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September 24, 2008

Ms. Florence E. Harmon
Acting Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

File Nos. S7-18-08 and S7-19-08

Dear Ms. Harmon:

We are pleased to submit this letter on behalf of our client, Merrill Lynch Depositor Inc. in response to the request of the U.S. Securities and Exchange Commission (the "Commission") for comments regarding the proposals published in Release No. 34-8940, Security Ratings (July 1, 2008) (the "Securities Act Release") and Release No. IC-28327, References to Ratings of Nationally Recognized Statistical Rating Organizations (July 1, 2008) (the "Investment Company Act Release"), and in particular, the proposed changes to (1) Form S-3 eligibility criteria based on securities ratings, (2) the amendment to Item 1100(c) of Regulation AB under the Securities Act of 1933, as amended (the "Securities Act"), to remove the reference to ratings, and (3) Rule 3a-7 under the Investment Company Act of 1940, as amended (the "Investment Company Act"), that would eliminate the exclusion for structured financings offered to the general public.

Our client does not support the Commission's proposed changes, set forth in the Securities Act Release, to remove the existing Form S-3 eligibility criteria for asset-backed securities ("ABS") based on the ABS being rated investment grade by a "nationally recognized statistical rating organization" (an "NRSRO").

Additionally, our client does not support the Commission's proposed replacement Form S-3 eligibility criteria of a minimum denomination requirement for initial and subsequent sales and a requirement that initial sales be made only to "qualified institutional buyers" (as defined in Rule 144A(a)(1) under the Securities Act), as our client believes that those amended criteria

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would effectively prohibit unit repackaging transactions that historically have been offered to retail investors. If the Commission decides to revise the Form S-3 eligibility criteria, our client requests that the Commission please confirm that its proposals (in particular the requirement that all subsequent sales of ABS be subject to the minimum denomination requirement) would not affect already-completed offerings of ABS that were registered on Form S-3 pursuant to the investment-grade ratings criterion and also clarify that issuers that have unused capacity on their existing effective Form S-3 registration statements will be able to register shelf takedowns with respect to such unused amounts.

Our client is not opposed to the Commission's proposal, set forth in the Securities Act Release, to amend Item 1100(c) of Regulation AB to remove the reference to ratings and allow asset-backed issuers to refer to third-party financial statements of a significant obligor that meets the registrant requirements of Form S-3, although our client believes that the Commission's proposed requirement that the pool assets relating to such third party be originally issued in a primary offering for cash registered under the Securities Act is not necessary and does not seem to advance the Commission's objective of improving the quality of disclosure relating to ABS.

In addition, our client does not support the Commission's proposal, set forth in the Investment Company Act Release, to eliminate the exclusion for structured financings offered to the general public from existing Rule 3a-7 under the Investment Company Act as it would not allow "repackaging" ABS to be offered to retail investors unless the issuing entity registers as an "investment company." If the Commission decides to revise Rule 3a-7 in the manner proposed, our client requests that the Commission please confirm that its proposals would not affect the exempt status applicable to issuers that have completed offerings of ABS in reliance on existing Rule 3a-7.

We discuss these points below, and we suggest modifications to the proposals.

Proposed Amendments to Form S-3 Eligibility Requirements

Currently, an offering of ABS is eligible to be registered on Form S-3 if the ABS receives an investment grade rating from an NRSRO at the time of offer and sale to the public.

Our client does not agree with the Commission's position that securities ratings should no longer serve as eligibility criteria for an issuers' use of Form S-3 nor does it believe that it should be replaced with other criteria. Our client believes that the other ratings reform initiatives being implemented by the Commission will address any undue or inappropriate reliance by investors on ratings and will obviate the need to delete references to credit ratings in rules proposed to be promulgated pursuant to the Securities Act Release.

Additionally, our client is concerned that the proposed replacement of the rating criterion with criteria based on a $250,000 minimum denomination and sales to qualified institutional

buyers ("QIBs"), would effectively eliminate access of retail investors to future issuances of corporate bond "repackaging" ABS irrespective of the quality of disclosure available regarding an investment in such securities.

Corporate bond "repackaging" ABS have historically been offered to a variety of investors, including retail investors pursuant to registered shelf public offerings, and are intended to provide retail investors with the benefit of owning corporate bonds at much lower denominations than the typical minimum $1,000 denomination for corporate bonds. In general, these transactions involve depositors such as our client that, if market conditions suggest that there will be investor demand for an offering of "repackaged" corporate bonds, will purchase a quantity of a specific issue of investment grade corporate bonds in the open market. The corporate bonds to be repackaged are typically issued by large, S-3 eligible companies, for which there is much public information, including the corporate issuer's reports and information filed pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"). These corporate bonds will then be deposited as underlying securities in a newly created issuing trust. The issuing trust issues trust certificates or units, with a low face amount such as $25 or $50, to the underwriter of the offering. The underwriter of the offering, usually an affiliate of the depositor, sells the trust certificates or units to retail investors. An independent trustee services the underlying securities and acts as disbursing agent with respect to the trust certificates/units. Each trust certificate or unit represents a proportionate, undivided beneficial interest in certain distributions to be made by the trust. Generally, all distributions of payments on the underlying corporate bonds will be made on a pro rata basis to the holders of the respective trust certificate class, and therefore, the securities rating on any series of trust certificates/units will be equal to that of the underlying corporate bonds because the default risk to an owner of the trust certificates/units is solely based on the default risk of the underlying corporate bonds. In certain transactions, depending on investor demand and market conditions, interest or principal payments on the underlying corporate bonds are divided and allocated among different classes of certificates or units, or the certificates or units are made subject to interest rate and foreign currency swaps. In many cases, in order to facilitate secondary market trading of the certificates or units, one or more classes of the certificates or units will be listed on a national securities exchange. Time is typically of the essence in offerings of "repackaging" ABS, as depositors and underwriters usually have only a very limited time to take advantage of favorable market conditions and distribute the trust certificates to the investing public. Offerings of these types of securities usually are completed within a few days from the time the depositor identifies a suitable corporate bond issuance for repackaging.

The Commission's proposed alternative criteria for Form S-3 eligibility of ABS offerings, a minimum denomination of at least $250,000 with respect to any sale of the ABS and a requirement that initial sales be made only to QIBs, would severely restrict the ability to market "repackaging" ABS to retail investors.

In the Securities Act Release, the Commission requested comments on whether the offer and sale of unit repackaging securities can be effectively registered on Form S-1. The offer and sale of "repackaging" ABS cannot be effectively registered on Form S-1 for the following reasons:

1) offerings registered on Form S-1 are not eligible for "shelf registration" on an immediate, continuous or delayed basis pursuant to Rule 415(a)(1)(x) under the Securities Act, and therefore a new registration statement on Form S-1 would need to be filed and declared effective prior to any subsequent offering of "repackaging" ABS; and

2) each new registration statement filed on Form S-1 would be subject to review by the Commission staff; such review period would not allow for the repackaging and offering of "repackaging" ABS on the accelerated timeframe usually dictated by favorable market conditions (as discussed above), and would therefore inhibit marketing of these securities.

Over the past decade, hundreds of millions of dollars in principal amount of corporate bonds have been repackaged and sold to retail investors in dozens of issuances by numerous investment banks, including Merrill Lynch (via our client's PPlus program), and others. The number of successful offerings of corporate bond repackagings demonstrates that retail investors feel that such a product is desirable. The Commission's proposal, if adopted, would decrease the ability of retail investors to diversify their investment portfolios by limiting their ability to make corporate bond investments except in larger denominations. Our client notes that the Commission's proposal, if adopted, would not restrict offerings and secondary market sales of corporate bonds of S-3-eligible issuers to retail investors. However, the proposal would prevent the repackaging of such bonds for sale to investors in amounts less than $1,000, even though the "repackaging" ABS sold to these investors would have the same default risk as the bonds themselves, and even though holders of both the "repackaging" ABS and the bonds themselves would have the benefit of the corporate issuer's Exchange Act reports. Our client believes that the Commission's proposal would thus effectively lock out retail investors from these types of issuances.

To the extent that the Commission decides to remove the investment grade rating criterion for Form S-3 eligibility of ABS offerings, our client suggests that the Commission consider as an alternative to conditioning Form S-3 eligibility for ABS on a minimum denomination requirement and a requirement that initial sales be made to QIBs, our client's proposal to allow ABS offered for cash to be eligible for registration on Form S-3, provided that the pool assets underlying such asset-backed securities were primarily issued by one or more "significant obligors" (as defined in Item 1100(k) of Regulation AB), each of which (1) is not an affiliate of the issuing entity and (2) meets the requirements of General Instruction I.A. of Form S-3.

Our client feels that its suggested alternative Form S-3 eligibility criteria would continue to permit corporate bond repackagings to be eligible for registration on Form S-3, and would therefore not have the negative effect on the market for "repackaging" ABS that would result from the Commission's proposed criteria. Additionally, our client believes that its proposal would have the additional benefit of tying the Form S-3 eligibility of a proposed offering of ABS to the Exchange Act reporting status of the significant obligor of the pool assets. Our client feels that this would be consistent with the Commission's objective to ensure adequate disclosure of the risks of ABS to investors. Our client's suggested alternative to the Commission's proposal would also be consistent with Commission's proposed revisions to Item 1100(c) of Regulation AB, which ties the ability of an ABS issuer to refer to a third party's financial information to the third party satisfying the requirements set forth in General Instruction I.A. to Form S-3.

In the Securities Act Release, the Commission also requested comments as to whether an alternative eligibility requirement should be added that would provide eligibility to use Form S-3 for securities listed on a national securities exchange. Our client would also support this approach, as it believes that issuances of "repackaging" ABS that are marketed to retail investors are often listed for trading on a national securities exchange.

To the extent that the Commission decides to adopt its proposal, including the proposed replacement Form S-3 eligibility criteria of a minimum denomination requirement for initial and subsequent sales and a requirement that initial sales be made only to QIBs, our client asks the Commission to specifically permit issuers of "repackaging" ABS to continue to use Form S-3 to register offerings of "repackaging" ABS.

Proposed Amendment to Item 1100(c) of Regulation AB

The Commission has proposed to amend existing Item 1100(c)(2)(ii)(B) of Regulation AB to remove the ratings reference and permit issuers to refer to third party financial statements if the third party meets the registrant requirements of Form S-3 and the pool assets relating to such third party are non-convertible securities, other than common equity, that were issued in a primary offering for cash that was registered under the Securities Act.

Our client is not opposed to the Commission's proposal to remove the ratings reference contained therein. Our client believes that the ratings reference is not strongly related to the underlying policy rationale for allowing asset-backed issuers to refer to third party financial information. In the adopting release for Regulation AB, the Commission noted that Item 1100(c)(2) of Regulation AB, which allows asset-backed issuers to refer investors to the existing financial statements of unaffiliated third party significant obligors of pool assets, was adopted in recognition of "practical difficulties that may be involved in obtaining the required information or the necessary consent to use the information, or the ability to evaluate the information, from an unaffiliated significant obligor whose securities have been securitized without any obligor

involvement in the ABS transaction."[1] Whether or not the pool assets were rated investment grade does not change this underlying policy rationale.

However, our client questions the need to require that the pool assets relating to such third party be originally issued in a primary offering for cash registered under the Securities Act. It is not necessarily the case that the securities issued in registered offerings are of "higher quality" than the securities issued in unregistered offerings. The decision on whether to do a registered or exempt offering is not dependent on the "quality" of the security to be issued, but is often based on considerations such as speed of execution, and price. Additionally, the Commission's rationale for the adoption of the existing provision did not seem to be based on the quality of the pool assets, but rather based on then-existing Staff positions and market practice, which focused on the S-3 eligibility category of the third party whose financial statements were being referred to.[2] The underlying policy rationale for Item 1100(c)(2) of Regulation AB discussed above would not be advanced by requiring that pool assets be originally issued in registered offerings. Such requirement also would not increase the amount or quality of disclosure of the third party financial information referred to because the ABS, particularly in the context of a repackaging, may be offered long after the original issuance of the pool assets, and because the third party whose financial information is being referred to would still be required to meet the registrant requirements for use of Form S-3, including timely and current Exchange Act reporting.

Proposed Amendment to Rule 3a-7 under the Investment Company Act of 1940

Our client is concerned that the Commission's proposal to eliminate the exclusion for structured financings offered to the general public from existing Rule 3a-7 under the Investment Company Act would not allow vehicles issuing "repackaging" ABS to avail themselves of an exemption from registration as an investment company and therefore would strongly prefer that existing Rule 3a-7 remain unchanged.

As discussed above, "repackaging" ABS are typically offered and sold to retail investors in small minimum denominations via registered public offerings. The only available exemption from registration under the Investment Company Act for an issuing entity of "repackaging" ABS is therefore existing Rule 3a-7. Issuers of "repackaging" ABS cannot avail themselves of the exemption set forth in Section 3(c)(7) of the Investment Company Act, because that exemption is only available with respect to private placements to larger, "qualified purchasers." Therefore, if the Commission's proposal is adopted, retail investors would no longer be able to invest in "repackaging" ABS.

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[1] Release No. 33-8518 (Dec. 22, 2004) [70 FR 1506, 1552].

[2] Release No. 33-8518 (Dec. 22, 2004) [70 FR 1506, 1553].

Our client strongly believes that limiting retail investors' access to "repackaging" ABS would not address the Commission's concerns regarding the ability of retail investors to understand the risks of an ABS and the quality of disclosure. Instead, the Commission's proposal, if adopted, would bar retail investors from investing in a product that they can more easily understand than other types of ABS, for which there is generally a greater amount of information available than other types of ABS, and for which there is already an established market. As discussed above, "repackaging" ABS are generally structured to pass through coupon and principal payments on the underlying securities, and therefore have the same default risk as the underlying corporate bonds themselves. Therefore, these products can be more easily understood by retail investors than other types of ABS. Our client also notes to the Commission that retail investors can purchase the underlying corporate bonds separately, but only at higher minimum denominations. Therefore, not allowing retail investors to purchase "repackaging" ABS would not protect these investors from overly-risky investments that they are not able to understand. Additionally, the underlying securities in "repackaging" ABS issuances are typically corporate bonds issued by large, S-3 eligible companies for which there is much public information, including the underlying corporate issuer's Exchange Act reports. This differs from other ABS, which may be backed by pool assets, such as student loans or residential mortgages.

Additionally, our client notes to the Commission that its proposal, if adopted, would also limit other ABS, such as securities issued in respect of some types of equipment trust financings, that do not qualify under other Investment Company Act exemptions.

Our client is concerned that issuers and underwriters of ABS relying on the exemption set forth in Rule 3a-7 will have difficulty in complying with the requirement that they exercise "reasonable care to ensure that such securities are sold and will be resold" only to "accredited investors" (as defined in paragraphs (1), (2), (3), and (7) of Rule 501(a) under the Securities Act) or QIBs, in particular because it is unclear whether the systems of the Depository Trust Company will allow for clearing and settlement of ABS in a manner that allows for sales and resales to occur only to accredited investors or QIBs.

As discussed earlier, our client would strongly prefer that Rule 3a-7 remain unchanged. However, if the Commission feels it necessary that Rule 3a-7 be amended, our client feels that the Commission's proposal that the rating requirement be replaced with alternate specific requirements regarding abuses that the Investment Company Act is designed to address, such as self-dealing and overreaching by issuers, misvaluation of assets, and inadequate asset coverage, is worth further consideration by the Commission to the extent that it continues to provide for the public offering of "repackaging" ABS and other structured finance products that satisfy such requirements. However, our client reserves its right to comment until it has had a chance to review the proposed rulemaking by the Commission specifying such requirements.

Additionally, to the extent that the Commission decides to amend existing Rule 3a-7 by eliminating the exclusion for investment grade rated structured financings offered to the general

public, our client asks the Commission to clarify in such amendment that issuers and underwriters of "repackaging" ABS may continue to make public offerings in reliance on existing Rule 3a-7.

In the context of its review of our client's comments to the Commission's proposals and their effect on the ability to offer "repackaging" ABS, our client also asks that the Commission consider permitting the repackaging of an interest-bearing asset together with an interest rate swap that converts interest on that asset into payments that are indexed to the consumer price index. This could be accomplished by the Commission clarifying that for purposes of paragraph (a)(1) of Rule 3a-7, the CPI-linked "repackaging" ABS entitles holders to receive payments that "depend primarily on the cash flow from eligible assets." Additionally, our client asks that the Commission clarify that the offering of such CPI-linked "repackaging" ABS is eligible for registration on Form S-3 and fits within the scope of Regulation AB, as this type of swap is a "derivative instrument . . . used to alter the payment characteristics of the cash flows from the issuing entity and whose primary purpose is not to provide credit enhancement" as described in Item 1115 of Regulation AB.

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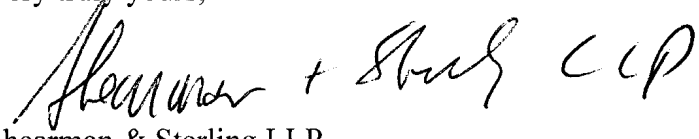
We and our client appreciate the opportunity to comment on the Securities Act Release and the Investment Company Act Release and would be pleased to discuss any questions with the Commission or its staff may have in respect of our comments. Please do not hesitate to contact Robert Evans III at 212-848-8830 or Stuart Fleischmann at 212-848-7527.

Very truly yours,



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