

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**DELPHI CORPORATION, J.T.  
BATTENBURG, III, ALAN  
DAWES, PAUL FREE, JOHN  
BLAHNIK, MILAN BELANS,  
CATHERINE ROZANSKI,  
JUDITH KUDLA, B.N.  
BAHADUR, ATUL PASRICHA,  
LAURA MARION, STUART  
DOYLE, and KEVIN CURRY,**

**Defendants.**

**Case No. 2:06-cv-14891  
DML-SDP**

**Honorable David M. Lawson  
Mag. Judge Steven D. Pepe**

**DISTRIBUTION PLAN**

**I. OVERVIEW**

1. This Distribution Plan (the “Plan”) was developed by the Securities and Exchange Commission (the “SEC” or the “Commission”) 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 the former Chief Financial Officer of Delphi Corporation (“Delphi”), Alan Dawes (“Dawes”), and the principal of an affiliated consulting company, B. N. Bahadur (“Bahadur”) (collectively, the “Defendants”) in this above-captioned matter.<sup>1</sup>

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<sup>1</sup> See Dkt. 413, PageID.22934.

2. As described more specifically below, the Plan seeks to compensate investors who were harmed, by the Defendants' conduct alleged in the SEC's Complaint filed on October 30, 2006 (the "Complaint").<sup>2</sup> The SEC alleged that Delphi and thirteen individuals, including Dawes and Bahadur, directly and indirectly, engaged in a pattern of fraudulent conduct between 2000 and 2004 that resulted in Delphi misstating its financial condition and operating results in its filings made with the SEC, offering documents, press releases, and other documents and statements disseminated to investors.

3. As calculated using the methodology detailed in the Plan of Allocation, identified investors will be compensated based on their losses on shares of Delphi Corporation (the "Security") purchased or acquired between January 1, 2001 and March 21, 2005, both dates inclusive (the "Relevant Period"), due to the violations of the federal securities laws alleged in the Complaint.

4. The Court has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Court retains jurisdiction over implementation of the Plan.

## **II. BACKGROUND**

5. On October 30, 2006, the SEC filed the Complaint against Delphi, several of its officers and employees, and affiliated persons alleging violations of the antifraud, reporting, and recordkeeping provisions of the federal securities laws in connection with a series of fraudulent schemes. Without admitting or denying the SEC's allegations, Delphi and six of the defendants, including Dawes and Bahadur, entered into settlements with the SEC simultaneously with the filing of the Complaint.<sup>3</sup>

6. In its Complaint, the SEC alleged multiple fraudulent schemes conducted by Delphi, including actions taken by Dawes in his capacity as Delphi's Chief Financial Officer and Bahadur's actions as the principal owner of a Michigan consulting company who aided and abetted Delphi in its fraudulent actions. According to the Complaint, Delphi overstated its reported earnings per share and net income in multiple quarters by (a) improperly disclosing an increase in warranty reserves related to warranty claims made by its former parent company, (b) reporting a liability to an IT Company as an immediate reduction in IT expenses, and (c) improperly accounting for transactions of inventory with agreements to repurchase the inventory for its original sale price plus interest as true sales. The SEC also alleged that Delphi failed to disclose material sales of its accounts receivable.

7. On November 7, 2006, the Court entered Final Judgments against the Defendants.<sup>4</sup> The Court ordered Dawes to pay disgorgement of \$253,000.00 plus prejudgment interest of \$134,000.00 and a civil penalty of \$300,000.00 (the "Dawes Final Judgment") and Bahadur to pay disgorgement of \$350,000.00 plus prejudgment interest of \$139,257.00, and a civil penalty of \$80,000.00 (the "Bahadur Final Judgment") (collectively, the "Final Judgments"). The Final Judgments directed the Defendants to pay a total of \$1,256,257.00 to the

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<sup>2</sup> Dkt. 1.

<sup>3</sup> Dkt 3; Dkt. 4.

<sup>4</sup> Dkt 10 & 11.

Court's registry to be held pending further order of the Court. The Defendants have paid in full. The Final Judgments also permitted the SEC to propose a distribution plan pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002.

8. On August 1, 2023, the Court issued an Order establishing a Fair Fund (the "Fair Fund"), pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalties paid, along with the disgorgement and interest paid, can be distributed to harmed investors.<sup>5</sup> The Order also appointed Joshua E. Braunstein (the "Distribution Agent") as the Distribution Agent for the Fair Fund, and Miller Kaplan Arase LLP (the "Tax Administrator") as the Tax Administrator for the Fair Fund.

9. The Fair Fund consists of the \$1,256,257.00 paid by the Defendants plus any accrued interest minus Court registry fees. Any additional funds collected in connection with this matter will be added to the Fair Fund. The Fair Fund has been deposited in an interest-bearing account in the CRIS, and any accrued interest will be added to the Fair Fund.

### III. DEFINITIONS

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

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

11. "**Beneficial Owner**" means the client, customer, shareholder, or beneficiary of shares of the Security purchased or acquired held by a Preliminary Claimant during the Relevant Period.

12. "**CRIS**" means the Court Registry Investment System or any other type of interest-bearing account utilized by the Clerk of the Court of the U.S. District Court of the Eastern District of Michigan.

13. "**Distribution Payment**" means a payment from the Fair Fund to a Payee in as calculated in accordance with the Plan of Allocation.<sup>6</sup>

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

15. "**Excluded Party**" shall mean the following:

- (a) any purchaser or assignee of another Person's right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall

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<sup>5</sup> Dkt. 413, PageID.22934.

<sup>6</sup> Any taxes withheld from a Payee's Distribution Payment will be remitted to the U.S. Treasury by the Tax Administrator on the Payee's behalf.

not be construed to exclude those Persons who obtained such a right by gift, inheritance, or devise; and

- (b) any Defendant named in *In re Delphi Corp. Sec., Derivative & ERISA Litig.*, Nos. 1725, 05-md-1725, 06-10026, 2007 U.S. Dist. LEXIS 10408 (E.D. Mich. Feb. 15, 2007).

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

17. **“Final Determination Notice”** means the written notice sent to (a) any Preliminary Claimant who timely submitted a written dispute of his, her, or its calculated Recognized Loss notifying the Preliminary Claimant of the Distribution Agent’s resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice as described in Paragraph 39 except for those whose Plan Notice were returned as “undeliverable,” notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant. The Final Determination Notice will constitute the Distribution Agent’s final ruling regarding the status of the claim.

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

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

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

21. **“Plan Notice”** means a written notice to each Preliminary Claimant regarding the Court’s approval of the Plan, including, as appropriate: a statement characterizing the distribution; a link to the approved Plan posted on the SEC’s website and instructions for requesting a copy of the Plan; specification of any information needed from the Preliminary Claimant to prevent him, her, or it from being deemed an Unresponsive Preliminary Claimant; his, her, or its preliminary Recognized Loss calculation; a description of the tax information reporting and other related tax matters; the procedure for the distribution as set forth in the Plan; and the name and contact information for the Distribution Agent as a resource for additional information or to contact with questions regarding the distribution.

22. **“Plan of Allocation”** means the methodology used by the Distribution Agent to calculate if a Preliminary Claimant has suffered a Recognized Loss. The Plan of Allocation is attached hereto.

23. **“Preliminary Claimant”** means a Person, or their lawful successors, identified by the Distribution Agent based on his review and analysis of reports of holdings of the Security

filed on Form 13F during the Relevant Period and other applicable records obtained by the SEC during its investigation and litigation, who may have suffered a loss from purchasing or acquiring the Security during the Relevant Period at prices inflated by the violations alleged in the Complaint.

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

25. **“Relevant Period”** is from March 1, 2001, through March 21, 2005, both dates inclusive.

26. **“Securities”** means the common stock of Delphi Corporation listed on the New York Stock Exchange during the Relevant Period.

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

#### IV. TAX COMPLIANCE

28. On August 1, 2023, the Court appointed Miller Kaplan Arase LLP as the tax administrator (“Tax Administrator”) of the Fair Fund to handle the tax obligations of the Fair Fund.<sup>7</sup> The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund, not to exceed \$15,000.

29. 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. § 1.468B-2(k)(3)(I) and shall satisfy the tax-related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- (a) Obtaining a federal tax identification number for the Fair Fund as a Qualified Settlement Fund under 26 U.S.C. § 468B(g);
- (b) Evaluate the Fair Fund’s tax liability for each year since the Defendants made their payments to the CRIS through the present;
- (c) Prepare and file federal and state income tax returns, as required, including returns for prior taxable years;
- (d) When required, calculate estimated tax payments and potential penalties, and provide information to the SEC so that payments may be made in a timely manner;

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<sup>7</sup> Dkt. 413, PageID.22934.

- (e) Make arrangements with the SEC to pay tax liabilities;
- (f) Calculate the amount and recommend retention of a reserve for penalties and interest to be assessed as a result of any late filing of tax returns and late payment of taxes;
- (g) Determine and comply with tax reporting or withholding obligations of the QSF relating to distributions or payments to vendors, if applicable; and
- (h) Perform all administrative tasks necessary to the foregoing services.

## **V. DISTRIBUTION AGENT**

30. On August 1, 2023, the Court appointed Joshua Braunstein as the distribution agent (“Distribution Agent”) for the Fair Fund.<sup>8</sup> As an SEC employee, the Distribution Agent shall receive no compensation, other than his regular salary as an SEC employee, for his services in administering the Fair Fund.

31. The Distribution Agent will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to obtain accurate mailing information for Preliminary Claimants; directing the dissemination of the Plan Notice; preparing accountings; cooperating with the Tax Administrator appointed by the Court to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements, including but not limited to Foreign Account Tax Compliance Act (FATCA); and disbursing the Fair Fund in accordance with this Plan, as ordered by the Court. The Distribution Agent will engage a third-party (the “Third-Party”) to perform some of the administrative tasks associated with implementing the Plan, including, among other things, establishing a database of harmed investors, verifying contact information for Preliminary Claimants, assisting with the collection of tax forms and tax identification numbers, establishing an escrow account to receive and disburse distribution payments, disbursing payments in accordance with the Plan, monitoring and tracking check-cashing, and researching and reconciling errors and reissuing distribution payments, if directed by the Distribution Agent, for reasonable compensation not to exceed \$8,600. The Third-Party’s fees and expenses will be paid from the Fair Fund as an Administrative Cost, pursuant to a cost proposal submitted to and approved by the SEC staff.

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

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

## **VI. PLAN PROCEDURES**

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<sup>8</sup> *Id.*

### Specification of Preliminary Claimants

34. Using reports of holdings of the Security filed on Form 13F during the Relevant Period and other applicable records obtained during its investigation and litigation, the SEC staff has identified the Preliminary Claimants. Preliminary Claimants are limited to only those Persons, identified by the SEC, who may have suffered a loss from purchasing or acquiring the Security during the Relevant Period at inflated prices by the violations of the federal securities laws alleged in the Complaint.

### Procedures for Locating and Notifying Preliminary Claimants

35. Within sixty (60) days of Court approval of the Plan, the Third-Party will send a Plan Notice to each Preliminary Claimant's last known email address (if known) and/or mailing address.

### Undeliverable Mail

36. If any mailing is returned as undeliverable, the Third-Party will make the best practicable efforts to ascertain a Preliminary Claimant's correct address. If another address is obtained, the Third-Party will then resend it to the Preliminary Claimant's new address within thirty (30) days of receipt of the returned mail. If the mailing is returned again, and the Third-Party, despite best practicable efforts, is unable to find a Preliminary Claimant's correct address, the Distribution Agent, in his discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

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

### Procedures to Request Plan Notice

38. Any Person who does not receive a Plan Notice, as described in Paragraph 35, but who is aware of this Plan (e.g., through other Preliminary Claimants or on [www.sec.gov](http://www.sec.gov)) and believes they should be included as a Preliminary Claimant should contact the Distribution Agent within sixty (60) days from the approval of the Plan to establish that they should be considered a Preliminary Claimant. Such Person should include with that communication, documentation sufficient to support their claim that they should be considered a Preliminary Claimant, as well as contact information (physical address, telephone number, and email address, if available) for responsive communications. The Distribution Agent will direct the Third-Party to send the Person a Plan Notice within thirty (30) days of receiving the Person's documentation, if the Distribution Agent determines that the Person should have received a Plan Notice.

### Failure to Respond to Plan Notice

39. If a Preliminary Claimant is requested to respond and fails to respond within thirty (30) days from the initial mailing of the Plan Notice, the Third-Party will make no fewer than two (2) attempts to contact the Preliminary Claimant by telephone, email, or mail. The second attempt will in no event take place more than one hundred thirty-five (135) days from the approval of the Plan. If a Preliminary Claimant fails to respond to the Third-Party's contact attempts as described in this paragraph, the Distribution Agent, in his discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

#### Dispute Process

40. Disputes will be limited to the calculation of Recognized Loss. Within one hundred fifty (150) days of approval of the Plan, the Distribution Agent must receive a written communication detailing any dispute along with any supporting documentation. The Distribution Agent will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation.

#### Final Determination Notices

41. Within one hundred eighty (180) days of the initial mailing of the Plan Notices, the Distribution Agent will direct the Third-Party to send a Final Determination Notice to (a) any Preliminary Claimant who timely submitted a written dispute as described in Paragraph 40 above, notifying the Preliminary Claimant of his resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice, as described in Paragraph 39 above, except for those whose Plan Notice were returned as undeliverable, notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant.

#### Distribution Methodology

42. The Distribution Agent will calculate each Preliminary Claimant's Recognized Loss in accordance with the Plan of Allocation. When responding to the Plan Notice, Preliminary Claimants will have the opportunity to submit additional records for consideration in the calculations. All Preliminary Claimants who are determined to have a Recognized Loss, and who are not deemed an Excluded Party or an Unresponsive Preliminary Claimant will be deemed an Eligible Claimant.

43. No Distribution Payments will be made for less than \$10.00. If an Eligible Claimant's distribution amount calculates to less than \$10.00, in accordance with the Plan of Allocation, 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 \$10.00. All Eligible Claimants whose distribution amount is equal to or greater than \$10.00, as calculated in accordance with the Plan of Allocation, will be deemed a Payee and receive a Distribution Payment.

#### Establishment of a Reserve



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

45. After all Distribution Payments are made and Administrative Costs paid, any remaining amounts in the Reserve will become part of the Residual described in Paragraph 61 below.

#### Preparation of the Payment File

46. Following the issuance of all Final Determination Notices, the Distribution Agent will compile a Payee List consisting of the name, address, calculated Recognized Loss, calculated Distribution Payment, the amount to be withheld from the Distribution Payment for taxes, if applicable. The Payee List will also include the total amount to be disbursed to the Bank, as defined in Paragraph 47, along with the total amount to be disbursed to the Tax Administrator and transferred to the U.S. Treasury as tax withholdings.

#### The Escrow Account

47. Prior to the disbursement of funds from the Net Available Fair Fund, the Third-Party will establish an escrow account at a United States commercial bank that is a well-capitalized financial institution as defined by the Federal Reserve Act, Subpart D, 12 C.F.R. § 208.43, and that is not unacceptable to the SEC staff (the "Bank"), pursuant to an escrow agreement (the "Escrow Agreement") provided by the SEC staff.

#### Distribution of the Fair Fund

48. After preparation of the Payee List, the SEC will petition the Court for authority to disburse funds from the Net Available Fair Fund for distribution in accordance with the Plan. The Payee List shall, upon request, be made available to the Court under seal. All disbursements will be made pursuant to a Court Order.

49. The Third-Party will be responsible for distributing the funds disbursed to the Bank to Payees in accordance with the Payee List. For any electronic payment, the exact amount necessary to make a payment shall be transferred directly to the Payee's bank account in accordance with written instructions provided to the Bank by the Third-Party.

50. All checks will bear a stale date of one hundred eighty (180) days from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the Bank will be instructed to stop payment on those checks. A Payee's claim will be extinguished if he, she, or it fails to negotiate his, her or its check by the stale date, and the funds will remain in the Fair Fund, except as provided in Paragraph 54.

51. All Distribution Payments will be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that

the tax treatment of the distribution is the responsibility of each Payee and that the Payee should consult his, her or its tax advisor for advice regarding the tax treatment of the distribution; however, any backup withholding required under Internal Revenue Code (“IRC”) section 3406(a) and the regulations promulgated thereunder, or withholding required with respect to nonresident aliens (“NRAs”) under Chapter 3 of the IRC, or FATCA-subject Payees under Chapter 4 of the IRC, will be withheld as required from the Distribution Payment and remitted to the Internal Revenue Service on the Payee’s behalf; (c) a statement that checks will be void and cannot be reissued after one hundred eighty (180) days from the date the original check was issued; and (d) contact information for the Distribution Agent for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment will be prepared by the Tax Administrator and provided to the Distribution Agent for review and approval.

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

53. Each Payee shall make commercially reasonable efforts, consistent with its legal, fiduciary, and contractual duties, as applicable, to allocate Distribution Payments received to the Beneficial Owner(s). If the Payee is unable to identify the beneficial owner(s) after receipt of a Distribution Payment, the Payee shall return the funds attributable to the beneficial owner(s) to the Third-Party to be added to the Residual described in Paragraph 61. All unallocated Distribution Payments must be returned to the Third-Party within ninety (90) days from the date of the Distribution Payment.

#### Post Distribution; Handing of Returned or Uncashed Checks; and Reissues

54. The Third-Party shall use its best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose checks are returned to the Third-Party as “undeliverable.” If new address information becomes available, the Third-Party will repackage the distribution check and send it to the new address. If new address information is not available after a diligent search (and in no event no later than one hundred fifty (150) days after the initial mailing of the original check) or if the distribution check is returned again, the check shall be voided and the Third-Party shall instruct the issuing financial institution to stop payment on such check. If the Third-Party is unable to find a Payee’s correct address, the Distribution Agent, in his discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

55. The Distribution Agent will direct the Third-Party to reissue checks or electronic payments to Payees upon the receipt of a valid, written request from the Payee prior to the initial stale date. In cases where a Payee is unable to endorse a check as written (e.g., name changes, IRA custodian changes, or recipient is deceased) and the Payee or a lawful representative requests the reissuance of a check in a different name, the Distribution Agent will request, and must receive, documentation to support the requested change. The Distribution Agent will review the documentation to determine the authenticity and propriety of the change request. If,

in the discretion of the Distribution Agent, such change request is properly documented, the Distribution Agent will direct the Third-Party to issue an appropriately redrawn check to the requesting party. Reissued checks will be void at the later of one hundred eighty (180) days from the date of issuance of the original check or thirty (30) days from the reissuance, and in no event will a check be reissued after one hundred eighty (180) days from the date of the original issuance without the approval of the SEC staff.

56. The Third-Party will work with issuing financial institution and maintain information about uncashed checks and any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Third-Party is responsible for researching and reconciling errors and reissuing payments, as directed by the Distribution Agent. The Third-Party is also responsible for accounting for all payments. The amount of all uncashed and undelivered payments will continue to be held in the Fair Fund.

57. The Third-Party will make and document its best efforts to contact Payees to follow-up on the status of uncashed distribution checks over \$100 (other than those returned as “undeliverable”) and take appropriate action to follow-up on the status of uncashed checks at the request of SEC staff. The Distribution Agent may direct the Third-Party to reissue such checks, subject to the time limits detailed herein.

58. At the discretion of the Distribution Agent, certain costs that were not factored into the Reserve, such as bank fees for the return of a payment, may reduce the Payee’s Distribution Payment. In such situations, the Distribution Agent will immediately notify the Tax Administrator of the reduction in the Distribution Payment.

#### Receipt of Additional Funds

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

#### Disposition of Undistributed Funds

60. If funds remain following the initial distribution the Distribution Agent, in consultation with the SEC staff, may seek subsequent distribution(s) of any available remaining funds. All subsequent distributions shall be made in a manner that is consistent with this Plan and pursuant to a Court Order.

61. A residual will be established for any amounts remaining after the final disbursement to Payees from the Fair Fund and the payment of all Administrative Costs (the “Residual”). The Residual may include funds from, among other things, amounts remaining in the Reserve, distribution checks that have not been cashed, checks or electronic payments that were not delivered or funds that were returned to the Fair Fund, and tax refunds due to the Fair Fund’s overpayment of taxes or for waiver of IRS penalties.

62. Once the Distribution Agent, in consultation with the SEC staff, deems further

distribution of the Fair Fund to investors infeasible, the Distribution Agent will direct the Third-Party to have any uncashed checks voided and to return any remaining funds disbursed to the Bank in Paragraph 47 above to the Commission to become part of the Residual.

63. All funds remaining in the Residual that are infeasible to distribute to investors will be returned to the SEC and held pending a final accounting.

#### Administrative Costs

64. The Tax Administrator will be entitled to reasonable administrative fees and expenses up to \$15,000. The Tax Administrator will invoice all fees and expenses for the tax administration of the Fair Fund on a quarterly basis directly to the SEC staff. Once the SEC staff has reviewed and approved the payment of the invoice(s), the SEC will petition the Court for an order to pay these invoices from the Fair Fund.

65. The Third-Party will be entitled to reasonable compensation for its fees and expenses, up to \$8,600 for services provided to assist the Distribution Agent with the administration of the distribution of the Fair Fund. The Third-Party will invoice all fees and expenses on a quarterly basis directly to the SEC staff. Once the SEC staff has reviewed and approved the payment of the invoice(s), the SEC will petition the Court for an order to pay these invoices from the Fair Fund.

66. Any other Administrative Costs shall be paid from the Fair Fund, pursuant to a Court order.

#### Accountings

67. When all funds have been disbursed, except for the Residual described in Paragraph 61, the Third-Party will submit to the Distribution Agent a final report (the “Third-Party Final Report”) that includes an accounting of all funds disbursed to the Bank. The Third-Party Final Report will include, at a minimum, the number of payments and total amount sent to Payees, and the number of payments and total amount successfully disbursed (i.e., cashed or electronically transferred) to Payees, and the amount of funds returned to the SEC, pursuant to Paragraph 62 above. The Third-Party Final Report must be endorsed by a declaration executed by the Third-Party under penalty of perjury under the laws of the United States.

68. Upon receipt of the Third-Party’s Final Report described above, the Distribution Agent will submit a final accounting, on a standardized form provided by the SEC staff, to the Court. The final accounting report will include a recommendation as to the disposition of the Residual, consistent with Sections 21(d)(3), (5), and (7) and *Liu v. SEC*, 140 S. Ct. 1936 (2020).<sup>9</sup>

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<sup>9</sup> 15 U.S.C. § § 78u(d)(3), (5), and (7). Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant provisions of the NDAA apply “to any action or proceeding that is pending on, or commenced on or after, the date of” the NDAA’s enactment. NDAA, Section 6501(b).

If distribution of the Residual to investors is infeasible, the SEC may petition the Court to transfer of the Residual to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.<sup>10</sup>

#### Termination of the Fair Fund

69. The Fair Fund will be eligible for termination and the Distribution Agent will be eligible for discharge after all of the following have occurred (a) a final accounting, in a standard accounting format provided by the SEC staff, has been submitted by the Distribution Agent and approved by the Court; (b) all Administrative Costs have been paid; and (c) the Court has approved the SEC's recommendation as to the final disposition of the Residual.

70. Once the Court has reviewed and accepted the final accounting, the SEC staff will petition the Court for an order, as appropriate, approving the final accounting, discharging the Distribution Agent, disposing of the Residual, and terminating the Fair Fund.

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

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<sup>10</sup> Section 21F(g)(3) of the Exchange Act, 15 U.S.C. §78u-6(g)(3), provides, in relevant part, that any monetary sanction of \$200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not added to a disgorgement fund or Fair Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

## PLAN OF ALLOCATION

This Plan of Allocation<sup>1</sup> is designed to compensate identified investors based on their losses on shares of Delphi Corporation common stock (the “Security”) purchased or acquired between January 1, 2001 and March 21, 2005, both dates inclusive (the “Relevant Period”), due to the violations of the federal securities laws alleged in the Complaint. Based upon a review and analysis of reports of holdings of the Security filed on Form 13F during the Relevant Period<sup>2</sup> and other applicable records obtained by the SEC during its investigation and litigation, the SEC has identified investors, or their lawful successors, who may have suffered a loss from purchasing or acquiring the Security during the Relevant Period at prices inflated by the violations alleged in the Complaint (the “Preliminary Claimants”). Only Preliminary Claimants are eligible to recover under this Plan.

The Distribution Agent will perform the calculations described below using investor-level holdings of the Security as reported in Forms 13F filed with the SEC during the Relevant Period. Preliminary Claimants will have the opportunity to submit additional records for consideration in the calculations. SEC staff economists have calculated the amount of artificial inflation in the price of the Security over the Relevant Period and the dollar value of harm per share of the Security.

The Distribution Agent will calculate each Preliminary Claimant’s Recognized Loss as the number of shares of the Security purchased or acquired during the Relevant Period, calculated from quarterly holdings data, as the number of shares held at the end of the Relevant Period (the lesser of the holdings at December 31, 2004 and the holdings at March 31, 2005) *minus* the number of shares held at the beginning of the Relevant Period (at December 31, 2000); *multiplied by* \$1.04, the inflation per share due to the misconduct of the Defendants during the Relevant Period, as determined by the SEC staff economists based on an event study.

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

A Preliminary Claimant who suffered a Recognized Loss and who is not an Excluded Party or an Unresponsive Preliminary Claimant, will be deemed an Eligible Claimant.

### **Additional Provisions**

Allocation of Funds: As the Net Available Fair Fund is less than the sum of the Recognized Losses of all Eligible Claimants, each Eligible Claimant’s distribution amount will

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<sup>1</sup> All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Plan.

<sup>2</sup> Section 13(f) of the Exchange Act, 15 U.S.C. §78m(f), and Exchange Act Rule 13f-1, 17 C.F.R. § 240.13f-1 require that any SEC-registered investment adviser who exercises investment discretion over at least \$100 million in “Section 13(f) securities” periodically report its holdings on Form 13F, *Information Required of Institutional Investment Managers Pursuant to Section 13(f) of the Securities Exchange Act of 1934 and Rules Thereunder*.

equal his, her or its “*Pro Rata Percent*” of the Net Available Fair Fund, subject to the “Minimum Distribution Amount” provision.

*Pro Rata Percent*: This computation is intended to measure Eligible Claimants’ Recognized Losses against one another. An Eligible Claimant’s *Pro Rata Percent* will be calculated as the ratio of his, her, or its Recognized Loss to the sum of Recognized Losses of all Eligible Claimants.

*Prior Recovery*: To avoid payment of a windfall, the distribution amount will be no larger the Recognized Loss minus the amount of any compensation for the loss that resulted from the conduct described in the Complaint that was received from another source (e.g., class action settlement), to the extent known by the Distribution Agent. That is, the distribution amount will be capped at the Recognized Loss less the Prior Recovery.

*Minimum Distribution Amount*: The Minimum Distribution Amount will be \$10.00. An Eligible Claimant whose distribution amount is less than the Minimum Distribution Amount will be deemed ineligible 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 the Minimum Distribution Amount will be deemed a Payee.

*Distribution Payment*: Each Payee will receive a distribution payment equal to his, her, or its calculated distribution amount.