

**EXHIBIT A**

**PLAN OF DISTRIBUTION**

**I. OVERVIEW**

1. The Securities and Exchange Commission (“Commission”) submits this plan of distribution (the “Plan”). As described more specifically below, the Plan provides for the distribution of the disgorgement, prejudgment interest, and civil money penalties paid by Hidalgo Mining Corp. (“Hidalgo”), John W. Boyer (“Boyer”), and Joshua F. McAlees (“McAlees”) (collectively, “Defendants”) in this proceeding. The Defendants have paid a total of \$112,632.00 in disgorgement, prejudgment interest, and civil penalties pursuant to the Final Judgments entered against them. These funds have been deposited in an interest-bearing account at the United States Department of the Treasury’s Bureau of the Fiscal Service (“BFS”). Any additional funds are received, will either be added to Fair Fund for disbursement to investors, or be sent to the United States Treasury and not distributed at the discretion of the Distribution Agent.

2. This Plan provides for the distribution of the Fair Fund, plus accrued interest and earnings thereon, less Administrative Costs (defined below) (“Net Available Fair Fund”) to those investors harmed as a result of the Defendants’ conduct alleged in the Complaint. Based on information obtained by the Commission during its investigation and the review and analysis of applicable records, the Commission has reasonably concluded that it has all the records necessary to calculate each investor’s harm, and as result will not be distributed according to a claims-made process.

3. As calculated using the methodology detailed in the Plan of Allocation (attached as Attachment A), investors will be compensated for their losses incurred from their purchase of Investment Contracts (as defined below) from Defendants between August 2009 and March 2013.

4. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Plan is subject to approval by the Court, and the Court retains jurisdiction over its implementation.

## **II. BACKGROUND**

5. On August 4, 2017, the SEC filed a Complaint against Hidalgo; Boyer, president of Hidalgo; and McAlees, vice president of Hidalgo, alleging that Defendants defrauded investors in an unregistered securities offering involving a silver mine located near Mexico City, Mexico. The Complaint alleged that from at least August 2009 through March 2013, Defendants raised approximately \$10.35 million from about eighty-five investors nationwide, purportedly to fund mining operations for the silver mine through the sale of investment contracts titled “Agreements for the Purchase and Sale of Future Production of Silver” (“Investment Contracts”). Hidalgo later refunded to investors about \$2.68 million of the \$10.35 million raised. Among other things, the Complaint alleged that Defendants failed to disclose the use of proceeds raised and failed to register the offering with the Commission.

6. On August 15, 2017, Final Judgments (“Judgments”) were entered against the Defendants. Without admitting or denying the allegations, all Defendants consented to an order enjoining them from violations of Sections 5(a), 5(c), and 17(a)(2) of the Securities Act of 1933. In addition, Defendants Boyer and McAlees consented to an order enjoining them from violations of Section 15(a)(1) of the Securities Exchange Act of 1934. Hidalgo was ordered to pay disgorgement of \$7,444,750; prejudgment interest of \$953,981; and a civil penalty of

\$178,156. Boyer was ordered to pay disgorgement of \$28,675; prejudgment interest of \$3,852; and a civil penalty of \$26,724. McAlees was ordered to pay disgorgement of \$23,500; prejudgment interest of \$3,157; and a civil penalty of \$26,724. Defendants Boyer and McAlees paid their judgments in full. Defendant Hidalgo has made no payments in satisfaction of its judgment.

7. The Commission has requested that the Court establish a fair fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the civil penalties paid, along with the disgorgement and prejudgment interest paid, can be distributed to harmed investors (the “Fair Fund”).

### III. DEFINITIONS

As used in this Plan, the following definitions will apply:

8. **“Administrative Costs”** shall mean any administrative costs and expenses, including without limitation tax obligations, the fees and expenses of the Tax Administrator and any investment and banking costs.

9. **“Distribution Payment”** means a payment from the Fair Fund to a Payee in accordance with the terms of this Plan.

10. **“Eligible Claimant”** means a Preliminary Claimant, who is determined to have suffered a Recognized Loss, pursuant to the Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant.

11. **“Excluded Party”** shall mean: (a) any Defendant; (b) present or former officers or directors of any Defendant and any assigns, creditors, heirs, distributees, spouses, parents, dependent children or controlled entities of any of the foregoing persons or entities; (c) any assigns, creditors, heirs, distributees, spouses, parents, dependent child or controlled entities of

any Defendant; (d) any employee or former employee of any Defendant or any of its affiliates who has been terminated for cause or has otherwise resigned, in connection with the conduct described in the Order; (e) any firm, trust, corporation, officer, or other entity in which any Defendant has or had a controlling interest; and (f) any purchaser or assignee of another person or entities right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall not be construed to exclude those persons or entities who obtained such a right by gift, inheritance or devise.

12. **“Fair Fund”** means the fund created by the Court pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Defendants’ violations alleged in the Complaint.

13. **“Final Determination Notice”** means the written notice sent by the Distribution Agent to (a) any Preliminary Claimant who timely submitted a written dispute of their calculated Recognized Loss notifying the Preliminary Claimant of her resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice as described in paragraph 29, notifying the Preliminary Claimant that they have been deemed an Unresponsive Preliminary Claimant. The Final Determination Notice will constitute the Distribution Agent’s final ruling regarding the status of the claim.

14. **“Net Available Fair Fund”** means the Fair Fund, plus any interest or earnings, less Administrative Costs.

15. **“Payee”** means an Eligible Claimant who is determined to receive a Distribution Payment, as calculated in accordance with the Plan of Allocation.

16. **“Person”** means natural individuals as well as legal entities such as corporations, partnerships, or limited liability companies.

17. **“Plan Notice”** means a written notice from the Distribution Agent to Preliminary Claimants regarding the Commission’s approval of the Plan, including, as appropriate: a statement characterizing the distribution, a link to the approved Plan posted on the Commission’s website and instructions for requesting a copy of the Plan, a Certification form, specification of any information needed from the Preliminary Claimant to prevent them from being deemed an Unresponsive Preliminary Claimant, their preliminary Recognized Loss, a description of the tax information reporting and other related tax matters, the procedure for the distribution as set forth in the Plan, and the name and contact information for the Distribution Agent as a resource for additional information or to contact with questions regarding the distribution.

18. **“Plan of Allocation”** means the methodology by which a Preliminary Claimant’s Recognized Loss is calculated. The Plan of Allocation is attached to Exhibit A.

19. **“Preliminary Claimant”** means those Persons, or their lawful successors, identified by the Distribution Agent based on its review and analysis of applicable records obtained by the Commission during its investigation, who may have suffered a loss from their purchase of Investment Contracts from Defendants between August 2009 and March 2013.

20. **“Recognized Loss”** means the total amount of loss calculated for a Preliminary Claimant in accordance with the Plan of Allocation.

21. **“Unresponsive Preliminary Claimant”** means a Preliminary Claimant whose address the Distribution Agent has not been able to verify and/or who does not timely respond to the Distribution Agent’s attempts to obtain information, including any information sought in the Plan Notice. Unresponsive Preliminary Claimants will not be eligible for a distribution under the Plan.

#### **IV. TAX COMPLIANCE**

22. On October 26, 2020, the Court appointed Miller Kaplan and Arase LLP as tax administrator in this matter. The Tax Administrator will be compensated for reasonable fees and expenses in accordance with the Court's order.

23. The Fair Fund constitutes a Qualified Settlement Fund under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is the administrator of such QSF for purposes of Treas. Reg. § 1.468B-2(k)(3)(I) and shall satisfy the tax-related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- (a) Obtaining a taxpayer identification number;
- (b) Requesting funds necessary for the timely payment of all applicable taxes, the payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- (c) Fulfilling any information reporting or withholding requirements imposed on distributions from the Fair Fund.

## **V. DISTRIBUTION AGENT**

24. Amy A. Sumner is proposed to be the distribution agent for the Fair Fund (the "Distribution Agent"). As a Commission employee, the Distribution Agent shall receive no compensation, other than her regular salary as a Commission employee, for her services in administering the Fair Fund.

25. The Distribution Agent will be responsible for, among other things: overseeing the administration of the Fair Fund, obtaining accurate mailing information for the Preliminary Claimants, preparing accountings, cooperating with the Tax Administrator in providing the

information necessary to accomplish income tax compliance, and distributing money from the Fair Fund in accordance with the Plan.

26. To carry out the purposes of this Plan, the Distribution Agent is authorized to make and implement immaterial changes to the Plan, consistent with the purposes of the Plan. If a change is material, Court approval is required prior to implementation by amending the Plan.

27. The Distribution Agent may extend any procedural deadline contained in the Plan for good cause.

## **VI. PLAN PROCEDURES**

### Specification of Preliminary Claimants

28. Using information obtained during its investigation, the Commission has identified the Preliminary Claimants. Preliminary Claimants are limited to only those Persons who may have suffered a loss from their purchase of Investment Contracts from Defendants between August 2009 and March 2013.

### Procedures for Locating and Notifying Preliminary Claimants

29. Within thirty (30) calendar days of Court approval of the Plan, the Distribution Agent will send to each Eligible Claimant's last known email address (if known) and/or mailing address a notice (the "Plan Notice") regarding the Court's approval of the Plan, including, as appropriate: a statement characterizing the distribution, a link to the approved Plan posted on the Commission's website and instructions for requesting a copy of the Plan, specification of any information needed from the Preliminary Claimant, their preliminary Recognized Loss, a description of the tax information reporting and other related tax matters, the procedure for the distribution as set forth in the Plan, and the name and contact information for the Distribution Agent in order to provide any requested information or to contact with questions regarding the

distribution. The Plan Notice will include a certification form (“Certification”) that Preliminary Claimants must return in order to receive a Distribution Payment.

#### Undeliverable Mail

30. If a Plan Notice is returned as undeliverable, the Distribution Agent will make her best practicable efforts to ascertain a Preliminary Claimant’s correct address. If another address is obtained, the Distribution Agent will then resend the Plan Notice to the Preliminary Claimant’s new address within twenty-one (21) days of receipt of the returned mail. If the Plan Notice is returned again, and the Distribution Agent, despite best practicable efforts, is unable to find a Preliminary Claimant’s correct address, the Distribution Agent, in her discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

31. Any Preliminary Claimant who relocates or otherwise changes contact information after receipt of the Plan Notice must promptly communicate any change in address or contact information to the Distribution Agent.

#### Procedures to Request a Plan Notice

32. A Person that does not receive a Plan Notice and believes that he or she should have received a Plan Notice after becoming aware of the Plan (e.g., through other Preliminary Claimants or on [www.sec.gov](http://www.sec.gov)) must submit documentation to the Distribution Agent to establish that the individual is in fact eligible to receive a Plan Notice within sixty (60) days of the Court’s approval of the Plan. The Distribution Agent will contact the Person within twenty-one (21) days of receiving the documentation with a determination of his or her eligibility.

#### Dispute Process

33. Disputes will be limited to objections by a Preliminary Claimant to the Preliminary Claimant’s Recognized Loss calculation. Within sixty (60) days of the date of the

Plan Notice, the Distribution Agent must receive a written communication detailing the dispute along with any supporting documentation. The Distribution Agent will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation. Within twenty-one (21) days of receipt of the written dispute, the Distribution Agent will notify the Preliminary Claimant of her resolution of the dispute, which will be final.

Failure to Respond to Plan Notice

34. If a Preliminary Claimant fails to return the Certification within sixty (60) days from the mailing of the Plan Notice, the Distribution Agent will make no fewer than two (2) attempts to contact the Preliminary Claimant by mail, telephone, or email. The second attempt will take place within ninety (90) days from the mailing of the Plan Notice. If a Preliminary Claimant fails to respond to the Distribution Agent's contact attempts as described in this paragraph, the Distribution Agent, in her discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

Final Determination Notices

35. Before determining the amount of funds available for distribution and calculating each Payee's Distribution Payments, the Distribution Agent, in conjunction with the Tax Administrator, will establish a reserve to pay Administrative Costs and to accommodate any unexpected expenditures (the "Reserve").

36. After all Distribution Payments are made and Administrative Costs are paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 47.

Preparation of the Payment File

37. After withholding the Reserve, the Distribution Agent will compile the Payee information, including the name, address, calculated Recognized Loss, and the amount of the Distribution Payment for all Payees (the "Payee List") to make the disbursements through BFS.

Distribution of the Fair Fund

38. After preparation of the Payee List, the Distribution Agent will petition the Court for an order to disburse the amount of funds referred to on the Payee List. The BFS will mail checks or electronically transfer funds to each Payee as instructed by the Distribution Agent.

39. All checks will bear a stale date of one (1) year from the date of issuance. Checks that are not negotiated by the stale date will be voided, and BFS will be instructed to stop payment on those checks. A Payee's claim will be extinguished if he, she, or it fails to negotiate his, her, or its check by the stale date, and the funds will remain in the Fair Fund, except as provided in paragraphs 42-44.

40. All Distribution Payments will be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that the tax treatment of the distribution is the responsibility of each Payee and that the Payee should consult his, her or its tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void and cannot be reissued after one hundred eighty (180) days from the date the original check was issued; and (d) contact information for the Distribution Agent for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment will be submitted to the Tax Administrator for review and approval.

41. All Distribution Payments, either on their face or the accompanying mailing, will clearly indicate that the money is being distributed from a Fair Fund established to compensate investors for harm suffered as a result of securities law violations.

Wind-Up and Reconciliation

42. The Distribution Agent shall use her best efforts to locate all Payees whose checks are returned as “undeliverable.” If new address information becomes available, the Distribution Agent will repackage the distribution check and send it to the new address. If new address information is not available after a diligent search (and in no event no later than one hundred eighty (180) days after the initial mailing of the original check) or if the distribution check is returned again, the check shall be voided and the Distribution Agent shall instruct BFS to stop payment on such check. If the Distribution Agent is unable to find a Payee’s correct address, the Distribution Agent, in its discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

43. The Distribution Agent will reissue checks or electronic payments to Payees upon the receipt of a valid, written request from the Payee if prior to the initial stale date. In cases where a Payee is unable to endorse a Distribution Payment check as written (*e.g.*, name changes, IRA custodian changes, or recipient is deceased) and the Payee or a lawful representative requests the reissuance of a Distribution Payment check in a different name, the Distribution Agent will request, and must receive, documentation to support the requested change. The Distribution Agent will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Distribution Agent, such change request is properly documented, the Distribution Agent will issue an appropriately redrawn Distribution

Payment to the requesting party. Reissued checks will be void at the latter of one (1) year from issuance of the original check or sixty (60) days from the reissuance, and in no event will a check be reissued after three hundred (300) days from the date of the original issuance.

44. The Distribution Agent will work with BFS to obtain information about uncashed checks, any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Distribution Agent is responsible for researching and reconciling errors and reissuing payments when possible. The Distribution Agent is also responsible for accounting for all payments. If any checks issued are not cashed within the one (1) year time period, the Distribution Agent will work with BFS to identify all uncashed checks and determine the extent to which, under the circumstances in this distribution, it would be appropriate and feasible to make additional efforts to contact the Payee(s). Following the conclusion of any efforts by the Distribution Agent to locate any such Payee(s), the amount of all uncashed checks will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

Administrative Costs

45. All Administrative Costs shall be paid from the Fair Fund, pursuant to a Court's order, and reported in the final accounting.

Disposition of Undistributed Funds

46. If funds remain following the initial distribution and payment of all Administrative Costs, the Distribution Agent may seek subsequent distribution(s) of any available remaining funds. All subsequent distributions shall be made in a manner that is consistent with this Plan and pursuant to a Court order.

47. A residual account within the Fair Fund will be established for any amounts remaining after the final disbursement to Payees from the Fair Fund (the "Residual"). The

Residual may include funds from, but is not limited to, the Reserve, distribution checks that have not been cashed, checks or electronic payments that were not delivered or were returned to the Commission, Fair Fund tax refunds for overpayment or for waiver of IRS penalties.

48. All funds remaining in the Residual that are infeasible to distribute shall be held pending a final accounting.

Accountings

49. When all funds have been disbursed, except for the Residual described in paragraph 47 of the Plan, the Distribution Agent will submit a final accounting report, for Court approval, summarizing all monies received, earned, spent, and distributed in connection with the administration of the Plan. The final accounting report will include a recommendation as to the final disposition of the Residual, consistent with *SEC v. Liu*, 140 S. Ct. 1936 (2020) and Section 21(d)(7) of the Exchange Act, 15 U.S.C. § 78u(d)(7).<sup>2</sup> If distribution of the Residual to investors is infeasible, the Commission may recommend the transfer of the Residual to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.<sup>3</sup>

Termination of the Fair Fund

50. Once all Distribution Payments have been negotiated or voided, the Commission shall seek an Order from the Court approving the final accounting, discharging the Distribution Agent, disposing of the Residual, and terminating the Fair Fund.

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<sup>2</sup> Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant provisions of the NDAA apply “to any action or proceeding that is pending on, or commenced on or after, the date of” the NDAA’s enactment. NDAA, Section 6501(b).

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

51. The Fair Fund will be eligible for termination and the Distribution Agent will be eligible for discharge after all of the following have occurred: (a) a final report and accounting has been submitted to and approved by the Court; (b) all Administrative Costs have been paid; and (c) the Court has approved the Commission's recommendation as to the final disposition of the Residual consistent with *SEC v. Liu*, 140 S. Ct. 1936 (2020) and Section 21(d)(7) of the Exchange Act, 15 U.S.C. § 78u(d)(7).

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

## **Attachment to Exhibit A**

### **PLAN OF ALLOCATION**

This Plan of Allocation is designed to compensate investors based on their losses on the purchase of investment contracts titled “Agreements for the Purchase and Sale of Future Production of Silver” (“Investment Contracts”) sold by Defendants between August 2009 and March 2013 (“Relevant Period”). Based upon records obtained by the Commission during its investigation, the Distribution Agent has identified those investors, or their lawful successors, who may have suffered a loss due to the purchase of Investment Contracts sold by Defendants during the Relevant Period (the “Preliminary Claimants”). Investors who did not purchase Investment Contracts during the Relevant Period are ineligible to recover under this Plan. Commission staff economists performed the calculations described below using information obtained by the Commission in the course of its investigation.

The Distribution Agent will calculate each Preliminary Claimant’s total loss (“Recognized Loss”), as the Preliminary Claimant’s investment amount in Investment Contracts *minus* any refunds or compensation the Preliminary Claimant received for losses incurred as recorded in documentation received by the Commission during its investigation.

If the Recognized Loss calculates to a gain, then the Recognized Loss will be \$0.00.

Any Preliminary Claimant who suffered a Recognized Loss pursuant to this Plan of Allocation, and who is not an Excluded Party or deemed an Unresponsive Preliminary Claimant will be deemed an Eligible Claimant.

### **Additional Provisions**

Allocation of Funds: The Net Available Fair Fund, as defined in the Plan, is less than the sum of the Recognized Losses of all Eligible Claimants, therefore, each Eligible Claimant’s distribution amount will equal his, her or its “*Pro Rata Share*” of the Net Available Fair Fund. The distribution amount will be subject to the “Minimum Distribution Amount.”

Pro Rata Share: A *Pro Rata Share* computation is intended to measure Eligible Claimants’ Recognized Losses against one another. The Distribution Agent shall determine each Eligible Claimant’s *Pro Rata Share* as the ratio of the Eligible Claimant’s Recognized Loss to the sum of Recognized Losses of all Eligible Claimants.

Minimum Distribution Amount: The Minimum Distribution Amount will be \$10.00. If an Eligible Claimant’s distribution amount is less than the Minimum Distribution Amount, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment and their distribution amount will be reallocated on a *pro-rata* basis to Eligible Claimants that have distribution amounts that are greater than or equal to the Minimum Distribution Amount.

Payee: An Eligible Claimant that has a distribution amount that equals or exceeds the Minimum Distribution Amount will be deemed a Payee and receive a Distribution Payment for their distribution amount. In no event will a Payee receive from the Fair Fund more than the Eligible Claimant's Recognized Loss.