

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

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**DECLARATION OF STEPHEN J. CIRAMI REGARDING DISTRIBUTION**

I, STEPHEN J. CIRAMI declare and state as follows:

1. I am the Executive Vice President and Chief Operating Officer for Garden City Group, LLC (“GCG”), headquartered at 1985 Marcus Avenue, Suite 200, Lake Success, New York 11042. Pursuant to the Court’s October 29, 2015 Order Preliminarily Approving Settlements and Providing for Notice to the Settlement Class (“Preliminary Approval Order”) (Dkt. No. 465), GCG was appointed as the Claims Administrator in connection with the settlement of this action.<sup>1</sup> The following statements are based on my personal knowledge and information provided by other GCG employees.

2. This Declaration supplements information provided in the Declaration I previously submitted Regarding (A) Mailing of the Notice; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date, dated March 29, 2016, (“Cirami March 29, 2016 Decl.”), as well as information provided in the Declaration of Loree B. Kovach Regarding Challenges and Late Claims Received to Date, dated October 27, 2016 (“Kovach Decl.”).

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<sup>1</sup> All terms with initial capitalization not otherwise defined herein shall have meanings ascribed to them in the Stipulation and Agreement of Settlements (the “Settlement Agreements”) (Dkt. No. 445, Exs. 1–14).

### **CLAIMS RECEIVED**

3. The deadline to file a claim and to submit additional transactions for consideration or otherwise challenge the Claims Administrator's data was May 27, 2016. On October 31, 2016, this Court entered an Order providing that late claims and challenges received on or before October 27, 2016 were to be accepted by the Administrator.

4. As of the date of this Declaration, GCG has received 7,555 valid claims from Class Members pre-identified in the original DTCC data obtained in the discovery process. In addition, as of the date of this Declaration, GCG has received 2,600 challenges for consideration.<sup>2</sup> These included 146 timely challenge submissions from certain Class Members that were not pre-identified in the original DTCC data obtained in the discovery process. Since these 146 challenge submissions are within the scope of the settlement, and were submitted in a timely manner, these Class Members are also eligible to participate in the settlement.

5. As of the date of this Declaration, one additional claim was received after the Court's cutoff date of October 27, 2016, and is invalid. No additional challenges were received after the Court's cutoff date of October 27, 2016.

### **THE CHALLENGE PROCESS**

6. The challenge process is described in detail in both my March 29, 2016 Declaration and in the Kovach Declaration. *See* Cirami March 29, 2016 Decl., ¶¶ 24 – 27; Declaration of Loree B. Kovach Regarding Challenges and Late Claims Received to Date (“Kovach Decl.”), ¶¶ 9 – 20.

7. The bulk of challenge submissions were received on or shortly before the May 27, 2016 filing deadline. Since that time, GCG has worked diligently with Plaintiffs' experts,

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<sup>2</sup> The term “challenge” is further described in the Kovach Declaration at ¶9. That term retains the same meaning in this Declaration.

Berkeley Research Group (“BRG” or “the Experts”), and Co-Lead Plaintiffs’ Counsel to resolve these challenge submissions.

8. Since the filing deadline, Claims Administrator challenge review personnel have spent in excess of 5,300 hours processing and reviewing Class Member challenges, drafting emails to Class Members regarding deficiencies in their submissions, and transmitting challenge submissions to BRG. This time does not include the over 3,000 additional hours spent by management-level staff overseeing this process during the same timeframe. BRG’s invoices from June 1, 2016 through October 31, 2016 indicate that its personnel spent in excess of 6,103 hours resolving challenge submissions during that timeframe.

9. As indicated in the Kovach Declaration, GCG conducted a threshold review of each challenge submission. Kovach Decl. at ¶14. Challenge submission templates which were complete on their face and which contained all required backup documentation were provided to the Experts for further review. Incomplete submissions were returned to the Class Member by GCG with a detailed email outlining the deficiencies in the submission. Class Members were given a week to cure any deficiencies in their submission. After that deadline, if an updated submission was provided by the Class Member, that submission was provided to BRG for further review, and if no updated submission was provided, the initial deficient submission was provided to BRG for further review.

10. Class Members were required to provide supporting documentation along with their completed challenge template; submissions which failed to include the required supporting documentation were rejected by GCG. A total of 148 challenge submissions were denied for failure to provide required supporting documentation.

11. Transactions between Class Members designated as foreign, *i.e.*, those domiciled and located outside the United States, and a foreign Defendant dealer were presumptively excluded as Covered Transactions because they were not within US commerce. Class Members submitting additional transactions for consideration could contest this in one of two ways. First, the Class Member could challenge its designation as a foreign Class Member by providing documentary proof that it was registered or had its principal place of business in the United States. Second, Class Members who did not dispute their designation as foreign could argue that certain specific transactions with foreign Defendant dealers had a nexus to the United States and were thus within US commerce and should be included as Covered Transactions. The most common way Class Members sought to show that specific transactions were within US commerce was by showing that a transaction was initiated by a trader located in a US-based office of the Class Member's investment manager. In these instances, the Class Member was required to provide proof that each transaction in their submission with a foreign Defendant dealer was made by a US-based trader. GCG did not accept more generalized arguments, such as the argument that a specific reference entity was always traded from a US desk. GCG informed BRG which Class Members made successful arguments in this regard and which did not, and BRG would account for that when processing the challenge submission.

12. BRG also identified deficiencies in a submission during the course of its processing and GCG relayed those deficiencies, as well as any other questions from BRG, to Class Members and coordinated with BRG on the Class Members' responses. Class Members were given one to two weeks to respond to any questions from BRG, depending on the complexity of the issue raised.

13. As BRG completed its review of each challenge submission, it provided to GCG transaction update files with the results of its review. GCG then used those update files to update the claimant portal with any additional Covered Transactions identified by BRG in its review of a Class Member's challenge submission. BRG also provided GCG with a report of any transactions in a Class Member's submission that it rejected as not meeting the definition of a Covered Transaction. That report included the initial reason for rejection.

14. As of November 16, 2016, a total of 2,245 individual Class Members' submissions were provided to and processed by BRG, with a total of 1,132,091 additional transactions.<sup>3</sup> Of those, a total of 551,951 additional transactions were accepted as Covered Transactions after BRG's review was completed. Of the 2,245 Class Member submissions provided to BRG, a total of 328 were rejected in their entirety. The remaining 1,917 Class Member submissions had one or more transactions accepted.<sup>4</sup>

15. The primary reason transactions were rejected was because the Class Member failed to successfully argue that the transaction was within US commerce. As of November 16, 2016, approximately 44% of rejected transactions were rejected for this reason. Another 18% of rejected transactions were attributed to bulk sale agreements, which were instances where a Class Member entered into a contract with a specific dealer with respect to a large book of CDS business; because these agreements were entered into directly between the Class Member and the dealer and the Class Member did not obtain pricing from the market. These types of transactions are not within the scope of the Settlement. Approximately 17% of rejected transactions were

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<sup>3</sup> Challenges denied for lack of supporting documentation as described in Paragraph 10 were not provided to BRG. In addition, other challenges not provided to BRG include those that were subsequently withdrawn by the claimant and challenges submitted by an entity without authorization to submit a challenge for the Class Member.

<sup>4</sup> Review and quality assurance of challenge resolutions is ongoing, and the numbers in this Paragraph and in Paragraph 14 are subject to change.

rejected for being duplicative, either within the challenge submission itself or within the DTCC data already reviewed by the experts. Another 10% of rejected transactions were rejected because they represented compression activity and thus did not meet the definition of a Covered Transaction. The remaining reasons for rejection included, *inter alia*, transactions outside the time period covered by this Settlement, incomplete submissions (i.e. those that did not contain enough data for the expert to calculate and assign an Applied Bid/Ask Spread to the transactions), and transactions with dealers other than one of the Defendants or an affiliate thereof.

16. After the claimant portal was updated with the results of BRG's review of a Class Member's challenge submission, GCG notified each Class Member of the resolution of its submission via email to the email address provided with the claim. Those Class Members whose submissions were rejected in their entirety were told of the complete rejection; all other Class Members were informed that some or all of their submission has been accepted and encouraged to complete their own reconciliation. Both groups were encouraged to respond to the notification email with any further questions for GCG regarding rejected transactions within one week of the date of the notification email.

17. As of the date of this Declaration, the vast majority of Class Members that submitted challenges have been notified of the resolution of their challenges, and GCG expects to provide the last of these notices by no later than November 23, 2016.

18. Any Class Member with questions about which transactions from its submission were rejected was provided with a spreadsheet which listed the rejected transactions, along with the initial reason for rejection for each transaction. GCG remains available to answer Class Member questions regarding rejected transactions.

19. As indicated in its Order Approving Plan of Distribution, Overruling Objections, and Retaining Jurisdiction dated April 18, 2016, this Court has retained jurisdiction over disputes arising from determinations of the Settlement Administrator regarding additional Covered Transactions. Dkt. 553 at ¶3. Class Members that continued to dispute the resolution of their challenge submission after the above process concluded were informed of this, and were told they would be able to raise any further disputes to the Court via whatever process it established for doing so. Class Members were further informed that once such a process was established, they would receive notice via email.

#### **CALCULATION OF A SET-ASIDE**

20. Co-Lead Plaintiffs' Counsel has indicated it wishes to distribute settlement funds to the class before the end of the year. It is likely that some Class Members may choose to dispute with the Court GCG's resolution of their challenge submission. Accordingly, in order to distribute funds before the end of the year, it will be necessary to set aside funds to account for the resolution of any such disputes.

21. Once the number of such disputes is known, GCG will work with Co-Lead Plaintiffs' Counsel and with BRG to determine an appropriate set-aside. In addition to funds allocated to cover the resolution of any challenge disputes, the set-aside will also include funds for taxes due on interest income earned by the Qualified Settlement Fund as well as funds allocated to cover future administrative costs of both BRG and GCG.

#### **DISTRIBUTION**

22. After the set-aside is calculated and this Court has entered an Order regarding distribution, GCG will work with BRG to calculate each Class Member's initial distribution amount *pro rata* based on the Applied Bid/Ask Spread calculated for all currently-identified

Covered Transactions for Class Members with valid claims.

23. Class Member payment amounts will be loaded to GCG's system, and GCG will facilitate payment to each Class Member via check or wire, per the Class Member's direction on its claim form.

24. Prior to payment, in accordance with the Office of Foreign Assets Control ("OFAC") regulations and guidelines, GCG will perform searches on certain payments to be issued in this matter in order to identify any potential payees whose names appear on the federal government's restricted person's list or who reside in countries to which payments are prohibited. GCG regularly monitors changes to OFAC regulations and guidelines.

25. GCG undertakes extensive quality assurance measures prior to issuing checks and wires. Files used for check and wire creation are reviewed at multiple steps throughout the process. All check and wire files have footer records that indicate the total number of payments and the total dollar amount of the payments; these footers are used to ensure reconciliation with the population of Class Members receiving payment.

26. Printed checks are subject to a 100% quality assurance review. Checks will be mailed via prepaid first class mail, or, for Class Members with addresses outside the United States, via Federal Express, to ensure ease of tracking. Prior to initiating wires, the Escrow Bank will undergo and GCG will oversee testing of recipient wire information to ensure wiring information provided by Class Members is complete and accurate.

27. After the initial distribution, GCG will respond to requests to reissue payment made via check and will answer other questions about award calculation and payment.

28. Prior to distribution of the set-aside, GCG will submit another Declaration to the Court detailing the results of the first distribution, the resolution of any disputes regarding

challenge submissions, and a plan for distributing the set-aside.

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 17<sup>th</sup> day of November, 2016, at Lake Success, New York.

A handwritten signature in blue ink, appearing to read "Stephen Cirami". The signature is stylized with a large initial "S" and a long, sweeping underline.

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Stephen J. Cirami