March 26, 2007

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attn: Comments/Legal ESS

Regulation Comments
Attn: No. 2006-49
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

RE: Comment on Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Domestic Capital Modifications (Basel 1A) FDIC RIN 3064-AC96 OTS No. 2006-49, RIN 1550-AB98

Dear Sir or Madam:

Merrill Lynch welcomes the opportunity to comment on the Basel IA Notice of Proposed Rulemaking (NPR) published in the Federal Register on December 26, 2006 (71 Fed. Reg. 77446, Dec. 26, 2006). Merrill Lynch comprises a number of legal entities regulated by various supervisors, including two FDIC-insured institutions: Merrill Lynch Bank USA, a Utah industrial bank, and Merrill Lynch Bank & Trust Co., FSB, a federal savings bank. These two banks together had in excess of $80 billion in assets at year-end 2006. Merrill Lynch & Co., Inc. ("ML&Co."), the diversified financial services firm, is the top-tier parent company of each of the banks. ML&Co. is a consolidated supervised entity subject to the supervision of the Securities and Exchange Commission.

Neither of the Merrill Lynch banks is a core bank for purposes of the proposed Basel II risk-based capital rules, and thus each is particularly interested in the development of the Basel IA framework. Merrill Lynch supports the direction of the Basel IA proposal which improves upon the risk-sensitivity of the existing Basel I capital requirements by increasing the number of risk weights, incorporating external ratings, improving treatment of off-balance sheet commitments, and improving collateral recognition.

By letter dated January 12, 2006, Merrill Lynch submitted comments on the Basel IA Advanced Notice of Proposed Rulemaking. We believe that the NPR has made significant strides in achieving the overall principles of increased risk-sensitivity without unduly increasing regulatory burden, and we appreciate the agencies' responsiveness to our comments and those of others in the industry. In particular, Merrill Lynch supports the increased risk-sensitivity proposed in the NPR through:

- Giving institutions the choice of following Basel IA or Basel I
- Increasing the number of risk-weight categories
- Expanding the use of external ratings for determining the risk-based capital charge

- Revising the list of recognized collateral to include a broader array of externally rated, liquid, and readily marketable financial instruments
- Risk weighting first-lien mortgages based on Loan-to-Value and evaluating approaches that consider borrower creditworthiness.

There are areas, however, where the risk sensitivity of the proposal could be enhanced to better align capital with risk. Additionally, there continue to be a few key areas where the NPR is not specific enough in the proposals, making it difficult to evaluate the appropriateness of the capital requirements. In order to better align the required regulatory capital with underlying risks, we would strongly encourage the agencies to address the following:

- Linking the risk weighting of retail mortgages directly to LTV and borrower credit quality
- Risk weighting fully collateralized exposures
- Increasing the $1 million threshold for small loans to businesses

The remainder of this letter provides additional discussion of each of these areas.

First Lien Risk Weights

It is difficult to evaluate the appropriateness of LTV combined with another measure of borrower creditworthiness without additional information. FICO scores, which are readily available and would impose minimum burden, are the most straightforward and objective measure of the borrower criteria in the U.S. retail sector. Merrill Lynch supports linking the retail risk weights directly to FICO/LTV segments, so that exposures to borrowers with lower FICO scores would attract proportionally more capital and vice versa. Although the NPR outlines the LTV and credit history bands, the thresholds are not fully specified, making the proposal difficult to evaluate fully.

Recognized Financial Collateral

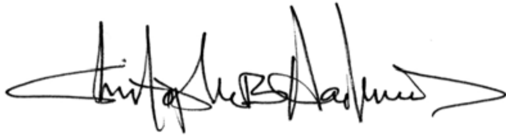
Recognizing that there is a broad range of views, the NPR does not go far enough to address risk weights for fully collateralized exposures where the collateral can be readily marked to market, but is not externally rated. As discussed in our January 2006 comment letter, there is ample economic support for significantly improved recoveries of secured corporate lending for several types of collateral, including these unrated exposures. As such, Merrill Lynch continues to support a reduction in risk weights for these fully collateralized exposures, where the collateral can be readily marked to market and a security interest in the collateral is readily perfectible, even though the collateral is not externally rated.

Small Loans to Businesses

Merrill Lynch supports a lower 75% risk weight for certain small loans to businesses. The $1 million maximum threshold for qualifying for the 75% risk weight, however, is too low and therefore is unlikely to have a material capital impact across the industry. While the $1 million threshold for defining small business loans may be appropriate in certain other contexts such as the Qualified Thrift Lender test and Community Reinvestment Act regulations, the purpose of those regulations is to achieve policy goals that may differ from capital adequacy. From a capital adequacy perspective, a threshold for small business loans to qualify for the 75% risk weight of $5 million would better align the capital with the risk. Additionally, for collateralized lending to middle-market companies, Merrill Lynch recommends linking the risk weight directly to objective benchmarks, such as a D&B rating, and increasing the threshold.

In conclusion, Merrill Lynch welcomes the Basel IA NPR and looks forward to the forthcoming publication of the Basel IA Final Rule.

Sincerely,



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