

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 10/24/2017
--

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

ALASKA ELECTRICAL PENSION FUND, et al., <p align="center">Plaintiffs,</p> <p align="center">v.</p> BANK OF AMERICA, N.A., et al., <p align="center">Defendants.</p>
--

Lead Case No.: 14-cv-7126 (JMF)

**ORDER PROVIDING FOR NOTICE TO THE SETTLEMENT CLASS
AND PRELIMINARILY APPROVING THE PLAN OF DISTRIBUTION**

WHEREAS, an action is pending before this Court styled *Alaska Electronic Pension Fund, et al. v. Bank of America, N.A., et al.*, Lead Case No. 14-cv-7126 (JMF) (the “Action”);

WHEREAS, the Court has entered orders (*see* Dkt. Entry Nos. 228, 337, 492), *inter alia*, preliminarily approving the terms of the settlements with defendants Bank of America, N.A.; Barclays Bank PLC and Barclays Capital Inc.; Citigroup Inc.; Credit Suisse AG, New York Branch; Deutsche Bank AG; The Goldman Sachs Group, Inc.; HSBC Bank USA, N.A.; JPMorgan Chase & Co.; Royal Bank of Scotland PLC.; and UBS AG (collectively, the “Settlements” or “Settlement Agreements”), preliminarily certifying the proposed Settlement Class, preliminarily appointing Class Counsel, preliminarily appointing Class Representatives, and appointing Claims Administrator;

WHEREAS, Plaintiffs have applied to the Court for this Order Providing for Notice to the Settlement Class and Preliminarily Approving the Plan of Distribution (the “Order”); and

WHEREAS, the Court agrees with Plaintiffs that there is no basis to delay a ruling on that application as requested by the Non-Settling Defendants (*see* Docket Nos. 516 and 518);

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. All terms in initial capitalization used in this Order shall have the same meanings as set forth in the Settlement Agreements and the Preliminary Approval Orders, unless otherwise defined herein.

2. The Court hereby preliminarily approves the Plan of Distribution as described in Plaintiffs' Memorandum in Support of their Motion for Approval of Notice and Preliminary Approval of Plan of Distribution, subject to further consideration at the Fairness Hearing described below. Any and all distributions to eligible Settlement Class Members shall be made pursuant to the Plan of Distribution, as finally approved by the Court, to those Settlement Class Members who submit a valid Proof of Claim and Release Form ("Claim Form").

3. The Court approves, as to form and content, the Notice of Proposed Settlement of Class Action (the "Notice"), Claim Form, and Summary Notice of Proposed Settlement of Class Action ("Summary Notice") for publication, substantially in the form attached to Plaintiffs' motion (Docket No. 512), respectively, as Exhibit A-1, A-2, and A-3, except that Plaintiffs shall modify the Notice as follows:

- a. to define "non-reversionary" (at page 8, line 2);
- b. to change "whether" to "when" in Section 13, Line 2;
- c. to include the "full description" of the claims being released in Section 14 (rather than incorporating the description in the Settlement Agreements by reference);

- d. to require mailing of objections only to the Court (and not to the Claims Administrator) (see Section 19).

4. The Court finds that the mailing and distribution of the Notice and the publication of the Summary Notice substantially in the manner set forth below meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process and constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled to notice.

5. By January 29, 2018 (the “Notice Date”), the Claims Administrator (Epiq) — or Settling Defendants (and/or their agent), in only those circumstances described in ¶8 below, which require notice by “alternate means” — shall cause a copy of the Notice and Claim Form, substantially in the forms attached to Plaintiffs’ Motion as Exhibit A-1 and A-2, to be mailed by first-class domestic or international mail, as applicable, to all members of the Settlement Class who can be identified through reasonable effort.

6. By the same date, Class Counsel shall establish and maintain, or cause to be established and maintained, a dedicated settlement website from which each member of the Settlement Class can view and download relevant documents, including the Notice, Claim Form, Summary Notice, Second Consolidated Amended Class Action Complaint, and other important pleadings and orders.

7. By February 6, 2018, the Claims Administrator shall cause the Summary Notice, substantially in the form attached to Plaintiffs’ Motion as Exhibit A-3, to be published once in the global editions of *The Wall Street Journal*, and *The Financial Times*; the monthly publication *Risk Magazine*; and the national editions of *The New York Times*, *The Daily Telegraph*, the *South China Morning Post*, and *The Straights Times*. Publication notice shall

also consist of a press release over PR Newswire, digital banner advertisements, and internet sponsored links as described in the Declaration of Cameron R. Azari, Esq. After the issuance of this Order, the Settling Parties may agree to broaden this publication notice plan in consultation with the Claims Administrator without further order of the Court.

8. To the extent Settling Defendants have identified members of the Settlement Class but the disclosure thereof to Class Counsel is not clearly permitted by law and/or in respect of other privacy considerations, Settling Defendants shall provide notice as described in the Settlement Agreements and may either engage an agent with experience in providing notice in class actions to disseminate the Notice and Claim Form to those members of the Settlement Class, or themselves disseminate the Notice and Claim Form to those members of the Settlement Class.

9. Any Person who is not a Settling Defendant or Released Party who transacted in ISDAfix Instruments for the benefit of another Person (a “Beneficial Owner”) during the Settlement Class Period shall be requested either to send the Mail Notice and Claim Form to all such Beneficial Owners within 35 days after receipt thereof or to send a list of the names and last known addresses of such Beneficial Owners to the Claims Administrator within 35 days of receipt thereof, in which event, the Claims Administrator shall promptly mail the Mail Notice and Claim Form to such Beneficial Owners.

10. Settlement Class Members who wish to participate in the Settlements must complete and submit valid Claim Forms, in accordance with the instructions contained therein. All Claim Forms shall include, *inter alia*, an acknowledgement of, and agreement to, the releases of all Released Claims against all Released Parties and shall be signed under penalty of perjury by an authorized Person.

11. Any Settlement Class Member who does not execute a Claim Form containing such an acknowledgement and agreement shall not be permitted to receive any distribution from the Settlement Fund and will in any event be barred from bringing any action against the Released Parties concerning the Released Claims.

12. Unless the Court orders otherwise, all Claim Forms must be submitted by July 16, 2018, or 45 days after the Fairness Hearing (whichever is later). Notwithstanding the foregoing, Class Counsel shall have the discretion, but not the obligation, to accept late-submitted Claim Forms for processing by the Claims Administrator, so long as distribution of the proceeds of the Settlement Fund is not materially delayed. Class Counsel shall have no liability for declining to accept any late-submitted Claim Forms.

13. All Settlement Class Members whose claims are not approved shall be barred from any participation in distributions from the Settlement Fund, but otherwise shall be bound by all of the terms of the Settlement Agreements, including the terms of the Final Judgments and Orders of Dismissal to be entered in the Action and the releases provided for in the Settlement Agreements, and will be barred from bringing any action against the Released Parties concerning the Released Claims.

14. Any Person seeking exclusion from the Settlement Class must submit a timely written request for exclusion (“Request for Exclusion”) in accordance with the procedures set forth herein. Any Person who submits such a request shall be excluded from the Settlement Class, shall have no rights with respect to the Settlements, shall receive no payment from the sums provided for as part of the Settlements. A Request for Exclusion must be (a) in writing; (b) signed by the Person or his, her, or its authorized representative; (c) state, at a minimum, the name, address, and phone number of that Person; (d) include proof of membership in the

Settlement Class; (e) identify the claim number printed on Claim Form(s) (if any) that Person received; and (f) include a signed statement stating substantially that “I/we hereby request that I/we be excluded from the proposed Settlement Class in the *ISDAfix Antitrust Litigation*.” To be valid, the Request for Exclusion must be mailed to the Claims Administrator at: *Alaska Electrical Pension Fund et al. vs. Bank of America et al.*, c/o Epiq Systems Inc., PO Box 3775, Portland, OR 97208-3775, U.S.A. and postmarked by April 30, 2018. A Request for Exclusion that does not include all of the foregoing information, that does not contain the proper signature, that is sent to an address other than the one designated herein, or that is not sent within the time specified, shall be invalid, and the Person(s) submitting such an invalid request shall be a Settlement Class Member and shall be bound by the Settlements set forth in the Settlement Agreements or, if approved, any Final Judgments and Orders of Dismissal approving the same.

15. Promptly after receipt of a Request for Exclusion, Class Counsel shall provide copies of the following to counsel for Settling Defendants: (a) the Request for Exclusion (including all information provided by the Person or entities making the requests concerning their transactions and/or potential claims); (b) information the Claims Administrator possesses concerning the volume of trading within the scope of Released Claims by Persons who have timely requested exclusion; and (c) written revocations of Requests for Exclusion. Class Counsel shall provide a list of those Persons who have submitted Requests for Exclusions, together with all such written Requests for Exclusions, to counsel for Settling Defendants within five (5) business days of the deadline set by the Court for the submitting of Requests for Exclusion.

16. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who objects to the Settlements, the Plan of Distribution, or the Fee and

Expense Application may appear in person or through counsel, at his, her, or its own expense, at the Fairness Hearing to present any evidence or argument that the Court deems proper and relevant. However, no such Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents filed by any such Settlement Class Member shall be considered by the Court, unless such Settlement Class Member properly files and serves a written objection that includes: (a) whether the Settlement Class Member intends to appear at the Fairness Hearing in person or through counsel (though an appearance is not necessary for the Court to consider the objection); (b) proof of membership in the Settlement Class; and (c) the specific grounds for the objection and any reasons why such Settlement Class Member desires to appear and be heard, as well as all documents or writings that such Settlement Class Member desires the Court to consider. Such a written objection must be filed with the Court by April 30, 2018. Any Settlement Class Member who fails to timely object in the manner prescribed herein shall be deemed to have waived his, her, or its objections and will forever be barred from making any such objections in the Action, unless otherwise excused for good cause shown, as determined by the Court.

17. Neither Settling Defendants nor any of the Released Parties shall have any responsibility for or liability whatsoever with respect to: (a) any act, omission, or determination of the Escrow Agent or any other person, or any of their respective designees or agents, in connection with the administration of the Settlement Fund or otherwise; (b) any Plan of Distribution; (c) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (d) any losses suffered by, or fluctuations in the value of, the Settlement Fund; (e) the payment or withholding of any Taxes and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns; (f) the

solicitation, review, or evaluation of proofs of claim; or (g) awards made pursuant to the Fee and Expense Application.

18. All papers in support of final approval of the Settlements and the Fee and Expense Application shall be filed by March 30, 2018, and any reply papers (which may include a response to objections, if any) shall be filed by May 14, 2018. Concurrent with the motion for final approval of the Settlements, and with any subsequent updates as necessary, Class Counsel shall file or cause to be filed a sworn statement attesting to the compliance with the paragraphs in this Order governing the provision of notice.

19. A hearing (the “Fairness Hearing”) shall be held before the Court on **May 30, 2018, at 3:30 p.m.**¹ in Courtroom 1105 of the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007 to determine: (a) whether the Court should certify the Settlement Class pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure; (b) whether the Settlements of the Action on the terms and conditions provided for in the Settlement Agreements are fair, reasonable, and adequate to the Settlement Class and should be approved by the Court; (c) whether Final Judgments and Orders of Dismissal should be entered; (d) whether the Plan of Distribution should be approved; (e) whether Class Counsel’s Fee and Expense Application should be granted; and (f) such other matters as the Court may deem appropriate. The Court shall consider the Plan of Distribution and the Fee and Expense Application separately from the fairness, reasonableness, and adequacy of the Settlements, and any decisions by the Court concerning the Plan of Distribution and the Fee and Expense Application shall not affect the validity or finality of the Settlements.


¹ A copy of the schedule for final approval is attached as Appendix A.

20. The Court reserves the right to adjourn the date of the Fairness Hearing without further notice to the Settlement Class. The Court retains jurisdiction to consider all further applications arising out of or connected with the Settlements. To the extent practicable, Class Counsel shall cause the Claims Administrator to promptly cause notice of any Court-ordered changes of schedule or any modifications of deadlines to be published on the settlement website. The Court may approve the Settlements or the Plan of Distribution, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Settlement Class.

21. The Clerk of Court is directed to terminate Docket No. 512.

SO ORDERED.

DATED: October 24, 2017
New York, New York



HON. JESSE M. FURMAN
UNITED STATES DISTRICT JUDGE

Appendix A – Schedule of Settlement Events and Final Approval

EVENT	DATE
Order Approving Notice and Preliminarily Approving Plan of Distribution	October 24, 2017
Commence Mail Notice and Launch Settlement Website	January 29, 2018 (the “Notice Date”)
Publish Summary Notice	February 6, 2018
File Papers in Support of Final Approval and Fee and Expense Application	March 30, 2018
Last Day to Mail Request for Exclusion/Opt Out of Class, Last Day to Object to Settlement	April 30, 2018 (the “Objection Deadline”)
File Reply Papers in Support of Final Approval and Fee and Expense Application	May 14, 2018
Fairness Hearing	May 30, 2018, at 3:30 p.m.
Deadline to Submit/Postmark Claim Form	July 16, 2018 or 45 days After Fairness Hearing