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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
Southern Division**

SECURITIES AND EXCHANGE  
COMMISSION

Plaintiff,

v.

ENERGY & ENVIRONMENTAL  
INVESTMENTS, LLC, et al.

Defendants.

Case No. 23-cv-00338-FWS-JDE

**NOTICE OF MOTION AND  
MOTION FOR AN ORDER TO  
SHOW CAUSE**

Date: April 4, 2024

Time: 10:00 am

Crtrm: 10D

Judge: Hon. Fred W. Slaughter

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that, on April 4, 2024, at 10 a.m. or as soon thereafter as possible, in Courtroom 10D of the United States District Court for the Central District of California, Southern Division, located at 411 W. Fourth Street, Santa Ana, CA 92701, the Plaintiff, the Securities and Exchange Commission (the

1 “SEC”), will move this Court for an Order to Show Cause why this Court should  
2 not approve the proposed distribution plan (the “Plan”) that provides for the  
3 distribution of funds paid or collected in this matter to compensate investors  
4 harmed by the conduct set forth in the Complaint. The Proposed Order to Show  
5 Cause, with the Plan attached, is submitted herewith as Exhibit 1. Accompanying  
6 this motion is a memorandum of law in support of the Plan.

7 The SEC’s motion for an Order to Show Cause is based upon the  
8 accompanying memorandum; the filings and record in this action; and any other  
9 evidence or argument the SEC may present in support of the motion. To oppose  
10 the motion, you must file with the Court and serve on the SEC a written opposition  
11 no later than March 14, 2024.

12 If the Court enters the Proposed Order to Show Cause, upon the completion  
13 of the steps set forth in the Proposed Order, the SEC will file a notice that informs  
14 the Court that the steps of the Order to Show Cause have been completed, responds  
15 to any objections, and provides a proposed order approving the Plan or an amended  
16 plan, as appropriate.



**SERVICE**

The undersigned hereby certifies that, March 1, 2024, I caused the foregoing Notice of Motion for an Order to Show Cause to be electronically filed with the clerk of the court for the U.S. District Court of the Central District of California, using the electronic case filing system of the court. The electronic case filing system sends a “Notice of Electronic Filing” to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means. I further certify that I have caused copies of the filing to be sent by electronic mail to the following counsel, who represented the defendants in connection with their consents to judgment in this matter. See ECF Nos. 5-8.

Robert Hartmann, Esq.  
650 Town Center Dr., Suite 1400  
Costa Mesa, CA 92626  
[bob@hartmannlawfirm.net](mailto:bob@hartmannlawfirm.net)  
*Counsel for Narysa Sardari Luddy*

Kristin M. Cano, Esq.  
19800 MacArthur Blvd., Suite 300  
Irvine, CA 92612  
[cano@securities-law.com](mailto:cano@securities-law.com)  
*Counsel for Amir A. Sardari,  
Energy and Environmental Investments, LLC, and  
Energy and Environment, Inc.*

/s/Catherine E. Pappas

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Catherine E. Pappas

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**UNITED STATES DISTRICT COURT  
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SECURITIES AND EXCHANGE  
COMMISSION

Plaintiff,

v.

ENERGY & ENVIRONMENTAL  
INVESTMENTS, LLC, et al.

Defendants.

Case No. 23-cv-00338-FWS-JDE

**[PROPOSED] ORDER TO SHOW  
CAUSE**

The Court has reviewed the Plaintiff Securities and Exchange Commission's (the "SEC") Motion for an Order to Show Cause (the "Motion") why the Court should not approve the SEC's proposed plan of distribution (the "Proposed Plan," attached as Attachment A) for the funds paid or collected in this matter (the "Fair Fund"),

The Court hereby finds good cause and the Motion is **GRANTED**.

**I.**

**IT IS FURTHER ORDERED THAT**, within ten (10) business days of the issuance of this Order:

- a. The SEC shall cause a copy of this Order, along with a copy of the Proposed Plan, to be sent to the last known physical and/or electronic address of all entities identified by the SEC as having been harmed by the conduct underlying the Complaint ("Identified Investors");
- b. The SEC shall publish this Order on the SEC's public webpage established for this case (<https://www.sec.gov/enforce/matter-sec-v-energy->

1 environmental-investments-llc-et-al) (the “SEC Webpage”) along with a  
2 copy of the Proposed Plan; and

3 c. Any costs associated with this Order, including I.a. (above), shall be paid by  
4 the Fair Fund.

5 The foregoing publication and dissemination, along with the publication of this  
6 Order through the Court’s ECF system, shall constitute notice of the Proposed Plan  
7 and the opportunity to object to interested individuals and entities.

8 **II.**

9 **IT IS FURTHER ORDERED THAT** individuals and entities who  
10 purchased membership units in Energy & Environmental Investments, LLC from  
11 March 1, 2011, through April 1, 2020, inclusive (“Preliminary Claimant”) or other  
12 interested individuals or entities, within forty (40) days from the entry of this Order  
13 (the “Objection Due Date”) shall show cause, if there is any, why this Court should  
14 not enter an Order approving the Proposed Plan.

15 Objections shall be made by correspondence received no later than 11:59  
16 p.m. EST on the Objection Due Date, at the following electronic mail address:

17 [info@secvEandEfairfund.com](mailto:info@secvEandEfairfund.com)

18 The correspondence must clearly state that the submitter is a Preliminary Claimant  
19 as defined above, or otherwise state fully and clearly the submitter’s interest in this  
20 matter, and the submitter’s objection(s) to the Proposed Plan. The submitter must  
21 include all documentation necessary to support the objection. All factual  
22 assertions must be concluded with the following declaration, if true, followed by  
23 the submitting person’s signature and the date of signature:

24  
25 I declare pursuant to 28 U.S.C. §1746, under penalty of perjury  
26 under the laws of the United States of America, that the  
27 foregoing is true and correct.  
28

1 All correspondence must include current contact information for the  
 2 submitting person, including, if available, an email address and mobile telephone  
 3 number. Unresolved objections will be publicly filed by the SEC with the Court,  
 4 as further set forth below in Section IV.

5 To the extent a submitter seeks to include in their submission sensitive  
 6 information such as a social security number, financial account number, or home  
 7 address, they should encrypt the submission prior to sending by electronic mail and  
 8 send the password for the encrypted submission in a separate electronic mail, or  
 9 submit the submission pursuant to the next paragraph.

10 If a submitter is unable to securely submit their objection by email, they may  
 11 send it addressed as set forth below. The submission must be received no later  
 12 than the Objection Due Date at the following address:

13 SEC v. Energy & Environmental Investments, LLC. et al.  
 14 c/o Rust Consulting, Inc.  
 15 PO Box 2599  
 Faribault, MN 55021-9599

16 Failure to timely submit an objection in accordance with this section will  
 17 result in the objection being waived. Proof of timely receipt will be the burden of  
 18 the submitter.

### 19 III.

20 **IT IS FURTHER ORDERED that**, if no objections to the Proposed Plan  
 21 are timely submitted, the SEC shall:

- 22 a. File a notice so advising the Court (the “Notice”), accompanied by a copy of  
 23 the Proposed Plan, as well as a proposed Order approving the Proposed Plan;  
 24 and
- 25 b. Post a copy of the Notice, Proposed Plan, and proposed Order on the SEC  
 26 Webpage.

1 Upon receipt of such Notice from the SEC, the Court may enter an Order  
 2 approving the Proposed Plan without further notice or passage of time.

3 **IV.**

4 **IT IS FURTHER ORDERED THAT**, if objections are timely received  
 5 pursuant to this Order and cannot be resolved, the SEC shall file them, with  
 6 sensitive information redacted, together with its response, within seventy-five (75)  
 7 days of the entry of this Order, with copies of its response served by electronic,  
 8 First Class, or Overnight Mail upon any objecting submitter. The SEC may  
 9 propose an amended plan if and as appropriate. If the SEC proposes an amended  
 10 plan, the amended plan, and any accompanying filings, will be made available to  
 11 all Potentially Eligible Investors and interested individuals and entities through the  
 12 SEC Webpage, with notice of the same sent to the last know physical and/or email  
 13 address of all Identified Investors. All costs of such dissemination shall be paid by  
 14 the Fair Fund. Such publication and dissemination, along with the publication  
 15 through the Court's ECF system, shall constitute notice of the amended plan. No  
 16 further objection period will be provided unless expressly ordered by the Court.

17 If the Court deems it necessary or appropriate, the Court may conduct a  
 18 hearing before approving the Proposed Plan or amended plan. Notice of a hearing  
 19 shall be provided through the Court Docket and the SEC Webpage, and if and as  
 20 otherwise ordered by the Court.

21  
 22 **SO ORDERED**, this \_\_\_\_ date of \_\_\_\_\_, 2024,

23  
 24  
 25 \_\_\_\_\_  
 26 Hon. Fred W. Slaughter  
 27 United States District Court Judge

28 Attachment A (Proposed Plan)



**Proposed Plan**

(attachment to the Order to Show Cause)

CATHERINE PAPPAS (*pro hac vice*, ECF No. 25)

Email: pappasc@sec.gov

U.S. Securities and Exchange Commission

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**PROPOSED PLAN OF  
DISTRIBUTION**

1. This Distribution Plan (the “Plan”) was developed by the Securities and Exchange Commission (the “SEC”) in accordance with practices and procedures customary in Fair Fund administrations. This Plan provides for the distribution of a fair fund (the “Fair Fund”), comprised of disgorgement, prejudgment interest, and civil money penalties paid by, or collected from, defendants to the captioned action.

1  
2       2.     As described more specifically below, the Plan seeks to compensate  
3 investors who were harmed by the fraudulent offering conducted by Energy &  
4 Environmental Investments, LLC (“EEI”), Energy & Environmental Inc., Amir A.  
5 Sardari, and Narysa Sardari Luddy (collectively, the “Defendants”) as alleged in  
6 the Complaint. As calculated using the methodology detailed in the Plan of  
7 Allocation (attached as Exhibit A), investors will be compensated for their losses  
8 on the purchase of membership units in EEI (the “Securities”) from March 1, 2011,  
9 through April 1, 2020, inclusive (the “Relevant Period”). Based on information  
10 obtained by the SEC during its investigation and litigation, and the review and  
11 analysis of applicable records, the SEC has concluded that it has all records  
12 necessary to calculate each investor’s harm. As a result, the Fair Fund is not being  
13 distributed according to a claims-made process.

14       3.     The SEC has custody of the Fair Fund and shall retain control of the  
15 assets of the Fair Fund. The Court retains jurisdiction over implementation of the  
16 Plan.

## 17                                   I.     BACKGROUND

18       4.     On February 24, 2023, the SEC filed a Complaint against the  
19 Defendants, alleging that, from March 2011 through April 2020, the Defendants  
20 perpetrated an offering fraud, raising \$9.3 million from over 200 investors  
21 nationwide. ECF No. 1. The SEC alleged that EEI fraudulently offered and sold  
22 securities, in the form of membership units, from a call center based in Orange  
23 County, California, claiming it would use the money to acquire and develop clean  
24 energy projects with an emphasis on the oil and gas sector. *Id.* at ¶ 5. The SEC  
25 alleged that, in fact, the Defendants spent investor funds on the call center’s  
26 payroll, marketing, personal expenses, and to pay other investors in a Ponzi-like  
27 scheme. *Id.* at ¶ 6. The SEC charged the Defendants with violations of the  
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antifraud provisions of the Securities Act of 1933, 15 U.S.C. § 77a *et seq.*, and the Securities Exchange Act of 1934, 15 U.S.C. § 78a *et seq.* *Id.* at ¶¶ 10, 11.

5. On May 19, 2023, the Court entered final judgments, by consent, against each of the Defendants (the “Final Judgments”), ordering them, collectively, to disgorge \$4,424,028.09, and to pay prejudgment interest of \$1,266,963.48 and civil penalties of \$1,235,909.00.<sup>1</sup> ECF Nos. 20, 21, 23.

6. By Order entered January 4, 2024, the Court created a fair fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. §7246(a) (the “Fair Fund”), appointed Heffler, Radetich & Saitta, LLP as the tax administrator of the Fair Fund (the “Tax Administrator”), and authorized the SEC to approve and arrange for the payment of taxes and tax administration fees and expenses without further Court order. ECF No. 29, the “Appointment Order.”

7. The SEC currently holds \$550,000.00 paid by, or collected from, the Defendants pursuant to the Final Judgments, plus accrued interest, comprising the Fair Fund. The Fair Fund has been deposited in an SEC-designated account at the United States Department of the Treasury (“Treasury”). Additional collections of funds in satisfaction of the Final Judgments shall be applied to outstanding disgorgement, civil penalties, prejudgment interest, and post-judgment interest, in that order.

## II. DEFINITIONS

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

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

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<sup>1</sup> The final judgment entered by consent against Sardari did not impose any monetary sanctions. ECF No. 22.

1 banking costs.

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

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

7 11. **“Excluded Party”** shall mean: (a) the Defendants, and Defendants’  
8 agents, nominees, assigns, heirs, spouses, parents, children, or controlled entities;  
9 (b) the Third-Party, its employees, and those Persons assisting the Third-Party in  
10 its role as described in paragraph 30; and (c) any purchaser or assignee of another  
11 Person’s eligibility to obtain a recovery from the Fair Fund for value; provided,  
12 however, that this provision (c) shall not be construed to exclude those Persons  
13 who obtained such a right by gift, inheritance, or devise.

14 12. **“Fair Fund”** means the fund created by the Court pursuant to Section  
15 308(a) of the Sarbanes-Oxley Act of 2002 for the benefit of investors harmed by  
16 Defendants’ violations alleged in the Complaint. Additional collections, accrued  
17 interest, and funds directed to the Fair Fund by Court or SEC order or otherwise,  
18 shall be added to, and become a part of, the Fair Fund.

19 13. **“Final Determination Notice”** means the written notice sent by the  
20 Third-Party to (a) any Preliminary Claimant who timely submitted a written  
21 dispute of his, her, or its preliminarily calculated Investment and Recovery,  
22 notifying the Preliminary Claimant of the Distribution Agent’s resolution of the  
23 dispute; and (b) those Preliminary Claimants who have not responded to the Plan  
24 Notice described in paragraph 18 and for whom the Distribution Agent and/or the  
25 Third-Party has current contact information, notifying the Preliminary Claimant  
26 that he, she, or it has been deemed an Unresponsive Preliminary Claimant. The  
27 Final Determination Notice will constitute the Distribution Agent’s final ruling  
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1 regarding the status of the claim.

2 14. **“Investment”** shall mean the Preliminary Claimant’s aggregate out-  
3 of-pocket payment to purchase the Securities during the Relevant Period and does  
4 not include any interest, dividend, or other (purported) profit.

5 15. **“Net Available Fair Fund”** means the Fair Fund less Administrative  
6 Costs.

7 16. **“Payee”** means an Eligible Claimant whose distribution amount is  
8 equal to or greater than \$10.00, as calculated in accordance with the Plan of  
9 Allocation, and who will receive a Distribution Payment.

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

12 18. **“Plan Notice”** means a written notice from the Distribution Agent to  
13 each Preliminary Claimant regarding the Court’s approval of the Plan, including,  
14 as appropriate: a statement characterizing the distribution; a link to the approved  
15 Plan posted on the SEC’s website and instructions for requesting a copy of the  
16 Plan; specification of any information needed from the Preliminary Claimant to  
17 prevent him, her, or it from being deemed an Unresponsive Preliminary Claimant;  
18 his, her, or its preliminarily calculated Investment and Recovery; a description of  
19 the tax information reporting and other related tax matters; the procedure for the  
20 distribution as set forth in the Plan; and the name and contact information for the  
21 Distribution Agent and/or the Third-Party as a resource for additional information  
22 or to contact with questions regarding the distribution.

23 19. **“Plan of Allocation”** means the methodology by which a Preliminary  
24 Claimant’s Recognized Loss is calculated. The Plan of Allocation is attached as  
25 Exhibit A.

26 20. **“Preliminary Claimant”** means a Person, or their lawful successors,  
27 identified by the Distribution Agent based on her review and analysis of applicable  
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records obtained by the SEC during its investigation, litigation, or otherwise, who may have suffered a loss on the purchase of the Securities during the Relevant Period.

21. **“Recognized Loss”** means the amount of loss calculated in accordance with the Plan of Allocation.

22. **“Recovery”** shall mean the aggregate amount of the Investment recovered by the Preliminary Claimant, including redemptions, periodic withdrawals, interest or dividend payments, distribution(s), settlements, court adjudication, or otherwise.

23. **“Relevant Period”** is March 1, 2011, through April 1, 2020, inclusive.

24. **“Securities”** means membership units in EEI.

25. **“Third-Party”** is the entity identified in paragraph 30.

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

### **III. TAX COMPLIANCE**

27. The Tax Administrator shall handle the tax obligations of the Fair Fund. The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund.

28. The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is the administrator of such QSF for purposes of Treas. Reg. §

1 1.468B-2(k)(3)(I) and shall satisfy the tax-related administrative requirements  
2 imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

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

10 **IV. DISTRIBUTION AGENT**

11 29. Catherine E. Pappas will be the distribution agent for the Fair Fund  
12 (“Distribution Agent”). As an SEC employee, the Distribution Agent shall receive  
13 no compensation, other than her regular salary as an SEC employee, for her  
14 services in administering the Fair Fund.

15 30. The Distribution Agent will be responsible for administering the Fair  
16 Fund in accordance with the Plan. This will include, among other things, taking  
17 reasonable steps to obtain accurate mailing information for Preliminary Claimants;  
18 establishing a webpage and providing contact information to which to direct  
19 inquiries regarding the Plan; causing the dissemination of the Plan Notice;  
20 cooperating with the Tax Administrator appointed by the Court to satisfy any tax  
21 liabilities and to ensure compliance with income tax reporting requirements,  
22 including but not limited to Foreign Account Tax Compliance Act (FATCA);  
23 directing the disbursement of the Fair Fund in accordance with this Plan, as  
24 ordered by the Court; and researching and reconciling errors and reissuing  
25 payments, when possible. The Distribution Agent will engage a third-party (the  
26 “Third-Party”), to perform some of the administrative tasks associated with  
27 implementing the Plan. The Third-Party’s fees and expenses will be paid from the  
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1 Fair Fund as an Administrative Cost pursuant to a cost proposal submitted to, and  
2 approved by, the SEC staff.

3 31. To carry out the purposes of this Plan, the Distribution Agent is  
4 authorized to make and implement immaterial changes to the Plan upon agreement  
5 of the SEC staff. If a change is deemed to be material by the SEC staff, Court  
6 approval of a Plan amendment is required prior to implementation.

7 32. The Distribution Agent may extend any procedural deadline contained  
8 in the Plan for good cause shown, if agreed upon by the SEC staff.

9 **V. PLAN PROCEDURES**

10 **Specification of Preliminary Claimants**

11 33. Using information obtained during its investigation, litigation, and  
12 otherwise, the SEC has identified the Preliminary Claimants. Preliminary  
13 Claimants are limited to only those Persons who may have suffered a loss on the  
14 purchase of the Securities during the Relevant Period.

15 **Procedures for Locating and Notifying Preliminary Claimants**

16 34. Within thirty (30) days of Court approval of the Plan, the Third-Party  
17 will create a mailing and harm database of all Preliminary Claimants based upon  
18 information provided by the Distribution Agent; run a National Change of Address  
19 search to retrieve updated addresses for all records in the database; send the Plan  
20 Notice to each Preliminary Claimant's last known email address (if known) and/or  
21 mailing address; and establish and monitor an email address specific to this action,  
22 as well as physical mail, for Preliminary Claimant communications.

23 **Undeliverable Mail**

24 35. If any mailing is returned as undeliverable, the Third-Party will make  
25 the best practicable efforts to ascertain a Preliminary Claimant's correct address. If  
26 another address is obtained, the Third-Party will then resend it the Preliminary  
27 Claimant's new address within fifteen (15) days of receipt of the returned mail. If  
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1 the mailing is returned again, and the Third-Party, despite best practicable efforts,  
2 is unable to find a Preliminary Claimant's correct address, the Distribution Agent,  
3 in her discretion, may deem such Preliminary Claimant an Unresponsive  
4 Preliminary Claimant.

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

8 Procedures to Request Plan Notice

9 37. Any Person who does not receive a Plan Notice as described in  
10 paragraph 18, but who is aware of this Plan (e.g., through other Preliminary  
11 Claimants or on [www.sec.gov](http://www.sec.gov)) and believes they should be included as a  
12 Preliminary Claimant, should contact the Distribution Agent within forty-five (45)  
13 days from the approval of the Plan to establish that they should be considered a  
14 Preliminary Claimant. The Third-Party will send the Person a Plan Notice within  
15 thirty (30) days of receiving the Person's documentation if the Distribution Agent  
16 determines that the Person should have received a Plan Notice.

17 Failure to Respond to Plan Notice

18 38. If a Preliminary Claimant is requested to respond and fails to respond  
19 within thirty (30) days of the initial mailing of the Plan Notice or other  
20 communication to that Preliminary Claimant, the Third-Party will make no fewer  
21 than two (2) attempts to contact the Preliminary Claimant by a different contact  
22 method (e.g. telephone or email if the Plan Notice was mailed), if available; and by  
23 the initial contact method if an alternative is unavailable. The second attempt will  
24 in no event take place more than sixty (60) days from the initial mailing of the Plan  
25 Notice or communication to that Preliminary Claimant. If the Third-Party's efforts  
26 to contact the Preliminary Claimant are unsuccessful and/or the Preliminary  
27 Claimant does not respond to the Plan Notice by or other communication despite  
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1 the Third-Party's outreach, the Distribution Agent, in her discretion, may deem  
2 such Preliminary Claimant an Unresponsive Preliminary Claimant.

3 Dispute Process

4 39. Disputes will be limited to the preliminarily calculated Investment and  
5 Recovery amounts set forth in the Plan Notice. Within thirty (30) days of the final  
6 mailing of the Plan Notice to the Preliminary Claimant, the Distribution Agent  
7 must receive a written communication detailing any dispute along with any  
8 supporting documentation. The Distribution Agent will investigate the dispute,  
9 and such investigation will include a review of the written dispute as well as any  
10 supporting documentation.

11 Final Determination Notices

12 40. Within sixty (60) days of the final mailing of the Plan Notice to the  
13 Preliminary Claimant, the Third-Party will send a Final Determination Notice to  
14 (a) any Preliminary Claimant who timely submitted a written dispute as described  
15 in paragraph 39, above, notifying the Preliminary Claimant of the Distribution  
16 Agent's resolution of the dispute; and (b) those Preliminary Claimants who have  
17 not responded to the Plan Notice as described in paragraph 18, above, and for  
18 whom the Distribution Agent and/or the Third-Party has current contact  
19 information, notifying the Preliminary Claimant that he, she, or it has been deemed  
20 an Unresponsive Preliminary Claimant.

21 Distribution Methodology

22 41. The Distribution Agent will calculate each Preliminary Claimant's  
23 Recognized Loss in accordance with the Plan of Allocation. All Preliminary  
24 Claimants who are determined to have a Recognized Loss, and who are not  
25 deemed an Excluded Party, or an Unresponsive Preliminary Claimant will be  
26 deemed an Eligible Claimant. All Eligible Claimants whose distribution amount is  
27 equal to or greater than \$10.00, as calculated in accordance with the Plan of  
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1 Allocation, will be deemed a Payee and receive a Distribution Payment.

2 Establishment of a Reserve

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

8 43. After all Distribution Payments are made and Administrative Costs  
9 paid, any remaining amounts in the Reserve will become part of the Residual  
10 described in paragraph 58, below.

11 Preparation of the Payment File

12 44. Within two hundred twenty (220) days of Court approval of the Plan,  
13 the Distribution Agent, working with the Third-Party, will compile the Payee  
14 information, including the name, address, calculated Recognized Loss, and the  
15 amount of the Distribution Payment for all Payees (the "Payee List").

16 **VI. The Escrow Account**

17 45. Prior to the disbursement of funds from the Net Available Fair Fund,  
18 the Third-Party will establish an escrow account at a commercial bank not  
19 unacceptable to the SEC (the "Bank"), pursuant to an escrow agreement (the  
20 "Escrow Agreement") provided by the SEC staff.

21 **VII. DISTRIBUTION**

22 Distribution of the Fair Fund

23 46. After preparation of the Payee List, the SEC will petition the Court for  
24 authority to disburse funds from the Net Available Fair Fund to the Bank pursuant  
25 to the Payee List for distribution by the Third-Party in accordance with the Plan.  
26 Pursuant to the order, the funds will be transferred to the Bank, and the Third-Party  
27 will be responsible for issuing Distribution Payments to Payees in accordance with  
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1 the Payee List.

2 47. For any electronic payment, the exact amount necessary to make a  
3 payment shall be transferred directly to the Payee's bank account in accordance  
4 with written instructions provided to the Bank by the Third-Party.

5 48. All checks will bear a stale date of one hundred twenty (120) days  
6 from the date of issuance. Checks that are not negotiated by the stale date will be  
7 voided, and the Bank will be instructed to stop payment on those checks. A  
8 Payee's claim will be extinguished if he, she, or it fails to negotiate his, her, or its  
9 check by the stale date, and the funds will remain in the Fair Fund, except as  
10 provided in paragraph 52.

11 49. All Distribution Payments will be accompanied by a communication  
12 that includes, as appropriate: (a) a statement characterizing the distribution; (b) a  
13 statement that the tax treatment of the distribution is the responsibility of each  
14 Payee and that the Payee should consult his, her or its tax advisor for advice  
15 regarding the tax treatment of the distribution; (c) a statement that checks will be  
16 void and cannot be reissued after one hundred twenty (120) days from the date the  
17 original check was issued; and (d) contact information for the Distribution Agent  
18 for questions regarding the Distribution Payment. The letter or other mailings to  
19 Payees characterizing a Distribution Payment will be submitted by the Third-Party  
20 to the Tax Administrator and SEC staff for review and approval.

21 50. All Distribution Payments, either on their face or in the accompanying  
22 mailing, will clearly indicate that the money is being distributed from the Fair  
23 Fund established by the Court to compensate investors for harm as a result of  
24 securities law violations.

25 Post Distribution; Handling of Returned or Uncashed Checks; and Reissues

26 51. The Third-Party shall use its best efforts to make use of commercially  
27 available resources and other reasonably appropriate means to locate all Payees

1 whose checks are returned to the Third-Party as “undeliverable.” If new address  
2 information becomes available, the Third-Party will repackage the distribution  
3 check and send it to the new address. If new address information is not available  
4 after a diligent search (and in no event no later than one hundred twenty (120) days  
5 after the initial mailing of the original check) or if the distribution check is returned  
6 again, the check shall be voided and the Third-Party shall instruct the issuing  
7 financial institution to stop payment on such check. If the Third-Party is unable to  
8 find a Payee’s correct address, the Distribution Agent may remove such Payee  
9 from the distribution and the allocated Distribution Payment will remain in the Fair  
10 Fund for distribution, if feasible, to the remaining Payees.

11 52. The Third-Party will reissue checks or electronic payments to Payees  
12 upon the receipt of a valid, written request from the Payee prior to the stale date.  
13 In cases where a Payee is unable to endorse a Distribution Payment check as  
14 written (*e.g.*, name changes, IRA custodian changes, or recipient is deceased) and  
15 the Payee or the Payee’s lawful representative requests the reissuance of a  
16 Distribution Payment check in a different name, the Third-Party will request, and  
17 must receive, documentation to support the requested change. The Third-Party  
18 will review the documentation to determine the authenticity and propriety of the  
19 change request and provide a recommendation regarding the same to the  
20 Distribution Agent. If, in the discretion of the Distribution Agent, such change  
21 request is properly documented, the Third-Party will issue an appropriately  
22 redrawn Distribution Payment to the requesting party. Reissued checks will be  
23 void sixty (60) days from the reissuance, and in no event will a check be reissued  
24 after one hundred twenty (120) days from the date of the original issuance without  
25 the approval of the SEC staff.

1           53. The Third-Party will work with the issuing financial institution and  
2 maintain information about uncashed checks and any returned items due to non-  
3 delivery, insufficient addresses, and/or other deficiencies. The Third-Party is  
4 responsible for researching and reconciling errors and reissuing payments when  
5 possible. The Third-Party is also responsible for accounting for all payments. The  
6 amount of all uncashed and undelivered payments will continue to be held in the  
7 Fair Fund.

8           54. The Third-Party will make and document its best efforts to contact  
9 Payees to follow-up on the status of uncashed distribution checks (other than those  
10 returned as “undeliverable”) and take appropriate action to follow-up on the status  
11 of uncashed checks at the request of the Distribution Agent and/or the SEC staff.  
12 The Third-Party may reissue such checks, subject to the time limits detailed herein.

13           55. At the discretion of the Distribution Agent, certain costs that were not  
14 factored into the Reserve, such as bank fees for the return of a payment, may  
15 reduce the Payee’s Distribution Payment. In such situations, the Third-Party will  
16 immediately notify the Distribution Agent and the Tax Administrator of the  
17 reduction in the Distribution Payment.

18                           Receipt of Additional Funds

19           56. Should any additional funds be received pursuant to SEC or Court  
20 order, agreement, or otherwise, prior to the Court’s termination of the Fair Fund,  
21 such funds will be added to the Fair Fund and distributed, if feasible, in accordance  
22 with the Plan.

23                           Disposition of Undistributed Funds

24           57. If funds remain following the initial distribution, the Distribution  
25 Agent may seek subsequent distribution(s) of any remaining funds, if feasible. All  
26 subsequent distributions shall be made consistent with this Plan and pursuant to the  
27 Court’s order.



59. Once the Distribution Agent deems further distribution of the Fair Fund to investors infeasible, the Distribution Agent will direct any uncashed Distribution Payments to be voided and the Third-Party to return any funds remaining in the Escrow and Deposit Accounts to the SEC to become part of the Residual.

60. All Administrative Costs will be paid from the Fair Fund.

61. In accordance with the Appointment Order, upon completion of all distributions, the Tax Administrator shall complete a final accounting report, in a format to be provided by the SEC staff, and provide it to the Distribution Agent and the SEC staff to review.



1 and *Liu v. SEC*, 140 S. Ct. 1936 (2020).<sup>2</sup> If distribution of the Residual to  
2 investors is infeasible, the SEC staff may recommend the transfer of the Residual  
3 to the general fund of the Treasury subject to Section 21F(g)(3) of the Exchange  
4 Act.<sup>3</sup>

## 5 **IX. TERMINATION**

6 63. The Fair Fund will be eligible for termination and the Distribution  
7 Agent will be eligible for discharge after all the following have occurred:

- 8 a. A final report and accounting have been submitted to and  
9 approved by the Court;
- 10 b. All Administrative Costs have been paid; and
- 11 c. The Court has approved the SEC staff's recommendation as to  
12 the final disposition of the Residual consistent with Sections  
13 21(d)(3), (5), and (7) and *Liu v. SEC*, 140 S. Ct. 1936 (2020).<sup>4</sup>

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

---

20 <sup>2</sup> 15 U.S.C. § § 78u(d)(3), (5), and (7). Section 21(d)(7) was added to the  
21 Exchange Act by Section 6501(a) of the National Defense Authorization Act for  
22 Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant  
23 provisions of the NDAA apply “to any action or proceeding that is pending on, or  
24 commenced on or after, the date of” the NDAA’s enactment. NDAA, Section  
25 6501(b).

26 <sup>3</sup> Section 21F(g)(3) of the Exchange Act, 15 U.S.C. § 78u-6(g)(3), provides, in  
27 relevant part, that any monetary sanction of \$200 million or less collected by the  
28 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.

<sup>4</sup> See note 2.

**Exhibit A**

**PLAN OF ALLOCATION**

This Plan of Allocation is designed to compensate investors for their losses on the purchase of membership units in EEI (the “Securities”) from March 1, 2011, through April 1, 2020, inclusive (the “Relevant Period”). Investors who did not purchase the Securities during the Relevant Period are ineligible to recover under this Plan. Based upon records obtained by the SEC during its investigation, litigation, or otherwise, the Distribution Agent has identified those investors, or their lawful successors, who may have suffered a loss on the purchase of the Securities during the Relevant Period (the “Preliminary Claimants”).

The Distribution Agent will calculate each Preliminary Claimant’s loss (“Recognized Loss”) as his, her, or its Investment less his, her, or its Recovery.

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

Any Preliminary Claimant who suffered a Recognized Loss greater than \$0.00 pursuant to this Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant, will be deemed an Eligible Claimant.

The Distribution Agent will identify Payees and the amount to be distributed to each such Payee in accordance with the “rising tide” methodology:

- (a) The Distribution Agent will create a list of Eligible Claimants (the “Preliminary List”).
- (b) The Distribution Agent will calculate the “Individual Recovery Ratio” for each Eligible Claimant on the Preliminary List as the claimant’s Recovery divided by his, her, or its Investment.
- (c) Using the Preliminary List, the Distribution Agent will calculate the “Equal Recovery Ratio” as the sum of the Recoveries for all Eligible

1 Claimants plus the amount of the Net Available Fair Fund, divided by  
2 the sum of the Investments for all Eligible Claimants.

- 3 (d) An Eligible Claimant on the Preliminary List whose Individual  
4 Recovery Ratio exceeds the Equal Recovery Ratio will be removed  
5 from the Preliminary List and deemed ineligible to receive a  
6 distribution under this Plan of Allocation.
- 7 (e) The Distribution Agent will re-calculate the Equal Recovery Ratio for  
8 the remaining Eligible Claimants as in step (c) and exclude  
9 Preliminary Claimants whose Individual Recovery Ratios exceed the  
10 re-calculated Equal Recovery Ratio, as in step (d), iteratively, until all  
11 remaining Eligible Claimants have Individual Recovery Ratios less  
12 than or equal to the re-calculated Equal Recovery Ratio.
- 13 (f) The Distribution Agent will calculate the “Tentative Distribution” for  
14 each remaining Eligible Claimant by multiplying the final Equal  
15 Recovery Ratio by the Eligible Claimant’s Investment and subtracting  
16 from that amount the Eligible Claimant’s Recovery.
- 17 (g) An Eligible Claimant whose Tentative Distribution (plus Reasonable  
18 Interests, if applicable) is less than the “Minimum Distribution  
19 Amount” of \$10.00 will be removed from the Preliminary List, be  
20 deemed ineligible to receive a Distribution Payment, and steps (e) and  
21 (f) will be repeated until each remaining Eligible Claimant’s Tentative  
22 Distribution is equal to or greater than the Minimum Distribution  
23 Amount.
- 24 (h) The distribution amounts of Eligible Claimants remaining on the  
25 Preliminary List will equal to their respective Tentative Distribution  
26 amounts (plus Reasonable Interest, if applicable).
- 27  
28

**Additional Provisions**

**Subsequent Distributions:** In the event of subsequent distributions, the steps in the rising tide calculations in paragraphs (a) through (h) set forth above will be repeated. Any Eligible Claimants who were removed from the Preliminary List in a previous distribution and deemed ineligible pursuant to paragraphs (d) or (g) above will be reconsidered in any subsequent distribution. The amount of any Distribution Payment paid to an Eligible Claimant in a previous distribution will be considered a Recovery for the Eligible Claimant in each subsequent distribution.

**Reasonable Interest:** At the final distribution, as determined by the Distribution Agent, if all Eligible Claimants have achieved an Individual Recovery Ratio of 100% and sufficient funds remain, the Distribution Agent may direct the payment of Eligible Claimants for the time value of his, her, or its respective loss as calculated in connection with the initial distribution. Reasonable Interest will be calculated using the Short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the end of the Relevant Period through the approximate date of the disbursement of the funds. If there are insufficient funds to pay the full amount of Reasonable Interest calculated for each Eligible Claimant, each Payee will receive Reasonable Interest from the excess funds in the proportion of the Distribution Payment calculated for him, her, or it, to the aggregate Distribution Payments calculated for all other Payees.

**Minimum Distribution Amount:** The Minimum Distribution Amount will be \$10.00 (inclusive of Reasonable Interest, if any). If an Eligible Claimant's distribution amount is less than the Minimum Distribution Amount, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment and his, her, or its distribution amount will be reallocated on a *pro-rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to the Minimum Distribution Amount.

**Payee:** An Eligible Claimant whose distribution amount equals or exceeds

1 the Minimum Distribution Amount will be deemed a Payee and receive a  
2 Distribution Payment equal to his, her, or its calculated distribution amount.

3 Distribution Payment Limitation: In no event will a Payee receive from the  
4 Fair Fund in any distribution more than his, her, or its calculated loss caused by the  
5 violations described in the Complaint, nor will the sum of all Distribution  
6 Payments made, exceed the amount of the Payee's calculated loss, plus Reasonable  
7 Interest, if any.

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14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**  
16 **Southern Division**

17 **SECURITIES AND EXCHANGE**  
18 **COMMISSION**

19 Plaintiff,

20 v.

21 **ENERGY & ENVIRONMENTAL**  
22 **INVESTMENTS, LLC, et al.,**

23 Defendants.

Case No. 23-cv-00338-FWS-JDE

**PLAINTIFF SECURITIES AND  
EXCHANGE COMMISSION'S  
MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF ITS MOTION  
FOR AN ORDER TO SHOW  
CAUSE RE: PROPOSED  
DISTRIBUTION PLAN**

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1     **I. INTRODUCTION**

2             Plaintiff, the Securities and Exchange Commission (the “SEC”), respectfully  
3     submits this memorandum in support of its proposed plan of distribution to  
4     distribute funds held by the SEC (the “Plan”) to compensate investors injured by  
5     the misconduct alleged in the Complaint.

6             The SEC is simultaneously seeking, by the accompanying motion the entry  
7     of an Order to Show Cause (the “Motion”), which gives interested individuals and  
8     entities the opportunity to object to the Plan.<sup>1</sup> If the Court grants the Motion and  
9     enters the proposed Order to Show Cause, upon the completion of the steps set  
10    forth in the Order to Show Cause, the SEC will file a notice (the “Notice”) that  
11    informs the Court that the steps in the Order to Show Cause have been completed,  
12    responds to any objections, and provides to the Court a proposed Order approving  
13    the Plan or an amended plan, as appropriate. By this memorandum, the SEC  
14    provides to the Court the factual and legal basis for approving the Plan.

15    **II. BACKGROUND**

16            On February 24, 2023, the SEC filed a complaint against Energy &  
17    Environmental Investments, LLC (“EEI”); Energy & Environment, Inc. (“EE  
18    Inc.”); Amir A. Sardari (“Sardari”); and Narysa Sardari Luddy (“Luddy”)  
19    (collectively, the “Defendants”), alleging that, from March 2011 through April  
20    2020, inclusive, the Defendants perpetrated an offering fraud, raising \$9.3 million  
21    from over 200 investors nationwide. ECF No. 1. The SEC alleged that EEI  
22    fraudulently offered and sold securities from a call center based in Orange County,  
23    California, claiming it would use the money to acquire and develop clean energy  
24    projects with an emphasis on the oil and gas sector. *Id.* at ¶ 5. The SEC alleged  
25    that, in fact, the Defendants spent investor funds on payroll for the call center,

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26            <sup>1</sup> The Plan is included as attachment to the proposed Order to Show Cause.  
27  
28

1 marketing, personal expenses, and to pay other investors in a Ponzi-like scheme.  
2 *Id.* at ¶ 6. The SEC charged the Defendants with violations of the antifraud  
3 provisions of the Securities Act of 1933, 15 U.S.C. § 77a *et seq.*, and the Securities  
4 Exchange Act of 1934, 15 U.S.C. § 78a *et seq.* *Id.* at ¶¶ 10, 11.

5 On May 19, 2023, the Court entered final judgments by consent against each  
6 of the Defendants (the “Final Judgments”), ordering, in relevant part:

- 7 1. EEI to disgorge \$3,414,836.23, plus prejudgment interest of  
8 \$977,948.76 and a civil penalty of \$1,035,909.00 within thirty (30) days of  
9 the entry of judgment, ECF No. 20;
- 10 2. EE Inc. to pay a civil penalty of \$200,000 within thirty (30) days of  
11 the entry of judgment, ECF No. 21; and
- 12 3. Luddy to disgorge \$1,009,191.86 plus prejudgment interest of  
13 \$289,014.72 within thirty (30) days of the entry of judgment, ECF No. 23.<sup>2</sup>

14 Each final judgment ordering monetary relief provides that the SEC shall hold the  
15 funds and may propose a plan to distribute funds pursuant to the Fair Fund provisions  
16 of Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246(a). ECF  
17 Nos. 20 § V., 21 § V., and 23 § V.

18 On January 4, 2024, following an uncontested motion by the SEC, the  
19 Court established a Fair Fund pursuant to Section 308(a) of the Sarbanes Oxley  
20 Act of 2002, 15 U.S.C. §7246(a); appointed Heffler, Radetich & Saitta, LLP as  
21 tax administrator for the Fair Fund (“Tax Administrator”); and authorized the  
22 SEC to approve and arrange payment of tax obligations and tax administration  
23 costs without further Court order. ECF No. 22.

24  
25  
26 <sup>2</sup> The final judgment entered by consent against Sardari did not impose any monetary  
27 sanctions. ECF No. 22.

The Fair Fund currently holds over \$566,000. This amount is comprised of disgorgement paid by, and/or collected from, one or more of the Defendants pursuant to the Final Judgments, plus accrued interest (the “Fair Fund”). The funds are held in an SEC-designated account with the United States Department of the Treasury (“Treasury”). Any additional payments and collections, any funds directed to the Fair Fund pursuant to Court or SEC order or otherwise, and any interest accrued will be added to, and become a part of, the Fair Fund.

### **III. THE PLAN**

#### **A. Definitions and Preliminary Matters**

Under the Plan, to save costs, the undersigned, an SEC employee, will act as the distribution agent for the Fair Fund (the “Distribution Agent”).<sup>3</sup> As an SEC employee, the Distribution Agent will receive no compensation, other than her regular salary as an SEC employee, for her services in administering the Fair Fund.<sup>4</sup> To assist in the administration of the Fair Fund, the Distribution Agent will engage a third party, Rust Consulting, Inc. (“Rust” or the “Third-Party”), to perform some of the administrative tasks associated with administering the Plan.<sup>5</sup> Rust’s fees and expenses will be paid from the Fair Fund pursuant to a cost proposal submitted to and approved by the SEC staff.<sup>6</sup>

“Preliminary Claimants” under the Plan are those individuals or entities who may have suffered a loss as a result of their purchase(s) of EEI

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<sup>3</sup> Plan ¶ 29.

<sup>4</sup> *Id.*

<sup>5</sup> Plan ¶ 30.

<sup>6</sup> Plan ¶ 30. Based on Rust’s proposal to the SEC and the current assessment of the work to be done, the SEC anticipates Rust’s fees and expenses will not exceed \$35,000.

1 membership units (the “Security”) during the Relevant Period, which is  
 2 defined as March 1, 2011 through April 1, 2020, inclusive.<sup>7</sup> The SEC has  
 3 identified Preliminary Claimants based on its review and analysis of records  
 4 obtained during its investigation and litigation, so there will be no claims  
 5 process.<sup>8</sup> Only those Preliminary Claimants who are not Excluded Parties or  
 6 Unresponsive Preliminary Claimants, and who have suffered a Recognized  
 7 Loss as calculated under the Plan, will be “Eligible Claimants”.<sup>9</sup> An Eligible  
 8 Claimant will be a “Payee” if their distribution amount is equal to or exceeds  
 9 \$10.00 (the “Minimum Distribution Amount”).<sup>10</sup>

10 Those excluded from recovering under the Plan include the Defendants,  
 11 as well as their agents, nominees, assigns, heirs, spouses, parents, children, or  
 12 controlled entities.<sup>11</sup> To avoid a conflict of interest, the Plan also excludes the  
 13 Third-Party, as well as its employees and those persons assisting the Third-  
 14 Party in its role as described in paragraph 30 of the Plan.<sup>12</sup> The Plan further  
 15 excludes non-investors through the exclusion of entities that purchase for value  
 16 a Preliminary Claimant’s claim to obtain a recovery from the Fair Fund, as  
 17 well as Unresponsive Preliminary Claimants.<sup>13</sup>

18 The Distribution Agent will calculate a Preliminary Claimant’s  
 19 Recognized Loss as the difference between their Investment and their

---

20 <sup>7</sup> Plan ¶¶ 23-24.

21 <sup>8</sup> Plan ¶¶ 2, 33.

22 <sup>9</sup> Plan ¶ 10.

23 <sup>10</sup> Plan ¶ 16.

24 <sup>11</sup> Plan ¶ 11.

25 <sup>12</sup> *Id.*

26 <sup>13</sup> *Id.*, *see also*, ¶ 26.

1 Recovery.<sup>14</sup> A Preliminary Claimant's Investment is their aggregate payment  
 2 to purchase the Security during the Relevant Period and does not include any  
 3 interest, dividend, or other (purported) profit.<sup>15</sup> Their Recovery is the  
 4 aggregate amount of the Investment recovered by the Preliminary Claimant,  
 5 whether through redemptions, periodic withdrawals, interest or dividend  
 6 payments, distribution(s), settlements, court adjudication, or otherwise.<sup>16</sup>  
 7 Under the Plan, Preliminary Claimants will be given an opportunity to dispute  
 8 the Distribution Agent's calculation of their Investment and their Recovery.<sup>17</sup>

### 9 **B. The Plan of Allocation**

10 In the Plan, the SEC proposes using the "rising tide" methodology to  
 11 calculate Distribution Payments.<sup>18</sup> A preliminary calculation of losses to  
 12 Preliminary Claimants aggregates to more than \$9.5 million, which far exceeds the  
 13 amount in the Fair Fund. Some investors with losses have recovered none of their  
 14 Investment, while others have recovered as much as 92% of their Investment.  
 15 Under the rising tide methodology, Recoveries previously obtained by Preliminary  
 16 Claimants through withdrawals, interest payments, or otherwise, are considered  
 17 distributions. Any Preliminary Claimant who has previously recovered a specific  
 18 calculated percent of their Investment will not get a distribution until those who  
 19 have previously recovered none of their Investment recoup that calculated percent,  
 20 called the "Equal Recovery Ratio".<sup>19</sup>

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21 <sup>14</sup> Plan, Exhibit A (Plan of Allocation)

22 <sup>15</sup> Plan ¶ 14.

23 <sup>16</sup> Plan ¶ 22.

24 <sup>17</sup> Plan ¶ 39.

25 <sup>18</sup> Plan, Exhibit A.

26 <sup>19</sup> The Equal Recovery Ratio is the highest percentage recovery that can be shared  
 27 by all investors. It is determined by first calculating the amount of funds necessary  
 28

1 Using the rising tide approach and based on preliminary calculations,<sup>20</sup> 144  
2 of the 234 identified investors who suffered harm (approximately 61%) would get  
3 a distribution payment that would bring their respective aggregate Recoveries to  
4 approximately 10.45% of their respective Investments. Those investors with  
5 Recoveries exceeding 10.45% will not be eligible for a Distribution Payment until  
6 all other investors recover 10.45%.<sup>21</sup>

7 By way of illustration, the chart below reflects the use of the rising tide  
8 methodology to compare the estimated Distribution Payments for three  
9 hypothetical Preliminary Claimants, all of whom invested \$200,000: Investor A,  
10 previously recovered nothing (0%); Investor B, recovered \$10,000 (5%); and  
11 Investor C, recovered 15%. Using the rising tide methodology and the preliminary  
12 calculation of 10.45% as the Equal Recovery Rate, Investor A would receive a  
13 Distribution Payment of \$20,900 and Investor B would receive a Distribution  
14 Payment of \$10,900, thereby bringing both their Recoveries to 10.45% of their  
15 Investment. Investor C, who has already recovered 15% of their Investment,  
16 which is more than the Equal Recovery Ratio, would receive no Distribution  
17 Payment.

18  
19  
20 to bring the investor with the largest percent of loss to the same level as the  
21 investor in the next loss tier. The calculation is repeated as many times as  
22 necessary until all investors reach the same loss tier, and that loss tier serves as the  
23 minimum recovery of all the investors—the equal recovery rate.

24 <sup>20</sup> The SEC expects that the numbers will change based on, among other things,  
25 investor corrections (if any) of their preliminarily calculated Investment and  
26 Recovery, interest accrued on the Fair Fund prior to distribution, and the final  
27 calculation of a reserve for Administrative Costs.

28 <sup>21</sup> The Plan provides for additional distributions if feasible. Plan ¶ 57. As  
explained in the Plan (Exhibit A, “Subsequent Distributions”), persons excluded in  
prior distributions because their Recovery exceeded the Equal Recovery Ratio may  
be determined to be eligible in a subsequent distribution pursuant to the Rising  
Tide methodology.

| Line | Line Identification   | Investor A   | Investor B   | Investor C   |
|------|---|--------------|--------------|--------------|
| 1    | Investment  | \$200,000.00 | \$200,000.00 | \$200,000.00 |
| 2    | Equal Recovery Ratio  | 10.45%       | 10.45%       | 10.45%       |
| 3    | Amount Necessary for 10.45% Recovery (Line 1*Line 2)                                    | \$20,900     | \$20,900     | \$20,900     |
| 4    | Previous Recovery   | \$0          | \$10,000     | \$30,000     |
| 5    | Percent Recovered (Line 4/Line 1 as a percent)  | 0.00%        | 5.00%        | 15.00%       |
| 6    | (Est.) Distribution Payment (Line 3-Line 4)   | \$20,900     | \$10,900     | \$0.00       |
| 7    | Final Percent Recovered with Distribution Payment ((Line 4+Line 6)/Line 1 as a percent) | 10.45%       | 10.45%       | 15.00%       |

The SEC alternatively considered the net loss methodology. Based on preliminary calculations, application of the net loss methodology results in all identified harmed investors receiving a distribution, but there is a significant disparity in final Recovery rates, with Recoveries ranging from 5.49% to 93.02%. By way of illustration, the chart below depicts the hypothetical Distribution Payment results under the net loss methodology: Investor A would receive a Distribution Payment of \$11,053, for a total Recovery of 5.53% of their Investment; Investor B would receive a Distribution Payment of \$10,500, for a total Recovery of 10.25% of their Investment; and Investor C would receive a Distribution Payment of \$9,395, for a total Recovery of 19.70% of their Investment.

| Line | Line Identification  | Investor A | Investor B | Investor B |
|------|--|------------|------------|------------|
| 1    | Investment   | \$200,000  | \$200,000  | \$200,000  |
| 2    | Previous Recovery  | \$0        | \$10,000   | \$30,000   |
| 3    | Net Loss (Line 1-Line 2)   | \$200,000  | \$190,000  | \$170,000  |
| 4    | Pro Rata Percentage (Net Available Distribution Amount (est. \$525,000)/ aggregate Net Losses (est. \$9.5 mm)) | 5.53%      | 5.53%      | 5.53%      |
| 5    | (Est.) Distribution Payment (Line 3 * Line 4)  | \$11,060   | \$10,507   | \$9,401    |
| 6    | Total Recovery with Distribution Payment (Line 5+Line 2)   | \$11,060   | \$20,507   | \$39,401   |
| 7    | Percent Total Recovery with Distribution Payment (Line 6/Line 1, as a percent)                                 | 5.53%      | 10.25%     | 19.70%     |

Based on the results set forth above, and as further discussed below, the SEC believes the rising tide methodology results in the most equitable distribution of the Fair Fund.

### **C. Additional Provisions**

The SEC contemplates one distribution of the Net Available Fair Fund.<sup>22</sup> Notwithstanding, if sufficient funds remain in the Fair Fund after one or more distribution(s) and/or if additional funds are collected in this action, the Distribution

<sup>22</sup> All capitalized terms used in this memorandum but not defined are used as defined in the Plan.



1 Agent may determine additional distribution(s) feasible and seek authority from this  
 2 Court to distribute.<sup>23</sup> The amount of any Distribution Payment paid to a Payee in a  
 3 previous distribution will be considered a Recovery for that Payee in each subsequent  
 4 distribution. Upon the completion of all distributions under the Plan, the Distribution  
 5 Agent will submit to the Court a final accounting and petition the Court for an order, if  
 6 and as appropriate, approving the final accounting, discharging the Distribution Agent,  
 7 disposing of the Residual, and terminating the Fair Fund.<sup>24</sup>

#### 8 9 **IV. THE PLAN SHOULD BE APPROVED**

10 By the Plan, the SEC seeks to compensate investors harmed by the wrongful  
 11 conduct described in the Complaint. The Court should approve the Plan because it  
 12 fairly and reasonably allocates the Fair Fund to achieve this purpose.

13 A district court has broad discretion in approving a plan of distribution. *SEC*  
 14 *v. Murray*, Civ. Act. No. 12-CV-01288-EMC, 2018 U.S. Dist. LEXIS 127221, \*2  
 15 (N.D. Cal. Jul. 30, 2018), *citing SEC v. Wang*, 944 F.2d 80, 85 (2d Cir. 1991). *Cf.*  
 16 *SEC v. Aequitas Management, LLC*, 16-cv-00438, 2020 U.S. Dist. LEXIS 57325,  
 17 \*11-12 (D. Or. Mar. 31, 2020) (internal citations excluded) (a court has extremely  
 18 broad power when determining the appropriate action to be taken in receivership  
 19 administration, especially where a federal agency seeks enforcement in the public  
 20 interest).

21 The district court's determination is reviewed for abuse of discretion. *See*  
 22 *Official Comm. Of Unsecured Creditors of WorldCom*, 467 F.3d 73, 84 (2d Cir.  
 23 2006); *Cf. CFTC v. Topworth International, Ltd.*, 205 F.3d 1107, 1115 (9th Cir.  
 24 1999) (supervision of an equitable receivership is reviewed for an abuse of

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25 <sup>23</sup> Plan ¶ 57.

26 <sup>24</sup> Plan ¶ 62.

discretion); *CFTC v. Inc21.com Corp.*, 475 Fed. Appx. 106, 108 (9th Cir. Mar. 30, 2012) (reviewing a district court’s order directing a *pro rata* distribution for abuse of discretion).

The job of the district court is to ensure that the plan of distribution is fair and reasonable. *Murray*, 2018 U.S. Dist. LEXIS 127221 at \*2-\*3. *See also, SEC v. Champion-Cain*, 19-cv-1628-LAB-AHG; 2023 U.S. Dist. LEXIS 31535, \*9; 2023 WL 2215955 (S.D. Ca. Feb. 24, 2023) (in the context of a receivership; a distribution must be equitable and fair); *Aequitas*, 220 U.S. Dist. LEXIS 57325, \*12 (in the context of a receivership); *SEC v. Bivona*, 16-cv-01386-EMC, 2017 U.S. Dist. LEXIS 148575, \*17 (N.D. Cal. September 13, 2017), *citing Wang*, 944 F.2d 80, 85 (in reviewing a plan proposed by the SEC and the Receiver, the Court must “satisf[y] itself that the distribution of proceeds . . . is fair and reasonable”); *SEC v. Copeland*, 11-cv-8607-R, 2014 U.S. Dist. LEXIS 195315, \*5 (C.D. Cal. May 19, 2014), *aff’d*, 645 F.3d. Appx. 596 (9th Cir. 2016) (same).

In this case, the SEC proposes using the rising tide methodology to ensure that those Preliminary Claimants who have recovered some of their Investment do not get additional funds through the SEC distribution until those who have recovered little or none of their Investment recoup some of that Investment. The SEC believes this methodology to be the most fair and reasonable approach to distribution under the circumstances here — limited funds and Preliminary Claimants with significantly varying Recoveries. *See Champion-Cain*, 2023 U.S. Dist. LEXIS 31535, \*26 (finding the rising tide method especially equitable when there are widely varying rates of recovery and factual circumstances distinguishing each claimant); *CFPB v. Pension Funding, LLC*, 15-cv-01329-JLS-JCG, 2017 U.S. Dist. LEXIS 221496; 2017 WL 10562570 (C.D. Ca. May 31, 2017) (finding the rising tide method most equitable where 75% of investors would receive a distribution; and others may receive a distribution in future disbursements); *CFTC*

1 v. *Wilson*, 11-cv-1651-GPC-BLM; 2013 U.S. Dist. LEXIS 99992, \*17-18; 2013  
2 WL 3776902 (S.D. Ca., July 17, 2013) (approving the rising tide methodology as  
3 equitable where, among other things, over 50 customers would receive a  
4 distribution, 28 would not but had received prior distributions in the form of  
5 withdrawals, and there were insufficient funds to make everyone whole). In this  
6 case, and based on preliminary calculations, use of the rising tide methodology will  
7 result in all harmed investors recovering at least 10.45% of their Investments. The  
8 commonly used alternative (net loss) approach would result in disparate  
9 Recoveries ranging from 5.8% to 93%.

10 The rest of the Plan is also fair and reasonable. District Courts have  
11 discretion to exclude claimants involved in the underlying scheme. *See Champion-*  
12 *Cain*, 2023 U.S. Dist. LEXIS 31535, \*18-19 (in the context of a receivership,  
13 courts may approve plans that exclude participants in a fraudulent scheme,  
14 including insiders who had no knowledge of the fraud); *Bivona*, 2017 U.S. Dist.  
15 LEXIS 148575, \*\*41-44 (district courts have discretion to exclude from a  
16 distribution plan active wrongdoers, persons whose unlawful activity resulted in  
17 investor harm, and claims of persons who received, or would receive, a profit from  
18 the fraud). *See also SEC v. McGinn, Smith & Co.*, 10-cv-457, 2020 U.S. Dist.  
19 LEXIS 118746, \*6-8 (Jul. 7, 2020); *SEC v. McGinn, Smith & Co.*, 10-cv-457, 2019  
20 U.S. Dist. LEXIS 35678, \*5-8 (N.D.N.Y. Mar. 6, 2019) (and the cases cited  
21 therein) (district courts have discretion to exclude claimants involved in the  
22 underlying fraudulent scheme). As indicated, the remaining exclusions are  
23 intended to avoid any conflict of interest, discourage payments to non-investors,  
24 and to enable the staff to move the distribution forward notwithstanding  
25 unresponsive investors.

26 The remaining provisions of the Plan provide for the careful and orderly  
27 distribution of the Fair Fund and the reporting of the results to the Court. Upon  
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1 completion of the final distribution, the SEC staff will file a motion with this Court  
2 to approve the final accounting, including a recommendation as to the final  
3 disposition of the Residual consistent with Sections 21(d)(3), (5), and (7)<sup>25</sup> of the  
4 Exchange Act and *Liu v. SEC*, 140 S. Ct. 1936 (2020). If distribution of the  
5 Residual to investors is infeasible, the SEC staff may recommend that the monies  
6 be transferred to the general fund of the U.S. Treasury subject to Section 21F(g)(3)  
7 of the Exchange Act.<sup>26</sup> In moving this Court to approve the final accounting, the  
8 SEC staff will also seek from the Court an Order that discharges the Distribution  
9 Agent and terminates the Fair Fund.

10 The SEC believes that the Plan fairly and reasonably distributes the Fair Fund  
11 to investors harmed by the conduct underlying the Complaint and accordingly,  
12 respectfully requests that it be approved.

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21 <sup>25</sup> 15 U.S.C. § 78u(d)(3), (5), and (7). Section 21(d)(7) was added to the  
22 Exchange Act by Section 6501(a) of the National Defense Authorization Act for  
23 Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant  
provisions of the NDAA apply “to any action or proceeding that is pending on, or  
commenced on or after, the date of” the NDAA’s enactment. NDAA, Section  
6501(b).

24 <sup>26</sup> Proposed Plan, ¶¶ 62, 63. Section 21F(g)(3) of the Exchange Act, 15 U.S.C. §  
25 78u-6(g)(3), provides, in relevant part, that any monetary sanction of \$200 million  
26 or less collected by the SEC in any judicial action brought by the SEC under the  
27 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.

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**V. CONCLUSION**

For all the foregoing reasons, the SEC respectfully requests that this Court enter an Order substantially in the form of that included with the Motion and grant such other relief as the Court deems just and proper.

**CERTIFICATE OF COMPLIANCE PURSUANT TO L.R. 11-6.2**

The undersigned, counsel of record for Plaintiff, Securities and Exchange Commission, certifies that this brief contains 3731 words, which complies with the word limit of L.R. 11-6.1.

Respectfully submitted,

/s/ Catherine E. Pappas

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SECURITIES AND EXCHANGE COMMISSION

Dated: March 1, 2024