

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,  
  
Plaintiff,

- against -

REGINALD (“REGGIE”) MIDDLETON,  
VERITASEUM, INC., AND VERITASEUM, LLC,  
  
Defendants.

19 CIV. 4625 (WFK) (RER)

ECF CASE

**NOTICE OF MOTION FOR AN  
ORDER TO SHOW CAUSE WHY  
THE DISTRIBUTION AGENT’S  
PROPOSED CLAIMS PROCESS  
AND DISTRIBUTION PLAN  
SHOULD NOT BE APPROVED**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, upon the annexed memorandum of law, declaration of Josias N. Dewey and all exhibits annexed thereto, and proposed order to show cause and all exhibits annexed thereto, Holland & Knight LLP, the Court-appointed Distribution Agent will move the Court, at a date and time to be determined by the Court, for an Order to Show Cause why the Court should not approve the Distribution Agent’s Proposed Claims Process and Proposed Distribution Plan.

Dated: December 23, 2020

Respectfully submitted,

/s/ Josias N. Dewey

Josias N. Dewey  
Holland & Knight LLP  
701 Brickell Avenue, Suite 3300  
Miami, Florida 33131  
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*Court-appointed Distribution Agent for the  
Veritaseum Fair Fund*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

REGINALD (“REGGIE”) MIDDLETON,  
VERITASEUM, INC., AND VERITASEUM, LLC,

Defendants.

19 Civ. 4625 (WFK) (RER)

ECF Case

**[PROPOSED]  
ORDER TO SHOW CAUSE**

Holland & Knight LLP, Court-appointed Distribution Agent, having filed a Motion for an Order to Show Cause why the Court should not approve the Distribution Agent’s proposed claims process (the “Proposed Claims Process”) and distribution plan (the “Proposed Distribution Plan”) for the Veritaseum Fair Fund, and for good cause shown,

IT IS HEREBY ORDERED that the Distribution Agent’s Motion for an Order to Show Cause is granted; and

IT IS HEREBY FURTHER ORDERED that within two business days of the issuance of this Order:

1. The Distribution Agent shall publish this Order on the Veritaseum Fair Fund website ([www.verifairfund.com](http://www.verifairfund.com)) along with a copy of the Proposed Claims Process and the Proposed Distribution Plan, which are annexed to this Order as Exhibits 1 and 2, respectively;
2. The Distribution Agent shall publish a Summary Notice<sup>1</sup> on Coindesk, Coin Telegraph, Reddit, and PR Newswire; and

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<sup>1</sup> The Summary Notice (the text of which shall be approved by the staff of the Securities and Exchange Commission (“SEC”)) shall include, at a minimum, a statement that the Veritaseum Fair Fund relates to purchases of Veritaseum tokens during the Relevant Period (defined below), and the means of obtaining a copy of the Order to Show Cause, Proposed Claims Process, and the Proposed Distribution Plan.

3. The SEC shall publish this Order on its public webpage for this action (<https://www.sec.gov/divisions/enforce/claims/reginald-middleton.htm>) along with a copy of the Proposed Claims Process and Proposed Distribution Plan.

Publication as described, along with the publication of this Order through the Court's ECF system, shall constitute and suffice as notice of the Proposed Claims Process and Proposed Distribution Plan and the opportunity to object to interest parties.

IT IS FURTHER ORDERED THAT individuals and entities who purchased VERI tokens during the period April 25, 2017 through August 14, 2019 at 12:01 a.m., EST, inclusive ("Relevant Period"), or other interested parties shall, within thirty (30) days from the entry of this Order ("Objection Due Date"), show cause, if there is any, why this Court should not enter an Order approving the Proposed Claim Process and Proposed Distribution Plan. Objections shall be made by correspondence received by the Distribution Agent no later than 11:59 p.m. on the Objection Due Date at the following electronic mail address: [objections@verifairfund.com](mailto:objections@verifairfund.com). The correspondence must clearly state that the submitting entity seeks a distribution from the Veritaseum Fair Fund, or otherwise state fully and clearly the entity's interest in this matter, and the entity's objection(s) to the Proposed Claims Process or Proposed Distribution Plan. The submitting entity must include all documentation necessary to support the objection. Any and all factual assertions must be concluded with the following declaration, if true, followed by the submitting person's signature and the date of signature:

I declare pursuant to 28 U.S.C. §1746, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

All correspondence must include current contact information for the submitting person, including, if available, an email address and mobile telephone number. Objections will be publicly filed by the Distribution Agent with the Court, as further set forth below. To the extent a

submitting entity seeks to include in their submission sensitive information such as a social security number, financial account number, or home address, they should encrypt the submission prior to sending, sending the password in a separate email, or submit it pursuant to the next paragraph.

If a submitting entity is unable to submit their objection by email, they may send it addressed as set forth below. The submission must be received by the Distribution Agent no later than the Objection Due Date.

Veritaseum Fair Fund  
c/o RCB Fund Services LLC  
17 Technology Place, Suite 1  
East Syracuse, NY 13057

Failure to timely submit an objection in accordance with this section will result in the objection being waived. Proof of timely receipt by the Distribution Agent will be the burden of the submitting entity.

IT IS FURTHER ORDERED that, if no objections to the Proposed Plan are timely submitted, the Distribution Agent shall:

1. File a notice so advising the Court (“Notice of No Objection”), accompanied by a Proposed Order approving the Proposed Claims Process and Proposed Distribution Plan; and
2. Publish a copy of the Notice of No Objection, Proposed Claims Process and Proposed Distribution Plan, and Proposed Order on the Veritaseum Fair Fund website;
3. Publish a Summary Notice of No Objection<sup>2</sup> to Coindesk, Coin Telegraph, Reddit, and PR Newswire;

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<sup>2</sup> The Summary Notice of No Objection (the text of which shall be approved by the staff of the Securities and Exchange Commission (“SEC”)) shall include, at a minimum, a statement that the Veritaseum Fair Fund relates to purchases of Veritaseum tokens during the Relevant Period

Submit a copy of the Notice of No Objection, Proposed Claims Process and Proposed Distribution Plan, and Proposed Order to the SEC for publication on the SEC webpage,

Upon receipt of the Notice of No Objection from the Distribution Agent, the Court may enter an Order approving the Proposed Claims Process and Proposed Distribution Plan without further notice or passage of time.

IT IS FURTHER ORDERED THAT, if objections are timely received pursuant to this Order, the Distribution Agent shall file them, with sensitive information redacted, together with its response, within fifty (50) days of the entry of this Order to Show Cause, with copies of its response served by electronic, First Class, or Overnight Mail upon any objecting party. The Distribution Agent may propose an amended distribution plan and/or claims process if and as appropriate. If the Distribution Agent proposes an amended plan and/or claims process, the amended plan and/or claims process, and any accompanying filings, will be made available to all interested parties through the SEC webpage, Veritaseum Fair Fund website, and a Summary Notice of Amendments<sup>3</sup> to Coindesk, Coin Telegraph, Reddit, and PR Newswire. Such publication, along with the publication through the Court's ECF system, shall constitute and suffice as notice of the amended plan. No further objection period will be provided unless expressly ordered by the Court.

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(defined below), that no objections have been made to the Proposed Claims Process and Proposed Distribution Plan, the means to submit a claim for distribution.

<sup>3</sup> The Summary Notice of Amendments (the text of which shall be approved by the staff of the Securities and Exchange Commission ("SEC")) shall include, at a minimum, a statement that the Veritaseum Fair Fund relates to purchases of Veritaseum tokens during the Relevant Period (defined below), that objections have been made to the Proposed Claims Process and Proposed Distribution Plan, and the means of obtaining a copy of the amended Proposed Claims Process, and the amended Proposed Distribution Plan.

If the Court deems it necessary or appropriate, the Court may conduct a hearing before approving the Proposed (or amended) Claims Process and Proposed (or amended) Distribution Plan. Notice of a hearing shall be provided through the Court Docket, the SEC webpage, and the Veritaseum Fair Fund, and if and as otherwise ordered by the Court.

**SO ORDERED**, this \_\_\_\_\_ date of \_\_\_\_\_, 2020.

\_\_\_\_\_  
United States District Judge

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

REGINALD (“REGGIE”) MIDDLETON,  
VERITASEUM, INC., AND VERITASEUM, LLC,

Defendants.

19 CIV. 4625 (WFK) (RER)

ECF CASE

**DECLARATION IN SUPPORT  
OF ORDER TO SHOW CAUSE**

Josias N. Dewey, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a partner of the law firm Holland & Knight LLP, which is the Court-appointed Distribution Agent in the above-captioned action. I make this declaration upon personal knowledge and pursuant to Local Rule 6.1(d) to show that good and sufficient reasons exist to issue an Order to Show Cause in connection with the Distribution Agent’s Proposed Claims Process and Proposed Distribution Plan.

2. No previous application for the relief requested herein or any similar relief has been made.

3. The Distribution Agent seeks an Order to Show Cause why the Proposed Claims Process and Proposed Distribution Plan, which are annexed hereto as **Exhibits 1 and 2**, respectively, should not be approved. Because any distribution in this matter will be done through the Proposed Claims Process and Proposed Distribution Plan, and because the Distribution Agent will not know the identity of harmed investors until the Proposed Claims Process is completed, the Distribution Agent has no practical means by which to directly inform harmed investors of its application to the Court to approve the Proposed Claims Process and Proposed Distribution Plan. The Distribution Agent believes the only way to inform all investors – whose identities are

unknown at this time by virtue of their purchase of VERI coins through the Ethereum blockchain -- of the Proposed Claims Process and Proposed Distribution Plan, is through the entry of the proposed Order to Show Cause, by which harmed investors will have the opportunity to communicate objections, if any, to the Proposed Claims Process and Proposed Distribution Plan.

4. If the Order to Show Cause is entered, the Distribution Agent will post the Order to Show Cause on the Veritaseum Fair Fund website ([www.verifairfund.com](http://www.verifairfund.com)), and a Summary Notice<sup>1</sup> on Coindesk, Coin Telegraph, Reddit, and PR Newswire, along with a copy of the Proposed Claims Process and the Proposed Distribution Plan. The Distribution Agent will further provide the Order to the SEC for publication on its public webpage for this action (<https://www.sec.gov/divisions/enforce/claims/reginald-middleton.htm>) along with a copy of the Proposed Claims Process and Proposed Distribution Plan. Harmed investors may notify the Distribution Agent of their objections to the Proposed Claims Process or Proposed Distribution Plan within the time allowed in the Order to Show Cause. Upon completion of the steps set forth in the Order to Show Cause, the Distribution Agent will file a notice with the Court, so notifying the Court and responding to any objections; and provide to the Court a proposed order approving the Claims Process and Distribution Plan, or amended plans, as appropriate.

I declare, under penalty of perjury, that the foregoing is true and correct.

/s/ Josias N. Dewey  
Josias N. Dewey

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<sup>1</sup> The Summary Notice (the text of which shall be approved by the staff of the Securities and Exchange Commission ("SEC")) shall include, at a minimum, a statement that the Fair Fund relates to purchases of Veritaseum tokens between April 25, 2017 (the date VERI sales began) and August 14, 2019 at 12:01 a.m., EST (the Relevant Period), and the means of obtaining a copy of the Proposed Claims Process and the Proposed Distribution Plan.



## EXHIBIT 1

## **PROPOSED CLAIM PROCESS**

### **I. Claimants**

A. Those investors who acquired VERI for value between April 25, 2017 (the date VERI sales began) and August 14, 2019 at 12:01 a.m., EST (“Relevant Period”) may be eligible for a distribution from the Veritaseum Fair Fund. This includes anyone who received VERI for value, such as those who received VERI in exchange for Veritaseum “Class B” shares or Colored Coins.

B. The following are ineligible for a distribution from the Veritaseum Fair Fund (“Excluded Claimants”):

1. The Defendants;
2. Any past or present director or officer of Defendants, or any of Defendants’ past or present affiliates who served in such a capacity during the Relevant Period and were directly involved in the conduct detailed in the Complaint;
3. Any employee or former employee of Defendants or of any of its past or present affiliates who has been terminated for cause in connection with the violations alleged in the Complaint or any related Securities and Exchange Commission (“SEC”) action, or who was otherwise terminated or has resigned in connection with the violations alleged in the Complaint or any related SEC or criminal action;
4. Any affiliates, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities of any of the foregoing persons or entities described in 1–3, above;
5. Any purchaser or assignee of another person’s right to obtain a recovery from the Veritaseum Fair Fund, provided, however, that this provision shall not be construed to exclude those persons who obtained such a right by gift, inheritance, devise or operation of law; and
6. The Distribution Agent, its partners, agents, or employees, and those persons assisting the Distribution Agent in its role as the Distribution Agent.

### **II. Notice of the Veritaseum Fair Fund and Claims Process**

A. Within 30 days after the entry of a Court Order approving this Claims Process, the Distribution Agent shall publish a claims process notice substantially in the form attached as Attachment A (the “Claims Process Notice”) by:

1. Including it in downloadable format on the Veritaseum Fair Fund website ([www.verifairfund.com](http://www.verifairfund.com));

2. Requesting that the SEC post it on its public webpage for this case: <https://www.sec.gov/divisions/enforce/claims/reginald-middleton.htm>;
3. Disseminating it through PRNewswire, and, at the Distribution Agent's discretion, on cryptocurrency and related online industry publications or online discussion forums such as Coindesk, Coin Telegraph, and Reddit, Telegram, and Twitter; and
4. Sending it by electronic mail or U.S. Mail to investors who have communicated with, or provided contact information, to the Distribution Agent.

B. Any claimant unable to download or otherwise access the Claims Process Notice may request one from the Distribution Agent via the electronic mail address, physical address, or toll-free number provided below.

### **III. Claim Submission and Claims Bar Date**

A. All claimants must file claims on or before 11:59 p.m., EST, ninety (90) calendar days following the initial publication of the Claims Process Notice (the "Bar Date"). The Bar Date will be included on the Claims Process Notice. Subject to Sections III. F. and III. G. below, claims not timely submitted through the Veritaseum Fair Fund website's online claim submission process will be ineligible for a Veritaseum Fair Fund distribution.

B. In order to be considered for eligibility for a Veritaseum Fair Fund distribution, claimants must submit a claim form that will be substantially similar to Attachment B (the "Claim Form") and available on the Veritaseum Fair Fund website ([www.verifairfund.com](http://www.verifairfund.com)).

C. In consideration of submission of a claim, claimants will be required to submit a release when submitting their claims, releasing and forever discharging the Distribution Agent, the Veritaseum Fair Fund, and all their agents, employees, professionals, successors, and assigns from all claims relating to the claimant's demand for Veritaseum Fair Fund distributions or the circumstances giving rise to their claim. The release is included in the Claim Form.

D. Subject to Section III. G. below, all completed Claim Forms **must be received by the Distribution Agent no later than the Bar Date**. The burden is on the claimant to prove timely submission of a Completed Claim Form.

E. Subject to Section III. F. below, all completed Claim Forms **must be timely submitted through the Veritaseum Fair Fund website's online claim submission process** at [www.verifairfund.com](http://www.verifairfund.com).

F. Claimants may request permission to submit claims by a method other than the online process by contacting the Distribution Agent via the email address, physical address, or toll-free number provided below. The Distribution Agent will give permission at its discretion for good cause shown. All such requests must be made prior to the Bar Date. No alternatively submitted claims will be accepted without the Distribution Agent's prior permission.

G. Claimants may request an extension of the Bar Date by contacting the Distribution Agent via the email address, physical address, or toll-free number provided below. The Distribution Agent will grant extensions at its discretion for good cause shown. All such requests must be made prior to the Bar Date. Late claims will not be accepted unless an extension was requested and granted.

#### **IV. Validation of Claims**

A. The Distribution Agent will validate claims based on claimant submissions and blockchain transactional data.

B. The Distribution Agent will solicit additional information as needed, including from claimants with complicated transaction histories or involving certain cryptocurrency exchanges. Claimants who fail to timely provide additional information in response to a request from the Distribution Agent will be deemed ineligible for a distribution.

C. To prevent fraudulent or duplicative claims, the Distribution Agent will verify a claimant's control over an address using a purpose-built Ethereum ERC-20 ("Control Token"). Failure to prove control within a defined period will result in an automatic emailed notice to the claimant, denying the claim, and stating the grounds for denial. Claimants unable to return the Control Token will have an opportunity to prove their address ownership via alternative means as part of the claim determination reconsideration process.

#### **V. Claim Determinations and Reconsiderations**

A. Upon completion of its claim review, the Distribution Agent will inform the claimant of the Distribution Agent's claims determination, *i.e.*, the Distribution Agent's determination as to, among other things, the sufficiency of the claim submitted and acceptance or denial of the claim based on whether the investor acquired VERI for value during the Relevant Period, and an OFAC review, and will provide directions on how the claimant can seek reconsideration of the same (the "Determination Notice"). The Distribution Agent will send Determination Notices by email unless, in its discretion, another transmission method is appropriate. A claimant who receives a Determination Notice accepting their claim without any need for further action is deemed a Potential Claimant.

B. The Determination Notice will include instructions by which a claimant may cure a defective claim or seek reconsideration of the Distribution Agent's determination ("Reconsideration or Cure Submission"). Reconsideration or Cure Submissions must be received by the Distribution Agent no later than twenty (20) days after the date of the Determination Notice. Reconsideration/Cure Submissions received by the Distribution Agent after this deadline will not be considered and the determination in the Determination Notice will stand as the final determination on the claimant's claim. The burden will be on the claimant to prove timely submission of a Reconsideration or Cure Submission.

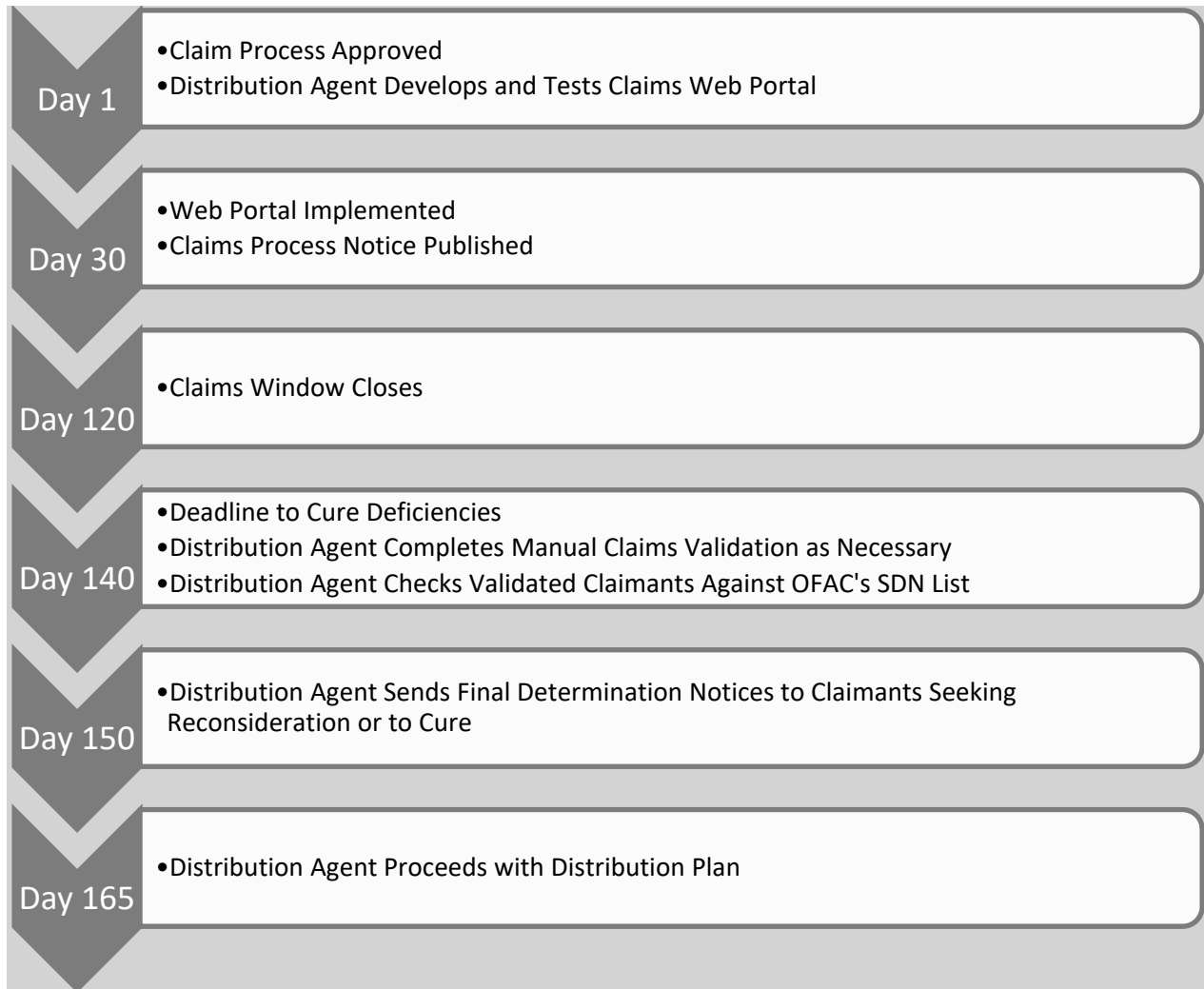
C. Within ten (10) days of receipt of a claimant's Reconsideration or Cure Submission, the Distribution Agent will communicate to the claimant the results of its review of the submission (the "Final Determination Notice"). An investor who receives a Final Determination Notice accepting their claim is deemed a Potential Claimant.

**VI. The Distribution Process**

After the Distribution Agent issues a Final Determination Notice with respect to all claims, the Distribution Agent will proceed in accordance with the Court-approved Distribution Plan.

**VII. Proposed Timeline**

The proposed timeline for the Claims Process is as follows. The Distribution Agent, in consultation with the staff of the SEC, may adjust this timeline for good cause.

**VIII. Contact Information for the Distribution Agent**

Phone: 800-765-7251  
 Email: [info@verifairfund.com](mailto:info@verifairfund.com)  
 Web: [www.verifairfund.com](http://www.verifairfund.com)  
 Mailing address:

Veritaseum Fair Fund

c/o RCB Fund Services LLC  
17 Technology Pl, Suite 1  
East Syracuse, NY 13057

To:

From: Josias Dewey, Partner, Holland & Knight as Veritaseum Fair Fund Distribution Agent

Date:

Re: Veritaseum Fair Fund—Notice of Claims Process and Bar Date

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

*Securities and Exchange Commission v. Reginald Middleton, Veritaseum, Inc. and Veritaseum  
LLC, 19- Civ-4625 (WFK) (RER)*

The Veritaseum Fair Fund

**CLAIMS BAR DATE: \_\_\_\_\_, 2020**

**Notice of Claims Process and Claims Bar Date**

*THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS. PLEASE READ IT CAREFULLY.  
AMONG OTHER THINGS, FAILURE TO TIMELY SUBMIT A CLAIM BY THE BAR DATE  
AND PURSUANT TO THE DIRECTIONS BELOW MAY RESULT IN YOUR CLAIM BEING  
BARRED AND DEEMED INELIGIBLE FOR A DISTRIBUTION*

Dear Investor:

On October 31, 2019, the above-captioned Court entered a Final Judgment creating the Veritaseum Fair Fund and appointing Holland & Knight, LLP as Distribution Agent for the Veritaseum Fair Fund. On \_\_\_\_\_, 2020, the Court entered an order approving a Claims Process and Distribution Plan, including a Bar Date (the “Order”). Copies of the Order and other information regarding this case are available on the Veritaseum Fair Fund website at [www.verifairfund.com](http://www.verifairfund.com).

You are receiving this Notice because our records indicate you *may* have a claim for a distribution from the Veritaseum Fair Fund. Receipt of this Notice does not mean that you hold a claim or that your claim will be eligible for a distribution from the Veritaseum Fair Fund. Please review this Notice in full; it contains important information about the Veritaseum Fair Fund and how to submit a claim seeking a distribution from the Veritaseum Fair Fund.

**Deadlines for Submitting Claims**

NOTICE IS HEREBY GIVEN that all people seeking a distribution from the Veritaseum Fair Fund should file their claim through the Distribution Agent’s online claim system so that it is completed, submitted, and received by the Distribution Agent’s online claim system by **11:59 p.m. (EST) on \_\_\_\_\_, 2020** (the “Bar Date”). All claims should be filed electronically following the directions and using the online claim system found at [www.verifairfund.com](http://www.verifairfund.com).

Claimants believing they have good cause to extend the Bar Date or to submit claims by means other than through the online claim system must make a request for the extension or the alternative claims submission from the Distribution Agent no later than the Bar Date through the contact methods listed below or at [www.verifairfund.com](http://www.verifairfund.com). Unless a claim is subject to a Distribution

Agent-granted exception, all Veritaseum Fair Fund claims not received via the online claim system by the Bar Date will be barred.

## Background

On August 12, 2019, the SEC commenced an action against Reginald Middleton, Veritaseum, Inc., and Veritaseum, LLC (collectively, the “Defendants”) (the “Civil Action”). The SEC alleged that, beginning on April 25, 2017, the Defendants fraudulently raised approximately \$14.8 million from the unregistered sales of digital securities called “VERI” based on a series of false and misleading statements to potential and actual investors, including misrepresentations about the potential profitability and viability of Veritaseum’s purported operations, the use of funds raised in the VERI initial coin offering (“VERI ICO”), and the amount of funds raised in the VERI ICO. The SEC further alleged that, after the VERI ICO, Middleton placed manipulative VERI trades on a digital asset platform to artificially increase its price and then publicly touted the price increases. Also on August 12, 2019, upon the SEC’s motion, the Court issued a Temporary Restraining Order freezing the Defendants’ assets and appointing an Independent Intermediary to take control of all digital assets controlled by the Defendants. The Complaint can be viewed at [www.verifairfund.com](http://www.verifairfund.com) or on the SEC’s website at <https://www.sec.gov/divisions/enforce/claims/reginald-middleton.htm>.

On November 1, 2019, upon the Defendants’ consent, the Court entered the Final Judgment. In the Final Judgment, the Court ordered the Defendants pay disgorgement of \$7,891,600, prejudgment interest of \$582,535, ordered Middleton to pay a civil penalty of \$1,000,000, and required the turnover of certain identified metals, bank assets, and digital assets in full satisfaction of monetary relief. The Court created the Veritaseum Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246(a), so that all of the collected assets can be distributed to harmed investors (the “Veritaseum Fair Fund”). The Final Judgment can be viewed at [www.verifairfund.com](http://www.verifairfund.com) or on the SEC’s website at <https://www.sec.gov/divisions/enforce/claims/reginald-middleton.htm>.

The Distribution Agent is now soliciting claims from VERI investors who are potentially eligible for a distribution, as further described below.

**Persons and Entities Potentially Eligible for a Distribution:** As set forth in the Claims Process, investors who acquired VERI for value from April 25, 2017 through August 14, 2019 at 12:01 a.m., EST, inclusive (the “Relevant Period”) may be eligible for a distribution from the Veritaseum Fair Fund. This includes include anyone who received VERI for value, such as those who received VERI in exchange for Veritaseum “Class B” shares or Colored Coins.

Certain persons are **not eligible** claimants (“Excluded Claimants”):

1. The Defendants;
2. Any past or present director or officer of Defendants, or any of Defendants’ past or present affiliates who served in such a capacity during the Relevant Period and were directly involved in the conduct detailed in the Complaint;



3. Any employee or former employee of Defendants or of any of its past or present affiliates who has been terminated for cause in connection with the violations alleged in the Complaint or any related Securities and Exchange Commission (“SEC”) action, or who was otherwise terminated or has resigned in connection with the violations alleged in the Complaint or any related SEC or criminal action;
4. Any affiliates, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities of any of the persons or entities described in 1–3, above;
5. Any purchaser or assignee of another person's right to obtain a recovery from the Veritaseum Fair Fund, provided, however, that this provision shall not be construed to exclude those persons who obtained such a right by gift, inheritance, devise or operation of law; and
6. The Distribution Agent, its partners, agents, or employees, and those persons assisting the Distribution Agent in its role as the Distribution Agent.

The Claims Process:

- Unless granted an exception as described in the next bullet, claims will only be accepted through the online claims form described in this paragraph. Claimants should review the directions at, and submit claims through, the online claim system at [www.verifairfund.com](http://www.verifairfund.com) so they are completed, submitted, and received by the Distribution Agent no later than by **11:59 p.m. (EST) on \_\_\_\_\_, 2020** (the Bar Date). Claims that are not timely submitted shall be barred.
- Claimants believing they have good cause to extend the Bar Date or submit claims by means other than through the online claim system *must request this from the Distribution Agent no later than the Bar Date* through the contact methods listed below, including by email to [info@verifairfund.com](mailto:info@verifairfund.com). Unless a claim is subject to a Distribution Agent-granted exception, all Veritaseum Fair Fund claims not received via the online claim system by the Bar Date are barred.
- The burden to prove timely and proper submission of a claim is on the claimant; please keep all documentation.
- The Distribution Agent will notify all claimants of its claim determination, including any claim deficiencies resulting in claim rejection. The Distribution Agent will include instructions for claimants desiring to cure claim deficiencies or request claim determination reconsideration. The Distribution Agent’s acceptance of your claim does not mean that you will be eligible for a distribution from the Veritaseum Fair Fund; eligibility for a distribution will be determined in accordance with the Court-approved distribution plan.

Contact Information for the Distribution Agent:

Phone: 800-765-7251

Email: [info@verifairfund.com](mailto:info@verifairfund.com)

Web: [www.verifairfund.com](http://www.verifairfund.com)

Mailing address:

Veritaseum Fair Fund  
c/o RCB Fund Services LLC  
17 Technology Pl, Suite 1  
East Syracuse, NY 13057

**VERITASEUM FAIR FUND CLAIM FORM**

**Claim Bar Date: 11:59 p.m. (EST), \_\_\_\_\_, 2020**

**I. Instructions**

A. You may be eligible to receive a payment from the Veritaseum Fair Fund if you acquired VERI for value between April 25, 2017 (the date VERI sales began) through August 14, 2019 at 12:01 a.m., EST, (the “Relevant Period”). This includes include anyone who received VERI for value, such as those who received VERI in exchange for Veritaseum “Class B” shares or Colored Coins,

And who is not any of the following (“Excluded Claimants”):

- A Defendant;
- A past or present director or officer of Defendants, or any of Defendants’ past or present affiliates who served in such a capacity during the Relevant Period and were directly involved in the conduct detailed in the Complaint;
- An employee or former employee of Defendants or of any of its past or present affiliates who has been terminated for cause in connection with the violations alleged in the Complaint or any related Securities and Exchange Commission (“SEC”) action, or who was otherwise terminated or has resigned in connection with the violations alleged in the Complaint or any related SEC or criminal action;
- An affiliate, assign, creditor, heir, distributee, spouse, parent, child, or controlled entity of any of the foregoing persons or entities described in 1–3, above;
- A purchaser or assignee of another person's right to obtain a recovery from the Veritaseum Fair Fund, provided, however, that this provision shall not be construed to exclude those persons who obtained such a right by gift, inheritance, devise or operation of law; and
- The Distribution Agent, its partner, agent, or employee, and a person assisting the Distribution Agent in its role as the Distribution Agent.

B. To be considered for eligibility for a Veritaseum Fair Fund payment, you must provide the information requested in this online form and submit a release through the Distribution Agent’s online claim system, located at [www.verifairfund.com](http://www.verifairfund.com). Failure to upload the completed form through the Distribution Agent’s online claim system so that it is submitted and received by the Bar Date set forth above may result in your claim being rejected and you being precluded from any recovery from the Veritaseum Fair Fund.

C. Timely submission of your claim does not guarantee you will be eligible for a distribution from the Veritaseum Fair Fund or that you will be compensated for your claimed loss.

D. Please fill out this claim form completely. After submission of the claim form, you may be requested to provide documentation to support your claim. Failure to completely fill out the claim form or timely provide all requested documentation will result in rejection of your claim.

E. Providing a valid email address is required as part of the claims validation process. Failure to provide a valid email address may result in rejection of your claim. Changes to your email address or any contact information must be promptly sent to the Distribution Agent via the contact methods listed at [www.verifairfund.com](http://www.verifairfund.com).

F. This form requires you to specify all transaction hashes for VERI tokens you acquired. This information is publicly available through any Ethereum blockchain viewer, such as Etherscan (<https://etherscan.io/>). Instructions for locating transaction hashes are available at [www.verifairfund.com](http://www.verifairfund.com).

G. You will be instructed via email to confirm control of any Ethereum addresses associated with your claimed transactions. Failure to confirm control of these addresses will result in rejection of your claims associated with those addresses.

H. Submitting your claim using this online claim form is the fastest method to determine your potential eligibility for a Fair Fund distribution. If necessary, you may request an alternative submission method or a filing time extension from the Distribution Agent via the contact methods listed at [www.verifairfund.com](http://www.verifairfund.com). Any such request must be made before the Bar Date or you will be precluded from filing a claim.

I. Upon completion of its review of your claim, the Distribution Agent will email you a Claim Determination, informing you of its determination regarding your claim and, in particular, whether your claim has been accepted. You may seek reconsideration of a Claim Determination by following the instructions included with the Claim Determination.

J. Eligibility for a Distribution Payment and Distribution amounts will be determined at a later date based on available Veritaseum Fair Fund assets.

**II. Claim Form****Contact Information**

First Name	
Last Name	
Address Street	
City	
State	
Country	
Zip/Postal Code	
Phone	
Email	
US Citizens or Residents: Tax ID	
Non-US Citizens or Residents: <ul style="list-style-type: none"> <li>• Passport Country</li> <li>• Passport Number</li> </ul>	

**Claim Information**

If represented by counsel with regards to this matter, please provide their name, email, phone number, and mailing address.	
What email address(es) did you provide to Veritaseum or Reginald “Reggie” Middleton, if any?	
List all transaction hashes for transactions through which you acquired VERI by purchase, as compensation for services or labor, or in exchange for anything of value.	

### III. Tax Certifications

To ensure that the Fair Fund can comply with its reporting and/or withholding obligations, you must complete and provide the Administrator of the Distribution Fund with one (1) of the following forms, as applicable:

- IRS Form W-9; **OR**
- IRS Form W-8BEN, W-8BEN-E, or other W-8 series form

If you are a U.S. person, as that term is defined below, then you should complete the Substitute IRS Form W-9 below.

If you are **not** a U.S. person, then you should **not** complete the Substitute IRS Form W-9 below. Instead, you should complete IRS Form W-8BEN, W-8BEN-E, or other W-8 series form, which can be found by visiting the following IRS website: <https://www.irs.gov/forms-instructions>

The term “U.S. person” means:

- A citizen or resident of the United States,
- A partnership created or organized in the United States or under the law of the United States or of any State, or the District of Columbia,
- A corporation created or organized in the United States or under the law of the United States or of any State, or the District of Columbia,
- Any estate or trust other than a foreign estate or foreign trust (see Internal Revenue Code § 7701(a)(31) for the definition of a foreign estate and a foreign trust), or
- Any other person that is not a foreign person.

If the Fair Fund does not receive a valid and complete Form W-9 or W-8 from you, the Fair Fund may be required under the Internal Revenue Code to make certain presumptions about you for purposes of tax reporting and, as applicable, withholding. The Fair Fund may be required to presume the interest is being paid to: (1) a payee subject to 30% withholding under the Foreign Account Tax Compliance Act (“FATCA”) and reporting on Form 1042-S; (2) a nonresident alien of the U.S. (“NRA”) subject to reporting and 30% NRA withholding and reporting on Form 1042-S; or (3) a U.S. person subject to 24% backup withholding and reporting on Form 1099-INT.

**Substitute Form W-9  
Taxpayer Identification Number Certification**

Social Security Number / Employer Identification Number: \_\_\_\_\_

Exempt Payee Code (if any) \_\_\_\_\_ Exemption from FATCA reporting code (if any) \_\_\_\_\_

Check appropriate box for federal tax classification:

☐ Individual ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate ☐ Other

\_\_\_\_\_

☐ Limited Liability Company - choose tax classification ☐ C Corporation ☐ S Corporation ☐ Partnership

Print your name as it appears on your federal income tax return:

\_\_\_\_\_

First Name and Last Name, for Individuals. Entity Name for businesses and trusts.

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number; **and**
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; **and**
3. I am a U.S. citizen or other U.S. person (including a U.S. resident alien); **and**
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Note:** If you have been notified by the IRS that you are subject to backup withholding, you must cross out item 2 above.

Signature  
of U.S. Person: \_\_\_\_\_ Date: \_\_\_\_\_

**IV. Claimant Acknowledgement**

**By submitting this form, claimant agrees to submit to the exclusive jurisdiction of the United States District Court for the Eastern District of New York for all purposes associated with the submitted claim.** Claimant agrees to waive trial by jury, to the extent such a right exists, and agrees to the Court's summary disposition of claim validity and amount.

The claimant consents to the Distribution Agent and his agents' use of any information provided in this Claim Form to verify and process the claim and understands that the information will be processed in the United States, protected by appropriate safeguards, stored only as long as required, and shared with the Distribution Agent's agents for claim verification and responses. Claimant consents to the release of related transactional records from cryptocurrency exchanges if the claimant received VERI at an address managed by or held through such an exchange.

European Economic Area Residents may withdraw their consent to store personal data unless there are other grounds for processing that data. Revocation will not affect processed and transferred data. Claimant may exercise rights afforded under applicable data protection law, including access, rectify, erase, restrict, or data portability, or object to the processing of personal data by contacting the Distribution Agent via the contact methods listed at [www.verifairfund.com](http://www.verifairfund.com). Complaints may be lodged with appropriate supervisory authorities in a claimant's country of residence.

### **Release**

In consideration of the claim submission, the claimant releases and forever discharges the Distribution Agent, the Veritaseum Fair Fund, and all their agents, employees, professionals, successors, and assigns (collectively, the "Released Persons") from all claims relating to the claimant's application for funds from the Veritaseum Fair Fund or the circumstances giving rise to the Claim, which the claimant now has, or can, shall, or may have, for or by any reason of any cause, matter, or thing whatsoever, prior to and including the date as certified below.

Notwithstanding any applicable legal rights or remedies available, claimant agrees to return immediately any Veritaseum Fair Fund property that is later found to have been distributed in error or to exceed the claimant's Distribution Payment as calculated under the Court-approved distribution plan. The claimant will indemnify and hold harmless the Released Persons from and against any damages, costs, or losses that may result from any assertion by any such other entity or person of any such claims.

Submitting this form is the claimant's certification—under penalty of perjury under the laws of the United States of America—that the submitted information, including all of the information provided on this claim form, is true, correct, and complete; that the claim submitted is the claimant's own; and that the claimant has the full authority and capacity to submit this claim and enter into the above agreement and release. By typing the claimant's name below, the claimant consents to the above and agrees to the release.

Date	
Name	



## EXHIBIT 2

## **PROPOSED DISTRIBUTION PLAN**

### **I. Introduction**

A. The Veritaseum Fair Fund currently holds over \$17 million, comprised of the cash and liquidated value of the assets turned over as ordered in the final judgment entered in *SEC v. Reginald Middleton, et al.*, 19 Civ. 4625 (WFK) (RER) (E.D.N.Y.), ECF No. 61 (the “Final Judgment”), plus accrued interest. The Veritaseum Fair Fund is deposited in an interest-bearing account at the U.S. Treasury’s Bureau of Fiscal Service. Amounts directed to this Court for inclusion in the Veritaseum Fair Fund by court order, agreement, or otherwise, and accrued interest will be added to the Veritaseum Fair Fund.

B. By this distribution plan (“Distribution Plan”), the Distribution Agent seeks to compensate investors who acquired VERI for value during the period April 25, 2017 through August 14, 2019 at 12:01 a.m., EST (“Relevant Period”); and who are otherwise determined to be eligible for a payment from the Veritaseum Fair Fund pursuant to a Court-approved claims process and the provisions set forth below.

C. In accordance with the Final Judgment, the Distribution Agent developed the Distribution Plan jointly with the Tax Administrator and the SEC, in accordance with practices and procedures customary in Fair Fund administrations. The Distribution Plan, in conjunction with the Court-approved claims process, governs the administration and distribution of the Veritaseum Fair Fund, and sets forth the method and procedures for distributing the assets of the Veritaseum Fair Fund to investors harmed by the conduct alleged in the Complaint.

### **II. Definitions<sup>1</sup>**

A. In addition to words otherwise defined herein and in the accompanying Proposed Claims Process, the following definitions apply to the Distribution Plan:

1. “Administrative Costs” means any administrative costs and expenses, including without limitation the fees and expenses of the Tax Administrator and the Distribution Agent, tax obligations, and investment costs. All Administrative Costs will be paid by the Veritaseum Fair Fund.
2. “Claims Process” refers to the Claims Process approved by the Court in this action.
3. “*De Minimis* Amount” is \$10. If a Potential Claimant’s Total Loss Amount is less than \$10, the Potential Claimant will not be eligible for a Distribution Payment and will not be deemed an Eligible Claimant.
4. “Distribution Payment” means the payment to an Eligible Claimant in accordance with the Distribution Plan.

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<sup>1</sup> Capitalized terms used in this Distribution Plan which are not otherwise defined carry the same meaning as in the Proposed Claims Process.

5. “Eligible Claimant” is a Potential Claimant whose loss(es) exceed the *De Minimis Amount* and who is determined to be eligible for a Distribution Payment under the Distribution Plan.
6. “Potential Claimant” means a claimant who has received a Determination Notice or a Final Determination Notice accepting their claim(s).
7. “Methodology” refers to the calculations and plan of allocation used in the Distribution Plan to determine Total Loss Amounts and Distribution Payments, as set forth in Section V, herein.
8. “Net Available Fair Fund” means the Veritaseum Fair Fund plus accrued interest, less Administrative Costs or a reserve for the same.
9. “Recognized Loss (or Gain) per Token” means the amount of loss (or gain) per VERI token as calculated pursuant to the Methodology below.
10. The “Relevant Period” is April 25, 2017 through August 14, 2019 at 12:01 a.m., EST, inclusive.
11. “Security” or “VERI” means the digital securities called “VERI”.
12. “Total Loss Amount” means, for each Potential Claimant, the aggregate of the Recognized Loss (or Gain) per VERI Token.

### **III. Tax Compliance**

A. In the Final Judgment, the Court, among other things, appointed Miller Kaplan Arase LLP as Tax Administrator (the “Tax Administrator”); created the Veritaseum Fair Fund; and authorized the SEC to pay all tax obligations and administrative fees and expenses out of the Veritaseum Fair Fund without further Court Order.

B. The Veritaseum Fair Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), as amended. 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. Regs. § 1.468B-1 to § 1.468B-5, including as set forth in the Final Judgment.

### **IV. Claimant Communications**

A. The Distribution Agent has established and maintains a website dedicated to the Veritaseum Fair Fund. The Veritaseum Fair Fund’s website, located at [www.verifairfund.com](http://www.verifairfund.com), makes available in downloadable form information that the Distribution Agent believes will be beneficial to claimants.

B. The Distribution Agent has established and maintains a traditional mailing address and an email mailing address which it includes on all correspondence from the Distribution Agent to investors as well as on the Veritaseum Fair Fund’s website.

C. The Distribution Agent has established and maintains a toll-free telephone number for investors to call and speak to a live representative of the Distribution Agent during its regular business hours or, outside of such hours, to hear pre-recorded information about the Veritaseum Fair Fund.

D. The SEC staff retains the right to review and approve any material posted on the Veritaseum Fair Fund's website dedicated to this matter, communications with investors, and any scripts used in connection with communications with investors.

## **V. Methodology**

A. For VERI tokens purchased and/or acquired for value during the Relevant Period, and:

1. Sold on or before August 14, 2019 at 12:01 a.m., EST, a Potential Claimant's Recognized Loss (or Gain) per Token shall be calculated as the difference between the purchase price (acquisition value) of the token, and the sale price of the token<sup>2</sup>;
2. Retained, or sold after August 14, 2019 at 12:01 a.m., EST, a Potential Claimant's Recognized Loss (or Gain) per Token shall be calculated as the difference between the purchase price (acquisition value) of the token and the greater of: \$5.38 (the closing price on August 14, 2019), or the sale price of the token;
3. A Potential Claimant's Total Loss Amount shall be determined by aggregating the Recognized Loss (or Gain) per Token.

B. For Potential Claimants who made multiple purchases or sales, the first-in, first out method will be applied to such holdings, purchases, and sales.

C. Time of acquisitions or sales will be determined based on transaction initiation, not transaction completion.

D. For purposes of the calculations in the Distribution Plan, prices and values exclude all fees and commissions.

E. If a Potential Claimant's actual losses in the Security are less than the Total Loss Amount, then the Total Loss Amount shall be limited to the actual loss. With respect to tokens of the Security purchased during the Relevant Period, Potential Claimants whose total proceeds from sales of those tokens exceed the total purchase price (acquisition value) for those tokens shall have a Total Loss Amount of \$0.00.

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<sup>2</sup> The "sale price of the token," as used herein, will be determined automatically based on the market price of the token at the time of the sale transaction. The sale price of the token will be ascertained through the public blockchain ledger.

F. The receipt or grant to a Potential Claimant by gift, devise, inheritance, or operation of law of the Security during the Relevant Period is not considered an eligible purchase if the original purchase did not occur during the Relevant Period. Such tokens will be excluded from the calculation of the Potential Claimant's Total Loss Amount.

G. Subject to tax withholding deemed necessary and/or appropriate by the Tax Administrator, and to the *De Minimis* Amount:

1. If the Net Available Fair Fund has sufficient funds, each Eligible Claimant will receive a Distribution Payment equal to the amount of his, her, or its Total Loss Amount;
2. If the Net Available Fair Fund has funds in excess of that necessary to pay each Eligible Claimant a Distribution Payment equal to the amount of their Total Loss Amount, the Distribution Agent, in consultation with the SEC staff, may include in the Distribution Payments an additional amount to compensate each Eligible Claimant for the time value of their respective Total Loss Amount ("Reasonable Interest");<sup>3</sup> and
3. If the Net Available Fair Fund is not sufficient to pay the full Total Loss Amount for all Eligible Claimants, then each Eligible Claimant will receive a Distribution Payment equal to the Net Available Fair Fund multiplied by the ratio of their Total Loss Amount to the aggregate Total Loss Amounts of all Eligible Claimants.

## **VI. Third-Party Review**

After the Distribution Agent has completed the process of analyzing the claims and determining Total Loss Amounts and potential Distribution Payments in accordance with the Distribution Plan, and prior to the distribution of any funds, the Distribution Agent will engage an independent, third-party firm, not unacceptable to SEC staff, to perform a set of agreed upon procedures, review a statistically significant sample of claims and ensure accurate and comprehensive application of the Claim Process and the Distribution Plan's methodology. The Distribution Agent will communicate the results of the review to SEC staff together with any written analysis or reports related to the review, and, upon request, will make the firm available to the SEC staff to respond to questions concerning the review.

## **VII. Procedures for the Distribution of the Net Available Fair Fund**

A. Prior to the disbursement of the Net Available Fair Fund, the Distribution Agent will establish the accounts described in the following paragraph at a United States commercial bank (the "Bank") not unacceptable to the SEC staff.

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<sup>3</sup> Reasonable Interest will be calculated using the short-term applicable Federal Rate, compounded quarterly from the approximate date of the loss through the approximate date of the disbursement of the Veritaseum Fair Fund.

B. The Distribution Agent shall establish an escrow account (“Escrow Account”) pursuant to an escrow agreement (“Escrow Agreement”) to be provided by SEC staff, in the name of and bearing the Employer Identification Number of the QSF. The Distribution Agent shall also establish with the Bank a separate deposit account (the “Deposit Account”) (e.g., controlled distribution account, managed distribution account, linked checking and investment account) for the purpose of funding Distribution Payments to be distributed to Eligible Claimants by the Distribution Agent pursuant to the Distribution Plan. The name of each account shall be substantially in the following form: “Veritaseum Fair Fund (EIN XX-XXXXXXX), as custodian for the benefit of investors allocated a distribution pursuant to the Distribution Plan in *SEC v. Middleton, et al.*, Case No. 19-CV-4625 (WFK) (E.D.N.Y.).”

C. During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term U.S. Treasury securities backed by the full faith and credit of the United States Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Claimants and tax obligations, including investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or in money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States Government.

D. The Distribution Agent, in consultation with the Tax Administrator and the SEC staff, shall determine the Net Available Fair Fund by retaining a prudent reserve for Administrative Costs. After all distributions and payment of all tax obligations, any remaining amounts in the reserve will become part of the residual described in Section IX.A.

E. Within 30 days following the completion of the Third Party Review and any remedial efforts, and after consulting with the Tax Administrator concerning reporting and withholding requirements, the Distribution Agent shall compile and securely send to the SEC staff the payee information, including the names, addresses, and Distribution Payments and withholding amounts of all Eligible Claimants (“Payment File”). The Distribution Agent will simultaneously provide a “Reasonable Assurances Letter” to the SEC staff, representing that the Payment File: (a) was compiled in accordance with the Distribution Plan; (b) is accurate as to Eligible Claimants’ names, address, Distribution Payment and, as applicable, tax withholding amount; and (c) provides all information necessary to make a payment equal to the amount of the applicable Distribution Payment for such Eligible Claimant.

F. Upon receipt and review of the validated Payment File and Reasonable Assurances Letter, the SEC staff shall cause to be disbursed to the Distribution Agent by sending to the Escrow Account the aggregate amount of Distribution Payments (including withholding amounts) set forth on the Payment File for distribution to Eligible Claimants pursuant to the Distribution Plan.

G. The Distribution Agent shall use its best efforts to commence mailing Distribution Payment checks or effect wire transfers within fifteen (15) business days of the transfer of the funds into the Escrow Account. All efforts will be coordinated to limit the time between the Escrow Account’s receipt of the funds and the issuance of Distribution Payments.

H. The Distribution Agent shall provide duplicate original bank and/or investment statements on any accounts established by the Distribution Agent to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

I. The Distribution Agent shall deposit or invest funds in the Escrow and Deposit Accounts so as to result in the maximum return, taking into account the safety of such deposits or investments. In consultation with SEC staff, the Distribution Agent shall work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow and the Deposit Accounts.

J. All interest earned will accrue for the benefit of the Veritaseum Fair Fund and all costs associated with the Escrow and Deposit Accounts will be paid by the Veritaseum Fair Fund.

K. All funds shall remain in the Escrow Account, separate from bank assets, pursuant to the Escrow Agreement until needed to satisfy a presented check or payment. All Veritaseum Fair Fund checks presented for payment or electronic transfer will be subject to “positive pay” controls before being honored by the Bank, at which time funds will be transferred from the Escrow Account to the Deposit Account to pay the approved checks.

L. All checks issued to Eligible Claimants by the Distribution Agent shall bear a stale date of one hundred twenty (120) days. Checks that are not negotiated before the stale date shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. Such Eligible Claimant’s claim is extinguished as of the stale date and the funds will remain in the Net Available Fair Fund. If a check reissue has been requested before the stale date, such request is governed by Section VIII.D.

M. Electronic or wire transfers may be utilized at the discretion of the Distribution Agent to transfer approved Distribution Payments. For any electronic payment, the exact amount necessary to make a payment shall be transferred from the Escrow Account directly to the payee bank account in accordance with written instruction provided to the Escrow Bank by the Distribution Agent. All wire transfers will be initiated by the Distribution Agent using a two-party check and balance system, whereby completion of a wire transfer will require authorization by two members of the Distribution Agent’s senior staff.

N. Claims on behalf of a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which do not include individual retirement accounts, and such plan’s participants, are properly made by the administrator, custodian or fiduciary of the plan and not by the plan’s participants. The Distribution Agent will issue any payments on such claims directly to the administrator, custodian or fiduciary of the retirement plan. The custodian or fiduciary of the retirement plan will distribute any payments received in a manner consistent with its fiduciary duties and the governing account or plan provisions. With respect to any retirement plan that has been closed prior to the Distribution Agent’s identification of Eligible Claimants, the Distribution Agent will endeavor to distribute funds directly to the beneficial account owner of such retirement plans if the information required for such a distribution is known to or provided to the Distribution Agent.



O. All Distribution Payments shall be preceded or accompanied by a communication that will include, as appropriate: (a) a statement characterizing the distribution; (b) a statement from the Tax Administrator regarding the tax consequences of Distribution Payments and informing Eligible Claimants that the tax treatment of the distribution is the responsibility of each recipient and that the recipient should consult their tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void after one hundred twenty (120) days; and (d) providing contact information for the Distribution Agent, to be used in the event of any questions regarding the distribution. All such communications shall be submitted to the SEC staff and the Tax Administrator for review and approval. Distribution Payments, on their face or in the preceding or accompanying mailing shall clearly indicate that the money is being distributed from a Fair Fund established by the Court for the benefit of investors for harm as a result of securities law violations.

### **VIII. Uncashed Checks and Reissues**

A. The Distribution Agent will work with the Bank and maintain information about uncashed checks, returned payments, 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 and for maintaining a record of such efforts. The Distribution Agent is also responsible for accounting for all payments. The amount of all uncashed and uncleared payments will continue to be held in the Veritaseum Fair Fund.

B. The Distribution Agent shall use its best efforts to make use of reasonable commercially available resources and other reasonably appropriate means to locate all Eligible Claimants whose checks are returned to the Distribution Agent as undeliverable by the USPS.

C. Where new address information becomes available, the Distribution Agent shall repack the distribution check and send it to the new address. Where new address information is not available after a diligent search (and in no event later than one hundred twenty (120) 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 the issuing financial institution to stop payment on such check. If the Distribution Agent, despite best practicable efforts, is unable to find an Eligible Claimant's correct address, the Distribution Agent, in its discretion, may remove such Eligible Claimant from the distribution and the allocated Distribution Payment will remain in the Net Available Fair Fund for distribution, if practicable, to the remaining Eligible Claimants.

D. The Distribution Agent will re-issue new checks to Eligible Claimants upon the receipt of a valid, written request from the Eligible Claimants prior to the initial stale date. Such reissued checks will be void if not negotiated by sixty (60) days after issuance.

E. In cases where an Eligible Claimant is unable to endorse a Distribution Payment (e.g., as the result of a name change because of marriage or divorce, or as the result of death), any request by an Eligible Claimant or a lawful representative for reissuance of a Distribution Payment in a different name must be documented to the satisfaction of the Distribution Agent. If, in the sole discretion of the Distribution Agent, such change is properly documented, the Distribution Agent will issue an appropriately redrawn Distribution Payment, subject to the time limits detailed herein.



F. The Distribution Agent will make reasonable efforts to contact Eligible Claimants to follow-up on the status of uncashed or uncleared Distribution Payments (other than those returned as “undeliverable”, which are addressed above) and take appropriate action to follow up on the status of uncashed checks and uncleared payments at the request of SEC staff. The Distribution Agent may reissue such checks or payments, subject to the time limits detailed herein.

#### **IX. Disposition of Remaining Funds after Distribution**

A. A residual within the Veritaseum Fair Fund will be established for any amounts remaining after all assets have been disbursed (the “Residual”). The Residual may include, among other things, funds reserved for future taxes and for post-distribution contingencies, amounts from Distribution Payments that have not been cashed or cleared, amounts from Distribution Payment checks that were not delivered or accepted upon delivery, and tax refunds.

B. The Distribution Agent, in consultation with SEC staff, may distribute any residual funds to (a) Eligible Claimants, if any, who filed claims with the Distribution Agent after the Claims Bar Date or who were late in curing a rejected claim in accordance with the Claims Process and, if feasible, (b) on a *pro rata* basis to all Eligible Claimants that negotiated the checks issued in the immediately preceding distribution or that received electronic payments, up to their Total Loss Amount and subject to the *De Minimis Amount*.

C. If, after the distribution is complete and all Administrative Costs have been paid, funds remain in the Veritaseum Fair Fund, and the Distribution Agent, in consultation with the SEC staff, has determined further distributions to be infeasible, the Residual shall be transferred to the SEC pending a final accounting. Upon completion of the final accounting, the SEC staff will file a motion with this Court to approve the final accounting, which will include a recommendation as to the final disposition of the Residual, consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020). If distribution of the Residual to investors is infeasible, the SEC staff 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>4</sup>

#### **X. Fair Fund Reporting and Accounting**

The Distribution Agent will provide reports in accordance with the Final Judgment, including, in consultation with the Tax Administrator, a final accounting and final report.

#### **XI. Termination of the Veritaseum Fair Fund**

A. Once all Distribution Payments have been negotiated or voided, any funds remaining in the Escrow and Deposit Accounts will be transferred to the SEC.

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<sup>4</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.

B. The SEC staff will seek an Order from the Court, as appropriate, approving the final accounting, discharging the Distribution Agent, and terminating the Veritaseum Fair Fund.

C. The Veritaseum Fair Fund will be eligible for termination and the Distribution Agent will be eligible for discharge after all of the following have occurred:

1. A final report and accounting has been submitted to and approved by the Court;
2. All Administrative Costs have been paid; and
3. The Court has approved the SEC's recommendation as to the final disposition of the Residual consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020).

D. Once the Veritaseum Fair Fund has been terminated, no further claims will be allowed and no additional payments will be made whatsoever.

## **XII. Miscellaneous**

A. The Court reserves the right to amend this Distribution Plan from time to time, and retains exclusive jurisdiction over all claims arising in connection with this Distribution Plan, including, but not limited to, claims against the Distribution Agent or Tax Administrator asserting liability for violation of any duty imposed by this Distribution Plan or other Court order.

The Distribution Agent and the Tax Administrator are entitled to rely on all outstanding rules of law and Court orders.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

REGINALD (“REGGIE”) MIDDLETON  
VERITASEUM, INC., AND VERITASEUM, LLC,

Defendants.

19 CIV. 4625 (WFK) (RER)

ECF CASE

**MEMORANDUM OF LAW IN SUPPORT OF THE ENTRY OF AN ORDER  
APPROVING CLAIMS PROCESS AND DISTRIBUTION PLAN FOR THE  
VERITASEUM FAIR FUND**

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## **INTRODUCTION**<sup>1</sup>

In accordance with Part X of the Final Judgment as to Defendants Reginald Middleton, Veritaseum, Inc., and Veritaseum, LLC (ECF No. 61, the “Final Judgment”), the Distribution Agent respectfully submits this memorandum in support of its proposed claims process (“Proposed Claims Process”) and distribution plan (“Proposed Distribution Plan”), attached to the accompanying proposed Order to Show Cause as Exhibits 1<sup>2</sup> and 2. Through these proposed documents, the Distribution Agent seeks to distribute more than \$17 million currently held in the Veritaseum Fair Fund to compensate Veritaseum investors for losses from the conduct underlying this civil action.<sup>3</sup> By the Proposed Claims Process, the Distribution Agent will identify and solicit claims information from investors and determine the Potential Claimants. Once all Potential Claimants have been identified, the Distribution Agent will calculate Distribution Payments, identify Eligible Claimants and make payments from the Veritaseum Fair Fund in accordance with the Proposed Distribution Plan.

Through this motion, the Distribution Agent is seeking the entry of an Order to Show Cause so that interested parties have the opportunity to object to the Proposed Claims Process and Proposed Distribution Plan. If the Court enters the proposed Order to Show Cause, upon the completion of the steps set forth in the Order to Show Cause, the Distribution Agent will file a notice, so notifying the Court and responding to any objections; and provide to the Court a proposed Order approving the Proposed Claims Process and Proposed Distribution Plan as proposed or amended, as appropriate.

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<sup>1</sup> Capitalized terms not otherwise defined herein have the same meanings as in the Proposed Claims Process and Proposed Distribution Plan.

<sup>2</sup> Included with the Claims Process are the proposed notice and claims form to be used in connection with the Claims Process, discussed below.

<sup>3</sup> As discussed below, the Distribution Agent voluntarily withdrew its previously submitted Motion for Entry of an Order Approving Claims Process and replaces the same with the current filing. *See* ECF No. 75.

By this memorandum, the Distribution Agent provides to the Court the factual and legal basis for the Proposed Claims Process and Proposed Distribution Plan. The Distribution Agent consulted with SEC staff on this Motion, the Proposed Claims Process, and the Proposed Distribution Plan, and the SEC has no objection to the relief sought.

## **RELEVANT FACTS AND PROCEDURE**

### **I. Procedural History**

On August 12, 2019, the SEC commenced an action against Reginald Middleton (“Middleton”), Veritaseum, Inc., and Veritaseum, LLC (collectively, the “Defendants”) (the “Civil Action”). The SEC alleged that, beginning on April 25, 2017, the Defendants fraudulently raised approximately \$14.8 million from the unregistered sales of digital securities called “VERI” based on a series of false and misleading statements to potential and actual investors, including misrepresentations about the potential profitability and viability of Veritaseum’s purported operations, the use of funds raised in the VERI initial coin offering (“VERI ICO”), and the amount of funds raised in the VERI ICO (the “Veritaseum Fraud”). *See* ECF No. 1 ¶ 1. The SEC further alleged that, after the VERI initial coin offering (“ICO”), Middleton placed manipulative VERI trades on a digital exchange, artificially increasing its price, and publicly touting the price increases. *Id.* at ¶ 2. Upon the SEC’s motion, the Court on August 12, 2019 issued a Temporary Restraining Order (the “TRO”) freezing the Defendants’ assets and appointing an Independent Intermediary to take control of all digital assets controlled by the Defendants. *See* ECF. No. 9.

On November 1, 2019, with the Defendants’ consent, the Court entered the Final Judgment. In the Final Judgment, the Court ordered the Defendants to pay disgorgement of \$7,891,600 and prejudgment interest of \$582,535, ordered Middleton to pay a civil penalty of \$1,000,000, and required the turnover of certain identified metals, bank assets, and digital assets in full satisfaction of the monetary relief. ECF No. 61, Section VII. The Defendants turned over the identified assets



in satisfaction of the Final Judgment. The Court created a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246(a), so that all of the collected assets could be distributed to harmed investors (the “Veritaseum Fair Fund”).

On May 22, 2020, the Distribution Agent filed a motion for approval of a claims process (the “Original Claims Process Motion”) by which, among other things, the Distribution Agent sought to determine the number of claimants seeking an “in kind” distribution of digital assets prior to presenting to the Court a plan of distribution. *See* ECF Nos. 69-70. Subsequent to filing that motion, and as a result of digital asset market fluctuations, on August 5, 2020, the Distribution Agent filed a motion under seal seeking an order approving liquidation of the Veritaseum Fair Fund’s digital assets (the “Liquidation Motion”). *See* ECF Nos. 71-73.<sup>4</sup> On August 5, 2020, the Court granted the Liquidation Motion, and the Distribution Agent liquidated all digital assets held in the Veritaseum Fair Fund. The Veritaseum Fair Fund currently holds more than \$17.1 million, comprised of the transferred bank assets, the liquidated metals and digital assets, and accrued interest, and is deposited in an interest-bearing account at the U.S. Treasury’s Bureau of Fiscal Service.

As a result of the liquidation of the Veritaseum Fair Fund’s digital assets and more specifically, because an in-kind digital asset distribution is no longer an option, on September 22, 2020, the Distribution Agent filed a notice with the Court withdrawing the Original Claims Process Motion (ECF No. 75) in anticipation of the current filing seeking approval of a claims process that no longer provides investors with the option of an “in kind” digital asset distribution, in conjunction with a plan to distribute the Veritaseum Fair Fund.

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<sup>4</sup>The Liquidation Motion was subsequently unsealed pursuant to the Distribution Agent’s Letter Motion to Unseal, filed on September 22, 2020. *See* ECF Nos. 74, 76.

## II. The Effect of the Veritaseum Fraud on VERI tokens

During the Veri ICO, the price of VERI was tied to the digital asset ether (“ETH”): 1 ETH purchased 30 VERI (subject to certain early-purchaser discounts) during the first 11 days of the offering. Veritaseum sold approximately 1.9 million VERI tokens from April 25, 2017 through May 26, 2017, raising approximately 69,000 ETH—then valued at \$14.8 million. Investors purchased VERI using ether, bitcoin, other virtual currencies, or central bank-issued currencies. Over 22,000 unique Ethereum blockchain addresses currently hold VERI. Because of the blockchain’s pseudonymous nature, the Distribution Agent can obtain information about harmed investors’ transactions, but not their identities.

Veritaseum continued selling VERI after the ICO period, through at least February 2018, raising an additional approximately \$2.6 million from investors. Defendants exchanged VERI for services, employee compensation, or for Veritaseum “Class B” shares and “Colored Coins”—virtual tokens sold by Middleton prior to the Veritaseum Fraud. VERI token holders also traded their assets on one or more digital asset platforms.

On August 12, 2019, VERI tokens began the day worth approximately \$17.56 apiece.<sup>5</sup> Beginning on August 13, 2019, the day after the SEC filed its complaint against the Defendants and the Court entered the TRO, news of the SEC action and alleged fraud was widely disseminated and by the end of the day on August 13, 2019, VERI was down by 57% from the day before, trading at approximately \$7.52. Based on price and volume reports, the news of the alleged fraud appears to have been fully incorporated into the VERI price on August 14, 2019, when VERI traded as low as \$3.96 before closing at \$5.38.

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<sup>5</sup>See, e.g., *Veritaseum (VERI) Historical Data*, COINMARKETCAP, <https://coinmarketcap.com/currencies/veritaseum/historical-data/?start=20190801&end=20200505> (last visited May 6, 2020).

### **III. Additional Considerations Relevant to the Proposed Claims Process and Proposed Distribution Plan**

The virtual and online nature of the Veritaseum Fraud presents opportunities for efficiencies in the claims and distribution processes. VERI tokens exist on the Ethereum blockchain. Many of the Potential Claimants purchased VERI with virtual currencies and VERI token recipients received tokens in an Ethereum address—the equivalent of a cryptocurrency account number. These transactions are visible on the blockchain, and in many cases, the Distribution Agent can use blockchain transactional information to quickly validate claims with minimal supporting documentation from claimants, reducing overall distribution costs.

As described below, the Distribution Agent continues to propose an online process for claim submission and automated blockchain-based claim validation. This will reduce administrative expenses, increase claim processing speed, and lead to the distribution of funds to Eligible Claimants in less time as compared to manual claim processing and analysis. Included with this Motion is the Proposed Claims Process and examples of the proposed notice and claims form. *See* Declaration of Josias N. Dewey (“Dewey Decl.”), Ex. 1. The Distribution Agent also includes the Proposed Distribution Plan with this Motion, by which the Veritaseum Fair Fund, net Administrative Costs (the “Net Available Fair Fund”), will be distributed to Eligible Claimants identified through the Proposed Claims Process. *Id.*, Ex. 2.

### **DISCUSSION**

A district court has broad discretion in approving a distribution plan in an SEC action, including the claims process component, which is often included in the distribution plan but is separately presented here. *See Official Comm. of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 84 (2d Cir. 2006). A district court is “required only to determine that the SEC’s distribution plan fairly and reasonably distribute[s] the limited Fair Fund proceeds among the

potential claimants.” *Id.* at 85; *see also SEC v. Wang*, 944 F.2d 80, 85 (2d Cir. 1991) (“[O]nce the district court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement plan is fair and reasonable, its review is at an end.”). District courts apply this same standard to distribution plans—including claims processes—employing a distribution agent working in concert with SEC counsel. *See, e.g., SEC v. CR Intrinsic Inv’rs, LLC*, 164 F. Supp. 3d 433, 435 (S.D.N.Y. 2016); *SEC v. K.W. Brown & Co.*, No. 05-80367-CIV, 2010 WL 11506361, at \*2 (S.D. Fla. Mar. 3, 2010); *SEC v. Terax Energy, Inc.*, No. CIV.A.3:07CV1554-BD, 2009 WL 3496147, at \*2 (N.D. Tex. Oct. 28, 2009); *SEC v. Cobalt Multifamily Inv’r I, LLC*, No. 06 CIV 2360 KMW MHD, 2009 WL 1808980, at \*3 (S.D.N.Y. June 24, 2009).

The Distribution Agent proposes the Proposed Claims Process and Distribution Plan described below, both of which are fair and reasonable and should be approved by the Court.

## **I. The Proposed Claims Process**

A claims process must also satisfy due process. Due process requires that a party must receive notice “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Internet-based notice is suitable for apprising parties when their involvement in a matter is predominantly internet based and the parties to be noticed are not individually identifiable. *See, e.g., SEC v. Arisebank*, No. 3:18-cv-00186-M (N.D. Tex. Feb. 1, 2019) (order approving claims process, notice procedures, and bar date) (approving receiver’s electronic notice procedures for claimants involved in a fraudulent initial coin offering); *see also Browning v. Yahoo! Inc.*, No. C04-01463, 2007 WL 4105971, at \*4 (N.D. Cal. Nov. 16, 2007) (internet notice “particularly suitable” where claims involved “visits to Defendants’ internet websites”); *Lundell v. Dell, Inc.*, No. CIVA C05-3970 JWRS, 2006 WL 3507938, at \*1 (N.D. Cal. Dec. 5, 2006) (electronically sent and internet-published notice satisfies due process); *cf In re Scotts EZ Seed Litig.*, No. 12 CV

4727 (VB), 2015 U.S. Dist. LEXIS 127844, at \*2 (S.D.N.Y., July 7, 2015) (approving class action online publication in lieu of newspaper publication for noticing likely class members because “times change, progress is made, and reliance on past practice cannot always carry the day”); *Jermyn v. Best Buy Stores, L.P.*, No. 08 Civ. 00214 (CM), 2010 U.S. Dist. LEXIS 130682, at \*11–12, 22 (S.D.N.Y., Dec. 6, 2010) (approving website publication of notice for a class action’s class members not individually identifiable).

The Proposed Claims Process described below is tailored to efficiently and effectively notify investors of the distribution and how to file claims, and to cull from filed claims the Potential Claimants, while also ensuring due process. It takes into consideration the methods of notice that are most likely to reach VERI purchasers on the Ethereum blockchain, protects against erroneous claims by requiring verification of control of the potential claimant’s digital currency wallet, and sets a timeline for the claims process that contemplates the dual goals of diligently reviewing each claim and distributing assets to Eligible Claimants in a timely manner.

**A. Notice of the Veritaseum Fair Fund will Be Predominantly Conducted Through the Internet.**

Under the Proposed Claims Process, the Distribution Agent proposes to notify investors of the information contained in the Notice attached as Attachment A to the Proposed Claims Process distribution, including how to submit claims, electronically, using media similar to that which the Defendants employed to propagate their misrepresentations. As discussed below, the Distribution Agent believes this to be fair and reasonable and to comport with due process.

Here, internet-based notice is appropriate because the investments were made through the internet and most individual investors are not identifiable. The Defendants primarily interacted with investors via the internet, promoting the VERI ICO through its website, internet news sites, and social media. Persons acquired VERI through electronic means, including an internet-based smart

contract that automatically exchanged ether for VERI. Almost all funds used to acquire VERI were in the form of internet-based cryptocurrencies. Direct notice is not feasible because investors are not identified on the blockchain; the most effective form of media to reach this audience is through the internet.

The Distribution Agent also will publish the Notice in downloadable format on the Veritaseum Fair Fund website,<sup>6</sup> request that the SEC include it on its public webpage for this case,<sup>7</sup> and will disseminate the Notice through PRNewswire and certain of the channels used by Veritaseum in promoting its digital tokens: cryptocurrency and related online industry publications including Coin Desk, Coin Telegraph, Reddit, and PR Newswire, online discussion forums, Telegram, and Twitter. With respect to investors who have communicated with, or provided their contact information to, the Distribution Agent, the Distribution Agent will send the Notice by electronic or regular mail. Any claimant unable to download the Notice will be able to request one from the Distribution Agent by electronic mail, U.S. mail, or a toll free number.

#### **B. Claims Will Be Submitted through a Secure Online Form.**

The Distribution Agent similarly proposes a predominantly online claims submission process and believes the same to be fair and reasonable for the reasons set forth in the preceding section. The Distribution Agent will provide electronic form-based claim submission hosted on the Veritaseum Fair Fund website. The online claims form will include protections mitigating the risk of automated form submission by bots and other techniques for submitting false claims. Upon request made in accordance with the procedures set forth in the Notice, the Distribution Agent, in its discretion, will permit the submission of claims via an alternative claims filing procedure for

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<sup>6</sup>[www.verifairfund.com](http://www.verifairfund.com)

<sup>7</sup>*Reginald ("Reggie") Middleton, Veritaseum, Inc., and Veritaseum, LLC*, SEC (Dec. 12, 2019), <https://www.sec.gov/divisions/enforce/claims/reginald-middleton.htm>.

those individuals establishing they are not reasonably able to use the online claims form (*e.g.*, due to government interference or censoring).

The claim form will be substantially in form of Attachment B to the Proposed Claims Process. The form will solicit sufficient information to enable the Distribution Agent to validate and assess the claim, communicate with the claimant, and conduct Office of Foreign Assets Control due diligence. The form will require the claimant to attest to the truth and correctness of the submitted information under penalty of perjury.

**C. The Distribution Agent Will Use Blockchain Transactional Information to Validate Claims.**

As discussed above, Veritaseum conducted its ICO on the public Ethereum blockchain network. Blockchains are publicly viewable online ledgers distributed among a global network of computers and are highly resistant to subsequent alteration; thus, a blockchain is often considered an accurate and immutable transaction archive. The Ethereum blockchain stores transactional information permitting the Distribution Agent's determination of many factors relevant to claim validity and claimant eligibility.

The Distribution Agent proposes validating claims based on claimant submissions and blockchain transactional data. The web-based claim form will permit automated validation and immediate claim determination for many claimants. The Distribution Agent will solicit additional information from claimants with complicated transaction histories or involving certain cryptocurrency exchanges.

The Distribution Agent acknowledges that publicly available transaction data on the Ethereum blockchain makes the process vulnerable to the submission of false claims. To prevent fraudulent or duplicative claims, the Distribution Agent will verify a claimant's control over an address using a purpose-built Ethereum ERC-20 ("Control Token"). After a claimant enters

sufficient information in the claims web portal, the Distribution Agent will automatically send a Control Token to the claimant's Ethereum address. Via email, the Distribution Agent will instruct the claimant to prove control over the claimed address by sending a fractional interest<sup>8</sup> in the Control Token back to the Distribution Agent. Failure to prove control within a defined period will result in an automatic emailed notice to the claimant, denying the claim, and stating the grounds for denial. Claimants unable to return the Control Token will have an opportunity to prove their address ownership via alternative means as part of the claim determination reconsideration process.

**D. Identifying Claimants Whose Acquisition of the Security Makes Them Potentially Eligible for a Distribution Payment**

Through the Proposed Claims Process, the Distribution Agent will determine whether each claimant's acquisition of VERI tokens suffices to make the claimant potentially eligible for a Distribution Payment. The Complaint alleges both registration violations and fraud. All purchasers of the Security for value prior to the broad dissemination of the allegations in the Complaint were potentially harmed by the registration violation: they purchased a security for which there was no registration statement in effect. Those affected by the fraud are a subset of this group. For simplicity and cost efficiency, and because the subset of investors harmed by the fraud were alternatively harmed by the registration violations, the Distribution Agent proposes that losses for all claimants be determined by reference to rescissory compensation principles. Accordingly, under the Proposed Distribution Plan, the Distribution Agent proposes to compensate all Eligible Investors for the harmed suffered as a result of the registration violations without regard to any separate fraud claims.

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<sup>8</sup>The fractional interest requested to be sent back to the Distribution Agent will be randomly generated and vary from token to token. This will allow the Distribution Agent to verify the person controlling the email address used in the claim submission is the same as the person controlling the Ethereum address.



The Distribution Agent proposes that the Relevant Period for purchases of the Security begins April 25, 2017 (the date VERI sales began) and ends August 14, 2019 at 12:01 a.m., EST, when the market reflects the incorporation of the allegations in the Complaint into the price of the security. Purchasers after the end of the Relevant Period had notice of the registration defect, purchased the security at their own risk, and are not be eligible for compensation in this action. Claimants potentially eligible for a distribution from the Veritaseum Fair Fund would thus include investors who acquired VERI—an unregistered security—for value during the Relevant Period, including anyone who received VERI for value, such as those who received VERI in exchange for Veritaseum “Class B” shares or Colored Coins.

Certain claimants would be excluded from consideration under the Proposed Claims Process, including the Defendants, who benefitted from the conduct underlying the misconduct and who should thus not benefit from this distribution, either directly or indirectly. *See, e.g., SEC v. McGinn, Smith & Co.*, No. 110CV457GLSCFH, 2019 WL 1060650, at \*3 (N.D.N.Y. Mar. 6, 2019) (“District courts have discretion to exclude claimants involved in the underlying fraudulent scheme.”). The Proposed Claims Process also requires the exclusion of employees and agents of the Distribution Agent to avoid any conflict of interest, as well as entities that seek to capitalize on the distribution by purchasing for value an Eligible Claimant’s anticipated Distribution Payment.

**E. Claim Determinations and the Opportunity to Cure Claim Deficiencies or Seek Reconsideration of a Claim Determination.**

Upon receipt of claims, the Distribution Agent will send to each claimant confirmation of their successfully submitted claim, and, upon completion of its review—which in many cases may be immediate and automated—will inform each claimant of the Distribution Agent’s determination to accept or reject the claimant’s claim, and provide directions on how to seek reconsideration of the same (the “Determination Notice”). After claim submission, the Distribution Agent will

communicate primarily with claimants using email; exceptions will be made at the Distribution Agent's discretion for good cause shown.

Each claimant will be provided an opportunity to cure a deficient claim and appeal a claim denial. Instructions for this process will be included in the denial-of-claim determination. Curing deficiencies or requests for reconsiderations will be done primarily through email and must be submitted no later than twenty days after the date of a claimant's Determination Notice. Within ten days of a timely submission of deficiency cures or requests for reconsideration, the Distribution Agent will communicate to claimants the results of its review and send a final claim determination ("Final Determination Notice").

Claimants whose claims are accepted by the Distribution Agent will be deemed Potential Claimants, and their claims will then be evaluated by the Distribution Agent for eligibility under the Distribution Plan.

#### **F. Proposed Timeline**

In order to obtain certainty regarding the number and aggregate amount of claims and to allow for a final distribution of the Net Available Fair Fund, the Distribution Agent proposes a Bar Date of 11:59 p.m. (EST), ninety (90) calendar days following the publication of the Proposed Claims Process Notice. An identical period was found reasonable and fair in a factually similar case involving an unknown class of cryptocurrency contributors. *See SEC v. Arisebank*, No. 3:18-cv-00186-M (N.D. Tex. Feb. 1, 2019) (order approving claims process, notice procedures, and bar date). Unless the Distribution Agent, in its discretion, determines an exception warranted, claims not properly submitted to the Distribution Agent by the Bar Date will be barred and deemed waived. As reflected in the timeline included in the Proposed Claims Process, the Distribution Agent anticipates that the Proposed Claims Process will be completed, and Claim Determinations

(including Final Determination Notices) issued to all claimants, 150 days after approval of the Proposed Claims Process.<sup>9</sup>

## **II. The Distribution Plan**

Under the federal securities laws the harm suffered from registration violations is rescissory and limited by actual loss if the claimant sold the security. See 15 U.S.C. § 77l(a). Accordingly, the Distribution Agent proposes that Recognized Loss (or Gain) Per Token be calculated based on the difference between the consideration paid for the Security during the Relevant Period, and any recovery on that payment due to the sale of the Security. The Recognized Loss (or Gain) Per Token for tokens retained after the Relevant Period will be calculated based on the difference between the consideration paid for the Security during the Relevant Period, and the greater of: \$5.38 (the closing price on August 14, 2019) or the sale price of the token. Each Potential Claimant's Total Loss Amount will be calculated as the aggregate of that Potential Claimant's Recognized Losses (or Gains) per Token but will be limited by (i.e. may not exceed) the Potential Claimant's overall net loss after profits.

After the Distribution Agent has completed the process of determining claim amounts, and prior to distributing any funds, the Distribution Agent will engage an independent, third-party firm to perform a set of agreed-upon procedures to ensure accurate and comprehensive application of the Proposed Claims Process and the Distribution Plan. Upon completion of this review and any necessary remedial efforts, and working with the Tax Administrator to calculate a reserve for Administrative Costs, the Distribution Agent will create a Payment File setting forth all Eligible Claimants and their Distribution Payment (and any tax withholding amount), along with a Reasonable Assurances Letter, the latter representing that the Payment File: (a) was compiled in

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<sup>9</sup>The proposed Order contains a provision permitting the Distribution Agent to extend procedural deadlines in the Claims Process for good cause shown, if agreed upon by the SEC staff.

accordance with the Plan; (b) is accurate as to Eligible Claimants' names, address, Distribution Payment and, as applicable, tax withholding amount; and (c) provides all information necessary to make a payment equal to the amount of the applicable Distribution Payment for such Eligible Claimant.

Upon the receipt and acceptance of a Payment File and Reasonable Assurances Letter from the Distribution Agent, the staff of the SEC, without further Court Order, shall cause to be transferred to the Distribution Agent, to be held in an escrow account as specified in the Distribution Plan, the aggregate amount of all Distribution Payments (including tax withholding amounts) listed on the Payment File. If the Net Available Fair Fund has sufficient funds, and subject to tax withholding, each Eligible Claimant will receive a Distribution Payment equal to the amount of their Total Loss Amount. If, after fully compensating Eligible Claimants, the Net Available Fair Fund has excess funds, the Distribution Agent may include in the Distribution Payments an additional amount as compensation for the time value of money. If, on the other hand, the Net Available Fair Fund is not sufficient to fully compensate Eligible Claimants, each Eligible Claimant will receive a pro rata distribution from the Net Available Fair Fund, as further described in the Distribution Plan.

If a residual remains in the Net Available Fair Fund after the first distribution, the Distribution Agent may conduct a second distribution in accordance with the Distribution Plan to late claimants and/or to Eligible Claimants that negotiated checks during the first distribution or that received electronic payments. If a determination is made by the Distribution Agent, in consultation with the SEC, that additional distributions are not feasible, money remaining in the account after the completion of all distributions and the payment of all Administrative Costs (*i.e.* the Residual) will be transferred to the SEC, pending a final accounting. At the end of all

distributions under the Distribution Plan, the Distribution Agent, working with the Tax Administrator and the SEC, will prepare a final accounting for approval by the Court. The SEC will file a motion with this Court to approve the final accounting, which will include a recommendation as to the final disposition of the Residual consistent with *Liu v. SEC*, 140 S. Ct.1936 (2020). If distribution of the Residual to investors is infeasible, the SEC staff may recommend that the monies be transferred to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.<sup>10</sup> In moving this Court to approve the final accounting, the SEC staff will also seek from the Court, if and as appropriate, an Order that discharges the Distribution Agent and terminates the Veritaseum Fair Fund.

The Distribution Agent believes that the combination of the Proposed Claims Process and the Proposed Distribution Plan will fairly and reasonably distribute the Veritaseum Fair Fund to Eligible Investors harmed by the conduct underlying the Complaint and accordingly, respectfully requests that it be approved.

### **CONCLUSION**

For the reasons stated above, the Distribution Agent respectfully requests that the Court enter an Order approving the Proposed Claims Process and Proposed Distribution Plan.

Dated: December 23, 2020

Respectfully submitted,

/s/ Josias N. Dewey

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<sup>10</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 distribution fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

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*Court-Appointed Distribution Agent for the  
Veritaseum Fair Fund*