

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE**

LEWIS COSBY, ERIC MONTAGUE, and MARTIN ZIESMAN, as Co-Trustee for the Carolyn K. Ziesman Revocable Trust, on behalf of themselves and all others similarly situated individually and on behalf of all others similarly situated,

Plaintiffs,

v.

KPMG LLP,

Defendant.

Case No. 3:16-cv-121 (TAV)

**ORDER PRELIMINARILY APPROVING PROPOSED SETTLEMENT AND  
PROVIDING FOR NOTICE**

WHEREAS, a class action is pending in this Court entitled *Cosby, et al. v. KPMG LLP*, Case No. 3:16-cv-121 (TAV) (the “Action”);

WHEREAS, Lewis Cosby, Eric Montague, and Martin Ziesman, as Co-Trustee for the Carolyn K. Ziesman Revocable Trust (collectively “Lead Plaintiffs”), on behalf of themselves and the Class, and Defendant KPMG, LLP (“KPMG”) have entered into the Stipulation to settle all claims asserted against KPMG in this Action with prejudice on the terms and conditions set forth in the Stipulation, subject to approval of this Court (the “Settlement”);

WHEREAS, Lead Plaintiffs have made an application pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an order preliminarily approving the Settlement in accordance with the Stipulation and allowing notice to the Settlement Class Members as more fully described herein;

WHEREAS, the Court has read and considered (a) the Third Amended Complaint filed in the Action on July 13, 2020; (b) Lead Plaintiffs' motion for preliminary approval of the Settlement and certification of a settlement class; and (c) the Stipulation and the exhibits attached thereto, including the proposed Notice, Publication Notice, Proof of Claim form, and Judgment, and finds substantial and sufficient grounds for entering this Order; and

WHEREAS, unless otherwise defined herein, all capitalized words contained herein shall have the same meaning as they have in the Stipulation;

NOW THEREFORE, IT IS ORDERED:

1. **Preliminary Approval of Settlement** – For the reasons stated in Lead Plaintiffs' motion for preliminary approval [Doc. 234] and corresponding memorandum of law [Doc. 235], the Court hereby preliminarily approves the Settlement, as embodied in the Stipulation, as being fair, reasonable, and adequate as to Class Members, subject to further consideration at the Final Fairness Hearing to be conducted as described below.
2. **Preliminary Certification of Settlement Class** – The Court entered an order on May 7, 2021, granting Plaintiffs' Motion to Certify the Classes, Appoint Class Representative, and Appoint Class Counsel and hereby also preliminarily certifies, solely for purposes of effectuating the Settlement, pursuant to Federal Rule of Civil Procedure 23, classes consisting of all persons and entities who: 1) purchased or otherwise acquired Miller Energy common stock, Miller Energy 10.75% Series C Cumulative Redeemable Preferred Stock (the "Series C Preferred Stock") or Miller Energy 10.5% Series D Fixed Rate/Floating Rate Cumulative Redeemable Preferred Stock (the "Series D Preferred Stock") between August 29, 2011 and July 30, 2015, inclusive, and who were damaged thereby (the "Section 10(b) Class"); and 2) purchased or otherwise acquired Miller Energy Series C

Preferred Stock pursuant to or traceable to the Offering Documents and were damaged thereby (the “Section 11 Class”) (the Section 10(b) Class and Section 11 Class collectively, the “Settlement Class”). Excluded from the Settlement Class are KPMG, the Officers, Directors, Partners, and affiliates of KPMG at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which KPMG has or had a controlling interest, and the Officers, Directors, Partners, and affiliates of Miller Energy at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which Miller Energy has or had a controlling interest. Also excluded from the Settlement Class is any person or entity who or which properly excludes himself, herself or itself by filing a valid and timely request for exclusion in accordance with the requirements set forth in this Order. Pursuant to Federal Rule of Civil Procedure 23 and for purposes of settlement only, the Court preliminarily certifies Lewis Cosby, Eric Montague, and Martin Ziesman, as Co-Trustee for the Carolyn K. Ziesman Trust, as Class Representatives for the Settlement Class and appoints Cohen Milstein Sellers & Toll PLLC and Gordon Ball PLLC as Counsel for the Settlement Class (“Co-Lead Counsel”). Co-Lead Counsel is authorized to act on behalf of the Settlement Class with respect to all acts required by, or which may be undertaken pursuant to, the Stipulation or such other acts that are reasonably necessary to consummate the proposed Settlement set forth in the Stipulation.

3. **Final Fairness Hearing** – The Court will hold a final fairness hearing (the “Final Fairness Hearing”) on **Thursday, June 30, 2022, at 1:30 p.m.** at the United States District Courthouse, 800 Market Street, Courtroom 4, in Knoxville, Tennessee, for the following purposes: (a) to determine whether the proposed

Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate, and should be approved by the Court; (b) to determine whether a Judgment substantially in the form attached as Exhibit B to the Stipulation, filed contemporaneously with this Proposed Order, should be entered dismissing the Action with prejudice against Defendant; (c) to determine whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable, and should be approved; (d) to determine whether the motion by Co-Lead Counsel for an award of attorneys' fees and reimbursement of litigation expenses should be approved; and (e) to consider any other matters that may properly be brought before the Court in connection with the Settlement. Notice of the Settlement and the Final Fairness Hearing shall be given to Class Members as set forth in Paragraph 5 of this Order.

4. The Court may adjourn the Final Fairness Hearing and approve the proposed Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class.
5. **Retention of Claims Administrator and Manner of Notice** – Co-Lead Counsel is hereby authorized to retain Epiq Global (the “Claims Administrator”) to supervise and administer the notice procedure as well as the processing of Claims. Notice of the Settlement and the Final Fairness Hearing shall be given by Co-Lead Counsel as follows:
  - a. not later than twenty (20) business days after entry of this Order (the “Notice Date”), the Claims Administrator shall cause copies of the Postcard Notice, attached hereto as Exhibit A-4, to be mailed by first-class mail to Class Members who may be identified through reasonable effort;

- b. contemporaneously with the mailing of the Postcard Notice, the Claims Administrator shall cause copies of the Notice and Proof of Claim form, as attached hereto as Exhibits A-1 and A-2, respectively, to be posted on the website designated for the Action, [www.MillerEnergy-KPMGsecuritiessettlement.com](http://www.MillerEnergy-KPMGsecuritiessettlement.com);
  - c. not later than ten (10) calendar days after the Notice Date, the Claims Administrator shall cause the Publication Notice, attached hereto as Exhibit A-3, to be published in PR Newswire, and, on a different date within ten (10) calendar days after the initial publication over PR Newswire, the Claims Administrator shall cause the same Publication Notice to be published in *Investors Business Daily*;
  - d. not later than seven (7) calendar days prior to the Final Fairness Hearing, Co-Lead Counsel shall serve on Defendants' Counsel and file with the Court proof, by affidavit or declaration, of such mailing and publication.
6. **Approval of Form and Content of Notice** – For the reasons stated in Lead Plaintiffs' motion for preliminary approval [Doc. 234] and corresponding memorandum of law [Doc. 235], the Court (a) approves, as to form and content, the Postcard Notice, Notice, Publication Notice, and Proof of Claim form as designated above, and (b) finds that the mailing of the Postcard Notice, online dissemination of the Notice, and publication of the Publication Notice in the manner and form set forth in Paragraph 5 of this Order (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Class Members of the proposed Settlement, of the effect of the proposed Settlement (including the Releases contained therein), and of their right to object to any aspect of the proposed Settlement and appear at the Final Fairness Hearing; (iii) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements

of Rule 23(e) of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78u-4(a)(7), and all other applicable laws and rules. The date and time of the Final Fairness Hearing shall be included in the Notices before they are mailed and published.

7. **Participation in Settlement** - Settlement Class Members who wish to participate in the Settlement and receive a distribution from the proceeds of the Net Settlement Fund must complete and submit a Proof of Claim in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proof of Claim forms must be postmarked no later than one hundred (120) calendar days after the Notice Date. Notwithstanding the foregoing, Co-Lead Counsel may, at their discretion, accept late claims for processing provided such acceptance does not delay the distribution of the Net Settlement Fund to the Settlement Class. By submitting a Proof of Claim, a person or entity shall be deemed to have submitted to the jurisdiction of this Court with respect to his, her, or its claims and the subject matter of the Settlement.
8. Each Proof of Claim that is submitted must satisfy the following conditions: (a) it must be properly completed, signed, and submitted in a timely manner in accordance with the provisions of the preceding paragraph; (b) it must be accompanied by adequate supporting documentation for the transactions and holdings reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement form the broker containing the transactional information found in a broker confirmation slip, or such other documentation deemed adequate by Co-Lead Counsel or the Claims Administrator; (c) if the person executing the Proof of Claim is acting in a

representative capacity, a certification of his, her, or its current authority to act on behalf of the Settlement Class Member must be included in the Proof of Claim to the satisfaction of Co-Lead Counsel or the Claims Administrator; (d) the Proof of Claim must be complete and contain no material deletions or modifications of any of the printed matter contained therein; and (e) the Proof of Claim must be signed under penalty of perjury.

9. Any Settlement Class Member that does not submit a timely and valid Proof of Claim, or whose claim is not otherwise approved by the Court: (a) shall be deemed to have waived his, her or its right to share in the Net Settlement Fund; (b) shall forever be barred from participating in any distributions therefrom; (c) shall be bound by the provisions of the Stipulation, the Settlement, and all proceedings, determinations, orders, and judgments in the Action relating thereto, including, without limitation, the Judgment and the Releases provided for therein, whether favorable or unfavorable to the Settlement Class; and (d) will be barred from commencing, maintaining or prosecuting any of the Settled Claims against Defendant and Defendant Releasees, as more fully described in the Stipulation and the Settlement Notice. Notwithstanding the foregoing, late Proof of Claim forms may be accepted for processing as set forth in paragraph 7 above.

10. **Appearance and Objections at Final Fairness Hearing** – Any Settlement Class Member may enter an appearance in the Action, at his, her, or its own expense, individually or through counsel of his, her, or its own choice, by filing with the Clerk of Court and delivering a notice of appearance to Co-Lead Counsel and Defendant’s Counsel, at the addresses set forth in paragraph 14 below, such that it is postmarked no

later than fourteen (14) calendar days before the date set for the Final Fairness Hearing, or as the Court may otherwise direct. Any Settlement Class Member who does not enter an appearance will be represented by Co-Lead Counsel.

11. Any Settlement Class Member may file a written objection to any aspect of the proposed Settlement, the proposed Plan of Allocation, or Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses and enter an appearance to show cause (if any can be shown) as to why the proposed Settlement, the proposed Plan of Allocation, or Co-Lead Counsel's motion for attorneys' fees and reimbursement of litigation expenses should not be approved; ***provided, however***, that no Settlement Class Member shall be heard or entitled to contest any aspect of the proposed Settlement, the proposed Plan of Allocation, or Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses unless that person or entity has filed a written objection with the Court and served copies of such objection on Co-Lead Counsel and Defendant's Counsel at the addresses set forth below such that they are postmarked no later than fourteen (14) calendar days before the date set for the Final Fairness Hearing (the "Response Deadline"). Lead Plaintiffs shall file any written response to such objection no later than seven (7) calendar days before the date set for the Final Fairness Hearing.

12. Any objections, filings, or other submissions by an objecting Settlement Class Member must (a) provide the name, address, telephone number, and signature of the objector; (b) state the objection(s) and the specific reasons for each objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; and (c) include documents sufficient to prove the objector's membership in



the Settlement Class, such as the number of shares of Miller Energy common or preferred stock purchased, acquired and sold during the Class Period, as well as the dates and prices of each such purchase, acquisition, and sale.

13. Any Settlement Class Member who does not make his, her, or its objection in the manner provided herein shall be deemed to have waived his, her, or its right to object to any aspect of the proposed Settlement, the proposed Plan of Allocation, or Co-Lead Counsel's motion for attorneys' fees and reimbursement of litigation expenses. Such Settlement Class Member shall forever be barred and foreclosed from objecting to the fairness, reasonableness, or adequacy of the proposed Settlement, the proposed Plan of Allocation, or Co-Lead Counsel's motion for attorneys' fees and reimbursement of litigation expenses, and otherwise from being heard concerning the proposed Settlement, the proposed Plan of Allocation, or Co-Lead Counsel's motion for attorneys' fees and reimbursement of litigation expenses in this or any other proceeding.

14. **Requests for Exclusion** – Any Settlement Class Member may seek to be excluded from the Settlement Class and the Settlement provided for in the Stipulation by submitting a written request for exclusion before the Response Deadline and in conformity with the requirements set forth in the Notices. Any members of the Settlement Class so excluded shall not be bound by the terms of this Stipulation, or be entitled to any of its benefits, and shall not be bound by the Judgment and/or other order of the Court, whether pursuant to the Stipulation or otherwise. Addresses for counsel are as follows:

CO-LEAD COUNSEL	COUNSEL FOR KPMG
<p>COHEN MILSTEIN SELLERS &amp; TOLL PLLC  Laura H. Posner  88 Pine Street, 14<sup>th</sup> Floor  New York, NY 10005</p> <p>GORDON BALL PLLC  Gordon Ball  7001 Old Kent Drive  Knoxville, TN 37919</p>	<p>MCDERMOTT WILL &amp; EMERY LLP  Gregory G. Ballard  Ludwig von Rigal  One Vanderbilt Avenue  New York, NY 10017</p> <p>WALLER LANSDEN DORTCH &amp; DAVIS, LLP  Paul S. Davidson  511 Union Street, Suite 2700  Nashville, TN 37219</p> <p>LEWIS ROCA ROTHGERBER CHRISTIE LLP  201 East Washington St., Suite 1200  Phoenix, AZ 85004</p>

15. **Stay** – Until and unless otherwise ordered by the Court, the Court shall continue to stay all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation. Pending final approval of the Settlement, the Court enjoins Lead Plaintiffs and all other Settlement Class Members from commencing or prosecuting any and all of the Settled Claims against Defendant or the Defendant Releasees in this or any other court or forum.
16. **Settlement Administration Fees and Expenses** – All reasonable costs incurred in identifying and notifying Settlement Class Members, as well as in administering the Settlement Fund, shall be paid from the Settlement Fund. Co-Lead Counsel is authorized to draw on the Settlement Fund without further order of the Court, in amounts up to \$200,000.00 to pay any costs or expenses associated with providing notice to the Settlement Class or administering the Settlement.

17. **Settlement Fund** – The contents of the Settlement Fund held by The Huntington National Bank (which the Court approves as the Escrow Agent) shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as they shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.
18. **Taxes** – Co-Lead Counsel are authorized and directed to prepare any tax returns and any other tax reporting form for or in respect of the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and otherwise to perform all obligations with respect to Taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Stipulation.
19. **Termination of Settlement** – If the Stipulation is terminated, the Settlement is not approved, or the Effective Date of the Settlement does not occur, this Order (except for paragraph 20, below) shall become null and void and be without prejudice to the rights of Lead Plaintiffs, the other Settlement Class Members, and Defendant – all of whom shall be restored to their respective positions in the Action as of August 26, 2021, as provided in the Stipulation. Within fourteen (14) days after written notification of termination is sent by Co-Lead Counsel and Defendant’s Counsel to the Escrow Agent pursuant to the terms of the Escrow Agreement, the Settlement Fund (including accrued interest thereon and any funds received by Co-Lead Counsel), less any expenses and any costs which have either been disbursed or incurred and chargeable to Notice and Administration Expenses and less any Taxes paid or due or owing shall be refunded by the Escrow Agent to Defendant and/or the entity or entities that paid any portion of the

Settlement Amount in proportion to their contributions, pursuant to instructions to be provided by Defendant's Counsel to Co-Lead Counsel. Co-Lead Counsel shall return any attorneys' fees, as set forth in ¶ 16 of the Stipulation, to the Settlement Fund within fifteen (15) days, at which time those funds shall be refunded by the Escrow Agent to Defendant and/or the entity or entities that paid any portion of the Settlement Amount in proportion to their contributions, pursuant to instructions to be provided by Defendant's Counsel to Co-Lead Counsel.

20. **Use of this Order** - Neither this Order, the MOU, the Stipulation (whether or not finally approved or consummated), nor their negotiation or any proceedings taken pursuant to them: (a) shall be offered against Defendant or any of the Defendant Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendant or any of the Defendant Releasees with respect to the truth of any fact alleged by Lead Plaintiffs or the Settlement Class, or the validity of any claim that was or could have been asserted, or the deficiency of any defense that has been or could have been asserted in this Action or in any litigation, or of any liability, negligence, fault, damages, or other wrongdoing of any kind by Defendant or any of the Defendant Releasees; (b) shall be offered against Lead Plaintiffs, any other Settlement Class Members, or any of the Released Plaintiff Parties as evidence of, or construed as, or deemed to be evidence of, any presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing of any kind of Lead Plaintiffs, any of the other Settlement Class Members, or any of the Released Plaintiff Parties; (c) shall be referred to for any reason against the Parties or other releasees in any other civil, criminal, or administrative action or proceeding;

(d) shall be construed against any of the Parties or other releasees as an admission, concession, or presumption that the consideration to be given represents the amount which could be or would have been recovered after trial; nor (e) shall be construed against Lead Plaintiffs or other Settlement Class Members or any of the Released Plaintiff Parties as an admission, concession, or presumption that any of their claims are without merit, that Defendant or any of the Defendant Releasees had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Settlement Amount.

21. Notwithstanding the foregoing, the Parties and other Releasees may file or refer to this Order, the Stipulation, Judgment, or any Proof of Claim: (a) to effectuate the liability protections granted hereunder or thereunder, including without limitation, to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction, offset, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim; (b) to obtain a judgment reduction under the PSLRA; (c) to enforce any applicable insurance policies and any agreements relating thereto; or (d) to enforce the terms of the Stipulation and/or the Judgment. The Parties and other Releasees submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.
22. **Supporting Papers** – Co-Lead Counsel shall file and serve papers in support of the proposed Settlement, the Plan of Allocation, and Co-Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of litigation expenses no later than thirty (30) days before the date scheduled for the Final Fairness Hearing. If reply papers are

necessary, they are to be filed and served no later than seven (7) days prior to the Final Fairness Hearing.

23. The procedure for and the allowance or disallowance of any application for attorneys' fees and litigation expenses are not part of the Settlement and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement.
24. Approval of the proposed Plan of Allocation is not a condition to the Settlement and Effective Date. Lead Plaintiffs and Co-Lead Counsel may not cancel or terminate the Stipulation or the Settlement in accordance with ¶¶ 33 or 34 of the Stipulation or otherwise based on this Court's or any appellate court's ruling solely with respect to the Plan of Allocation or any plan of allocation in the Action. Defendant has no responsibility or liability for allocation of the Net Settlement Fund.
25. The Court retains jurisdiction to consider all further applications arising out of the proposed Settlement.
26. For the reasons stated in this Order, plaintiffs' motion for preliminary approval [Doc. 234] is **GRANTED**.

SO ORDERED this 23rd day of March, 2022.



THE HONORABLE THOMAS A. VARLAN  
United States District Judge

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE**

LEWIS COSBY, ERIC MONTAGUE, and MARTIN ZIESMAN, as Co-Trustee for the Carolyn K. Ziesman Revocable Trust, on behalf of themselves and all others similarly situated individually and on behalf of all others similarly situated,

Plaintiffs,

v.

KPMG LLP,

Defendant.

Case No. 3:16-cv-121 (TAV)

**NOTICE OF (I) PROPOSED SETTLEMENT OF CLASS ACTION, (II)  
HEARING ON PROPOSED SETTLEMENT, AND (III) DEADLINE TO SUBMIT  
PROOFS OF CLAIM**

**If you purchased or otherwise acquired Miller Energy Resources, Inc. (“Miller Energy”) Common Stock or Series C or Series D Preferred Stock between August 29, 2011 and July 30, 2015, inclusive, or purchased Miller Energy Series C or Series D Preferred Stock pursuant to or traceable to a public offering ( the “Settlement Class”), you might be a member of the Settlement Class in this action (“Settlement Class Member”) entitling you to a payment in connection with a settlement of the action.**

**A federal court authorized this notice. This is not a solicitation from a lawyer.**

1. **Securities:** This notice relates to a securities class action brought by investors who claim that the prices of Miller Energy publicly-traded common stock and Series C and Series D preferred stock were artificially inflated as a result of false statements, non-disclosures, and fraudulent conduct in violation of the federal securities laws.

2. **Description of the Action and the Class:** On \_\_\_\_, 2022, the Court preliminarily approved a settlement of this class action (the “Settlement”). This Settlement is with Defendant KPMG LLP (“Defendant” or “KPMG”). The Court has preliminarily certified for purposes of the Settlement two classes that consist of, subject to certain exceptions identified below, the following individuals and entities:

All persons or entities who: 1) purchased or otherwise acquired Miller Energy common stock, Miller Energy 10.75% Series C Cumulative Redeemable Preferred Stock (the “Series C Preferred Stock”) or Miller Energy 10.5% Series D Fixed Rate/Floating Rate Cumulative Redeemable Preferred Stock (the “Series D Preferred Stock”) between August 29, 2011 and July 30, 2015, inclusive, and who were damaged thereby (the “Section 10(b) Class”); and 2) purchased or otherwise

acquired Miller Energy Series C Preferred Stock or Series D Preferred Stock pursuant to or traceable to the Offering Documents and were damaged thereby (the “Section 11 Class”) (the Section 10(b) Class and Section 11 Class are collectively, the “Settlement Class”).

3. **Statement of Class’s Recovery:** This Settlement provides that KPMG will cause \$35,000,000 to be paid to the Class. After payment of attorneys’ fees, costs and expense, the settlement proceeds will be distributed to any investor who is a member of the Settlement Class and who submits a timely and valid proof of claim form. No determination has been made yet of the amount to be distributed.

4. **Statement of Attorneys’ Fees and Litigation Expenses Sought:** In accordance with the fee agreement between Lead Plaintiffs and the attorneys who have been appointed to represent the Class, Co-Lead Counsel will ask the Court to award them a fee not to exceed 33 1/3% of the settlement fund, plus reimbursement of expenses incurred in prosecuting this lawsuit, as well as incentive awards not to exceed \$45,000 in total for the three lead plaintiffs, to be paid from the settlement proceeds. In addition, Lead Plaintiffs will request that the Court allow notice and administration expenses to be paid to the claims administrator, not to exceed \$200,000.00.

5. By submitting the enclosed proof of claim form, you will be submitting a claim to share in the proceeds of the Settlement, unless you request to be excluded from the Settlement.

6. The Settlement was reached because it provides significant benefits to Settlement Class Members and avoids the costs and risks of continuing the lawsuit against Defendant.

7. If you are a member of the Settlement Class and the Settlement is approved, your legal rights will be affected whether you act or not. Read this notice carefully to see what your options are in connection with the Settlement.

8. The Court in charge of this case still has to decide whether to approve the Settlement. If it does, and after any appeals are resolved, money will be distributed to those who qualify. Please be patient.

## YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

<b><u>Submit a Claim Form</u></b>	The only way to receive a cash payment from the Settlement.
<b><u>Exclude Yourself</u></b>	Receive no benefits from the Settlement, but keep your rights to start or remain part of any other lawsuit against KPMG about its conduct challenged in this case or related conduct.
<b><u>Object</u></b>	Submit a written statement to the Court about why you don’t like the Settlement.
<b><u>Go to Final Fairness Hearing</u></b>	Ask to speak in Court about the fairness of the Settlement.
<b><u>Do Nothing</u></b>	You will receive no payment from the Settlement and will give up your rights to start or remain part of any lawsuit against KPMG about its conduct challenged in this case or related conduct.



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**WHY IS THIS NOTICE BEING PROVIDED?**

9. Judge Thomas A. Varlan of the United States District Court for the Eastern District of Tennessee authorized this notice to inform you about a proposed Settlement of this class action lawsuit and about all of your rights and options before the Court decides whether to approve the Settlement. This notice explains the lawsuit, the Settlement, your legal rights, what money is available, who is eligible to share in this money, and how to get your share if you are eligible.

10. The persons and entities who started the lawsuit are the Lead Plaintiffs. The company they sued, KPMG LLP (“KPMG”), is the Defendant. The case is known as *Cosby, et al. v. KPMG LLP*, Case No. 3:16-cv-121 (TAV). This notice summarizes the Settlement. You can view the complete Settlement Agreement at [www.MillerEnergy-KPMGsecuritiessettlement.com](http://www.MillerEnergy-KPMGsecuritiessettlement.com).

#### **WHAT IS THIS LAWSUIT ABOUT?**

11. The Third Amended Complaint (the “Complaint”), which was filed on July 13, 2020, alleges that Defendant violated the federal securities laws by failing to comply with auditing standards in connection with the valuation of certain oil and gas reserves and related assets situated in Alaska (“Alaska Assets”) acquired by Miller Energy as of December 16, 2009, and that Defendant’s auditing of financial statements reflecting Miller Energy’s royalty expenses, depletion, depreciation, and amortization expenses related to wells and equipment, and income taxes, violated U.S. generally accepted auditing standards, and caused Miller Energy’s published financial statements during fiscal years 2011 through 2014 to be materially false and misleading.

12. The Complaint asserts fraud-based claims under Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and strict liability and negligence claims under Section 11 of the Securities Act.

#### **WHY IS THIS A CLASS ACTION?**

13. In a class action, one or more people (in this case, Lewis Cosby, Eric Montague, and Martin Ziesman, as Co-Trustee for the Carolyn K. Ziesman Revocable Trust (the “Lead Plaintiffs”) sue on behalf of businesses, other organizations, and people who have similar claims. If allowed by a court, all of these organizations and people become part of a “class” or “Class Members.” One lawsuit resolves the claims of all class members, except for any who exclude themselves from the class.

#### **WHY IS THERE A SETTLEMENT?**

14. The Court did not decide in favor of Lead Plaintiffs or KPMG. Instead, both sides agreed to settle this case to avoid the burden, cost, and risk of further litigation. By settling, KPMG is not admitting any wrongdoing or liability. KPMG continues to deny all legal claims in this case. The Lead Plaintiffs and their lawyers think the Settlement is best for all Settlement Class Members.

15. To see if you will be affected by this Settlement and if you are eligible to get money from it, you first have to determine if you are a Settlement Class Member.

#### **HOW DO I KNOW IF I AM A SETTLEMENT CLASS MEMBER?**

16. The Court has preliminarily certified for purposes of the Settlement two classes that consist of, subject to certain exceptions identified below, the following individuals and entities:

All persons or entities who: 1) purchased or otherwise acquired Miller Energy common stock, Miller Energy 10.75% Series C Cumulative Redeemable Preferred Stock (the “Series C Preferred Stock”) or Miller Energy 10.5% Series D Fixed Rate/Floating Rate Cumulative Redeemable Preferred Stock (the “Series D Preferred Stock”) between August 29, 2011 and July 30, 2015, inclusive, and who were damaged thereby (the “Section 10(b) Class”); and 2) purchased or otherwise acquired Miller Energy Series C Preferred Stock or Series D Preferred Stock

pursuant to or traceable to the Offering Documents and were damaged thereby (the “Section 11 Class”) (the Section 10(b) Class and Section 11 Class are collectively, the “Settlement Class”).

17. Excluded from the Settlement Class are KPMG, the officers, directors, partners, and affiliates of KPMG, members of their immediate families, and their legal representatives, heirs, successors or assigns and any entity in which KPMG has or had a controlling interest, and the officers, directors, partners, and affiliates of Miller Energy, members of their immediate families, and their legal representatives, heirs, successors or assigns, and any entity in which Miller Energy has or had a controlling interest.

#### **WHAT DOES THE SETTLEMENT PROVIDE?**

18. In the Settlement, Defendant agrees to cause \$35,000,000 to be paid to the Settlement Class (the “Settlement Amount”). The Settlement Amount is to be paid into escrow within fifteen (15) days after the Court’s Preliminary Approval Order is entered.

19. The Settlement shall become effective when and if each of the following conditions is met: (a) the Court has entered a final judgment approving the Settlement; and (b) any appeals from that judgement have been finally resolved, or the time has expired in which to file such appeals (the “Effective Date”).

20. If the Settlement is approved by the Court, then as of the Effective Date of the Settlement, all members of the Settlement Class will be deemed to have released all claims against the defendant named in the Complaint that arise out of or relate to the allegations in the Complaint. This means that, upon the Effective Date, all Settlement Class Members will be permanently barred from asserting any of the claims described above against Defendant. In addition, upon the Effective Date, Defendant will be precluded from suing the Lead Plaintiffs, members of the Settlement Class, or Co-Lead Counsel in connection with the action.

#### **HOW MUCH WILL MY PAYMENT BE?**

##### **PROPOSED PLAN OF ALLOCATION**

21. The Plan of Allocation set forth herein is the plan for distributing the proceeds of the Settlement among eligible Settlement Class Members that is being proposed by Lead Plaintiffs and their counsel to the Court for approval.

22. The \$35,000,000 Cash Settlement Amount and the interest earned thereon shall be the Gross Settlement Fund. The Gross Settlement Fund, less all taxes, approved costs, fees, and expenses (the “Net Settlement Fund”) shall be distributed to members of the Settlement Class who submit valid Claim Forms that are accepted for payment in accordance with the Plan of Allocation approved by the Court (“Authorized Claimants”).

23. The objective of the Plan of Allocation is to equitably distribute the Net Settlement proceeds to those Authorized Claimants who suffered economic losses as a proximate result of the alleged violations of the federal securities laws.

24. The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The

computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making pro rata allocations of the Net Settlement Fund.

25. All purchases of Miller Energy common stock, Miller Energy Series C preferred stock, and Miller Energy Series D preferred stock (together the “Miller Energy Securities”) during the Class Period, August 29, 2011 through July 30, 2015,<sup>1</sup> are potentially eligible for compensation based on claims asserted under Sections 10(b) of the Exchange Act. In addition, purchases of Miller Energy Series C preferred stock made on or after February 13, 2013 through March 29, 2016, and purchases of Miller Energy Series D preferred stock from October 1, 2013 through March 29, 2016, are potentially eligible for compensation based on claims asserted under Section 11 of the Securities Act.

26. The entire Net Settlement Fund shall be distributed to members of the Settlement Class, other than the portion of the Net Settlement Fund that cannot be distributed because of prohibitive administrative costs, which remainder shall be donated to a non-sectarian, non-profit organization.

### **Exchange Act Claims**

27. For losses to be compensable damages under Section 10(b) of the Exchange Act, the disclosure of the allegedly misrepresented information must be, among other things, the cause of the decline in the price or value of the security. In this case, Lead Plaintiffs allege that Defendant made false statements and omitted material facts during the Class Period which had the effect of artificially inflating the prices of Miller Energy Securities. Lead Plaintiffs further allege that corrective information was released to the market on: December 17, 2013, December 24, 2013, March 13-14, 2014, July 14-15, 2014, October 13, 2014, November 26, 2014, November 28, 2014, December 4, 2014, December 10, 2014, March 12, 2015, April 29, 2015, May 6, 2015, July 14, 2015, and July 31, 2015, which impacted the market prices of at least one of the Miller Energy Securities in a statistically significant manner and partially removed the artificial inflation from the prices of such Securities on: December 18, 2013, December 19, 2013, December 24, 2013, December 26, 2013, March 17, 2014, July 16, 2014, October 13-14, 2014, November 28, 2014, December 1, 2014, December 5-8, 2014, December 15, 2014, April 30 – May 1, 2015, May 6, 2015, July 14, 2015, and July 31, 2015.

28. “Exchange Act Loss Amounts” for transactions in Miller Energy Securities are calculated under the Plan of Allocation based primarily on the difference in the amount of alleged artificial inflation in the prices of each respective Miller Energy Security at the time of purchase or acquisition and at the time of sale, or the difference between the actual purchase/acquisition price and sale price. Accordingly, in order to have an Exchange Act Loss Amount under the Plan of Allocation, a claimant who purchased or otherwise acquired a respective Miller Energy Security must have held the respective Miller Energy Security through at least one of the respective corrective disclosure events listed above where the alleged artificial inflation was removed from the price of the respective Miller Energy Security.

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<sup>1</sup> Miller Energy Series C preferred stock first traded on October 8, 2012 and Miller Energy Series D preferred stock first traded on October 1, 2013.

## Securities Act Claims

29. Claims asserted in the Action under Section 11 of the Securities Act serve as the basis for the calculation of the “Securities Act Loss Amounts” under the Plan of Allocation. Section 11 of the Securities Act provides a statutory formula for the calculation of damages under that provision. The formulas stated below, which were developed by Lead Plaintiffs’ damages expert, generally track the statutory formula.

### CALCULATION OF RECOGNIZED LOSS AMOUNTS

30. An Exchange Act Loss Amount will be calculated as set forth below for each publicly traded share of the Miller Energy Securities purchased or otherwise acquired from August 29, 2011 through July 30, 2015, inclusive, that is listed in the Claim Form and for which adequate documentation is provided.

31. A Securities Act Loss Amount will be calculated as set forth below for each publicly traded share of Miller Energy Preferred Class C preferred stock purchased or acquired from February 13, 2013 through March 29, 2016, and each publicly traded share of Miller Energy Preferred Class D preferred stock purchased or acquired from October 1, 2013 through March 29, 2016.

32. The “Recognized Loss Amount” for each purchased or acquired share of publicly traded Miller Energy Common Stock will be equal to its respective Exchange Act Loss Amount.

33. The Recognized Loss Amount for each purchased or acquired share of publicly traded Miller Energy Series C preferred stock and Series D preferred stock during the Class Period is **the greater of**: (a) the respective Exchange Act Loss Amount, if any *or* (b) the respective Securities Act Loss Amount, if any.

### Exchange Act Loss Amounts

#### A. Common Stock

34. For each share of publicly traded Miller Energy common stock purchased from August 29, 2011 through July 30, 2015, inclusive, and:

- a. sold from August 29, 2011 through July 30, 2015, the Exchange Act Loss Amount is **the lesser of**: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A *minus* the amount of artificial inflation per share on the date of sale as stated in Table A; or (b) the purchase/acquisition price per share (excluding taxes, commissions, and fees) *minus* the sale price per share (excluding taxes, commissions, and fees).
- b. sold from July 31, 2015 through October 28, 2015, the Exchange Act Recognized Loss will be **the least of**: (a) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A; (b) the purchase/acquisition price per share *minus* the average closing price between July 31, 2015 and the date of sale as stated in Table B below; or (c) the purchase/acquisition price per share (excluding taxes, commissions, and fees) *minus* the sale price per share (excluding taxes, commissions, and fees).

- c. held as of the close of trading on October 28, 2015, the Exchange Act Loss Amount is **the lesser of**: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A; or (ii) the purchase price per share minus \$0.10.<sup>2</sup>

## B. Series C Preferred Stock

35. For each share of publicly traded Miller Energy Series C preferred stock purchased from October 8, 2012 through July 30, 2015, inclusive, and:

- a. sold from October 8, 2012 through July 30, 2015, the Exchange Act Loss Amount is **the lesser of**: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A minus the amount of artificial inflation per share on the date of sale as stated in Table A; or (b) the purchase/acquisition price per share (excluding taxes, commissions, and fees) minus the sale price per share (excluding taxes, commissions, and fees).
- b. sold from July 31, 2015 through October 28, 2015, the Exchange Act Recognized Loss will be **the least of**: (a) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A; (b) the purchase/acquisition price per share minus the average closing price between July 31, 2015 and the date of sale as stated in Table B below; or (c) the purchase/acquisition price per share (excluding taxes, commissions, and fees) minus the sale price per share (excluding taxes, commissions, and fees).
- c. held as of the close of trading on October 28, 2015, the Exchange Act Loss Amount is **the lesser of**: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A; or (ii) the purchase price per share minus \$0.33.<sup>3</sup>

## C. Series D Preferred Stock

36. For each share of publicly traded Miller Energy Series D preferred stock purchased from October 1, 2013 through July 30, 2015, inclusive, and:

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<sup>2</sup> Pursuant to Section 21D(e)(1) of the Exchange Act, “in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market.” Consistent with the requirements of the Exchange Act, Miller Energy common stock Exchange Act Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of Miller Energy common stock during the “90-day look-back period,” from July 31, 2015 through October 28, 2015. The mean (average) closing price for Miller Energy common stock during this 90-day look-back period was \$0.10.

<sup>3</sup> As explained in footnote 2 above, pursuant to the Exchange Act, Miller Energy Class C preferred stock Exchange Act Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of Miller Energy Class C preferred stock during the 90-day look-back period, from July 31, 2015 through October 28, 2015. The mean (average) closing price for Miller Energy Class C preferred stock during this 90-day look-back period was \$0.33.

- a. sold from October 1, 2013 through July 30, 2015, the Exchange Act Loss Amount is the lesser of: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A minus the amount of artificial inflation per share on the date of sale as stated in Table A; or (b) the purchase/acquisition price per share (excluding taxes, commissions, and fees) minus the sale price per share (excluding taxes, commissions, and fees).
- b. sold from July 31, 2015 through October 28, 2015, the Exchange Act Recognized Loss will be the least of: (a) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A; (b) the purchase/acquisition price per share minus the average closing price between July 31, 2015 and the date of sale as stated in Table B below; or (c) the purchase/acquisition price per share (excluding taxes, commissions, and fees) minus the sale price per share (excluding taxes, commissions, and fees).
- c. held as of the close of trading on October 28, 2015, the Exchange Act Loss Amount is the lesser of: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A; or (ii) the purchase price per share minus \$0.31.<sup>4</sup>

### **Securities Act Loss Amounts**

#### **A. Series C Preferred Stock**

37. For each share of Miller Energy Series C preferred stock purchased between February 13, 2013 and May 6, 2013, inclusive, and:

- a. sold before the close of trading on March 29, 2016, the Securities Act Loss Amount is the purchase price per share (not to exceed \$22.90) minus the sale price per share;
- b. held as of the close of trading on March 29, 2016, the Securities Act Loss Amount is the purchase price per share (not to exceed \$22.90).

38. For each share of Miller Energy Series C preferred stock purchased between May 7, 2013 and June 26, 2013, inclusive, and:

- a. sold before the close of trading on March 29, 2016, the Securities Act Loss Amount is the purchase price per share (not to exceed \$22.25) minus the sale price per share;
- b. held as of the close of trading on March 29, 2016, the Securities Act Loss Amount is the purchase price per share (not to exceed \$22.25).

39. For each share of Miller Energy Series C preferred stock purchased between June 27, 2013 and March 29, 2016, inclusive, and:

- a. sold before the close of trading on March 29, 2016, the Securities Act Loss Amount is the purchase price per share (not to exceed \$21.50) minus the sale price per share;

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<sup>4</sup> As explained in footnote 2 above, pursuant to the Exchange Act, Miller Energy Class D preferred stock Exchange Act Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of Miller Energy Class D preferred stock during the 90-day look-back period, from July 31, 2015 through October 28, 2015. The mean (average) closing price for Miller Energy Class D preferred stock during this 90-day look-back period was \$0.31.

- b. held as of the close of trading on March 29, 2016, the Securities Act Loss Amount is the purchase price per share (not to exceed \$21.50).

**B. Series D Preferred Stock**

40. For each share of Miller Energy Series D preferred stock purchased between October 1, 2013 and December 25, 2013, inclusive, and:

- a. sold before the close of trading on March 29, 2016, the Securities Act Loss Amount is the purchase price per share (not to exceed \$25.00) *minus* the sale price per share;
- b. held as of the close of trading on March 29, 2016, the Securities Act Loss Amount is the purchase price per share (not to exceed \$25.00).

41. For each share of Miller Energy Series D preferred stock purchased between December 26, 2013 and March 29, 2016, inclusive,<sup>5</sup> and:

- a. sold before the close of trading on March 29, 2016, the Securities Act Loss Amount is the purchase price per share (not to exceed \$21.25) *minus* the sale price per share;
- b. held as of the close of trading on March 29, 2016, the Securities Act Loss Amount is the purchase price per share (not to exceed \$21.25).

**ADDITIONAL PROVISIONS**

42. As noted above, for each purchase/acquisition, the Recognized Loss Amount is *the greater of*: the Exchange Act Loss Amount, if any, and the Securities Act Loss Amount, if any. If a Recognized Loss Amount calculates to a negative number, the Recognized Loss Amount for that transaction will be zero.

43. An Authorized Claimant's Recognized Claim shall be the sum of the Authorized Claimant's Recognized Loss Amounts, not to be less than zero.

44. Purchases or acquisitions and sales of Miller Energy Securities shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. The receipt or grant by gift, inheritance or operation of law of Miller Energy Securities during the Class Period shall not be deemed a purchase, acquisition or sale of these Miller Energy Securities for the calculation of an Authorized Claimant's Recognized Claim, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of such Miller Energy Securities unless (i) the donor or decedent purchased or otherwise acquired such Miller Energy Securities during the Class Period; (ii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such Miller Energy Securities; and (iii) it is specifically so provided in the instrument of gift or assignment.

45. In the event that a Class Member has multiple transactions of Miller Energy Securities during the Class Period, all purchases/acquisitions and sales shall be matched according to the First-In, First-Out ("FIFO") basis for each respective security. Class Period sales will be matched first against any respective holdings at the beginning of the Class Period, and then against

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<sup>5</sup> For purchases of Miller Energy Series D preferred stock made in the Secondary Public Offering on August 25, 2014 with adequate documentation on the Claim form, the purchase price per share will be limited to \$24.50 rather than \$21.25.



purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

46. The Recognized Loss Amount on any portion of a purchase or acquisition that matches against (or “covers”) a “short sale” is zero. The Recognized Loss Amount on a “short sale” that is not covered by a purchase or acquisition is also zero. In the event that a Claimant has an opening short position in a Miller Energy Security at the start of the Settlement Class Period, the earliest respective Class Period purchases or acquisitions shall be matched against such an opening short position in accordance with the FIFO matching described above, and any portion of such purchases or acquisitions that cover such short sales will not be entitled to recovery. In the event that a claimant newly establishes a short position during the Class Period, the earliest subsequent respective Class Period purchase or acquisition shall be matched against such short position on a first-in-, first-out basis and will not be entitled to a recovery.

47. Publicly-traded Miller Energy Securities are the only securities eligible for recovery under the Plan of Allocation. Option contracts to purchase or sell Miller Energy Securities are not securities eligible to participate in the Settlement. With respect to Miller Energy Securities purchased or sold through the exercise of an option, the purchase/sale date of such shares is the exercise date of the option and the purchase/sale price is the exercise price of the option.

48. The Recognized Claims will be used solely to calculate the relative amount of the Net Settlement Fund to be apportioned to each Authorized Claimant and do not reflect the actual amount an Authorized Claimant may expect to recover from the Net Settlement Fund.

49. If the sum total of Recognized Claims of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized Claimant shall receive his, her, or its pro rata share of the Net Settlement Fund. The pro rata share shall be the Authorized Claimant’s Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

50. If the Net Settlement Fund exceeds the sum total amount of the Recognized Claims of all Authorized Claimants entitled to receive payment out of the Net Settlement Fund, the excess amount in the Net Settlement Fund shall be distributed pro rata to all Authorized Claimants entitled to receive payment (i.e., an Authorized Claimant will also receive the Authorized Claimant’s Recognized Claims divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the excess amount in the Net Settlement Fund).

51. The Net Settlement Fund will be allocated among all Authorized Claimants whose prorated payment is \$10.00 or greater. If the prorated payment to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.

52. Payment pursuant to the Plan of Allocation shall be conclusive against all Authorized Claimants. No person shall have any claim based on distributions made substantially in accordance with the Settlement, the Plan of Allocation, or further order(s) of the Court, against Plaintiffs’ Counsel, Class Representative, their damages expert, Claims Administrator, or other agent designated by Plaintiffs’ Counsel, Class Members, Defendant, its counsel, or the Released Parties. All members of the Class who fail to timely submit an acceptable Proof of Claim Form by the deadline set by the Court, or such other deadline as may be ordered by the Court, or otherwise

allowed, shall be forever barred from receiving any payments pursuant to the Settlement, but will in all other respects be subject to and bound by the terms of the Settlement, including the release of the Released Claims against the Released Parties provided for therein and in the Judgment.

53. The Plan of Allocation is a matter separate and apart from the proposed Settlement, and any decision by the Court concerning the Plan of Allocation shall not affect the validity or finality of the proposed Settlement. The Court may approve this Plan of Allocation or modify it without additional notice to the Settlement Class. Any order modifying the Plan of Allocation will be posted on the Settlement website at: [www.MillerEnergy-KPMGsecuritiessettlement.com](http://www.MillerEnergy-KPMGsecuritiessettlement.com), and at <https://www.cohenmilstein.com>.

#### **WHEN WILL SETTLEMENT MONEY BE DISTRIBUTED TO CLAIMANTS?**

54. Settlement money will be mailed to claimants after the Court approves the Settlement and after any appeals are resolved. It is uncertain when any appeals taken will be resolved, and resolving them can take time. Please be patient.

#### **WHAT DO I GIVE UP IF THE SETTLEMENT IS GIVEN FINAL APPROVAL?**

55. If you remain a member of the Settlement Class and do not exclude yourself, you will be bound by all orders, judgments, and releases entered by the Court regarding the Settlement. If the Settlement is approved, you will not be able to sue, continue to sue, or be part of any other lawsuit involving any claims released in the Settlement. You will be bound by the releases whether or not you submit a proof of claim and/or receive a payment under the Settlement.

#### **HOW CAN I GET A PAYMENT?**

56. To ask for a payment, you must submit a claim form. Claim forms are available at the Settlement website, upon request from the claims administrator, or by calling the toll free number (855-604-1841).

57. After carefully reading the claim form instructions, fill out the claim form, attach the required documentation, sign it, and mail it postmarked no later than \_\_\_\_\_ to:

*Miller Energy Securities Settlement*  
PO Box 5024  
Portland, OR 97208-5024

58. NOTICE TO INSTITUTIONAL FILERS. Institutions who file claims with 100 or more transactions, or who file claims on behalf of 20 or more different accounts, must submit their claims electronically, in the required filing format. Proper electronic filing of claims includes the submission of a manually signed paper (master) proof of claim form along with the electronically submitted data. Electronically submitted data must be submitted in the required file layout. To obtain the required file layout and details of the electronic filing requirements, you may visit the website at [www.MillerEnergy-KPMGsecuritiessettlement.com](http://www.MillerEnergy-KPMGsecuritiessettlement.com), call the toll free number (855-604-1841), or send an email to [info@MillerEnergy-KPMGsecuritiessettlement.com](mailto:info@MillerEnergy-KPMGsecuritiessettlement.com). The electronic file must be in accordance with the electronic filing format and include all purchase and sale transactions as well as beginning and unsold holdings as required in the claim form. Any file not in accordance with the required electronic filing format will be rejected. No electronic files will be considered to have been properly submitted unless the claims administrator issues a written acknowledgement of receipt and acceptance of electronically submitted data.

**WHAT DO I DO IF I HAVE QUESTIONS ABOUT THE CLAIM FORM?**

59. If you have questions about how to file a claim, call the toll free number (855-604-1841), or send an email to [info@MillerEnergy-KPMGSecuritiesSettlement.com](mailto:info@MillerEnergy-KPMGSecuritiesSettlement.com) or a letter to *Miller Energy Securities Settlement*, PO Box 5024, Portland, OR 97208-5024.

**IF I EXCLUDE MYSELF, CAN I GET ANYTHING FROM THIS SETTLEMENT?**

60. No. If you exclude yourself, you may not submit a claim for a payment from the Settlement and you cannot object to the Settlement.

**IF I DO NOT EXCLUDE MYSELF, CAN I SUE LATER?**

61. No. Unless you exclude yourself, you give up any right to sue Defendant for the claims that the Settlement resolves. If you have a pending lawsuit that may be related to this lawsuit, speak to your lawyer in that case immediately. You must exclude yourself from *this* Class to continue your own lawsuit.

**HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?**

62. To exclude yourself from the Settlement, you must send a letter by mail to the claims administrator saying that you want to be excluded from *Cosby, et al. v. KPMG*. Be sure to include your name, address, telephone number, your Social Security Number or Taxpayer Identification Number; a list stating the number of shares of Miller Energy common or preferred stock purchased and sold between August 29, 2011 and July 30, 2015, inclusive, and the dates of each purchase and sale; as well as your signature. Mail your exclusion request postmarked no later than fourteen days before the Final Fairness Hearing, to:

*Miller Energy Securities Settlement*  
PO Box 5024  
Portland, OR 97208-5024

63. If you request exclusion on behalf of any person or entity other than yourself (such as, for example, a trust, a minor, or a pension fund), you also must state the basis of your legal authority to make a request for exclusion on behalf of that person or entity.

64. You cannot exclude yourself on the phone or by email. If you do not follow the above procedures – including meeting the postmark deadline – you will not be excluded from the Settlement Class, and you will be bound by all of the orders and judgments entered by the Court regarding the Settlement. You must exclude yourself even if you already have a pending case against Defendant based on the claims being released.

65. If you ask to be excluded, you will not get any payment from the Settlement, you cannot object to the Settlement, and you will not be legally bound by anything that happened in this lawsuit. You might be able to sue Defendant in the future.

**HOW CAN I TELL THE COURT I DON'T LIKE THE SETTLEMENT?**

66. You can object to the Settlement if you do not like some part or all of it. You must give reasons why you think the Court should not approve the Settlement. You may also object to Co-Lead Counsel's request for attorneys' fees, reimbursement of expenses, and Plaintiffs' incentive

awards. To object, send a letter to the two addresses below, saying that you object to the Settlement in *Cosby, et al. v. KPMG LLP*, Case No. 3:16-cv-121 (TAV), and file your objection with the Court. Be sure to include any papers or briefs that support your objections.

67. You must file your objection with the clerk of the United States District Court for the Eastern District of Tennessee, so it is received no later than [DATE]. The address is:

Clerk of the U.S. District Court for the Eastern District of Tennessee  
Howard H. Baker, Jr. United States Courthouse  
800 Market Street, Suite 130  
Knoxville, TN 37902

68. You must also mail your objection to the following counsel postmarked no later than [DATE]:

**Co-Lead Counsel**

Cohen Milstein Sellers & Toll PLLC  
Laura H. Posner  
88 Pine Street, 14<sup>th</sup> Floor  
New York, NY 10005

Gordon Ball PLLC  
Gordon Ball  
7001 Old Kent Drive  
Knoxville, TN 37919

**Counsel for KPMG**

McDermott Will & Emery LLP  
Gregory G. Ballard  
Ludwig von Rigal  
One Vanderbilt Avenue  
New York, NY 10017

Waller Lansden Dortch & Davis LLP  
Paul S. Davidson  
511 Union Street, Suite 2700  
Nashville, TN 37219

Lewis Roca Rothgerber Christie LLP  
Gary F. Bendinger  
201 East Washington St., Suite 1200  
Phoenix, AZ 85004

**WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND ASKING TO BE EXCLUDED?**

69. Objecting is telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you cannot object to the Settlement because the Settlement no longer affects you.

**WHAT HAPPENS IF I OBJECT AND THE SETTLEMENT IS APPROVED?**

70. If the Settlement is finally approved and you did not request to be excluded from the Settlement, you will remain a Settlement Class Member regardless of whether you objected. You will remain bound by the terms of the Settlement and will not be able to sue KPMG about the claims in this case.

**DO I HAVE A LAWYER IN THIS CASE?**

71. The Court has appointed the law firms of Cohen Milstein Sellers & Toll PLLC and Gordon Ball PLLC as Co-Lead Counsel to represent Lead Plaintiffs and all other Settlement Class Members in the action. If you want to be represented by your own lawyer, you may hire one at your own expense.

**HOW WILL THE LAWYERS IN THE CASE BE PAID?**

72. You will not be charged directly for the fees or expenses of the Co-Lead Counsel appointed by the Court. Instead, these lawyers may apply to the Court for payment of fees and expenses out of the proceeds of any recoveries achieved in the action.

73. Lead Plaintiffs negotiated a fee agreement with Co-Lead Counsel which permits Co-Lead Counsel to apply for fees of up to 33 1/3% of the Settlement Fund plus out of pocket expenses. For the Settlement, Co-Lead Counsel intend to request a fee of 33 1/3\_\_% of the net recovery to the Class, plus reimbursement of out-of-pocket expenses. The fees would pay the lawyers for investigating the facts, actively litigating the case for several years, and negotiating the Settlement.

**HOW WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?**

74. At the Final Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider Co-Lead Counsel's request for attorney fees and expenses and Lead Plaintiffs' incentive awards. If there are objections, the Court will consider them. After the Final Fairness Hearing, the Court will decide whether to approve the Settlement and how much to award for fees, expenses and incentive awards.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?**

75. The Court will hold the Final Fairness Hearing at [TIME], on [DATE], before the Honorable Thomas A. Varlan in the U.S. District Court for the Eastern District of Tennessee, United States Courthouse, 800 Market Street, Knoxville, TN 37902. A motion for final approval of the Settlement will be filed by Co-Lead Counsel by [DATE]. The motion will also be posted on the settlement website.

76. Please note that the date of the Court hearing is subject to change without further notice. If you plan to attend the hearing, you should check [www.MillerEnergy-KPMGsecuritiessettlement.com](http://www.MillerEnergy-KPMGsecuritiessettlement.com) to be sure no change to the date and time of the hearing has been made.

**DO I NEED TO COME TO THE HEARING?**

77. No. Co-Lead Counsel will answer any questions the Court may have. However, you are welcome to attend the hearing at your own expense. If you send in a written objection, you do not have to come to the Final Fairness Hearing to talk about it. As long as you mailed your written objection on time, the Court will consider it. You also may pay your own lawyer to attend the Final Fairness Hearing, but his or her attendance is not necessary.

**MAY I SPEAK AT THE HEARING?**

78. If you are a Settlement Class member who has not asked to be excluded from the Settlement Class, you may ask the Court for permission to speak at the hearing. To do so, you must send a letter or other paper called a “Notice of Intention to Appear at Final Fairness Hearing in *Cosby et al. v. KPMG LLP.*” Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be filed with the Clerk of the Court and sent to the counsel listed above in the answer to Question #15 so it is received by the Court and counsel no later than \_\_\_\_, 2022. You cannot speak at the hearing if you exclude yourself from the Settlement.

**WHAT HAPPENS IF I DO NOTHING?**

79. If you are a Settlement Class Member and do nothing, you will not get a payment from this Settlement. And, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against KPMG relating to claims being resolved by this Settlement, ever again.

**HOW DO I GET MORE INFORMATION?**

80. This notice summarizes the Settlement. More details are in the Settlement Agreement available at [www.MillerEnergy-KPMGsecuritiessettlement.com](http://www.MillerEnergy-KPMGsecuritiessettlement.com). If you still have questions, call the claims administrator at 855-604-1841 or send an email to [info@MillerEnergy-KPMGsecuritiessettlement.com](mailto:info@MillerEnergy-KPMGsecuritiessettlement.com) or write to *Miller Energy Securities Settlement*, PO Box 5024, Portland, OR 97208-5024.

# EXHIBIT A-2

**PROOF OF CLAIM AND RELEASE FORM**

Before completing this form, please read the detailed instructions on page 7. When filling out this form, type or print in the boxes below in **CAPITAL LETTERS**; do not use red ink, pencils or staples.

**PART I: CLAIMANT INFORMATION**

Beneficial Owner's First Name	Beneficial Owner's Last Name	
Co-Beneficial Owner's First Name	Co-Beneficial Owner's Last Name	
Entity Name (if claimant is not an individual)		
Representative or Custodian Name (if different from Beneficial Owner(s) listed above)		
Account Number (if filing for multiple accounts, file a separate Proof of Claim Form for each account)		
Address 1 (street name and number)		
Address 2 (apartment, unit, or box number)		
City	State	Zip Code
Foreign Country (only if not United States)		
Social Security Number	Taxpayer Identification Number	
Telephone Number (Home)	Telephone Number (Work)	
E-Mail Address		

Claimant Account Type (check appropriate):

- |  |   |                             |
|--|---|-----------------------------|
| <input type="radio"/> Individual (includes joint owner accounts) | <input type="radio"/> Pension Plan                  | <input type="radio"/> Trust |
| <input type="radio"/> Corporation                                | <input type="radio"/> Estate                        |                             |
| <input type="radio"/> IRA/401(k)                                 | <input type="radio"/> Other: _____ (please specify) |                             |

**(TURN TO NEXT PAGE)**



**PART II: SCHEDULE OF HOLDINGS AND TRANSACTIONS IN SHARES OF MILLER ENERGY COMMON STOCK OR SERIES C OR SERIES D PREFERRED STOCK**

**A. Number of shares of Miller Energy Common Stock**

**Beginning Holdings.** For shares held before the opening of trading on August 29, 2011, please provide the quantity of shares held (if none, leave blank):

Quantity of Shares:       .

**Incoming Shares.** Purchases from August 29, 2011, to July 30, 2015 (inclusive). Please provide all data, and list each trade separately:

Trade Date (MMDDYYYY)	Quantity of Shares Purchased	Purchase Price per Share
<input type="text"/>	<input type="text"/> . <input type="text"/>	\$ <input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	\$ <input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	\$ <input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	\$ <input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	\$ <input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	\$ <input type="text"/> . <input type="text"/>

**Outgoing Shares.** Sales from August 29, 2011 through the end of trading on October 28, 2015 (inclusive). Please provide all data, and list each trade separately:

Trade Date (MMDDYYYY)	Quantity of Shares Sold	Sale Price per Share
<input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/> . <input type="text"/>

**Unsold Shares.** Shares held as of the end of trading on October 28, 2015. Please provide the quantity of shares held (if none, leave blank):

Quantity of Shares:       .

If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

**(TURN TO NEXT PAGE)**

**B. Number of shares of Miller Energy Series C Preferred Stock**

**Beginning Holdings.** For shares held before the opening of trading on October 8, 2012, please provide the quantity of shares held (if none, leave blank):

Quantity of Shares:        .

**Incoming Shares.** Purchases from October 8, 2012, to March 29, 2016 (inclusive). Please provide all data, and list each trade separately:

Trade Date (MMDDYYYY)	Quantity of Shares Purchased	Purchase Price per Share
<input type="text"/>	<input type="text"/> . <input type="text"/>	\$ <input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	\$ <input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	\$ <input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	\$ <input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	\$ <input type="text"/> . <input type="text"/>

**Outgoing Shares.** Sales from the beginning of the Relevant Period through the end of trading on March 29, 2016 (inclusive). Please provide all data, and list each trade separately:

Trade Date (MMDDYYYY)	Quantity of Shares Sold	Sale Price per Share
<input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/> . <input type="text"/>

**Unsold Shares.** Shares held as of the end of trading on October 28, 2015. Please provide the quantity of shares held (if none, leave blank):

Quantity of Shares:

If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

**(TURN TO NEXT PAGE)**

**C. Number of shares of Miller Energy Series D Preferred Stock**

**Beginning Holdings.** For shares held before the opening of trading on the first day of the Relevant Period (October 1, 2013), please provide the quantity of shares held (if none, leave blank):

Quantity of Shares:       .

**Incoming Shares.** Purchases from October 1, 2013, to March 29, 2016 (inclusive). Please provide all data, and list each trade separately:

Trade Date (MMDDYYYY)	Quantity of Shares Purchased	Purchase Price per Share
<input type="text"/>	<input type="text"/> . <input type="text"/>	\$ <input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	\$ <input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	\$ <input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	\$ <input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	\$ <input type="text"/> . <input type="text"/>

**Outgoing Shares.** Sales from October 1, 2013, through the end of trading on March 29, 2016 (inclusive). Please provide all data, and list each trade separately:

Trade Date (MMDDYYYY)	Quantity of Shares Sold	Sale Price per Share
<input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/> . <input type="text"/>
<input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/> . <input type="text"/>

**Unsold Shares.** Shares held as of the end of trading on October 28, 2015. Please provide the quantity of shares held (if none, leave blank):

Quantity of Shares:       .

If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

**(TURN TO NEXT PAGE)**

### **PART III: CERTIFICATION, SUBMISSION TO JURISDICTION OF COURT, AND ACKNOWLEDGEMENTS**

I (We) submit this Proof of Claim and Release Form under the terms of the Stipulation described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Eastern District of Tennessee with respect to my (our) claim as a Class Member(s) and for purposes of enforcing the releases set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in the Action. I (We) agree to furnish additional information to the Claims Administrator to support this claim upon request. I (We) have not submitted any other claim covering the same purchases or acquisitions of shares of Miller Energy common stock or Series C or Series D preferred stock during the Class Period and know of no other person having done so on my (our) behalf.

#### **RELEASE**

I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally, and forever settle, release, and discharge from the Settled Claims, suspected or unsuspected, that now exist or heretofore existed, or may have existed, without regard to the subsequent discovery of different or additional facts, each and all of the Defendant's Releasees, defined as KPMG LLP, and each and all of its past and present directors, officers, employees, partners, member firms or affiliates, principals, agents, representatives, stockholders, parents, subsidiaries, divisions, joint venture partners, attorneys, consultants, insurers, co-insurers and reinsurers, spouses, heirs, associates, related or affiliated entities, general or limited partners or partnerships, limited liability companies, members, estates, administrators, predecessors, successors, assigns, immediate family members, or any trusts for which any of the foregoing are trustees, settlers or beneficiaries, or any Persons or other entities in which any Defendant Releasee has a controlling interest or which is related to or affiliated with any Defendant Releasee, and any other representatives, including legal representatives, of any of the foregoing Persons or other entities, whether or not they were named, served with process or appeared in the Action, and shall forever be barred and enjoined from commencing, instituting or maintaining any of the Settled Claims against the Defendant Releasees.

"Settled Claims" means any and all claims, demands, losses, rights, and causes of action of every nature and description, whether known or unknown, including Unknown Claims, that (a) were or could have been asserted in a complaint in this Action, including but not limited to those asserted in the Class Action Complaint filed on March 14, 2016, the Amended Complaint filed on May 8, 2017, the Second Amended Class Action Complaint filed on September 15, 2017, and the Third Amended Consolidated Complaint filed on July 13, 2020 (collectively, the "Complaint"), (b) could have been asserted in this Action against KPMG, or (c) could in the future be asserted in any forum whether arising under federal, state, common or foreign law, by Lead Plaintiffs or any other member of the Classes, or their successors, assigns, executors, administrators, representatives, attorneys, and agents in their capacities as such, which (i) arise out of, are based upon, or relate in any way to any of the allegations, acts, transactions, facts, events, matters or occurrences, representations or omissions involved, set forth, alleged, or referred to in the Complaint or which could have been alleged in this Action; (ii) arise out of, are based upon, or relate in any way to the purchase, acquisition, holding, sale, or disposition of any Miller Energy securities; and (iii) could have been asserted against KPMG. Defendant shall release Lead Plaintiffs, the members of the Classes, and their counsel from any claims relating to the institution, prosecution, or settlement of this Action.

"Unknown Claims" means any and all Settled Claims which Lead Plaintiffs in the Action or any Settlement Class Member does not know to exist in his, her, or its favor at the time of the release of Defendant's Releasees, and any Defendant's Claims which Defendant did not know to exist in their favor at the time of the release of the Released Plaintiff Parties, which if known might have affected the decision to enter into the Settlement. With respect to any and all Settled Claims and Defendant's Claims, the parties stipulate and agree that upon the Effective Date, Lead Plaintiffs and Defendant shall expressly, and each Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any

Miller Energy Securities Settlement  
PO Box 5024  
Portland, OR 97208-5024  
Toll-Free Number: (855) 604-1841  
Website: www.MillerEnergy-KPMGsecuritiessettlement.com

Objection/Exclusion Deadline: [\_\_\_\_], 2022  
Final Approval Hearing: [\_\_\_\_], 2022  
Deadline to File a Claim: [\_\_\_\_], 2022

law of any state or territory of the United States or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1452, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Lead Plaintiffs and Defendant acknowledge, and other Settlement Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Settled Claims and Defendant’s Claims was separately bargained for and was a key element of this Settlement.

This release shall be of no force or effect unless and until the Court approves the Settlement and the Stipulation becomes effective.

I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any rights or claims released pursuant to this release or any other part or portion thereof.

I (We) hereby warrant and represent that I (we) have included information about all of my (our) transactions in shares of Miller Energy common stock or Series C or Series D preferred stock which are the subject of this claim, which occurred during the Class Period as well as the opening position in such shares held by me (us) on the dates requested in this claim form.

I declare under penalty of perjury under the laws of the United States of America that all of the foregoing information supplied on this Proof of Claim and Release Form by the undersigned is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ in \_\_\_\_\_,  
(Day) (Month/Year) (City) (State/Country)

\_\_\_\_\_  
(Signature of Claimant)

\_\_\_\_\_  
(Print Name of Claimant)

\_\_\_\_\_  
(Signature of Joint Claimant, if any)

\_\_\_\_\_  
(Print Name of Joint Claimant, if any)

## GENERAL INSTRUCTIONS

1. To recover as a Settlement Class Member based on your claims in the action entitled *Cosby, et al. v. KPMG, LLP*, Case No. 3:16-cv-121 (TAV) (the “Litigation”), you must complete and sign this Proof of Claim and Release Form. All capitalized words or terms not otherwise defined herein shall have the meaning of the words or terms set forth in the Notice of Proposed Settlement of Class Action (the “Notice”).

2. If you fail to submit a timely and properly addressed Proof of Claim and Release Form, your claim may be rejected and you may not receive any recovery from the Settlement Fund created in connection with the proposed Settlement. Submission of this Proof of Claim and Release Form, however, does not assure that you will share in the proceeds of the Settlement.

3. YOU MUST MAIL YOUR COMPLETED AND SIGNED PROOF OF CLAIM AND RELEASE FORM POSTMARKED ON OR BEFORE \_\_\_\_\_, 2022, ADDRESSED AS FOLLOWS:

*Miller Energy Securities Settlement*  
PO Box 5024  
Portland, OR 97208-5024

4. If you are NOT a Settlement Class Member (as defined in the Notice of Proposed Settlement of Class Action (“Notice”)), DO NOT submit a Proof of Claim and Release Form.

5. If you are a Settlement Class Member and you do not timely request exclusion in connection with the proposed Settlement, you will be bound by the terms of any judgment entered in the Action, including the releases provided therein, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM AND RELEASE FORM.

6. If you purchased or otherwise acquired shares of common stock or Series C or Series D preferred stock of Miller Energy Resources, Inc. (“Miller Energy”) and held the shares in your name, you are the beneficial purchaser as well as the record purchaser. If, however, you purchased or otherwise acquired shares of Miller Energy common stock or Series C or Series D preferred stock and the shares were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial purchaser and the third party is the record purchaser.

7. Use Part I of this form, entitled “Claimant Information” to identify each purchaser of record (“Nominee”), if different from the beneficial purchaser of the shares of Miller Energy common stock or Series C or Series D preferred stock which form the basis of this claim. THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL PURCHASER(S) OR ACQUIRER(S) OR THE LEGAL REPRESENTATIVE OF SUCH PURCHASER(S) OR ACQUIRER(S) OF THE MILLER ENERGY COMMON STOCK OR SERIES C OR SERIES D PREFERRED STOCK UPON WHICH THIS CLAIM IS BASED.

8. All joint purchasers must sign this claim. Executors, administrators, guardians, conservators, and trustees must complete and sign this claim on behalf of persons represented by them and their authority must accompany this claim and their titles or capacities must be stated. The social security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

9. Use Part II of this form, entitled "Schedule of Transactions in Shares of Miller Energy Common Stock or Series C or Series D Preferred Stock," to supply all required details of your transaction(s) in Miller Energy stock. If you need more space or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

10. On the schedule, provide all of the requested information with respect to *all* of your purchases or acquisitions of shares of Miller Energy common stock or Series C or Series D preferred stock which took place at any time from August 29, 2011 through March 29, 2016, or your purchases of Series C or Series D preferred stock pursuant to or traceable to a public offering.

11. List each transaction separately and in chronological order, by trade date, beginning with the earliest. You must accurately provide the month, day, and year of each transaction you list.

12. Copies of broker confirmations or other documentation of your transactions in shares of Miller Energy common stock or Series C or Series D preferred stock should be attached to your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim.

13. NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request to, or may be requested to, submit information regarding their transactions in electronic files. All claimants MUST submit a manually signed paper Proof of Claim and Release Form whether or not they also submit electronic copies. If you wish to file your claim electronically, you must contact the Claims Administrator at 855-604-1841 or [info@MillerEnergy-KPMGsecuritiessettlement.com](mailto:info@MillerEnergy-KPMGsecuritiessettlement.com), or visit the website at [www.MillerEnergy-KPMGsecuritiessettlement.com](http://www.MillerEnergy-KPMGsecuritiessettlement.com) to obtain the required file layout. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues to the claimant a written acknowledgment of receipt and acceptance of electronically submitted data.

**Reminder Checklist:**

- Please sign the above release.
- Remember to attach supporting documentation, if available.
- Keep a copy of your claim form and all supporting documentation for your records
- If you desire an acknowledgement of receipt of our claim form, please send it Certified Mail, Return Receipt Requested.

**Accurate claims processing can take a significant amount of time. Thank you for your patience.**

# EXHIBIT A-3



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE**

LEWIS COSBY, ERIC MONTAGUE, and MARTIN ZIESMAN, as Co-Trustee for the Carolyn K. Ziesman Revocable Trust, on behalf of themselves and all others similarly situated individually and on behalf of all others similarly situated,

Plaintiffs,

v.

KPMG LLP,

Defendant.

Case No. 3:16-cv-121 (TAV)

**TO: ALL PERSONS WHO PURCHASED OR OTHERWISE ACQUIRED MILLER ENERGY RESOURCES, INC. (“MILLER ENERGY”) COMMON STOCK OR SERIES C OR SERIES D PREFERRED STOCK BETWEEN AUGUST 29, 2011 AND JULY 30, 2015, INCLUSIVE, OR PURCHASED MILLER ENERGY SERIES C OR SERIES D PREFERRED STOCK PURSUANT TO OR TRACEABLE TO A PUBLIC OFFERING (THE “SETTLEMENT CLASS”)**

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District Court for the Eastern District of Tennessee, that a hearing will be held on \_\_\_\_\_, 2022 at \_\_\_ a.m., before the Honorable Thomas A. Varlan at the Howard A. Baker, Jr. United States Courthouse, 800 Market Street, Knoxville, TN 37902, for the purpose of determining (1) whether the proposed settlement of the claims in the above-captioned action (the “Action”) for the principal amount of \$35,000,000 for the Settlement Class (the “Settlement”) should be approved by the Court as fair, just, reasonable, and adequate; (2) whether a Final Judgment and Order of Dismissal should be entered by the Court dismissing the Action with prejudice; (3) whether the Plan of Allocation is fair, reasonable, and adequate and should be approved; and (4) whether the application of Co-Lead Counsel for the payment of attorneys’ fees in the amount of \_\_\_\_\_, litigation expenses not to exceed

, and Notice and Administration Expenses not to exceed \$200,000.00 incurred in connection with the Action should be approved.

IF YOU PURCHASED OR ACQUIRED SHARES OF COMMON OR PREFERRED STOCK OF MILLER ENERGY DURING THE PERIOD FROM AUGUST 29, 2011 THROUGH JULY 30, 2015, INCLUSIVE, OR PURCHASED MILLER ENERGY SERIES C OR SERIES D STOCK PURSUANT TO OR TRACEABLE TO A PUBLIC OFFERING, YOUR RIGHTS MAY BE AFFECTED BY THE SETTLEMENT OF THIS ACTION.

You may obtain copies of a detailed Notice of Proposed Settlement of Class Action (“Notice”) and a copy of the Proof of Claim and Release form by writing to *Miller Energy Securities Settlement*, PO Box 5024, Portland, OR 97208-5024, visiting [www.MillerEnergy-KPMGsecuritiessettlement.com](http://www.MillerEnergy-KPMGsecuritiessettlement.com) or calling the claims administrator at 855-604-1841.

If you are a Settlement Class member, in order to share in the distribution of the Settlement fund, you must submit a Proof of Claim and Release *postmarked no later than \_\_\_\_\_, 2022*, establishing that you are entitled to recovery.

If you purchased or otherwise acquired Miller Energy common or preferred stock and you desire to be excluded from the Settlement Class, you must submit a request for exclusion postmarked no later than \_\_\_, 2022, in the manner and form explained in the detailed Notice referred to above. All Settlement Class members who do not timely and validly request exclusion from the Settlement Class will be bound by any judgment entered in the Action pursuant to the applicable stipulation of Settlement.

Any objection to the Settlement must be mailed to each of the following recipients *no later than \_\_\_\_\_, 2022*.

Clerk of the U.S. District Court for the Eastern District of Tennessee  
Howard H. Baker, Jr. United States Courthouse  
800 Market Street, Suite 130

Knoxville, TN 37902

*Co-Lead Counsel for Plaintiffs:*

COHEN MILSTEIN SELLERS & TOLL PLLC

Laura H. Posner

88 Pine Street, 14<sup>th</sup> Floor

New York, NY 10005

GORDON BALL PLLC

Gordon Ball

7001 Old Kent Drive

Knoxville, TN 37919

*Counsel for Defendant KPMG:*

MCDERMOTT WILL & EMERY LLP

Gregory G. Ballard

Ludwig von Rigal

One Vanderbilt Avenue

New York, NY 10017

WALLER LANSDEN DORTCH & DAVIS, LLP

Paul S. Davidson

511 Union Street, Suite 2700

Nashville, TN 37219

LEWIS ROCA ROTHGERBER CHRISTIE LLP

Gary F. Bendinger

201 East Washington St., Suite 1200

Phoenix, AZ 85004

**PLEASE DO NOT CONTACT THE COURT OF THE CLERK'S OFFICE REGARDING THIS NOTICE.**

If you have questions about the Settlement, you may contact the claims administrator at the address or phone number listed above.

DATED: \_\_\_\_\_, 2022

BY ORDER OF THE COURT

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TENNESSEE

# EXHIBIT A-4

## POSTCARD NOTICE TEXT

You have been identified as a possible class member in a securities fraud class action against KPMG, LLP (“KPMG”). You may be eligible to receive a payment from a \$35 million class action settlement fund in *Cosby, et al. v. KPMG, LLP*, Case No. 3:16-cv-121 (TAV). The case involves alleged material misrepresentations in violation of the federal securities laws concerning Miller Energy Resources, Inc.’s (“Miller”) acquisition of certain assets in Alaska and the financial reporting and accounting regarding those assets. Additional information is contained in a detailed settlement notice (“Settlement Notice”). To participate in the settlement you must submit a Proof of Claim form no later than \_\_, 2022. The Proof of Claim form and Settlement Notice are available by visiting [www.MillerEnergy-KPMGsecuritiessettlement.com](http://www.MillerEnergy-KPMGsecuritiessettlement.com) or calling or writing the Claims Administrator noted below.

**Settlement Class Definition:** You are a settlement class member if you 1) purchased or otherwise acquired Miller Energy common stock, Miller Energy 10.75% Series C Cumulative Redeemable Preferred Stock (the “Series C Preferred Stock”) or Miller Energy 10.5% Series D Fixed Rate/Floating Rate Cumulative Redeemable Preferred Stock (the “Series D Preferred Stock”) between August 29, 2011 and July 30, 2015, inclusive, and were damaged thereby (the “Section 10(b) Class”); or 2) purchased or otherwise acquired Miller Energy Series C Preferred Stock or Series D Preferred Stock pursuant to or traceable to the Offering Documents and were damaged thereby (the “Section 11 Class” (the “Section 10(b) Class” and the “Section 11 Class” are collectively the “Settlement Class”).

**Reasons for Settlement:** The parties wish to avoid the costs and risks of continued litigation.

**Attorneys’ Fees and Expenses:** Attorneys for the class will ask the Court for attorneys’ fees of 33 1/3% of the settlement fund, reimbursement of out-of-pocket costs, and incentive awards not to exceed \$45,000 in total for the three lead plaintiffs, and excluding notice and claims administration costs, which will be deducted separately from the settlement fund. Attorneys’ fees and costs will be paid out of the settlement fund as expenses for investigating the facts, litigating the case and negotiating the settlement.

**Your Options:** You can file a claim, object to the settlement (with or without appearing at the final approval hearing and with or without hiring your own attorney), exclude yourself from the class, or do nothing. Unless you exclude yourself from the class, you will be bound by the settlement and you will release any claims you may have against KPMG. More information is contained in the Settlement Notice.

**Deadline:** Claims must be filed by \_\_\_\_, 2022; settlement objections must be received by \_\_\_\_, 2022; request for exclusion from the class must be received by \_\_\_\_, 2022; and the Court’s hearing on final approval of the settlement is scheduled for \_\_\_\_, 2022.

**Plaintiffs’ Counsel’s Representative:** The Claims Administrator, Epiq Global, is available to answer questions concerning the settlement or any matter contained in the Settlement Notice. You may contact the Claims Administrator by calling 855-604-1841 or writing to *Miller Energy Securities Settlement*, PO Box 5024, Portland, OR 97208-5024.

# EXHIBIT B

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE**

LEWIS COSBY, ERIC MONTAGUE, and MARTIN ZIESMAN, as Co-Trustee for the Carolyn K. Ziesman Revocable Trust, on behalf of themselves and all others similarly situated individually and on behalf of all others similarly situated,

Plaintiffs,

v.

KPMG LLP,

Defendant.

Case No. 3:16-cv-121 (TAV)

**[PROPOSED] JUDGMENT APPROVING CLASS ACTION SETTLEMENT**

WHEREAS, Lewis Cosby, Eric Montague, and Martin Ziesman, as Co-Trustee for the Carolyn K. Ziesman Revocable Trust (collectively “Lead Plaintiffs”), on behalf of themselves and the Class; and Defendant KPMG LLP (“KPMG or “Defendant”) entered into a Stipulation and Agreement of Settlement dated March \_\_, 2022 (the “Stipulation”), which provides for a settlement of this Action (the “Settlement”); and

WHEREAS, unless otherwise defined herein, all capitalized words contained in this Judgment shall have the same meaning as they have in the Stipulation; and

WHEREAS, the Court entered an order on May 7, 2021 granting Plaintiffs’ Motion to Certify the Classes, Appoint Class Representative, and Appoint Class Counsel and the Court entered an Order dated \_\_\_\_\_, 2022 (the “Preliminary Approval Order”) that (i) also preliminarily certified, for settlement purposes only, a Settlement Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3); (ii) ordered that notice of the proposed Settlement and of the deadline to submit proof of claim forms be provided to potential members of the Settlement Class; (iii) scheduled a Final

Fairness Hearing; and (iv) provided those persons and entities identified as members of the putative Class with an opportunity either to exclude themselves from the proposed Settlement or to object to the proposed Settlement; and

WHEREAS, the Court held a Final Fairness Hearing on \_\_\_\_\_, 2022 to determine, among other things, (i) whether the terms and conditions of the Settlement are fair, reasonable, and adequate and should therefore be approved; and (ii) whether judgment should be entered dismissing the Action on the merits and with prejudice as against Defendant; and

NOW THEREFORE, based on the submissions of the parties, and on the arguments of counsel at the Final Fairness Hearing, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. **Incorporation of Settlement Documents.** This Judgment Approving Class Action Settlement incorporates and makes a part hereof:

- (a) the Stipulation filed with this Court; and
- (b) the Postcard Notice, Notice and Publication Notice, each of which were filed with the Court on \_\_\_\_\_, 2022.

2. **Jurisdiction.** The Court has personal jurisdiction over all Settlement Class members and has subject matter jurisdiction over the Action, including, without limitation, jurisdiction to approve the proposed Settlement, grant final certification of the Settlement Class, and dismiss the Action against Defendant on the merits and with prejudice. The Court has personal jurisdiction over Defendant for purposes of enforcing the Settlement.

3. **Final Class Certification.** On May 7, 2021, the Court entered an order certifying the Settlement Class, finding that it meets all of the requirements of Federal Rule of Civil Procedure 23(a) and (b)(3). The Court again finds that the Settlement Class preliminarily certified in the Preliminary Approval Order meets all the requirements of Federal Rule of Civil Procedure



23(a) and (b)(3). The Court therefore certifies the Settlement Class for settlement purposes of all persons or entities who (1) purchased or otherwise acquired Miller Energy common stock, Miller Energy 10.75% Series C Cumulative Redeemable Preferred Stock (the “Series C Preferred Stock”) or Miller Energy 10.5% Series D Fixed Rate/Floating Rate Cumulative Redeemable Preferred Stock (the “Series D Preferred Stock”) between August 29, 2011 and July 30, 2015, inclusive, and who were damaged thereby (the “Section 10(b) Class”); or (2) purchased or otherwise acquired Miller Energy Series C Preferred Stock or Series D Preferred Stock pursuant to or traceable to the Offering Documents and were damaged thereby (the “Section 11 Class”) (the Section 10(b) Class and the Section 11 Class are collectively, the “Settlement Class”). Excluded from the Settlement Class are KPMG, the Officers, Directors, Partners and affiliates of KPMG, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which KPMG has or had a controlling interest, and the Officers, Directors, Partners, and affiliates of Miller Energy, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which Miller Energy has or had a controlling interest. Also excluded from the Class is any person or entity who or which properly excluded himself, herself or itself by filing a valid and timely request for exclusion in accordance with the requirements set forth in the Notice.

4. **Adequacy of Representation.** Co-Lead Counsel and Lead Plaintiffs adequately represented the Settlement Class for purposes of entering into and implementing the Settlement and have fully and adequately represented the Settlement Class for purposes of entering into and implementing the Settlement and have satisfied the requirements of Federal Rule of Civil Procedure 23(a)(4). Consistent with the Court’s Order and for purposes of the Settlement, the Lead Plaintiffs are appointed as class representatives on behalf of all Settlement Class Members

and the law firms of Cohen Milstein Sellers & Toll PLLC and Gordon Ball PLLC are appointed as Class counsel.

5. **Notice.** The Court finds that the distribution of the Postcard Notice, the online posting of the Notice, the publication of the Publication Notice, and the notice methodology: (i) were all implemented in accordance with the Preliminary Approval Order; (ii) constituted the best practicable notice; (iii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, of the effect of the Settlement including the Releases, of their right to object to the proposed Settlement, of their right to exclude themselves from the Settlement Class, or their right to appear at the Final Fairness Hearing, and of the deadline for filing a proof of claim in connection with the proposed Settlement; (iv) were reasonable and constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (v) met all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C. 78u-4, *et seq.*) (the “PSLRA”), the Rules of the Court, and any other applicable law.

6. **Binding Effect.** The terms of the Stipulation and of this Judgment shall be forever binding on Lead Plaintiffs and all members of the Settlement Class, as well as all of their heirs, executors and administrators, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b) and assigns.

7. **Final Settlement Approval.** The Settlement is hereby fully and finally approved as fair, reasonable and adequate, and Lead Plaintiffs and Defendant are directed to implement and consummate the Settlement in accordance with the terms and provisions of the Stipulation. The

Court approves the documents submitted to the Court in connection with the implementation of the Settlement.

8. **Releases.** The releases as forth in ¶¶ 3 and 4 of the Stipulation (the “Releases”), together with the definitions of Settled Claims, Defendant’s Claims, Defendant Releasees, and Released Plaintiff Parties, are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date and release and forever discharge, among other things, the Defendant Releasees from any and all claims of liability arising from or related to the Settled Claims, and the Released Plaintiff Parties from any and all claims of liability arising from or related to Defendant’s Claims. The Settled Claims are hereby forever compromised, settled, released, discharged and dismissed as against the Defendant Releasees on the merits and with prejudice by virtue of the proceedings herein and this Judgment. The Defendant’s Claims are hereby forever compromised, settled, released, discharged and dismissed as against Lead Plaintiffs and members of the Settlement Class on the merits and with prejudice by virtue of the proceedings herein and this Judgment.

9. **Permanent Injunction.** The Court permanently bars and enjoins (i) all Settlement Class Members (and their heirs, executors and administrators, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b) and assigns) from filing, commencing, instituting, prosecuting, intervening in, assisting, maintaining, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration or other proceeding or order in any jurisdiction that is based upon, arises out of or relates to any Settled Claims; and (ii) Defendant from filing, commencing, instituting, prosecuting, intervening in, assisting, maintaining, participating in (as class members or otherwise), or receiving any benefits

or other relief from, any other lawsuit, arbitration or other proceeding or order in any jurisdiction that is based upon, arises out of or relates to Defendant's Claims.

10. **No Admissions.** Neither this Judgment, the Stipulation, nor any of their terms and provisions, nor any of the negotiations or proceedings connected therewith, nor any of the documents or statements connected therewith or referred to therein shall be:

(a) admissible in any action or proceeding for any reason, other than an action to enforce the terms of the Settlement or this Judgment;

(b) described as, construed as, offered or received against Defendant as evidence of and/or deemed to be evidence of any presumption, concession, or admission by Defendant of: the truth of any fact alleged by Lead Plaintiffs; the validity of any claim that has been or could have been asserted in the Action or in any litigation; the deficiency of any defense that has been or could have been asserted in the Action or in any litigation; or any liability, negligence, fault, or wrongdoing of Defendant;

(c) described as, construed as, offered or received against Lead Plaintiffs or any Settlement Class Members as evidence of any infirmity in the claims of said Plaintiffs and the Class or that damages recoverable under the Complaint would not have exceeded the Settlement Amount;

(d) described as, construed as, offered or received against any of the parties to the Stipulation or any of the Defendant Releasees or Plaintiff Released Parties, in any other civil, criminal, or administrative action or proceeding, provided, however, that (i) if it is necessary to refer to the Stipulation to effectuate the provisions of the Stipulation, it may be referred to in such proceedings, and (ii) if the Stipulation is approved by the Court, Defendant Releasees may refer to it to effectuate the liability protection granted it hereunder; or

(e) described as or construed against Defendant, Defendant Releasees or Lead Plaintiffs or any Settlement Class Members as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been awarded to Lead Plaintiffs or Settlement Class Members after trial.

11. **Enforcement of Settlement.** Nothing in this Judgment shall preclude any action to enforce the terms of the Stipulation.

12. **Claims Administrator's Fees and Expenses.** The Court retains jurisdiction to consider an application by or on behalf of the Claims Administrator for an award of fees and reimbursement of expenses relating to its implementation of the terms of the Stipulation and/or any orders of this Court.

13. **Bar Order.** Any person or entity that was or could have been named as a Defendant in this Action, or any other action, is hereby permanently enjoined, barred and restrained to the fullest extent permitted by law from commencing, prosecuting or asserting any action, for contribution, indemnity or otherwise, from Defendant or Defendant Releasees seeking, as damages or otherwise, the recovery of all or any part of any liability or any settlement which they pay or are obligated to pay or agree to pay, as a result of such persons' participation in any acts, facts, statements or omissions that were or could have been based upon, arising out of, or relating to the claims or allegations in the Action or as any other claim of any type, including but not limited to, claims, cross-claims, counterclaims, third-party claims or otherwise, whether asserted in the Actions in this Court or in any federal or state court or any other court, arbitration proceeding, administrative agency or other forum in the United States or elsewhere.

14. **Judgment Reduction.** Any person or entity who is subject to the injunction set forth in ¶ 13 shall be entitled to a reduction in any final verdict or judgment in an amount calculated as provided for in 15 U.S.C. §78u-4(f)(7)(B).

15. **Rule 11 Findings.** The Court finds that all parties to the Stipulation and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein, and that the Parties hereto are barred from asserting claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the maintenance, defense or settlement of the Action.

16. **Modification of Settlement Agreement.** Without further approval from the Court, Lead Plaintiffs and Defendant are hereby authorized to jointly agree to and adopt such amendments, modifications, and expansions of the Stipulation or any exhibits attached to the Stipulation as: (i) are not materially inconsistent with this Judgment; and (ii) do not materially limit the rights of the Class members under the Stipulation.

17. **Extensions of Time.** Without further order of the Court, Lead Plaintiff and Defendant may agree to reasonable extensions of time to carry out any provisions of the Stipulation.

18. **Retention of Jurisdiction.** The Court has jurisdiction to enter this Judgment. Without in any way affecting the finality of this Judgment, the Court expressly retains continuing and exclusive jurisdiction over Defendant and the Settlement Class members for purposes of the administration, interpretation, and enforcement of the Stipulation and of this Judgment. The Court further expressly retains continuing and exclusive jurisdiction over the Settlement Class members for all matters relating to the Action.

19. **Dismissal of Action.** The Action, which the Court finds was filed on a good faith basis against Defendant in accordance with the Private Securities Litigation Reform Act and Rule 11 of the Federal Rules of Civil Procedure based upon all publicly available information, is hereby dismissed on the merits and with prejudice as of the Effective Date, without fees or costs except as otherwise provided in this Judgment.

20. **Termination of Settlement.** If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation, and this Judgment shall be without prejudice to the rights of Lead Plaintiffs, the Settlement Class Members, and Defendant, and the Parties shall revert to their respective positions in the Action as of August 26, 2021, as provided in the Stipulation.

21. **Entry of Final Judgment.** There is no reason to delay the entry of this Judgment as a final judgment in this Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final judgment in this Action.

The Action, which the Court finds was filed on a good faith basis against Defendant in accordance with the Private Securities Litigation Reform Act and Rule 11 of the Federal Rules of Civil Procedure based upon all publicly available information, is hereby dismissed on the merits and with prejudice as of the Effective Date, without fees or costs except as otherwise provided in this Judgment.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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THE HONORABLE THOMAS A. VARLAN  
United States District Judge