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

SECURITIES AND EXCHANGE
COMMISSION

Plaintiff,

v.

ENERGY & ENVIRONMENTAL
INVESTMENTS, LLC, et al.

Defendants.

Case No. 8:23-cv-00338-FWS-JDE

**ORDER RE MOTION FOR AN
ORDER TO SHOW CAUSE [30]**

Having reviewed and considered the Plaintiff Securities and Exchange Commission’s (“SEC”) Motion for an Order to Show Cause (“Motion”) why the court should not approve the SEC’s proposed plan of distribution (“Proposed Plan,” attached as Attachment A) for the funds paid or collected in this matter (“Fair Fund”), as well as the law and record applicable to this matter, for good cause appearing, the court **GRANTS** the Motion.

1 **I.**

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

- 4 a. The SEC shall cause a copy of this Order, along with a copy of the Proposed
5 Plan, to be sent to the last known physical and/or electronic address of all
6 entities identified by the SEC as having been harmed by the conduct
7 underlying the Complaint (“Identified Investors”);
- 8 b. The SEC shall publish this Order on the SEC’s public webpage established
9 for this case ([https://www.sec.gov/enforce/matter-sec-v-energy-](https://www.sec.gov/enforce/matter-sec-v-energy-environmental-investments-llc-et-al)
10 [environmental-investments-llc-et-al](https://www.sec.gov/enforce/matter-sec-v-energy-environmental-investments-llc-et-al)) (“SEC Webpage”) along with a copy of
11 the Proposed Plan; and
- 12 c. Any costs associated with this Order, including I.a. (above), shall be paid by
13 the Fair Fund.

14 The foregoing publication and dissemination, along with the publication of this
15 Order through the court’s CM/ECF system, shall constitute notice of the Proposed
16 Plan and the opportunity to object to interested individuals and entities.

17 **II.**

18 **IT IS FURTHER ORDERED** that individuals and entities who purchased
19 membership units in Energy & Environmental Investments, LLC from March 1,
20 2011, through April 1, 2020, inclusive (“Preliminary Claimants”) or other
21 interested individuals or entities, **within forty (40) days from the entry of this**
22 **Order** (“Objection Due Date”) shall show cause, if there is any, why this court
23 should not enter an Order approving the Proposed Plan.

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

26 info@secvEandEfairfund.com

1 The correspondence must clearly state that the submitter is a Preliminary Claimant
2 as defined above, or otherwise state fully and clearly the submitter's interest in this
3 matter, and the submitter's objection(s) to the Proposed Plan. The submitter must
4 include all documentation necessary to support the objection. All factual
5 assertions must be concluded with the following declaration, if true, followed by
6 the submitting person's signature and the date of signature:

7
8 I declare pursuant to 28 U.S.C. §1746, under penalty of perjury
9 under the laws of the United States of America, that the
10 foregoing is true and correct.

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

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

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

23 SEC v. Energy & Environmental Investments, LLC. et al.
24 c/o Rust Consulting, Inc.
25 PO Box 2599
26 Faribault, MN 55021-9599
27
28

1 Failure to timely submit an objection in accordance with this section will
2 result in the objection being waived. Proof of timely receipt will be the burden of
3 the submitter.

4 **III.**

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

- 7 a. File a notice so advising the court (the “Notice”), accompanied by a copy of
8 the Proposed Plan, as well as a proposed Order approving the Proposed Plan;
9 and
10 b. Post a copy of the Notice, Proposed Plan, and proposed Order on the SEC
11 Webpage.

12 Upon receipt of such Notice from the SEC, the court may enter an Order approving
13 the Proposed Plan without further notice or passage of time.

14 **IV.**

15 **IT IS FURTHER ORDERED** that, if objections are timely received
16 pursuant to this Order and cannot be resolved, the SEC shall file them, with
17 sensitive information redacted, together with its response, **within seventy-five (75)**
18 **days of the entry of this Order**, with copies of its response served by electronic,
19 First Class, or Overnight Mail upon any objecting submitter. The SEC may
20 propose an amended plan if and as appropriate. If the SEC proposes an amended
21 plan, the amended plan, and any accompanying filings, will be made available to
22 all Potentially Eligible Investors and interested individuals and entities through the
23 SEC Webpage, with notice of the same sent to the last know physical and/or email
24 address of all Identified Investors. All costs of such dissemination shall be paid by
25 the Fair Fund. Such publication and dissemination, along with the publication
26 through the court’s CM/ECF system, shall constitute notice of the amended plan.
27 No further objection period will be provided unless expressly ordered by the court.

1 If the court deems it necessary or appropriate, the court may conduct a
2 hearing before approving the Proposed Plan or amended plan. Notice of a hearing
3 shall be provided through the case docket and the SEC Webpage, and if and as
4 otherwise ordered by the court.

5
6 **IT IS SO ORDERED.**

7
8
9 Dated: April 23, 2024



10 Hon. Fred W. Slaughter
11 UNITED STATES DISTRICT JUDGE

12 **CC: FISCAL**

Attachment A (Proposed Plan)

1
2 1. This Distribution Plan (the “Plan”) was developed by the Securities
3 and Exchange Commission (the “SEC”) in accordance with practices and
4 procedures customary in Fair Fund administrations. This Plan provides for the
5 distribution of a fair fund (the “Fair Fund”), comprised of disgorgement,
6 prejudgment interest, and civil money penalties paid by, or collected from,
7 defendants to the captioned action.
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9
10 2. As described more specifically below, the Plan seeks to compensate
11 investors who were harmed by the fraudulent offering conducted by Energy &
12 Environmental Investments, LLC (“EEI”), Energy & Environmental Inc., Amir A.
13 Sardari, and Narysa Sardari Luddy (collectively, the “Defendants”) as alleged in
14 the Complaint. As calculated using the methodology detailed in the Plan of
15 Allocation (attached as Exhibit A), investors will be compensated for their losses
16 on the purchase of membership units in EEI (the “Securities”) from March 1, 2011,
17 through April 1, 2020, inclusive (the “Relevant Period”). Based on information
18 obtained by the SEC during its investigation and litigation, and the review and
19 analysis of applicable records, the SEC has concluded that it has all records
20 necessary to calculate each investor’s harm. As a result, the Fair Fund is not being
21 distributed according to a claims-made process.

22 3. The SEC has custody of the Fair Fund and shall retain control of the
23 assets of the Fair Fund. The Court retains jurisdiction over implementation of the
24 Plan.

25 **I. BACKGROUND**

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

11 5. On May 19, 2023, the Court entered final judgments, by consent,
12 against each of the Defendants (the “Final Judgments”), ordering them,
13 collectively, to disgorge \$4,424,028.09, and to pay prejudgment interest of
14 \$1,266,963.48 and civil penalties of \$1,235,909.00.¹ ECF Nos. 20, 21, 23.

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

21 7. The SEC currently holds \$550,000.00 paid by, or collected from, the
22 Defendants pursuant to the Final Judgments, plus accrued interest, comprising the
23 Fair Fund. The Fair Fund has been deposited in an SEC-designated account at the
24 United States Department of the Treasury (“Treasury”). Additional collections of
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26 ¹ The final judgment entered by consent against Sardari did not impose any monetary
27 sanctions. ECF No. 22.

1 funds in satisfaction of the Final Judgments shall be applied to outstanding
2 disgorgement, civil penalties, prejudgment interest, and post-judgment interest, in
3 that order.

4 II. DEFINITIONS

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

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

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

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

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

22 12. **“Fair Fund”** means the fund created by the Court pursuant to Section
23 308(a) of the Sarbanes-Oxley Act of 2002 for the benefit of investors harmed by
24 Defendants’ violations alleged in the Complaint. Additional collections, accrued
25 interest, and funds directed to the Fair Fund by Court or SEC order or otherwise,
26 shall be added to, and become a part of, the Fair Fund.

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

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

13 15. **“Net Available Fair Fund”** means the Fair Fund less Administrative
14 Costs.

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

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

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

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

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

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

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

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

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

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

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

1 **III. TAX COMPLIANCE**

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

5 28. The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under
6 Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. §
7 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The
8 Tax Administrator is the administrator of such QSF for purposes of Treas. Reg. §
9 1.468B-2(k)(3)(I) and shall satisfy the tax-related administrative requirements
10 imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

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

18 **IV. DISTRIBUTION AGENT**

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

23 30. The Distribution Agent will be responsible for administering the Fair
24 Fund in accordance with the Plan. This will include, among other things, taking
25 reasonable steps to obtain accurate mailing information for Preliminary Claimants;
26 establishing a webpage and providing contact information to which to direct
27 inquiries regarding the Plan; causing the dissemination of the Plan Notice;

1 cooperating with the Tax Administrator appointed by the Court to satisfy any tax
2 liabilities and to ensure compliance with income tax reporting requirements,
3 including but not limited to Foreign Account Tax Compliance Act (FATCA);
4 directing the disbursement of the Fair Fund in accordance with this Plan, as
5 ordered by the Court; and researching and reconciling errors and reissuing
6 payments, when possible. The Distribution Agent will engage a third-party (the
7 “Third-Party”), to perform some of the administrative tasks associated with
8 implementing the Plan. The Third-Party’s fees and expenses will be paid from the
9 Fair Fund as an Administrative Cost pursuant to a cost proposal submitted to, and
10 approved by, the SEC staff.

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

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

17 V. PLAN PROCEDURES

18 Specification of Preliminary Claimants

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

23 Procedures for Locating and Notifying Preliminary Claimants

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

4 Undeliverable Mail

5 35. If any mailing is returned as undeliverable, the Third-Party will make
6 the best practicable efforts to ascertain a Preliminary Claimant’s correct address. If
7 another address is obtained, the Third-Party will then resend it the Preliminary
8 Claimant’s new address within fifteen (15) days of receipt of the returned mail. If
9 the mailing is returned again, and the Third-Party, despite best practicable efforts,
10 is unable to find a Preliminary Claimant’s correct address, the Distribution Agent,
11 in her discretion, may deem such Preliminary Claimant an Unresponsive
12 Preliminary Claimant.

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

16 Procedures to Request Plan Notice

17 37. Any Person who does not receive a Plan Notice as described in
18 paragraph 18, but who is aware of this Plan (e.g., through other Preliminary
19 Claimants or on www.sec.gov) and believes they should be included as a
20 Preliminary Claimant, should contact the Distribution Agent within forty-five (45)
21 days from the approval of the Plan to establish that they should be considered a
22 Preliminary Claimant. The Third-Party will send the Person a Plan Notice within
23 thirty (30) days of receiving the Person’s documentation if the Distribution Agent
24 determines that the Person should have received a Plan Notice.

25 Failure to Respond to Plan Notice

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

11 Dispute Process

12 39. Disputes will be limited to the preliminarily calculated Investment and
13 Recovery amounts set forth in the Plan Notice. Within thirty (30) days of the final
14 mailing of the Plan Notice to the Preliminary Claimant, the Distribution Agent
15 must receive a written communication detailing any dispute along with any
16 supporting documentation. The Distribution Agent will investigate the dispute,
17 and such investigation will include a review of the written dispute as well as any
18 supporting documentation.

19 Final Determination Notices

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

2 Distribution Methodology

3 41. The Distribution Agent will calculate each Preliminary Claimant's
4 Recognized Loss in accordance with the Plan of Allocation. All Preliminary
5 Claimants who are determined to have a Recognized Loss, and who are not
6 deemed an Excluded Party, or an Unresponsive Preliminary Claimant will be
7 deemed an Eligible Claimant. All Eligible Claimants whose distribution amount is
8 equal to or greater than \$10.00, as calculated in accordance with the Plan of
9 Allocation, will be deemed a Payee and receive a Distribution Payment.

10 Establishment of a Reserve

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

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

19 Preparation of the Payment File

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

24 **VI. The Escrow Account**

25 45. Prior to the disbursement of funds from the Net Available Fair Fund,
26 the Third-Party will establish an escrow account at a commercial bank not
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1 unacceptable to the SEC (the “Bank”), pursuant to an escrow agreement (the
2 “Escrow Agreement”) provided by the SEC staff.

3 **VII. DISTRIBUTION**

4 **Distribution of the Fair Fund**

5 46. After preparation of the Payee List, the SEC will petition the Court for
6 authority to disburse funds from the Net Available Fair Fund to the Bank pursuant
7 to the Payee List for distribution by the Third-Party in accordance with the Plan.
8 Pursuant to the order, the funds will be transferred to the Bank, and the Third-Party
9 will be responsible for issuing Distribution Payments to Payees in accordance with
10 the Payee List.

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

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

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

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

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

8 51. The Third-Party shall use its best efforts to make use of commercially
9 available resources and other reasonably appropriate means to locate all Payees
10 whose checks are returned to the Third-Party as “undeliverable.” If new address
11 information becomes available, the Third-Party will repackage the distribution
12 check and send it to the new address. If new address information is not available
13 after a diligent search (and in no event no later than one hundred twenty (120) days
14 after the initial mailing of the original check) or if the distribution check is returned
15 again, the check shall be voided and the Third-Party shall instruct the issuing
16 financial institution to stop payment on such check. If the Third-Party is unable to
17 find a Payee’s correct address, the Distribution Agent may remove such Payee
18 from the distribution and the allocated Distribution Payment will remain in the Fair
19 Fund for distribution, if feasible, to the remaining Payees.

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

8 53. The Third-Party will work with the issuing financial institution and
9 maintain information about uncashed checks and any returned items due to non-
10 delivery, insufficient addresses, and/or other deficiencies. The Third-Party is
11 responsible for researching and reconciling errors and reissuing payments when
12 possible. The Third-Party is also responsible for accounting for all payments. The
13 amount of all uncashed and undelivered payments will continue to be held in the
14 Fair Fund.

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

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

25 Receipt of Additional Funds

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

3 Disposition of Undistributed Funds

4 57. If funds remain following the initial distribution, the Distribution
5 Agent may seek subsequent distribution(s) of any remaining funds, if feasible. All
6 subsequent distributions shall be made consistent with this Plan and pursuant to the
7 Court's order.

8 58. A residual will be established for any amounts remaining after the
9 final disbursement to Payees from the Fair Fund and the payment of all
10 Administrative Costs (the "Residual"). The Residual may include funds from,
11 among other things, amounts remaining in the Reserve, distribution checks that
12 have not been cashed, checks that were not delivered or were returned to the SEC,
13 and tax refunds received due to the Fair Fund's overpayment of taxes or for waiver
14 of IRS penalties.

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

20 **VIII. Miscellaneous**

21 Administrative Costs

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

23 Filing of Reports and Accountings

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

1 62. All funds remaining in the Residual that are infeasible to distribute to
2 investors will be held by the SEC pending a final accounting. Once the
3 Distribution Agent and the SEC staff have reviewed and accepted the final
4 accounting, the SEC will petition the Court for an order, as appropriate, approving
5 the final accounting, discharging the Distribution Agent, disposing of the Residual,
6 and terminating the Fair Fund. The motion will include a recommendation as to
7 the final disposition of the Residual, consistent with Sections 21(d)(3), (5), and (7)
8 and *Liu v. SEC*, 140 S. Ct. 1936 (2020).² If distribution of the Residual to
9 investors is infeasible, the SEC staff may recommend the transfer of the Residual
10 to the general fund of the Treasury subject to Section 21F(g)(3) of the Exchange
11 Act.³

12 IX. **TERMINATION**

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

- 15 a. A final report and accounting have been submitted to and
16 approved by the Court;
- 17 b. All Administrative Costs have been paid; and
- 18 c. The Court has approved the SEC staff's recommendation as to
19 the final disposition of the Residual consistent with Sections

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21 ² 15 U.S.C. §§ 78u(d)(3), (5), and (7). Section 21(d)(7) was added to the
22 Exchange Act by Section 6501(a) of the National Defense Authorization Act for
23 Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant
24 provisions of the NDAA apply “to any action or proceeding that is pending on, or
25 commenced on or after, the date of” the NDAA’s enactment. NDAA, Section
26 6501(b).

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

1 21(d)(3), (5), and (7) and *Liu v. SEC*, 140 S. Ct. 1936 (2020).⁴

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

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⁴ See note 2.

1 **Exhibit A**

2 **PLAN OF ALLOCATION**

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

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

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

15 Any Preliminary Claimant who suffered a Recognized Loss greater than
16 \$0.00 pursuant to this Plan of Allocation, and who is not an Excluded Party or an
17 Unresponsive Preliminary Claimant, will be deemed an Eligible Claimant.

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

- 20 (a) The Distribution Agent will create a list of Eligible Claimants (the
21 “Preliminary List”).
- 22 (b) The Distribution Agent will calculate the “Individual Recovery Ratio”
23 for each Eligible Claimant on the Preliminary List as the claimant’s
24 Recovery divided by his, her, or its Investment.
- 25 (c) Using the Preliminary List, the Distribution Agent will calculate the
26 “Equal Recovery Ratio” as the sum of the Recoveries for all Eligible
27

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

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

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

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

20 **Minimum Distribution Amount:** The Minimum Distribution Amount will be
21 \$10.00 (inclusive of Reasonable Interest, if any). If an Eligible Claimant's
22 distribution amount is less than the Minimum Distribution Amount, that Eligible
23 Claimant will be deemed ineligible to receive a Distribution Payment and his, her,
24 or its distribution amount will be reallocated on a *pro-rata* basis to Eligible
25 Claimants whose distribution amounts are greater than or equal to the Minimum
26 Distribution Amount.

27 **Payee:** An Eligible Claimant whose distribution amount equals or exceeds
28

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

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

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