

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

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IN RE CREDIT DEFAULT SWAPS ANTITRUST :

LITIGATION :

: **13 Md. 2476 (DLC)**

This Document Relates To: All Actions :

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**DECLARATION OF LOREE B. KOVACH
REGARDING CHALLENGES AND LATE CLAIMS RECEIVED TO DATE**

I, Loree B. Kovach, declare and states as follows:

1. I am an Assistant Vice President of Operations for the Court-appointed Claims Administrator, Garden City Group, LLC (“GCG”), in the above-captioned matter. I submit this declaration in response to 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”). The following statements are based on my personal knowledge and information provided by other GCG employees working under my supervision.

2. In its Order dated November 18, 2016 (Dkt. Entry No. 575), the Court set November 28, 2016 as the deadline by which any party that wished to contest a challenge submission could file an appeal. Five such appeals were filed. Subsequently three of these appeals were withdrawn and a fourth, the appeal filed by MFS, was fully resolved although it is my understanding that MFS has not yet formally withdrawn its appeal.¹

¹ After filing its appeal, MFS provided GCG with the support necessary to process its claims concerning 193 CDS transactions. Upon receiving this support, GCG provided it to Co-Lead Counsel’s experts, and it is our understanding that the experts have determined that all 193 qualify as Covered Transactions.

3. Below I provide background on the challenge resolution process GCG used and the Battea appeal.

The Challenge Resolution Process

4. As described in the Declaration of Stephen J. Cirami Regarding Distribution (*see* Dkt. No. 574), in the months following the May 27, 2016 claim-filing deadline, GCG reviewed over 2,300 challenge submissions. GCG evaluated each and every one of these challenges and where deficiencies were identified advised claimants about the deficiency so that the claimant could correct the deficiency and the claim could be processed by Co-Lead Counsel's experts, Berkeley Research Group ("BRG").

5. After claimants responded to deficiency notices and remedied the relevant defects, the updated submissions were sent to BRG for further processing. GCG did not follow up with claimants that chose not to cure deficiencies previously identified by GCG. Similarly, if a claimant did not respond to GCG's deficiency notice by the deadline, only those trades for which GCG had received sufficient information were processed by BRG.

6. Once challenge submissions were processed by BRG, BRG would provide GCG with updated transaction files, which GCG used to update the Covered Transactions in the claimant portal so each claimant could see the disposition of their challenged transactions. At around the same time, an automated email was sent to claimants at the email address they provided when their claims were filed, notifying the claimant that their challenge submission had been reviewed and that updated Covered Transactions information could be viewed in the claimant portal. These emails instructed claimants to advise GCG within seven days if they had further questions about why specific transactions were rejected.

7. Upon request, GCG provided claimants with spreadsheets listing all rejected transactions and the reason for the rejection of each individual transaction.

The Battea Natixis Appeal

8. On May 27, 2016, Battea submitted transactions on behalf of three Natixis funds, including the fund that is the subject of the appeal.

9. Based on the Natixis transactions that have already been accepted, this class member has the 17th largest award out of the 7,712 timely claims filed.

10. An appeal was filed with respect to certain of the challenges submitted by Battea on behalf of Natixis. The appeal asserts that 71,761 transactions were improperly rejected for being part of a portfolio or bulk sale.

11. Battea's initial submissions for each of the three Natixis funds was missing information in required fields, such as ISIN and Red Code. *See* August Deficiency Email Exchange, attached hereto as Exhibit A. GCG notified Battea of these deficiencies and asked Battea to revise its submission in an email dated August 24, 2016. *Id.* This e-mail also advised Battea, as all claimants were being advised, that if sufficient information was not provided for each and every transaction, the transactions would be rejected. *Id.* Battea notified GCG that they provided an updated submission for Natixis on August 29, 2016. *Id.*

12. Based on a review of data maintained by the Depository Trust and Clearing Corporation ("DTCC"), GCG and BRG determined that Natixis was considered a CDS dealer.

13. On September 7, 2016, GCG asked Battea by email to explain how Natixis had limited its submission to buy side transactions, as well as to address multiple additional deficiencies in its submission identified by BRG. *See* September Deficiency Email Exchange, attached hereto as Exhibit B. This email also stated that Battea's submission appeared to identify

a large volume of transactions on a single day, which is often indicative of a portfolio or bulk sale agreement. *Id.* The email provided examples of those transactions, and requested confirmation as to whether such transactions were executed in conjunction with a portfolio or bulk sale agreement, as well as a copy of any such agreement. *Id.* Battea was given until September 21, 2016 to respond on behalf of Natixis. *Id.*

14. On September 21, 2016, Battea stated in an email that “there is recollection that the high volume of trades with Morgan Stanley referenced below 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.” *Id.* Battea offered to provide confirms for some such transactions, and asked for a further extension.

15. After conferring with BRG, GCG responded to Battea’s email on October 19, 2016. This email states that “without a copy of the transaction regarding the bulk sale . . . the expert will exclude these transactions. Even with a copy of the contract, the expert may have further questions and/or the transactions may still be excluded.” *Id.* The e-mail went on to state that “[w]hile the deadline for you to respond has passed, [and] thus we cannot guarantee acceptance of any late responses, we would encourage you to continue to look for the contract and if possible provide it by the end of the week—in no event could we accept it after Monday, but if you can get it to us by the end of this week the expert may be able to review.” *Id.*

16. Battea responded the same date that “[n]o agreement can be found, the client could produce individual confirms, if they would help.” *Id.* At no time did Battea offer to explain how the portfolio of transactions was priced or submit any evidence concerning the pricing process.

17. After conferring with BRG, on October 21, 2016, GCG requested that Battea

provide trade confirms for a list of seven trades generated by BRG and stated that the “individual trade confirms would be helpful.” *Id.* BRG asked GCG to request certain trade confirmations from Battea.

18. On October 24, 2016, Battea provided the requested confirms for the seven trades.

19. At no time did I or anyone else at GCG tell Battea why the seven confirmations were being sought or that the seven confirmations would be sufficient to support their claims.

20. GCG provided the confirms Battea provided to BRG along with the rest of Natixis’s submission.

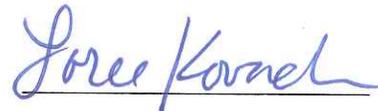
21. GCG subsequently sent a Claim Form to Battea for Natixis by mail on November 15 and by email on November 17, 2016. *See Claim/Rejected Transaction Email Exchange*, attached hereto as Exhibit C.

22. On November 21, 2016, Battea emailed GCG requesting additional information concerning the Natixis transactions that had been rejected. *Id.*

23. GCG responded by email the same day, providing a spreadsheet listing the reasons for each of Natixis’s 72,300 rejected transactions. *Id.*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 12th day of December, 2016, at Seattle, Washington.



Loree B. Kovach