

ESTTA Tracking number: **ESTTA54215**

Filing date: **11/21/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

### Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

#### Opposer Information

<b>Name</b>	Merrill Lynch & Co., Inc.
<b>Granted to Date of previous extension</b>	11/19/2005
<b>Address</b>	222 Broadway, 17th Floor New York, NY 10038 UNITED STATES

<b>Correspondence information</b>	Oliver Garcia Aegis Law Group LLP 901 F ST NW STE 500 Washington, DC 20004 UNITED STATES ogarcia@aegislawgroup.com, mross@aegislawgroup.com Phone:202-737-3500
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#### Applicant Information

<b>Application No</b>	78457223	<b>Publication date</b>	09/20/2005
<b>Opposition Filing Date</b>	11/21/2005	<b>Opposition Period Ends</b>	11/19/2005
<b>Applicant</b>	Lehman Brothers Inc. 745 Seventh Avenue		

New York, NY 10019 UNITED STATES
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**Goods/Services Affected by Opposition**

Class 036. First Use: 20040721 First Use In Commerce: 20040721 All goods and services in the class are opposed, namely: Automated brokerage services in the fields of options, futures and equity securities
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<b>Attachments</b>	Notice of Opposition.pdf ( 4 pages )
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<b>Signature</b>	/og/
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<b>Name</b>	Oliver Garcia
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<b>Date</b>	11/21/2005
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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MERRILL LYNCH & CO., INC.,            )  
  )  
                  Opposer,                            )  
  )  
                  v.                                    )  
  )  
LEHMAN BROTHERS INC.,                    )  
  )  
                  Applicant.                        )  
\_\_\_\_\_)

Application Serial No.:	78457223
Filed:	July 27, 2004
Mark:	LMX
International Class:	036
Published:	September 20, 2005

**NOTICE OF OPPOSITION**

Merrill Lynch & Co., Inc. (“Merrill Lynch”), a Delaware corporation having a business address at 222 Broadway, 17th Floor, New York, NY 10038, believes that it would be damaged by the registration of the mark LMX as shown in United States Trademark Application Serial No. 78/457,223 filed by Lehman Brothers Inc. (“Lehman”) and published for opposition on September 20, 2005. Accordingly, Merrill Lynch hereby opposes the application for registration of the LMX mark.

Opposer previously requested and received an extension of time until Saturday, November 19, 2005, in which to oppose the application.

The grounds for this Opposition are as follows:

1. Merrill Lynch has for many years offered throughout the United States a variety of financial and other services under or in connection with numerous trademarks. These trademarks include the mark MLX (U.S. Registration No. 2,586,215). Merrill Lynch filed its application to use the MLX mark on April 20, 2000. The MLX mark was published for opposition on February 27, 2001, and was registered on the the principal register on June 25, 2002. Merrill Lynch has used the MLX mark in commerce continuously since June 23, 2000.

2. In addition to the MLX mark, Merrill Lynch also has filed trademark applications for related marks, such as MLX FIRST CLEAR, Serial No. 76/574,338, and MLXPORT, Serial No. 76/623,931.

3. MLX is Merrill Lynch's proprietary Internet platform for institutional clients, hosting functionality ranging from research and analytics to trade execution and post-trade reporting. The MLX platform is a convenient way to allow customers and third parties to interface with Merrill Lynch's wide range of products and services in the global debt markets, global equity markets, global research, and in other areas.

4. By virtue of Merrill Lynch's extensive use and promotion of its MLX mark in connection with Merrill Lynch's goods and services in the United States and abroad, the MLX mark has acquired substantial distinctiveness, goodwill, and secondary meaning as indicating goods and services having their origin exclusively with Merill Lynch. The MLX

mark has priority of use and registration to Lehman's proposed LMX mark.

5. Lehman seeks to register the mark LMX for an automated trading platform for investment securities. Lehman's application recites that its product will offer "Automated brokerage services in the fields of options, futures and equity securities." Lehman advertises LMX as a suite of model-driven equity order execution strategies, offering research capability, algorithmic trading services, and post-trade reporting.

6. Lehman's proposed LMX mark is confusingly similar to Merrill Lynch's MLX mark. The proposed LMX mark consists of the same three letters of Merrill Lynch's MLX mark, with the first two letters transposed and the third letter the same as Merrill Lynch's mark. The MLX and LMX marks are visually and phonetically similar.

7. Lehman's LMX products and services are related to Merrill Lynch's goods and services, use some of the same channels of trade, and are directed to some of the same customers to which Merrill Lynch's goods and services under the MLX mark are directed. Accordingly, Lehman's use of the proposed LMX mark creates a likelihood of confusion that Lehman products and services originate with or are otherwise licensed, sponsored, or authorized by Merrill Lynch.

8. By reason of all the foregoing, Merrill Lynch will be damaged by the registration of Lehman's LMX mark for the goods and services described in Lehman's application.

WHEREFORE, Merrill Lynch requests that this Opposition be sustained, the application be denied, and the registration of LMX to Lehman Brothers Inc. be refused.

Respectfully submitted,

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*Attorneys for Opposer Merrill Lynch & Co., Inc.*

Dated: November 21, 2005