



Financial Sector
Conduct Authority

FSCA FM NOTICE 1 OF 2025

FINANCIAL MARKETS ACT, 2012 (ACT NO. 19 OF 2012)

**EXEMPTION OF MERRILL LYNCH SOUTH AFRICA (PROPRIETARY) LIMITED FROM
REGULATION 2(1)(a) OF THE REGULATIONS UNDER THE FINANCIAL MARKETS
ACT, 2012 READ WITH SECTIONS 5 AND 6(8)(a) OF THE FINANCIAL MARKETS
ACT, 2012**

The Financial Sector Conduct Authority, under section 6(3)(m) of the Financial Markets Act No.19 of 2012 (FMA) read with section 281(3) of the Financial Sector Regulation Act No.9 of 2017 exempts Merrill Lynch South Africa (Proprietary) Limited from Regulation 2(1)(a) of the Regulations under the FMA read with sections 5 and 6(8)(a) of the FMA to the extent set out in the Schedule.

A handwritten signature in black ink, appearing to read "Kedibone Dikokwe", is written in a cursive style.

KEDIBONE DIKOKWE
DIVISIONAL EXECUTIVE: MARKET INTEGRITY AND DECISION SCIENCES
FINANCIAL SECTOR CONDUCT AUTHORITY
Date of publication: 13 June 2025

SCHEDULE

EXEMPTION OF MERRILL LYNCH SOUTH AFRICA (PROPRIETARY) LIMITED FROM REGULATION 2(1)(a) OF THE REGULATIONS UNDER THE FINANCIAL MARKETS ACT, 2012 READ WITH SECTIONS 5 AND 6(8)(a) OF THE FINANCIAL MARKETS ACT, 2012

1. Definitions

In this Schedule “**the Act**” means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), “**the FMA**” means the Financial Markets Act, 2012 (Act No. 19 of 2012), and “**the FMA Regulations**” means the Financial Markets Act Regulations published under Government Notice R98 in Government Gazette 41433 of 9 February 2018, and any word or expression to which a meaning is assigned in the Act, the FMA or the FMA Regulations bears, subject to context, the meaning so assigned to it unless a different meaning is assigned elsewhere in this Schedule, and

“**Merrill Lynch South Africa**” means Merrill Lynch South Africa (Proprietary) Limited, a private company incorporated in accordance with the Companies Act, 2008 (Act No.71 of 2008) with registration number 1995/001805/07; and

“**Merrill Lynch International**” means Merrill Lynch International, a broker dealer for the Bank of America Corporation in the United Kingdom.

2. Applicable Legislation

- (1) In terms of Regulation 2(1) of the FMA Regulations, a person may not-
 - (a) act as an OTC derivative provider; or
 - (b) advertise or hold itself out as an OTC derivative provider;unless authorised by the Authority in terms of section 6(8) of the FMA.
- (2) Section 6(3)(m) of the FMA provides that the Authority may exempt, for a specified period which may be renewed, any person or category of persons from the provisions of a section of the FMA if the Authority is satisfied that—
 - (a) the granting of the exemption will not—
 - (i) conflict with the public interest; or
 - (ii) frustrate the achievement of the objects of the FMA; and
 - (b) the application of the section will cause the applicant or clients of the applicant financial or other hardship or prejudice.
- (3) Section 281(4) of the Act requires that where the Authority grants an exemption in terms of a financial sector law, the requirements of section 281(3) must be met,

and such exemption must be published. The FMA is a financial sector law as defined in section 1(1) read with Schedule 1 of the Act.

3. Extent of the Exemption and conditions

- (1) Merrill Lynch South Africa is hereby exempted from Regulation 2(1)(a) of the FMA Regulations read with sections 5 and 6(8)(a) of the FMA pursuant to section 6(3)(m) of the FMA.
- (2) The exemption is granted to Merrill Lynch South Africa subject to the following conditions:
 - (a) The OTC derivative transactions must, at all times, be restricted to Merrill Lynch South Africa and Merrill Lynch International thus entered between two group affiliates;
 - (b) Merrill Lynch South Africa may only act as an OTC derivative provider in relation to Merrill Lynch International and no origination, issuance and market-making in OTC derivatives may take place with external third-party clients and counterparties;
 - (c) Merrill Lynch South Africa must only issue forward or swap derivative instruments to Merrill Lynch International, and instruments may therefore only be issued on reverse solicitation/enquiry basis;
 - (d) The forward or swap derivative instruments must only be issued on a needs basis and Merrill Lynch South Africa may not actively solicit for business in OTC derivative instruments from Merrill Lynch International;
 - (e) All OTC derivative transactions must fall below the minimum thresholds for intra-group transactions set in Joint Standard 2 of 2020: Margin requirements for non-centrally cleared OTC derivatives transactions, as determined from time to time;
 - (f) Appropriate risk management and valuation frameworks as well as sound governance structures and sufficient oversight must continue to be applied to these transactions and be in place at all times;
 - (g) Merrill Lynch South Africa will report all OTC derivatives transactions to the Authority on a monthly basis in the form and manner required by the Authority, and at any time upon receipt of a request from the Authority; and
 - (h) Merrill Lynch South Africa will immediately inform the Authority of any change to the particulars furnished in and relating to the exemption application.
- (3) Failure by Merrill Lynch South Africa to comply with any conditions referred to in subparagraph (2) will result in the exemption no longer being applicable to Merrill Lynch South Africa.
- (4) This exemption will, subject to paragraph 4, be valid for a period of 36 months from the date of publication.

- (5) The Authority may at any time after the granting of the exemption and before the expiry of the exemption, revoke the exemption should it deem it necessary and appropriate to do so.

4. Amendment and withdrawal of Exemption

This Exemption is subject to-

- (1) amendment thereof published by the Authority by notice on the website of the Authority; and
- (2) withdrawal in a like manner.

5. Short title and commencement

This Notice is called the Exemption of Merrill Lynch South Africa (Proprietary) Limited from Regulation 2(1)(a) of the FMA, 2025 and takes effect on the date of publication.