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March 29, 2006

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

Re: Merrill Lynch Comments to Proposed
Interagency Guidance on Nontraditional Mortgage Products

Dear Mr. Feldman:

Merrill Lynch & Co., Inc., through a number of its subsidiaries (collectively, "Merrill Lynch"), actively participates in the origination, servicing, purchase, and sale/securitization of residential mortgage loans. We appreciate being afforded the opportunity to comment on the proposed Interagency Guidance on Nontraditional Mortgage Products, 70 Fed. Reg. 77249 (Dec. 29, 2005), hereafter the "Guidance."

For the reasons set forth below, we do not believe that the Guidance is necessary. In the event that the FDIC and the other federal financial regulatory agencies (collectively, the "Agencies") do proceed with this proposal, we also offer a number of comments that we suggest be considered before formulating any final guidance.

I. No Guidance Required.

We respectfully submit that the Guidance is not required for the following reasons:

A. Existing Federal Guidance as to Loan Parameters.

The FDIC has previously adopted regulations and supervisory guidance that sets forth minimum standards for residential mortgage loans. These regulations include, but are not limited to, the following:

- Safety & Soundness Standards (12 C.F.R. Part 364);
- Real Estate Lending Standards (12 C.F.R. Part 365);
- Appraisal Standards (12 C.F.R. Part 323);
- Credit Risk Management for Home Equity Lending (PR-44-2005); and
- Interagency Guidance on Sub-Prime Lending (including, but not limited to, PR-9-2001).

These rules already regulate virtually every aspect of the mortgage loan application, underwriting, closing, and servicing processes including, but not limited to, the documentation of underwriting decisions, loan-to-value limitations and acceptable additional collateral, minimum standards to document the value of the mortgage collateral, risk assessment and management, ALLL, minimum capital requirements, and periodic reporting to an insured institution's board of directors. We believe that these federal regulations adequately address, with particularity, the regulatory concerns described in the Guidance. To the extent there are any gaps in these regulations that may warrant any additional protections, we suggest that these existing regulations be revised to correct any specific deficiencies as opposed to adopting a new, possibly redundant, layer of regulatory requirements.

B. Existing Federal Laws as to Consumer Protection.

There are presently a number of federal laws and regulations that set minimum standards for consumer disclosures covering the application and loan closing processes as well as the servicing of the loan after closing. These regulations include, but are not limited to, the following:

- Truth-in-Lending Act/Regulation Z (12 C.F.R. Part 226);
- Real Estate Settlement Procedures Act/Regulation X (24 C.F.R. Part 3500); and
- Equal Credit Opportunity Act/Regulation B (12 C.F.R. Part 202).

These laws already mandate numerous disclosures to consumers in advertising, at the time of application, at closing, and during the servicing of the loan. We believe that these federal regulations adequately provide, with particularity, ample information to consumers regarding their mortgage loans. To the extent there are any gaps in these laws that may warrant any additional protections, we suggest that these existing laws be revised to correct any specific deficiencies as opposed to adopting a new, possibly redundant, layer of laws and regulations.

C. Existing Accounting Requirements and SEC Rules and Regulations.

There are also a number of standards adopted by the Financial Accounting Standards Board and the rules and regulations promulgated by the Securities and Exchange Commission that effectively regulate disclosures to both investors of: (i) publicly-traded companies that originate and purchase residential mortgage loans, and (ii) mortgage-backed securities. Such guidance includes, but is not limited to, the following:

- FASB Staff Position 94-6-1;
- Current Accounting and Disclosure Issues in the Division of Corporation Finance of the U.S. Securities and Exchange Commission dated December 1, 2005;
- The Securities Exchange Act of 1933, as amended;
- The Securities Act of 1934, as amended; and
- Regulation AB: Subpart 229.1100 - Asset Backed Securities, 17 C.F.R. §§229.1100-229.1123.

We believe that these requirements effectively regulate, among other things, disclosures to those who invest in mortgage companies directly and indirectly through the purchase of mortgage-backed securities. Thus, we question whether the Agencies need to address any of the secondary marketing concerns raised in the Guidance given the existing regulatory oversight of these investor-related issues. We think more empirical data is needed to demonstrate that the existing regulatory structure is deficient before adopting a new, possibly redundant, layer of regulatory requirements.

D. Nontraditional Products May Not be Risky.

Finally, the December 20, 2005 Joint Press Release announcing the Guidance provides that nontraditional mortgage products "present unique risks." Our experience with one of our "interest-only" loan products, however, does not indicate that these loans, if properly underwritten, are any riskier than "traditional" 30-year fixed rate mortgages. Thus, we are not sure that the loss data supports the need for additional guidance for "nontraditional" mortgage products, especially with respect to "prime" borrowers.

II. Suggestions if Guidance Issued.

As stated above, in the event that Agencies do determine to issue final guidance, we have the following comments on the proposal:

A. Define Nontraditional.

It is not clear what types of loan products would be construed to be "nontraditional" and, hence, subject to the Guidance. While the Guidance provides that nontraditional mortgage loans "include" interest-only mortgages and "payment option" ARMS with the potential for negative amortization, the Guidance does not clearly define the term "nontraditional." This makes it difficult to ascertain with any degree of certainty which loan products are or are not subject to the Guidance. If the Guidance is adopted, we suggest that the Guidance be clarified to define with specificity the types of loans and loan applicants that are governed by the Guidance.

B. Provide Specifics to Facilitate Compliance.

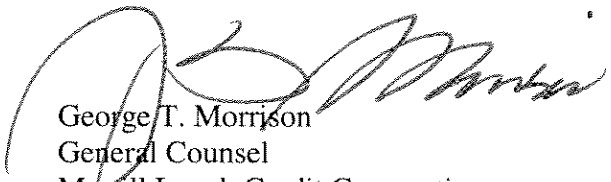
The Guidance provides general suggestions such as providing "clear and balanced information" to potential loan applicants. The Guidance does not provide any specifics as to what would be deemed sufficient for compliance, unlike, for example, the federal Truth-in-Lending regulations. If the Guidance is adopted, we request that it be clarified to ensure that institutions can easily understand the specific disclosures, processes, procedures, and system enhancements that must be implemented to effectively comply with any additional consumer disclosure requirements. Please note that we receive consistent feedback from our sales and marketing personnel that mortgage customers actually want fewer, not more, legal disclosures and associated paperwork.

C. Exclude Secondary Market Transactions.

We suggest that the Guidance should be amended to either exclude or otherwise provide for a "safe harbor" for purchased loans. We carefully scrutinize the parameters of each pool of mortgage loans prior to submitting a bid for their purchase as part of our pre-acquisition due-diligence process. The analysis typically includes an assessment of FICO scores, geographic diversification of the mortgage properties, loan-to-value ratios, borrowers' economic circumstances, types of mortgage products, etc. The result of this analysis is that we would pay less for a pool of lesser quality mortgage loans than we would for a higher-quality pool. Thus, any "non-traditional" features associated with a pool of mortgage loans are factored into the bid price for the portfolio. We believe that most loan purchasers undertake similar pre-acquisition due-diligence. We therefore submit that the Guidance is not necessary to protect purchasers from any origination risks that may be associated with these types of mortgages (see also Section I.C. above).

We thank you again for the opportunity to comment and we trust that our comments are helpful.

Very truly yours,



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cc: Comments@FDIC.gov