

## Financial Markets Conduct (Merrill Lynch, Pierce, Fenner & Smith Incorporated) Exemption Notice 2026

This exemption is granted by the Financial Markets Authority under section 556 of the Financial Markets Conduct Act 2013, after being satisfied of the matters set out in section 557 of that Act.

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### Notice

#### 1 Title

This notice is the Financial Markets Conduct (Merrill Lynch, Pierce, Fenner & Smith Incorporated) Exemption Notice 2026.

#### 2 Commencement

This notice comes into force on 15 March 2026.

#### 3 Revocation

This notice is revoked on 14 March 2031.

#### 4 Interpretation

(1) In this notice, unless the context otherwise requires,

**Act** means the Financial Markets Conduct Act 2013

**client money or property service, client money** and **client property** have the same meaning as in section 431W of the Act

**Exchange Act** means the Securities Exchange Act of 1934 of the United States of America (or any other enactment that, with or without modification, replaces, or corresponds to, the Exchange Act)

**external auditor's report** means the report that MLPF&S is required to obtain by rule 17a-5 of the Exchange Act

**FOCUS Report** means that portion of the form required under the Exchange Act to be used by registered broker-dealers to report their net capital position and other financial information containing the statement of financial condition, computation of net capital, computation of net capital requirements and other ratios

**MLPF&S** means Merrill Lynch, Pierce, Fenner & Smith Incorporated, a corporation organised and existing under the laws in the State of Delaware

**New Zealand client** means a person in New Zealand to whom MLPF&S makes available a limited purpose brokerage account to facilitate the settlement of shares resulting from either:

- (a) the exercise of an employee stock option by that person; or
- (b) the exercise or vesting of an equity award in favour of that person, as applicable, and the subsequent holding or sale of any such shares

**registration terms** means the terms and conditions of MLPF&S's registration as a broker-dealer with the Securities and Exchange Commission of the United States of America

**Regulations** means the Financial Markets Conduct Regulations 2014

**SEC Rules** means any rules or regulations made under the Exchange Act, and includes the regulations contained in Title 17 of Chapter 2 of the Code of Federal Regulations of the United States of America (or other rules or regulations that, with or without modification, replace, or correspond to, those rules or regulations)

**separate account** means a segregated account maintained in accordance with the Exchange Act, the SEC Rules and the registration terms.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

## 5 Exemptions

MLPF&S is exempted from sections 431ZC, 431ZE(3), 431ZE(4), 431ZF and 431ZG of the Act in respect of client money and client property received from any New Zealand client.

## 6 Conditions of exemption

The exemptions in clause 5 are subject to the following conditions:

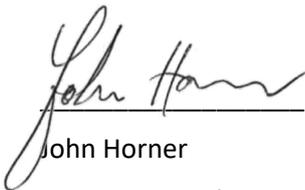
- (a) In relation to a client money or property service and any client money or client property received from a New Zealand client, MLPF&S must comply with the requirements of each of the following, as if that New Zealand client were a person located in the United States of America:
  - (i) its registration terms;
  - (ii) the Exchange Act;
  - (iii) the SEC Rules; and
- (b) MLPF&S must provide its FOCUS Report (or equivalent) to the FMA at the same time as it provides its FOCUS Report (or equivalent) to the Financial Industry Regulatory Authority of the United States of America; and
- (c) MLPF&S must ensure that client money and client property that is received from a New Zealand client is held in a separate account from money or property held by or for MLPF&S on its own account; and

- (d) MLPF&S must not use or apply client money or client property that is received for a New Zealand client in any way except to the extent permitted by section 431ZG(a) of the Act; and
- (e) MLPF&S must inform each new New Zealand client in writing, before providing client money or property services to that New Zealand client, that it –
  - (i) is acting in reliance on this notice; and
  - (ii) is not required to comply with the obligations in relation to client money and client property contained in sections 431ZC to 431ZH of the Act and regulations 229Q to 229V of the Regulations; and
  - (iii) is instead required to comply with its registration terms, the Securities and Exchange Act and the SEC Rules and the other conditions of this notice.

## **7 Further condition of exemptions**

- (1) Subclause (2) applies if MLPF&S receives an external auditor's report that shows that MLPF&S has failed to comply with –
  - (a) its registration terms; or
  - (b) the Exchange Act; or
  - (c) the SEC Rules.
- (2) Each time this subclause applies, the exemptions in clause 5 are subject to the further condition that MLPF&S must provide the FMA with a copy of the external auditor's report as soon as is reasonably practicable.

Dated at Wellington this 3rd day of March 2026.



John Horner

Director – Markets, Investors and Reporting  
Financial Markets Authority

## Statement of Reasons

This notice comes into force on 15 March 2026 and is revoked on 14 March 2031.

This notice exempts Merrill Lynch, Pierce, Fenner & Smith Incorporated (**MLPF&S**) from certain requirements relating to the holding of client money and client property that are contained in the Financial Markets Conduct Act 2013 (the **Act**) (specifically, sections 431ZC, 431ZE(3), 431ZE(4), 431ZF and 431ZG). While the exemptions expressly apply only to these specific provisions, the effect of these exemptions is that MLPF&S will not be required to comply with the obligations in sections 431ZC to 431ZH of the Act and regulations 229Q to 229V of the Regulations. This is because the exemption from section 431ZC of the Act removes the requirement for client money and client property to be held on trust, which is the basis on which those other obligations would otherwise apply.

This notice replaces the Financial Markets Conduct (Merrill Lynch, Pierce, Fenner & Smith Incorporated) Exemption Notice 2021 (the **2021 Exemption Notice**). This notice continues the effect of the 2021 Exemption Notice and is made as a consequence of the 2021 Exemption Notice expiring on 14 March 2026.

The exemption applies only in respect of services provided by MLPF&S to a defined sub-set of New Zealand clients (**New Zealand clients**). The conditions of the exemption require MLPF&S to hold client money and client property received from New Zealand clients in accordance with applicable requirements in the United States of America (**US**). MLPF&S must also provide information to the Financial Markets Authority (the **FMA**) and inform new New Zealand clients that their money and property is being held in that manner.

The FMA, after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant the exemptions because —

- as a US-registered broker-dealer, MLPF&S is subject to regulation by the Securities and Exchange Commission of the United States of America. The exemptions enable MLPF&S to provide services to New Zealand clients in accordance with the same regulatory requirements that apply to its US clients:
- US regulatory requirements, together with the conditions in the notice, are broadly equivalent to those under the Act and provide adequate protection for the client money and client property of New Zealand clients.

For the above reasons the FMA is satisfied that granting the exemptions is desirable in order to promote the purposes of the Act. Specifically, it will avoid unnecessary compliance costs, and promote flexibility in the financial markets.

The FMA is also satisfied that the exemptions are not broader than is reasonably necessary to address the matters that give rise to the exemptions as the exemptions —

- are limited to a defined subset of New Zealand clients:
- are limited to the specific requirements of sections 431ZC, 431ZE(3), 431ZE(4), 431ZF and 431ZG of the Act and MLPF&S will instead comply with the US regulatory requirements, which together with the conditions in the notice, are broadly equivalent to these requirements.