

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

IN RE FOREIGN EXCHANGE  
BENCHMARK RATES ANTITRUST  
LITIGATION

No. 1:13-cv-07789-LGS

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR ENTRY OF  
AN ORDER APPROVING THE FOURTH DISTRIBUTION OF THE  
SETTLEMENT FUND**

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## **PRELIMINARY STATEMENT**

Since the Court’s July 11, 2022, Order (ECF No. 1698) approving the “Third Distribution” of \$270.1 million to pay 2,031 Authorized Claims, Class Counsel has continued to work with its claims administrator and settlement experts to analyze and process claims. Plaintiffs respectfully request the Court to authorize a “Fourth Distribution” of \$225,204,639.84 to pay 160 Authorized Claims (the “Fourth Distribution Claims”). The Court’s approval of the Fourth Distribution will bring the total number of approved claims to 50,001, which is 99.8% of claims expected to be paid.

Class Counsel continues to work diligently with the claims administrator and settlement experts to resolve the remaining 109 claims. These claims are largely complex, high-dollar claims that require additional analysis to protect the integrity of the claims process and avoid dilution of the Settlement Fund by inflated or otherwise improper claim submissions.

In addition, Epiq has received 24 dispute letters indicating the claimant’s intent to seek Court review of Epiq’s administrative determinations. Class Counsel has organized a team of lawyers who are not going to trial to confer with claimants, where appropriate, and resolve or narrow the issues to be presented to the Court for adjudication. After trial concludes, we will present the Court with a status update and proposed briefing schedule.

## **ARGUMENT**

### **I. THE COURT SHOULD APPROVE THE FOURTH DISTRIBUTION**

#### **A. Background on the Claims Administration Process**

The Plan of Distribution provides claimants with two claim submission options – Option 1 and Option 2. Marr Decl., ¶4.<sup>1</sup> Under Option 1, payment is calculated from transaction data

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<sup>1</sup> “Marr Decl.” refers to the Declaration of Charles Marr in Support of Plaintiffs’ Motion for Entry of Order of an Order Approving the Fourth Distribution of the Settlement Fund, filed concurrently herewith.

produced by Settling Defendants. *Id.* Under Option 2, payment is calculated from transaction data produced by the claimant. *Id.* For Option 2 claims, Option 1 results are also calculated (where available), and the claimant’s payment is based on the greater of the two values. *Id.*, ¶7.

Processing Option 2 claims requires several steps. First, the “Settlement Experts” (Ankura and Velador) perform an algorithmic, trade-by-trade review of the claimant’s transaction data and calculate claim value. *Id.*, ¶31. The algorithms flag ineligible or erroneous transactions for further review and/or auditing. If there are no transaction-level deficiencies flagged by the algorithms, the claim is considered an “Authorized Claim” eligible for payment. *Id.* If there are deficiencies, the claimant is notified and has 30 days to cure by submitting additional information, and the claim is reprocessed. *Id.*, ¶32. Epiq then issues a final administrative determination, accepting the claim in full (if cured), in part (if partially cured), or rejecting the claim in its entirety (if uncured). *Id.*

The following deficiencies lead to partial or full rejections of Option 2 claims:

- Inclusion of trades that are ineligible under the Settlements, including trades with non-defendants, outside the Class Period, in non-FX products (*e.g.*, precious metals or interest rates), on ineligible venues, or outside of the United States (*i.e.*, non-U.S. domiciled claimant trading with non-U.S. desk of a defendant).<sup>2</sup>
- Submission of trades with invalid or missing mandatory fields, including ISO codes (standardized currency pair codes), contract codes (for futures), product type, base amounts, contra amounts, value dates, and/or trade rates. These are mandatory fields

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<sup>2</sup> *In re Citigroup Inc. Sec. Litig.*, No. 09 MD 2070(SHS), 2014 WL 2445714, at \*2-\*3 (S.D.N.Y. May 30, 2014) (upholding claims administrator’s rejection of claims where claimants did not hold shares during the necessary time period and therefore “suffered no loss”); *In re Goldome Sec. Litig.*, No. 88 Civ. 4765 (JES), 1991 WL 113263, at \*1, \*3 (S.D.N.Y. June 20, 1991) (accepting claims administrator’s rejection of claims where “(1) the purchase took place outside the class period; (2) the claim showed no purchase of the stock; . . . (5) the claim submitted was duplicate of a previously filed claim; (6) the claimant failed to correct a deficiency in the documents provided to the claims administrator after being given notice; or (7) the claimant withdrew the claim”); *Blank v. Jacobs*, No. 03-CV-2111(JS)(WDW), 2013 WL 1310503, at \*5 (E.D.N.Y. Mar. 27, 2013) (approving decision to reject claims with no eligible transactions).

because the Plan of Distribution requires these data points to calculate claim value. Trades missing these fields are therefore rejected.<sup>3</sup>

- Where the trade rate supplied is materially different from the prevailing daily rate and the claimant has not substantiated the trade with third party documentation showing the trade is genuine.<sup>4</sup>
- Where the trade size supplied is unusual or implausible and the claimant has not substantiated the trade size with third-party documentation showing the trade is genuine.<sup>5</sup>

Marr Decl., ¶36.

After a final administrative determination, a claimant is not permitted to resubmit its claims but may, within 20 days, request Court review of the administrative determination. *Id.*, ¶29. Class Counsel and Epiq review all requests for Court review and attempt to resolve objections. *Id.*

#### **B. The Court Should Approve Epiq’s Final Administrative Determinations**

This Motion seeks approval of Epiq’s final administrative determinations to accept 40 Option 1 claims and 120 Option 2 claims. Of the Option 2 claims, Epiq accepted 71 claims in part and 49 claims in full. Marr Decl., ¶14, Ex. 4 (listing Partially Accepted Claims). All 160 Fourth Distribution Claims have completed the processing steps outlined above, and the period to submit additional information to cure or seek Court review of final administrative determinations has

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<sup>3</sup> *Goldome*, 1991 WL 113263, at \*1, \*3 (accepting claims administrator’s rejection of claims where the claimant “failed to correct a deficiency in the documents provided to the claims administrator after being given notice”).

<sup>4</sup> *Alaska Elec. Pension Fund v. Bank of Am., Corp.*, No. 14-CV-7126 (JMF), 2020 WL 916853, at \*4 (S.D.N.Y. Feb. 26, 2020) (accepting claims administrator’s decision to reject claim where claimant was unable to provide documentation proving that submitted transactions actually occurred), *aff’d sub nom. Alaska Elec. Pension Fund v. Fortinbras Asset Mgmt. GmbH*, 835 F. App’x 647 (2d Cir. 2021); *Blank*, 2013 WL 1310503, at \*5 (accepting claims administrator’s “decision to reject any claims not properly documented unless any of those claimants has been able to cure the deficiencies”); *Contant v. Bank of Am. Corp.*, No. 1:17-cv-3139-LGS-SDA, Order, ECF No. 531 at 1-2 (S.D.N.Y. Nov. 16, 2021) (denying claim to the extent it lacked documentation to validate denied transactions).

<sup>5</sup> *Id.*

expired or has been waived by the claimant. Marr Decl., ¶29. Epiq has therefore determined that these claims are Authorized Claims eligible for payment. The following table shows a breakdown of the payment categories:

<b>Total Fourth Distribution Claims by Payment Category</b>	
<b>Number of Claims</b>	<b>Payment Category / Marr Ex. Number</b>
40	Total Option 1 Fourth Distribution Claims
1	<i>De Minimis</i> (\$15) / Ex. 1
2	Automatic (\$150) / Ex. 2
37	<i>Pro Rata</i> (>\$150) / Ex. 3
120	Total Option 2 Fourth Distribution Claims
0	<i>De Minimis</i> (\$15) / Ex. 1
0	Automatic (\$150) / Ex. 2
120	<i>Pro Rata</i> (>\$150) / Ex. 3

*Id.*, ¶¶11-13.

**C. *Pro Rata* Option 1 and Option 2 Claims Should Be Paid Subject to a Holdback**

The Court should also approve a 40% holdback on *pro rata* Fourth Distribution Claims (the “Reserve”).<sup>6</sup> Class Counsel, in consultation with Ankura, who are experts in modeling claims participation and calculating holdbacks, recommends maintaining the holdback at the level the Court approved in connection with the Third Distribution (40%). The Reserve will allow for fluctuations in the participation rate by volume, as the value of the remaining 109 claims (discussed in §II.B., below) has been conservatively estimated, but the precise amount may fluctuate.

Class Counsel will use the Reserve to pay for expenses incurred in connection with administering the Settlements and any contingencies that may arise after the distribution with respect to claims (including any appeals). Class Counsel will then equalize any payment differentials between the Initial Distribution and subsequent distributions and will distribute any

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<sup>6</sup> Because *de minimis* and automatic payments are not subject to proration, they will be paid in full.

remaining Reserve *pro rata* in subsequent distribution(s) to Authorized Claimants. *See Alaska Elec.*, 2020 WL 916853, at \*2 (approving payment of claim subject to a holdback).

**D. The Court Should Approve the Distribution Plan for the Fourth Distribution Claims**

Claimants entitled to *de minimis* payments, automatic payments, or a single *pro rata* payment less than \$1,000 will receive a check. Marr Decl., ¶37(d); Proposed Distribution Order, ¶3(c).<sup>7</sup> Claimants entitled to a *pro rata* payment greater than \$1,000 will have the option of receiving a check or a wire. Marr Decl., ¶37(d); Proposed Distribution Order, ¶3(c). Claimants who provide deficient wire instructions will be sent a check. *Id.*

To avoid the accumulation of uncashed checks, the checks will bear the notation “CASH PROMPTLY; VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT NEGOTIATED BY [DATE 90 DAYS AFTER ISSUE DATE].” Marr Decl., ¶37(e); Proposed Distribution Order, ¶3(d). Epiq will also communicate with Authorized Claimants holding uncashed checks as the 90-day period closes. Marr Decl., ¶37(f). Authorized Claimants who have not cashed their distribution checks or have not provided valid wire information will forfeit their right to payment and will not be permitted to participate in future distributions. Any forfeited amounts will be allocated to Authorized Claimants in subsequent distributions. *Id.*; Proposed Distribution Order, ¶3(e).

**II. STATUS REPORT ON REMAINING CLAIMS AND SETTLEMENT FUND**

The following chart breaks down the 108,745 submitted claims:

Number of Claims	Category
108,745	Total Claims Submitted

<sup>7</sup> “Proposed Distribution Order” refers to the [Proposed] Order Approving the Third Distribution of the Settlement Fund, filed concurrently herewith.

Number of Claims	Category
52,000	Estimated Authorized Claims <sup>8</sup>
56,745	Unauthorized Claims
26,937	Authorized Claims in Initial Distribution
23,019	Option 1
3,918	Option 2
22,904	Authorized Claims in Second Distribution
6,882	Option 1
16,022	Option 2
2,031	Authorized Claims in Third Distribution
172	Option 1
1,859	Option 2
160	Authorized Claims in Fourth Distribution
40	Option 1
120	Option 2
109	Pending Claims

The Court's approval of the Fourth Distribution will result in paying 160 Authorized Claims. Marr Decl., ¶10. The remaining claims fall into three categories – Unauthorized Claims, pending claims, and disputed claims. The discussion below addresses these remaining claims.

#### A. Unauthorized Claims

Epiq has determined that 56,745 of the submitted claims are likely to be rejected in full. Marr Decl., ¶17. Almost 21,000 of the Unauthorized Claims are withdrawn claims.<sup>9</sup> *Id.*, ¶20. Approximately 33,000 claims cannot receive payment because they were not eligible for Option 1, no Option 2 data was provided, or the claim calculated to \$0 value due to all trades being transacted fully outside the United States or outside of the Class Period. *Id.*, ¶¶21-26. Other Unauthorized Claims were rejected because they were duplicates, missing signatures or

<sup>8</sup> Estimated Authorized Claims are submitted claims, which based on their status have indicia that Epiq will likely be able to accept them in whole or in part as Authorized Claims. Estimated Authorized Claims includes the Initial Distribution Claims, Second Distribution Claims, Third Distribution Claims, and pending claims; it excludes claims that Epiq expects to reject in full as "Unauthorized Claims." Marr Decl., ¶17.

<sup>9</sup> Most of the withdrawn claims are due to a third-party agent improperly submitting claims under both Option 1 and 2 for all its clients. Epiq required each claimant to elect to proceed under only one option, and the other claim was withdrawn. *Id.*, ¶20.

authorization documents, submitted by a person excluded from the Settlement Class, or did not pass foreign data privacy compliance. *Id.* All Unauthorized Claims have received at least one deficiency notice that was not cured within the time allotted. Some Unauthorized Claims have remained uncured for more than 500 days. *Id.*, ¶24.

## **B. Pending Claims**

109 claims are pending (*i.e.*, they are not included in the Initial, Second, Third, or Fourth Distribution, and are not counted as Unauthorized Claims or disputed claims). Marr Decl., ¶17.

The pending claims fall within the following categories:

- *Option 2 Claims subject to audit.* These are Option 2 claims being audited to confirm their validity. Claimants must submit, among other things, third-party documentation (*e.g.*, trade confirmations or broker statements) to verify some of the transactions. The audit process is ongoing.
- *Option 2 claims subject to Settlement Expert review.* These are high-value claims or improperly formatted claims not suitable for algorithmic assessment.
- *Claims converted from Option 1 to Option 2.* These claims, initially submitted under Option 1 and later converted to Option 2, are being processed as Option 2 claims.
- *Resubmitted Option 2 claims or claims with deficiency notices that are likely to be cured.* These claims were or will be resubmitted to cure deficiencies and are undergoing reprocessing.
- *Disputed claims.* These claims were rejected in a final administrative determination, and the claimant may seek Court review.

*Id.*

Given their complexity, size, and potential dollar value, processing the pending claims has been time- and expert-intensive. Many of the pending claims represent trillions of dollars of notional volume and therefore require heightened scrutiny and auditing to protect the integrity of the claims process. All pending claims have received deficiency notifications and one (if not two or three) chances to cure. In addition, the parties are working to resolve some global issues relating

to these claims, which has delayed the process. If these global issues can be resolved, there will be fewer disputes requiring judicial intervention.

**C. Disputed Claims**

Plaintiffs anticipate filing a distribution motion covering the pending claims after trial; however, Plaintiffs believe that some claimants may request judicial review of Epiq's claim determinations. To date, Epiq has received 24 dispute letters indicating the claimant's intent to seek Court review of Epiq's administrative determinations. *Id.*, ¶29. As noted above, Class Counsel will confer with claimants, where appropriate, and are endeavoring to present as few claims to the Court as possible.

Plaintiffs will move for approval of Epiq's determinations on the Unauthorized Claims and any disputed claims in connection with the next distribution motion. This sequencing is intended to minimize the number of disputes brought to the Court and to ensure that all disputes are presented in a single motion so that any appeals of the Court's determinations may be consolidated before the Second Circuit. After trial concludes, Plaintiffs will present the Court with a status update and proposed briefing schedule, which is dependent on how many claimants intend to present their objections to the Court.

**CONCLUSION**

Plaintiffs respectfully request that the Court enter the accompanying Proposed Order approving the Fourth Distribution and authorizing Epiq to implement the Distribution Plan.

Dated: September 27, 2022

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 27, 2022, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

s/ Christopher M. Burke  
Christopher M. Burke