES AND EXPENSES. No charges and expenses of the Depositary or any Depositary's Agent hereunder shall be payable by any person, except as provided in this Section 5.7. The Bank shall pay all transfer and other taxes and governmental charges arising solely from the existence of this Deposit Agreement. The Bank shall also pay all fees and expenses of the Depositary, Registrar, Transfer Agent and Depositary's Agent in connection with the deposit of the Preferred Shares and the issuance of the Depositary Shares evidenced by the Receipts, any redemption of the Preferred Shares at the option of the Bank and all withdrawals of the Preferred Shares by holders of Depositary Shares. If a holder of Receipts requests the Depositary to perform duties not required under this Deposit Agreement, the Depositary shall notify the holder of the cost of the performance of such duties prior to the performance thereof. Such holder will be liable for the charges and expenses related to such performance. All other fees and expenses of the Depositary and any Depositary's Agent hereunder and of any Registrar and any Transfer Agent (including, in each case, fees and expenses of counsel) incident to the performance of their respective obligations hereunder will

be promptly paid as previously agreed between the Depositary and the Bank. The Depositary shall present its statement for fees and expenses to the Bank every month or at such other intervals as the Bank and the Depositary may agree.

ARTICLE VI

AMENDMENT AND TERMINATION

SECTION 6.1. AMENDMENT. The form of the Receipts and any provision of this Deposit Agreement may at any time and from time to time be amended by written agreement between the Bank and the Depositary in any respect that they may deem necessary or desirable; provided, however, that no such amendment (other than any change in the fees of any Depositary, Registrar or Transfer Agent) which (i) shall materially and adversely alter the rights of the holders of Receipts or (ii) would be materially and adversely inconsistent with the rights granted to the holders of the Preferred Shares pursuant to the Designating Amendment shall be effective unless such amendment shall have been approved by the holders of at least a majority of the Depositary Shares then outstanding. In no event shall any amendment (i) impair the right, subject to the provisions of Section 2.6 and Section 2.7 and Article III, of any holder of any Depositary Shares to surrender the Receipt evidencing such Depositary Shares with instructions to the Depositary to deliver to the holder the deposited Preferred Shares and all money and other property, if any, represented thereby, or (ii) alter the tax treatment set forth in the offering circular under the caption "U.S. Federal Income Tax Consideration," except in order to comply with mandatory provisions of applicable law. As a condition precedent to the Depositary's execution of any amendment, the Bank shall deliver to the Depositary a certificate from an appropriate officer of the Bank that states that the proposed amendment is in compliance with the terms of this Section 6.1. Every holder of an outstanding Receipt at the time any such amendment becomes effective shall be deemed, by continuing to hold such Receipt, to consent and agree to such amendment and to be bound by this Deposit Agreement as amended thereby.

SECTION 6.2. TERMINATION. This Deposit Agreement may be terminated by the Bank upon not less than 30 days' prior written notice to the Depositary if the holders of a majority of the Depositary Shares consent to such termination, whereupon the Depositary shall deliver or make available to each holder of a Receipt, upon surrender of the Receipt held by such holder, such number of deposited Preferred Shares that are represented by the Depositary Shares evidenced by such Receipt, together with any other property held by the Depositary in respect of such Receipt. This Deposit Agreement will automatically terminate if (i) all outstanding Preferred Shares shall have been redeemed and the depositary has distributed the proceeds to the holders of the Depositary Shares or (ii) there shall have been made a final distribution in respect of the deposited Preferred Shares in connection with any liquidation, dissolution or winding up of the Bank and such distribution shall have been distributed to the holders of Receipts entitled thereto.

Upon the termination of this Deposit Agreement, the Bank shall be discharged from all obligations under this Deposit Agreement except for its obligations to the Depositary, any Depositary's Agent, any Transfer Agent and any Registrar under Section 5.6 and Section 5.7.

ARTICLE VII

MISCELLANEOUS

SECTION 7.1. COUNTERPARTS. This Deposit Agreement may be executed in any number of counterparts, and by each of the parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Deposit Agreement by telecopier shall be effective as delivery of a manually executed counterpart of this Deposit Agreement. Copies of this Deposit Agreement shall be filed with the Depositary and the Depositary's Agents and shall be open to inspection during business hours at the Corporate Office and the respective offices of the Depositary's Agents, if any, by any holder of a Receipt.

SECTION 7.2. EXCLUSIVE BENEFIT OF PARTIES. This Deposit Agreement is for the exclusive benefit of the parties hereto, and their respective successors hereunder, and shall not be deemed to give any legal or equitable right, remedy or claim to any other person whatsoever.

SECTION 7.3. INVALIDITY OF PROVISIONS. In case any one or more of the provisions contained in this Deposit Agreement or in the Receipts should be or become invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein or therein shall in no way be affected, prejudiced or disturbed thereby.

SECTION 7.4. NOTICES. Any and all notices to be given to the Bank hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, or by telegram or facsimile transmission confirmed by letter, addressed to the Bank at:

First Republic Bank
111 Pine Street
San Francisco, California 94111
Attn: Willis H. Newton Jr.
Facsimile No.: (415) 392-0758

or at any other address of which the Bank shall have notified the Depositary in writing.

Any notices to be given to the Depositary hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, or by telegram or facsimile transmission confirmed by letter, addressed to the Depositary at:

Mellon Investor Services LLC
235 Montgomery Street, 23rd Floor
San Francisco, California 94104
Attn: Relationship Manager
Facsimile No.: (415) 989-5241

with a copy to:

Mellon Investor Services LLC
85 Challenger Road
Ridgefield Park, New Jersey 07660
Attention: General Counsel
Facsimile: (201) 296-4004

Any notices given to any record holder of a Receipt hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, or by telegram or facsimile transmission confirmed by letter, addressed to such record holder at the address of such record holder as it appears on the books of the Depositary or, if such holder shall have filed with the Depositary in a timely manner a written request that notices intended for such holder be mailed to some other address, at the address designated in such request.

Delivery of a notice to the Bank or the Depositary sent by mail, or by telegram or facsimile transmission shall be deemed to be effected at the time when written confirmation thereof is received by the person or entity delivering such notice. The Depositary or the Bank may, however, act upon any notice sent by mail, telegram or facsimile transmission received by it from the other or from any holder of a Receipt, notwithstanding that such notice shall not subsequently be confirmed as aforesaid.

SECTION 7.5. DEPOSITARY'S AGENTS. The Depositary may from time to time appoint Depositary's Agents to act in any respect for the Depositary for the purposes of this Deposit Agreement and may at any time appoint additional Depositary's Agents and vary or terminate the appointment of such Depositary's Agents. The Depositary will notify the Bank of any such action.

SECTION 7.6. HOLDERS OF RECEIPTS ARE PARTIES. The holders of Receipts from time to time shall be deemed to be parties to this Deposit Agreement and shall be bound by all of the terms and conditions hereof and of the Receipts by acceptance of delivery thereof.

SECTION 7.7. GOVERNING LAW. This Deposit Agreement and the Receipts and all rights hereunder and thereunder and provisions hereof and thereof shall be governed by, and construed in accordance with, the law of the State of New York applicable to agreements made and to be performed in said State. The Bank hereby submits to the non-exclusive jurisdiction of the Federal and state courts in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Deposit Agreement or the transactions contemplated thereby.

SECTION 7.8. INSPECTION OF DEPOSIT AGREEMENT AND DESIGNATING AMENDMENT. Copies of this Deposit Agreement and the Designating Amendment shall be filed with the Depositary and the Depositary's Agents and shall be open to inspection during normal business hours at the Corporate Office and the respective offices of the Depositary's Agents, if any, by any holder of any Receipt.

SECTION 7.9. HEADINGS. The headings of articles and sections in this Deposit Agreement and in the form of the Receipt set forth in Exhibit A hereto have been inserted for convenience only and are not to be regarded as part of this Deposit Agreement or to have any bearing upon the meaning or interpretation of any provision contained herein or in the Receipts.

IN WITNESS WHEREOF, this Deposit Agreement has been duly executed as of the day and year first above set forth and all holders of Receipts shall become parties hereto by and upon acceptance by them of delivery of Receipts issued in accordance with the terms hereof.

FIRST REPUBLIC BANK

By: /s/ Willis H. Newton. Jr.
Authorized Officer

MELLON INVESTOR SERVICES LLC

By: /s/ Kerri Altig
Authorized Signatory

Exhibit 4.5

FIRST REPUBLIC BANK,
MELLON INVESTOR SERVICES LLC,
AS DEPOSITARY,

AND

THE HOLDERS FROM TIME TO TIME OF
THE DEPOSITARY RECEIPTS DESCRIBED HEREIN
RELATING TO
6.25% NONCUMULATIVE PERPETUAL SERIES B PREFERRED SHARES

DEPOSIT AGREEMENT

DATED AS OF MARCH 18, 2005

DEPOSIT AGREEMENT

DEPOSIT AGREEMENT, dated as of March 18, 2005, among First Republic Bank, a commercial bank organized under the laws of the State of Nevada (the "Bank"), Mellon Investor Services LLC, a New Jersey limited liability company, as Depositary, and all holders from time to time of Receipts (as hereinafter defined) issued hereunder.

W I T N E S S E T H:

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the deposit of the Bank's Preferred Shares (as hereinafter defined) with the Depositary for the purposes set forth in this Deposit Agreement and for the issuance hereunder of the Receipts evidencing Depositary Shares representing a fractional interest in the Preferred Shares deposited; and

WHEREAS, the Receipts are to be substantially in the form of Exhibit A annexed to this Deposit Agreement, with appropriate insertions, modifications and omissions, as hereinafter provided in this Deposit Agreement;

NOW, THEREFORE, in consideration of the premises contained herein, it is agreed by and among the parties hereto as follows:

ARTICLE I

DEFINITIONS

The following definitions shall apply to the respective terms (in the singular and plural forms of such terms) used in this Deposit Agreement and the Receipts:

"Affiliate" shall mean, with respect to any person or entity, any person or entity directly or indirectly controlling, controlled by, or under common control with, such other person or entity. For the purpose of this definition, "controlling," "controlled by" or "under common control with," mean the ownership, direct or indirect, of the power to direct or cause the direction of the operation or management and policies of a person or entity, whether through the ownership or control of voting interests, by contract or otherwise.

"Articles of Incorporation" shall mean the amended and restated articles of incorporation, as amended from time to time, of the Bank.

"Bank" shall mean First Republic Bank, a commercial bank organized under the laws of the State of Nevada.

"Corporate Office" shall mean the corporate office of the Depositary at which at any particular time its business in respect of matters governed by this Deposit Agreement shall be administered, which at the date of this Deposit Agreement is located at Mellon Investor Services LLC, 235 Montgomery Street, 23rd floor, San Francisco, CA 94104.

"Deposit Agreement" shall mean this agreement, as the same may be amended, modified or supplemented from time to time.

"Depositary" shall mean Mellon Investor Services LLC, a company having its principal office in the United States and any successor as depositary hereunder.

"Depositary Share" shall mean a fractional interest of 1/40 of a Preferred Share deposited with the Depositary hereunder and the same proportionate interest in any and all other property received by the Depositary in respect of such Preferred Share and held under this Deposit Agreement, all as evidenced by the Receipts issued hereunder. Subject to the terms of this Deposit Agreement, each owner of a Depositary Share is entitled, proportionately, to all the rights, preferences and privileges of the Preferred Share represented by such Depositary Share, including the dividend, voting, redemption, conversion and liquidation rights contained in the Designating Amendment.

"Depositary's Agent" shall mean an agent appointed by the Depositary as provided, and for the purposes specified, in section 7.5.

"Designating Amendment" shall mean the amendment to the Articles of Incorporation in the form of a certificate of designations filed with the Secretary of State of the State of Nevada establishing the Preferred Shares as a series of preferred shares of the Bank.

"DTC" shall mean The Depository Trust Company.

"DTC Receipt" has the meaning set forth in Section 2.1.

"Preferred Shares" shall mean the Bank's 6.25% Noncumulative Perpetual Series B Preferred Shares, par value $0.01 per share, heretofore validly issued, fully paid and nonassessable.

"Receipt" shall mean a depositary receipt issued hereunder to evidence one or more Depositary Shares, whether in definitive or temporary form, substantially in the form set forth as Exhibit A hereto. If the context so requires, the term "Receipt" shall be deemed to include the DTC Receipt (as defined in Section 2.1 hereof).

"Record Date" shall mean the date fixed pursuant to Section 4.4.

"Record Holder" or "Holder" as applied to a receipt shall mean the person in whose name a receipt is registered on the books maintained by the Depositary for such purpose.

"Registrar" shall mean Mellon Investor Services LLC or any bank or trust company appointed to register ownership and transfers of Receipts or the deposited Preferred Shares, as the case may be, as herein provided.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Transfer Agent" shall mean Mellon Investor Services LLC or any bank or trust company appointed to transfer the Receipts or the deposited Preferred Shares, as the case may be, as herein provided.

ARTICLE II

FORM OF RECEIPTS, DEPOSIT OF PREFERRED SHARES, EXECUTION AND DELIVERY, TRANSFER, SURRENDER AND REDEMPTION OF RECEIPTS

SECTION 2.1 Form and Transferability of Receipts. The Bank and the Depositary shall make application to DTC for acceptance of all or a portion of the Receipts for its book-entry settlement system. The Bank hereby appoints the Depositary acting through any authorized officer thereof as its attorney-in-fact, with full power to delegate, for purposes of executing any agreements, certifications or other instruments or documents necessary or desirable in order to effect the acceptance of such Receipts for DTC eligibility. So long as the Receipts are eligible for book-entry settlement with DTC, unless otherwise required by law, all Depositary Shares to be traded on the New York Stock Exchange or any other exchange with book-entry settlement through DTC shall be represented by a single receipt (the "DTC Receipt"), which shall be deposited with DTC (or its designee) evidencing all such Depositary Shares and registered in the name of the nominee of DTC (initially expected to be Cede & Co.). The Depositary or such other entity as is agreed to by DTC may hold the DTC Receipt as custodian for DTC. Ownership of beneficial interests in the DTC Receipt shall be shown on, and the transfer of such ownership shall be effected through, records maintained by (i) DTC or its nominee for such DTC Receipt, or (ii) institutions that have accounts with DTC.

Notwithstanding the foregoing, the DTC Receipt shall be exchangeable for definitive Receipts only if (i) DTC notifies the Bank at any time that it is unwilling or unable to continue to make its book-entry settlement system available for the Receipts and a successor to DTC is not appointed by the Bank within 90 days of the date the Bank is so informed in writing, (ii) DTC notifies the Bank at any time that it has ceased to be a clearing agency registered under applicable law and a successor to DTC is not appointed by the Bank within 90 days of the date the Bank is so informed in writing or (iii) the Bank executes and delivers to DTC, with a copy to the Depositary, a notice to the effect that such DTC Receipt shall be so exchangeable. The Bank shall promptly forward to the Depositary any notice that it receives from DTC as described in the preceding sentence. If the beneficial owners of interests in Depositary Shares are entitled to exchange such interests for definitive Receipts as the result of an event described in clause (i), (ii) or (iii) of the preceding sentence, then without unnecessary delay but in any event not later than the earliest date on which such beneficial interests may be so exchanged, the Depositary shall provide written instructions to DTC to deliver to the Depositary for cancellation the DTC Receipt, and the Bank shall instruct the Depositary to deliver to the beneficial owners of the Depositary Shares previously evidenced by the DTC Receipt definitive Receipts in physical form evidencing such Depositary Shares. Such definitive Receipts shall be in substantially the form annexed hereto as Exhibit A, with appropriate insertions, modifications and omissions, as hereafter provided.

The holders of Depositary Shares shall not, except as stated above with respect to Depositary Shares in book-entry form issued in exchange for the DTC Receipt, be entitled to receive Receipts in physical, certificated form as herein provided.

Definitive Receipts shall be substantially in the form set forth in Exhibit A annexed to this Deposit Agreement, with appropriate insertions, modifications and omissions, as hereinafter provided (but which do not affect the rights, duties, obligations or immunities of the Depositary as set forth in this Deposit Agreement). The DTC Receipt shall bear such legend or legends as may be required by DTC in order for it to accept the Depositary Shares for its book-entry settlement system (but which do not affect the rights, duties, obligations or immunities of the Depositary as set forth in this Deposit Agreement). Pending the preparation of definitive Receipts, the Depositary, upon the written order of the Bank or any holder of Preferred Shares, as the case may be, delivered in compliance with Section 2.2, shall execute and deliver temporary Receipts which may be printed, lithographed, typewritten, mimeographed or otherwise substantially of the tenor of the definitive Receipts in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Bank may determine, as evidenced by a writing delivered to the Depositary. If temporary Receipts are issued, the Bank will cause definitive Receipts to be prepared without unreasonable delay. After the preparation of definitive Receipts, the temporary Receipts shall be exchangeable for definitive Receipts upon surrender of the temporary Receipts at the Corporate Office or such other offices, if any, as the Depositary may designate, without charge to the holder. Upon surrender for cancellation of any one or more temporary Receipts, the Depositary shall execute and deliver in exchange therefor definitive Receipts representing the same number of Depositary Shares as represented by the surrendered temporary Receipt or Receipts; provided that, the Depositary has been provided with all necessary information that it may request in order to execute and deliver such definitive Receipts. Such exchange shall be made at the Bank's expense and without any charge to the holder. Until so exchanged, the temporary Receipts shall in all respects be entitled to the same benefits under this Deposit Agreement, and with respect to the Preferred Shares deposited, as definitive Receipts.

Receipts shall be executed by the Depositary by the manual or facsimile signature of a duly authorized signatory of the Depositary;provided that if a Registrar (other than the Depositary) shall have been appointed then such Receipts shall also be countersigned by manual signature of a duly authorized signatory of the Registrar. No Receipt shall be entitled to any benefits under this Deposit Agreement or be valid or obligatory for any purpose unless it shall have been executed as provided in the preceding sentence. The Depositary or the Registrar, as applicable, shall record on its books each Receipt executed as provided above and delivered as hereinafter provided.

Except as the Depositary may otherwise determine, Receipts shall be in denominations of any number of whole Depositary Shares. All Receipts shall be dated the date of their issuance.

Receipts may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Deposit Agreement as may be required by the Depositary or required to comply with any applicable law or regulation or with the rules and regulations of any securities exchange upon which the Preferred Shares, the

Depositary Shares or the Receipts may be listed or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Receipts are subject (but which do not affect the rights, duties, obligations or immunities of the Depositary as set forth in this Deposit Agreement).

Title to any Receipt (and to the Depositary Shares evidenced by such Receipt), that is properly endorsed or accompanied by a properly executed instrument of transfer or endorsement shall be transferable by delivery with the same effect as in the case of a negotiable instrument; provided, however, that until a Receipt shall be transferred on the books of the Depositary as provided in Section 2.4, the Depositary may, notwithstanding any notice to the contrary, treat the record holder thereof at such time as the absolute owner thereof for the purpose of determining the person entitled to distribution of dividends or other distributions, the exercise of any conversion rights or to any notice provided for in this Deposit Agreement and for all other purposes.

SECTION 2.2 Deposit of Preferred Shares; Execution and Delivery of Receipts in Respect Thereof. Concurrently with the execution of this Deposit Agreement, the Bank is delivering to the Depositary a certificate or certificates, registered in the name of the Depositary and evidencing 50,000 Preferred Shares, accompanied by a duly executed instrument of transfer or endorsement, in form satisfactory to the Depositary, together with (i) all such certifications as may be required by the Depositary in accordance with the provisions of this Deposit Agreement and (ii) a written order of the Bank directing the Depositary to execute and deliver to, or upon the written order of, the person or persons stated in such order a Receipt or Receipts for, and specifying, the Depositary Shares representing such deposited Preferred Shares. The Depositary acknowledges receipt of the deposited Preferred Shares and related documentation and agrees to hold such deposited Preferred Shares in an account to be established by the Depositary at the Corporate Office or at such other office as the Depositary shall determine. The Bank hereby appoints the Depositary as the Registrar and Transfer Agent for Preferred Shares deposited hereunder and the Depositary hereby accepts such appointment and, as such, will reflect changes in the number of shares of deposited Preferred Shares held by it by notation, book-entry or other appropriate method.

If required by the Depositary, Preferred Shares presented for deposit by the Bank at any time, whether or not the register of shareholders of the Bank is closed, shall also be accompanied by an agreement or assignment, or other instrument satisfactory to the Depositary, that will provide for the prompt transfer to the Depositary or its nominee of any dividend or right to subscribe for additional Preferred Shares or to receive other property that any person in whose name the Preferred Shares is or has been registered may thereafter receive upon or in respect of such deposited Preferred Shares, or in lieu thereof such agreement of indemnity or other agreement as shall be satisfactory to the Depositary.

Upon receipt by the Depositary of a certificate or certificates for Preferred Shares deposited in accordance with the provisions set forth in this Deposit Agreement, together with the other documents specified above, and upon registering such Preferred Shares in the name of the Depositary, the Depositary, subject to the terms and conditions of this Deposit Agreement, shall execute and deliver to, or upon the order of, the person or persons named in the written order delivered to the Depositary referred to in the first paragraph of this Section 2.2, a Receipt

or Receipts for the number of Depositary Shares representing the Preferred Shares so deposited and registered in such name or names as may be requested by such person or persons. The Depositary shall execute and deliver such Receipt or Receipts at the Corporate Office, except that, at the written request, risk and expense of any person requesting such delivery, such delivery may be made at such other place as may be designated by such person.

Other than in the case of splits, combinations or other reclassifications affecting the Preferred Shares, or in the case of dividends or other distributions of Preferred Shares, if any, there shall be deposited hereunder not more than the number of shares constituting the Preferred Shares as set forth in the Designating Amendment, as such may be amended. The Depositary shall have no duty or obligation to monitor the number of Preferred Shares to be deposited for purposes of this paragraph.

The Bank shall deliver to the Depositary from time to time such quantities of Receipts as shall be necessary to enable the Depositary to perform its obligations under this Deposit Agreement.

SECTION 2.3 Optional Redemption of Preferred Shares for Cash. Whenever the Bank shall elect to redeem deposited Preferred Shares for cash in accordance with the provisions of the Designating Amendment, it shall (unless otherwise agreed in writing with the Depositary) give the Depositary not less than 60 days' prior written notice of the date of such proposed redemption and of the number of such Preferred Shares held by the Depositary to be redeemed and the applicable redemption price, as set forth in the Designating Amendment. The Depositary shall mail, first-class postage prepaid, notice of the redemption of Preferred Shares and the proposed simultaneous redemption of the Depositary Shares representing the Preferred Shares to be redeemed, not less than 30 and not more than 60 days prior to the date fixed for redemption of such Preferred Shares and Depositary Shares (the "cash redemption date"), to the holders of record on the record date fixed for such redemption pursuant to Section 4.4 hereof of the Receipts evidencing the Depositary Shares to be so redeemed, at the addresses of such holders as the same appear on the records of the Depositary; but neither failure to mail any such notice to one or more such holders nor any defect in any such notice shall affect the sufficiency of the proceedings for redemption as to other holders. The Bank shall provide the Depositary with such notice, and each such notice shall state: the cash redemption date; the cash redemption price; the number of deposited Preferred Shares and Depositary Shares to be redeemed; if fewer than all the Depositary Shares held by any holder are to be redeemed, the number of such Depositary Shares held by such holder to be so redeemed; and the place or places where Receipts evidencing Depositary Shares to be redeemed are to be surrendered for payment of the cash redemption price. If fewer than all the outstanding Depositary Shares are to be redeemed, the Depositary Shares to be redeemed shall be selected by lot or pro rata (as nearly as may be practicable without creating fractional Depositary Shares) or by any other equitable method determined by the Bank (as set forth in a writing given to the Depositary). The Bank shall also cause notice of redemption to be published in a newspaper of general circulation in The City of New York at least once a week for two successive weeks commencing not less than 30 nor more than 60 days prior to the cash redemption date.

In the event that notice of redemption has been made as described in the immediately preceding paragraph and the Bank has paid in full to the Depositary the cash

redemption price (determined pursuant to the Designating Amendment) of the Preferred Shares deposited with the Depositary to be redeemed, the Depositary shall redeem the number of Depositary Shares representing such Preferred Shares so called for redemption by the Bank and from and after the cash redemption date (unless the Bank shall have failed to redeem the Preferred Shares to be redeemed by it as set forth in the Bank's notice provided for in the preceding paragraph), all dividends in respect of the Preferred Shares called for redemption shall cease to accrue, the Depositary Shares called for redemption shall be deemed no longer to be outstanding and all rights of the holders of Receipts evidencing such Depositary Shares (except the right to receive the cash redemption price and any money or other property to which holders of such Receipts were entitled upon such redemption) shall, to the extent of such Depositary Shares, cease and terminate. Upon surrender in accordance with said notice of the Receipts evidencing such Depositary Shares (properly endorsed or assigned for transfer), such Depositary Shares shall be redeemed at a cash redemption price of $25.00 per Depositary Share plus any other money and other property payable in respect of such Preferred Shares. The foregoing shall be further subject to the terms and conditions of the Designating Amendment.

If fewer than all of the Depositary Shares evidenced by a Receipt are called for redemption, the Depositary will deliver to the holder of such Receipt upon its surrender to the Depositary, together with payment of the cash redemption price for any and all other amounts payable in respect of the Depositary Shares called for redemption, a new Receipt evidencing the Depositary Shares evidenced by such prior Receipt and not called for redemption.

SECTION 2.4 Registration of Transfers of Receipts. The Bank hereby appoints the Depositary as the Registrar and Transfer Agent for the Receipts and the Depositary hereby accepts such appointment and, as such, shall register on its books from time to time transfers of Receipts upon any surrender thereof by the holder, in person or by a duly authorized attorney, properly endorsed or accompanied by a properly executed instrument of transfer or endorsement, together with evidence of the payment of any taxes or governmental charges as may be required by law. Upon such surrender, the Depositary shall execute a new Receipt or Receipts and deliver the same to or upon the order of the person entitled thereto evidencing the same aggregate number of Depositary Shares evidenced by the Receipt or Receipts surrendered.

SECTION 2.5 Combinations and Split-Ups of Receipts. Upon surrender of a Receipt or Receipts at the Corporate Office or such other office as the Depositary may designate for the purpose of effecting a split-up or combination of Receipts, subject to the terms and conditions of this Deposit Agreement, the Depositary shall execute and deliver a new Receipt or Receipts in the authorized denominations requested evidencing the same aggregate number of Depositary Shares evidenced by the Receipt or Receipts surrendered.

SECTION 2.6 Surrender of Receipts and Withdrawal of Preferred Shares. Any holder of a Receipt or Receipts may withdraw any or all of the deposited Preferred Shares represented by the Depositary Shares evidenced by such Receipt or Receipts and all money and other property, if any, represented by such Depositary Shares by surrendering such Receipt or Receipts at the Corporate Office or at such office as the Depositary may designate for such withdrawals; provided that a holder of a Receipt or Receipts may not withdraw such Preferred Shares (or money and other property, if any, represented thereby) which has previously been called for redemption. After such surrender and upon the receipt of written instructions from the

holder of such Receipt or Receipts, without unreasonable delay (provided the Bank has provided the Depositary with all necessary documentation and a sufficient amount of cash), the Depositary shall deliver to such holder, or to the person or persons designated by such holder as hereinafter provided, the number of shares of such Preferred Shares and all such money and other property, if any, represented by the Depositary Shares evidenced by the Receipt or Receipts so surrendered for withdrawal. Holders of such Preferred Shares will not thereafter be entitled to deposit such Preferred Shares hereunder or to receive Depositary Shares therefor. If the Receipt or Receipts delivered by the holder to the Depositary in connection with such withdrawal shall evidence a number of Depositary Shares in excess of the number of Depositary Shares representing the number of Preferred Shares to be withdrawn, the Depositary shall at the same time, in addition to such number of Preferred Shares and such money and other property, if any, to be withdrawn, deliver to such holder, upon the holder's written order, a new Receipt or Receipts evidencing such excess number of Depositary Shares. Delivery of such Preferred Shares and such money and other property being withdrawn may be made by the delivery of such certificates, documents of title and other instruments as the Depositary may deem appropriate, which shall be properly endorsed or accompanied by proper instruments of transfer.

If the deposited Preferred Shares and the money and other property being withdrawn are to be delivered to a person or persons other than the record holder of the Receipt or Receipts being surrendered for withdrawal of Preferred Shares, such holder shall execute and deliver to the Depositary a written order so directing the Depositary and the Receipt or Receipts surrendered by such holder for withdrawal of such Preferred Shares be properly endorsed in blank or accompanied by a properly executed instrument of transfer or endorsement in blank and that the signature on such instrument of transfer be guaranteed by an eligible guarantor institution pursuant to Rule 17 Ad-15 of the Securities Exchange Act of 1934, as amended.

The Depositary shall deliver the deposited Preferred Shares and the money and other property, if any, represented by the Depositary Shares evidenced by Receipts surrendered for withdrawal at the Corporate Office or such other office as the Depositary may designate for such purpose, except that, at the request, risk and expense of the holder surrendering such Receipt or Receipts and for the account of the holder thereof, such delivery may be made at such other place as may be designated by such holder.

SECTION 2.7 Limitations on Execution and Delivery, Transfer, Split-Up, Combination, Surrender and Exchange of Receipts. As a condition precedent to the execution and delivery, transfer, split-up, combination, surrender or exchange of any Receipt, the Depositary, any of the Depositary's Agents or the Bank may require any or all of the following: (i) payment to it of a sum sufficient for the payment (or, in the event that the Bank shall have made such payment, the reimbursement to it) of any tax or other governmental charge with respect thereto (including any such tax or charge with respect to the Preferred Shares being deposited or withdrawn); (ii) the production of proof satisfactory to it as to the identity and genuineness of any signature (or the authority of any signature); and (iii) compliance with such regulations, if any, as the Depositary or the Bank may establish consistent with the provisions of this Deposit Agreement as may be required by any securities exchange upon which the deposited Preferred Shares, the Depositary Shares or the Receipts may be included for quotation or listed.

The deposit of Preferred Shares may be refused, the delivery of Receipts against Preferred Shares may be suspended, the transfer of Receipts may be refused, and the transfer, split-up, combination, surrender, exchange or redemption of outstanding Receipts may be suspended (i) during any period when the register of shareholders of the Bank is closed or (ii) if any such action is deemed reasonably necessary or advisable by the Depositary, any of the Depositary's Agents or the Bank at any time or from time to time because of any requirement of law or of any government or governmental body or commission or under any provision of this Deposit Agreement.

SECTION 2.8 Lost Receipts, Etc. In case any Receipt shall be mutilated or destroyed or lost or stolen, the Depositary, in its discretion, may execute and deliver a Receipt of like form and tenor in exchange and substitution for such mutilated Receipt or in lieu of and in substitution for such destroyed, lost or stolen Receipt; provided that the holder thereof provides the Depositary with (i) evidence satisfactory to the Depositary of such destruction, loss or theft of such Receipt, of the authenticity thereof and of his ownership thereof, including, without limitation, an affidavit of loss, (ii) indemnification satisfactory to the Depositary and the Bank, including, without limitation, a bond of indemnity, and (iii) payment of any expense (including fees, charges and expenses of the Depositary and its agents and counsel) in connection with such execution and delivery.

SECTION 2.9 Cancellation and Destruction of Surrendered Receipts. All Receipts surrendered to the Depositary or any Depositary's Agent shall be cancelled by the Depositary. Except as prohibited by applicable law or regulation, the Depositary is authorized to destroy such Receipts so cancelled.

ARTICLE III

CERTAIN OBLIGATIONS OF HOLDERS OF RECEIPTS AND THE BANK

SECTION 3.1 Filing Proofs, Certificates and Other Information. The Bank, upon presenting Preferred Shares for deposit or any holder of a Receipt may be required from time to time to file such proof of residence or other information, to execute such certificates and to make such representations and warranties as the Depositary or the Bank may deem necessary or proper. The Depositary or the Bank may withhold or delay the delivery of any Receipt, the transfer, redemption or exchange of any Receipt, the withdrawal of the deposited Preferred Shares represented by the Depositary Shares evidenced by any Receipt, the distribution of any dividend or other distribution or the sale of any rights or of the proceeds thereof, until such proof or other information is filed, such certificates are executed or such representations and warranties are made.

SECTION 3.2 Payment of Fees and Expenses. Holders of Receipts shall be obligated to make payments to the Depositary of certain fees and expenses, as provided in Section 5.7, or provide evidence satisfactory to the Depositary that such fees and expenses have been paid. Until such payment is made, transfer of any Receipt or any withdrawal of the Preferred Shares or money or other property, if any, represented by the Depositary Shares evidenced by such Receipt may be refused, any dividend or other distribution may be withheld,

and any part or all of the Preferred Shares or other property represented by the Depositary Shares evidenced by such Receipt may be sold for the account of the holder thereof (after attempting to notify such holder prior to such sale). Any dividend or other distribution so withheld and the proceeds of any such sale may be applied to any payment of such fees or expenses, the holder of such Receipt remaining liable for any deficiency.

SECTION 3.3 Representations and Warranties as to Preferred Shares. In the case of the initial deposit of the Preferred Shares hereunder, the Bank and, in the case of subsequent deposits thereof, each person so depositing Preferred Shares under this Deposit Agreement shall be deemed thereby to represent and warrant that such Preferred Shares and each certificate therefor are valid and that the person making such deposit is duly authorized to do so. The Bank hereby further represents and warrants that such Preferred Shares, when issued, will be validly issued, fully paid and nonassessable. Such representations and warranties shall survive the deposit of the Preferred Shares and the issuance of Receipts.

SECTION 3.4 Representation and Warranty as to Receipts and Depositary Shares. The Bank hereby represents and warrants that the Receipts, when issued, will evidence legal and valid interests in the Depositary Shares and each Depositary Share will represent a legal and valid 1/40 fractional interest in a deposited Preferred Share. Such representation and warranty shall survive the deposit of the Preferred Shares and the issuance of Receipts evidencing the Depositary Shares.

ARTICLE IV

THE PREFERRED SHARES; NOTICES

SECTION 4.1 Cash Distributions. Whenever the Depositary shall receive any cash dividend or other cash distribution on the deposited Preferred Shares, including any cash received upon redemption of any Preferred Shares pursuant to Section 2.3, the Depositary shall, upon written instructions from the Bank, subject to Section 3.2, distribute to record holders of Receipts on the record date fixed pursuant to Section 4.4 such amounts, as determined by the Bank, of such sum as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts held by such holders; provided, however, that in case the Bank or the Depositary shall be required to and shall withhold from any cash dividend or other cash distribution in respect of the Preferred Shares represented by the Receipts held by any holder an amount on account of taxes, the amount made available for distribution or distributed in respect of Depositary Shares represented by such Receipts subject to such withholding shall be reduced accordingly. The Depositary shall distribute or make available for distribution, as the case may be and in accordance with the Bank's written instructions, only such amount, however, as can be distributed without attributing to any holder of Receipts a fraction of one cent by rounding the amount of any distribution to the record holder of Receipts to the nearest whole cent; provided, however, that, in the event the Depositary requires an additional amount in connection with such rounding to avoid the distribution of a fraction of one cent to any holder, the Depositary shall notify the Bank of the amount necessary and the Bank shall promptly deliver such amount to the Depositary.

SECTION 4.2 Distributions Other Than Cash. Whenever the Depositary shall receive any distribution other than cash on the deposited Preferred Shares, the Depositary shall, subject to Section 3.2, distribute to record holders of Receipts on the record date fixed pursuant to Section 4.4 such amounts, as determined by the Bank and set forth in writing, of the securities or property received by it as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts held by such holders. If the Bank determines that such distribution cannot be made proportionately among such record holders, or if for any other reason (including any requirement that the Bank or the Depositary withhold an amount on account of taxes) the Bank determines that such distribution is not feasible, then the Bank shall adopt such method as it deems equitable and practicable for the purpose of effecting such distribution, including the sale (at public or private sale) of the securities or property received by the Depositary or any part thereof (on behalf of the holders of Receipts), at such place or places and upon such terms as it may deem proper. The net proceeds of any such sale shall, subject to Section 3.2, be distributed or made available for distribution, as the case may be, by the Depositary to record holders of Receipts as provided by Section 4.1 in the case of a distribution received in cash. The Bank shall not make any distribution of such securities or property to the holders of Receipts unless the Bank shall have provided to the Depositary an opinion of counsel stating that such securities or property have been registered under the Securities Act or do not need to be registered. The Bank shall advise the Depositary in writing of the nature of any property, and if the Depositary in its judgment determines that it may incur liability by reason of being deemed an owner thereof, the Depositary shall have the right to refuse such property, but the Depositary shall assist the Bank in determining an appropriate means of distributing such property.

SECTION 4.3 Subscription Rights, Preferences or Privileges. If the Bank shall at any time offer or cause to be offered to the persons in whose names deposited Preferred Shares are registered on the books of the Bank any rights, preferences or privileges to subscribe for or to purchase any securities or any rights, preferences or privileges of any other nature, such rights, preferences or privileges shall in each such instance be made available by the Depositary to the record holders of Receipts in such manner as the Bank shall instruct in writing (including by the issue to such record holders of warrants representing such rights, preferences or privileges); provided, however, that (a) if at the time of issue or offer of any such rights, preferences or privileges the Bank determines upon advice of its legal counsel that it is not lawful or feasible to make such rights, preferences or privileges available to the holders of Receipts (by the issue of warrants or otherwise) or (b) if and to the extent instructed by holders of Receipts who do not desire to exercise such rights, preferences or privileges, the Depositary shall then, if so instructed in writing by the Bank, and if applicable laws or the terms of such rights, preferences or privileges so permit, sell such rights, preferences or privileges of such holders at public or private sale, at such place or places and upon such terms as it may deem proper. The net proceeds of any such sale shall, subject to Section 3.1 and Section 3.2, upon written notice to the Depositary, be distributed by the Depositary to the record holders of Receipts entitled thereto as provided by Section 4.1 in the case of a distribution received in cash. The Bank shall not make any distribution of such rights, preferences or privileges, unless the Bank shall have provided to the Depositary an opinion of counsel stating that the distribution of such rights, preferences or privileges have been registered under the Securities Act or do not need to be registered.

If registration under the Securities Act of the securities to which any rights, preferences or privileges relate is required in order for holders of Receipts to be offered or sold the securities to which such rights, preferences or privileges relate, the Bank agrees that it will promptly file a registration statement pursuant to the Securities Act with respect to such rights, preferences or privileges and securities and use its best efforts and take all steps available to it to cause such registration statement to become effective sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges, and the Bank shall notify the Depositary in writing when such registration statement becomes effective. In no event shall the Depositary make available to the holders of Receipts any right, preference or privilege to subscribe for or to purchase any securities unless and until such a registration statement shall have become effective or unless the offering and sale of such securities to such holders are exempt from registration under the provisions of the Securities Act and the Bank shall have provided to the Depositary an opinion of counsel to such effect.

If any other action under the law of any jurisdiction or any governmental or administrative authorization, consent or permit is required in order for such rights, preferences or privileges to be made available to holders of Receipts, the Bank agrees to use its best efforts to take such action or obtain such authorization, consent or permit sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges.

SECTION 4.4 Notice of Dividends; Fixing of Record Date for Holders of Receipts. Whenever any cash dividend or other cash distribution shall become payable, any distribution other than cash shall be made, or any rights, preferences or privileges shall at any time be offered, with respect to the deposited Preferred Shares, or whenever the Depositary shall receive written notice of (i) any meeting at which holders of such Preferred Shares are entitled to vote or of which holders of such Preferred Shares are entitled to notice or (ii) any election on the part of the Bank to redeem any such Preferred Shares, the Depositary shall in each such instance fix a record date (which shall be the same date as the record date fixed by the Bank with respect to the Preferred Shares) for the determination of the holders of Receipts who shall be entitled to receive such dividend, distribution, rights, preferences or privileges or the net proceeds of the sale thereof, to give instructions for the exercise of voting rights at any such meeting or to receive notice of such meeting or whose Depositary Shares are to be so redeemed.

SECTION 4.5 Voting Rights. Upon receipt of written notice of any meeting at which the holders of deposited Preferred Shares are entitled to vote, the Depositary shall, as soon as practicable thereafter, mail to the record holders of Receipts a notice, which shall be provided by the Bank and which shall contain (i) such information as is contained in such notice of meeting, (ii) a statement that the holders of Receipts at the close of business on a specified record date fixed pursuant to Section 4.4 will be entitled, subject to any applicable provision of law, to instruct the Depositary as to the exercise of the voting rights pertaining to the amount of Preferred Shares represented by their respective Depositary Shares and (iii) a brief statement as to the manner in which such instructions may be given. Upon the written request of a holder of a Receipt on such record date, the Depositary shall vote or cause to be voted the amount of Preferred Shares represented by the Depositary Shares evidenced by such Receipt in accordance with the instructions (and as nearly as possible in the event the holder's Depositary Shares

represent a fractional Preferred Share) set forth in such request. Each Preferred Share, when voting as a separate series, is entitled to 40 votes and, accordingly, each Depositary Share is entitled to one vote. On any matter in which the Preferred Shares are entitled to vote as a class with holders of any other shares upon which like voting rights have been conferred and are exercisable, each Preferred Share will be entitled to one vote. The Bank hereby agrees to take all reasonable action that may be deemed necessary by the Depositary in order to enable the Depositary to vote such Preferred Shares or cause such Preferred Shares to be voted. In the absence of specific instructions from the holder of a Receipt, the Depositary will abstain from voting to the extent of the Preferred Shares represented by the Depositary Shares evidenced by such Receipt. The Depositary shall not be required to exercise discretion in voting any Preferred Shares represented by the Depositary Shares evidenced by such Receipt.

SECTION 4.6 Changes Affecting Preferred Shares and Reclassifications, Recapitalization, Etc. Upon any change in par or stated value, split-up, combination or any other reclassification of Preferred Shares, or upon any recapitalization, reorganization, merger, amalgamation or consolidation affecting the Bank or to which it is a party or sale of all or substantially all of the Bank's assets, the Depositary shall, upon the written instructions of the Bank (i) make such adjustments in (a) the fraction of an interest represented by one Depositary Share in one Preferred Share and (b) the ratio of the redemption price per Depositary Share to the redemption price of a Preferred Share, in each case as may be required by or as is consistent with the provisions of the Designating Amendment to fully reflect the effects of such change in liquidation value, split-up, combination or other reclassification of shares, or of such recapitalization, reorganization, merger, consolidation or sale and (ii) treat any shares or other securities or property (including cash) that shall be received by the Depositary in exchange for or upon conversion of or in respect of the Preferred Shares as new deposited property under this Deposit Agreement, and Receipts then outstanding shall thenceforth represent the proportionate interests of holders thereof or the new deposited property so received in exchange for or upon conversion or in respect of such Preferred Shares. In any such case the Depositary shall, upon the written instructions of the Bank, execute and deliver additional Receipts, or may call for the surrender of all outstanding Receipts to be exchanged for new Receipts specifically describing such new deposited property. Anything to the contrary herein notwithstanding, holders of Receipts shall have the right from and after the effective date of any such change in par or stated value, split-up, combination or other reclassification of the Preferred Shares or any such recapitalization, reorganization, merger, amalgamation or consolidation or sale of substantially all the assets of the Bank to surrender such Receipts to the Depositary with written instructions to convert, exchange or surrender the Preferred Shares represented thereby only into or for, as the case may be, the kind and amount of shares and other securities and property and cash into which the deposited Preferred Shares evidenced by such Receipts might have been converted or for which such Preferred Shares might have been exchanged or surrendered immediately prior to the effective date of such transaction. The Bank shall cause effective provisions to be included in the charter of the resulting or surviving corporation (if other than the Bank) for protection of such rights as may be applicable upon exchange of the deposited Preferred Shares for securities or property or cash of the surviving corporation in connection with the transactions set forth above. The Bank shall cause any such surviving corporation (if other than the Bank) expressly to assume the obligations of the Bank hereunder.

SECTION 4.7 Inspection of Reports. The Depositary shall make available for inspection by holders of Receipts at the Corporate Office and at such other places as it may from time to time deem advisable during normal business hours any reports and communications received from the Bank that are both received by the Depositary as the holder of deposited Preferred Shares and made generally available to the holders of the Preferred Shares. In addition, the Depositary shall transmit certain notices and reports to the holders of Receipts as provided in Section 5.5.

SECTION 4.8 Lists of Receipt Holders. Promptly upon written request from time to time by the Bank, the Depositary shall furnish to the Bank a list, as of a recent date specified by the Bank, of the names, addresses and holdings of Depositary Shares of all persons in whose names Receipts are registered on the books of the Depositary.

SECTION 4.9 Tax and Regulatory Compliance. The Depositary shall be responsible for (i) preparation and mailing of form 1099s for all open and closed accounts, (ii) foreign tax withholding, (iii) any withholding required by then applicable law of dividends from eligible holders of Receipts if directed to do so by the Bank or required to do so by applicable law, (iv) mailing W-9 forms to new holders of Receipts without a certified taxpayer identification number, (v) processing certified W-9 forms, (vi) preparation and filing of state information returns and (vii) escheatment services.

SECTION 4.10 Withholding. Notwithstanding any other provision of this Deposit Agreement, in the event that the Depositary determines that any distribution in property is subject to any tax which the Depositary is obligated by law to withhold, the Depositary may dispose of all or a portion of such property in such amounts and in such manner as the Depositary deems necessary and practicable to pay such taxes, by public or private sale, and the Depositary shall distribute the net proceeds of any such sale or the balance of any such property after deduction of such taxes to the holders of Receipts entitled thereto in proportion to the number of Depositary Shares held by them respectively.

ARTICLE V

THE DEPOSITARY, THE DEPOSITARY'S AGENTS, THE REGISTRAR, THE TRANSFER AGENT AND THE BANK

For purposes of this Article V, "Depositary" shall also mean "Registrar" and/or "Transfer Agent", as the case may be.

SECTION 5.1 Maintenance of Offices, Agencies and Transfer Books by the Depositary and the Registrar. The Depositary shall maintain at the Corporate Office facilities for the execution and delivery, transfer, surrender and exchange, split-up, combination and redemption of Receipts and deposit and withdrawal of Preferred Shares and at the offices of the Depositary's Agents, if any, facilities for the delivery, transfer, surrender and exchange, split-up, combination and redemption of Receipts and deposit and withdrawal of Preferred Shares, all in accordance with the provisions of this Deposit Agreement.

The Depositary shall keep books at the Corporate Office for the registration and transfer of Receipts, which books at all reasonable times during normal business hours shall be open for inspection by the record holders of Receipts as provided by applicable law; provided, that any such holder requesting to exercise such right shall certify to the Depositary that such inspection shall be for a proper purpose reasonably related to such person's interest as an owner of Depositary Shares evidenced by the Receipts. The Depositary may close such books, at any time or from time to time, when deemed expedient by it in connection with the performance of its duties hereunder.

If the Receipts or the Depositary Shares evidenced thereby or the Preferred Shares represented by such Depositary Shares shall be listed on the New York Stock Exchange or any other stock exchange, the Depositary may, with the written approval of the Bank, appoint a Registrar (acceptable to the Bank) for registration of such Receipts or Depositary Shares in accordance with the requirements of such stock exchange. Such Registrar (which may be the Depositary if so permitted by the requirements of such stock exchange) may be removed and a substitute registrar appointed by the Depositary upon the written request or with the written approval of the Bank. If the Receipts, such Depositary Shares or such Preferred Shares are listed on one or more other stock exchanges, the Depositary will, at the written request and expense of the Bank, arrange such facilities for the delivery, transfer, surrender, redemption and exchange of such Receipts, such Depositary Shares or such Preferred Shares as may be required by law or applicable stock exchange regulations.

SECTION 5.2 Prevention or Delay in Performance by the Depositary, the Depositary's Agents, the Registrar or the Bank Neither the Depositary, any Depositary's Agent, any Registrar nor the Bank shall incur any liability to any holder of any Receipt or any beneficial owner, if by reason of any provision of any present or future law or regulation thereunder of the United States of America or of any other governmental authority or, in the case of the Depositary, the Depositary's Agent or any Registrar, by reason of any provision, present or future, of the Articles of Incorporation or the Designating Amendment or, in the case of the Bank, the Depositary, the Depositary's Agent or any Registrar, by reason of any act of God or war or other circumstance beyond the control of the relevant party, the Depositary, the Depositary's Agent, any Registrar or the Bank shall be prevented or forbidden from doing or performing any act or thing that the terms of this Deposit Agreement provide shall be done or performed; nor shall the Depositary, any Depositary's Agent, any Registrar or the Bank incur any liability to any holder of a Receipt or any beneficial owner by reason of any nonperformance or delay, caused as aforesaid, in the performance of any act or thing that the terms of this Deposit Agreement provide shall or may be done or performed, or by reason of any exercise of, or failure to exercise, any discretion provided for in this Deposit Agreement.

SECTION 5.3 Obligations of the Depositary, the Depositary's Agents, the Registrar, the Transfer Agent and the Bank Neither the Depositary, any Depositary's Agent, any Registrar, any Transfer Agent nor the Bank assumes any obligation or shall be subject to any liability to the Bank or any other person or entity (including, without limitation, to holders of Receipts or to beneficial owners) under this Deposit Agreement or any Receipt, other than from acts or omissions arising out of conduct constituting bad faith, gross negligence or willful misconduct (each as finally determined by a court of competent jurisdiction) in the performance of such duties as are specifically set forth in this Deposit Agreement. Under no circumstances

shall the Depositary, any Depositary's Agent, any Transfer Agent or any Registrar be liable for any special, punitive, indirect, incidental or consequential loss or damage of any kind whatsoever (including, but not limited to, lost profits), even if they have been advised of the likelihood of such loss or damage and regardless of the form of action.

Neither the Depositary, any Depositary's Agent, any Registrar nor the Bank shall be under any obligation to appear in, prosecute or defend any action, suit or other proceeding with respect to the deposited Preferred Shares, Depositary Shares or Receipts that in its reasonable opinion may involve it in expense or liability unless indemnity reasonably satisfactory to it against all expense and liability be furnished as often as may be required.

Neither the Depositary, any Depositary's Agent, any Registrar nor the Bank shall be liable for any action or any failure to act by it in reliance upon the advice or opinion of legal counsel or accountants, or information provided by any person presenting Preferred Shares for deposit, any holder of a Receipt or any other person believed by it to be competent to give such information. The Depositary, any Depositary's Agent, any Registrar and the Bank may each rely and shall each be fully protected in acting upon any written notice, request, instruction, direction or other document believed by it to be genuine and to have been signed or presented by the proper party or parties.

In the event the Depositary shall receive conflicting claims, requests or instructions from any holders of Receipts, on the one hand, and the Bank, on the other hand, the Depositary shall be entitled to act on such claims, requests or instructions received from the Bank, and shall be entitled to the full indemnification set forth in Section 5.6 hereof in connection with any action so taken. In the event the Depositary believes any ambiguity or uncertainty exists in any notice, instruction, direction, request or other communication, paper or document received by the Depositary from the Bank pursuant hereto, the Depositary will promptly notify the Bank of the details of such alleged ambiguity or uncertainty, and may, in its reasonable discretion, refrain from taking any action, and shall be fully protected and shall not be liable in any way to any person for refraining from taking such action, absent gross negligence or willful misconduct (each as finally determined by a court of competent jurisdiction), unless the Depositary receives written instructions with respect to such matter signed by the Bank which eliminates such ambiguity or uncertainty to the satisfaction of the Depositary.

The Depositary shall not be responsible for any failure to carry out any instruction to vote any of the deposited Preferred Shares or for the manner or effect of any such vote made, as long as any such action or non-action does not result from gross negligence or willful misconduct of the Depositary (each as finally determined by a court of competent jurisdiction). The Depositary undertakes, any Registrar and any Transfer Agent shall be required to undertake to perform such duties and only such duties as are specifically set forth in this Deposit Agreement, and no implied covenants or obligations shall be read into this Agreement or imposed upon the Depositary, any Registrar or any Transfer Agent.

The Depositary, its parent, affiliate, or subsidiaries, any Depositary's Agent, and any Registrar or Transfer Agent may own, buy, sell or deal in any class of securities of the Bank and its affiliates and in Receipts or Depositary Shares or become pecuniarily interested in any transaction in which the Bank or its affiliates may be interested or contract with or lend money to

or otherwise act as fully or as freely as if it were not the Depositary or the Depositary's Agent hereunder. The Depositary may also act as transfer agent or registrar of any of the securities of the Bank and its affiliates or act in any other capacity for the Bank or its affiliates.

It is intended that neither the Depositary nor any Depositary's Agent shall be deemed to be an "issuer" of the securities under the federal securities laws or applicable state securities laws, it being expressly understood and agreed that the Depositary and any Depositary's Agent are acting only in a ministerial capacity as Depositary for the deposited Preferred Shares; provided, however, that the Depositary agrees to comply with all information reporting and withholding requirements applicable to it under law or this Deposit Agreement in its capacity as Depositary.

Neither the Depositary (or its officers, directors, employees or agents) nor any Depositary's Agent makes any representation or has any responsibility as to the validity of any registration statement pursuant to which the Depositary Shares may be registered under the Securities Act, the deposited Preferred Shares, the Depositary Shares, the Receipts (except its countersignature thereon) or any instruments referred to therein or herein, or as to the correctness of any statement made in any such registration statement or herein.

The Bank agrees that it will register the deposited Preferred Shares and the Depositary Shares if required by the applicable securities laws, it being agreed that such registration is not required under current rules and regulations.

The Depositary hereunder:

(i) shall have no duties or obligations other than those specifically set forth herein (and no implied duties or obligations), or as may subsequently be agreed to in writing by the parties;

(ii) shall have no obligation to make payment hereunder unless the Bank shall have provided the necessary federal or other immediately available funds or securities or property, as the case may be, to pay in full amounts due and payable with respect thereto;

(iii) shall not be obligated to take any legal or other action hereunder; if, however, the Depositary determines to take any legal or other action hereunder, and, where the taking of such action might in the Depositary's judgment subject or expose it to any expense or liability, the Depositary shall not be required to act unless it shall have been furnished with an indemnity satisfactory to it;

(iv) may rely on and shall be authorized and protected in acting or failing to act upon any certificate, instrument, opinion, notice, letter, telegram, telex, facsimile transmission or other document or security delivered to the Depositary and believed by the Depositary to be genuine and to have been signed by the proper party or parties, and shall have no responsibility for determining the accuracy thereof;

(v) may rely on and shall be authorized and protected in acting or failing to act upon the written, telephonic, electronic and oral instructions, with respect to any

matter relating to the Depositary's actions as Depositary covered by this Deposit Agreement (or supplementing or qualifying any such actions) of officers of the Bank;

(vi) may consult counsel satisfactory to it, and the advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by the Depositary hereunder in accordance with the advice of such counsel;

(vii) shall not be called upon at any time to advise any person with respect to the Preferred Shares or Receipts;

(viii) shall not be liable or responsible for any recital or statement contained in any documents relating hereto or the Preferred Shares or Receipts; and

(ix) shall not be liable in any respect on account of the identity, authority or rights of the parties (other than with respect to the Depositary) executing or delivering or purporting to execute or deliver this Deposit Agreement or any documents or papers deposited or called for under this Deposit Agreement.

SECTION 5.4 Resignation and Removal of the Depositary; Appointment of Successor Depositary. The Depositary may at any time resign as Depositary hereunder by notice of its election to do so delivered to the Bank, such resignation to take effect upon the appointment of a successor depositary and its acceptance of such appointment as hereinafter provided.

The Depositary may at any time be removed by the Bank by written notice of such removal delivered to the Depositary, such removal to take effect upon the appointment of a successor depositary and its acceptance of such appointment as hereinafter provided.

In case at any time the Depositary acting hereunder shall resign or be removed, the Bank shall, within 60 days after the delivery of the notice of resignation or removal, as the case may be, appoint a successor depositary, which shall be (i) a bank or trust company having its principal office in the United States of America and having a combined capital and surplus of at least $50,000,000 or (ii) an Affiliate of any such bank or trust company. If a successor depositary shall not have been appointed within 60 days of the date of the applicable notice, the resigning Depositary may, at the expense of the Bank, petition a court of competent jurisdiction to appoint a successor depositary. Every successor depositary shall execute and deliver to its predecessor and to the Bank an instrument in writing accepting its appointment hereunder, and thereupon such successor depositary, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor and for all purposes shall be the Depositary under this Deposit Agreement, and such predecessor, upon payment of all sums due it and on the written request of the Bank, shall promptly execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder, shall duly assign, transfer and deliver all rights, title and interest in the deposited Preferred Shares and any moneys or property held hereunder to such successor and shall deliver to such successor a list of the record holders of all outstanding Receipts. Any successor depositary shall promptly mail notice of its appointment to the record holders of Receipts.

Any entity into or with which the Depositary may be merged, consolidated or converted shall be the successor of such Depositary without the execution or filing of any document or any further act. Such successor depositary may execute the Receipts either in the name of the predecessor depositary or in the name of the successor depositary.

SECTION 5.5 Notices, Reports and Documents. The Bank agrees that it will deliver to the Depositary, and the Depositary will, promptly after receipt thereof, transmit to the record holders of Receipts, in each case at the address recorded in the Depositary's books, copies of all notices and reports (including financial statements) required by law, by the rules of any national securities exchange upon which the Preferred Shares, the Depositary Shares or the Receipts are included for quotation or listed or by the Articles of Incorporation and the Designating Amendment to be furnished by the Bank to holders of the deposited Preferred Shares and, if requested by the holder of any Receipt, a copy of this Deposit Agreement and the form of Receipt. Such transmission will be at the Bank's expense and the Bank will provide the Depositary with such number of copies of such documents as the Depositary may reasonably request. In addition, the Depositary will transmit to the record holders of Receipts at the Bank's expense such other documents as may be requested by the Bank.

SECTION 5.6 Indemnification by the Bank. The Bank agrees to indemnify the Depositary, any Depositary's Agent, any Transfer Agent and any Registrar against, and hold each of them harmless from and against, any fee, loss, claim, penalty, fine, settlement, judgment, damage liability, cost and expense (including reasonable attorneys' fees and expenses) that may arise out of, or in connection with, its acting as Depositary, Depositary's Agent, Transfer Agent or Registrar, respectively, under this Deposit Agreement and the Receipts, except for any liability arising out of the willful misconduct, gross negligence, or bad faith (each as finally determined by a court of competent jurisdiction) on the part of any such person or persons. The obligations of the Bank set forth in this Section 5.6 shall survive any resignation or removal of any Depositary, Registrar, Transfer Agent or Depositary's Agent or termination of this Deposit Agreement.

SECTION 5.7 Fees, Charges and Expenses. No charges and expenses of the Depositary or any Depositary's Agent hereunder shall be payable by any person, except as provided in this Section 5.7. The Bank shall pay all transfer and other taxes and governmental charges arising solely from the existence of this Deposit Agreement. The Bank shall also pay all fees and expenses of the Depositary, Registrar, Transfer Agent and Depositary's Agent in connection with the deposit of the Preferred Shares and the issuance of the Depositary Shares evidenced by the Receipts, any redemption of the Preferred Shares at the option of the Bank and all withdrawals of the Preferred Shares by holders of Depositary Shares. If a holder of Receipts requests the Depositary to perform duties not required under this Deposit Agreement, the Depositary shall notify the holder of the cost of the performance of such duties prior to the performance thereof. Such holder will be liable for the charges and expenses related to such performance. All other fees and expenses of the Depositary and any Depositary's Agent hereunder and of any Registrar and any Transfer Agent (including, in each case, fees and expenses of counsel) incident to the performance of their respective obligations hereunder will be promptly paid as previously agreed between the Depositary and the Bank. The Depositary shall present its statement for fees and expenses to the Bank every month or at such other intervals as the Bank and the Depositary may agree.

ARTICLE VI

AMENDMENT AND TERMINATION

SECTION 6.1 Amendment. The form of the Receipts and any provision of this Deposit Agreement may at any time and from time to time be amended by written agreement between the Bank and the Depositary in any respect that they may deem necessary or desirable; provided, however, that no such amendment (other than any change in the fees of any Depositary, Registrar or Transfer Agent) which (i) shall materially and adversely alter the rights of the holders of Receipts or (ii) would be materially and adversely inconsistent with the rights granted to the holders of the Preferred Shares pursuant to the Designating Amendment shall be effective unless such amendment shall have been approved by the holders of at least a majority of the Depositary Shares then outstanding. In no event shall any amendment (i) impair the right, subject to the provisions of Section 2.6 and Section 2.7 and Article III, of any holder of any Depositary Shares to surrender the Receipt evidencing such Depositary Shares with instructions to the Depositary to deliver to the holder the deposited Preferred Shares and all money and other property, if any, represented thereby, or (ii) alter the tax treatment set forth in the offering circular under the caption "U.S. Federal Income Tax Considerations," except in order to comply with mandatory provisions of applicable law. As a condition precedent to the Depositary's execution of any amendment, the Bank shall deliver to the Depositary a certificate from an appropriate officer of the Bank that states that the proposed amendment is in compliance with the terms of this Section 6.1. Every holder of an outstanding Receipt at the time any such amendment becomes effective shall be deemed, by continuing to hold such Receipt, to consent and agree to such amendment and to be bound by this Deposit Agreement as amended thereby.

SECTION 6.2 Termination. This Deposit Agreement may be terminated by the Bank upon not less than 30 days' prior written notice to the Depositary if the holders of a majority of the Depositary Shares consent to such termination, whereupon the Depositary shall deliver or make available to each holder of a Receipt, upon surrender of the Receipt held by such holder, such number of deposited Preferred Shares that are represented by the Depositary Shares evidenced by such Receipt, together with any other property held by the Depositary in respect of such Receipt. This Deposit Agreement will automatically terminate if (i) all outstanding Preferred Shares shall have been redeemed and the Depositary has distributed the proceeds to the holders of the Depositary Shares or (ii) there shall have been made a final distribution in respect of the deposited Preferred Shares in connection with any liquidation, dissolution or winding up of the Bank and such distribution shall have been distributed to the holders of Receipts entitled thereto.

Upon the termination of this Deposit Agreement, the Bank shall be discharged from all obligations under this Deposit Agreement except for its obligations to the Depositary, any Depositary's Agent, any Transfer Agent and any Registrar under Section 5.6 and Section 5.7.

ARTICLE VII

MISCELLANEOUS

SECTION 7.1 Counterparts. This Deposit Agreement may be executed in any number of counterparts, and by each of the parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Deposit Agreement by telecopier shall be effective as delivery of a manually executed counterpart of this Deposit Agreement. Copies of this Deposit Agreement shall be filed with the Depositary and the Depositary's Agents and shall be open to inspection during business hours at the Corporate Office and the respective offices of the Depositary's Agents, if any, by any holder of a Receipt.

SECTION 7.2 Exclusive Benefit of Parties. This Deposit Agreement is for the exclusive benefit of the parties hereto, and their respective successors hereunder, and shall not be deemed to give any legal or equitable right, remedy or claim to any other person whatsoever.

SECTION 7.3 Invalidity of Provisions. In case any one or more of the provisions contained in this Deposit Agreement or in the Receipts should be or become invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein or therein shall in no way be affected, prejudiced or disturbed thereby.

SECTION 7.4 Notices. Any and all notices to be given to the Bank hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, or by telegram or facsimile transmission confirmed by letter, addressed to the Bank at:

First Republic Bank
111 Pine Street
San Francisco, California 94111
Attn: Willis H. Newton Jr.
Facsimile No.: (415) 392-0758

or at any other address of which the Bank shall have notified the Depositary in writing.

Any notices to be given to the Depositary hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, or by telegram or facsimile transmission confirmed by letter, addressed to the Depositary at:

Mellon Investor Services LLC
235 Montgomery Street, 23rd Floor
San Francisco, California 94104
Attn: Relationship Manager
Facsimile No.: (415) 989-5241

with a copy to:

Mellon Investor Services LLC
85 Challenger Road
Ridgefield Park, New Jersey 07660
Attention: General Counsel
Facsimile: (201) 296-4004

Any notices given to any record holder of a Receipt hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, or by telegram or facsimile transmission confirmed by letter, addressed to such record holder at the address of such record holder as it appears on the books of the Depositary or, if such holder shall have filed with the Depositary in a timely manner a written request that notices intended for such holder be mailed to some other address, at the address designated in such request.

Delivery of a notice to the Bank or the Depositary sent by mail, or by telegram or facsimile transmission shall be deemed to be effected at the time when written confirmation thereof is received by the person or entity delivering such notice. The Depositary or the Bank may, however, act upon any notice sent by mail, telegram or facsimile transmission received by it from the other or from any holder of a Receipt, notwithstanding that such notice shall not subsequently be confirmed as aforesaid.

SECTION 7.5 Depositary's Agents. The Depositary may from time to time appoint Depositary's Agents to act in any respect for the Depositary for the purposes of this Deposit Agreement and may at any time appoint additional Depositary's Agents and vary or terminate the appointment of such Depositary's Agents. The Depositary will notify the Bank of any such action.

SECTION 7.6 Holders of Receipts are Parties. The holders of Receipts from time to time shall be deemed to be parties to this Deposit Agreement and shall be bound by all of the terms and conditions hereof and of the Receipts by acceptance of delivery thereof.

SECTION 7.7 Governing Law. This Deposit Agreement and the Receipts and all rights hereunder and thereunder and provisions hereof and thereof shall be governed by, and construed in accordance with, the law of the State of New York applicable to agreements made and to be performed in said State. The Bank hereby submits to the non-exclusive jurisdiction of the Federal and state courts in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Deposit Agreement or the transactions contemplated thereby.

SECTION 7.8 Inspection of Deposit Agreement and Designating Amendment. Copies of this Deposit Agreement and the Designating Amendment shall be filed with the Depositary and the Depositary's Agents and shall be open to inspection during normal business hours at the Corporate Office and the respective offices of the Depositary's Agents, if any, by any holder of any Receipt.

SECTION 7.9 Headings. The headings of articles and sections in this Deposit Agreement and in the form of the Receipt set forth in Exhibit A hereto have been inserted for convenience only and are not to be regarded as part of this Deposit Agreement or to have any bearing upon the meaning or interpretation of any provision contained herein or in the Receipts.

[Signature Page Follows]

IN WITNESS WHEREOF, this Deposit Agreement has been duly executed as of the day and year first above set forth and all holders of Receipts shall become parties hereto by and upon acceptance by them of delivery of Receipts issued in accordance with the terms hereof.

FIRST REPUBLIC BANK

By: /s/ Willis H. Newton, Jr.
Willis H. Newton, Jr.
Executive Vice President & CFO

MELLON INVESTOR SERVICES LLC

By: /s/ Kerri Altig
Authorized Signatory

Exhibit 5.1

FORM OF OPINION OF SULLIVAN & CROMWELL LLP

May **[•]**, 2007

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

Ladies and Gentlemen:

In connection with the registration under the Securities Act of 1933 (the "Act") of 12,000,000 shares of Common Stock, par value $1.33 1/3 per share (the "Common Shares"), and 115,000 shares of Preferred Stock, par value $1.00 per share (the "Preferred Shares") of Merrill Lynch & Co., Inc., a Delaware corporation (the "Company"), we, as your counsel, have examined such corporate records, certificates and other documents, and such questions of law, as we have considered necessary or appropriate for the purposes of this opinion. Upon the basis of such examination, we advise you that, in our opinion:

(1) When the registration statement relating to the Common and Preferred Shares (the "Registration Statement") has become effective under the Act, and the Common Shares have been duly issued and delivered as provided in the Agreement and Plan of Merger, dated as of January 29, 2007 (the "Merger Agreement"), among the Company, First Republic Bank, a Nevada banking corporation ("First Republic"), and Merrill Lynch Bank & Trust Co., FSB, a federal savings bank ("ML Bank"), as contemplated by the Registration Statement, the Common Shares will be validly issued, fully paid and nonassessable**.**

(2) When the Registration Statement has become effective under the Act, certificates of designations with respect to the Preferred Shares substantially in the forms filed as exhibits to the Registration Statement have been duly filed with the Secretary of State of the State of Delaware, and the Preferred Shares have been duly issued and delivered as provided in the Merger Agreement, as contemplated by the Registration Statement, the Preferred Shares will be validly issued, fully paid and nonassessable.

The foregoing opinion is limited to the Federal laws of the United States and the laws of the State of Delaware, and we are expressing no opinion as to the effect of the laws of any other jurisdiction.

We have relied as to certain factual matters on information obtained from public officials, officers of the Company, First Republic and ML Bank and other sources believed by us to be responsible.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to us under the heading "Validity of Common and Preferred Stock" in the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act.

Very truly yours,

EXHIBIT 5.2

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

Ladies and Gentlemen:

I have acted as counsel for Merrill Lynch & Co., Inc., a Delaware corporation (the "Corporation") in connection with the registration on Form S-4 (the "Registration Statement") of 12,000,000 shares (the " Common Shares") of Common Stock, par value $1.33 1/3 per share together with the rights attached thereto (the "Rights"), and 115,000 shares of Preferred Stock, par value $1.00 per share, which are to be issued in connection with the merger of First Republic Bank, a Nevada banking corporation ("First Republic"), and Merrill Lynch Bank & Trust Co., FSB, a federally chartered savings bank ("ML Bank") pursuant to the Agreement and Plan of Merger, dated as of January 29, 2007, among the Corporation, First Republic and ML Bank.

I have examined and am familiar with the Company's Amended and Restated Rights Agreement Dated as of December 2, 1997 and the corporate proceedings relating to the Rights Agreement.

Subject to the foregoing, and having satisfied myself as to such other matters of law and fact as I consider relevant for the purposes of this opinion, it is my opinion that, upon issuance and delivery of the Common Shares in accordance with the Merger Agreement and the Registration Statement, the Rights associated with such Common Shares will have been duly authorized by all necessary corporate action on the part of the Company and the associated Rights will be validly issued.

I am admitted to practice law in the State of New York and the foregoing opinion is limited to the valid issuance of the Rights under the Federal laws of the United States and the laws of the State of Delaware. It should be understood that this opinion addresses the Rights and the Rights Agreement in their entirety and not any particular provision of the Rights or the Rights Agreement and that it is not settled whether the invalidity of any particular provision of a rights agreement or of rights issued thereunder would result in invalidating in their entirety such rights. I express no opinion herein as to any other laws, statutes or regulations.

I hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to use my name under the heading "Validity of Common and Preferred Stock" in the Registration Statement. In giving such consent, I do not thereby admit that I am in the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended.

Very truly yours,

Richard B. Alsop
Senior Vice President
Corporate Law

Exhibit 8.1

Sullivan & Cromwell LLP Form of Opinion

May [ ], 2007

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

Ladies and Gentlemen:

We have acted as counsel to Merrill Lynch & Co., Inc, a Delaware corporation ("Merrill Lynch"), in connection with the planned merger (the "Merger") of First Republic Bank, a Nevada banking corporation ("First Republic"), with and into Merrill Lynch Bank & Trust Co., FSB, a federal savings bank and a wholly owned, indirect subsidiary of Merrill Lynch ("ML Bank"), pursuant to the Agreement and Plan of Merger, dated as of January 29, 2007 (the "Merger Agreement"), among Merrill Lynch, ML Bank and First Republic, as described in the proxy statement and other proxy solicitation materials of First Republic, and the prospectus of Merrill Lynch constituting a part thereof (the "Proxy Statement-Prospectus"), which is part of the registration statement on Form S-4 filed by Merrill Lynch on or about the date hereof (the "Registration Statement") in connection with the Merger.

We hereby confirm to you that, in our opinion, insofar as they purport to describe provisions of United States federal income tax law applicable to holders of stock of First Republic that exchange their First Republic stock for cash and stock of Merrill Lynch, solely for stock of Merrill Lynch, or solely for cash, in each case pursuant to the Merger, the statements set forth under the caption "Material United States Federal Income Tax Consequences" in the Proxy Statement-Prospectus included in the Registration Statement are accurate in all material respects.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not hereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Securities and Exchange Commission thereunder.

Very truly yours,

Exhibit 8.2

FORM OF WHITE & CASE LLP OPINION

[Letterhead of White & Case LLP]

[Date]

First Republic Bank
111 Pine Street
San Francisco, California 94111

Ladies and Gentlemen:

We have acted as counsel to First Republic Bank, a Nevada banking corporation ("First Republic"), in connection with the proposed merger (the "Merger") of First Republic with and into Merrill Lynch Bank & Trust Co., FSB, a federal stock savings bank and a wholly owned, indirect subsidiary of Merrill Lynch & Co., Inc., a Delaware corporation ("Merrill Lynch"), as described in the proxy statement/prospectus of First Republic and Merrill Lynch (the "Proxy Statement/Prospectus") that forms a part of Merrill Lynch's registration statement on Form S-4 to be filed with the Securities and Exchange Commission in connection with the Merger on the date hereof (the "Registration Statement").

In our opinion, subject to the assumptions, qualifications and limitations contained or referenced therein, the statements set forth under the caption "Material U.S. Federal Income Tax Consequences" in the Proxy Statement/Prospectus that forms a part of the Registration Statement, to the extent that such statements constitute summaries or descriptions of United States federal income tax law or legal conclusions with respect thereto, are accurate in all material respects.

Our opinion is based on the Internal Revenue Code of 1986, as amended, the Treasury Regulations issued thereunder and administrative and judicial interpretations thereof, in each case as in effect and available on the date hereof. We have not considered and render no opinion on any aspect of law other than as expressly set forth above.

A partner of White & Case LLP, L. Martin Gibbs, serves on the Board of Directors of First Republic and holds an equity ownership interest in First Republic as disclosed in its public filings.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the references to our name contained therein. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

Very truly yours,

Exhibit 15.1

May 7, 2007

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 for the three-month periods ended March 30, 2007 and March 31, 2006, and have issued our report dated May 7, 2007 (which report included an explanatory paragraph regarding the adoption of Statement of Financial Accounting Standards No. 157, "*Fair Value Measurement*", 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*."). 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 March 30, 2007, is being incorporated by reference in this Registration Statement.

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 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 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-4 of our reports dated February 26, 2007, relating to the consolidated financial statements of Merrill Lynch & Co., Inc. and subsidiaries (which report expressed an unqualified opinion and included an explanatory paragraph regarding the change in accounting method in 2006 for share-based payments to conform to Statement of Financial Accounting Standards ("SFAS") No. 123 (revised 2004), *Share-Based Payment*), and management's report on the effectiveness of internal control over financial reporting appearing in the Annual Report on Form 10-K of Merrill Lynch & Co., Inc. and subsidiaries for the year ended December 29, 2006 and to the reference to us under the heading "Experts" in the proxy statement/prospectus, which is part of this Registration Statement.

/s/ Deloitte & Touche LLP
New York, New York
May 7, 2007

Exhibit 23.2

Consent of Independent Registered Public Accounting Firm

The Board of Directors
First Republic Bank:

We consent to the use of our report dated February 27, 2007, with respect to the consolidated balance sheet of First Republic Bank and subsidiaries as of December 31, 2006 and 2005, and the related consolidated statements of income and comprehensive income, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2006, incorporated by reference herein and to the reference to our firm under the heading "Experts" in the prospectus.

/s/ KPMG LLP

San Francisco, California
May 3, 2007

Exhibit 99.1

Morgan Stanley

Consent of Morgan Stanley & Co. Incorporated

We hereby consent to the use in the Registration Statement of Merrill Lynch & Co., Inc. on Form S-4 and in the Proxy Statement/Prospectus of Merrill Lynch & Co., Inc. and First Republic Bank, which is part of the Registration Statement, of our opinion dated January 28, 2007 appearing as Annex B to such Proxy Statement/Prospectus, and to the description of such opinion and to the references to our name contained therein under the heading "SUMMARY — Opinion of First Republic's Financial Advisor," "THE MERGER — Background of the Merger," "THE MERGER — First Republic's Reasons for the Merger; Recommendation of First Republic's Board of Directors," and "THE MERGER — Opinion of First Republic's Financial Advisor." In giving the foregoing consent, we do not admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended (the "Securities Act"), or the rules and regulations promulgated thereunder, nor do we admit that we are experts with respect to any part of such Registration Statement within the meaning of the term "experts" as used in the Securities Act or the rules and regulations promulgated thereunder.

MORGAN STANLEY & CO. INCORPORATED

By: /s/ JOHN P. ESPOSITO

New York, New York
May 7, 2007

Exhibit 99.2

SPECIAL MEETING OF STOCKHOLDERS OF
FIRST REPUBLIC BANK
[_____], 2007

The undersigned stockholder of First Republic Bank (the "Bank") hereby constitutes and appoints Roger O. Walther, James H. Herbert, II, and Katherine August-deWilde, and each of them, with full power of substitution, attorneys and proxies of the undersigned to attend and act for the undersigned at the Special Meeting of Stockholders of the Bank to be held on [___], 2007, at [___]:00 [AM/PM] Local Time, at [___] and at any adjournments or postponements thereof, and to represent and vote as designated below all of the shares of Common Stock of the Bank that the undersigned would be entitled to vote with respect to the matters described in the accompanying Notice of Special Meeting of Stockholders and Proxy Statement/Prospectus, receipt of which is hereby acknowledged.

THE BOARD OF DIRECTORS OF THE BANK UNANIMOUSLY RECOMMENDS A VOTE "FOR" THE APPROVAL OF THE PLAN OF MERGER CONTAINED IN THE MERGER AGREEMENT

1. **To approve the plan of merger contained in the Agreement and Plan of Merger, dated as of January 29, 2007, among Merrill Lynch & Co., Inc., First Republic Bank and Merrill Lynch Bank & Trust Co., FSB, a wholly owned subsidiary of Merrill Lynch & Co., Inc., as it may be amended from time to time, pursuant to which First Republic Bank will be merged with and into Merrill Lynch Bank & Trust Co., FSB, as more fully described in the proxy statement/prospectus.**

☐ FOR **☐ AGAINST** **☐ ABSTAIN**

2. **To transact such other business as may properly come before the meeting or any adjournment or postponement of the special meeting, if necessary, including to solicit additional proxies.**

☐ FOR **☐ AGAINST** **☐ ABSTAIN**

THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS OF THE BANK.

When this proxy is properly executed and returned, the shares it represents will be voted as directed. If no specification is made, this proxy will be voted in favor of the approval of the plan of merger contained in the merger agreement and in accordance with the best judgment of the proxy holders with respect to any other matters which may properly come before the Special Meeting.

PLEASE SIGN AND DATE BELOW:

DATED: _____, 2007

X _____

Please sign exactly as name(s) appear hereon. If shares are held jointly, each holder should sign. When signing as attorney, executor, administrator, trustee, guardian or corporate officer, please give full title. If a partnership, please sign in partnership name by authorized person.

PLEASE COMPLETE, SIGN, DATE AND RETURN THIS PROXY PROMPTLY USING THE ENCLOSED ENVELOPE
SO THAT IT MAY BE COUNTED AT THE SPECIAL MEETING