

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE DISTRICT OF COLUMBIA**

SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 1:19-cv-2904
)	
MYLAN N.V.,)	
)	
Defendant.)	
)	

DISTRIBUTION PLAN

I. Introduction

1. On September 27, 2019, the U.S. Securities and Exchange Commission (“SEC” or “Commission”) filed a complaint against Mylan N.V. (“Mylan” or “Defendant”) alleging, among other things, that Mylan failed to timely disclose to investors a possible loss relating to a U.S. Department of Justice (“DOJ”) probe into whether Mylan overcharged Medicaid by hundreds of millions of dollars for sales of EpiPen Auto-Injector (“EpiPen”) by misclassifying EpiPen as a “generic” or “non-innovator” drug. (*Dkt No. 1*).
2. Without admitting or denying the Commission’s allegations, Mylan consented to the entry of a Final Judgment based on the violations alleged in the Commission’s Complaint. On October 1, 2019, the Court entered a Final Judgment against Mylan that enjoined Mylan from future violations of the same provisions of the federal securities laws and ordered Mylan to pay a civil penalty in the amount of \$30 million. (*Dkt No. 5*). The Final Judgment further authorized the Commission to “propose a plan to distribute the collected funds subject to the Court’s approval,” and that “such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002” (“Sarbanes-Oxley”), 15 U.S.C. § 7246(a). (*Id. at 5*).
3. On October 31, 2019, Mylan paid the \$30,000,000 civil penalty to the Commission and the funds were deposited into an interest-bearing account at the United States Department of the Treasury’s Bureau of Fiscal Services.
4. By Order dated February 19, 2020, the Court created a Fair Fund (the “Fair Fund”) pursuant to Section 308(a) of Sarbanes-Oxley, as amended, to return funds to certain Mylan investors harmed by the alleged misconduct. (*Dkt No. 10*).

5. By Order dated February 19, 2020, the Court appointed RCB Fund Services, LLC to serve as the Distribution Agent for the Fair Fund (“Distribution Agent”) to oversee all aspects of the administration and distribution of the Fair Fund in accordance with the terms of a distribution plan to be approved by the Court, and in coordination with the SEC Staff. (*Dkt No. 11 – Minute Order*).
6. All fees, expenses, and other costs relating to the administration and distribution of the Mylan Fair Fund, including those of the Distribution Agent and the Tax Administrator, will be paid from the Fair Fund.
7. This Distribution Plan was developed jointly by the Distribution Agent and the SEC Staff in accordance with practices and procedures customary in Fair Fund administrations. This Distribution Plan governs the administration and distribution of the Fair Fund, and sets forth the method and procedures for distributing the assets of the Fair Fund to certain Mylan investors harmed by the alleged misconduct.

II. Definitions

8. As used in this Distribution Plan, the following definitions shall apply:
 - a. “**Check-cashing Period**” means the ninety (90) days following the mailing of Distribution Payment checks to Eligible Claimants in accordance with this Distribution Plan.
 - b. “**Claim Form**” means the form designed by the Distribution Agent for the filing of claims in accordance with the terms of this Distribution Plan. The Claim Form will require, at a minimum, sufficient documentation reflecting any Potential Claimant's purchases and dispositions of the Eligible Security during the Relevant Period, and the tax identification number of the Potential Claimant.
 - c. “**Claims Bar Date**” means the date established in accordance with this Distribution Plan by which Claim Forms must be postmarked or submitted electronically in order to receive consideration under the Distribution Plan. Subject to certain extensions provided for in this Distribution Plan, the Claims Bar Date will be one hundred and twenty (120) days from the initial Notice Publication.
 - d. “**Claims Packet**” means the materials relevant to submitting a claim that may be provided to Potential Claimants known to the Distribution Agent or to those who obtain such materials through the Fair Fund website or other appropriate delivery mechanisms. These materials will include a copy of the Fair Fund Notice and a Claim Form (together with instructions for completion of the Claim Form).
 - e. “**Day**” means a calendar day, unless otherwise specified herein.
 - f. “**De Minimis Amount**” is \$10.00. No Eligible Claimant shall receive a Distribution Payment unless his, her, or its Distribution Payment calculated pursuant to the Plan of Allocation is equal to or greater than \$10.00.
 - g. “**Determination Notice**” means the notice sent by the Distribution Agent to all Potential Claimants that submitted a Claim Form. The Determination Notice will set forth the Distribution Agent’s determination of the eligibility of the claim

(eligible, partially or wholly deficient, or ineligible) and the Eligible Loss Amount, if any. The Determination Notice will provide to each Potential Claimant whose claim is deficient, in whole or in part, the reason(s) for the deficiency, notify the Potential Claimant of the opportunity to cure such deficiency, and provide instructions regarding further necessary actions. In the event the claim is denied, the Determination Notice will state the reason for such denial and notify the Potential Claimant of their opportunity to request reconsideration of their claim.

- h. **“Distribution Agent”** refers to RCB Fund Services, LLC (collectively with all employees, agents, consultants, or independent contractors of such firm), which has been appointed by the Court to administer and distribute the Fair Fund in accordance with the terms of this Distribution Plan and the Court's orders.
- i. **“Distribution Payment”** means the payment from the Fair Fund to an Eligible Claimant in accordance with the terms of this Distribution Plan.
- j. **“Distribution Plan”** means this Distribution Plan in the form approved by the Court.
- k. **“Eligible Claimant”** means a Potential Claimant who suffered a loss as a result of transactions in the Eligible Security during the Relevant Period and who is determined by the Distribution Agent to be eligible for a Distribution Payment from the Fair Fund. An “Eligible Claimant” does not include:
 - i. Any Defendant in this or any related matter;
 - ii. Any Person who served at any time from January 1, 2013 through the end of the Relevant Period as an officer¹ or director of Mylan, or any subsidiary or affiliate² of Mylan involved in the conduct alleged in the Complaint;
 - iii. Any firm, trust, corporation, or other entity in which Mylan has or had a controlling interest;
 - iv. Mylan’s directors’ and officers’ liability insurance carriers, and any affiliates or subsidiaries thereof;
 - v. Any current or former employee of Mylan or any of its subsidiaries or affiliates who has been terminated for cause or has otherwise resigned in connection with the conduct alleged in the Complaint;
 - vi. Any Person who, as of the Claims Bar Date, has been the subject of criminal charges related to the conduct alleged in the Complaint, unless and until such defendant is found not guilty in all such criminal actions prior to the Claims Bar Date, and proof of the finding(s) is included with such defendant’s timely filed Claim Form;
 - vii. The Distribution Agent, its employees, and those persons assisting the Distribution Agent in its role as Distribution Agent;
 - viii. Any affiliates, assigns, creditors, heirs, distributees, spouses, parents, children or controlled entities of any of the foregoing Persons or entities described in k.i – k.vii; or

¹ An “officer” excluded under this paragraph is any officer of Mylan required to file a Form 3, 4 or 5 with the Commission pursuant to Section 16 of the Securities Exchange Act of 1934 to report transactions in Eligible Securities during the 2015 or 2016 calendar years.

² As used herein, “affiliate” shall have the meaning described in Section 101(2) of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq.

- ix. Any purchaser or assignee of another Person's right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by bona fide gift, inheritance, devise or operation of law.

The Claim Form will require Potential Claimants to certify that he, she, or it is not an Excluded Party.

- l. **"Eligible Loss Amount"** means the amount of loss for an Eligible Claimant as calculated in accordance with the Plan of Allocation for shares of the Eligible Security purchased or acquired during the Relevant Period.
- m. **"Eligible Loss per Share"** means the amount of loss on a share of the Eligible Security purchased or acquired during the Relevant Period.
- n. **"Eligible Security"** refers to Mylan N.V. common stock listed on a U.S. exchange and registered with the Commission during the Relevant Period. Investors who acquired shares of Mylan common stock in the June 2016 share exchange in connection with Mylan's acquisition of Meda Aktiebolag may be eligible for a recovery from the Fair Fund, if they satisfy all other requirements of the Distribution Plan.
- o. **"Fair Fund"** refers to the \$30,000,000 fund created by the Court pursuant to Section 308(a) of the Sarbanes-Oxley Act, as amended, and pursuant to the Final Judgment for the benefit of investors harmed by the conduct alleged in the Complaint, plus any additions thereto as may be provided by future Court order or agreement in related cases or otherwise.
- p. **"Fair Fund Notice"** means a written notice from the Distribution Agent to Potential Claimants informing them of the Fair Fund and its eligibility requirements, and explaining how to submit a claim. The Notice will be both mailed and published according to the schedule detailed herein.
- q. **"Final Determination Notice"** means the Distribution Agent's written reply to each Potential Claimant who timely responded to the Determination Notice in an effort to cure a deficiency or seek reconsideration of a rejected claim. The Final Determination Notice will constitute the Distribution Agent's final ruling regarding the status of the claim.
- r. **"Net Fair Fund"** means the Fair Fund, plus any accumulated interest or earnings thereon, less any amounts expended for fees and expenses to administer the Fair Fund (including Distribution Agent and Tax Administrator fees and expenses), and tax obligations of the Fair Fund in accordance with this Distribution Plan.
- s. **"Notice Publication"** means the publication of the Fair Fund Notice, or a notice closely resembling the Fair Fund Notice, in print or internet media in a manner deemed appropriate by the Distribution Agent and not unacceptable to the SEC Staff.
- t. **"Person"** means natural individuals as well as legal entities including, but not limited to, corporations, partnerships, limited liability companies, and governmental entities.

- u. “**Plan of Allocation**” means the methodology by which a Potential Claimant’s Eligible Loss Amount is calculated. The Plan of Allocation is set forth herein.
- v. “**Prior Recovery**” is the amount of any compensation for the loss that resulted from the conduct alleged in the Complaint that was received from another source (e.g., class action settlement), to the extent known by the Distribution Agent.
- w. “**Potential Claimants**” means those Persons, or their lawful successors, identified by the Distribution Agent as having possible claims to recover from the Fair Fund under this Distribution Plan, or Persons asserting that they have possible claims to recover from the Fair Fund under this Distribution Plan.
- x. “**Pro Rata Share**” is a computation intended to measure Eligible Claimants’ Eligible Loss Amount against one another. Should the sum of all Eligible Claimants’ Eligible Loss Amounts exceed the Net Fair Fund, the distribution will proceed in a *pro rata* fashion. The Distribution Agent will determine each Eligible Claimant’s *Pro Rata* Share as the ratio of the Eligible Claimant’s Eligible Loss Amount to the sum of the Eligible Loss Amounts of all Eligible Claimants.
- y. “**Reasonable Interest**” refers to the possibility that if the Net Fair Fund has funds in excess of that necessary to pay all Eligible Claimants’ Distribution Payments equal to their Eligible Loss Amounts, the Distribution Agent, in consultation with the SEC Staff, may include the Reasonable Interest in the Distribution Payment to compensate Eligible Claimants for the time value of their respective Eligible Loss Amounts. Reasonable Interest will be calculated using the short-term Applicable Federal Rate, compounded quarterly from the end of the Relevant Period through the approximate date of the disbursement of the Fair Fund.
- z. “**Relevant Period**” means that shares of the Eligible Security must have been purchased or acquired during the period of time commencing on March 2, 2015 and continuing until the market close on September 1, 2016.
- aa. “**Tax Administrator**” means Miller Kaplan Arase LLP, the firm appointed by the Court on February 19, 2020 as the Tax Administrator in this action. (*Dkt No. 10*).
- bb. “**Third Party Filer**” means a third-party, including without limitation a nominee, custodian, or an intermediary holding in street name, who is authorized to, and submits, a claim(s) on behalf of one or more Potential Claimants. Third Party Filer does not include assignees or purchasers of claims, which are excluded from receiving distribution payments. *See* Paragraph 28, below.

III. Administration of the Fair Fund

A. Identification of and Notice to Potential Claimants

- 9. The Distribution Agent will, insofar as is practicable, use its best efforts to identify Potential Claimants from a review of trading records and account information provided by the Defendant, the transfer agent for Mylan, registered broker-dealers, investment advisors, and other sources.
- 10. In order to ensure a timely mailing to Potential Claimants, Mylan shall deliver to the Distribution Agent data files from its transfer agent no later than forty-five (45) days from

the date of the entry of the order by the Court approving the Distribution Plan. The required content and format of the data files will be transmitted directly to the Defendant by the Distribution Agent. The Defendant shall also provide assistance to the Distribution Agent as necessary to obtain information from the transfer agent and/or Depository Trust and Clearing Corporation regarding banks and brokers that traded in Eligible Security during the Relevant Period.

11. Within seventy-five (75) days following the entry by the Court of its Order approving this Distribution Plan, the Distribution Agent will:
 - a. Design and submit a Claims Packet, including a Fair Fund Notice and a Claim Form, to the SEC Staff for review and approval;
 - b. Create a claims database consisting of the records provided by Mylan's transfer agent or otherwise obtained by the Distribution Agent;
 - c. Run a National Change of Address search to obtain updated addresses for all Potential Claimants recorded in the database;
 - d. Commence mailing the Fair Fund Notice to all Potential Claimants known to the Distribution Agent ("Initial Mailing"). Each Fair Fund Notice will notify the Potential Claimant of the Fair Fund, contain a brief description of the eligibility requirements, generally describe the Fair Fund's claim and distribution processes, explain how to obtain a copy of the approved Distribution Plan and Claim Form by request or from the Fair Fund website, and provide instructions for submitting a claim;
 - e. Establish and maintain a website devoted solely to the Fair Fund. The Fair Fund website, located at www.mylanfairfund.com, will make available a copy of the Fair Fund Notice, the approved Distribution Plan, and provide information regarding the claims process and eligibility requirements for participation in the Fair Fund in the form of frequently asked questions. The website will also include a copy of a Claim Form and related materials in downloadable form, and such other information covering process or substance that the Distribution Agent believes will be beneficial to Potential Claimants;
 - f. Establish and maintain a toll-free telephone number for Potential Claimants to call to speak to a live representative of the Distribution Agent during its regular business hours, 8:30 a.m. to 5:00 p.m., Eastern Standard Time, or, outside of such hours, to hear prerecorded information about the Fair Fund. The Distribution Agent will advise the SEC Staff of the toll-free telephone number;
 - g. Establish and maintain a traditional mailing address and an email address to enable Potential Claimants to correspond with the Distribution Agent;

- h. Provide a copy of the Distribution Plan and Fair Fund Notice to the SEC Staff, who will post the Distribution Plan and Fair Fund Notice on the Information for Harmed Investors page of www.sec.gov and establish a link to the Fair Fund website; and
- i. Upon request, deliver electronic copies of the Claim Form to electronic filers who regularly submit electronic claims on behalf of their clients.

This deadline will be extended proportionally to any delay in delivery of the data files to the Distribution Agent from Mylan. The SEC Staff retains the right to review and approve any scripts used or material posted on the Fair Fund website.

12. The Distribution Agent will mail notices to the Distribution Agent's list of banks, brokers, and other nominees, as well as any other institutions identified during the outreach process ("record holders") that may have information regarding the beneficial owners of the Eligible Security during the Relevant Period. The Distribution Agent will request that these entities, to the extent that they were record holders for beneficial owners of the Eligible Security:
 - a. Notify the respective beneficial owners within fourteen (14) days of receipt of the Distribution Agent's notice so that beneficial owners may timely file a claim. The burden will be on the record holders to ensure the Claims Packets and other relevant materials are properly disseminated to their customers; and/or
 - b. Provide the Distribution Agent a list of last known names and addresses for all beneficial owners for whom the record holders purchased the Eligible Security during the Relevant Period in a timely manner so that the Distribution Agent can communicate with them directly.
13. Claims Packets will be available on the Fair Fund website to brokerages and other institutions that hold the Eligible Security in "street name" for the benefit of their customers who are the beneficial owners of the securities.
14. The Distribution Agent will also promptly provide a Claims Packet to any Potential Claimant upon request.
15. Within twenty (20) days of the Initial Mailing of the Fair Fund Notice, the Distribution Agent will carry out the Notice Publication, which will notify the public of the Fair Fund, contain a brief description of the eligibility requirements, generally describe the Fair Fund's claim and distribution processes, explain how to obtain a copy of the approved Distribution Plan and Claim Form by request or from the Fair Fund website, and provide instructions for submitting a claim.
16. The Distribution Agent will attempt to locate any Potential Claimant whose mailing is returned by the United States Postal Service as "undeliverable" and will document all such efforts. The Distribution Agent will utilize all means reasonably available, including

LexisNexis, to obtain updated addresses in response to undeliverable notices, and forward any returned mail for which an updated address is provided or obtained. Upon request, the Distribution Agent shall provide the SEC Staff with a list of all Potential Claimants whose Fair Fund Notices have been returned as “undeliverable” due to incorrect addresses and for which the Distribution Agent has been unable to locate current addresses.

B. Claims Process

17. The Claims Bar Date will be clearly identified in all materials as the calendar date one hundred and twenty (120) days from the initial Notice Publication. To avoid being barred from asserting a claim, each Potential Claimant must submit to the Distribution Agent a properly completed Claim Form reflecting such Potential Claimant's claim, together with all required supporting documentation postmarked on or before the Claims Bar Date. A Claim Form that is postmarked after the Claims Bar Date will not be accepted unless the deadline is extended by the Distribution Agent after consultation with SEC Staff.
18. The Distribution Agent will also provide Potential Claimants with the option to submit their claims electronically via the Fair Fund website. If using the web-based claim filing option, a Potential Claimant must submit their claim to the Distribution Agent by 11:59 p.m. EST on the Claims Bar Date.
19. The Potential Claimant has the burden to ensure the Claim Form is properly and timely postmarked, or filed through the Distribution Agent’s claim filing internet portal. Therefore, Potential Claimants must submit their claims in a manner that will enable them to prove receipt of the claim by the Distribution Agent.
20. Claim Forms must be properly filled out per the instructions provided by the Distribution Agent, and must be accompanied by such documentary evidence as the Distribution Agent deems necessary or appropriate to substantiate the claim. Without limitation, required information may include third party documentary evidence of purchases and dispositions of the Eligible Security during the Relevant Period, as well as holdings of the Eligible Security at pertinent dates.
21. All claims, as well as, supporting representations and documentation necessary to determine a Potential Claimant’s eligibility to receive a distribution payment from the Fair Fund must be confirmed by a declaration executed by the Potential Claimant under penalty of perjury under the laws of the United States. The declaration must be executed by the Potential Claimant, unless the Distribution Agent accepts such declaration from a Person authorized to act on the Potential Claimant’s behalf, whose authority is supported by such documentary evidence as the Distribution Agent deems necessary. Further, the Distribution Agent will have the discretion to accept claims with physical signatures or such electronic identification as the Distribution Agent deems necessary or appropriate.
22. The Distribution Agent will review all claim submissions and determine the eligibility of each Potential Claimant to participate in the Fair Fund by reviewing the claim data and

supporting documentation (or the lack thereof), verifying the claim, and calculating each Potential Claimant's Eligible Loss Amount pursuant to the Plan of Allocation. Each Potential Claimant will have the burden of proof to establish the validity and amount of their claim, and that they qualify as an Eligible Claimant. The Distribution Agent will have the right to request, and the Potential Claimant will have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

23. Each Potential Claimant will have the burden of providing information and documentation regarding any Prior Recovery or compensation for the loss that resulted from the conduct described in the Complaint in this case that was received from another source (*e.g.*, class action settlement).
24. Claims containing one hundred (100) or more transactions or claims submitted by an intermediary on behalf of twenty (20) or more accounts must be submitted electronically using the format provided by the Distribution Agent. The electronic filing template will be made available on the Fair Fund website. Files that do not comply with the format provided by the Distribution Agent may be rejected.
25. When submitting claims to the Fair Fund on behalf of its clients, all Third-Party Filers must use the electronic filing template provided by the Distribution Agent. Files that do not comply with the format provided by the Distribution Agent may be rejected. Third-Party Filers must also submit a signed master proof of claim and release, as well as proof of authority to file on behalf of the Potential Claimant(s) at the time the electronic file of transactions is submitted. Failure to do so may result in rejection of the claim(s).
26. Each Third-Party Filer must establish the validity and amount of each claim in its submission. Like all other claimants to the Fair Fund, Third-Party Filers must submit such documentary evidence of purchases, dispositions, and holdings of the Eligible Security as the Distribution Agent deems necessary or appropriate to substantiate each individual claim. Without limitation, this includes the complete name of the claimant (beneficial account owner) and its TIN (for individuals) or EIN (for companies), sufficient contact information to confirm the identity of the beneficial owner, and documentation from the original bank, broker or other institution of purchases and dispositions of the Eligible Security (account statements, confirmations and other documentation of purchases and dispositions) during the Relevant Period on their trade dates, as well as, holdings of the Eligible Security on pertinent dates. Documentation generated by the Third-Party Filer, as well as, affidavits in lieu of supporting documentation will not be accepted, unless for good cause the Distribution Agent determines it acceptable. The Distribution Agent will have the right to request, and the Third-Party Filer will have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed necessary by the Distribution Agent to substantiate the claim(s) contained in the submission. Documentation from a Third-Party Filer that is not acceptable to the Distribution Agent will result in a determination that the claim is deficient and possible rejection of the affected claim(s). Third-Party Filers will be subject to the same deficiency and claims determination

processes as all other Potential Claimants. These processes are described in Paragraphs 29 through 36 of the Distribution Plan. The Final Determination of the Distribution Agent to reject a claim for insufficient documentation is final and within the discretion of the Distribution Agent and may not be appealed.

27. Distribution payments must be made by check or electronic payment payable to the beneficial account owner. The Third-Party Filer shall not be the payee of any distribution payment check or electronic payment. Any other payment arrangement must be discussed with the Distribution Agent and must be authorized by the Eligible Claimant (beneficial account owner), in writing. Compensation to the Third-Party Filer for its services may not be paid or deducted from the Distribution Payment.
28. Any Third Party Filer who invests or invested on behalf of more than one Potential Claimant in a pooled investment fund or entity will be required to complete a certification, which will require them, at a minimum, to attest that any distribution to the Third Party Filer representing multiple Potential Claimants, will be allocated for the benefit of current or former pooled investors and not for the benefit of management. The certification form will be available on the Fair Fund website and upon request from the Distribution Agent. All such Third Party Filers who invested on behalf of more than one Potential Claimant in a pooled investment fund or entity must have an auditable mechanism available to the Distribution Agent and the SEC staff to confirm that each Potential Claimant, if determined an Eligible Claimant, received the Distribution Payment directed to them.

C. Deficiency and Claim Determination Processes

29. The Distribution Agent will provide a Determination Notice to each Potential Claimant who has filed a Claim Form with the Distribution Agent, setting forth the Distribution Agent's conclusions concerning such claim within one hundred twenty (120) days of the Claims Bar Date.
30. The Determination Notice will provide to each Potential Claimant whose claim is deficient, in whole or in part, the reason(s) for the deficiency (*e.g.*, failure to provide required information or documentation). The Determination Notice will also notify the Potential Claimant of the opportunity to cure such deficiency, and provide instructions regarding what is required to do so. Any Potential Claimant with a deficient claim will have forty-five (45) days from the date of the Determination Notice to cure any deficiencies identified in the Determination Notice.
31. In the event the claim is denied, in whole or in part, the Determination Notice will state the reason for such denial. Any Potential Claimant seeking reconsideration of a rejected claim must advise the Distribution Agent in writing within forty-five (45) days of the date of the Determination Notice. All requests for reconsideration must include the necessary documentation to substantiate the basis upon which the Potential Claimant is requesting reconsideration of their claim.

32. The Distribution Agent will send, as appropriate, a Final Determination Notice to all Potential Claimants who responded to the Determination Notice in an effort to cure a deficiency or to seek reconsideration of a rejected claim. The Distribution Agent will send such Final Determination Notices by no later than sixty (60) days following receipt of documentation or information in response to the Determination Notice, or such longer time as the Distribution Agent determines is necessary for a proper determination concerning the claim.
33. The Distribution Agent may consider disputes of any nature presented by Potential Claimants, and will consult SEC Staff as appropriate. The Distribution Agent will have the authority to waive technical claim deficiencies and approve claims on a case-by-case basis, or in groups of claims. All determinations made by the Distribution Agent in accordance with the Distribution Plan in any dispute, request for reconsideration, or request to cure a deficient claim will be final and not subject to appeal.
34. The Potential Claimant has the burden of notifying the Distribution Agent of a change in his or her current address and other contact information, and of ensuring that such information is properly reflected in the Distribution Agent's records.
35. No Person who purchased a claim shall be deemed an Eligible Claimant under the Distribution Plan. Provided however, Persons that received the Eligible Security by gift, inheritance, devise, or by operation of law from someone who died intestate may be eligible for a recovery from the Fair Fund if the original purchaser of the Eligible Security would have been eligible under the terms of this Distribution Plan. Any gift, inheritance, devise or transfer by operation of law from someone who died intestate will not be deemed to be a purchase of the Eligible Security, nor will it be deemed an assignment of any claim relating to the purchase of such securities unless specifically so provided in the instrument of inheritance. Only one claim may be submitted with regard to the same transactions in the Eligible Security, and in cases where multiple claims are filed by the donor and donee, the donee claim will be honored, assuming it is supported by proper documentation. Notwithstanding any of the foregoing, the Distribution Agent shall be entitled to disallow any claim that the Distribution Agent finds was not acquired via a bona fide gift in its entirety, or where the Distribution Agent finds that the inheritance, devise or operation of law was obtained through payment in any form.
36. Claims on behalf of a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which do not include individual retirement accounts, and such plan's participants, are properly made by the administrator, custodian or fiduciary of the plan and not by the plan's participants. The Distribution Agent will issue any payments on such claims directly to the administrator, custodian or fiduciary of the retirement plan. The custodian or fiduciary of the retirement plan will distribute any payments received in a manner consistent with its fiduciary duties and the governing account or plan provisions. With respect to any retirement plan that has been closed prior to the Distribution Agent's identification of Potential Claimants, the Distribution Agent will endeavor to distribute

funds directly to the beneficial accountholders of such retirement plans if the information required for such a distribution is known to or provided to the Distribution Agent.

D. Plan of Allocation

37. For purposes of this Distribution Plan, the methodology to be applied in calculating Eligible Loss Amounts was based on an analysis of the reaction of the price of the Eligible Security to the misstatements and omissions alleged in the Commission's Complaint. The analysis considered news stories, financial filings, analyst reports, and statements from Mylan in order to assess whether Mylan's stock price was inflated as a result of the misstatements and omissions alleged in the Commission's Complaint.
38. The Relevant Period for this Distribution Plan is March 2, 2015 through the market close on September 1, 2016.
39. The Eligible Loss Amount for each claim is calculated by taking into account the artificially inflated portion of the per-share price of the Eligible Security as a result of the misstatements and omissions alleged in the Commission's Complaint, as well as the Potential Claimant's actual expenditures and proceeds.
40. For each share of the Eligible Security purchased or acquired between March 2, 2015 and September 1, 2016, inclusive, and
 - a. Sold prior to September 2, 2016, the eligible loss per share is \$0.00.
 - b. Sold on September 2, 2016, the eligible loss per share is the *lesser of*:
 - i. \$1.96; or
 - ii. the purchase/acquisition price *minus* the sale price.
 - c. Sold after the close of trading on September 2, 2016 and prior to the close of trading on November 30, 2016, the eligible loss per share is the *least of*:
 - i. \$1.96; or
 - ii. the purchase/acquisition price *minus* the sale price; or
 - iii. the purchase/acquisition price *minus* the moving average closing price of Mylan common stock on the sale date as set forth in Table A below.
 - d. Held as of the close of trading on November 30, 2016, the eligible loss per share is the *lesser of*:
 - i. \$1.96; or
 - ii. the purchase/acquisition price *minus* \$38.39, the average closing price of Mylan common stock between September 2, 2016 and November 30, 2016, as shown on the last row in Table A.
41. If the Eligible Loss Amount per share calculates to a negative number, reflecting a gain, the Eligible Loss Amount per share on such shares will be \$0.00.

42. The date of any transaction for purposes of the loss methodology is the “contract” or “trade” date as distinguished from the “settlement” or “payment” date. All prices mentioned in the calculations in this Plan of Allocation exclude all fees, taxes, and commissions.
43. Multiple purchases and sales of the Eligible Security during the Relevant Period will be handled according to the first-in, first-out (“FIFO”) method. Shares of the Eligible Security sold during the Relevant Period will be matched, in chronological order, first against shares held at the beginning of the Relevant Period. Any remaining sales during the Relevant Period will be matched, in chronological order, against shares purchased during the Relevant Period.
44. The receipt or grant of the Eligible Security to the investor by gift, devise, inheritance, or operation during the Relevant Period is not considered an eligible purchase if the original purchase did not occur during the Relevant Period. Such shares will be excluded from the calculation of the Eligible Loss Amount.
45. Mylan common stock is the only security eligible for recovery under this Plan. Options contracts to purchase or sell the Eligible Security are not securities eligible for recovery under the Plan. With respect to the Eligible Security purchased or sold through the exercise of an option, the purchase/sale date is the exercise date of the call and the assignment date of the put, and the purchase/sale price is the strike price of the call at the time of exercise and the strike price of the put at the time of assignment. Transactions in the Eligible Security during the Relevant Period that are pursuant to, or in connection with, a swap or another derivative will not be eligible for a recovery.
46. If the sale date for a share falls before the purchase date, then the share has an Eligible Loss Amount per share of \$0.00. The date of covering a short sale is deemed to be the date of purchase of the Eligible Security and the date of a short sale is deemed to be the date of sale of the Eligible Security. For an Eligible Claimant who held a short position at the beginning of the Relevant Period, purchases of shares during the Relevant Period will be matched, in chronological order, against the short position until the short position has been exhausted. For such short sales the eligible loss per share will be \$0.00.
47. A Potential Claimant’s Eligible Loss Amount will be the sum of the eligible loss per share for all his, her or its shares of the Eligible Security that meet the purchase and holding conditions stated in the previous paragraphs. If the Eligible Loss Amount is a negative amount, reflecting a gain, the Eligible Loss Amount will be zero. Examples showing the application of the Plan of Allocation are provided in Appendix 1 to this Plan.
48. An Eligible Claimant’s Eligible Loss Amount will be reduced by a Prior Recovery or any compensation for the loss that resulted from the conduct alleged in the Complaint in this case that was already received from another source (*e.g.*, class action settlement) and that is actually known to the Distribution Agent.

49. The following market loss limitation also applies to the Eligible Loss Amount. The actual market loss will be calculated as a) the total purchase amount for shares of the Eligible Security purchased during the Relevant Period less b) the sales proceeds on any of those shares sold during the Relevant Period, and c) and the holding value on the remainder of those shares, which for the purposes of this calculation is \$39.97 per share, the closing price on September 2, 2016. If an investor's actual market loss on shares of the Eligible Security purchased during the Relevant Period is less than his, her or its Eligible Loss Amount, then the investor's Eligible Loss Amount shall be limited to the actual market loss amount. If the actual market loss calculates to a gain, then the investor's Eligible Loss Amount will be \$0.00.
50. Distribution Payments to Eligible Claimants will be based on a *pro rata* allocation. If the Net Fair Fund equals or exceeds the sum of the Eligible Loss Amounts of all Eligible Claimants, each Eligible Claimant will receive a Distribution Payment equal to his, her or its Eligible Loss Amount. Alternatively, if the Net Fair Fund is less than the sum of Eligible Loss Amounts of all Eligible Claimants, each Eligible Claimant will receive a Distribution Payment equal to the Net Fair Fund multiplied by his, her or its *Pro Rata* Share.
51. The minimum Distribution Payment amount to an Eligible Claimant under this Plan of Allocation is \$10.00. If an Eligible Claimant's calculated Distribution Payment is less than \$10.00, that claimant will not receive a payment and the funds will be distributed to other Eligible Claimants whose Distribution Payments are equal to or greater than \$10.00.

Table A: Mylan Common Stock Average Closing Price, September 2, 2016 – November 30, 2016

Date	Average Closing Price from September 2, 2016 to Date Shown	Date	Average Closing Price from September 2, 2016 to Date Shown	Date	Average Closing Price from September 2, 2016 to Date Shown
9/2/2016	\$39.97	10/4/2016	\$40.56	11/2/2016	\$39.01
9/6/2016	\$40.19	10/5/2016	\$40.45	11/3/2016	\$38.89
9/7/2016	\$40.23	10/6/2016	\$40.30	11/4/2016	\$38.81
9/8/2016	\$40.31	10/7/2016	\$40.12	11/7/2016	\$38.76
9/9/2016	\$40.23	10/10/2016	\$40.08	11/8/2016	\$38.72
9/12/2016	\$40.41	10/11/2016	\$40.01	11/9/2016	\$38.73
9/13/2016	\$40.48	10/12/2016	\$39.91	11/10/2016	\$38.72
9/14/2016	\$40.53	10/13/2016	\$39.84	11/11/2016	\$38.70
9/15/2016	\$40.63	10/14/2016	\$39.72	11/14/2016	\$38.70
9/16/2016	\$40.75	10/17/2016	\$39.62	11/15/2016	\$38.70
9/19/2016	\$40.82	10/18/2016	\$39.55	11/16/2016	\$38.68
9/20/2016	\$40.85	10/19/2016	\$39.48	11/17/2016	\$38.66
9/21/2016	\$40.94	10/20/2016	\$39.42	11/18/2016	\$38.62
9/22/2016	\$41.05	10/21/2016	\$39.35	11/21/2016	\$38.59
9/23/2016	\$41.12	10/24/2016	\$39.30	11/22/2016	\$38.55
9/26/2016	\$41.12	10/25/2016	\$39.29	11/23/2016	\$38.52
9/27/2016	\$41.14	10/26/2016	\$39.26	11/25/2016	\$38.49
9/28/2016	\$41.08	10/27/2016	\$39.22	11/28/2016	\$38.46
9/29/2016	\$40.95	10/28/2016	\$39.17	11/29/2016	\$38.42
9/30/2016	\$40.81	10/31/2016	\$39.11	11/30/2016	\$38.39
10/3/2016	\$40.68	11/1/2016	\$39.06		

IV. Third-Party Review

52. After the Distribution Agent has completed the process of analyzing the claims and determining claim amounts in accordance with this Distribution Plan, and prior to the distribution of any funds, the Distribution Agent will engage an independent, third-party firm, not unacceptable to SEC Staff, to perform a set of agreed upon procedures, review a statistically significant sample of claims and ensure accurate and comprehensive application of the methodology set forth in the Plan of Allocation. The Distribution Agent will communicate the results of the review to SEC Staff together with any written analysis or reports related to the review, and, upon request, will make the firm available to the Commission staff to respond to questions concerning the review.

V. Establishment of the Escrow Account

53. Prior to disbursement of the Fair Fund, the Distribution Agent will establish accounts described as follows at a well-capitalized³ U.S. commercial bank (“Bank”), not unacceptable to SEC Staff. The Distribution Agent will establish an escrow account (the “Escrow Account”) pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by Commission staff. The Escrow Account will be established to receive the monies from the Commission and the Fair Fund will be held in the Escrow Account until the time of distribution. The Distribution Agent will also establish a separate deposit account (*e.g.*, controlled distribution account, managed distribution account, linked checking and investment account) (the “Distribution Account”) for the purpose of funding the Distribution Payments to be distributed to Eligible Claimants.
54. The accounts shall be in the name of and bearing the Employer Identification Number of the Fair Fund as custodian for the distributees of the Distribution Plan. The name of each account will be in the following form: “SEC v. Mylan N.V. Distribution Fund, as custodian for the benefit of investors allocated a distribution pursuant to the Distribution Plan in SEC v. Mylan N.V., Case No. 19-CV-02904 (D.D.C.)”
55. During the term of the Escrow Agreement, any investment of the funds will be with a view toward: first, conserving and preserving the principal; and second, maximizing investment return. The Escrow Account shall be invested and reinvested in short-term United States (“U.S.”) Treasury securities backed by the full faith and credit of the U.S. Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Claimants or tax obligations that may accrue. This may include investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or investments in Money Market Mutual Funds registered under the Investment Company Act of 1940 that directly invest 100% of their assets in obligations of the U.S. Government.

³ A well-capitalized bank is a bank that meets the Federal Reserve Board’s definition of “well-capitalized” as defined by the Federal Reserve Act Subpart D, 12 C.F.R. § 208.43(b)(1).

56. In consultation with the staff of the Commission, the Distribution Agent will work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow Account and Distribution Account that will preserve earnings, if possible, while providing maximum protection for the Fair Fund.
57. Prior to the receipt of any funds in the Escrow Account, the Bank will provide the Distribution Agent with an attestation, in a form not unacceptable to the SEC Staff, that all funds in the Escrow Account will be held for the Fair Fund and that the Bank will not place any lien or encumbrance of any kind upon the funds.
58. All interest earned will accrue for the benefit of the Fair Fund and all costs associated with the Escrow and Distribution Accounts will be paid out of the Fair Fund.
59. The Distribution Agent will provide copies of the bank and/or investment statements on any accounts established by the Distribution Agent to the Tax Administrator on a monthly basis and will assist the Tax Administrator in obtaining any other statements, as necessary.

VI. Distribution

60. The Net Fair Fund will be distributed to Eligible Claimants as provided under the terms of this Distribution Plan. An Eligible Claimant's Eligible Loss Amount, as determined in accordance with the Plan of Allocation will be used to determine the amount of their Distribution Payment.
61. The Distribution Agent, in consultation with the Tax Administrator and the SEC Staff, shall determine the Net Fair Fund by retaining a prudent reserve to pay administrative costs. After all distributions and payment of all tax obligations, any remaining amounts in the reserve will become part of the residual described in Paragraph 84. For purposes of calculating the residual of the Net Fair Fund, any disgorgement amount(s) ordered by the Court shall be deemed to have been paid out first to Eligible Claimants, with any prejudgment interest and/or penalty amount(s) to be paid out to Eligible Claimants only after the total disgorgement has been paid out in full.
62. The Distribution Agent will disburse the Net Fair Fund to all Eligible Claimants, in one or more tranches, once all Claim Forms have been processed and all Potential Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to cure pursuant to the procedures set forth herein. No distribution will be conducted without prior authorization by an Order of the Court. All Distribution Payments will be made in U.S. currency.
63. Within seventy-five (75) days following the date the Distribution Agent has mailed the Final Determination Notices, the Distribution Agent will prepare a list of all Eligible Claimants, the Eligible Loss Amount, and the Distribution Payment of each Eligible Claimant ("Payment File"). This Payment File shall be accompanied by a reasonable

assurances letter as to the completeness and accuracy of the Payment File. The Distribution Agent will also prepare the relevant materials to effect a distribution, including recommending an estimated distributable amount from the Net Fair Fund. The Distribution Agent will retain a prudent reserve to pay any federal, state or local taxes payable in connection with the Fair Fund, as well as the fees and expenses of the Distribution Agent and the Tax Administrator.

64. The Distribution Agent shall provide the Payment File to the Bank. The Payment File shall be maintained by the Bank in the Escrow Account records. The Distribution Agent will also obtain from the SEC staff and communicate to the Bank the anticipated timing for the transfer of funds.
65. Upon receipt of the Payment File and the estimated timing for the transfer of the Escrow Property, the Bank will take all necessary steps to prepare for the Escrow Funds Pledge described in ¶66. Upon completion of all preparation, the Bank will so inform the Distribution Agent in writing (the “Pledge Notice”). The Distribution Agent will transmit the Pledge Notice to the SEC staff.
66. Immediately upon receipt of the funds, the Bank shall pledge collateral in the form of U.S. Government Securities in an amount equal to or exceeding the value of the transferred funds to fully protect the funds from the time of its receipt by the Bank through its transfer to the Escrow Account and full investment in short-term U.S. Treasury securities backed by the full faith and credit of the United States Government (the “Escrow Funds Pledge”).
67. Upon receipt of the monies from the SEC into the Escrow Account, the Distribution Agent will provide a signed receipt to the SEC Staff within ten (10) business days. The SEC Staff will file the receipt with the Court.
68. Upon transfer from the SEC, the assets of the Fair Fund will be held in the Escrow Account, separate from Bank assets, until the presentation of checks. All Fair Fund checks presented for payment or electronic transfers will be subject to “positive pay with payee verification” controls before they are honored by the Bank. The “positive pay with payee verification” system provides protection against fraud arising from counterfeit or altered checks. The “positive pay with payee verification” system will require, at a minimum, confirmation by the Bank that all checks presented for payment match the identifiers and amounts on the payee list prior to honoring such checks. In each instance, funds will be transferred from the Escrow Account to the Distribution Account on the Bank’s confirmation that a presented check matches the relevant “positive pay with payee verification” criteria.
69. After receipt and acceptance of the Payment File and the Pledge Notice, the SEC Staff will petition the Court for authority to disburse the entire balance of the Net Fair Fund from the Commission to the Distribution Agent for distribution to Eligible Claimants pursuant to the Distribution Plan. In conjunction with any motion seeking approval of a distribution, the Payment File will, upon request, be made available to the Court under seal.

70. Following the Court's approval of the Commission's petition for the authority to distribute the Net Fair Fund to Eligible Claimants as provided for in this Distribution Plan, the Distribution Agent will commence the distribution to Eligible Claimants as promptly as possible following the transfer of funds.
71. The Distribution Agent in its exclusive discretion may, but will have no obligation to, aggregate accounts held by a person in the same legal capacity in determining Eligible Loss Amounts and Distribution Payment amounts.
72. Checks will be issued by the Distribution Agent from the Distribution Account set up at the Bank. Checks will bear a stale date of ninety (90) days from the date of issuance. Accordingly, checks that are not negotiated within this Check-cashing Period will be voided, and the issuing financial institution will be instructed to stop payment on those checks, except as provided below. Where an Eligible Claimant's check is not negotiated within the Check-cashing Period and has been voided by the Distribution Agent, that Eligible Claimant's claim will be extinguished. All such funds will remain in the Fair Fund.
73. If payment instructions have been provided and verified by the Distribution Agent, Distribution Payments to Eligible Investors may be made by wire transfer or by any method otherwise approved by the Distribution Agent. For any wire or other electronic transfer, the exact amount necessary to make a payment shall be transferred from the Escrow Account directly to the payee account in accordance with written instruction provided to the Escrow Bank by the Distribution Agent. In the event that a wire or electronic transfer to an Eligible Investor is unsuccessful, the Eligible Investor has not provided sufficient information to the Distribution Agent, or the Distribution Agent has not been able to verify the provided wire transfer or electronic payment information to its satisfaction, the Distribution Payment will be made by check to the Eligible Investor. In consultation with the SEC staff and subject to the controls set forth herein, the Distribution Agent shall have the discretion to make a payment by electronic transfer other than wire transfer if appropriate under the circumstances.
74. For every electronic payment that is returned after the day of issuance, the Bank shall pledge collateral in the form of U.S. Government Securities to fully protect the payment until the returned payment has been fully invested in short-term U.S. Treasury securities backed by the full faith and credit of the United States Government or an agency thereof, or invested as otherwise directed in the Plan and/or Escrow Agreement.
75. Distribution Payments will be made directly to Eligible Claimants and not to counsel or someone other than the Eligible Claimant unless, at the discretion of the Distribution Agent, sufficient documentation has been provided by or with respect to the Eligible Claimant to demonstrate that the full payment will be applied to the benefit of the Eligible Claimant, and not to pay attorney fees or otherwise to benefit someone other than the Eligible Claimant.

76. Payments to Eligible Claimants will be preceded or accompanied by a communication that includes, as appropriate:
- a. A statement characterizing the distribution;
 - b. A statement that checks will be void and cannot be reissued after ninety (90) days from the date the original check was issued;
 - c. A statement that reissued checks will expire on the later of ninety (90) days from the date of the original check or sixty (60) days from the date of the reissued check;
 - d. A statement that the tax treatment of the distribution is the responsibility of each Eligible Claimant and that the Eligible Claimant should consult his or her tax advisor for advice regarding the tax treatment of the distribution; and
 - e. Contact information for the Distribution Agent for questions regarding the Distribution Payment.
77. Distribution Payments and/or accompanying communications will clearly indicate that the money is being distributed from a Fair Fund established to compensate investors for alleged harm suffered as a result of their investment in Mylan. Any such communication, letter or other mailing to Eligible Claimants characterizing the distribution will be submitted to the SEC Staff and the Tax Administrator for review and approval.
78. If wire transfers are utilized, they will be initiated by the Distribution Agent using a two-party check and balance system, whereby completion of a wire transfer will require an authorization by two members of the Distribution Agent's senior staff.
79. Under no circumstances will the Distribution Agent, its employees or its agents incur any liability to any Person for making a distribution in accordance with the Order of the Court approving the distribution and the schedules of Eligible Claimants, and all Persons shall be enjoined from taking any action in contravention of this provision. Upon receipt and acceptance by an Eligible Claimant of a distribution from the Fair Fund, such Eligible Claimant will be deemed to have released all claims that such Eligible Claimant may have against the Distribution Agent, its employees, agents, and attorneys in connection with the Distribution Plan and the administration of the Fair Fund, and shall be barred from prosecuting or asserting any such claims.

VII. Post Distribution

A. Handling of Returned or Uncashed Checks

80. The Distribution Agent is authorized to reissue checks to Eligible Claimants upon the receipt of a valid, written request from the Eligible Claimant. Such reissued checks will be void at the later of ninety (90) days from issuance of the original check or sixty (60) days from the reissuance, and in no event will a replacement check be reissued after ninety (90) days from the date of original issuance.

81. The Distribution Agent will research and attempt to locate all Eligible Claimants whose checks are returned to the Distribution Agent as undeliverable by the United States Postal Service. However, the Eligible Claimant has the burden of providing the Distribution Agent with any changes to his or her mailing address. The Distribution Agent will mail a reissued check to the updated address, subject to the time limits detailed herein.
82. In cases where an Eligible Claimant is unable to endorse a Distribution Payment (*e.g.*, as the result of a name change because of marriage or divorce, or as the result of death), any request by an Eligible Claimant or a lawful representative for reissuance of a Distribution Payment in a different name must be documented to the satisfaction of the Distribution Agent. If such change is properly documented in the sole discretion of the Distribution Agent, the Distribution Agent will issue an appropriately redrawn Distribution Payment, subject to the time limits detailed herein.
83. The Distribution Agent will make reasonable efforts to contact Eligible Claimants to follow up on the status of uncashed Distribution Payments over \$100 (other than those returned as “undeliverable”) and take appropriate action to follow up on the status of uncashed checks at the request of SEC Staff. The Distribution Agent may reissue such checks, subject to the time limits detailed herein.

B. Disposition of Remaining Funds

84. A residual within the Net Fair Fund (the “Residual”) will be established for any amounts remaining after all assets have been disbursed. The Residual may include, among other things, funds reserved for future taxes and for post-distribution contingencies, amounts from Distribution Payment checks that have not been cashed, amounts from Distribution Payment checks that were not delivered or accepted upon delivery, and tax refunds.
85. The Distribution Agent, in consultation with SEC Staff, may distribute the Residual to Eligible Claimants in a manner that is consistent with this Distribution Plan up to the Eligible Loss Amount for each Eligible Claimant and subject to the requirements of the Plan of Allocation detailed herein. The SEC Staff will seek the Court’s approval of any distribution of the Residual.
86. If, after the distribution is complete, all tax obligations of the Fair Fund have been satisfied, all outstanding fees and expenses of the Distribution Agent and the Tax Administrator have been paid, funds remain in the Fair Fund, and further distributions to investors is infeasible, the Residual shall be transferred to the SEC, pending a final accounting. Upon completion of the final accounting, the SEC Staff will file a motion with the Court to approve the final accounting, which will include a recommendation as to the final disposition of the Residual. If distribution of the Residual to investors is infeasible, consistent with Section 21(d)(7) of

the Exchange Act [15 U.S.C. §78u(d)(7)],⁴ *Liu v. SEC*, 140 S. Ct. 1936, 1940 (2020), and equitable principles, the SEC Staff may recommend the transfer of the Residual to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.⁵

VIII. The Distribution Agent

87. The Distribution Agent will be responsible for administering the Fair Fund in accordance with the Distribution Plan. This will include, among other things, taking reasonable steps to identify and contact Potential Claimants; obtaining accurate mailing information for Potential Claimants; establishing a website and staffing a call center to address inquiries during the claims process; developing a claims database; preparing accountings; cooperating with the Tax Administrator to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements; advising Potential Claimants of deficiencies in claims and providing an opportunity to cure any documentary defects; taking antifraud measures, such as identifying false, ineligible and overstated claims; making determinations under the criteria established herein as to Potential Claimant eligibility; advising Potential Claimants of final claim determinations; and disbursing the Fair Fund in accordance with this Distribution Plan.
88. To carry out the purposes of this Distribution Plan, the Distribution Agent is authorized to make and implement immaterial changes to the Distribution Plan upon agreement with the SEC Staff. If a change is deemed to be material by the SEC Staff, Court approval is required prior to implementation by amending the Distribution Plan.
89. The Distribution Agent may extend any procedural deadline contained in the Distribution Plan for good cause shown, if agreed upon by the SEC Staff.
90. The Distribution Agent is authorized to enter into agreements with institutions (“Institutions”) as appropriate or necessary in the administration of the Fair Fund, provided such Institutions are not excluded pursuant to other provisions of this Distribution Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Distribution Agent under this Distribution Plan.
91. The Distribution Agent will be entitled to reasonable administrative fees and expenses in connection with the administration and distribution of the Fair Fund (including any such fees and expenses incurred by agents, consultants or third parties retained by the

⁴ Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant provisions of the NDAA apply “to any action or proceeding that is pending on, or commenced on or after, the date of” the NDAA’s enactment. NDAA, Section 6501(b).

⁵ Section 21F(g)(3) of the Exchange Act, 15 U.S.C. § 78u-6(g)(3), provides, in relevant part, that any monetary sanction of \$200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not added to a disgorgement fund or Fair Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

Distribution Agent in furtherance of its duties). The Distribution Agent will invoice all fees and expenses for the administration and distribution of the Fair Fund on a quarterly basis directly to the Commission. The SEC Staff will seek approval of the Court for payment of all fees and expenses of the Distribution Agent, which will be paid directly from the Fair Fund upon approval of the Court. All payments for the fees and expenses of the Distribution Agent will be reported to the Court in the final accounting.

92. The Distribution Agent may be removed at any time by the Court, and replaced with a successor. In the event the Distribution Agent decides to resign, it will first give written notice to the SEC Staff and the Court of such intention, and such resignation will not be effective until the Court has appointed a successor. The Distribution Agent will then follow such instructions as such successor or the Court provides in turning over management of the Fair Fund.
93. The Distribution Agent will retain all claims materials in paper and electronic form for a period of six (6) years after approval of the final report and final accounting and thereafter will transfer the documents to the Commission, pursuant to Commission direction. In addition, the Distribution Agent will shut down the website, P.O. Box and customer service telephone line(s) established specifically for the administration of the Fair Fund six (6) months after the closing of the Escrow and Distribution Accounts, or at such earlier time as the Distribution Agent determines with concurrence of the SEC Staff.

IX. Tax Compliance

94. The Fair Fund is a Qualified Settlement Fund (“QSF”) under Section 468B (g) of the Internal Revenue Code, 26 U.S.C. § 468B (g), as amended. The Tax Administrator is the administrator of such QSF for purposes of Treas. Reg. § 1.468B-2(k)(3)(I), and shall satisfy the tax related administrative requirements imposed by Treas. Regs. § 1.468B-1 to § 1.468B-5, including, but not limited to:
 - a. Obtaining a taxpayer identification number;
 - b. Submitting requests for funds from the Fair Fund that are necessary for the timely payment of all applicable taxes, making timely payment of taxes for which the Tax Administrator has received funds, and filing all applicable returns;
 - c. Satisfying any information, reporting and compliance requirements of the Foreign Account Tax Compliance Act; and
 - d. Satisfying any information, reporting, or withholding requirements in connection with the distribution of the Fair Fund.
95. The Commission will approve and arrange payment of the tax obligations and the fees and expenses of the Tax Administrator from the Fair Fund without further approval of the Court, pursuant to the Order entered by the Court on February 19, 2020. (*Dkt No. 10*).

X. Fair Fund Reporting and Accounting

96. The Distribution Agent will provide to the SEC Staff, who will file with the Court, a quarterly status report within forty-five (45) days of Court approval of this Distribution Plan, and will provide additional reports and quarterly account statements within thirty (30) days after the end of every quarter thereafter as detailed below.
97. Once the money has been transferred to the Escrow Account, a quarterly account statement, in a format to be provided by the SEC Staff, shall be submitted with the status report by the Distribution Agent.
98. The status report and quarterly account statement will inform the Court and the SEC Staff of the activities and status of the Fair Fund during the relevant reporting period, and once funds are transferred to the Distribution Agent will specify, at a minimum:
- a. The location of the account(s) comprising the Fair Fund; and
 - b. An interim accounting of all monies in the Fair Fund as of the most recent month-end, including the value of the account(s), all monies earned or received into the account(s), funds distributed to Eligible Claimants under this Distribution Plan, and any monies expended from the Fair Fund to satisfy any fees, costs, taxes and other expenses incurred in the implementation of this Distribution Plan.
99. The Distribution Agent will prepare a final report and final accounting, in a format to be provided by the SEC Staff, when the distribution is complete. In compiling the final accounting, the Distribution Agent will coordinate with the Tax Administrator. The SEC Staff will file the final report and final accounting with the Court.
100. SEC Staff, or other relevant party, shall provide the Distribution Agent with any and all account information relating to the Fair Fund that may be required to meet reporting obligations; including providing copies of any account statements that the Distribution Agent may request.

XI. Termination of the Fair Fund

101. Once all Distribution Payments have been negotiated or voided, any funds remaining in the Escrow and Distribution Accounts will be transferred to the Commission.
102. The Fair Fund will be eligible for termination and the Distribution Agent will be eligible for discharge after all of the following have occurred:
- a. A final report and accounting has been submitted to and approved by the Court;
 - b. All taxes have been paid;
 - c. All outstanding fees and expenses of the Distribution Agent and Tax Administrator have been paid; and

d. The Court has approved the SEC staff's recommendation as to the final disposition of the Residual consistent with Section 21(d)(7) of the Exchange Act [15 U.S.C. §78u(d)(7)], *Liu v. SEC*, 140 S. Ct. 1936, 1940 (2020), and equitable principles.

103. Once the Fair Fund has been terminated, no additional payments will be made whatsoever.

XII. Limitation of Liability

104. The Court reserves the right to amend this Distribution Plan from time to time; and retains exclusive jurisdiction over all claims arising in connection with this Distribution Plan, including, but not limited to, claims against the Distribution Agent asserting liability for violation of any duty imposed by this Distribution Plan or other Court order.

105. The submission of the Claim Form and the receipt and acceptance of a distribution by an Eligible Claimant will not affect an Eligible Claimant's rights and claims as against any party (other than the Distribution Agent), including, without limitation, the Defendant's past or present directors, officers, employees, affiliates, nominees, creditors, advisors and agents.

Appendix 1 – FIFO Calculation Examples

Example #1 – Shares Sold on September 2, 2016

Transactions				
Date	Transaction Type	# of Shares	Price	Amount
3/1/2015	Beginning Holding	0		
10/20/2015	Purchase	1,000	\$42.55	\$42,550.00
9/2/2016	Sale	1,000	\$39.97	\$39,970.00

Market Loss/(Gain) During Relevant Period		
	# of Shares	Amount
Total Purchase Amount	1,000	\$42,550.00
Matched Sales Proceeds	1,000	\$39,970.00
Held Value at 9/2/16 (\$39.97/share)	0	\$0.00
Market Loss/(Gain)		\$2,580.00
Market Loss Limitation		\$2,580.00

FIFO Calculation				Calculation of Eligible Loss Amount				
Shares	Purchase Date	Sale Date	Inflation per Share	Purchase Price - Sale Price	Purchase Price - Moving Avg. Price from Table A	Purchase Price - Held Price at 11/30/16 (\$38.39)	Eligible Loss per Share	Eligible Loss on Transaction
[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8] = max(0, min([4],[5],[6],[7]))	[9] = [1] * [8]
1,000	10/20/2015	9/2/2016	\$1.96	\$42.55 - \$39.97 = \$2.58	N/A	N/A	\$1.96	\$1,960.00
Preliminary Eligible Loss Amount								\$1,960.00
Market Loss Limitation								\$2,580.00
Eligible Loss Amount								\$1,960.00

Example #2 – Shares Sold on Various Dates

Transactions				
Date	Transaction Type	# of Shares	Price	Amount
3/1/2015	Beginning Holding	0		
10/20/2015	Purchase	1,000	\$42.55	\$42,550.00
12/31/2015	Sale	300	\$54.07	\$16,221.00
9/2/2016	Sale	300	\$39.97	\$11,991.00
11/1/2016	Sale	300	\$37.16	\$11,148.00

Market Loss/(Gain) During Relevant Period		
	# of Shares	Amount
Total Purchase Amount	1,000	\$42,550.00
Matched Sales Proceeds	600	\$28,212.00
Held Value at 9/2/16 (\$39.97/share)	400	\$15,988.00
Market Loss/(Gain)		(\$1,650.00)
Market Loss Limitation		\$0.00

FIFO Calculation				Calculation of Eligible Loss Amount				
Shares	Purchase Date	Sale Date	Inflation per Share	Purchase Price - Sale Price	Purchase Price - Moving Avg. Price from Table A	Purchase Price - Held Price (\$38.39)	Eligible Loss per Share	Eligible Loss on Transaction
[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8] = max(0, min([4],[5],[6],[7]))	[9] = [1] * [8]
300	10/20/2015	12/31/2015	\$0.00	N/A	N/A	N/A	\$0.00	\$0.00
300	10/20/2015	9/2/2016	\$1.96	\$42.55 - \$39.97 = \$2.58	N/A	N/A	\$1.96	\$588.00
300	10/20/2015	11/1/2016	\$1.96	\$42.55 - \$37.16 = \$5.39	\$42.55 - \$39.06 = \$3.49	N/A	\$1.96	\$588.00
100	10/20/2015	Held Through 11/30/2016	\$1.96	N/A	N/A	\$42.55 - \$38.39 = \$4.16	\$1.96	\$196.00
Preliminary Eligible Loss Amount								\$1,372.00
Market Loss Limitation								\$0.00
Eligible Loss Amount								\$0.00

Example #3 – Shares Purchased Before the Relevant Period

Transactions				
Date	Transaction Type	# of Shares	Price	Amount
3/1/2015	Beginning Holding	400		
10/20/2015	Purchase	1,000	\$42.55	\$42,550.00
9/2/2016	Sale	1,100	\$39.97	\$43,967.00

Market Loss/(Gain) During Relevant Period		
	# of Shares	Amount
Total Purchase Amount	1,000	\$42,550.00
Matched Sales Proceeds	700	\$27,979.00
Held Value at 9/2/16 (\$39.97/share)	300	\$11,991.00
Market Loss/(Gain)		\$2,580.00
Market Loss Limitation		\$2,580.00

FIFO Calculation				Calculation of Eligible Loss Amount				
Shares	Purchase Date	Sale Date	Inflation per Share	Purchase Price - Sale Price	Purchase Price - Moving Avg. Price from Table A	Purchase Price - Held Price (\$38.39)	Eligible Loss per Share	Eligible Loss on Transaction
[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8] = max(0, min([4],[5],[6],[7]))	[9] = [1] * [8]
400	Beginning Holding	9/2/2016	\$0.00	N/A	N/A	N/A	\$0.00	\$0.00
700	10/20/2015	9/2/2016	\$1.96	\$42.55 - \$39.97 = \$2.58	N/A	N/A	\$1.96	\$1,372.00
300	10/20/2015	Held Through 11/30/2016	\$1.96	N/A	N/A	\$42.55 - \$38.39 = \$4.16	\$1.96	\$588.00
Preliminary Eligible Loss Amount								\$1,960.00
Market Loss Limitation								\$2,580.00
Eligible Loss Amount								\$1,960.00

Example #4 – Options Exercised During the Relevant Period

Transactions				
Date	Transaction Type	# of Shares	Price	Amount
3/1/2015	Beginning Holding	0		
4/17/2015	Investor Exercises Call Option (Purch.)	500	\$25.00	\$12,500.00
6/19/2015	Call Option Exercised Against Investor (Sale)	500	\$70.00	\$35,000.00
10/20/2015	Purchase	1,000	\$42.55	\$42,550.00
9/2/2016	Sale	1,000	\$39.97	\$39,970.00

Market Loss/(Gain) During Relevant Period		
	# of Shares	Amount
Total Purchase Amount	1,500	\$55,050.00
Matched Sales Proceeds	1,500	\$74,970.00
Held Value at 9/2/16 (\$39.97/share)	0	\$0.00
Market Loss/(Gain)		(\$19,920.00)
Market Loss Limitation		\$0.00

FIFO Calculation				Calculation of Eligible Loss Amount				
Shares	Purchase Date	Sale Date	Inflation per Share	Purchase Price - Sale Price	Purchase Price - Moving Avg. Price from Table A	Purchase Price - Held Price (\$38.39)	Eligible Loss per Share	Eligible Loss on Transaction
[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8] = max(0, min([4],[5],[6],[7]))	[9] = [1] * [8]
500	4/17/2015	6/19/2015	\$0.00	N/A	N/A	N/A	\$0.00	\$0.00
1,000	10/20/2015	9/2/2016	\$1.96	\$42.55 - \$39.97 = \$2.58	N/A	N/A	\$1.96	\$1,960.00
Preliminary Eligible Loss Amount								\$1,960.00
Market Loss Limitation								\$0.00
Eligible Loss Amount								\$0.00