

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE LIBOR-BASED FINANCIAL)	MDL No. 2262
INSTRUMENTS ANTITRUST LITIGATION)	
_____)	
THIS DOCUMENT RELATES TO:)	Master File No. 1:11-md-02262-NRB
Case No. 12-CV-1025 (NRB))	ECF Case
_____)	

REPLY MEMORANDUM IN SUPPORT OF BONDHOLDER PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENTS WITH MUFGBANK, LTD., CREDIT SUISSE GROUP AG, AND THE NORINCHUKIN BANK, AND OF THE PLAN OF ALLOCATION; AND CLASS COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS

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RULES

Fed. R. Civ. P. 23(e)1

I. INTRODUCTION

On February 15, 2023, Bondholder Plaintiffs¹ filed motions for final approval of the Subsequent Settlements² (ECF No. 3635-1), and for an award of attorneys' fees, reimbursement of litigation expenses, and service awards for the named class representatives. (ECF No. 3636-1). Objections to any aspect of either motion, or any request to opt out of the Subsequent Settlement Classes had to be post marked no later than March 1, 2023. To date, twelve days after the objection and opt out deadline, no objections and only 10 opt outs have been received. Not a single member of the sophisticated, largely institutional Settlement Class has objected to the relief requested in the Motions: (i) final approval of the Subsequent Settlements; (ii) confirmation of the certification of the Subsequent Settlement Classes; (iii) final approval of the Plan of Allocation; (iv) confirmation of the appointment of Class Counsel; (v) an award of attorneys' fees and reimbursement of litigation expenses as requested; and (vi) approval of service awards to Bondholder Plaintiffs.

For the reasons set forth in the opening memoranda in support of each of the Motions, which arguments are incorporated by reference, and for the reasons set forth herein, it is respectfully requested that the Court grant the motions.

II. THE SUBSEQUENT SETTLEMENTS SHOULD BE APPROVED

The brief in support of the Final Approval Motion³ explained why the Subsequent Settlements meet the factors governing final approval as set forth in 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*

¹ Unless defined herein, all capitalized words have the same meaning as set forth in the Motions and in the Subsequent Settlement Agreements.

² The Subsequent Settlements were entered into between Bondholder Plaintiffs and MUFG, Credit Suisse, and Norinchukin.

³ ECF No. 3635-2.

by *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). In the absence of any objectors, there is no need to repeat those arguments here.

Indeed, the absence of objectors demonstrates the favorable reaction of members of the Subsequent Settlement Classes to the Subsequent Settlements, reinforcing the conclusion that they are fair, reasonable and adequate. The “[f]avorable reaction of a class of sophisticated investors evidences [the] fairness, reasonableness, and adequacy” of a proposed settlement. *In re Luxottica Grp. S.p.A. Sec. Litig.*, 233 F.R.D. 306, 312 (E.D.N.Y. 2006) (citing *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 425 (S.D.N.Y. 2001)). *See also In re Sturm, Ruger, & Co., Inc. Sec. Litig.*, No. 3:09-cv-1293 (VLB), 2012 WL 3589610, at *5 (D. Conn. Aug. 20, 2012) ((The lack of objections is evidence of fairness).

In fact, the Second Circuit has gone so far as to say that “the favorable reaction of the overwhelming majority of class members to the Settlement is perhaps the *most significant factor* in [the] *Grinnell* inquiry.” *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 119 (2d Cir. 2005) (italics added); Because of the importance of the classes’ reaction, the Second Circuit has observed that “[i]f only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.” *Id.* As noted above, there were no objections to the Subsequent Settlements or to any of the other relief sought in the motions. There were ten (10) requests for exclusion from the Settlement Classes. Supplemental Declaration of Cameron R. Azari Regarding Implementation of the Notice Plan, ¶ 7. These requests covered fifty (50) separately named institutions and entities and one (1) individual. *Id.* All of the institutional investors are plaintiffs in preexisting actions in this MDL, *id.*, and Settling Defendants have informed Class Counsel that they will not exercise their rights to terminate the Settlement Agreements. Morris-Kitchenoff Supplemental Declaration, ¶ 6.

Class Counsel respectfully contend that the absence of objections and the limited number of exclusions overwhelmingly support final approval of the Subsequent Settlements. *E.g., Luxottica*, 233 F.R.D. at 312 (settlement approval warranted where “not a single objection to the settlement” was received); *Am. Bank Note*, 127 F. Supp. 2d at 425 (no objections and low number of exclusions warrants settlement approval). The Court should therefore grant the Final Approval Motion.

III. THE PLAN OF ALLOCATION SHOULD BE APPROVED

Courts routinely approve *pro-rata* distributions like the one proposed here. *See, e.g., Yang v. Focus Media Holding Ltd.*, No. 11-civ-9051 (CM) (GWG), 2014 WL 4401280, *10 (S.D.N.Y. Sept. 4, 2014) (“Pro-rata distribution of settlement funds based on investment loss is clearly a reasonable approach.” (citation omitted)). There were no objections to the Plan of Allocation. Morris-Kitchenoff Supplemental Declaration, ¶ 5. The uniformly favorable reaction of members of the Subsequent Settlement Classes further supports approval of the Plan of Allocation. *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695(CM), 2007 WL 4115809, at *14 (S.D.N.Y. Nov. 7, 2007) (“[N]ot 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.”) (citation omitted); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) (“[T]he favorable reaction of the Class supports approval of the proposed Plan of Allocation.”).

The Court previously granted final approval to the identical Plan of Allocation in the Final Judgment entered in connection with the Initial Bondholder Settlements. ECF 3246, ¶ 5. Given the Court’s prior ruling, the lack of any objection by any member of the Subsequent Settlement Classes to the Plan of Allocation, and Class Counsel’s intent to conserve the Net

Settlement Fund for the benefit of the Initial and Subsequent Settlement Classes by doing a single distribution for all of the settlements, Class Counsel respectfully request that the Court approve the Plan of Allocation for use in distributing the Subsequent Settlement Funds.

IV. CLASS COUNSEL’S REQUEST FOR ATTORNEYS’ FEES AND REIMBURSEMENT OF EXPENSES SHOULD BE GRANTED.

The absence of any objections to the request for an award of attorneys’ fees and the reimbursement of litigation expenses likewise evinces strong support for the efforts of and results achieved by Class Counsel, and supports a finding that the requested fees and expenses are reasonable under the circumstances of this litigation. *See, e.g., In re Signet Jewelers Limited Securities Litig.*, No. 1:16-cv-06728-CM-SDA, 2020 WL 4196468, *21 (S.D.N.Y. July 21, 2020) (“The absence of any objections to the requested attorneys’ fees and [l]itigation [e]xpenses supports a finding that the request is fair and reasonable.”); *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.”) (citation omitted).

In view of the results achieved, the absence of objections, the reasonableness of the requested percentage, and the cross-check multiplier of less than 1.0, Class Counsel respectfully contend that their requested fee is fair and reasonable and should be approved. Class Counsel’s requested expense reimbursement is also reasonable and should also be approved.

V. BONDHOLDER PLAINTIFFS SHOULD RECEIVE SERVICE AWARDS

There were no objections to the request for \$2,500 in service awards to each of the two Bondholder Plaintiffs. As noted in the memorandum of law in support of the Fees and

Expenses Motion (ECF No. 3636-2), the named plaintiffs' continued participation and dedication to the Bondholder Action, in the face of the repeated dismissal of their claim, was essential in securing the Subsequent Settlements. Therefore, these requests should also be approved.

VI. A REVISED FINAL JUDGMENT AND ORDER IS HEREWITH SUBMITTED

In connection with this reply memorandum, Class Counsel submit a revised proposed final judgment and order to include, at Exhibit 1, the entire list of the entities and individuals that have requested to be excluded from the Settlement Classes. This revision is necessary because the final list of opt-outs was not available to Class Counsel at the time their initial Final Approval Motion papers were filed on February 15, 2023. The deadline to opt out of the Subsequent Settlement Classes did not occur until March 1, 2023.

VII. CONCLUSION

For these reasons and those stated in the initial memoranda in support of the Motions, the Court should grant the Final Approval Motion and award fees, reimbursement of expenses, and service awards as sought in the Fees and Expenses Motion.

Dated: March 13, 2023

Respectfully submitted,

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