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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION	MDL No. 2672 CRB (JSC) **Plaintiff's Notice, Motion and Memorandum for an Order Approving a Distribution Plan**
This Document Relates To: *U.S. SEC v. Volkswagen AG*, No. 3:19-cv-1391 CRB	Date: August 28, 2026 Time: 10:00 am Courtroom: 6, 17th Floor Judge: The Honorable Charles R. Breyer

<u>NOTICE OF MOTION AND MOTION</u>

TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on August 28, 2026, at 10:00 am or as soon thereafter as possible, and based upon the accompanying Motion, Memorandum, and all other papers and proceedings herein, Plaintiff Securities and Exchange Commission (the "Commission" or "SEC") will move this Court, the Honorable Charles R. Breyer, at the United States Courthouse for the Northern District of California, in Courtroom 6 of the Phillip Burton Federal Building, on the Seventeenth Floor, at 450 Golden Gate Avenue, San Francisco, California 94102, for an order approving the Distribution Plan.

By the Motion, the SEC moves this Court for an Order approving a plan to distribute $48,750,000.00 to compensate harmed investors who, during the period November 20, 2014, through September 18, 2015, suffered losses as a result of Defendant's violations of the securities laws, including nondisclosure of its ongoing defeat device fraud and the government investigations looking into the same (the "Distribution Plan"). In support of this motion, the SEC relies on its Memorandum filed herewith and a Proposed Order appending the Distribution Plan as Exhibit 1.

MEMORANDUM

BACKGROUND

On March 14, 2019, the SEC filed a Complaint against Volkswagen Aktiengesellschaft ("VWAG"), Martin Winterkorn ("Winterkorn"), Volkswagen Group of America Finance, LLC ("VWGoAF"), and VW Credit, Inc. ("VCI") (collectively, the "VW Defendants"). ECF No. 1. The SEC alleged that the VW Defendants violated the securities laws by offering and selling billions of dollars of corporate bonds in the United States without disclosing its ongoing defeat device fraud and the government investigations looking into the same. ECF No. 1. On September 4, 2020, the SEC filed an amended complaint, including all the prior defendants except VW Credit, Inc. MDL Dkt. 7683, ECF No. 49.

The litigation has since been resolved. On April 3, 2024, the Court entered a final judgment by consent against VWGoAF (the "Final Judgment"), ordering, in relevant part, VWGoAF to disgorge $34,350,000.00 and pay prejudgment interest of $14,400,000.00, for a total payment of $48,750,000.00. ECF No. 137. Under the Final Judgment, the SEC must hold the funds paid in an account at the United States Treasury ("Treasury") and may propose a plan to distribute the funds to affected investors subject to Court's approval. Also on April 3, 2024, upon the SEC's Stipulation of Dismissal, the Court dismissed with prejudice all claims against VWAG and Winterkorn. ECF No. 138. VWGoAF has paid the monetary judgment in full. The SEC received $48,750,000.00, comprising the Distribution Fund.

On October 31, 2024, the Court appointed Heffler, Radetich & Saitta, LLC as tax administrator to fulfill the tax obligations for all funds under the Court's jurisdiction. ECF No. 142.

Also on October 31, 2024, the Court appointed KCC Class Action Services, LLC as the Distribution Agent for the Distribution Fund. ECF No. 142. The Funds are deposited in an SEC-designated account with the Treasury pending distribution to harmed investors pursuant to the Distribution Plan requested to be approved by this Court. Interest accrued in the account will be added to, and become a part of, the Distribution Fund. The Distribution Fund currently holds approximately $51,074,749.81. The Commission staff has prepared a Distribution Plan for the Distribution Fund, which the Commission now submits to this Court for its approval.[1]

APPROVAL OF THE DISTRIBUTION PLAN FOR THE DISTRIBUTION FUND

I. The Applicable Standard

Nearly every plan to distribute funds obtained in a Commission enforcement action requires choices to be made regarding the allocation of funds between and among potential claimants within the parameters of the amounts recovered. In recognition of the difficulty of this task, Courts historically have given the Commission significant discretion to design and set the

[1] The Distribution Plan for the Distribution Fund is attached as Exhibit 1 to the Proposed Order.

parameters of a distribution plan. As the Court of Appeals in the Second Circuit has explained, "[t]his kind of line-drawing—which inevitably leaves out some potential claimants—is . . . appropriately left to the experience and expertise of the SEC in the first instance." *SEC v. Wang*, 944 F.2d 80, 83-84, 88 (2d Cir. 1991); *see SEC v. Fischbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997); *SEC v. Levine*, 881 F.2d 1165, 1182 (2d Cir. 1989).

The Court's review of a distribution plan focuses on whether the plan is fair and reasonable. *See Official Committee of Unsecured Creditors of Worldcom, Inc. v. SEC*, 467 F.3d 73, 81 (2d Cir. 2006) ("[u]nless the consent decree specifically provides otherwise[,] once the district court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement plan is fair and reasonable, its review is at an end"), citing *Wang*, 944 F.2d at 85. For the reasons articulated below, the Commission asserts that the Distribution Plan for the Distribution Fund constitutes a fair and reasonable allocation of the funds available for distribution and should be approved.

II. The Commission's Distribution Plan Provides a Fair and Reasonable Allocation of the Distribution Fund

The Complaint alleges the Defendants violated the securities laws and caused investor losses amounting to $48,750,000.00. The Distribution Plan will compensate investors who purchased bonds in the initial offerings or in the secondary market included in VWGoAF's November 20, 2014, offering of 144A Bonds in the amount of $2,000,000,000 and/or VWGoAF's May 22, 2015, offering 144A Bonds in the amount of $2,800,000,000 (collectively, the "Securities"), during the period November 20, 2014, the earliest offering date of the Securities, through September 18, 2015, the date of the disclosure of the defeat device fraud, both dates inclusive (the "Relevant Period"), and who were not compensated for undisclosed risks due to VWGoAF's misconduct as alleged in the Complaint. The defeat device fraud was ongoing at the time that VWGoAF offered the bonds.

Recognized Losses will be the sum of the Recognized Loss per $1,000 Par Value for the full par value of the Securities purchased or acquired by the Preliminary Claimant during the Relevant Period. Investors who did not purchase the Securities during the Relevant Period or who are an Excluded Party[2] are ineligible to recover under the Distribution Plan. The Distribution Fund consists of a little more than $51 million. The distribution will proceed on a *pro rata* basis. A $250 *de minimis* will be applied.

If, after the distribution is complete and all Administrative Costs have been paid, funds remain in the Distribution Fund, and the Distribution Agent, in consultation with the SEC staff, has determined further distributions to be infeasible, the Residual shall be transferred to the SEC, pending a final accounting. Upon completion of the final accounting, the SEC staff will file a motion with this Court to approve the final accounting, including a recommendation as to the final disposition of the Residual, consistent with Sections 21(d)(3), (5), and (7) of the Securities Exchange Act of 1934 ("Exchange Act")[3] and *Liu v. SEC*, 140 S. Ct. 1936 (2020). If distribution of the Residual to investors is infeasible, the SEC staff may recommend the transfer of the Residual to the general fund of the Treasury subject to Section 21F(g)(3) of the Exchange Act.[4]

[2] All capitalized terms used herein but not defined shall have the same meaning ascribed to them in the Plan.

[3] 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 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" the NDAA's enactment. NDAA, Section 6501(b).

[4] 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 Distribution Fund or otherwise distributed to victims, plus

In moving this Court to approve the final accounting, the SEC staff will also seek from the Court an Order discharging the Distribution Agent and terminating the Distribution Fund.

CONCLUSION

WHEREFORE, for all the foregoing reasons, the SEC respectfully requests that this Court enter the attached Proposed Order and grant such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Ilana Z. Sultan

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investment income, shall be deposited or credited into the SEC Investor Protection Fund.

CERTIFICATE OF SERVICE

I, Ilana Z. Sultan, hereby certify that, on July 22, 2026, I caused the foregoing document to be electronically filed with the clerk of the court for the U.S. District Court of Northern District of California, using the electronic case filing system of the court. The electronic case filing system sends a “Notice of Electronic Filing” to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Ilana Z. Sultan
Ilana Z. Sultan