

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100222 / May 23, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21140

In the Matter of
The Boeing Company,
Respondent.

**ORDER APPROVING PLAN OF
DISTRIBUTION**

ADMINISTRATIVE PROCEEDING
File No. 3-21141

In the Matter of
Dennis A. Muilenburg,
Respondent.

On September 22, 2022, the Commission issued two separate, but related Orders Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (the “Orders”) against The Boeing Company (“Boeing”)¹ and Dennis Muilenburg (“Muilenburg”)² (collectively, the “Respondents”). In the Orders, the Commission found that the Respondents failed to exercise reasonable care in making statements to the public following two fatal accidents (the Lion Air Flight 610 and Ethiopian Airlines Flight 302) involving its new 737 MAX line of aircraft. Those failures resulted in Respondents making materially misleading statements to investors in Boeing’s November 27, 2018 press release about the Lion Air crash and in Muilenburg’s public statements in April 2019 following the Ethiopian Airlines crash. By failing to exercise reasonable care to ensure those statements provided all facts necessary to make those statements to investors not misleading under the circumstances, Boeing and Muilenburg violated Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933.

¹ Securities Act Rel. No. 11105 (Sept. 22, 2022).

² Securities Act Rel. No. 11106 (Sept. 22, 2022).

In their respective Orders, the Commission ordered Boeing and Muilenburg to pay civil money penalties of \$200,000,000 and \$1,000,000, respectively, to the Commission. In each of the Orders, the Commission also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalties paid can be distributed to harmed investors and ordered that it may be combined with any other distribution fund or fair fund arising out of the same facts that are the subject of the Order.

The Respondents have paid in full. In accordance with the Orders, the \$201,000,000 paid by the Respondents has been combined (collectively, the “Fair Fund”) and deposited in a Commission-designated account at the U.S. Department of the Treasury. Any accrued interest will be added to the Fair Fund for the benefit of harmed investors.

On May 10, 2023, the Division of Enforcement (the “Division”), pursuant to delegated authority, appointed Epiq Class Action & Claims Solutions, Inc., as the fund administrator for the Fair Fund (the “Fund Administrator”) and set the Fund Administrator’s bond at \$201,000,000.³

On October 12, 2023, the Division, pursuant to delegated authority, published a Notice of Proposed Plan of Distribution and Opportunity for Comment⁴ and simultaneously posted the proposed plan of distribution (“Proposed Plan”) for a 30-day period to allow for comments from the public, pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans.⁵ The Notice advised all interested persons that they may obtain a copy of the Proposed Plan from the Commission’s public website or by submitting a written request to Jennifer Cardello via email at cardelloj@sec.gov. The Notice also advised that all persons desiring to comment on the Proposed Plan could submit their comments, in writing, within 30 days of the Notice. The Commission received two comments on the Proposed Plan during the comment period (collectively, the “Comments”).

After considering the Comments received on the Proposed Plan, the Commission staff, working with the 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

The Commission received Comments from the public on October 26, 2023 and November 10, 2023. By electronic submission on October 26, 2023, Manmohan V. (“MV”)

³ See Order Appointing Fund Administrator and Setting Bond Amount, Exchange Act Rel. No. 97469 (May 10, 2023).

⁴ Exchange Act Rel. No. 98735 (Oct. 12, 2023).

⁵ 17 C.F.R. § 201.1103.

objected to the Relevant Period defined in the Proposed Plan.⁶ By letter dated November 10, 2023, Chicago Clearing Corporation (“Chicago Clearing”) objected to Paragraphs 13(g) and 80 of the Proposed Plan which excludes parties that have purchased an investor’s claim from participating in the distribution of the Fair Fund and prohibits third-party filers from directly receiving their compensation from the distribution payments, respectively.

1. Objection to Relevant Period

In its Comment, MV contends that the Relevant Period should be extended beyond the time period of harm defined in the Proposed Plan up through at least May of 2022. MV contends that it takes longer for the average investor to fully understand the implication of the nondisclosure of material information concerning the 737 MAX issues when deciding to invest and further states that the withholding of material information was not fully felt by those investing in 2019 but extended to those acquiring shares or options through at least May of 2022. MV’s Comment also asserts that the Security⁷ experienced price volatility during the COVID-19 pandemic through 2022.

The Commission has considered this comment and finds the Relevant Period fair and reasonable. The Proposed Plan “seeks to compensate investors who were harmed, by the Respondents’ conduct described in the Orders, in connection with Respondents making materially misleading statements to investors.” Proposed Plan, ¶ 2. Here, the Relevant Period is the time between when the material misleading statements were made to investors and the date of the corrective disclosures to investors. The Proposed Plan is not designed to compensate investors for all losses in the Security caused by market-wide and industry-specific downturns or events subsequent to the conduct described in the Orders. For these reasons, the Relevant Period is properly limited in scope to the conduct described in the Orders and should not be extended.

2. Objection to Paragraph 13(g) and 80

By its letter dated November 10, 2023, Chicago Clearing contends that the prohibition of payments to purchasers of claims in Paragraph 13(g) could eliminate the opportunity for many harmed investors to receive value from the Fair Fund. Similarly, Chicago Clearing also contends that prohibiting the deduction of Third-Party compensation from the distribution payments made to harmed investors in Paragraph 80 would significantly affect retail investor participation. No new issues have been raised by Chicago Clearing in connection with paragraphs 13(g) and 80 of the Proposed Plan than have been previously raised by Chicago Clearing and considered by the Commission.⁸ The Commission finds paragraphs 13(g) and 80 of the Proposed Plan fair and reasonable.

⁶ The Proposed Plan defines the Relevant Period as the period of time between November 28, 2018 and October 17, 2019, inclusive. Proposed Plan ¶22. MV also requests that the SEC allow claims from investors who acquired their shares through the exercise of options. Because the Proposed Plan does allow for such claims there is no need to address this comment. See Proposed Plan, Exhibit A (“Plan of Allocation”), at p. 2 (“Options and Derivatives”).

⁷ All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Proposed Plan.

⁸ *In the Matter of Baxter International Inc.*, Admin. Proc. File No. 3-20781, Exchange Act Rel. No. 96898 (Feb. 13, 2023); *In the Matter of Bayerische Motoren Werke Aktiengesellschaft, et al.*, Admin. Proc. File No. 3-20060,

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 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

Exchange Act Rel. No. 97345 (Apr. 21, 2023); *In the Matter of Allianz Global Investors U.S. LLC*, Admin Proc. File No. 3-20855, Exchange Act Rel. No. 97540 (May 22 2023); and *In the Matter of Momentus, Inc. et al.*, Admin Proc. File No. 3-20393, Exchange Act Rel. No. 97801 (June 27, 2023).

⁹ 17 C.F.R. § 201.1104.