Ilana Z. Sultan
Email: sultani@sec.gov
100 F Street NE
Washington, DC 20549
Phone: 202-551-4485

Attorney for Plaintiff
U.S. Securities and Exchange Commission

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 Proposed Distribution Plan**
This Document Relates To: *U.S. SEC v. Volkswagen AG*, No. 3:19-cv-1391 CRB	

I. OVERVIEW

1. This Distribution Plan (the "Plan") was developed by the Securities and Exchange Commission (the "SEC") in accordance with practices and procedures customary in Distribution Fund administrations. This Plan provides for the distribution of disgorgement and prejudgment interest paid by Volkswagen Group of America Finance, LLC ("VWGoAF") in this proceeding which, with accrued interest, comprise a Distribution Fund (the "Distribution Fund").

2. As described more specifically below, the Plan seeks to compensate investors who were harmed by the Defendant's conduct alleged in the Complaint, in connection with the offering and selling of billions of dollars of corporate bonds in the United States without

disclosing ongoing fraud and government investigations looking into the same. As calculated using the methodology detailed in the Plan of Allocation (attached as Exhibit A), the plan is intended to compensate investors who, during the period November 20, 2014, through September 18, 2015 (the "Relevant Period"), purchased bonds in the initial offerings or on the secondary market 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 of 144A Bonds in the amount of $2,800,000,000 (collectively, the "Securities") and suffered losses due to VWGoAF's misconduct as alleged in the Complaint.

3. The Commission has custody of the Distribution Fund and shall retain control of the assets of the Distribution Fund. The Court retains jurisdiction over its implementation.

II. BACKGROUND

4. On March 14, 2019, the SEC filed a Complaint against Volkswagen Aktiengesellschaft, Martin Winterkorn, VWGoAF, and VW Credit, Inc. (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 August 20, 2020, the Court granted in part and denied in part the VW Defendants' motion to dismiss and denied Winterkorn's motion to dismiss. MDL Dkt. 7666. As a result of the Court's ruling, the SEC filed an amended complaint on September 4, 2020, including all the prior defendants except VW Credit, Inc. MDL Dkt. 7683, ECF No. 49.

5. 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 and pay prejudgment interest of $14,400,000, for a total payment of $48,750,000. ECF No. 137.

6. Also on April 3, 2024, upon the SEC's stipulation, the Court dismissed with prejudice all claims against Volkswagen Aktiengesellschaft and Martin Winterkorn. ECF No. 138.

7. VWGoAF has paid the $48,750,000 monetary judgment in full with interest, comprising the Distribution Fund. The Distribution Fund is deposited in an SEC-designated account at the United States Department of the Treasury, and any funds directed to the Distribution Fund by Court or SEC Order, agreement, or otherwise, and accrued interest, will be added to, and become a part of, the Distribution Fund.

III. DEFINITIONS

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

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

9. "**Claim Form**" means the form designed by the Distribution Agent, in consultation with the SEC staff, for the filing of claims in accordance with this Plan. The Claim Form will require, at a minimum, sufficient documentation reflecting any Preliminary Claimant's purchases and dispositions of the Securities during the Relevant Period such that eligibility under the Plan can be determined, tax identification and other related information from the Preliminary Claimant as determined necessary by the Distribution Agent in coordination with the Tax Administrator, and a certification that the Preliminary Claimant is not an Excluded Party.

10. **"Claim Status Notice"** means the notice sent by the Distribution Agent within 90 days of the Claims Bar Date to all Preliminary Claimants that submitted a deficient Claim Form. The Claim Status Notice will provide to each Preliminary Claimant whose claim is deficient, in whole or in part, the reason(s) for the deficiency and in the event the claim is denied, the Claim Status Notice will state the reason(s) for such denial. The Claim Status Notice will also notify the Preliminary Claimant of the opportunity to cure any deficiency, request reconsideration, or dispute the determination made by the Distribution Agent and provide instructions regarding what is required to do so.

11. "**Claims Bar Date**" means the date established in accordance with this Plan by which a Preliminary Claimant's Claim Form must be postmarked or submitted electronically to receive consideration under the Plan. The Claims Bar Date shall be 120 days after the initial mailing of the Plan Notice. Claim Forms submitted by Preliminary Claimants postmarked or received after the Claims Bar Date will not be accepted unless the Distribution Agent is directed to do so by the SEC staff.

12. "**Determination Notice**" shall mean the written notice sent by the Distribution Agent to all Preliminary Claimants who timely submitted a Claim Form notifying the Preliminary Claimant of its eligibility determination. The Determination Notice will further provide each Preliminary Claimant that is determined to be an Eligible Claimant with his, her, or its calculated Recognized Loss. The Determination Notice will constitute the Distribution Agent's final ruling regarding the eligibility status of the claim.

13. "**Distribution Fund**" is comprised of disgorgement and prejudgment interest paid by VWGoAF in this proceeding and accrued interest. Any funds directed to the Distribution

Fund by Court or SEC Order, agreement, or otherwise, and accrued interest, will be added to, and become a part of, the Distribution Fund.

14. "**Distribution Payment**" means a payment from the Distribution Fund to a Payee in accordance with the terms of this Plan.

15. "**Eligible Claimant**" means a Preliminary Claimant, who is not an Excluded Party, and who submitted a valid Claim Form and has suffered a Recognized Loss, as calculated in accordance with the Plan of Allocation.

16. **"Excluded Party"** shall mean:

(a) The VW Defendants;

(b) Present or former officers or directors of the VW Defendants or any assigns, heirs, distributees, spouses, parents, dependent children or controlled entities of any of the foregoing Persons or entities;

(c) Any employee or former employee of VW Defendants or any of its affiliates who has been terminated for cause, or has otherwise resigned, in connection with the conduct alleged in the Complaint;

(d) Any Person who, as of the Claims Bar Date, has been the subject of criminal charges related to the conduct alleged in the Complaint or any related Commission action;

(e) Any firm, trust, corporation, or other entity in which Defendants have or had a controlling interest;

(f) The Distribution Agent, its employees, and those Persons assisting the Distribution Agent in its role as the Distribution Agent; or

(g) Any purchaser or assignee of another Person's right to obtain a recovery from the Distribution Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance or devise.

The Claim Form will require claimants to certify that they are not an Excluded Party. All Excluded Parties will be deemed ineligible to participate in the distribution of the Distribution Fund.

17. "**Net Available Distribution Fund"** means the Distribution Fund less Administrative Costs.

18. "**Payee**" means an Eligible Claimant whose Recognized Loss calculates, in accordance with the Plan of Allocation, to a distribution amount equal to or greater than $250.00 who will receive a Distribution Payment.

19. "**Person**" means natural individuals as well as legal entities such as corporations, partnerships, or limited liability companies.

20. "**Plan Notice**" means a written notice from the Distribution Agent to Preliminary Claimants informing them of the Distribution Fund; the Plan and its eligibility requirements; explaining how to submit a claim, including instructions for any online claims process; and explaining how to obtain a copy of the approved Plan and Claim Form by request or from the Distribution Fund's website. The Plan Notice will also be available on the Distribution Fund's website that is maintained by the Distribution Agent. The initial mailing of the Plan Notice is the mailing sent by the Distribution Agent in accordance with paragraph 38.

21. “**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 as Exhibit A.

22. “**Preliminary Claimant**” shall mean a Person, or their lawful successors, identified by the Distribution Agent as having a possible claim to recover from the Distribution Fund under this Plan, or a Person asserting prior to the Claims Bar Date that he, she, or it has a possible claim to recover from the Distribution Fund under this Plan, as a result of transactions in the Security during the Relevant Period.

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

24. “**Relevant Period**” means November 20, 2014, the earliest offering date of the Securities (at which time the defeat device fraud was ongoing), through September 18, 2015, the date of the disclosure of the defeat device fraud, both dates inclusive. The defeat device fraud was ongoing at the time that VWGoAF offered the bonds.

25. “**Securities**” mean the 144A Bonds offered by VWGoAF on November 20, 2014, in the amount of $2,000,000,000, and May 22, 2015, in the amount of $2,800,000,000, as listed in Table A of the Plan of Allocation.

26. **“Summary Notice”** means the notice published in print or internet media that shall include, at a minimum, a statement of the purpose of the Distribution Fund and the Plan, the means of obtaining a Claim Form and Plan Notice, and the Claims Bar Date. The Summary Notice will be published within ten days of the initial mailing of the Plan Notice, and will be published as many times, in whatever media, the Distribution Agent, in consultation with the SEC staff, determines to be most effective for providing notice to investors.

27. "**Third-Party Filer**" means a third-party, including without limitation a nominee, custodian, or an intermediary holding in street name, who is authorized to submit and submits a claim(s) on behalf of one or more Preliminary Claimants. Third-Party Filer does not include assignees or purchasers of claims that are excluded from receiving Distribution Payments under paragraph 16.

IV. TAX COMPLIANCE

28. By Order entered October 31, 2024, the Court appointed Heffler, Radetich & Saitta, LLP as the tax administrator (the "Tax Administrator") for the Distribution Fund. ECF No. 142, (the "Appointment Order"). The Tax Administrator shall handle the tax obligations of the Distribution Fund. The Tax Administrator will be compensated for reasonable fees and expenses from the Distribution Fund.

29. The Distribution 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 taxpayer identification number;

(b) Requesting funds necessary for the timely payment of all applicable taxes, the payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and

(c) Fulfilling any information reporting or withholding requirements imposed on distributions from the Distribution Fund.

V. DISTRIBUTION AGENT

30. Also by the Appointment Order, the Court appointed KCC Class Action Services, LLC ("KCC") as the distribution agent (the "Distribution Agent"), to assist in developing a plan of distribution and to oversee the distribution of the Distribution Fund. The Distribution Agent will be compensated for reasonable fees and expenses from the Distribution Fund.

31. The Distribution Agent will be responsible for administering the Distribution Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to identify, obtain contact information for, and contact Preliminary Claimants; developing a claims database; establishing a website and staffing a call center to address inquiries regarding the Plan; disseminating the Plan Notice; preparing accountings; cooperating with the Tax Administrator 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); advising Preliminary Claimants of deficiencies in claims and providing an opportunity to cure any documentary defects; taking antifraud measures, such as identifying false, ineligible and overstated claims; making determinations under the criteria established herein as to Preliminary Claimants' eligibility; advising Preliminary Claimants of final claim determinations; disbursing the Distribution Fund in accordance with this Plan, as ordered by the Court; and researching and reconciling errors and reissuing payments, when possible.

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.

34. The Distribution Agent is entitled to rely on all outstanding rules of law and Court orders. The Distribution Agent will not be liable to anyone, except the SEC on behalf of the Distribution Fund for a pecuniary loss to the Distribution Fund, for any action taken or omitted by the Distribution Agent in connection with the Plan and all Preliminary Claimants will have no claims against the Distribution Agent, its employees, agents, and attorneys in connection with the Plan and the administration of the Distribution Fund, and will be deemed enjoined from prosecuting or asserting any such claims, except upon a finding by this Court of gross negligence or reckless disregard of duty under this Plan.

35. The Distribution Agent is authorized to enter into agreements with third parties as may be appropriate or necessary in the administration of the Distribution Fund, provided such third parties are not excluded pursuant to other provisions of this Plan. In connection with such agreements, the third parties shall be deemed to be agents of the Distribution Agent under this Plan.

36. The Distribution Agent may be removed at any time by the Court and replaced with a successor. In the event the Distribution Agent decides to resign, it will first give written notice to the Commission staff and the Court of such intention, and such resignation will not be effective until the Court has appointed a successor. The Distribution Agent will then follow such instructions as such successor or the Court provides in turning over management of the Distribution Fund.

VI. ADMINISTRATION OF THE DISTRIBUTION FUND

<u>Identification of and Notification to Preliminary Claimants</u>

37. The Distribution Agent will, insofar as practicable, use its best efforts to identify Preliminary Claimants from a review of trading records, obtaining records from registered broker-dealers and investment advisors, and seeking information from any other source available to it. The Distribution Agent may also engage a third-party firm, after consultation with and approval of the SEC staff, to assist in identifying Preliminary Claimants to maximize the participation rate in the Distribution Fund.

38. Within 60 days after Court approval of the Plan, the Distribution Agent shall:

(a) design and submit a Plan Notice and the Claim Form to the SEC staff for review and approval;

(b) create a mailing and claim database of all Preliminary Claimants based upon information identified by the Distribution Agent;

(c) run a National Change of Address search to retrieve updated addresses for all records in the database;

(d) email and/or mail a Plan Notice to each Preliminary Claimant identified by the Distribution Agent and to the Distribution Agent's list of banks, brokers, and other nominees in accordance with paragraph 43;

(e) establish and maintain a website devoted solely to the Distribution Fund. The Distribution Fund's website, located at www.VWDistributionFund.com, will make available a copy of the approved Plan; provide information regarding the claims process and eligibility requirements for participation in the Distribution Fund in the form of frequently asked questions; include in downloadable form, the

Claim Form and other related materials; and such other information the Distribution Agent believes will be beneficial to Preliminary Claimants;

(f) establish and maintain a secure online Claim Form filing portal on the Distribution Fund's website;

(g) establish and maintain a toll-free telephone number, 1-888-830-4646, for Preliminary Claimants to call to speak to a live representative of the Distribution Agent during its regular business hours or, outside of such hours, to hear prerecorded information about the Distribution Fund. The toll-free number will be listed on all correspondence from the Distribution Agent to Preliminary Claimants as well as on the Distribution Fund's website; and

(h) establish and maintain a traditional mailing address and an email address which will be listed on all correspondence from the Distribution Agent to Preliminary Claimants as well as on the Distribution Fund's website.

39. The Distribution Agent will publish the Summary Notice within ten days of the initial mailing of the Plan Notice. The Summary Notice will be published as many times, in whatever media, the Distribution Agent, in consultation with the SEC staff, determines to be most effective for providing notice to investors.

40. The Commission staff retains the right to review and approve any material posted on the Distribution Fund's website, any material mailed, and any scripts used in connection with any communication with Preliminary Claimants.

41. In all materials that refer to the Claims Bar Date, the filing deadline will be clearly identified with the calendar date, which is 120 days from the date of the initial mailing of the Plan Notice.

42. The Distribution Agent will promptly provide a Claims Packet to any Preliminary Claimant upon request made via mail, phone, or email prior to the Claims Bar Date.

43. The Distribution Agent will send by mail, email, or other means the Plan Notice to the Distribution Agent's list of banks, brokers, and other nominees, as well as any other institutions identified during the outreach process, that may have records of the Securities during the Relevant Period (collectively, the "Nominees or Custodians"). The Distribution Agent will request that these entities, to the extent that they were record holders for beneficial owners of the Securities:

(a) within 14 days of the Nominees' or Custodians' receipt of the Plan Notice, notify and send the Plan Notice to the respective beneficial owners and, as requested, provide to the beneficial owners a Claim Form, so that the beneficial owners may timely file a claim. The burden will be on the Nominees or Custodians to ensure the claims process information, including, if requested, the Claim Form and Plan Notice and other relevant materials, is properly disseminated to the beneficial owners; and/or

(b) provide to the Distribution Agent, within 14 days of receipt of the Plan Notice, a list of last known names and addresses for all beneficial owners for whom/which they purchased, as the record holder, the Securities during the Relevant Period, so that the Distribution Agent can communicate with the beneficial owners directly.

44. An unlimited number of Plan Notices and Claim Forms may be downloaded by the Nominees or Custodians. In the event paper copies are needed, the Distribution Agent may provide no more than 50 additional copies of the materials relevant to submitting a claim to any Nominee or Custodian requesting it for the purpose of distribution to beneficial owners.

45. Documented reasonable out-of-pocket expenses incurred by the Nominees or the Custodians, which would not have been incurred but for compliance with paragraph 42 above, shall be reimbursed from the Distribution Fund. The amount of such expenses allowed will be at the discretion of the Distribution Agent, in consultation with the SEC staff. Unless otherwise determined by the Distribution Agent in consultation with the SEC staff, out-of-pocket expenses based on the following rates will be considered reasonable:

(a) a maximum of $0.03 per Plan Notice and/or Claim Form, plus postage at the pre-sort postage rate per Plan Notice and/or Claim Form actually mailed;

(b) a maximum of $0.05 per email of the Plan Notice with a link to the Claim Form; or

(c) $0.20 per name, address, and email address provided to the Distribution Agent, up to a maximum of amount of $1,500.00.

46. The Distribution Agent will attempt to locate any Preliminary Claimant whose mailing is returned as "undeliverable" and will document all such efforts. The Distribution Agent shall use its best efforts to make use of commercially available resources and other reasonably appropriate means to obtain updated addresses in response to "undeliverable" notices and forward any returned mail for which an updated address is provided or obtained. The

Distribution Agent will make available, upon request by the SEC staff, a list of all Preliminary Claimants whose Plan Notice have been returned as "undeliverable" due to incorrect addresses and for which the Distribution Agent has been unable to locate current addresses.

Filing a Claim

47. To avoid being barred from asserting a claim, on or before the Claims Bar Date, each Preliminary Claimant must submit to the Distribution Agent a properly completed Claim Form reflecting such Preliminary Claimant's claim, together with all required supporting documentation as the Distribution Agent, in its discretion, deems necessary or appropriate to substantiate the claim. Without limitation, this information may include third-party documentary evidence of purchases and dispositions of the Securities during the Relevant Period, as well as holdings of the Securities at pertinent dates.

48. Electronic claims submission is encouraged; the Plan Notice will include instructions on how Preliminary Claimants can submit their claims electronically via the Distribution Fund's website. If using the web-based claim filing option, a Preliminary Claimant must submit his, her, or its claim to the Distribution Agent by 11:59 p.m. Pacific Time on the Claims Bar Date. The Plan Notice will also include instructions for submission of claims if the Preliminary Claimant is unable to submit his, her, or its claim electronically.

49. The burden will be upon the Preliminary Claimant to ensure that his, her or its Claim Form has been properly and timely received by the Distribution Agent. A Claim Form that is postmarked or otherwise received after the Claims Bar Date will not be accepted unless the deadline is extended by the Distribution Agent for good cause shown, after consultation with the SEC staff.

50. All Claim Forms and supporting documentation necessary to determine a Preliminary Claimant's eligibility to receive a distribution from the Distribution Fund under the terms of the Plan must be endorsed by a declaration executed by the Preliminary Claimant under penalty of perjury under the laws of the United States. The declaration must be executed by the Preliminary Claimant, unless the Distribution Agent accepts such declaration from a Person authorized to act on the Preliminary Claimant's behalf, whose authority is supported by such documentary evidence as the Distribution Agent deems necessary.

51. When submitting claims to the Distribution Fund on behalf of its clients, all Third-Party Filers must use the electronic filing template provided by the Distribution Agent in this matter. Third-Party Filers that do not comply with the template and format provided by the Distribution Agent may be rejected. Third-Party Filers must also submit a signed master proof of claim and release, as well as proof of authority to file on behalf of the claimant(s) at the time the electronic file of transactions is submitted. Failure to do so may result in rejection of the claim.

52. Each Third-Party Filer must establish the validity and amount of each claim in its submission. Third-Party Filers must submit such supporting documentary evidence of purchases, dispositions, and holdings of the Securities as the Distribution Agent deems necessary or appropriate to substantiate each individual claim. Without limitation, this includes the complete name of the Preliminary Claimant (beneficial account owner) and its TIN (for individuals) or EIN (for companies), sufficient contact information to confirm the identity of the beneficial owner, and documentation from the original bank, broker or other institution of purchases and dispositions of the Securities (account statements, confirmations and other documentation of purchases and dispositions), as well as holdings of the Securities on pertinent

dates. The Distribution Agent will have the right to request, and the Third-Party Filer will have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed necessary by the Distribution Agent to substantiate the claim(s) contained in the submission. Documentation from a Third-Party Filer that is not acceptable to the Distribution Agent will result in rejection of the affected claim(s). The determination of the Distribution Agent to reject a claim for insufficient documentation, as reflected in the Determination Notice, is final and within the discretion of the Distribution Agent.

53. The receipt of the Securities by gift, inheritance, devise, or operation of law will not be deemed to be a purchase of the Securities, nor will it be deemed an assignment of any claim relating to the purchase of such Securities unless specifically so provided in the instrument of inheritance. The recipient of the Securities as a gift, inheritance, devise or by operation of law will be eligible to file a Claim Form and participate in the distribution of the Distribution Fund to the extent the original purchaser would have been eligible under the terms of the Plan. Only one claim may be submitted regarding the same transactions in the Securities, and in cases where duplicative claims are filed by the donor and donee, the donee claim will be honored, assuming it is supported by proper documentation.

54. Claims on behalf of a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C.§ 1002(3), which do not include Individual Retirement Accounts and such plan's participants, are properly made by the administrator, custodian or fiduciary of the plan and not by the plan's participants. The Distribution Agent will distribute any payments on such claims directly to the administrator, custodian or fiduciary of the retirement plan. The custodian or fiduciary of the retirement plan will distribute any payments received in a manner consistent with its fiduciary duties and the governing account or plan provisions.

55. The Preliminary Claimant has the burden of notifying the Distribution Agent of a change in his, her or its current address and other contact information, and ensuring that such information is properly reflected on the Distribution Agent's records.

Review of Claims and Deficiency Process

56. The Distribution Agent will review all claim submissions and determine the eligibility of each Preliminary Claimant to participate in the Distribution Fund by reviewing claim data and supporting documentation (or the lack thereof) and verifying the claim. Each Preliminary Claimant will have the burden of proof to establish the validity and amount of his, her or its claim. The Distribution Agent will have the right to request, and the Preliminary Claimant will have the burden of providing to the Distribution Agent any additional information and/or documentation deemed relevant by the Distribution Agent.

57. The Distribution Agent will provide a Claim Status Notice within 90 days of the Claims Bar Date to each Preliminary Claimant who has filed a deficient Claim Form with the Distribution Agent. The Claim Status Notice will provide to each Preliminary Claimant whose claim is deficient, in whole or in part, the reason(s) for the deficiency (*e.g.*, failure to provide required information or documentation). In the event the claim is denied, in whole or in part, the Claim Status Notice will state the reason(s) for such denial. The Claim Status Notice will also notify the Preliminary Claimant of the opportunity to cure any deficiency, request reconsideration, or dispute the determination made by the Distribution Agent and provide instructions regarding what is required to do so.

58. Any Preliminary Claimant with a deficient claim will have 30 days from the date of the Claim Status Notice to cure any deficiencies identified in the Claim Status Notice.

59. Any Preliminary Claimant seeking reconsideration of a denied claim must submit their request to the Distribution Agent in writing within 30 days of the date of the Claim Status Notice. All requests for reconsideration must include the necessary documentation to substantiate the basis upon which the Preliminary Claimant is requesting reconsideration of his, her, or its claim.

60. The Distribution Agent will have the authority, in its sole discretion, to waive technical claim deficiencies and approve claims on a case-by-case basis, or in groups of claims. All determinations made by the Distribution Agent in accordance with the Plan in any dispute, request for reconsideration, or request to cure a deficient claim will be final and not subject to appeal.

Claims Eligibility Determination

61. Within 240 days of the Claims Bar Date, the Distribution Agent will complete all claims determinations and send a Determination Notice to all Preliminary Claimants who timely submitted a Claim Form notifying the Preliminary Claimant of its eligibility determination. The Determination Notice will further provide to each Preliminary Claimant that is determined to be an Eligible Claimant his, her, or its calculated Recognized Loss. The Determination Notice will constitute the Distribution Agent's final ruling regarding the eligibility status of the claim.

62. The Distribution Agent may consider disputes of an Eligible Claimant's Recognized Loss calculation if presented in writing to the Distribution Agent within 30 days of the date of the Determination Notice. Within 30 days of receiving an Eligible Claimant's dispute, the Distribution Agent will notify the Eligible Claimant, in writing, of its calculation of the Eligible Claimant's Recognized Loss after considering the dispute. This notice will constitute the Distribution Agent's final ruling regarding the loss calculations for the claim.

Third-Party Review

63. After the Distribution Agent has completed the process of analyzing the claims and determining claim amounts in accordance with the Plan, and prior to the distribution of any funds, the Distribution Agent will engage an independent, third-party firm, not unacceptable to Commission 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 of Allocation. The Distribution Agent will communicate the results of the review to Commission staff together with any written analysis or reports related to the review, and, upon request, will make the firm available to the Commission staff to respond to questions concerning the review.

Distribution Methodology

64. Any Preliminary Claimant, who is not an Excluded Party, who submitted a valid Claim Form and has suffered a Recognized Loss, as calculated in accordance with the Plan of Allocation, will be deemed an Eligible Claimant.

65. No Distribution Payments will be made for less than $250.00. If an Eligible Claimant's distribution amount calculates to less than $250.00, 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 $250.00. All Eligible Claimants whose Recognized Loss calculates to a distribution amount equal to or greater than $250.00 will be deemed a Payee and receive a Distribution Payment.

Establishment of a Reserve

66. 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").

67. After all disbursements and Administrative Costs are paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 91 below.

Preparation of the Payment File

68. Within 60 days following the date of the Determination Notices described above, paragraph 61, the Distribution Agent will compile and send to the SEC staff the Payee information, including the name, address, calculated Recognized Loss, and the amount of the Distribution Payment for all Payees (the "Payee List"). The Distribution Agent will also provide a Declaration to the SEC staff, representing that the Payee List: (a) was compiled in accordance with the approved Plan; (b) is accurate as to Payees' names, addresses, Recognized Losses and amounts of their Distribution Payment; (c) includes the number of Payees compensated; (d) the percentage of the Payee's Recognized Loss being compensated by the disbursement from the Distribution Fund, and if applicable, the total percentage to include all prior disbursements; (e) the total amount of funds to be disbursed, and if applicable, includes the total amount of such funds to be withheld pursuant to paragraph 79; and (f) provides all information necessary to make a payment to each Payee.

The Escrow Account

69. Prior to the disbursement of funds from the Net Available Distribution Fund, the Distribution Agent will establish an escrow account (the "Escrow Account") with 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") to be provided by SEC staff.

70. The Distribution Agent, pursuant to the Escrow Agreement, shall also establish with the Bank a separate deposit account (*e.g.,* controlled distribution account, managed distribution account, linked checking and investment account) (the “Distribution Account”), insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC pass through limit. The Distribution Account shall be linked with the Escrow Account and both shall be named, and records maintained, in accordance with the Escrow Agreement.

71. During the term of the Escrow Agreement, the portions of the Distribution Fund transferred to the Escrow Account (the “Escrow Property”), shall be invested and reinvested in short-term U.S. Treasury securities backed by the full faith and credit of the United States Government or an agency thereof. The investment shall be, of a type and term necessary to meet the cash liquidity requirements for payments to Payees, tax obligations, and/or fees of the Tax Administrator and/or Distribution Agent, including investment or reinvestment in a bank account insured by the FDIC up to the guaranteed FDIC limit, or in money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States Government.

72. The Distribution Agent shall provide duplicate original bank and/or investment statements on any accounts established by the Distribution Agent to the Tax Administrator monthly and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

73. The Distribution Agent shall deposit or invest funds in the Escrow and Distribution Accounts to result in the maximum reasonable net return, taking into account the safety of such deposits or investments. In consultation with SEC staff, the Distribution Agent shall work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow and Distribution Account.

74. All interest, dividends, and/or income earned by the Escrow Property will accrue for the benefit of the Escrow Property. All Administrative Cost associated with the Escrow and Distribution Accounts will be the responsibility of the Distribution Agent, who may be reimbursed for said costs as provided in this Plan. No such Administrative Costs may be paid to the Bank, its agents, and/or its affiliates from the Escrow Property.

Distribution of the Distribution Fund

75. The Distribution Agent will seek to distribute the Net Available Distribution Fund to all Payees only after all Claim Forms have been processed and all Preliminary Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to contest or cure pursuant to the procedures set forth herein.

76. Upon the SEC's staff's receipt, review, and acceptance of the Payee List and Declaration from the Distribution Agent, the Commission will petition the Court for authority to disburse funds from the Net Available Distribution Fund to the Bank in accordance with the Payee List for distribution by the Distribution Agent 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.

77. Upon issuance of an order to disburse by this Court, the SEC staff will direct the transfer of funds in accordance with the Payee List to the Bank. The Distribution Agent will then use its best efforts to commence mailing Distribution Payment checks and/or effect wire transfers within ten business days of the release of the funds into the Escrow Account. All efforts will be coordinated to limit the time between the Escrow Account's receipt of the funds and the issuance of Distribution Payments.

78. All Distribution Payments will be issued by the Distribution Agent from the Distribution Account. All checks will bear a stale date of 90 days from the date of issuance. Reissuance of a check must be requested before the stale date, and such request is governed by paragraph 86.

79. 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 IRC § 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 90 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 SEC staff for review and approval.

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

81. Distribution Payments must be made by check or electronic payment payable to the Payee (the beneficial account owner). A Third-Party Filer shall not be the payee of any Distribution Payment check or electronic Distribution Payment nor shall a Third-Party filer

deposit any Distribution Payment in its own or any affiliated account. Compensation to a Third-Party Filer for its services may not be paid or deducted from the Distribution Payment.

82. The submission of a Claim Form and the receipt and acceptance of a Distribution Payment by a Payee is not a release of a Payee's rights and claims against any party.

83. Subject to paragraph 79 above, electronic or wire transfers may be utilized at the discretion of the Distribution Agent to transfer approved Distribution Payments to filers of claims on behalf of 20 or more Payees. Wire transfers will be initiated by the Distribution Agent using a two-party check and balance system, whereby completion of a wire transfer will require an authorization by two members of the Distribution Agent's senior staff.

84. 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.

<u>Post Distribution; Handling of Returned or Uncashed Checks; and Reissues</u>

85. The Distribution Agent 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 Distribution Agent as "undeliverable." If new address information becomes available, the Distribution Agent will repackage the distribution check and send it to the new address. If, within 14 days after the initial mailing of the distribution check, new address information for the Payee is not available, or if the distribution check is returned again, the Distribution Agent will void the distribution check, and, in its discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Distribution Fund for distribution, if feasible, to the remaining Payees.

86. The Distribution Agent will reissue checks 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 Distribution Payment 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 Distribution Payment 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 issue an appropriately redrawn Distribution Payment to the requesting party. Reissued checks will be void at the later of 90 days from issuance of the original check or 60 days from the reissuance, and in no event will a check be reissued after 90 days from the date of the original issuance without the approval of SEC staff.

87. The Distribution Agent will make reasonable efforts to contact Payees who have failed to negotiate their Distribution Payment check and take appropriate action to follow up on the status of uncashed checks at the request of SEC staff. The Distribution Agent may reissue such checks subject to the time limits detailed herein. If a Distribution Payment remains uncashed after the stale date the Distribution Agent will instruct the Bank to issue a stop payment on the check. The Distribution Agent, in its discretion, may remove such Payee from the distribution, and the allocated Distribution Payment will remain in the Distribution Fund for distribution, if feasible, to the remaining Payees.

<u>Administrative Costs</u>

88. Payment of the Distribution Agent and the Tax Administrator will be from the Distribution Fund in accordance with the Appointment Order.

89. All Administrative Costs shall be paid from the Distribution Fund and shall be reflected in the final accounting referenced below.

Disposition of Undistributed Funds

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

91. A residual will be established for any amounts remaining after the final disbursement to Payees from the Distribution 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 were returned to the SEC, and tax refunds received due to the Distribution Fund's overpayment of taxes or for waiver of IRS penalties.

92. Within one hundred eighty (180) days of the stale date of the Distribution Payments, the Distribution Agent, in consultation with the Commission staff, will determine whether further distribution of the Distribution Fund to investors is feasible. Within 10 days of the determination that further distribution is infeasible, the Distribution Agent will direct the Bank to stop payment on all uncashed Distribution Payments, and within 45 days, the Distribution Agent will return any funds remaining in the Escrow and Deposit Accounts to the Commission to become part of the Residual.

93. All funds remaining in the Residual that are infeasible to distribute to investors will be held by 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, which will

include a recommendation as to the final disposition of the Residual, consistent with Sections 21(d)(3), (5), and (7) and *Liu v. SEC*, 140 S. Ct. 1936 (2020).[1] 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 U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.[2]

<u>Filing of Reports and Accountings</u>

94. The Distribution Agent shall file with the Court and provide to SEC staff progress reports as set forth in the Appointment Order.

95. Upon completion of all distributions to Payees and payment of all Administrative Costs, the Distribution Agent will submit to the SEC staff a final accounting, on a standardized form provided by the SEC staff. The Distribution Agent will also submit a report to the SEC containing the final distribution statistics regarding distributions to individuals and entities, and such other information requested by the SEC staff.

<u>Receipt of Additional Funds</u>

96. Should any additional funds be received pursuant to SEC or Court order, agreement, or otherwise, prior to the Court's termination of the Distribution Fund, such funds will be added to, and become a part of, the Distribution Fund and distributed, if feasible, in accordance with the Plan.

---

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

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

Wind-down and Document Retention

97. The Distribution Agent will shut down the website, P.O. Box, and customer service telephone line(s) established specifically for the administration of the Distribution Fund upon the transfer of any remaining funds to the SEC, or at such earlier time as the Distribution Agent determines with the concurrence of the SEC staff.

98. The Distribution Agent will retain all materials submitted by Preliminary Claimants in either paper or electronic form for a period of 6 years from the date of approval of a final fund accounting. Materials maintained in electronic form must be accessible and readable for the duration of retention. Upon expiration of this period, and pursuant to the SEC staff's direction, the Distribution Agent will either turn over to the SEC or destroy all materials, including documents in any media.

Termination of the Distribution Fund

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

100. The Distribution 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 consistent

with *Liu v. SEC*, 140 S. Ct. 1936 (2020) and Sections 21(d)(3), (5), and (7) of the Exchange Act, 15 U.S.C. § 78u(d)(3), (5), and (7).[3]

101. Once the Distribution Fund has been terminated, no additional payments will be made whatsoever.

[3] *See* footnote 1.

Exhibit A

PLAN OF ALLOCATION

This Plan of Allocation[4] is designed to compensate investors who purchased bonds in the initial offerings or on 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" as listed in Table A below), 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. Investors who did not purchase the Securities during the Relevant Period, or who are an Excluded Party, are ineligible to recover under this Plan.

The additional annual coupon amounts necessary to compensate investors for the undisclosed risk have been calculated for each of the Securities by SEC staff economists and are reflected in Table A.

I. The Methodology

The Distribution Agent will calculate the Recognized Loss per $1,000 Par Value as follows.

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

For each $1,000 par value of the Securities purchased during the Relevant Period, the Recognized Loss Per $1,000 Par Value is the respective Security's additional coupon amount specified in Table A, multiplied by

A. For floating-rate bonds (CUSIPs 928668AG7, 928668AJ1, and 928668AL6), the number of years the Preliminary Claimant held the $1,000 par value, calculated using the "actual/360 day-count" convention;[5] and

B. For fixed-rate bonds (CUSIPs 928668AF9, 928668AH5, 928668AK8, and 928668AM4), the number of years the Preliminary Claimant held the $1,000 par value, calculated using the "30/360 day-count" convention.[6]

Purchases/acquisitions and sales will be deemed to have occurred on the "contract or "trade" date as opposed to the "settlement" or "payment" date.

II. Additional Provisions

A. FIFO Methodology

Multiple purchases/acquisitions and sales of the Securities during the Relevant Period will be matched transactions in the same Security according to the first-in, first-out ("FIFO") method. For each Security separately, the earliest sales will be matched against the earliest purchases during the Relevant Period and chronologically thereafter.

---

[5] The actual/360 day-count calculation is as follows: years = ACT / 360, where ACT is the number of calendar days between the start date and the end date.

[6] The 30/360 day-count formula calculates the number of years between two dates, assuming each month has 30 days and each year has 360 days: years = [(Y2 − Y1) × 360 + (M2 − M1) × 30 + (D2 − D1)] / 360. Y1, M1 and D1 are the year, month, and day of the start date, and Y2, M2 and D2 are the year, month, and day of the end date.

B. Acquisitions

The receipt or grant of the Securities by gift, devise, inheritance, or operation of law during the Relevant Period is not considered an eligible purchase if the original purchase did not occur during the Relevant Period. Securities acquired outside the Relevant Period will be excluded from the calculation of the Recognized Loss.

C. Options and Derivatives

The Securities listed in Table A are the only securities eligible for recovery under this Plan. Option contracts to purchase or sell the Securities are not eligible for recovery under the Plan. With respect to the Securities purchased or sold through the exercise of an option, the purchase/sale date is the option's exercise or assignment date. Transactions in the Securities during the Relevant Period that are pursuant to, or in connection with, a swap or another derivative will not be eligible for a recovery and will be excluded from the calculation of the Recognized Loss.

D. Short Sales

Securities purchased during the Relevant Period to cover short positions opened during the Relevant Period will have a Recognized Loss per $1,000 Par Value of $0.00. The date of a "short sale" is deemed to be the date of sale of the Securities and the date of covering a short sale is deemed to be the date of purchase of the Securities.

III. Calculating Recognized Loss

Recognized Loss for each Preliminary Claimant will be the sum of the Recognized Loss per $1,000 Par Value, as calculated above, for the full par value of the Securities purchased or acquired by the Preliminary Claimant during the Relevant Period.

IV. Becoming An Eligible Claimant

A Preliminary Claimant, who is not an Excluded Party, who submits a valid Claim Form and has suffered a Recognized Loss, as calculated above, will be deemed an Eligible Claimant.

V. Allocation of Funds

If the Net Available Distribution Fund is equal to or exceeds the sum of Recognized Losses (*minus* any Prior Recovery) of all Eligible Claimants, each Eligible Claimant's distribution amount will equal his, her, or its Recognized Loss, *plus* any "Reasonable Interest" awarded. If the Net Available Distribution Fund is less than the sum of the Recognized Losses (*minus* any Prior Recovery) of all Eligible Claimants, each Eligible Claimant's distribution amount will equal his, her or its "*Pro Rata* Percentage" of the Net Available Distribution Fund. In either case, the distribution amount will be subject to the "Offset for Prior Recovery" and "Minimum Distribution Amount."

A. Calculating an Eligible Claimant's *Pro Rata* Percentage

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

B. Offset for Prior Recovery

To avoid payment of a windfall, an Eligible Claimant's distribution amount will be no larger than his, her, or its Recognized Loss *minus* the amount of any compensation for the loss that resulted from the conduct alleged in the Complaint that was received from another source (*e.g.*, class action settlement), to the extent known by the Distribution Agent ("Prior Recovery"), *plus* any Reasonable Interest awarded. That is, the distribution amount will be capped at the Recognized Loss *less* the Prior Recovery, *plus* any Reasonable Interest awarded.

C. Reasonable Interest

If the Net Available Distribution Fund exceeds the amount necessary to pay all Eligible Claimants their Recognized Loss (*minus* any Prior Recovery) in full, the Distribution Agent, in consultation with the Commission staff, may include interest in the distribution amount to compensate for the time value of money. Reasonable Interest will be calculated using the Short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the end of the Relevant Period through the approximate date of the disbursement of the funds. If there are insufficient funds to pay Reasonable Interest in full to all Eligible Claimants, Reasonable Interest will be awarded on a *pro rata* basis from the excess funds.

D. Minimum Distribution Amount

The Minimum Distribution Amount will be $250.00. An Eligible Claimant whose distribution amount is less than the Minimum Distribution Amount will be deemed ineligible and his, her, or its distribution amount may be reallocated on a *pro rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to the Minimum Distribution Amount.

E. Payee and Distribution Payment

An Eligible Claimant whose distribution amount equals or exceeds the Minimum Distribution Amount will be deemed a Payee and will receive a Distribution Payment equal to his, her, or its calculated distribution amount.

Table A

Additional Annual Coupon (per $1,000 Par Value)

CUSIP	Additional Coupon (per $1,000 par value)	Day Count Convention	Issue Date	Maturity Date
928668AF9	$12.86	30/360	11/20/2014	11/20/2017
928668AG7	$15.46	ACT/360	11/20/2014	11/20/2017
928668AH5	$13.98	30/360	11/20/2014	11/20/2019
928668AJ1	$12.51	ACT/360	5/22/2015	11/22/2016
928668AK8	$12.86	30/360	5/22/2015	5/22/2018
928668AL6	$15.46	ACT/360	5/22/2015	5/22/2018
928668AM4	$13.98	30/360	5/22/2015	5/22/2020