July 27, 2023

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: In the Matter of Momentus, Inc., Stable Road Acquisition Corp., SRC-NI Holdings, LLC, and Brian Kabot, Administrative Proceeding File No. 3-20393

Dear Ms. Countryman,

Chicago Clearing Corporation (CCC) offers the following comments on the Proposed Plan of Distribution In the matter of In the Matter of Momentus, Inc., Stable Road Acquisition Corp., SRC-NI Holdings, LLC, and Brian Kabot, Administrative Proceeding File No. 3-20393 ("Momentus"). We are commenting specifically on paragraphs 84 and 18(g).

Harmed investors hire CCC to file claims and recover settlement payments in class action and Fair Fund settlements. Founded in 1992 and based in Chicago, Illinois, CCC currently serves more than 2,900 institutional clients who represent over six million underlying beneficial owner accounts. Our clients are mostly bank trust departments and registered investment advisors, but also hedge funds, 40 Act funds, pension funds, custodians, brokers, family offices, law firms and trading firms. Through these institutional clients, CCC files for retail investors *en masse*, so if any of our six million beneficial owner accounts have a claim in a class action or Fair Fund, CCC files and recovers their settlement proceeds for them. Since inception, CCC has filed more than thirteen million individual claim forms and recovered $2 billion dollars for our clients and their underlying accounts. CCC is an integral part of the claim recovery industry and an active participant in many industry organizations like SIFMA and BDUG.

Our comments regarding both paragraphs 84 and 18 (g) support our clients' desired method to recover potential settlement proceeds in Momentus and in other SEC Fair Funds.

Part One: Paragraph 84 of the Momentus Distribution Plan

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

> "84. Distribution Payments must be made by check, electronic payment, or other payment method with the approval of the Commission staff. The Distribution Payment will be made payable to the Payee (the beneficial account owner). Any other payment arrangement must be discussed with the Fund Administrator in consultation with the Commission staff and must be authorized by the Payee. Compensation to a Third-Party Filer for its services may not be paid or deducted from the Distribution Payment."

As we stated in our previous comments to the SEC, we believe this paragraph and others like it will substantially reduce participation of harmed investors in Fair Funds and subsequently harm the exact party, the individual investor, that the SEC is mandated to protect. Please see our comments in Exhibits A, B, C, D.

This restriction will also adversely affect the fiduciary duty that institutions like registered investment advisors, bank trust departments, hedge funds, mutual funds and pension funds have to their clients or underlying beneficial owners. When it comes to class action and SEC Fair Fund claims, it is accepted in the industry that bank trust departments have a fiduciary duty to file class action and SEC Fair Fund claims on their clients' behalf. The same can be said for mutual funds and pension funds. Though hedge funds are more self-interested in nature, there still is a duty to the underlying partners to recover every dollar owed to them from class action and SEC Fair Funds. Finally, though it is arguable whether registered investment advisors have a fiduciary duty to file claims on their clients' behalf, they certainly have a fiduciary responsibility to retrieve any settlement proceeds that may be available to their clients.

To fulfill their fiduciary role, many of these institutions utilize third-party claim filers to recover class action and SEC Fair Fund distributions for their clients. Third-party claim filers provide a crucial function in retrieving historical trade history (positions and transactions) and databasing trade data updates going forward. Through proper trade data management, third-party claim filers can develop a complete chain of title and file the most complete and accurate class action or SEC Fair Fund claims possible for an institution's underlying accounts. Many institutions have personnel turnover, changing systems and complex acquisitions. So, if institutions try to file on their own, personnel and systems are consistently changing. This is not a good environment for claim filing. Claims get missed, are improperly filed, or inadequately managed from beginning to end. Institutions have recognized the value of using a third-party that is completely devoted to claim filing. Third-party claim filers provide consistency, economies of scale and expertise that institutions simply do not have on their own. Finally, as mentioned in Exhibit D, third-party claim filers work with claims administrators on a day-to-day basis. Third-party claim filers know how to deal with the nuances of claim filing, requests for supporting documentation, responses to

deficiencies or rejections, and serve a critical role in the administration of class action settlements and SEC Fair Funds. We are the grease that keeps the machine running smoothly.

Third-party claim filers have been utilizing a contingency fee payment method for thirty years. The contingency model has proven incredibly efficient and cost effective (i.e., there is no cost for claim filing if there are no proceeds received). Moreover, clients overwhelmingly prefer contingency fees. Indeed, CCC always offers a flat fee arrangement for our clients, yet only 2% of CCC's clients choose it.

Removing the main source of compensation for an entire industry of third-party claim filers will have the effect of forcing claim filers to forgo filing SEC Fair Fund claims for their clients. We are seeing it happen already. Please see Exhibit D where we discuss how Broadridge is dropping SEC Fair Fund claim filing for their clients. We hear from our clients and prospects that other third-party filers are following Broadridge's lead. If this trend continues, then institutions who have hired third-party filers are in jeopardy of violating their fiduciary duty to their clients. Beneficial owner clients will be incensed that institutions that are supposed to be operating in a client's best interest will now leave their money on the table and not retrieve every dollar owed to them.

Sure, third-party claim filing clients could try to cobble separate operational processes to file for SEC Fair Funds internally. However, as we just discussed, those claims will be rife with inefficiencies generating incomplete or missed claims. Missing claims will put institutions at legal risk. In fact, many institutions turn to third-party claim filers to alleviate possible legal risk. So, either the institution will be at legal risk for missed or botched claims, or they will be at risk for breaching their fiduciary responsibility or duty by choosing not to file SEC Fair Fund claims all together. With that in mind, CCC respectfully requests that the SEC reconsider its policy of disallowing third-party claim filers to recover their filing fee from SEC Fair Fund distributions.

Part Two: Paragraph 18(g) of the Momentus Distribution Plan

Paragraph 18 defines the various excluded parties, and clause g states:

> "18. Excluded Party shall mean:
>
> (g) Any purchaser or assignee of another Person's right to obtain a recovery from the Fair Fund for value..."

The Momentus Plan of Distribution mirrors the language that appears in several other SEC Fair Fund Distribution Plans. We believe this exclusion will eliminate the opportunity for many harmed investors to receive value from Momentus. Please refer to our comments in Exhibit B, Exhibit C, and Exhibit D.

As we discussed above, a bank trust department, mutual fund, pension fund, and hedge fund have fiduciary duties to their clients or underlying beneficial owners. Arguably a registered investment advisor has a fiduciary duty or at least a fiduciary responsibility to its clients to get every dollar owed to them in class action and SEC Fair Fund settlements. However, those duties and responsibilities often run

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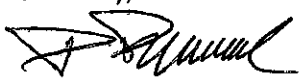
headlong into painful realities, such as a wind-down or liquidation. Selling a claim, therefore, is very useful-- especially considering that many class actions or Fair Funds can take 20 months or more from claim filing deadline to distribution. Circumstances may dictate that funds or clients cannot wait that long.

Assigning class action and SEC Fair Fund claims is an efficient way of capturing a receivable and allowing a beneficial owner to receive their payment now, before it goes away. For example, a dying hedge fund assigning claims to a third-party allows the fund to get as much class action and SEC Fair Fund proceeds as possible to its underlying partners. The fund exercises its fiduciary duty and then winds down properly. Yet with the current restriction in place, the hedge fund cannot exercise this duty. Instead, underlying partners will be denied settlement proceeds owed to them. Those underlying partners may be angered by this turn of events and may decide to pursue legal action against the fund for breach of fiduciary duty.

We have been contemplating this restriction, which appears in many other Fair Fund Plans of Distribution for quite some time now. We still do not know what is driving it. What public policy does this restriction achieve? Denying the assignability of SEC Fair Fund claims is opposite of the spirit and intent of SEC Fair Funds. Fair Funds are in place to compensate as many harmed investors as possible, not to limit compensation. Therefore, CCC respectfully requests that the SEC reconsider its policy of disallowing the assignment of SEC Fair Fund claims to third parties.

Thank you very much for your consideration.

Sincerely,



Brian Blockovich
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December 16, 2022

Vanessa A. Countryman
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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

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

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[1] Old 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.

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,

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March 15, 2023

Vanessa A. Countryman
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CC: rule-comments@sec.gov

Re: Baxter International Fair Fund, Administrative Proceeding File Nos. 3-20781, 3-20782, and 3-20783

Dear Ms. Countryman,

Chicago Clearing Corporation (CCC) offers the following comment on the Proposed Plan of Distribution in the Baxter International Fair Fund ("Baxter"), Administrative Proceeding File Nos. 3-17582 and 3-17628. We are commenting specifically on paragraph 16(g) and paragraph 83.

Harmed investors hire CCC to recover settlement payments in class action and Fair Fund settlements. Founded in 1992 and based in Chicago, Illinois, CCC currently serves 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 twelve million individual claim forms and has recovered more than $1.2 billion dollars for our clients and their underlying accounts. CCC has become an integral part of the financial system and an active participant in many industry organizations like SIFMA and BDUG.

In our comments for both paragraph 16(g) and 83, we write in support of our clients' desired method to recover money in Baxter and in other Fair Funds. For further background on CCC and our comments on other Plans of Distributions in other Fair Funds like Baxter, please see our comments regarding the Distribution Plan in the Weatherford International PLC, et al. Administrative Proceeding File Nos. 3-17582 and 3-17628. We attach that letter as Exhibit A.

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Part one: Comment on Paragraph 16(g) of the Baxter Distribution Plan

Paragraph 16 defines the various excluded parties, and clause g states:

> "16. Excluded Party shall mean:
>
> (g) Any purchaser or assignee of another Person's right to obtain a recovery from the Baxter Fair Fund for value..."

We believe this exclusion could, depending on interpretation, eliminate the opportunity for many harmed investors to receive value from Baxter, as well as other Fair Funds with similar language in their Plans of Distribution. As discussed in more detail below, Fair Funds take a year or more from deadline to distribution. Some investors cannot wait that long. As an alternative, investors will sell their claims to third parties. This has been customary practice in the class action industry for years.

In a typical securities class action settlement and Fair Fund, the class period is several years old. The claims administration process adds another year or more until distribution. According to our analysis of the last 50 Fair Funds that have distributed, the average length of time between the claim filing deadline and distribution is 1.6 years. The average time from the end of the class period—around when the investor's loss occurred—until the distribution is 8.9 years. Class periods vary, but can easily be 5 years long, so if you add 5 years to 9 years, you may have to retrieve data that is more than a decade old – back to when Barack Obama was in his first term as President.

There are many reasons why investors sell their claims to third parties instead of waiting for their recoveries through the lengthy distribution process. Hedge funds and 40 Act funds are a particularly salient example: hundreds of funds close and wind down each year. When they wind down, they must return money to their investors and partners prior to liquidation. Liquidation can be shockingly swift. Most often, the claimant fund no longer exists by the time the Fair Fund distributes. Selling the fund's claim for value now is the only option. Indeed, if the fund fails to distribute contingent assets like class action claims, the fund becomes a target of litigation for failing to maximize the assets to its investors or partners. Therefore, the fund must sell all its contingent assets prior to shuttering.

Other types of investors also have various motives for selling a claim: debt, divorce, death, illiquidity, you name it. Purchasers of claims in each instance provide a valuable and tangible service to firms and individuals who need money now and can't wait for a Fair Fund to distribute 18 months or so hence.

Ironically, the Baxter Distribution Plan explicitly acknowledges the value provided by purchasers of claims in the language of 16(g) itself: "Any *purchaser* or assignee of another Person's right to obtain a recovery from the Baxter Fair Fund *for value*..." (Emphasis added.) When a right to obtain a recovery is

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purchased, that right is not surrendered. Rather, the Fair Fund claim is transferred at a fair market *value* at a negotiated price and swift time frame rather than at an undetermined and unknowable date for an uncertain amount far into the future.

CCC and other companies like us have been providing monetization services for decades. We do not understand what prompted this restriction. We are not aware of any event, law or regulation which prohibits a claimant from transferring ownership of their assets and rights to someone else for value. The right to transfer one's assets for a negotiated price is fundamental to our capitalistic system. Denying that right is completely opposite to the purpose of Fair Funds' goals, which is to deliver value to all harmed investors.

Therefore, we would suggest that the Commission clarify the right of investors to sell their claims, (i.e., their right to a recovery), and to alter the language in paragraph 16 to clearly permit purchasers of claims to take receipt of payments in Baxter and all other similar Fair Funds. CCC would be happy to discuss with the Commission auditable processes that ensure the authenticity and accuracy of the purchased claim and to verify that the original investor fully negotiated, willingly transferred, and properly received compensation for the sale of their Baxter claim and other Fair Fund claims to CCC.

Part two: Paragraph 83 of the Baxter Distribution Plan

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

> "83. Distribution Payments must be made by check, electronic payment, or other payment method with the approval of the Commission staff. The Distribution Payment will be made payable to the Payee (the beneficial account owner). Any other payment arrangement must be discussed with the Fund Administrator in consultation with the Commission staff and must be authorized by the Payee. Compensation to a Third-Party Filer for its services may not be paid or deducted from the Distribution Payment."

As we stated in our December 16, 2022, comment on the Weatherford Fair Fund Distribution Plan, we believe that this paragraph and others like it, depending on interpretation, could reduce retail participation in Fair Funds and subsequently harm the exact party – the little guy – that the SEC is committed to protect.

Shockingly few individual shareholders file claims on their own in Fair Funds and securities class action settlements. CCC recently studied 200 SEC Fair Funds and securities settlements to determine the retail claims filing rate, outside of CCC. Despite the millions of notice packets sent by administrators to eligible class members each year, only 2% of retail investors filed claims on their own. This 2% claim filing rate does not include claims filed by CCC on behalf of retail investors.

Our comments in the Weatherford matter also discussed how rules like the ones found in paragraph 83 circumvent long-standing contractual relationships and best practices in the claim filing industry. Since

1992, CCC's clients have overwhelmingly chosen to file claims on a contingency fee basis. This method is the most efficient and least onerous way for our clients to help their clients recover settlement awards, and the best way to allocate payments. The retail investor pays a fee only if they receive a recovery. CCC charges no fees above its contingency fee.

For further analysis of how the prohibition in paragraph 83 will hurt retail investors, how Third-Party Filers help increase participation, and why investors prefer contingency fees with Third-Party Filers, we refer you to our December 16, 2022, Weatherford comments.

In this comment we would like to also stress how the time-lag between the class periods of Fair Funds and their claim filing deadlines, discussed above in relation to monetization, also burdens retail investors when it comes to filing claims on their own. Consider the span between the end of the class period and the claim filing deadline: the average for the past 50 Fair Funds is 7.25 years. Now consider the *beginning* of the class period: 9.76 years. Ten years is a long time.

Many retail investors do not retain comprehensive holding and transaction records for any significant time, certainly not ten years, and many retail investors switch brokerages and custodians through the years. Many retail investors do not have the time, wherewithal, and desire to laboriously complete the requisite claim forms for an unknowable reward. Obviously, based on the puny retail claim filing rate, the numbers prove that out. Because retail investors do not retain their trading records for any considerable time, they have to go their broker, bank trust or RIA to retrieve their trading records to support their claims. However, they cannot easily retrieve their trading records from their RIA's, bank trust, or brokers. Brokers do not retain, nor do they provide historical trade date for any substantial time. Even if a retail investor does figure out a way to file a claim, is it really worth their time and effort? Indeed, the average return from securities class actions for CCC clients is $217 dollars, and that number is skewed by some of the largest institutions in the world who get very large awards. Also, once the claim is filed the retail investor may have to fix a deficiency or deal with a rejection. Our research indicates that 44% of filed claims get rejected, yet a rejected claim takes as much time to research and complete as an accepted claim. It then takes more time to ascertain whether the rejection is correct or not. No wonder the retail claim filing rate is so low - It makes little sense for the retail investor to take hours of their time for such a small, distant, and uncertain return.

CCC is different. CCC proactively retrieves historical trade data for all our clients, no matter the source. CCC partners with accounting software firms that hold our RIA and bank wealth management clients' books and records since inception. Our software partners have built extracts that retrieve all the appropriate data points. Once we begin servicing our clients, in particular bank trust departments, registered investment advisors and brokers, we have all the data we need to file a claim on a beneficial owner's behalf. Our systems are automated, and we have retrieved every dollar owed to every investor. In practice that means a tremendous amount of retail investor participation: as stated in our previous comment on the Weatherford matter, CCC filed 120,000 claim forms in the Wells Fargo Fair Fund settlement. If we did not file for our clients in that case, it follows that only 2% -- a mere 2,400 of those

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120,000 individual investors -- would have filed a Wells Fargo Fair Fund claim form on their own. We cannot believe that the SEC wishes to see so few retail investors file claims in Fair Fund settlements.

CCC, and other third-party filers provide a valuable service to investors. As stated, CCC retrieves, normalizes, and stores several years of trade history for retail investors in our proprietary database. We are staffed by knowledgeable, sophisticated experts with years—often decades—of experience navigating financial markets and class action settlements. CCC's clients include custodians, brokerages, bank trust departments, registered investment advisors, pension funds, mutual funds, proprietary trading firms and family offices throughout the country. Many of our clients represent ERISA accounts. Our clients rely on CCC to fulfill their fiduciary obligations to their clients. Which is why they hired CCC. They need us, and they are happy to pay CCC a contingency fee by allowing a deduction of their settlement proceeds and receiving a net balance per their directions.

Without such expertise on their side, retail investors typically drop their claim forms in the waste basket once they see the class period—as might happen in the Baxter Fair Fund. We are sure the SEC would like to avoid that outcome. CCC makes it simple and automatic for harmed investors to retrieve the award they deserve in Fair Funds, but CCC cannot do it for free. If the language in Paragraph 83 remains, CCC cannot serve the retail investor in the Baxter Fair Fund, which is a tragedy for all.

We therefore suggest that the Commission alter Paragraph 83 to clearly 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, which 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
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312-204-6970

May 19, 2023

Vanessa A. Countryman
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Re: In the Matter of Bayerische Motoren Werke, Aktiengesellschaft, BMW of North America, LLC, and BMW US Capital, LLC, Administrative Proceeding File No. 3-20060

Dear Ms. Countryman,

Chicago Clearing Corporation (CCC) offers the following comments on the Proposed Plan of Distribution in the matter of Bayerische Motoren Werke, Aktiengesellschaft, BMW of North America, LLC, and BMW US Capital, LLC ("BMW"), Administrative Proceeding File No. 3-20060. We are commenting specifically on paragraphs 15(h) and 83.

Harmed investors hire CCC to recover settlement payments in class action and Fair Fund settlements. Founded in 1992 and based in Chicago, Illinois, CCC currently serves more than 2,900 institutional clients who represent over six million underlying beneficial owner accounts. We file for retail investors *en masse*, so if any or all our six million clients have a claim in a Fair Fund, we file and recover their proceeds for them. It is quite an arduous task. Since our inception, CCC has filed more than thirteen million individual claim forms and has recovered nearly $2 billion dollars for our clients and their underlying accounts. CCC is an integral part of the claim recovery industry and an active participant in many industry organizations like SIFMA and BDUG.

Our comments regarding both paragraphs 15(h) and 83 support our clients' desired method to recover money in BMW and in other Fair Funds.

Part one: Paragraph 15(h) of the BMW Distribution Plan

Paragraph 15 defines the various excluded parties, and clause h states:

> "15. Excluded Party shall mean:

> (h) Any purchaser or assignee of another Person's right to obtain a recovery from the Fair Fund for value..."

BMW's Plan of Distribution mirrors the language that appears in several other SEC Fair Fund Distribution Plans such as the Baxter International Fair Fund ("Baxter"), Administrative Proceeding File Nos. 3-17582 and 3-17628. We believe this exclusion will eliminate the opportunity for many harmed investors to receive value from BMW. Please refer to our Baxter comments in Exhibit A.

All harmed investors, whether they are part of an SEC Fair Fund or not, should have the right to assign their claims to anyone for value. By prohibiting harmed investors from assigning their claim prior to distribution, some claimants will receive $0 from the BMW Fair Fund. For example, a claimant may cease to exist prior to distribution, such as a corporate entity, a 40 Act fund, an ERISA fund, a hedge fund, or an individual investor. The only way dying entities can receive recompense is to assign their claim before their dissolution and distribute the funds to their investors, partners, pensioners, or beneficiaries. As we mentioned in our Baxter comments, the practice of assigning assets is an age-old right. Assigning class action claims has been commonplace for over twenty years in the claim recovery industry. We wonder why the SEC has decided to disallow the assignment and transfer of SEC Fair Fund claims now.

If the reason is because the SEC wants to protect investors from fraudulent transactions, CCC understands and supports this goal. To alleviate the SEC's concern, CCC would be willing to submit all CCC's monetization bids that involve Fair Funds to the SEC. If an investor assigns their Fair Fund claims to CCC, CCC will share that information with the claim's administrator. That way, the SEC will have a clear line of sight for all SEC Fair Fund claim assignments from offer through acceptance, ending with delivery of payment.

Part two: Paragraph 83 of the BMW Distribution Plan

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

> "83. Distribution Payments must be made by check, electronic payment, or other payment method with the approval of the Commission staff. The Distribution Payment will be made payable to the Payee (the beneficial account owner). Any other payment arrangement must be discussed with the Fund Administrator in consultation with the Commission staff and must be authorized by the Payee. Compensation to a Third-Party Filer for its services may not be paid or deducted from the Distribution Payment."

As we stated in our comments regarding Weatherford International PLC, et al ("Weatherford"), Administrative Proceeding File Nos. 3-17582 and 3-17628, we believe that this paragraph and others like it will reduce retail participation in Fair Funds substantially and subsequently harm the exact party – the

harmed investor (the "little guy") – that the SEC is committed to protect. Please see our Weatherford comments attached as Exhibit B.

For further analysis of how the prohibition in paragraph 83 in BMW and other SEC Fair Funds with similar restrictive language will hurt retail investors, how Third-Party Filers help increase participation, and why investors prefer contingency fees with Third-Party Filers, we also refer you to Exhibit A, and our comments regarding the Baxter Fair Fund.

In this comment we would like to focus on the SEC's recent Order Approving Plan of Distribution in the Matter of MagnaChip Semiconductor Corporation and Margaret Hey-Ryoung Sakai, CPA ("MagnaChip"), Administrative Proceeding File No. 3-17956. Like BMW, MagnaChip's Plan of Distribution restricted the deduction of Third-Party fees from distribution payments. Securities Class Action Services, LLC ("SCAS"), another Third-Party claim filer, objected to the fee restrictions. The SEC rejected SCAS' objection by stating:

"The Commission has determined that the requirements of paragraphs 85 and 86, demonstrating that the preferred method of payment is directly to the Eligible Claimant and prohibiting the offset of Third-party Filer compensation from Distribution Payments, are necessary to reduce risks to the Commission's distribution program and to harmed investors and therefore, are fair and reasonable... Congress entrusted the Commission with the responsibility of distributing Commission settlement funds, and the Commission has procedures in place to efficiently and effectively distribute these government settlement funds while protecting the funds from waste and fraud. Distribution funds should not be sent to Third-Party Filers because the Commission does not have visibility into how these funds are handled once in the Third-Party Filers' possession. Furthermore, the Third-Party Filers are not subject to the controls and oversight procedures prescribed in the distribution plan, and all of the safeguards implemented by the Commission and Congress to protect investors can no longer protect the distribution funds once in the Third-Party Filers' possession."

We fully support the SEC's goal to reduce risks related to its distribution program and protect investors from waste and fraud. It also makes sense for the SEC to have full visibility into what happens to Fair Fund awards sent to Third-Party filers. With that in mind, CCC believes that we can help the SEC achieve its mission while dramatically increasing the participation rates of Fair Funds and ensuring Third-Party filers receive fair compensation for their services, both of which the current language in paragraph 83 of the BMW Plan of Distribution precludes.

With that in mind, CCC proposes the following process for Third-Party Filer participation:

- Prior to release of Fair Funds, the claims administrator sends an allocation sheet to Third-Party Filer. This is customary practice.
- Third-Party Filer reviews allocation sheets and collects payment instructions from its clients.
- Claims administrator sends payments to Third-Party Filer.

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- When Third-Party Filer sends payments to clients, Third-Party Filer sends a report to claims administrator showing name of recipient, amount of its filing fee, net balance to be sent to claimant, and address of where payment was sent.
- Once payments have been cashed, Third-Party Filer sends a report to claims administrator of those payments that have cleared. For those payments that have not cleared, the Third-Party Filer sends all proceeds (Third Party Filer's fee and net balance of payment) back to the claim's administrator.
- Third-Party Filer will provide hard copies, soft copies, and access to an online reporting portal so the claims administrator can track the movement of every SEC Fair Fund payment for every recipient.

I am sure there are further details and nuances that would need to be discussed regarding the process above. However, we hope that instead of simply shutting down the delivery of SEC Fair Fund payments through Third-Party Filers because there is currently no oversight, the SEC will collaborate with us to develop processes and procedures to protect Fair Fund payments from waste and fraud while ensuring that the maximum number of harmed investors are compensated properly.

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

Sincerely,

Brian Blockovich
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June 21, 2023

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: In the Matter of Allianz Global Investors U.S. LLC, Administrative Proceeding File No. 3-20855

Dear Ms. Countryman,

Chicago Clearing Corporation (CCC) offers the following comments on the Proposed Plan of Distribution in the matter of Allianz Global Investors U.S. LLC, Administrative Proceeding File No. 3-20855. We are commenting specifically on paragraphs 81 and 15(j).

Harmed investors hire CCC to file claims and recover settlement payments in class action and Fair Fund settlements. Founded in 1992 and based in Chicago, Illinois, CCC currently serves more than 2,900 institutional clients who represent over six million underlying beneficial owner accounts. These institutional clients are mostly bank trust departments and registered investment advisors, but also hedge funds, 40 Act funds, pension funds, custodians, brokers, family offices, law firms and trading firms. Through these institutional clients, CCC files for retail investors *en masse*, so if any of our six million beneficial owner accounts have a claim in a class action or Fair Fund, CCC files and recovers their settlement proceeds for them. Since inception, CCC has filed more than thirteen million individual claim forms and recovered $2 billion dollars for our clients and their underlying accounts. CCC is an integral part of the claim recovery industry and an active participant in many industry organizations like SIFMA and BDUG.

Our comments regarding both paragraphs 81 and 15 (j) support our clients' desired method to recover potential settlement proceeds in Allianz and in other Fair Funds.

Part One: Paragraph 81 of the Allianz Distribution Plan

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

> "81. Distribution Payments must be made by check, electronic payment, or other payment method with the approval of the Commission staff. The Distribution Payment will be made payable to the Payee (the beneficial account owner). Any other payment arrangement must be discussed with the Fund Administrator in consultation with the Commission staff and must be authorized by the Payee. Compensation to a Third-Party Filer for its services may not be paid or deducted from the Distribution Payment."

As we stated in our previous comments to the SEC, we believe this paragraph and others like it will substantially reduce the participation of individual retail investors in Fair Funds and subsequently harm the exact party (the "little guy") that the SEC is mandated to protect.

Based on our research of the millions of notices distributed to eligible claimants in Fair Fund and civil class action settlements every year, roughly 2% of retail investors file claims on their own.[1] When Third-Party Filers are actively filing claims for harmed investors, the class action participation rate can exponentially increase depending on the size of the settlement fund, how widely held the financial instrument may be, and the client composition of the Third-Party Filer. Third-Party Filers not only dramatically increase the number of participants in Fair Funds, but they also deliver significantly greater distributions to their client bases.

Filing Fair Fund and class action claims is an arduous process. Any individual that has tried to file a class action claim can testify to its difficulty. To illustrate, every claim for every account must identify the correct initial position, accurately display each transaction during the often-extensive class period, and balance to an accurate end holding position. If the claim does not balance, it will be considered deficient and likely rejected. Unfortunately, the clients' requisite trade data is most often ancient and inaccessible. Further, the data is often tainted by an assortment of problems such as cancellations and replaces, splits, incorrect quantities, incorrect prices, you name it. It gets even more complicated when administrators ask for paper (PDF) brokerage statements to justify the electronic submission. (We touch on that issue below in further detail.) Bottomline, filing claims is not for the faint of heart. Only a small handful of retail investors bother and far fewer succeed. Third-Party Filers are often the retail investor's only hope. As a result, Third-Party Filers should receive reasonable compensation for their efforts—especially when the method of compensation is contractually chosen by the retail investor themselves.

Third-Party Filers have been utilizing a contingency fee payment method for thirty years. The contingency model has proven incredibly efficient and cost effective (i.e., there is no cost for claim filing if there are no proceeds received). Moreover, clients overwhelmingly prefer contingency fees. Indeed, CCC always offers a flat fee arrangement for our clients, yet only 2% of CCC's clients choose it. Eliminating the ability to charge this preferred contingency fee creates unnecessary chaos, putting the

[1] See CCC's comments in the matter of Weatherford International PLC, et al. Administrative Proceeding File Nos. 3-17582 and 3-17628 submitted December 16,2022. Exhibit A.

value of Fair Funds for retail investors in jeopardy. For further analysis of how the prohibition in paragraph 81 in Allianz and other SEC Fair Funds with similar restrictive language will hurt retail investors, how Third-Party Filers help increase participation, and why investors prefer contingency fees with Third Party Filers, we refer you to Exhibits A, B, and C.

If the policy of disallowing Third-Party Filers from collecting their fees from Fair Fund distributions continues, Third Party-Filers will stop filing Fair Fund claims. Indeed, this is already happening.[2] This news is very disturbing and completely contrary to what Fair Funds are about – getting all harmed investors the recourse they deserve. If claim filers stop filing Fair Fund claims, the real victims are the individual retail investors: our parents, our neighbors, the construction worker relying on his or her pension, the teacher with a brokerage account, and the local business owner down the street.

Removing Third-Party Filers will force individual retail investors to futilely attempt to file claims on their own. As we have shown, scant few individual retail investors successfully file claims. So, if retail investors do not file and Third-Party Filers decide to drop filing SEC Fair Fund cases, millions and millions of dollars owed to retail investors will go unclaimed by retail investors and flow to institutional claimants with enough resources and incentive to file. The retail investors will effectively subsidize the institutional investors. The haves get more, and the have-nots get less. Yet isn't the intent of SEC Fair Funds to compensate all investors, especially "the little guy"?

As we noted in our comment in Exhibit A, CCC's experience in the Wells Fargo Fair Fund is a perfect example of how a Third-Party filer like CCC keeps the little guy engaged in the recovery process. CCC's team filed 120,000 claim forms for individual investors and recovered $21,000,000 for 45,000 beneficial owners. 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.

To illustrate the impact Third-Party Filers have on Fair Fund participation rates, CCC analyzed all Fair Fund cases where CCC filed claims and recovered settlement proceeds for our clients. Since 2016:

- CCC has filed and received settlement payments on behalf of our clients in 30 Fair Fund cases.
- CCC successfully filed 251,198 individual claims and recovered $33,425,339.
- Of these claimants, at least 80%, or 200,958, would be considered individual retail investors, and their recovery was $26,740,271.

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[2] "Due to regulatory changes, Alta Capital's class action filing services vendor, Broadridge Investor Communications Solutions, Inc., is no longer able to provide filing services with respect to fair funds matters." **Form ADV entry for Alta Capital Management, Material Changes, Page 2, March 21, 2023**. "Broadridge Financial Solutions will research global securities class action cases that are not deemed by the SEC to be a "Fair Fund" lawsuit, on behalf of our clients and will generate and submit the applicable proof of claim to the Claims Administrator...Class action cases deemed as a "Fair Fund" lawsuit will not be managed by Broadridge." **Form ADV entry for Stillwater Capital Advisors, LLC, Item 17: Voting Client Securities, Page 17, February 23, 2023.**

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If CCC had not filed claims on their behalf and they were left on their own to file:

- Only 4,019 individual retail investors would have filed.
- Assuming all these 4,019 retail investors had eligible claims, they would have received $534,805.
- Most of the remaining $26,205,466 that CCC would *not* have recovered for retail investors would have been claimed by institutional investors, as the distribution of Fair Funds is made on a pro rata basis.

That is significant.

If we take that tack and look at claims filed in current Fair Fund cases, the numbers look much the same:

- CCC has filed 212,579 claims in 19 Fair Fund settlements that are operating with the new restriction on third party fees and have yet to distribute.
- At least 80% of those 212,579 claims are on behalf of individual retail investors, or 170,063 claims.
- Assuming all these individual retail investors have eligible claims, we project these individual retail investors will receive $5,781,780 because of CCC's efforts.
- Yet if CCC did not file for these harmed investors, and they were left on their own to file, we project that only 3,401 claims (2% of estimated 170,063 retail claims) would have been filed at this point for a projected receivable of $115,635, assuming they all have eligible claims.
- The remaining projected receivable of $5,666,144 would mostly flow to institutional investors.

As you can tell, the drop in claims filed and money recovered for individual retail investors would be staggering if CCC alone stopped filing Fair Funds. Again, all the unfulfilled individual class member funds will disproportionately benefit large institutions who have whole departments devoted to claim filing. This is the complete opposite intent of Fair Funds and the mission of the SEC.

The hurdles highlighted here and in our previous comments are now often paired with another unnecessary burden that will drive the claim participation rate even lower: excessive and unreasonable documentation requests.

When a claimant files a claim, claims administrators will accept electronic trade data, usually over fifty lines of data. In fact, as a large filer, CCC is typically required to file claims on behalf of our clients through an electronic submission. Occasionally administrators will audit claims and require supporting documentation for a particular trade, position, or a series of transactions to support an electronic submission. Supporting documentation often can be satisfied by the official books and records of the client such as an accounting software display or custodial display. Brokerage statements or confirmation statements from a client's custodian or broker are also accepted.

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However, since many custodians or brokers only retain trading records for seven years or less, eligible claimants are sometimes not able to provide a brokerage statement or confirmation to verify their electronic submission. The trades occurred, but because of an older class period, the additional piece of paper or PDF to verify the trades may no longer exist. In those instances, CCC collaborates with administrators, such as the one in this Allianz matter, to produce other acceptable forms of supporting documentation, such as affidavits confirming the truth and accuracy of the electronic file. Working collaboratively with claims administrators ensures a smooth process and ensures that harmed investors receive just relief.

Unfortunately, there are some other administrators in SEC Fair Fund cases that require all filers— large electronic Third-Party Filers like CCC, custodians and brokers, and individual retail investors— to submit full documentation, including paper confirmations and paper brokerage statements to support every single transaction and position that may be included in their electronic file, no matter how old or how impossible to retrieve, with no exceptions. Claimants are not allowed to provide affidavits or any other similar documentation to support their electronic data. Thus, if claimants cannot provide their custodial confirmations and statements from way back when, the claim will be rejected with no recourse.

If a Third-Party Filer like CCC faces an uphill battle to keep claims in good standing, imagine what an individual filer will face. Thousands, perhaps millions, of individuals will have to call their brokers to try to obtain confirmations and statements that often no longer exist in the brokers' system. Since brokers are only required to retain trading records for seven years and often foreclose the retrieval of physical documentation after three years, it may be impossible to respond to a claims administrator's document request. Retrieving documentation is even harder if the claimant is no longer a client of the broker. Since 20% of all brokerage accounts close every year, this makes retrieval unlikely for most claimants. If the individual retail investor cannot retrieve supporting documentation for their claim, the claim is rejected. Individual investors will invariably decide filing Fair Fund claims is not worth the hassle and abandon filing claims altogether. This indifference will further drive claims rates below the current 2% filing rate, thus putting even more money in the coffers of institutional investors from the pockets of individual retail investors.

Fortunately, because CCC (and perhaps other Third-Party Filers) have been collecting comprehensive trade data from their clients for years and fostered relationships with custodians and brokers, Third-Party Filers are in a much better position to produce or retrieve supporting documentation for clients. Thus, even in this instance Third-Party Filers like CCC serve a critical role in the administration of Fair Funds and should not be driven out of participating in Fair Funds because of the current restrictions on how Third-Party Filers collect their fees.

Part Two: Paragraph 15(j) of the Allianz Distribution Plan

Paragraph 15 defines the various excluded parties, and clause j states:

> "15. Excluded Party shall mean:

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(j) Any purchaser or assignee of another Person's right to obtain a recovery from the Fair Fund for value..."

The Allianz Plan of Distribution mirrors the language that appears in several other SEC Fair Fund Distribution Plans such as Bayerisch Motoren Werke, Aktiengesellschaft, BMW of North America, LLC, and BMW US Capital, LLC ("BMW"), Administrative Proceeding File Nos. 3-20060. We believe this exclusion will eliminate the opportunity for many harmed investors to receive value from Allianz. Please refer to our BMW comments in Exhibit C, and our comments in the Baxter International Fair Fund ("Baxter"), Administrative Proceeding File Nos. 3-17582 and 3-117628 in Exhibit B.

Assigning ownership of property or to monetize a claim or interest is a fundamental right for individuals and entities. This right is often necessary when a hedge fund or 40 Act fund closes. Funds have a fiduciary duty to retrieve the maximum amount for their partners and shareholders. If they do not, funds run the risk of lawsuits. Since many class actions or Fair Funds can take 20 months or more from claim filing deadline to distribution, many changes can occur to a claimant in that time. Circumstances may dictate that funds cannot wait for distribution. Assigning their claim prior to distribution allows claimants to satisfy their fiduciary duties and receive value from a class action or Fair Fund settlement *now*—instead of receiving nothing from the settlement because they can no longer accept proceeds when distribution occurs. It is not clear to us why the SEC is denying investors, such as hedge funds or 40 Act funds, the opportunity to fulfill their fiduciary obligations and the right to get value for their investors and partners by assigning their claim to others.

Is the SEC worried about fraud? Or is the SEC worried that someone will assign their claim without fully realizing what they are doing? If these are some of the reasons, these are legitimate concerns. However, instead of simply taking away a fundamental tool to derive value from these cases, we respectfully request that SEC consider working with assignees of Fair Fund claims. As mentioned in Exhibit C, CCC would gladly provide full transparency of any assigned claims that we receive from claimants. CCC supports any process or procedure which preserves the right of any investor to assign their Fair Fund claims for the value they choose.

In conclusion, if the current policies discussed remain in place and Third-Party Filers stop filing claims in SEC Fair Funds, then very few individual investors will file claims on their own. The investors that do file will have little to no chance of keeping their claims in good standing, especially if they submit claims to certain administrators. The SEC risks inadvertently foiling its mandate of protecting investors. Therefore, CCC respectfully requests that SEC reconsider its current policies in Allianz and other SEC Fair Funds, so that individual retail investors can receive maximum value through the services of a Third-Party filer, and investors can assign their claims to anyone they choose.

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

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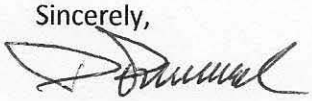
Sincerely,



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