MERRILL
A BANK OF AMERICA COMPANY

[redacted] [redacted]

YOUR CMA TRANSACTIONS

July 30, 2022 - August 31, 2022

DIVIDENDS/INTEREST INCOME TRANSACTIONS (continued)

Date Description	Transaction Type	Quantity	Income	Income Year To Date
Taxable Dividends				
Subtotal (Taxable Dividends)				**11,510.28**
NET TOTAL			**.08**	**11,510.49**

PRIVATE EQUITY/REAL ASSETS FUNDS SUMMARY

PRIVATE EQUITY/ REAL ASSETS FUNDS	Original Investment Date	Commitment	Contributions (a)	Distributions (b)	Estimated NAV (c)	Total Distributions & Estimated NAV	Investment Multiple on Contributions to Date (d)	Net IRR as Reported by Fund (e)
BLACKSTONE TAC OPPS ACCESS L.P. CLASS A	04/17/2017	100,000	86,000	36,124	69,749	105,873	1.23	6.95%
LS REAL ESTATE RECOVERY V TRUST CLASS A	10/04/2017	47,562	32,737	12,795	11,877	24,672	0.75	(11.91%)
TOTAL		147,562	118,737	48,919	81,626	130,545	1.10	

Footnotes*

a - Aggregate contributions, net of applicable placement fee, from original investment date. Unfunded balance does not include outstanding recallable capital, if applicable. Please refer to the most recent Fund Capital Account Statement.

b - Net distributions, including outstanding recallable if applicable, from original investment date. Please refer to the most recent Fund Capital Account Statement.

c - Estimated Net Asset Value (NAV) based on the most recent financial information (may be unaudited) from the Underlying Fund and adjusted for any contributions or distributions since the valuation date for feeder funds. Other funds (e.g., not feeder funds) may not adjust for subsequent calls/distributions. Please refer to the Capital Account Statement.

d - Investment Multiple = (Distributions + Estimated NAV) / Contributions, net of applicable placement fee.

E e - Last reported annualized net internal rate of return (IRR). IRR is the net return earned by investors over a particular period calculated on the basis of cash flows to and from investors, after the deduction of all fees (except placement fee if applicable), including carried interest. In the early years of a Fund, fees and expenses are a more material component of the calculation, and have a greater impact on the Fund's IRR.

* - All amounts shown above are cumulative-to-date, without regard to transfer activity, if any.

No mention of the subscription line which has the opposite effect.

019 4782

I allege that Bank of America/Merrill Lynch has been violating a basic "don't make misleading statements" FINRA RULE 2210(d)(1) for 5-10 years. It is possible the rule was violated orally for many years. The statement was actually added to the Merrill Lynch client statements as a footnote in November of 2017.

The below language was added as a footnote in the Private Equity summary on the Merrill Lynch/Bank of America statements. (Merrill Lynch sells a Private Equity deal from Blackstone or another Gold-standard Private Equity Firms. Blackstone gives the IRR to Merrill who puts it on the client statement. Merrill notes that the IRR was provided from the PE Firms.) I have BOLDED the misleading statement.

NET IRR AS REPORTED BY FUND (e)

e - Last reported annualized net internal rate of return (IRR). IRR is the net return earned by investors over a particular period, calculated on the basis of cash flows to and from investors, after the deduction of all fees (except placement fee if applicable), including carried interest. ***In the***

early years of a Fund, fees and expenses are a more material component of the calculation, and have a greater impact on the Fund's IRR.

The truth is that IRR is totally meaningless in the early years. The second truth is that there are several factors influencing the IRR in the early years. One is excess fees, the most powerful is the subscription facility and a third is the effect of one good deal coming back quickly. This misleading statement is telling the clients that IRR is understated in the beginning because of the fees. In most cases, it is actually overstated because of the subscription facilities. The only place in the entire PE ecosystem where "early IRR" is considered real and low is **this footnote.**

In the 11/17/22 ML complaint, I asked ML for specific dates when the "early years" began and ended for the two private equity funds under discussion. ML had no answer.

From Federal Register:

Computed Without the Impact of Fund-Level Subscription Facilities.

The proposed rule would require advisers to calculate performance measures for each illiquid fund as if the private fund called investor capital, rather than drawing down on fund-level subscription facilities.Such facilities enable the fund to use loan proceeds – rather than investor capital This practice permits the fund to delay the calling of capital from investors, which has the potential to increase performance metrics artificially.

Many advisers currently provide performance figures that reflect the impact of fund-level subscription facilities. These "levered" performance figures often do not reflect the fund's actual performance and have the potential to mislead investors. For example, an investor could reasonably believe that levered performance results are similar to those that the investor has achieved from its investment in the fund. We believe that unlevered performance figures would provide investors with more meaningful data and improve the comparability of returns.

From page 68 of SEC SECURITIES AND EXCHANGE COMMISSION 17 CFR Part 275 [Release Nos. IA-5955; File No. S7-03-22] RIN 3235-AN07 Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews-Federal Register version

1) Warren Buffet "IRR is a number that I would not say is honest"

2) Howard Marks
    a) You Can't Eat IRR 7/12/2006
        i) "IRR only has meaning over a long time and lots of money"
    b) Lines in the Sand (Subscription Lines 4/18/17)

i) With calls for LP Postponed, the reported internal rate of return or IRR in the early years will increase substantially.

ii) The use of borrowed money can reduce or even eliminate the deleterious impact on early returns of the so-called J curve. The J-curve Results from the fact that in a fund's early years, management fees are usually charged on total committed Capital, while a relatively small percentage of the capital has been put to work.

iii) Since a fund's total dollar profits and multiple of capital aren't improved by the use of a subscription line, the increase in IRR, while pleasant, may be thought of as illusory.

3) <u>Blackstone Wholesaler</u> "IRR doesn't mean (expletive)- I don't want the clients to hear this. "IRR doesn't really mean anything, it only means something after at least 10 years or maybe even well after that ...at the end of the life of the fund."

4) *The SEC has fined various PE managers for undisclosed fees. Will the focus of future enforcement actions be something far more serious.....fake performance?*
   a) Castle Hall Diligence: 7/12/18

5) In a July 2017 article, the Financial Times wrote about "Private Equity's Dirty Secret" - the subscription credit line. Per the article: This little-discussed technique, known as subscription-line financing, helps private equity managers earn performance fees because one of their funds' key assessment metrics, the internal rate of return, is based on the date an investor's cash is put to work.

   a) "This sleight of hand artificially raises the fund's apparent performance but it does nothing to increase the actual returns earned by investors," says Jennifer Choi, managing director of industry affairs at ILPA.

6) <u>Diane Mulcahy, Bill Weeks, and Harold S. Bradley, "'We Have Met the Enemy…and He is Us': Lessons from Twenty Years of the Kauffman Foundation's Investments in Venture Capital Funds and the Triumph of Hope over Experience," working paper, May 2012.</u>*There is not consistent evidence of a J-curve in venture investing since 1997; the typical Kauffman Foundation venture fund reported peak internal rates of return (IRRs) and investment multiples early in a fund's life (while still in the typical sixty-month investment period), followed by serial fundraising in month twenty-seven*

7) *<u>McKinsey Internal Rate of Return- A cautionary tale:</u> 8/1/2004*
In an informal survey of 30 executives at corporations, hedge funds, and venture capital firms, we found only 6 who were fully aware of IRR's most critical deficiencies.

8) Forbes article august 2021 / Antoine Gara-

a) There is a J curve, but it is an "Upside down J curve"
b) "The IRR is high in the beginning because they're manipulating it to be high," says Brad Case, an economist who studies private equity. "Why does it come down over time? Because they run out of opportunities to keep manipulating it."
c) Win or lose, those high reported early IRRs are a great marketing tool.

d) https://www.forbes.com/sites/antoinegara/2021/08/06/how-big-promises-and-fat-fees-turned-private-equity-into-a-lousy-investment/?sh=2c8bd95d6e34

9) NYTimes article -Deal Book-12/4/21- by Michelle Celarier/editor is Andrew Ross Sorkin.
a) *Investors have long assumed that private equity produces the best returns. In today's newsletter, we examine how the industry's recent performance stacks up against public markets — and the often misleading way in which it calculates returns.*

b) *Longtime critics like Ms. Appelbaum and Mr. Phalippou say the typical methodology used to report results to investors, known as the internal rate of return, or I.R.R., is easily gamed. "It's certainly highly misleading, Mr. Phalippou said. But, Ms. Appelbaum said, "the private equity guys love it." For example, she said, if a 10-year private equity fund buys 10 companies, and decides to sell the best one early on, the I.R.R. looks great. "You got a lot of money when you sold it, so you have a very high rate of return," she said. That's because the I.R.R. assumes that until the fund liquidates, the profit from that sale can be reinvested at the same high rate. The I.R.R. methodology may be why some funds look better in their* ***early years,*** *especially if they have borrowed money to add to the investments*

10) Blackstone wholesaler talking about the "mythical" j-curve: This is where the misleading language on the statement comes from.
a) ***Blackstone wholesaler (MD at Blackstone)****: Yeah, as you know, the fees with private equity are steep in the beginning because you are drawing down the capital. You are putting the money in the ground and you have this thing called the* ***J curve*** *which means these deals take three to four to five years to season and your paying fees. You are paying fees, and then, all of a sudden, in years four or five, You are seeing a huge return on your money. So it is beneficial in the long run. These are great return enhancement vehicles.*

11) A better statement would be " ***In the early years of a Fund, fees and expenses are a more material component of the calculation, and have a greater impact on the Fund's IRR.*** *However, the use of a subscription facility will make the IRR appear higher than it actually is. Usually the high IRR because of the use of a subscription facility overwhelms the potential low IRR because of the fees and expenses and you should not think your fund will do as well as it is doing in the "early years". In general, Don't put any value on the IRR*

during the investment period. We apologize for using the term "early years". We know it is vague. IRR needs a confidence factor next to it for the duration of the fund's 12-year life. Think of it like quarterbacks. You only get paid on the passing yardage of a 4th year pro. The fact that he passed for 1,000 yards a game as a 10th grader is not important.

12) I note that the term "early years" is vague and is there to intentionally confuse the clients and let the advisor say things are rosy for a long period of time..

13) Why put any footnote at all? The only thing the clients look at is the statement. In this case they look at the IRR and look at the footnote each month. It drills in their mind that they are doing better than they really are. It helps sales, **The footnote means:**

a) **"You have more money than the IRR states in the first 3-5 years of the fund. "**
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c) **"Don't think of selling the fund at a discount in the secondary market and don't have a competitor review the statement"**

14) It is telling the client that the IRR on their statement during "the early years" (let's call that years 3-5 as that is the average length of an investment period.) can be ignored if it is negative or low as that is how Private Equity deals work. It is also telling them that a positive IRR is being held back by the weight of the "fees and expenses" and is actually higher than it appears. The end result is the client is being told every month that they have a better investment than it looks. It is there to help fundraise for the next deal.

FINRA Rule 2210(d)(1) requires that all member firm communications be fair, balanced and not misleading. Communications that promote the potential rewards of an investment also must disclose the associated risks in a balanced manner.8

In addition, communications must be accurate and provide a sound basis to evaluate the facts with respect to the products or services discussed. Rule 2210(d)(1) also prohibits false, misleading or promissory statements or claims, and prohibits the publication, circulation or distribution of a communication that a member firm knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

2020. Use of Manipulative, Deceptive or Other Fraudulent Devices
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(A) All member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading.

(B) No member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication. No member may publish, circulate or distribute any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

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