

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 IN RE: VOLKSWAGEN “CLEAN DIESEL”
5 MARKETING, SALES PRACTICES, AND
6 PRODUCTS LIABILITY LITIGATION

MDL No. 2672 CRB (JSC)

**(Proposed) Order Appointing a Tax
Administrator and a Distribution Agent
and Authorizing the SEC to Approve and
Arrange Payment of the Tax Obligations
of the Distribution Fund and
Administrative Fees and Expenses
Without Further Court Order**

9 This Document Relates To:

10 *U.S. SEC v. Volkswagen AG*,
11 No. 3:19-cv-1391 CRB

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14 The Court, having reviewed the Motion of Plaintiff Securities and Exchange Commission
15 (“SEC”) for an Order: (1) appointing Heffler, Radetich & Saitta, LLP (“HRS”) as tax administrator
16 for the funds under the Court’s jurisdiction in this matter (the “Distribution Fund”); (2) appointing
17 KCC Class Action Services, LLC (“KCC”) as distribution agent for the Distribution Fund; and (3)
18 authorizing the SEC to approve and arrange payment of the tax obligations, and all administrative
19 fees and expenses of HRS and KCC, from the Distribution Fund without further Court Order (the
20 “Motion”), and for good cause shown,

21 **IT IS HEREBY ORDERED:**

- 22 1. The Motion is **GRANTED**.

23 **Tax Administrator**

24 2. HRS is appointed Tax Administrator (the “Tax Administrator”) to execute all
25 income tax reporting requirements, including the preparation and filing of tax returns, for the
26 Distribution Fund.

27 [Proposed] Order Appointing a Tax
28 Administrator, Distribution Agent,
and Related Relief

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1 3. HRS shall be designated the Tax Administrator of the Distribution Fund, pursuant to
2 Section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations,
3 and shall satisfy the administrative requirements imposed by those regulations, including but not
4 limited to (a) obtaining a taxpayer identification number; (b) filing applicable federal, state, and local
5 tax returns and paying taxes reported thereon out of the Distribution Fund; and (c) satisfying any
6 information, reporting, or withholding requirements imposed on distributions from the Distribution
7 Fund. Upon request, the Tax Administrator shall provide copies of any filings to the SEC’s counsel
8 of record.

9 4. The Tax Administrator shall comply with the distribution plan to be approved by
10 this Court (the “Plan”) and all Court orders;

11 5. The Tax Administrator shall, at such times as the Tax Administrator deems
12 necessary to fulfill the tax obligations of the Distribution Fund, submit a request to the SEC’s
13 counsel of record for payment from the Distribution Fund of any tax obligations of the Distribution
14 Fund.

15 6. The Tax Administrator shall be entitled to charge reasonable fees for tax
16 compliance services and related expenses in accordance with its agreement with the SEC. The
17 Tax Administrator shall, at such times as the Tax Administrator deems appropriate, submit a
18 request to the SEC’s counsel of record for payment of fees and expenses from the Distribution
19 Fund.

20 7. The SEC is authorized to approve and arrange payment of all tax obligations owed
21 by the Distribution Fund and the fees and expenses of the Tax Administrator from the Distribution
22 Fund without further Court order. The Tax Administrator will submit notification of tax obligations,
23 and invoices of all fees and expenses incurred in connection with its administration of the QSF to
24 the SEC’s counsel of record for review and, as appropriate, payment. All payments for taxes and the
25 fees and expenses of the Tax Administrator shall be reported to the Court in a final accounting.

Distribution Agent

8. KCC is appointed distribution agent (the “Distribution Agent”) for the Distribution Fund, to oversee the administration and distribution of the Distribution Fund in coordination with the SEC’s counsel of record pursuant to the terms of the Plan. The Distribution Agent will, among other things:

- a) Perform services in accordance with the pricing schedule and cost proposal submitted by the Distribution Agent to the SEC;
- b) Work with the SEC to develop the Plan;
- c) Identify harmed investors in accordance with the process set forth in the Plan;
- d) Respond to investor and distribution related inquiries;
- e) Quantify losses;
- f) Assist the Tax Administrator in calculating the Reserve;
- g) Perform all activities necessary for the distribution of the Distribution Fund net the Reserve in accordance with the Plan;
- h) Engage an independent, third-party firm, acceptable to the SEC staff, to perform a set of agreed upon procedures, review a statistically significant sample of claims and ensure accurate and comprehensive application of the Plan approved by the Court;
- i) Coordinate with the Court-appointed Tax Administrator to ensure timely compliance with all tax related obligations; and
- j) Comply with the Plan and all Court orders;

9. KCC shall file with the Court or provide to the SEC’s counsel of record to file with the Court a quarterly status report within forty-five (45) days of Court approval of the Plan and provide additional reports within thirty (30) days after the end of every quarter thereafter. Upon establishing an escrow account into which the monies in the Distribution Fund are transferred, the Distribution Agent will include a quarterly accounting report, in a format to be provided by the SEC, in the status report. The status report will inform the Court and the SEC of the activities and

1 status of the Distribution Fund during the relevant reporting period and the quarterly accounting
2 report will specify, at a minimum:

- 3 a) The location of the account(s) comprising the Distribution Fund; and
- 4 b) An interim accounting of all monies in the Distribution Fund as of the most recent
5 month-end, including the value of the account(s), all monies earned or received into the
6 account(s), funds distributed to eligible claimants under the Plan, and any monies expended from
7 the Distribution Fund to satisfy fees, expenses, and taxes, incurred or required in the
8 administration of the Distribution Fund or the implementation of the Plan.

9 10. The Distribution Agent shall be entitled to charge reasonable fees and related
10 expenses incurred in the performance of its duties in accordance with the cost proposal submitted to
11 the SEC. The Distribution Agent will submit invoices of all fees and expenses incurred in connection
12 with its role as Distribution Agent to the SEC's counsel of record for review and, as appropriate,
13 payment. The SEC is authorized to approve and arrange payment of the fees and expenses of the
14 Distribution Agent from the Distribution Fund without further order of this Court. All payments will
15 be reflected in a final accounting.

16 **Additional Provisions**

17 11. Upon completing their duties as set forth herein, the Tax Administrator, in
18 consultation with the Distribution Agent, will jointly provide to the SEC's counsel of record a final
19 accounting in a form provided by the SEC's counsel of record. The Distribution Agent will further
20 provide to the SEC's counsel of record a final report providing statistics related to the distribution,
21 including amounts disbursed to investors, amounts returned and/or not delivered or negotiated,
22 outreach efforts on unnegotiated payments and the costs and results of the same, and statistics
23 concerning payments made to individuals and entities; and an affidavit in a format acceptable to
24 the SEC's counsel of record summarizing its activities as Distribution Agent.

1 12. The Distribution Agent and/or the Tax Administrator may be removed *sua sponte*
2 at any time by the Court or upon motion of the SEC and replaced with a successor. In the event
3 the Distribution Agent and/or the Tax Administrator decide to resign, the resigning entity must
4 first give written notice to the SEC’s counsel of record and the Court of its intention, and
5 resignation, if permitted, will not be effective until the Court has appointed a successor. The
6 resigning entity will then follow instructions from the Court or a successor for relinquishing its
7 duties, including all records related to Distribution Fund monies and property. Unless otherwise
8 ordered, the resigning entity will within 30 days of the notice of resignation or removal, file with
9 the Court a final accounting and a report of its activities as further set forth above in paragraph 6,
10 and provide any other information requested by the SEC, the Court, or the successor.

11 13. The Court will retain exclusive jurisdiction over the distribution.

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13 **IT IS SO ORDERED.**

14 Dated: October 31, 2024

15 
16 HONORABLE CHARLES R. BREYER
17 United States District Judge