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Joint Committee of Inquiry into the Banking Crisis

Witness Statement of

Sally Burke

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- (c) to his or her legal practitioner."¹

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¹ See s.37 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013

**Responses of Merrill Lynch International to
Questions raised by the Joint Committee of Inquiry into the Banking Crisis by
Letter dated 2 June 2015**

Please note that during the relevant time in which Merrill Lynch International (*MLI*) provided advice to the National Treasury Management Agency (*NTMA*), the MLI team consisted of approximately 17 individuals (the *MLI Team*). However, a number of individuals within the MLI Team are no longer employees of MLI. Accordingly, the answers set out below have been drafted with the assistance of a small number of the remaining members of the MLI Team only (the *Remaining MLI Team*).

In order to prepare this response, certain members of the Remaining MLI Team, including Ms Henrietta Baldock, have: (i) to the best of their ability in the limited time available, carried out a targeted review of particular emails for the relevant period; (ii) reviewed the deal file that was created during the NTMA's engagement of MLI; and (iii) considered the documents provided to them by the Joint Committee.

- 1. Provide details of the analysis carried out by Merrill Lynch International in May 2008 where it was reported that commercial property values could drop by 30%.**

Reference: Merrill Lynch International research analyst Philip Ingram warns that commercial property values could drop by 30% DMS .DOF01B01-DOF01706-001.

Please note that Philip Ingram was employed by Merrill Lynch, Pierce, Fenner & Smith, Incorporated (UK) (*MLPF&S (UK)*), and published the research on behalf of MLPF&S (UK), not MLI.

The Research department which publishes Research Notes through MLPF&S (UK) operates independently of the Investment Banking department which provides financial advice through MLI.

According to Merrill Lynch's June 2008 Global Research Policy and Procedures Manual (*ML's Policies and Procedures*), "no Equity Analyst (including such Analyst's assistants) may send an e-mail or other Electronic Communication relating to business to corporate broking ("*IBK*"), equity origination ("*ECM*"), or debt origination, including the Issuer Client Group ("*Debt Origination*") personnel." Moreover, "unreleased Global Research equity reports or other equity research commentary relating to a U.S. Traded Company may not be reviewed or otherwise shared with IBK, ECM or Debt Origination personnel under any circumstances, including for verification of facts or in connection with clearing potential conflicts of interest." Similar restrictions were in place for models and business-related documents.

By reason of ML's Policies and Procedures, the Remaining MLI Team had no knowledge of Philip Ingram's research of May 2008 until it was published. MLI did not assist with the production of the research, and could not have known about its contents prior to publication.

- 2. Outline any contact between any representative of the Irish government or its Agencies following this publication in May 2008 on commercial property.**

The Remaining MLI Team does not have any recollection of speaking with the Irish Government or its Agencies about the May 2008 publication. It has not been possible to track whether any other members of the MLI Team spoke with the Irish Government on this subject.

- 3. Supply a copy of the terms and conditions and scope of the engagement between Merrill Lynch International and the National Treasury Management Agency (NTMA) in September 2008?**

We have enclosed a copy of the engagement letter and extension between MLI and the NTMA, at Appendix A.

- 4. Provide the name, titles, period (years and months), a short description of their role and expertise of the team put in place by Merrill Lynch International in September 2008.**

Henrietta Baldock, then Head of EMEA FIG, had day to day responsibility for the MLI Team. As noted above, the MLI Team was comprised of approximately 16 other individuals each with long standing expertise and experience across a range of specialisations including financial institutions investment banking, corporate finance, debt capital markets, ratings advisory, special product development and real estate investment banking. We regret that we do not have consent to disclose the names of the other members of the MLI Team. Accordingly, as a result of concerns regarding data protection and our duty to respect the privacy of those individuals, we are unable to disclose any further details.

5. Outline external expert advice (non-legal), if any, sought or obtained by Merrill Lynch International during the assignment.

The Remaining MLI Team does not recall seeking any external expert advice, however they do recall PricewaterhouseCoopers (**PWC**) being retained by the NTMA in order to provide the NTMA with advice in relation to accounting, corporate finance and due diligence. PWC's engagement was solely with the NTMA and not the MLI Team.

6. Outline the role played, if any, by representatives of Merrill Lynch International based in Ireland in the procurement of the engagement and during the engagement.

MLI did not have any representatives permanently based in Ireland in 2008. The only individuals who were involved in the procurement of the engagement and the engagement itself were the members of the MLI Team, none of whom were based in Ireland.

7. Provide details of the meeting held on the 25th of September 2008 involving the Taoiseach, Minister for Finance and other representatives of Government and its agencies. Outline the possible interventions discussed and conclusions reached.

Reference: Note of meeting held on the 25/09/2008 involving Merrill Lynch International and Government representatives. DMS DOF 01B02-DOF 03377-001.

The Remaining MLI Team recall that the meeting held on 25 September 2008 was an early, introductory meeting which provided those in attendance from the MLI Team with the opportunity to meet some of the key advisers and stakeholders and be brought up to speed on the latest situation concerning the Irish banks. During the meeting, key individuals gave those in attendance from the MLI Team some high level information. Basil Geoghegan of Goldman Sachs attended the meeting briefly, in order to outline the work that had been completed to date. His presence meant that there were some restrictions on the type of information and level of detail that could be shared between those in attendance. However, he was asked to leave on the grounds that Goldman Sachs would be conflicted from working for the NTMA and Irish Government going forward because of their relationship with Irish Nationwide Building Society (**INBS**). The Remaining MLI Team's recollection of the meeting corresponds with the note of the meeting provided at Appendix B of your letter dated 2 June 2015, in that, during the meeting, no conclusions regarding appropriate interventions were reached, and no advice was given by the MLI Team.

8. Provide details of the meeting held on the 26/09/2008 involving the Minister for Finance and others. Please outline the possible interventions discussed and conclusions reached.

Reference: Note of meeting held on the 26/09/2008 with Merrill Lynch International and D/Finance reps on the 26/09/2008 DMS DOF 01B01-DOF 02254-001.

The purpose of the meeting on 26 September 2008 was for the MLI Team to meet the Minister for Finance and discuss the Irish banking situation in the context of what was happening at that time in Europe and the US. During the meeting, the Minister for Finance requested some written advice from the MLI Team, such as: how the Irish Government should navigate between intervening early in order to protect deposits and allowing time for the markets and management of the Irish banks to realise that there was a problem and make the necessary adjustments; and whether the Irish Government should provide a blanket guarantee for all banks. These questions were addressed to a limited extent at the meeting on 26 September 2008. However, the various options available to the Irish Government, and the advantages and disadvantages associated with those options, were considered in full in the memorandum dated 28 September 2008 and provided to the NTMA on 29 September 2008 (the **MLI Memorandum**) (see answer (11) below). The meeting note provided at Appendix B of your letter dated 2 June 2015 reflects the discursive nature of the meeting.

9. **Provide details of “The information received from and conversations with: PWC regarding Anglo, Goldman Sachs regarding Irish Nationwide, Limited verbal information from the Ministry of Finance and IFSRA”, as referenced in the strategic options for the presentation to the NTMA on the 26/09/2008.**

Reference: Presentation by Merrill Lynch International to the NTMA on the 26/09/2008 DMS DOF 01B02-DOF 03334-001.

Shortly after the appointment of the MLI Team on 23 September 2008, PWC provided the MLI team with a draft due diligence report that PWC had prepared in relation to Anglo Irish Bank (**Anglo**). Two members of the MLI Team attended a meeting with PWC at PWC's offices on 27 September 2008. The meeting was also attended by INBS and Goldman Sachs.

10. **Outline the reasons why Merrill Lynch International did not have any discussions with the management of any of the Irish Banks in preparing the strategic options outlined on the 26/09/2008. What impact or limitation, if any, did this lack of discussion have on the strategic options.**

There was insufficient time between the meeting of 25 September 2008 and meeting of 26 September 2008 to consult with the management of any of the Irish Banks. The MLI Team considered the information provided by its client at the time, the NTMA, and would have considered it inappropriate to engage with other entities that were not clients of MLI. The limitations of the analysis were clearly set out in the MLI Memorandum.

11. **Outline the work plan agreed at the meeting held on the 26/09/2008.**

At the meeting on 26 September 2008, MLI agreed to provide the Minister for Finance with a summary of the options available to him. Those options, and the advantages and disadvantages associated with those options, were set out in the MLI Memorandum, and included immediate liquidity provision, state protective custody, a secured lending scheme, allowing banks to contribute their bad commercial property loans to the State Banks, the consolidation of financial institutions and a guarantee for the six primary regulated banks. In presenting those options, the MLI Team specifically considered INBS, Anglo and Irish Life and Permanent (**IL&P**). PWC was also carrying out ongoing work in relation to Anglo and INBS, as referred to in question 9 above.

12. **Outline the views of Merrill Lynch International on the option of a Guarantee for 6 Primary Regulated Irish Banks on the 26/09/2008.**

The MLI Team presented its views on the guarantee for the 6 primary regulated Irish banks to the NTMA on 26 September 2008. The presentation noted that the advantages of the guarantee were that it was the most decisive and impactful decision from the market's perspective, it would stem outflows and may result in inflows, and it would protect senior and subordinated creditors. However, the presentation noted that there were a number of disadvantages associated with the guarantee, such as whether the market would find it credible given its scale, the question of whether the Irish Government could afford the guarantee, the impact it may have had on Ireland's credit rating, whether it would pass the test with other EU countries, and the question of how long the guarantee would have to last. In considering the guarantee, MLI advised the NTMA to take into account whether INBS and Anglo could be taken into state control, and what the equity market perception of the guarantee would be. In presenting the option of the guarantee, the MLI team also covered quantification, references to the legal analysis the NTMA had received from other advisers, the impact on primary and non-primary regulated banks, the systemic European impact, and timing.

13. **Outline the basis for the statement in the memorandum of the 28/09/2008 "it is important to stress that at present, liquidity concerns aside, all of the Irish banks are profitable and well capitalised".**

As noted in the presentation given by MLI on 26 September 2008, the statement, and indeed all of MLI's analysis, was made on the basis of the information that was provided to the MLI Team at the meetings on 25 and 26 September 2008 and the associated reports, namely: information from PWC regarding Anglo; information from Goldman Sachs regarding INBS; and limited verbal information from the Department of Finance and IFSRA.

- 14. Outline the analysis which supported your assessment that "we have also fully considered and ultimately discounted, one additional outcome - allowing an Irish bank to fail and go into liquidation without any government intervention".**

At the time, the MLI Team considered it to be self-evident that allowing an Irish Bank to fail in a disorderly fashion would have caused systemic problems in the Irish banking system and potentially throughout the European and global banking system. The context surrounding this decision in 2008 must be considered. The MLI Team was instructed by the NTMA shortly after the collapse of Lehman Brothers without US Government support, and was fully cognisant of the impact this had on the global banking system. Moreover, at the time, other governments in Europe were focused on state intervention which included options to nationalise banks rather than allow them to fail without any support and indeed there have not been any further examples since Lehman Brothers of a systemically important bank that was simply left to fail.

- 15. Did Merrill Lynch International provide any further written advice to the Irish government on the options open to the government other than supplied in an email on the 30/09/2008 at 18.43 to Mr Kevin Cardiff by Ms Henrietta Baldock?**

For what purpose, for whom and why was this email requested by Mr Cardiff?

Reference: email from Merrill Lynch International to Mr Kevin Cardiff. DMS DOF 01B02-DOF 03233-001.

MLI provided the Irish Government with a draft note on how to communicate with the rating agencies in the event of government intervention in the banking sector, a copy of which has been enclosed at Appendix B. Beyond that, the Remaining MLI Team is not aware of any other written advice being provided to the Irish Government. Ultimately, the question of for whom and why this email was requested is a question for Mr Cardiff. However, the Remaining MLI Team assumes that Mr Cardiff wanted a written response to present to the Taoiseach and Minister for Finance.

- 16. What communication, written or oral, did Merrill Lynch International representatives receive from Mr Kevin Cardiff, Mr William Beausang, Mr Brendan McDonagh or any other Irish officials prior to the announcement by the Irish Government of a guarantee on the 30/09/2008?**

To the best of the Remaining MLI Team's recollection, prior to the announcement by the Irish Government of a guarantee on 30 September 2008, the only communication with Mr Kevin Cardiff, Mr William Beausang or Mr Brendan McDonagh was an email from Mr McDonagh to a member of the MLI Team at 1:30am which said that the NTMA would be seeking MLI's advice on how to deal with rating agencies and institutional investors. However there was no information regarding which option was to be pursued. There was then a phone call from Mr Cardiff to Ms Baldock at approximately 3:00am on the day of the announcement in which Mr Cardiff informed Ms Baldock of a draft press release regarding the announcement of the guarantee. Ms Baldock was sent the text of the announcement at 4:00am and it was released at 7:00am.

- 17. Who sought the advice on the saleability of assets of Anglo and IL&P which led to the email from Ms Henrietta Baldock on the 29/09/2008 at 21.27 to Brendan McDonagh and Kevin Cardiff?**

Reference: email from Merrill Lynch re initial thoughts on the saleability of assets. DMS DOF 01B01-DOF 01698.001

The Remaining MLI Team are unable to recall who sought the advice on the saleability of assets of Anglo and IL&P but given that it was addressed to Mr McDonagh and Mr Cardiff, would assume that they were the ones who requested it.

- 18. Who sought the advice on how to prepare for an intervention which led to the email from Andreas Mattheus from Merrill Lynch on the 29/09/2008 at 23.54 to Kevin Cardiff and Brendan McDonagh?**

Reference: email from Merrill Lynch to Dept of Finance on what Government should consider were it to take over an institution. DMS DOF 01B01-DOF 01702-001.

As far as the Remaining MLI Team can recall, the advice was requested by Mr Kevin Cardiff and Mr Brendan McDonagh. In response, the MLI Team provided Mr Cardiff and Mr McDonagh with some key points to consider with regard to a possible government intervention.

- 19. Provide a copy of the final signed off memo from Merrill Lynch outlined in the email from Ms Henrietta Baldock on the 29/09/2008 at 10.39 to Kevin Cardiff, Brendan McDonagh and Oliver Whelan.**

We have enclosed a copy of the final memorandum from MLI outlined in the email from Ms Baldock on 29 September 2008 to Mr Cardiff, Mr McDonagh and Mr Whelan at Appendix C.

- 20. Outline the nature of the work engaged in by Merrill Lynch International post the Guarantee decision. Outline the respective roles of Merrill Lynch, PWC and Arthur Cox.**

The MLI Team was engaged by the NTMA until June 2009. Within that role, the MLI Team advised on the state custody of Anglo and asset sales, such as Allied Irish Bank's sale of M&T and BZWBK. The MLI Team also advised the NTMA on: bids for other Irish banks, such as the Malabranca consortium's bid for Bank of Ireland; the impact of consolidating various other Irish banks; the cost of funding Irish banks; the assessment of capital needs; capital injections in Bank of Ireland and Allied Irish Bank; and asset resolution strategies such as the option of a 'bad bank' before NAMA was set up.

As far as the Remaining MLI Team is aware, PWC continued to be responsible for due diligence, and MLI helped to formulate the scope of PWC's role. Arthur Cox remained responsible for the provision of legal advice to the NTMA. The Remaining MLI Team understands that both PWC and Arthur Cox advised on the nationalisation of Anglo and the capital injections into Bank of Ireland and Allied Irish Bank.

- 21. What was the view of Merrill Lynch International to the view expressed by Mr William Beausang in his email of the 10/10/2008 to Matthew Pass of Merrill Lynch that the "Commission have not formed a final view but appear to have a strong concern that it is not appropriate to guarantee dated subordinated debt (Lower Tier 2) on the basis that this safeguards shareholder interests rather than contributing to systemic stability"?**

Matthew Pass is no longer an employee of MLI. The Remaining MLI Team did not keep a contemporaneous record of a response to this point and cannot recall whether a view was formed. Accordingly, we are unable to answer this question.

- 22. Outline the advice given to the Irish Government on "the state aid issues-charging mechanism and dated subordinated debt" referenced in the email from Mr William Beausang to Mr Matthew Pass of the 10/10/2008.**

The advice provided by MLI on the "state aid issues-charging mechanism and dated subordinated debt" related to both the quantum and allocation of the levy to be charged to the six financial institutions and specific questions asked by the EU Commission. In summary, MLI concluded that: (i) the determination of the size of the fee the six financial institutions should be charged was subjective, and input from the EU Commission was desirable in order to set the fee at an appropriate and commercially viable level; and (ii) the spread for the fee across the six financial institutions would require some subjective assessments of the bank in question, and a judgment of that nature should be made by Department of Finance, the Irish Financial Services Regulatory Authority and the Central Bank.

- 23. Outline any direct contact by Merrill Lynch on behalf of the Irish government with European Commission officials relating to the state aid issue and the outcome of any such discussions.**

To the best of the Remaining MLI Team's knowledge, there was no contact between MLI on behalf of the Irish Government and the European Commission relating to the state aid issue.

- 24. Outline the nature of the meeting with the Minister for Finance on the 13/11/2008 to discuss Merrill Lynch's request to join the Bank Guarantee Scheme.**

The meeting with the Minister of Finance on 13 November 2008 was attended by representatives of Merrill Lynch International Bank Limited and not MLI. Accordingly, the Remaining MLI Team is not in a position to comment on the nature of that meeting.

- 25. Comment on the estimate that Merrill Lynch provided in November 2008, which stated that the level of impaired cumulative capital requirements will range from €6.6bn at the current estimate of**

impairment rates to a maximum of €13.1bn based on Merrill Lynch's own analysis which takes account of PWC stress testing for a worst case scenario.

The MLI Team were relying on the information provided by the NTMA and PWC, and based on the information provided, they had no reason to believe the information provided was inaccurate. Moreover, based on peer capital ratios in Europe at the time, the level of capital required would have put Irish banks at the high end of peers. However, it is difficult to evaluate the MLI Team's decision at the time given the Remaining MLI Team's subsequent state of knowledge.

26. Outline the nature of the discussions held between Merrill Lynch representatives and the Citigroup and Deutsche in December 2008 and referred to in a conference call with Mr Kevin Cardiff on the 02/12/2008.

Citigroup represented Bank of Ireland and put forward some proposals on how Bank of Ireland should be recapitalized with government support. There was at least one meeting held between MLI and Citigroup, but it did not lead to any conclusions and the Remaining MLI Team have no notes of the meeting.

Deutsche Bank represented the Irish Fund Managers association and was keen to ensure that equity investor interests were taken into account when considering government intervention with the listed banks.

In the event, the Irish Government undertook capital injections into Allied Irish Bank and Bank of Ireland, which were announced on 21 December 2008. Anglo was taken into public ownership by the State, which was announced on 15 January 2009.

Merrill Lynch International

Date: 16 June 2015

Appendix A
MLI's Engagement Letter and Extension

Appendix B

MLI note on how to communicate with the rating agencies in the event of government intervention in the banking sector

Appendix C

Signed memorandum provided by MLI to the NTMA on 29 September 2008