

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 98512 / September 25, 2023**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20781**

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**In the Matter of**

**Baxter International Inc.,**

**Respondent.**

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**ORDER APPROVING PLAN OF  
DISTRIBUTION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20782**

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**In the Matter of**

**Jeffrey Schaible,**

**Respondent.**

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**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20783**

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**In the Matter of**

**Scott Bohaboy,**

**Respondent.**

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On February 22, 2022, the Commission issued an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (the “Order”)

against Baxter International Inc. (“Baxter”).<sup>1</sup> In the Order, the Commission found that beginning in at least 2009 and continuing through July 2019, Baxter improperly leveraged its foreign exchange rate convention by engaging in intra-company transactions for the purpose of generating foreign exchange accounting gains or avoiding foreign exchange accounting losses (the “FX Transactions”). These FX Transactions had the effect of materially misstating Baxter’s net income as reported in public filings. In October 2019, Baxter announced that it was conducting an internal investigation concerning the FX Transactions. In March 2020, Baxter restated its financial statements, which reduced its previously reported net income for 2017 through June 30, 2019, and retained earnings as of January 1, 2017, by \$582 million, collectively. The Commission ordered Baxter to pay a civil money penalty of \$18 million and created a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 (the “Baxter Fair Fund”).

Also on February 22, 2022, in two related matters, the Commission issued Corrected Orders Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order against Jeffrey Schaible (the “Schaible Order”)<sup>2</sup> and Scott Bohaboy (the “Bohaboy Order”).<sup>3</sup> During relevant times, Schaible was an employee in the Treasury department of Baxter, and Bohaboy was its Treasurer. In the Schaible and Bohaboy Orders, the Commission found that the Respondents, among other things, caused Baxter’s violations of the federal securities laws. The Commission ordered Schaible to pay disgorgement, prejudgment interest, and a civil penalty totaling \$189,359.00 and Bohaboy to pay a civil money penalty of \$125,000. The Commission created a Fair Fund in each of the Schaible and Bohaboy Orders pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 and further ordered those Fair Funds combined with the Baxter Fair Fund.

The Baxter Fair Fund includes the \$18,314,359.00 paid by Baxter, Schaible, and Bohaboy. The assets of the Baxter Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Baxter Fair Fund has been deposited in a Commission-designated account at the U.S. Department of the Treasury, and any interest accrued will be added to, and become a part of, the Baxter Fair Fund.

On July 1, 2022, the Division of Enforcement (the “Division”), pursuant to delegated authority, appointed Epiq Class Action & Claims Solutions, Inc. as the fund administrator for the Baxter Fair Fund and set the fund administrator’s bond at \$18,314,359.00.<sup>4</sup>

On February 13, 2023, the Division, pursuant to delegated authority, published a Notice of Proposed Plan of Distribution and Opportunity for Comment (“Notice”),<sup>5</sup> pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”).<sup>6</sup> The Notice advised all interested persons that they may obtain a copy of the proposed plan of

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<sup>1</sup> Securities Act Rel. No. 11032 (Feb. 22, 2022).

<sup>2</sup> Securities Act Rel. No. 11033 (Feb. 22, 2022).

<sup>3</sup> Securities Act Rel. No. 11034 (Feb. 22, 2022).

<sup>4</sup> See Order Appointing Fund Administrator and Setting Administrator’s Bond Amount, Exchange Act Rel. No. 95192 (July 1, 2022).

<sup>5</sup> Exchange Act Rel. No. 96898 (Feb. 13, 2023).

<sup>6</sup> 17 C.F.R. § 201.1103.

distribution (“Proposed Plan”) from the Commission’s public website at <http://www.sec.gov/litigation/fairfundlist.htm> or by submitting a written request to Catherine E. Pappas, United States Securities and Exchange Commission, One Penn Center, 1617 JFK Blvd., Ste. 520, Philadelphia, PA 19103. All persons who desired to comment on the Proposed Plan could submit their comments, in writing, no later than March 15, 2023. The Commission received two public comments during the comment period (the “Comment Letters”).

After considering the Comment Letters received on the Proposed Plan, the Commission staff, working with the fund administrator, recommends that the Proposed Plan be approved without modification.

After careful consideration, the Commission concludes that the Proposed Plan should be approved without modification.

## I.

### A. Public Comments on the Proposed Plan

By letters dated March 14, 2023 and March 15, 2023, respectively, Securities Class Actions Services (“SCAS”) and Chicago Clearing Corporation (“CCC”), collectively objected to paragraphs 83 and 84 of the Proposed Plan which describe the procedures relating to claims submitted by Third-Party Filers.<sup>7</sup> CCC additionally objects to paragraph 16(g) of the Proposed Plan, which excludes claim purchasers from the distributions.

#### 1. Objections to Paragraphs 83 and 84

By its Comment Letter, SCAS requests that the Proposed Plan be revised to allow recipients of distribution payments to authorize payments to be made directly to Third-Party Filers. Both SCAS and CCC request that the Proposed Plan be modified to permit Third-Party Filers to deduct their own compensation from distribution payments before remitting these payments to the harmed investors for whom the distributions are intended. The commenters request these changes to facilitate payment for their services, claiming alternative methods of payment to be “extremely difficult, if not impossible.” SCAS and CCC assert that Third-Party Filers help to maximize participation in distributions, and that retail investor participation in Commission’s distributions will decrease if Third-Party Filers do not participate due to the restrictions on their ability to offset their own fees under the current provisions of the Proposed Plan. CCC further states that its clients have “overwhelmingly chosen” to pay for CCC’s third-party filing services through contingency fee arrangements.<sup>8</sup>

The Commission has considered these comments and, for the same reasons set forth in prior orders approving the substance of the paragraphs at issue, has determined that the requirements of paragraphs 83 and 84 are necessary to protect the Baxter Fair Fund. *See In the*

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<sup>7</sup> A Third-Party Filer is defined in the Proposed Plan as a third-party, including without limitation a nominee, custodian, or an intermediary holding in street name, who is authorized to submit and submits a claim(s) on behalf of one or more Preliminary Claimants. Proposed Plan, ¶ 27.

<sup>8</sup> <https://www.sec.gov/comments/3-20781/320781-328044.htm>, p. 2.

*Matter of MagnaChip Semiconductor Corporation, et al.*, Exchange Act Rel. No. 97470 (May 10, 2023) (finding plan provisions precluding the sending of payments to Third-Party Filers and the offset of Third-Party Filer compensation from distribution payments to be appropriate as a “means to protect the integrity of Commission distributions”); *see also In the Matter of The Kraft Heinz Co., et al.*, Exchange Act Rel. No. 96578 (Dec. 23, 2022) (finding plan provisions precluding the sending of payments to Third-Party Filers and the offset of Third-Party Filer compensation from distribution payments to be “necessary to reduce risks to the Commission’s distribution program and to harmed investors”); *see also In the Matter of Wells Fargo & Company*, Exchange Act Rel. No. 90898 (Jan. 11, 2021) (approving the plan without modification, observing that provision directing payments to harmed investors as opposed to Third-Party Filers also allows alternative payment arrangements upon Commission staff consultation and harmed investor authorization, and finding the preclusion of offsets of Third-Party Filer compensation from distribution payments to be appropriate as a “means to protect the integrity of Commission distributions” that “will not significantly restrict distribution participation”). Accordingly, the Commission finds paragraphs 83 and 84 of the Proposed Plan to be fair and reasonable and approves their inclusion without modification.

## **2. Objections to Paragraph 16(g)**

CCC also objects to paragraph 16(g) of the Proposed Plan, claiming that the exclusion of claim purchasers could eliminate the opportunity for many harmed investors to timely receive some value from the Baxter Fair Fund, as well as other distribution funds with similar provisions. CCC requests that paragraph 16(g) be altered to clearly permit purchasers of claims to be eligible for a distribution from the Baxter Fair Fund. The Commission has considered this objection and concludes that it does not require modification to the Proposed Plan.

By including paragraph 16(g) in the Proposed Plan, the Commission does not take a position on investors selling their claims. Rather, the Proposed Plan specifies to whom the distribution payment will be made.

The Commission finds the payment restriction to be fair and reasonable. The purpose of a Commission plan of distribution is to distribute a fund established for the benefit of harmed investors. *See* Section 308(a) of the Sarbanes Oxley Act of 2002 (stating that, in the context of Fair Funds, a fund is “established for the benefit of victims of” federal securities law violations). The Commission believes that the best way to ensure that distribution payments are made for the benefit of investors is to relate the harm caused by the misconduct underlying its enforcement actions to the specific investors who suffered the harm, and to compensate those investors for as much of that harm as the distribution fund makes possible.

## **B. Approval of the Proposed Plan**

For the reasons stated above, the Commission finds that the Proposed Plan is fair and reasonable and should be approved without modification.

**II.**

Accordingly, it is hereby ORDERED, pursuant to Rule 1104 of the Commission's Rules,<sup>9</sup> that the Proposed Plan is approved, and the approved Plan of Distribution shall be posted simultaneously with this order on the Commission's website at [www.sec.gov](http://www.sec.gov).

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>9</sup> 17 C.F.R. § 201.1104.