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*VIA OVERNIGHT DELIVERY SERVICE*

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, District of Columbia 20551

Re: Merrill Lynch Comments to  
Proposed Amendments to Regulation Z - Docket No. R-1305

Dear Ms. Johnson:

Merrill Lynch & Co., Inc., through a number of its subsidiaries (collectively, "Merrill Lynch"), actively participates in the solicitation, origination, servicing, purchase, and sale/securitization of "prime" closed-end consumer-purpose residential mortgage loans. We have reviewed the proposed amendments to Regulation Z (the "Proposal") as promulgated by the Board of Governors of the Federal Reserve Board on December 19, 2007, as set forth in 73 Fed. Reg. 1672 (Jan. 9, 2008). Merrill Lynch supports the Board's efforts to protect residential mortgage consumers from unfair, abusive, or deceptive lending and servicing practices. We request, however, that any final regulations be narrowly tailored to eliminate such practices without unwittingly capturing legitimate business activities. In this regard, we are concerned that proposed Section 226.24(i)(6), as drafted, may have the unintended consequence of creating customer confusion with respect to mortgage advertisements placed by certain bona-fide financial professionals such as registered securities broker-dealers. We therefore submit this letter to bring this matter to the Board's attention and propose a clarification to this section as more particularly described below.

One Merrill Lynch subsidiary is Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"). It is licensed or registered, as applicable, as a securities broker-dealer in each of the fifty states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. MLPF&S employs Financial Advisors who offer numerous financial products and services to MLPF&S's clients and prospective customers. These products include, but are not limited to, securities brokerage accounts, securities, mutual funds, certificates of deposit, insurance, and "prime" consumer-purpose residential mortgage loans. All of such products are advertised by MLPF&S under the "Total Merrill" paradigm whereby Financial Advisors are the customers' single point of contact for all of their financial products and services. We call them "Financial Advisors" because that is what they are. In fact, their state licensing or registration as registered securities broker-dealers permit them to act in that capacity.

In connection with “prime” residential mortgage loans, Financial Advisors may refer potential applicants to Merrill Lynch Credit Corporation (“MLCC”), which is a Merrill Lynch subsidiary that offers consumer-purpose, closed-end, residential mortgage loans.<sup>1</sup> In this regard, Financial Advisors may, subject to applicable state law, engage in one or more of the following activities: (a) soliciting mortgage loan applicants for MLCC; (b) discussing the benefits of residential mortgage loans in the context of overall wealth management and financial planning; (c) distributing brochures and other promotional materials describing MLCC residential mortgages; (d) directing clients to MLCC’s public web-site ([www.mlcc.com](http://www.mlcc.com)) for more information; (e) running magazine, newspaper, and television mortgage ads with the name and phone number of the Financial Advisor as the contact person for more information; (f) soliciting applications for mortgage loans in person or via email, U.S. mail, or telephone; (g) discussing the various mortgage products offered by MLCC, including explaining features, pricing, and terms of such products; and (h) recommending a particular MLCC mortgage to the customer.

Attached please find a representative example of a typical MLPF&S advertisement for MLCC products and services. This advertisement provides, among other things, that “[a]t Merrill Lynch, your Financial Advisor can help you make smart choices when utilizing your home equity line of credit.” Further, consumers who are interested in learning more about MLCC mortgages are asked to call an MLPF&S Financial Advisor. These references to a Financial Advisor in the context of advertisements for MLCC mortgages are consistent with customers’ expectations that their Financial Advisor will be the single point of contact for all of their financial products and services, including residential mortgages. We note, however, that Section 226.24(i)(6) of the Proposal, as drafted, could be construed to prohibit MLPF&S from using the term “financial advisor” to refer to its employees (i.e., the Financial Advisor) in the context of MLCC mortgage advertisements. We believe that such a prohibition would be misplaced for the following reasons.

First and foremost, we believe that proposed Section 226.24(i)(6) is intended to prevent “sub-prime” mortgage prospects from thinking they are working with bona-fide financial professionals when, in reality, the advertising parties are not bound by any sort of professional standards, rules, or regulations pertaining to financial advisory work. Indeed, we concur that it is inappropriate for a lender or mortgage broker, even one that is properly licensed as a lender or broker under state law, to lull a prospect into thinking that he/she is dealing with a licensed financial advisor when such may not be the case. In the case of the MLPF&S Financial Advisor, however, the prospect is working with an

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<sup>1</sup> MLCC is an originator of “prime” residential mortgage loans and does not anticipate that it will originate many, if any, “higher-priced mortgage loans” as those loans are defined in the Proposal. The comments and observations set forth in this letter are limited to the new proposed advertising restrictions contemplated by Section X of the Proposal.

individual who is both licensed as a mortgage broker if required under applicable state law AND duly registered as a securities broker-dealer who is bound by a number of additional federal and state rules and regulations that govern dealings with customers. Therefore, the prospect will not be confused by the term “Financial Advisor” in the context of MLCC mortgage advertisements because they will know that they are, in fact, working with a bona-fide financial professional who is providing counseling on a range of retail financial products, including MLCC mortgages.

Second, the term “Financial Advisor” is a term commonly used in the securities industry to denote a “stock broker.” It is, in fact, the proper designation of the person to whom the customer is instructed to direct further inquiries. This term has been used by Merrill Lynch to refer to its registered representatives since 2001 and correctly describes their roles in providing financial services to our clients. The use of the term “financial advisor” in the context of the mortgage advertisement is therefore consistent with the use of that term in all other MLPF&S advertisements for consumer products and services. Indeed, we submit that MLPF&S advertisements for MLCC mortgages would be false and misleading if MLPF&S was not able to designate “Financial Advisor” as the proper name for its employees. The use of any term other than “financial advisor” would create customer confusion. For example, the use of a different term may lead customers to incorrectly conclude that that the person to whom they are directed may not have the same level of training and professional experience as other Merrill Lynch “Financial Advisors.” This is especially true given the established use of the term “Financial Advisor” at both Merrill Lynch and in the securities industry at large.

Given the above, we respectfully request that proposed Section 226.24(i)(6) be amended as follows:

226.24(i)(6) – Misleading Claims Suggesting a Fiduciary or Other Relationship

Some advertisements for home-secured loans attempt to create the impression that the mortgage broker or lender, its employees, or its subcontractors, have a fiduciary relationship with the consumer. The Board finds that such advertisements may mislead consumers into believing that the broker or lender will consider only the consumer’s best interest in offering a mortgage loan to the consumer, when, in fact, the broker or lender may be considering its own interests. Proposed § 226.24(i)(6) would prohibit advertisements for credit secured by a dwelling from using the terms “counselor” or “financial advisor” to refer to a for-profit mortgage broker or lender, its employees, or persons working for the broker or lender that are involved in offering, originating or selling mortgages. The Board recognizes that counselors and financial advisors do play a legitimate role in assisting consumers in selecting appropriate home-secured loans.

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
April 7, 2008  
Page 4

Nothing in this rule would prohibit advertisements for bona fide consumer credit counseling services, such as counseling services provided by non-profit organizations, or bona fide financial advisory services, such as services provided by certified financial planners, **registered securities broker-dealers and investment advisors, etc.**

We trust the above comments are helpful to the Board. Lastly, please note that we appreciate the opportunity to provide comments to the Proposal and please advise if you would like any additional information or require anything further.

Thank you.

Very truly yours,



George T. Morrison  
General Counsel  
Merrill Lynch Credit Corporation

Enclosure

cc: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)