

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

FUND LIQUIDATION HOLDINGS LLC, as assignee and successor-in-interest to FrontPoint Asian Event Driven Fund L.P., MOON CAPITAL PARTNERS MASTER FUND LTD., and MOON CAPITAL MASTER FUND LTD., on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

CITIBANK, N.A., BANK OF AMERICA, N.A., JPMORGAN CHASE BANK, N.A., THE ROYAL BANK OF SCOTLAND PLC, UBS AG, BNP PARIBAS, S.A., OVERSEA-CHINESE BANKING CORPORATION LTD., BARCLAYS BANK PLC, DEUTSCHE BANK AG, CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, CREDIT SUISSE AG, STANDARD CHARTERED BANK, DBS BANK LTD., ING BANK, N.V., UNITED OVERSEAS BANK LIMITED, AUSTRALIA AND NEW ZEALAND BANKING GROUP, LTD., THE BANK OF TOKYO-MITSUBISHI UFJ, LTD., THE HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED, COMMERZBANK AG, AND JOHN DOES NOS. 1-50,

Defendants.

Docket No. 16-cv-05263 (AKH)

**MEMORANDUM OF LAW IN SUPPORT OF REPRESENTATIVE PLAINTIFFS'  
MOTION FOR ENTRY OF AN ORDER APPROVING DISTRIBUTION OF THE NET  
SETTLEMENT FUNDS TO AUTHORIZED CLAIMANTS**

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Representative Plaintiffs Fund Liquidation Holdings, LLC, individually and as assignee and successor-in-interest to FrontPoint Asian Event Driven Fund, L.P., Moon Capital Partners Master Fund Ltd., and Moon Capital Master Fund Ltd. (“Representative Plaintiffs”), by and through their counsel, Lowey Dannenberg, P.C. (“Plaintiffs’ Counsel”), respectfully submit this memorandum and the accompanying Declaration of Jack Ewashko (the “Ewashko Decl.”) in support of their motion seeking approval of the proposed distribution of the Net Settlement Funds.

### **INTRODUCTION**

Plaintiffs’ Counsel is pleased to submit this motion seeking distribution of the settlement proceeds to Authorized Claimants impacted by the alleged manipulation of SIBOR- and/or SOR-Based Derivatives. For the last six months, the Court-appointed Settlement Administration, A.B. Data, Ltd. (“A.B. Data”) and Plaintiffs’ Counsel have worked quickly and diligently to process Claims, answer questions, and implement the Distribution Plan approved by the Court in this Action. After a thorough review of all Claims, A.B. Data determined that 914 Claims are eligible to receive a payment. Ewashko Decl. ¶ 16. Upon the Court’s entry of the Distribution Order, each Authorized Claimant will receive its *pro rata* share of the Net Settlement Funds.<sup>1</sup>

A.B. Data proposes distributing the Net Settlement Funds in two phases. In the first phase (the “Primary Distribution”), each Authorized Claimant whose *pro rata* share of the Net Settlement Funds (the “Distribution Amount”) is less than \$20,000.00 will receive the full Distribution Amount. Ewashko Decl. ¶ 44. The remaining Authorized Claimants whose Distribution Amount is greater than or equal to \$20,000.00 will receive ninety percent (90%) of

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<sup>1</sup> “Net Settlement Funds” means the Settlement Funds provided by the seven settlements in this Action plus any accrued interest, less deductions for tax payments, claims administration and escrow costs, and any Court-approved awards. As of June 30, 2023, the Net Settlement Funds (not including accrued interest) total \$115,416,587.66 million. Interest will continue to accrue on the Net Settlement Funds until the time of distribution and is expected to exceed \$2,500,000.

their Distribution Amount from the Primary Distribution. *Id.* The remaining ten percent (10%) 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*”); Order Approving Distribution of the Net Settlement Fund, *Laydon v. The Bank of Tokyo-Mitsubishi UFJ, Ltd., et al.*, No. 12-cv-3419 (GBD) (S.D.N.Y.), ECF No. 1098 (Mar. 14, 2023) (“*Laydon Distribution Order*”).

Importantly, there are no objections to A.B. Data’s determinations.

## **I. CLAIMS ADMINISTRATION PROCESS**

The sections below summarize A.B. Data’s efforts to: (a) identify eligible Claims; (b) advise Claimants of A.B. Data’s deficiency findings and final dispositions concerning their Claims; (c) audit 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. ¶¶ 18-24. To be eligible, a Claim had to include:

- eligible SIBOR- and/or SOR-Based Derivatives transaction(s) during the Class Period and related data;
- valid documentation to support the SIBOR- and/or SOR-Based Derivatives transactions included in the Claim; and
- information demonstrating that the SIBOR- and/or SOR-Based Derivatives transactions in the Claim had a connection to the United States.

*Id.* ¶¶ 20-22, 24. In addition, each Claim needed to remain in good standing, meaning that the Claim was not withdrawn, replaced, or duplicative of another Claim. *Id.* ¶ 23.

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

After reviewing all filed Claims, A.B. Data notified each Claimant of the final disposition of the Claim and further identified any Claim-level or transaction-level deficiencies. Ewashko Decl. ¶¶ 25-26. If the Claim was rejected in part or in whole, the reason(s) for the rejection was referenced. *Id.* The final disposition information provided the Transaction Claim Amount calculation pursuant to the Distribution Plan (if applicable) for each Authorized Claimant whose Claim was accepted. *Id.*

A.B. Data's correspondence also advised each Claimant of its right to object to A.B. Data's determination. *Id.* ¶¶ 25, 29. 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.* ¶ 29. For Claimants that provided additional information in response to the deficiency notice, an updated final disposition was provided to the extent that the Claimant's response resolved the noted deficiency. *Id.* ¶ 28. As of this filing, A.B. Data has not received any objections or requests for Court review of its administrative determination. *Id.* ¶¶ 31-32.

## **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. ¶¶ 33-34. These targeted audits helped to ensure that transaction data supplied by Claimants did not contain false or inaccurate information. *Id.* ¶ 34. 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 93% of the Transaction Claim Amounts under the Distribution Plan. *Id.* ¶ 34.
- 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.* ¶ 34.

A.B. Data sent an email (or letter) to each auditee (the “Audit Letter”), asking that these Claimants provide the requested documentation or data. *Id.* ¶ 35. 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.* ¶ 35. In total, A.B. Data audited 14 Claims (the “Audited Claims”). Ten Claimants responded to the Audit Letter. *Id.* ¶¶ 37-38.

Upon receiving data from the Audited Claims, A.B. Data’s Electronic Claim Filing Team evaluated all transaction-level data provided to confirm the eligibility of each audited transaction. As a result of the audit, 10 of the Audited Claims passed with no rejections or adjustments. *Id.* ¶ 38. Four of the Audited Claims were fully rejected. *Id.* ¶ 39. This includes (a) one Claim for which no response was submitted and (b) three Claims where transaction-specific documentation supporting the Claim could not be provided. These Claims are included in Exhibit C to the Ewashko Decl. as rejected in full. *Id.* ¶ 39.

#### **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. ¶ 40. 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 Claims whose Transaction Claim Amount calculation equaled zero; (i) audited the approved calculation specifications based on the Distribution Plan; and (j) re-tested the accuracy of the program that calculated the allocation from Net Settlement Funds. *Id.* ¶ 40. A.B. Data also confirmed that it compared the Claimant list against its list of known questionable claim filers. *Id.* ¶ 41.

#### **E. A.B. Data's Claim Determinations**

A total of 1,106 Claims were submitted on or before the Claim deadline of January 20, 2023, of which 573 were determined by A.B. Data to have eligible SIBOR- and/or SOR-Based Derivatives transactions ("Timely Eligible Claims"). Ewashko Decl. ¶ 14.

A total of 368 Claims were submitted after the January 20, 2023 Claim submission deadline ("Late Claims"). *Id.* ¶¶ 15, 42. Of those, 341 were determined by A.B. Data to have eligible SIBOR- and/or SOR-Based Derivatives transactions. *Id.* These otherwise eligible Late Claims are recommended for payment because the late submission did not delay the distribution of the Net Settlement Funds. *Id.* Twenty-Seven Late Claims were ineligible for reasons other than timeliness. *Id.* ¶ 15.



In total, there are 914 Claims with eligible SIBOR- and/or SOR-Based Derivatives transactions that may receive their Distribution Amount pursuant to the Distribution Plan. *Id.* ¶ 16.

A.B. Data further recommends that the Court reject the remaining 560 Claims, which include Claims that: were withdrawn (27), replaced (46), submitted in duplicate (42), had no US connection (1), did not satisfy the audit request (4), or did not have eligible transactions or failed to provide acceptable data or documentation concerning the transactions (440). *Id.* ¶ 17.

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

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

### **A. Claimants Receiving the \$500.00 Minimum Payment**

All Authorized Claimants whose Distribution Amount is less than \$500.00 will receive a minimum payment of \$500.00 (“Minimum Payment”) during the Primary Distribution (the “Minimum Payment Claims”). Ewashko Decl. ¶ 44. 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 515 Authorized Claimants will receive the Minimum Payment, which totals 0.22% of the Net Settlement Funds. *Id.* ¶ 44. If these Minimum Payment Claims received their *pro rata* share of the Net Settlement Funds, 0.03% of the Net Settlement Funds would be distributed. *Id.* ¶ 44. The reallocation of 0.19% 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)); *Laydon* Distribution Order (approving distribution motion including a \$100 minimum payment totaling 0.087% of the net settlement fund and reallocating 0.072% of the net settlement fund to reduce administrative costs), *see* Mem. of Law in Support of Plaintiffs’ Motion for Entry of an Order Approving Distribution of the Net Settlement Fund, *Laydon*, ECF No. 1091 (Feb. 16, 2023).

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

All Authorized Claimants whose *pro rata* Distribution Amount is between \$500.00 and less than \$20,000.00 will receive their full Distribution Amount in the Primary Distribution. Ewashko Decl. ¶ 44. There are 304 Authorized Claimants whose Distribution Amount is between \$500.00 and less than \$20,000.00 based on their *pro rata* share calculation. *Id.* ¶ 44. Paying these Authorized Claimants in full during the Primary Distribution means fewer Authorized Claimants will need to be included in any subsequent distributions, reducing the administrative costs associated with such an effort.

**C. Claimants Receiving 90% of Their Distribution Amount in the Primary Distribution**

The remaining 95 Authorized Claimants, whose *pro rata* share of the Net Settlement Funds results in a Distribution Amount equal to or greater than \$20,000.00, will receive 90% of their Distribution Amount in the Primary Distribution. Ewashko Decl. ¶ 44. So, for example, if

Claimant X's Distribution Amount under the Distribution Plan is \$200,000, it will receive \$180,000.00 in the Primary Distribution.

The remaining 10% 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. *Id.* ¶ 44. 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); *Laydon Distribution Order* (approving initial distribution with a 10% reserve).

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

Once the time to negotiate the distribution checks from the Primary 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 Primary Distribution will be combined with any funds set aside in reserve and made available for reallocation in a subsequent distribution. *Ewashko Decl.* ¶ 44.

After accounting for any outstanding fees and expenses of administration or other contingencies, and unless the Court approves a request by Plaintiffs' Counsel to do otherwise, a Secondary Distribution (and any subsequent distributions) will allocate any funds that remain in reserve to all Authorized Claimants that: (a) received a Distribution Amount of \$20,000.00 or more; and (b) negotiated their first distribution payments; and (c) are entitled to at least \$500.00 from such redistribution based on their *pro rata* share of the remaining funds. *Id.* ¶ 44.

**III. RECORD RETENTION AND DESTRUCTION**

Plaintiffs' 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 have been distributed; and (b) the Action has finally terminated. *See* Ewashko Decl. ¶ 44.

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

To date, the costs of notice and administration for the Settlements total \$569,793.34, for which A.B. Data has been or will be paid in full. Ewashko Decl. ¶ 45. A.B. Data anticipates that the additional cost to complete the administration for these Settlements and distribution of the Net Settlement Funds will be \$75,000.00. *Id.* ¶ 45. This cost includes the work described in the Ewashko Decl. Plaintiffs' Counsel respectfully request that the Court enter the Distribution Order, which authorizes payment of up to \$75,000.00 for the costs and expenses expected to be incurred with the distribution of the Net Settlement Funds.<sup>2</sup>

**CONCLUSION**

For the foregoing reasons, Representative Plaintiffs respectfully request that the Court grant their motion and enter the accompanying Distribution Order.

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<sup>2</sup> To the extent additional expenses are incurred beyond the \$75,000.00 estimate, Plaintiffs' Counsel will make an application to the Court to pay any additional administration expenses.

Dated: July 14, 2023  
White Plains, New York

Respectfully submitted,

**LOWEY DANNENBERG, P.C.**

*/s/ Vincent Briganti*

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Vincent Briganti  
Geoffrey M. Horn  
44 South Broadway, Suite 1100  
White Plains, New York 10601  
Tel.: 914-997-0500  
Fax: 914-997-0035  
E-mail: vbriganti@lowey.com  
E-mail: ghorn@lowey.com

*Counsel for Representative Plaintiffs and  
the Proposed Class*