**UNITED STATES DISTRICT COURT**
**DISTRICT OF MASSACHUSETTS**

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| **SECURITIES AND EXCHANGE COMMISSION**<br><br>**Plaintiff,**<br><br>**v.**<br><br>**DANIEL FERNANDES ROJO FILHO, et al.,**<br><br>**Defendants.** | ) | **Civil Action No. 15-CV-12857-PBS** |

**MOTION FOR AN ORDER TO SHOW CAUSE**

Plaintiff, the SEC, respectfully submits this Motion for an Order to Show Cause why the Court should not approve the SEC's proposed Plan, which provides for the distribution of more than $3 million to compensate investors in DFRF Enterprises LLC and/or DFRF Enterprises, LLC during the period June 1, 2014, through June 30, 2015, inclusive, for losses caused by the conduct underlying the Complaint (the "Plan"). A proposed order to show cause, to which the proposed plan is attached, is included as Exhibit A to this Motion.

Accompanying this Motion is a Memorandum setting forth the grounds for approving the Plan. Upon the completion of the steps set forth in the Order to Show Cause, the SEC will file a notice informing the Court of completion, responding to objections, if any; and will provide a proposed Order approving the Plan or an amended plan, as appropriate.

**WHEREFORE,** the SEC respectfully requests that the Court issue an Order to Show Cause substantially in the form attached as Exhibit A to this Motion.

Dated: Feb. 27, 2025

Respectfully submitted,

s/ Catherine E. Pappas
Catherine E. Pappas (PA Bar No. 56544)
Appearance and Practice Pursuant to L.R. 83.5.3(c)
Email: pappasc@sec.gov
Securities and Exchange Commission
One Penn Center
1617 JFK Blvd., Ste. 520
Philadelphia, Pa. 19103
Tel: (215) 597-0657
Fax: (215) 597-2740
*Attorney for Plaintiff Securities and Exchange Commission*

Exhibit A: Order to Show Cause (with attached Plan)

**Certification Pursuant to LR 7.1 (a)(2)**

The foregoing motion relates to the distribution of funds to investors harmed by the conduct described in the Complaint. Because final judgments have been entered against each of the defendants to this action (ECF Nos. 219, 223, 245-249, 258) that provide that the respective defendant relinquishes all legal and equitable right, title, and interest in funds paid in satisfaction of the final judgment, *Id*., Section IV, the undersigned has not consulted with the defendants with respect to this motion. The requested Order to Show Cause, if issued, will provide to harmed investors and other interested parties the opportunity to object to the proposed distribution plan.

February 27, 2025

s/ Catherine E. Pappas
Catherine E. Pappas

**CERTIFICATE OF SERVICE**

I, Catherine E. Pappas, hereby certify that, on Feb. 27, 2025, I caused the foregoing document to be electronically filed with the clerk of the court for the U.S. District Court of District of Massachusetts, using the electronic case filing system of the court. The electronic case filing system sends a "Notice of Electronic Filing" to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

Additional service was made by first class mail to the below persons:

Daniel Fernandes Rojo Filho
as Defendant and as
Registered Agent for DFRF Enterprises
[sent to his last known address]

DFRF Enterprises, LLC (Florida)
2800 Sand Lake Road,
Suite 500
Orlando, FL 32801

Wanderley M. Dalman
[sent to his last known address]

Gasper C. Jesus
[sent to his last known address]

Eduardo N. Da Silva
[sent to his last known address]

s/Catherine E. Pappas
Catherine E. Pappas

**Exhibit A**

**(Proposed Order to Show Cause)**

**UNITED STATES DISTRICT COURT**
**DISTRICT OF MASSACHUSETTS**

| | |
|---|---|
| **SECURITIES AND EXCHANGE COMMISSION**<br><br>**Plaintiff,**<br><br>**v.**<br><br>**DANIEL FERNANDES ROJO FILHO, ET AL.**<br><br>**Defendants.** | **Civil Action No. 15-CV-12857-PBS**<br><br>**ORDER TO SHOW CAUSE** |

Plaintiff Securities and Exchange Commission (the "SEC") has filed a motion for an Order to Show Cause (the "Motion") why the Court should not approve the SEC's proposed plan of distribution (the "Proposed Plan"), attached as Exhibit 1, for the distribution of funds under the jurisdiction of this Court in this matter (the "Distribution Fund"), and for good cause shown, **IT IS HEREBY ORDERED** that the Motion is **GRANTED**.

**I.**

**IT IS FURTHER ORDERED THAT**, within five business days of the issuance of this Order:

a) Guidehouse Inc., Baker & Hostetler LLP, and PACE Claims Services LLC, the appointed Distribution Agent for the Distribution Fund (the "Distribution Agent"), shall publish this Order to Show Cause on the website established for this case: www.dfrfdistributionfund.com) (the "Distribution Fund Website") along with a copy of the Proposed Plan;

b) The Distribution Agent shall provide this Order to Show Cause to the SEC for publication on the SEC's public webpage for this matter (https://www.sec.gov/enforce/dfrf-enterprises-llc) (the "SEC Webpage") along with a

copy of the Proposed Plan;

c) The Distribution Agent shall cause a copy of this Order to Show Cause, along with a copy of the Proposed Plan, to be sent, via electronic mail or U.S. mail to the last known address of entities identified by the SEC as possible victims of the conduct underlying the Complaint for which it has an address or email address ("Possible Investors"); and

d) The Distribution Agent shall publish notice of the Order to Show Cause and the Proposed Plan, along with directions on how to get a copy of these documents or access these documents on the internet, in publications that the Distribution Agent, in consultation with the SEC staff, believes likely to provide notification to the majority of possible victims of the conduct underlying the Complaint for whom it does not have contact information ("Other Investors"). Such publication shall include the following media, and shall be in the language specified:

(i) The Boston Globe (Boston, English)
(ii) The Miami Herald (Miami, English)
(iii) El Nuevo Herald (Miami, Spanish)
(iv) Orlando Sentinel (Orlando, English)
(v) Wall Street Journal (National, English)
(vi) O Globo (Brazil, Portuguese)
(vii) At least one publication in each of Puerto Rico (English, Spanish), Portugal (Portuguese), Uruguay (Spanish), and Colombia (Spanish)

Publication as described, along with the publication of this Order to Show Cause through the Court's ECF system, shall constitute and suffice as notice of the Proposed Plan and the opportunity to object to interested parties.

**II.**

**IT IS FURTHER ORDERED THAT** individuals and entities who purchased memberships in DFRF Enterprises LLC and/or DFRF Enterprises, LLC during the period June 1,

2014 through June 30, 2015, inclusive ("Preliminary Claimants"), or other interested parties, within forty (40) days from the entry of this Order to Show Cause (the "Objection Due Date"), shall show cause, if there is any, why this Court should not enter an Order approving the Proposed Plan. Objections shall be made by correspondence received by the Distribution Agent no later than 11:59 p.m. on the Objection Due Date at the following electronic mail address: Support@DFRFDistributionFund.com. The correspondence must clearly state that the submitting entity is a Preliminary Claimant as defined above, or otherwise state fully and clearly the entity's interest in this matter, and the entity's objection(s) to the Proposed Plan. The submitting entity must include all documentation necessary to support the objection. All factual assertions must be concluded with the following declaration, if true, followed by the submitting person's signature and the date of signature:

> I declare pursuant to 28 U.S.C. §1746, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

All correspondence must include current contact information for the submitting person, including, if available, an email address and mobile telephone number. Objections will be publicly filed by the SEC with the Court, as further set forth below in Section IV.

To the extent a submitting entity seeks to include in their submission sensitive information such as a social security number, financial account number, or home address, they should encrypt the submission prior to sending by email, sending the password for the encrypted file in a separate email. Alternatively, the submission may be sent by mail pursuant to the next paragraph.

If a submitting entity is unable to submit their objection securely by email, they may send it addressed as set forth below. The submission must be received by the Distribution Agent no later than the Objection Due Date.

SEC v. DFRF Distribution Fund
c/o DFRF Distribution Agent
200 American Metro Blvd, Suite 129
Hamilton, NJ 08619

Failure to timely submit an objection in accordance with this Section II. will result in the objection being waived. Proof of timely receipt by the Distribution Agent will be the burden of the submitting entity.

**III.**

**IT IS FURTHER ORDERED that**, if no objections to the Proposed Plan are timely submitted, the SEC shall:

a) File a notice so advising the Court (the "Notice"), accompanied by a copy of the Proposed Plan and a proposed Order approving the Proposed Plan; and

b) Post a copy of the Notice, Proposed Plan, and proposed Order on the SEC Webpage.

The Distribution Agent shall post a copy of the Notice, Proposed Plan, and proposed Order on the Distribution Fund Website. Upon receipt of such notice from the SEC, the Court may enter an Order approving the Proposed Plan without further notice or passage of time.

**IV.**

**IT IS FURTHER ORDERED THAT,** if objections are timely received pursuant to this Order to Show Cause, the SEC shall file them, with sensitive information redacted, together with its response, within seventy (70) days of the entry of this Order to Show Cause, with copies of its response served by electronic, First Class, or Overnight Mail upon any objecting entity. The SEC may propose an amended plan if and as appropriate. If the SEC proposes an amended plan, the amended plan, and any accompanying filings, will be made available to all Preliminary Claimants and interested parties through the SEC Webpage and the Distribution Fund Website, with notice of the same sent to all Possible Investors. Such publication, along with the

publication through the Court's ECF system, shall constitute and suffice as notice of the amended plan. No further objection period will be provided unless expressly ordered by the Court.

If the Court deems it necessary or appropriate, the Court may conduct a hearing before approving the Proposed (or amended) Plan. Notice of a hearing shall be provided through the Court Docket, the SEC Webpage, and the Distribution Fund Website, and if and as otherwise ordered by the Court.

**SO ORDERED**, this ___ date of _____, 2025,

_____
The Honorable Patti B. Saris
United States Senior District Court Judge

Exhibit 1 (Proposed Plan)

**Exhibit 1**

**(Proposed Plan)**

**UNITED STATES DISTRICT COURT**
**DISTRICT OF MASSACHUSETTS**

| | |
|---|---|
| **SECURITIES AND EXCHANGE COMMISSION**<br><br>**Plaintiff,**<br><br>**v.**<br><br>**DANIEL FERNANDES ROJO FILHO, et al.,**<br><br>**Defendants.** | **Civil Action No. 15-CV-12857-PBS**<br><br>**(Proposed) Distribution Plan** |

# DISTRIBUTION PLAN

## 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 funds collected on the final judgments entered in this action against Daniel Fernandes Rojo Filho ("Filho"); Romildo Da Cunha ("Da Cunha"); Wanderley M. Dalman ("Dalman"); Gaspar C. Jesus ("Jesus"); Eduardo N. Da Silva ("Da Silva"); DFRF Enterprises LLC ("DFRF Mass"); DFRF Enterprises, LLC ("DFRF FL," and collectively with DFRF Mass, "DFRF"); Jeffrey A. Feldman; Heriberto C. Perez Valdes ("Valdes") (collectively, the "Defendants").

2. As described more specifically below, the Plan seeks to compensate investors who were harmed by the Defendants' conduct alleged in the Complaint. As calculated using the methodology detailed in the Plan of Allocation (attached as Exhibit A), investors will be compensated for their losses from purchases of memberships in DFRF Mass and DFRF FL (the "Securities") from June 1, 2014, through June 30, 2015 (the "Relevant Period").

3. The SEC has custody of the funds collected on the final judgments entered in this action (the "Distribution Fund") and shall retain control of the assets of the Distribution Fund. The Court retains jurisdiction over the Plan and its implementation.

## II. BACKGROUND

4. By complaint filed on June 30, 2015, the SEC alleged that, beginning in the summer of 2014, Filho orchestrated, and his co-Defendants promoted, a fraudulent offering of memberships in DFRF, raising more than $15 million from more than 1,400 investors worldwide.

ECF No. 2, ¶¶1-7. The SEC alleged that the Defendants solicited investments with, among other things, stories about lucrative gold mines, remarkable investment returns, charitable work, registered securities, access to a large credit line from a Swiss private bank; and claimed that investments were fully guaranteed by a worldwide insurance company. *Id*. The SEC further alleged that virtually all the Defendants' public statements about DFRF were materially false and misleading: there were no gold mines and there was no credit line, charity work, or insurance. *Id*. Rather, investments were used to pay other investors in a Ponzi-scheme fashion and for Filho's personal benefit. *Id*. The SEC charged the Defendants with violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 [15 U.S.C. §§77e(a) and (c) and 77q(a)(1)-(3)], and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b), 17 C.F.R. §240.10b-5].

5. On May 13, 2019, the Court entered final judgment, by default, against Valdes, ordering him to pay disgorgement of $551,403, prejudgment interest of $106,437, and to pay a civil penalty in the amount of $551,403. ECF No. 219.

6. On June 5, 2019, the Court entered final judgment by default against DFRF, ordering DFRF Mass and DFRF FL to pay, jointly and severally, disgorgement of $15,291,689, prejudgment interest of $2,636,463; and each to pay a civil penalty in the amount of $775,000. ECF No. 223.

7. On October 22, 2019, the Court entered final judgments by default against Filho, Jesus, Dalman, Da Silva, and Da Cunha, ordering:

(a) Filho to pay disgorgement of $8,600,000, prejudgment interest of $1,669,827, and a civil penalty of $1,000,000. ECF No. 245;
(b) Jesus to pay disgorgement of $87,513, prejudgment interest of $16,991, and a civil penalty of $160,000. ECF No. 246;
(c) Dalman to pay disgorgement of $82,120, prejudgment interest of $98,064, and a civil penalty of $160,000. ECF No. 247;
(d) Da Silva to pay disgorgement of $222,755, prejudgment interest of $43,251, and a civil penalty of $160,000. ECF No. 248; and
(e) Da Cunha to pay disgorgement of $143,000, prejudgment interest of $27,765, and a civil penalty of $160,000. ECF No. 249.

8. On January 30, 2020, the Court entered final judgment, by consent, against Feldman, finding him liable for disgorgement of $125,000 and prejudgment interest of $151,131, but waiving payment of all but $15,000. ECF No. 258. Feldman has paid the $15,000 in full.

9. In total, the Court ordered the Defendants to pay over $38 million in combined monetary remedies. The SEC has collected approximately $2.9 million pursuant to the final judgments (the "Distribution Fund") and holds these funds in an SEC-designated, interest-bearing account at the United States Department of the Treasury (the "Treasury"). Accrued interest is added to, and becomes a part of, the Distribution Fund.

10. The final judgments provide that the SEC may propose a plan to distribute the Distribution Fund subject to the Court's approval. The Distribution Fund currently holds over $3 million.

11. By Order entered August 3, 2023 (ECF No. 282, the "Appointment Order"), the Court, among other things, appointed Miller Kaplan Arase LLP as the tax administrator for the Distribution Fund (the "Tax Administrator"); and Guidehouse Inc., Baker & Hostetler LLP, and PACE Claims Services LLC (collectively "GBP") as the distribution agent for the Distribution Fund (the "Distribution Agent").

## III. DEFINITIONS

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

12. **"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.

13. "**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 of the Securities during the Relevant Period, and dispositions of the Securities, 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.

14. **"Claim Status Notice"** means the notice sent by the Distribution Agent within 60 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.

15. "**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 in order 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.

16. "**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.

17. **"Distribution Fund"** means the fund created for the benefit of investors harmed by Defendants' violations alleged in the Complaint. Accrued interest; additional collections; and amounts directed to the Distribution Fund by Court or SEC order, or otherwise; will be added to, and become a part of, the Distribution Fund. All collections will first be applied to outstanding disgorgement, civil penalty, prejudgment interest, and post-judgment interest, in that order.

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

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

20. **"Excluded Party"** shall mean: (a) the Defendants and Defendants' advisers, agents, nominees, assigns, heirs, spouses, parents, children, or controlled entities; (b) the Distribution Agent, its employees, and those Persons assisting the Distribution Agent in its role as the Distribution Agent; (c) any purchaser or assignee of another Person's claim to a recovery from the Distribution Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained the claim by gift, inheritance, or devise; and (d) any Person who is confirmed by the Distribution Agent 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.

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.

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

22. "**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 $20.00 who will receive a Distribution Payment.

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

24. "**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 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 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 41(e).

25. "**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.

26. "**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 Securities during the Relevant Period.

27. "**Recognized Loss**" means the amount of loss calculated for a Preliminary Claimant in accordance with the Plan of Allocation.

28. "**Relevant Period**" is from June 1, 2014, through June 30, 2015.

29. "**Securities**" refers to membership(s) in DFRF Mass and DFRF FL.

30. **"Summary Notice"** means the notice published in print or internet media in accordance with paragraph 42 below, 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.

31. "**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 20(c).

## IV. TAX COMPLIANCE

32. 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.

33. 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

34. 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 obtain accurate mailing information for Preliminary Claimants; establishing a website and staffing a call center to address inquiries regarding the Plan; disseminating the Plan Notice; reviewing Claim Forms; issuing Claim Status Notices and Determination Notices; preparing accountings; cooperating with the Tax Administrator appointed by the Court 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"); taking appropriate antifraud measures; ensuring compliance with any restrictions on making Distribution Payments in accordance with sanctions imposed by the United States government, including those administered by OFAC; making determinations under the criteria established herein as to Preliminary Claimant's eligibility for a Distribution Payment; disbursing the Distribution Fund in accordance with this Plan, as ordered by the Court; and researching and reconciling errors and reissuing payments, when possible.

35. 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.

36. The Distribution Agent may extend any procedural deadline contained in the Plan for good cause shown, if agreed upon by the SEC staff.

37. 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 and/or 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.

38. 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.

39. 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 SEC 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

Identification of and Notification to Preliminary Claimants

40. The Distribution Agent will, insofar as practicable, use its best efforts to identify Preliminary Claimants from a review of records obtained by the SEC staff and seeking information from any other source available to it.

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

(a) design and submit a Plan Notice, Summary 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, thereby ensuring the mailing information for Preliminary Claimants is up to date;

(d) Use additional resources, as determined appropriate in consultation with the SEC staff, to determine current addresses and contact information for Preliminary Claimants;

(e) Email, mail, or otherwise send a Plan Notice to each Preliminary Claimant for which the Distribution Agent has contact information;

(f) establish and maintain a website devoted solely to the Distribution Fund. The Distribution Fund's website, located at www.DFRFDistributionFund.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; permit online submission of a Claim Form; include information on how to contact the Distribution Agent with questions; and make available such other information the Distribution Agent believes will be beneficial to Preliminary Claimants;

(g) establish and maintain a toll-free telephone number, 1-833-373-3535, 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.

42. The Distribution Agent will publish the Summary Notice at least one time in whatever media determined by the Distribution Agent in consultation with the SEC staff to be cost-efficient and most likely to alert harmed investors to the Plan and this distribution.

43. The Distribution Agent will have available and use as determined appropriate in consultation with the SEC staff, translation services in connection with contacts with Preliminary Claimants so that communications can be as effective as practicable. Translations of the Plan Notice and any other notices or communications issued by the Distribution Agent in connection with the distribution may be requested by Preliminary Claimants by contacting the Distribution Agent by mail, email, or the toll-free number.

44. The SEC 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.

45. 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.

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

47. 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

48. 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.

49. 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. EST 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.

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 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.

51. 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.

52. 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.

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 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.

54. 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 with regard to 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.

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. 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.

56. 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

57. 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.

58. The Distribution Agent will provide a Claim Status Notice within 60 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.

59. 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.

60. 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.

61. 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

62. Within 135 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 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.

63. 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.

Distribution Methodology

63. 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.

64. No Distribution Payments will be made for less than $20.00. If an Eligible Claimant's distribution amount calculates to less than $20.00, 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 $20.00. All Eligible Claimants whose Recognized Loss calculates to a distribution amount equal to or greater than $20.00 will be deemed a Payee and receive a Distribution Payment.

Establishment of a Reserve

65. 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").

66. 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

67. Within 70 days following the date of the Determination Notices described above, paragraph 62, the Distribution Agent will compile and send to the SEC staff the Payee information, including the name, address, calculated Recognized Loss, tax withholding (if any), 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 78; and (f) provides all information necessary to make a payment to each Payee.

The Escrow Account

68. 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.

69. 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.

70. 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 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.

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

72. The Distribution Agent shall deposit or invest funds in the Escrow and Distribution Accounts to result in the maximum reasonable net return, considering 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.

73. 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

74. 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.

75. Upon the SEC's staff's receipt, review, and acceptance of the Payee List and Declaration from the Distribution Agent, the SEC 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.

76. 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 10 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.

77. All Distribution Payments will be issued by the Distribution Agent from the Distribution Account. All checks will bear a stale date of 120 days from the date of issuance. Reissuance of a check must be requested before the stale date, and such request is governed by paragraph 85.

78. 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 120 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.

79. 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.

80. 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.

81. 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.

82. Subject to paragraph 80, 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.

83. 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 or fees charged by an intermediary or recipient bank, 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.

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

84. 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 120 days after the initial issuance 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 Fair Fund for distribution, if feasible, to the remaining Payees.

85. 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 120 days from issuance of the original check or 60 days from the reissuance, and in no event will a check be reissued after 120 days from the date of the original issuance without the approval of SEC staff.

86. 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 Fair Fund for distribution, if feasible, to the remaining Payees.

Administrative Costs

87. The Distribution Agent will be entitled to reasonable administrative fees and expenses in connection with the administration and distribution of the Distribution Fund (including any such fees and expenses incurred by agents, consultants or third parties retained by the Distribution Agent in furtherance of its duties), which shall be paid from the Distribution Fund. The Distribution Agent will invoice all fees and expenses for the administration and distribution of the Distribution Fund in accordance with the Appointment Order.

88. Pursuant to the Appointment Order, the Tax Administrator will invoice all taxes and fees and expenses for the administration of the Distribution Fund directly to SEC staff, for payment from the Distribution Fund without further Court Order.

89. All Administrative Costs shall be paid from the Distribution Fund, pursuant to a Court Order and shall be reflected in the final accounting referenced below. All Administrative Costs will be paid from the Distribution Fund in accordance with a Court order.

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 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. Once the Distribution Agent, in consultation with the SEC staff, deems further distribution of the Distribution Fund to investors infeasible, the Distribution Agent will direct the Bank to stop payment on all any uncashed distribution payments, and return any funds remaining in the Escrow and Deposit Accounts to the SEC 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 and staff acceptance of the final accounting, the SEC staff will file a motion with this Court for an order, as appropriate, approving the final accounting, discharging the Distribution Agent, disposing of the Residual, and terminating the Distribution Funds. The motion will include a recommendation as to the final disposition of the Residual, consistent with Sections 21(d)(3), (5), and (7), 15 U.S.C. § 78u(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 Treasury subject to Section 21F(g)(3) of the Exchange Act.[2]

Filing of Reports and Accountings

94. The Distribution Agent shall file reports in accordance with the Appointment Order.

95. As provided in the Appointment Order, upon completion of all distributions to Payees and payment of all Administrative Costs, the Distribution Agent will submit to the SEC

[1] 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.

staff a final accounting, on a standardized form provided by the SEC staff. The final accounting report will include a recommendation as to the disposition of the Residual, consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020) and Section 21(d)(7) of the Exchange Act, 15 U.S.C. § 78u(d)(7).[3]

Receipt of Additional Funds

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.

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 6 months after 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 has been submitted to and approved by the Court;

(b) All Administrative Costs have been paid; and

[3] *See* note 1.

(c) The Court has approved the SEC staff's recommendation as to the final disposition of the Residual consistent with Sections 21(d)(3), (5), and (7), 15 U.S.C. § 78u(d)(3), (5), and (7), and *Liu v. SEC*, 140 S. Ct. 1936 (2020).[4]

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

[4] *Id.*

**Exhibit A**

PLAN OF ALLOCATION

This Plan of Allocation is designed to compensate investors for their losses from purchases of memberships in DFRF Mass and DFRF FL (the "Securities") from June 1, 2014, through June 30, 2015 (the "Relevant Period"). Investors who did not suffer a loss from purchases of the Securities during the Relevant Period due to the misconduct of the Defendants, or who are an Excluded Party are ineligible to recover under this Plan.

The Distribution Agent will calculate each Preliminary Claimant's loss ("Recognized Loss") as the difference between the aggregate amount paid by the Preliminary Claimant to purchase the Securities during the Relevant Period, and any amount recovered by the Preliminary Claimant on their purchases, including any dividends, interest, refund, or other compensation received from any source relating to their investment in the Securities.

If the Recognized Loss calculates to a gain, then the Recognized Loss will be $0.00.

To avoid payment of a windfall, the Recognized Loss will be reduced by 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.

Any Preliminary Claimant who suffered a Recognized Loss pursuant to this Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant, as defined in the Plan, will be deemed an Eligible Claimant.

**Additional Provisions**

Allocation of Funds: If the Net Available Distribution Fund, as defined in the Plan, 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 Distribution 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 Distribution 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 Distribution Fund exceeds that necessary to pay all Eligible Claimants his, her, or its Recognized Losses in full, the Distribution Agent, in consultation with the SEC staff, may include interest in the distribution amount to compensate Eligible Claimants for the time value of his, her, or its respective 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, each Eligible Claimant's Reasonable Interest amount will be equal to his, her or its *Pro Rata* Percent of the excess funds.

*Pro Rata* Percent: A *Pro Rata* Percent computation is intended to measure Eligible Claimants' Recognized Losses against one another. The Distribution Agent shall determine each Eligible Claimant's

*Pro Rata* Percent 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 $20.00 (inclusive of Reasonable Interest, if any). If an Eligible Claimant's distribution amount is less than the Minimum Distribution Amount, 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 the Minimum Distribution Amount.

Payee: An Eligible Claimant whose distribution amount equals or exceeds the Minimum Distribution Amount will be deemed a Payee and receive a Distribution Payment equal to his, her, or its distribution amount. In no event will a Payee receive from the Distribution Fund more than his, her, or its Recognized Loss, plus Reasonable Interest, if applicable.

**UNITED STATES DISTRICT COURT**
**DISTRICT OF MASSACHUSETTS**

| | | |
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| **SECURITIES AND EXCHANGE COMMISSION**<br><br>**Plaintiff,**<br><br>**v.**<br><br>**DANIEL FERNANDES ROJO FILHO, et al.,**<br><br>**Defendants.** | ) | **Civil Action No. 15-CV-12857-PBS** |

**Plaintiff's Memorandum in Support of Entry of an Order Approving a Distribution Plan**

## I. Introduction

Plaintiff, the Securities and Exchange Commission (the "SEC"), respectfully submits this memorandum in support of its proposed plan of distribution (the "Proposed Plan")[1] to distribute more than $3 million to compensate investors in DFRF Enterprises LLC and DFRF Enterprises, LLC for their losses. The SEC is simultaneously seeking, by the accompanying motion, the entry of an Order to Show Cause that allows interested parties the opportunity to object to the Proposed Plan (the "Motion"). If the Court grants the Motion and issues the proposed Order to Show Cause, upon the completion of the steps set forth in the Order to Show Cause, the SEC will file a notice (the "Notice") notifying the Court of the completion of those steps, responding to objections, if any; and will submit a proposed Order approving the Proposed Plan or an

[1] The Proposed Plan is attached to the simultaneously submitted proposed Order to Show Cause, included as Exhibit 1 to the accompanying Motion for an Order to Show Cause

Amended Plan, as appropriate. By this memorandum, and subject to the Notice, the SEC provides to the Court the factual and legal basis for approving the Proposed Plan.

## II. Background

On June 30, 2015, the SEC filed a Complaint against Daniel Fernandes Rojo Filho ("Filho"); Romildo Da Cunha ("Cunha"); Wanderley M. Dalman ("Dalman"); Gaspar C. Jesus ("Jesus"); Eduardo N. Da Silva ("Da Silva"); DFRF Enterprises LLC ("DFRF Mass"); DFRF Enterprises, LLC ("DFRF Fl," and collectively with DFRF Mass, "DFRF"); Jeffrey A. Feldman; Heriberto C. Perez Valdes ("Valdes") (collectively, the "Defendants"). The SEC alleged that that, beginning in the summer of 2014, Filho orchestrated, and his co-Defendants promoted, a fraudulent offering of memberships in DFRF, raising more than $15 million from more than 1,400 investors worldwide. ECF No. 2, ¶¶1-7. The SEC alleged that the Defendants solicited investments with, among other things, stories about lucrative gold mines, remarkable investment returns, charitable work, registered securities, and access to a large credit line from a Swiss private bank; and claimed that investments were fully guaranteed by a worldwide insurance company. *Id*. The SEC further alleged that virtually all of the Defendants' public statements about DFRF were materially false and misleading: there are no gold mines, there is no credit line, there is no charity work, the securities were unregistered, and there is no insurance. *Id*. Rather, investments were used to pay other investors in a Ponzi-scheme fashion and for Filho's personal benefit. *Id*. The SEC charged the Defendants with violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 [15 U.S.C. §§77(3)(a), (c); 77q(a)(1)-(3)], and Section 10(b), Rule 10b-5, of the Securities Exchange Act of 1934 [15 U.S. C. §78j(b), 17 C.F.R. §240.10b-5].

The litigation is complete and final judgments have been entered against the Defendants (the "Final Judgments"), as follows:

- On May 13, 2019, the Court entered final judgment by default against Valdes, ordering him to pay disgorgement of $551,403, prejudgment interest of $106,437; and a civil penalty in the amount of $551,403. ECF No. 219.

- On June 5, 2019, the Court entered final judgment by default against DFRF, ordering DFRF Mass and DFRF Fl to, jointly and severally, pay disgorgement of $15,291,689, prejudgment interest of $2,636,463; and a civil penalty in the amount of $775,000. ECF No. 223.

- On October 22, 2019, the Court entered final judgments by default against Filho, Jesus, Dalman, Da Silva, and Da Cunha, ordering:

  - Filho to pay disgorgement of $8,600,000, prejudgment interest of $1,669,827, and a civil penalty of $1,000,000, ECF No. 245;
  - Jesus to pay disgorgement of $87,513, prejudgment interest of $16,991, and a civil penalty of $160,000, ECF No. 246;
  - Dalman to pay disgorgement of $82,120, prejudgment interest of $98,064 , and a civil penalty of $160,000, ECF No. 247;
  - Da Silva to pay disgorgement of $222,755, prejudgment interest of $43,251, and a civil penalty of $160,000, ECF No. 248; and
  - Da Cunha to pay disgorgement of $143,000, prejudgment interest of $27,765, and a civil penalty of $160,000, ECF No. 249; and

- On January 30, 2020, the Court entered final judgment by consent against Feldman, finding him liable for disgorgement of $125,000 and prejudgment interest of $151,131, but waiving payment of all but $15,000. ECF No. 258.

The Final Judgments provide that the SEC may propose a plan to distribute funds paid or collected in satisfaction of those judgments (the "Distribution Fund"), subject to the Court's approval.

## III. The Distribution Fund and its Administration

The SEC currently holds the Distribution Fund of over $3 million in an SEC-designated account at the United States Department of the Treasury. Accrued interest, additional collections, and amounts directed to the Distribution Fund by Court order or otherwise, will be added to, and become a part of, the Distribution Fund.

By Order entered August 3, 2023, the Court appointed Miller Kaplan Arase LLP ("Miller Kaplan"), a certified public accounting firm with an office in San Francisco, CA, as tax administrator of the Distribution Fund, to execute all income tax reporting requirements of the Distribution Fund (the "Tax Administrator"); (ii) appointed Guidehouse Inc., Baker & Hostetler LLP, and PACE Claims Services LLC as distribution agent for the Distribution Fund (the "Distribution Agent"); and (iii) authorized the SEC to approve and arrange for the payment of the tax obligations of the Distribution Fund and administrative fees and expenses without further Court order.

## IV. The Proposed Plan is Fair and Reasonable and Should be Approved.

The goal of the Proposed Plan is to compensate those investors harmed by the Defendants' fraudulent offering of interests in DFRF. The Court should approve the Proposed Plan because, as discussed below, it fairly and reasonably allocates the collected funds among the harmed investors.

A district court has broad discretion in approving a plan of distribution, and that determination is reviewed for abuse of discretion. *Official Comm. of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 84 (2d Cir. 2006); *SEC v. Wang,* 944 F.2d 80, 85 (2d Cir. 1991). *Cf. Rohn v. Tap Pharm. Prods.*, 677 F.3d 21, 31 (1st Cir. 2012) (in the context of a class action distribution and a *cy pres* award from the distribution fund, reviewed the district court's approval of a distribution for abuse of discretion).

District courts review distribution plans proposed by the SEC to determine whether the plan fairly and reasonably distributes limited funds among the potential claimants. *See WorldCom*, 467 F.3d at 81-82, 84; *Wang,* 944 F.2d at 85; *SEC v. AR Capital, LLC,* Civ. Act. No. 19-6603 (AT), 2021 US Dist. LEXIS 94434, *7 (S.D.N.Y. May 18, 2021). *Cf. In re*

*Pegasystems Inc. Sec. Litig.,* Civ. Act. No. 22-11220-WGY, 2024 U.S. Dist. LEXIS 213643,*5 (D. Mass., Sept. 25, 2024) (in the context of a class action settlement, finding the plan of allocation fair and reasonable); *Crandall v. PTC Inc*., Civ. Act. No. 16-10471-WGY, 2017 U.S. Dist. LEXIS 217581, *16 (D. Mass. Jul. 14, 2017)( in a class action, the Court finds the plan of allocation to be a fair and reasonable method of allocation); *Courtney v. Avid Tech., Inc.*, Civ. Act. No. 13-10686-WGY, 2015 U.S. Dist. LEXIS 66837, *3 (D. Mass. May 12, 2015) (in a class action, approving a plan of allocation as "in all respects fair and reasonable").

In this Plan, the Distribution Agent will consider eligible for a Distribution Payment,[2] persons or their lawful successors who are identified by the Distribution Agent through a claims process as having a possible claim to recover from the Distribution Fund as a result of their purchases of memberships in DFRF during the period June 1, 2024 through June 30, 2015 ("Preliminary Claimants"). Plan ¶ 26. Those Preliminary Claimants who submit a valid Claim Form, who are not Excluded Parties, and who are determined to have suffered a recognized loss as calculated under the Plan of Allocation attached as Exhibit A to the Plan ("Recognized Loss"), will be deemed to be "Eligible Claimants," eligible to receive a distribution payment if their distribution amount is equal to or exceeds $20.00 (the "Payees"). Plan ¶¶ 18, 19, 20, 22, and Exhibit A, "Payee". Persons who submit claims determined to be insufficient or denied will be notified and given an opportunity to contest the determination and/or cure the deficiency before a final determination is made. Plan ¶¶ 58, 62.

The Plan, ¶ 20(a), excludes from distribution the Defendants, those related to the Defendants, and claimants involved in the underlying scheme. *See SEC v. Champion-Cain, et al.*, Civ. Act. No. 19-1628-LAB- AHG, 2023 U.S. Dist. LEXIS 31535, *18-19 (S.D. Ca. Feb. 24,

[2] Capitalized terms not defined in this memorandum are used as defined in the Plan.

2023) (in the context of a receivership, courts may approve plans that exclude participants in a fraudulent scheme, including insiders who had no knowledge of the fraud); *SEC v. Bivona*, Civ. Act. No. 16-01386-EMC, 2017 U.S. Dist. LEXIS 148575, **41-44 (N.D. Ca. Sept. 13, 2017) (district courts have discretion to exclude from a distribution plan active wrongdoers, persons whose unlawful activity resulted in investor harm, and claims of persons who received, or would receive, a profit from the fraud). *See also SEC v. McGinn, Smith & Co.,* Civ. Act. No. 10-457, 2020 U.S. Dist. LEXIS 118746, *6-8 (Jul. 7, 2020); *SEC v. McGinn, Smith & Co.*, Civ. Act. No. 10-457, 2019 U.S. Dist. LEXIS 35678, *5-8 (N.D.N.Y. Mar. 6, 2019) (and the cases cited therein) (district courts have discretion to exclude claimants involved in the underlying fraudulent scheme).

The Plan also excludes the Distribution Agent and its agents to avoid any conflicts of interest; as well as Persons that seek to capitalize on the distribution by purchasing for value a Preliminary Claimant's claim to obtain a recovery from the Distribution Fund. Plan ¶¶ 20(b), (c). Further, the Plan excludes any Person who is confirmed by the Distribution Agent to be subject to sanctions by the U.S. government. *Id*. ¶ 20(d).

Under the Plan of Allocation, Recognized Losses will be calculated as the difference between the amount invested by each Preliminary Claimant and any recovery on that investment. *Id*., Exhibit A (Plan of Allocation). The Distribution Fund will be allocated to Payees *pro rata*. *Id*. If there are sufficient funds remaining, harmed investors may receive reasonable interest on their losses. *Id*. ("Reasonable Interest")

If sufficient funds remain after an initial distribution and the payment of all Administrative Costs and harmed investors have not been fully compensated, the Distribution Agent may conduct additional distributions pursuant to Court Order. Plan ¶ 90. When the

Distribution Agent, in consultation with the SEC staff, determines additional distributions infeasible, the Distribution Agent will begin termination activities, including, with the Tax Administrator, completing a final accounting. *Id*. ¶¶ 92, 95. Upon completion of the final accounting, the SEC staff will file a motion with the Court to approve the final accounting, discharge the Distribution Agent, and terminate the Distribution Fund. *Id*. ¶¶ 93, 99. That motion will include a recommendation as to the disposition of the Residual, consistent with Sections 21(d)(3), (5), and (7) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78u(d)(3),(5), and (7); and *Liu v. SEC*, 140 S. Ct. 1936 (2020),[3] such as the transfer of the Residual to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.[4]

The SEC believes that the Plan fairly and reasonably distributes the Distribution Fund to clients harmed by the conduct underlying the Complaint and accordingly, respectfully requests that it be approved.

[3] 15 U.S.C. § § 78u(d)(3), (5), and (7). Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant provisions of the NDAA apply "to any action or proceeding that is pending on, or commenced on or after, the date of" the NDAA's enactment. NDAA, Section 6501(b).

[4] Section 21F(g)(3) of the Exchange Act, 15 U.S.C. § 78u-6(g)(3), provides, in relevant part, that any monetary sanction of $200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not added to a disgorgement fund or fair fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

## V. Conclusion

For all the foregoing reasons, the SEC respectfully requests that after issuance of the simultaneously requested Order to Show Cause and completion of all steps therein, the Court approve the Proposed Plan and grant such other relief as the Court deems appropriate.

Dated: Feb. 27, 2025

Respectfully submitted,

s/ Catherine E. Pappas
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