

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98735 / October 12, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21140

In the Matter of

The Boeing Company,

Respondent.

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

ADMINISTRATIVE PROCEEDING
File No. 3-21141

In the Matter of

Dennis A. Muilenburg,

Respondent.

Notice is hereby given, pursuant to Rule 1103 of the United States Securities and Exchange Commission's (the "Commission") Rules on Fair Fund and Disgorgement Plans (the "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 matters.

On September 22, 2022, the Commission issued two separate, but related Orders (the "Orders")¹ against The Boeing Company ("Boeing") and Dennis Muilenburg ("Muilenburg") (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

¹ Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order, Securities Act Rel. No. 11105 (Sept. 22, 2022), (Admin. Proc. File No. 3-21140); Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order, Securities Act Rel. No. 11106 (Sept. 22, 2022), (Admin. Proc. File No. 3-21141).

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.

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 the funds 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.

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 Jennifer Cardello via email at cardelloj@sec.gov. 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.

Comments submitted by email or via the Commission's website should include "Administrative Proceeding File Nos. 3-21140 and 3-21141" in the subject line. Comments received will be publicly available. Persons should submit only information they wish to make publicly available.

THE PROPOSED PLAN

The Net Available Fair Fund² is comprised of the \$201,000,000.00 in civil money penalties paid by the Respondents, plus any 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 purchased or acquired shares of The Boeing Company common stock between November 28, 2018 and October 17, 2019, inclusive, and suffered a Recognized Loss as calculated by the methodology used in the Plan of Allocation.

For the Commission, by the Division of Enforcement, pursuant to delegated authority.³

Vanessa A. Countryman
Secretary

² All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Proposed Plan.

³ 17 C.F.R. § 200.30-4(a)(21)(iii).