

# M

COMPANIES FORM No. 395

309910/52

# 395

CHWP000

Please do not  
write in  
this marginPlease complete  
legibly, preferably  
in black type, or  
bold block lettering

## Particulars of a mortgage or charge

A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge.

Pursuant to section 395 of the Companies Act 1985

To the Registrar of Companies  
(Address overleaf - Note 6)

For official use

Company number



FC026157

Name of company

\* Insert full name  
of Company

\* Merrill Lynch International Bank Limited

Date of creation of the charge

7 October 2008

Description of the instrument (if any) creating or evidencing the charge (note 2)

Assignment Agreement dated 7 October 2008 between Merrill Lynch International Bank Limited (the "Assignor") and Bank of America, N A (the "Administrative Agent") (the "Assignment")

Amount secured by the mortgage or charge

The Claims shall serve as collateral in order to secure the prompt and complete satisfaction and discharge in full of any and all Secured Obligations. For defined terms, please refer to Part II of the Schedule to this Form 395, unless defined elsewhere in this Form 395

To

Names and addresses of the mortgagees or persons entitled to the charge

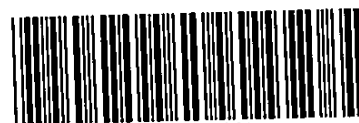
Bank of America, N A , 335 Madison Avenue, 5th Floor

New York, New York 10017, United States

Postcode 10017

Presenter's name address and  
reference (if any)Sullivan & Cromwell LLP  
1 New Fetter Lane  
London EC4A 1ANFor official Use (02/06)  
Mortgage Section

MONDAY



\*LG9KU4B3\*

LD3

27/10/2008

28

COMPANIES HOUSE

Time critical reference

Short particulars of all the property mortgaged or charged

Please refer to Part 1 (Particulars of the Assignment Agreement) of the Schedule to this Form 395

Please do not  
write in  
this margin

*Please complete  
legibly, preferably  
in black type, or  
bold block lettering*

Particulars as to commission allowance or discount (note 3)

N/A

*A fee is payable  
to Companies  
House in  
respect of each  
register entry  
for a mortgage  
or charge  
(See Note 5)*

Signed **SULLIVAN T CROMWELL LLP**

Date 27 October, 2008

On behalf of [company] ~~[mortgagee/chargee]~~†

† delete as  
appropriate

## Notes

- 1 The original instrument (if any) creating or evidencing the charge, together with these prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of creation of the charge (section 395). If the property is situated and the charge was created outside the United Kingdom delivery to the Registrar must be effected within 21 days after the date on which the instrument could in due course of post, and if dispatched with due diligence, have been received in the United Kingdom (section 398). A copy of the instrument creating the charge will be accepted where the property charged is situated and the charge was created outside the United Kingdom (section 398) and in such cases the copy must be verified to be a correct copy either by the company or by the person who has delivered or sent the copy to the registrar. The verification must be signed by or on behalf of the person giving the verification and where this is given by a body corporate it must be signed by an officer of that body. A verified copy will also be accepted where section 398(4) applies (property situate in Scotland or Northern Ireland) and Form No. 398 is submitted.
- 2 A description of the instrument, eg "Trust Deed", "Debenture", "Mortgage", or "Legal charge", etc, as the case may be, should be given.
- 3 In this section there should be inserted the amount or rate per cent of the commission, allowance or discount (if any) paid or made either directly or indirectly by the company to any person in consideration of his
  - (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, or
  - (b) procuring or agreeing to procure subscriptions, whether absolute or conditional,for any of the debentures included in this return. The rate of interest payable under the terms of the debentures should not be entered.
- 4 If any of the spaces in this form provide insufficient space the particulars must be entered on the prescribed continuation sheet.
- 5 A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge. Cheques and Postal Orders are to be made payable to **Companies House**.
- 6 The address of the Registrar of Companies is Companies House, Crown Way, Cardiff CF14 3UZ.

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## SCHEDULE TO FORM 395

### PART I: PARTICULARS OF THE ASSIGNMENT AGREEMENT

#### 1. Assignment

- 1 1 The Assignor has assigned for security purposes all of the Assigned Collateral to the Administrative Agent. The Assignor transferred the Claims and Related Rights pertaining thereto to the Administrative Agent. The Claims shall serve as collateral in order to secure the prompt and complete satisfaction and discharge in full of any and all Secured Obligations.
- 1 2 The Assignor and the Administrative Agent agreed that the Assigned Collateral existing at the date of the Assignment would pass over to the Administrative Agent on the execution of the Assignment, and any Assigned Collateral arising thereafter would pass over to the Administrative Agent on the date such Assigned Collateral arises.

#### 2. Continuing Security

The Assignor has agreed that the Assignment shall create a continuing security and no change or amendment whatsoever in any Loan Document or in any document or agreement related thereto shall affect the validity or, save, for the avoidance of doubt, for any future extensions of the Secured Obligations, the scope of the Assignment nor the obligations which are imposed on the Assignor pursuant to it.

#### 3. Negative Pledge

The Assignor has agreed that it would not sell, lease, exchange, assign or otherwise dispose of, or grant any option with respect to, or create or permit to subsist any Lien (other than a Permitted Lien) on, any of the Assigned Collateral without the prior written consent of the Administrative Agent; such consent is not to be unreasonably withheld or delayed.

#### 4. Blocked Accounts

- 4 1 The Assignor undertook to procure that all amounts to be paid to it under any Assigned Agreement or in respect of any of the Assigned Collateral are paid by the relevant person directly into a Blocked Account and that the Assignor would instruct each relevant facility agent or similar responsible for making payments under each Assigned Agreement (each a Paying Agent) to make payments due to the Assignor directly into the Blocked Account.
- 4 2 The Assignor agreed that

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- (a) Except with the prior consent of the Administrative Agent or as provided below and/or in the Control Deed the Assignor may not withdraw any moneys (including interest) standing to the credit of any Blocked Account
  - (b) The Administrative Agent (or a Receiver) may (subject to the payment of any claims having priority to this Security and to the Control Deed) withdraw amounts standing to the credit of any Blocked Account
  - (c) The Assignor may require the Administrative Agent to apply funds in the Blocked Account to (i) prepay principal amounts outstanding under the Loan Documents or (ii) to pay interest or other amounts due and payable under the Loan Documents, in each case owed or payable by the Assignor
  - (d) The Administrative Agent has sole signing rights on each Blocked Account. The Assignor has no access to any amount standing to the credit of any Blocked Account subject to sub-Clause 5.4 of the Assignment and the Control Deed

## **5. Power of Attorney**

- 5.1 Each of the Beneficiaries authorized and granted power of attorney to the Administrative Agent to
- (a) make and receive all declarations and statements which are necessary or desirable in connection with this Agreement,
  - (b) realize the Assigned Collateral, and
  - (c) undertake all other necessary or desirable actions and measures

- 5.2 The Administrative Agent shall be exempt from the restrictions of § 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and any similar prohibitions of self-dealing under the laws of other jurisdictions

## **6. Reassignment and Release of Security in Case of Over-Collateralization**

- 6.1 After the full and complete satisfaction of the Release Conditions, the Administrative Agent shall (at the cost, if any, of the Assignor) reassign to the Assignor the Assigned Collateral and surrender the excess proceeds, if any, resulting from any realization of the Assigned Collateral. The Administrative Agent will, however, transfer any Assigned Collateral to a third party to the extent that it is obliged to do so
- 6.2 Even prior to the full and complete satisfaction of all Release Conditions, the Administrative Agent is obliged to release upon the Assignor's request all or part of the security insofar as the realizable value of the security exceeds, not only temporarily, the Secured Obligations by more than 10%. The Administrative Agent may, at its discretion, determine which part of the Security shall be released

## PART II: DEFINITIONS

In this Form 395

**"Account Bank"** means Bank of America, N A,

**"Aggregate Commitments"** means, at any time, the aggregate amount of all Commitments in effect at such time. The Aggregate commitments on the date of the Credit Agreement are \$7,500,000,000,

**"Assigned Agreements"** means the agreements identified in Schedule 1 to the Assignment and as set out in Part III of this Schedule, as modified, supplemented, amended or restated from time to time,

**"Assigned Collateral"** means the Claims together with all Related Rights in respect of the Assigned Agreements and Claims,

**"Blocked Accounts"** means the accounts listed in Schedule 2 to the Assignment, in each case held with the Account Bank,

**"Borrower"** means Merrill Lynch & Co , Inc or any Borrowing Subsidiary,

**"Borrowing"** means Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of Eurocurrency Revolving Loans, as to which a single Interest Period is in effect,

**"Borrowing Subsidiary"** has the meaning given to it in the Credit Agreement,

**"Business Day"** means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed, provided, that when used in connection with a Eurocurrency Revolving Loan, the term "Business Day" shall exclude any day on which banks are not open for dealings in deposits in US Dollars in the London interbank market,

**"Claims"** means any and all present and future receivables (*Forderungen*) and any other rights (*Rechte*) and claims (*Ansprüche*) (including non-monetary claims and rights to create, alter and terminate (*Gestaltungsrechte*)) the Assignor holds or will or may at any time in the future hold pursuant to or in connection with the Assigned Agreements against any other party thereto or thereunder (including, for the avoidance of doubt against the Facility Agent and against the Security Agent as defined in the Assigned Agreements),

**“Collateral”** means all property on which a Lien is granted or purports to be granted to the Administrative Agent pursuant to the Security Documents. When used with a respect to a specific Grantor, the term “Collateral” means all its property on which such a lien is granted or purports to be granted,

**“Control Deed”** means a deed dated 7 October 2008 between the Assignor, the Administrative Agent and the Account Bank (as therein defined) in respect of the Blocked Accounts,

**“Credit Agreement”** means a USD 7,500,000,000 Credit Agreement dated 26 September 2008 among, among others, Merrill Lynch & Co., Inc., the Borrowing Subsidiaries party thereto, including the Assignor, the Lenders (as therein defined) party thereto and the Administrative Agent, as modified, supplemented, amended or restated from time to time,

**“Effective Date”** means the first Business Day on which the conditions specified in Section 4.01 of the Credit Agreement are satisfied (or waived in accordance with Section 10.02 of the Credit Agreement),

**“Eurocurrency”**, when used in reference to any Revolving Loan or Borrowing, means that such Revolving Loan, or the Revolving Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Eurocurrency Rate,

**“Eurocurrency Rate”** means, with respect to any Eurocurrency Borrowing for any Interest Period, the rate per annum determined by the Administrative Agent at approximately 11:00 a.m., London time, on the Quotation Day for such Interest Period by reference to the British Bankers’ Association Interest Settlement Rates for deposits in US Dollars (as reflected on the applicable Reuters screen), for a period equal to such Interest Period, provided that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the “Eurocurrency Rate” shall mean the average (rounded upward, if necessary, to the next 1/100 of 1%) of the rates per annum at which deposits in US Dollars are offered for such Interest Period to the principal London offices of the Administrative Agent in the London interbank market at approximately 11:00 a.m., London time, on the Quotation Day for such Interest Period,

**“Federal Funds Rate”** means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight [Federal] funds transactions with members of the [Federal Reserve System] arranged by [Federal] funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three [Federal] funds brokers of recognized standing selected by it,

**“Grantors”** means Merrill Lynch & Co., Inc. and the Subsidiary Grantors including the Assignor,

“**Interest Period**” means, with respect to any Eurocurrency Borrowing, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period for such Eurocurrency Borrowing (as applicable) and ending on the first or seventh day thereafter, as the applicable Borrower may elect, provided that if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would extend past the Maturity Date, in which case such Interest Period shall end on the next preceding Business Day. For purposes of the Credit Agreement, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion of such Borrowing,

“**Lien**” means, with respect to any asset, any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset,

“**Loan Documents**” means the Credit Agreement, the Security Documents and each promissory note delivered pursuant to the Credit Agreement,

“**Maturity Date**” has the meaning given to such term in the Credit Agreement,

“**Obligations**” means (a) the principal of and premium, if any, and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Revolving Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (b) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of Merrill Lynch & Co., Inc. or any other Borrower under the Credit Agreement or any other Loan Document,

“**Permitted Lien**” means (i) the Transaction Liens and (ii) any other Liens on the Collateral permitted to be created or assumed or to exist pursuant to Section 6.02 of the Credit Agreement,

“**Post-Petition Interest**” means any interest that accrues after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of any one or more of the Grantors (or would accrue but for the operation of applicable bankruptcy or insolvency laws), whether or not such interest is allowed or allowable as a claim in any such proceeding,

“**Quotation Day**” means, with respect to any Eurocurrency Borrowing and any Interest Period, the second Business Day prior the first day of such Interest Period,

“**Related Rights**” means, in respect of any Assigned Collateral

- (a) the proceeds of sale or realization of any part of that Assigned Collateral;

- (b) all rights, remedies, claims (including claims against third parties under insurances or guarantees), contracts, warranties, remedies, security, indemnities or covenants under or in respect of that Assigned Collateral,
- (c) all monies and proceeds (whether in cash or in kind) paid or payable in respect of that Assigned Collateral, and

without limitation to the foregoing, all proceeds of, and all other profits or receipts, in whatever form, arising from the collection, sale, lease, exchange, assignment, licensing or other disposition of, or other realization upon, any Assigned Collateral.

**"Release Conditions"** means, subject to Clause 9.1 of the Assignment, the following conditions for release of all security interests under the Assignment

- a) all Aggregate Commitments under the Credit Agreement shall have been terminated, and
- b) all Secured Obligations shall have been paid in full (other than contingent indemnification and expense reimbursement obligations as to which no claim shall have been asserted)

**"Revolving Loan"** means a loan made pursuant to Section 2.01 of the Credit Agreement,

X **"Secured Obligations"** means the outstanding principal amount of all Loans advanced to the Assignor from time to time under the Credit Agreement, all interest (including Post-Petition Interest) on such Loans and all other actual, contingent, present and/or future obligations and liabilities (whether owed jointly or severally or in any other capacity whatsoever) of the Assignor to any of the Secured Parties under or pursuant to the Loan Documents, each as amended, restated, extended, varied, supplemented or novated from time to time (including without limitation, any increases of principal or interest), including, for the avoidance of doubt, liabilities for damages (*Schadenersatz*) and liabilities based on unjust enrichment (*ungerechtfertigte Bereicherung*), in each case together with all interest, cost, charges and expenses incurred by the Secured Parties (or any of them) in connection with the protection, preservation or enforcement of their respective rights and claims under the Loan Documents or any other document evidencing or securing any such obligations or liabilities to the extent that such interest, costs, charges, and expenses are owed under the Loan Documents,

**"Secured Parties"** means the Administrative Agent, the Lenders (as defined in the Credit Agreement) and the holders from time to time of the Secured Obligations and **"Secured Party"** shall mean any one of them,

**"Security Agreement"** means the Security Agreement, dated 26 September 2008 between, *inter alios*, Merrill Lynch & Co., Inc., the Assignor and the Administrative Agent, as the same may be amended, modified, supplemented or restated from time to time;



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**“Security Documents”** means the Security Agreement and each other security agreement, pledge agreement or other similar instruments or agreements granting or purporting to grant any Lien to secure the Obligations,

**“Subsidiary Grantor”** has the meaning given to such term in the Security Agreement,

**“Transaction Liens”** means the Liens granted by the Assignor under the Security Documents,

**“Type”**, when used in reference to any Revolving Loan or Borrowing, refers to whether the rate of interest on such Revolving Loan, or on the Revolving Loans comprising such Borrowing, is determined by reference to the Eurocurrency Rate or the Federal Funds Rate,

**“US Dollars”, “dollars” or “\$”** refers to lawful money of the United States of America,

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### **PART III: LIST OF ASSIGNED AGREEMENTS**

- (1) Credit Agreement dated August 21, 2007 (EUR 66,150,000 Acquisition Facility and EUR 6,600,000 Capex Facility) for Jakob Holding S à r l as Original Borrower with Merrill Lynch International as Arranger, Merrill Lynch International Bank Limited (London branch) as Original Lender, Merrill Lynch International Bank Limited as Hedge Counterparty, Capita Trust Company Limited as Security Agent and Global Servicing Solutions Germany GmbH as Facility Agent relating to a portfolio of seven properties in Germany, and
- (2) Amendment Agreement dated May 20, 2008 to the Credit Agreement dated August 21, 2007 (EUR 66,150,000 Acquisition Facility and EUR 6,600,000 Capex Facility) for Jakob Holding S à r l as Original Borrower with Merrill Lynch International as Arranger, Merrill Lynch International Bank Limited (London branch) as Original Lender, Merrill Lynch International Bank Limited as Hedge Counterparty, Capita Trust Company Limited as Security Agent and Global Servicing Solutions Germany GmbH as Facility Agent relating to a portfolio of 7 properties in Germany



**CERTIFICATE OF THE REGISTRATION  
OF A MORTGAGE OR CHARGE**

**Pursuant to section 401(2) of the Companies Act 1985**

COMPANY NO. FC26157  
CHARGE NO. 4

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES  
HEREBY CERTIFIES THAT AN ASSIGNMENT AGREEMENT  
DATED 7 OCTOBER 2008 AND CREATED BY MERRILL LYNCH  
INTERNATIONAL BANK LIMITED FOR SECURING ALL MONIES  
DUE OR TO BECOME DUE FROM THE COMPANY TO ANY OF  
THE SECURED PARTIES ON ANY ACCOUNT WHATSOEVER  
UNDER THE TERMS OF THE AFOREMENTIONED INSTRUMENT  
CREATING OR EVIDENCING THE CHARGE WAS REGISTERED  
PURSUANT TO CHAPTER 1 PART XII OF THE COMPANIES ACT  
1985 ON THE 27 OCTOBER 2008

GIVEN AT COMPANIES HOUSE, CARDIFF THE 28 OCTOBER  
2008



*Companies House*  
— for the record —

PS



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES