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

**SECURITIES EXCHANGE ACT OF 1934**
**Release No. 100154 / May 15, 2024**

**ADMINISTRATIVE PROCEEDING**
**File No. 3-17582**

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| **In the Matter of**<br><br>**Weatherford International PLC, f/k/a Weatherford International LTD., James Hudgins, CPA, and Darryl Kitay, CPA**<br><br>**Respondents.** | **ORDER APPROVING PLAN OF DISTRIBUTION** |

**ADMINISTRATIVE PROCEEDING**
**File No. 3-17628**

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| **In the Matter of**<br><br>**Ernst & Young LLP, Craig R. Fronckiewicz, CPA, and Sarah E. Adams, CPA**<br><br>**Respondents.** |

On September 27, 2016, the Commission issued an Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the "Weatherford Order")[1] against Weatherford International PLC, f/k/a/ Weatherford International LTD. ("Weatherford"), James Hudgins, CPA, and Darryl Kitay, CPA (collectively, the "Weatherford Respondents"). In the Weatherford Order, the Commission found that, between 2007 and 2012, Weatherford, a large multinational provider of oil and natural gas equipment and services, issued false financial statements that inflated its earnings by over $900 million in violation of Generally Accepted Accounting Principles ("GAAP"). As a result, Weatherford was forced to restate its financial statements on March 8, 2011, and again in February and July 2012. As a result of the conduct described in the Weatherford Order, the

[1] Securities Act Rel. No 10221 (Sept. 27, 2016).

Commission ordered the Weatherford Respondents to pay a total of $140,364,067 in disgorgement, prejudgment interest, and civil money penalties. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley") the Weatherford Order created a Fair Fund for distribution of the amounts ordered to harmed investors.

On October 18, 2016, the Commission issued an Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the "E&Y Order" and together with the Weatherford Order, the "Orders")[2] against Ernst & Young LLP, Craig R. Fronckiewicz, CPA, and Sarah E. Adams, CPA (collectively, the "E&Y Respondents" and together with the Weatherford Respondents, the "Respondents"). According to the E&Y Order, the E&Y Respondents violated the federal securities laws and engaged in improper professional conduct while serving as the external auditor, coordinating (*i.e.,* signing) partner, and tax partner, respectively for Weatherford in connection with its 2007-2010 financial statements. As a result of this conduct, the Commission ordered the E&Y Respondents to pay a total of $11,840,107 in disgorgement, prejudgment interest, and civil money penalties to the Commission, and created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley.

On November 30, 2017, the Commission issued an Order consolidating the Weatherford and Ernst & Young Fair Funds into a single Fair Fund for distribution to harmed investors, for a total Fair Fund in the amount of $152,204,174 (the "Fair Fund").[3]

On August 2, 2018, the Secretary, pursuant to delegated authority, issued an order appointing Miller Kaplan Arase LLP as the Tax Administrator of the Fair Fund.[4]

On July 16, 2020, the Division, pursuant to delegated authority, issued an order appointing Epiq Systems, Inc. as the Fund Administrator of the Fair Fund and setting the bond amount.[5]

On November 17, 2022, the Division, pursuant to delegated authority, published a Notice of Proposed Plan of Distribution and Opportunity for Comment ("Notice"),[6] pursuant to Rule 1103 of the Commission's Rules on Fair Fund and Disgorgement Plans (the "Commission's Rules"). The Notice advised all interested persons that they may obtain a copy of the proposed plan of distribution ("Proposed Plan") from the Commission's public website at http://www.sec.gov/litigation/fairfundlist.htm or by submitting a written request to Adriene Mixon, Esq., Assistant Chief Litigation Counsel, United States Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA 90071. All persons who desired to comment on the Proposed Plan could submit their comments, in writing, no later than December 19, 2022. The Commission received three public comments during the comment period (the "Comment Letters").

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[2] Exchange Act Rel. No. 79109 (Oct. 18, 2016).

[3] Order Consolidating Fair Funds, Exchange Act Rel. No. 82185 (Nov. 30, 2017).

[4] Order Appointing Tax Administrator, Exchange Act Rel. No. 83766 (Aug. 2, 2018).

[5] Order Appointing Fund Administrator and Setting Bond Amount, Exchange Act Rel. No. 89333 (July 16, 2020).

[6] Exchange Act Rel. No. 96340 (Nov. 17, 2022).

After considering the Comment Letters received on the Proposed Plan, the Commission staff and Fund Administrator, recommends that the Proposed Plan be approved without modification.

After careful consideration, the Commission concludes that the Proposed Plan should be approved without modification.

## I.

### A. Public Comments on the Proposed Plan

By letters dated December 16, 2022, ISS Securities Class Actions Services ("SCAS") and Chicago Clearing Corporation ("CCC"), both objected to paragraphs 85 and 86 of the Proposed Plan, the procedures to be followed with respect to Third-Party Filers.[7] By letter also dated December 16, 2022, Venture Recapture Partners ("VRP") objected to paragraph 22 of the Proposed Plan, which excludes claim purchasers from the distributions. In addition, the Commission received two non-public comments objecting to the Proposed Plan; however, those comments reference conduct that falls outside of the relevant time period of the Proposed Plan and therefore, warrant no modification to the Proposed Plan.

#### 1. Objections to Paragraphs 85 and 86

By its Comment Letters, SCAS and CCC request edits to the Proposed Plan that would allow Third-Party Filers to collect distribution payments on behalf of harmed investors and deduct their fees from these distribution payments before remitting the remainder of the funds to harmed investors. The commenters request these changes to facilitate their payment for services, claiming alternative methods of payment to be "extremely difficult, if not impossible." The Comment Letters also explain that Third-Party Filers help maximize participation in distributions, and that retail investor participation in Commission distributions will plummet if Third-Party Filers do not participate. CCC states that its clients have chosen to pay for CCC's third-party filing services through contingency fee arrangements.

The Commission has considered these comments and has determined that requirements of paragraphs 85 and 86 are necessary to protect against risks to the Fair Fund and protect harmed investors. Commission distribution plans are qualified settlement funds under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5 and Third-Party Filers are not entitled to deduct their fees from the Commission's distribution payments.

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[7] A Third-Party Filer is defined in the Proposed Plan as a third-party, including without limitation a nominee, custodian, or an intermediary holding in street name, who is authorized to, and submits, a claim(s) on behalf of one or more Potentially Eligible Claimants. Third-Party Filer does not include assignees or purchasers of claims, which are excluded from receiving Distribution Payments under paragraph 22 [Excluded Parties]. Proposed Plan, ¶ 34.

The Commission has determined that the requirements of paragraphs 85 and 86, demonstrating that the preferred method of payment is directly to the Eligible Claimant and prohibiting the offset of Third-Party Filer compensation from Distribution Payments, are necessary to reduce risks to the Commission's distribution program and to harmed investors and therefore, are fair and reasonable. Section 21(d)(4) of the Exchange Act evidences Congress's intent that certain practices prevalent in private securities litigation, such as compensation of attorneys and other private parties from investors' compensation, should not be carried over to the distribution of Commission disgorgement funds.

Congress entrusted the Commission with the responsibility of distributing Commission settlement funds, and the Commission has procedures in place to efficiently and effectively distribute these government settlement funds while protecting the funds from waste and fraud. Distribution Payments should not be sent to Third-Party Filers because the Commission does not have visibility into how these funds are handled once in the Third-Party Filers' possession. Furthermore, the Third-Party Filers are not subject to the controls and oversight procedures prescribed in the distribution plan, and all of the safeguards implemented by the Commission and Congress to protect investors can no longer protect the funds once in the Third-Party Filers' possession. For the above reasons, the Commission concludes that paragraphs 85 and 86 which preclude the sending of distribution payments to Third-Party Filers, and which preclude the offset of Third-Party Filer compensation from Distribution Payments, are appropriate as a means to protect the integrity of Commission distributions.

In addition, the Commission has previously considered similar comments on several occasions. In each of these cases,[8] the Commission has upheld the provisions as necessary to reduce risks to the Commission's distribution program and to harmed investors and approved the proposed plan without modification.

Accordingly, the Commission again finds those paragraphs fair and reasonable and approves them without modification.

### 2. Objections to Paragraph 22

VRP objects to paragraph 22 of the Proposed Plan as excluding VRP from participating in the Fair Fund distribution despite having purchased the "right" to obtain recovery in good faith arms-length transactions. VRP requests that paragraph 22 be altered to clearly permit purchasers of claims to be eligible for a distribution from the Fair Fund. The Commission has considered this objection and concludes that it does not require modification to the Proposed Plan.

The purpose of a Commission plan of distribution is to distribute a fund formed for the benefit of harmed investors. *See* Section 308(a) of the Sarbanes Oxley Act of 2002, in the context of Fair Funds: [a fund] "established for the benefit of victims of" federal securities law

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[8] *In the Matter of MagnaChip Semiconductor Corporation, et al.,* Exchange Act Rel. No. 97470 (May 10, 2023), *In the Matter of The Kraft Heinz Co.*, Exchange Act Rel. No. 96578 (Dec. 23, 2022), and *In the Matter of Wells Fargo & Co.*, Exchange Act Rel. No. 90898 (Jan. 11, 2021).

violations. The Commission believes the best way to ensure that distribution payments are made for the benefit of investors is to relate the harm caused by the misconduct underlying its enforcement actions to the specific investors who suffered the harm, and to compensate those investors for as much of that harm as the distribution fund makes possible.

Paragraph 22 of the Proposed Plan does not take a position on investors selling their claims. Rather, the Proposed Plan specifies to whom the distribution payment will be made. The fact that VRP has purchased recovery rights from a liquidating entity does not make VRP a harmed investor. Rather, VRP is simply a purchaser for profit of the possibility that the true harmed investors may receive a distribution payment.

Furthermore, here the harmed investors have been identified as those who traded in Weatherford common stock from February 25, 2009 to November 12, 2012 and suffered a loss after corrective disclosures were issued, following the falsification of records that resulted in inflated earnings reports. There were more than $900 million in losses to injured investors; yet the Fair Fund is comprised only of $152 million. There are insufficient funds to fully compensate all of the injured investors; therefore, it is likely that this will be a *pro rata* distribution in which harmed investors receive partial compensation for their harm. Consequently, excluding purchasers of potential distribution payments in favor of implementing a methodology that provides maximum compensation to injured investors, given the amount of funds available, is fair and reasonable.

**B. Approval of the Proposed Plan**

For the reasons stated above, the Commission finds that the Proposed Plan is fair and reasonable and should be approved without modification.

**II.**

Accordingly, it is hereby ORDERED, pursuant to Rule 1104 of the Commission's Rules,[9] that the Proposed Plan is approved, and the approved Plan of Distribution shall be posted simultaneously with this Order on the Commission's website at www.sec.gov.

By the Commission.

Vanessa A. Countryman
Secretary

[9] 17 C.F.R. § 201.1104.