

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

STEPHEN SULLIVAN, WHITE OAK FUND LP,  
CALIFORNIA STATE TEACHERS' RETIREMENT  
SYSTEM, SONTERRA CAPITAL MASTER FUND,  
LTD., FRONTPOINT PARTNERS TRADING FUND,  
L.P., AND FRONTPOINT AUSTRALIAN  
OPPORTUNITIES TRUST on behalf of themselves and  
all others similarly situated,

Plaintiffs,

– against –

BARCLAYS PLC, BARCLAYS BANK PLC,  
BARCLAYS CAPITAL INC., BNP PARIBAS S.A.,  
CITIGROUP, INC., CITIBANK, N.A., COÖPERATIEVE  
CENTRALE RAIFFEISEN-BOERENLEENBANK B.A.,  
CRÉDIT AGRICOLE S.A., CRÉDIT AGRICOLE CIB,  
DEUTSCHE BANK AG, DB GROUP SERVICES UK  
LIMITED, HSBC HOLDINGS PLC, HSBC BANK PLC,  
ICAP PLC, ICAP EUROPE LIMITED, J.P. MORGAN  
CHASE & CO., JPMORGAN CHASE BANK, N.A., THE  
ROYAL BANK OF SCOTLAND PLC, SOCIÉTÉ  
GÉNÉRALE SA, UBS AG AND JOHN DOE NOS. 1-50,

Defendants

Docket No.: 13-cv-02811 (PKC)

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR ENTRY OF  
AN ORDER APPROVING DISTRIBUTION OF THE NET SETTLEMENT FUNDS  
FROM SETTLEMENTS WITH BARCLAYS PLC, BARCLAYS BANK PLC,  
BARCLAYS CAPITAL INC., DEUTSCHE BANK AG, DB GROUP  
SERVICES (UK) LTD., HSBC HOLDINGS PLC, HSBC BANK PLC, CITIGROUP INC.,  
CITIBANK, N.A., JPMORGAN CHASE & CO., JPMORGAN CHASE BANK, N.A.,  
CRÉDIT AGRICOLE S.A., CRÉDIT AGRICOLE CIB, AND SOCIÉTÉ GÉNÉRALE**

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Plaintiffs,<sup>1</sup> by and through their counsel, Lowey Dannenberg, P.C. and Lovell Stewart Halebian Jacobson LLP (“Class Counsel”), respectfully submit this memorandum and the accompanying Declaration of Jack Ewashko (the “Ewashko Decl.”) in support of their motion requesting distribution of the Net Settlement Funds from the settlements to date in this Action.

### **INTRODUCTION**

Distribution of the Net Settlement Funds represents a substantial milestone in this Action. For more than eleven years, Class Counsel invested over 133,000 hours to prosecute this Action and obtain the six settlements approved to date totaling \$651,500,000. That work includes thousands of hours coordinating and collaborating with the court-appointed Settlement Administrator, A.B. Data, Ltd. (“A.B. Data”) and subject matter experts from Williamsburg Expert Financial Analysis, LLC (“WEFA”) to ensure that the Distribution Plan was effectively and accurately implemented. After years of helping Claimants file (and in some cases re-file) their claims, answering questions, and implementing processes to determine the *pro rata* shares under the Distribution Plan, Class Counsel is pleased to submit this motion seeking distribution of the settlement proceeds to the claimants eligible to receive payment pursuant to the Distribution Plan (“Authorized Claimants”).

After A.B. Data disseminated notice to the Class, potential Class Members submitted Proofs of Claim (“Claims”) to determine whether they were eligible to receive a portion of the Net Settlement Funds. Ewashko Decl. ¶¶ 6, 8, 11. After a thorough review of all Claims received, A.B.

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<sup>1</sup> “Plaintiffs” are Stephen Sullivan, White Oak Fund LP, California State Teachers’ Retirement System (“CalSTRS”), any subsequently named plaintiff(s), and any of their assignees of any named plaintiff(s) that may exist now or in the future, including but not limited to Fund Liquidation Holdings, LLC. Unless otherwise defined herein, all capitalized terms have the same meaning as in the Stipulations and Agreements of Settlement (“Settlement Agreements”) with Barclays plc, Barclays Bank plc, and Barclays Capital Inc.; Deutsche Bank AG and DB Group Services (UK) Ltd.; HSBC Holdings plc and HSBC Bank plc; Citigroup Inc., Citibank, N.A., JPMorgan Chase & Co., and JPMorgan Chase Bank, N.A.; Crédit Agricole S.A. and Crédit Agricole CIB; and Société Générale, and in the Distribution Plan. See ECF Nos. 218-1, 276-1, 360-1, 451-1, 518-1, 562-1 (Settlement Agreements) and 382-1 (Distribution Plan). Unless noted, ECF citations are to the docket in this Action.

Data determined that 10,592 Claims are eligible to receive a payment. *Id.* ¶ 15. Upon the Court's entry of the Distribution Order, each Authorized Claimant will receive its *pro rata* share of the Net Settlement Funds,<sup>2</sup> which will compensate these eligible Class Members for a portion of their total losses caused by Defendants' misconduct.

A.B. Data proposes distributing the Net Settlement Funds in two phases. In the first phase (the "Initial Distribution"), each Authorized Claimant whose *pro rata* share of the Net Settlement Funds (the "Distribution Amount") is less than \$250,000 will receive their full Distribution Amount. *Id.* ¶ 43. This includes Claimants who will receive the guaranteed minimum payment of \$30.00 (the "Minimum Payment"). The remaining Authorized Claimants whose Distribution Amount is greater than or equal to \$250,00 will receive eighty-five (85) percent of their Distribution Amount from the Initial Distribution. *Id.* The remaining 15% of the Distribution Amounts will be held in reserve for contingencies and later distribution. *Id.*; *see, e.g.*, Order Approving Distribution of the Net Settlement Fund, *In re GSE Bonds Antitrust Litig.*, No. 19-cv-1704 (JSR) (S.D.N.Y), ECF No. 451 (Apr. 23, 2021) ("*GSE* Distribution Order").

Claimants have been advised of A.B. Data's determinations and of their ability to submit a written statement with supporting information should they wish to contest their determination. To the extent any Claimant exercises that right and A.B. Data disagrees with the Claimant's position, the written statement will be submitted to the Court within twenty (20) business days of this filing for its review and ultimate resolution. Notwithstanding, Class Counsel and A.B. Data believe that these determinations are accurate based on the information provided and should be approved. Accordingly, Plaintiffs respectfully request that the Court adopt the Settlement

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<sup>2</sup> "Net Settlement Funds" means the means the total of the Settlement Funds from the six Settlements minus the costs, expenses, and fees approved by the Court. For the avoidance of doubt, such costs, expenses and fees include all taxes, attorneys' fees, class representative fees, settlement administration fees, or other costs or fees of any nature whatsoever that are approved by the Court. As of June 27, 2024, the Net Settlement Funds total \$551,840,792.75.

Administrator's determinations and authorize A.B. Data to implement its proposal to distribute the Net Settlement Funds.

## **I. CLAIMS ADMINISTRATION PROCESS**

The sections below summarize A.B. Data's efforts to: (a) process and identify eligible Claims; (b) audit Claims; (c) advise Claimants of A.B. Data's final determinations concerning their Claims; and (d) complete a quality assurance review. A summary of A.B. Data's determinations is also provided.

### **A. Identification of Eligible Claims and Transactions**

A.B. Data reviewed each Claim to determine whether it was eligible on both the claim-level and on the transaction-level. Ewashko Decl. ¶¶ 16-21. To be eligible, a Claim had to include:

- At least one eligible Euribor Products transaction during the Class Period and related data;
- Valid documentation to support the Euribor Products transactions included in the Claim; and
- Information demonstrating that the Euribor Products transactions in the Claim had a connection to the United States.

*Id.* ¶¶ 18-19. In addition, each Claim needed to remain in good standing, meaning that the Claim was not withdrawn, replaced, or duplicative of another Claim. *Id.* ¶ 20. To be eligible for inclusion in the Distribution Plan calculation, each transaction had to be, among other criteria, an eligible Euribor Products transaction that occurred during the Class Period and be free of other deficiencies determined by A.B. Data. *Id.* ¶ 21.

### **B. Final Disposition and Deficiency Letters**

After completion of the deficiency process, A.B. Data calculated the Total Adjusted Volume of the eligible Euribor Products transactions and assessed whether the applicable

transactions calculated to a Total Adverse Impact under the Distribution Plan. Ewashko Decl. ¶ 22. A.B. Data then sent a letter to each Claimant that provided a final disposition of the Claim and described any identified deficiencies (the “Final Disposition and Deficiency Letter”). *Id.* For Claims that were incomplete or had one or more deficiencies, the Final Disposition and Deficiency Letter: (i) identified any claim-level or transaction-level deficiencies and described what, if anything, was necessary to cure the identified defect; (ii) explained that any claim-level deficiencies that were not corrected within the time period specified would result in the rejection of the Claim in its entirety, and any transaction-level deficiencies that were not corrected within the time period specified would result in the rejection of the transaction from the artificiality calculation under the Distribution Plan; (iii) provided instructions on how to submit corrections (if applicable); and (iv) advised Claimants of their right to contest the rejection of their Claims or certain transaction(s) in their Claims by requesting Court review of A.B. Data’s administrative determinations. *Id.* ¶ 24. The Final Disposition and Deficiency Letter also provided the Total Adjusted Volume and Total Adverse Impact calculation (if applicable) pursuant to the Distribution Plan for each Claimant whose Claim was accepted and advised the Claimant of its right to object to A.B. Data’s determination. *Id.* ¶ 23. A Claimant seeking to object to A.B. Data’s determination was required to submit a written statement requesting additional review of their Claim and setting forth the basis for the objection. *Id.* ¶¶ 24, 27-28.

Responses to any deficiencies were evaluated by A.B. Data’s team of processors. *Id.* ¶ 29. If a Claimant’s response corrected the defect(s), A.B. Data updated the database to reflect the changes in the status of the Claim or transaction. *Id.* If Claim-level deficiencies were not cured, the Claims were rejected. *Id.* If transaction-level deficiencies were not cured, the relevant transactions remained excluded from the Distribution Plan calculation. *Id.*

After completing its review of any information submitted in response to the Final Disposition and Deficiency Letters, performing an additional audit of the Total Adverse Impact/Total Favorable Impact and Total Adjusted Volume calculations across Claims, and auditing (and, if applicable, making corrections to) the programs that perform the required calculations under the Distribution Plan, A.B. Data provided Claimants with updated Final Disposition and Deficiency Letters. *Id.* ¶ 30. The updated Final Disposition and Deficiency Letters provided updated calculations of the Total Adjusted Volume and Total Adverse Impact (if applicable) and advised that Class Counsel would file their motion for distribution of the Net Settlement Funds. The updated letter also informed Claimants that if they disagreed with the calculation of their Total Adjusted Volume and Total Adverse Impact, such Claimants must submit, within ten (10) business days of the date of the letter, a signed written statement stating the reasons for contesting the determinations, along with documentation supporting a different Recognized Claim Amount and/or Total Volume calculation under the Distribution Plan. *Id.*

To the extent any Claimant contests its determination, and such dispute is not otherwise resolved, Class Counsel will provide the Claimant's submission to the Court along with its position on the contest within twenty (20) business days of this filing. *Id.* ¶ 31.

### **C. Claims Auditing**

A.B. Data also performed targeted audits of transactions from certain Claims. Audited Claimants were asked to provide broker/custodian statements, confirmation slips or other transaction-specific documentation supporting the specific sample transaction(s) selected by A.B. Data for audit. Ewashko Decl. ¶¶ 32-33. These targeted audits helped to ensure that transaction data supplied by Claimants did not contain false or inaccurate information. *Id.* ¶ 33. The Claims selected to submit their underlying confirmations and other documentation for audit included:



- Large Claims: A.B. Data requested supporting documentation from the Claimants comprising the top 25% of Total Adverse Impact under the Distribution Plan. *Id.*
- Unusually Large Claims from Individuals or Claims from Questionable Filers: A.B. Data requested supporting documentation from all Claimants that had been previously identified as questionable claim filers and from other individuals whose Claims had a notional value that appeared unusually large based on A.B. Data's or WEFA's review. *Id.*
- Bulk Filer Claims: Certain Claims submitted by (a) financial institutions on behalf of multiple customers and (b) agents such as claims aggregators and law firms on behalf of their customers/clients (collectively, "Bulk Filer Claims") were also selected to be included in the audit. *Id.*

A.B. Data sent an email to each auditee (the "Audit Letter"), asking that these Claimants provide the requested documentation or data. *Id.* ¶ 34. Each Claimant was advised that failing to timely respond and provide the requested information within a specified time period would result in the Claim's rejection. *Id.* In total, A.B. Data audited 5,500 Claims (the "Audited Claims"). *Id.* ¶ 35. The filers for 5,201 Audited Claims responded to the Audit Letter. *Id.* ¶ 36.

Upon receiving data from the Audited Claims, A.B. Data's ECF Team evaluated all transaction-level data provided for the Audited Claims to confirm the eligibility of each transaction. *Id.* As a result of the audit, 4,800 of the Audited Claims passed with no rejections or adjustments. *Id.* ¶ 37. The remaining 700 Audited Claims were fully rejected. *Id.* ¶ 38. These include (a) 299 Claims for which no response was submitted and (b) 401 Claims where the Claimants were unable to provide the requested documentation.

#### **D. Quality Assurance Review**

A.B. Data's Quality Assurance Department operated as an independent auditor to ensure that the settlement administration followed the Distribution Plan and commonly accepted claims administration practices. Ewashko Decl. ¶ 39. The department performed a quality assurance review of the Claims during which A.B. Data: (a) verified that all Claim Forms were signed by authorized individuals; (b) verified that true duplicate Claims were identified and rejected; (c) verified that persons and entities excluded from the Class or particular Settlements did not file Claims and, if such persons or entities did file Claims, that their Claims were rejected or properly excluded from the *pro rata* calculation of the applicable Net Settlement Fund(s); (d) audited Claims and all supporting documentation to ensure completeness of Claims; (e) reviewed Claims flagged as deficient or invalid; (f) confirmed all Claimants that were to receive a deficiency and/or rejection notice were sent such notification; (g) performed additional reviews of Claims with a high *pro rata* share of the Net Settlement Funds; (h) audited the approved calculation specifications based on the Distribution Plan; and (i) updated and re-tested the accuracy of the program that calculated the allocation from Net Settlement Funds. *Id.* A.B. Data also confirmed that it compared the Claimant list against its list of known questionable claim filers and issued an Audit Letter to Claimants that appeared on the questionable claim filer list. *Id.* ¶ 40.

#### **E. A.B. Data Claims Determinations**

A total of 46,359 Claims were submitted on or before the Claim deadline of November 30, 2023, of which 9,270 Claims were determined by A.B. Data to have eligible Euribor Products transactions ("Timely Eligible Claims"). Ewashko Decl. ¶ 13. A total of 1,352 Claims were submitted after the November 30, 2023 Claim submission deadline ("Late Claims"). *Id.* ¶ 14. Of

those, 1,322 Claims were determined by A.B. Data to have eligible Euribor Products transactions (“Late But Otherwise Eligible Claims”). *Id.*

In total, there are 10,592 Claims with eligible Euribor Products transactions. *Id.* ¶ 15. These Authorized Claims are thus eligible to receive their Distribution Amount based on their Total Adverse Impact and/or their Total Adjusted Volume pursuant to the Distribution Plan.

A.B. Data further recommends that the Court reject the remaining 37,119 Claims, which include Claims that: were withdrawn (724), replaced (4,879), or submitted in duplicate (1,438), did not have a U.S. connection (6); or did not have any eligible Euribor Products transactions or failed to provide acceptable documentation (30,072). *Id.* ¶ 14.

## **II. DISTRIBUTION PROCEDURE FOR THE NET SETTLEMENT FUNDS**

A.B. Data recommends that the distribution of the Net Settlement Funds occur in two phases, starting with the Initial Distribution and followed by the Second Distribution involving any remaining funds.

### **A. Claimants Receiving the \$30 Minimum Payment**

All Authorized Claimants whose Distribution Amount is greater than \$0 and less than \$30 will receive a minimum payment of \$30 (“Minimum Payment”) during the Initial Distribution (the “Minimum Payment Claims”). Ewashko Decl. ¶ 43(a)(2). Awarding a Minimum Payment ensures these Authorized Claimants will receive a meaningful payment without substantially reallocating the Net Settlement Fund. The implementation of a payment floor also provides administrative savings that ensures the cost to administer these Claims does not exceed their value under the Distribution Plan. *Id.* A total of 5,633 Authorized Claimants will receive the Minimum Payment, which totals 0.031% of the Net Settlement Funds. *Id.* If these Minimum Payment Claims received their *pro rata* share of the Net Settlement Funds, 0.00484% of the Net Settlement Funds would be distributed. *Id.* The reallocation of 0.026% of the Net Settlement Fund to these Minimum Payment

Claims is within the range accepted by courts for purposes of administrative cost savings. *See, e.g., Alaska Elec. Pension Fund v. Bank of Am., Corp.*, No. 14-cv-7126 (JMF), 2020 WL 916853, at \*2 (S.D.N.Y. Feb. 26, 2020) (approving \$100 minimum payment, which totaled less than 1% of the settlement fund on basis that the minimum payment reduced claims administration costs); *GSE Distribution Order* (approving distribution motion where minimum payment reallocated approximately 1% of the Net Settlement Fund to save administrative costs, *see* Mem. of Law in Support of Plaintiffs' Motion for Entry of an Order Approving Distribution of the Net Settlement Fund to Authorized Claimants, *In re GSE Bonds Antitrust Litig.*, No. 19-cv-1704 (JSR) (S.D.N.Y.), ECF No. 447 (Dec. 3, 2020)).

**B. Claimants Receiving Their Full Distribution Amount during the Initial Distribution**

All Authorized Claimants whose Distribution Amount is greater than or equal to \$30 but less than \$250,000 will receive their full Distribution Amount in the Initial Distribution. Ewashko Decl. ¶ 43(a)(4). There are 4,763 Authorized Claimants whose Distribution Amount falls within this category. Ewashko Decl., Ex. E. Paying these Authorized Claimants in full during the Initial Distribution means fewer Authorized Claimants will need to be included in any Second Distribution, reducing the administrative costs associated with such an effort.

**C. Claimants Receiving 85% of Their Distribution Amount in Initial Distribution**

For the 196 Authorized Claimants whose *pro rata* share of the Net Settlement Funds results in a Distribution Amount greater than or equal to \$250,000, A.B. Data will distribute eighty-five percent of the remaining balance of the Net Settlement Fund *pro rata*. Ewashko Decl. ¶ 43(a)(5), Ex. E. For example, if an Authorized Claimant's Distribution Amount is \$200,000, it will receive \$170,000 in the Initial Distribution.

The remaining 15% will be set aside in reserve to address any contingencies that may arise as well as to pay any further tax obligations, fees or expenses incurred through the administration of the Net Settlement Funds. Ewashko Decl. ¶ 43(a)(6). The establishment of a reserve is a customary practice of claim administrators in complex cases and has been approved by courts. *See, e.g., Alaska Elec. Pension Fund*, 2020 WL 916853, at \*2 (approving initial distribution with an 8% reserve); *GSE Distribution Order*, at ¶ 3 (approving initial distribution with a 10% reserve).

#### **D. Payment Terms and Second Distribution**

Once the time to negotiate the distribution checks from the Initial Distribution has elapsed (approximately 90 days), and after reasonable efforts have been made to encourage Authorized Claimants to cash their checks, the proceeds from all void, stale-dated, or returned checks and failed wire transfers from the Initial Distribution will be combined with any funds remaining in reserve and made available for reallocation in a Second Distribution. Ewashko Decl. ¶ 43(b).

Class Counsel and A.B. Data will assess whether a Second Distribution is feasible and cost-effective. *Id.* ¶ 43(d). After accounting for any outstanding fees and expenses of administration or other contingencies, and unless the Court approves a request by Class Counsel to do otherwise, a Second Distribution will allocate any funds that remain in reserve to all Authorized Claimants that: (a) received a Distribution Amount of \$250,000 or more; and (b) negotiated their first distribution payments; and (c) are entitled to at least \$30 from such redistribution based on their *pro rata* share of the remaining funds. *Id.*

### **III. RECORD RETENTION AND DESTRUCTION**

Class Counsel requests that A.B. Data be permitted to destroy paper and electronic copies of Claims one year after (a) all Net Settlement Funds in connection with these Settlements and any subsequent settlements that may be reached in this Action have been distributed; and (b) the Action has finally terminated. *See* Ewashko Decl. ¶ 43(f).

**IV. SETTLEMENT ADMINISTRATOR EXPENSES TO DATE AND COST TO COMPLETE DISTRIBUTION**

To date, the costs of notice and administration for the Settlements total \$4,843,534.16, for which A.B. Data has been or will be paid in full. Ewashko Decl. ¶ 44. A.B. Data anticipates that the additional cost to complete the administration for these Settlements and distribution of the Net Settlement Funds will be \$78,213.72. *Id.* This cost includes the work described in the Ewashko Decl. Class Counsel respectfully request that the Court enter the Distribution Order, which authorizes payment of up to \$78,213.72 for the costs and expenses expected to be incurred with the distribution of the Net Settlement Funds.<sup>3</sup>

**CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion to distribute the Net Settlement Funds and enter the accompanying Distribution Order.

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<sup>3</sup> To the extent additional expenses are incurred beyond the \$78,213.72 estimate, Class Counsel will make an application to the Court to pay any additional administration expenses.

Dated: June 28, 2024  
White Plains, New York

Respectfully submitted,

**LOWEY DANNENBERG, P.C.**

/s/ Vincent Briganti

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