

Scott J. Watnik
Of Counsel

October 18, 2016

VIA EMAIL AND FEDERAL EXPRESS: rule-comments@sec.gov

To the Office of the Secretary, United States
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Administrative Proceeding File Number 3-16398

In response to the Proposed Plan of Distribution for Administrative Proceeding File No. 3-16398, issued on September 20, 2016 (the "Proposed Plan"), and consistent with Paragraph 27 therein, Respondent Sandra Dyche ("Dyche" or "Respondent") asserts the following objections and comments:

1. Paragraphs 1 and 2 of the Proposed Plan do not accurately characterize the factual allegations made regarding Dyche's conduct. For those allegations, the Proposed Plan cites, in footnote 1, to a consent order reached as part of a settlement of the SEC's claims against Dyche ("Consent Order"). These allegations misconstrue the plain language of the Consent Order.

Specifically, the Consent Order does **not** contain any admissions or judicial determinations of misconduct by Dyche, as Paragraphs 1 and 2 of the Proposed Plan incorrectly state or imply. The Consent Order plainly states that it was entered into only after Dyche "submitted an *Offer of Settlement* (the 'Offer') which the Commission has determined to accept." Consent Order, at 1 (emphasis added). This is a settlement agreement, not a judgment.

Indeed, Section II of the Consent Order, at page 1, states that Dyche entered into the Consent Order "**without admitting or denying the findings herein**," except with regard to the scope of the Commission's jurisdiction and except as provided therein in Section V. *Id.* (emphasis added). In addition, Section V of the Consent Order, at page 8, states that "the findings in this [Consent] Order" are "admitted" by Dyche "**solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code**." *Id.* at 8 (emphasis added).

Moreover, the SEC's February 20, 2015 press release concerning the Consent Order states that Dyche consented to the order "**without admitting or denying the SEC's findings**." See <http://www.sec.gov/litigation/litreleases/2015/lr23203.htm> (emphasis added).

Thus: (i) Dyche has **not** admitted to any wrongdoing; and (ii) to the extent that Dyche has admitted to the factual findings contained in the Consent Order, she has done so for a purpose (*i.e.*, Section 523 of the Bankruptcy Code) that has nothing to do with the Proposed Plan.

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Accordingly, Paragraphs 1 and 2 of the Proposed Plan are erroneous, and should be revised as set forth below to accurately reflect the Consent Order:

- A. The second sentence of Paragraph 1 should be revised to state “. . . the Commission’s Order against Sandra Dyche (‘Dyche’ or ‘Respondent’), reached pursuant to a settlement of the SEC’s claims against Respondent.”
- B. The third sentence of Paragraph 1 should be preceded by the following sentence: “The Order contains factual allegations or findings of the SEC which Respondent does not admit and which were not found by any court of law to be true.” Alternatively, the sentence should be revised to state “The Order alleges that Dyche violated”
- C. The fourth sentence of Paragraph 1 should be revised to state “Dyche agreed, as part of her settlement with the SEC, to pay disgorgement”
- D. The third, fourth, fifth, and sixth sentences of Paragraph 2 should either (i) be preceded with a new, qualifying sentence repeating Dyche’s settlement and lack of admissions, or, alternatively, (ii) each begin with “The Order alleges that”

The factual statements in Paragraphs 1 and 2 will remain **false** in their express and/or implicit content unless these changes are made. For the avoidance of doubt, Dyche has **not** admitted **any** of these claims for the purposes of the Proposed Plan, nor has there been **any** adjudication in any court finding she engaged in such conduct. To state or imply otherwise is unfairly prejudicial to Dyche and misrepresents Dyche’s settlement, including the Consent Order.

2. Any funds that are part of the Net Fair Fund but which are not ultimately claimed by any Eligible Investor should be subject to precisely the same process as “additional funds” are subject pursuant to Para. 13(g) of the Proposed Plan (on p. 4). As noted in Para. 13(d), the “total Net Loss Amount exceeds the Net Fair Fund.” *Id.* Each Eligible Investor is, thus, receiving less than its full Net Loss Amount. Redistribution of any unclaimed funds to those Eligible Investors claiming funds is the only means by which such Eligible Investors can recover amounts closer to their Net Loss Amounts.


Enclosed with this letter for your reference is a redline that we have prepared showing the above-discussed changes to the Proposed Plan as compared to the original text of the Proposed Plan.

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Thank you for making these changes to the Proposed Plan.

Very truly yours,



Scott J. Watnik

SJW:sjl
Enclosure

With Enclosure.

cc: Beth Groves, Esq. (by email at: grovesb@SEC.gov) (with enclosure)
Ian Rupell, Esq. (by email at: rupelli@SEC.gov) (with enclosure)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16398

In the Matter of

SANDRA DYCHE,

Respondent.

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PROPOSED PLAN OF DISTRIBUTION

1. *Purpose and Background.* The Division of Enforcement submits this proposed Plan of Distribution (the “Plan”) to the United States Securities and Exchange Commission (“Commission”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Rules”), 17 C.F.R. § 201.1101. The Plan provides for a distribution of funds collected to injured investors from the disgorgement, prejudgment interest and civil monetary penalties paid pursuant to the Commission’s Order¹ against Sandra Dyche (“Dyche” or “Respondent”) reached pursuant to a settlement of the SEC’s claims against Respondent. The Order contains factual allegations or findings of the SEC which Respondent does not admit and which were not found by any court of law to be true. One such finding is The Order found that Dyche violated Section 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10b of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder, and willfully violated Exchange Act Section 15(a). Dyche was ordered agreed, as part of her settlement with the SEC, to pay disgorgement of \$1,000,000, prejudgment interest of \$164,000 and civil penalties of \$250,000. The Order created a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, for the funds paid by Dyche (the “Fair Fund”).

2. According to the Order, Premiere Power, LLC (“Premiere”), was formed in 2009 to pursue energy-related projects on Native American land. From 2009 through 2010 (“Relevant Period”), Respondent, a board member of Premiere, raised \$1.95 million from three investors. The Order alleges that, Pprior to raising the funds, Respondent made an agreement with Premiere Power’s CEO and Chairman that she would use approximately half of the funds raised from investors in connection with an unrelated lawsuit. Respondent allegedly failed to disclose this arrangement in the offering materials that she used to solicit investments from the three investors and during an in-person meeting with the investors. The offering materials also allegedly

¹ Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order, Securities Act Rel. No. 9729 (Feb. 20, 2015).

contained other material misstatements and omissions. Furthermore, Respondent allegedly misappropriated \$1,000,000 of the total \$1.95 million that she raised for Premiere.

3. In accordance with the Order, Dyche paid a total of \$1,414,000.00 in disgorgement, prejudgment interest, and civil monetary penalties to the Commission. A total of \$1,412,426.21² is available for distribution to injured investors less \$7,761.20 held in reserve for taxes and tax administrator fees. It is anticipated that there will be one or more disbursements to eligible investors specified in paragraph 12 below (“Eligible Investor”). The Fair Fund is subject to the continuing jurisdiction and control of the Commission and the Fair Fund is currently on deposit at the United States Department of Treasury’s Bureau of the Fiscal Service (“BFS”) for investment. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over the implementation of the Plan.

4. On February 20, 2015, the same day that the Commission entered the Order, the Commission also filed a civil action against Premiere, its CEO, and its Chairman (collectively, the “Defendants”). Currently pending in district court, that action, *SEC v. Premiere Power, LLC*, No. 15-cv-1248 (S.D.N.Y.), alleges that the Defendants participated in a fraudulent scheme, along with Dyche, to misappropriate investor funds and defrauded the three investors referred to in the Order. The Commission’s complaint also alleges that the Defendants made material misstatements and omissions to the investors regarding: the use of their investment funds in connection with an unrelated lawsuit; Premiere’s affiliates, board members, and auditor; and, the Chairman’s successful career in the energy business. According to the complaint, these misstatements and omissions were made in offering materials used to solicit investments from the investors and during an in-person meeting with investors.

5. The Commission staff intends to request that the court overseeing *SEC v. Premiere Power*, direct any funds collected as a result of monetary sanctions being sought in the Commission’s litigation to investors either in accordance with this Plan or to the Commission for subsequent distribution pursuant to the Plan.

6. Under the Plan, the Fair Fund, less any reserve for taxes, tax administrator fees, or other expenses of the administering the Plan (the “Net Fair Fund”), will be distributed to Eligible Investors, as set forth in paragraph 13 below.

7. *Fund Administrator*. Michael S. Lim, Attorney Advisor in the Commission’s Office of Distributions in the Division of Enforcement, is proposed to be the administrator of the Fair Fund (the “Fund Administrator”). As a Commission employee, the Fund Administrator receives no compensation from the Fair Fund for his services in administering the Fair Fund. In accordance with Rule 1105(c) of the Rules, 17 C.F.R. § 201.1105(c), no bond is required since the Fund Administrator is a Commission employee. In carrying out his duties, the Fund Administrator may be assisted by other Commission staff.

8. The Fund Administrator will, among other things: oversee the administration of the Fair Fund, obtain mailing information for Eligible Investors, distribute money from the assets of the Fair Fund to Eligible Investors in accordance with the Plan, resolve

² The amount available for distribution reflects a reduction of \$1,573.79 for administration fees, DC taxes, and investment fees.

disputes, prepare a final accounting with assistance from the tax administrator, and provide the Fair Fund's tax administrator with funds to pay tax liabilities and tax compliance fees and costs.

9. *Qualified Settlement Fund.* The Fair Fund constitutes a Qualified Settlement Fund ("QSF") 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.

10. *Tax Administrator.* On February 12, 2016, the Commission issued an Order Appointing Tax Administrator,³ pursuant to the 2016 Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds,⁴ appointing Damasco & Associates LLP as the Tax Administrator for the QSF in this proceeding. The Tax Administrator will be compensated for all reasonable costs and expenses from the Fair Fund in accordance with its 2016-2018 Engagement Letter Agreement with the Commission. The Fair Fund's taxes will also be paid out of the Fair Fund.

11. *No Claims-Made Process.* This Fair Fund is not being distributed according to a claims-made process because the staff of the Commission has reasonably concluded that it has all records necessary to calculate harm as described in paragraph 13.a. As a result, procedures for making and approving claims in accordance with Rule 1101(b)(4) of the Rules, 17 C.F.R. § 201.1101(b)(4) are not applicable.

12. *Eligible Investors.* Eligible Investors are limited to persons who invested in Premiere during the Relevant Period and who suffered a net loss amount, as described in paragraph 13.b. of this Plan.

13. *Methodology for Determining Payment Amounts for Eligible Investors.* The Fund Administrator will determine the amount to be distributed to each Eligible Investor from the Net Fair Fund as follows. In the view of the Fund Administrator, this methodology constitutes a fair and reasonable allocation of the Net Fair Fund.

- a. Using information collected by the Commission staff, the Fund Administrator totaled the actual principal invested for each Eligible Investor in Premiere;
- b. The Fund Administrator then subtracted from this total amount all actual payments an Eligible Investor received (if any) from Premiere including redemptions, withdrawals and any other payments. This resulting total is an Eligible Investor's net loss amount ("Net Loss Amount");
- c. The Fund Administrator next added the Net Loss Amounts for each Eligible Investor and compared this amount to the Net Fair Fund;
- d. Because the total Net Loss Amount currently exceeds the Net Fair Fund, the staff determined what percentage of the total Net Loss Amount was

³ Exchange Act Rel. No. 77131 (Feb. 12, 2016).

⁴ Exchange Act Rel. No. 77016 (Feb. 2, 2016).

represented by each Eligible Investor's Net Loss Amount. The resulting percentage for each Eligible Investor is the investor's *pro rata* share ("Pro Rata Share");⁵

- e. The Fund Administrator determined each Eligible Investor's estimated distribution amount by multiplying the Net Fair Fund by each Eligible Investor's *Pro Rata* share ("Estimated Net Distribution Amount");
- f. Based on this methodology, the individual Net Loss Amounts and *Pro Rata* Shares for Eligible Investors are as follows:

Eligible Investor #	Net Loss Amount	Pro Rata Share
Eligible Investor #1	\$ 1,500,000	76.92%
Eligible Investor #2	\$ 300,000	15.39%
Eligible Investor #3	\$ 150,000	7.69%
TOTAL NET LOSS	\$ 1,950,000	100.00%

- g. In the event that the Commission collects additional funds from any defendant in *SEC v. Premiere Power*, the Commission intends to request that the court overseeing the case either (i) direct funds to Eligible Investors on a *pro rata* basis in accordance with this Plan; or (ii) direct funds to the Commission for distribution pursuant to the Plan.
- h. In any event, an Eligible Investor will not receive combined payments that would exceed the investor's actual Net Loss Amount.

14. *Procedures for Locating and Notifying Eligible Investors.* Within thirty (30) days of the Commission's approval of the Plan, the Fund Administrator will send each Eligible Investor a correspondence by electronic mail, and United States Postal Service, or other mail delivery service regarding the Commission's approval of the Plan. The Fund Administrator's correspondence will include as appropriate, a statement characterizing the distribution, a copy of the Plan, a link to the Plan on the Commission's website, the number assigned that Eligible Investor on the chart in paragraph 13.f., the Eligible Investor's Net Loss Amount and Estimated Net Distribution Amount, a description of tax information reporting and related tax matters, and the name of the Fund Administrator to contact with questions regarding the distribution. Eligible Investors will be asked to confirm the distribution payment or provide documentation if they disagree with the estimated Net Loss Amount. The Fund Administrator will coordinate with the Tax Administrator to request contact and other information from each Eligible Investor that is needed to accomplish the distribution in accordance with applicable tax requirements relating to the Fair Fund.

15. *Undelivered Correspondence.* If a correspondence from the Fund Administrator is returned as undeliverable within sixty (60) days of approval of the Plan, the Fund

⁵ Based on information collected by the Commission staff, the Fund Administrator is not aware of any redemptions, withdrawals, or payments by or to any of the Eligible Investors. However, if the Fund Administrator later receives evidence of any such redemptions, withdrawals, or payments, such information will be taken into consideration in calculating an Eligible Investor's Net Loss Amount and *Pro Rata* Share.

Administrator will make all reasonable efforts to ascertain an Eligible Investor's correct address. The Fund Administrator will then resend the correspondence to the Eligible Investor's new address within thirty (30) days of receipt of the returned correspondence. If the correspondence is returned again and the Fund Administrator, despite all reasonable efforts, is unable to find an Eligible Investor's correct address, the Fund Administrator, in his discretion, may remove such Eligible investor from the distribution and the allocated amount will be added to the Net Fair Fund and will be distributed to the remaining Eligible Investors, described above in paragraph 13.

16. *Failure to Respond.* If an Eligible Investor fails to respond within sixty (60) days from approval of the Plan, the Fund Administrator will then make no fewer than two (2) attempts to contact the Eligible Investor by telephone or email. The second attempt will, to the extent possible, take place no more than seventy-five (75) days from the approval of the Plan. If an Eligible Investor fails to respond to the Fund Administrator's contact attempts, the Fund Administrator, in his discretion, may remove such Eligible Investor from the distribution and the allocated distribution amount that such Eligible Investor would have received would be included in the Net Fair Fund available to the remaining Eligible Investors who responded to the Fund Administrator, as described above in paragraph 13.

17. Any funds from the Net Fair Fund that cannot be distributed for any reason will become part of the residual described in paragraph 25 and reported in the final accounting.

18. *Distribution Timing.* The Fund Administrator will use his best efforts to start the distribution within one hundred and fifty (150) days of the Plan's approval.

19. *Bureau of the Fiscal Service; Validation and Approval of Disbursement of the Fair Fund.* The Fair Fund disbursement to Eligible Investors will be implemented by the Commission and disbursed through the BFS; checks will be mailed or distribution payments will be electronically transferred to each Eligible Investor as instructed by the Fund Administrator. The Fund Administrator will compile the payee information and prepare a payment file in a Commission-approved format for submission to the Commission to make the disbursements through BFS. Pursuant to Rule 1101(b)(6) of the Rules, the Fund Administrator will obtain an order from the Commission to disburse the Fair Fund.

20. The Fund Administrator will work with BFS to obtain information about uncashed checks, any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Fund Administrator is responsible for researching and reconciling errors and reissuing payments when possible. The Fund Administrator also is responsible for accounting for all payments. Checks issued by BFS state on their face that they are valid for one year. If any checks issued are not cashed within the one year time period, the Fund Administrator will work with BFS to identify all uncashed checks.

21. *Accountings.* When all funds have been disbursed except for the residual described in paragraph 25 of the Plan, the Fund Administrator will submit a final accounting for the approval of the Commission prior to termination of the Fair Fund and discharge of the Fund Administrator. Since the funds are being held in a Commission designated account at the

U.S. Treasury and a Commission employee has been appointed as Fund Administrator, no interim accountings are required.

22. *Expenses of Administration.* Because the Fund Administrator is a Commission employee, no fee from the Fair Fund will be paid to the Fund Administrator for his services. Taxes, tax administrator fees, investment fees, and other expenses of administering the fund will be paid from the Fair Fund.

23. *Amendments and Procedural Deadline Extensions.* The Fund Administrator shall take reasonable and appropriate steps to distribute funds from the Net Fair Fund according to this Plan. The Fund Administrator will inform Commission staff of any changes needed in this Plan. If a change is determined to be material, Commission approval is required prior to implementation by amending this Plan, which may be done upon the motion of any party, the Fund Administrator, or upon the Commission's own motion. Immaterial changes may be made by the Fund Administrator. For good cause shown, and in consultation with the Commission staff, the Fund Administrator may extend any of the procedural deadlines set forth in this Plan.

24. *Procedures to Request Plan Notice.* A person that does not receive correspondence from the Fund Administrator and believes that he or she should have received correspondence after becoming aware of the Plan (e.g., through other Eligible Investors or on www.sec.gov) must submit documentation to the Fund Administrator in order to establish that the person is in fact an Eligible Investor. Such documentation must be submitted within seventy-five (75) days after the Commission's approval of the Plan. The Fund Administrator will contact the person within twenty-one (21) days of receiving the person's documentation with a determination of his or her eligibility.

25. *Disposition of Undistributed Funds and Residual.* A residual within the Fair Fund refers to any amounts remaining after all distributions of the Net Fair Funds to Eligible Investors have occurred. The residual will include as applicable funds reserved for future taxes and related expenses, funds from checks that have not been cashed, that were not delivered or that were returned to the Commission, tax refunds for overpayment or for waiver of IRS penalties. After the distributions are complete, all funds remaining in the residual will be transferred to the U.S. Treasury after the final accounting is approved by the Commission.

26. *Termination of the Fair Fund.* Upon final distribution of the Net Fair Fund to Eligible Investors, the Fund Administrator will make arrangements for the final payment of taxes and Tax Administrator fees and will submit a final accounting to the Commission. The Fair Fund will be eligible for termination after all of the following have occurred: a) a final accounting, in the Commission's standard accounting format, has been submitted by the Fund Administrator, and has been approved by the Commission; and b) all taxes, fees and expenses, have been paid. When the Commission has approved the final accounting, the Commission staff will seek an order from the Commission to approve the termination of the Fair Fund, the discharge of the Fund Administrator, and the transfer of any amount remaining in the Fair Fund to the U.S. Treasury.

27. *Notice of Proposed Plan of Distribution and Opportunity for Comment.* The Notice of Proposed Plan of Distribution and Opportunity for Comment (the "Notice") shall be

published in the SEC Docket and on the Commission's website at <http://www.sec.gov/litigation/fairfundlist.htm>. Any person wishing to comment on the Plan must do so in writing by submitting their comments to the Commission within thirty (30) days of the date of the Notice: (a) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (b) by using the Commission's Internet comment form (www.sec.gov/litigation/admin.shtml); or (c) by sending an e-mail to rule-comments@sec.gov. Comments submitted by e-mail or via the Commission's website should include "Administrative Proceeding File Number 3-16398" in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.