

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): May 2, 2007

Merrill Lynch & Co., Inc.
(Exact name of Registrant as specified in its charter)

Delaware	1-7182	13-2740599
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

4 World Financial Center, New York, New York 10080

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (212) 449-1000

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 8.01. Other Events

Merrill Lynch & Co., Inc., a Delaware corporation (the "Company"), and Merrill Lynch Capital Trust II, a statutory trust formed under the laws of the State of Delaware (the "Trust"), closed on May 2, 2007 the public offering of \$950,000,000 aggregate liquidation amount of the Trust's Trust Preferred Securities (the "Capital Securities"), representing preferred beneficial interests in the Trust, pursuant to an Underwriting Agreement, dated April 25, 2007, among the Company, the Trust and the underwriters named therein (the "Underwriters"), for whom Merrill Lynch, Pierce, Fenner & Smith Incorporated acted as representative (the "Representative"). The Capital Securities are fully, irrevocably and unconditionally guaranteed on a subordinated basis by the Company pursuant to a Guarantee Agreement (the "Guarantee") between the Company and The Bank of New York, as Guarantee Trustee. The proceeds from the sale of the Capital Securities, together with the proceeds from the sale by the Trust of its common securities, were invested by the Trust in Income Capital Obligation Notes (the "ICONS") initially due June 15, 2062, issued pursuant to a Junior Subordinated Indenture (the "Indenture"), dated as of December 14, 2006, as supplemented by the Second Supplemental Indenture, dated May 2, 2007, between the Company and The Bank of New York, as Trustee. The Capital Securities, the ICONs and the Guarantee have been registered under the Securities Act of 1933, as amended, by a registration statement on Form S-3 (File No. 333-132911) and the Post-Effective Amendment No. 2 thereto.

Item 9.01. Financial Statements, Pro Forma Financial Information and Exhibits

EXHIBITS

- 1 Underwriting Agreement, dated April 25, 2007, among Merrill Lynch & Co., Inc., the Trust and Merrill Lynch, Pierce, Fenner & Smith Incorporated as Representative of the Underwriters.
- 4 (a) Junior Subordinated Indenture, dated as of December 14, 2006, between Merrill Lynch & Co., Inc. and The Bank of New York, as trustee, incorporated by reference to Exhibit 4(a) to Merrill Lynch & Co., Inc.'s filing on Form 8-K, filed on December 14, 2006.
- 4 (b) Second Supplemental Indenture, dated as of May 2, 2007, between Merrill Lynch & Co., Inc. and The Bank of New York, as trustee.
- 4 (c) Specimen Capital Security Certificate (included as part of Exhibit 4(e)).
- 4 (d) Specimen Income Capital Obligation Note initially due June 15, 2062 (included as part of Exhibit 4(b)).
- 4 (e) Amended and Restated Trust Agreement, dated May 2, 2007, among Merrill Lynch & Co., Inc., The Bank of New York (Delaware), as Delaware Trustee, The Bank of New York, as Property Trustee, and the Administrative Trustees named therein.
- 4 (f) Guarantee Agreement, dated as of May 2, 2007, between Merrill Lynch & Co., Inc. and The Bank of New York as Guarantee Trustee.
- 8 Opinion of Sidley Austin LLP with respect to certain tax matters.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereto duly authorized.

MERRILL LYNCH & CO., INC.
(Registrant)

By: _____ /s/ JOHN J. THURLOW
John J. Thurlow
Assistant Treasurer

Date: May 2, 2007

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

MERRILL LYNCH & CO., INC.

EXHIBITS TO CURRENT REPORT ON
FORM 8-K DATED MAY 2, 2007

Commission File Number 1-7182

Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>	<u>Page</u>
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MERRILL LYNCH & CO., INC.

(a Delaware corporation)

MERRILL LYNCH CAPITAL TRUST II

(a Delaware Statutory Trust)

UNDERWRITING AGREEMENT FOR
36,000,000 TRUST PREFERRED SECURITIES

Dated: April 25, 2007

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MERRILL LYNCH & CO., INC.
(a Delaware corporation)

MERRILL LYNCH CAPITAL TRUST II
(a Delaware Statutory Trust)

36,000,000 Trust Preferred Securities

Trust Preferred Securities
(Liquidation Amount of \$25 per Security)

UNDERWRITING AGREEMENT

April 25, 2007

Merrill Lynch, Pierce, Fenner & Smith Incorporated
4 World Financial Center
New York, New York 10080

as Representative of the Underwriters
named in Schedule I hereto

Ladies and Gentlemen:

Merrill Lynch Capital Trust II (the "Trust"), a statutory trust organized under the Statutory Trust Act (the "Delaware Act") of the State of Delaware (Chapter 38, Title 12, of the Delaware Business Code, 12 Del. C. Section 3801 *et seq.*), proposes, upon the terms and conditions set forth herein, to issue and sell 36,000,000 trust preferred securities with an aggregate liquidation amount equal to \$900,000,000 (the "Initial Trust Preferred Securities") to the several Underwriters named in Schedule I hereto (the "Underwriters") for whom Merrill Lynch, Pierce, Fenner & Smith Incorporated is acting as representative (the "Representative"). In addition, the Trust has granted to the Underwriters, acting severally and not jointly, an option to purchase up to an additional 5,400,000 trust preferred securities (the "Option Trust Preferred Securities" and collectively with the Initial Trust Preferred Securities, the "Trust Preferred Securities"), as provided in Section 2 hereof.

The Trust Preferred Securities and the Common Securities (as defined herein) are to be issued pursuant to the terms of a trust agreement, to be amended and restated as of the Closing Time (as defined in Section 2 hereof) (as so amended and restated, the "Trust Agreement"), among Merrill Lynch & Co., Inc. (the "Company", and together with the Trust, the "Offerors"), the trustees named therein (the "Merrill Lynch Capital Trust II Trustees") and the holders from

time to time of undivided beneficial interests in the assets of the Trust. The Trust Agreement is qualified as an indenture under the Trust Indenture Act of 1939, as amended (together with the rules and regulations thereunder, the “1939 Act”). Pursuant to the Trust Agreement, the number of Merrill Lynch Capital Trust II Trustees will initially be five. Three of the Merrill Lynch Capital Trust II Trustees (the “Administrative Trustees”) will be persons who are employees of the Company. The fourth Merrill Lynch Capital Trust II Trustee will be a financial institution unaffiliated with the Company that will serve as property trustee under the Trust Agreement and as indenture trustee with respect to the Trust Preferred Securities for purposes of the 1939 Act (the “Property Trustee”). The fifth Merrill Lynch Capital Trust II Trustee will be a financial institution or an affiliate thereof which maintains a principal place of business in the State of Delaware, meeting the requirements of the Delaware Act (the “Delaware Trustee”). Initially, The Bank of New York, a New York banking corporation, will act as the Property Trustee and The Bank of New York (Delaware), a banking association with its principal place of business in the State of Delaware, will act as the Delaware Trustee until removed or replaced by the holder of the Common Securities. The Trust Preferred Securities will be guaranteed by the Company on a subordinated basis with respect to distributions and payments upon liquidation, redemption or otherwise pursuant to the Guarantee Agreement, to be dated as of the Closing Time, (the “Guarantee”) between the Company and The Bank of New York, as trustee (the “Guarantee Trustee”). The assets of the Trust will consist of \$901,000,000 aggregate principal amount of Income Capital Obligation Notes initially due 2062 (the “ICONS”) of the Company (or up to \$1,036,000,000 if the Underwriters exercise the option granted to them in Section 2(b)) which will be issued under a Junior Subordinated Indenture dated as of December 14, 2006, as supplemented by a second supplemental indenture thereto to be dated as of the Closing Time (together, the “Indenture”), among the Company and The Bank of New York, as trustee (the “Indenture Trustee”). Under certain circumstances, the ICONs will be distributable to the holders of undivided beneficial interests in the assets of the Trust. The Trust Preferred Securities, the Guarantee and the ICONs are referred to herein as the “Securities”.

The Offerors wish to confirm as follows their agreement with you and the other several Underwriters on whose behalf you are acting as Representative, in connection with the several purchases of the Trust Preferred Securities by the Underwriters.

The Company has filed with the Securities and Exchange Commission (the “Commission”) an automatic shelf registration statement on Form S-3 (No. 333-132911), and the Offerors have filed a post-effective amendment thereto, including the related prospectus or prospectuses, each of which registration statement and post-effective amendment became effective upon filing under Rule 462(e) of the rules and regulations of the Commission (the “1933 Act Regulations”) under the Securities Act of 1933, as amended (the “1933 Act”). Such registration statement, as so amended, covers the registration of the Securities under the 1933 Act. Promptly after execution and delivery of this Agreement, the Company will prepare and file a prospectus in accordance with the provisions of Rule 430B (“Rule 430B”) of the 1933 Act Regulations and paragraph (b) of Rule 424 (“Rule 424(b)”) of the 1933 Act Regulations. Any information included in such prospectus that was omitted from such registration statement at the time it became effective but that is deemed to be part of and included in such registration statement pursuant to Rule 430B is referred to as “Rule 430B Information.” Each prospectus used in connection with the offering of the Securities that omitted Rule 430B Information is herein called a “preliminary prospectus.” Such registration statement, at any given time,

including the amendments thereto to such time, the exhibits and any schedules thereto at such time, the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act at such time and the documents otherwise deemed to be a part thereof or included therein by 1933 Act Regulations, is herein called the “Registration Statement.” The Registration Statement, at the time it originally became effective is herein called the “Original Registration Statement” and the second post-effective amendment thereto, at the time it originally became effective, is herein called the “Post-Effective Amendment.” The final prospectus in the form first furnished to the Underwriters for use in connection with the offering of the Trust Preferred Securities, including the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act at the time of the execution of this Agreement and any preliminary prospectuses that form a part thereof, is herein called the “Prospectus.” For purposes of this Agreement, all references to the Registration Statement, any preliminary prospectus, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system (“EDGAR”).

All references in this Agreement to financial statements and schedules and other information which is “contained,” “included” or “stated” (or other references of like import) in the Registration Statement, Prospectus or preliminary prospectus shall be deemed to mean and include all such financial statements and schedules and other information which is incorporated by reference or otherwise deemed by 1933 Act Regulations to be a part of or included in the Registration Statement, Prospectus or preliminary prospectus, as the case may be; and all references in this Agreement to amendments or supplements to the Registration Statement, Prospectus or preliminary prospectus shall be deemed to mean and include the filing of any document under the 1934 Act which is incorporated by reference in the Registration Statement, Prospectus or preliminary prospectus, as the case may be.

Section 1. Representation and Warranties.

(a) *Representations and Warranties by the Offerors* The Offerors jointly and severally represent and warrant to the Underwriters as of the date hereof, the Applicable Time referred to in Section 1(a)(2) hereof and as of the Closing Time (as defined below) and as of each Date of Delivery (as defined below), if any (in each case, a “Representation Date”), as follows:

(1) Status as a Well-Known Seasoned Issuer. (A) At the time of filing the Original Registration Statement, (B) at the time of filing the Post-Effective Amendment, (C) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) of the 1933 Act Regulations) made any offer relating to the Trust Preferred Securities in reliance on the exemption of Rule 163 of the 1933 Act Regulations and (D) at the date hereof, the Company was and is a “well-known seasoned issuer” as defined in Rule 405 of the 1933 Act Regulations (“Rule 405”), including not having been and not being an “ineligible issuer” as defined in Rule 405. The Registration Statement is an “automatic shelf registration statement,” as defined in Rule 405, and the Guarantee, ICONs and Trust Preferred Securities, since their registration on the Registration Statement, have been and remain eligible for registration by the Company on a Rule 405 “automatic shelf registration statement”. The Company has not received from

the Commission any notice pursuant to Rule 401(g)(2) of the 1933 Act Regulations objecting to the use of the automatic shelf registration statement form.

(2) Registration Statement, Prospectus and Disclosure at Time of Sale. The Original Registration Statement became effective upon filing under Rule 462(e) of the 1933 Act Regulations (“Rule 462(e)”) on March 31, 2006, and any post-effective amendment thereto also became effective upon filing under Rule 462(e). No stop order suspending the effectiveness of the Registration Statement has been issued under the 1933 Act and no proceedings for that purpose have been instituted or are pending or, to the knowledge of the Company, are contemplated by the Commission, and any request on the part of the Commission for additional information has been complied with. In addition, each of the Indenture, the Guarantee and the Trust Agreement has been duly qualified under the 1939 Act.

Any offer that is a written communication relating to the Securities made prior to the filing of the Original Registration Statement or any applicable amendment thereto by the Company or any person acting on its behalf (within the meaning, for this paragraph only, of Rule 163(c) of the 1933 Act Regulations) has been filed with the Commission in accordance with the exemption provided by Rule 163 of the 1933 Act Regulations (“Rule 163”) and otherwise complied with the requirements of Rule 163, including without limitation the legending requirement, to qualify such offer for the exemption from Section 5(c) of the 1933 Act provided by Rule 163.

At the respective times the Original Registration Statement and each amendment thereto became effective, at each deemed effective date with respect to the Underwriters pursuant to Rule 430B(f)(2) of the 1933 Act Regulations and at each Representation Date, the Registration Statement complied and will comply in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations, and did not and will not contain an 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 not misleading. At the date of the Prospectus and at the Closing Time (and if any Option Trust Preferred Securities are purchased, the Date of Delivery), the Prospectus and any amendments and supplements thereto did not and will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties in this subsection shall not apply to that part of the Registration Statement that constitutes the Statement of Eligibility on Form T-1 (the “Form T-1”) under the 1939 Act of the relevant trustee.

Each preliminary prospectus (including the prospectus or prospectuses filed as part of the Original Registration Statement or any amendment thereto, or filed pursuant to Rule 424 under the 1933 Act), complied when so filed in all material respects with the 1933 Act Regulations and each preliminary prospectus and the Prospectus delivered to the Underwriters for use in connection with the offering of the Trust Preferred Securities will, at the time of such delivery, be identical to any electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

As of the Applicable Time, neither (x) the Issuer General Use Free Writing Prospectus (as defined below) issued at or prior to the Applicable Time (as defined below) and the Statutory Prospectus (as defined below), all considered together (collectively, the “General Disclosure Package”), nor (y) any individual Issuer Limited Use Free Writing Prospectus, when considered together with the General Disclosure Package, included any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

As used in this subsection and elsewhere in this Agreement:

“Applicable Time” means 2:38 P.M. (Eastern time) on April 25, 2007 or such other time as agreed by the Offerors and the Underwriters.

“Issuer Free Writing Prospectus” means any “issuer free writing prospectus,” as defined in Rule 433 of the 1933 Act Regulations (“Rule 433”), relating to the Trust Preferred Securities that (i) is required to be filed with the Commission by the Company, (ii) is a “road show that is a written communication” within the meaning of Rule 433(d)(8)(i), whether or not required to be filed with the Commission or (iii) is exempt from filing pursuant to Rule 433(d)(5)(i) because it contains a description of the Trust Preferred Securities or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g).

“Issuer General Use Free Writing Prospectus” means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being specified in Schedule II hereto.

“Issuer Limited Use Free Writing Prospectus” means any Issuer Free Writing Prospectus that is not an Issuer General Use Free Writing Prospectus.

“Statutory Prospectus” as of any time means the prospectus relating to the Securities that is included in the Registration Statement immediately prior to that time, including any document incorporated by reference therein and any preliminary or other prospectus deemed to be a part thereof.

Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Trust Preferred Securities or until any earlier date that the issuer notified or notifies the Company as described in Section 3(e), did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement or the Prospectus, including any document incorporated by reference therein and any preliminary or other prospectus deemed to be a part thereof that has not been superseded or modified.

The representations and warranties in this subsection shall not apply to statements in or omissions from the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus made in reliance upon and in conformity with written information

furnished to the Offerors by the Underwriters through the Representative expressly for use therein or to that part of the Registration Statement that constitutes the Statement of Eligibility on form T-1 (the "Form T-1") under the 1939 Act of the relevant trustee.

(3) Incorporated Documents. The documents incorporated or deemed to be incorporated by reference in the Registration Statement and the Prospectus at the time they were or hereafter are filed with the Commission, complied and will comply in all material respects with the requirements of the 1934 Act and the rules and regulations thereunder (the "1934 Act Regulations"), and, when read together with the other information in the Prospectus, (a) at the time the Original Registration Statement and each amendment thereto became effective, (b) at the earlier of the time the Prospectus was first used and the date and time of the first contract of sale of Securities in this offering and (c) at the Closing Time (and if any Option Trust Preferred Securities are purchased, the Date of Delivery), did not and will not, contain an 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 are made, not misleading.

(4) No Material Adverse Change in Business. Since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, except as otherwise stated therein or contemplated thereby, there has been no material adverse change in the condition, financial or otherwise, of the Company and its subsidiaries considered as one enterprise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business (such a material adverse change hereinafter referred to as a "Material Adverse Effect").

(5) Independent Accountants. Deloitte & Touche LLP, which has audited certain financial statements of the Company, is an independent registered public accounting firm as required by the 1933 Act and the 1933 Act Regulations.

(6) Good Standing. The Company has been duly organized and is validly existing as a corporation in good standing under the laws of the State of Delaware and has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus and to enter into and perform its obligations under, or as contemplated under, this Agreement. The Company is duly qualified as a foreign corporation to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or be in good standing would not result in a Material Adverse Effect.

(7) Good Standing of Subsidiaries. Each subsidiary of the Company which is a "significant subsidiary" as defined in Regulation S-X under the 1933 Act (each a "Subsidiary" and, collectively, the "Subsidiaries") has been duly organized and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus and is duly qualified as a

foreign corporation to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or be in good standing would not result in a Material Adverse Effect; except as otherwise disclosed in the Registration Statement and Prospectus, all of the issued and outstanding capital stock of each Subsidiary has been duly authorized and validly issued and is fully paid and non-assessable and is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity; and none of the outstanding shares of capital stock of any Subsidiary was issued in violation of preemptive or similar rights of any security holder of such Subsidiary. The only subsidiaries of the Company are (A) the subsidiaries listed in Exhibit 21 to the Annual Report on Form 10-K of the Company filed with the Commission under Section 13 of the 1934 Act and (B) certain other subsidiaries which, considered in the aggregate as a single subsidiary, do not constitute a “significant subsidiary” as defined in Rule 1-02 of Regulation S-X under the 1933 Act.

(8) Authorization of this Agreement. This Agreement has been duly authorized, executed and delivered by the Company and the Trust.

(9) Authorization of Indenture, ICONs, Guarantee and Trust Agreement. (i) Each of the Indenture and the Guarantee has been duly authorized by the Company and at the Closing Time will have been validly executed and delivered by the Company and each, when so executed (assuming the due authorization, execution and delivery of such instrument by each other party thereto), will constitute a valid and legally binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, fraudulent transfer, fraudulent conveyance, moratorium or other laws affecting creditors’ rights generally and general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law); (ii) the ICONs have been duly authorized and, when validly executed and delivered by the Company, authenticated in accordance with the provisions of the Indenture and delivered to the Trust against payment therefor, will constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, fraudulent transfer, fraudulent conveyance, moratorium or other laws affecting creditors’ rights generally and general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law) and the holders of the ICONs will be entitled to the benefits of the Indenture and, (iii) the Trust Agreement has been duly authorized by the Company and at the Closing Time will have been validly executed and delivered by the Administrative Trustees named therein and the Company, and the Trust Agreement, when so executed (assuming the due authorization, execution and delivery of such instrument by each other party thereto), will constitute a legally binding agreement of the Company, enforceable against the Company in accordance with its terms except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, fraudulent transfer, fraudulent conveyance, moratorium or other laws affecting creditors’ rights generally and general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(10) Authorization of The Trust Preferred Securities and The Common Securities. The Trust Preferred Securities have been duly and validly authorized by the Trust Agreement and, when validly executed and delivered by the Trust, authenticated in accordance with the provisions of the Trust Agreement and delivered to the Underwriters against payment therefor in accordance with the terms hereof, will be validly issued and will be fully paid and non-assessable undivided beneficial interests in the assets of the Trust and will be entitled to the benefits of the Trust Agreement; the issuance of the Trust Preferred Securities is not subject to preemptive or other similar rights; holders of Trust Preferred Securities will be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit under the General Corporation Law of the State of Delaware. The Common Securities have been duly authorized for issuance by the Trust and, when issued and delivered against payment therefor will be validly issued, fully paid and non-assessable, undivided beneficial interests in the assets of the Trust. At the Closing Time, all of the issued and outstanding Common Securities of the Trust will be directly owned by the Company, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity.

(11) Description of Trust Preferred Securities and ICONs. Each of the Indenture, the Guarantee, the Trust Agreement, the Trust Preferred Securities and the ICONs conform, in each case in all material respects, to the respective statements relating thereto contained in the Prospectus and the General Disclosure Package.

(12) Administrative Trustees. The Administrative Trustees of the Trust are employees of the Company and have been duly authorized by the Company to execute and deliver the Trust Agreement.

(13) Absence of Proceedings. There is not any action, suit, proceeding, inquiry or investigation before or brought by any court or governmental agency or body, domestic or foreign, now pending, or, to the knowledge of the Company, threatened, against or affecting the Company or any of its subsidiaries which is required to be disclosed in the Registration Statement, the Prospectus and the General Disclosure Package (other than as stated therein), or which might reasonably be expected to result in a Material Adverse Effect, or which might reasonably be expected to materially and adversely affect the assets, properties, or operations thereof or the consummation of the transactions contemplated in this Agreement or the Trust Agreement, the Indenture or the Guarantee or the performance by the Company of its obligations hereunder and thereunder; and the aggregate of all pending legal or governmental proceedings to which the Company or any of its subsidiaries is a party or of which any of their respective assets, property, or operations is the subject which are not described in the Registration Statement and the Prospectus, including ordinary routine litigation incidental to the business, could not reasonably be expected to result in a Material Adverse Effect.

(14) Possession of Licenses and Permits. The Company and its subsidiaries possess such permits, licenses, approvals, consents and other authorizations (collectively, "Governmental Licenses") issued by the appropriate federal, state, local or foreign regulatory agencies or bodies necessary to conduct the business now operated by them except where the failure to so possess such Governmental Licenses would not, singly or

in the aggregate, have a Material Adverse Effect; the Company and its subsidiaries are in compliance with the terms and conditions of all such Governmental Licenses, except where the failure so to comply would not, singly or in the aggregate, have a Material Adverse Effect; all of the Governmental Licenses are valid and in full force and effect, except where the invalidity of such Governmental Licenses or the failure of such Governmental Licenses to be in full force and effect would not have a Material Adverse Effect; and neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of any such Governmental Licenses which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would result in a Material Adverse Effect.

(b) *Officer's Certificate.* Any certificate signed by any officer of the Company or any of its subsidiaries, or in the case of the Trust, one of the Administrative Trustees, and delivered to the Representative or counsel for the Underwriters in connection with the offering of Trust Preferred Securities shall be deemed a representation and warranty by the Company or the Trust, as the case may be, to each of the Underwriters as to the matters set forth in such certificate as of the date of such certificate and, unless subsequently amended or supplemented, at each Representation Date subsequent thereto.

Section 2. Sale and Delivery to the Underwriters; Closing.

(a) *Initial Trust Preferred Securities.* On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Trust hereby agrees to sell to each Underwriter, and each Underwriter acting severally and not jointly, hereby agrees to purchase from the Trust, at a purchase price of \$25.00 per Trust Preferred Security, the number of Initial Trust Preferred Securities set forth in Schedule I opposite the name of such Underwriter.

(b) *Option Trust Preferred Securities.* On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Trust hereby grants to the Underwriters an option to purchase up to an additional 5,400,000 Option Trust Preferred Securities at the purchase price referred to in Section 2(a). Such option shall expire 30 days from the date hereof, and may be exercised in whole or in part from time to time only for the purpose of covering over-allotments in connection with the offering and distribution of the Initial Trust Preferred Securities upon notice by the Representative to the Company setting forth the number of Option Trust Preferred Securities as to which the several Underwriters are then exercising the option and the time and date of payment and delivery for such Option Trust Preferred Securities. Any such time and date of delivery (a "Date of Delivery") shall be determined by the Representative, but shall not be later than seven full business days and not earlier than two full business days after the exercise of said option, nor in any event prior to the Closing Time, unless otherwise agreed between the Representative and the Company. If the option is exercised as to all or any portion of the Option Trust Preferred Securities, each of the Underwriters, acting severally and not jointly, shall purchase that proportion of the total number of Option Trust Preferred Securities then being purchased which the total number of Initial Trust Preferred Securities set forth in Schedule I opposite the name of such Underwriter bears to the total number of Initial Trust Preferred Securities, subject in each case to such adjustments as the

Representative in its discretion shall make to eliminate any sale or purchases of fractional Trust Preferred Securities.

(c) *Payment.* Payment of the purchase price for, and delivery of the certificates representing, the Initial Trust Preferred Securities to be purchased by the Underwriters shall be made at the offices of Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019, or at such other place as shall be agreed upon by the Representative and the Offerors, at 10:00 A.M., New York City time, on the fifth business day (unless postponed in accordance with the provisions of Section 11) following the date hereof or such other time as shall be agreed upon by the Representative and the Offerors (each such time and date being referred to as a “Closing Time”). In addition, in the event that any or all of the Option Trust Preferred Securities are purchased by the Underwriters, payment of the purchase price for, and delivery of the certificates representing, such Option Trust Preferred Securities shall be made at the above-mentioned office of Sidley Austin LLP, or at such other place as may be agreed upon by the Representative and the Company, at 10:00 A.M. on each Date of Delivery as specified in the notice from the Representative to the Company.

Payment shall be made to the Trust by wire transfer of immediately available funds to a bank account designated by the Trust, against delivery to the Representative for its account or, if applicable, for the respective accounts of the Underwriters of the Trust Preferred Securities to be purchased by them (unless such Trust Preferred Securities are issuable only in the form of one or more global securities registered in the name of a depository or a nominee of a depository, in which event the Underwriters’ interest in such global certificate shall be noted in a manner satisfactory to the Underwriters and their counsel). It is understood that each Underwriter has authorized the Representative, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Initial Trust Preferred Securities and the Option Trust Preferred Securities, if any, which it has severally agreed to purchase. The Representative, individually and not as representative of the Underwriters, may (but shall not be obligated to) make payment of the purchase price for the Initial Trust Preferred Securities or the Option Trust Preferred Securities, if any, to be purchased by any Underwriter whose funds have not been received by the Closing Time or the relevant Date of Delivery, as the case may be, but such payment shall not relieve such Underwriter from its obligations hereunder.

(d) *Commission.* The Company agrees that, in view of the fact that the proceeds of the sale of the Trust Preferred Securities will be invested in the ICONs, it shall pay to the Underwriters as compensation for their arranging the investment of the proceeds therein, on the Closing Time and on each Date of Delivery, \$0.7875 per Trust Preferred Security.

(e) *Denominations; Registration.* Certificates for the Initial Trust Preferred Securities shall be in such denominations and registered in such names as the Representative may request in writing at least one full business day prior to the Closing Time or the relevant Date of Delivery, if any. The certificates for the Initial Trust Preferred Securities and the Option Trust Preferred Securities, if any, will be made available for examination and packaging by the Representative in The City of New York not later than 10:00 A.M. (Eastern time) on the business day prior to the Closing Time or the relevant Date of Delivery, as the case may be.

(f) *Covenant by the Underwriters.* Each Underwriter agrees not to take any action to permit a public offering of the Trust Preferred Securities in any jurisdiction outside the United States where action would be required for such purpose. Each Underwriter further agrees not to offer or sell any Trust Preferred Securities in any jurisdiction outside the United States except under circumstances that will result in compliance with all applicable laws thereof and, in connection therewith, agrees to comply with the respective restrictions applicable to the jurisdictions specified in the Prospectus with respect to the offer and sale of the Trust Preferred Securities in such jurisdictions.

Section 3. Covenants of the Offerors. The Offerors covenant with each of the Underwriters as follows:

(a) *Compliance with Securities Regulations and Commission Requests; Payment of Filing Fees.* The Offerors, subject to Section 3(b), will comply with the requirements of Rule 430B of the 1933 Act Regulations, if and as applicable, and will notify the Representative as soon as reasonably possible of (i) the effectiveness of any post-effective amendment to the Registration Statement or new registration statement relating to the Securities or the filing of any supplement or amendment to the Prospectus, (ii) the receipt of any comments from the Commission, (iii) any request by the Commission for any amendment to the Registration Statement or the filing of a new registration statement or any amendment or supplement to the Prospectus or otherwise deemed to be a part thereof or for additional information, (iv) the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or such new registration statement or of any order preventing or suspending the use of any preliminary prospectus, or of the suspension of the qualification of the Trust Preferred Securities for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes. The Offerors will effect the filings required under Rule 424 of the 1933 Act Regulations, in the manner and within the time period required by Rule 424, and will take such steps as it deems necessary to ascertain promptly whether the Prospectus transmitted for filing under Rule 424 was received for filing by the Commission and, in the event that it was not, it will promptly file the Prospectus. The Offerors will make reasonable efforts to prevent the issuance of any stop order and, if any stop order is issued, to obtain the lifting thereof as soon as reasonably possible. The Offerors shall pay the required Commission filing fees relating to the Trust Preferred Securities within the time required by Rule 456(b)(1) (i) of the 1933 Act Regulations without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) of the 1933 Act Regulations (including, if applicable, by updating the "Calculation of Registration Fee" table in accordance with Rule 456(b)(1)(ii) either in a post-effective amendment to the Registration Statement or on the cover page of a prospectus filed pursuant to Rule 424(b)).

(b) *Notice of Filing Amendments.* The Offerors will give the Representative notice of its intention to file any amendment to the Registration Statement or new registration statement relating to the Trust Preferred Securities or any amendment or supplement to either any preliminary prospectus (including any prospectus included in the Original Registration Statement or amendment thereto at the time it became effective) or to the Prospectus or the General Disclosure Package, whether pursuant to the 1934 Act, the 1933 Act or otherwise, and the Offerors will furnish the Representative with copies of any such amendment or supplement or other documents proposed to be filed a reasonable time in advance of such proposed filing or

use, and will not file any such amendment or supplement or other documents or use any such amendment, supplement or document in a form to which the Representative or counsel for the Underwriters shall reasonably object.

(c) *Delivery of Registration Statements.* The Offerors have furnished or will deliver to the Representative and counsel for the Underwriters, without charge, upon written request, signed copies of the Original Registration Statement and of each amendment thereto (including exhibits filed therewith or incorporated by reference therein and documents incorporated or deemed to be incorporated by reference therein or otherwise deemed to be a part thereof) and signed copies of all consents and certificates of experts, and will also deliver to the Representative, without charge, a conformed copy of the Original Registration Statement and of each amendment thereto (without exhibits) for each of the Underwriters. Copies of the Original Registration Statement and each amendment thereto furnished to the Underwriters will be identical to any electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(d) *Delivery of Prospectuses.* The Offerors will deliver to each Underwriter, without charge, as many copies of each preliminary prospectus as such Underwriter may reasonably request, and the Company hereby consents to the use of such copies for purposes permitted by the 1933 Act. The Offerors will furnish to each Underwriter, without charge, during the period when the Prospectus is required to be delivered under the 1933 Act or the 1934 Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request. The Prospectus and any amendments or supplements thereto furnished to the Underwriters will be identical to any electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) *Continued Compliance with Securities Laws.* The Offerors will comply with the 1933 Act and the 1933 Act Regulations and the 1934 Act and the 1934 Act Regulations so as to permit the completion of the distribution of the Trust Preferred Securities as contemplated in this Agreement and in the Registration Statement and the Prospectus. If at any time when the Prospectus is required by the 1933 Act or the 1934 Act to be delivered in connection with sales of the Trust Preferred Securities, any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of counsel for the Underwriters or for the Offerors, which the Offerors may request to be in writing, to amend the Registration Statement in order that the Registration Statement will not contain an 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 not misleading or to amend or supplement the Prospectus in order that the Prospectus will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser, or if it shall be necessary, in the opinion of such counsel, which the Offerors may request to be in writing, at any such time to amend the Registration Statement or amend or supplement the Prospectus in order to comply with the requirements of the 1933 Act or the 1933 Act Regulations, the Offerors will promptly prepare and file with the Commission, subject to Section 3(b), such amendment or supplement as may be reasonably necessary to correct such statement or omission or to comply with such requirements, and the Offerors will furnish to the Underwriters, without charge, such number of copies of such amendment, supplement or new registration statement as the Underwriters may reasonably request. If at any

time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement (or any other registration statement relating to the Trust Preferred Securities) or the Statutory Prospectus or any preliminary prospectus or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at that subsequent time, not misleading, the Offerors will promptly notify the Underwriters and will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(f) *Blue Sky Qualifications.* The Offerors will use reasonable efforts, in cooperation with the Representative, to qualify the Trust Preferred Securities for offering and sale under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Representative may request, and will maintain such qualifications in effect for as long as may be required for the distribution of the Trust Preferred Securities provided, however, that the Offerors shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject. The Offerors will file such statements and reports as may be required by the laws of each jurisdiction in which the Trust Preferred Securities have been qualified as above provided.

(g) *Final Term Sheet.* The Offerors will prepare a final term sheet, in the form approved by the Representative and included in Schedule II to this Agreement, for the Trust Preferred Securities and will file such term sheet pursuant to Rule 433(d) of the 1933 Act Regulations within the time required by such rule (the “Final Term Sheet”). The Final Term Sheet is an Issuer Free Writing Prospectus for purposes of this Agreement.

(h) *Earnings Statement.* The Offerors will timely file such reports pursuant to the 1934 Act as are necessary in order to make generally available to its securityholders as soon as reasonably practicable an earnings statement for the purposes of, and to provide to the Underwriters the benefits contemplated by, the last paragraph of Section 11(a) of the 1933 Act.

(i) *Reporting Requirements.* The Offerors, during the period when the Prospectus is required to be delivered under the 1933 Act or the 1934 Act, will file promptly all documents required to be filed with the Commission pursuant to the 1934 Act within the time periods required by the 1933 Act and the 1934 Act Regulations.

(j) *Issuer Free Writing Prospectuses.* The Offerors represent and agree that, unless they obtain the prior consent of the Representative, and each Underwriter represents and agrees that, unless it obtains the prior consent of the Offerors, it has not made and will not make any offer relating to the Trust Preferred Securities that would constitute an “issuer free writing prospectus,” as defined in Rule 433, or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by the Offerors and the Underwriters is hereinafter referred to as a “Permitted Free Writing Prospectus.” Each Offeror represents that it has treated or agrees that

it will treat each Permitted Free Writing Prospectus as an “issuer free writing prospectus,” as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely filing with the Commission where required, legending and record keeping.

(k) *Listing.* The Offerors will use all reasonable efforts to effect the listing of the Trust Preferred Securities on the New York Stock Exchange.

Section 4. Payment of Expenses.

(a) *Expenses.* The Company will pay all expenses incident to the performance of the Offerors’ obligations under this Agreement, including (i) the preparation, printing and filing of the Registration Statement as originally filed and all amendments thereto, and the preparation, printing and delivery of this Agreement, any Agreement among Underwriters, the Indenture, the Trust Agreement, the Guarantee and such other documents as may be required in connection with the offering, purchase, sale, issuance or delivery of the Trust Preferred Securities, (ii) the preparation, issuance and delivery of the Trust Preferred Securities, any certificates for the Trust Preferred Securities to the Underwriters, including any transfer taxes and any stamp or other duties payable upon the sale, issuance or delivery of the Trust Preferred Securities to the Underwriters, (iii) the fees and disbursements of the Offerors’ counsel, accountants and other advisers or agents (including transfer agents and registrars), (iv) the qualification of the Trust Preferred Securities under state securities laws in accordance with the provisions of Section 3(f), including filing fees and the fee and disbursements of the Offerors’ counsel in connection therewith and in connection with the preparation of any Blue Sky Survey, (v) the printing and delivery to the Underwriters in quantities as hereinabove stated of copies of the Registration Statement and any amendments thereto, each preliminary prospectus, any Permitted Free Writing Prospectus and of the Prospectus and any amendments or supplements thereto and any costs associated with electronic delivery of any of the foregoing by the Underwriters to investors, (vi) the printing and delivery to the Underwriters of copies of the Blue Sky Survey, (vii) the fees of rating agencies, (viii) the fees and expenses, if any, incurred in connection with the listing of the Trust Preferred Securities on the New York Stock Exchange or any other national securities exchange, and (ix) the filing fees incident to, and the reasonable fees and disbursements of counsel to the Underwriters in connection with, the review, if any, by the National Association of Securities Dealers, Inc. (“NASD”) of the terms of the sale of the Trust Preferred Securities.

(b) *Termination of Agreement.* If this Agreement is terminated by the Representative in accordance with the provisions of Section 5 or Section 10(a)(i), the Company shall reimburse the Underwriters for all of their out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Underwriters.

Section 5. Conditions of the Underwriters’ Obligations. The obligations of the Underwriters to purchase Trust Preferred Securities pursuant hereto at the Closing Time, or the relevant Date of Delivery, as the case may be, are subject to the accuracy of the representations and warranties on the part of the Offerors contained in Section 1, to the accuracy of the statements of the Offerors’ officers made in any or in certificates of the Offerors or any subsidiaries of the Company furnished pursuant to the provisions hereof, to the performance by

the Offerors of all of its covenants and other obligations hereunder and to the following further conditions:

(a) *Effectiveness of Registration Statement.* The Registration Statement has become effective under the 1933 Act and no stop order suspending the effectiveness of the Registration Statement shall have been issued under the 1933 Act and no proceedings for that purpose shall have been initiated or be pending or threatened by the Commission, and any request on the part of the Commission for additional information shall have been complied with to the reasonable satisfaction of counsel to the Underwriters. A prospectus containing information relating to the description of the Trust Preferred Securities, the specific method of distribution and similar matters shall have been filed with the Commission in the manner and within the time period required by Rule 424(b) (or any required post-effective amendment providing such information, in accordance with the requirements of Rule 430(B) shall have been filed and become effective under the 1933 Act). The Company shall have paid the required Commission filing fees relating to the Trust Preferred Securities within the time period required by the 1933 Act Regulations (including, if applicable, by updating the "Calculation of Registration Fee" table in accordance with Rule 456(b)(1)(ii) on the cover page of a prospectus filed pursuant to Rule 424(b))

(b) *Opinion of Counsel for Company.* At the Closing Time, the Representative shall have received the favorable opinion, dated as of the Closing Time, of Sidley Austin LLP, counsel for the Offerors, in form and substance satisfactory to the Representative, together with signed or reproduced copies of such letter for each of the other Underwriters, to the effect set forth in Exhibit A hereto and to such further effect as counsel to the Underwriters may reasonably request.

(c) *Opinion of Counsel for the Underwriters.* At the Closing Time, the Representative shall have received the favorable opinion, dated as of the Closing Time, of Sullivan & Cromwell LLP, counsel for the Underwriters, in substance satisfactory to the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters with such additional qualifications and exceptions as shall be acceptable to the Underwriters.

(d) *Opinion of Counsel for the Trust.* At the Closing Time, the Underwriters shall have received the favorable opinion, dated as of the Closing Time, of Morris, Nichols, Arsht & Tunnell LLP, counsel to the Trust, substantially in the form attached as Exhibit B with such additional qualifications and exceptions as shall be acceptable to the Underwriters and their counsel.

(e) *Opinion of Counsel for the Property Trustee.* At the Closing Time, the Underwriters shall have received the favorable opinion, dated as of the Closing Time, of Kelley Drye & Warren LLP, counsel to The Bank of New York, substantially in the form attached hereto as Exhibit C with such additional qualifications and exceptions as shall be acceptable to the Underwriters and their counsel.

(f) *Officers' Certificate.* At the Closing Time, there shall not have been, since the date hereof or since the respective dates as of which information is given in the Registration Statement and the Prospectus or the General Disclosure Package, any material adverse change in

the condition, financial or otherwise, of the Company and its subsidiaries considered as one enterprise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, and the Representative shall have received a certificate of the Chairman of the Board, the President, a Vice President, the Treasurer, an Assistant Treasurer, the Controller or the Vice President and Finance Director (Principal Accounting Officer) of the Company, and a certificate signed by one of the Administrative Trustees, in each case dated as of the Closing Time, to the effect that (i) in the case of the certificate to be provided in respect of the Company, there has been no such material adverse change, (ii) the representations and warranties of the Company or the Trust, as the case may be, contained in Section 1 are true and correct with the same force and effect as though made at and as of the Closing Time, (iii) the Company or the Trust, as the case may be, has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to Closing Time and (iv) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been initiated or, to the Company's knowledge, threatened by the Commission.

(g) *Accountant's Comfort Letter.* At the time of execution of this Agreement and at the Closing Time, the Representative shall have received from Deloitte & Touche LLP a letter in the form and substance satisfactory to the Representative, together with signed or reproduced copies for each of the other Underwriters containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement and the Prospectus.

(i) *Conditions to Purchase Option Trust Preferred Securities.* In the event that the Underwriters exercise the option granted in Section 2(b) hereof to purchase all or any portion of the Option Trust Preferred Securities, the representations and warranties of the Offerors contained herein and the statements in any certificates furnished by the Company or the Trust hereunder shall be true and correct as of each Date of Delivery and, at each relevant Date of Delivery, the Representative shall have received:

(1) Officer's Certificates. A certificate, dated such Date of Delivery, of the Chairman of the Board, the President, a Vice President, the Treasurer, an Assistant Treasurer, the Controller or the Vice President and Finance Director (Principal Accounting Officer) of the Company and a certificate of an Administrative Trustee of the Trust confirming that the certificate delivered at the Closing Time pursuant to Section 5(f) hereof remains true and correct as of such Date of Delivery.

(2) Opinion of Counsel for Company. The favorable opinion of Sidley Austin LLP, counsel for the Company, in form and substance satisfactory to the Representative, dated such Date of Delivery, relating to the Option Trust Preferred Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(b) hereof.

(3) Opinion of Counsel for Underwriters. The favorable opinion of Sullivan & Cromwell LLP, counsel for the Underwriters, relating to the Option Trust Preferred Securities and otherwise to the same effect as the opinion required by Section 5(c) hereof.

(4) Opinion of Counsel for the Trust. The favorable opinion of Morris, Nichols, Arsht & Tunnell LLP, counsel to the Trust, dated such Date of Delivery, relating to the Option Trust Preferred Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(d) hereof.

(5) Opinion of Counsel for the Property Trustee. The favorable opinion of Kelley Drye & Warren LLP, counsel to The Bank of New York, dated such Date of Delivery, relating to the Option Trust Preferred Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(e) hereof.

(6) Comfort Letter. A letter from Deloitte & Touche LLP, in form and substance satisfactory to the Representative and dated such Date of Delivery, substantially in the same form and substance as the letter furnished to the Representative pursuant to Section 5(g) hereof, except that the “specified date” on the letter furnished pursuant to this paragraph shall be a date not more than three business days prior to such Date of Delivery.

(h) Additional Documents. At the Closing Time or Date of Delivery, as the case may be, counsel shall have been furnished with such documents and opinions as they may reasonably require for the purpose of enabling them to pass upon the issuance and sale of the Trust Preferred Securities as herein contemplated and related proceedings or in order to evidence the accuracy and completeness of any of the representations and warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Offerors in connection with the issuance and sale of the Trust Preferred Securities as herein contemplated shall be satisfactory in form and substance to the Representative.

(i) Termination of Agreement. If any condition specified in this Section shall not have been fulfilled when and as required to be fulfilled, this Agreement, or, in the case of any condition to the purchase of Option Trust Preferred Securities on a Date of Delivery, which is after the Closing Time, the obligations of the several Underwriters to purchase the relevant Option Trust Preferred Securities may be terminated by the Representative by notice to the Offerors at any time at or prior to the Closing Time or such Date of Delivery, as the case may be, and such termination shall be without liability of any party to any other party except as provided in Section 4 and except that Sections 1, 6, 7 and 8 shall survive any termination and remain in full force and effect.

Section 6. Indemnification.

(a) Indemnification of the Underwriters. The Offerors jointly and severally agree to indemnify and hold harmless each Underwriter and each person, if any, who controls an Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act as follows:

(1) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto) or the omission

or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact included in any preliminary prospectus, any Issuer Free Writing Prospectus, the General Disclosure Package or in the Prospectus (or any amendment or supplement thereto) or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(2) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 6(d) below) any such settlement is effected with the written consent of the Company; and

(3) against any and all expense whatsoever, as incurred (including the fees and disbursements of counsel chosen by the Representative), reasonably incurred in investigating, preparing or defending against any litigation, or investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

provided, however, that this indemnity shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Offerors by any Underwriter through the Representative expressly for use in the Registration Statement (or any amendment thereto) or any preliminary prospectus, any Issuer Free Writing Prospectus, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto).

Insofar as this indemnity may permit indemnification for liabilities under the 1933 Act of any person who is a partner of an Underwriter or who controls an Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and who is a director, officer of the Company or controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, such indemnity agreement is subject to the undertaking of the Company in the Registration Statement.

(b) *Indemnification of Company, Directors and Officers.* Each Underwriter severally agrees to indemnify and hold harmless the Company, its directors, each of its officers who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), any preliminary prospectus, any Issuer Free Writing Prospectus, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity

with written information furnished to the Offerors by such Underwriter through the Representative expressly for use therein.

(c) *Actions against Parties; Notification.* Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. In the case of parties indemnified pursuant to Section 6(a) above, counsel to the indemnified parties shall be selected by the Representative, and, in the case of parties indemnified pursuant to Section 6(b) above, counsel to the indemnified parties shall be selected by the Offerors. An indemnifying party may participate at its own expense in the defense of any such action; provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, except that the Offerors shall be liable for the fees and expenses of one counsel representing the Representative and the persons controlling the Representative and one counsel representing all other Underwriters and the persons controlling them. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 6 or Section 7 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) *Settlement without Consent if Failure to Reimburse.* If at any time an indemnified party shall have requested in writing an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a)(2) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received written notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such written request prior to the date of such settlement.

Section 7. Contribution. If the indemnification provided for in Section 6 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Offerors, on the one hand, and the Underwriters, on the other

hand, from the offering of the Trust Preferred Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Offerors, on the one hand, and of the Underwriters, on the other hand, in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Offerors, on the one hand, and the Underwriters, on the other hand, in connection with the offering of the Trust Preferred Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of such Trust Preferred Securities (before deducting expenses) received by the Offerors and the total underwriting discount received by the Underwriters, in each case as set forth on the cover of the Prospectus.

The relative fault of the Offerors, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Offerors or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Offerors and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 7. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 7 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 7, no Underwriters shall be required to contribute any amount in excess of the amount by which the total price at which the Trust Preferred Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of any such untrue or alleged untrue statement or omission or alleged omission.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 7, each person, if any, who controls an Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as such Underwriters, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall

have the same rights to contribution as the Company. The Underwriters' respective obligations to contribute pursuant to this Section 7 are several in proportion to the number or aggregate principal amount, as the case may be, of the Initial Trust Preferred Securities set forth opposite their respective names in Schedule I, and not joint.

Section 8. Commercial Transaction. The Company acknowledges and agrees that (i) the purchase and sale of the Trust Preferred Securities pursuant to this Agreement, including the determination of the public offering price of the Trust Preferred Securities and any related discounts and commissions, is an arm's-length commercial transaction between the Offerors, on the one hand, and the several Underwriters, on the other hand, (ii) in connection with the offering contemplated hereby and the process leading to such transaction each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Offerors, or its respective stockholders, creditors, employees or any other party, (iii) no Underwriter has assumed or will assume an advisory or fiduciary responsibility in favor of the Offerors with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company on other matters) and no Underwriter has any obligation to the Offerors with respect to the offering contemplated hereby except the obligations expressly set forth in this Agreement, (iv) the Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Offerors, and (v) the Underwriters have not provided any legal, accounting, regulatory or tax advice with respect to the offering contemplated hereby and the Offerors have consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

Section 9. Representations, Warranties and Agreements to Survive Delivery. All representations, warranties and agreements contained in this Agreement, or contained in certificates of officers of the Company submitted pursuant hereto, shall remain operative and in full force and effect, regardless of any termination of this Agreement, or any investigation made by or on behalf of any Underwriter or controlling person, or by or on behalf of the Company, and shall survive delivery of any Trust Preferred Securities to the Underwriters.

Section 10. Termination. (a) This Agreement may be terminated by the Representative, immediately upon notice to the Company, at any time at or prior to the Closing Time (i) if there has been, since the date hereof or since the respective dates as of which information is given in the Prospectus (exclusive of any supplement thereto) or the General Disclosure Package, any material adverse change in the condition, financial or otherwise, of the Company and its subsidiaries considered as one enterprise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, or (ii) if there has occurred any material adverse change in the financial markets in the United States or in the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Representative, impracticable or inadvisable to market the Trust Preferred Securities or to enforce contracts for the sale of the Trust Preferred Securities, or (iii) if trading in any securities of the Company has been suspended or limited by the Commission or the New York Stock Exchange, or if trading generally on the New York Stock Exchange or the American Stock

Exchange or in the Nasdaq National Market System has been suspended or limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by either of said exchanges or by such system or by order of the Commission, the NASD or any other governmental authority, or (iv) if a banking moratorium has been declared by either Federal or New York authorities, or (v) if the rating assigned by any nationally recognized statistical rating agency to any preferred stock, debt securities or other obligations of the Company as of the date hereof shall have been lowered since the date hereof or if any such rating agency shall have publicly announced that it has placed any preferred stock, debt securities or other obligations of the Company on what is commonly termed a “watch list” for possible downgrading. In the event of any such termination, the provisions of Section 5, the indemnity agreement set forth in Section 6, the contribution provisions set forth in Section 7, and the provisions of Sections 9 and 13 shall remain in effect.

(b) *Liabilities.* If this Agreement is terminated pursuant to this Section 10, such termination shall be without liability of any party to any other party except as provided in Section 4 hereof, and provided further that Sections 1, 6, 7 and 9 shall survive such termination and remain in full force and effect.

Section 11. Default. If one or more of the Underwriters participating in an offering of Trust Preferred Securities shall fail at the Closing Time or a Date of Delivery to purchase the Trust Preferred Securities which it or they are obligated to purchase hereunder (the “Defaulted Trust Preferred Securities”), then the Representative shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Trust Preferred Securities in such amounts as may be agreed upon and upon the terms herein set forth. If, however, during such 24 hours the Representative shall not have completed such arrangements for the purchase of all of the Defaulted Trust Preferred Securities, then:

(1) if the aggregate number of Defaulted Trust Preferred Securities does not exceed 10% of the aggregate number of the Trust Preferred Securities to be purchased on such date, the non-defaulting Underwriters shall be obligated to purchase the full amount thereof in the proportions that their respective underwriting obligations thereunder bear to the underwriting obligations of all such non-defaulting Underwriters, or

(2) if the aggregate number of Defaulted Trust Preferred Securities exceeds 10% of the aggregate number of the Trust Preferred Securities to be purchased on such date, this Agreement or, with respect to any Date of Delivery which occurs after the Closing Time, the obligation of the Underwriters to purchase and of the Company to sell the Option Trust Preferred Securities to be purchased and sold on such Date of Delivery shall terminate, without any liability on the part of any non defaulting Underwriter or the Company.

No action taken pursuant to this Section shall relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

In the event of any such default which does not result in a termination of this Agreement or, in the case of a Date of Delivery which is after the Closing Time, which does not result in a

termination of the obligation of the Underwriters to purchase and the Company to sell the relevant Option Trust Preferred Securities, as the case may be, either the Representative or the Company shall have the right to postpone Closing Time or the relevant Date of Delivery, as the case may be, for a period not exceeding seven days in order that any required changes in the Registration Statement or Prospectus or in any other documents or arrangements may be effected.

Section 12. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be directed to the Representative c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated at 4 World Financial Center New York, New York 10080, notices to the Company shall be directed to it at 4 World Financial Center, 24th Floor, New York, New York 10080, attention of the Treasurer with a copy to the Corporate Secretary at 222 Broadway, 17th Floor, New York, New York 10038.

Section 13. Parties. This Agreement shall inure to the benefit of and be binding upon each of the Underwriters and the Offerors and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the parties hereto and their respective successors and the controlling persons and officers and directors referred to in Sections 6 and 7 and their heirs and legal Representative, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the parties and their respective successors and said controlling persons and officers and directors and their heirs and legal Representative, and for the benefit of no other person, firm or corporation. No purchaser of Trust Preferred Securities from any Underwriter shall be deemed to be a successor by reason merely of such purchase.

Section 14. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN SUCH STATE.

Section 15. Effect of Headings. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

[Signature page follows]

If the foregoing is in accordance with your understanding of our agreement, please sign and return to us a counterpart hereof, whereupon this instrument along with all counterparts will become a binding agreement among the Underwriters, the Company and the Trust in accordance with its terms.

Very truly yours,

Merrill Lynch & Co., Inc.

By /s/ John J. Thurlow

Name: John J. Thurlow

Title: Assistant Treasurer

Merrill Lynch Capital Trust II

By /s/ Marlene B. Debel

Name: Marlene B. Debel

As Administrative Trustee

Confirmed and Accepted,
as of the date first above written:

Merrill Lynch, Pierce, Fenner & Smith
Incorporated

By /s/ Michael J. Clarke

Name: Michael J. Clarke

Title: Vice President

For itself and as Representative of the other Underwriters named in Schedule I hereto

Schedule I

<u>Underwriter</u>	<u>Number of Trust Preferred Securities</u>
Merrill Lynch, Pierce, Fenner & Smith Incorporated	5,472,000
Citigroup Global Markets Inc.	5,472,000
Morgan Stanley & Co. Incorporated	5,472,000
UBS Securities LLC	5,472,000
Wachovia Capital Markets, LLC	5,472,000
BB&T Capital Markets, a division of Scott & Stringfellow, Inc.	360,000
Barclays Capital Inc.	360,000
Countrywide Securities Corporation	360,000
Deutsche Bank Securities Inc.	360,000
HSBC Securities (USA) Inc.	360,000
ING Financial Markets LLC	360,000
Jefferies & Company, Inc.	360,000
KeyBanc Capital Markets Inc.	360,000
Mellon Financial Markets, LLC	360,000
Morgan Keegan & Company, Inc.	360,000
NatCity Investments, Inc.	360,000
RBS Greenwich Capital	360,000
Santander Securities Corporation	360,000
SunTrust Capital Markets, Inc.	360,000
U.S. Bancorp Investments, Inc.	360,000
Wells Fargo Securities, LLC	360,000
Zions Direct, Inc.	360,000
H&R Block Financial Advisors, Inc.	150,000
A.G. Edwards & Sons, Inc.	150,000
Fifth Third Securities, Inc.	150,000
Goldman, Sachs & Co.	150,000
J.P. Morgan Securities Inc.	150,000
Oppenheimer & Co. Inc.	150,000
Piper Jaffray & Co.	150,000
RBC Dain Rauscher Inc.	150,000
Raymond James & Associates, Inc.	150,000
Charles Schwab & Co., Inc.	150,000
Robert W. Baird & Co. Incorporated	60,000
Blaylock & Company, Inc	60,000
CastleOak Securities, LP	60,000
Davenport & Company LLC	60,000
D.A. Davidson & Co.	60,000
Ferris, Baker Watts, Incorporated	60,000
Fidelity Capital Markets, a division of National Financial Services LLC	60,000
Fixed Income Securities, LP	60,000
J.J.B. Hilliard, W.L. Lyons, Inc.	60,000
Janney Montgomery Scott LLC	60,000
Loop Capital Markets, LLC	60,000
Samuel A. Ramirez & Co., Inc.	60,000
Muriel Siebert & Co., Inc.	60,000
Toussaint Capital Partners, LLC	60,000
Utendahl Capital Partners, L.P.	60,000
Vining-Sparks IBG, Limited Partnership	60,000
The Williams Capital Group, L.P.	60,000
TOTAL	<u>36,000,000</u>

Schedule II

Issuer Free Writing Prospectus

Filed under Rule 433
File No. 333-132911 and 333-132911-02



Term Sheet

Issuer:	Merrill Lynch Capital Trust II
Guarantor:	Merrill Lynch & Co., Inc.
Securities:	Trust preferred securities representing undivided beneficial interests in the assets of the Issuer whose sole assets will consist of the Income Capital Obligation Notes* ("ICONS") of the Guarantor
Expected Ratings:	A1/A+/A high (Moody's/S&P/Fitch/DBRS). None of these securities ratings is a recommendation to buy, sell or hold these securities. Each rating may be subject to revision or withdrawal at any time, and should be evaluated independently of any other rating
Size:	\$900,000,000 (36,000,000 million trust preferred securities)
Overallotment Option:	5,400,000 million trust preferred securities
Maturity Date:	June 15, 2062, subject to extension to as late as June 15, 2087
Election Dates:	Each election to extend the maturity date of the ICONs by an additional 5 years may be made on each of June 15, 2012, June 15, 2017, June 15, 2022, June 15, 2027 and June 15, 2032 on the terms set forth in the prospectus supplement
Coupon/Distribution Rate:	6.45% per annum through June 15, 2062; Three-Month LIBOR Rate plus 1.07% thereafter if the maturity date of the ICONs is extended
1st Coupon/Distribution:	June 15, 2007 and quarterly thereafter
Day Count:	30/360 until June 15, 2062; actual/360 thereafter if the maturity date of the ICONs is extended
Payment Deferral:	Distributions may be deferred for up to 10 years on the terms set forth in the prospectus supplement
Step Up:	None
DRD/QDI Eligible:	Not eligible
Redemption:	On or after June 15, 2012 at \$25 per trust preferred security plus accrued and unpaid distributions and prior to that date on the terms set forth in the prospectus supplement

* Income Capital Obligation Notes is a registered service mark of Merrill Lynch & Co., Inc.

Make-Whole Premium:	If applicable, to be determined at a discount rate equal to the Treasury Yield plus 25 basis points
Liquidation Amount /Par:	\$25 per trust preferred security
Trade Date:	April 25, 2007
Settle:	May 2, 2007 (T+5)
Expected Listing:	NYSE
Public Offering Price:	\$25 per trust preferred security
Net Proceeds (before expenses) to Issuer:	\$871,650,000
Sole Structuring Advisor and Sole Bookrunner:	Merrill Lynch, Pierce, Fenner & Smith Incorporated
Sr. Co-Managers:	Citigroup, Morgan Stanley, UBS Investment Bank, Wachovia Securities
Jr. Co-Managers:	Barclays Capital, BB&T Capital Markets, Countrywide, Deutsche Bank Securities, HSBC, ING Financial Markets, Jefferies & Co., KeyBanc Capital Markets, Mellon Financial Markets, LLC, Morgan Keegan & Company, Inc., National City Capital Markets, RBS Greenwich Capital, Santander Investment, SunTrust Robinson Humphrey, U.S. Bancorp Investments, Inc., Wells Fargo Securities, Zions Direct, Inc.
CUSIP/ISIN:	59024T203/US59024T2033

Merrill Lynch & Co., Inc and Merrill Lynch Capital Trust II have filed a registration statement (including a prospectus and a preliminary prospectus supplement) with the SEC for the offering to which this communication relates. Before you invest, you should read each of these documents and other documents filed with the SEC and incorporated by reference in such documents for more complete information about Merrill Lynch & Co., Inc., Merrill Lynch Capital Trust II and this offering. You may get these documents for free by visiting EDGAR on the SEC Web site at www.sec.gov, as listed below. Alternatively Merrill Lynch, Pierce, Fenner & Smith Incorporated will arrange to send you these documents if you request them by calling Merrill Lynch, Pierce, Fenner & Smith Incorporated toll-free at 1-866-500-5408.

You may access the documents listed below on the SEC Web site at www.sec.gov as follows (or if such address has changed, by reviewing our filings for the relevant date on the SEC Web site):

- Preliminary prospectus supplement dated April 23, 2007:
<http://www.sec.gov/Archives/edgar/data/65100/000119312507087311/d424b5.htm>
- Prospectus dated April 23, 2007:
<http://www.sec.gov/Archives/edgar/data/65100/000119312507087166/dposar.htm>

Exhibit A

Opinion of Sidley Austin LLP

(i) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware.

(ii) The Company has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the General Disclosure Package and in the Prospectus and to enter into and perform its obligations under, the Underwriting Agreement.

(iii) The Company is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or be in good standing would not result in a material adverse change in the condition, financial or otherwise, of the Company and its subsidiaries considered as one enterprise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business.

(iv) Merrill Lynch, Pierce, Fenner & Smith Incorporated (“MLPF&S”) has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware, has corporate power and authority to own, lease and operate its properties and conduct its business as described in the Prospectus, and is duly qualified as a foreign corporation to transact business and is in good standing in the State of New York; all of the issued and outstanding capital stock of MLPF&S has been duly authorized and validly issued and is fully paid and non-assessable, and to the best of our knowledge, all of such capital stock owned by the Company directly or indirectly through subsidiaries, free and clear of any pledge, lien, encumbrance, claim or equity.

(v) The ICONs have been duly and validly authorized and established in conformity with the provisions of the Indenture by all necessary corporate action by the Company and when the ICONs have been duly executed, authenticated and delivered against payment therefor in accordance with the provisions of the Indenture, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law), and the holders of the ICONs will be entitled to the benefits of the Indenture.

(vi) The Indenture has been duly authorized, executed and delivered by the Company and, upon the due authorization, execution and delivery thereof by each other party thereto, will constitute a valid and binding agreement of the Company enforceable against the Company in accordance with its terms except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(vii) The Guarantee has been duly authorized, executed and delivered by the Company and, upon the due authorization, execution and delivery thereof by each other party thereto, will constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(viii) Each of this Agreement and the Trust Agreement has been duly authorized, executed and delivered by the Company.

(ix) Each of the Indenture, the Trust Agreement, and the Guarantee has been duly qualified under the 1939 Act.

(x) Each of the Trust Preferred Securities, the Trust Agreement, the Guarantee, the Indenture and the ICONs conform in all material respects to the statements relating thereto in the General Disclosure Package and the Prospectus insofar as such statements purport to summarize certain provisions of such securities or documents.

(xi) The execution and delivery of, and performance by the Company of its respective obligations under this Agreement, the Indenture, the Guarantee, the Trust Agreement, the ICONs and any other agreement or instrument entered into or issued or to be entered into or issued by the Company in connection with the transactions contemplated in the General Disclosure Package and the Prospectus and the consummation of the transactions contemplated in this Agreement and in the General Disclosure Package and the Prospectus (including the issuance and sale of the Trust Preferred Securities by the Trust and the issuance and sale of the ICONs by the Company and the use of the proceeds from the sale of the ICONs as described under the caption "Use of Proceeds") and compliance by the Company with its respective obligations thereunder do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or a default under or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any subsidiary of the Company pursuant to, any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or any other agreement or instrument, known to us, to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound, or to which any of the property or assets of the Company or its subsidiaries is subject, except for such conflicts, breaches, defaults, liens, events, charges or encumbrances that would not result in a Material Adverse Effect, nor will such action result in any violation of the provisions of the charter or by-laws of the Company or any subsidiary, or any applicable law, statute, rule, regulation, judgment, order, writ or decree, known to us, of any government, government instrumentality or court, domestic or foreign, having jurisdiction over the Company or any subsidiary or any of their assets properties, assets or operations.

(xii) The Registration Statement has become effective under the 1933 Act; any required filing of each prospectus relating to the Trust Preferred Securities (including the Prospectus) pursuant to Rule 424(b) has been made in the manner and within the time period required by Rule 424(b) (without reference to Rule 424(b)(8)); any required filing of each Issuer Free Writing Prospectus pursuant to Rule 433 has been made in the manner and within the time

period required by Rule 433(d); and, to the best of our knowledge, no stop order suspending the effectiveness of the Registration Statement has been issued under the 1933 Act and no proceedings for that purpose have been instituted or are pending or threatened by the Commission.

(xiii) The Registration Statement, including without limitation the Rule 430B Information, the Prospectus, excluding the documents incorporated by reference therein, and each amendment or supplement to the Registration Statement and the Prospectus, excluding the documents incorporated by reference therein, as of their respective effective or issue dates (including without limitation each deemed effective date with respect to the Underwriters pursuant to Rule 430B(f)(2) of the 1933 Act Regulations), other than the financial statements and supporting schedules included therein or omitted therefrom, and the Trustee's Statement of Eligibility on Form T-1 (the "Form T-1"), as to which we need express no opinion, complied as to form in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations.

(xiv) The documents incorporated by reference in the Prospectus (other than the financial statements and supporting schedules included therein or omitted therefrom, as to which we need express no opinion), when they were filed with the Commission, complied as to form in all material respects with the requirements of the 1934 Act and the rules and regulations of the Commission thereunder.

(xv) No filing with, or authorization, approval, consent, license, order registration, qualification or decree of, any court or governmental authority or agency, domestic or foreign, is necessary or required for the performance by the Company of its respective obligations under this Agreement or under the Indenture, the Guarantee, the Trust Agreement or the ICONs, or in connection with the transactions contemplated under this Agreement other than under the 1933 Act, the 1933 Act Regulations, which have been obtained, or as may be required under the 1933 Act, the 1933 Act Regulations or state securities or blue sky laws.

(xvi) The information in the Prospectus under "Certain United States Federal Income Tax Consequences", to the extent that it constitutes matters of law, summaries of legal matters or legal conclusions, has been reviewed by us and is correct in all material respects.

(xvii) Neither the Company nor the Trust is, or, upon the issuance and sale of the Securities as herein contemplated and the application of the net proceeds therefrom as described in the Prospectus will be, an "investment company" or an entity "controlled" by an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended.

Nothing has come to our attention that has caused us to believe that the Original Registration Statement or any amendment thereto (except for financial statements and schedules and other financial data included or incorporated by reference therein or omitted therefrom and the Forms T-1, as to which we need make no statement), at the time such Original Registration Statement or any such amendment became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading; that the Registration Statement, including the Rule 430B Information (except for financial statements and schedules and other financial data included or

incorporated by reference therein or omitted therefrom and the Form T-1, as to which we need make no statement), at each deemed effective date with respect to the Underwriters pursuant to Rule 430B(f)(2) of the 1933 Act Regulations, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading; or that the Prospectus or any amendment or supplement thereto (except for financial statements and schedules and other financial data included or incorporated by reference therein or omitted therefrom and the Form T-1, as to which we need make no statement), at the time the Prospectus was issued, at the time any such amended or supplemented prospectus was issued or at the Closing Time, included or includes an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. In addition, nothing has come to our attention that has caused us to believe that the General Disclosure Package, other than the financial statements and schedules and other financial data included or incorporated by reference therein or omitted therefrom, as to which we need make no statement, as of the Applicable Time, contained any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of circumstances under which they were made, not misleading. With respect to statements contained in the General Disclosure Package, any statement contained in any of the constituent documents shall be deemed to be modified or superseded to the extent that any information contained in subsequent constituent documents modifies or replaces such statement.

In rendering such opinion, such counsel may rely, as to matters of fact (but not as to legal conclusions), to the extent they deem proper, on certificates of responsible officers of the Company and public officials.

Exhibit B

Opinion of Morris, Nichols, Arsht & Tunnell LLP

(i) The Trust has been duly formed and is validly existing in good standing as a statutory trust under the Delaware Statutory Trust Act, and all filings required under the laws of the State of Delaware with respect to the formation and valid existence of the Trust as a statutory trust have been made.

(ii) Under the Delaware Statutory Trust Act and the Trust Agreement, the Trust has the statutory trust power and authority to own property and conduct its business, as described in the Issuer General Use Free Writing Prospectus, the Preliminary Prospectus Supplement dated April 23, 2007 and the Prospectus dated April 25, 2007.

(iii) Under the Delaware Statutory Trust Act and the Trust Agreement, the Trust has the statutory trust power and authority (a) to execute and deliver, and to perform its obligations under, this Agreement and (b) to issue and perform its obligations under the Trust Preferred Securities and the Common Securities.

(iv) Under the Delaware Statutory Trust Act and the Trust Agreement, the execution and delivery by the Trust of this Agreement, and the performance by the Trust of its obligations thereunder, have been duly authorized by all necessary trust action on the part of the Trust. This Agreement has been duly executed and delivered by the Trust.

(v) The Trust Agreement constitutes a valid and binding obligation of the Company and the Trustees, and is enforceable against the Company and the Trustees, in accordance with its terms, subject, as to enforcement, to the effect upon the Trust Agreement of (A) bankruptcy, insolvency, reorganization, receivership, fraudulent conveyance, moratorium or other similar laws of general application relating to or affecting the enforcement of creditors' right and remedies, as from time to time in effect, (B) application of equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law), and (C) considerations of public policy or the effect of applicable law relating to fiduciary duties.

(vi) The Trust Preferred Securities have been duly authorized for issuance by the Trust Agreement and, when issued, executed and delivered in accordance with the terms of the Trust Agreement against payment therefor as set forth in this Agreement, will be duly and validly issued and, subject to the qualifications set forth in this paragraph (vi) below, fully paid and non-assessable undivided beneficial interests in the assets of the Trust. The holders of the Trust Preferred Securities, as beneficial owners of the Trust (the "Securityholders"), are entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware; provided, however, that we express no opinion with respect to the liability of any Securityholder who is, was or may become a named trustee of the Trust. Such counsel may note that the Securityholders may be obligated, pursuant to the Trust Agreement, to (a) provide indemnity and/or security in connection with and pay a sum sufficient to cover any taxes or governmental charges arising from transfers or exchanges of Trust Preferred Securities certificates and the issuance of

replacement Trust Preferred Securities certificates and (b) provide security, and/or indemnity in connection with requests of or directions to the Property Trustee (as defined in the Trust Agreement) to exercise its rights and powers under the Trust Agreement.

(vii) Under the Delaware Statutory Trust Act and the Trust Agreement, (A) the issuance of the Trust Preferred Securities is not subject to preemptive or other similar rights and (B) the Trust is not authorized to issue any securities other than the Trust Preferred Securities and the Common Securities.

(viii) The Common Securities have been duly authorized for issuance by the Trust Agreement and, when paid for in accordance with the Trust Agreement, will be duly and validly issued and subject to the terms of the Trust Agreement fully paid undivided beneficial interests in the assets of the Trust; and under the Delaware Statutory Trust Act and the Trust Agreement, the issuance of the Common Securities is not subject to preemptive or other similar rights.

(ix) Assuming that the Trust derives no income from or connected with sources within the State of Delaware and has no assets, activities (other than having a Delaware trustee as required by the Delaware Act and the filing of documents with the State Office) or employees in the State of Delaware, no authorization, approval, consent or order of any governmental authority or agency of the State of Delaware or, based solely on the Docket Search, an order of any Delaware Court, is required to be obtained by the Trust solely as a result of the issuance and sale of the Trust Preferred Securities, the consummation by the Trust of the transactions contemplated by the Underwriting Agreement and the performance by the Trust of its obligations thereunder. The execution, delivery and performance by the Trust of the Underwriting Agreement, the consummation by the Trust of the transactions contemplated by the Underwriting Agreement, the performance by the Trust of its obligations thereunder and the issuance and sale by the Trust of the Trust Preferred Securities and the Common Securities will not violate (A) the Certificate or the Governing Instrument or (B) any applicable law or administrative regulation of the State of Delaware.

(x) Assuming that the Trust derives no income from or connected with sources within the State of Delaware and has no assets, activities (other than having a Delaware trustee as required by the Delaware Statutory Trust Act and the filing of documents with the Secretary of State of the State of Delaware) or employees in the State of Delaware, and assuming that the Trust is treated as a grantor trust for federal income tax purposes, and that the Securityholders are viewed for federal income tax purposes as owners of either all of, or their liquidation and accrued but unpaid share of, the ICONs held by the Trust, the Securityholders (other than those holders of the Trust Preferred Securities who are partners or S corporation shareholders for federal income tax purposes in such holders of Trust Preferred Securities or Securityholders who reside or are domiciled in the State of Delaware) will have no liability for income taxes imposed by the State of Delaware solely as a result of their participation in the Trust, and the Trust will not be liable for any income tax imposed by the State of Delaware (in rendering the opinion expressed in this paragraph (x), such counsel need express no opinion concerning the securities laws of the State of Delaware).

Exhibit C

Opinion of Kelley Drye & Warren LLP

(i) The Bank of New York has been duly organized and is validly existing in good standing as a banking corporation under the laws of the State of New York.

(ii) The Bank of New York has the corporate power and authority to enter into, and perform its obligations under, the Agreement and has duly authorized, executed and delivered the Agreement. Assuming that the Agreement is the legal, valid, binding and enforceable obligation of the Issuer, the Agreement constitutes the legal, valid and binding obligation of The Bank of New York, enforceable against The Bank of New York in accordance with its terms except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or affecting enforcement of creditors' rights and the application of equitable principles in any action, at law or in equity.

(iii) The execution and delivery of the Agreement and the performance by The Bank of New York of its terms do not conflict with or result in a violation of the Articles of Association or By-laws of The Bank of New York.

(iv) No approval, authorization or other action by, or filing with, any governmental authority of the United States of America or the State of New York having jurisdiction over the banking or trust powers of The Bank of New York is required in connection with The Bank of New York's execution and delivery of the Agreement.

SECOND SUPPLEMENTAL INDENTURE

between

MERRILL LYNCH & CO., INC.

and

THE BANK OF NEW YORK,
as Trustee

DATED AS OF MAY 2, 2007

Supplement to Junior Subordinated Indenture dated as of December 14, 2006

SECOND SUPPLEMENTAL INDENTURE, dated as of May 2, 2007 (this “Supplemental Indenture”), between MERRILL LYNCH & CO., INC., a Delaware corporation (hereinafter called the “Company”), having its principal office at 4 World Financial Center, New York, New York 10080, and THE BANK OF NEW YORK, a New York banking corporation, as Trustee (hereinafter called the “Trustee”).

RECITALS

WHEREAS, the Company and the Trustee have entered into that certain Junior Subordinated Indenture, dated as of December 14, 2006 (the “Indenture”), providing for the issuance from time to time of Securities;

WHEREAS, pursuant to Section 2.1 and 3.1 of the Indenture, the Company desires to provide for the establishment of a new series of Securities under the Indenture to be known as its Income Capital Obligation Notes[®] initially due June 15, 2062, the form and substance of such Securities and the terms, provisions and conditions thereof to be set forth as provided in the Indenture and this Supplemental Indenture;

WHEREAS, the conditions set forth in the Indenture for the execution and delivery of this Supplemental Indenture have been satisfied; and

WHEREAS, all things necessary to make this Supplemental Indenture a valid agreement of the Company and the Trustee, in accordance with its terms, and a valid amendment of, and supplement to, the Indenture have been done.

NOW, THEREFORE, in consideration of the premises and the purchase of the Securities by the Holders thereof from time to time on or after the date hereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all such Holders, that the Indenture is supplemented and amended, to the extent and for the purposes expressed herein, as follows:

ARTICLE I DEFINITIONS

Section 1.1. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture.

Section 1.2. In addition, the following capitalized terms used in this Supplemental Indenture have the following respective meanings (if such capitalized terms are defined differently in the Indenture, the meanings given to such terms in this Supplemental Indenture shall prevail):

[®] Income Capital Obligation Notes is a registered service mark of Merrill Lynch & Co., Inc.

“Business Day” means any day other than a day on which banking institutions in The City of New York are authorized or required by law to close; provided that, during the Floating Rate Period the day is also a London Banking Day.

“Calculation Agent” has the meaning set forth in Section 2.1(e).

“Capital Securities” mean the Trust Preferred Securities of the Trust.

“Change in 1940 Act Law” means a change (including any announced proposed change) in law or regulation or a change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority.

“Company” has the meaning set forth in the Declarations.

“Election Date” has the meaning set forth in Section 2.1(d) hereof.

“Extension Notice” has the meaning set forth in Section 2.1(d) hereof.

“Fixed Rate Period” has the meaning set forth in Section 2.1(e) hereof.

“Floating Rate Period” has the meaning set forth in Section 2.1(e) hereof.

“Guarantee” has the meaning set forth in Section 2.1(a) hereof.

“ICONS” has the meaning set forth in Section 2.1(a) hereof.

“Indenture” has the meaning set forth in the Declarations.

“Investment Banker” means an investment banking institution of national standing, which may include Merrill Lynch, Pierce, Fenner & Smith Incorporated.

“Investment Company Event” means the receipt by the Company and the Trust of an opinion of counsel experienced in matters relating to investment companies, to the effect that, as a result of any Change in 1940 Act Law, there is more than an insubstantial risk that the Trust is or will be considered an “investment company” that is required to be registered under the Investment Company Act of 1940, as amended, which Change in 1940 Act Law becomes effective on or after the date of original issuance of the Capital Securities.

“LIBOR Interest Determination Date” has the meaning set forth in Section 2.1(e).

“London Banking Day” means a day on which commercial banks are open for business, including dealings in US dollars, in London, England.

“Make Whole Premium” has the meaning set forth in Section 2.1(k).

“Maturity Extension Election” has the meaning set forth in Section 2.1(d).

“Regulatory Event” means the determination by the Company, based on the opinion of counsel experienced in such matters, who may be an employee of the Company or any of its affiliates, that as a result of: (1) any amendment to, clarification of or change (including any

announced prospective change) in applicable laws or regulations or official interpretations thereof or policies with respect thereto; or (2) any official administrative pronouncement or judicial decision interpreting or applying such laws or regulations, which amendment, clarification, change, pronouncement or decision is effective or announced on or after the date of the original issuance of the Capital Securities, there is more than an insubstantial risk that the Capital Securities will no longer constitute “tier 1” capital (or its equivalent for purposes of the capital adequacy guidelines of the applicable regulatory body or governmental authority) of the Company or any holding company of which the Company is a subsidiary for the purposes of the capital adequacy guidelines or policies of the Commission or any applicable regulatory body or governmental authority.

“Reuters Page LIBOR01” has the meaning set forth in Section 2.1(e).

“Special Event” means a Tax Event, a Regulatory Event or an Investment Company Event.

“Supplemental Indenture” has the meaning set forth in the Declarations.

“Tax Event” means the receipt by the Company or the Trust of an opinion of counsel (which may be the Company’s counsel or counsel of an Affiliate but not an employee and must be reasonably acceptable to the Property Trustee) experienced in such matters, to the effect that, as a result of any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein affecting taxation that is enacted or becomes effective after the initial issuance of the Capital Securities or any interpretation or application of such laws or regulations by any court, governmental agency or regulatory authority that is announced after the initial issuance of the Capital Securities, there is more than an insubstantial risk that (1) the Trust is, or will be within 90 days of the date of such opinion of counsel, subject to United States federal income tax with respect to income received or accrued on the ICONs; (2) interest payable by the Company to the Trust on the ICONs is not, or will not be within 90 days of the date of such opinion of counsel, deductible, in whole or in part, by the Company, for United States federal income tax purposes; or (3) the Trust is, or will be within 90 days of the date of such opinion, subject to more than a de minimis amount of other taxes, duties or other governmental charges.

“Three-Month LIBOR Rate” has the meaning set forth in Section 2.1(e).

“Treasury Yield” has the meaning set forth in Section 2.1(k).

“Trust” has the meaning set forth in Section 2.1(a) hereof.

“Trust Agreement” has the meaning set forth in Section 2.1(a) hereof.

“Trustee” has the meaning set forth in the Declarations.

ARTICLE II
TERMS OF SERIES OF SECURITIES

Section 2.1. Pursuant to Sections 2.1 and 3.1 of the Indenture, there is hereby established a series of Securities, the terms of which shall be as follows:

(a) Designation. The Securities of this series shall be known and designated as the “Income Capital Obligation Notes[®] initially due June 15, 2062” of the Company (the “ICONS”). The ICONs initially shall be issued to Merrill Lynch Capital Trust II, a Delaware statutory trust (the “Trust”). The Trust Agreement for the Trust shall be the Amended and Restated Trust Agreement, dated as of May 2, 2007, among the Company, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York (Delaware), as Delaware Trustee, and the Administrative Trustees named therein (the “Trust Agreement”). The Guarantee will be issued pursuant to the Guarantee Agreement, dated as of May 2, 2007 (the “Guarantee”), between the Company and The Bank of New York, as Guarantee Trustee.

(b) Aggregate Principal Amount. The maximum aggregate principal amount of the ICONs which may be authenticated and delivered under the Indenture and this Supplemental Indenture is \$1,036,000,000 (except for ICONs authenticated and delivered upon registration of transfer of, or exchange for, or in lieu of, other ICONs pursuant to Section 3.4, 3.5, 3.6, 9.6 or 11.6 of the Indenture).

(c) Denominations. The ICONs will be issued only in fully registered form, and the authorized minimum denomination of the ICONs shall be \$25 principal amount and any integral multiple thereof.

(d) Maturity. (i) The principal amount of the ICONs shall be payable in full on June 15, 2062, unless the Maturity of the ICONs is extended in accordance with the provisions of this Section 2.1(d).

(ii) On each of June 15, 2012, June 15, 2017, June 15, 2022, June 15, 2027 and June 15, 2032 (each, an “Election Date”), the Company may, at its sole option, elect to extend the Stated Maturity of the principal of the ICONs for an additional five years from the then applicable Stated Maturity of the principal of the ICONs. If the Company shall make this election on all of the Election Dates, the Stated Maturity of the principal of the ICONs shall occur on June 15, 2087. If the Company shall make this election on only one of the Election Dates, the Stated Maturity of the principal of the ICONs shall occur on June 15, 2067 (any such election, a “Maturity Extension Election”).

[®] Income Capital Obligation Notes is a registered service mark of Merrill Lynch & Co., Inc.

(iii) The Company shall provide irrevocable notice (an "Extension Notice") to the Holders of any Maturity Extension Election not less than 30 calendar days, and not more than 60 calendar days, prior to the applicable Election Date. Any such Extension Notice shall be provided in the manner set forth in Section 1.6 of the Indenture.

(iv) The Company may make a Maturity Extension Election only if the following conditions are met at the time the Company shall provide the related Extension Notice: (A) the senior unsecured indebtedness of the Company shall be rated at least Baa1 by Moody's Investors Service, Inc. ("Moody's") or BBB+ by either of Standard & Poor's Ratings Services, a division of McGraw Hill, Inc. ("S&P") or Fitch Ratings ("Fitch") or, if any of Moody's, S&P and Fitch (or their respective successors) is no longer in existence, the equivalent rating by any other "nationally recognized statistical rating organization" within the meaning of Rule 15c3-1 under the Securities Exchange Act of 1934, as amended; (B) the Company shall not be deferring the payment of interest on the ICONs pursuant to an Optional Deferral Period and the Trust shall not be in default in respect of any of its payment obligations with respect to the Capital Securities; and (C) the Company shall not be in default in respect of any of its outstanding indebtedness for money borrowed having an aggregate principal or face amount in excess of \$100 million; provided, however, that the conditions set forth above shall not be required to be met in connection with the Company's first Maturity Extension Election, regardless of the Election Date on which the Company makes the first such Maturity Extension Election.

(e) Rate of Interest. The ICONs shall bear interest in accordance with the provisions of this Section 2(e).

(i) The ICONs shall bear interest at 6.45% per annum during the period commencing on and including May 2, 2007 to but excluding the initial scheduled Stated Maturity of the principal of the ICONs of June 15, 2062 or any earlier date of redemption for the ICONs (such period, the "Fixed Rate Period"). During the Fixed Rate Period interest shall be payable quarterly in arrears on March 15, June 15, September 15, and December 15 of each year, commencing June 15, 2007. Interest payments that are deferred or that are not paid when due during the Fixed Rate Period will themselves accrue Additional Interest at the annual rate of 6.45% on the amount of unpaid interest, to the extent permitted by law, compounded quarterly. The amount of interest payable for any accrual period during the Fixed Rate Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

(ii) If the Company shall have made one or more Maturity Extension Elections, then the ICONs shall bear interest at the Three-Month LIBOR Rate plus 107 basis points (1.07%), reset quarterly, during the period commencing on and including June 15, 2062 to but excluding the Stated Maturity of the principal of the ICONs or any earlier date of redemption of the ICONs (such period, the "Floating Rate Period"). During the Floating Rate Period interest shall be payable quarterly in arrears on March 15, June 15, September 15, and December 15 of

each year, commencing September 15, 2062. Interest payments that are deferred or that are not paid when due during the Floating Rate Period shall themselves accrue Additional Interest at the prevailing annual rate then applicable to the ICONs on the amount of unpaid interest, to the extent permitted by law, compounded quarterly. The amount of interest payable for any accrual period during the Floating Rate Period shall be computed on the basis of a 360-day year and the actual number of days elapsed during the relevant period.

“Three-Month LIBOR Rate” means the rate determined in accordance with the following provisions. On each LIBOR Interest Determination Date, the Calculation Agent or an affiliate thereof shall determine the Three-Month LIBOR Rate which will be the rate for deposits in U.S. Dollars having a three-month maturity which appears on the Reuters Page LIBOR01 as of 11:00 a.m., London time, on the LIBOR Interest Determination Date. If no rate appears on Reuters Page LIBOR01 on the LIBOR Interest Determination Date, the Calculation Agent or such affiliate thereof shall request the principal London offices of four major reference banks in the London Inter-Bank Market to provide it with their offered quotations for deposits in U.S. Dollars for the period of three months, commencing on the applicable Interest Payment Date in the Floating Rate Period, to prime banks in the London Inter-Bank Market at approximately 11:00 a.m., London time, on that LIBOR Interest Determination Date and in a principal amount that is representative for a single transaction in U.S. dollars in that market at that time. If at least two quotations are provided, then the Three-Month LIBOR Rate will be the average (rounded, if necessary, to the nearest one hundredth (0.01) of a percent) of those quotations. If fewer than two quotations are provided, then the Three-Month LIBOR Rate will be the average (rounded, if necessary, to the nearest one hundredth (0.01) of a percent) of the rates quoted at approximately 11:00 a.m., New York City time, on the LIBOR Interest Determination Date by three major banks in New York City selected by the Calculation Agent or such affiliate thereof for loans in U.S. Dollars to leading European banks, having a three-month maturity and in a principal amount that is representative for a single transaction in U.S. dollars in that market at that time. If the banks selected by the Calculation Agent or its affiliate are not providing quotations in the manner described by this paragraph, the rate for the quarterly interest period following the applicable LIBOR Interest Determination Date will be the rate in effect on that LIBOR Interest Determination Date.

“Reuters Page LIBOR01” means the display designated as “LIBOR01” on Reuters 3000 Xtra Service (or such other page as may replace “LIBOR01” on such service or any successor service) for the purpose of displaying the London Inter-Bank offered rates of major banks for U.S. Dollars.

“LIBOR Interest Determination Date” means the second London Banking Day preceding each Interest Payment Date in the Floating Rate Period.

“Calculation Agent” means the Trustee, or its successor appointed by the Company, acting as calculation agent.

(iii) The amount of interest payable on any Interest Payment Date or at the Stated Maturity of the principal of the ICONS or on any earlier Redemption Date shall include interest accrued from and including the immediately preceding Interest Payment Date (or if none, from and including May 2, 2007) to but excluding such Interest Payment Date or the date of such Stated Maturity or earlier redemption.

(f) To Whom Interest Payable. Interest will be payable to the person in whose name the ICONs are registered at the close of business on the Regular Record Date next preceding the Interest Payment Date, except that interest payable on the Stated Maturity of the principal of the ICONs shall be paid to the Person to whom principal is paid.

(g) Legal Holidays. During the Fixed Rate Period, if an Interest Payment Date or a Redemption Date of the ICONs falls on a day that is not a Business Day, the payment of interest and principal will be made on the next succeeding Business Day, and no interest on such payment will accrue for the period from and after the Interest Payment Date or the Redemption Date, as applicable. During the Floating Rate Period, if any Interest Payment Date, other than an Interest Payment Date which coincides with a Redemption Date or the Stated Maturity of the principal of the ICONs, falls on a day that is not a Business Day, the Interest Payment Date shall be postponed to the next day that is a Business Day, except that if such Business Day is in the next succeeding calendar month, such Interest Payment Date shall be the immediately preceding Business Day. Also during the Floating Rate Period, if a Redemption Date or the Stated Maturity of the principal of the ICONs falls on a day that is not a Business Day, the payment of interest and principal shall be made on the next succeeding Business Day, and no interest on such payment shall accrue for the period from and after the Redemption Date or the Stated Maturity of the principal of the ICONs, as applicable.

(h) Option to Defer Interest Payments. Interest payments on the ICONs shall be subject to deferral to the extent and in the manner provided in Section 3.11 of the Indenture for one or more Optional Deferral Periods of up to forty (40) consecutive quarterly periods.

(i) Events of Default. An Event of Default as defined in the Indenture shall be an Event of Default with respect to the ICONs. No other Events of Default are provided with respect to the ICONs as contemplated by Section 5.1(4) of the Indenture.

(j) Location of Payment. Payment of the principal of (and premium, if any) and interest on the ICONs will be made at the corporate trust office of the Trustee, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; provided, however, that, at the option of the Company, payment of interest may be made: (i) by check mailed to the address of the Person entitled thereto as such address shall appear in the Securities Register or (ii) by wire transfer in immediately available funds at such place and to such account as may be designated in writing at least 15 days before the relevant Interest Payment Date by the Person entitled thereto as specified in the Securities Register. The office where the ICONs may be presented or surrendered for payment and the office where the ICONs

may be surrendered for transfer or exchange and where notices and demands to or upon the Company in respect of the ICONs and the Indenture may be served shall be the Corporate Trust Office. The Trustee shall act as Paying Agent.

(k) Redemption. (i) The ICONs are redeemable at the option of the Company, subject to the terms and conditions of Article XI of the Indenture and subject further to the Company having received prior approval from any applicable regulatory body or governmental authority if then required under the applicable capital guidelines or policies of such regulatory body or governmental authority, at a Redemption Price equal to: (x) 100% of their principal amount plus accrued and unpaid interest (1) in whole or in part, on one or more occasions at any time on or after June 15, 2012, (2) subject to clause (ii) below, in whole at any time if a Tax Event or an Investment Company Event has occurred and is continuing, or (3) subject to clause (ii) below, in whole or in part on one or more occasions at any time a Regulatory Event has occurred and is continuing; and (y) if other than in connection with a redemption pursuant to sub-clauses (2) and (3) of the immediately preceding clause (x), 100% of their principal amount plus accrued and unpaid interest plus any applicable Make Whole Premium in whole or in part on one or more occasions at any time prior to June 15, 2012.

(ii) The Company shall be permitted to redeem the ICONs in connection with the occurrence of a Special Event only if the Company shall be unable to cure the Special Event by some reasonable action. In such event, the Company may redeem the ICONs within 90 days following the occurrence of such Special Event.

(iii) For purposes of this Section 2(k), "Make-Whole Premium" means the amount equal to the excess, if any, of: (1) the sum of the present values, calculated as of the Redemption Date, of: (a) each interest payment that, but for such redemption, would have been payable on the ICONs being redeemed on each Interest Payment Date occurring during the period from the Redemption Date to June 15, 2012 (excluding any accrued interest for the period prior to the Redemption Date); and (b) the principal amount of the ICONs to be redeemed, assuming that the ICONs were to be redeemed on June 15, 2012; over (2) the principal amount of the ICONs being redeemed. The present values of interest and principal payments referred to in the immediately preceding clause (1) shall be determined in accordance with generally accepted principles of financial analysis. Such present values shall be calculated by discounting the amount of each payment of interest or principal from the date that each such payment would have been payable, but for the redemption, to the Redemption Date at a discount rate equal to the Treasury Yield plus 25 basis points.

The Company shall appoint an Investment Banker to calculate the Make-Whole Premium.

For purposes of determining the Make-Whole Premium, "Treasury Yield" means a rate of interest per year equal to the weekly average yield to maturity of United States Treasury Notes that have a constant maturity that corresponds to the remaining term to June 15, 2012 of the ICONs to be redeemed, calculated to the

nearest 1/12th of a year (the "Remaining Term"). The Investment Banker shall determine the Treasury Yield as of the third business day immediately preceding the applicable redemption date. The Investment Banker shall determine the weekly average yields of United States Treasury Notes by reference to the most recent statistical release published by the Federal Reserve Bank of New York and designated "H.15(519) Selected Interest Rates" or any successor release (the "H.15 Statistical Release"). If the H.15 Statistical Release sets forth a weekly average yield for United States Treasury Notes having a constant maturity that is the same as the Remaining Term, then the Treasury Yield will be equal to such weekly average yield. In all other cases, the Investment Banker will calculate the Treasury Yield by interpolation, on a straight-line basis, between the weekly average yields on the United States Treasury Notes that have a constant maturity closest to and greater than the Remaining Term and the United States Treasury Notes that have a constant maturity closest to and less than the Remaining Term (in each case as set forth in the H.15 Statistical Release). The Independent Investment Banker shall round any weekly average yields so calculated to the nearest 1/100th of 1%, and shall round upward for any figure of 1/200th of 1% or above. If weekly average yields for United States Treasury Notes are not available in the H.15 Statistical Release or otherwise, then the Independent Investment Banker shall select comparable rates and calculate the Treasury Yield by reference to those rates.

(l) Sinking Fund. The ICONs shall not be subject to any sinking fund or analogous provisions.

(m) Forms. The ICONs shall be substantially in the form of Annex A attached hereto, with such modifications thereto as may be approved by the authorized officer executing the same. The Trust Agreement shall be substantially in the form of Annex B attached hereto, with such modifications thereto as may be approved by the authorized officer executing the same. The Guarantee Agreement shall be substantially in the form of Annex C attached hereto, with such modifications thereto as may be approved by the authorized officer executing the same.

(n) Subordination. The subordination provisions of Article XIII of the Indenture shall apply.

ARTICLE III MISCELLANEOUS

Section 3.1. If any provision of this Supplemental Indenture limits, qualifies or conflicts with the duties deemed imposed by any of Sections 310 to 317, inclusive, of the Trust Indenture Act of 1939 through operation of Section 318(c) thereof, such deemed imposed duties shall control.

Section 3.2. The Article and Section headings herein are for convenience only and shall not effect the construction hereof.

Section 3.3. All covenants and agreements in this Supplemental Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

Section 3.4. In case any provision of this Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 3.5. Nothing in this Supplemental Indenture is intended to or shall provide any rights to any parties other than those expressly contemplated by this Supplemental Indenture.

Section 3.6. THIS SUPPLEMENTAL INDENTURE AND THE RIGHTS AND OBLIGATIONS OF EACH OF THE HOLDERS, THE COMPANY, AND THE TRUSTEE SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO ITS CONFLICTS OF LAW PROVISIONS (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW).

Section 3.7. The Trustee makes no representations as to the validity or sufficiency of this Supplemental Indenture and the Trustee shall not be accountable for the Company's performance hereunder. The recitals and statements herein are deemed to be those of the Company and not of the Trustee.

* * * *

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed all as of the day and year first above written.

MERRILL LYNCH & CO., INC.

By: /s/ John J. Thurlow

Name: John J. Thurlow

Title: Assistant Treasurer

THE BANK OF NEW YORK,

As Trustee

By: /s/ Michael A. Smith

Name: Michael A. Smith

Title: Vice President

MERRILL LYNCH & CO., INC.
Income Capital Obligations Notes[®] initially due June 15, 2062

No. **\$** **CUSIP No. 59022CCR2**

MERRILL LYNCH & CO., a corporation organized and existing under the laws of the State of Delaware (hereinafter called the “Company,” which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to The Bank of New York, the Property Trustee of MERRILL LYNCH CAPITAL TRUST II, or registered assigns, the principal sum of _____ dollars (\$ _____) on June 15, 2062 or on such later date to which the Stated Maturity of the principal hereof shall have been extended in accordance with the provisions set forth on the reverse hereof. The Company further promises to pay interest on said principal sum from May 2, 2007 or from the most recent interest payment date (each such date, an “Interest Payment Date”) on which interest has been paid or duly provided for, quarterly (subject to deferral as set forth herein) in arrears on March 15, June 15, September 15 and December 15 of each year, commencing June 15, 2007, at the rates specified on the reverse hereof, until the principal hereof shall have become due and payable, and on any overdue principal and (without duplication and to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest at the same rate per annum, compounded quarterly.

Payment of principal of (and premium, if any) and interest on this Security will be made at the office or agency of the Company maintained for that purpose in the United States, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; provided, however, that at the option of the Company payment of interest may be made (i) by check mailed to the address of the Person entitled thereto as such address shall appear in the Securities Register or (ii) by wire transfer in immediately available funds at such place and to such account as may be designated in writing at least 15 days before the relevant Interest Payment Date by the Person entitled thereto as specified in the Securities Register.

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinated and subject in right of payments to the prior payment in full of all Senior Indebtedness, and this Security is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee his attorney-in-fact for any and all such purposes. Each Holder hereof, by his acceptance hereof, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Indebtedness, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

Income Capital Obligation Notes is a registered service mark of Merrill Lynch & Co., Inc.

Reference is made hereby to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated: _____, 2007

CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture. [SEAL]

The Bank of New York, as Trustee

By: _____
Authorized Officer

Merrill Lynch & Co., Inc.

By: _____
Assistant Treasurer

Attest: _____
Secretary

REVERSE OF SECURITY

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under a Junior Subordinated Indenture, dated as of December 14, 2006, as supplemented by the Second Supplemental Indenture, dated as of May 2, 2007 (herein together called the "Indenture"), between the Company and The Bank of New York, as trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Trustee, the Company and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof, limited in aggregate principal amount of \$1,036,000,000, issuable on one or more occasions.

All terms used in this Security that are defined in the Indenture or in the Amended and Restated Trust Agreement, dated as of May 2, 2007 (the "Trust Agreement"), for MERRILL LYNCH CAPITAL TRUST II, among Merrill Lynch & Co., Inc., as Sponsor, and the Trustees named therein, shall have the meanings assigned to them in the Indenture or the Trust Agreement, as the case may be.

This Security shall bear interest at 6.45% per annum during the period commencing on and including May 2, 2007 to but excluding June 15, 2062 or any earlier date of redemption (such period, the "Fixed Rate Period"). During the Fixed Rate Period interest shall be payable quarterly in arrears on March 15, June 15, September 15, and December 15 of each year, commencing June 15, 2007. Interest payments that are deferred or that are not paid when due during the Fixed Rate Period will themselves accrue Additional Interest at the annual rate of 6.45% on the amount of unpaid interest, to the extent permitted by law, compounded quarterly. The amount of interest payable for any accrual period during the Fixed Rate Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. If the Company shall have made a Maturity Extension Election, then this Security shall bear interest at the Three-Month LIBOR Rate plus 107 basis points (1.07%), reset quarterly, during the period commencing on and including June 15, 2062 to but excluding the Stated Maturity of the principal of this Security or any earlier date of redemption (such period, the "Floating Rate Period"). During the Floating Rate Period interest shall be payable quarterly in arrears on March 15, June 15, September 15, and December 15 of each year, commencing September 15, 2062. Interest payments that are deferred or that are not paid when due during the Floating Rate Period shall themselves accrue Additional Interest at the prevailing annual rate then applicable to this Security on the amount of unpaid interest, to the extent permitted by law, compounded quarterly. The amount of interest payable for any accrual period during the Floating Rate Period shall be computed on the basis of a 360-day year and the actual number of days elapsed during the relevant period.

During the Fixed Rate Period, if an Interest Payment Date or a Redemption Date falls on a day that is not a Business Day, the payment of interest and principal will be made on the next succeeding Business Day, and no interest on such payment will accrue for the period from and after the Interest Payment Date or the Redemption Date, as applicable. During the Floating Rate Period, if any Interest Payment Date, other than an Interest Payment Date which coincides with a

Redemption Date or the Stated Maturity of this Security, falls on a day that is not a Business Day, the Interest Payment Date shall be postponed to the next day that is a Business Day, except that if such Business Day is in the next succeeding calendar month, such Interest Payment Date shall be the immediately preceding Business Day. Also during the Floating Rate Period, if a Redemption Date or the Stated Maturity of the principal of this Security falls on a day that is not a Business Day, the payment of interest and principal shall be made on the next succeeding Business Day, and no interest on such payment shall accrue for the period from and after the Redemption Date or the Stated Maturity of the principal of this Security.

The interest installment so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest installment, which shall be (i) the Business Day next preceding such Interest Payment Date if this Security is issued in the form of a Global Security, or (ii) the fifteenth day (whether or not a Business Day) preceding such Interest Payment Date if this Security is not issued in the form of a Global Security. Any such interest installment not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not fewer than ten days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture.

So long as no Event of Default has occurred and is continuing, the Company shall have the right at any time and from time to time during the term of the Securities of this series to defer payment of interest on the Securities of this series for up to 40 consecutive quarterly interest payment periods with respect to each deferral period (each an "Optional Deferral Period"), but shall pay all interest then accrued and unpaid (together with interest thereon to the extent permitted by applicable law, compounded quarterly at the rate specified in this Security) on the first Interest Payment Date following the termination of such Optional Deferral Period; *provided, however*, that no Optional Deferral Period shall extend beyond the Stated Maturity of the principal of the Securities of this series. Upon termination of any such Optional Deferral Period and upon the payment of all accrued and unpaid interest (including any Additional Interest) then due, the Company may elect to begin a new Optional Deferral Period, subject to the foregoing conditions and to the further conditions set forth in the Indenture. No interest shall be due and payable during an Optional Deferral Period except on the first Interest Payment Date thereafter. The Company may pay at any time during an Optional Deferral Period all or any portion of the interest accrued to that point during such Optional Deferral Period.

During any Optional Deferral Period or any other period in which the Company shall have failed to pay all accrued and payable interest on this Security, the Company shall not, and shall not permit any Subsidiary of the Company to, (i) declare or pay any dividends or distributions on or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Company's capital stock or (ii) make any payment of principal of or interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company (including

Securities of other series issued under the Indenture) that rank *pari passu* with or junior in interest to this Security other than pro rata payments of accrued and unpaid amounts on the Securities of this series and any other debt securities of the Company (including Securities of other series issued under the Indenture) that rank equally with the Securities of this series or (iii) make any guarantee payments with respect to any guarantee by the Company of the debt securities of any subsidiary of the Company (including pursuant to any guarantee by the Company of the Capital Securities of a Merrill Lynch Trust holding Securities of a different series) if such guarantee ranks *pari passu* with or junior in interest to the Guarantee other than pro rata payments of accrued and unpaid amounts on the Guarantee and any other guarantees of the debt securities of the Company's subsidiaries that rank *pari passu* with the Guarantee (provided that the Company shall be permitted to (a) pay dividends or distributions on the capital stock of the Company in additional shares of the Company's capital stock, (b) declare or pay a dividend in connection with the implementation of a shareholders' rights plan, or issue stock under such a plan or repurchase such rights, (c) make payments under the Guarantee with respect to the Capital Securities and the common securities of the Trust and (d) purchase Common Stock for issuance pursuant to any of the Company's benefits plans).

On each of June 15, 2012, June 15, 2017, June 15, 2022, June 15, 2027 and June 15, 2032 (each, an "Election Date"), the Company may, at its sole option, elect to extend the Stated Maturity of the principal of the Securities of this series. Each such election shall extend the Stated Maturity of the principal of the Securities of this series by an additional five years from the then applicable Stated Maturity of the principal of the Securities. The Company shall provide irrevocable notice of any such election not less than 30 calendar days, nor more than 60 calendar days, prior to the applicable Election Date; provided, however that the Company shall only be permitted to make such an election if the conditions set forth in the Indenture are satisfied at the time the irrevocable notice of such election is provided, except that the Company shall not be required to meet such conditions in connection with the Company's first election to extend the Stated Maturity of the principal of the Securities of this series regardless of the Election Date on which the Company first makes such an election.

This Security is redeemable at the option of the Company, subject to the Company having received prior approval from any applicable regulatory body or governmental authority if then required under the applicable capital guidelines or policies of such regulatory body or governmental authority, at a Redemption Price equal to: (x) 100% of the principal amount of this Security to be redeemed plus accrued and unpaid interest (1) in whole or in part, on one or more occasions at any time on or after June 15, 2012, (2) in whole at any time if a Tax Event or an Investment Company Event (each as defined in the Indenture) has occurred and is continuing, or (3) in whole or in part on one or more occasions at any time a Regulatory Event (as defined in the Indenture) has occurred and is continuing; and (y) if other than in connection with a redemption pursuant to sub-clauses (2) and (3) of the immediately preceding clause (x), 100% of the principal amount of this Security to be redeemed plus accrued and unpaid interest plus any applicable Make Whole Premium in whole or in part on one or more occasions at any time prior to June 15, 2012. The Company shall be permitted to redeem this Security in connection with the occurrence of a Special Event only if the Company shall be unable to cure the Special Event by some reasonable action. In such event, the Company may redeem this Security within 90 days following the occurrence of such Special Event.

The Indenture contains provisions for satisfaction and discharge of the entire indebtedness of this Security upon compliance by the Company of certain conditions set forth in the Indenture.

The Indenture permits, with certain exceptions as therein provided, the Company and the Trustee at any time to enter into a supplemental indenture or indentures for the purpose of modifying in any manner the rights and obligations of the Company and of the Holders of the Securities, with the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities of all series to be affected by such supplemental indenture. The Indenture also contains provisions permitting Holders of specified percentages in principal amount of the Securities of all series at the time Outstanding, on behalf of the Holders of all Securities of such series, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holders of this Security and of any Security issued upon the registration and transfer hereof or in exchange hereof or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

As provided in and subject to the provisions of the Indenture, if an Event of Default with respect to the Securities of this series at the time Outstanding occurs and is continuing, then the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of this series may declare the principal amount of all the Securities of this series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders) unless such Event of Default is an Event of Default which shall automatically cause all the Securities of this series to become due and payable in which case all of the Securities of this series shall automatically become so due and payable. If the Holder of the Securities of this series shall be the Property Trustee of the Trust and upon the occurrence and continuation of an Event of Default the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of this series shall fail to declare the principal of all the Securities of this series to be immediately due and payable, then the holders of at least 25% of the aggregate liquidation amount of the Capital Securities then outstanding shall have such right by a notice in writing to the Company and the Trustee and upon any such declaration the principal amount of and the accrued interest (including Additional Interest) on all the Securities of this series shall become immediately due and payable. The payment of principal and interest (including Additional Interest) on the Securities of this series in accordance with the foregoing shall remain subordinated to the extent provided in Article XIII of the Indenture.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of (and premium, if any) and interest on this Security at the times, places and rate, and in the coin or currency, herein prescribed (subject to the deferral rights of the Company described in the Indenture).

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Securities Register, upon surrender of this Security for registration of transfer at the office or agency of the Company maintained under Section 10.2 of the Indenture duly endorsed by, or accompanied by written instrument of transfer in form satisfactory to the Company and the Securities Registrar duly executed by, the Holder hereof or

his attorney duly authorized in writing, and thereupon one or more new Securities of this series, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration or transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

The Securities of this series are issuable only in registered form without coupons in denominations of \$25 and in any multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for like aggregate principal amount of Securities of such series of a different authorized denomination, as requested by the Holder surrendering the same.

The Company and, by its acceptance of this Security or a beneficial interest therein, the Holder of, and any Person that acquires beneficial interest in, this Security agree that for United States federal, state and local tax purposes it is intended that this Security constitute indebtedness.

THE INDENTURE, THIS SECURITY AND THE RIGHTS AND OBLIGATIONS OF EACH OF THE HOLDERS, THE COMPANY, AND THE TRUSTEE SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO ITS CONFLICTS OF LAW PROVISIONS (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW).

THIS SECURITY IS NOT A DEPOSIT OR OTHER OBLIGATION OF A BANK. THIS SECURITY IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY OR INSTRUMENTALITY.

AMENDED AND RESTATED TRUST AGREEMENT

By and Among

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

**THE BANK OF NEW YORK,
as Property Trustee**

**THE BANK OF NEW YORK (DELAWARE),
as Delaware Trustee**

And

THE ADMINISTRATIVE TRUSTEES NAMED HEREIN

Dated as of May 2, 2007

MERRILL LYNCH CAPITAL TRUST II

CROSS REFERENCE TABLE¹

Section of Trust Indenture Act of 1939, as amended	Section of Agreement
310(a)	6.3
310(b)	6.3(c); 6.3(d)
310(c)	Inapplicable
311(a)	2.2(b)
311(b)	2.2(b)
311(c)	Inapplicable
312(a)	2.2(a)
312(b)	2.2(b)
312(c)	Inapplicable
313(a)	2.3
313(b)	2.3
313(c)	2.3
313(d)	2.3
314(a)	2.4
314(b)	Inapplicable
314(c)	2.5
314(d)	Inapplicable
314(e)	2.5
314(f)	Inapplicable
315(a)	3.9(b); 3.10(a)
315(b)	2.7(a)
315(c)	3.9(a)
315(d)	3.9(b)
316(a)	2.6; 7.5(b); 7.6(c)
316(b)	Inapplicable
316(c)	Inapplicable
317(a)	3.16
317(b)	Inapplicable
318(a)	2.1(c)

¹ This Cross-Reference Table does not constitute part of the Agreement and shall not have any bearing upon the interpretation of any of its terms or provisions.

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EXHIBITS

Exhibit A	Form of Capital Security Certificate
Exhibit B	Form of Common Security Certificate

AMENDED AND RESTATED TRUST AGREEMENT

This AMENDED AND RESTATED TRUST AGREEMENT (this “Trust Agreement”), dated as of May 2, 2007 is entered into by and among (i) MERRILL LYNCH & CO., INC., a Delaware corporation, (ii) THE BANK OF NEW YORK, a New York banking corporation, as property trustee, (iii) THE BANK OF NEW YORK (DELAWARE), a Delaware banking corporation that maintains its principal place of business in Delaware, as Delaware trustee, (iv) Allen G. Braithwaite III, an individual, Marlene B. Debel, an individual, and John J. Thurlow, an individual, each as an administrative trustee and each of whose address is c/o Merrill Lynch & Co., Inc., 4 World Financial Center, New York, New York 10080 and (v) the several Holders, as hereinafter defined.

RECITALS

WHEREAS, the Sponsor, Marlene B. Debel, as the initial Administrative Trustee, and the Delaware Trustee have heretofore established Merrill Lynch Capital Trust II (the “Trust”), a statutory trust under the Delaware Statutory Trust Act (as defined, together with other capitalized terms, herein) pursuant to a Trust Agreement dated as of April 19, 2007 (the “Original Trust Agreement”) and a certificate of trust filed with the Secretary of State of the State of Delaware on April 19, 2007 (the “Certificate of Trust”);

WHEREAS, the sole purpose of the Trust shall be to issue and sell certain securities representing undivided beneficial interests in the assets of the Trust and invest the gross proceeds thereof in the ICONs issued by the ICON Issuer and to engage in only those activities necessary or incidental thereto; and

WHEREAS, the parties hereto, by this Trust Agreement, amend and restate each and every term and provision of the Original Trust Agreement;

NOW, THEREFORE, it being the intention of the parties hereto to continue the Trust as a statutory trust under the Delaware Statutory Trust Act and that this Trust Agreement constitute the governing instrument of such statutory trust, the Trustees hereby declare that all assets contributed to the Trust be held in trust for the benefit of the Holders of the Securities representing undivided beneficial interests in the assets of the Trust issued hereunder, subject to the provisions of this Trust Agreement.

ARTICLE 1

INTERPRETATION AND DEFINITIONS

SECTION 1.1. Interpretation and Definitions.

Unless the context otherwise requires:

(a) capitalized terms used in this Trust Agreement but not defined in the preamble above have the meanings assigned to them in this Section 1.1;

-
- (b) a term defined anywhere in this Trust Agreement has the same meaning throughout;
- (c) all references to “the Trust Agreement” or “this Trust Agreement” are to this Trust Agreement as modified, supplemented or amended from time to time;
- (d) all references in this Trust Agreement to Articles, Sections, Recitals and Exhibits are to Articles and Sections of, or Recitals and Exhibits to, this Trust Agreement unless otherwise specified;
- (e) unless otherwise defined in this Trust Agreement, a term defined in the Trust Indenture Act has the same meaning when used in this Trust Agreement;
- (f) a reference to the singular includes the plural and vice versa and a reference to any masculine form of a term shall include the feminine form of a term, as applicable; and
- (g) the following terms have the following meanings:
- “*Administrative Trustee*” means any Trustee other than the Property Trustee and the Delaware Trustee.
- “*Affiliate*” has the same meaning as given to that term in Rule 405 of the Securities Act or any successor rule thereunder.
- “*Authorized Officer*” of a Person means any Person that is authorized to bind such Person.
- “*Beneficial Owners*” means, for Capital Securities represented by a Global Security, the Person who acquires an interest in the Capital Securities which is reflected on the records of the Depository through the Depository Participants.
- “*Business Day*” has the meaning specified in the Indenture.
- “*Capital Security*” has the meaning specified in Section 7.1.
- “*Capital Security Certificate*” means a definitive certificate in fully registered form representing a Capital Security, substantially in the form of Exhibit A.
- “*Certificate*” means a Common Security Certificate or a Capital Security Certificate.
- “*Certificate of Trust*” has the meaning specified in the Recitals hereto.
- “*Closing Date*” means May 2, 2007.
- “*Code*” means the Internal Revenue Code of 1986, as amended from time to time, or any successor legislation. A reference to a specific section of the Code refers not only to such specific section but also to any corresponding provision of any federal tax statute enacted after the date of this Trust Agreement, as such specific section or corresponding provision is in effect on the date of application of the provisions of this Trust Agreement containing such reference.

“*Commission*” means the Securities and Exchange Commission or any successor thereto.

“*Common Securities Holder*” means Merrill Lynch & Co., Inc., or any successor thereto, in its capacity as purchaser and holder of all of the Common Securities issued by the Trust.

“*Common Security*” has the meaning specified in Section 7.1.

“*Common Security Certificate*” means a definitive certificate in fully registered form representing a Common Security, substantially in the form of Exhibit B hereto.

“*Corporate Trust Office*” means the principal office of the Property Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of execution of this Trust Agreement is located at 101 Barclay Street, Floor 8 West, New York, New York 10286, Attention: Corporate Trust Administration.

“*Covered Person*” means (a) any officer, director, shareholder, partner, member, representative, employee or agent of (i) the Sponsor, (ii) the Sponsor’s Affiliates, (iii) the Trust or (iv) the Trust’s Affiliates; and (b) any Holder.

“*Delaware Statutory Trust Act*” means Chapter 38 of Title 12 of the Delaware Code, 12 Del. Code Section 3801 *et seq.*, as it may be amended from time to time, or any successor legislation.

“*Delaware Trustee*” has the meaning specified in Section 6.2 and initially shall mean The Bank of New York (Delaware), solely in its capacity as Delaware Trustee under this Trust Agreement and not in its individual capacity, until a Successor Delaware Trustee shall have become such pursuant to the applicable provisions of this Trust Agreement.

“*Depository*” means, with respect to Securities issuable in whole or in part in the form of one or more Global Securities, a clearing agency registered under the Exchange Act that is designated to act as Depository for such Securities.

“*Depository Participant*” means a member of, or participant in, the Depository.

“*Direct Action*” has the meaning specified in Section 3.8(e).

“*Distribution*” means a distribution payable to Holders of Securities in accordance with Section 7.2.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended from time to time, or any successor legislation.

“*Fiduciary Indemnified Person*” shall mean the Property Trustee, the Delaware Trustee, any Affiliate of the Property Trustee or the Delaware Trustee and any officers, directors, stockholders, members, partners, employees, representatives, custodians, nominees or agents of the Property Trustee or the Delaware Trustee.

“*Fiscal Year*” has the meaning specified in Section 10.1.

“*Fixed Rate Period*” has the meaning specified in the Indenture.

“*Floating Rate Period*” has the meaning specified in the Indenture.

“*Global Security*” means a Capital Security in the form prescribed in Section 7.12 evidencing all or part of the aggregate liquidation amount of the Capital Securities issued to the Depository or its nominee for such securities and registered in the name of the Depository or its nominee.

“*Guarantee*” means the Guarantee Agreement, dated the date hereof, of the Sponsor in respect of the Securities, as amended and supplemented from time to time in accordance with the terms thereof.

“*Holder*” means any holder of Securities, as registered on the books and records of the Trust.

“*ICONS Default*” has the meaning given to the term “Default” in the Indenture.

“*ICON Issuer*” means Merrill Lynch & Co., Inc., or any successor thereto under the Indenture, in its capacity as issuer of the ICONs under the Indenture.

“*ICON Issuer Indemnified Person*” means (a) any Administrative Trustee; (b) any Affiliate of any Administrative Trustee; (c) any officers, directors, shareholders, members, partners, employees, representatives or agents of any Administrative Trustee or any Affiliate thereof; or (d) any officer, employee or agent of the Trust or its Affiliates.

“*ICON Trustee*” means The Bank of New York, in its capacity as trustee under the Indenture until a successor is appointed thereunder, and thereafter means such successor trustee.

“*ICONS*” means the series of junior subordinated debentures to be issued under the Indenture designated as “Income Capital Obligation Notes initially due 2062” and held by the Property Trustee.

“*Indemnified Person*” means an ICON Issuer Indemnified Person or a Fiduciary Indemnified Person.

“*Indenture*” means the Junior Subordinated Indenture, dated as of December 14, 2006, as supplemented by the Second Supplemental Indenture, dated as of May 2, 2007, between the ICON Issuer and the ICON Trustee, as amended and supplemented from time to time.

“*Indenture Event of Default*” has the meaning given to the term “Event of Default” in the Indenture.

“*Investment Company*” means an investment company as defined in the Investment Company Act and the regulations promulgated thereunder.

“*Investment Company Act*” means the Investment Company Act of 1940, as amended from time to time, or any successor legislation.

“*Legal Action*” has the meaning specified in Section 3.6(g).

“*List of Holders*” has the meaning specified in Section 2.2(a).

“*Majority in Liquidation Amount*” means, except as provided in the terms of the Capital Securities or by the Trust Indenture Act, Holder(s) of outstanding Securities, voting together as a single class, or, as the context may require, Holders of outstanding Capital Securities or Holders of outstanding Common Securities, voting separately as a class, who are the record owners of more than 50% of the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accumulated and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of the relevant class.

“*Make Whole Premium*” has the meaning specified in the Indenture.

“*New York Stock Exchange*” means the New York Stock Exchange, Inc. or any successor thereto.

“*Officers’ Certificate*” means, with respect to any Person, a certificate signed on behalf of such Person by two Authorized Officers of such Person. Any Officers’ Certificate delivered with respect to compliance with a condition or covenant provided for in this Trust Agreement shall include:

(i) a statement that each officer signing the Officers’ Certificate has read the covenant or condition and the definitions relating thereto;

(ii) a brief statement of the nature and scope of the examination or investigation undertaken by each officer on behalf of such Person in rendering the Officers’ Certificate;

(iii) a statement that each such officer has made such examination or investigation as, in such officer’s opinion, is necessary to enable such officer on behalf of such Person to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(iv) a statement as to whether, in the opinion of each such officer acting on behalf of such Person, such condition or covenant has been complied with; provided, that the term “Officers’ Certificate,” when used with reference to Administrative Trustees who are natural persons shall mean a certificate signed by two or more of the Administrative Trustees which otherwise satisfies the foregoing requirements.

“*Paying Agent*” has the meaning specified in Section 7.7.

“*Payment Amount*” has the meaning specified in Section 7.2(c).

“*Person*” means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

“*Property Account*” has the meaning specified in Section 3.8(c).

“*Property Trustee*” initially shall mean The Bank of New York, solely in its capacity as Property Trustee under this Trust Agreement and not in its individual capacity, until a Successor Property Trustee shall have become such pursuant to the applicable provisions of the Trust Agreement.

“*Pro Rata*” means pro rata to each Holder of Securities according to the aggregate liquidation amount of the Securities held by the relevant Holder in relation to the aggregate liquidation amount of all Securities outstanding.

“*Quorum*” means a majority of the Administrative Trustees or, if there are only two Administrative Trustees, both of them.

“*Redemption/Distribution Notice*” has the meaning specified in Section 7.4(a).

“*Redemption Price*” means the amount for which each \$25 liquidation amount of Securities will be redeemed, which amount will equal (i) the redemption price per \$25 principal amount of ICONs paid by the ICON Issuer to repay or redeem, in whole or in part, the ICONs held by the Trust, which shall include accrued and unpaid interest on such ICONs through the date of their redemption and any applicable Make Whole Premium or (ii) such lesser amount as will be received by the Trust in respect of the ICONs so repaid or redeemed.

“*Related Party*” means, with respect to the Sponsor, any direct or wholly owned subsidiary of the Sponsor or any Person that owns, directly or indirectly, 100% of the outstanding voting securities of the Sponsor.

“*Responsible Officer*” means, with respect to the Property Trustee, any officer with direct responsibility for the administration of this Trust Agreement and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer’s knowledge of and familiarity with the particular subject.

“*Securities*” means the Common Securities and the Capital Securities.

“*Securities Act*” means the Securities Act of 1933, as amended from time to time, or any successor legislation.

“*Special Event*” has the meaning specified in the Indenture.

“*Sponsor*” means Merrill Lynch & Co., Inc., a Delaware corporation, or any successor entity in a merger, consolidation, amalgamation or replacement by or conveyance, transfer or lease of its properties substantially as an entirety, in its capacity as sponsor of the Trust.

“*Successor Delaware Trustee*” has the meaning specified in Section 6.6(b).

“*Successor Entity*” has the meaning specified in Section 3.15(b)(i).

“*Successor Property Trustee*” has the meaning specified in Section 6.6(b).

“*Successor Securities*” has the meaning specified in Section 3.15(b)(i)b.

“*Super Majority*” has the meaning specified in Section 2.6(a)(ii).

“*Three-Month LIBOR Rate*” has the meaning specified in the Indenture.

“*10% in Liquidation Amount*” means, except as provided in the terms of the Capital Securities or by the Trust Indenture Act, Holder(s) of outstanding Securities, voting together as a single class, or, as the context may require, Holders of outstanding Capital Securities or Holders of outstanding Common Securities, voting separately as a class, who are the record owners of 10% or more of the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accumulated and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of the relevant class.

“*Treasury Regulations*” means the income tax regulations, including temporary and proposed regulations, promulgated under the Code by the United States Treasury, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

“*Trust*” has the meaning specified in the Recitals.

“*Trust Enforcement Event*”, in respect of the Securities, means an Indenture Event of Default has occurred and is continuing in respect of the ICONs.

“*Trust Indenture Act*” means the Trust Indenture Act of 1939, as amended from time to time, or any successor legislation.

“*Trustee*” or “*Trustees*” means the Administrative Trustees, the Property Trustee and the Delaware Trustee, so long as such Person shall continue as a trustee in accordance with the terms hereof, and all other Persons who may from time to time be duly appointed, qualified and serving as Trustees in accordance with the provisions hereof, and references herein to a Trustee or the Trustees shall refer to such Person or Persons solely in their capacity as trustees hereunder.

ARTICLE 2

TRUST INDENTURE ACT

SECTION 2.1. Trust Indenture Act; Application.

(a) This Trust Agreement is subject to the provisions of the Trust Indenture Act that are required or deemed to be part of this Trust Agreement and shall, to the extent applicable, be governed by such provisions.

(b) The Property Trustee shall be the only Trustee which is a Trustee for the purposes of the Trust Indenture Act.

(c) If and to the extent that any provision of this Trust Agreement limits, qualifies or conflicts with the duties deemed imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed or deemed duties shall control. If any provision of this Trust Agreement modifies or excludes any provision of the Trust Indenture Act which may be so modified or excluded, the latter provision shall be deemed to apply to this Trust Agreement as so modified or excluded, as the case may be.

(d) The application of the Trust Indenture Act to this Trust Agreement shall not affect the Trust's classification as a grantor trust for United States federal income tax purposes.

SECTION 2.2. Lists of Holders of Securities.

(a) Within 60 days after May 15 of each year (commencing May 15, 2007), each of the Sponsor and the Administrative Trustees on behalf of the Trust shall provide the Property Trustee (i) except while the Capital Securities are represented by one or more Global Securities, at least five Business Days prior to the date for payment of Distributions, a list, in such form as the Property Trustee may reasonably require, of the names and addresses of the Holders of the Securities ("List of Holders") as of the record date relating to the payment of such Distributions, and (ii) at any other time, within 30 days of receipt by the Trust of a written request from the Property Trustee for a List of Holders, as of a date no more than 15 days before such List of Holders is given to the Property Trustee; provided that neither the Sponsor nor the Administrative Trustees on behalf of the Trust shall be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Property Trustee by the Sponsor and the Administrative Trustees on behalf of the Trust. The Property Trustee shall preserve, in as current a form as is reasonably practicable, all information contained in Lists of Holders given to it or which it receives in the capacity as Paying Agent (if acting in such capacity), provided that the Property Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

(b) The Property Trustee shall comply with its obligations under, and shall be entitled to the benefits of, Sections 311(a), 311(b) and 312(b) of the Trust Indenture Act.

SECTION 2.3. Reports by the Property Trustee.

Within 60 days after May 15 of each year (commencing May 15, 2007), the Property Trustee shall provide to the Holders of the Capital Securities such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form and in the manner provided by Section 313 of the Trust Indenture Act.

SECTION 2.4. Periodic Reports to the Property Trustee.

Each of the Sponsor and the Administrative Trustees on behalf of the Trust shall provide to the Property Trustee such documents, reports and information as required by Section 314 of the Trust Indenture Act (if any) and the compliance certificate required by Section 314 of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act, but in no event later than 120 days after the end of each calendar year.

SECTION 2.5. Evidence of Compliance with Conditions Precedent

Each of the Sponsor and the Administrative Trustees on behalf of the Trust shall provide to the Property Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Trust Agreement that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) may be given in the form of an Officers' Certificate.

SECTION 2.6. Trust Enforcement Events: Waiver.

(a) The Holders of a Majority in Liquidation Amount of the Capital Securities may, by vote or written consent, on behalf of the Holders of all of the Capital Securities, waive any past Trust Enforcement Event in respect of the Capital Securities and its consequences, provided that, if the underlying Indenture Event of Default:

(i) is not waivable under the Indenture, the Trust Enforcement Event under this Trust Agreement shall also not be waivable; or

(ii) requires the consent or vote of the Holders of greater than a majority in principal amount of the ICONs (a "Super Majority") to be waived under the Indenture, the related Trust Enforcement Event under the Trust Agreement may only be waived by the vote or written consent of the Holders of at least the proportion in liquidation amount of the Capital Securities that the relevant Super Majority represents of the aggregate principal amount of the ICONs outstanding.

The foregoing provisions of this Section 2.6(a) shall be in lieu of Section 316(a)(1)(B) of the Trust Indenture Act and such Section 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Trust Agreement and the Securities, as permitted by the Trust Indenture Act. Upon such waiver, any such default shall cease to exist, and any Trust Enforcement Event with respect to the Capital Securities arising therefrom shall be deemed to have been cured, for every purpose of this Trust Agreement and the Capital Securities, but no such waiver shall extend to any subsequent or other Trust Enforcement Event with respect to the Capital Securities or impair any right consequent thereon. Any waiver by the Holders of the Capital Securities of a Trust Enforcement Event with respect to the Capital Securities shall also be deemed to constitute a waiver by the Holders of the Common Securities of any such Trust Enforcement Event with respect to the Common Securities for all purposes of this Trust Agreement without any further act, vote, or consent of the Holders of the Common Securities.

(b) The Holders of a Majority in Liquidation Amount of the Common Securities may, by vote or written consent, on behalf of the Holders of all of the Common Securities, waive any past Trust Enforcement Event in respect of the Common Securities and its consequences, provided that, if the underlying Indenture Event of Default:

(i) is not waivable under the Indenture, except where the Holders of the Common Securities are deemed to have waived such Trust Enforcement Event under the Trust Agreement as provided below in this Section 2.6(b), the Trust Enforcement Event under the Trust Agreement shall also not be waivable; or

(ii) requires the consent or vote of a Super Majority to be waived under the Indenture, except where the Holders of the Common Securities are deemed to have waived such Trust Enforcement Event under the Trust Agreement as provided below in this Section 2.6(b), the Trust Enforcement Event under the Trust Agreement may only be waived by the vote or written consent of the Holders of at least the proportion in liquidation amount of the Common Securities that the relevant Super Majority represents of the aggregate principal amount of the ICONs outstanding;

provided further, each Holder of Common Securities will be deemed to have waived any Trust Enforcement Event and all Trust Enforcement Events with respect to the Common Securities and the consequences thereof until all Trust Enforcement Events with respect to the Capital Securities have been cured, waived or otherwise eliminated, and until such Trust Enforcement Events with respect to the Capital Securities have been so cured, waived or otherwise eliminated, the Property Trustee will be deemed to be acting solely on behalf of the Holders of the Capital Securities and only the Holders of the Capital Securities will have the right to direct the Property Trustee in accordance with the terms of the Securities. The foregoing provisions of this Section 2.6(b) shall be in lieu of Sections 316(a)(1)(A) and 316(a)(1)(B) of the Trust Indenture Act and such Sections 316(a)(1)(A) and 316(a)(1)(B) of the Trust Indenture Act are hereby expressly excluded from this Trust Agreement and the Securities, as permitted by the Trust Indenture Act. Subject to the foregoing provisions of this Section 2.6(b), upon such cure, waiver or other elimination, any such default shall cease to exist and any Trust Enforcement Event with respect to the Common Securities arising therefrom shall be deemed to have been cured for every purpose of this Trust Agreement, but no such waiver shall extend to any subsequent or other Trust Enforcement Event with respect to the Common Securities or impair any right consequent thereon.

(c) A waiver of an Indenture Event of Default by the Property Trustee at the direction of the Holders of the Capital Securities constitutes a waiver of the corresponding Trust Enforcement Event with respect to the Capital Securities under this Trust Agreement. The foregoing provisions of this Section 2.6(c) shall be in lieu of Section 316(a)(1)(B) of the Trust Indenture Act and such Section 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Trust Agreement and the Securities, as permitted by the Trust Indenture Act.

SECTION 2.7. Trust Enforcement Event; Notice.

(a) The Property Trustee shall, within 90 days after the occurrence of a Trust Enforcement Event actually known to a Responsible Officer of the Property Trustee, transmit by mail, first class postage prepaid, to the Holders of the Securities, notices of all such defaults with respect to the Securities, unless such defaults have been cured before the giving of such notice (the term “defaults” for the purposes of this Section 2.7(a) being hereby defined to be an Indenture Event of Default, not including any periods of grace provided for therein and irrespective of the giving of any notice provided therein); provided that, except for a default in the payment of principal of (or premium, if any) or interest on any of the ICONs, the Property Trustee shall be protected fully in withholding such notice if and so long as a Responsible Officer of the Property Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Securities.

(b) The Property Trustee shall not be deemed to have knowledge of any default except any default as to which the Property Trustee shall have received written notice or of which a Responsible Officer of the Property Trustee charged with the administration of this Trust Agreement shall have actual knowledge.

ARTICLE 3
ORGANIZATION

SECTION 3.1. Name and Organization.

The Trust hereby continued is named “Merrill Lynch Capital Trust II” as such name may be modified from time to time by the Administrative Trustees following written notice to the Holders of Securities, the Property Trustee and the Delaware Trustee. The Trust’s activities may be conducted under the name of the Trust or any other name deemed advisable by the Administrative Trustees.

SECTION 3.2. Office.

The address of the principal office of the Trust is c/o Merrill Lynch & Co., Inc., 4 World Financial Center, New York, New York, 10080. On ten Business Days’ written notice to the Holders of Securities, each of the Property Trustee, the Delaware Trustee and the Administrative Trustees may designate another principal office.

SECTION 3.3. Purpose.

The exclusive purposes and functions of the Trust are (a) to issue and sell Securities and invest the gross proceeds thereof in the ICONs, (b) to maintain the Trust’s status as a grantor trust for United States federal income tax purposes, and (c) except as otherwise limited herein, to engage in only those other activities necessary or incidental thereto. The Trust shall not borrow money, issue debt or reinvest proceeds derived from investments, pledge any of its assets or otherwise undertake (or permit to be undertaken) any activity that would cause the Trust to be classified as other than a grantor trust for United States federal income tax purposes.

By the acceptance of this Trust, the Trustees, the Sponsor, the Holders of the Capital Securities and Common Securities and the Capital Securities Beneficial Owners will agree to treat the Trust as a grantor trust for United States federal income tax purposes and not to take any position which is contrary to such classification.

SECTION 3.4. Authority.

Subject to the limitations provided in this Trust Agreement and to the specific duties of the Property Trustee, the Administrative Trustees shall have exclusive authority to carry out the purposes of the Trust. An action taken by the Administrative Trustees in accordance with their powers shall constitute the act of and serve to bind the Trust and an action taken by the Property Trustee on behalf of the Trust in accordance with its powers shall constitute the act of and serve to bind the Trust.

In dealing with the Trustees acting on behalf of the Trust, no Person shall be required to inquire into the authority of the Trustees to bind the Trust. Persons dealing with the Trust are entitled to rely conclusively on the power and authority of the Trustees as set forth in this Trust Agreement.

(a) Except as expressly set forth in this Trust Agreement and except if a meeting of the Administrative Trustees is called with respect to any matter over which the Administrative Trustees have power to act, any power of the Administrative Trustees may be exercised by, or with the consent of, any one such Administrative Trustee.

(b) Except as otherwise required by the Delaware Statutory Trust Act or applicable law, any Administrative Trustee is authorized to execute on behalf of the Trust any documents which the Administrative Trustees have the power and authority to cause the Trust to execute pursuant to Section 3.6(b).

(c) An Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purposes of signing any documents which the Administrative Trustees have power and authority to cause the Trust to execute pursuant to Section 3.6; provided that such person is a United States Person as defined in Section 7701(a)(30) of the Code.

SECTION 3.5. Title to Property of the Trust.

Except as provided in Section 3.8 with respect to the ICONs and the Property Account or as otherwise provided in this Trust Agreement, legal title to all assets of the Trust shall be vested in the Trust. The Holders shall not have legal title to any part of the assets of the Trust, but shall have an undivided beneficial ownership interest in the assets of the Trust.

SECTION 3.6. Powers and Duties of the Administrative Trustees.

The Administrative Trustees shall have the exclusive power, duty and authority, and are hereby authorized and directed, to cause the Trust to engage in the following activities:

(a) to establish the terms and form of the Capital Securities and the Common Securities in the manner specified in Section 7.1 and issue and sell the Capital Securities and the Common Securities in accordance with this Trust Agreement; *provided, however*, that the Trust may issue no more than one series of Capital Securities and no more than one series of Common Securities, and, provided further, that there shall be no interests in the Trust other than the Securities, and the issuance of Securities shall be limited to a simultaneous issuance of both Capital Securities and Common Securities on the Closing Date (or any subsequent settlement date resulting from the exercise by the underwriters of the overallotment option granted to them in the underwriting agreement pursuant to which the underwriters agreed to purchase the Capital Securities);

(b) in connection with the issuance of the Capital Securities, at the direction of the Sponsor, to execute and file any documents prepared by the Sponsor, or take any acts as determined by the Sponsor to be necessary, in order to qualify or register all or part of the Capital Securities in any State in which the Sponsor has determined to qualify or register such Capital Securities for sale;

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- (c) to purchase the ICONs with the gross proceeds from the issuance and sale of the Capital Securities and the Common Securities; *provided, however*, that the Administrative Trustees shall cause legal title to the ICONs to be held of record in the name of the Property Trustee for the benefit of the Holder of the Capital Securities and the Holders of the Common Securities;
- (d) to give the Sponsor and the Property Trustee prompt written notice of the occurrence of a Special Event; provided that the Administrative Trustees shall consult with the Sponsor and the Property Trustee before taking or refraining from taking any action in relation to any such Special Event;
- (e) to establish a record date with respect to all actions to be taken hereunder that require a record date be established, including and with respect to, for the purposes of Section 316(c) of the Trust Indenture Act, Distributions, voting rights, redemptions and exchanges, and to issue relevant notices to the Holders of Capital Securities and Holders of Common Securities as to such actions and applicable record dates;
- (f) to take all actions and perform such duties as may be required of the Administrative Trustees pursuant to the terms of this Trust Agreement and the Securities;
- (g) to bring or defend, pay, collect, compromise, arbitrate, resort to legal action or otherwise adjust claims or demands of or against the Trust (“Legal Action”), unless, pursuant to Section 3.8(e), the Property Trustee has the exclusive power to bring such Legal Action;
- (h) to employ or otherwise engage employees and agents (who may be designated as officers with titles) and managers, contractors, advisors and consultants to conduct only those services that the Administrative Trustees have authority to conduct directly, and to pay reasonable compensation for such services, provided that such person is a United States Person as defined in Section 7701(a)(30) of the Code;
- (i) to cause the Trust to comply with the Trust’s obligations under the Trust Indenture Act;
- (j) to give the certificate required by Section 314(a)(4) of the Trust Indenture Act to the Property Trustee, which certificate may be executed by any Administrative Trustee;
- (k) to incur expenses that are necessary or incidental to carry out any of the purposes of the Trust;
- (l) to act as, or appoint another Person to act as, registrar and transfer agent for the Securities;
- (m) to give prompt written notice to the Holders of the Securities of any notice received from the ICON Issuer of its election to defer payments of interest on the ICONs or to extend the maturity date of the principal of the ICONs, in each case as authorized by the Indenture;

(n) to take all action that may be necessary or appropriate for the preservation and the continuation of the Trust's valid existence, rights, franchises and privileges as a statutory trust under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Holders of the Capital Securities and the Holders of the Common Securities or to enable the Trust to effect the purposes for which the Trust was created;

(o) to take any action, not inconsistent with applicable law, that the Administrative Trustees determine in their discretion to be necessary or desirable in carrying out the purposes and functions of the Trust as set out in Section 3.3 or the activities of the Trust as set out in this Section 3.6, including, but not limited to:

(i) causing the Trust not to be deemed to be an Investment Company required to be registered under the Investment Company Act;

(ii) causing the Trust to be classified as a grantor trust for United States federal income tax purposes; and

(iii) cooperating with the ICON Issuer to ensure that the ICONs will be treated as indebtedness of the ICON Issuer for United States federal income tax purposes;

(p) to take all action necessary to cause all applicable tax returns and tax information reports that are required to be filed with respect to the Trust to be duly prepared and filed by the Administrative Trustees, on behalf of the Trust; and

(q) to execute and deliver all documents or instruments, perform all duties and powers, and do all things for and on behalf of the Trust in all matters necessary or incidental to the foregoing.

The Administrative Trustees shall exercise the powers set forth in this Section 3.6 in a manner that is consistent with the purposes and functions of the Trust set out in Section 3.3, and the Administrative Trustees shall have no power to, and shall not, take any action that is inconsistent with the purposes and functions of the Trust set forth in Section 3.3.

Subject to this Section 3.6, the Administrative Trustees shall have none of the powers or the authority of the Property Trustee set forth in Section 3.8.

Any expenses incurred by the Administrative Trustees pursuant to this Section 3.6 shall be reimbursed by the ICON Issuer.

SECTION 3.7. Prohibition of Actions by the Trust and the Trustees.

(a) The Trust shall not, and none of the Trustees (including the Property Trustee) shall cause the Trust to, engage in any activity other than as required or authorized by this Trust Agreement. In particular, the Trust shall not and none of the Trustees (including the Property Trustee) shall cause the Trust to:

- (i) invest any proceeds received by the Trust from holding the ICONs, but shall distribute all such proceeds to Holders of Securities pursuant to the terms of this Trust Agreement and of the Securities;
 - (ii) acquire any assets other than as expressly provided herein;
 - (iii) possess Trust property for other than a Trust purpose;
 - (iv) make any loans (other than those represented by the ICONs) or incur any indebtedness;
 - (v) possess any power or otherwise act in such a way as to vary the Trust assets;
 - (vi) possess any power or otherwise act in such a way as to vary the terms of the Securities in any way whatsoever (except to the extent expressly authorized in this Trust Agreement or by the terms of the Securities);
 - (vii) issue any securities or other evidences of beneficial ownership of, or beneficial interest in, the Trust other than the Securities;
 - (viii) other than as provided in this Trust Agreement or by the terms of the Securities, (A) direct the time, method and place of exercising any trust or power conferred upon the ICON Trustee with respect to the ICONs, (B) waive any past default that is waivable under the Indenture, (C) exercise any right to rescind or annul any declaration that the principal of all the ICONs shall be due and payable, or (D) consent to any amendment, modification or termination of the Indenture or the ICONs where such consent shall be required, unless the Trust shall have received an opinion of counsel to the effect that such modification will not cause more than an insubstantial risk that the Trust will be deemed an Investment Company required to be registered under the Investment Company Act, or the Trust will be classified as other than a grantor trust for United States federal income tax purposes;
 - (ix) take any action inconsistent with the status of the Trust as a grantor trust for United States federal income tax purposes;
- or
- (x) revoke any action previously authorized or approved by vote of the Holders of the Capital Securities.

SECTION 3.8. Powers and Duties of the Property Trustee.

(a) The legal title to the ICONs shall be owned by and held of record in the name of the Property Trustee for the benefit of the Trust and the Holders of the Securities. The right, title and interest of the Property Trustee to the ICONs shall vest automatically in each Person who may hereafter be appointed as Property Trustee in accordance with Section 6.6. Such vesting and cessation of title shall be effective whether or not conveyancing documents with regard to the ICONs have been executed and delivered.

(b) The Property Trustee shall not transfer its right, title and interest in the ICONs to the Administrative Trustees or to the Delaware Trustee (if the Property Trustee does not also act as Delaware Trustee).

(c) The Property Trustee shall:

(i) establish and maintain a segregated non-interest bearing trust account (the “Property Account”) in the name of and under the exclusive control of the Property Trustee on behalf of the Holders of the Securities and, upon the receipt of payments of funds made in respect of the ICONs held by the Property Trustee, deposit such funds into the Property Account and make payments to the Holders of the Capital Securities and Holders of the Common Securities from the Property Account in accordance with Section 7.2. Funds in the Property Account shall be held uninvested until disbursed in accordance with this Trust Agreement. The Property Account shall be an account that is maintained with a banking institution the rating on whose long-term unsecured indebtedness is at least equal to the rating assigned to the Capital Securities by a “nationally recognized statistical rating organization” within the meaning of Rule 15c3-1 under the Exchange Act;

(ii) engage in such ministerial activities as shall be necessary or appropriate to effect the redemption of the Capital Securities and the Common Securities to the extent the ICONs are redeemed or mature; and

(iii) upon written notice of distribution issued by the Administrative Trustees in accordance with the terms of the Securities, engage in such ministerial activities as so directed and as shall be necessary or appropriate to effect the distribution of the ICONs to Holders of Securities upon the liquidation of the Trust.

(d) The Property Trustee shall take all actions and perform such duties as may be specifically required of the Property Trustee pursuant to the terms of this Trust Agreement and the Securities.

(e) The Property Trustee shall take any Legal Action which arises out of or in connection with a Trust Enforcement Event of which a Responsible Officer of the Property Trustee charged with the administration of this Trust Agreement has actual knowledge or the Property Trustee’s duties and obligations under this Trust Agreement or the Trust Indenture Act. Notwithstanding the foregoing, if an ICONs Default has occurred and is continuing, then a Holder of Capital Securities may directly institute a proceeding against the ICON Issuer for enforcement of payment to such Holder of the principal of or interest on the ICONs having a principal amount equal to the aggregate liquidation amount of the Capital Securities of such Holder (a “Direct Action”) on or after the respective due dates specified in the ICONs (and without causing any acceleration of the principal of the ICONs). Notwithstanding anything to the contrary in this Trust Agreement or the Indenture, the ICON Issuer shall have the right to set-off any payment it is otherwise required to make under the Indenture in respect of any Capital Security to the extent the ICON Issuer has heretofore made, or is currently on the date of such payment making, a payment under the Guarantee relating to such Capital Security or under Section 5.8 of the Indenture.

(f) The Property Trustee shall continue to serve as a Trustee until either:

(i) the Trust has been completely liquidated and the proceeds of the liquidation distributed to the Holders of Securities pursuant to the terms of the Securities; or

(ii) a Successor Property Trustee has been appointed and has accepted that appointment in accordance with Section 6.6.

(g) The Property Trustee shall have the legal power to exercise all of the rights, powers and privileges of a holder of ICONs under the Indenture and, if a Trust Enforcement Event actually known to a Responsible Officer of the Property Trustee occurs and is continuing, the Property Trustee shall, for the benefit of Holders of the Securities, enforce its rights as holder of the ICONs subject to the rights of the Holders pursuant to the terms of such Securities.

(h) Subject to this Section 3.8, the Property Trustee shall have none of the duties, liabilities, powers or the authority of the Administrative Trustees set forth in Section 3.6.

The Property Trustee shall exercise the powers set forth in this Section 3.8 in a manner that is consistent with the purposes and functions of the Trust set out in Section 3.3, and the Property Trustee shall have no power to, and shall not, take any action that is inconsistent with the purposes and functions of the Trust set out in Section 3.3.

SECTION 3.9. Certain Duties and Responsibilities of the Property Trustee.

(a) The Property Trustee, before the occurrence of any Trust Enforcement Event or ICONs Default and after the curing of all Trust Enforcement Events and ICONs Defaults that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Trust Agreement and no implied covenants shall be read into this Trust Agreement against the Property Trustee. In case a Trust Enforcement Event or an ICONs Default has occurred (that has not been cured or waived pursuant to Section 2.6) of which a Responsible Officer of the Property Trustee has actual knowledge, the Property Trustee shall exercise such of the rights and powers vested in it by this Trust Agreement, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) No provision of this Trust Agreement shall be construed to relieve the Property Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) prior to the occurrence of a Trust Enforcement Event or ICONs Default and after the curing or waiving of all such Trust Enforcement Events and ICONs Defaults that may have occurred:

- a. the Property Trustee undertakes to fulfill its duties and perform its obligations that are specifically set forth in this Trust Agreement, and no implied covenants or obligations shall be read into this Trust Agreement against the Property Trustee; and
- b. in the absence of bad faith on the part of the Property Trustee, the Property Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Property Trustee and conforming to the requirements of this Trust Agreement; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Property Trustee, the Property Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Trust Agreement;

(ii) the Property Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer of the Property Trustee, unless it shall be proved that the Property Trustee was negligent in ascertaining the pertinent facts upon which such judgment was made;

(iii) the Property Trustee shall not be liable with respect to any action taken or omitted to be taken by it, in good faith in accordance with the direction of the Holders of not less than a Majority in Liquidation Amount of the Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee under this Trust Agreement;

(iv) no provision of this Trust Agreement shall require the Property Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that the repayment of such funds or protection from liability is not reasonably assured to it under the terms of this Trust Agreement or indemnity reasonably satisfactory to the Property Trustee against such risk or liability is not reasonably assured to it;

(v) the Property Trustee's sole duty with respect to the custody, safe-keeping and physical preservation of the ICONs and the Property Account shall be to deal with such property in a similar manner as the Property Trustee deals with similar property for its own account, subject to the protections and limitations on liability afforded to the Property Trustee under this Trust Agreement and the Trust Indenture Act;

(vi) the Property Trustee shall have no duty or liability for or with respect to the value, genuineness, existence or sufficiency of the ICONs or the payment of any taxes or assessments levied thereon or in connection therewith;

(vii) the Property Trustee shall not be liable for any interest on any money received by it except as it may otherwise agree with the Sponsor. Money held by the Property Trustee need not be segregated from other funds held by it except in relation to the Property Account maintained by the Property Trustee pursuant to Section 3.8(c)(i) and except to the extent otherwise required by law; and

(viii) the Property Trustee shall not be responsible for monitoring the compliance by the Administrative Trustees or the Sponsor with their respective duties under this Trust Agreement, nor shall the Property Trustee be liable for any default or misconduct of the Administrative Trustees or the Sponsor.

(c) Whether or not therein expressly so provided, every provision of this Trust Agreement relating to the conduct or affecting the liability of or affording protection to the Property Trustee shall be subject to the provisions of this Section.

SECTION 3.10. Certain Rights of Property Trustee.

(a) Subject to the provisions of Section 3.9:

(i) the Property Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed, sent or presented by the proper party or parties;

(ii) any direction or act of the Sponsor or the Administrative Trustees contemplated by this Trust Agreement shall be sufficiently evidenced by an Officers' Certificate;

(iii) whenever in the administration of this Trust Agreement, the Property Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Property Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and conclusively rely upon an Officers' Certificate and an opinion of counsel which, upon receipt of such request, shall be promptly delivered by the Sponsor or the Administrative Trustees;

(iv) the Property Trustee shall have no duty to see to any recording, filing or registration of any instrument (including any financing or continuation statement or any filing under tax or securities laws) or any rerecording, refiling or reregistration thereof;

(v) the Property Trustee may consult with counsel of its choice or other experts and the advice or opinion of such counsel and experts with respect to legal matters or advice within the scope of such experts' area of expertise shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion; such counsel may be counsel to the Sponsor or any of its Affiliates, and may include any of its employees. The Property Trustee shall have the right at any time to seek instructions concerning the administration of this Trust Agreement from any court of competent jurisdiction;

(vi) the Property Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Agreement at the request or direction of any Holder, unless such Holder shall have provided to the Property Trustee security and indemnity, reasonably satisfactory to the Property Trustee, against the costs, expenses (including reasonable attorneys' fees and expenses and the expenses of the Property Trustee's agents, nominees or custodians) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Property Trustee; provided that, nothing contained in this Section 3.10(a) shall be taken to relieve the Property Trustee, upon the occurrence of a Trust Enforcement Event or an ICONs Default, of its obligation to exercise the rights and powers vested in it by this Trust Agreement;

(vii) the Property Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Property Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit;

(viii) the Property Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, custodians, nominees or attorneys and the Property Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder, provided that such agent, custodian, nominee or attorney is a United States Person as defined in Section 7701(a)(30) of the Code;

(ix) any authorized or required action taken by the Property Trustee or its agents hereunder shall bind the Trust and the Holders of the Securities, and the signature of the Property Trustee or its agents alone shall be sufficient and effective to perform any such action. No third party shall be required to inquire as to the authority of the Property Trustee to so act or as to its compliance with any of the terms and provisions of this Trust Agreement, both of which shall be conclusively evidenced by the Property Trustee's or its agent's taking such action;

(x) whenever in the administration of this Trust Agreement, the Property Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Property Trustee (i) may request written instructions from the Holders of the Securities, which instructions may only be given by the Holders of the same proportion in liquidation amount of the Securities as would be entitled to direct the Property Trustee under the terms of the Securities in respect of such remedy, right or action, (ii) may refrain from enforcing such remedy or right or taking such other action until such instructions are received and (iii) shall be fully protected in conclusively relying on or acting in or accordance with such instructions;

(xi) except as otherwise expressly provided by this Trust Agreement, the Property Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Trust Agreement;

(xii) the Property Trustee shall not be liable for any action taken, suffered or omitted to be taken by it without negligence or willful misconduct, in good faith and reasonably believed by it to be authorized or within the discretion, rights or powers conferred upon it by this Trust Agreement;

(xiii) without prejudice to any other rights available to the Property Trustee under applicable law, when the Property Trustee incurs expenses or renders services in connection with a bankruptcy, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally; and

(xiv) the Property Trustee shall not be charged with knowledge of a Trust Enforcement Event or an ICONs Default unless a Responsible Officer of the Property Trustee charged with the administration of this Trust Agreement obtains actual knowledge of such event or the Property Trustee receives written notice of such event from Holders holding more than a Majority in Liquidation Amount of the Capital Securities;

(b) No provision of this Trust Agreement shall be deemed to impose any duty or obligation on the Property Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it, in any jurisdiction in which it shall be illegal, or in which the Property Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts, or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Property Trustee shall be construed to be a duty.

SECTION 3.11. Delaware Trustee.

Notwithstanding any provision of this Trust Agreement other than Section 6.2, the Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities of the Administrative Trustees or the Property Trustee described in this Trust Agreement. Except as set forth in Section 6.2, the Delaware Trustee shall be a Trustee for the sole and limited purpose of fulfilling the requirements of Section 3807(a) of the Delaware Statutory Trust Act. In the event the Delaware Trustee shall at any time be required to take any action or perform any duty hereunder with respect to the Trust, the Delaware Trustee shall be entitled to all of the same rights as the Property Trustee listed in Section 3.9(b) and Section 3.10.

SECTION 3.12. Execution of Documents.

Except as otherwise required by the Delaware Statutory Trust Act or applicable law, any Administrative Trustee is authorized to execute on behalf of the Trust any documents that the Administrative Trustees have the power and authority to execute pursuant to Section 3.6.

SECTION 3.13. Not Responsible for Recitals or Issuance of Securities.

The recitals contained in this Trust Agreement and the Securities shall be taken as the statements of the Sponsor, and the Trustees do not assume any responsibility for their correctness. The Trustees make no representations as to the value or condition of the property of the Trust or any part thereof. The Trustees make no representations as to the validity or sufficiency of this Trust Agreement, the Securities, the ICONs or the Indenture.

SECTION 3.14. Duration of Trust.

The Trust shall exist until dissolved and terminated pursuant to the provisions of Article 8 hereof.

SECTION 3.15. Mergers.

(a) The Trust may not consolidate, amalgamate, merge with or into, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to any Person, except as described in Section 3.15(b) and (c) or Section 8.2.

(b) The Trust may, at the request of the Sponsor and with the consent of the Administrative Trustees or, if there are more than two, a majority of the Administrative Trustees and without the consent of the Holders of the Securities, the Delaware Trustee or the Property Trustee, consolidate, amalgamate, merge with or into, or be replaced by or convey, transfer or lease its properties substantially as an entirety to a trust organized as such under the laws of any State; provided, that:

- (i) if the Trust is not the successor, such successor entity (the “Successor Entity”) either:
 - a. expressly assumes all of the obligations of the Trust with respect to the Securities; or
 - b. substitutes for the Capital Securities other securities having substantially the same terms as the Capital Securities (the “Successor Securities”) so long as the Successor Securities rank the same as the Capital Securities rank in priority with respect to Distributions and payments upon liquidation, redemption and otherwise;

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- (ii) the ICON Issuer expressly appoints a trustee of such Successor Entity that possesses the same powers and duties as the Property Trustee as the holder of the ICONs;
- (iii) the Capital Securities or any Successor Securities are listed, or any Successor Securities will be listed upon notification of issuance, on any national securities exchange or with any other organization on which the Capital Securities are then listed or quoted;
- (iv) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not cause the Capital Securities (including any Successor Securities) to be downgraded by any nationally recognized statistical rating organization;
- (v) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders of the Capital Securities (including any Successor Securities) in any material respect;
- (vi) such Successor Entity has a purpose substantially similar to that of the Trust;
- (vii) prior to such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease the Sponsor has received an opinion of independent counsel to the Trust experienced in such matters to the effect that:
- a. such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders of the Capital Securities (including any Successor Securities) in any material respect;
 - b. following such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease neither the Trust nor the Successor Entity will be required to register as an Investment Company; and
 - c. following such merger, consolidation, amalgamation or replacement, the Trust (or the Successor Entity) will continue to be classified as a grantor trust for United States federal income tax purposes; and
- (viii) the Sponsor or any permitted successor or assignee owns all of the common securities of the Successor Entity and guarantees the obligations of such Successor Entity under the Successor Securities at least to the extent provided by the Guarantee.
- (c) Notwithstanding Section 3.15(b), the Trust shall not, except with the consent of Holders of 100% in aggregate liquidation amount of the Securities, consolidate, amalgamate, merge with or into, or be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to, any other entity or permit any other entity to consolidate, amalgamate, merge with or into, or replace it, if such consolidation, amalgamation, merger, replacement, conveyance, transfer or lease would cause the Trust or Successor Entity to be classified as other than a grantor trust for United States federal income tax purposes and each Holder of the Securities not to be treated as owning an undivided interest in the ICONs.

SECTION 3.16. Property Trustee May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other similar judicial proceeding relative to the Trust or any other obligor upon the Securities or the property of the Trust or of such other obligor or their creditors, the Property Trustee (irrespective of whether any Distributions on the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Property Trustee shall have made any demand on the Trust for the payment of any past due Distributions) shall be entitled and empowered, to the fullest extent permitted by law, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of any Distributions owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Property Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Property Trustee, its and counsel) and of the Holders allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Property Trustee and, in the event the Property Trustee shall consent to the making of such payments directly to the Holders, to pay to the Property Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Property Trustee, its agents and counsel, and any other amounts due the Property Trustee.

Nothing herein contained shall be deemed to authorize the Property Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement adjustment or compensation affecting the Securities or the rights of any Holder thereof or to authorize the Property Trustee to vote in respect of the claim of any Holder in any such proceeding.

ARTICLE 4

SPONSOR

SECTION 4.1. Responsibilities of the Sponsor.

In connection with the issue of the Capital Securities, the Sponsor shall have the exclusive right and responsibility to engage in the following activities:

- (a) to prepare for filing by the Trust with the Commission under the Securities Act or the Exchange Act, and execute on behalf of the Trust, one or more registration statements on the applicable forms, including any amendments thereto, pertaining to the Capital Securities, the Guarantee and the ICONs;
- (b) to determine the States in which to take appropriate action to qualify or register for sale all or part of the Capital Securities and to do any and all such acts, other than actions which must be taken by the Trust, and advise the Trust of actions it must take, and prepare for execution and filing any documents to be executed and filed by the Trust, as the Sponsor deems necessary or advisable in order to comply with the applicable laws of any such States; and
- (c) to negotiate the terms of, and execute, an underwriting agreement and other related agreements providing for the sale of the Capital Securities.

SECTION 4.2. Compensation of the Trustees.

The Sponsor agrees:

- (a) to pay to the Property Trustee and the Delaware Trustee from time to time compensation for all services rendered by them hereunder in such amounts as the Company, the Property Trustee and the Delaware Trustee shall agree from time to time;
- (b) to reimburse the Property Trustee and the Delaware Trustee upon their request for all expenses, disbursements and advances incurred or made by the Property Trustee and Delaware Trustee in accordance with any provision of this Trust Agreement (including the costs of collection and the reasonable compensation and the expenses and disbursements of their counsel, accountants and experts), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and
- (c) to indemnify the Property Trustee and Delaware Trustee and their officers, directors, employees and agents for, and to hold each harmless against, any loss, liability or expense (including the compensation and the expenses and disbursements of the Property its agents and counsel) incurred without negligence or bad faith, arising out of or in connection with the acceptance or administration of this trust or the performance of their respective duties hereunder, including but not limited to the costs and expenses of defending themselves against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. This Section 4.2 shall survive the termination of this Trust Agreement.

ARTICLE 5

TRUST COMMON SECURITIES HOLDER

SECTION 5.1. ICON Issuer's Receipt of Common Securities.

On the Closing Date, the ICON Issuer will receive all of the Common Securities issued by the Trust and on the same date shall invest the gross proceeds thereof in the ICONs to be issued to the Trust by the ICON Issuer. The Common Securities will be issued in a total liquidation amount of \$1,000,000.

Subject to Section 7.4(b), the aggregate stated liquidation amount of Common Securities outstanding at any time shall not be less than \$1,000,000.

SECTION 5.2. Covenants of the Common Securities Holder.

For so long as the Capital Securities remain outstanding, the Common Securities Holder will covenant (i) to maintain directly 100% ownership of the Common Securities, (ii) to cause the Trust to remain a statutory trust and not to voluntarily dissolve, wind up, liquidate or be terminated, except as permitted by this Trust Agreement, (iii) to use its commercially reasonable efforts to ensure that the Trust will not be an Investment Company for purposes of the Investment Company Act, and (iv) to take no action which would be reasonably likely to cause the Trust to be classified as other than a grantor trust for United States federal income tax purposes.

ARTICLE 6

TRUSTEES

SECTION 6.1. Number of Trustees.

The number of Trustees initially shall be five, and:

- (a) at any time before the issuance of any Securities, the Sponsor may, by written instrument, increase or decrease the number of Trustees;
- (b) after the issuance of any Securities, the number of Trustees may be increased or decreased by vote of the Holders of a Majority in Liquidation Amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities or by written consent in lieu of such meeting; provided that the number of Trustees shall be at least three; and provided further that (1) the Delaware Trustee, in the case of a natural person, shall be a person who is a resident of the State of Delaware or that, if not a natural person, is an entity which has its principal place of business in the State of Delaware and otherwise meets the requirements of applicable law; (2) at least one Administrative Trustee is an employee or officer of, or is affiliated with, the Sponsor; and (3) one Trustee shall be the Property Trustee for so long as this Trust Agreement is required to qualify as an indenture under the Trust Indenture Act, and such Trustee may also serve as Delaware Trustee if it meets the applicable requirements;

(c) at all times, the Property Trustee must be (i) a bank as defined in Section 581 of the Code or (ii) a U.S. government-owned agency or U.S. government sponsored enterprise; and

(d) at all times, each Trustee must be a United States Person as defined in Section 7701(a)(30) of the Code.

SECTION 6.2. Delaware Trustee; Eligibility.

If required by the Delaware Statutory Trust Act, one Trustee (the “Delaware Trustee”) shall be:

(a) a natural person who is a resident of the State of Delaware; or

(b) if not a natural person, an entity which has its principal place of business in the State of Delaware, and otherwise meets the requirements of applicable law,

provided that, if the Property Trustee has its principal place of business in the State of Delaware and otherwise meets the requirements of applicable law, then the Property Trustee shall also be the Delaware Trustee and Section 3.11 shall have no application.

SECTION 6.3. Property Trustee; Eligibility.

(a) There shall at all times be one Trustee (which may be the Delaware Trustee) which shall act as Property Trustee which shall:

(i) not be an Affiliate of the Sponsor; and

(ii) be a Person organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a Person or other Person permitted by the Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least 50 million U.S. dollars (\$50,000,000), and subject to supervision or examination by federal, State, Territorial or District of Columbia authority. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then for the purposes of this Section 6.3(a)(ii), the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Property Trustee shall cease to be eligible to so act under Section 6.3(a), the Property Trustee shall immediately resign in the manner and with the effect set forth in Section 6.6(c).

(c) If the Property Trustee has or shall acquire any “conflicting interest” within the meaning of Section 310(b) of the Trust Indenture Act, the Property Trustee and the Holder of the Common Securities (as if it were the obligor referred to in Section 310(b) of the Trust Indenture Act) shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

(d) The Guarantee shall be deemed to be specifically described in this Trust Agreement for purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

SECTION 6.4. Qualifications of Administrative Trustees and Delaware Trustee Generally.

Each Administrative Trustee and the Delaware Trustee (unless the Property Trustee also acts as Delaware Trustee) shall be either a natural person who is at least 21 years of age or a legal entity that shall act through one or more Authorized Officers.

SECTION 6.5. Initial Administrative Trustees.

The initial Administrative Trustees shall be:

Allen G. Braithwaite III, Marlene B. Debel and John J. Thurlow, the business address of all of whom is c/o Merrill Lynch & Co., Inc., 4 World Financial Center, New York, New York, 10080.

SECTION 6.6. Appointment, Removal and Resignation of Trustees.

(a) Subject to Section 6.6(b), Trustees may be appointed or removed without cause at any time:

(i) until the issuance of any Securities, by written instrument executed by the Sponsor;

(ii) after the issuance of any Securities (but prior to the occurrence of an Indenture Event of Default), by vote of the Holders of a Majority in Liquidation Amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities; and

(iii) after the issuance of the Capital Securities and the occurrence of an Indenture Event of Default or an ICONs Default, and only with respect to each of the Property Trustee and Delaware Trustee, by vote of the Holders of a Majority in Liquidation Amount of the Capital Securities.

(b) The Trustee that acts as Property Trustee shall not be removed in accordance with Section 6.6(a) until a successor Trustee possessing the qualifications to act as Property Trustee under Section 6.3(a) (a "Successor Property Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Property Trustee and delivered to the Administrative Trustees and the Sponsor. The Trustee that acts as Delaware Trustee shall not be removed in accordance with Section 6.6(a) until a successor Trustee possessing the qualifications to act as Delaware Trustee under Sections 6.2 and 6.4 (a "Successor Delaware Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Delaware Trustee and delivered to the Administrative Trustees and the Sponsor.

(c) A Trustee appointed to office shall hold office until his or its successor shall have been appointed, until his death or its dissolution or until his or its removal or resignation. Any Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing signed by the Trustee and delivered to the Sponsor and the Trust, which resignation shall take effect upon such delivery or upon such later date as is specified therein; *provided, however*, that:

(i) no such resignation of the Trustee that acts as the Property Trustee shall be effective:

- a. until a Successor Property Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Property Trustee and delivered to the Trust, the Sponsor and the resigning Property Trustee; or
- b. until the assets of the Trust have been completely liquidated and the proceeds thereof distributed to the holders of the Securities; and

(ii) no such resignation of the Trustee that acts as the Delaware Trustee shall be effective until a Successor Delaware Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Delaware Trustee and delivered to the Trust, the Sponsor and the resigning Delaware Trustee.

(d) The Holders of the Common Securities shall use their best efforts to promptly appoint a Successor Delaware Trustee or Successor Property Trustee, as the case may be, if the Property Trustee or the Delaware Trustee delivers an instrument of resignation in accordance with this Section 6.6.

(e) If no Successor Property Trustee or Successor Delaware Trustee, as the case may be, shall have been appointed and accepted appointment as provided in this Section 6.6 within 60 days after delivery to the Sponsor and the Trust of an instrument of resignation or removal, the resigning or removed Property Trustee or Delaware Trustee, as applicable, may petition any court of competent jurisdiction in the U.S. for appointment of a Successor Property Trustee or Successor Delaware Trustee, as applicable. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Property Trustee or Successor Delaware Trustee, as the case may be.

(f) No Property Trustee or Delaware Trustee shall be liable for the acts or omissions to act of any Successor Property Trustee or Successor Delaware Trustee, as the case may be.

SECTION 6.7. Vacancies among Trustees.

If a Trustee ceases to hold office for any reason and the number of Trustees is not reduced pursuant to Section 6.1, or if the number of Trustees is increased pursuant to Section 6.1, a vacancy shall occur. A resolution certifying the existence of such vacancy by the Administrative Trustees or, if there are more than two, a majority of the Administrative Trustees shall be conclusive evidence of the existence of such vacancy. The vacancy shall be filled with a Trustee appointed in accordance with Section 6.6.

SECTION 6.8. Effect of Vacancies.

The death, resignation, retirement, removal, bankruptcy, dissolution, liquidation, incompetence or incapacity to perform the duties of a Trustee shall not operate to annul, dissolve or terminate the Trust. Whenever a vacancy in the number of Administrative Trustees shall occur, until such vacancy is filled by the appointment of an Administrative Trustee in accordance with Section 6.6, the Administrative Trustees in office, regardless of their number, shall have all the powers granted to the Administrative Trustees and shall discharge all the duties imposed upon the Administrative Trustees by this Trust Agreement.

SECTION 6.9. Meetings.

If there is more than one Administrative Trustee, meetings of the Administrative Trustees shall be held from time to time upon the call of any Administrative Trustee. Regular meetings of the Administrative Trustees may be held at a time and place fixed by resolution of the Administrative Trustees. Notice of any in-person meetings of the Administrative Trustees shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 48 hours before such meeting. Notice of any telephonic meetings of the Administrative Trustees shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 24 hours before a meeting. Notices shall contain a brief statement of the time, place and anticipated purposes of the meeting. The presence (whether in person or by telephone) of an Administrative Trustee at a meeting shall constitute a waiver of notice of such meeting except where an Administrative Trustee attends a meeting for the express purpose of objecting to the transaction of any activity on the ground that the meeting has not been lawfully called or convened. Unless provided otherwise in this Trust Agreement, any action of the Administrative Trustees may be taken at a meeting by vote of a majority of the Administrative Trustees present (whether in person or by telephone) and eligible to vote with respect to such matter, provided that a Quorum is present, or without a meeting by the unanimous written consent of the Administrative Trustees. In the event there is only one Administrative Trustee, any and all action of such Administrative Trustee shall be evidenced by a written consent of such Administrative Trustee.

SECTION 6.10. Delegation of Power.

(a) Any Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any natural person over the age of 21 his, her or its power for the purpose of executing any documents contemplated in Section 3.6 or making any governmental filing; provided that such person is a United States Person as defined in Section 7701(a)(30) of the Code.

(b) The Administrative Trustees shall have power to delegate from time to time to such of their number or to officers of the Trust the doing of such things and the execution of such instruments either in the name of the Trust or the names of the Administrative Trustees or otherwise as the Administrative Trustees may deem expedient, to the extent such delegation is not prohibited by applicable law or contrary to the provisions of the Trust, as set forth herein; provided, that such person is a United States Person as defined in Section 7701(a)(30) of the Code.

SECTION 6.11. Merger, Conversion, Consolidation or Succession to Business.

Any Person into which the Property Trustee, the Delaware Trustee or any Administrative Trustee that is not a natural person may be merged or converted or with such Trustee may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Trustee shall be a party, or any Person succeeding to all or substantially all the corporate trust business of such Trustee shall be the successor of such Trustee hereunder, provided such Person shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

ARTICLE 7

TERMS OF SECURITIES

SECTION 7.1. General Provisions Regarding Securities.

(a) The Administrative Trustees shall on behalf of the Trust issue one class of capital securities representing undivided beneficial interests in the assets of the Trust and one class of common securities representing undivided beneficial interests in the assets of the Trust.

(i) Capital Securities. The Capital Securities of the Trust have an aggregate liquidation amount with respect to the assets of the Trust of up to one billion one hundred thirty five million dollars (\$1,035,000,000) with respect to the closing of the sale of Capital Securities on one or more occasions and a liquidation amount with respect to the assets of the Trust of \$25.00 per Capital Security. The Capital Securities are hereby designated for identification purposes only as "Trust Preferred Securities" (the "Capital Securities"). The Capital Security Certificates evidencing the Capital Securities shall be substantially in the form of Exhibit A to this Trust Agreement, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice or to conform to the rules of any stock exchange on which the Capital Securities are listed or quoted.

(ii) Common Securities. The Common Securities of the Trust have an aggregate liquidation amount with respect to the assets of the Trust of one million dollars (\$1,000,000) and a liquidation amount with respect to the assets of the Trust of \$25.00 per Common Security. The Common Securities are hereby designated for identification purposes only as "Common Securities" (the "Common Securities" and, together with the Capital Securities, the "Securities"). The Common Security Certificates evidencing the Common Securities shall be substantially in the form of Exhibit B to this Trust Agreement, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice.

(b) Payment of Distributions on, and payment of the Redemption Price upon a redemption of, the Capital Securities and the Common Securities, as applicable, shall be made Pro Rata based on the liquidation amount of such Capital Securities and Common Securities; *provided, however*, that if on any date on which amounts payable on distribution or redemption, an Indenture Event of Default or an ICONs Default shall have occurred and be continuing, no payment of any Distribution on, or Redemption Price of, any of the Common Securities, and no other payment on account of the redemption, liquidation or other acquisition of such Common Securities, shall be made unless payment in full in cash of all accumulated and unpaid Distributions on all of the outstanding Capital Securities for all Distribution periods terminating on or prior thereto, or, in the case of amounts payable on redemption, the full amount of the Redemption Price for all of the outstanding Capital Securities then called for redemption, shall have been made or provided for, and all funds available to the Property Trustee shall first be applied to the payment in full in cash of all Distributions on, or the Redemption Price of, the Capital Securities then due and payable. The Trust shall issue no securities or other interests in the assets of the Trust other than the Capital Securities and the Common Securities.

(c) The Certificates shall be signed on behalf of the Trust by an Administrative Trustee. Such signature shall be the manual or facsimile signature of any present or any future Administrative Trustee. In case an Administrative Trustee of the Trust who shall have signed any of the Certificates shall cease to be such Administrative Trustee before the Certificates so signed shall be delivered by the Trust, such Certificates nevertheless may be delivered as though the person who signed such Certificates had not ceased to be such Administrative Trustee; and any Certificate may be signed on behalf of the Trust by such persons who, at the actual date of execution of such Certificate, shall be the Administrative Trustees of the Trust, although at the date of the execution and delivery of the Trust Agreement any such person was not such an Administrative Trustee. Certificates shall be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Administrative Trustees, as evidenced by their execution thereof, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements as the Administrative Trustees may deem appropriate (but which do not affect the rights, duties or responsibilities of the Property Trustee), or as may be required to comply with any law or with any rule or regulation of any stock exchange on which Securities may be listed, or to conform to usage.

A Certificate representing Capital Securities shall not be valid until authenticated by the manual signature of an authorized officer of the Property Trustee. Such signature shall be conclusive evidence that such Certificate has been authenticated under this Trust Agreement.

Upon a written order of the Trust signed by one Administrative Trustee, the Property Trustee shall authenticate the Certificates representing Capital Securities for original issue. The aggregate amount of Capital Securities outstanding at any time shall not exceed the liquidation amount set forth in Section 7.1(a)(i).

The Property Trustee may appoint an authenticating agent acceptable to the Trust to authenticate Certificates. An authenticating agent may authenticate Certificates whenever the Property Trustee may do so. Each reference in this Trust Agreement to authentication by the Property Trustee includes authentication by such agent. An authenticating agent has the same rights as the Property Trustee to deal with the Sponsor or an Affiliate of the Sponsor.

(d) The consideration received by the Trust for the issuance of the Securities shall constitute a contribution to the capital of the Trust and shall not constitute a loan to the Trust.

(e) Upon issuance of the Securities as provided in this Trust Agreement, the Securities so issued shall be deemed to be validly issued, fully paid and non-assessable undivided beneficial interests in the assets of the Trust.

(f) Every Person, by virtue of having become a Holder or a Capital Security Beneficial Owner in accordance with the terms of this Trust Agreement, shall be deemed to have expressly assented and agreed to the terms of, and shall be bound by, this Trust Agreement and the terms of the Securities.

(g) The holders of the Securities shall have no preemptive or similar rights.

SECTION 7.2. Distributions.

(a) As owners of undivided beneficial ownership interests in the ICONs, holders of Securities shall be entitled (subject to the last sentence of this Section 7.2(a)) to receive cumulative cash Distributions (i) with respect to each accrual period during the Fixed Rate Period, at the rate per annum of 6.45% of the stated liquidation amount of \$25.00 per Security and (ii) with respect to each accrual period in the Floating Rate Period, at the percentage of the stated liquidation amount of \$25.00 per Security equal to the Three-Month LIBOR Rate applicable to such accrual period plus 1.07%. Pursuant to the Indenture, the amount of interest on the ICONs payable for any accrual period during the Fixed Rate Period and the Floating Rate Period, and, as a result, Distributions on the Securities payable for any accrual period during the Fixed Rate Period and the Floating Rate Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months and on the basis of a 360-day year and the actual number of days elapsed during the relevant period, respectively. Subject to Section 7.1(b), Distributions shall be made on the Capital Securities and the Common Securities on a Pro Rata basis. Pursuant to the Indenture, interest on the ICONs shall, from the date of original issue, accrue and be cumulative, and, as a result Distributions on the Securities shall, from the date of original issue, accumulate and be cumulative. Distributions shall be payable quarterly in arrears on each March 15, June 15, September 15 and December 15 of each year, commencing June 15, 2007, when, as and if available for payment, by the Property Trustee, except as otherwise described below. Distributions are payable only to the extent that payments are made by the ICON Issuer in respect of the ICONs held by the Property Trustee and to the extent that the Trust has funds available for the payment of such Distributions in the Property Account.

(b) Pursuant to the Indenture, interest not paid on the scheduled payment date will accrue and compound quarterly at the annual rate then applicable to the ICONs, and, as a result, interest on the ICONs not paid on the scheduled payment date will accrue and compound quarterly at the then applicable rate (and, as a result) the Distributions on the Securities will accumulate and compound at the then applicable rate ("Compounded Distributions"). "Distributions" shall mean ordinary cumulative distributions together with any Compounded Distributions.

(c) If and to the extent that the ICON Issuer makes a payment of interest, premium and/or principal on the ICONs held by the Property Trustee (the amount of any such payment being a “Payment Amount”), the Property Trustee shall and is directed, to the extent funds are available for that purpose, make a Pro Rata distribution of the Payment Amount to Holders, subject to Section 7.1(b).

(d) Distributions on the Securities shall be payable to the Holders thereof as they appear on the register of the Trust as of the close of business on the relevant record dates. While the Capital Securities are represented by one or more Global Securities, the relevant record dates shall be the close of business the Business Day preceding such Distribution payment date; otherwise the relevant record date shall be the fifteenth day (whether or not a Business Day) preceding such Distribution payment date. At all times, the Distribution payment dates shall correspond to the interest payment dates on the ICONs. Distributions payable on any Securities that are not punctually paid on any Distribution payment date as a result of the ICON Issuer having failed to make a payment under the ICONs shall cease to be payable to the Person in whose name such Securities are registered on the relevant record date, and such defaulted Distribution will instead be payable to the Person in whose name such Securities are registered on the special record date or other specified date determined in accordance with this Trust Agreement. During the Fixed Rate Period, if any date on which Distributions are payable on the Securities is not a Business Day, then payment of the Distribution payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), with the same force and effect as if made on such payment date. During the Floating Rate Period, if any date on which Distributions are payable on the Securities, other than a Distribution payment date which coincides with a redemption date for the Securities, falls on a day that is not a Business Day, then the Distribution payment date shall be postponed to the next day that is a Business Day, except that if such Business Day is in the next succeeding calendar month, such Distribution payment date shall be the immediately preceding Business Day.

(e) In the event that there is any money or other property held by or for the Trust that is not accounted for hereunder, such property shall be distributed Pro Rata among the Holders of the Securities except as provided in Section 7.1(b).

SECTION 7.3. Redemption of Securities.

(a) Upon the repayment or redemption, in whole or in part, of the ICONs held by the Property Trustee on behalf of the Trust, whether at the maturity of the ICONs or upon earlier redemption as provided in the Indenture, the proceeds from such repayment or redemption shall be simultaneously applied Pro Rata (subject to Section 7.1(b)) to redeem Securities having an aggregate liquidation amount equal to the aggregate principal amount of the ICONs so repaid or redeemed at the Redemption Price. Holders shall be given not fewer than 30 nor more than 60 days notice of such redemption in accordance with Section 7.4.

(b) On the date fixed for any distribution of ICONs, upon dissolution of the Trust, (i) the Securities will no longer be deemed to be outstanding and (ii) certificates representing Securities will be deemed to represent the ICONs having an aggregate principal amount equal to the stated liquidation amount of, and bearing accrued and unpaid interest equal to accumulated and unpaid distributions on, such Securities until such certificates are presented to the Sponsor or its agent for transfer or reissuance.

SECTION 7.4. Redemption Procedures.

(a) Notice of any redemption of, or notice of distribution of ICONs in exchange for, the Securities (a “Redemption/Distribution Notice”), which notice shall be irrevocable, will be given by the Trust by mail to each Holder of Securities to be redeemed or exchanged not fewer than 30 nor more than 60 days before the date fixed for redemption or exchange thereof which, in the case of a redemption, will be the date fixed for redemption of the ICONs. For purposes of the calculation of the date of redemption or exchange and the dates on which notices are given pursuant to this Section 7.4(a), a Redemption/Distribution Notice shall be deemed to be given on the day such notice is first mailed by first-class mail, postage prepaid, to Holders of Securities. Each Redemption/Distribution Notice shall be addressed to the Holders of Securities at the address of each such Holder appearing in the register of the Trust. No defect in the Redemption/Distribution Notice or in the mailing of either thereof with respect to any Holder shall affect the validity of the redemption or exchange proceedings with respect to any other Holder.

(b) If fewer than all the outstanding Securities are to be so redeemed, the Common Securities and the Capital Securities will be redeemed Pro Rata (subject to Section 7.1(b)) and the Capital Securities to be redeemed will be redeemed as described in Section 7.4(c) below. The particular Capital Securities to be redeemed will be selected on a Pro Rata basis by the Property Trustee from the outstanding Capital Securities not previously called for redemption, by such method (including, without limitation, by lot) as the Property Trustee shall deem fair and appropriate. The Trust may not redeem the Securities in part unless all accumulated and unpaid Distributions to the date of redemption have been paid in full on all Securities then outstanding. For all purposes of this Trust Agreement, unless the context otherwise requires, all provisions relating to the redemption of Capital Securities shall relate, in the case of any Capital Security redeemed or to be redeemed only in part, to the portion of the aggregate liquidation amount of Capital Securities which has been or is to be redeemed.

(c) Subject to the Trust’s fulfillment of the notice requirements set forth in Section 7.4(a) above, if Securities are to be redeemed, then (i) with respect to Capital Securities represented by one or more Global Securities, by 12:00 noon, New York City time, on the redemption date, provided that the ICON Issuer has paid the Property Trustee a sufficient amount of cash in connection with the related redemption or maturity of the ICONs, the Property Trustee will deposit irrevocably with the Depositary or its nominee (or successor Clearing Agency or its nominee) funds sufficient to pay the applicable Redemption Price with respect to the Capital Securities and will give the Depositary irrevocable instructions and authority to pay the Redemption Price to the Holders of the Capital Securities and (ii) with respect to Securities not represented by a Global Security, provided that the ICONs Issuer has paid the Property Trustee a sufficient amount of cash in connection with the related redemption or maturity of the ICONs, the Property Trustee will give the Paying Agent irrevocable instructions and authority to pay the relevant Redemption Price to the Holders of such Securities upon surrender of their certificates evidencing the Capital Securities. If any date fixed for redemption of Securities is not a Business Day, then payment of the Redemption Price payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) with the same force and effect as if made on such date fixed for redemption.

If payment of the Redemption Price in respect of any Securities is not paid because the payment of the Redemption Price on the ICONs is not made, interest will continue to accrue on the ICONs, and, as a result, Distributions on such Securities will continue to accumulate at the then applicable rate from the original redemption date to the actual date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the Redemption Price. For these purposes, the applicable Redemption Price shall not include Distributions which are being paid to Holders who were Holders on a relevant record date. If a Redemption/Distribution Notice shall have been given and funds deposited or paid as required, then immediately prior to the close of business on the date of such deposit or payment, Distributions will cease to accumulate on the Securities called for redemption and all rights of Holders of such Securities so called for redemption will cease, except the right of the Holders to receive the Redemption Price, but without interest on such Redemption Price, and from and after the date fixed for redemption, such Securities will cease to be outstanding.

Neither the Administrative Trustees nor the Trust shall be required to register or cause to be registered the transfer of any Securities that have been called for redemption, except in the case of any Securities being redeemed in part, any portion thereof not to be redeemed.

SECTION 7.5. Voting Rights of Capital Securities.

(a) Except as provided under Section 6.6, Section 11.1 and this Article 7 and as otherwise required by the Delaware Statutory Trust Act, the Trust Indenture Act and other applicable law, the Holders of the Capital Securities shall have no voting rights.

(b) Subject to the requirement of the Property Trustee obtaining a tax opinion in certain circumstances set forth in Section 7.5(d) below, the Holders of a Majority in Liquidation Amount of the Capital Securities voting separately as a class have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or to direct the exercise of any trust or power conferred upon the Property Trustee under the Trust Agreement, including the right to direct the Property Trustee, as Holder of the ICONs, to (i) exercise the remedies available to it under the Indenture as a Holder of the ICONs; (ii) consent to any amendment or modification of the Indenture or the ICONs where such consent shall be required or (iii) waive any past default and its consequences that is waivable under Section 5.13 of the Indenture; *provided, however*, that if an Indenture Event of Default has occurred and is continuing, then the Holders of 25% of the aggregate liquidation amount of the Capital Securities may direct the Property Trustee to declare the principal of and interest on the ICONs due and payable (unless such Indenture Event of Default is an Indenture Event of Default which shall have caused the principal of the ICONs and accrued interest thereon to become automatically due and payable); provided, further, that where a consent or action under the Indenture would require the consent or act of the Holders of more than a majority of the aggregate principal amount of ICONs affected thereby, only the Holders of the percentage of the aggregate stated liquidation amount of the Capital Securities which is at least equal to the percentage required under the Indenture may direct the Property Trustee to give such consent to take such action.

(c) If the Property Trustee fails to enforce its rights under the ICONs after a Holder of Capital Securities has made a written request, such Holder of Capital Securities may, to the extent permitted by applicable law, institute a legal proceeding directly against the ICON Issuer to enforce the Property Trustee's rights under the Indenture without first instituting any legal proceeding against the Property Trustee or any other Person. In addition, if a Trust Enforcement Event has occurred and is continuing and such event is attributable to the failure of the ICON Issuer to pay interest in full on the ICONs for a period of 30 days after the conclusion of a ten-year period following the commencement of any Optional Deferral Period, then a Holder of Capital Securities may directly institute a Direct Action against the ICON Issuer on or after the respective due date specified in the ICONs;

(d) The Property Trustee shall notify all Holders of the Capital Securities of any notice of any Indenture Event of Default or ICONs Default received from the ICON Issuer with respect to the ICONs. Such notice shall state, if applicable, that such Indenture Event of Default also constitutes a Trust Enforcement Event. Except with respect to directing the time, method, and place of conducting a proceeding for a remedy, the Property Trustee shall be under no obligation to take any of the actions described in clause 7.5(b)(i) and (ii) above unless the Property Trustee has obtained an opinion of independent tax counsel to the effect that the Trust will not be classified as an association or publicly traded partnership taxable as a corporation for United States federal income tax purposes as a result of such action.

(e) In the event the consent of the Property Trustee, as the Holder of the ICONs, is required under the Indenture with respect to any amendment or modification of the Indenture, the Property Trustee shall request the direction of the Holders of the Capital Securities with respect to such amendment or modification and shall vote with respect to such amendment or modification as directed by not less than a majority in liquidation amount of the Capital Securities voting together as a single class; *provided, however*, that where a consent under the Indenture would require the consent of the Holders of more than a majority of the aggregate principal amount of the ICONs, the Property Trustee may only give such consent at the direction of the Holders of at least the same proportion in aggregate stated liquidation amount of the Securities. The Property Trustee shall not take any such action in accordance with the directions of the Holders of the Securities unless the Property Trustee has obtained an opinion of independent tax counsel to the effect that the Trust will not be classified as an association or publicly traded partnership taxable as a corporation for United States federal income tax purposes as a result of such action.

(f) A waiver of an Indenture Event of Default with respect to the ICONs will constitute a waiver of the corresponding Trust Enforcement Event.

(g) Any required approval or direction of Holders of Capital Securities may be given at a separate meeting of Holders of Capital Securities convened for such purpose, at a meeting of all of the Holders of Securities or pursuant to written consent. The Administrative Trustees will cause a notice of any meeting at which Holders of Capital Securities are entitled to vote to be mailed to each Holder of record of Capital Securities. Each such notice will include a statement setting forth (i) the date of such meeting, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote and (iii) instructions for the delivery of proxies.

(h) No vote or consent of the Holders of Capital Securities shall be required for the Trust to redeem and cancel Capital Securities or distribute ICONs in accordance with this Trust Agreement and the terms of the Securities.

(i) Notwithstanding that Holders of Capital Securities are entitled to vote or consent under any of the circumstances described above, any of the Securities that are owned at such time by the ICON Issuer, any Administrative Trustee or any entity directly or indirectly controlled by, or under direct or indirect common control with, the ICON Issuer or any Administrative Trustee, shall not be entitled to vote or consent and shall, for purposes of such vote or consent, be treated as if such Securities were not outstanding; *provided, however*, that Persons otherwise eligible to vote to whom the ICON Issuer or any of its subsidiaries have pledged Capital Securities may vote or consent with respect to such pledged Capital Securities under any of the circumstances described herein.

(j) Subject to Sections 6.6(a) and 7.5(k), Holders of the Capital Securities shall have no rights to appoint or remove the Trustees, who may be appointed, removed or replaced solely by the Common Securities Holder.

(k) If an Indenture Event of Default or an ICONs Default has occurred and is continuing, the Property Trustee and the Delaware Trustee may be removed at such time only by a Majority in Liquidation Amount of the Capital Securities.

(l) The Trustees shall not revoke any action previously authorized or approved by a vote of the Holders of the Securities, except by a subsequent vote of the Holders of the Securities.

SECTION 7.6. Voting Rights of Common Securities.

(a) Except as provided under Section 6.1(b), this Section 7.6 or Section 11.1 or as otherwise required by the Delaware Statutory Trust Act, the Trust Indenture Act or other applicable law or provided by the Trust Agreement, the Holders of the Common Securities will have no voting rights.

(b) Subject to Sections 6.6(a) and 7.5(k), the Holders of the Common Securities shall be entitled, in accordance with Article VI of this Trust Agreement, to vote to appoint, remove or replace any Trustee or to increase or decrease the number of Trustees.

(c) Subject to Section 2.6 and only after all Trust Enforcement Events with respect to the Capital Securities have been cured, waived, or otherwise eliminated and subject to the requirement of the Property Trustee obtaining a tax opinion in certain circumstances set forth in this paragraph (c), the Holders of a Majority in Liquidation Amount of the Common Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee with respect to the Common Securities, or direct the exercise of any trust or power conferred upon the Property Trustee under this Trust Agreement with respect to the Common Securities, including the right to direct the Property Trustee, as Holder of the ICONs, to (i) exercise the remedies available to it under the Indenture as a Holder of the ICONs, (ii) consent to any amendment or modification of the Indenture or the ICONs where such consent shall be required or (iii) waive any past default and its consequences that is waivable under Section 5.13 of the Indenture; *provided, however*, that where a consent or action under the Indenture would require the consent or act of the Holders of more than a majority of the aggregate principal amount of ICONs affected thereby, only the Holders of the percentage of the aggregate stated liquidation amount of the Common Securities which is at least equal to the percentage required under the Indenture may direct the Property Trustee to have such consent or take such action.

Except with respect to directing the time, method, and place of conducting a proceeding for a remedy, the Property Trustee shall be under no obligation to take any of the actions described in clause 7.6(c)(i) and (ii) above unless the Property Trustee has obtained an opinion of independent tax counsel to the effect that, as a result of such action, for United States federal income tax purposes the Trust will not be classified as other than a grantor trust.

(d) If the Property Trustee fails to enforce its rights under the ICONs with respect to the Common Securities after a Holder of Common Securities has made a written request, such Holder of Common Securities may, to the extent permitted by applicable law, directly institute a legal proceeding directly against the ICON Issuer to enforce the Property Trustee's rights under the ICONs without first instituting any legal proceeding against the Property Trustee or any other Person.

(e) A waiver with respect to the Common Securities of an Indenture Event of Default with respect to the ICONs will constitute a waiver of the corresponding Trust Enforcement Event with respect to the Common Securities.

(f) Any required approval or direction of Holders of Common Securities may be given at a separate meeting of Holders of Common Securities convened for such purpose, at a meeting of all of the Holders of Securities or pursuant to written consent. The Administrative Trustees will cause a notice of any meeting at which Holders of Common Securities are entitled to vote to be mailed to each Holder of record of Common Securities. Each such notice will include a statement setting forth (i) the date of such meeting, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote and (iii) instructions for the delivery of proxies.

(g) No vote or consent of the Holders of the Common Securities will be required for the Trust to redeem and cancel Common Securities or to distribute ICONs in accordance with the Trust Agreement and the terms of the Securities.

SECTION 7.7. Paying Agent.

The Trust shall maintain in the Borough of Manhattan, City of New York, State of New York, an office or agency where the Capital Securities may be presented for payment ("Paying Agent") and to pay Distributions, redemption payments or liquidation payments on behalf of the Trust with respect to all Securities and any such Paying Agent shall comply with Section 317(b) of the Trust Indenture Act. The Trust shall appoint the Paying Agent and may appoint one or more additional paying agents in such other locations as it shall determine. The term "Paying Agent" includes any additional paying agent. The Trust may change any Paying Agent without prior notice to the Holders. The Trust shall notify the Property Trustee of the name and address of any Paying Agent not a party to this Trust Agreement. If the Trust fails to appoint or maintain another entity as Paying Agent, the Property Trustee shall act as such. The Trust or any of its Affiliates may act as Paying Agent.

The Property Trustee shall initially act as Paying Agent for the Securities and the initial office of the Paying Agent shall be The Bank of New York, 101 Barclay Street, Floor 8 West, New York, New York 10286, Attention: Corporate Trust Administration. In the event The Bank of New York shall no longer be the Paying Agent, the Administrative Trustees shall appoint a successor (which shall be a bank or trust company acceptable to the ICON Issuer) to act as Paying Agent. The Paying Agent shall be permitted to resign as Paying Agent upon 30 days' written notice to the Property Trustee and the ICON Issuer.

SECTION 7.8. Listing.

The Sponsor shall use its best efforts to cause the Capital Securities to be listed for quotation on the New York Stock Exchange.

SECTION 7.9. Transfer of Securities.

(a) Securities may only be transferred, in whole or in part, in accordance with the terms and conditions set forth in this Trust Agreement and in the terms of the Securities. To the fullest extent permitted by law, any transfer or purported transfer of any Security not made in accordance with this Trust Agreement shall be null and void.

(b) (i) Subject to this Article 7, Capital Securities shall be freely transferable.

(ii) The Holder of the Common Securities may not transfer the Common Securities except (A) in compliance with a consolidation, merger, sale, conveyance or lease of the Sponsor in compliance with Article VIII of the Indenture or (B) to the Sponsor or an Affiliate thereof in compliance with applicable law, including the Securities Act and applicable state securities and blue sky laws. To the fullest extent permitted by law, any attempted transfer of the Common Securities other than as set forth in the immediately preceding sentence shall be null and void.

(c) The Trust shall cause to be kept at an office or offices designated by the Trust a register (the register maintained in such office being herein sometimes referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Trust shall provide for the registration of Capital Securities and of transfers of Capital Securities. The Trust initially designates the Property Trustee, 101 Barclay Street, Floor 8 West, New York, New York 10286, Attention: Corporate Trust Administration, as its office for the purpose of registering Capital Securities and transfers of Capital Securities, and hereby initially appoints the Property Trustee as "Security Registrar" for such purposes.

(d) Upon surrender for registration of transfer of any Security at an office or agency of the Trust designated for such purpose, the Trust shall execute, and the Property Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denominations and of a like aggregate principal amount.

(e) At the option of the Holder, Securities may be exchanged for other Securities of any authorized denominations and of a like aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency.

Whenever any Securities are so surrendered for exchange, the Trust shall execute, and in the case of Capital Securities the Property Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

(f) Every Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Trust or the Property Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Trust and the Security Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing.

(g) No service charge shall be made for any registration of transfer or exchange of Securities, but the Trust may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities.

(h) If the Securities are to be redeemed in part, the Trust shall not be required (A) to issue, register the transfer of or exchange any Securities during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of any such Securities selected for redemption under Section 7.4 and ending at the close of business on the day of such mailing, or (B) to register the transfer or exchange of any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

SECTION 7.10. Mutilated, Destroyed, Lost or Stolen Certificates.

If:

(a) any mutilated Certificates should be surrendered to the Administrative Trustees, or if the Administrative Trustees shall receive evidence to their satisfaction of the destruction, loss or theft of any Certificate; and

(b) there shall be delivered to the Administrative Trustees such security or indemnity as may be required by them to keep each of the Trustees, the Sponsor and the Trust harmless,

then, in the absence of notice that such Certificate shall have been acquired by a protected purchaser, any Administrative Trustee on behalf of the Trust shall execute and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Certificate, a new Certificate of like denomination. In connection with the issuance of any new Certificate under this Section 7.10, the Administrative Trustees may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith. Any duplicate Certificate issued pursuant to this Section shall constitute conclusive evidence of an ownership interest in the relevant Securities, as if originally issued, whether or not the lost, stolen or destroyed Certificate shall be found at any time.

SECTION 7.11. Deemed Security Holders.

The Trustees may treat the Person in whose name any Certificate shall be registered on the register of the Trust as the sole holder of such Certificate and of the Securities represented by such Certificate for purposes of receiving Distributions and for all other purposes whatsoever and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Certificate or in the Securities represented by such Certificate on the part of any Person, whether or not the Trust shall have actual or other notice thereof.

SECTION 7.12. Global Securities.

On initial issuance, the Capital Securities shall be issued in the form of one or more Global Securities. An Administrative Trustee on behalf of the Trust shall execute, and the Property Trustee shall authenticate and deliver, one or more Global Securities that (i) shall represent and shall be denominated in an amount equal to the aggregate liquidation amount of all of the Capital Securities to be issued, (ii) shall be registered in the name of the Depository for such Global Security or the nominee of such Depository, and (iii) shall be delivered by the Property Trustee to such Depository or pursuant to such Depository's instructions. Global Securities shall bear a legend substantially to the following effect:

“This Capital Security is a Global Security within the meaning of the Trust Agreement hereinafter referred to and is registered in the name of The Depository Trust Company, a New York corporation (the “Depository”), or a nominee of the Depository. This Capital Security is exchangeable for Capital Securities registered in the name of a person other than the Depository or its nominee only in the limited circumstances described in the Trust Agreement and no transfer of this Capital Security (other than a transfer of this Capital Security as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository) may be registered except in limited circumstances.

Unless this Capital Security Certificate is presented by an authorized representative of the Depository to Merrill Lynch Capital Trust II or its agent for registration of transfer, exchange or payment, and any Capital Security Certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of the Depository (and any payment hereon is made to Cede & Co. or to such other entity as is requested by an authorized representative of the Depository), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.”

In the event that Capital Securities in definitive registered form are issued in exchange for all or a part of a Global Security pursuant to this Section 7.12, such Capital Securities shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Property Trustee. Upon execution and authentication, the Property Trustee shall deliver such Capital Securities not represented by a Global Security to the Persons in whose names such definitive Capital Securities are so registered.

At such time as all interests in Global Securities have been redeemed, repurchased or cancelled, such Global Securities shall be, upon receipt thereof, cancelled by the Property Trustee in accordance with standing procedures of the Depository.

At any time prior to such cancellation, if any interest in Global Securities is exchanged for Capital Securities not represented by a Global Security, redeemed, cancelled or transferred to a transferee who receives Capital Securities not represented by a Global Security therefor or any Capital Security not represented by a Global Security is exchanged or transferred for part of Global Securities, the principal amount of such Global Securities shall, in accordance with the standing procedures of the Depositary, be reduced or increased, as the case may be, and an endorsement shall be made on such Global Securities by the Property Trustee to reflect such reduction or increase.

The Trust and the Property Trustee may for all purposes, including the making of payments due on the Capital Securities, deal with the Depositary as the authorized representative of the Holders for the purposes of exercising the rights of Holders hereunder. The rights of the owner of any beneficial interest in a Global Security shall be limited to those established by law and agreements between such owners and depository participants provided, that no such agreement shall give any rights to any Person against the Trust or the Property Trustee without the written consent of the parties so affected. Multiple requests and directions from and votes of the Depositary as holder of Capital Securities in global form with respect to any particular matter shall not be deemed inconsistent to the extent they do not represent an amount of Capital Securities in excess of those held in the name of the Depositary or its nominee.

If at any time the Depositary for any Capital Securities represented by one or more Global Securities notifies the Trust that it is unwilling or unable to continue as Depositary for such Capital Securities or if at any time the Depositary for such Capital Securities shall no longer be eligible under this Section 7.12, the Trust shall appoint a successor Depositary with respect to such Capital Securities. If a successor Depositary for such Capital Securities is not appointed by the Trust within 90 days after the Trust receives such notice or becomes aware of such ineligibility, the Trust's election that such Capital Securities be represented by one or more Global Securities shall no longer be effective and the Trust shall execute, and the Property Trustee will authenticate and deliver, Capital Securities in definitive registered form, in any authorized denominations, in an aggregate liquidation amount equal to the principal amount of the Global Security or Capital Securities representing such Capital Securities in exchange for such Global Security or Capital Securities.

The Trust may at any time and in its sole discretion determine that the Capital Securities issued in the form of one or more Global Securities shall no longer be represented by a Global Security or Capital Securities. In such event the Trust shall execute, and the Property Trustee, shall authenticate and deliver, Capital Securities in definitive registered form, in any authorized denominations, in an aggregate liquidation amount equal to the principal amount of the Global Security or Capital Securities representing such Capital Securities, in exchange for such Global Security or Capital Securities.

Notwithstanding any other provisions of this Trust Agreement (other than the provisions set forth in Section 7.9), Global Securities may not be transferred as a whole except by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

Interests of beneficial owners in a Global Security may be transferred or exchanged for Capital Securities not represented by a Global Security and Capital Securities not represented by a Global Security may be transferred or exchange for Global Securities in accordance with rules of the Depository and the provisions of Section 7.9.

ARTICLE 8

DISSOLUTION AND TERMINATION OF TRUST

SECTION 8.1. Dissolution and Termination of Trust.

- (a) The Trust shall dissolve upon the earliest of:
- (i) the bankruptcy of the Holder of the Common Securities or the Sponsor;
 - (ii) the filing of a certificate of dissolution or its equivalent with respect to the Sponsor or the revocation of the Sponsor's charter and the expiration of 90 days after the revocation without a reinstatement thereof;
 - (iii) the entry of a decree of judicial dissolution of the Sponsor or the Trust;
 - (iv) the time when all of the Securities shall have been called for redemption and the amounts then due shall have been paid to the Holders in accordance with the terms of the Securities;
 - (v) at the Sponsor's election by notice and direction to the Property Trustee to distribute the ICONs to the Holders of the Securities in exchange for all of the Securities; *provided* that the Sponsor will be required to obtain an opinion of an independent counsel that the distribution of the ICONs will not be taxable to the Holders of the Capital Securities for United States federal income tax purposes; or
 - (vi) the time when all of the Administrative Trustees and the Sponsor shall have consented to dissolution of the Trust provided such action is taken before the issuance of any Securities.
- (b) As soon as is practicable after the occurrence of an event referred to in Section 8.1(a) and upon completion of the winding up and liquidation of the Trust, the Trustees shall terminate the Trust by filing a certificate of cancellation with the Secretary of State of the State of Delaware.
- (c) The provisions of Section 4.2 and Article 9 shall survive the termination of the Trust.

SECTION 8.2. Liquidation Distribution Upon Dissolution of the Trust.

(a) In the event of any voluntary or involuntary liquidation, dissolution, or winding-up of the Trust (each a "Liquidation"), the Holders of the Securities on the date of the Liquidation will be entitled to receive, out of the assets of the Trust available for distribution to Holders of Securities after satisfaction of the Trust's liabilities to creditors, if any, distributions in cash or other immediately available funds in an amount equal to the aggregate of the stated liquidation amount of \$25.00 per Security plus accumulated and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"), unless, in connection with such Liquidation, ICONs in an aggregate stated principal amount equal to the aggregate stated liquidation amount of, with an interest rate identical to the distribution rate of, and accumulated and unpaid interest equal to accrued and unpaid Distributions on, such Securities shall be distributed on a Pro Rata basis to the Holders of the Securities in exchange for such Securities.

(b) If, upon any such Liquidation, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then the amounts payable directly by the Trust on the Securities shall be paid on a Pro Rata basis. The Holders of the Common Securities will be entitled to receive distributions upon any such Liquidation Pro Rata with the Holders of the Capital Securities except that if an ICONs Default or an Indenture Event of Default has occurred and is continuing, the Capital Securities shall have a preference over the Common Securities with regard to such distributions as provided for in Section 7.1(b).

ARTICLE 9

LIMITATION OF LIABILITY OF HOLDERS OF SECURITIES, DELAWARE TRUSTEES
OR OTHERS

SECTION 9.1. Liability.

(a) Except as expressly set forth in this Trust Agreement, the Guarantee and the terms of the Securities, the Sponsor and the Trustees:

(i) shall not be personally liable for the return of any portion of the capital contributions (or any return thereon) of the Holders of the Securities which shall be made solely from assets of the Trust; and

(ii) shall not be required to pay to the Trust or to any Holder of Securities any deficit upon dissolution of the Trust or otherwise.

(b) Pursuant to Section 3803(a) of the Delaware Statutory Trust Act, the Holder of the Common Securities shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware; *provided, however*, the Holders of the Common Securities shall be liable for all of the debts and obligations of the Trust (other than with respect to the Securities) to the extent not satisfied out of the Trust's assets.

(c) Pursuant to Section 3803(a) of the Delaware Statutory Trust Act, the Holders of the Capital Securities shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

SECTION 9.2. Exculpation.

(a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Trust or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person on behalf of the Trust and in a manner such Indemnified Person believed in good faith to be within the scope of the authority conferred on such Indemnified Person by this Trust Agreement or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's negligence (or, with respect to any ICON Issuer Indemnified Person, gross negligence) or willful misconduct with respect to such acts or omissions.

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Trust and upon such information, opinions, reports or statements presented to the Trust by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Trust, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits, losses or any other facts pertinent to the existence and amount of assets from which Distributions to Holders of Securities might properly be paid.

SECTION 9.3. Fiduciary Duty.

(a) To the extent that, at law or in equity, an Indemnified Person has duties (including fiduciary duties) and liabilities relating thereto to the Trust or to any other Covered Person, an Indemnified Person acting under this Trust Agreement shall not be liable to the Trust or to another Covered Person for its good faith reliance on the provisions of this Trust Agreement. The provisions of this Trust Agreement, to the extent that they restrict the duties and liabilities of an Indemnified Person otherwise existing at law or in equity (other than the duties imposed on the Property Trustee under the Trust Indenture Act), are agreed by the parties hereto to replace such other duties and liabilities of such Indemnified Person.

(b) Unless otherwise expressly provided herein:

(i) whenever a conflict of interest exists or arises between any Covered Person and any Indemnified Person; or

(ii) whenever this Trust Agreement or any other agreement contemplated herein or therein provides that an Indemnified Person shall act in a manner that is, or provides terms that are, fair and reasonable to the Trust or any Holder of Securities,

the Indemnified Person shall resolve such conflict of interest, take such action or provide such terms, considering in each case the relative interest of each party (including its own interest) to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices and any applicable generally accepted accounting practices or principles. In the absence of bad faith by the Indemnified Person, the resolution, action or term so made, taken or provided by the Indemnified Person shall not constitute a breach of this Trust Agreement or any other agreement contemplated herein or of any duty or obligation of the Indemnified Person at law or in equity or otherwise.

In the event the Indemnified Person believes any ambiguity or uncertainty exists hereunder, the Indemnified Person may, in its sole discretion, refrain from taking any action, and shall be fully protected and not liable in any way to any person or entity for refraining from taking such action, unless the Indemnified Person receives written instructions signed by an Authorized Officer of the Sponsor which eliminates such ambiguity or uncertainty to the satisfaction of the Indemnified Person.

- (c) Whenever in this Trust Agreement an Indemnified Person is permitted or required to make a decision:
- (i) in its “discretion” or under a grant of similar authority, the Indemnified Person shall be entitled to consider such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Trust or any other Person; or
 - (ii) in its “good faith” or under another express standard, the Indemnified Person shall act under such express standard and shall not be subject to any other or different standard imposed by this Trust Agreement or by applicable law.

SECTION 9.4. Indemnification.

(a) To the fullest extent permitted by law, the ICON Issuer shall indemnify each ICON Issuer Indemnified Person from and against any loss, damage, liability, tax, penalty, expense, judgment, fine and amounts paid in settlement (collectively, “Loss”) incurred by such ICON Issuer Indemnified Person in connection with any threatened, pending or completed action, suit, proceeding or claim of any kind or nature whatsoever (including any civil, criminal, administrative or investigative action, suit, proceeding and claim) relating to or arising from the creation, operation or termination of the Trust or any act or omission performed or omitted to be performed by such ICON Issuer Indemnified Person in connection therewith (including acts and omissions constituting negligence) if he or she acted in a manner he or she believed in good faith to be in or not opposed to the best interests of the Trust, except that no ICON Issuer Indemnified Person shall be entitled to be indemnified in respect of any Loss incurred by such ICON Issuer Indemnified Person to the extent such Loss resulted from the gross negligence or willful misconduct of such ICON Issuer Indemnified Person.

(b) Any indemnification under paragraphs (a) of this Section 9.4 (unless ordered by a court) shall be made by the ICON Issuer only as authorized in the specific case upon a determination that indemnification of the ICON Issuer Indemnified Person is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraph (a). Such determination shall be made (1) by the Administrative Trustees by a majority vote of a quorum consisting of such Administrative Trustees who were not parties to such action, suit or proceeding, (2) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Administrative Trustees so directs, by independent legal counsel in a written opinion, or (3) by the Common Security Holder of the Trust.

(c) Expenses (including attorneys' fees) incurred by an ICON Issuer Indemnified Person in defending a civil, criminal, administrative or investigative action, suit or proceeding referred to in paragraph (a) of this Section 9.4 shall be paid by the ICON Issuer in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such ICON Issuer Indemnified Person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the ICON Issuer as authorized in this Section 9.4. Notwithstanding the foregoing, no advance shall be made by the ICON Issuer if a determination is reasonably and promptly made (1) by the Administrative Trustees by a majority vote of a quorum of disinterested Administrative Trustees, (2) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Administrative Trustees so directs, by independent legal counsel in a written opinion or (3) the Common Security Holder of the Trust, that, based upon the facts known to the Administrative Trustees, counsel or the Common Security Holder at the time such determination is made, such ICON Issuer Indemnified Person acted in bad faith or in a manner that such person did not believe in or not opposed to the best interests of the Trust. In no event shall any advance be made in instances where the Administrative Trustees, independent legal counsel or Common Security Holder reasonably determine that such person deliberately breached his duty to the Trust or its Common or Capital Security Holders.

(d) The indemnification and advancement of expenses provided by, or granted pursuant to, the other paragraphs of this Section 9.4 shall not be deemed exclusive of any other rights to which those seeking indemnification and advancement of expenses may be entitled under any agreement, vote of stockholders or disinterested directors of the ICON Issuer or Capital Security Holders of the Trust or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. All rights to indemnification under this Section 9.4 shall be deemed to be provided by a contract between the ICON Issuer and each ICON Issuer Indemnified Person who serves in such capacity at any time while this Section 9.4 is in effect. Any repeal or modification of this Section 9.4 shall not affect any rights or obligations then existing.

(e) The ICON Issuer or the Trust may purchase and maintain insurance on behalf of any person who is or was an ICON Issuer Indemnified Person against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the ICON Issuer would have the power to indemnify him against such liability under the provisions of this Section 9.4.

(f) For purposes of this Section 9.4, references to "the Trust" shall include, in addition to the resulting or surviving entity, any constituent entity (including any constituent of a constituent) absorbed in a consolidation or merger, so that any person who is or was a director, trustee, officer or employee of such constituent entity, or is or was serving at the request of such constituent entity as a director, trustee, officer, employee or agent of another entity, shall stand in the same position under the provisions of this Section 9.4 with respect to the resulting or surviving entity as he would have with respect to such constituent entity if its separate existence had continued.

(g) The indemnification and advancement of expenses provided by, or granted pursuant to, this Section 9.4 shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be an ICON Issuer Indemnified Person and shall inure to the benefit of the heirs, executors and administrators of such a person.

The obligation to indemnify as set forth in this Section 9.4(a) shall survive the resignation or removal of the Delaware Trustee or the Property Trustee or the termination of this Trust Agreement.

SECTION 9.5. Outside Businesses.

Subject to the provisions of Section 6.3, any Covered Person, the Sponsor, the Delaware Trustee and the Property Trustee may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the activities of the Trust, and the Trust and the Holders of Securities shall have no rights by virtue of this Trust Agreement in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the activities of the Trust, shall not be deemed wrongful or improper. No Covered Person, the Sponsor, the Delaware Trustee or the Property Trustee shall be obligated to present any particular investment or other opportunity to the Trust even if such opportunity is of a character that, if presented to the Trust, could be taken by the Trust, and any Covered Person, the Sponsor, the Delaware Trustee and the Property Trustee shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment or other opportunity. Any Covered Person, the Delaware Trustee and the Property Trustee may engage or be interested in any financial or other transaction with the Sponsor or any Affiliate of the Sponsor, or may act as depositary for, trustee or agent for, or act on any committee or body of holders of, securities or other obligations of the Sponsor or its Affiliates.

ARTICLE 10

ACCOUNTING

SECTION 10.1. Fiscal Year.

The fiscal year (“Fiscal Year”) of the Trust shall be the calendar year, or such other year as is required by the Code.

SECTION 10.2. Certain Accounting Matters.

(a) At all times during the existence of the Trust, the Administrative Trustees shall keep, or cause to be kept, full books of account, records and supporting documents, which shall reflect in reasonable detail, each transaction of the Trust. The books of account shall be maintained on the accrual method of accounting, in accordance with generally accepted accounting principles, consistently applied. The Trust shall use the accrual method of accounting for United States federal income tax purposes.

(b) The Administrative Trustees shall cause to be duly prepared and delivered to each of the Holders of Securities, an annual United States federal income tax information statement, required by the Code, containing such information with regard to the Securities held by each Holder as is required by the Code and the Treasury Regulations. Notwithstanding any right under the Code to deliver any such statement at a later date, the Administrative Trustees shall endeavor to deliver all such statements within 30 days after the end of each Fiscal Year of the Trust.

(c) The Administrative Trustees shall cause to be duly prepared and filed with the appropriate taxing authority, an annual United States federal income tax return, on a Form 1041 or such other form required by United States federal income tax law, and any other annual income tax returns required to be filed by the Administrative Trustees on behalf of the Trust with any state or local taxing authority.

SECTION 10.3. Banking.

The Trust shall maintain one or more bank accounts in the name and for the sole benefit of the Trust; *provided, however*, that all payments of funds in respect of the ICONs held by the Property Trustee shall be made directly to the Property Account and no other funds of the Trust shall be deposited in the Property Account. The sole signatories for such accounts shall be designated by the Administrative Trustees; *provided, however*, that the Property Trustee shall designate the signatories for the Property Account.

SECTION 10.4. Withholding.

The Trust and the Administrative Trustees shall comply with all withholding requirements under United States federal, state and local law. The Trust shall request, and the Holders shall provide to the Trust, such forms or certificates as are necessary to establish an exemption from withholding with respect to each Holder, and any representations and forms as shall reasonably be requested by the Trust to assist it in determining the extent of, and in fulfilling, its withholding obligations. The Administrative Trustees shall file required forms with applicable jurisdictions and, unless an exemption from withholding is properly established by a Holder, shall remit amounts withheld with respect to the Holder to applicable jurisdictions. To the extent that the Trust is required to withhold and pay over any amounts to any authority with respect to distributions or allocations to any Holder, the amount withheld shall be deemed to be a distribution in the amount of the withholding to the Holder. In the event of any claimed over withholding, Holders shall be limited to an action against the applicable jurisdiction. If the amount required to be withheld was not withheld from actual Distributions made, the Trust may reduce subsequent Distributions by the amount of such withholding.

ARTICLE 11

AMENDMENTS AND MEETINGS

SECTION 11.1. Amendments.

(a) Except as otherwise provided in this Trust Agreement or by any applicable terms of the Securities, this Trust Agreement may only be amended by a written instrument approved and executed by the Sponsor and (i) the Administrative Trustees (or, if there are more than two Administrative Trustees, a majority of the Administrative Trustees) and (ii) the Property Trustee, if the amendment affects the rights, powers, duties, obligations or immunities of the Property Trustee, and (iii) the Delaware Trustee, if the amendment affects the rights, powers, duties, obligations or immunities of the Delaware Trustee.

(b) Neither the Property Trustee nor the Delaware Trustee shall be required to enter into any amendment to this Trust Agreement which affects its own rights, duties or immunities under this Agreement.

(c) No amendment shall be made, and any such purported amendment shall be void and ineffective:

(i) unless, in the case of any proposed amendment, the Property Trustee shall have first received:

- a. an Officers' Certificate from each of the Trust and the Sponsor that such amendment is permitted by, and conforms to, the terms of this Trust Agreement (including the terms of the Securities) and that all conditions precedent to the execution and delivery of such amendment have been satisfied; and
- b. an opinion of counsel (who may be counsel to the Sponsor or the Trust) that such amendment is permitted by, and conforms to, the terms of this Trust Agreement (including the terms of the Securities) and that all conditions precedent to the execution and delivery of such amendment have been satisfied; and

(ii) to the extent the result of such amendment would be to:

- a. cause the Trust to be classified as other than a grantor trust for United States federal income tax purposes;
- b. reduce or otherwise adversely affect the powers of the Property Trustee in contravention of the Trust Indenture Act; or
- c. cause the Trust to be deemed to be an Investment Company required to be registered under the Investment Company Act.

(d) If the Trust has issued any Securities that remain outstanding:

(i) any amendment that would (a) change the amount or timing of any Distribution on the Securities or any other payment due to the Holders of Securities resulting from the payment of amounts related to repayment or redemption of the ICONs or otherwise adversely affect the amount of any Distribution or such other payment required to be made in respect of the Securities as of a specified date or (b) restrict the right of a Holder of Securities to institute suit for the enforcement of any such payment on or after such date, shall not be effective except with the approval of each of the Holders of the Securities affected thereby; and

(ii) Except as provided in Section 11.1(d)(i) hereof, any provision of this Trust Agreement may be amended by the Trustee and the Sponsor with (i) the consent of the Holders representing not less than a Majority in Liquidation Amount of the Capital Securities outstanding and (ii) receipt by the Trustees of an opinion of counsel to the effect that such amendment or the exercise of any power granted to the Trustees in accordance with such amendment will not affect the Trust's status as a grantor trust for United States federal income tax purposes or the Trust's exemption from status of an Investment Company.

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- (e) This Section 11.1 shall not be amended without the consent of all of the Holders of the Securities.
- (f) Article 4 shall not be amended without the consent of the Holders of a Majority in Liquidation Amount of the Common Securities.
- (g) The rights of the Holders of the Common Securities under Article 5 to increase or decrease the number of, and appoint and remove Trustees shall not be amended without the consent of the Holders of a Majority in Liquidation Amount of the Common Securities.
- (h) Notwithstanding Section 11.1(d), this Trust Agreement may be amended without the consent of the Holders of the Securities, if such amendment does not adversely affect in any material respect the rights of the holders of the Securities, to:
- (i) cure any ambiguity or make any other change which does not adversely affect the rights of Holders in any material respect;
 - (ii) correct or supplement any provision in this Trust Agreement that may be defective or inconsistent with any other provision of this Trust Agreement;
 - (iii) add to the covenants, restrictions or obligations of the Sponsor;
 - (iv) to conform to any change in Rule 3a-5 of the Investment Company Act or written change in interpretation or application of Rule 3a-5 of the Investment Company Act by any legislative body, court, government agency or regulatory authority; or
 - (v) to modify, eliminate and add to any provision of this Trust Agreement to ensure that the Trust will be classified as a grantor trust for United States federal income tax purposes at all times that any Securities are outstanding or to ensure that the Trust will not be required to register as an Investment Company under the Investment Company Act.

SECTION 11.2. Meetings of the Holders of Securities; Action by Written Consent.

(a) Meetings of the Holders of any class of Securities may be called at any time by the Administrative Trustees (or as provided in the terms of the Securities) to consider and act on any matter on which Holders of such class of Securities are entitled to act under the terms of this Trust Agreement, the terms of the Securities or the rules of any stock exchange on which the Capital Securities are listed or admitted for trading. The Administrative Trustees shall call a meeting of the Holders of such class if directed to do so by the Holders of at least 10% in Liquidation Amount of such class of Securities. Such direction shall be given by delivering to the Administrative Trustees one or more calls in a writing stating that the signing Holders of Securities wish to call a meeting and indicating the general or specific purpose for which the meeting is to be called.

Any Holders of Securities calling a meeting shall specify in writing the Certificates held by the Holders of Securities exercising the right to call a meeting and only those Securities specified shall be counted for purposes of determining whether the required percentage set forth in the second sentence of this paragraph has been met.

(b) Except to the extent otherwise provided in the terms of the Securities, the following provisions shall apply to meetings of Holders of Securities:

(i) notice of any such meeting shall be given to all the Holders of Securities having a right to vote thereat at least seven days and not more than 60 days before the date of such meeting. Whenever a vote, consent or approval of the Holders of Securities is permitted or required under this Trust Agreement or the rules of any stock exchange on which the Capital Securities are listed or admitted for trading, such vote, consent or approval may be given at a meeting of the Holders of Securities. Any action that may be taken at a meeting of the Holders of Securities may be taken without a meeting and without prior notice if a consent in writing setting forth the action so taken is signed by the Holders of Securities owning not less than the minimum amount of Securities in liquidation amount that would be necessary to authorize or take such action at a meeting at which all Holders of Securities having a right to vote thereon were present and voting. Prompt notice of the taking of action without a meeting shall be given to the Holders of Securities entitled to vote who have not consented in writing. The Administrative Trustees may specify that any written ballot submitted to the Security Holders for the purpose of taking any action without a meeting shall be returned to the Trust within the time specified by the Administrative Trustees;

(ii) each Holder of a Security may authorize any Person to act for it by proxy on all matters in which a Holder of Securities is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Holder of Securities executing such proxy. Except as otherwise provided herein, all matters relating to the giving, voting or validity of proxies shall be governed by the General Corporation Law of the State of Delaware relating to proxies, and judicial interpretations thereunder, as if the Trust were a Delaware corporation and the Holders of the Securities were stockholders of a Delaware corporation;

(iii) each meeting of the Holders of the Securities shall be conducted by the Administrative Trustees or by such other Person that the Administrative Trustees may designate; and

(iv) unless the Delaware Statutory Trust Act, this Trust Agreement, the terms of the Securities, the Trust Indenture Act or the listing rules of any stock exchange on which the Capital Securities are then listed for trading, otherwise provides, the Administrative Trustees, in their sole discretion, shall establish all other provisions relating to meetings of Holders of Securities, including notice of the time, place or purpose of any meeting at which any matter is to be voted on by any Holders of Securities, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy or any other matter with respect to the exercise of any such right to vote.

ARTICLE 12

REPRESENTATIONS OF PROPERTY TRUSTEE AND DELAWARE TRUSTEE

SECTION 12.1. Representations and Warranties of the Property Trustee.

The Trustee that acts as initial Property Trustee represents and warrants to the Trust and to the Sponsor at the date of this Trust Agreement, and each Successor Property Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Property Trustee's acceptance of its appointment as Property Trustee that:

- (a) the Property Trustee is a company duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with trust power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Trust Agreement;
- (b) the Property Trustee satisfies the requirements set forth in Section 6.3(a);
- (c) the execution, delivery and performance by the Property Trustee of this Trust Agreement have been duly authorized by all necessary corporate action on the part of the Property Trustee. This Trust Agreement has been duly executed and delivered by the Property Trustee, and it constitutes a legal, valid and binding obligation of the Property Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether the enforcement of such remedies is considered in a proceeding in equity or at law);
- (d) the execution, delivery and performance of this Trust Agreement by the Property Trustee do not conflict with or constitute a breach of the articles of association or incorporation, as the case may be, or the by-laws (or other similar organizational documents) of the Property Trustee; and
- (e) no consent, approval or authorization of, or registration with or notice to, any Delaware or federal banking authority is required for the execution, delivery or performance by the Property Trustee of this Trust Agreement.

SECTION 12.2. Representations and Warranties of the Delaware Trustee.

The Trustee that acts as initial Delaware Trustee represents and warrants to the Trust and to the Sponsor at the date of this Trust Agreement, and each Successor Delaware Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Delaware Trustee's acceptance of its appointment as Delaware Trustee that:

- (a) the Delaware Trustee satisfies the requirements set forth in Section 6.2, satisfies Trust Section 3807(a) of the Delaware Statutory Trust Act and has the power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Trust Agreement and, if it is not a natural person, is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization;

(b) the Delaware Trustee has been authorized to perform its obligations under the Certificate of Trust and this Trust Agreement. This Trust Agreement under Delaware law constitutes a legal, valid and binding obligation of the Delaware Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether the enforcement of such remedies is considered in a proceeding in equity or at law); and

(c) no consent, approval or authorization of, or registration with or notice to, any Delaware or federal banking authority is required for the execution, delivery or performance by the Delaware Trustee of this Trust Agreement.

ARTICLE 13

MISCELLANEOUS

SECTION 13.1. Notices.

All notices provided for in this Trust Agreement shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by registered or certified mail, as follows:

(a) if given to the Trust, in care of the Administrative Trustees at the Trust's mailing address set forth below (or such other address as the Trust may give notice of to the Property Trustee, the Delaware Trustee and the Holders of the Securities):

c/o Merrill Lynch & Co., Inc.
4 World Financial Center
New York, New York 10080
Attention: Treasury Department
Facsimile No.: 212-738-1952

(b) if given to the Delaware Trustee, at the mailing address set forth below (or such other address as the Delaware Trustee may give notice of to the Administrative Trustees, the Property Trustee and the Holders of the Securities):

The Bank of New York (Delaware)
100 White Clay Center, Route 273
Newark, DE 19711
Attention: Corporate Trust Department - Kristine K. Gullo
Facsimile No.: 302-453-4400

(c) if given to the Property Trustee, at its Corporate Trust Office (or such other address as the Property Trustee may give notice of to the Administrative Trustees, the Delaware Trustee and the Holders of the Securities).

(d) if given to the Holder of the Common Securities, at the mailing address of the Sponsor set forth below (or such other address as the Holder of the Common Securities may give notice of to the Property Trustee, the Delaware Trustee and the Trust):

c/o Merrill Lynch & Co., Inc.
4 World Financial Center
New York, New York 10080
Attention: Treasury Department
Facsimile No.: 212-738-1952

(e) if given to any other Holder, at the address set forth on the register of the Trust.

All such notices shall be deemed to have been given when received in person, telecopied with receipt confirmed or mailed by first class mail, postage prepaid except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

SECTION 13.2. Governing Law.

This Trust Agreement and the Securities and the rights of the parties hereunder and thereunder shall be governed by and interpreted in accordance with the laws of the State of Delaware.

SECTION 13.3. Intention of the Parties.

It is the intention of the parties hereto that the Trust be classified for United States federal income tax purposes as a grantor trust. The provisions of this Trust Agreement shall be interpreted in a manner consistent with such classification.

SECTION 13.4. Headings.

Headings contained in this Trust Agreement are inserted for convenience of reference only and do not affect the interpretation of this Trust Agreement or any provision hereof.

SECTION 13.5. Successors and Assigns.

Whenever in this Trust Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all covenants and agreements in this Trust Agreement by the Sponsor and the Trustees shall bind and inure to the benefit of their respective successors and assigns, whether so expressed.

SECTION 13.6. Partial Enforceability.

If any provision of this Trust Agreement, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Trust Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

SECTION 13.7. Counterparts.

This Trust Agreement may contain more than one counterpart of the signature page and this Trust Agreement may be executed by the affixing of the signature of each of the Trustees to one of such counterpart signature pages. All of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

[The remainder of this page left blank intentionally; The signature page follows.]

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed as of the day and year first above written.

MERRILL LYNCH & CO., INC.,
as Sponsor, as Common Securities
Holder and as ICON Issuer

By: /s/ John J. Thurlow
Name: John J. Thurlow
Title: Assistant Treasurer

THE BANK OF NEW YORK,
as Property Trustee

By: /s/ Michael A. Smith
Name: Michael A. Smith
Title: Vice President

THE BANK OF NEW YORK (DELAWARE),
as Delaware Trustee

By: /s/ Kristine K. Gullo
Name: Kristine K. Gullo
Title: Vice President

/s/ Allen G. Braithwaite III
Allen G. Braithwaite III,
as Administrative Trustee

/s/ Marlene B. Debel
Marlene B. Debel,
as Administrative Trustee

/s/ John J. Thurlow
John J. Thurlow,
as Administrative Trustee

[IF THE CAPITAL SECURITY IS TO BE A GLOBAL CAPITAL SECURITY, INSERT THE FOLLOWING: This Capital Security is a Global Security within the meaning of the Trust Agreement hereinafter referred to and is registered in the name of The Depository Trust Company, a New York corporation (the “Depository”), or a nominee of the Depository. This Capital Security is exchangeable for Capital Securities registered in the name of a person other than the Depository or its nominee only in the limited circumstances described in the Trust Agreement and no transfer of this Capital Security (other than a transfer of this Security as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository) may be registered except in limited circumstances.

Unless this Capital Security Certificate is presented by an authorized representative of the Depository to the issuer or its agent for registration of transfer, exchange or payment, and any Capital Security Certificate issued is registered in the name of Cede & Co. or such other name as registered by an authorized representative of the Depository (and any payment hereon is made to Cede & Co. or to such other entity as is requested by an authorized representative of the Depository), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.]

Certificate No. _____
CUSIP No. 59024T203

Number of Capital Securities: _____

**Certificate Evidencing Trust Preferred Securities
of
Merrill Lynch Capital Trust II
Trust Preferred Securities
Fully and Unconditionally
Guaranteed by Merrill Lynch & Co., Inc.**

MERRILL LYNCH CAPITAL TRUST II, a statutory trust created under the laws of the State of Delaware (the “Trust”), hereby certifies that ___ (the “Holder”) is the registered owner of ___ capital securities of the Trust representing undivided beneficial ownership interests in the assets of the Trust designated the “Trust Preferred Securities” (the “Capital Securities”). The Capital Securities have a liquidation amount with respect to the assets of the Trust of \$25.00 per Capital Security. The Capital Securities are transferable on the register of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer as provided in the Trust Agreement (as defined below). The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Capital Securities represented hereby are issued and shall in all respects be subject to the provisions of the Amended and Restated Trust Agreement of the Trust, dated as of May 2, 2007, as the same may be amended from time to time (the “Trust Agreement”), by and among MERRILL LYNCH & CO., INC., Allen G. Braithwaite III, Marlene B. Debel and John J. Thurlow, as Administrative Trustees, THE BANK OF NEW YORK, as Property Trustee, and THE BANK OF NEW YORK (DELAWARE), as Delaware Trustee, and the holders of undivided beneficial ownership interests in the assets of the Trust.

Capitalized terms used herein but not defined shall have the meaning given them in the Trust Agreement. The Holder is entitled to the benefits of the Guarantee to the extent described therein. The Sponsor will provide a copy of the Trust Agreement, the Guarantee and the Indenture to a Holder without charge upon written request to the Sponsor at its principal place of business.

Upon receipt of this certificate, the Holder is bound by the Trust Agreement and is entitled to the benefits thereunder.

By acceptance, the Holder agrees to treat, for United States federal, state and local income tax purposes, the ICONs as indebtedness and the Capital Securities as evidence of undivided beneficial ownership interests in the ICONs.

This Capital Security Certificate shall be governed by and construed in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, the Trust has executed this certificate this day of _____, 2007.

MERRILL LYNCH CAPITAL TRUST II

By: _____
Name:
Title: Administrative Trustee

This is one of the Capital Securities referred to in the within-mentioned Trust Agreement.

THE BANK OF NEW YORK,
not in its individual capacity but as
as Property Trustee and Authenticating Agent

By: _____
Name:
Authorized Officer

**TRANSFER OF THIS CERTIFICATE IS SUBJECT TO THE CONDITIONS SET
FORTH IN THE TRUST AGREEMENT REFERRED TO BELOW.**

Certificate No. 1

Number of Common Securities: 40,000

**Certificate Evidencing Common Securities
of
Merrill Lynch Capital Trust II
Common Securities**

MERRILL LYNCH CAPITAL TRUST II, a statutory trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that MERRILL LYNCH & CO., INC. (the "Holder") is the registered owner of common securities of the Trust representing an undivided beneficial ownership interest in the assets of the Trust designated the "Common Securities" (the "Common Securities"). The Common Securities have a liquidation amount with respect to the assets of the Trust of \$25.00 per Common Security. The Common Securities are not transferable and any attempted transfer thereof shall be void except as permitted by applicable law and by Section 7.9(b)(ii) of the Trust Agreement (as defined below). The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities represented hereby are issued and shall in all respects be subject to the provisions of the Amended and Restated Trust Agreement of the Trust, dated as of May 2, 2007 (as the same may be amended from time to time, the "Trust Agreement"), by and among Merrill Lynch & Co., Inc., as Sponsor, ALLEN G. BRAITHWAITE III, MARLENE B. DEBEL AND JOHN J. THURLOW, as Administrative Trustees, THE BANK OF NEW YORK, as Property Trustee, and THE BANK OF NEW YORK (DELAWARE), as Delaware Trustee, and the holders of undivided beneficial ownership interests in the assets of the Trust. The Holder is entitled to the benefits of the Guarantee to the extent described therein. Capitalized terms used herein but not defined shall have the meaning given them in the Trust Agreement. The Sponsor will provide a copy of the Trust Agreement, the Guarantee and the Indenture to the Holder without charge upon written request to the Sponsor at its principal place of business.

Upon receipt of this certificate, the Holder is bound by the Trust Agreement and is entitled to the benefits thereunder.

By acceptance, the Holder agrees to treat, for United States federal, state and local income tax purposes, the ICONs as indebtedness and the Common Securities as evidence of an undivided indirect beneficial ownership interest in the ICONs.

This Common Security Certificate shall be governed by and construed in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, the Trust has executed this certificate this day of , 2007.

MERRILL LYNCH CAPITAL TRUST II

By: _____

Name:

Title: Administrative Trustee

GUARANTEE AGREEMENT

Dated as of May 2, 2007

By and Between

MERRILL LYNCH & CO., INC.

as Guarantor

and

THE BANK OF NEW YORK

as Trustee

CROSS REFERENCE TABLE¹

Section of Trust Indenture Act of <u>1939, as amended</u>	Section of Guarantee <u>Agreement</u>
310(a)	4.1(a)
310(b)	2.8; 4.1(c)
310(c)	Inapplicable
311(a)	2.2(b)
311(b)	2.2(b)
311(c)	Inapplicable
312(a)	2.2(a); 2.9
312(b)	2.2(b); 2.9
312(c)	2.9
313(a)	2.3
313(b)	2.3
313(c)	2.3
313(d)	2.3
314(a)	2.4
314(b)	Inapplicable
314(c)	2.5
314(d)	Inapplicable
314(e)	2.5
314(f)	Inapplicable
315(a)	3.1(d); 3.2(a)
315(b)	2.7(a)
315(c)	3.1(c)
315(d)	3.1(d)
316(a)	2.6; 5.4(a)
316(b)	5.3
316(c)	Inapplicable
317(a)	2.10
317(b)	Inapplicable
318(a)	2.1(b)

¹ This Cross-Reference Table does not constitute part of the Agreement and shall not have any bearing upon the interpretation of any of its terms or provisions.

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GUARANTEE AGREEMENT

This GUARANTEE AGREEMENT (the “Guarantee”), dated as of May 2, 2007, is executed and delivered by MERRILL LYNCH & CO., INC., a Delaware corporation (the “Guarantor”), and THE BANK OF NEW YORK, a New York banking corporation, as guarantee trustee (the “Guarantee Trustee”), for the benefit of the Holders (as defined herein) from time to time of the Securities (as defined herein) of MERRILL LYNCH CAPITAL TRUST II, a Delaware statutory trust (the “Trust”).

RECITALS

WHEREAS, pursuant to the Trust Agreement (as defined herein), the Trust may issue up to \$1,035,000,000 aggregate liquidation amount of capital securities, having a liquidation amount of \$25.00 per security and designated the “Trust Preferred Securities” of the Trust (the “Capital Securities”) and \$1,000,000 aggregate liquidation amount of common securities, having a liquidation amount of \$25.00 per security and designated the “Common Securities” of the Trust (the “Common Securities” and, together with the Capital Securities, the “Securities”);

WHEREAS, as incentive for the Holders to purchase the Securities, the Guarantor desires irrevocably and unconditionally to agree, to the extent set forth in this Guarantee, to pay to the Holders of the Securities the Guarantee Payments (as defined herein) and to make certain other payments on the terms and conditions set forth herein; and

WHEREAS, if an ICONs Default (as defined herein) or a Trust Enforcement Event (as defined herein) has occurred and is continuing, the rights of holders of the Common Securities to receive Guarantee Payments (as defined herein) under this Guarantee are subordinated to the rights of Holders of Capital Securities to receive Guarantee Payments under this Guarantee;

NOW, THEREFORE, in consideration of the purchase by each Holder of Securities, which purchase the Guarantor hereby agrees shall benefit the Guarantor, the Guarantor executes and delivers this Guarantee for the benefit of the Holders.

ARTICLE 1

INTERPRETATION AND DEFINITIONS

SECTION 1.1. Interpretation and Definitions.

In this Guarantee, unless the context otherwise requires:

- (a) capitalized terms used in this Guarantee but not defined in the preamble above have the respective meanings assigned to them in this Section 1.1;
- (b) a term defined anywhere in this Guarantee has the same meaning throughout;
- (c) all references to “the Guarantee” or “this Guarantee” are to this Guarantee as modified, supplemented or amended from time to time;

(d) all references in this Guarantee to Articles, Sections and Recitals are to Articles, Sections and Recitals of this Guarantee, unless otherwise specified;

(e) unless otherwise defined in this Guarantee, a term defined in the Trust Indenture Act has the same meaning when used in this Guarantee;

(f) a reference to the singular includes the plural and vice versa and a reference to any masculine form of a term shall include the feminine form of a term, as applicable; and

(g) the following terms have the following meanings:

“Affiliate” has the same meaning as given to that term in Rule 405 of the Securities Act of 1933, as amended, or any successor rule thereunder.

“Business Day” has the meaning specified in the Trust Agreement.

“Capital Securities” has the meaning specified in the Recitals hereto.

“Common Securities” has the meaning specified in the Recitals hereto.

“Common Stock” means the common stock, par value \$1.33 ¹/₃ per share, of the Guarantor.

“Corporate Trust Office” means the principal office of the Guarantee Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of execution of this Guarantee is located at 101 Barclay Street, Floor 8 West, New York, New York 10286, Attention: Corporate Trust Administration.

“Distributions” has the meaning specified in the Trust Agreement.

“Global Security” means a fully registered Capital Security Certificate in global form representing the Capital Securities.

“Guarantee Event of Default” means a default by the Guarantor on any of its payment or other obligations under this Guarantee.

“Guarantee Payments” means the following payments or distributions, without duplication, with respect to the Securities, to the extent not paid by or on behalf of the Trust: (i) any accumulated and unpaid Distributions that are required to be paid on such Securities to the extent the Trust has sufficient funds available therefor at the time, (ii) the Redemption Price, including all accumulated and unpaid Distributions to the date of redemption, with respect to any Securities called for redemption by the Trust, to the extent the Trust shall have sufficient funds available therefor at the time or (iii) upon a voluntary or involuntary dissolution, winding-up or termination of the Trust (other than in connection with the distribution of ICONs to the Holders in exchange for Securities as provided in the Trust Agreement or redemption of all the ICONs), the lesser of (a) the aggregate of the liquidation amount and all accumulated and unpaid Distributions on the Securities to the date of payment, to the extent the Trust has sufficient funds available therefor and (b) the amount of assets of the Trust remaining available for distribution to Holders in liquidation of the Trust.

“Guarantee Trustee” means The Bank of New York, solely in its capacity as guarantee trustee under this Guarantee and not in its individual capacity, until a Successor Guarantee Trustee has been appointed and has accepted such appointment pursuant to the terms of this Guarantee and thereafter means each such Successor Guarantee Trustee.

“Holder” means any holder of Securities, as registered on the books and records of the Trust; provided, however, that, in determining whether the Holders of the requisite percentage of Capital Securities have given any request, notice, consent or waiver hereunder, “Holder” shall not include the Guarantor or any Affiliate of the Guarantor or any other obligor on the Capital Securities.

“ICONS” means the series of debentures issued under the Indenture designated the “Income Capital Obligation Notes initially due 2062” held by the Property Trustee.

“ICONS Default” has the meaning specified in the Trust Agreement.

“Indenture” means the Junior Subordinated Indenture dated as of December 14, 2006, as amended by the Second Supplemental Indenture thereto, dated as of May 2, 2007, between Merrill Lynch & Co., Inc. and The Bank of New York, as amended and supplemented from time to time and under which the ICONs are to be issued.

“List of Holders” has the meaning assigned to it in Section 2.2 hereof.

“Liquidation Distribution” has the meaning specified in the Trust Agreement.

“Majority in Liquidation Amount” means, except as provided in the terms of the Capital Securities or by the Trust Indenture Act, Holders of outstanding Securities, voting together as a single class, or, as the context may require, Holders of outstanding Capital Securities or Holders of outstanding Common Securities, voting separately as a class, who are the record owners of more than 50% of the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accumulated and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of the relevant class. In determining whether the Holders of the requisite amount of Securities have voted, Securities which are owned by the Guarantor or any Affiliate of the Guarantor or any other obligor on the Securities shall be disregarded for the purpose of any such determination.

“Officers’ Certificate” means, with respect to any Person, a certificate signed on behalf of such Person by two Authorized Officers (as defined in the Trust Agreement) of such Person. Any Officers’ Certificate delivered with respect to compliance with a condition or covenant provided for in this Guarantee shall include:

(i) a statement that each officer signing the Officers’ Certificate has read the covenant or condition and the definitions relating thereto;

(ii) a brief statement of the nature and scope of the examination or investigation undertaken by each officer on behalf of such Person in rendering the Officers’ Certificate;

(iii) a statement that each such officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer on behalf of such Person to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(iv) a statement as to whether, in the opinion of each such officer acting on behalf of such Person, such condition or covenant has been complied with.

"Optional Deferral Period" has the meaning specified in the Indenture.

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

"Property Trustee" has the meaning specified in the Trust Agreement.

"Redemption Price" has the meaning specified in the Trust Agreement.

"Responsible Officer" means, with respect to the Guarantee Trustee, any officer with direct responsibility for the administration of this Guarantee and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of and familiarity with the particular subject.

"Securities" has the meaning specified in the Recitals hereto.

"Successor Guarantee Trustee" means a successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under Section 4.1.

"Trust Agreement" means the Amended and Restated Trust Agreement, dated as of May 2, 2007, as amended, modified or supplemented from time to time, among the trustees of the Trust named therein, the Guarantor, as sponsor, and the Holders, from time to time, of undivided beneficial ownership interests in the assets of the Trust.

"Trust Enforcement Event" has the meaning specified in the Trust Agreement.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended from time to time, or any successor legislation.

ARTICLE 2

TRUST INDENTURE ACT

SECTION 2.1. Trust Indenture Act; Application.

(a) This Guarantee is subject to the provisions of the Trust Indenture Act that are required to be part of this Guarantee and shall, to the extent applicable, be governed by such provisions.

(b) If and to the extent that any provision of this Guarantee limits, qualifies or conflicts with the deemed duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed deemed duties shall control.

SECTION 2.2. Lists of Holders of Securities.

(a) Within 60 days after May 15 of each year (commencing May 15, 2007), the Guarantor shall provide the Guarantee Trustee at least two Business Days prior to the date for payment of Distributions, a list, in such form as the Guarantee Trustee may reasonably require, of the names and addresses of the Holders of the Securities ("List of Holders") as of the record date relating to the payment of such Distributions; provided that if the Capital Securities are in global form, the Guarantor shall, within 30 days of receipt by the Guarantor of a written request from the Guarantee Trustee for a List of Holders, provide a List of Holders as of a date no more than 15 days before such List of Holders is given to the Guarantee Trustee. Notwithstanding the foregoing, the Guarantor shall not be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Guarantee Trustee by the Guarantor. The Guarantee Trustee shall preserve, in as current a form as is reasonably practicable, all information contained in Lists of Holders given to it, provided that the Guarantee Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

(b) The Guarantee Trustee shall comply with its obligations under, and shall be entitled to the benefits of, Sections 311(a), 311(b) and 312(b) of the Trust Indenture Act.

SECTION 2.3. Reports by Guarantee Trustee.

Within 60 days after May 15 of each year (commencing with May 15, 2007), the Guarantee Trustee shall provide to the Holders of the Securities such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form and in the manner provided by Section 313 of the Trust Indenture Act.

SECTION 2.4. Periodic Reports to Guarantee Trustee.

The Guarantor shall provide to the Guarantee Trustee such documents, reports and information as required by Section 314 of the Trust Indenture Act, if any, and the compliance certificate required by Section 314(a) of the Trust Indenture Act in the form, in the manner and at the times required by Section 314(a) of the Trust Indenture Act, but in no event later than 120 days after the end of each calendar year.

SECTION 2.5. Evidence of Compliance with Conditions Precedent.

The Guarantor shall provide to the Guarantee Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Guarantee that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) may be given in the form of an Officers' Certificate.

SECTION 2.6. Guarantee Event of Default; Waiver.

The Holders of a Majority in Liquidation Amount of the Capital Securities may, by vote or written consent, on behalf of the Holders of all of the Securities, waive any past Guarantee Event of Default and its consequences. Upon such waiver, any such Guarantee Event of Default shall cease to exist, and any Guarantee Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Guarantee, but no such waiver shall extend to any subsequent or other default or Guarantee Event of Default or impair any right consequent thereon.

SECTION 2.7. Guarantee Event of Default; Notice.

(a) The Guarantee Trustee shall, within 90 days after the occurrence of a Guarantee Event of Default actually known to a Responsible Officer of the Guarantee Trustee, transmit by mail, first class postage prepaid, to the Holders of the Securities, notices of all such Guarantee Events of Default, unless such defaults have been cured before the giving of such notice; provided, that the Guarantee Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Guarantee Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Securities.

(b) The Guarantee Trustee shall not be deemed to have knowledge of any Guarantee Event of Default unless the Guarantee Trustee shall have received written notice thereof or a Responsible Officer of the Guarantee Trustee charged with the administration of this Guarantee shall have obtained actual knowledge thereof.

SECTION 2.8. Conflicting Interests.

The Trust Agreement shall be deemed to be specifically described in this Guarantee for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

SECTION 2.9. Disclosure of Information.

The disclosure of information as to the names and addresses of the Holders of the Securities in accordance with Section 312 of the Trust Indenture Act, regardless of the source from which such information was derived, shall not be deemed to be a violation of any existing law, or any law hereafter enacted which does not specifically refer to Section 312 of the Trust Indenture Act, nor shall the Guarantee Trustee be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

SECTION 2.10. Guarantee Trustee May File Proofs of Claim.

Upon the occurrence of a Guarantee Event of Default, the Guarantee Trustee is hereby authorized to (a) recover judgment, in its own name and as trustee of an express trust, against the Guarantor for the whole amount of any Guarantee Payments remaining unpaid and (b) file such proofs of claim and other papers or documents as may be necessary or advisable in order to have its claims and those of the Holders of the Securities allowed in any judicial proceedings relative to the Guarantor, its creditors or its property.

ARTICLE 3

POWERS, DUTIES AND RIGHTS OF
GUARANTEE TRUSTEE

SECTION 3.1. Powers and Duties of Guarantee Trustee.

(a) This Guarantee shall be held by the Guarantee Trustee on behalf of the Trust for the benefit of the Holders of the Securities, and the Guarantee Trustee shall not transfer this Guarantee to any Person except a Holder of Securities exercising his or her rights pursuant to Section 5.4(b) or to a Successor Guarantee Trustee on acceptance by such Successor Guarantee Trustee of its appointment to act as Successor Guarantee Trustee. The right, title and interest of the Guarantee Trustee in and to this Guarantee shall automatically vest in any Successor Guarantee Trustee, and such vesting and succession of title shall be effective whether or not conveyance documents have been executed and delivered pursuant to the appointment of such Successor Guarantee Trustee.

(b) If a Guarantee Event of Default actually known to a Responsible Officer of the Guarantee Trustee has occurred and is continuing, the Guarantee Trustee shall enforce this Guarantee for the benefit of the Holders of the Securities.

(c) The Guarantee Trustee, before the occurrence of any Guarantee Event of Default and after the curing of all Guarantee Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Guarantee, and no implied covenants shall be read into this Guarantee against the Guarantee Trustee. In case a Guarantee Event of Default has occurred (that has not been cured or waived pursuant to Section 2.6) and is actually known to a Responsible Officer of the Guarantee Trustee, the Guarantee Trustee shall exercise such of the rights and powers vested in it by this Guarantee, and use the same degree of care and skill in its exercise thereof, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(d) No provision of this Guarantee shall be construed to relieve the Guarantee Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) prior to the occurrence of any Guarantee Event of Default and after the curing or waiving of all such Guarantee Events of Default that may have occurred:

(A) the Guarantee Trustee undertakes to person such duties and only such duties as are specifically set forth in this Guarantee, and no implied covenants or obligations shall be read into this Guarantee against the Guarantee Trustee; and

(B) in the absence of bad faith on the part of the Guarantee Trustee, the Guarantee Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Guarantee Trustee and conforming to the requirements of this Guarantee; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Guarantee Trustee, the Guarantee Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Guarantee;

(ii) the Guarantee Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer of the Guarantee Trustee, unless it shall be proved that the Guarantee Trustee was negligent in ascertaining the pertinent facts upon which such judgment was made;

(iii) the Guarantee Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a Majority in Liquidation Amount of the Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee, or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee; and

(iv) no provision of this Guarantee shall require the Guarantee Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that the repayment of such funds or protection from liability is not reasonably assured to it under the terms of this Guarantee or indemnity, reasonably satisfactory to the Guarantee Trustee, against such risk or liability is not reasonably assured to it.

(e) Whether or not therein so expressly provided, every provision of this Guarantee relating to the conduct or affecting the liability of or affording protection to the Guarantee Trustee shall be subject to the provisions of this Section.

SECTION 3.2. Certain Rights of Guarantee Trustee.

(a) Subject to the provisions of Section 3.1:

(i) the Guarantee Trustee may conclusively rely, and shall be fully protected in acting or refraining from acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed, sent or presented by the proper party or parties;

(ii) any direction or act of the Guarantor contemplated by this Guarantee shall be sufficiently evidenced by an Officers' Certificate;

(iii) whenever, in the administration of this Guarantee, the Guarantee Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Guarantee Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and conclusively rely upon an Officers' Certificate which, upon receipt of such request, shall be promptly delivered by the Guarantor;

(iv) the Guarantee Trustee shall have no duty to see to any recording, filing or registration or any instrument (including any financing or continuation statement or any filing under tax or securities laws) or any rerecording, refiling or reregistration thereof;

(v) the Guarantee Trustee may consult with counsel of its choice or other experts and the advice or opinion of such counsel and experts with respect to legal matters or advice within the scope of such experts' area of expertise shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion; such counsel may be counsel to the Guarantor or any of its Affiliates and may include any of its employees. The Guarantee Trustee shall have the right at any time to seek instructions concerning the administration of this Guarantee from any court of competent jurisdiction;

(vi) the Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Guarantee at the request or direction of any Holder, unless such Holder shall have provided to the Guarantee Trustee such security and indemnity, reasonably satisfactory to the Guarantee Trustee, against the costs, expenses (including attorneys' fees and expenses and the expenses of the Guarantee Trustee's agents, nominees or custodians) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Guarantee Trustee; provided, that nothing contained in this Section 3.2(a)(vi) shall be taken to relieve the Guarantee Trustee, upon the occurrence of a Guarantee Event of Default, of its obligation to exercise the rights and powers vested in it by this Guarantee;

(vii) the Guarantee Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Guarantee Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and if the Guarantee Trustee shall determine to make such inquiry or investigation, it shall be entitled to examine the books, records and premises of the Guarantor, personally or by agent or attorney upon reasonable prior written notice and during normal business hours;

(viii) the Guarantee Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, nominees, custodians or attorneys, and the Guarantee Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(ix) any action taken by the Guarantee Trustee or its agents hereunder shall bind the Holders, and the signature of the Guarantee Trustee or its agents alone shall be sufficient and effective to perform any such action. No third party shall be required to inquire as to the authority of the Guarantee Trustee to so act or as to its compliance with any of the terms and provisions of this Guarantee, both of which shall be conclusively evidenced by the Guarantee Trustee's or its agent's taking such action;

(x) whenever in the administration of this Guarantee, the Guarantee Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Guarantee Trustee (i) may request written instructions from the Holders of a Majority in Liquidation Amount of the Securities, (ii) may refrain from enforcing such remedy or right or taking such other action until such written instructions are received and (iii) shall be protected in conclusively relying on or acting in accordance with such written instructions; and

(xi) the Guarantee Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Guarantee.

(b) No provision of this Guarantee shall be deemed to impose any duty or obligation on the Guarantee Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it in any jurisdiction in which it shall be illegal, or in which the Guarantee Trustee shall be unqualified or incompetent to act in accordance with applicable law, to perform any such act or acts or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Guarantee Trustee shall be construed to be a duty.

SECTION 3.3. Not Responsible for Recitals or Issuance of Guarantee.

The recitals contained in this Guarantee shall be taken as the statements of the Guarantor, and the Guarantee Trustee does not assume any responsibility for their correctness. The Guarantee Trustee makes no representation as to the validity or sufficiency of this Guarantee; it shall not be responsible for the Guarantor's performance hereunder of the Guarantor's representations or warranties.

ARTICLE 4

GUARANTEE TRUSTEE

SECTION 4.1. Guarantee Trustee; Eligibility.

(a) There shall be at all times a Guarantee Trustee which shall:

(i) not be an Affiliate of the Guarantor; and

(ii) be a Person organized and doing business under the laws of the United States of America or any state or territory thereof or of the District of Columbia, or a corporation or other Person permitted by the Securities and Exchange Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least 50 million U.S. dollars (\$50,000,000), and subject to supervision or examination by federal, state, territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then, for the purposes of this Section 4.1(a)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Guarantee Trustee shall cease to be eligible to so act under Section 4.1(a), the Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.2(c).

(c) If the Guarantee Trustee has or shall acquire any “conflicting interest” within the meaning of Section 310(b) of the Trust Indenture Act, the Guarantee Trustee and Guarantor shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

SECTION 4.2. Appointment, Removal and Resignation of Guarantee Trustee.

(a) Subject to Section 4.2(b), unless a Guarantee Event of Default shall have occurred and be continuing, the Guarantee Trustee may be appointed or removed with or without cause at any time by the Guarantor.

(b) The Guarantee Trustee shall not be removed in accordance with Section 4.2(a) until a Successor Guarantee Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor.

(c) The Guarantee Trustee appointed to office shall hold such office until a Successor Guarantee Trustee shall have been appointed or until its removal or resignation. The Guarantee Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing executed by the Guarantee Trustee and delivered to the Guarantor, which resignation shall not take effect until a Successor Guarantee Trustee has been appointed and has accepted such appointment by instrument in writing executed by such Successor Guarantee Trustee and delivered to the Guarantor and the resigning Guarantee Trustee.

(d) If no Successor Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.2 within 60 days after delivery to the Guarantor of an instrument of removal or resignation, the removed or resigning Guarantee Trustee may petition any court of competent jurisdiction for appointment of a Successor Guarantee Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Guarantee Trustee.

(e) No Guarantee Trustee shall be liable for the acts or omissions to act of any Successor Guarantee Trustee.

(f) Upon termination of this Guarantee or removal or resignation of the Guarantee Trustee pursuant to this Section 4.2, the Guarantor shall pay to the Guarantee Trustee all amounts owing for fees and reimbursement of expenses which have accrued to the date of such termination, removal or resignation.

ARTICLE 5

GUARANTEE

SECTION 5.1. Guarantee.

The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by the Trust), as and when due, regardless of any defense, right of set-off or counterclaim that the Trust may have or assert. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Trust to pay such amounts to the Holders. Notwithstanding anything to the contrary herein, the Guarantor retains all of its rights under the Indenture to defer the interest payments on the ICONs pursuant to the terms thereof and the Guarantor shall not be obligated hereunder to make any Guarantee Payments during any Optional Deferral Period with respect to the Distributions on the Securities.

SECTION 5.2. Waiver of Notice and Demand.

The Guarantor hereby waives notice of acceptance of this Guarantee and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Trust or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

SECTION 5.3. Obligations Not Affected.

The obligations, covenants, agreements and duties of the Guarantor under this Guarantee shall be absolute and unconditional and shall remain in full force and effect until all amounts due with respect to any outstanding Securities shall have been paid and such obligation shall in no way be affected or impaired by reason of the happening from time to time of any event, including without limitation, the following, whether or not with notice to, or the consent of, the Guarantor:

(a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Trust of any express or implied agreement, covenant, term or condition relating to the Securities to be performed or observed by the Trust;

(b) the extension of time for the payment by the Trust of all or any portion of the Distributions, Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with the Securities (other than an extension of time for payment of Distributions, Redemption Price, Liquidation Distribution or other sum payable that results from the extension of any Optional Deferral Period);

(c) any failure, omission, delay or lack of diligence on the part of the Property Trustee or the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Property Trustee or the Holders pursuant to the terms of the Securities, or any action on the part of the Trust granting indulgence or extension of any kind;

(d) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Trust or any of the assets of the Trust;

(e) any invalidity of, or defect or deficiency in, the Securities;

(f) the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or

(g) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.3 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Guarantee Trustee or the Holders to give notice to, or obtain consent of the Guarantor or any other Person with respect to the happening of any of the foregoing.

No setoff, counterclaim, reduction or diminution of any obligation, or any defense of any kind or nature that the Guarantor has or may have against any Holder shall be available hereunder to the Guarantor against such Holder to reduce the payments to it under this Guarantee.

SECTION 5.4. Rights of Holders.

(a) The Holders of at least a Majority in Liquidation Amount of the Capital Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee in respect of this Guarantee or to direct the exercise of any trust or power conferred upon the Guarantee Trustee under this Guarantee ; provided, however, that (subject to Section 3.1) the Guarantee Trustee shall have the right to decline to follow any such direction if the Guarantee Trustee shall determine that the actions so directed would be unjustly prejudicial to the Holders not taking part in such direction or if the Guarantee Trustee being advised by counsel determines that the action or proceedings directed may not lawfully be taken or if the Guarantor Trustee in good faith by its board of directors or trustees, executive committees or a trust committee of directors or trustees and/or Responsible Officers shall determine that the action or proceedings so directed would be illegal or expose the Guarantee Trustee to personal liability.

(b) The Guarantor expressly acknowledges that (i) this Guarantee will be deposited with the Guarantee Trustee to be held for the benefit of the Holders and (ii) the Guarantee Trustee has the right to enforce this Guarantee on behalf of the Holders.

SECTION 5.5. Guarantee of Payment.

This Guarantee creates a guarantee of payment and not of collection. If the Guarantee Trustee fails to enforce this Guarantee, then any Holder of Securities may, subject to the subordination provisions of Section 6.2, institute a legal proceeding directly against the Guarantor to enforce the Guarantee Trustee's rights under this Guarantee without first instituting a legal proceeding against the Trust, the Guarantee Trustee or any other person or entity. In addition, if the Guarantor has failed to make a Guarantee Payment, a Holder of Securities may, subject to the subordination provisions of Section 6.2, directly institute a proceeding against the Guarantor for enforcement of the Guarantee with respect to Guarantee Payments owing in respect of the Securities held by such Holder. The Guarantor hereby waives any right or remedy to require that any action on this Guarantee be brought first against the Trust or any other person or entity before proceeding directly against the Guarantor.

SECTION 5.6. Subrogation.

The Guarantor shall be subrogated to all (if any) rights of the Holders of Securities against the Trust in respect of any amounts paid to such Holders by the Guarantor under this Guarantee; provided, however, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any right that it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this Guarantee, if at the time of any such payment, any amounts are due and unpaid under this Guarantee. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Guarantee Trustee for the benefit of the Holders.

SECTION 5.7. Independent Obligations.

The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Trust with respect to the Securities, and that the Guarantor shall be liable as principal and as debtor hereunder to make the Guarantee Payments pursuant to the terms of this Guarantee notwithstanding the occurrence of any event referred to in subsections 5.3(a) through 5.3(g), inclusive, hereof.

ARTICLE 6

LIMITATION OF TRANSACTIONS; SUBORDINATION

SECTION 6.1. Limitation of Transactions.

So long as any Securities remain outstanding, (i) if there shall have occurred an Event of Default (as defined in the Indenture) with respect to the ICONs, (ii) if there shall have occurred a Guarantee Event of Default or (iii) during any Optional Deferral Period as provided in the Indenture, then the Guarantor shall not, and shall not permit any subsidiary of the Guarantor, to (x) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Guarantor's capital stock, (y) make any payment of principal, interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Guarantor that rank pari passu with or junior in interest to the ICONs, other than pro rata payments of accrued but unpaid amounts on the ICONs and any other debt securities of the Guarantor that rank equally with the ICONs, or (z) make any guarantee payments with respect to any guarantee by the Guarantor of the debt securities of any subsidiary of the Guarantor if such guarantee ranks pari passu with or junior in interest to the guarantee, other than any pro rata payments of accrued but unpaid amounts on the guarantee and any other guarantees of debt securities of any subsidiary of the Guarantor (other than (a) dividends or distributions in Common Stock of the Guarantor, (b) any declaration of a dividend in connection with the implementation of a rights plan or the issuance of stock under any such plan or the redemption or repurchase of any such rights pursuant thereto, (c) payments under this Guarantee, and (d) purchases of Common Stock related to the issuance of Common Stock or rights under any of the Company's benefit plans for its directors, officers or employees).

SECTION 6.2. Ranking.

This Guarantee will constitute an unsecured obligation of the Guarantor and will rank subordinate and junior in right of payment to all other current and future liabilities of the Guarantor and will rank equally with the most senior preferred stock, if any, issued from time to time by the Guarantor and with similar guarantees issued by the Guarantor with respect to financial subsidiaries similar to the Trust.

SECTION 6.3. Subordination of Common Securities.

If a Trust Enforcement Event has occurred and is continuing under the Trust Agreement, the rights of the holders of the Common Securities to receive Guarantee Payments hereunder shall be subordinated to the rights of the Holders of the Capital Securities to receive Guarantee Payments under this Guarantee.

ARTICLE 7

TERMINATION

This Guarantee shall terminate upon (i) full payment of the Redemption Price of all Securities, (ii) distribution of the ICONs to the Holders of all the Securities or (iii) full payment of the amounts payable in accordance with the Trust Agreement upon liquidation of the Trust.

Notwithstanding the foregoing, this Guarantee will continue to be effective or will be reinstated, as the case may be, if at any time any Holder of Securities must restore payment of any sums paid under the Securities or under this Guarantee.

ARTICLE 8

INDEMNIFICATION, COMPENSATION AND REIMBURSEMENT

The Company agrees:

(a) to pay to the Guarantee Trustee from time to time compensation for all services rendered by it hereunder in such amounts as the Guarantor and the Guarantee Trustee shall agree from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) to reimburse the Guarantee Trustee upon its request for all expenses, disbursements and advances incurred or made by the Guarantee Trustee in accordance with any provision of this Guarantee (including the costs of collection and the reasonable compensation and the expenses and disbursements of its counsel, accountants and experts), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

(c) to indemnify the Guarantee Trustee and its officers, directors, employees and agents for, and to hold each harmless against, any loss, liability or expense (including the reasonable compensation and the expenses and disbursements of the Guarantee Trustee's agents and counsel) incurred without negligence or bad faith, arising out of or in connection with the acceptance or administration of this trust or the performance of their duties hereunder, including but not limited to the costs and expenses of defending themselves against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

To secure the Guarantor's payment obligations in this Article 8, the Guarantor and the Holders agree that the Guarantee Trustee shall have a lien prior to the Securities on all money or property held or collected by the Guarantee Trustee. The provisions of this Article 8 shall survive the termination of this Guarantee or the resignation or removal of the Guarantee Trustee.

ARTICLE 9

MISCELLANEOUS

SECTION 9.1. Successors and Assigns.

All guarantees and agreements contained in this Guarantee shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Securities then outstanding. Except in connection with a consolidation, merger or sale involving the Guarantor that is permitted under Article VIII of the Indenture and pursuant to which the successor or assignee agrees in writing to perform the Guarantor's obligations hereunder, the Guarantor shall not assign its obligations hereunder.

SECTION 9.2. Amendments.

Except with respect to any changes that do not materially adversely affect the rights of the Holders (in which case no consent of the Holders will be required), this Guarantee may not be amended without the prior approval of the Holders of at least a Majority in Liquidation Amount of the Capital Securities. The provisions of Section 11.2 of the Trust Agreement with respect to meetings of, and action by written consent of, the Holders of the Securities apply to the giving of such approval.

SECTION 9.3. Notices.

All notices provided for in this Guarantee shall be in writing, duly signed by the party giving such notice, and shall be delivered by hand, telecopied or mailed by registered or certified mail, as follows:

(a) If given to the Guarantee Trustee, at the Guarantee Trustee's mailing address set forth below (or such other address as the Guarantee Trustee may give notice of to the Guarantor and the Holders of the Securities):

The Bank of New York
101 Barclay Street, Floor 8 West
New York, New York 10286
Attention: Corporate Trust Administration
Facsimile No.: (212) 815-5704/5707

(b) If given to the Guarantor, at the Guarantor's mailing addresses set forth below (or such other address as the Guarantor may give notice of to the Guarantee Trustee and the Holders of the Securities):

Merrill Lynch & Co., Inc.
4 World Financial Center
New York, New York 10080
Facsimile No.: 212-738-1952
Attention: Treasury Department

(c) If given to any Holder of Securities, at the address set forth on the books and records of the Trust.

All such notices shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid, except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

SECTION 9.4. Benefit.

This Guarantee is solely for the benefit of the Holders of the Securities and, subject to Section 3.1(a), is not separately transferable from the Securities.

SECTION 9.5. Governing Law.

THIS GUARANTEE AND THE RIGHTS AND OBLIGATIONS OF EACH OF THE GUARANTOR AND THE GUARANTEE TRUSTEE SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS CONFLICTS OF LAWS PROVISIONS (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW).

[The remainder of this page left blank intentionally; the signature page follows.]

IN WITNESS WHEREOF, this Guarantee is executed as of the day and year first above written.

MERRILL LYNCH & CO., INC.,
as Guarantor

By: /s/ Allen G. Braithwaite III
Name: Allen G. Braithwaite III
Title: Assistant Treasurer

THE BANK OF NEW YORK,
as Guarantee Trustee

By: /s/ Michael S. Smith
Name: Michael A. Smith
Title: Vice President



SIDLEY AUSTIN LLP
 787 SEVENTH AVENUE
 NEW YORK, NY 10019
 (212) 839 5300
 (212) 839 5599 FAX

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 SINGAPORE
 TOKYO
 WASHINGTON DC

FOUNDED 1866

May 2, 2007

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

Merrill Lynch Capital Trust II
 c/o Merrill Lynch & Co., Inc.
 4 World Financial Center
 New York, New York 10080

Merrill Lynch, Pierce, Fenner & Smith Incorporated
 4 World Financial Center
 New York, New York 10080

Re: Merrill Lynch Capital Trust II

Ladies and Gentlemen:

Circular 230: To comply with certain Treasury regulations, we inform you that (i) this opinion was written to support the promotion and marketing by the Company and the Trust of the Trust Preferred Securities (each as defined herein), (ii) this opinion was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding U.S. federal tax penalties that may be imposed on such person, and (iii) each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

We have acted as special tax counsel to Merrill Lynch & Co., Inc. (the "Company") in connection with the issuance and sale by Merrill Lynch Capital Trust II (the "Trust") of 36,000,000 of the Trust's preferred securities, liquidation amount \$25 per security (the "Trust Preferred Securities"), representing preferred beneficial interests in the assets of the Trust, under the Amended and Restated Trust Agreement, dated as of May 2, 2007 (the "Trust Agreement"), by and among the Company, as Sponsor, The Bank of New York, as Property Trustee (in such capacity, the "Property Trustee"), The Bank of New York (Delaware), as Delaware Trustee, and the Administrative Trustees named therein.

Concurrently with the Trust's issuance of the Trust Preferred Securities, the Company will purchase the Trust's common securities, with a total liquidation amount of \$1,000,000 (the "Common Securities"), representing common beneficial interests in the assets of the Trust. The Trust will use the proceeds from the issuance and sale of the Trust Preferred Securities and the Common Securities to purchase the Company's Income Capital Obligation NotesSM initially due 2062 (the "ICONS") issued under the Junior Subordinated Indenture, dated as of December 14, 2006, as amended and supplemented by the Second Supplemental Indenture, dated as of May 2, 2007 (the "Indenture"), between the Company and the Bank of New York, as trustee (in such capacity, the "Indenture Trustee"). Capitalized terms used but not otherwise defined herein shall have the meaning assigned to such terms in the Indenture.

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As tax counsel to the Company, we have examined and relied upon originals or copies of such agreements, instruments, certificates, records and other documents and have made such examination of law as we have deemed necessary or appropriate for the purpose of this letter, including (i) the Indenture, (ii) the Trust Agreement, (iii) the Underwriting Agreement, dated as of April 25, 2007 (the "Underwriting Agreement") between the Company, the Trust, and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as Representative of the Underwriters named therein, and (iv) the Guarantee Agreement, dated as of May 2, 2007 (the "Guarantee Agreement"), by and between the Company and The Bank of New York, as guarantee trustee (collectively, the "Documents"). We have assumed the authenticity of all documents submitted to us as originals and the conformity to the originals of all documents submitted to us as copies. We have also reviewed such questions of law as we have considered necessary for purposes of the opinions expressed herein. We have assumed the due authorization, execution and delivery of all agreements referred to herein by all the parties thereto and that such agreements are valid and binding agreements of the parties thereto. We have assumed that each of the parties to any such agreement has satisfied those legal requirements that are applicable to it to the extent necessary to make such agreement or obligation enforceable against it.

As to any facts material to the following opinions that we did not independently establish or verify, we have relied upon statements and representations of the responsible officers and other representatives of the Company and of public officials and agencies, including statements and representations made to us by the Company in that certain representation letter addressed to us, dated as of May 2, 2007 (the "Tax Representation Letter"). Our opinions are also based on the assumption that there are no agreements or understandings with respect to those transactions contemplated in the Documents other than those contained therein. Furthermore, our opinions are based on the assumption that all parties to the Documents will comply with the terms thereof, including all tax reporting requirements contained therein.

Based upon the foregoing and consideration of such other matters as we have deemed appropriate, under current law and assuming full compliance with the Documents, we are of the opinion that

- a) the Trust will be classified for U.S. federal income tax purposes as a grantor trust and not as an association taxable as a corporation, and
- b) the ICONs will be respected as indebtedness of the Company for U.S. federal income tax purposes (although there is no clear authority on point).

The opinions set forth herein are based upon the existing provisions of the Internal Revenue Code of 1986, as amended, and Treasury regulations issued or proposed thereunder, published Revenue Rulings and releases of the Internal Revenue Service and existing case law,

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any of which could be changed at any time. Any such changes may be retroactive in application and could modify the legal conclusions upon which such opinions are based. The opinions expressed herein are limited as described above, and we do not express an opinion on any other tax aspect of the transactions contemplated by the Documents or the effect of such transactions.

In rendering the foregoing opinions, we express no opinion as to the laws of any jurisdiction other than the federal income tax laws of the United States. Our opinions are rendered as of the date hereof and we undertake no obligation to update our opinions or advise you of any changes in the event there is any change in legal authorities, facts, assumptions or documents on which our opinions are based (including the taking of any action by any party to the Documents pursuant to any opinion of counsel or a waiver), or any inaccuracy in any of the representations, warranties or assumptions upon which we have relied in rendering our opinions unless we are specifically engaged to do so. Our opinions are solely for your benefit in connection with your role in the transactions as contemplated in the Documents and may not be relied on in any manner for any other purpose or by any other person for any purpose without our prior written consent.

Very truly yours,

Sidley Austin LLP

By: /s/ Sidley Austin LLP