

Financial Markets Conduct (Merrill Lynch, Pierce, Fenner & Smith Incorporated) Exemption Notice 2021

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act, gives the following notice.

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Notice

1 Title

This notice is the Financial Markets Conduct (Merrill Lynch, Pierce, Fenner & Smith Incorporated) Exemption Notice 2021.

2 Commencement

This notice comes into force on 15 March 2021.

3 Revocation

This notice is revoked on the close of 14 March 2026.

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, that 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 the:

- (a) 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 and/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 Exemption

MLPF&S is exempted from regulations 229N, 229O and 229Q to 229W of the Regulations and sections 431ZC to 431ZH 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 is subject to the following conditions:

- (a) MLPF&S must comply with the requirements of each of the following in respect of client money and client property received from a New Zealand client in connection with the provision of a client money or property service to that New Zealand client:
 - (i) its registration terms:
 - (ii) the Exchange Act:
 - (iii) the SEC Rules:
- (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:
- (c) MLPF&S must ensure that client money and client property is held in a separate account:
- (d) MLPF&S may use and apply client money and client property received from a New Zealand client only to the extent permitted by section 431ZG(a) of the Act:
- (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 regulations 229N, 229O and 229Q to 229W of the Regulations and sections 431ZC to 431ZH of the Act, except to the extent required under paragraph (d):
- (iii) is instead required to comply with the SEC Rules.

7 Further condition of exemption

- (1) This clause 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) If this clause applies, the exemptions in clause 5 is 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 Auckland this 10th day of March 2021.



Liam Mason
Director of Regulation and Acting General Counsel
Financial Markets Authority

Statement of reasons

This notice comes into force on 15 March 2021 and is revoked on the close of 14 March 2026.

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 to 431ZH of the Act) and the Financial Markets Conduct Regulations 2014 (the **Regulations**) (specifically, regulations 229N, 229O and 229Q to 229W).

This notice replaces the Financial Advisers (Merrill Lynch, Pierce, Fenner & Smith Incorporated) Exemption Notice 2016 (**2016 Exemption Notice**). This notice continues the effect of the 2016 Exemption Notice and is made as a consequence of the Financial Services Legislation Amendment Act 2019 (**FSLAA**). FSLAA introduces a new regulatory financial advice regime, moving the obligations relating to the holding of client money and client property, together with some minor updates and clarifications, to the Act and Regulations.

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 exemption because:—

- as a registered broker-dealer MLPF&S is subject to regulation by the Securities and Exchange Commission of the United States of America. This exemption will allow MLPF&S to carry on business with New Zealand clients under the same rules as apply in respect of its dealings with US clients:
- US regulatory requirements, together with the conditions in the notice, are broadly equivalent to those under the Act and the Regulations and provide adequate protection for the New Zealand clients' client money and client property:
- the FMA is satisfied that granting the exemption 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 exemption is limited to the client money and client property of the New Zealand clients that is required to be held by MLPF&S in accordance with US regulatory requirements that are broadly equivalent to those in New Zealand. The FMA is therefore satisfied that the exemption is not broader than is reasonably necessary to address the matters that give rise to it.