

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20781**

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**In the Matter of**

**Baxter International Inc. ,**

**Respondent.**

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**PROPOSED PLAN OF  
DISTRIBUTION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20782**

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**In the Matter of**

**Jeffrey Schaible,**

**Respondent.**

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**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20783**

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**In the Matter of**

**Scott Bohaboy,**

**Respondent.**

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**I. OVERVIEW**

1. The Division of Enforcement submits this Proposed Plan of Distribution (the “Plan”) to the United States Securities and Exchange Commission (the “Commission”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”), 17 C.F.R. § 201.1101. This Plan provides for the distribution of a Fair

Fund (the “Baxter Fair Fund”), comprised of disgorgement, prejudgment interest, and civil money penalties paid by Baxter International Inc. (“Baxter”), Jeffrey Schaible, and Scott Bohaboy (the “Respondents”) in the above-captioned matters.<sup>1</sup>

2. As described more specifically below, the Plan seeks to compensate investors who were harmed by the Respondents’ conduct described in the Orders, in connection with Baxter’s improper leveraging of its foreign exchange rate convention by engaging in intra-company transactions for the purpose of generating foreign exchange accounting gains or avoiding foreign exchange accounting losses. As calculated using the methodology detailed in the Plan of Allocation (attached as Exhibit A), investors will be compensated based on their losses on shares of Baxter International common stock (the “Security”) purchased and/or acquired from May 6, 2015 through October 23, 2019, inclusive (the “Relevant Period”) due to Baxter International improperly recognizing income from intercompany foreign exchange transactions. In the view of the Commission staff and the Fund Administrator, this methodology constitutes a fair and reasonable allocation of the Baxter Fair Fund.

3. The Commission has custody of the Baxter Fair Fund and shall retain control of the assets of the Baxter Fair Fund. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over its implementation.

## **II. BACKGROUND**

4. On February 22, 2022, the Commission issued the Baxter Order instituting and simultaneously settling cease-and-desist proceedings against Baxter. In the Baxter Order, the Commission found that, beginning in at least 2009 and continuing through July 2019, Baxter improperly leveraged its foreign exchange rate convention by engaging in intra-company transactions for the purpose of generating foreign exchange accounting gains or avoiding foreign exchange accounting losses (the “FX Transactions”). The FX Transactions had the effect of materially misstating Baxter’s net income as reported in public filings. On October 24, 2019, Baxter issued a press release announcing that it had begun conducting an internal investigation of previously reported non-operating income related to foreign exchange gains and losses (the FX Transactions). In March 2020, Baxter restated its financial statements, which reduced its previously reported net income for 2017 through June 30, 2019, and retained earnings as of January 1, 2017, by \$582 million, collectively. The Commission ordered Baxter to pay a civil money penalty of \$18 million to the Commission and created the Baxter Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002.

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<sup>1</sup> See Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order, Securities Act Rel. No. 11032 (Feb. 22, 2022) (the “Baxter Order”); Corrected Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order, Securities Act Rel. No. 11033 (Feb. 22, 2022) (the “Schaible Order”); and Corrected Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order, Securities Act Rel. No. 11034 (Feb. 22, 2022) (the “Bohaboy Order”) (collectively, the “Orders”).

5. Also on February 22, 2022, in two related matters, the Commission issued the Schaible Order and the Bohaboy Order. During relevant times, Schaible was an employee in the Treasury department of Baxter, and Bohaboy was its Treasurer. In the Schaible and Bohaboy Orders, the Commission found that the respondents, among other things, caused Baxter's violations of the federal securities laws. The Commission ordered Schaible to pay disgorgement, prejudgment interest, and a civil penalty totaling \$189,359.00 and Bohaboy to pay a civil money penalty of \$125,000. The Commission created a Fair Fund in each of the Schaible and Bohaboy Orders pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 and further ordered those Fair Funds combined with the Baxter Fair Fund.

6. The Respondents have paid in full. The Baxter Fair Fund includes the \$18,314,359.00 paid by Baxter, Schaible, and Bohaboy, and the Baxter Fair Fund has been deposited in a Commission-designated account at the United States Department of the Treasury. Any accrued interest and any assets directed to the Baxter Fair Fund by Court or Commission order or otherwise, shall be added to, and become a part of, the Baxter Fair Fund.

### III. DEFINITIONS

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

7. **“Administrative Costs”** shall mean any administrative costs and expenses, including without limitation the fees and expenses of the Tax Administrator and the Fund Administrator, tax obligations, bond premium expenses, and investment and banking costs.

8. **“Baxter Fair Fund”** means the fund created by the Commission pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 for the benefit of investors harmed by the violations of the Respondents in the Orders. Any accrued interest and any assets directed to the Baxter Fair Fund by Court or Commission order or otherwise, shall be added to, and become a part of, the Baxter Fair Fund.

9. **“Claim Form”** means the form designed by the Fund Administrator, in consultation with the Commission 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/or acquisitions of the Security during the Relevant Period, and dispositions and holdings of the Security, such that eligibility under the Plan can be determined; tax identification and other related information from the Preliminary Claimant as determined necessary by the Fund Administrator 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 Fund Administrator within one hundred twenty (120) days of the Claims Bar Date to any Preliminary Claimant that submitted a deficient Claim Form or whose claim has been denied. 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 Fund Administrator and provide instructions regarding what is required to do so.

11. **“Claims Bar Date”** means the date established in accordance with the Plan by which a Preliminary Claimant’s Claim Form must be postmarked or submitted electronically in order to receive consideration under the Plan. The Claims Bar Date shall be ninety (90) 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 Fund Administrator is directed to do so by the Commission staff.

12. **“Claims Packet”** means the materials relevant to submitting a claim that will be provided to Preliminary Claimants who request such materials prior to the Claims Bar Date. The Claims Packet will include, at a minimum, a copy of the Plan Notice and a Claim Form, together with instructions for completion of the Claim Form.

13. **“Determination Notice”** shall mean the written notice sent by the Fund Administrator 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 Fund Administrator’s final ruling regarding the eligibility status of the claim.

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

15. **“Eligible Claimant”** means a Preliminary Claimant who submitted a valid Claim Form, who is not excluded under paragraph 16(a)-(g), and who has suffered a Recognized Loss, as calculated in accordance with the Plan of Allocation.

16. **“Excluded Party”** shall mean:

- (a) The Respondents;
- (b) Present or former officers or directors of Respondents or any assigns, creditors, heirs, distributees, spouses, parents, dependent children or controlled entities of any of the foregoing Persons or entities;
- (c) Any employee or former employee of the Respondents or any of its affiliates who has been terminated for cause or has otherwise resigned, in connection with the conduct described in the Orders;
- (d) Any Person who, as of the Claims Bar Date, has been the subject of criminal charges related to the conduct described in the Orders or any related Commission action;

- (e) Any firm, trust, corporation, officer, or other entity in which Respondents has or had a controlling interest;
- (f) The Fund Administrator, its employees, and those Persons assisting the Fund Administrator in its role as the Fund Administrator;
- (g) Any purchaser or assignee of another Person's right to obtain a recovery from the Baxter Fair 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; and
- (h) Any person who is confirmed by the Fund Administrator to be subject to sanctions by the United States government, as determined by Executive Orders, the authority of the Department of the Treasury's Office of Foreign Asset Control (OFAC) or any other applicable laws of the United States.

Preliminary Claimants will be required to certify that they are not an Excluded Party. All Excluded Parties will be deemed ineligible to participate in the distribution of the Baxter Fair Fund.

17. **"Net Available Fair Fund"** means the Baxter Fair Fund, less Administrative Costs.

18. **"Payee"** means an Eligible Claimant whose Recognized Loss calculated in accordance with the Plan of Allocation, results in a distribution amount equal to or greater than \$10.00 and who is not excluded under paragraph 16(h), 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 Fund Administrator to Preliminary Claimants informing them of the Baxter Fair 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 Baxter Fair Fund's website. The Plan Notice will also be available on the Baxter Fair Fund's website that is maintained by the Fund Administrator.

21. **"Plan of Allocation"** means the methodology used by the Fund Administrator to calculate if a Preliminary Claimant has suffered a Recognized Loss and to determine the Distribution Payment, if any. The Plan of Allocation is attached as Exhibit A.

22. **"Preliminary Claimant"** means a Person or their lawful successors, identified by the Fund Administrator as having a possible claim to recover from the Baxter Fair 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 Baxter Fair Fund under this Plan, as a result of purchases and/or acquisitions of 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 the period from May 6, 2015 through October 23, 2019, inclusive.

25. “**Security**” refers to shares of Baxter International common stock listed on the New York Stock Exchange under the symbol “BAX” during the Relevant Period.

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 Baxter Fair Fund and the Plan, the means of obtaining a Claims Packet, and the Claims Bar Date. The Summary Notice will be published three (3) times and will appear within ten (10) days of the initial mailing of the Plan Notice.

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(g) above.

#### **IV. TAX COMPLIANCE**

28. On June 6, 2022, the Commission appointed Miller Kaplan Arase LLP as the tax administrator (the “Tax Administrator”) for the Baxter Fair Fund to handle the tax obligations of the Baxter Fair Fund.<sup>2</sup> The Tax Administrator will be compensated for reasonable fees and expenses from the Baxter Fair Fund in accordance with its agreement with the Commission.<sup>3</sup>

29. The Baxter Fair 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

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<sup>2</sup> See Order Appointing Tax Administrator, Exchange Act Rel. No. 95043 (June 6, 2022).

<sup>3</sup> See Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds, Exchange Act Rel. No. 94845 (May 4, 2022).

- (c) Fulfilling any information reporting or withholding requirements required for distributions from the Baxter Fair Fund.

30. All tax obligations will be paid from the Baxter Fair Fund, subject to the review and approval of Commission staff.

## **V. FUND ADMINISTRATOR**

31. On July 1, 2022, the Commission appointed Epiq Class Action & Claims Solutions, Inc. as the fund administrator for the Baxter Fair Fund (the “Fund Administrator”), and the Fund Administrator has obtained a bond in the amount of \$18,314,359, as ordered.<sup>4</sup> Pursuant to Rule 1105(a) of the Commission’s Rules, 17 C.F.R. § 201.1105(a), the Fund Administrator may be removed at any time by order of the Commission or hearing officer.

32. The Fund Administrator will be responsible for administering the Baxter Fair Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to identify and contact Preliminary Claimants; obtaining mailing information for Preliminary Claimants; establishing a website and staffing a call center to address inquiries during the claims process; developing a claims database; preparing accountings; cooperating with the tax administrator appointed by the Commission 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 Claimant eligibility and Recognized Losses; advising Preliminary Claimants of final claim determinations; disbursing the Baxter Fair Fund in accordance with this Plan, as ordered by the Commission; and researching and reconciling errors and reissuing payments, when possible.

33. To carry out the purposes of this Plan, the Fund Administrator is authorized to make and implement immaterial changes to the Plan upon agreement of the Commission staff. If a change is deemed material by the Commission staff, Commission approval is required prior to implementation by amending the Plan.

34. The Fund Administrator may extend any procedural deadline contained in the Plan for good cause shown, if agreed upon by the Commission staff.

35. The Fund Administrator is authorized to enter into agreements with third parties as may be appropriate or necessary in the administration of the Baxter Fair 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 agents of the Fund Administrator under this Plan.

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<sup>4</sup> See Order Appointing Fund Administrator and Setting Bond Amount, Exchange Act Rel. No. 95192 (July 1, 2022).

36. The Fund Administrator will be entitled to payment from the Baxter Fair Fund of reasonable fees and expenses, including the bond premium, incurred in the performance of its duties, and including any such fees and expenses incurred by agents, consultants or third parties retained by the Fund Administrator in furtherance of its duties.

## **VI. ADMINISTRATION OF THE BAXTER FAIR FUND**

### Identification of and Notification to Preliminary Claimants

37. The Fund Administrator 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 Fund Administrator may also engage a third party firm, after consultation with and approval of the Commission staff, to assist in identifying Preliminary Claimants to maximize the participation rate of investors in the Baxter Fair Fund.

38. Within thirty (30) days after Commission approval of the Plan, the Fund Administrator shall:

- (a) design and submit a Claims Packet, including the Plan Notice and the Claim Form, to the Commission staff for review and approval;
- (b) create a mailing and claim database of all Preliminary Claimants based upon information identified by the Fund Administrator;
- (c) run a National Change of Address search to retrieve updated addresses for all records in the database, thereby ensuring the mailing information for Preliminary Claimants is up-to-date;
- (d) email and/or mail a Claims Packet to each Preliminary Claimant identified by the Fund Administrator and to the Fund Administrator's list of banks, brokers, and other nominees in accordance with paragraph 43 below;
- (e) establish and maintain a website devoted solely to the Baxter Fair Fund. The Baxter Fair Fund's website, located at [www.BaxterFairFundDistribution.com](http://www.BaxterFairFundDistribution.com), will make available a copy of the approved Plan; provide information regarding the claims process and eligibility requirements for participation in the Baxter Fair Fund in the form of frequently asked questions; include in downloadable form, the Claim Form and other related materials; and such other information the Fund Administrator believes will be beneficial to Preliminary Claimants;
- (f) establish and maintain a toll-free telephone number for Preliminary Claimants to call to speak to a live representative of the Fund Administrator during its regular business hours or, outside of such hours, to hear prerecorded information about the Baxter Fair Fund. The toll-free



number will be listed on all correspondence from the Fund Administrator to Preliminary Claimants as well as on the Baxter Fair Fund's website; and

- (g) establish and maintain a traditional mailing address and an email address, which will be listed on all correspondence from the Fund Administrator to Preliminary Claimants as well as on the Baxter Fair Fund's website.

39. The Fund Administrator will publish the Summary Notice on the internet and/or in print media acceptable to Commission staff three (3) times within ten (10) days of the initial mailing of the Plan Notice

40. The Commission staff retains the right to review and approve any material posted on the Baxter Fair 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 ninety (90) days from the date of the initial mailing of the Plan Notice.

42. The Fund Administrator 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 Fund Administrator will send by mail, email, or other means, the Plan Notice to the Fund Administrator'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 Security during the Relevant Period (collectively, the "Nominees or Custodians"). The Fund Administrator will request that these entities, to the extent that they were record holders for beneficial owners of the Security:

- (a) within fourteen (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 Claims Packet, 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 Claims Packet and other relevant materials, is properly disseminated to the beneficial owners; and/or
- (b) provide to the Fund Administrator, within fourteen (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 and/or acquired the Security during the Relevant Period as the record holder, so that the Fund Administrator can communicate with the beneficial owners directly.

44. At the discretion of the Fund Administrator, in consultation with the Commission staff, a reasonable number of additional copies of the Claims Packet shall be made available to any Nominee or Custodian requesting it for the purpose of distribution to beneficial owners.

45. Requests to the Fund Administrator for additional copies of the Claims Packet in excess of 250,000 are subject to approval by the Fund Administrator in consultation with the Commission staff.

46. Documented reasonable out-of-pocket expenses incurred by the Nominees or the Custodians, which would not have been incurred but for compliance with paragraph 43, shall be reimbursed from the Baxter Fair Fund. The amount of such expenses allowed will be at the discretion of the Fund Administrator, in consultation with the Commission staff. Unless otherwise determined by the Fund Administrator in consultation with the Commission staff, out-of-pocket expenses based on the following rates will be considered reasonable:

- (a) a maximum of \$0.08 per Claims Packet, plus postage at the pre-sort postage rate per Claim Packet actually mailed;
- (b) a maximum of \$0.05 per email of Summary Notice or Plan Notice and Claim Form link disseminated; or
- (c) \$0.20 per name, address, and email address provided to the Fund Administrator, up to a maximum of amount of \$1,500.00.

47. The Fund Administrator will attempt to locate any Preliminary Claimant whose mailing is returned as “undeliverable” and will document all such efforts. The Fund Administrator 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 Fund Administrator will make available, upon request by the Commission staff, a list of all Preliminary Claimants whose Plan Notice have been returned as “undeliverable” due to incorrect addresses and for which the Fund Administrator has been unable to locate current addresses.

#### Filing a Claim

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

49. Electronic claims submission is encouraged; the Plan Notice will include directions on how Preliminary Claimants can submit their claims electronically via the Baxter Fair Fund’s website. If using the web-based claim filing option, a Preliminary Claimant must submit his, her, or its claim to the Fund Administrator by 11:59 p.m. on the Claims Bar Date. The Plan Notice will also include directions for submission of claims if the Preliminary Claimant

is unable to submit his, her, or its claim electronically; all such claims must be received by the Fund Administrator by 11:59 p.m. on the Claims Bar Date.

50. 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 Fund Administrator. 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 Fund Administrator for good cause shown, after consultation with the Commission staff.

51. All Claim Forms and supporting documentation necessary to determine a Preliminary Claimant's eligibility to receive a distribution from the Baxter Fair 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 Fund Administrator 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 Fund Administrator deems necessary.

52. When submitting claims to the Baxter Fair Fund on behalf of its clients, all Third-Party Filers must use the electronic filing template provided by the Fund Administrator in this matter. Third-Party Filers that do not comply with the template and format provided by the Fund Administrator 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.

53. 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 Security, as the Fund Administrator 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/or acquisitions, and dispositions, of the Security (account statements, confirmations and other documentation of purchases and dispositions), as well as holdings of the Security on pertinent dates. Documentation generated by the Third-Party Filer as well as affidavits in lieu of supporting documentation will not be accepted unless, for good cause, the Fund Administrator determines it acceptable. The Fund Administrator will have the right to request, and the Third-Party Filer will have the burden of providing to the Fund Administrator, any additional information and/or documentation deemed necessary by the Fund Administrator to substantiate the claim(s) contained in the submission. Documentation from a Third-Party Filer that is not acceptable to the Fund Administrator will result in rejection of the affected claim(s). The determination of the Fund Administrator to reject a claim for insufficient documentation, as reflected on the Determination Notice, is final and within the discretion of the Fund Administrator.

54. The receipt of the Security by gift, inheritance, devise, or operation of law will not be deemed to be a purchase and/or acquisition of the Security, nor will it be deemed an

assignment of any claim relating to the purchase and/or acquisition of such Security unless specifically so provided in the instrument of inheritance. The recipient of the Security 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 Baxter Fair Fund to the extent the original purchaser and/or acquirer would have been eligible under the terms of the Plan. Only one claim may be submitted with regard to the same purchase and/or acquisition in the Security, 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.

55. 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. Claims by the plan's participants relating to shares of the Security purchased and/or acquired through the plan will be rejected. The Fund Administrator 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.

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

#### Review of Claims and Deficiency Process

57. The Fund Administrator will review all claim submissions and determine the eligibility of each Preliminary Claimant to participate in the Baxter Fair 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 Fund Administrator will have the right to request, and the Preliminary Claimant will have the burden of providing to the Fund Administrator, any additional information and/or documentation deemed relevant by the Fund Administrator.

58. The Fund Administrator will provide a Claim Status Notice within one hundred twenty (120) days of the Claims Bar Date to each Preliminary Claimant who has filed a deficient Claim Form with the Fund Administrator or whose claim will be denied. 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 Fund Administrator and provide instructions regarding what is required to do so.

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

60. Any Preliminary Claimant seeking reconsideration of a denied claim must request reconsideration from the Fund Administrator in writing within thirty (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.

61. The Fund Administrator 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.

#### Claims Eligibility Determination

62. Within two hundred seventy (270) days of the Claims Bar Date, the Fund Administrator 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 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 Fund Administrator's final ruling regarding the eligibility status of the claim.

63. The Fund Administrator may consider disputes of an Eligible Claimant's Recognized Loss calculation, if notice of the dispute is presented in writing to the Fund Administrator within thirty (30) days of the date of the Determination Notice. The Fund Administrator will consult with Commission staff as appropriate. Within thirty (30) days of receiving an Eligible Claimant's notice of dispute, the Fund Administrator will notify the Eligible Claimant, in writing, of its calculation of the Eligible Claimant's Recognized Loss after considering the dispute. Moreover, if the Third-Party Review described in paragraph 64 results in a change to the Recognized Loss last communicated to an Eligible Claimant, the Fund Administrator will notify the Eligible Claimant, in writing, of the change and reason for the change before submitting the Payment File described in paragraph 70 to the Commission. Notices sent by the Fund Administrator pursuant to this paragraph will constitute the Fund Administrator's final ruling regarding the loss calculations for the claim.

#### Third-Party Review

64. After the Fund Administrator 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 Fund Administrator 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. Unless otherwise agreed to by the Fund Administrator in consultation with the Commission staff, and except for a review of paragraph 63 disputes and the Fund Administrator's responses thereto and the finalization of any written analysis or report, the Third-Party Review process will be completed by the time the Fund Administrator notifies Eligible Claimants of their calculated Recognized Losses as set forth in paragraph 62. Upon completion of the Third-Party Review, the Fund Administrator 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

65. The Fund Administrator will use the methodology in the Plan of Allocation to calculate if a Preliminary Claimant has suffered a Recognized Loss and to determine their Distribution Payment, if any. Any Preliminary Claimant who submitted a valid Claim Form, who is not excluded under paragraph 16(a)-(g), and who has suffered a Recognized Loss as calculated in accordance with the Plan of Allocation, will be deemed an Eligible Claimant.

66. No Distribution Payments will be made for less than \$10.00. If an Eligible Claimant's Recognized Loss calculates, in accordance with the Plan of Allocation, to a distribution amount less than \$10.00, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment and the distribution amount calculated for that Eligible Claimant will remain in the Baxter Fair Fund for distribution to Eligible Claimants whose distribution amounts are greater than or equal to \$10.00. All Eligible Claimants whose Recognized Loss, calculated, in accordance with the Plan of Allocation, results in a distribution amount equal to or greater than \$10.00 and who is not excluded under paragraph 16(h), will be deemed a Payee and receive a Distribution Payment.

67. There may be one or more distributions made from the Baxter Fair Fund, which will take place as described herein.

#### Establishment of a Reserve

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

69. After all disbursements and Administrative Costs are paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 95.

#### Preparation of the Payment File

70. Within ninety (90) days following the date of the Determination Notices described above, paragraph 62, the Fund Administrator will compile and send to the Commission staff the Payee information, including the name, address, calculated Recognized Loss, Reasonable Interest (if any), tax withholding (if any), and the amount of the Distribution Payment for all Payees (the "Payee List"). The Fund Administrator will also provide a Reasonable Assurances Letter to the Commission 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 Baxter Fair Fund, and if applicable, the total percentage to include all

prior disbursements; (e) the total amount of funds to be disbursed; and (f) provides all information necessary to make a payment to each Payee.

### The Escrow Account

71. Prior to the disbursement of funds from the Net Available Fair Fund, the Fund Administrator 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 Commission staff (the “Bank”), pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by Commission staff.

72. The Fund Administrator, 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 shall be named, and records maintained, in accordance with the Escrow Agreement.

73. During the term of the Escrow Agreement, the portions of the Baxter Fair 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 Fund Administrator, 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.

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

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

76. All interest, dividends, and/or income earned by the Escrow Property will accrue for the benefit of the Escrow Property. All Administrative Costs associated with the Escrow and Distribution Accounts will be the responsibility of the Fund Administrator, 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 Baxter Fair Fund

77. The Fund Administrator will seek to distribute the Net Available Fair 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.

78. Upon the Commission's staff's receipt, review, and acceptance of the Payee List and Reasonable Assurances Letter from the Fund Administrator, the Commission staff will seek an Order from the Commission pursuant to Rule 1101(b)(6) of the Commission's Rules, 17 C.F.R. § 210.1101(b)(6), to disburse funds from the Net Available Fair Fund to the Bank in accordance with the Payee List for distribution by the Fund Administrator in accordance with the Plan. All disbursements will be made pursuant to a Commission Order.

79. Upon issuance of an Order to disburse, the Commission staff will direct the transfer of funds in accordance with the Payee List to the Bank. The Fund Administrator will then use its best efforts to commence mailing Distribution Payment checks and/or effect payments within twenty (20) 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.

80. All Distribution Payments will be issued by the Fund Administrator from the Distribution Account. All checks will bear a stale date of one hundred twenty (120) days from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the Bank will be instructed to stop payment on those checks. A Payee's claim will be extinguished if he, she, or it fails to negotiate his, her or its check by the stale date, and the funds will remain in the Baxter Fair Fund, except as provided in paragraph 90.

81. All 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; (c) a statement that checks will be void and cannot be reissued after one hundred twenty (120) days from the date the original check was issued; and (d) contact information for the Fund Administrator for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment will be submitted to the Tax Administrator and Commission staff for review and approval.

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

83. Distribution Payments must be made by check, electronic payment, or other payment method with the approval of the Commission staff. The Distribution Payment will be made payable to the Payee (the beneficial account owner). Any other payment arrangement must be discussed with the Fund Administrator in consultation with the Commission staff and



must be authorized by the Payee. Compensation to a Third-Party Filer for its services may not be paid or deducted from the Distribution Payment.

84. If, after discussion with the Fund Administrator in consultation with the Commission staff, and authorization by the Payee(s), a Distribution Payment is to be made to a Third-Party Filer to distribute to the Payee(s), the Third-Party Filer will be required to complete a certification, which will require them, at a minimum, to attest that any distribution to the Third-Party Filer, including without limitation a custodian, trustee, or investment professional representing multiple potentially eligible beneficial owners, will be allocated for the benefit of the Eligible Claimants (beneficial owners) and not for the benefit of management. The certification form will be available on the Baxter Fair Fund website and upon request from the Fund Administrator. All such Third-Party Filers must have an auditable mechanism available to the Fund Administrator and the Commission staff to confirm that each Payee received the Distribution Payment directed to them.

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

86. Checks, electronic payments, or other payment method with the approval of the Commission staff, may be utilized at the discretion of the Fund Administrator to transfer approved Distribution Payments to filers of claims on behalf of twenty (20) or more Payees.

87. Electronic payments will be initiated by the Fund Administrator after confirming the wire instructions are accurate directly with the filer.

88. At the discretion of the Fund Administrator, 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 Fund Administrator will immediately notify the Tax Administrator of the reduction in the Distribution Payment.

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

89. The Fund Administrator 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 Fund Administrator as "undeliverable" or whose payment did not go through. If new address or payment information becomes available, the Fund Administrator will repackage the distribution check and send it to the new address, or resend the electronic or other payment. If new address or payment information is not available after a diligent search and outreach (and in no event no later than one hundred twenty (120) days after the initial mailing of the original check or issuance of the payment) or if the distribution check, payment, or disbursement is returned or rejected again, the check shall be voided, and the Fund Administrator shall instruct the issuing financial institution to stop payment on such check or terminate the electronic or other payment. If the Fund Administrator is unable to find a Payee's correct address or payment information, or if despite best efforts, payment is impractical due to geopolitical conditions including but not limited to federal sanctions, war, natural or manmade

disasters, the Fund Administrator, in consultation with the Commission staff, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Baxter Fair Fund for distribution, if feasible, to the remaining Payees.

90. The Fund Administrator 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 Fund Administrator will request, and must receive, documentation to support the requested change. The Fund Administrator will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Fund Administrator, such change request is properly documented, the Fund Administrator will issue an appropriately redrawn Distribution Payment to the requesting party. Reissued checks will be void at the later of one hundred twenty (120) days from issuance of the original check or sixty (60) days from the reissuance, and in no event will a check be reissued after one hundred twenty (120) days from the date of the original issuance without the approval of Commission staff.

91. The Fund Administrator will make reasonable efforts to contact Payees who have failed to negotiate and/or receive a Distribution Payment and take appropriate action to follow up on the status of uncashed checks or other payments that do not reach the intended recipient. The Fund Administrator may reissue such checks or other payments subject to the time limits detailed herein.

#### Administrative Costs

92. All Administrative Costs will be paid from the Baxter Fair Fund in accordance with the Commission's Rules.

#### Receipt of Additional Funds

93. Should any additional funds be received pursuant to Commission or Court Order, agreement, or otherwise, prior to the termination of the Baxter Fair Fund, such funds will be added to the Baxter Fair Fund and distributed, if feasible, in accordance with the Plan.

#### Disposition of Undistributed Funds

94. If funds remain following the initial distribution and payment of all Administrative Costs, the Fund Administrator, in consultation with the Commission staff, may seek subsequent distribution of any available remaining funds, pursuant to the Commission's Rules.

95. A residual within the Baxter Fair Fund will be established for any amounts remaining after the final disbursement to Payees from the Baxter Fair Fund (the "Residual"). The Residual may include funds from, among other things, amounts remaining the Reserve, distribution checks that have not been cashed, checks or electronic payments that were not

delivered or returned to the Commission, tax refunds for overpayment or for waiver of IRS penalties.

96. All funds remaining in the Residual that are infeasible to distribute to investors will be returned to the Commission and transferred to the U.S. Treasury after the final accounting is approved by the Commission. Returning such money to Respondent would be inconsistent with the equitable principle that no Person should profit from their own wrongdoing. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative.

#### Filing of Reports and Accountings

97. In accordance with Rule 1105(f) of the Commission's Rules, the Fund Administrator shall provide to the Commission staff a progress report and a quarterly account statement in a format to be provided by Commission staff, within forty-five (45) days of the Commission's approval of the Plan, and shall provide to Commission staff additional reports and quarterly account statements within ten (10) days after the end of every calendar quarter. Such progress reports shall inform the Commission staff of the activities and status of the Baxter Fair Fund during the reporting period, and shall specify, at a minimum, the location of the account(s) comprising the Baxter Fair Fund, including among other things, an interim accounting of all monies in the Baxter Fair Fund.

98. When the final distribution is completed, the Fund Administrator shall provide to Commission staff a final report summarizing all tasks undertaken and the outcome of its administrative efforts. The Fund Administrator shall arrange for the final payment of all Administrative Costs, and submit a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Plan in a format provided by the Commission staff. The Fund Administrator will also submit a report to the Commission staff containing the final distribution statistics regarding distributions to individuals and entities, and such other information requested by the Commission staff.

#### Termination of the Baxter Fair Fund

99. The Baxter Fair Fund will be eligible for termination and the Fund Administrator will be eligible for discharge after all of the following have occurred (a) a final accounting, in a standard accounting format provided by the Commission staff, has been submitted by the Fund Administrator and approved by the Commission; (b) all Administrative Costs have been paid; and (c) any amount remaining in the Baxter Fair Fund has been returned to the Commission for transfer to U.S. Treasury. Once the Commission has approved the final accounting, the Commission staff will seek an order from the Commission authorizing: (a) the transfer of any amounts remaining in the Baxter Fair Fund that is infeasible to return to investors, and any amounts returned to the Baxter Fair Fund in the future that are infeasible to return to investors, to the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act; (b) discharge of the Fund Administrator; (c) cancellation of the Fund Administrator's bond; and (d) termination of the Baxter Fair Fund.

100. Once the Baxter Fair Fund has been terminated and funds, if any, are transferred to the U.S. Treasury, no further claims will be allowed and no additional payments will be made whatsoever.

#### Miscellaneous

101. When administering this Plan, the Fund Administrator, and/or each of its designees, agents and assigns, may rely on: all applicable law; orders issued by the Commission, including orders issued by delegated authority; orders issued by an administrative law judge, if any, appointed in this proceeding; and any records, including records containing investor information, provided by Commission staff.

102. Should any additional funds be received pursuant to Commission or Court order, agreement, or otherwise, prior to the Commission's termination of the Baxter Fair Fund, such funds will be added to the Baxter Fair Fund and distributed, if feasible, in accordance with the Plan, pursuant to the Commission's Rules.

#### Wind-down and Document Retention

103. The Fund Administrator will shut down the website, P.O. Box and customer service telephone line(s) established specifically for the administration of the Baxter Fair Fund six (6) months after the transfer of any remaining funds to the Commission, or at such earlier time as the Fund Administrator determines with the concurrence of the Commission staff.

104. The Fund Administrator will retain all materials submitted by Preliminary Claimants in either paper or electronic form for a period of six (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. Pursuant to the Commission staff's direction, the Fund Administrator will either turn over to the Commission or destroy all materials, including documents in any media, upon expiration of this period.

### **VII. NOTICE AND COMMENT PERIOD**

105. The Notice of Proposed Plan of Distribution and Opportunity to Comment (the "Notice") will be published on the Commission's website at <http://www.sec.gov/litigation/fairfundlist.htm>. Any Person wishing to comment on the Plan must do so in writing by submitting their comments to the Commission within thirty (30) days of the publication of the Notice: (a) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (b) by using the Commission's Internet comment form ([www.sec.gov/litigation/admin.shtml](http://www.sec.gov/litigation/admin.shtml)); or (c) by sending an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Comments submitted by email or via the Commission's website should include "Administrative Proceeding File Numbers 3-20781, 3-20782, and 3-20783" in the subject line. Comments received will be available to the public. Persons should only submit comments that they wish to make publicly available.

## Exhibit A

### PLAN OF ALLOCATION

This Plan of Allocation is designed to compensate investors based on their losses on shares of Baxter International common stock (the “Security”) purchased and/or acquired from May 6, 2015 through October 23, 2019, inclusive (the “Relevant Period”) due to Baxter International improperly recognizing income from intercompany foreign exchange transactions.

Preliminary Claimants<sup>1</sup> who did not purchase and/or acquire shares of the Security during the Relevant Period or who are Excluded Parties are ineligible to recover under this Plan.

A Preliminary Claimant who submitted a valid Claim Form, who is not excluded under paragraph 16(a)-(g), and who has suffered a Recognized Loss, will be deemed an Eligible Claimant.

Artificial inflation in the price of the Security over various date ranges surrounding corrective disclosures and average closing prices of the Security during the Lookback Period (defined below) have been calculated by Commission’s staff economists.

The Fund Administrator will calculate the amount of loss for each share of the Security purchased and/or acquired during the Relevant Period (“Recognized Loss per Share”) as follows:

For each share of the Security purchased and/or acquired between May 6, 2015 and October 23, 2019, inclusive, and

- A. Sold on or prior to October 23, 2019, the Recognized Loss per Share is \$0.00.
- B. Sold after the opening of trading on October 24, 2019 and prior to the opening of trading on October 25, 2019, the Recognized Loss per Share is the *least of*:
  1. \$8.60 (the calculated amount of artificial inflation removed from the price of Baxter common stock on October 24, 2019);
  2. the purchase or acquisition price *minus* \$79.08, the closing price on October 24, 2019; or
  3. the purchase or acquisition price *minus* the sale price.
- C. Sold after the opening of trading and before the close of trading on October 25, 2019, the Recognized Loss per Share is the *least of*:

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<sup>1</sup> Capitalized terms that are used in this Plan of Allocation but not defined, are used as defined in the Plan.

1. \$10.65 (the calculated amount of artificial inflation removed from the price of Baxter common stock on October 24 and October 25, 2019);
  2. the purchase or acquisition price *minus* \$77.28, the closing price on October 25, 2019; or
  3. the purchase or acquisition price *minus* the sale price.
- D. Sold after the close of trading on October 25, 2019 and prior to the close of trading on January 22, 2020 (the “Lookback Period”), the Recognized Loss per Share is the *least of*:
1. \$10.65 (dollar amount of calculated artificial inflation); or
  2. the purchase or acquisition price *minus* the sale price; or
  3. the purchase or acquisition price *minus* the moving average closing price of Baxter International common stock on the sale date set forth in in Table A below.
- E. Held as of the close of trading on January 22, 2020, the last day of the Lookback Period, the Recognized Loss per Share is the *lesser of*:
1. \$10.65 (dollar amount of calculated artificial inflation); or
  2. the purchase or acquisition price *minus* \$82.85, the average closing price of the Security between October 25, 2019 and January 22, 2020, as shown on the last row in Table A below.

If the Recognized Loss per Share calculates to a negative number, reflecting a gain, the Recognized Loss per Share on such shares will be \$0.00.

All prices mentioned in the calculations exclude all taxes, fees and commissions.

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

### **Additional Provisions**

**FIFO Methodology:** Transactions for a Preliminary Claimant who made multiple purchases and/or acquisitions and sales of the Security during the Relevant Period will be matched according to the first-in, first-out (“FIFO”) method. The earliest sales during the Relevant Period will be matched first against any holdings at the opening of the Relevant Period. Once the beginning holdings all have been matched, or in the event that there are no beginning

holdings, then any further sales will be matched against the earliest Relevant Period purchases and/or acquisitions, and chronologically thereafter.

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

Options and Derivatives: Baxter International common stock listed on the New York Stock Exchange under the symbol “BAX” is the only security eligible for recovery under this Plan. Option contracts to purchase or sell the Security are not eligible for recovery under the Plan. With respect to the Security purchased or sold through the exercise of an option, the purchase/sale date is the exercise date of the call and the assignment date of the put, and the purchase/sale price is the strike price of the call at the time of exercise and the strike price of the put at the time of assignment. Transactions in the Security 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 Recognized Loss calculation.

Short Sales: If the sale date for a share falls before the purchase date, then the share has a Recognized Loss per Share of \$0.00. The date of covering a short sale is deemed to be the date of purchase of the Security and the date of a short sale is deemed to be the date of sale of the Security. The earliest Relevant Period purchases will be matched against any short position existing on the date prior to the start of the Relevant Period, and not be entitled to a recovery, until that short position is fully covered.

Recognized Loss: Recognized Loss will be calculated as the sum of the Recognized Loss per Share, as calculated above, on all shares of the Security purchased and/or acquired during the Relevant Period. If the Recognized Loss calculates to a negative number (i.e., a gain), then the Recognized Loss will be \$0.00.

Market Loss Limitation: If an Eligible Claimant’s actual market loss on shares of the Security purchased and/or acquired during the Relevant Period is less than his, her or its Recognized Loss, then his, her or its Recognized Loss shall be limited to the actual market loss amount. If the actual market loss calculates to a gain, then the Eligible Claimant’s Recognized Loss will be \$0.00. The actual market loss will be calculated as (a) the total purchase amount for shares of the Security purchased and/or acquired during the Relevant Period,<sup>2</sup> less the sum of (b) the sales proceeds from shares purchased and/or acquired during the Relevant Period and sold during the Relevant Period or during the Lookback Period,<sup>3</sup> and (c) the holding value on the remaining of those shares purchased and/or acquired during the Relevant Period, which for the

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<sup>2</sup> Purchases and/or acquisitions during the Relevant Period to cover short positions will be included in the calculation of actual market loss if the purchase is matched to a short sale during the Relevant Period. Only purchases and/or acquisitions considered in the calculation of Recognized Loss will be considered for purposes of calculating the actual market loss.

<sup>3</sup> Sales of the Security during the Relevant Period will be matched first against the opening position and the proceeds of such sales will not be considered for purposes of calculating the actual market loss. Short sales will be considered for purposes of calculating the actual market loss.

purposes of this calculation will be \$82.85 per share, the moving average price as of the last day of the Lookback Period.<sup>4</sup>

Allocation of Funds: If the Net Available Fair Fund is equal to or exceeds the sum of Recognized Losses of all Eligible Claimants, each Eligible Claimant's distribution amount will equal his, her or its Recognized Loss, plus "Reasonable Interest" if applicable. If the Net Available Fair Fund is less than the sum of the Recognized Losses of all Eligible Claimants, each Eligible Claimant's distribution amount will equal his, her or its "Pro Rata Percent" of the Net Available Fair Fund (and no Reasonable Interest). In either case, the distribution amount will be subject to the "Minimum Distribution Amount."

Reasonable Interest: If the Net Available Fair Fund exceeds that necessary to pay all Eligible Claimants their Recognized Losses in full, the Fund Administrator, in consultation with the Commission staff, may include interest in the distribution amount to compensate for the time value of money on Recognized Losses. 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.

Pro Rata Percent: A *pro rata* computation is intended to measure Eligible Claimants' Recognized Losses against one another. An Eligible Claimant's *Pro Rata Percent* will be calculated as the ratio of his, her or its Recognized Loss to the sum of Recognized Losses of all Eligible Claimants.

Minimum Distribution Amount: The Minimum Distribution Amount will be \$10.00. An Eligible Claimant whose distribution amount is less than the Minimum Distribution Amount 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 the Minimum Distribution Amount.

Payee: An Eligible Claimant whose Recognized Loss, calculated in accordance with the Plan of Allocation, results in a distribution amount equal to or greater than \$10.00 and who is not excluded under paragraph 16(h) of the Plan will be deemed a Payee and will be sent a Distribution Payment calculated in accordance with this Plan of Allocation.

Prior Recovery: To avoid payment of a windfall, the Distribution Payment will be no larger than the Payee's Recognized Loss minus the amount of any compensation for the loss that resulted from the conduct described in the Orders that was received from another source (e.g., class action settlement), to the extent known by the Fund Administrator. Reasonable Interest, if awarded, may be added to such Distribution Payment.

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<sup>4</sup> Any open short positions at the end of the Lookback Period will be ignored for purposes of calculating the actual market loss.



**Table A: Baxter International Common Stock Moving Average Closing Price during the Lookback Period**

<b>Date</b>	<b>Moving Average Closing Price from October 25, 2019 to Date Shown</b>	<b>Date</b>	<b>Moving Average Closing Price from October 25, 2019 to Date Shown</b>	<b>Date</b>	<b>Moving Average Closing Price from October 25, 2019 to Date Shown</b>
10/25/2019	\$77.28	11/25/2019	\$79.45	12/26/2019	\$81.13
10/28/2019	\$77.56	11/26/2019	\$79.56	12/27/2019	\$81.19
10/29/2019	\$77.66	11/27/2019	\$79.68	12/30/2019	\$81.24
10/30/2019	\$77.47	11/29/2019	\$79.77	12/31/2019	\$81.30
10/31/2019	\$77.31	12/2/2019	\$79.85	1/2/2020	\$81.39
11/1/2019	\$77.41	12/3/2019	\$79.89	1/3/2020	\$81.48
11/4/2019	\$77.47	12/4/2019	\$79.98	1/6/2020	\$81.56
11/5/2019	\$77.47	12/5/2019	\$80.07	1/7/2020	\$81.64
11/6/2019	\$77.57	12/6/2019	\$80.17	1/8/2020	\$81.74
11/7/2019	\$77.62	12/9/2019	\$80.22	1/9/2020	\$81.83
11/8/2019	\$77.70	12/10/2019	\$80.28	1/10/2020	\$81.90
11/11/2019	\$77.79	12/11/2019	\$80.36	1/13/2020	\$82.04
11/12/2019	\$77.97	12/12/2019	\$80.46	1/14/2020	\$82.17
11/13/2019	\$78.18	12/13/2019	\$80.56	1/15/2020	\$82.31
11/14/2019	\$78.35	12/16/2019	\$80.65	1/16/2020	\$82.44
11/15/2019	\$78.54	12/17/2019	\$80.72	1/17/2020	\$82.57
11/18/2019	\$78.69	12/18/2019	\$80.80	1/21/2020	\$82.71
11/19/2019	\$78.86	12/19/2019	\$80.83	1/22/2020	\$82.85
11/20/2019	\$79.03	12/20/2019	\$80.87		
11/21/2019	\$79.19	12/23/2019	\$80.96		
11/22/2019	\$79.32	12/24/2019	\$81.05		