

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 104426 / December 17, 2025

ADMINISTRATIVE PROCEEDING
File No. 3-22173

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In the Matter of	:	
	:	NOTICE OF PROPOSED PLAN OF
	:	DISTRIBUTION AND OPPORTUNITY
Merrill Lynch, Pierce, Fenner &	:	FOR COMMENT
Smith Incorporated,	:	
	:	
Respondents.	:	
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ADMINISTRATIVE PROCEEDING
File No. 3-22174

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In the Matter of	:
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	:
Harvest Volatility Management	:
LLC,	:
	:
Respondent.	:
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Notice is hereby given, pursuant to Rule 1103 of the United States Securities and Exchange Commission's (the "Commission") Rules on Fair Fund and Disgorgement Plans (the "Commission's Rules"), 17 C.F.R. § 201.1103, that the Division of Enforcement has submitted to the Commission a proposed plan of distribution (the "Proposed Plan") for the distribution of monies paid in the above-captioned matter.

On September 25, 2024, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), Making Findings, and Imposing Remedial Sanctions and a Cease-and Desist Order (the "Merrill Lynch Order")¹ against Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"). Also on September 25, 2024, the Commission issued a separate, but related, Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a

¹ Exchange Act Rel. No. 101158 (Sept. 25, 2024).

Cease-and-Desist Order² (the “Harvest Volatility Order”) against Harvest Volatility Management LLC (“Harvest Volatility”).

In the Orders, the Commission found that from March 2016 to April 2018, Merrill Lynch referred certain clients to a third-party investment adviser, Harvest Volatility, to manage an option overlay strategy, more specifically, Harvest Volatility’s Collateral Yield Enhancement Strategy (“CYES”), pursuant to the terms of an Investment Management Agreement (“IMA”). In the Orders, the Commission found that Harvest Volatility purchased and sold options contracts at levels materially above the levels clients authorized in the IMA. By failing to comply with the IMA, Harvest Volatility caused hundreds of clients to be over exposed to the strategy, resulting in higher fees and, during certain periods, financial losses. As a result, Harvest Volatility willfully violated Section 206(2) of the Advisers Act. Harvest Volatility also failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its execution of CYES with respect to authorized notional amounts. As a result, Harvest Volatility willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

The Commission further found that Merrill Lynch knew or reasonably should have known that certain clients’ actual investment levels exceeded the dollar amounts designated and agreed upon between the clients and Harvest Volatility. By failing to adequately notify certain clients of their over-exposure, Merrill Lynch breached its fiduciary duties to those clients and willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

The Commission ordered the Respondents to pay \$4,500,000.00 in disgorgement, \$180,000.00 in prejudgment interest, and \$3,000,000.00 in civil money penalties, for a total of \$9,300,000.00, to the Commission. The Commission also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalties collected, along with the disgorgement and prejudgment interest collected, can be distributed to harmed investors (the “Fair Fund”).

The Fair Fund includes the \$9,300,000.00 collected from the Respondents. The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Fair Fund and has been deposited in a Commission-designated account at the U.S. Department of the Treasury, and any interest accrued will be added to the Fair Fund.

OPPORTUNITY FOR COMMENT

Pursuant to this Notice, all interested persons are advised that they may obtain a copy of the Plan from the Commission’s public website at <https://www.sec.gov/litigation/fairfundlist.htm>. Interested persons may also obtain a written copy of the Proposed Plan by submitting a written request to Devon Anthony Brown, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5876, or Brownde@sec.gov. All persons who desire to comment on the Proposed Plan may submit their comments, in writing, no later than thirty (30) days from the date of this Notice:

² Advisors Act Rel. No. 6726 (Sept. 25, 2024).

1. to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090;
2. by using the Commission's Internet comment form (<https://www.sec.gov/litigation/admin.shtml>); or
3. by sending an e-mail to rule-comments@sec.gov.

Comments submitted by email or via the Commission's website should include "Administrative Proceeding File No. 3-22173" and "Administrative Proceeding File No. 3-22174" in the subject line. Comments received will be publicly available. Persons should submit only information they wish to make publicly available.

THE PROPOSED PLAN

The Net Available Fair Fund³ is comprised of the \$9,300,000.00 in disgorgement, prejudgment interest, and civil money penalties collected from the Respondents, plus any interest and income earned thereon, less taxes, fees, and expenses. The Proposed Plan provides for the distribution of the Net Available Fair Fund to investors based on the management fees paid to the Respondents for investments in the Collateral Yield Enhancement Strategy (the "Security" or "CYES") that exceeded contractual limits from March 1, 2016, through April 30, 2018 (the "Relevant Period") as calculated by the methodology used in the Plan of Allocation outlined in the Plan.

For the Commission, by the Division of Enforcement, pursuant to delegated authority.⁴

Vanessa A. Countryman
Secretary

³ All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Proposed Plan.

⁴ 17 C.F.R. § 200.30-4(a)(21)(iii).