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BOARD NOTICE 39 OF 2009

FINANCIAL SERVICES BOARD

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002
(ACT NO. 37 OF 2002)

EXEMPTION OF MERRILL LYNCH ENTITIES IN RESPECT OF CERTAIN CLIENTS

I, German Emmanuel Anderson, Deputy Registrar of Financial Services Providers, hereby exempt under section 44(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), Merrill Lynch entities to the extent and subject to the conditions set out in the Schedule.

G E ANDERSON,
Deputy Registrar of Financial Services Providers

SCHEDULE

EXEMPTION OF CERTAIN MERRILL LYNCH ENTITIES IN RESPECT OF CERTAIN CLIENTS

Definitions

1. In this Schedule, "the Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), any word or expression to which a meaning is assigned in the Act shall have that meaning, and unless the context otherwise indicates-

"bank", means a 'branch', 'branch of a bank', 'mutual bank' or 'representative office' as defined in section 1(1) of the Banks Act, 1994 (Act No. 94 of 1994);

"client", in relation to the Merrill Lynch Entities, means-

(a) a bank;

(b) a financial services provider who is registered, licensed, recognised, approved or otherwise authorised by-

(i) the Registrar of Long-term Insurance to conduct long-term insurance business;

(ii) the Registrar of Short-term Insurance to conduct short-term insurance business;

(c) a person outside the Republic who-

(i) as a regular feature of the person's business, renders a service similar to a 'financial service' as defined in section 1(1) of the Act; and

(ii) is registered, licensed, recognised, approved or otherwise authorised to conduct the business of a bank or a business referred to in paragraph (b) by a foreign regulator, with functions similar to those of the Registrar of Banks or a Registrar referred to in the said paragraph;

(d) a central bank or other national monetary authority of any country, state or territory;

(e) any person who is mandated to manage assets and who has confirmed to the satisfaction of the Merrill Lynch Entities that the market value of the assets managed by the person will exceed R1 billion at all times of the rendering of financial services to the person;

(f) any other person included in the definition of 'client' in section 1(1) of the Act, who has confirmed to the satisfaction of the Merrill Lynch Entities that the person will have assets of which the net asset value will exceed R20 million at all times of the rendering of financial services to the person, and who is not–

(i) a natural person;

(ii) a pension fund organisation as defined in section 1(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956);

(iii) a friendly society referred to in the Friendly Societies Act, 1956 (Act No. 25 of 1956);

(iv) a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act No. 131 of 1998);

"Merrill Lynch Entities" means Merrill Lynch Commodities (Europe) Limited, Merrill Lynch International and Merrill Lynch International Bank Limited who render a financial service to a client as a regular feature of their businesses and belong to 'Category I' as defined in paragraph 1(1) of Part I of the Determination of Fit and Proper Requirements for Financial Services Providers, 2008, published by Board Notice No. 106 of 2008 in Gazette No. 31514 of 15 October 2008.

Objective of exemption

2. The Merrill Lynch Entities have submitted an application for exemption from the application of the Act in respect of the rendering of financial services in the course of merchant banking business. The Merrill Lynch Entities offer similar services to those of merchant banks to which a similar exemption has already been granted.

The Registrar is of the view that the provisions of the Act can hardly be applied where an entity is confronted by large corporate and other clients in a business situation where clients will usually have sufficient know-how and expertise, or access thereto. Certain of these clients will be "execution-only" clients who will have a fixed mind on the services required, leaving the entity with a limited discretion in the rendering of the required service.

The Registrar is also satisfied that the requested exemption can hardly frustrate the achievement of any object of the Act, particularly as the exemption will not apply to several classes of clients still in need of full statutory protection.

The Registrar is in addition satisfied that under current economic and public financial circumstances, the granting of the requested exemption does not seem to be in conflict with public interest and may obviously result in financial or other hardship or prejudice to the relevant parties.

The Registrar is however, despite the considerations mentioned above, satisfied that economic and public financial circumstances and current business practices and client base of the Merrill Lynch Entities may change even in the near future, and that the non-applicability of the provisions of the Act referred to above, may in practice be proved to frustrate an object of the Act to provide and promote client protection, and that at this stage an exemption of only limited duration must be granted.

Extent of exemption and condition

3. The Merrill Lynch Entities are exempted until 30 September 2009 from section 7(1) of the FAIS Act, subject to the condition that in the rendering of a financial service to a client suitable guarantees or professional indemnity or fidelity insurance cover, quarterly approved by the Registrar, are maintained.

Amendment and withdrawal of exemption and conditions

4. The exemption and conditions mentioned in paragraph 3 are subject to-

(a) amendment thereof published by the registrar by notice in the *Gazette*; and

(b) withdrawal in like manner.

Short title and commencement

5. This Exemption is called the Exemption of certain Merrill Lynch Entities in respect of Certain Clients, 2009, and comes into operation on the date of publication in the *Gazette*.

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