

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' REPLY MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT WITH
DEFENDANTS CREDIT SUISSE AG, LLOYDS BANK PLC, BANK OF SCOTLAND
PLC, NATWEST MARKETS PLC, PORTIGON AG, WESTDEUTSCHE
IMMOBILIENBANK AG, ROYAL BANK OF CANADA, RBC CAPITAL MARKETS,
LLC, COÖPERATIEVE RABOBANK U.A., THE NORINCHUKIN BANK, MUFG
BANK, LTD., AND UBS AG AND MOTION FOR ATTORNEYS' FEES AND
REIMBURSEMENT OF LITIGATION EXPENSES**

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Exchange-Based Plaintiffs¹ respectfully submit this reply memorandum of law in further support of their Motion for Final Approval of Class Action Settlement with the Settling Defendants² (ECF Nos. 4092-94) (“Final Approval Motion”) and their Motion for Attorneys’ Fees and Reimbursement of Litigation Expenses (ECF Nos. 4095-98) (“Fee and Expense Application”) filed on August 1, 2024. For the reasons set forth in the opening memoranda in support of the Motions, which arguments are incorporated by reference, and for the reasons set forth herein, Plaintiffs respectfully request that the Court grant the Motions.

The deadline for class members to exclude themselves or object to the Settlement passed on August 15, 2024, and Settlement Class Counsel received zero objections and only two (2) requests for exclusion. *See* the accompanying Supplemental Declaration of Jack Ewashko on Behalf of A.B. Data, Ltd. Regarding Objections and Requests for Exclusions (“Supp. Ewashko Decl.”) ¶5. The positive reaction of this Class of sophisticated commodity futures traders and investors is a strong indication of the fairness, reasonableness, and adequacy of the Settlement, the Plan of Distribution, and Settlement Class Counsel’s request for attorneys’ fees representing a 0.88 risk multiplier and reimbursement of litigation expenses.

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 capitalized terms in this memorandum have the same meaning as set forth in the Stipulation and Agreement of Settlement (“Stipulation”), dated April 8, 2024, attached as Exhibit 1 to the Declaration of David E. Kovel in Support of the Exchange-Based Plaintiffs’ Motion (“Kovel Decl.”), ECF No. 4011. Unless otherwise specified, all references to “ECF No.” herein refer to documents in the docket of the MDL Action, No. 11 MD 2262 (NRB) (S.D.N.Y.). Unless otherwise noted, all emphasis is added and internal citations are omitted.

² “Settling Defendants” or “Remaining Settling Defendants” refers to: (i) Credit Suisse AG; (ii) Lloyds Bank plc and Bank of Scotland plc; (iii) NatWest Markets plc (f/k/a The Royal Bank of Scotland plc); (iv) Portigon AG (f/k/a WestLB) and Westdeutsche Immobilienbank AG (n/k/a Westdeutsche Immobilien Servicing AG); (v) Royal Bank of Canada and RBC Capital Markets, LLC; (vi) Coöperatieve Rabobank U.A. (f/k/a Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A.); (vii) The Norinchukin Bank; (viii) MUFG Bank, Ltd. (f/k/a The Bank of Tokyo-Mitsubishi UFJ, Ltd.); and (ix) UBS AG. Credit Suisse AG merged with and into UBS AG and ceases to exist.

I. The Settlement Should be Approved

The Settlement satisfies the requirements of Fed. R. Civ. P. 23(e) and *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). As explained in the Memorandum of Law in Support of Final Approval (ECF No. 4094), the Settlement is fair, reasonable, and adequate.

“It is well settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy.” *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, No. 05 MD 1720, 2019 WL 6875472, at *16 (E.D.N.Y. Dec. 16, 2019); *see also In re Luxottica Grp. S.p.A. Sec. Litig.*, 233 F.R.D. 306, 312 (E.D.N.Y. 2006) (“Favorable reaction of a class of sophisticated investors evidences fairness, reasonableness, and adequacy.”); *see also In re Signet Jewelers Ltd. Sec. Litig.*, No. 16 Civ. 6728 (CM), 2020 WL 4196468, at *6 (S.D.N.Y. July 21, 2020) (“[T]he favorable reaction of the overwhelming majority of class members to the Settlement is perhaps the most significant factor in [the] *Grinnell* inquiry”). Where “only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.” *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 118 (2d Cir. 2005).

Here, the Notice Program consisted of direct mail, published, and online notice which explained, in clear and concise language, the legal options and monetary benefits available to Settlement Class Members. *See* Declaration of Jack Ewashko on Behalf of A.B. Data, Ltd. Regarding Notice and Claims Administration for Exchange-Based Plaintiffs’ Class Action Settlement with the Settling Defendants (ECF No. 4098-1) ¶¶ 8, 11-12, Exs. A-D. That Settlement Class Counsel did not receive any objections and only two (2) requests for exclusion strongly supports the Settlement’s fairness, reasonableness, and adequacy. *See In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 WL 313474, at *10 (S.D.N.Y.

Feb. 1, 2007) (“minimal number of objections and requests for exclusion militates in favor of approving the settlement as be[ing] fair, adequate, and reasonable”). Notably, the requests for exclusion were filed by direct action plaintiffs who are pursuing individual claims in this multi-district litigation. *See* Supp. Ewashko Decl. ¶5.

II. The Plan of Distribution Should be Approved

The Plan of Distribution, which distributes funds on a *pro rata* basis, is a fair, reasonable, and rational method for distributing the Net Settlement Fund to the Settlement Class. *See Yang v. Focus Media Holding Ltd.*, No. 11 Civ. 9051 (CM), 2014 WL 4401280, at *10 (S.D.N.Y. Sept. 4, 2014) (“Pro-rata distribution of settlement funds based on investment loss is clearly a reasonable approach.”); *In re GSE Bonds*, 414 F. Supp. 3d 686, 694-95 (S.D.N.Y. 2019) (proposed distribution method effective where “the claimant’s pro rata share of the settlement would be obtained by dividing the individual transaction claim amount by the total of all transaction claim amount”). The Plan of Distribution was formulated by experienced counsel with the assistance of a nationally recognized mediator and has been given preliminary approval by the Court. *See In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005) (“An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.”). The Plan of Allocation is also substantively identical to the Revised Plan of Distribution that the Court found fair and adequate in approving the Prior Settlements. *See* ECF Nos. 3175-80.

The Settlement Class’s favorable reaction to the Plan of Distribution strongly supports its fairness, reasonableness, and adequacy. *See In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115809, at *14 (S.D.N.Y. Nov. 7, 2007) (“not one class member has objected to the Plan of Allocation which was fully explained in the Notice of Settlement sent to all Class Members. This favorable reaction of the Class supports approval of the Plan of Allocation”);

Maley v. Del Glob. Techs. Corp., 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) (“the favorable reaction of the Class supports approval of the proposed Plan of Allocation”).

III. Settlement Class Counsel’s Request for Attorneys’ Fees and Reimbursement of Expenses Should be Granted

Settlement Class Counsel’s request for an award of attorneys’ fees representing a 0.88 lodestar multiplier and reimbursement of litigation expenses totaling \$135,349.19 has received no objections from the Settlement Class. The lack of objections from this class of sophisticated institutional investors, who “possess the incentive and ability to object,” *Signet Jewelers*, 2020 WL 4196468, at *6, strongly supports the award as fair and reasonable. *See also In re Prudential Sec. Inc. Ltd. P’ship Litig.*, 985 F. Supp. 410, 416 (S.D.N.Y. 1997) (in “determining the reasonableness of a requested fee, numerous courts have recognized that ‘the lack of objection[s] from members of the class is one of the most important reasons’” considered in approving a fee request); *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115808, at *10 (S.D.N.Y. Nov. 7, 2007) (The reaction of class members to a fee and expense request “is entitled to great weight by the Court,” and the absence of any objection “suggests that the fee request is fair and reasonable.”).

In view of the results achieved, the absence of objections, the reasonableness of the requested percentage, and the lodestar multiplier of less than 1.0, Settlement Class Counsel respectfully assert that their requested fees and expense reimbursement are fair and reasonable and should be approved.

Dated: August 29, 2024

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