

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

IN RE LONDON SILVER FIXING, LTD.
ANTITRUST LITIGATION

14-MD-02573-VEC

This Document Relates to:

The Honorable Valerie E. Caproni

ALL ACTIONS

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

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Representative Plaintiffs,¹ by and through their counsel, Lowey Dannenberg, P.C. and Grant & Eisenhofer P.A. (together, “Interim Co-Lead 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 Fund.²

INTRODUCTION

The Court-appointed Settlement Administrator, A.B. Data, Ltd. (“A.B. Data”) and Interim Co-Lead Counsel have worked diligently to process Claims, answer questions, and implement the Distribution Plan approved by the Court in this Action. Following dissemination of notice to the Class, potential Class members submitted Proof of Claim and Release forms (“Claims”) to determine their eligibility to receive a portion of the Net Settlement Fund. Ewashko Decl. ¶ 6. After a thorough review of all Claims, A.B. Data has determined that 1,546 Claims are eligible to receive a payment. Ewashko Decl. ¶ 16. Upon the Court’s entry of the accompanying Distribution Order, each Authorized Claimant will receive its *pro rata* share of the Net Settlement Fund (the “Distribution Amount”).

A.B. Data proposes distributing the Net Settlement Fund in two phases. In the first phase (the “Primary Distribution”), Authorized Claimants whose Distribution Amount is less than \$50,000 will receive their full Distribution Amount. Ewashko Decl. ¶ 45. The remaining Authorized Claimants whose Distribution Amount is greater than or equal to \$50,000 will receive ninety percent (90%) of their Distribution Amount during the Primary Distribution. *Id.* The remaining ten percent (10%) of the Distribution Amounts will be held in reserve for contingencies

¹ “Representative Plaintiffs” are Christopher DePaoli, John Hayes, Laurence Hughes, KPFF Investment, Inc. f/k/a KP Investment, Inc., Kevin Maher, J. Scott Nicholson, and Don Tran.

² “Net Settlement Fund” means the Settlement Fund provided by the settlement (“Settlement”) in this Action plus any accrued interest, less deductions for tax payments, claims administration and escrow costs, and any Court-approved awards. As of March 7, 2024, the Net Settlement Fund totals \$27,382,805.40. Interest will continue to accrue on the Net Settlement Fund until the time of distribution.

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*”); Order Approving Distribution of the Net Settlement Funds, *Fund Liquidation Holdings LLC v. Citibank, N.A., et al.*, No. 16-cv-5263 (AKH) (S.D.N.Y.), ECF No. 592 (Aug. 22, 2023) (“*SIBOR Distribution Order*”). The ten percent (10%) of the Distribution Amounts held in reserve plus any amount of the Primary Distribution that has gone unclaimed by Authorized Claimants will be reallocated *pro rata* to those Authorized Claimants who had a portion of their Distribution Amounts held in reserve.

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:

- Transactions in eligible physical silver and derivative instruments in which silver is the underlying reference asset (collectively, “Silver Instruments”) during the Class Period;
- valid documentation to support the Silver Instruments transactions included in the Claim; and

- U.S.-Related Transactions³ in Silver Instruments in or on any over-the counter (“OTC”) market or exchange.

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 sent a letter (the “Deficiency Letter”) to each Claimant describing any deficiency with the Claim and providing the Claimant an opportunity to cure the deficiency. Ewashko Decl. ¶¶ 25-26. If the Claim was rejected in part or in whole, the reason(s) for the rejection was referenced. *Id.* In addition, A.B. Data contacted each Claimant to provide a final disposition of the Claim (the “Final Determination Letter”). Ewashko Decl. ¶¶ 30-31. The Final Determination Letter provided the Individual Settlement Transaction Value (“Individual STV”) calculation pursuant to the Distribution Plan for each Authorized Claimant whose Claim was accepted. *Id.*

A.B. Data’s correspondence advised each Claimant of its right to object to A.B. Data’s determination. *Id.* ¶¶ 25, 31. A Claimant seeking to object to A.B. Data’s determination was required to submit a written statement requesting additional review of its Claim and setting forth the basis for the objection. *Id.* ¶¶ 25, 31. As of this filing, A.B. Data has not received any objections or requests for Court review of its administrative determinations. *Id.* ¶¶ 33-34.

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

³ “U.S.-Related Transaction” means any transaction in a Silver Instrument (a) by any person or entity domiciled in the U.S. or its territories, or (b) by any person or entity domiciled outside the U.S. or its territories but conducted, in whole or in part, in the U.S. or its territories.

transaction-specific documentation supporting the specific sample transaction(s) selected by A.B. Data for audit. Ewashko Decl. ¶¶ 36-37. These targeted audits helped to ensure that transaction data supplied by Claimants did not contain false or inaccurate information. *Id.* ¶ 36. 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 38% of the Settlement Transaction Values (“STV”) under the Distribution Plan. *Id.* ¶ 36.
- 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.* ¶ 36.

A.B. Data sent an email to each auditee (the “Audit Letter”), asking that these Claimants provide the requested documentation or data. *Id.* ¶ 37. 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.* In total, A.B. Data audited 22 Claims (the “Audited Claims”). Each of the audited Claimants responded to the Audit Letter. *Id.* ¶¶ 38-39.

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, all of the Audited Claims passed with no rejections or adjustments. *Id.* ¶ 40. These Claims are included in Exhibit A (Timely Eligible Claims) to the Ewashko Decl. *Id.* ¶ 40.

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. ¶ 41. 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 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 Net Settlement Fund; (d) audited Claims and all supporting documentation to ensure completeness of Claims; (e) performed a review of deficient or invalid Claims; (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 Distribution Amount; (h) audited Claims whose Individual STV calculation equaled zero; (i) performed other auditing based on Claims completion requirements and 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 Fund. *Id.* ¶ 41. As part of its fraud prevention procedures, A.B. Data also compared the Claimant list against its list of known questionable claim filers, whose claims (if present) would be subject to additional review. *Id.* ¶ 42.

E. A.B. Data's Claim Determinations

A total of 1,967 Claims were submitted on or before the Claim deadline of March 1, 2021, of which 1,200 were determined by A.B. Data to have eligible Silver Instruments transactions ("Timely Eligible Claims"). Ewashko Decl. ¶ 14.

A total of 471 Claims were submitted after the March 1, 2021 Claim submission deadline (“Late Claims”). *Id.* ¶¶ 15, 43. Of those, 346 were determined by A.B. Data to have eligible Silver Instruments transactions. *Id.* These otherwise eligible Late Claims are recommended for payment because the late submission did not delay the distribution of the Net Settlement Fund. *Id.* A total of 125 Late Claims were ineligible for reasons other than timeliness. *Id.* ¶ 15.

In total, there are 1,546 Claims with eligible Silver Instruments transactions that may receive their Distribution Amount pursuant to the Distribution Plan. *Id.* ¶ 16.

A.B. Data recommends that the Court reject the remaining 892 Claims, which include Claims that: were withdrawn (86), replaced (304), submitted in duplicate (39), had no US connection (1), or did not have eligible transactions or failed to provide acceptable data or documentation concerning the transactions (462). *Id.* ¶ 17.

II. DISTRIBUTION PROCEDURE FOR THE NET SETTLEMENT FUND

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

A. Claimants Receiving the \$15 Minimum Payment

All Authorized Claimants whose Distribution Amount is less than \$15 will receive a minimum payment of \$15 (“Minimum Payment”) during the Primary Distribution (the “Minimum Payment Claims”). Ewashko Decl. ¶ 45. 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 447 Authorized Claimants will receive the Minimum Payment, which totals 0.024% of the Net Settlement Fund. *Id.* ¶ 45. If these Minimum Payment Claims received their Distribution

Amount, 0.006% of the Net Settlement Fund would be distributed. *Id.* ¶ 45. The reallocation of 0.018% 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); *SIBOR Distribution Order* (approving distribution motion including a \$500 minimum payment where minimum payment reallocated 0.19% 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, *SIBOR*, ECF No. 586 (July 14, 2023).

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

All Authorized Claimants whose *pro rata* Distribution Amount is between \$15 and less than \$50,000 will receive their full Distribution Amount in the Primary Distribution. Ewashko Decl. ¶ 45. There are 1,040 Authorized Claimants whose Distribution Amount is between \$15 and less than \$50,000 based on their Distribution Amount calculation. *Id.* 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 59 Authorized Claimants, whose Distribution Amount results in a Distribution Amount equal to or greater than \$50,000, will receive 90% of their Distribution Amount in the Primary Distribution. Ewashko Decl. ¶ 45. So, for example, if Claimant X's Distribution Amount under the Distribution Plan is \$60,000, it will receive \$54,000 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 Fund. *Id.* ¶ 45. 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); *SIBOR 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. ¶ 45.

After accounting for any outstanding fees and expenses of administration or other contingencies, and unless the Court approves a request by Interim Co-Lead 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 \$50,000 or more; and (b) negotiated their first distribution payments; and (c) are entitled to at least \$15 from such redistribution based on their *pro rata* share of the remaining funds. *Id.* ¶ 45.

III. RECORD RETENTION AND DESTRUCTION

Interim Co-Lead Counsel requests that A.B. Data be permitted to destroy paper and electronic copies of Claims one year after (a) the Net Settlement Fund in connection with the Settlement has been distributed; and (b) the Action has finally terminated. *See* Ewashko Decl. ¶ 45.

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

To date, the costs of notice and administration for the Settlement totals \$793,177.13, for which A.B. Data has been or will be paid in full. Ewashko Decl. ¶ 46. A.B. Data anticipates that the additional cost to complete the administration for this Settlement and distribution of the Net Settlement Fund will be \$26,950.36. *Id.* ¶ 46. This cost includes the work described in the Ewashko Decl. Interim Co-Lead Counsel respectfully request that the Court enter the Distribution Order, which authorizes payment of up to \$26,950.36 for the costs and expenses expected to be incurred with the distribution of the Net Settlement Fund.⁴

⁴ To the extent additional expenses are incurred beyond the \$26,950.36 estimate, Interim Co-Lead Counsel will make an application to the Court to pay any additional administration expenses.

CONCLUSION

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

Dated: March 18, 2024
White Plains, New York

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