

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 97345 / April 21, 2023**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20060**

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**In the Matter of**

**Bayerische Motoren Werke  
Aktiengesellschaft, BMW of North  
America, LLC and BMW US  
Capital, LLC,**

**Respondents.**

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**NOTICE OF PROPOSED PLAN OF  
DISTRIBUTION AND  
OPPORTUNITY FOR COMMENT**

Notice is hereby given, pursuant to Rule 1103 of the United States Securities and Exchange Commission's (the "Commission") Rules on Fair Fund and Disgorgement Plans (the "Commission's Rules"), 17 C.F.R. § 201.1103, that the Division of Enforcement has submitted to the Commission a proposed plan of distribution (the "Proposed Plan") for the distribution of monies paid in the above-captioned matter.

On September 24, 2020, the Commission issued an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (the "Order")<sup>1</sup> against Bayerische Motoren Werke Aktiengesellschaft ("BMW"), BMW of North America, LLC, and BMW US Capital, LLC ("BMW USC") (collectively, the "Respondents") for violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 ("Securities Act"). In the Order, the Commission found that from 2015 to 2019, BMW inflated its reported retail sales in the U.S., which helped BMW close the gap between its actual retail sales volume and internal targets and publicly maintain a leading retail sales position relative to other premium automotive companies. The Commission also found that BMW NA used three practices that had the effect of inaccurately reporting its U.S. retail sales volume (a non-financial metric). First, from January 2015 through March 2017, BMW used its demonstrator and service loaner programs to boost reported retail sales volume and meet internal targets, resulting in demonstrator and loaner vehicles accounting for over one quarter of BMW NA's reported retail sales in this period. Second, from 2015 through 2019, BMW NA maintained an excess reserve of unreported vehicle sales—referred to internally as the "bank" that it used when necessary to meet internal monthly sales targets without regard to when the underlying sales occurred. Finally, in January 2015 and January 2017, BMW NA improperly adjusted its retail sales reporting calendar, which usually followed a standard calendar used in the automotive industry, to achieve internal retail sales targets or bank excess retail sales for use in future reporting periods.

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<sup>1</sup> Securities Act Rel. No. 10850 (Sept. 24, 2020).

In addition, the Commission found that BMW AG, a German corporation and the ultimate parent company of BMW NA and BMW USC, raised approximately \$18 billion through seven bond offerings on the U.S. capital markets from 2016 through 2019, which were offered and sold to investors pursuant to Rule 144A promulgated under the Securities Act. According to the Order, in connection with these bond offerings, BMW AG, through BMW USC, provided information about BMW's U.S. retail vehicle sales to bond investors, initial purchasers, and credit rating agencies in offering memoranda and investor presentations. BMW NA also issued monthly press releases during this period regarding BMW's U.S. retail sales. The Commission found that BMW AG provided materially incomplete and inaccurate information regarding its U.S. retail sales performance and customer demand for BMW vehicles in the U.S. market because it failed to disclose BMW NA's practices that resulted in the inaccurate reporting of its U.S. retail sales volume.

The Respondents were ordered to cease and desist from future violations of the securities laws and ordered to pay an \$18,000,000 civil penalty to the Commission. The Commission ordered the funds paid pursuant to the Order be held in an account at the United States Treasury pending a decision whether the Commission, in its discretion, would seek to distribute the funds.

On April 7, 2022, the Commission issued an order<sup>2</sup> that created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalty paid can be distributed to harmed investors (the "Fair Fund").

The Fair Fund consists of the \$18,000,000 paid by the Respondents. The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Fair Fund and has been deposited in a Commission-designated account at the U.S. Department of the Treasury, and any interest accrued will be added to the Fair Fund.

## **OPPORTUNITY FOR COMMENT**

Pursuant to this Notice, all interested persons are advised that they may obtain a copy of the Plan from the Commission's public website at <http://www.sec.gov/litigation/fairfundlist.htm>. Interested persons may also obtain a written copy of the Proposed Plan by submitting a written request to Keshia W. Ellis, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5876. All persons who desire to comment on the Proposed Plan may submit their comments, in writing, no later than thirty (30) days from the date of this Notice:

1. to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090;
2. by using the Commission's Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or
3. by sending an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov).

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<sup>2</sup> See Order Establishing a Fair Fund, Exchange Act Rel. No. 94623 (Apr. 7, 2022).

Comments submitted by email or via the Commission’s website should include “Administrative Proceeding File No. 3-20060” in the subject line. Comments received will be publicly available. Persons should submit only information they wish to make publicly available.

## **THE PROPOSED PLAN**

The Net Available Fair Fund<sup>3</sup> is comprised of the \$18,000,000 in civil money penalties paid by the Respondents, plus interest and income earned thereon, less taxes, fees, and expenses. The Proposed Plan provides for the distribution of the Net Available Fair Fund to investors who purchased certain debt securities offered by BMW USC in private placement transactions identified in Appendix A of the Proposed Plan, as calculated in accordance with the methodology in the Plan of Allocation in the Proposed Plan.

For the Commission, by the Division of Enforcement, pursuant to delegated authority.<sup>4</sup>

Vanessa A. Countryman  
Secretary

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<sup>3</sup> All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Proposed Plan.

<sup>4</sup> 17 C.F.R. § 200.30-4(a)(21)(iii).