



THE COMMODITY FUTURES ACT)
Subsection 66(1))

Order No. 7568
November 24, 2021

MERRILL LYNCH CANADA INC.

WHEREAS:

(A) The application (the **Application**) of Merrill Lynch Canada Inc. (the **Filer**) to the Manitoba Securities Commission (the **Commission**) for an order under subsection 66(1) of the *Commodity Futures Act*, R.S.M. 1988, c. C152 (the **CFA**) that the Designated Foreign Affiliate Employees (as defined below) of the Filer are not subject to the dealer registration requirement set forth in subsection 24(1)(a) of the CFA when conducting Extended Hours Activities (as defined below) on the Bourse de Montréal Inc. (the **MX**), subject to the terms and conditions set out below (the **Exemption Sought**).

(B) The Commission granted an order dated October 9, 2018 (the **Original Order**) providing relief in connection with certain Extended Hours Activities in respect of certain Designated Foreign Affiliate Employees of MLI (as defined below). The Filer has also applied for an order pursuant to subsection 66(1) of the CFA to revoke the Original Decision as of the date hereof.

(C) The Filer has represented to the Commission that:

1. The Filer is a corporation formed under the laws of Canada. The head office of the Filer is located in Toronto, Ontario.
2. The Filer is registered as an investment dealer under the securities legislation of all the provinces and territories of Canada except Nunavut; is registered as a futures commission merchant under the commodity futures legislation of Ontario and Manitoba; and is registered as a derivatives dealer under the derivatives legislation of Québec.
3. The Filer is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**) and the TSX Venture Exchange, an approved participant of the MX and a participating organization of the Toronto Stock Exchange.
4. The Filer is not in default of securities, derivatives or commodity futures legislation in any jurisdiction of Canada.
5. Merrill Lynch International (**MLI**) is a private unlimited company incorporated in England and Wales. The head office of MLI is located in London, England.
6. Merrill Lynch (Australia) Futures Limited (**ML Australia**) is an Australian public company. The head office of ML Australia is located in Sydney, New South Wales, Australia.
7. Merrill Lynch Far East Limited (ML Hong Kong and together with MLI and ML Australia, the **Designated Foreign Affiliates**) is a company incorporated in Hong Kong. The head office of ML Hong Kong is located in Hong Kong.

8. The Filer, MLI, ML Australia and ML Hong Kong are each a wholly-owned indirect subsidiary of Bank of America Corporation.
9. MLI is a United Kingdom-based broker dealer, which is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and Prudential Regulation Authority.
10. MLI holds memberships and/or has third-party clearing relationships with commodity and financial futures exchanges and clearing associations, including the London Stock Exchange. It also carries positions reflecting trades executed on other exchanges through affiliates and/or third-party clearing brokers.
11. MLI provides a variety of investment banking, market making, and brokerage services, including fixed income and equity for governments, corporations, financial institutions and other clients. MLI also conducts proprietary trading activities.
12. ML Australia is a futures broker licensed and regulated by the Australian Securities & Investments Commission to carry out regulated activities such as dealing in securities and derivatives.
13. ML Australia is a trading participant on ASX 24 and a clearing participant on ASX Clear (Futures) Pty Ltd.
14. ML Hong Kong is licensed with the Securities and Futures Commission of Hong Kong to carry out regulated activities including Dealing in Securities and Dealing in Futures Contracts. ML Hong Kong is an Options Trading Exchange Participant with Stock Exchange of Hong Kong, a Futures Commissions Merchant with Hong Kong Futures Exchange and a General Clearing Participant with HKFE Clearing Corporation and the SEHK Options Clearing House. In addition, ML Hong Kong is a clearing member of Hong Kong Securities Clearing Company Limited for listed securities.
15. The Filer wishes to make use of certain designated employees of the Designated Foreign Affiliates (the **Designated Foreign Affiliate Employees**) certified under applicable laws of the United Kingdom, Australia or Hong Kong, as applicable, in a category that permits trading the types of products which they would be trading on the MX to handle trading requests on the MX from the Filer's clients and the Filer on a proprietary basis during the MX's extended trading hours from 4:30 p.m. Eastern Time (ET) (t-1) to 6:00 a.m. ET each day on which the MX is open for trading (the Extended Hours Activities).

The MX Extended Trading Hours Amendments

16. The MX, based in Montréal, Québec, operates an exchange for options, commodity futures contracts and commodity futures options, and offers access to trading in those to market participants in Canada.
17. On July 9, 2018, the MX announced that the MX had approved amendments to its rules and procedures in order to accommodate the extension of the MX's

trading hours (the **Initial Extended Hours Initiative**). As a result of these amendments, since October 9, 2018, trading of certain products on the MX commences at 2:00 a.m. ET rather than the previous 6:00 a.m. ET.

18. As set out in MX Circular 111-18, in order to accommodate this earlier trading, the MX amended its rules to allow participants on the MX to have employees of affiliated corporations, including foreign affiliates, become an approved person of the MX participant and thus be able to handle trading requests originating from the MX participant's clients or the MX participant on a proprietary basis. In furtherance of the Initial Extended Hours Initiative, the Filer sought and obtained the Original Decision.
19. On March 17, 2020, the MX announced that the MX had approved non-material amendments to its rules and procedures in order to accommodate the further extension of the MX's trading hours (the **Asian Trading Hours Initiative**). As a result of these amendments, it is anticipated that, following the self-certification process under the Derivatives Act (Québec) applicable to self-regulatory organizations such as the MX, trading of certain products on the MX will commence at 8:00 p.m. ET (t-1) rather than the current 2:00 a.m. ET. These amendments are considered non-material insofar as the framework put in place in connection with the Initial Extended Hours Initiative will apply to the Asian Trading Hours Initiative, allowing participants on the MX to have employees of affiliated corporations, including foreign affiliates, become an approved person of the MX participant and thus be able to handle trading requests originating from the MX participant's clients or the MX participant on a proprietary basis. See MX Circular 135-20.
20. On February 4, 2021, the MX announced a proposed launch date of May 30, 2021 for the Asian Trading Hours Initiative, which has since been rescheduled to September 19, 2021. See MX Circulars 024-21 and 063-21.

Application of the dealer registration requirement in the CFA to Designated Foreign Affiliate Employees

21. The Filer is an MX approved participant and each of the Designated Foreign Affiliates is an affiliate of the Filer. The Filer wishes to make use of the Designated Foreign Affiliate Employees to conduct the Extended Hours Activities.
22. The dealer registration requirement in the CFA requires an individual to be registered to act as a dealing representative on behalf of a registered firm. The Exemption Sought is intended to provide the Filer with an exemption from (i) the requirement that the Filer use only registered dealing representatives to conduct the Extended Hours Activities; and (ii) the requirement that the Designated Foreign Affiliate Employees who will be conducting the Extended Hours Activities be registered as dealing representatives of the Filer.
23. The Filer seeks an exemption from the dealer registration requirement in the CFA because, in the absence of such exemption, each Designated Foreign Affiliate Employee who was to trade on behalf of the Filer would be required to become

individually registered and licensed in Canada. The Filer believes this is duplicative since the Designated Foreign Affiliate Employees are certified or authorized, as applicable, under applicable United Kingdom, Australian or Hong Kong law, and will be supervised by the Filer's Designated Supervisors (as defined below) and are otherwise subject to the conditions set forth below. The Filer believes the dealer registration requirement in the CFA is unduly onerous in light of the limited trading activities the Designated Foreign Affiliate Employees will be conducting and only during the period from 4:30 p.m. ET (t-1) to 6:00 a.m. ET.

24. The Filer has also applied to, and obtained from, IIROC an exemption from the registered representative requirements that are found in IIROC Dealer Member Rules 18.2 and 500 and the requirement to enter into an employee or agent relationship with the person conducting securities related business on its behalf that is found in IIROC Dealer Member Rule 39.3 (the **IIROC Relief**).
25. The IIROC Relief obtained by the Filer is subject to certain conditions, including:
 - (a) The Designated Foreign Affiliate Employees must be registered, licensed, certified or authorized and subject to equivalent regulatory supervision in the United Kingdom, Australia or Hong Kong, as applicable in a category that permits trading the types of products which they will be trading on the MX.
 - (b) The Designated Foreign Affiliate Employees may only accept and enter orders from clients of the Filer or orders from the Filer on a proprietary basis during the period from 4:30 p.m. ET (t-1) to 6:00 a.m. ET, subject to the MX trading rules being modified to allow for trading to commence at 4:30 p.m. ET (t-1) rather than 8:00 p.m. ET (t-1) as contemplated by the Asian Trading Hours Initiative, and are not permitted to provide advice.
 - (c) The actions of the Designated Foreign Affiliate Employees must be supervised by Canadian based registered Supervisors qualified to supervise the relevant trading (including futures contracts, futures contract options and options) (the **Designated Supervisors**).
 - (d) The Filer must establish and maintain written policies and procedures that address the performance and supervision requirements relating to this extended trading hours arrangement.
 - (e) The Filer and each Designated Foreign Affiliate must jointly and severally undertake to ensure IIROC has, upon request, prompt access to the audit trail of all trades, wherever located, that relate to Extended Hours Activities at each Designated Foreign Affiliate, and records evidencing the supervision of such activities.
 - (f) The Filer retains all responsibilities for its client accounts.
 - (g) The Filer and each Designated Foreign Affiliate Employee must enter into an agency agreement pursuant to which the Filer would assume all responsibility for the actions of the Designated Foreign Affiliate

Employee and of the Designated Foreign Affiliates that relate to the Filer's clients and the Filer would be liable under IIROC rules for such actions.

- (h) All MX trading rules will apply to orders entered by the Designated Foreign Affiliate Employees.
- (i) All other existing Canadian regulatory requirements continue to apply, including:
 - i. the Filer's client accounts would continue to be carried on the books of the Filer;
 - ii. all communications with the Filer's clients will continue to be in the name of the Filer; and
 - iii. the Filer's client account monies, security and property will continue to be held by the Filer.
- (j) The Filer must disclose this extended trading hours arrangement to its clients and provide specific instructions concerning the placement of orders relating to the extended trading hours arrangement.
- (k) The Filer must provide, in writing to IIROC, the names of the foreign affiliate(s) and all Designated Foreign Affiliate Employees authorized to accept and enter orders from the Filer's clients on behalf of the Filer under the extended trading hours arrangement. Such individuals are subject to IIROC's "fit and proper" review and IIROC Registration staff may refuse their participation in this extended trading hours arrangement.
- (l) The Filer must provide, in writing to IIROC, timely updates to the list of Designated Foreign Affiliate Employees, and confirm any changes on at least an annual basis.

(D) The Commission is of the opinion that it would not be prejudicial to the public interest to grant the Exemption Sought.

IT IS ORDERED:

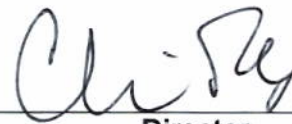
1. **THAT**, under subsection 66(1) of the CFA that the Original Decision is revoked;
2. **THAT**, under subsection 66(1) of the CFA that the Filer is hereby exempt from the dealer registration requirement under subsection 24(1)(a) of the CFA, provided that:
 - (a) the Designated Foreign Affiliates and the Designated Foreign Affiliate Employees are registered, licensed, certified or authorized under the applicable laws of the foreign jurisdiction in which the head office or principal place of business of the Designated Foreign Affiliate is located in a category

that permits trading the type of products which the Designated Foreign Affiliate Employees will be trading on the MX;

- (b) the Designated Foreign Affiliate Employees are permitted to accept and enter orders from clients of the Filer or orders from the Filer on a proprietary basis during the period from 4:30 p.m. ET (t-1) to 6:00 a.m. ET, and will not be permitted to give advice;
- (c) the Filer retains all responsibilities for its client accounts;
- (d) the actions of the Designated Foreign Affiliate Employees will be supervised by the Designated Supervisors, each of whom is qualified to supervise trading in futures contracts, futures contract options and options;
- (e) the Filer and the Designated Foreign Affiliate Employees enter into an agency agreement substantially as described in paragraph 25(g), and such agreement remains in effect; and
- (f) the Filer remains in compliance with the terms and conditions of the IIROC Relief.

3. **THAT**, the fee for this Order is \$650.00.

BY ORDER OF THE COMMISSION



Director