

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 103849 / September 3, 2025**

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

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<b>In the Matter of</b>	:	<b>ORDER APPOINTING FUND</b>
	:	<b>ADMINISTRATOR, SETTING</b>
<b>Merrill Lynch, Pierce Fenner &amp;</b>	:	<b>ADMINISTRATOR’S BOND AMOUNT,</b>
<b>Smith Incorporated,</b>	:	<b>AND AUTHORIZING THE APPROVAL</b>
	:	<b>AND PAYMENT OF THE FEES AND</b>
<b>Respondent.</b>	:	<b>EXPENSES OF ADMINISTRATION</b>

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

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<b>In the Matter of</b>	:
	:
<b>Harvest Volatility Management</b>	:
<b>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”).

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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).

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 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 in civil money penalty, for a collective total of \$9,300,000.00 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.

The Division of Enforcement (the “Division”) now seeks the appointment of Rust Consulting, Inc. (“Rust”) as the fund administrator and requests that the administrator’s bond be set at \$9,300,000.00. Rust is included in the Commission’s approved pool of administrators.

The Division further requests that the Commission authorize the Office of Financial Management (“OFM”), at the direction of an Assistant Director of the Office of Distributions, to pay the Fund Administrator’s fees and expenses from the Fair Fund, so long as the total amount paid to the Fund Administrator does not exceed the total amount of an approved cost proposal submitted by the Fund Administrator.

Accordingly, IT IS HEREBY ORDERED that:

- A. Rust is appointed as the Fund Administrator, pursuant to Rule 1105(a) of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Commission’s Rules”);<sup>3</sup>
- B. Rust shall obtain a bond in accordance with Rule 1105(c) of the Commission’s Rules,<sup>4</sup> in the amount of \$9,300,000.00;

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<sup>3</sup> 17 C.F.R. § 201.1105(a).

<sup>4</sup> 17 C.F.R. § 201.1105(c).

- C. the Fund Administrator will submit invoices to the Commission staff for services rendered, in accordance with Rule 1105(d) of the Commission's Rules;<sup>5</sup> and
- D. at the direction of an Assistant Director of the Office of Distributions, OFM is authorized to pay the Fund Administrator's fees and expenses from the Fair Fund, in accordance with Rule 1105(e) of the Commission's Rules,<sup>6</sup> so long as the total amount paid to the Fund Administrator does not exceed the total amount of an approved cost proposal submitted by the Fund Administrator.

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> 17 C.F.R. § 201.1105(d).

<sup>6</sup> 17 C.F.R. § 201.1105(e).

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