

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

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**DECLARATION OF ELIZABETH KROGER DAVIS**

1. I am a Managing Director at Berkeley Research Group, LLC (“BRG”). I have previously submitted a declaration in this matter (Dkt. Entry No. 488) explaining the work performed by BRG to compile and analyze CDS trading data and develop an economic model capable of estimating the bid-ask spread inflation resulting from the Dealer Defendants’ alleged conduct for each transaction submitted by claimants.

2. I have been asked to comment on the appeal of the challenge submission filed by a third-party claim processor, Battea – Class Action Services, LLC (“Battea”), on behalf of Natixis Financial Products LLC (“Natixis”).

**Overview of Role of BRG in Claims Processing**

3. BRG was retained by class counsel to support the Claims Administrator, GCG. BRG and the Claims Administrator have taken responsibility for different aspects of the claims process. BRG has been primarily responsible for analyzing and processing claims transactions after the Claims Administrator has performed certain claim validation procedures designed to ensure that the claimant is a Class Member and that they have been given an opportunity to provide the information needed to properly evaluate and process their claims. The Claims Administrator has also been responsible for all communications with class members.

4. To ensure that all claims would be carefully reviewed and analyzed upon receiving them from GCG and that all claimants would be treated in a fair and consistent manner, BRG developed a rigorous framework. This framework was used to review all 4,898,189 Covered transactions submitted by 7,712 class members including 963,364 transactions that were submitted for challenge by 2,245 class members.

5. When the Claims Administrator notified BRG that a claim submission was ready for review, it would make available each claimant's Claims Submission Spreadsheet (an Excel file containing the minimum required information necessary to compute the appropriate spread inflation for each transaction) and all submission support provided by the claimant.

6. As a first step in the process, BRG would review the Claims Submission Spreadsheet to ensure that the data provided by the claimant appeared to be complete and accurate. Among other checks, BRG would upload the information from the Claims Submission Spreadsheet into a database, and would apply algorithms and perform review procedures to determine whether individual transactions would be deemed "Covered" transactions in accordance with the Plan of Distribution and whether the claimant provided the information required to determine spread inflation.

7. In instances where the Claims Submission Spreadsheet contained significant deficiencies or errors for a large number of transactions, we would notify the Claims Administrator who would subsequently contact the claimant and attempt to resolve the deficiency.

8. Once a Claims Submission Spreadsheet was determined to be reasonably complete and accurate, BRG evaluated the submission to determine whether the CDS transactions met the definition of a Covered transaction. This involved excluding trades that, among other reasons: were executed with a non-defendant dealer bank; were a duplicate of another Covered transaction assigned spread inflation; were missing information on the Claims Submission Spreadsheet that was necessary to calculate spread inflation; contained erroneous information for specific transactions such as illogical trade dates, red codes or security descriptions; involved trade compression, bookkeeping, or other non-economic activity; or the transaction occurred outside of the class period.

9. After screening out non-Covered transactions, BRG would compare a sample of transactions (including transactions with large notional amounts) in a given submission to trade confirmations, clearing records provided by the claimant, and when possible, to the more comprehensive Depository Trust and Clearing Corporation (“DTCC”) record for that same transaction that the claimant had previously reported to the DTCC. This allowed BRG to verify, on a sample basis, the accuracy of the information reported on the Claims Submission Template.

10. BRG would then process claims data through the economic model and assign the appropriate spread inflation to each Covered transaction. If quote data was not available for an individual transaction, that transaction was hand-priced using other available Markit data as a proxy for the spread.

11. As a final step, in many cases, BRG would examine trading patterns in the claimant’s data for spikes in the trading volumes that could be indicative of undetected compression entries, additional duplicate entries, product type errors (e.g., index versus index options), or the bulk sale, liquidation or transfer of a trading book. In such instances, BRG would have the Claims Administrator submit a request to the claimant to provide additional information for transactions that we had identified. The evaluation of the responses to these inquiries by the Claims Administrator and BRG would sometimes result in additional adjustments, including rejections or inclusions of transactions.

12. I have been personally involved in all the foregoing aspects of BRG’s analysis of claimant submissions (including Battea’s) and have directly supervised the work performed by various BRG economists and analysts that evaluated these submissions.

### **The Battea Natixis Appeal**

13. Battea’s submission on behalf of Natixis was larger than any other submission BRG reviewed in this matter. It includes 91,346 transactions, making Natixis one of the largest claimants among all class members. Even were the 71,761 transactions Battea is appealing rejected, Natixis would still recover more than 99% of the other class members.

14. When Natixis provided the Claims Administrator with its Claims Submission Spreadsheet, it was immediately clear that there was an unusual pattern in the transaction data.

The majority of the submission pertained to thousands of transactions that took place on a limited number of days, including 65,028 transactions that were purportedly entered into on August 26, 2010 with Morgan Stanley. No other submission that BRG has reviewed has anywhere near this concentration of transactions occurring on a single date and with a single dealer.

15. Our preliminary analysis indicated that much of the Natixis claim submission related to a portfolio or bulk sale to Morgan Stanley, and contemporaneous public documents confirmed this. Public statements during this time by Natixis and third parties indicated Natixis was disposing of its credit derivatives business and Morgan Stanley was the likely buyer.<sup>1</sup> This was subsequently confirmed by Battea in an email to GCG.<sup>2</sup>

16. As BRG had done with another claimant bank that had sold portions of its CDS book to a dealer, BRG sought to obtain and review additional documentation that would have explained how the portfolio was priced. For example, another claimant with a portfolio sale had provided the Claims Administrator with a sale agreement and related correspondence. That information was instructive in helping BRG identify the population of transactions affected by the sale and other unique financial terms associated with the disposition of the portfolio.

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<sup>1</sup> Comments from Natixis CEO Lauren Mignon regarding Natixis's second quarter financial results describe the disposal of Natixis' complex credit derivatives portfolio and explains how this portfolio had first been "fully offset with one counterparty at the end of the second quarter" and that during the second half of 2010, Natixis would "gradually post all the transactions and liquidate them to the counterparty of our transaction (2<sup>nd</sup> Quarter Results, Laurent Mignon, CEO, August 6, 2010). Also, see July 5, 2010 Natixis Press Release titled "Natixis Significantly Reduces GAPC Risk Positions," July 5, 2010; and Matt Cameron, "Morgan Stanley is Mystery Buyer of Natixis CDS Portfolio," *Risk Magazine*, August 3, 2010 (downloaded from Risk.net website).

<sup>2</sup> See Sept. 21, 2016 Email from Christie Cellini to info@CDSAntitrustSettlement.com included in Exhibit B to the Declaration of Loree B. Kovach ("There is a recollection that the high volume of trades with Morgan Stanley referenced below [in the September 7 email] were related to a portfolio sale, however there is no agreement that we can find which indicates the pricing or other information was pre-determined").

17. Natixis never explained, however, how its portfolio sale was priced, and failed to provide any of the support necessary to evaluate its claims in a manner that would be fair and consistent with those of the other class members.

18. BRG's review of Battea's December 9, 2016 additional submission confirmed our previous understanding that Natixis's transactions were sold as part of a portfolio-wide bulk sale and were not the product of individually executed over-the-counter, retail, buy-side trades with single dealers.<sup>3</sup> Indeed, Battea's additional submission establishes that the portfolio was priced based on a competitive bid process conducted among five dealers.<sup>4</sup>

19. It would be inappropriate to treat 71,761 transactions that were sold in a bulk portfolio sale by a dealer (Natixis) to a single other dealer (Morgan Stanley) following a competitive bid process among five dealers as over 71,000 individual CDS transactions that were subject to the full estimated spread inflation applied to other claimants' transactions. To treat the rejected Natixis transactions this way would result in a substantial increase of the spread inflation associated with these transactions and give Battea and Natixis a windfall at the expense of other claimants many times over what they should be entitled to collect in the settlement.

20. Furthermore, once BRG took the step in August 2016 of linking the Natixis submission records to their corresponding DTCC records, we discovered that the submission trade dates and the DTCC trade dates did not match for 91 percent of the transactions. It was apparent at that point that the submission was not only highly unusual, but unreliable. GCG asked Battea to address the discrepancy in trade dates but Battea never provided a response.<sup>5</sup>

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<sup>3</sup> See Declaration of Daniel Briggs In Support Of Appeal Of Natixis Financial Products LLC From Final Determination By Claims Administrator, December 8, 2016 ("Briggs Declaration, December 8, 2016"); and Declaration Of Chudozie Okgonwu In Support Of Appeal Of Natixis Financial Products LLC From Final Determination By Claims Administrator, December 9, 2016 ("Okgonwu Declaration, December 9, 2016").

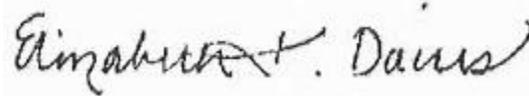
<sup>4</sup> See Briggs Declaration, December 8, 2016 ¶¶ 6 – 9 and Exhibit A; and Okgonwu Declaration, December 9, 2016, ¶¶ 18, 21.

<sup>5</sup> See Sept. 7, 2016 Email from info@CDSAntitrustSettlement.com to Christie Cellini included in Exhibit B to the Declaration of Loree B. Kovach.

21. BRG subsequently asked for a small number of confirmations so as to evaluate whether the trade dates in the submission were accurate. As all seven confirmations contradicted the information that had been submitted in Battea's submission, irrespective of the portfolio sale issue, BRG had no confidence in the reliability of the submission. The seven confirmations also did not confirm specific pricing information or contain trade execution time stamps.

22. The unreliable nature of Battea's submission coupled with its failure to timely provide information and documentation that would permit BRG to fairly analyze the spread compression that should be applied to Natixis's sale of its CDS portfolio to Morgan Stanley led to the rejection of the 71,761 transactions. To award spread inflation on each of these individual 71,761 transactions would be inconsistent with the rigor applied to the submissions of other claimants and result in a substantial windfall for Battea/Natixis at the expense of all the other claimants.

23. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on this 12th day of December, 2016 at Chicago, IL.

A handwritten signature in black ink that reads "Elizabeth Kroger Davis". The signature is written in a cursive style with some flourishes.

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Elizabeth Kroger Davis