

JURISDICTION AND VENUE

3. The Commission brings this action under Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)]. The Commission seeks the imposition of a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

4. The Court has jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(d), 77v(a)], Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78aa], and Sections 209(d), 209(e) and 214 of the Advisers Act [15 U.S.C. §§ 80b-9(d), 80b-9(e), 80b-14].

5. Venue is proper in this District under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Section 27 of the Exchange Act [15 U.S.C. § 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14] because, among other things, Defendant resided in this district at the time of the conduct alleged herein and certain acts or transactions constituting the violations of the federal securities laws detailed herein occurred in this district.

6. In connection with the conduct described in this Complaint, Defendant, directly or indirectly, made use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange.

DEFENDANT

7. Defendant Thomas J. Buck, age 63, is a resident of Orchid, Florida. Buck formerly resided in Carmel, Indiana. Buck was at all times relevant to the events described herein a registered representative and investment adviser representative employed as a financial advisor by Merrill Lynch, Pierce, Fenner & Smith, Incorporated, now a division of Bank of America (“Merrill Lynch”).

FACTUAL ALLEGATIONS

A. BACKGROUND

8. Buck was employed by Merrill Lynch as a financial advisor from approximately February 1982 until March 2015, when he was terminated for cause. During the relevant time period, Merrill Lynch was a broker-dealer and investment adviser registered with the Commission pursuant to Section 15(b) of the Exchange Act and Section 203 of the Advisers Act, with an office in Carmel, Indiana, among other places across the country.

9. During the relevant period, Buck was a financial advisor to thousands of customers and investment advisory clients of Merrill Lynch. Buck was the leader of a team of at least thirteen other associated individuals under the designation of “The Buck Group” and “The Buck Team” (collectively “The Buck Group”). From 2012 through March 2015, the Buck Group’s customer and client base comprised approximately 800 households with more than 3,000 accounts and approximately \$1.3 billion assets under management.

10. During the relevant period, in general, Merrill Lynch customers and clients were offered commission and fee-based cost options, among others.

11. Under the commission-based option, customers were charged a commission for each transaction made in the customer’s account. With limited exceptions, the number and dollar size of transactions completed directly affected the amount of commissions yielded.

12. Under the fee-based option, clients were charged an annual fee that was a fixed percentage of the client’s total assets under management at Merrill Lynch regardless of the number and dollar value of transactions made on their account. The specific percentage within that range for a given client depended on the client’s total assets under management, the type of securities in the account, and negotiations between the client and the financial advisor.

13. During the relevant period, Merrill Lynch encouraged its financial advisors, including Buck, to evaluate whether a fee-based alternative might be appropriate for their customers, particularly by informing customers about the amounts they paid annually in commissions, comparing those

amounts to what customers would have paid under a fee-based alternative, and encouraging customers to choose the lowest cost option consistent with their investment objectives.

14. During the relevant period, approximately 70% of all revenue from Merrill Lynch's Indiana-based financial advisors came from clients on a fee-based cost platform. However, during the same period, approximately 80% of the revenue from Buck's customers came from commissions.

15. Merrill Lynch paid its financial advisors, including Buck, a portion of the revenue generated from customers' and clients' accounts, which was largely made up of the commissions and fees that customers and clients paid. In general, the more revenue that a financial advisor generated, whether from commissions or fees, the greater that advisor's compensation.

B. DEFENDANT MADE NUMEROUS MATERIAL MISREPRESENTATIONS AND OMISSIONS TO CUSTOMERS AND CLIENTS AND ENGAGED IN A SCHEME TO DEFRAUD CUSTOMERS AND CLIENTS

16. From at least 2012 through March 2015, Defendant executed a fraudulent scheme to obtain excessive commissions and fees and increase his personal compensation by making misrepresentations and omissions to customers and clients regarding the commissions or fees that would be and had been charged to their accounts.

17. Defendant represented to numerous customers that the total annual commissions would not exceed certain limits in their commission-based accounts. Defendant then traded in those accounts, generating commissions that exceeded the amounts that he had promised.

18. Buck failed to inform customers that their total annual commissions were exceeding the promised limits and falsely represented to several customers that their total annual commissions were within the promised limits.

19. Defendant also intentionally failed to inform those customers that a fee-based option could be cheaper compared to the total annual commissions the customer was paying based on trades executed in the account.

20. Defendant also made similar false and materially misleading representations to certain investment advisory clients about the fees and commissions in their accounts.

21. As part of the scheme, Defendant also impermissibly exercised discretion by intentionally placing certain trades in certain customer accounts without obtaining authorization from the customer.

22. As part of the scheme, Defendant also directly or indirectly made false and materially misleading statements to Merrill Lynch in response to inquiries regarding the commissions charged in customer accounts.

23. Defendant received in excess of \$2.5 million in excessive commissions and fees from at least 50 customers and investment advisory clients in connection with the fraudulent scheme.

24. In one example, on numerous occasions, Defendant made materially misleading statements to Customer A by representing that the total annual commissions in his accounts remained at or below a certain percentage of the value of the account, when in fact they exceeded this amount. During the applicable time, Buck bought and sold securities in Customer A's accounts.

25. When Merrill Lynch identified a commission-based account of Customer A that had commissions that exceeded certain internal thresholds, Buck caused a false statement to be entered into Merrill Lynch's compliance system that stated that Buck had discussed a fee-based option during previous reviews, when in fact Buck failed to discuss the fee-based option with Customer A.

26. As another example, Buck made materially misleading statements to Customer B by representing that the total annual commissions in her account would remain at a certain percentage of the value of the account, when in fact they exceeded this amount. During the applicable time, Buck bought and sold securities in Customer B's accounts.

27. When Merrill Lynch identified a commission-based account of Customer B that had commissions that exceeded certain internal thresholds, Buck caused a false statement to be entered into Merrill Lynch's compliance system that stated that Buck had discussed a fee-based option in the past, when in fact Buck failed to discuss the fee-based option with Customer B.

28. As a final example, Buck made materially misleading statements to Customer C, who had both fee-based and commission-based accounts, by representing that the total annual commissions

in his commission-based accounts would not exceed a certain percentage of the value of the account, when in fact they exceeded that amount. During the applicable time, Buck bought and sold securities in Customer C's accounts.

CLAIMS FOR RELIEF

First Claim

Section 10(b) of the Exchange Act and Rule 10b-5
[15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5]

29. Plaintiff repeats and incorporates by reference paragraphs 1 through 28 of this Complaint as if set forth herein.

30. Defendant, by engaging in the conduct described above, directly and indirectly, with *scienter*, in connection with the purchase or sale of securities, and by use of the means and instrumentalities of interstate commerce the mails, or any facility of a national securities exchange, has: (a) employed devices, schemes and artifices to defraud; or (b) made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business that have operated or will operate as a fraud and deceit upon other persons.

31. Defendant acted knowing and/or recklessly when he engaged in the conduct detailed above.

32. By reason of the foregoing acts and practices, Defendant violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

Second Claim

Section 17(a)(1), (2) and (3) of the Securities Act
[15 U.S.C. § 77q(a)(1), (2) and (3)]

33. Plaintiff repeats and incorporates by reference paragraphs 1 through 28 of this Complaint as if set forth herein.

34. Defendant directly or indirectly, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails,

has: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit upon the purchaser.

35. In engaging in the conduct described herein, Defendant acted knowingly and/or with a reckless disregard for the truth and/or negligently.

36. For these reasons, the Defendant has violated, and unless enjoined will likely again violate, Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(1), § 77q(a)(2) and § 77q(a)(3)].

Third Claim

Sections 206(1) and 206(2) of the Advisers Act
[15 U.S.C. §§ 80b-6(1) and 80b-6(2)]

37. Plaintiff repeats and incorporates by reference paragraphs 1 through 28 of this Complaint as if set forth herein.

38. Defendant, directly or indirectly, knowingly, recklessly or negligently, by use of the mails or any means or instrumentality of interstate commerce, while acting as an investment adviser within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)], has: (a) employed devices, schemes, and artifices to defraud a client or prospective client; and/or (b) engaged in transactions, practices, or courses of business which operate as a fraud or deceit upon a client or prospective client.

39. In engaging in the conduct described herein, Defendant acted knowingly and/or with a reckless disregard for the truth and/or negligently.

40. For these reasons, Defendant has violated, and unless restrained and enjoined, will continue violating, Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) Enter an Order finding that Defendant committed, and unless restrained will continue to commit, the violations alleged in this Complaint;
- (2) Permanently enjoin Defendant from future violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240. 10b-5] and Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)];
- (3) Permanently enjoin Defendant from future violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)];
- (4) Order Defendant to disgorge all ill-gotten gains from the conduct alleged herein, with prejudgment interest;
- (5) Order civil penalties against Defendant pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)] for violations of the federal securities laws as alleged herein; and
- (6) Order such other and further relief as the Court may deem just and proper.

Dated: October 31, 2017

Respectfully submitted,

By: /s/Aleah Borghard
Aleah Borghard (NY Bar No. 4595054)
Brian D. Fagel (IL Bar No. 6224886)
U.S. Securities and Exchange Commission
Chicago Regional Office
175 W. Jackson Blvd., Suite 1450
Chicago, Illinois 60604
(312) 353-7390