

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 104851 / February 17, 2026**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-22173**

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<b>In the Matter of</b>	:	
	:	<b>ORDER APPROVING</b>
	:	<b>PLAN OF DISTRIBUTION</b>
<b>Merrill Lynch, Pierce Fenner &amp; Smith Incorporated,</b>	:	
	:	
	:	
<b>Respondents.</b>	:	

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**ADMINISTRATIVE PROCEEDING**  
**File No. 3-22174**

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<b>In the Matter of</b>	:
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	:
<b>Harvest Volatility Management LLC,</b>	:
	:
	:
<b>Respondent.</b>	:

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On September 25, 2024, the Commission issued two separate but related Orders (the “Orders”) against Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”),<sup>1</sup> a registered broker-dealer and investment adviser, and Harvest Volatility Management LLC (“Harvest Volatility”),<sup>2</sup> a registered investment adviser (collectively, the “Respondents”).

In the Orders, the Commission found that from March 2016 to April 2018 (the “Relevant Period”), 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

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<sup>1</sup> 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, Exchange Act Rel. No. 101158 (Sept. 25, 2024) (Admin. Proc. File No. 3-22173).

<sup>2</sup> 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 Cease-and-Desist Order, Advisers Act Rel. No. 6726 (Sept. 25, 2024) (Admin. Proc. File No. 3-22174).

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 amount designated and agreed upon between the clients and Harvest Volatility and its failure to adequately notify certain clients of their over-exposure breached its fiduciary duties to those clients and therefore willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

In their respective Orders, the Commission ordered Merrill Lynch to pay \$2,000,000.00 in disgorgement, \$800,000.00 in prejudgment interest, and \$1,000,000.00 in civil money penalty; and Harvest Volatility to pay \$2,500,000.00 in disgorgement, \$1,000,000.00 in prejudgment interest, and \$2,000,000.00 in civil money penalty, for a collective total of \$9,300,000.00, to the Commission. In each of the Orders, the Commission 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, and further ordered that it may be added to or combined with any other fund established in any related action arising out of the same facts.

The Respondents have paid in full. In accordance with the Orders, the Fair Funds collected from the Respondents have been combined (collectively, the “Fair Fund”). The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Fair Fund 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.

On December 17, 2025, the Division of Enforcement, pursuant to delegated authority, published a Notice of Proposed Plan of Distribution and Opportunity for Comment (“Notice”),<sup>3</sup> pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Commission’s Rules”);<sup>4</sup> and simultaneously posted the Proposed Plan of Distribution (the “Proposed Plan”). The Notice advised interested persons that they could obtain a copy of the Proposed Plan from the Commission’s public website or by submitting a written request to Devon Brown, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5876. The Notice also advised that all persons desiring to comment on the Proposed Plan could submit their comments, in writing, within 30 days of the Notice. The Commission received no comments on the Proposed Plan during the comment period.

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<sup>3</sup> Exchange Act Rel. No. 104426 (Dec. 17, 2025).

<sup>4</sup> 17 C.F.R. § 201.1103.

The Proposed Plan provides for the distribution of the Net Available Fair Fund<sup>5</sup> to those 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 during the Relevant Period as calculated by the methodology used in the plan of allocation outlined in the Plan.

The Division of Enforcement now requests that the Commission approve the Proposed Plan.

Accordingly, it is hereby ORDERED, pursuant to Rule 1104 of the Commission’s Rules,<sup>6</sup> that the Proposed Plan is approved, and the approved Plan of Distribution shall be posted simultaneously with this order on the Commission’s website at [www.sec.gov](http://www.sec.gov).

For the Commission, by the Division of Enforcement, pursuant to delegated authority.<sup>7</sup>

Vanessa A. Countryman  
Secretary

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<sup>5</sup> All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Proposed Plan.

<sup>6</sup> 17 C.F.R. § 201.1104.

<sup>7</sup> 17 C.F.R. § 200.30-4(a)(21)(iv).