



March 15, 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: 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.

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

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 data 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



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
President and General Counsel
Chicago Clearing Corporation
[Redacted]