

In addition, Merrill Lynch satisfies the listed marketplace requirement set forth in Rule 4420(f)(2).<sup>7</sup> Lastly, pursuant to Rule 4420(f)(3), prior to the commencement of trading of the Notes, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. In particular, Nasdaq will advise members recommending a transaction in the Notes to: (1) Determine that such transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

The Notes will be subject to Nasdaq's continued listing criterion for other securities pursuant to Rule 4450(c). Under this criterion, the aggregate market value or principal amount of publicly-held units must be at least \$1 million. The Notes also must have at least two registered and active market makers as required by Rule 4450(a)(6). Nasdaq will also consider prohibiting the continued listing of the Notes if Merrill Lynch is not able to meet its obligations on the Notes.

The Notes are a series of senior non-convertible debt securities of Merrill Lynch that provide for a single payment at maturity. The Notes will have a term of not less than one, nor more than ten, years. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change between the "Starting Index Value" and the "Ending Index Value" (the "Redemption Amount"). The "Starting Index Value" is the value of the Select Ten Index on the date on which Merrill Lynch prices the Notes for the initial sale to the public. The "Ending Index Value" is the value of the Select Ten Index over a period shortly prior to the expiration of the Notes. The "Ending Index Value" will be used in calculating the amount owners will receive upon maturity. The Notes may not have a minimum principal amount that will be repaid and, accordingly, payments on the Notes prior to or at maturity may be less than the original issue price of the Notes. During the designated month each year, investors will have the right to require Merrill Lynch to repurchase

the Notes at a redemption amount based on the value of the Select Ten Index at such repurchase date. The Notes are not callable by Merrill Lynch.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security or any other ownership right or interest in the portfolio securities, although the return on the investment is based on the aggregate portfolio value of the Select Ten Index securities.

The Select Ten Index will consist of the ten stocks with the highest dividend yields among the thirty stocks that comprise the DJIA, adjusted as described below. The Commission has previously approved the listing of options on, and securities the performance of which have been linked to or based on, an index of the top ten dividend yielding stocks of the DJIA.<sup>8</sup> The Commission has also previously approved the listing of securities with a structure identical to that of the Notes.<sup>9</sup>

Components of the Select Ten Index approved pursuant to this filing will meet the following criteria: (1) A minimum market value of at least \$75 million, except that up to 10% of the component securities in the Select Ten Index may have a minimum market value of \$50 million; (2) average monthly trading volume in the last six months of not less than 1 million shares, except that up to 10% of the component securities in the Select Ten Index may have an average monthly trading volume of 500,000 shares or more in the last six months; (3) 90% of the Select Ten Index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Amex Rule 915; and (4) all component stocks will either be listed on the Amex, the NYSE, or traded through the facilities of Nasdaq and reported National Market System securities.

As of January 22, 2003, the market capitalization of the portfolio of securities representing the Select Ten Index ranged from a high of \$124.9 billion to a low of \$9.7 billion. The average monthly trading volume for the last six months, as of the same date, ranged from a high of 288 million shares to a low of 45.2 million shares.

Moreover, as of January 22, 2003, all of the components comprising the portfolio of securities representing the Select Ten Index were eligible for standardized options trading pursuant to Amex Rule 915.

The value of the Select Ten Index at any time will equal: (1) The sum of the products of the current market price for each stock underlying the Select Ten Index and the applicable share multiplier,<sup>10</sup> plus (2) an amount reflecting current calendar quarter dividends, and less (3) a pro rata portion of the annual index adjustment factor.<sup>11</sup> Current quarter dividends for any day will be determined by the Amex and will equal the sum of each dividend paid by the issuer on one share of stock during the current calendar quarter multiplied by the share multiplier applicable to such stock on the ex-dividend date.

As of the first day of the start of each calendar quarter, the Amex will allocate the current quarter dividends as of the end of the immediately preceding calendar quarter to each then outstanding components of the Select Ten Index. The amount of the current quarter dividends allocated to each stock will equal the percentage of the value of such stock contained in the portfolio of securities comprising the Select Ten Index relative to the value of the entire portfolio based on the closing market price of such stock on the last day in the immediately preceding calendar quarter. The share multiplier of each stock will be increased to reflect the number of shares, or portion of a share, that the amount of the current quarter dividends allocated to each stock can purchase of each stock based on the closing market price on the last day in the immediate preceding calendar quarter.

As of the close of business on each anniversary date (May 29th of each year, which is the anniversary of the date the Select Ten Index was originally calculated and disseminated) through the applicable anniversary date in the year preceding the maturity of the Notes, Nasdaq states that the portfolio of securities comprising the Select Ten

<sup>10</sup> The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price on an exchange or Nasdaq, to be included in the calculation of the portfolio.

<sup>11</sup> At the end of each day, the Index will be reduced by a pro rata portion of the annual index adjustment factor, 1.5% (*i.e.*, 1.5%/365 days = 0.0041% daily). This reduction to the value of the Index will reduce the total return to investors upon redeeming the Notes at maturity. An explanation of this deduction will be included in any marketing materials, fact sheets, or any other materials circulated to investors regarding the trading of this product.

<sup>7</sup> Rule 4420(f)(2) requires issuers of securities designated pursuant to this paragraph to be listed on The Nasdaq National Market or the New York Stock Exchange ("NYSE") or be an affiliate of a company listed on The Nasdaq National Market or the NYSE; provided, however, that the provisions of Rule 4450 will be applied to sovereign issuers of "other" securities on a case-by-case basis.

<sup>8</sup> See Securities Exchange Act Release No. 39453 (December 16, 1997), 62 FR 67101 (December 23, 1997) (approving the listing and trading of options on the Dow Jones High Yield Select 10 Index); Securities Exchange Act Release No. 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (approving the listing and trading of Top Ten Yield Market Index Target-Term Securities).

<sup>9</sup> Securities Exchange Act Release No. 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (approving the listing and trading of Select Ten Notes).