

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

**SECURITIES ACT OF 1933**  
**Release No. 11109 / September 27, 2022**

**In the Matter of**

**Certain  
Broker-Dealer  
Practices,**

**Respondents.**

**ORDER UNDER RULES 262(b)(2),  
506(d)(2)(ii), AND 602(e) OF THE  
SECURITIES ACT OF 1933 AND RULE  
503(b)(2) OF REGULATION  
CROWDFUNDING GRANTING  
WAIVERS OF THE DISQUALIFICATION  
PROVISIONS OF RULES 262(a)(4),  
506(d)(1)(iv), AND 602(c)(3) OF THE  
SECURITIES ACT OF 1933 AND RULE  
503(a)(4)(ii) OF REGULATION  
CROWDFUNDING**

**I.**

Pursuant to the Broker-Dealer Off-Channel Communications Initiative,<sup>1</sup> the Division of Enforcement determined to recommend that the Securities and Exchange Commission (“Commission”) accept settlement offers from certain registered broker-dealers, certain dual registered broker-dealers and investment advisers, and a registered investment adviser that committed certain non-scienter based record-keeping violations of the federal securities laws and agreed to consent to certain standardized settlement terms.

**II.**

The Commission has issued separate orders (“Record-Keeping Orders”) instituting administrative and cease-and-desist proceedings against certain SEC-registered broker-dealers or dual SEC-registered broker-dealers and investment advisers (the “Broker-Dealers”) and an SEC-registered investment adviser (the “Investment Adviser”) (together, the “Firms”).<sup>2</sup> These proceedings were brought pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940

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<sup>1</sup> The Broker-Dealer Off-Channel Communications Initiative was an investigative initiative conducted by the Division of Enforcement.

<sup>2</sup> The list of Firms subject to this Order is included as an Appendix to this Order. All firms on the list are SEC-registered broker-dealers or dual SEC-registered broker-dealers and investment advisers, with the exception of DWS Investment Management Americas, Inc., which is an SEC-registered investment adviser.

(“Advisers Act”) for willful violations of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder by the Broker-Dealers, and Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder by the Investment Adviser for their failure to comply with the recordkeeping requirements on broker-dealers and investment advisers to ensure that they responsibly discharge their crucial roles in our markets. Specifically, the Firms failed to keep for prescribed periods, and furnish copies of, such business-related records as necessary or appropriate in the public interest or for the protection of investors. The Firms admit to facts set forth in their respective Record-Keeping Orders and acknowledge that their conduct violated the federal securities laws. The Record-Keeping Orders will require the Broker-Dealers to cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-4, thereunder, the Investment Adviser to cease and desist from committing or causing any violations and any future violations of Section 204 of the Advisers Act and Rule 204-2 thereunder, and all Firms to, among other things, undertake to retain a compliance consultant to conduct a comprehensive review of its supervisory, compliance, and other policies and procedures designed to ensure that all relevant electronic communications are preserved in accordance with the requirements of the federal securities laws. The Record-Keeping Orders will trigger certain disqualifications from exemptions from registration available under the Securities Act of 1933 (“Securities Act”) for the Firms.

### III.

Rule 262(a) of Regulation A provides for disqualification from the Regulation A exemption from registration under the Securities Act for offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) of the Exchange Act or Section 203(e) or (f) of the Advisers Act that places limitations on that entity’s activities, functions, or operations. *See* 17 CFR § 230.262(a)(4)(ii). Similarly, Rules 506(d) of Regulation D and 503(a) of Regulation Crowdfunding provide for disqualification from the Regulation D and Regulation Crowdfunding exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) of the Exchange Act or Section 203(e) or (f) of the Advisers Act that places limitations on that entity’s activities, functions, or operations. *See* 17 CFR §§ 230.506(d)(1)(iv)(B) and 227.503(a)(4)(ii).

Rule 602(a) of Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. *See* 17 CFR § 230.602(a). Rule 602(c)(3) of Regulation E makes this exemption unavailable for the securities of an issuer if, among other things, any investment adviser or any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act or Section 203(e) or Section 203(f) of the Advisers Act. *See* 17 CFR § 230.602(c)(3).

The Commission has the authority to waive the disqualifications of Regulations A, D, E, and Crowdfunding upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. *See* 17 CFR. §§ 230.262(b)(2), 230.506(d)(2)(ii), 230.602(e), and 227.503(b)(2).

In light of the Firms' participation in the Broker-Dealer Off-Channel Communications Initiative, assuming the Firms comply with the terms of the Record-Keeping Orders, and in light of the benefits of the Broker-Dealer Off-Channel Communications Initiative, the Commission has determined that, pursuant to Rules 262(b)(2), 506(d)(2)(ii), and 602(e) of the Securities Act and Rule 503(b)(2) of Regulation Crowdfunding good cause exists for not denying the various exemptions from registration discussed herein.

#### IV.

Accordingly, IT IS ORDERED, pursuant to Rules 262(b)(2), 506(d)(2)(ii), and 602(e) of the Securities Act and Rule 503(b)(2) of Regulation Crowdfunding, that waivers from the application of the disqualification provisions of Rules 262(a)(4)(ii), 506(d)(1)(iv)(B), and 602(c)(3) of the Securities Act and Rule 503(a)(4)(ii) of Regulation Crowdfunding, resulting from the entry of the Record-Keeping Orders against the Firms are hereby granted to the Firms as reflected in the attached appendix. Nothing in this Order shall effect any pre-existing disqualification under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any Firm. Failure to comply with terms of a Record-Keeping Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under these circumstances.

Because of the unique nature of the Broker-Dealer Off-Channel Communications Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Vanessa Countryman  
Secretary

Appendix: Firms

## Appendix A

(Waivers from disqualification under Regulations A, D, E, and Crowdfunding)

Barclays Capital Inc.  
BofA Securities, Inc.  
Cantor Fitzgerald & Co.  
Citigroup Global Markets Inc.  
Credit Suisse Securities (USA) LLC  
Deutsche Bank Securities Inc.  
DWS Distributors, Inc.  
DWS Investment Management Americas, Inc.  
Goldman Sachs & Co. LLC  
Jefferies LLC  
Merrill Lynch, Pierce, Fenner & Smith Incorporated  
Morgan Stanley & Co. LLC  
Morgan Stanley Smith Barney LLC  
Nomura Securities International, Inc.  
UBS Securities LLC  
UBS Financial Services, Inc.