

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	13 Civ. 7789 (LGS)
IN RE FOREIGN EXCHANGE BENCHMARK	:	
RATES ANTITRUST LITIGATION.	:	<u>ORDER</u>
	:	
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LORNA G. SCHOFIELD, District Judge:

WHEREAS, Plaintiffs filed a final claims motion on October 13, 2023. The motion seeks approval of the Claims Administrator’s (1) final, undisputed administrative determinations rejecting in full approximately 57,000 claims; (2) final administrative determinations rejecting in full or in part five claims where such determinations are disputed by the claimants (“Objectors”) and (3) recommendation for payment of one final claim that was resolved during the meet and confer process. The motion also seeks a release of claims related to the administration process. Objectors had until October 27, 2023, to file memoranda in opposition to the motion. Two of the five Objectors, Sean Waraich and Gregor L. McIntosh, filed opposition papers. Plaintiffs filed a reply on November 8, 2023.

WHEREAS, courts may accept the decisions of Claims Administrators in denying claims where such determinations are based on the lack of “requisite transactional records.” *See, e.g., Contant v. AMA Cap., LLC*, 66 F.4th 59, 62 (2d Cir. 2023); *see also Alaska Elec. Pension Fund v. Bank of Am., Corp.*, No. 14 Civ. 7126, 2020 WL 916853, at *4 (S.D.N.Y. Feb. 26, 2020), *aff’d sub nom. Alaska Elec. Pension Fund v. Fortinbras Asset Mgmt. GmbH*, 835 F. App’x 647 (2d Cir. 2021) (“Epiq properly rejected [claimant’s] disputed claims because [claimant] failed to prove that it engaged in real transactions.”).

WHEREAS, Plaintiffs denied Waraich’s claim on the basis of insufficient data. The data submitted do not support the claim and show, among other things, non-Defendant counterparties,

incorrect trading venues, trade dates and value dates. The Claims Administrator found Waraich's trades were ineligible because he had not traded with Defendant banks as counterparties. The Claims Administrator provided Waraich numerous opportunities to support his claim, but he did not. On July 7, 2022, the Claims Administrator sent Waraich a final rejection letter detailing the ineligibility of his retail trades. Waraich's memorandum in opposition does not provide any evidence that he traded with a Defendant bank in the spot FX market and instead shows that he traded in the retail market. The Plan of Distribution requires that a claimant have entered "into one or more FX Instruments *directly with a Defendant.*" (Emphasis added). Exhibit B to Waraich's motion states that an intermediary through which Waraich conducted transactions "cooperates with" counterparty Defendants. This is not the same as transacting directly with a counterparty Defendant. Waraich's opposition also did not provide evidence curing the deficient value dates for his transactions.

WHEREAS, McIntosh contests the Claims Administrator's application of a conversion ratio to ten FX futures, pursuant to a provision of the Plan of Distribution called "other FX products." The Claims Administrator determined that McIntosh's transactions were "rolls," wherein a trader rolls an existing position from one future expiry date to a new expiry date further in the future. The Claims Administrator applied the conversion ratio that is otherwise applied to FX swaps because rolls of futures positions on an exchange mirror over-the-counter FX swap transactions where the two spot legs, e.g., spot and forward, are of equal size. McIntosh raised his objections with the Claims Administrator, which were reviewed over several months from May to July 2022. The Claims Administrator ultimately rejected McIntosh's objections. McIntosh's memorandum in opposition argues that the application of this ratio was an "unsupported administrative determination." McIntosh undermines his own position by

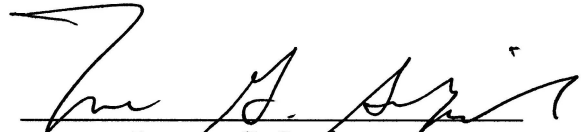
acknowledging that his documentation does not contain trade timestamps to corroborate his classification of the disputed trades as non-rolls. The burden is on the claimant to provide documentation to prove their participation in an eligible transaction.

WHEREAS, the remaining three Objectors did not file any papers in opposition to the motion and are deemed to have waived any objections. It is hereby

ORDERED that Plaintiffs' motion that the Court reject the Disputed Claims is GRANTED. An Order approving the Claims Administrator's determinations regarding unauthorized and disputed Claims will issue separately.

The Clerk of Court is respectfully directed to close the motion at Dkt. 2075.

Dated: April 5, 2024
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE