# Merrill Lynch Bank and Trust Company (Cayman) Limited and Subsidiaries

Consolidated Financial Statements
as of and for the Years Ended
December 31, 2009 and December 26, 2008, and
Report of Independent Auditors

## MERRILL LYNCH BANK AND TRUST COMPANY (CAYMAN) LIMITED AND SUBSIDIARIES

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## Report of Independent Auditors

To the Stockholder and Board of Directors of
Merrill Lynch Bank and Trust Company
(Cayman) Limited:

In our opinion, the accompanying consolidated balance sheet and the related consolidated statements of earnings, of comprehensive income, of changes in stockholder's equity, and of cash flows present fairly, in all material respects, the financial position of Merrill Lynch Bank and Trust Company (Cayman) Limited and Subsidiaries (the "Company") as at December 31, 2009, and the results of their operations and their cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit of these statements in accordance with the auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion. The financial statements of the Company as of December 26, 2008 and for the year then ended were audited by other auditors whose report dated March 27, 2009 expressed an unqualified opinion on those statements.

As discussed in Note 1 to the financial statements, the Company underwent an ownership change on January 1, 2009 from the purchase of Merrill Lynch & Company by Bank of America Corporation.

As discussed in Notes 4 and 10 to the financial statements, the Company, on a recurring basis, enters into significant related party transactions with Merrill Lynch & Company subsidiaries.

March 31, 2010

## MERRILL LYNCH BANK AND TRUST COMPANY (CAYMAN) LIMITED AND SUBSIDIARIES

### CONSOLIDATED BALANCE SHEETS
### AS OF DECEMBER 31, 2009 AND DECEMBER 26, 2008
### (In thousands of United States dollars)

| | 2009 | 2008 |
|---|---|---|
| **ASSETS** | | |
| CASH AND CASH EQUIVALENTS: | | |
| Cash and due from banks | $ 3,199 | $ 3,918 |
| Interbank placements with affiliated companies | - | 9,913 |
| Total cash and cash equivalents | 3,199 | 13,831 |
| INVESTMENT SECURITIES AVAILABLE FOR SALE | 696 | 602 |
| LOANS (Net of allowance for loan losses of $521 in 2009 and $3,550 in 2008) | 1,784,342 | 2,102,976 |
| RECEIVABLES FROM AFFILIATES | 48,414 | 44,892 |
| OTHER ASSETS | 30,440 | 38,111 |
| TOTAL | $ 1,867,091 | $ 2,200,412 |
| **LIABILITIES AND STOCKHOLDER'S EQUITY** | | |
| LIABILITIES: | | |
| Deposits: | | |
| Demand | $ 456,674 | $ 497,510 |
| Time | 828,933 | 1,007,636 |
| Total deposits | 1,285,607 | 1,505,146 |
| DEBT | - | 165,000 |
| PAYABLES TO AFFILIATES | 104,050 | 75,754 |
| UNFUNDED PENSION LIABILITY | 61,892 | 54,603 |
| OTHER LIABILITIES | 7,941 | 13,642 |
| Total liabilities | 1,459,490 | 1,814,145 |
| COMMITMENTS AND CONTINGENCIES (Note 11) | | |
| STOCKHOLDER'S EQUITY: | | |
| Capital | 386,160 | 273,537 |
| Accumulated other comprehensive (loss) income | (2,069) | 864 |
| Retained earnings | 23,510 | 111,866 |
| Total stockholder's equity | 407,601 | 386,267 |
| TOTAL | $ 1,867,091 | $ 2,200,412 |

The accompanying notes are an integral part of these consolidated financial statements.

Allen Braithwaite
Director

Johann Moxam
Director

## MERRILL LYNCH BANK AND TRUST COMPANY (CAYMAN) LIMITED AND SUBSIDIARIES

### CONSOLIDATED STATEMENTS OF EARNINGS
**FOR THE YEARS ENDED DECEMBER 31, 2009 AND DECEMBER 26, 2008**
**(In thousands of United States dollars)**

| | 2009 | 2008 |
|---|---|---|
| INTEREST INCOME: | | |
| Loans | $ 39,896 | $ 102,991 |
| Interest earning deposits with affiliated companies | 243 | 4,601 |
| Other | 86 | 1,373 |
| Total Interest Income | 40,225 | 108,965 |
| INTEREST EXPENSE: | | |
| Deposits | 10,716 | 72,459 |
| Interest rate swap expense - net | 3,022 | 1,452 |
| Other borrowings | 2,993 | 7,521 |
| Total Interest Expense | 16,731 | 81,432 |
| NET INTEREST INCOME | 23,494 | 27,533 |
| PROVISION FOR LOAN LOSSES | 554 | 266 |
| NET INTEREST INCOME AFTER PROVISION FOR LOAN LOSSES | 22,940 | 27,267 |
| NON-INTEREST INCOME: | | |
| Service fee income from affiliated companies | 55,250 | 51,865 |
| Trust administration fees | 29,625 | 34,625 |
| Other | 2,660 | 5,985 |
| Total Non-interest Income | 87,535 | 92,475 |
| NET INCOME | 110,475 | 119,742 |
| NON-INTEREST EXPENSES: | | |
| Compensation and benefits | 51,003 | 43,197 |
| Service fee expense with affiliated companies | 8,851 | 9,778 |
| Occupancy and related depreciation | 3,132 | 3,370 |
| Communication and technology | 2,184 | 2,410 |
| Advertising and market development | 1,247 | 2,208 |
| Professional fees | 2,003 | 2,435 |
| Other | 4,062 | 5,807 |
| Total Non-interest Expenses | 72,482 | 69,205 |
| EARNINGS BEFORE INCOME TAXES | 37,993 | 50,537 |
| INCOME TAX EXPENSE | 14,483 | 772 |
| NET EARNINGS | $ 23,510 | $ 49,765 |

The accompanying notes are an integral part of these consolidated financial statements.

## MERRILL LYNCH BANK AND TRUST COMPANY
## (CAYMAN) LIMITED AND SUBSIDIARIES

**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**
**FOR THE YEARS ENDED DECEMBER 31, 2009 AND DECEMBER 26, 2008**
**(In thousands of United States dollars)**

| | 2009 | 2008 |
|---|---|---|
| NET EARNINGS | $ 23,510 | $ 49,765 |
| OTHER COMPREHENSIVE INCOME (LOSS), net of tax: | | |
| Foreign currency translation adjustment (1) | (3,395) | 19,877 |
| Net change in unrealized loss on investment securities available for sale (2) | (3) | (174) |
| Net actuarial gain (loss) (3) | 1,329 | (1,477) |
| Total other comprehensive (loss) income | (2,069) | 18,226 |
| COMPREHENSIVE INCOME | $ 21,441 | $ 67,991 |

(1) Net of Tax Expense of $2,094 and $0 for 2009 and 2008, respectively.
(2) Net of Tax Expense of $2 and $0 for 2009 and 2008, respectively.
(3) Net of Tax Benefit of $819 and $0 for 2009 and 2008, respectively.

The accompanying notes are an integral part of these consolidated financial statements.

# MERRILL LYNCH BANK AND TRUST COMPANY (CAYMAN) LIMITED AND SUBSIDIARIES

## CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDER'S EQUITY FOR THE YEARS ENDED DECEMBER 31, 2009 AND DECEMBER 26, 2008

**(In thousands of United States dollars, except shares and per share amounts)**

| | 2009 | 2008 |
|---|---|---|
| CAPITAL | | |
| Share Capital (12,000 ordinary shares with par value $1 per share) - Balance - beginning and end of year | $ 12 | $ 12 |
| | | |
| Share Premium: | | |
| Balance - beginning of year | 273,525 | 273,525 |
| Transfer of prior year's cumulative retained earnings due to Purchase Accounting | 111,866 | - |
| Reclass of prior year's accumulated other comprehensive income balance due to Purchase Accounting | 864 | - |
| Bank of America Acquisition adjustment | (107) | - |
| Balance - end of year | 386,160 | 273,537 |
| | | |
| ACCUMULATED OTHER COMPREHENSIVE (LOSS) INCOME: | | |
| Foreign currency translation adjustment: | | |
| Balance - beginning of year | 6,518 | (12,475) |
| Transfer of foreign currency translation, due to Purchase Accounting | (6,518) | - |
| Translation adjustment, including impact of taxes | (3,395) | 19,877 |
| Distributions | - | (884) |
| Balance - end of year | (3,395) | 6,518 |
| | | |
| Net unrealized loss on investment securities available for sale: | | |
| Balance - beginning of year | (8) | 166 |
| Transfer of unrealized loss on investment securities available for sale, due to Purchase Accounting | 8 | - |
| Net change in unrealized loss on investment securities available for sale | (3) | (174) |
| Balance - end of year | (3) | (8) |
| | | |
| Defined benefit pension plan: | | |
| Balance - beginning of year | (5,646) | (4,150) |
| Transfer of defined benefit pension plan, due to Purchase Accounting | 5,646 | - |
| Net actuarial gains (losses) - net of tax | 1,329 | (1,477) |
| Distributions | - | (19) |
| Balance - end of year | 1,329 | (5,646) |
| Total balance - end of year | (2,069) | 864 |
| | | |
| RETAINED EARNINGS: | | |
| Balance - beginning of year | 111,866 | 66,019 |
| Transfer of retained earnings, due to Purchase Accounting | (111,866) | - |
| Net earnings | 23,510 | 49,765 |
| Adjustment to apply ASC 715 measurement date provision | - | (1,687) |
| Distributions | - | (2,231) |
| Balance - end of year | 23,510 | 111,866 |
| | | |
| TOTAL STOCKHOLDER'S EQUITY | $ 407,601 | $ 386,267 |

The accompanying notes are an integral part of these consolidated financial statements.

## MERRILL LYNCH BANK AND TRUST COMPANY (CAYMAN) LIMITED AND SUBSIDIARIES

### CONSOLIDATED STATEMENTS OF CASH FLOWS
### FOR THE YEARS ENDED DECEMBER 31, 2009 AND DECEMBER 26, 2008
### (In thousands of United States dollars)

| | 2009 | 2008 |
|---|---|---|
| CASH FLOWS FROM OPERATING ACTIVITIES: | | |
| Net earnings | $ 23,510 | $ 49,765 |
| Noncash items excluded from earnings: | | |
| Depreciation and amortization | 475 | 601 |
| Stock compensation expense | 92 | 531 |
| Deferred taxes | (176) | (38) |
| Provision for loan losses | 554 | 266 |
| Changes in operating assets and liabilities: | | |
| Receivables from affiliates | (3,522) | 39,610 |
| Payables to affiliates | 28,204 | (23,631) |
| Unfunded pension liability | 7,289 | (1,994) |
| Other liabilities | (5,701) | 358 |
| Other assets | 7,372 | 16,897 |
| Other, net | 1,232 | (2,451) |
| Net cash provided by operating activities | 59,329 | 79,914 |
| CASH FLOWS FROM INVESTING ACTIVITIES: | | |
| Purchases of securities available-for-sale | - | (100) |
| Maturities of securities available-for-sale | - | 200,000 |
| Net decrease in loans | 318,080 | 235,077 |
| Net cash provided by investing activities | 318,080 | 434,977 |
| CASH FLOWS FROM FINANCING ACTIVITIES: | | |
| Cash in ML Belgium - see Note 1 | - | (4,293) |
| Repayment of long-term borrowing | (165,000) | - |
| Proceeds from long-term borrowing | - | 65,000 |
| Paydown of other borrowings | - | (2,459) |
| Net increase (decrease) in demand deposits | (40,836) | 279,814 |
| Net decrease in time deposits | (178,703) | (995,837) |
| Bank of America Acquisition adjustment | (107) | - |
| Net cash used in financing activities | (384,646) | (657,775) |
| Effect of exchange rate changes on cash | (3,395) | 18,993 |
| NET DECREASE IN CASH AND CASH EQUIVALENTS | (10,632) | (123,891) |
| CASH AND CASH EQUIVALENTS—Beginning of year | 13,831 | 137,722 |
| CASH AND CASH EQUIVALENTS—End of year | $ 3,199 | $ 13,831 |
| SUPPLEMENTAL CASH FLOW INFORMATION - Cash paid for: | | |
| Interest | $ 19,001 | $ 87,064 |
| Income Taxes | $ 618 | $ 1,021 |

SUPPLEMENTAL DISCLOSURE OF NONCASH ACTIVITIES - During 2008, the Company distributed its shares of ML Belgium at book value to MLIHI. Net assets distributed were $3,134.

The accompanying notes are in integral part of these consolidated financial statements.

## 1. DESCRIPTION OF BUSINESS

Merrill Lynch Bank and Trust Company (Cayman) Limited (the "Company"), a wholly owned subsidiary of Merrill Lynch Cayman Holdings Incorporated, or MLCHI, which in turn is a wholly owned subsidiary of Merrill Lynch International Holdings, Inc., or MLIHI, consists of a banking division (the "Banking Division") and non-banking division (the "Non-Banking Division"). The Company's intermediate parent company is Merrill Lynch & Co., Inc. ("ML & Co.") which is a wholly-owned subsidiary of Bank of America Corporation ("Bank of America"). The Company is registered under the laws of the Cayman Islands and holds a Category "A" Banking and Trust License subject to the provisions of the Banks and Trust Companies Law.

The Company's most significant business is the Banking Division, which conducts banking and trust operations for customers of its affiliates. The Banking Division maintains branches in the Isle of Man and Singapore, which perform administration duties associated with the Banking Division's trust business. The branches do not engage in deposit taking, lending, or foreign currency trading activities. The Company has a subsidiary in Uruguay, whose primary activities consist of intercompany lending and business development for other ML & Co. entities. The Banking Division conducts business with non-resident client corporations, non-resident high net worth individuals, and other financial institutions. The Banking Division's principal products include secured loans, interbank placements, deposits from private clients, and foreign exchange transactions.

In December 2008, the Company distributed its shares of one of its subsidiaries, Merrill Lynch, Pierce, Fenner & Smith Belge SA ("ML Belgium"), to MLIHI, at book value.

During 2008, the Company purchased $1,069,000 of secured loans that were initially originated by Merrill Lynch Bank USA (MLBUSA) that are collateralized by securities and other financial assets held by an affiliate of the Banking Division. In conjunction with the purchase of 2008 secured loans, the Company issued $65,000 of debt.

On January 1, 2009, ML & Co. was acquired by Bank of America Corporation ("Bank of America") through the merger of a wholly owned subsidiary of Bank of America with and into ML & Co. with ML & Co. continuing as the surviving corporation and a wholly owned subsidiary of Bank of America. As a result of the merger, all of the direct and indirect subsidiaries of ML & Co. including the Company, have become indirect subsidiaries of Bank of America. Bank of America's cost of acquiring ML & Co has been pushed down to form a new accounting basis for ML & Co. and the Company. Due to the liquidity and short term nature of the assets and liabilities, the Company's carry-over basis has been maintained and as a result the fair value adjustment to the Company's balance sheet was immaterial. As a result of the acquisition, the components of the Company's shareholder's equity were reclassified to paid-in-capital on January 1, 2009. In addition, it was determined that no goodwill or intangible assets were to be pushed-down from ML & Co. to the Company's consolidated financial statements due to its immateriality to ML & Co.

Effective January 1, 2009, the Company adopted calendar year-end reporting periods to coincide with those of Bank of America. The intervening period between the Company's previous fiscal year end (December 26, 2008) and the beginning of the new calendar reporting period (January 1, 2009) (the stub period) is included in the 2009 consolidated financial statements.

## 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**Basis of Presentation** — The consolidated financial statements are presented in accordance with accounting principles generally accepted in the United States of America, which include industry practices. Intercompany transactions and balances have been eliminated in consolidation. The consolidated financial statements are presented in U.S. dollars.

In presenting the consolidated financial statements, management makes estimates regarding the outcome of litigation, the allowance for loan losses, the realization of deferred tax assets, and other matters that affect the reported amounts and disclosure of contingencies in the financial statements. Estimates, by their nature, are based on judgment and available information. Therefore, actual results could differ from those estimates and could have a material impact on the consolidated financial statements, and it is possible that such changes could occur in the near term.

In July 2009, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Codifications ("ASC") 105, *Generally Accepted Accounting Principles,* (ASC 105), which approved the FASB Accounting Standards Codification (the "Codification") as the single source of the authoritative non-governmental GAAP. All existing accounting standards have been superseded and all other accounting literature not included in the Codification will be considered non-authoritative. All accounting references within these consolidated financial statements are in accordance with the new Codification.

**Currency Translation** — The consolidated financial statements are presented in U.S. dollars. Non-U.S. subsidiaries have a functional currency (i.e., the currency in which activities are primarily conducted) that is other than the U.S. dollar, often the currency of the country in which a subsidiary is domiciled. Subsidiaries' assets and liabilities are translated to U.S. dollars at year-end exchange rates, while revenues and expenses are translated at average exchange rates during the year. Adjustments that result from translating amounts in a subsidiary's functional currency, net of related tax effects, are reported in stockholder's equity as a component of accumulated other comprehensive income (loss). All other translation adjustments are included in earnings. The Banking Division maintains a matched book in its currency position. As such, changes in the foreign exchange rates for money market transactions are covered daily with an affiliate to avoid any significant fluctuations in net earnings.

**Foreign Exchange Transactions** — The Banking Division enters into foreign exchange contracts to facilitate currency conversions for its customers, as well as to minimize its currency exposure. Foreign exchange contracts are valued daily with realized and unrealized gains and losses reflected in non-interest income or expense as Other, as appropriate.

**Fair Value of Financial Instruments** — The Company's financial instruments consist of cash and cash equivalents, investment securities available-for-sale, loans, deposits, and certain other assets and liabilities, all of whose fair values approximate their carrying value.

ASC 820, *Fair Value Measurements and Disclosures*, ("Fair Value Accounting") defines fair value, establishes a framework for measuring fair value, establishes a fair value hierarchy based on the quality of inputs used to measure fair value and enhances disclosure requirements for fair value measurements.

Fair values for derivative financial instruments, principally forwards and swaps, represent amounts that would be received from, or paid to, a third party in settlement of these instruments. These amounts are determined using pricing models based on the net present value of estimated future cash flows and directly observed prices from exchange-traded derivatives, or external pricing services.

**Derivatives** — The Company accounts for all derivatives as receivables from affiliates and payables to affiliates at fair value under ASC 815, *Derivative and Hedging* (“Derivative Accounting”). The changes in fair value of the derivative are recorded in earnings.

**Interest Rate Swaps (IRS)** — The Banking Division enters into IRSs for the purpose of managing its overall interest rate risk. IRSs are valued daily with realized and unrealized gains and losses recorded as interest income or expense, as appropriate.

**Market Risk** — Market risk is the potential change in an instrument’s value caused by fluctuations in interest and currency exchange rates, equity and commodity prices, credit spreads, and other risks. The level of market risk is influenced by the volatility and the liquidity in the markets in which financial instruments are traded.

The Company uses a combination of cash instruments and derivatives to hedge its market exposures. The following discussion describes the types of market risk faced by the Company.

*Interest Rate Risk* — Interest rate risk arises from the possibility that changes in interest rates will affect the value of financial instruments. Interest rate swap agreements are common interest rate risk management tools. The decision to manage interest rate risk using swap contracts, as opposed to buying or selling short other instruments, depends on current market conditions and funding considerations.

*Currency Risk* — Currency risk arises from the possibility that fluctuations in foreign exchange rates will impact the value of financial instruments. Currency forwards and options are commonly used to manage currency risk associated with these instruments. Currency swaps may also be used in situations where a long-dated forward contract is not available or where the end user needs a customized instrument to hedge a foreign currency cash flow stream.

*Credit Risk* — The Company is exposed to risk of loss if an issuer or a counterparty fails to perform its obligations under contractual terms (“default risk”). Both cash instruments and derivatives expose the Company to default risk.

The notional or contractual value of derivatives does not represent default risk exposure. Default risk is limited to the current cost of replacing derivative contracts in a gain position. Default risk exposure varies by type of derivative.

To reduce default risk, the Company typically requires collateral on certain derivative transactions. From an economic standpoint, the Company evaluates default risk exposure net of related collateral. In addition to obtaining collateral, the Company attempts to mitigate default risk on derivatives by entering into transactions with provisions that enable the Company to terminate or reset the terms of the derivative contract.

*Concentrations of Credit Risk* — The Company’s exposure to credit risk, both default and credit spread, associated with its trading and lending activities is measured on an individual counterparty basis as well as by groups of counterparties that share similar attributes. Concentrations of credit risk can be affected by changes in political, industry, or economic factors. To reduce the potential for risk concentration, credit limits are established and monitored in light of changing counterparty and market conditions.

As of December 31, 2009 and December 26, 2008, the Company’s most significant concentration of credit risk is with affiliates. This concentration arises in the normal course of business.

**Cash and Cash Equivalents** — The Company defines cash equivalents as short-term, highly liquid securities and interest-earning deposits with maturities, when purchased, of three months or less, other than those used for trading purposes.

**Investment Securities Available-for-Sale** — The Company accounts for all Investment Securities Available-for-Sale at fair value under ASC 320, *Investments – Debt and Equity Securities* ("Investment Accounting"). Securities to be held for unspecified periods of time, including securities that management intends to use as part of its asset/liability strategy or that may be sold in response to changes in interest rates, changes in prepayment risk, or other similar factors, are classified as available-for-sale and are carried at fair value. The fair value of investment securities is based on quoted market prices or pricing models. Unrealized gains or losses are reported within accumulated other comprehensive income (loss), which is a separate component of stockholder's equity. Management reviews all available-for-sale securities at least on a quarterly basis to determine whether any impairment is other than temporary. Factors considered in the review include estimated future cash flows, length of time and extent to which market value has been less than amortized cost, the Company's intent to hold the securities and the lack of a requirement to sell the securities before recovery of their costs bases. Any unrealized losses deemed other than temporary are included in current-period earnings. Realized gains and losses are reclassified into earnings using the specific identification method upon realization.

**Loans** — Loans are carried at their principal amount outstanding, net of the allowances for loan losses. All loans are classified as held for investment. Interest income from loans is recognized as earned, based upon the principal amount outstanding over the term of the related instruments.

**Allowance for Loan Losses** — The allowance for loan losses is based upon management's estimate of the amount necessary to maintain the allowance at a level adequate to absorb probable loan losses.

Management's estimate of loan losses is influenced by many factors, including adverse situations that may affect the borrower's ability to repay, current economic conditions, prior loan loss experience, and the estimated value of any underlying collateral. The fair value of collateral is generally determined by quoted market prices for securities and estimates of fair value for other assets. Management's estimates of loan losses include considerable judgment about collectibility based on available facts and evidence at the balance sheet date and the uncertainties inherent in those assumptions. While management uses the best information available on which to base its estimates, future adjustments to the allowance may be necessary, based on changes in the economic environment or variances between actual results and the original assumptions used by management.

Management, considering current information and events regarding the borrowers' ability to repay their obligations, considers a loan to be impaired when it is probable that the Company will be unable to collect all amounts due according to the contractual terms of the loan. When a loan is considered to be impaired, the amount of the impairment is measured based on the present value of expected future cash flows discounted at the loan's effective interest rate. Alternatively, measurement may also be based on observable market prices or, for loans that are solely dependent on the collateral for repayment, measurement may be based on the fair value of the collateral. Impairment losses are included in the allowance for loan losses through a charge to the provision.

**Equipment and Facilities** — Equipment and facilities primarily consist of technology hardware, facility and non technology equipment, and leasehold improvements. Equipment and facilities with a historical cost of $12,742 and $12,788 as of December 31, 2009 and December 26, 2008, respectively, and net of accumulated depreciation and amortization of $11,861 and $11,341 as of December 31, 2009 and December 26, 2008, respectively, totaled $881 and $1,447 as of December 31, 2009 and December 26, 2008, respectively, and are included in other assets in the accompanying consolidated balance sheets. Depreciation and amortization are computed using the straight-line method. Equipment is depreciated over its estimated useful life (which range from three to five years), while leasehold improvements are amortized over the lesser of the improvement's estimated economic useful life or the term of the lease. Maintenance and repair costs are expensed as incurred.

Included in the occupancy and related depreciation expense category was depreciation and amortization of $229 and $285 in 2009 and 2008, respectively. Depreciation and amortization recognized in the communications and technology expense category was $246 and $316 for 2009 and 2008, respectively.

**Deposits** — Demand deposits are interest-bearing accounts that the depositor is entitled to withdraw at any time without prior notice. Time deposits are accounts that have a stipulated maturity and interest rate. Depositors holding time deposits may recover their funds prior to the stated, maturity but may pay a penalty to do so.

**Pension Plan** — The Company accounts for its defined benefit pension plans in accordance with ASC 715-20-50, *Compensation-Retirement Benefits, Defined Benefit Plans-General* ("Defined Benefit Plan Accounting"). Defined Benefit Plan Accounting requires the recognition of a plan's overfunded or underfunded status as an asset or liability, measured as the difference between the fair value of plan assets and the benefit obligation, with an offsetting adjustment to accumulated other comprehensive income/(loss). Defined Benefit Plan Accounting also requires the determination of the fair values of a plan's assets at a company's year end and recognition of actuarial gains and losses, prior service costs or credits, and transition assets and obligations as a component of accumulated other comprehensive income/(loss). Under the provisions of Defined Benefit Plan Accounting, the Company changed its measurement date to coincide with its fiscal year-end effective December 26, 2008. The Company adopted the measurement date provisions of Defined Benefit Plan Accounting under the alternative transition method.

**Trust Accounts** — Funds held by the Banking Division in fiduciary or agency capacities are not included in the accompanying consolidated financial statements, as such items are not assets of the Company.

**Stock-Based Compensation** — The Company accounts for stock-based compensation expense in accordance with ASC 718, *Compensation — Stock Compensation,* ("Stock Compensation Accounting"), under which compensation expense for share-based awards that do not require future service are recorded immediately, while those that do require future service are amortized into expense over the relevant service period. Further, expected forfeitures of share-based compensation awards for non-retirement-eligible employees are included in determining compensation expense.

ML & Co. adopted Stock Compensation Accounting under the modified prospective method whereby the provisions of Stock Compensation Accounting are generally applied only to share-based awards granted or modified subsequent to adoption. The Company is allocated its portion of expenses related to Stock Compensation Accounting awards.

Prior to the adoption of Stock Compensation Accounting, ML & Co. had recognized expense for share-based compensation over the vesting period stipulated in the grant for all employees. This included those who had satisfied retirement eligibility criteria but were subject to a non-compete agreement that applied from the date of retirement through each applicable vesting period. Previously, ML & Co. had accelerated any unrecognized compensation cost for such awards if a retirement-eligible employee left ML & Co. However, because Stock Compensation Accounting applies only to awards granted or modified in 2006, and thereafter, expenses for share-based awards granted prior to 2006 to employees who were retirement-eligible with respect to those awards must continue to be amortized over the stated vesting period.

**Income Taxes** — The Company is a foreign branch of Merrill Lynch Cayman Holdings Incorporated ("MLCHI"). MLCHI is included in the U.S. Federal income tax return and certain state income tax returns of Bank of America. The Company is treated as a disregarded entity for U.S. tax purposes and as such, all items of the Company's income and expense are treated as the income and expense of MLCHI. Therefore, the Company accrues tax at MLCHI tax rate.

During 2007, the Company received approval from the Cayman Islands government exempting it from all local income, profits and capital gains taxes until February 19, 2028. As of December 31, 2009, no such taxes are levied in the Cayman Islands.

The Company provides for income taxes on all transactions that have been recognized in the Consolidated Financial Statements in accordance with ASC 740, *Income Taxes* ("Income Tax Accounting"). Accordingly, deferred taxes are adjusted to reflect the tax rates at which future taxable amounts will likely be settled or realized. The effects of tax rate changes on deferred tax liabilities and deferred tax assets, as well as other changes in income tax laws, are recognized in net earnings in the period during which such changes are enacted. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts that are more-likely-than-not to be realized. Pursuant to Income Tax Accounting, the Company may assess various sources of evidence in the conclusion as to the necessity of valuation allowances to reduce deferred tax assets to amounts more-likely-than-not to be realized, including the following: 1) past and projected earnings, including losses, of the Company, the Parent and Bank of America, as certain tax attributes such as U.S. net operating losses ("NOLs"), U.S. capital loss carryforwards and foreign tax credit carryforwards can be utilized by Bank of America in certain income tax returns, 2) tax carryforward periods, and 3) tax planning strategies and other factors of the legal entities, such as the intercompany tax-allocation policy.

The Company recognizes and measures its unrecognized tax benefits in accordance with Income Tax Accounting. The Company estimates the likelihood, based on their technical merits, that tax positions will be sustained upon examination considering the facts and circumstances and information available at the end of each period. The Company adjusts the level of unrecognized tax benefits when there is more information available, or when an event occurs requiring a change. In accordance with Bank of America's policy, any new or subsequent change in an unrecognized tax benefit related to a Bank of America state consolidated, combined or unitary return in which the Company is a member will not be reflected in the Company's balance sheet. However, upon Bank of America's resolution of the item, any material impact determined to be attributable to the Company will be reflected in the Company's balance sheet. The Company accrues income-tax-related interest and penalties, if applicable, within income tax expense.

Beginning with the 2009 tax year, the Company's results of operations are included in the U.S. Federal income tax return and certain state income tax returns of Bank of America as described above. The method of allocating income tax expense is determined under the intercompany tax allocation policy of Bank of America. This policy specifies that income tax expense will be computed for all Bank of America subsidiaries generally on a separate company method, taking into account the tax position of the consolidated group and the Company. Under this policy, tax benefits associated with net operating losses (or other tax attributes) of the Company are payable to the Company upon the earlier of the utilization in the filing of Bank of America's returns or the utilization in the Company's pro forma returns. See Note 12 for further discussion of income taxes.

## 3. NEW ACCOUNTING PRONOUNCEMENTS

In December 2009, the FASB amended ASC 860, *Transfers and Servicing*. This amendment will be effective January 1, 2010 and modifies the criteria to achieve sale accounting. This amendment did not impact the Company's consolidated financial statements.

In May 2009, the FASB issued ASC 855, *Subsequent Events*, which provides general standards of accounting for and disclosure of event that occur after the balance sheet date but before the financial statements are issued or available to be issued. In addition, disclosure of the date through which an entity has evaluated subsequent events is required as well as the basis for the date. The adoption of this standard, effective June 30, 2009, did not impact the Company's consolidated financial statements. The Company evaluated subsequent events through March 31, 2010**.**

In April 2009, the FASB amended Fair Value Accounting to provide guidance for determining whether a market is inactive and a transaction is distressed. The Company elected to early adopt the amendments effective January 1, 2009. The adoption did not have a material impact on the Company's consolidated financial statements.

In April 2009, the FASB amended ASC 825, *Financial Instruments*, ("Financial Instruments Accounting"), to require expanded disclosure for all financial instruments within its scope, such as loans that are not measured at fair value through earnings. The Company adopted the amendments during the second quarter of 2009. Since the amendments only require certain additional disclosures, they did not affect the Company's consolidated financial statements.

In April 2009, the FASB amended ASC 805-10, *Business Combination*, whereby assets acquired and liabilities assumed in a business combination that arise from contingencies should be recognized at fair value on the acquisition date if fair value can be determined during the measurement period. If fair value cannot be determined, companies should typically account for the acquired contingencies using existing guidance. This new guidance is effective for the new acquisitions consummated on or after January 1, 2009. Bank of America applied this guidance to its January 1, 2009 acquisition of ML & Co. and the effects of the adoption were not material to these consolidated financial statements.

In April 2009, the FASB amended Investment Accounting to require that an entity recognize the credit component of an other-than-temporary impairment of a debt security in earnings and the noncredit component in Other Comprehensive Income ("OCI") when the entity does not intend to sell the security and it is more likely than not that the entity will not be required to sell the security prior to recovery. The amendments also require expanded disclosures. The Company elected to early adopt the amendments effective January 1, 2009 and the adoption did not have a material impact on the consolidated financial statements, as any OCI that the Company previously recorded was eliminated upon Bank of America's acquisition of ML & Co. The amendments did not change the recognition of other-than-temporary impairment for equity securities.

In March 2008, the FASB amended Derivatives Accounting to improve transparency in financial reporting by requiring enhanced disclosures of an entity's derivative instruments and hedging activities and their effects on the entity's financial position, financial performance, and cash flows. The amendments apply to all derivatives instruments within the scope of Derivatives Accounting. The amendments also apply to non-derivative hedging instruments and all hedged items designated and qualifying as hedges under Derivatives Accounting. The amendments require additional qualitative and quantitative disclosures for derivatives instruments and hedging activities set forth in Derivatives Accounting and generally increase the level of disaggregation required in an entity's financial statements. Additional disclosure include qualitative disclosures about objectives and strategies for using derivatives, quantitative disclosures about fair value amounts of gains and losses on derivatives instruments, and disclosures about credit-risk related contingent features in derivatives agreements. The Company adopted the amendments to Derivatives Accounting on January 1, 2009, effective prospectively. Since the amendments only resulted in certain additional disclosures, they did not have an effect on the Company's consolidated financial position, results of operations or cash flows.

## 4. RELATED-PARTY TRANSACTIONS

The Company receives service fee income for conducting banking and trust operations for customers of affiliates. Receivables from affiliates include loans and deposits with affiliated companies. Interest is accrued on these amounts at prevailing short-term rates. The remaining balances of receivables from affiliates are service fee related and are non-interest bearing.

Payables to affiliates include loans from affiliated companies on which interest is accrued at prevailing short-term rates. The Company also enters into other derivative transactions, such as swaps and forwards, with its affiliates, which are included in receivables and payables with affiliates.

In 2008, the Company entered into a deposit facility agreement with Merrill Lynch International Inc. ("MLI") to accept MLI clients' deposits as money-market deposits, which are held and identified in a separate account from MLI. As of December 31, 2009, MLI clients' deposits amounted to $225,000.

In 2009, Moorgate Funding Limited ("MFL"), an affiliate of the Company, placed funds on deposit with the Company pursuant to Moorgate Funding Limited's obligation to hold separately identifiable cash funds on deposit at a level determined periodically. As of December 31, 2009, MFL clients' deposits amounted $28,202.

The summary of balances and transactions with affiliated companies as of and for the years ended December 31, 2009 and December 26, 2008, is as follows:

| | 2009 | 2008 |
|---|---|---|
| Interbank placements with affiliated companies | $ - | $ 9,913 |
| Receivables from affiliates | 48,414 | 44,892 |
| Total assets | $ 48,414 | $ 54,805 |
| Debt | $ - | $ 165,000 |
| MLI demand deposit | 225,000 | 335,000 |
| Moorgate Funding Limited time deposit | 28,202 | - |
| ML & Co. demand deposit | 21,300 | - |
| Payables to affiliates | 104,050 | 75,754 |
| Total liabilities | $ 378,552 | $ 575,754 |
| Service fee income from affiliated companies | $ 55,250 | $ 51,865 |
| Interest income on deposits with affiliated companies | 243 | 4,601 |
| Total income | $ 55,493 | $ 56,466 |
| Interest expense related to deposits with affiliates | $ 572 | $ 1,809 |
| Interest expense related to debt | 2,526 | 6,683 |
| Interest expense related to MLI demand deposit | 541 | 6,333 |
| Interest expense related to Moorgate Funding Limited time deposit | 151 | - |
| Interest rate swap expense - net | 3,022 | 1,452 |
| Service fee expense with affiliated companies | 8,851 | 9,778 |
| Total expense | $ 15,663 | $ 26,055 |

See Note 10, for disclosures of foreign exchange forward contracts, currency swaps, forward rate agreements, and interest rate swaps entered into with affiliates.

## 5. INVESTMENT SECURITIES AVAILABLE-FOR-SALE

Securities have been classified in the consolidated balance sheets according to management's intent. The carrying amount of securities available-for-sale and their approximate fair value as of December 31, 2009 and December 26, 2008, were as follows:

| | 2009 | | | |
|---|---|---|---|---|
| | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Approximate Fair Values |
| Singapore Gov. Treasury Bills - other | $ 699 | $ - | $ (3) | $ 696 |

| | 2008 | | | |
|---|---|---|---|---|
| | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Approximate Fair Values |
| Singapore Gov. Treasury Bills - other | $ 610 | $ 1 | $ (9) | $ 602 |

All securities available-for-sale as of December 31, 2009, are due in one year or less and have been in an unrealized loss position for less than 12 months.

## 6. LOANS

Loans as of December 31, 2009 and December 26, 2008, consist of the following:

| | 2009 | 2008 |
|---|---|---|
| Three months or less | $1,446,609 | $1,632,165 |
| Less than six months, greater than three months | 61,837 | 114,902 |
| Less than one year, greater than six months | 85,613 | 95,141 |
| Greater than one year | 190,804 | 264,318 |
| Less allowance for loan losses | (521) | (3,550) |
| Loans — net | $1,784,342 | $2,102,976 |

During the year ended December 31, 2009 and December 26, 2008, the Company recorded $554 and $266 of provisions for loan losses, respectively. There were no significant loan charge-offs or recoveries of loans during 2009 and 2008.

In the normal course of business, the Banking Division enters into loans with customers. These loans are primarily collateralized by diversified marketable securities (equities and bonds) and other financial assets held by affiliates of the Banking Division. These activities expose the Banking Division to risks arising from the potential that customers may fail to satisfy their obligations and the collateral will be insufficient. In these situations, the Banking Division may be required to sell financial instruments at unfavorable market prices to satisfy obligations of its customers.

## 7. DEPOSITS

Substantially, all demand and time deposits were in denominations of $100 or more as of December 31, 2009 and December 26, 2008, and their scheduled maturities are as follows:

| | 2009 | 2008 |
|---|---|---|
| With agreed maturity dates or period notice by remaining maturity: | | |
| Three months or less but not repayable on demand | $ 690,696 | $ 901,970 |
| One year or less but over three months | 133,386 | 105,586 |
| Over one year | 4,851 | 80 |
| Repayable on demand | 456,674 | 497,510 |
| Total | $1,285,607 | $1,505,146 |

The effective weighted-average interest rates for deposits as of December 31, 2009 and December 26, 2008, were 0.69% and 1.64%, respectively.

## 8. DEBT

During 2007, the Company entered into a credit facility with ML & Co., which provides for a maximum available borrowing of up to $200,000. As of December 31, 2009 and December 26, 2008 the outstanding amount under the credit facility was $0 and $165,000, respectively. The Company incurred interest expense of $2,421 and $6,683 related to this credit facility during the years ended December 31, 2009, and December 26, 2008, respectively. The credit facility does not have any financial or non-financial covenants.

In addition, during 2007, the Company entered into a credit facility with ML & Co., which provides for maximum available borrowing of up to $2,000,000. As of December 31, 2010, there were no amounts outstanding under the credit facility. The credit facility matures on December 19, 2009. The Company did not incur interest expense related to this credit facility during the year ended December 31, 2009. The credit facility does not have any financial or non-financial covenants.

In 2007, the Company also entered into an uncommitted credit facility with ML & Co., which provided for a maximum available borrowing of up to $5,000,000. As of December 31, 2009, there were no amounts outstanding under the credit facility. The uncommitted credit facility matures on December 7, 2017. The Company did not incur interest expense related to this credit facility during the year ended December 31, 2009. The credit facility does not have any financial or non-financial covenants.

## 9. EMPLOYEE BENEFIT PLANS

See Note 1 for a discussion of the Bank of America acquisition of ML & Co., which was completed on January 1, 2009. Effective January 1, 2009 the pension plans sponsored by  ML & Co. were assumed by Bank of America.

The Company participates in an employee compensation plan sponsored by ML & Co. which provides eligible employees with stock and options to purchase shares. Compensation and benefits expense included $92 and $ 531 related to this plan as of December 31, 2009 and December 26, 2008, respectively. Payables to affiliates included $ 23,545 and $23,453 in accrued liabilities related to this plan as of December 31, 2009 and December 26, 2008, respectively.

The Company provides retirement and other post-employment benefits to its employees worldwide through defined contribution and defined benefit pension plans and other post-retirement benefit plans sponsored by ML & Co. and the Company. ML & Co. reserves the right to amend, modify, or terminate these plans at any time for any reason without prior notice to employees.

The U.S. defined contribution plans sponsored by ML & Co. consist of the Retirement Accumulation Plan (the “RAP”), the Employee Stock Ownership Plan (the “ESOP”), and the 401(k) Savings & Investment Plan (the “401(k)”). The RAP, ESOP and 401(k) cover substantially all U.S. employees who have met certain service requirements.

Employees of ML & Co.’s non-U.S. subsidiaries participate in various local defined benefit plans. These plans provide benefits that are generally based on years of credited service and a percentage of the employee’s eligible compensation during the final years of employment. ML & Co.’s funding policy has been to contribute annually the amount necessary to satisfy local funding standards. The Third Country National Defined Benefit Pension (the “TCN Plan”) is the responsibility of the Company and serves as the pension plan for various non-U.S. expatriate employees. The costs of the TCN Plan are ultimately allocated back to the Merrill Lynch affiliates for which the employees provide services.

There were no participant contributions made to the TCN Plan for the years ended December 31, 2009 and December 26, 2008. The Company is the sole contributor to the Plan. During 2009 and 2008, the Company contributed in the amounts of $1,602 and $1,739 to pay benefits to participants. The Company expects to make contributions to the TCN Plan in the amount of $2,008 for expected benefit payments to participants in 2010. The accumulated benefit obligation for the TCN Plan was $97,020 and $80,761 at December 31, 2009 and December 26, 2008, respectively.

Total net periodic benefit cost for the years ended December 31, 2009 and December 26, 2008, included the following components:

| | 2009 | 2008 |
|---|---|---|
| Service costs | $ 5,340 | $ 5,184 |
| Interest costs | 5,609 | 4,579 |
| Expected return on plan assets | (1,818) | (1,858) |
| Amortization of prior service costs | - | (496) |
| Amortization of actuarial (gain)/loss | - | 238 |
| Total net periodic benefit cost | $ 9,131 | $ 7,647 |

Pension expense for the Company amounted to $4,536 and $3,115 for the years ended December 31, 2009 and December 26, 2008, respectively, and was fully reimbursed as service-fee income from Merrill Lynch International Incorporated. The remainder of the net periodic benefit cost was allocated to other Merrill Lynch affiliates.

The following table provides the status of the TCN Plan's projected benefit obligations, fair value of the TCN Plan assets, and funded status for the periods ended December 31, 2009 and December 26, 2008 and the amounts recognized in the Company's consolidated balance sheets at year-end 2009 and 2008.

| | **2009** | **2008** |
|---|---|---|
| Projected benefit obligation — beginning of year | $ 90,445 | $ 77,358 |
| Adjustment to Service cost and Interest Cost | | |
| due to Change in Measurement Date | - | 2,441 |
| Effect of Purchase Accounting | (2,315) | - |
| Service cost | 5,340 | 5,184 |
| Interest cost | 5,609 | 4,579 |
| Actuarial loss | 1,426 | 2,622 |
| Benefits paid | (1,602) | (1,739) |
| Projected benefit obligation — end of year | 98,903 | 90,445 |
| Fair value of plan assets — beginning of year | 35,842 | 32,318 |
| Effect of Purchase Accounting | (4,224) | - |
| Actual return on plan assets | 5,393 | 3,524 |
| Employer contribution | 1,602 | 1,739 |
| Benefits paid | (1,602) | (1,739) |
| Fair value of plan assets — end of year | 37,011 | 35,842 |
| Unfunded Pension Liability — end of year | $ (61,892) | $ (54,603) |

Amounts recognized in accumulated other comprehensive loss, pre-tax, at year-end 2009 and 2008 consisted of ($2,149) and $12,966 in net actuarial (gains) losses, as well as $0 and $7,320 in prior service credits, respectively. In order to comply with the intercompany tax allocation policy of Bank of America and as result of the acquisition, the accumulated other comprehensive (gains) after-tax was ($1,329) as of December 31, 2009. There are no estimated net (gains) losses or prior service costs (credits) that will be amortized from accumulated other comprehensive loss into net periodic benefit cost over the next fiscal year.

The weighted-average assumptions used in calculating the projected benefit obligation at December 31, 2009 and December 26, 2008, are as follows:

| | **2009** | **2008** |
|---|---|---|
| Discount Rate | 5.8% | 6.3% |
| Rate of compensation increase | 3.0 | 3.0 |

The weighted-average assumptions used in calculating the net periodic cost for the years ended December 31, 2009 and December 26, 2008, are as follows:

| | 2009 | 2008 |
|---|---|---|
| Discount Rate | 6.0% | 6.0% |
| Rate of compensation increase | 3.0 | 4.0 |
| Expected long-term return on plan assets | 5.8 | 5.8 |

The expected long-term rate of return on the TCN Plan assets reflects the average rate of earnings expected on the funds invested or to be invested to provide for the benefits included in the projected benefit obligation. The rate reflects estimates by the TCN Plan investment advisors of the expected returns of different asset classes held by the TCN Plan in light of prevailing economic conditions at the beginning of the fiscal year.

The assets of the TCN Plan are invested prudently so that the benefits promised to members are provided, having regard to the nature and duration of the TCN Plan's liabilities. Generally, the planned investment strategy is set following an asset-liability study and advice from the Trustee's investment advisors. The asset allocation strategy selected is designed to achieve a higher return than the lowest risk strategy while maintaining a prudent approach to meet the TCN Plan's liabilities. The table below sets forth the composition of plan assets by asset category:

| | Target allocation | 2009 |
|---|---|---|
| Debt securities (1) | 100.0% | 100.0% |
| | 100.0% | 100.0% |

(1) Primarily invested in long term government bonds.

Expected benefit payments associated with the TCN Plan for the next five years, and in the aggregate for the five years thereafter are as follows:

| **Year** | |
|---|---|
| 2010 | $ 2,008 |
| 2011 | 2,160 |
| 2012 | 2,205 |
| 2013 | 2,252 |
| 2014 | 2,436 |
| 2015 through 2019 | 16,176 |

## 10. FINANCIAL INSTRUMENTS

Certain of the Banking Division's financial instruments have off-balance sheet risk of loss, which may consist of market and/or credit risk in excess of amounts recorded on the consolidated balance sheets. Financial instruments with off-balance sheet market risk include derivatives and certain commitments.

A derivative is an instrument whose value is "derived" from an underlying instrument or index, such as a future, forward, swap, or option contract or other financial instrument with similar characteristics. Derivative contracts often involve future commitments to exchange interest payment streams or currencies based on a notional or contractual amount (e.g., interest rate swaps or currency forwards) or to purchase or sell other financial instruments at specified terms on a specified date (e.g., options to buy or sell securities or currencies).

The Banking Division enters into foreign exchange forward contracts and currency swaps with affiliates for hedging foreign currency positions including the U.S. dollar costs of future foreign currency requirements. Delayed delivery and forward contracts are transactions in which one party agrees to deliver securities or a currency to counterparty at a specified price on a specified date. Parties to a currency swap initially exchange principal amounts in two currencies, agreeing to exchange interest payments and to re-exchange the currencies at a future date and exchange rate. The Banking Division is exposed to market risk associated with the possibility of unfavorable changes in currency exchange rates and the market price of the underlying financial instruments.

The Banking Division enters into IRS with affiliates to manage its overall interest rate risk. These agreements generally fix an interest spread between a rate earned and rate paid; any change in actual interest rates results in an amount paid or received under the agreement based on a notional amount. Any amounts paid or received under these rate agreements are recorded as adjustments to interest expense.

Derivative instruments contain numerous market risks. In particular, most derivatives have interest rate risk, as they contain an element of financing risk which is affected by changes in interest rates. Additionally, derivatives expose the Company to counterparty credit risk. For disclosure purposes below, the primary risk of derivative is largely determined by the business that is engaging in the derivative activity.

The following table identifies the notional and fair value of outstanding derivative instruments at December 31, 2009 and December 26, 2008:

| | 2009 | | 2008 | |
|---|---|---|---|---|
| | **Notional** | **Fair Value** | **Notional** | **Fair Value** |
| Foreign exchange forward contracts and currency swaps — long | $ 503,159 | $ 416 | $ 429,190 | $ (2,473) |
| Foreign exchange forward contracts and currency swaps — short | 14,538 | 141 | 8,213 | 85 |
| Interest Rate Swaps | 618,323 | (11,416) | 305,750 | (12,579) |

The fair value of these instruments is recorded in receivable from affiliates and payables to affiliates, as applicable, in the accompanying consolidated balance sheets as of December 31, 2009 and December 26, 2008, respectively. The interest income or interest expense impact of these instruments is recorded in the consolidated statement of earnings.

The notional or contractual amounts of these instruments do not represent the Banking Division's exposure to credit risk.

Substantially, all of the above transactions are entered into with the Banking Division's swaps and foreign exchange dealer affiliates, which intermediate the interest rate and currency risk with third parties in the normal course of their trading activities.

Changes in the fair value of derivatives are recorded in Interest Expense on the consolidated income statement. The following table identifies the amount in Interest Expense related to derivative instruments by primary risk:

For The Year-Ended December 31, 2009

| | **Interest Expense** |
|---|---|
| Foreign Exchange Risk | $ (6,953) |
| Interest Rate Risk | 9,975 |
| Total trading | $ 3,022 |

## 11. COMMITMENTS AND CONTINGENCIES

**Litigation** — From time to time, the Company is named as a defendant in legal actions and arbitrations, arising in connection with its normal course of business. Although the ultimate outcome of these actions cannot always be ascertained and the results of legal proceedings cannot be predicted with certainty, it is the opinion of management that the resolution of these matters will not have a material adverse effect on the Company's consolidated financial statements. As of December 31, 2009, there was no pending or potentially threatening litigation against the Company.

The Company may explore potential settlements before a case is taken through trial because of the uncertainty, risks, and costs inherent in the litigation process. In accordance ASC 450, *Contingencies,* the Company will accrue a liability when it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. In many lawsuits it is not possible to determine whether a liability has been incurred or to estimate the ultimate or minimum amount of that liability until the case is close to resolution, in which case no accrual is made until that time.

**Leases** — The Company has entered into various non cancelable long-term operating lease agreements for premises and equipment. The Company has also entered into various non cancelable short-term operating lease agreements that are primarily commitments of less than one year under equipment leases.

As of December 31, 2009, future non cancelable minimum rental commitments under leases with remaining terms exceeding one year are presented below:

| | |
|---|---|
| 2010 | $ 1,781 |
| 2011 | 1,785 |
| 2012 | 1,188 |
| 2013 | 1,252 |
| 2014 through 2018 | 3,153 |
| Total | $ 9,159 |

The Company recorded rent expense of $2,015 and $2,418 for the years ended December 31, 2009 and December 26, 2008, respectively.

## 12. INCOME TAXES

The income tax provision on earnings for the years ended December 31, 2009 and December 26, 2008, consisted of:

| | 2009 | 2008 |
|---|---|---|
| U.S. federal | | |
| Current | $ 12,296 | $ - |
| Deferred | (154) | - |
| U.S. state, local, and other | | |
| Current | 1,867 | - |
| Deferred | (22) | - |
| Foreign | | |
| Current | 496 | 810 |
| Deferred | - | (38) |
| Total | $ 14,483 | $ 772 |

The corporate statutory U.S. federal tax rate is 35%. A reconciliation of the statutory U.S. federal income tax to the Company's effective tax expense follows:

| | 2009 | 2008 |
|---|---|---|
| U.S. federal income tax at statutory rate | $ 13,298 | $ - |
| U.S state and local income taxes, net | 1,199 | - |
| Other | (14) | - |
| Total | $ 14,483 | $ - |

At December 31, 2009, the Company had a current tax payable to ML & Co. of $14, 361.

Deferred income taxes are provided for the effects of temporary differences between the tax basis of an asset or liability and its reported amounts in the consolidated balance sheet. These temporary differences result in taxable or deductible amounts in future years.

The Company's deferred tax assets at December 31, 2009 and December 26, 2008, which are included in Other Assets, are comprised of:

| Deferred Tax Asset | 2009 | 2008 |
|---|---|---|
| Loan Loss Reserve | $ 199 | $ - |
| Cumulative Translation Adjustment | 2,095 | 104 |
| Total Deferred Tax Asset | $ 2,294 | $ 104 |

| Deferred Tax Liability | 2009 | 2008 |
|---|---|---|
| Other Liabilities | (296) | (166) |
| Deferred Tax Liability | $ (296) | $ (166) |
| | | |
| Net Deferred Tax Asset | $ 1,998 | $ (62) |

ML & Co. is under examination by the Internal Revenue Service ("IRS") and other tax authorities in countries and states in which it has significant business operations. The Company is included in the income tax returns of ML & Co. which are filed in multiple state jurisdictions each year and are under continuous examination by various state taxing authorities. While many of these examinations are resolved every year, the Company does not anticipate that resolutions occurring within the next twelve months would result in a material change to the Company's financial position.

The table below summarizes the status of significant tax examinations, by jurisdiction as of December 31, 2009:

| Jurisdiction | Years under examination[1] | Status at December 31, 2009 |
|---|---|---|
| U.S. Federal | 2004 | In appeals process |
| U.S. Federal | 2005-2007 | Field examination |

The Company is subject to examination by local tax authorities in two countries - Spain and Lebanon for the 2006 – 2009 tax years.

At December 31, 2009, the Company did not have any liabilities for unrecognized tax benefits.

## 13. FAIR VALUE

**Fair Value Hierarchy** — In accordance with Fair Value Accounting, the Company has categorized its financial instruments, based on the priority of the inputs to the valuation technique, into a three-level fair value hierarchy. The fair value hierarchy gives the highest priority to quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). Financial assets and liabilities recorded on the consolidated balance sheets are categorized based on the inputs to valuation techniques as follows:

*Level 1* — Financial assets and liabilities whose values are based on unadjusted quoted prices for identical assets or liabilities in an active market that the Company has the ability to access.

*Level 2* — Financial assets and liabilities whose values are based on quoted prices in markets that are not active or model inputs that are observable either directly or indirectly for substantially the full term of the asset or liability. Level 2 inputs include the following:

a. Quoted prices for similar assets or liabilities in active markets.

b. Quoted prices for identical or similar assets or liabilities in non-active markets.

c. Pricing models whose inputs are observable for substantially the full term of the asset or liability (examples include most over-the-counter, derivatives, including interest rate and currency swaps); and

[1] All subsequent tax years in the jurisdictions above remain open to examination.

d. Pricing models whose inputs are derived principally from or corroborated by observable market data through correlation or other means for substantially the full term of the asset or liability.

*Level 3* — Financial assets and liabilities whose values are based on prices or valuation techniques that require inputs that are both unobservable and significant to the overall fair value measurement. These inputs reflect management's own assumptions about the assumptions a market participant would use in pricing the asset or liability.

As required by Fair Value Accounting, when the inputs used to measure fair value fall within different levels of the hierarchy, the level within which the fair value measurement is categorized is based on the lowest level input that is significant to the fair value measurement in its entirety, For example, a Level 3 fair value measurement may include inputs that are observable (Levels 1 and 2) and unobservable (Level 3).

A review of fair value hierarchy classifications is conducted at least on an annual basis. Changes in the observability of valuation inputs may result in a reclassification for certain financial assets or liabilities. Reclassifications impacting Level 3 of the fair value hierarchy are reported as transfers in/out of the Level 3 category as of the beginning of the year in which the reclassifications occur.

The Company's fair value hierarchy for those assets and liabilities measured at fair value on a recurring basis as of December 31, 2009, is as follows:

| | **Level 1** | **Level 2** | **Level 3** | **Total** |
|---|---|---|---|---|
| Assets: | | | | |
| Investment securities available for sale | $ - | $ 696 | $ - | $ 696 |
| Foreign exchange forward contracts and currency swaps — short | - | 141 | - | 141 |
| Foreign exchange forward contracts and currency swaps — long | - | 416 | - | 416 |
| Liabilities: | | | | |
| Interest rate swaps | - | 11,416 | - | 11,416 |

There were no financial or non-financial assets or liabilities measured at fair value on a non-recurring basis at December 31, 2009.

The Company's fair value hierarchy for those assets and liabilities measured at fair value on a recurring basis as of December 26, 2008, is as follows:

| | Level 1 | Level 2 | Level 3 | Total |
|---|---|---|---|---|
| Assets: | | | | |
| Investment securities available for sale | $ - | $ 602 | $ - | $ 602 |
| Foreign exchange forward contracts and currency swaps — short | - | 85 | - | 85 |
| Liabilities: | | | | |
| Foreign exchange forward contracts and currency swaps — long | - | 2,473 | - | 2,473 |
| Interest rate swaps | - | 12,579 | - | 12,579 |

* * * * * *