

Edgar Filing: CHART INDUSTRIES INC - Form SC 13D

CHART INDUSTRIES INC
Form SC 13D
February 17, 2004

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

SCHEDULE 13D
(Rule 13d-101)

INFORMATION TO BE INCLUDED IN STATEMENTS FILED PURSUANT TO
RULES 13d-1(a) AND AMENDMENTS THERETO FILED PURSUANT TO 13d-2(a)

Chart Industries, Inc.

(Name of Issuer)

Common Stock, Par Value \$0.01 per share

(Title of Class of Securities)

16115Q209

(CUSIP Number)

Merrill Lynch Pierce Fenner & Smith Incorporated
4 World Financial Center
12th Floor
New York, New York 10080
(212) 449-2010

(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

September 15, 2003

(Date of Event Which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1 (e), 13d-1(f) or 13d-1 (g), check the following box. This box should not be checked off.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

(Continued on following pages)

(Page 1 of 12 Pages)

Edgar Filing: CHART INDUSTRIES INC - Form SC 13D

1. NAME OF REPORTING PERSONS
I.R.S. IDENTIFICATION NO. OF ABOVE PERSONS (ENTITIES ONLY)

Merrill Lynch & Co., Inc.

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP*

(a)

(b)

3. SEC USE ONLY

4. SOURCE OF FUNDS*
OO

5. CHECK THIS BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO
ITEM 2(d) OR 2(e)

6. CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

NUMBER OF 7. SOLE VOTING POWER

SHARES None

BENEFICIALLY 8. SHARED VOTING POWER

OWNED BY 4,271,419 (See Item 5 (a)(i))

EACH 9. SOLE DISPOSITIVE POWER

REPORTING 225,588 (See Item 5 (a)(ii))

PERSON 10. SHARED DISPOSITIVE POWER

WITH: None

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

4,271,419

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES*

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

80.2%

14. TYPE OF REPORTING PERSON*

HC, CO

CUSIP No. 16115Q209

13D

Page 3 of 12 Pages

1. NAME OF REPORTING PERSONS
I.R.S. IDENTIFICATION NO. OF ABOVE PERSONS (ENTITIES ONLY)

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Edgar Filing: CHART INDUSTRIES INC - Form SC 13D

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP*
(a) [X]
(b) [_]

3. SEC USE ONLY

4. SOURCE OF FUNDS*
OO

5. CHECK THIS BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO
ITEM 2(d) OR 2(e) [X]

6. CITIZENSHIP OR PLACE OF ORGINIZATION

Delaware

NUMBER OF 7. SOLE VOTING POWER

SHARES None

BENEFICIALLY 8. SHARED VOTING POWER

OWNED BY 4,271,419 (See Item 5 (a) (i))

EACH 9. SOLE DISPOSITIVE POWER

REPORTING 225,588 (See Item 5 (a) (ii))

PERSON 10. SHARED DISPOSITIVE POWER

WITH: None

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

4,271,419

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES*

[_]

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

80.2%

14. TYPE OF REPORTING PERSON*

BD, CO

CUSIP No. 16115Q209

13D

Page 4 of 12 Pages

Item 1. SECURITY AND ISSUER.

This statement on Schedule 13D (this "Statement") relates to the common stock (the "Common Stock") of Chart Industries, (the "Issuer") a Delaware corporation. The principal executive offices are located at 5885 Landerbrook Drive, Suite 205, Cleveland, Ohio.

Item 2. IDENTITY AND BACKGROUND.

Edgar Filing: CHART INDUSTRIES INC - Form SC 13D

(a) This statement is filed by each of the following persons (the "Reporting Persons"):

- (i) Merrill Lynch, Pierce, Fenner & Smith Incorporated, a Delaware corporation ("MLPFS") and
- (ii) Merrill Lynch & Co., Inc., a Delaware corporation ("MLC"), which is the parent holding company of MLPFS (collectively, with MLPFS, the "Reporting Persons")

(b) The address of the principal business office of MLPFS and MLC is 4 World Financial Center, New York, New York, 10080. The directors and executive officers of MLPFS and MLC can be reached at the same address. A list of the directors and executive officers of MLC and MLPFS, along with their principal occupations is as follows:

For MLC:

| Directors | Principal Occupation |
|-------------------------|---|
| E. Stanley O'Neal | Chairman of the Board and Chief Executive Officer |
| W. H. Clark | Corporate Director; Chairman of the Board, Retired, of Nalco Chemical Company |
| Jill K. Conway | Visiting Scholar, Massachusetts Institute of Technology |
| Alberto Cribiore | Managing Principal of Brera Capital Partners LLC |
| George B. Harvey | Corporate Director; Chairman of the Board, Retired, of Pitney Bowes Inc. |
| Heinz-Joachim Neuburger | Executive Vice President and Chief Financial Officer of Siemens AG; Member of the Executive Committee of the Managing Board of Siemens AG |
| David K. Newbigging | Chairman of the Board of Friends Provident plc |

CUSIP No. 16115Q209

13D

Page 5 of 15 Pages

| | |
|---------------------|---|
| Aulana L. Peters | Corporate Director; Partner, Retired, of Gibson, Dunn & Crutcher LLP |
| John J. Phelan, Jr. | Corporate Director |
| Joseph W. Prueher | Corporate Director; U.S. Ambassador, Retired, to the People's Republic of China |

| Executive Officers | Principal Occupation |
|--------------------|---|
| E. Stanley O'Neal | Chairman of the Board and Chief Executive Officer |

Edgar Filing: CHART INDUSTRIES INC - Form SC 13D

| | |
|---------------------|---|
| Rosemary T. Berkery | Executive Vice President and General Counsel |
| Robert C. Doll | Senior Vice President and Chief Investment Officer and President of Merrill Lynch Investment Managers |
| Ahmass L. Fakahany | Executive Vice President and Chief Financial Officer |
| Gregory J. Fleming | Executive Vice President and Co-President of Global Markets and Investment Banking |
| James P. Gorman | Executive Vice President and President of Global Private Client |
| Do Woo Kim | Executive Vice President and Co-President of Global Markets and Investment Banking |
| Robert J. McCann | Executive Vice President and Vice Chairman, Wealth Management Group |

For MLPFS:

| Directors | Principal Occupation |
|---------------------|---|
| ----- | ----- |
| Candace E. Browning | Director and Senior Vice President |
| Gregory J. Fleming | Director and Executive Vice President |
| James P. Gorman | Director, Chairman of the Board and Chief Executive Officer |
| Do Woo Kim | Director and Executive Vice President |
| Carlos M. Morales | Director and Senior Vice President |

CUSIP No. 16115Q209

13D

Page 6 of 12 Pages

| Executive Officers | Principal Occupation |
|---------------------|--|
| ----- | ----- |
| Rosemary T. Berkery | Executive Vice President |
| Ahmass L. Fakahany | Executive Vice President |
| John J. Fosina | First Vice President and Chief Financial Officer |

Messrs. Fleming, Gorman and Kim are also Executive Officers in the capacities listed above.

(c) The principal business of MLPFS is, together with its subsidiaries, to provide investment, financing, and related services to individuals and institutions on a global basis. The principal business of MLC is, as a holding company, through its subsidiaries and affiliates, providing broker-dealer, financing, advisory, wealth management, asset

Edgar Filing: CHART INDUSTRIES INC - Form SC 13D

management, insurance, lending and related products and services on a global basis.

- (d) During the last five years, none of the Reporting Persons or, to the best of their knowledge, any of their directors or executive officers, have been convicted of any criminal proceeding (excluding traffic violations or similar misdemeanors).
- (e) During the last five years, none of the Reporting Persons or, to the best of their knowledge, any of their directors or executive officers, have been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to federal or state securities laws or finding any violation with respect to such laws except as noted below:

On February 20, 2003, Merrill Lynch agreed with the staff of the Securities and Exchange Commission to a settlement-in-principle resolving the Commission's investigation regarding two transactions between Merrill Lynch and Enron in 1999. On March 17, 2003, Merrill Lynch announced that it had finalized the settlement-in-principle with the Securities and Exchange Commission. Without admitting or denying any wrongdoing, MLC consented to an injunction enjoining it from violations of the anti-fraud provisions of the federal securities laws. This settlement concluded the SEC's investigation into Enron-related matters with respect to Merrill Lynch. Under the settlement, Merrill Lynch paid a total of \$80 million in disgorgement, penalties and interest.

In December 2002, MLPFS joined with nine other major financial Services institutions in a settlement-in-principle with the U.S. Securities and Exchange Commission, the National Association of Securities Dealers and the New York Stock Exchange to resolve matters

CUSIP No. 16115Q209

13D

Page 7 of 12 Pages

arising from their research-related inquiries, including inquiries into potential conflicts that may arise from the relationship between research and investment banking within securities firms. On April 28, 2003, the Securities and Exchange Commission, New York Stock Exchange, National Association of Securities Dealers, and state securities regulators announced that the settlements-in-principle had been reduced to final settlements. The settlements called for MLPFS, among other things, to contribute \$100 million for the funding of independent research and investor education over the next five years but did not require MLPFS to pay any fines or make any additional civil payments. Earlier in 2002, MLPFS had agreed to pay \$100 million to settle allegations by the Attorney General of the State of New York challenging the independence of its research. Additionally, the terms of the settlements provided that an injunction would be entered against MLPFS enjoining it from violating the statutes and rules that it is alleged to have violated. On October 31, 2003, the United States District Court for the Southern District of New York entered final judgments in connection with the April 28, 2003, research settlements between the SEC and ten investment banking firms, including Merrill Lynch. The final settlements pertaining to MLPFS, which involve both monetary and non-monetary relief set forth in the regulators' announcements, bring to a conclusion the regulatory actions against MLPFS related to alleged conflicts of interest affecting research analysts. MLPFS entered into these settlements

Edgar Filing: CHART INDUSTRIES INC - Form SC 13D

without admitting or denying the allegations and findings by the regulators, and the settlements do not establish wrongdoing or liability for purposes of any other proceedings.

- (f) The Reporting Persons are corporations formed under the laws of the state of Delaware. To the best of the knowledge of the Reporting Person, all of the Reporting Person's executive officers and directors are United States citizens, with the following exceptions:

For MLC:

Heinz-Joachim Neuburger - Citizen of Germany
David K. Newbigging - Citizen of the United Kingdom
James P. Gorman - Citizen of Australia
Do Woo Kim - Citizen of the Republic of Korea

For MLPFS:

James P. Gorman - Citizen of Australia
Do Woo Kim - Citizen of the Republic of Korea

Item 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION

The Reporting Persons acquired the shares to which this Statement relates in connection with the Issuer's and certain of its U.S. subsidiaries emergence from Chapter 11 bankruptcy proceedings. On July 8, 2003, the Issuer and certain of its U.S. subsidiaries (collectively referred to as the "Old Issuer") filed voluntary petitions for reorganization relief under Chapter 11 of Title 11 of the United States Code in the United

CUSIP No. 16115Q209

13D

Page 8 of 12 Pages

States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). On September 15, 2003, (the "Consummation Date"), the Issuer and those subsidiaries ("collectively referred to as the "New Issuer") emerged from Chapter 11 proceedings pursuant to the Amended Joint Prepackaged Reorganization Plan of the Issuer and certain subsidiaries, dated September 3, 2003 (the "Plan"), which the Bankruptcy Court confirmed by an order entered on September 4, 2003.

On the Consummation Date, Old Issuer's senior debt of approximately \$256 million was converted into a \$120 million secured term loan and an initial 95% equity ownership position in New Issuer, and Old Issuer's \$40 million secured debtor-in-possession financing facility was converted into an amended and restated \$40 million secured revolving credit facility. On the Consummation Date, all of Old Issuer's common stock and warrants, options and other rights to acquire Old Issuer's common stock were cancelled, and Old Issuer's stockholders received 5% of the initial equity of New Issuer and the opportunity to acquire up to an additional 5% of equity through the exercise of new warrants. Additionally, under the terms of the Plan, all general unsecured creditors will be paid in full on their prepetition claims or otherwise have their prepetition claims reinstated.

As of the Consummation Date, 5,325,331 shares of New Issuer's common stock, par value \$.01 per share (the "New Common Stock"), are deemed to be issued and outstanding in aggregate. Of this number, 4,271,419 shares initially were issued to Old Issuer's senior lenders party to the Investor Rights Agreement, including 225,588 shares that were issued to the Reporting Persons.

Item 4. PURPOSE OF TRANSACTION.

Edgar Filing: CHART INDUSTRIES INC - Form SC 13D

As of the Consummation Date, New Issuer and certain significant holders of New Common Stock, including the Reporting Persons, (the "Stockholder Parties") entered into the Investor Rights Agreement pursuant to the Plan. The Investor Rights Agreement provides the Stockholder Parties the right to designate most of the members of New Issuer's Board of Directors, prohibits New Issuer from engaging in a variety of actions without the consent of certain controlling Stockholder Parties, and includes provisions obligating the Stockholder Parties to support a sale of New Issuer to a third party if the sale is approved by such controlling Stockholder Parties. The Investor Rights Agreement also provides the Stockholder Parties registration rights at New Issuer's expense, grants the Stockholder Parties limited preemptive rights and provides for certain tag-along rights with respect to, and certain restrictions on the transfer of, New Common Stock held by the Stockholder Parties.

The Reporting Persons will review from time to time various factors relevant to their beneficial ownership of the New Common Stock, including trading prices for the New Common Stock and conditions in capital markets generally, developments in New Issuer's business and financial condition, results of operations and prospects, and other factors and, based thereon, may pursue the possible sale of some or all of the Common Stock in privately negotiated transactions, market sales or otherwise, subject to its obligations under the Investor Rights Agreement.

CUSIP No. 16115Q209

13D

Page 9 of 12 Pages

Except as set forth above, the Reporting Persons have no present plans or proposals which relate or would result in any of the actions described in Item 4(a) through (j) of Schedule 13D.

Item 5. INTEREST IN SECURITIES OF THE ISSUER.

- (a) (i) By virtue of being a party to the Investors Rights Agreement, the Reporting Persons may be deemed to be the beneficial owner of 4,271,419 shares of New Common Stock, collectively held by the Stockholder Parties. Based on information provided by the New Issuer, such shares constitute approximately 80.2% of the outstanding shares of New Common Stock.
- (ii) The Reporting Persons are the direct beneficial owner of 225,588 shares of New Common Stock. Their ability to vote or dispose of these shares is controlled by the terms of the Investors Rights Agreement (for a description of the terms of the Investor Rights Agreement see Item 4 to this Statement). Based on information provided by the New Issuer, such shares constitute approximately 4.2% of the outstanding shares of the New Common Stock.
- (b) The Reporting Persons have the sole power to vote and dispose of 225,588 shares of New Common, subject to the terms of the Investors Rights Agreement (for a description of the terms of the Investor Rights Agreement see Item 4 to this Statement.)
- (c) See the response to Item 4 to this Statement.
- (d) Not applicable.
- (e) Not applicable.

Edgar Filing: CHART INDUSTRIES INC - Form SC 13D

Item 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER.

See Response to Item 4 of this Statement.

Item 7. MATERIAL TO BE FILED AS EXHIBITS.

Exhibit No.

Exhibit 1. Amended Joint Prepackaged Reorganization Plan of Chart Industries, Inc. and Certain Subsidiaries, dated September 3, 2003 (incorporated by reference from Exhibit 2.1 of the Issuer's Form 8-K/A filed on September 22, 2003 (File No. 1-11442)).

CUSIP No. 16115Q209

13D

Page 10 of 12 Pages

Exhibit 2. Investor Rights Agreement by and among Chart Industries, Inc. and the Stockholder parties thereto, dated September 15, 2003 (incorporated by reference from Exhibit 10.5 of the Issuer's Form 8-K/A filed on September 22, 2003 (File No. 1-11442)).

Exhibit 3. Power of Attorney, dated November 17, 1995.

Exhibit 4. Power of Attorney, dated February 25, 1995.

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

MERRILL LYNCH & CO., INC

Dated: February 17, 2004

By: /s/ Lawrence M. Egan, Jr.

Name: Lawrence M. Egan, Jr.
Title: Attorney-in-Fact*
Assistant Secretary

MERRILL LYNCH PIERCE FENNER & SMITH INC.

Dated: February 17, 2004

By: /s/ Lawrence M. Egan, Jr.

Name: Lawrence M. Egan, Jr.
Title: Attorney-in-Fact**

Edgar Filing: CHART INDUSTRIES INC - Form SC 13D

Assistant Secretary

* Executed pursuant to a Power of Attorney, dated November 17, 1995, a copy of which is attached hereto as Exhibit 3.

** Executed pursuant to a Power of Attorney, dated February 25, 1995, a copy of which is attached hereto as Exhibit 4.

CUSIP No. 16115Q209

13D

Page 11 of 12 Pages

Exhibit 3 to Schedule 13D

Power of Attorney

The undersigned, Merrill Lynch & Co., Inc. (the "Corporation"), a corporation duly organized under the laws of Delaware, with its principal place of business at World Financial Center, North Tower, 2560 Vesey Street, New York, New York 10281 does hereby make, constitute and appoint Richard B. Alsop, Richard D. Kreuder, Andrea Lowenthal, Gregory T. Russo, or any individual from time to time elected or appointed as secretary or an assistant secretary of the Corporation, acting severally, each of whose address is Merrill Lynch & Co., Inc., World Financial Center, North Tower, 250 Vesey Street, New York, New York 10281, as its true and lawful attorneys-in-fact, for it and in its name, place and stead (i) to execute on behalf of the Corporation and cause to be filed and/or delivered, as required under Section 13(d) of the Securities Exchange Act of 1934 (the "Act") and the regulations thereunder, any number, as appropriate, of original, copies, or electronic filings of the Securities and Exchange Commission Schedule 13D or Schedule 13G Beneficial Ownership Reports (together with any amendments and joint filing agreements under Rule 13d-1(f)(1) of the Act, as may be required thereto) to be filed and/or delivered with respect to any equity security (as defined in Rule 13d-1(d) under the Act) beneficially owned by the undersigned and which must be reported by the undersigned pursuant to Section 13(d) of the Act and the regulations thereunder, (ii) to execute on behalf of the Corporation and cause to be filed and/or delivered, any number, as appropriate, of original, copies or electronic filings of any forms (including without limitation), Securities and Exchange Commission Forms 3, 4 and 5) required to be filed pursuant to Section 16(a) of the Act and the regulations thereunder, and (iii) generally to take such other actions and perform such other things necessary to effectuate the foregoing as fully in a all respects as if the undersigned could do if personally present.

This Power of Attorney shall remain in effect until revoked, in writing, by the undersigned.

IN WITNESS WHEREOF, the undersigned has executed this Power of Attorney, this 17th day of November 1995.

MERRILL LYNCH & CO., INC.

By: /s/ David H. Komansky

Name: David H. Komansky
Title: President and Chief Operating Officer

CUSIP No. 16115Q209

13D

Page 12 of 12 Pages

Exhibit 4 to Schedule 13D

Power of Attorney

The undersigned, Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Corporation"), a corporation duly organized under the laws of Delaware, with its principal place of business at World Financial Center, North Tower, 2560 Vesey Street, New York, New York 10281 does hereby make, constitute and appoint Richard B. Alsop, Richard D. Kreuder, Andrea Lowenthal, Gregory T. Russo, or any individual from time to time elected or appointed as secretary or an assistant secretary of the Corporation, acting severally, each of whose address is Merrill Lynch & Co., Inc., World Financial Center, North Tower, 250 Vesey Street, New York, New York 10281, as its true and lawful attorneys-in-fact, for it and in its name, place and stead (i) to execute on behalf of the Corporation and cause to be filed and/or delivered, as required under Section 13(d) of the Securities Exchange Act of 1934 (the "Act") and the regulations thereunder, any number, as appropriate, of original, copies, or electronic filings of the Securities and Exchange Commission Schedule 13D or Schedule 13G Beneficial Ownership Reports (together with any amendments and joint filing agreements under Rule 13d-1(f) (1) of the Act, as may be required thereto) to be filed and/or delivered with respect to any equity security (as defined in Rule 13d-1(d) under the Act) beneficially owned by the undersigned and which must be reported by the undersigned pursuant to Section 13(d) of the Act and the regulations thereunder, (ii) to execute on behalf of the Corporation and cause to be filed and/or delivered, any number, as appropriate, of original, copies or electronic filings of any forms (including without limitation), Securities and Exchange Commission Forms 3, 4 and 5) required to be filed pursuant to Section 16(a) of the Act and the regulations thereunder, and (iii) generally to take such other actions and perform such other things necessary to effectuate the foregoing as fully in a all respects as if the undersigned could do if personally present.

This Power of Attorney shall remain in effect until revoked, in writing, by the undersigned.

IN WITNESS WHEREOF, the undersigned has executed this Power of Attorney, this 25th day of February 1995.

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: /s/ David H. Komansky

Edgar Filing: CHART INDUSTRIES INC - Form SC 13D

Name: David H. Komansky

Title: President and Chief Operating Officer