

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 101814 / December 4, 2024**

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

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<b>In the Matter of</b>	:	
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<b>MERRILL LYNCH, PIERCE,</b>	:	<b>EXTENSION ORDER</b>
<b>FENNER &amp; SMITH</b>	:	
<b>INCORPORATED,</b>	:	
	:	
<b>Respondent.</b>	:	
_____	:	

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

_____	:	
<b>In the Matter of</b>	:	
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<b>HARVEST VOLATILITY</b>	:	
<b>MANAGEMENT LLC.,</b>	:	
	:	
<b>Respondent.</b>	:	
_____	:	

The Division of Enforcement (“Division”) has requested an extension of time until October 31, 2025, to submit a Proposed Plan of Distribution under Rule 1101(a) of the Commission’s Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1101(a).

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”), a registered investment adviser (collectively, the “Respondents”).<sup>2</sup> 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 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 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 and its failure to adequately notify certain

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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, 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).

clients of their over-exposure 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.

In their respective Orders, the Commission ordered Merrill Lynch to pay \$2,000,000.00 in disgorgement, \$800,000.00 in prejudgment interest, and a \$1,000,000.00 civil money penalty; and Harvest Volatility to pay \$2,500,000.00 in disgorgement, \$1,000,000.00 in prejudgment interest, and a \$2,000,000.00 civil money penalty, to the Commission. In each of the Orders, the Commission also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalty 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 \$9,300,000.00 paid by the Respondents has been combined (collectively, the “Fair Fund”) and deposited in a Commission-designated account at the U.S. Department of the Treasury, and any accrued interest will be added to the Fair Fund.

In its request for an extension of time, the Division states that additional time is needed to select and appoint a tax administrator, complete the fund administrator solicitation and appointment process, develop the distribution methodology, and prepare the proposed plan of distribution.

Accordingly, for good cause shown, IT IS HEREBY ORDERED that the Division's request for an extension of time until October 31, 2025, to submit a Proposed Plan of Distribution is granted.

For the Commission, by the Division of Enforcement, pursuant to delegated authority.<sup>3</sup>

Vanessa A. Countryman  
Secretary

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<sup>3</sup> 17 C.F.R. § 200.30-4(a)(21)(i).