

Financial Advisers (Merrill Lynch, Pierce, Fenner & Smith Incorporated) Exemption Notice 2016

Pursuant to section 148 of the Financial Advisers Act 2008, the Financial Markets Authority, being satisfied of the matters set out in section 148(2) of that Act, gives the following notice.

Contents

		Page
1	Title	1
2	Commencement	1
3	Revocation	1
4	Interpretation	1
5	Exemption – Wealth Management clients	2
6	Exemption – ESOP clients	2
7	Conditions of exemptions in clauses 5 and 6	2
8	Further condition of exemptions	3

Notice

1 Title

This notice is the Financial Advisers (Merrill Lynch, Pierce, Fenner & Smith Incorporated) Exemption Notice 2016.

2 Commencement

This notice comes into force on 29 April 2016.

3 Revocation

- (1) Clause 5 of this notice is revoked on the close of 31 December 2016.
- (2) The remainder of this notice is revoked on the close of 28 April 2021.

4 Interpretation

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

Act means the Financial Advisers Act 2008

ESOP 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

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)

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

New Zealand client means an ESOP client or a Wealth Management client

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 Advisers (Custodians of FMCA Financial Products) 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

Wealth Management client means a person that is resident, incorporated, or carrying on business in New Zealand to whom MLPF&S provides wealth management services and in respect of whom MLPF&S would, but for this notice, have obligations under the Act or the Regulations.

- (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 – Wealth Management clients

MLPF&S is exempted from the Regulations and sections 77P to 77T of the Act in respect of client money and client property received from any Wealth Management client.

6 Exemption – ESOP clients

MLPF&S is exempted from the Regulations and sections 77P to 77T of the Act in respect of client money and client property received from any ESOP client.

7 Conditions of exemptions in clauses 5 and 6

The exemptions in clauses 5 and 6 are subject to the conditions that:—

- (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 broking service to that New Zealand client:
- (i) its registration terms; and
 - (ii) the Exchange Act; and
 - (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 is held in a separate account; and
- (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 77S(1)(a) of the Act; and
- (e) MLPF&S must, by no later than 1 July 2016, inform each New Zealand client in writing 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 in the Regulations and sections 77P to 77T of the Act, except to the extent required under paragraph (d); and
 - (iii) is instead required to comply with its registration terms, the Exchange Act, and the SEC Rules; and
- (f) MLPF&S must inform each new ESOP client in writing, before providing broking services to that ESOP 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 in the Regulations and sections 77P to 77T of the Act, except to the extent required under paragraph (d); and
 - (iii) is instead required to comply with its registration terms, the Exchange Act, and the SEC Rules.

8 Further condition of exemptions

- (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 clauses 5 and 6 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 22nd day of April 2016.



Liam Mason
Director of Regulation
Financial Markets Authority

Statement of reasons

This notice comes into force on 29 April 2016. The exemptions relating to Wealth Management clients are revoked on the close of 31 December 2016. The exemptions relating to ESOP clients are revoked on the close of 28 April 2021.

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 Advisers Act 2008 (the **Act**) (specifically, sections 77P to 77T of the Act) and the Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014 (the **Custodian Regulations**).

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

The Financial Markets Authority, after satisfying itself as to the matters set out in section 148(2) of the Act, considers it appropriate to grant the exemptions 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 certain New Zealand clients under the same rules as apply in respect of its dealings with US clients; and
- US requirements, together with the conditions in the notice, are broadly equivalent to those under the Act and Custodian Regulations and provide adequate protection for New Zealand clients' client money and client property. Given these substantial similarities, the costs of compliance with the relevant obligations would not be justified by the benefit of compliance (holding New Zealand clients' client money and client property in a trust account and various associated reporting requirements); and
- by requiring MLPF&S to hold New Zealand clients' client money and client property in a separate account at all times (together with the client money and client property of other MLPF&S clients) in accordance with US requirements the conditions of the exemption provide adequate alternative safeguards for the protection of client money and client property. Consequently, New Zealand clients are unlikely to be prejudiced by the grant of the exemption as overseas regulation provides satisfactory protection.