

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 95277 / July 14, 2022**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20523**

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**In the Matter of**

**The Kraft Heinz Co. and Eduardo  
Pelleissone,**

**Respondents.**

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**NOTICE OF PROPOSED PLAN OF  
DISTRIBUTION AND  
OPPORTUNITY FOR COMMENT**

Notice is hereby given, pursuant to Rule 1103 of the United States Securities and Exchange Commission's ("Commission") Rules on Fair Fund and Disgorgement Plans ("Commission's Rules"), 17 C.F.R. § 201.1103, that the Division of Enforcement has submitted to the Commission a proposed plan of distribution (the "Proposed Plan") for the distribution of monies paid in the above-captioned matter.

On September 3, 2021, the Commission issued an Corrected Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (the "Order")<sup>1</sup> against The Kraft Heinz Co. and Eduardo Pelleissone (collectively, the "Respondents"). In the Order, the Commission found that from the last quarter of 2015 to the end of 2018, The Kraft Heinz Company ("KHC") engaged in various types of accounting misconduct, including recognizing unearned discounts from suppliers and maintaining false and misleading supplier contracts, which improperly reduced the company's cost of goods sold and allegedly achieved "cost savings." KHC, in turn, touted these purported savings to the market, which were widely covered by financial analysts. The accounting improprieties resulted in KHC reporting inflated adjusted "EBITDA," a key earnings performance metric for investors. KHC failed to design and maintain effective internal accounting controls for its procurement division. As a result, finance and gatekeeping personnel repeatedly overlooked indications that expenses were being improperly accounted for. In total, the Commission ordered the Respondents to pay \$12,500.00 in disgorgement, \$1,711.31 in prejudgment interest, and \$62,300,000.00 in civil money penalties, for a total of \$62,314,211.31, to the Commission. The Commission also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalties paid, along with the disgorgement and interest paid, can be distributed to harmed investors (the "Fair Fund").

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<sup>1</sup> Securities Act Rel. No. 10977 (Sept. 3, 2021).

The Fair Fund includes the \$62,314,211.31 paid by the Respondents and an additional \$100,000 paid in a related civil proceeding (the “Related Action”).<sup>2</sup> The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Fair Fund and has been deposited in an interest-bearing account at the U.S. Department of the Treasury’s Bureau of the Fiscal Service, and any interest accrued will be added to the Fair Fund.

## **OPPORTUNITY FOR COMMENT**

Pursuant to this Notice, all interested persons are advised that they may obtain a copy of the Plan from the Commission’s public website at <http://www.sec.gov/litigation/fairfundlist.htm>. Interested persons may also obtain a written copy of the Proposed Plan by submitting a written request to Amy A. Sumner, United States Securities and Exchange Commission, Byron Rogers Federal Office Building, 1961 Stout Street, Suite 1700, Denver, CO 80294-1961. All persons who desire to comment on the Proposed Plan may submit their comments, in writing, no later than thirty (30) days from the date of this Notice:

1. to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090;
2. by using the Commission’s Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or
3. by sending an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov).

Comments submitted by email or via the Commission’s website should include “Administrative Proceeding File No. 3-20523” in the subject line. Comments received will be publicly available. Persons should submit only information they wish to make publicly available.

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<sup>2</sup> Order Establishing a Fair Fund and Directing the Transfer of Funds for Distribution, Docket No. 13, *SEC v. Hofmann*, 21-CV-7407 (S.D.N.Y.).

## **THE PROPOSED PLAN**

The Net Available Fair Fund<sup>3</sup> is comprised of the \$62,314,211.31 in disgorgement, prejudgment interest, and civil money penalties paid by the Respondents and \$100,000 in civil penalties received from the Related Action, plus interest and income earned thereon, less taxes, fees, and expenses. The Proposed Plan provides for the distribution of the Net Available Fair Fund to investors who suffered losses on shares of the Security purchased or acquired during the Relevant Period and who suffered a Recognized Loss as calculated by the methodology used in the Plan of Allocation in the Plan.

For the Commission, by the Division of Enforcement, pursuant to delegated authority.<sup>4</sup>

Vanessa A. Countryman  
Secretary

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<sup>3</sup> All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Proposed Plan.

<sup>4</sup> 17 C.F.R. § 200.30-4(a)(21)(iii).