

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

### **Rule 15c3-3 Customer Protection—Reserves and Custody of Securities**

Rule 15c3-3 ("Rule") requires registered broker-dealers to maintain certain records in connection with their compliance with the Rule's requirements that broker-dealers maintain possession and control of and segregate customer funds and securities. Commission staff estimates that the average number of hours necessary for each broker-dealer to make the required computations pursuant to the Rule is 2.5 hours per response. In order to demonstrate compliance with the Rule, approximately 326 broker-dealers choose to make a weekly computation and 127 broker-dealers choose to make a monthly computation. Accordingly, the total is approximately 48,290 hours annually for all broker-dealers, based upon past submissions. The average cost per hour is approximately \$60. Consequently, the staff estimates that the total cost of compliance with the Rule for all broker-dealers is \$2,897,400.

The retention period for the recordkeeping requirement under the Rule is three years following the date of a report prepared pursuant to the rule. The recordkeeping requirement under the Rule is mandatory to assist the Commission with monitoring broker-dealers and ensuring compliance with the Rule. The information collected under this Rule is kept confidential to the extent permitted by the Freedom of Information Act and any other applicable law. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments

must be submitted to OMB within 30 days of this notice.

Dated: December 15, 1997.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-33586 Filed 12-23-97; 8:45 am]

BILLING CODE 8010-01-M

### **SECURITIES AND EXCHANGE COMMISSION**

[Investment Company Act Release No. 22947; 812-10890]

### **Merrill Lynch & Co., Inc., et al.; Notice of Application**

December 19, 1997.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from section 15(a) of the Act.

*Summary of Application:* Applicants seek an order to permit the implementation, without shareholder approval, of new investment advisory or sub-advisory agreements ("New Agreements") between Mercury Asset Management International Limited ("MAM International") and Mercury Asset Management International Channel Islands Ltd. ("MAM Channel Islands") (collectively, the "Advisers") and various registered investment companies (each a "Fund" and collectively, the "Funds") in connection with the acquisition of Mercury Asset Management Group plc ("Mercury") by Merrill Lynch & Co., Inc. ("Merrill Lynch"). The order would cover a period of up to 150 days following the later of the date on which the assignment of the existing investment advisory contracts is deemed to have occurred (i.e., the date Merrill Lynch is deemed to control the issued share capital of Mercury (the "Assignment Date")) or the date upon which the requested order is issued (but in no event later than July 15, 1998) (the "Interim Period"). The order also would permit the Advisers to receive all fees earned under the New Agreements during the Interim Period following shareholder approval.

*Applicants:* Merrill Lynch, Mercury, and the Advisers.

*Filing Dates:* The application was filed on December 10, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 9, 1998, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Merrill Lynch, World Financial Center, North Tower, 250 Vesey Street, New York, New York 10281-1318; Mercury and MAM International, 33 King William Street, London, England EC4R 9AS; MAM Channel Islands, Forum House, Grenville Street, St. Helier, Jersey JE48RL, Channel Islands.

**FOR FURTHER INFORMATION CONTACT:** John K. Forst, Attorney Advisor, at (202) 942-0569, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202-942-8090).

### **Applicant's Representations**

1. Merrill Lynch, through its subsidiaries, provides investment, financing, insurance, and related services on a global basis. Mercury, a holding company whose shares are listed on the London Stock Exchange, provides investment and related services through its subsidiaries on a global basis. The Advisers are investment advisers registered under the Investment Advisers Act of 1940. MAM International provides discretionary international investment portfolio management services to individual and institutional clients. MAM International provides investment advice to its wholly-owned subsidiary, MAM Channel Islands. MAM Channel Islands acts as investment adviser and MAM International acts as sub-adviser for The Europe Fund, Inc. and The United Kingdom Fund Inc., each a management investment company registered under the Act. MAM International also acts as investment sub-adviser to the Global Bond Series of Fortis Series Fund, Inc.,

a management investment company registered under the Act.

2. On November 19, 1997, the boards of directors of Merrill Lynch and Mercury announced that they had agreed on the terms of a recommended cash offer (the "Offer") under which Merrill Lynch, through its newly-formed wholly-owned subsidiary, ML Invest plc, would seek to acquire all of the issued share capital of Mercury (the "Transaction"). Applicants state that, upon completion of the Transaction, it is intended that Mercury will be combined with the worldwide institutional business of Merrill Lynch Asset Management, L.P. and Fund Asset Management, L.P., which are both owned and controlled by Merrill Lynch, to form Merrill Lynch Mercury Asset Management. Applicants expect that all conditions to the Offer, including receipt of all necessary regulatory approvals, will be fulfilled by or after late December 1997.

3. Applicants state that the Transaction could be deemed to result in an assignment of the existing advisory and sub-advisory contracts between the Funds and the Advisers (the "Existing Agreements") and, thus, their automatic termination. Applicants request an exemption to permit implementation, prior to obtaining shareholder approval, of the New Agreements. The requested exemption will cover the Interim Period of not more than 150 days beginning on the later of the Assignment Date or the date of the issuance of the requested order and continuing, in respect of each Fund, through the date on which each New Agreement is approved or disapproved by the respective Fund's shareholders, but in no event after July 15, 1998. Applicants represent that, during the Interim Period, the New Agreements will contain identical terms and conditions as the Existing Agreements, except in each case for the names of the parties, effective dates, termination dates, and the escrow provisions.

4. On December 11, 1997, the board of directors of each Fund (the "Board") met, in accordance with section 15(c) of the Act, so that they could evaluate whether the terms of the New Agreements, including the escrow provisions, are in the best interests of the Funds and their shareholders. Each of the Boards voted to approve the New Agreements in accordance with section 15(c).

5. Applicants submit that it will not be possible to obtain shareholder approval of New Agreements in accordance with section 15(a) of the Act prior to the Assignment Date. Applicants state the each Fund will

promptly schedule a meeting of shareholders to vote on the approval of the New Agreements to be held within 150 days after the commencement of the Interim Period, but in no event later than July 15, 1998.

6. Applicants also request an exemption to permit the Advisers to receive from each Fund all fees earned under the New Agreements during the Interim Period, if and to the extent the New Agreements are approved by the shareholders of each Fund.<sup>1</sup> Applicants state that the fees to be paid during the Interim Period will not be greater than the fees currently paid by the Funds.

7. Applicants propose to enter into escrow arrangements with an unaffiliated financial institution (the "Escrow Agent"). The advisory fees payable by the Funds under the New Agreements during the Interim Period will be paid into an interest-bearing escrow account. The Escrow Agent will pay the amounts in the escrow account (including interest) to the Advisers only after the New Agreements are approved by the shareholders of the relevant Fund in accordance with section 15(a) of the Act. If shareholder approval is not given, the Escrow Agent will return the moneys to the appropriate Fund. Before any such release is made, the Boards will be notified.

#### Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it is unlawful for any person to serve as an investment adviser to a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires that the written contract provide for its automatic termination in the event of its "assignment." Section 2(a)(4) of the Act defines the term "assignment" to include any direct or indirect transfer of an investment advisory contract by the assignor or a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants state that it is possible that Merrill Lynch may be deemed to have obtained control of more than 25%

<sup>1</sup> Applicants state that if the Assignment Date precedes issuance of the requested order, the advisers will continue to serve as investment advisers after the Assignment Date (and prior to the issuance of the order) in a manner consistent with their fiduciary duty to continue to provide advisory services to the Funds even though approval of the new arrangements has not yet been secured from the Funds' shareholders. Applicants also state that the Funds may be required to pay, with respect to the period until receipt of the order, no more than the actual out-of-pocket cost to the Advisers for providing advisory services.

of the voting securities of Mercury as early as mid-December. Applicants state that they are concerned that if an assignment does exist, the Existing Agreements will terminate by their terms.

3. Rule 15a-4 provides, in pertinent part, that if an investment advisory contract with a registered investment company is terminated by an assignment, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that (as) the new contract is approved by the company's board of directors (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (c) neither the adviser nor any controlling person of the adviser "directly or indirectly receive money or other benefit" in connection with the assignment. Applicants state that because Merrill Lynch, Mercury and/or the Advisers may be deemed to receive a benefit in connection with the Transaction, there is a question as to applicants' ability to rely on rule 15a-4. However, applicants submit that granting the requested exemption would be within the spirit of rule 15a-4.

4. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

5. Applicants note that the terms and the timing of the Transaction were determined by Merrill Lynch and Mercury in response to a number of factors beyond to scope of the Act and substantially unrelated to the Funds or the Advisers. Applicants state that it is not possible for the Funds to obtain shareholder approval of the New Agreements prior to the Assignment Date. Applicants submit that the Boards have approved the New Agreements, and the shareholders of the Funds will be further protected by the establishment of the escrow account described in the application.

6. Applicants submit that the Advisers will take all appropriate steps to ensure that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent to the scope

and quality of services previously provided. During the Interim Period, the Advisers would operate under the New Agreements, which would have the same terms and conditions as the respective Existing Agreements, except for the effective dates, termination dates and escrow provisions. Applicants believe that the level of service provided by the Advisers will remain the same under the New Agreements as under the existing ones.

7. Applicants believe that the best interests of shareholders of the Funds would be served by allowing for the implementation of the New Agreements during the Interim Period. Applicants state that allowing the implementation of the New Agreements will ensure that there will be no disruption to the investment program and the delivery of related services to the Funds because the personnel that provide such services to the Funds will remain substantially the same as before the Transaction.

#### **Applicants' Conditions**

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The New Agreements to be implemented following the commencement of the Interim Period will have the same terms and conditions as the respective Existing Agreements, except for the effective dates, termination dates, and escrow provisions.

2. Fees payable to the Advisers by the Funds for the period covered by the order will be maintained during the Interim Period in an interest-bearing escrow account, and will be paid (1) to the Advisers after the requisite approval by shareholders is obtained, or (b) in the absence of such approval, to the relevant Fund.

3. Each Fund will promptly schedule a meeting of shareholders to vote on approval of the New Agreements to be held within 150 days after the commencement of the Interim Period, but in no event later than July 15, 1998.

4. Merrill Lynch and/or Mercury will pay the costs of preparing and filing the application and the costs relating to the solicitation of approval of the Funds' shareholders of the New Agreements.

5. The Advisers will take all appropriate steps to ensure that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the respective Boards, including a majority of the directors who are not "interested persons" of the Funds, as defined in section 2(a)(19) of the Act (the "Disinterested Directors"), to the scope

and quality of services previously provided. In the event of any material change in the personnel providing services pursuant to the advisory agreements, the Advisers will apprise and consult with the Boards of the affected Funds in order to assure that the Boards, including a majority of the Disinterested Directors, are satisfied that the services provided will not be diminished in scope or quality.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-39402A; File No. SR-Amex-97-46]

#### **Self-Regulatory Organizations; Notice of Filing and Order Granting Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Incorporated Relating to the Listing of Commodity Indexed Preferred or Debt Securities**

December 17, 1997.

#### **Notice of Corrections**

On December 4, 1997 the Securities and Exchange Commission ("SEC" or "Commission") issued a notice of filing and order granting immediate effectiveness of proposed rule change by the American Stock Exchange, Incorporated ("Amex") relating to the listing of commodity indexed preferred or debt securities<sup>1</sup> pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act"),<sup>2</sup> and paragraph (e)(6) of Rule 19b-4 under the Act.<sup>3</sup> The following sentence should be deleted from the first paragraph of *Section A—Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*: "[T]he Exchange also will require that the issuer have a minimum tangible net worth of \$150 million."

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

<sup>1</sup> Securities Exchange Act Release No. 34-39402 (December 4, 1997) 62 FR 65459 (December 12, 1997).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4(e)(6).

<sup>4</sup> 17 CFR 200.30-3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-39449; File No. SR-MBSCC-97-08]

#### **Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Electronic Pool Notification Service's Fee Schedule**

December 15, 1997.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on October 22, 1997, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The text of the proposed rule change consists of modifications to the Electronic Pool Notification ("EPN") schedule of charges, which is attached as Exhibit A to the filing.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

#### **(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

MBSCC currently assesses message processing fees as reflected in the EPN Schedule of Charges. MBSCC assesses

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The Commission has modified the text of the summaries prepared by MBSCC.