



December 16, 2022

Vanessa A. Countryman
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
CC: rule-comments@sec.gov

Re: Weatherford International PLC, et al. Administrative Proceeding File Nos. 3-17582 and 3-17628

Dear Ms. Countryman,

Chicago Clearing Corporation (CCC) offers the following comment on the Proposed Plan of Distribution in the Weatherford International Fair Fund, Administrative Proceeding File Nos. 3-17582 and 3-17628. We are commenting on paragraph 85:

“The Third-Party Filer shall not be the payee of any Distribution Payment check or electronic Distribution Payment. Any other payment arrangement must be discussed with the Distribution Agent in consultation with the SEC staff and must be authorized by the Eligible Claimant. Compensation to the Third-Party Filer for its services may not be paid or deducted from the Distribution Payment.”

Beginning with the Plan of Distribution in *SEC v. Longfin* (Case No. 18-CV-2977-DLC. S.D. N. Y.), over a dozen Fair Fund settlements have Distributions Plans with this same or similar language.

Since the Sarbanes-Oxley Act established Fair Funds in 2002, Fair Funds have been a reliable opportunity for investors to recover funds after they have been harmed by fraud and mismanagement. However, this reliability is threatened by the Proposed Plan of Distribution in the current Fair Fund, and by all other similar Plans of Distribution.

CCC is a Third-Party Filer, founded in 1992, and based in Chicago, Illinois. We currently have more than 2,700 institutional clients who represent over six million underlying beneficial owner accounts. Thus, we file for retail investors *en masse*. Since our inception, CCC has filed more than 12 million individual claim forms and has recovered more than \$1.2 billion dollars for our harmed clients.

Very few individual shareholders file claims on their own in Fair Funds and securities class action settlements. Most retail investors believe they will receive nothing, and certainly not enough for the

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effort required to file a claim. Indeed, the concept of ‘negative return’ is salient here—most often, it costs far more for retail investors to file claims themselves than the prospective relief. The retail investor is expected to do the Herculean—retrieve ancient transaction and position statements and confirmations for dated class periods, painstakingly ensure that beginning and ending positions are properly balanced, and respond to complicated deficiencies.¹ Unfortunately, this means that most, indeed nearly all, of the notices that arrive in retail investors’ mailboxes immediately land in their wastebaskets.

To prove that point, CCC recently studied 200 SEC Fair Funds and securities settlements to determine the claims filing rate. In 2021, CCC presented its findings to the Securities Industry Financial Markets Association’s (SIFMA) Corporate Actions Section. Despite the millions of notice packets sent by administrators to eligible class members each year, only 2% of retail investors file claims on their own—a truly sad and dismal number. CCC’s mission is to sharply increase that number.

CCC’s experience in the recent Wells Fargo Fair Fund is a perfect example of how CCC keeps the retail investor engaged in the recovery process. Our team filed 120,000 claim forms for individual investors and recovered \$21,000,000 for 45,000 beneficial owners.² If CCC had not filed claims in the Wells Fargo Fair fund, then only 2,400 beneficial owners (2% of 120,000) would have participated. Applying the same ratio to our clients who received a distribution, only 900 beneficial owners would have received awards for grand total of \$420,000—not the \$21 million we received for our beneficial owner clients (CCC’s \$21M client recovery represents 4.2% of the total fund.)

Paragraph 85 in the Weatherford Plan of Distribution, and all similar paragraphs in other Fair Funds, circumvents long standing contractual relationships and best practices. Since 1992, CCC’s clients have chosen to file claims on a contingency fee basis. Contingency fees are the most efficient and least onerous way for our clients to help their clients recover settlement awards, and the least onerous way to allocate payments.

If CCC cannot get paid its contractual contingency fee from Fair Funds for the painstaking work it does, then we too would encounter the negative-return scenario that deters retail investors from participating. It is not cost-effective or rational for CCC to retrieve and normalize data, balance and file so many claims for so many individuals, and then invoice on a per-claim basis. Such invoicing could cause our clients compliance problems, such as registered investment advisors (who are not permitted to debit client accounts). They would then have to choose whether to eat the cost of filing, invoice their

¹Old class periods alone can prevent participation. For example, the class period for the upcoming Fiat Chrysler Vehicle Sales Fair Fund begins in 2014; the WellCare Health Plans Fair Fund begins in 2004. Few retail investors retain records or know how to retrieve transaction data from archival data systems.

² This efficiency also turns thousands of individual paper claim forms into one electronic form—which is a boon to the administrator as well as the class member.

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clients, or just stop participating in Fair Funds. Put simply: without Third-Party Filers, retail investor participation rates in SEC Fair Funds will plummet. The absence of retail investors will then increase the pro rata for large institutional investors who file claims. The little guys' unclaimed awards would be divvied up by the big guys, an outcome we suspect is not palatable to the SEC and opposite of the intention of an SEC Fair Fund.

It is our understanding that the language in paragraph 85 is meant to ensure that Fair Fund recoveries go to the beneficial owners, and to avoid instances where the Third-Party Filers extract their fees and return the net balance back to the fund administrator. We can emphatically state that this is not what CCC does. Indeed, CCC's client data and people-finding methods ensure a near perfect location record. If CCC cannot locate a beneficial owner in an SEC Fair Fund, we return the full amount of the settlement award to the claims administrator. While we share the SEC's concern that no party should unfairly claim a portion of a Fair Fund, the current restriction for how a Third-Party Filer receives compensation inadvertently restricts the ability of countless individuals to recover their rightful damages, and upends a process that has worked efficiently for administrators, Third-Party Filers, and in particular retail investors since 2002.

Paragraph 85 already contains a potential solution: "Any other payment arrangement must be discussed with the Fund Administrator and must be authorized by the Payee (beneficial account owner)." Recent practice, however, has contradicted this sentence. Indeed, claims administrators have not allowed Third-Party Filers to make alternative arrangements. When CCC attempted to discuss using the normal payment arrangement with the claims administrator in Wells Fargo, the administrator was inflexible and stated that the new policy prohibited any alternative (normal and workable) arrangement.

We therefore suggest that the Commission alter Paragraph 85 to permit contractually authorized deductions. We are happy to show our contracts to administrators and the SEC. We would further be happy to implement procedures, such as detailed reporting, that will satisfy the SEC's concerns while ensuring that our clients' retail accounts continue to participate in Fair Funds.

Thank you for your time. If you have any questions, please let me know.

Sincerely,



Brian Blockovich
President and General Counsel
Chicago Clearing Corporation
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