

December 16, 2022

(Via email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov))

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

*Re: In the Matter of Weatherford International PLC, f/k/a Weatherford International LTD., James Hudgins, CPA, and Darryl Kitay, CPA, and In the Matter of Ernst & Young LLP, Craig R. Fronkiewicz, CPA, and Sarah E. Adams, CPA, Administrative Proceeding File Nos. 3-17582 and 3-17628*

Dear Commission Staff Members:

Value Recapture Partners, LLC ("VRP")<sup>1</sup> submits these comments on paragraph 22 of the U.S. Securities & Exchange Commission's Proposed Plan of Distribution ("Proposed Plan") for the combined fair funds (the "Fair Fund") in the above-referenced enforcement proceedings. On November 17, 2022, the Commission's Secretary published the Notice of Proposed Plan of Distribution and Opportunity for Comment, giving interested parties a chance to comment within 30 days.

### Background

VRP is in the business of purchasing recovery rights from pooled investment vehicles. These purchases typically occur when a pooled investment vehicle is in the process of winding down, liquidating assets, and returning value to shareholders ("liquidating vehicle"). Our understanding is that liquidating vehicles engage in these types of transactions for several reasons, including but not limited to:

- Providing the liquidating vehicle with the ability to immediately return value to shareholders;
- Providing the liquidating vehicle with the ability to return to shareholders value for unknown future claims that arise post-closure;
- Reducing the administrative burden on the liquidating vehicle to monitor and administer claims and distribute recoveries post-closure; and
- Allowing the orderly and prompt wind down and liquidation of the pooled investment vehicle.

We further understand that these issues are particularly acute when the time between the conduct, the announcement of the action, and the ultimate distributions span over several years.

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<sup>1</sup> While a separate corporation, VRP is owned by the same parent entity as Financial Recovery Technologies LLC, a Third-Party Claim Filer. They share offices and Rob Adler is the CEO for both.

VRP has been purchasing recovery rights from liquidating vehicles for more than 10 years, and there are several other companies doing the same. This allows the liquidating vehicles to obtain multiple proposals for their current and future claim rights, ensuring they and the shareholders receive full and fair market value. The liquidating vehicles are sophisticated entities and represented by counsel in the transactions.

### The Proposed Plan of Distribution

Paragraph 22(h) of the Proposed Plan defines as an Excluded Party “any purchaser or assignee of another Persons’ right to obtain a recovery from the Fair Fund for value ....” If this definition is adopted, and not modified, it can be read to preclude VRP from participation in the Fair Fund despite having purchased the right to obtain recovery in good faith arms-length transactions with liquidating vehicles. Respectfully, that would be an unfair and inequitable result.

The two above-referenced matters involved alleged securities laws violations during the period from 2007 to 2012, with a settlement announced on September 27, 2016. Paragraph 2 of the Proposed Plan provides that “investors will be compensated for their losses on shares of Weatherford common stock (“Security”) purchased between February 25, 2009 and November 12, 2012 (the “Relevant Period”).”

Therefore, by definition, investors and entities who purchased securities well over a decade ago will have a right to obtain a recovery from the Fair Fund. Prohibiting the service provided by VRP ignores the practical realities faced by liquidating vehicles caused, in part, by the unavoidable and extended delay between alleged misconduct and the ultimate distribution of fair fund assets.

Based on keyword searches of SEC Form 497 filings, VRP estimates that from January 1, 2020, to present, approximately 1,000 mutual funds (including ETFs) have been liquidated. Collectively, these funds represent billions of dollars in previously invested assets with millions of securities transactions. It is our experience that, as with securities class action settlements, institutional investors are among the largest participants in these recoveries.

We respectfully submit that foreclosing the service provided by VRP will adversely affect aggrieved investors and result in the unfair and inequitable distribution of proceeds from fair funds. Investors in funds should have the ability to recover without the excessive burden and cost of monitoring all possible fair funds or holding their investment vehicles open for years waiting for possible resolution of claims and the ultimate distribution of fair fund assets.

Finally, the exclusion set forth in Paragraph 22(h) of the Proposed Plan would also deprive VRP of a recovery that it purchased in good faith to the benefit of investors. The proposed exclusion has a significant economic impact on VRP and other claim purchasers, who have already paid for the claim rights and are now prohibited from realizing *any* value. For this Fair Fund alone, VRP bought claim rights for more than 500,000 shares of Weatherford common stock purchased during the Relevant Period in the Proposed Plan. The proposed exclusion negates the value of these claims and directly interferes with the parties’ distinct expectations.

In addition, the operative language noted in Paragraph 22(h) appears to be a relatively new addition to proposed distribution plans submitted by the Commission staff. VRP purchased most of the claims, otherwise eligible here, before the end of 2019. A review suggests that many fair fund distribution plans approved before then did not contain this exclusion.

VRP respectfully submits that a limited modification of the Proposed Plan to permit the assignment of the right to obtain a recovery to third-party providers like VRP is consistent with the purpose of a fair fund to distribute assets fairly and reasonably among claimants.

Thank you in advance for your consideration of this comment letter. If you have any questions about these comments, please communicate with me by e-mail at [REDACTED] by phone at [REDACTED] or by mail at the address above.

Sincerely,

DocuSigned by:  
*Rob Adler*  
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Robert Adler, CEO