



## Information Circular 09-019

**Date:** February 4, 2009

**Re:** Merrill Lynch & Co., Inc. ETNs

Pursuant to Rule 14.1(c)(2) of the Rules of BATS Exchange, Inc. (the "Exchange"), this Information Circular is being issued to advise you that the following securities have been approved for trading on the Exchange as UTP Derivative Securities pursuant to Chapter XIV of the Exchange's Rules.

**Security ("STEPS" or "Notes")**

**Symbol**

Merrill Lynch & Co., Inc. STEP Income Securities Linked to the Common Stock of Freeport-McMoRan Copper & Gold Inc.

FOA

**Commencement of Trading on the Exchange:** February 5, 2009

**Issuer/Trust:** Merrill Lynch & Co., Inc.

**Issuer Website:** <http://www.totalmerrill.com>

**Primary Listing Exchange:** NYSE Arca

The purpose of this information circular is to outline various rules and policies that will be applicable to trading in this new product on the Exchange, as well as to provide certain characteristics and features of the Notes.

**Background Information on the Notes**

The Issuer has issued STEPS linked to the common stock of Freeport-McMoRan Copper & Gold Inc. ("Freeport"). The STEPS were priced at \$10 each and mature on July 14, 2009.

The STEPS are senior, unsecured debt securities of the Issuer that are designed for investors who seek quarterly interest payments on their investment and want the opportunity to receive an additional payment at maturity if the Ending Value of Freeport stock on the July 7, 2009 valuation date is at or above the Step Level (130.6620). If the Ending Value of Freeport stock on the valuation date is below the Step Level (130.6620), the amount investors receive on at maturity will not be greater than the \$10 original public offering price per STEPS and will be based on the direction of and percentage change in the level of Freeport stock from the Starting Value (116.8085), to the Ending Value, as determined on the valuation date.

Investors must be willing to accept a payment of principal that may be less, and potentially significantly less, than the \$10 original public offering price of the STEPS. Investors should also be willing to accept that no Step Payment will be payable at maturity if the closing level of Freeport stock is below the Step Level (130.6620) and be willing to lose a portion of their principal if the Ending Value is below the Threshold Level (105.1277).

At maturity, investors will receive interest on the STEPS at a rate of 11.86% per year, payable quarterly in arrears computed on the basis of a 360-day year of twelve 30-day months. In addition to any interest due and payable, at maturity investors will be entitled to receive the Redemption Amount, a payment per STEPS calculated as follows:

If Ending Value is greater than or equal to Step Level (130.6620):  
\$10 + Step Payment

If Ending Value is greater than or equal to Threshold Value (105.1277) but less than Step Level (130.6620):  
\$10

If Ending Value is less than Threshold Value (105.1277):  
 $\$10 + [\$10 \times ((\text{Ending Value} - \text{Threshold Value}) / \text{Starting Value}) \times 100\%]$

Investors should also notes that their return is limited and will not reflect the return of a direct investment in Freeport stock.

It is expected that the market value of the STEPS will depend substantially on the value of Freeport and may be affected by a number of other interrelated factors including, among other things: the general level of interest rates, the volatility of Freeport stock, the time remaining to maturity, the dividend yield of Freeport stock, and the credit ratings of the Issuer.

Investors should note that Freeport is not involved in the subject offering and has no obligation with respect to these securities whatsoever, including any obligations with respect to the principal amount to be paid at maturity, or to take the needs of the Issuer or holders of STEPS into consideration. Any dividends or distributions to the underlying common stock will not be paid to holders of STEPS.

The Trustee for the securities is The Bank of New York.

### **Exchange Rules Applicable to Trading in the STEPS**

Trading in the STEPS on BATS is subject to BATS equity trading rules.

### **Trading Hours**

The STEPS will trade on BATS between 8:00 a.m. and 4:00 p.m. ET. Please note that trading in the STEPS during the Exchange's pre-opening session may result in additional trading risks which include: (1) that the current underlying indicative value may not be updated during the pre-opening session, (2) the indicative value may not be updated during the pre-opening session, (3) lower liquidity in the pre-opening session may impact pricing, (5) higher volatility in the pre-opening session may impact pricing, (6) wider spreads may occur in the pre-opening session, and (7) because the indicative value is not calculated or widely disseminated during the pre-opening session, an investor who is unable to calculate an implied value for the STEPS in that session may be at a disadvantage to market professionals.

### **Suitability**

Trading in the securities on BATS will be subject to the provisions of Exchange Rule 3.7. Members recommending transactions in the securities to customers should make a determination that the recommendation is suitable for the customer. Members should adopt appropriate procedures for the opening and maintaining of accounts, including the maintaining of records prescribed by any applicable regulatory organization and by the rules and regulations of the Commission.

### **Trading Halts**

BATS will halt trading in the shares of a security in accordance with BATS Rule 14.1(c)(4). The grounds for a halt under BATS Rule 14.1(c)(4) include a halt by the primary market because the intraday indicative value of the security and/or the value of its underlying index are not being disseminated as required, or a halt for other regulatory reasons. In addition, BATS will stop trading the shares of a security if the primary market de-lists the security.

**This Information Circular is not a statutory prospectus. BATS Members should consult the prospectus for a security and the security's website for relevant information.**

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