

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE LIBOR-BASED FINANCIAL
INSTRUMENTS ANTITRUST LITIGATION

Master File No. 11-md-2262 (NRB)

THIS DOCUMENT RELATES TO:

METZLER INVESTMENT GmbH, et al.,

No. 11 Civ. 2613

Plaintiffs,

v.

CREDIT SUISSE GROUP AG, et al.

Defendants.

**EXCHANGE-BASED PLAINTIFFS' NOTICE OF MOTION TO AUTHORIZE
DISTRIBUTION OF THE BANK OF AMERICA, BARCLAYS BANK PLC,
CITI, DEUTSCHE BANK, HSBC BANK PLC, JPMORGAN, AND
SOCIÉTÉ GÉNÉRALE NET SETTLEMENT FUNDS AND FOR
REIMBURSEMENT OF CLAIMS ADMINISTRATION EXPENSES**

TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD

PLEASE TAKE NOTICE that, on a date and at a time to be determined by the Court, at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, New York 10007, in the Courtroom of the Honorable Naomi Reice Buchwald, Exchange-Based Plaintiffs¹ will, and hereby do, move the Court to authorize distribution of the BOA, Barclays, Citi, Deutsche Bank, HSBC, JPMorgan, and SG net settlement funds² to Authorized Claimants and reimbursement of claims administration expenses for the distributions.

Submitted herewith in support of Exchange-Based Plaintiffs' motion are: (i) the Memorandum of Law in support; (ii) the Declaration of David E. Kovel; (iii) the Declaration of Steven Straub and exhibits thereto; and (iv) a Proposed Order.

Dated: September 7, 2023
New York, New York

KIRBY McINERNEY LLP

By: /s/ David E. Kovel
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¹ "Exchange-Based Plaintiffs" or "Plaintiffs" are Metzler Asset Management GmbH (f/k/a Metzler Investment GmbH), FTC Futures Fund SICAV, FTC Futures Fund PCC Ltd., Atlantic Trading USA, LLC, 303030 Trading LLC, Gary Francis, and Nathaniel Haynes. All references to "ECF No." herein refer to documents in the docket of the MDL Action, No. 11 MDL 2262 (NRB) unless otherwise specified.

² "Settlements" collectively refer to the "Stipulations of Settlement," or the "Settlement Agreements." See Barclays Settlement Agreement (ECF No. 2307-3), Citi Settlement Agreement (ECF No. 2307-4); Deutsche Bank Settlement (ECF No. 2307-5); HSBC Settlement Agreement (ECF No. 2307-6); JPMorgan/BOA Settlement Agreement (ECF No. 2728-5); SG Settlement Agreement (ECF No. 3023-4). Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in the Settlement Agreements.

**LOVELL STEWART HALEBIAN
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE LIBOR-BASED FINANCIAL INSTRUMENTS ANTITRUST LITIGATION	Master File No. 11-md-2262 (NRB)
THIS DOCUMENT RELATES TO:	
METZLER INVESTMENT GmbH, et al., Plaintiffs, v. CREDIT SUISSE GROUP AG, et al. Defendants.	No. 11 Civ. 2613

**[PROPOSED] ORDER AUTHORIZING EXCHANGE-BASED
PLAINTIFFS' MOTION FOR DISTRIBUTION OF
CLASS ACTION SETTLEMENT FUNDS**

WHEREAS, by its Final Judgments and Orders dated September 17, 2020 (ECF Nos. 3175, 3176, 3177, 3178, 3179, and 3180), this Court approved the terms of the Settlements¹ and the Plan of Distribution for distributing the settlement proceeds to Class Members; and

WHEREAS, this Court has directed the parties to administer the terms of the Stipulations and Plan of Distribution; and

WHEREAS, as set forth in the Court-approved Notice, the deadline for Class Members to submit Proof of Claim and Release forms to the claims administrator for the Settlement, A.B. Data,

¹ All capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Settlements. "Settlements" collectively refer to the "Stipulations of Settlement," or the "Settlement Agreements." See Barclays Settlement Agreement (ECF Nos. 680-3, 2307-3), Citi Settlement Agreement (ECF No. 2307-4); Deutsche Bank Settlement (ECF No. 2307-5); HSBC Settlement Agreement (ECF No. 2307-6); JPMorgan/BOA Settlement Agreement (ECF No. 2728-5); SG Settlement Agreement (ECF No. 3023-4).

Ltd. (“A.B. Data” or the “Claims Administrator”), in order to participate in the distribution of the Settlement Funds was December 1, 2020; and

WHEREAS, in satisfaction of due process requirements, all Class Members who filed claims that were in any way ineligible or deficient were: (i) informed that their claims were ineligible or deficient; and (ii) given opportunities to correct any deficiency prior to their claims being finally rejected, or to contest the determination as to the deficiency; and

WHEREAS, the process of reviewing all Proofs of Claim has been completed; and

WHEREAS, Class Counsel now seeks authorization to distribute the proceeds of the Settlement Funds to Authorized Claimants, after the payment of any taxes and unpaid costs or expenses; and

WHEREAS, this Court has retained jurisdiction of this Action with respect to enforcement of the terms of the Stipulations, including considering any further application or matter which may arise in connection with the implementation of the Settlements and the processing of Proofs of Claim and the distribution of the Net Settlement Funds to the Authorized Claimants;

NOW, THEREFORE, upon reading and filing of: (1) Exchange-Based Plaintiffs’ memorandum of law in support of their Motion for Entry of an Order Approving the Distribution of the Bank of America, Barclays Bank Plc, Citi, Deutsche Bank, HSBC Bank Plc, JPMorgan, and Société Générale Net Settlement Funds and for Reimbursement of Claims Administration Expenses; (2) the supporting Declaration of David E. Kovel dated September 7, 2023; (3) the supporting Declaration of Steven Straub of A.B. Data, Ltd. dated September 6, 2023 (“A.B. Data Declaration”) and the exhibits attached thereto; and (4) upon all prior proceedings heretofore, and after due deliberation, it is hereby:

ORDERED, that the administrative determinations of A.B. Data to accept the Timely Eligible Claims, as set forth in Exhibit A of the A.B. Data Declaration, and the Late But Otherwise Eligible Claims, as set forth in Exhibit B of the A.B. Data Declaration, are adopted and said claims are hereby accepted; and it is further

ORDERED, that the administrative determinations of A.B. Data to reject the claims on the list of Rejected Claims, as set forth in Exhibit C of the A.B. Data Declaration, are adopted and said claims are hereby rejected; and it is further

ORDERED, that any claim submitted after July 1, 2023 is and will be rejected, and that no further claims against the Settlement Funds be permitted; and it is further

ORDERED, that no further adjustments or corrections to claims submitted after August 16, 2023 may be accepted; and it is further

ORDERED, that payment be made from the Settlement Funds to the Internal Revenue Service for the proper amount of taxes due and owing on the interest earned on the Settlement Funds while in escrow, if any; and it is further

ORDERED, that the balance of the Settlement Funds, after deducting payments previously allowed or set forth herein, shall be distributed to the Authorized Claimants listed on Exhibits A and B of the A.B. Data Declaration under the court-approved Plan of Distribution in proportion to: (i) each Authorized Claimant's Recognized Net Loss as compared to the total Recognized Net Loss of all accepted claimants and multiplied by 75% of the amount of the Net Settlement Funds; and/or (ii) each Authorized Claimant's Recognized Net Volume as compared to the total Recognized Net Volume of all accepted claimants and multiplied by 25% of the amount of the Net Settlement Funds, as shown on such printout; and it is further

ORDERED, that any Authorized Claimant whose *pro rata* Distribution Amount is greater than \$0 and \$19.99 or less shall receive a minimum payment of \$20.00 (the “Minimum Payment”) in the Initial Distribution and will not be eligible to receive any further distribution from the Net Settlement Funds; and it is further

ORDERED, that after excluding Authorized Claimants who will receive the Minimum Payment, any Authorized Claimant whose Distribution Amount recalculates to \$20.00 or more and less than \$10,000.00 will receive their full *pro rata* Distribution Amount in the Initial Distribution and will not be eligible to receive any further distribution from the Net Settlement Funds; and it is further

ORDERED, that 90% of the remaining balance of the Net Settlement Funds will be distributed *pro rata* to Authorized Claimants whose Distribution Amount calculates to \$10,000.00 or more, with the remaining 10% of the Net Settlement Funds held in reserve; and it is further

ORDERED, that after payments of any additional fees and expenses incurred in connection with administering the Settlements, estimated taxes, the costs of preparing appropriate tax returns, any escrow and administrative fees, and any claims administration-related contingencies, and the reserve is not depleted, following consultation with Class Counsel, in a reasonable amount of time after the Initial Distribution, A.B. Data will conduct a Second Distribution to Authorized Claimants whose (i) *pro rata* Distribution Amount in the Initial Distribution calculated to \$10,000.00 or more, (ii) who cashed their first distribution check, and (iii) who would receive at least \$10.00 from such distribution based on their *pro rata* share of the remaining funds; and it is further

ORDERED, that any checks for distribution to Authorized Claimants shall bear the notation “CASH PROMPTLY. VOID AND SUBJECT TO REDISTRIBUTION IF NOT

CASHED WITHIN 90 DAYS AFTER ISSUE DATE.” Class Counsel and A.B. Data are authorized to take appropriate action to locate and/or contact any Authorized Claimant who has not cashed his, her or its check within said time; and it is further

ORDERED, that the costs of such services to locate and reissue payments to such Authorized Claimants shall be payable from the monies remaining in the Net Settlement Funds; and it is further

ORDERED, that: (a) in a reasonable amount of time after the Second Distribution, any funds remaining in the Net Settlement Funds, by reason of uncashed checks, or otherwise, after the Claims Administrator has made reasonable efforts to have Authorized Claimants who are entitled to participate in the distribution of the Net Settlement Funds cash their distribution checks and following consultation with Class Counsel, shall be redistributed, if economically feasible, to Settlement Class Members who have cashed their distributions and who would receive at least \$10.00 from such redistribution, after payment of any unpaid costs or fees incurred in administering the Net Settlement Funds for such redistribution; and (b) if there is any balance remaining in the Net Settlement Funds after redistribution to Authorized Claimants, and further redistribution is not economically feasible, then such remaining funds, after payment of any further notice and administration expenses and taxes, shall be donated to a nonsectarian, not-for-profit 501(c)(3) organization(s) recommended by Class Counsel and approved by the Court; and it is further

ORDERED, that the Court finds that the administration of the Settlement and the proposed distribution of the Net Settlement Funds comply with the terms of the Stipulations and the Plan of Distribution and that all Persons who are involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Proofs of Claim filed in this Action, or who

are otherwise involved in the administration or taxation of the Settlement Funds, or the Net Settlement Funds, are released and discharged from any and all claims arising out of such involvement, and, pursuant to the release terms of the Settlement, all Class Members, whether or not they are to receive payment from the Net Settlement Funds, are barred from making any further claims against the Net Settlement Funds, beyond the amount allocated to Authorized Claimants, and to provide that all Persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Proofs of Claim submitted herein, or otherwise involved in the administration or taxation of the Settlement Funds or Net Settlement Funds, be released and discharged from any and all claims arising out of such involvement; and it is further

ORDERED, that this Order shall not release any claim by Exchange-Based Plaintiffs against the Claims Administrator with respect to distributions, if any, if later discovered to have been made not substantially in accordance with the Stipulations, the Plan of Distribution, or any order of the Court; and it is further

ORDERED, that A.B. Data's request for payment of its estimate for the distributions as set forth above in the amount of \$44,945.93, is approved; and it is further

ORDERED, that A.B. Data is permitted to destroy paper and electronic copies of the Claims and all supporting documentation one year after all funds from these Settlements have been distributed, and the Action has finally terminated; and it is further

ORDERED, that this Court retains jurisdiction over any further application or matter which may arise in connection with this Action.

IT IS SO ORDERED

This _____ day of _____, 2023
New York, New York

Honorable Naomi Reice Buchwald
United States District Judge