

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96578 / December 23, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20523

In the Matter of	:	
	:	
	:	
The Kraft Heinz Co. and Eduardo	:	ORDER APPROVING PLAN OF
Pelleissone,	:	DISTRIBUTION
	:	
	:	
Respondents.	:	

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”)¹ 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. 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”).

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 assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Fair Fund and has been deposited in

¹ Securities Act Rel. No. 10977 (Sept. 3, 2021).

an interest-bearing account at the U.S. Department of the Treasury, and any interest accrued will be added to the Fair Fund.

On March 8, 2022, the Division, pursuant to delegated authority, appointed RCB Fund Services LLC (“RFS” or the “Fund Administrator”) as the fund administrator for the Kraft Heinz Fair Fund and set the fund administrator’s bond at \$62,314,211.31.²

On July 14, 2022, the Division, pursuant to delegated authority, published a Notice of Proposed Plan of Distribution and Opportunity for Comment (“Notice”),³ pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”).⁴ 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 Amy A. Sumner, Trial Counsel, United States Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver CO 80294. All persons who desired to comment on the Proposed Plan could submit their comments, in writing, no later than August 15, 2022. The Commission received one comment during the comment period (the “Comment Letter”).

After considering the comment 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 Comment on the Proposed Plan

Battea Class Action Services LLC (“Battea”) submitted a letter dated August 12, 2022 objecting to two paragraphs in the Proposed Plan regarding procedures to be followed with respect to Third-Party Filers.⁵

Objections to Paragraphs 81 and 82 of the Proposed Plan

Battea objects to the provisions of the Proposed Plan that require distribution payments to be made directly to harmed investors and that prohibit deduction of the Third-Party fees from payments to harmed investors.

² See Order Appointing Fund Administrator and Setting Bond Amount, Exchange Act Rel. No. 94380 (Mar. 8, 2022).

³ Exchange Act Rel. No. 95277 (July 14, 2022).

⁴ 17 C.F.R. § 201.1103.

⁵ Third-Party Filers are 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 Preliminary Claimants. Proposed Plan, ¶ 26.

Battea requests that edits to the Proposed Plan allowing recipients of distribution payments to authorize payments to be made to Third-Party Filers and also to allow Third-Party Filers to deduct its own compensation before remitting payments to payees in distributions. Battea requests these changes in order to avoid “operational burdens” for Third-Party Filers and to facilitate payments “in a manner that is efficient, responsible, and secure.” The Comment Letter also explains that Battea and similar firms help maximize participation in distributions because large financial institutions engage Third-Party Filers to avoid distraction from their core business.

The Commission has considered these objection and concludes that it does not require modification to the Proposed Plan. In consultation with members of its fund administrator pool, including RFS, the Commission has determined that the requirements of paragraphs 81 and 82, 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.

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,⁶ 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

⁶ 17 C.F.R. § 201.1104.