

May 28, 2021

Electronically Transmitted

United States Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
Washington D.C.
Attn: David Fredrickson, Esq.

Dear Mr. Fredrickson,

On behalf of PG&E Fire Victim Trust, a Delaware statutory trust (the “**Trust**”), we hereby request that the staff of the Division of Corporation Finance (the “**Staff**”) of the Securities and Exchange Commission (the “**Commission**”) provide interpretive guidance regarding the availability to the Trust of the temporary exemption from Section 16 of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**” and Section 16 thereof “**Section 16**”), contained in Rule 16a-2(d)(1) thereunder (“**Rule 16a-2(d)(1)**”). More particularly, we respectfully request that the Staff confirm our opinion that the Trust, when engaging in transactions in equity securities of PG&E Corporation, a California corporation (“**Parent**”), may be considered to be acting as a “fiduciary in a similar capacity” within the meaning of clause (iv) of Rule 16a-2(d)(1). Accordingly, such transactions are exempt from Section 16 during the twelve-month period following the Trust’s appointment and qualification.

SUMMARY

As explained in further detail in the remainder of this letter:

1. The Trust was created under the authority of, and is supervised by, the federal bankruptcy Court overseeing the voluntary reorganization proceedings instituted by Parent and its principal operating subsidiary (together, the “**Debtors**”).
2. In order to facilitate the emergence of the Debtors from bankruptcy, the Trust assumed all liabilities of the Debtors to the victims of certain fires, and was funded by the Debtors primarily with cash and shares of Parent’s common stock (“**Common Stock**”) which are registered for trading on The New York Stock Exchange.
3. The number of shares of Common Stock received by the Trust (substantially in excess of 10% of all Common Stock outstanding) made it subject to the provisions of Section 16.
4. Rule 16a-2(d)(1) temporarily exempts from the application of Section 16 transactions by persons or entities authorized by law to administer the estates or assets of others, and expressly includes among such persons or entities executors, receivers, trustees in bankruptcy, conservators and liquidating agents, as well as a “[f]iduciary in a similar capacity.”



5. The Trust, in our view, shares with the persons or entities listed in Rule 16a-2(d)(1) the duties of an administrator of the assets of others, and, like them, is subject to the strictures of a legal regime that is similar in nature and scope to the legal framework under which such persons or entities discharge their duties. Key attributes of the Trust and its administration that demonstrate such similarities include the following:
 - a. the Trust was authorized by and operates under court order and supervision (a U.S. federal bankruptcy court);
 - b. the Trust has a defined purpose and carefully identified beneficiaries (the satisfaction and payment, to the extent of funds available, of the claims of the fire victims, who are the only beneficiaries of the Trust);
 - c. the Trust administrators are subject to a heightened standard of care:
 - i. the administration of the Trust includes a trustee, who is a fiduciary to the Trust (the “Trustee”), and an oversight committee (the Trust Oversight Committee or “TOC”) charged with fiduciary responsibilities exclusively to the fire victims; and
 - ii. the Trust is authorized to sell Common Stock only when the Trustee determines, in consultation with the Trust’s investment and financial advisor, that to do so is in the best interest of the beneficiaries of the Trust;
 - d. the Trust administrators are subject to restrictions that seek to prevent self-dealing and conflicts of interests; indeed, the Trustee is required to have no interest in, and to be independent of, the Debtors, the TOC, and the fire victim claimants; and
 - e. the Trust’s administration of the assets of others is of a temporary nature; following the completion of its limited purpose through the exhaustion of its assets for the benefit of the fire victims, the Trust will automatically dissolve 90 days after the bankruptcy Court has approved the Trustee’s final accounting.
6. In addition to the similarities between the Trust and the fiduciaries that are expressly exempted from Section 16 by Rule 16a-2(d)(1), several other features of the Trust make it clear that transactions in Common Stock by the Trust do not pose the risk of the abuses that Congress sought to address when Section 16 was enacted. For example:
 - a. The Trust has no direct or indirect involvement in the management of the business or affairs of the Debtors or any of their affiliates. In fact, seeking to divest itself of any semblance of control with respect to Parent, the Trust has agreed that, except for shareholder votes pertaining to matters directly related to the natural environment or safety, any shares of Common Stock it may from time to time own in excess of 9.9% of



all Common Stock outstanding will be voted in the same proportion as all other shares of Common Stock are voted by the remaining shareholders of Parent.

- b. The Trust's governing documents carefully regulate the circumstances in which trading in Common Stock by the Trust is allowed:

First, the Trustee is required to consult with the Trust's investment and financial advisor and to obtain the TOC's consent prior to any sale of Common Stock;

Second, the Trustee is directed to continue to hold the Trust's Common Stock until such time as it determines that a sale is in the best interest of the fire victims; and

Third, the Trustee has been exempted from any portfolio diversification obligation that might otherwise have applied.

In light of these restrictions, the possibilities of opportunistic trading in Common Stock by the Trust are likely to be rare.

- c. the Trustee is compensated with a flat monthly fee that has no relation to the performance of, or returns on, the Trust's holdings of Common Stock.

These considerations, together with the additional facts and analysis set forth in the remainder of this letter, support our request that the Staff concur with our opinion expressed at the end of Part II below.

I. FACTUAL BACKGROUND

1. On January 29, 2019, Parent and its principal operating subsidiary Pacific Gas and Electric Company, a California utility company ("**Utility**"), filed in the U.S. Bankruptcy Court for the Northern District of California (the "**Bankruptcy Court**") a joint request for relief under chapter 11 of the U.S. Bankruptcy Code.
2. At the time of the filing, tens of thousands of tort and other claims were pending against Utility for its alleged responsibility in connection with fires that occurred between 2015 and 2018 (collectively, the "**Fire Victim Claims**").
3. With respect of the Fire Victim Claims, the Plan of Reorganization (the "**Plan**") approved by order of the Bankruptcy Court dated June 20, 2020 (the "**Confirmation Order**")¹ provided for the creation of the Trust and its funding by the Debtors with cash, shares of Common Stock and certain other assets (collectively, the "**Aggregate Fire Victim Consideration**").

¹ The Confirmation Order, together with the Plan attached thereto as Exhibit A, is available at <https://www.sec.gov/Archives/edgar/data/75488/000095015720000795/ex2-1.htm>



4. The Plan became effective pursuant to its terms and the Confirmation Order on July 1, 2020 (the “**Plan Effective Date**”).²
5. As directed by the Confirmation Order,³ the Trust’s governing document, the PG&E Fire Victim Trust Agreement (the “**Trust Agreement**”),⁴ also became effective on the Plan Effective Date.
6. According to the Confirmation Order, the Trust is required to “administer, process, settle, resolve, liquidate, satisfy, and pay all Fire Victims Claims[.]” and funding of the Trust with the Aggregate Fire Victim Consideration “shall be in restitution and full and final satisfaction, release, and discharge of all Fire Victim Claims.”⁵
7. The Trust has no beneficiaries other than the holders of Fire Victim Claims;⁶ such beneficiaries are entitled to receive distributions from the Trust, but only to the extent that their claims have been “approved”⁷ in compliance with an adjudicatory process governed by rules approved by the Bankruptcy Court (the “**Claim Resolution Procedures**” or “**CRP**”).⁸
8. Except as discussed in the preceding paragraph, holders of Fire Victim Claims do not have, with respect of the Trust assets, any other rights, including “upon dissolution, liquidation or winding up” of the Trust,⁹ or “rights comparable to shareholders of a corporation[.]”¹⁰ in fact, in the unlikely event that the Trust’s assets will exceed the aggregate of all claims approved, the Trust Agreement directs that the excess shall be distributed to a charity of the Trustee’s choice.¹¹
9. The claims of holders of Fire Victim Claims (i) are not represented by any certificate or other instrument;¹² (ii) do not possess any voting rights;¹³ (iii) are not entitled to any dividends or interest payments;¹⁴ and (iv) may be transferred only upon death, by operation of law or to a successor by merger, consolidation or purchase of substantially all of the assets of the holder.¹⁵

² See Current Report on Form 8-K filed by Parent with the Commission on July 2, 2020.

³ Confirmation Order, ¶ 18.c.

⁴ The Trust Agreement is available at <https://www.sec.gov/Archives/edgar/data/1004980/000119312520191183/d923552dex994.htm>

⁵ Confirmation Order, ¶ 18.a.

⁶ Trust Agreement, Section 1.5(a).

⁷ Trust Agreement, Section 2.4(a).

⁸ Confirmation Order, ¶ 31.

⁹ Trust Agreement, Section 1.5(a).

¹⁰ Trust Agreement, Section 1.5(b).

¹¹ Trust Agreement, Section 4.3(b).

¹² Trust Agreement, Section 8.8(b).

¹³ Trust Agreement, Section 8.8(c).

¹⁴ Trust Agreement, Section 8.8(d).

¹⁵ Trust Agreement, Section 8.11.



10. The Confirmation Order appointed the Trustee¹⁶ and directed that representatives of the holders of Fire Victim Claims be appointed to the TOC as of the Plan Effective Date.
11. The Trust Agreement, as explained in greater detail in Part II.3 below, provides, among other things, that
 - a. the Trustee “is and shall act as the fiduciary to the Trust”¹⁷ and the members of the TOC “shall serve in a fiduciary capacity representing current holders of Fire Victim Claims in the administration of the Trust . . . [and] shall not have any fiduciary duties or responsibilities to any party other than holders of Fire Victim Claims[.]”¹⁸
 - b. the Trust is directed to sell its holdings of Common Stock only upon a determination that such sale is “in the best interest of the beneficiaries of the Trust;”¹⁹
 - c. the purposes of the Trust are limited to the administration, settlement, satisfaction and payment of the Fire Victim Claims, and the maximization and monetization of the Trust assets for the purposes of paying such claims, all in compliance with the Plan and the Confirmation Order;²⁰
 - d. the duration of the Trust is set to automatically end upon the exhaustion of the Trust assets and the approval by the Bankruptcy Court of the final accounting report submitted by the Trustee;²¹
 - e. the Trust is directed to evaluate all Fire Victim Claims in compliance with the CRP,²² to determine which of such claims are “approved and eligible for payment” (“**Approved Claims**”)²³ and to pay such Approved Claims “in a fair, consistent and equitable manner[.]”²⁴
 - f. the Trustee, and others assisting in the administration of the Trust, including the Claims Administrator and Claims Processor and their agents, are required “to have no interest in and at all times . . . [to] be independent of the Debtors, the Fire Victim Claimants, the TOC, and their agents[.]”²⁵

¹⁶ Confirmation Order, ¶ 18.e.iv.
¹⁷ Trust Agreement, Section 2.1(a).
¹⁸ Trust Agreement, Section 6.2.
¹⁹ Trust Agreement, Section 3.2(b).
²⁰ Trust Agreement, Section 1.2.
²¹ Trust Agreement, Section 8.2(b).
²² Trust Agreement, Section 2.4.
²³ Trust Agreement, Exhibit 2, Part VII, clause A.
²⁴ Trust Agreement, Section 1.2
²⁵ Trust Agreement Section 1.2



- g. in addition, the Trustee is not permitted, “during the term of his or her service, [to] hold a financial interest in, act as attorney or agent for, or serve as any other professional for any entity with a financial interest in the Trust[;]”²⁶
 - h. the Trustee is required to prepare and file with the Bankruptcy Court and publicly disclose on the Trust’s website annual reports containing audited financial statements, together with claims reports containing summaries of the number and type of claims disposed of during the period covered by the financial statements;²⁷
 - i. the Trustee is authorized to “contract for the establishment and continuing maintenance of a website ... to aid in communicating information to Fire Victims and in making the activities of the Trust as transparent as possible;”²⁸
 - j. the Trustee’s compensation is a monthly flat fee initially set forth in the Trust Agreement and subject to annual review in negotiations between the Trustee and the TOC;²⁹
 - k. TOC members do not receive compensation for their services, but are entitled to reimbursement of expenses;³⁰
 - l. the Bankruptcy Court retains jurisdiction “with respect to any action relating to or arising out of the Trust;”³¹ and
 - m. the approval of the Bankruptcy court is required for any amendment to the Trust Agreement that is “in any material way . . . inconsistent with the Plan, the Confirmation Order or the Bankruptcy Code.”³²
12. As required by the Plan and the Confirmation Order, between July 1 and August 3, 2020, the Debtors transferred to the Trust pursuant to an assignment agreement dated as of July 1, 2020 (the “**Assignment Agreement**”)³³ approximately 480 million shares of Common Stock (the “**Chapter 11 Plan Shares**” and, together with any other shares of Common Stock that may from time to time be held by the Trust, the “**Portfolio**”). Except for certain shares of Common Stock that the Debtors may be required to transfer to the Trust pursuant to the anti-dilution provisions of the Plan and the Assignment Agreement, the Trust is not expected to receive additional Common Stock from Parent or any of its affiliates.

²⁶ Trust Agreement, Sections 5.9.

²⁷ Trust Agreement, Section 2.2(c).

²⁸ Trust Agreement, Section 2.1(e)(xxviii). The Trust website has been established and is available at <https://www.firevictimtrust.com/>

²⁹ Trust Agreement, Section 5.6(a).

³⁰ Trust Agreement, Section 6.5.

³¹ Trust Agreement, Section 1.6.

³² Trust Agreement, Section 8.3.

³³ The Assignment Agreement is available at <https://www.sec.gov/Archives/edgar/data/1004980/000119312520191183/d923552dex993.htm>



13. Because the Common Stock is registered under Section 12(b) of the Exchange Act and at the time of receipt by the Trust the Chapter 11 Plan Shares represented more than 10% of Parent's issued and outstanding Common Stock, the Trust became subject to the reporting obligations of Section 13(d) and 16(a) of the Exchange Act.
14. In anticipation of the approval of the Plan and the issuance of the Confirmation Order, on May 26, 2020, Parent requested from the Internal Revenue Service ("IRS") a private letter ruling ("PLR") regarding certain matters related to the treatment of the Trust as a "grantor trust" for federal income tax purposes. Because this treatment eliminates taxation at the Trust level, it maximizes the assets available for the payment of Fire Victim Claims and, accordingly, reduces the portion of such claims that will remain unpaid upon exhaustion of the Trust assets.
15. On January 22, 2021, the IRS granted Parent's request. As a condition to the relief granted, the IRS requires that, prior to each sale of Chapter 11 Plan Shares,
 - a. the Trust retransfer to Utility the number of Chapter 11 Plan Shares intended to be sold,
 - b. Parent, on behalf of Utility, transfer to the Trust an equal number of substitute shares of Common Stock (the "New Shares"), and
 - c. immediately upon receipt thereof, the Trust sell the New Shares in lieu of the Chapter 11 Plan Shares originally intended to be sold.
16. In other words, the tax relief granted by the IRS depends on the Trust's ability to exchange, on a one-for-one basis, in advance of any sale of shares of Common Stock, the Chapter 11 Plan Shares it currently owns and intends to sell for the same number of New Shares received from Parent immediately prior to the sale (each such exchange, a "Share Exchange").³⁴
17. The Trust, Parent and Utility currently anticipate that they will enter into an agreement (the "Exchange Agreement") pursuant to which, among other things, Utility will provide to the Trust appropriate documentation to be filed by the Trust with the IRS formalizing the status of the Trust as a "grantor trust" for tax purposes, and the Trust, Parent and Utility will agree to terms and procedures that will make it possible for the Trust to consummate a Share Exchange prior to each sale of New Shares.

³⁴

Representatives of Parent have advised the Trust that the sale of the newly received Common Stock will allow the Trust to satisfy Treasury Regulation Section 1.1032-3(c), allowing for nonrecognition of gain if certain conditions are met. One of these conditions is that the acquiring entity (*i.e.*, the Trust) immediately transfers the stock to acquire money from a third party (*i.e.*, sells the stock). The IRS has ruled that transactions such as those contemplated by the Exchange Agreement satisfy the requirements of Treasury Regulation Section 1.1032-3(c).



18. On April 29, 2021, the Bankruptcy Court authorized the Trust to execute the Exchange Agreement substantially in the terms set forth in the term sheet attached to the Trust's application filed with the court on April 5, 2021.
19. Parent has submitted to the Department of Financial Protection & Innovation of the State of California (the "DFPI") an application for the qualification of each Share Exchange under Section 25121 of the California Corporations Code (the "CCC"), and the approval of the fairness of the terms and conditions of each such exchange pursuant to Section 25142 of the CCC. Following a hearing on these matters on May 18, 2021, the Commissioner of the DFPI certified that the terms and conditions of the proposed Share Exchanges "are fair and are approved."
20. The Trust entered into a Registration Rights Agreement with Parent, dated as of July 1, 2020 (the "**Registration Rights Agreement**")³⁵ requiring the Parent to register the Chapter 11 Plan Shares for resale. Pursuant to the Registration Rights Agreement, on February 26, 2021, Parent filed Registration Statement No. 333-253630-01 (the "**Registration Statement**") which includes resales of the Chapter 11 Plan Shares by the Trust and became effective upon filing pursuant to Rule 462(e) under the Securities Act of 1933, as amended (the "**Securities Act**"). The Exchange Agreement is contemplated to provide that the Registration Rights Agreement will be amended in form and substance mutually satisfactory to the Trust and Parent to address the new proposed structure, and that promptly following the execution of the Exchange Agreement, Parent will amend the Registration Statement or file a new registration statement under the Securities Act to register resales of the New Shares by the Trust.

Given the novel nature of the Exchange Agreement and the Share Exchanges to be consummated thereunder, and seeking to avoid for the Trust the distraction and expense of any potential litigation surrounding the characterization of those transactions, we respectfully request that the Staff concur with our opinion set forth at the end of Part II below.

II. LEGAL ANALYSIS

1. Rule 16a-2(d)(1)

As in effect on the date of this request, Rule 16a-2(d)(1) provides:

"Transactions by a person or entity shall be exempt from the provisions of section 16 of the Act for the 12 months following appointment and qualification, to the extent such person or entity is acting as:

- (i) Executor or administrator of the estate of a decedent;
- (ii) Guardian or member of a committee for an incompetent;

³⁵

The Registration Rights Agreement is available at <https://www.sec.gov/Archives/edgar/data/0001004980/000119312520185803/d947912dex102.htm>



- (iii) Receiver, trustee in bankruptcy, assignee for the benefit of creditors, conservator, liquidating agent, or other similar person duly authorized by law to administer the estate or assets of another person; or
- (iv) Fiduciary in a similar capacity.”³⁶

When the Commission first proposed in 1988 what became Rule 16a-2(d)(1),³⁷ it explained the rationale for the exemptions contemplated therein as follows:

“Certain transactions are beyond the control of the insider or are part of the ordinary course of a legitimate business. Where the disclosure of such transactions would not further the purposes of section 16(a)—to provide shareholders with a mechanism to monitor insider transactions for possible short-swing profit recovery, and to provide investors with a possible indication of the insider’s view concerning the prospects of the company—it is appropriate to exclude them from section 16(a) reporting. The proposed rules would contain five such exclusions: (1) a temporary 12 month exclusion for fiduciaries that are liquidating estates; . . .

The first exclusion relates to fiduciaries such as executors and trustees in bankruptcy. Trades by these persons, where conducted to liquidate an estate holding ten percent of a class of equity securities, will in effect end insider status. They perform a useful service for purposes of probate. Generally, requiring reports of such trades would serve no section 16 purpose.”³⁸

Along the same lines, a leading treatise explains:

“Securities transactions effected by a fiduciary in connection with the administration or liquidation of an estate generally are motivated by the fiduciary’s need to convert the estate to cash for the benefit of the estate’s beneficiaries rather than by the person’s knowledge of inside information. In recognition of the special circumstances of fiduciaries, the Commission has, since 1935, provided an exemption for transactions executed by certain classes of fiduciary in a representative capacity during the 12 months following their appointment or qualification.

. . .

The exemption for fiduciaries reflects the Commission’s belief that transactions by fiduciaries are unlikely to involve speculative abuse. This belief is well-founded, given the limited life of estates, the presence of court supervision of the fiduciary’s administration of the estate, and the usual requirement that the fiduciary file or distribute to the estate’s beneficiaries periodic statements of account.”³⁹

³⁶ 17 CFR §240.16a-2(d)(1).

³⁷ Release 34-26333, December 2, 1988, 53 F.R. 49997 (the “**Proposing Release**”).

³⁸ Proposing Release at 50004.

³⁹ Romeo & Dye, Section 16 Treatise and Reporting Guide, § 6.03[1].



In sum, it appears that the Commission and learned commentators agree that the exemptions provided by Rule 16a-2(d)(1) are justified given the temporary nature of the administration involved, the level of oversight and disclosure applicable to the persons or entities so exempted, and the existence of useful purposes (including putting an end to the insider status of the trading party) for the trading transactions covered by the exemptions, coupled with an absence of self-evident Section 16 purposes that would be advanced in the absence of the exemptions.

We are of the view that the Trust's role regarding the administration of the Portfolio satisfies the requirements of Rule 16a-2(d)(1) and that, accordingly, Trust transactions in Common Stock are entitled to the temporary exemption provided by the rule. Furthermore, we believe that the reasons discussed in the preceding paragraph for the existence of the exemption are equally applicable in the case of the Trust.

Our views are based on the considerations set forth in the remainder of this letter.

2. Fiduciary Status

According to Black's law dictionary, the term *fiduciary* includes "a person having duty, created by his undertaking, to **act primarily for another's benefit** in matters connected with such undertaking," and a person acts in a *fiduciary capacity* when the business such person transacts "is not his own or for his own benefit, but **for the benefit of another person.**"⁴⁰

In the same vein, under Delaware law (the Trust's governing law), it has been held that

"[T]he principle of fiduciary duty, stated most generally, [is] that one who **controls property of another** may not . . . intentionally use the property in a way that benefits the holder of the control to the detriment of the property or its beneficial owner. There are, of course, other aspects—a fiduciary may not waste property even if no self interest is involved and must exercise care even when his heart is pure—but the central aspect of the relationship is, undoubtedly, **fidelity in the control of property for the benefit of another.**"⁴¹

More recently, the Delaware Court of Chancery has held that "the hallmark of a fiduciary relationship is that one person has the power to exercise **control over the property of another** as if it were her own[.]"⁴² and that "fiduciary duties arise only to the extent that one exercises control over the property of another[.]"⁴³ Once a fiduciary relationship is found to exist, a fiduciary owes its beneficiaries "an affirmative duty to act . . . in the best interests"⁴⁴ of the beneficiary. Incidentally, this standard of conduct is similar to the one that obtains under certain federal securities laws governing fiduciary relationships. For example, an investment adviser

⁴⁰ Black's Law Dictionary, Fifth Edition (1979) (emphasis added).

⁴¹ *In re USACafes, LP Litigation*, 600 A.2d 43, 48 (1991) (emphasis added).

⁴² *Sokol Holdings, Inc. v. Dorsey & Whitney LLP*, 2009 WL 2501542 at *3 (2009) (emphasis added).

⁴³ *In re. National Collegiate Student Trusts Litigation*, C.A. No. 12111-VCS, 2020 WL 5049402, at *54 (Del. Ch. Aug. 27, 2020) (internal quotation marks omitted) (holding that Delaware statutory trusts used in the securitization of several pools of student loans owed fiduciary duties to the holders of the notes they issued and to the insurer of such notes because they (the trusts) controlled the underlying loan pools).

⁴⁴ *In re. Walt Disney Co. Derivative Litigation*, 907 A.2d 693, 778 (Del. Ch. 2005).



“must, at all times, serve the best interest of its client and not subordinate its client’s interest to its own. In other words, the investment adviser cannot place its own interests ahead of the interests of its client. This combination of care and loyalty obligations has been characterized as requiring the investment adviser to act in the ‘best interest’ of its client at all times. In our view, an investment adviser’s obligation to act in the best interest of its client is an overarching principle that encompasses both the duty of care and the duty of loyalty.”⁴⁵

Turning to the language of Rule 16a-2(d)(1), it is clear that executors and administrators of a decedent’s estate, guardians, trustees in bankruptcy, conservators and receivers are all parties charged with the administration of the property of another. Under the principles explained in the preceding paragraphs, they all are fiduciaries. However, as pointed out by Romeo & Dye in the passage quoted above, the critical underpinning of the exemptions in Rule 16a-2(d)(1) is the capacities in which such fiduciaries operate in the discharge of their duties. In each of those capacities, the fiduciary temporarily administers somebody else’s property, typically under some level of court supervision, and generally subject to standards of care that are variously articulated as requiring that decisions be made “in the best interest” of the beneficiary, and that actions be taken “loyally” or “for the principal’s benefit.”⁴⁶

3. The Trust

The following is a summary of some of the most salient features of the Trust.

A. *The Trust only holds legal title to the Portfolio*

The Trust Agreement and the Confirmation Order make it abundantly clear that the Trust only holds legal title to the Portfolio, while the beneficial ownership thereof belongs to the holders of Fire Victim Claims to the extent of their Approved Claims. The following provisions of two of the governing documents of the Trust illustrate the dichotomy:

- a. Pursuant to the Trust Agreement,
 - i. “the Trustee shall accept and hold the [Portfolio] ***in trust for*** the Fire Victims, and shall hold that stock in the name of the [Trust] and not individually[;]”⁴⁷
 - ii. no property of the Trust, including the Portfolio, “shall be used ***for any purpose other than*** for the payment, defense, or administration of the Fire Victim Claims and the payment of Trust Expenses[;]”⁴⁸
 - iii. neither the Trust nor the Trustee derive any proprietary benefit from an increase, or incur any loss as a result of a decrease, in the value of the Portfolio;⁴⁹ and

⁴⁵ Release IA-5348, text accompanying footnote 23.

⁴⁶ See, e.g., 12 Del. Code §49A-114(b) (listing the duties an agent owes to his principal).

⁴⁷ Trust Agreement, Section 3.2(b) (emphasis added).

⁴⁸ Trust Agreement, Section 1.3(a) (emphasis added).



iv. the duration of the Trust is determined by the time it will take to adjudicate all Fire Victim Claims and to pay, to the extent of the Trust assets, all such Approved Claims.⁵⁰

b. In addition, pursuant to the Confirmation Order,

- i. “no party *other than holders of Fire Victim Claims* . . . shall have any rights to any of the proceeds in the Fire Victim Trust, or any clawback or reversionary interest of any of the consideration (whether Cash or otherwise) allocated to any of the holders of Fire Victim Claims generally or in the total amount funded to the Fire Victim Trust[;]”⁵¹
- ii. “[t]he Fire Victim Trustee . . . will be vested with the authority and power (subject to the Fire Victim Trust Agreement, the Plan, and this Confirmation Order) to, among other things . . . carry out the provisions of the Plan and this Confirmation Order related to the Fire Victim Trust and the Fire Victim Claims, including but not limited to prosecuting or settling all Assigned Rights and Causes of Action in his or her capacity as a trustee *for the benefit of holders of Fire Victim Claims*[;]”⁵² and
- iii. the Trustee shall have such powers as may be necessary to “carry out the provisions of the Plan . . . *for the benefit of Fire Victims*.”⁵³

Nothing in the foregoing discussion is meant to imply that for the purposes of Section 16 the Trust may not be the *beneficial owner* of the Portfolio. We readily concede that, in light of the mandate of Rule 16a-1(a)(1) (which refers to Section 13(d) of the Exchange Act and regulations thereunder for the determination of whether for Section 16 purposes someone holds more than ten percent of the equity of an issuer) the Trust is, unequivocally, by virtue of its power to dispose of the Chapter 11 Plan Shares, the beneficial owner thereof.⁵⁴ What we seek to emphasize, however, is that, although legally the title holder of the Portfolio, the Trust’s ownership is exclusively for the benefit of the holders of Approved Claims.

⁴⁹ As compensation for his services, the Trustee is entitled to a flat fee that is revised periodically pursuant to Section 5.6 of the Trust Agreement. In addition, Section 4.3(b) of the Trust Agreement provides: “In the event the Trust holds Cash after paying all Trust Expenses and all distributions contemplated under the Trust Documents, the Plan and the Confirmation Order, such remaining cash shall be distributed to a national recognized charitable organization of the Trustee’s choice to the extent economically feasible.”

⁵⁰ Trust Agreement, Section 8.2(b).

⁵¹ Confirmation Order, ¶ 18.d. (emphasis added).

⁵² Confirmation Order, ¶ 18.e.iii. (emphasis added).

⁵³ Confirmation Order, ¶ 6.8.a.

⁵⁴ See, Rule 13a-3(a)(2).



B. *The Trust's sole reason of being is the satisfaction (to the extent of funds available) of all Approved Claims*

The purposes of the Trust are carefully enumerated in the Trust Agreement; they all aim to what is, without dispute, the ultimate objective of the Trust's existence: the satisfaction (to the extent of funds available) of Approved Claims in a "fair, consistent and equitable manner." Any additional tasks that the Trust has been charged with (*e.g.*, the administration and adjudication of Fire Victim Claims and the monetization of the Trust's assets) are merely necessary steps towards the achievement of that ultimate goal. The Trust Agreement identifies these purposes as follows:

"The purposes of the Trust are to (i) assume the liability for all [Fire Victim] Claims against the Debtors, (ii) evaluate, administer, process, settle, defend, expunge, resolve, liquidate Fire Victim Claims, and satisfy and pay all Approved Fire Victim Claims and all Trust Expenses (as defined in Section 1.4(b) below) of the Trust from the Trust Assets (as defined in Section 1.3(a), below) in a ***fair, consistent, and equitable manner*** without regard to the asserted amount of the claim (and in respect of Approved Fire Victim Claims, on a *pro rata* basis), (iii) prosecute or settle all Assigned Rights and Causes of Action, (iv) preserve, hold, manage, monetize and ***maximize*** the Trust Assets for use in paying and satisfying Approved Fire Victim Claims on a *pro rata basis* and for use in paying all Trust Expenses, all in accordance with the terms of the Trust Documents, the Plan and the Confirmation Order, and (iv) (*sic*) otherwise comply in all respects with the Trust Documents, the Plan and the Confirmation Order."⁵⁵

A review of the provisions governing the duration of the Trust confirms that its existence is inextricably linked to the satisfaction (to the extent of funds available) of Approved Claims. The following language in the Trust Agreement makes it clear that the Trust ends when there can be no expectation of further payments in respect of Approved Claims:

"The Trust shall automatically dissolve on the date . . . ninety (90) days after . . . the date on which the Bankruptcy Court approves dissolution of the Trust because (1) all Claims duly filed with the Trust have been liquidated, approved or disallowed, accepted, and paid to the extent possible based upon funds available through the Plan and as provided in this Trust Agreement, the CRP, the Plan and the Confirmation Order or have been disallowed by a final non-appealable order, (2) all known claims against third parties have been pursued and all reasonably expected recoveries from those claims have been collected, and (3) a final accounting has been filed with and approved by the Bankruptcy Court[.]"⁵⁶

⁵⁵ Trust Agreement, Section 1.2 (emphasis added). The "Assigned Rights and Causes of Action" mentioned in clause (iii) include claims that the Debtors may have against third parties (*e.g.*, contractors, consultants, suppliers) in connection with the fires from which the Fire Victim Claims arose.

⁵⁶ Trust Agreement, Section 8.2(b).



Upon satisfaction of the conditions set forth in the foregoing language, the dissolution of the Trust occurs *automatically*. Any attempt to extend the duration of the Trust would require the consent of the TOC and the approval of the Bankruptcy Court.⁵⁷

C. The Trust operates pursuant to a multi-tiered prescriptive regime

The operation of the Trust and, more particularly, any actions to be taken by the Trustee on behalf of the Trust are subject to several levels of constraints that derive (i) from the ultimate supervision of the Trust by the Bankruptcy Court, (ii) the role of the TOC in the administration of the Trust, and (iii) the provisions of the multiple documents governing the Trust (including the Confirmation Order, the Plan, the Trust Agreement and the CRP).

1. Bankruptcy Court

The supervisory role of the Bankruptcy Court is pervasive, as evidenced, for example, by the facts that:

- a. The Bankruptcy Court retains “exclusive jurisdiction with respect to any action relating to or arising out of the Trust.”⁵⁸
- b. The Trust must present to the Bankruptcy Court annual reports containing audited financial statements, together with claims reports containing summaries of the number and type of claims disposed of during the period covered by the financial statements.⁵⁹
- c. The approval of the Bankruptcy Court is required for any amendment to the CRP that is inconsistent with the Plan, the Confirmation Order or the Bankruptcy Code.⁶⁰
- d. Under certain circumstances, holders of Fire Victim Claims may have the Trust’s adjudication of their claims reviewed by the Bankruptcy Court.⁶¹
- e. The Trust can bring before the Bankruptcy Court certain matters initially subject to consideration by the TOC.⁶²

⁵⁷ Confirmation Order, ¶ 18.1 and Trust Agreement, Section 8.3. The Plan and the Confirmation Order contain provisions pursuant to which all claims that the holders of Fire Victim Claims had against the Debtors were permanently replaced for claims against the Trust. According to the Plan, such claims “shall be satisfied solely from the assets of the Fire Victim Trust.” (Plan, ¶ 4.26(c)). This provision alone should dissuade anyone from amending the Trust Agreement to allow the Trust to enter new businesses following the exhaustion of the assets received pursuant to the Plan and the Confirmation Order.

⁵⁸ Trust Agreement, Section 1.6.

⁵⁹ *See, e.g.*, Trust Agreement, Sections 2.2(c) (annual reports and claims reports) and 8.2(b) (final accounting report).

⁶⁰ Trust Agreement, Sections 2.2(f)(iii).

⁶¹ Trust Agreement, Exhibit 2 (Claims Resolution Procedures), Section IX.

⁶² Trust Agreement, Section 6.6(c).



- f. Upon the failure of the replacement mechanisms contemplated by the Trust Agreement, the Bankruptcy Court has the ultimate authority to appoint successors to the Trustee, the Claims Administrator or the TOC members.⁶³
- g. Material amendments of the Trust Agreement which are inconsistent with the Plan, the Confirmation Order or the Bankruptcy Code require the approval of the Bankruptcy Court.⁶⁴

2. *The TOC*

According to the Confirmation Order, the Trust is administered by the Trustee, the Claims Administrator and the TOC.⁶⁵ The TOC is a committee comprised of nine members who “serve in a fiduciary capacity representing current holders of Fire Victim Claims in the administration of the Trust.”⁶⁶

The initial members of the TOC were chosen mainly from among counsel representing the holders of Fire Victim Claims and, unless removed (only for cause, by majority vote of the remaining TOC members and with the approval of the Trustee) will remain in that position until their resignation or the termination of the Trust.⁶⁷ Some of the actions that require consent of a majority of the TOC members (or in certain circumstances an authorized committee thereof) include amendments to the Trust Agreement, the approval of Trust budgets, amendments to the CRP, voting the shares of Common Stock in the Portfolio in any election of Parent’s directors, the settlement of litigation involving Trust assets, the sale of Trust assets and the adoption of the plan (the “**Sell-Down Plan**”) for the liquidation of some or all of the shares of Common Stock in the Portfolio.⁶⁸ In addition, the Trustee is required to consult with the TOC “on matters not contemplated by [the] Trust Agreement regarding the general implementation and administration of the Trust” or the CRP.⁶⁹

3. *The Trust’s governing documents*

Three main documents govern the operation of the Trust: the Confirmation Order, the Plan and the Trust Agreement.⁷⁰ In addition, the administration and adjudication of Fire Victim Claims must comply with the CRP.

⁶³ Trust Agreement, Sections 2.3(a), 5.2(d) and 6.4(a).

⁶⁴ Trust Agreement, Section 8.3.

⁶⁵ Confirmation Order, ¶ 18.e.ii.

⁶⁶ Trust Agreement, Section 6.2.

⁶⁷ Trust Agreement, Section 6.3.

⁶⁸ Trust Agreement, Section 2.2(f).

⁶⁹ Trust Agreement, Section 2.2(e).

⁷⁰ Section 2.1(a) of the Trust Agreement provides that in case of conflict among these three documents, “the Plan and the Confirmation Order shall control.” In turn, paragraph 80 of the Confirmation Order makes it clear that in the event of conflict between the Plan and the Confirmation Order, the latter prevails.



Several provisions of the Trust Agreement govern the nature of the duties owed to the holders of Fire Victim Claims and define the standards of conduct required of those responsible for administering Trust assets:

- Section 2.1(a) declares that the Trustee “is and shall be the fiduciary to the Trust in accordance with the provisions of this Trust Agreement.”
- Section 6.2 announces that the members of the TOC “shall serve in a fiduciary capacity representing current holders of Fire Victim Claims in the administration of the Trust” and adds that the TOC shall not have fiduciary duties to any party other than holders of Fire Victim Claims.
- The provisos to Sections 5.4(c) and 5.5(c) expressly confirm that the duties of care and loyalty (two quintessentially fiduciary duties under Delaware law,⁷¹ the governing law of the Trust) apply to the administration of the assets of the Trust.
- With respect to the payment of Approved Claims, Section 1.2 directs that they be made “in a fair, consistent and equitable manner . . . on a *pro rata* basis.”
- More particularly, pursuant to Section 3.2(b), sales of Common Stock can only occur when “the Trustee determines, in consultation with an Investment Advisor . . . that it is in the best interest of the beneficiaries of the Trust to liquidate some or all of the stock.” The Investment Advisor referred to in the preceding sentence is, pursuant to the Trust Agreement, a professional advisor that the Trustee, acting in consultation with the TOC, retains to “assist the Trustee in assessing acceptable levels of investment risk, making investment decisions based in budgetary considerations and market conditions, and taking reasonable steps to protect, and reinvest and dispose of the Trust [a]ssets in accordance with the purposes of the Trust.”⁷² Prior to the

⁷¹ See, *Cinerama Inc. v. Technicolor, Inc.* 663 A.2d 1134, 1148 (Del. Ch. 1994), *aff’d* 663 A.2d 1156 (Del. 1995).

⁷² Trust Agreement, Section 3.2(d). The Trust’s Investment Guidelines (attached to the Trust Agreement as Exhibit 6), provide:

“Only the following investments will be permitted, provided that maturities on the following securities do not exceed thirty-six (36) months, all investments are U.S. dollar denominated, and all rating requirements are satisfied at the time of purchase:

- (i) marketable securities issued by the U.S. Government and supported by the full faith and credit of the U.S. Treasury, either by statute or an opinion of the Attorney General of the United States;
- (ii) marketable debt securities, rated AAA by Moody’s and/or AAA by S&P (to be reconfirmed on a quarterly basis) and issued by U.S. Government-sponsored enterprises, U.S. federal agencies, U.S. federal financial banks, or international institutions whose capital stock has been subscribed for by the United States; and



selection of an Investment Advisor, candidates are required to “fully disclose to the Trustee any interest or relationship with the Debtors[;] . . . [a]ny such interest or relationship shall not be an automatic disqualification for the position, but the Trustee shall take any such interest or relationship into account in selecting the Investment Advisor.”⁷³

Other provisions of the Trust Agreement seek to ensure that the decision-making authorities of the Trust are not subject to conflicts of interest, and that the economic interests of the members of the TOC are entirely aligned with the economic interests of the holders of Fire Victim Claims they represent. For example:

- Section 1.2 requires that the Trustee and certain other officers of the Trust, including the Claims Administrator, “shall have no interest in and at all times shall be independent of the Debtors, the Fire Victim Claimants, the TOC, and their agents.”
- Section 5.6 provides that the compensation of the Trustee is a flat fee per month that is subject to periodic review by the TOC and the Trustee.
- Section 5.9 establishes the standard for the Trustee’s independence, and requires the disclosure to the TOC of “any relationship that constitutes a conflict under this Section.”
- Section 6.5 provides that TOC members “shall not be entitled to compensation for their services but shall be reimbursed promptly for all reasonable out-of-pocket costs and expenses incurred in connection with the performance of their duties.”
- Section 4.3(b) provides that any funds that remain in the Trust after the payment of all Trust expenses and Approved Claims “shall be distributed to a national recognized charitable organization of the Trustee’s choice to the extent economically feasible.”

In addition, other actions to be taken by the Trust are subject of detailed regulation in the Trust Agreement for the sole benefit and best interests of its beneficiaries. For example,

- the Trust’s discretion regarding the disposition of shares of Common Stock in the Portfolio is severely constrained:

(iii) certificates of deposit, time deposits, and bankers acceptances of any bank or trust company incorporated under the laws of the United States or any state, provided that, at the date of acquisition, such investment and/or the commercial paper or other short term debt obligation of such bank or trust company has a short-term credit rating or ratings from Moody’s and/or S&P, each at least P-1 or A-1.”

⁷³ Trust Agreement, Section 3.2(d).



“Pursuant to the Plan, the Trustee shall accept and hold the [Portfolio] in trust for the Fire Victims, and shall hold that stock in the name of the PG&E Fire Victim Trust and not individually. The Trust shall continue to hold all such stock until such time as the Trustee determines, in consultation with an Investment Advisor [and the TOC], that it is *in the best interests* of the beneficiaries of the Trust to liquidate some or all of the stock[.]”⁷⁴

- Investments by the Trust must comply with the restrictive guidelines initially attached to the Trust Agreement as Exhibit 6, as from time to time amended by the Trustee with notice to the TOC.⁷⁵
- As previously mentioned, adjudication of Fire Victim Claims must be in compliance with the CRP.⁷⁶
- Payment of Approved Claims must be *pro rata*, “in a fair, consistent and equitable manner”⁷⁷ and otherwise in compliance with the provisions of Article IV of the Trust Agreement.

4. Application of Rule 16a-2(d)(1) to the Trust

The Trust as a “fiduciary in a similar capacity”

Clause (iv) of Rule 16a-2(d)(1) extends to a “fiduciary in a similar capacity” the temporary exemption from Section 16 provided by the rule.

The status of the Trust as a fiduciary under Delaware law (which, as explained in Part II.2 above, arises from the “control of property for the benefit of another”⁷⁸) appears plainly from the face of the Trust Agreement and the Confirmation Order, both of which proclaim that the Trust holds its assets “in trust” or “for the benefit of” the holders of Fire Victim Claims.⁷⁹ As explained above,⁸⁰ under Delaware law this circumstance provides the foundation for the existence of a fiduciary relationship that, in the case of the Trust, is further confirmed by the provisions in the Trust Agreement that

- direct that the Trustee and the TOC members have fiduciary duties to the Trust beneficiaries;⁸¹
- make it explicit that the duties of care and loyalty, traditional fiduciary duties under Delaware law, apply to the administration of the assets of the Trust;⁸²

⁷⁴ Trust Agreement, Section 3.2(b) (emphasis added).

⁷⁵ Trust Agreement, Section 3.2(a). See footnote 72 above for a description of the investments authorized by the Trust Agreement.

⁷⁶ Trust Agreement, Section 2.4.

⁷⁷ Trust Agreement, Sections 1.2 and 3.3(b).

⁷⁸ See text accompanying footnote 4241 above.

⁷⁹ See text accompanying footnotes 47 to 5353 above.

⁸⁰ See text accompanying footnote 41 above.

⁸¹ Trust Agreement, Sections 2.1(a) and 6.2.



- require that sales of Common Stock take place only when it is in the best interest of the Trust's beneficiaries;⁸³ and
- seek to preserve the independence of the Trustee.⁸⁴

This being the case, the only remaining inquiry is whether the Trust discharges its duties “in a similar capacity” to that of the other fiduciaries expressly identified in clauses (i) to (iii) of Rule 16a-2(d)(1).

As further summarized below and described in further detail in this letter, we believe satisfaction of the “in a similar capacity” requirement in clause (iv) is evident in the case of the Trust, given (a) the scope of the responsibilities of the Trust, (b) the legal framework within which the Trust operates, and (c) the finite nature of the duration of the Trust's duties with respect to the Portfolio.

- a) Similar to the scope and responsibilities of the persons or entities listed in Rule 16a-2(d)(1): (i) the Trust has a defined purpose and carefully identified beneficiaries (the satisfaction and payment, to the extent of funds available, of the claims of the fire victims, who are the only beneficiaries of the Trust); (ii) the Trust administrators are subject to a heightened standard of care for the benefit of the fire victims, (iii) the administration of the Trust includes a Trustee, who is a fiduciary to the Trust, and an oversight committee charged with fiduciary responsibilities exclusively to the fire victims; (iv) the Trust is authorized to sell Common Stock only when the Trustee determines, in consultation with the Trust's investment and financial advisor, that to do so is in the best interest of the beneficiaries of the Trust; and (v) the Trust is subject to restrictions that seek to prevent self-dealing and conflicts of interests.
- b) In regard to the legal regime under which the Trust operates, the Trust is and will be until its end under court supervision and the oversight of a committee of fiduciaries representing the interest of the Trust's beneficiaries. In addition, the Trust is required to comply with the provisions of the Delaware statute under which it was organized, and of the multiple governing documents that, sometimes in minute detail, set forth the principles, policies and procedures that must govern its actions for the exclusive benefit of the Trust's beneficiaries. In other words, a review of the governance framework applicable to the Trust reveals that the administration of the Portfolio is carefully regulated, monitored and supervised, similar to the administration of the assets under their care by any of the persons or entities expressly listed in Rule 16a-2(d)(1).
- c) As it is the case with several of the persons or entities expressly listed in clauses (i) to (iii) of Rule 16a-2(d)(1), the length of the period during which the Trust will be acting in a capacity similar to that of such persons or entities will be a function of the time needed to accomplish the very specific tasks with which it has been charged. Like an executor, receiver, trustee in bankruptcy or liquidating agent, the Trust is responsible for administering an estate for the benefit of specified

⁸² See text accompanying footnote 71 above.

⁸³ See Trust Agreement, Section 3.2(b) and text accompanying footnotes 72 and 73 above.

⁸⁴ Trust Agreement, Section 5.9.



beneficiaries and with the specified goal of fairly and equitably distributing its assets to such beneficiaries. Once these duties have been discharged (or, more likely, the assets available therefor have been exhausted), the Trust will submit a final accounting to the Bankruptcy Court and, shortly after the approval thereof by the court, it will automatically dissolve.

In addition to the foregoing, we believe that exempting the Trust's transactions in Common Stock from Section 16 under clause (iv) of Rule 16a-2(d)(1) on the basis that the Trust is a "fiduciary in a similar capacity" comports with the justifications supporting the existence of the rule.⁸⁵ These justifications include the temporary nature of the Trust's administration of the Portfolio, and the strictures governing the operation of the Trust, its level of supervision, and its reporting or disclosure requirements. Moreover, the temporary transaction exemption provided by Rule 16a-2(d)(1) will likely accelerate the completion of the Trust's purpose and also carry into effect the policies and objectives underlying the court-approved Plan and the Confirmation Order.

On the basis of, and subject to, the facts and analysis set forth above, we are of the opinion that the Trust, when engaging in transactions in Common Stock, may be considered to be acting as a "fiduciary in a similar capacity" within the meaning of clause (iv) of Rule 16a-2(d)(1). Accordingly, such transactions will be exempt from Section 16 during the twelve-month period following the Trust's appointment and qualification. We respectfully request that the Staff concur with our interpretation.

* * *

We remain available to discuss this request at the Staff's convenience. We kindly ask that you contact the undersigned at (617) 856-8555 or pflink@brownrudnick.com should you wish any clarification or additional information regarding any of the matters presented above.

Sincerely,

BROWN RUDNICK LLP

A handwritten signature in black ink, appearing to read "Brown Rudnick LLP", is written over a horizontal line.

⁸⁵ See text accompanying footnotes 38 and 39 above.