

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

IN RE CREDIT DEFAULT SWAPS  
ANTITRUST LITIGATION

This Document Relates To: All Actions

13 MD 2476 (DLC)

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION  
FOR A SECOND AND FINAL DISTRIBUTION OF SETTLEMENT FUNDS**

**I. INTRODUCTION**

Plaintiffs, through Co-Lead Counsel, respectfully request approval to make a second and final distribution of settlement funds to class members who have submitted claims that have been approved by the Court-appointed Claims Administrator, Garden City Group (the “Claims Administrator”). Plaintiffs also request ancillary relief relating to the completion of claims administration in this litigation. Co-Lead counsel expects this will be the final distribution of all monies recovered on behalf of the Plaintiff Class. Accordingly, following this distribution, claims administration in this class action will be completed.

Pursuant to this Court’s Order dated November 19, 2016 (Dkt. No. 575), the Claims Administrator distributed \$1,480,000,000 of the net settlement funds to all eligible class members on December 28, 2016. As of the date of this motion, \$123,696,681 (this amount includes \$90,000 estimated to be earned in interest in the weeks prior to the final distribution) remains in the Settlement Fund after payment of all claims administration expenses through April 30, 2017. This second distribution will be made to all class members who were eligible to receive a distribution in the initial distribution based upon their pro rata share of the net settlement proceeds.

In addition, certain class members who were able to resolve issues with the Claims Administrator regarding certain challenged transactions immediately prior to the hearing on December 15, 2016 but who did not receive a full payment in the first distribution for logistical reasons will receive their full *pro rata* payment on those transactions.<sup>1</sup> Finally, class member

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<sup>1</sup> Included in this distribution will be two funds managed by Hayman Capital. These funds were eligible class members for the first distribution and had submitted a timely challenge to the Claims Administrator. However, there was some question whether Hayman Capital also had submitted a timely proof of claim. After investigation by Co-Lead Counsel and the Claims

Natixis, whose objection to the Claims Administrator's rejection of its claim was denied by the Court following a hearing on December 15, 2016, has reached agreement with Lead Counsel to accept \$3.1 million subject to the Court approving that agreement. *See* discussion of Natixis below.

Because of pending appeals of class member challenges denied by the Claims Administrator at the time the Court approved the first distribution, Lead Counsel reserved \$120 million of the net settlement funds.<sup>2</sup> Plaintiffs seek approval of the distribution of these remaining Settlement Funds for all approved claims.

## **II. BACKGROUND**

Plaintiffs refer the Court to the following documents describing the settlement approval and claims administration process: Order granting Preliminary Approval of the Settlement and the proposed notice procedure entered on October 29, 2015 (*See* Dkt. No. 465); Decl. of Stephen J. Cirami, filed on March 29, 2016 ("Cirami Decl.") (*See* Dkt. No. 505); Order Approving the Plan of Distribution entered on April 18, 2016 (*See* Dkt. No. 553).

The court-approved Plan of Distribution describes in detail how the Claims Administrator, with the help of Co-Lead Counsel and BRG, would compute each class member's "pro rata" share of the Net Settlement Fund. Mem. of Law in Supp. of Mot. for Final Approval at 24-25 (*See* Dkt. No. 503). On a general level, the amount of damages assignable to each claimant was computed on a transaction-by-transaction basis. Class members were also able to

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Administrator it has been determined that these Hayman Capital funds should participate in the second distribution. The two Hayman Funds will receive a total payout of \$1,098,357.

<sup>2</sup> After payment of the Court approved attorneys' fees and litigation expenses and reserving for future claims administration expenses and potential tax liabilities, Co-Lead Counsel had estimated that \$1.6 billion would be available for distribution to eligible class members. As explained below, over \$1.603 billion will be distributed to the class.

submit “challenge transactions” for consideration by the Claims Administrator to supplement those transactions captured in the DTCC database.

**III. FIRST DISTRIBUTION OF THE NET SETTLEMENT FUND AND RESOLUTION OF THE NATIXIS APPEAL**

Following a hearing before the Court on December 15, 2016, of Natixis’ appeal of the rejection of its bulk sale of CDS positions, the Court ordered that \$1,480,000,000 of the net settlement funds could be distributed to eligible class members. That first distribution was made on December 28, 2016. Over the past six months the Claims Administrator has dealt with numerous class members who were unable to cash settlement checks or provide proper wire instructions. Many of those issues arose because class members eligible to receive payments were investment funds that had liquidated a number of years past and it was necessary either to reopen funds or provide alternative payees. To ensure the proper parties were being substituted, the Claims Administrator worked closely with such class members to resolve payment issues. Moreover, several class members decided to withdraw their claims for various reasons. Those monies payable on withdrawn claims are being returned to the settlement fund for pro rata distribution to all other class members. At this time, most of these issues have been resolved or in the process of being resolved.

As to Natixis, in its appeal to this Court, it sought tens of millions of dollars in payment for additional CDS transactions that Co-lead counsel and their experts determined were bulk CDS transactions. Following denial of Natixis’ appeal, Natixis and co-lead counsel commenced negotiations to avoid Natixis appealing to the Second Circuit the Court’s denial of its challenge. An agreement was reached that Natixis would receive \$3.1 million for these additional CDS transactions, the amount Plaintiffs’ experts had calculated Natixis would have been entitled to receive using the same methodology as applied to other class

members with such bulk sales. That amount is well below what Natixis argued in its appeal that it should receive. Thus, the \$3.1 million compromise is fair and reasonable to Natixis and to other class members and avoids the lengthy appeal process that would have likely delayed payments to other class members. The proposed order submitted with this motion requests that Court approve the \$3.1 million compromise as fair and reasonable.

The Claims Administrator is now prepared to make a second and final distribution of all remaining settlement funds.

**IV. THE SECOND AND FINAL DISTRIBUTION OF SETTLEMENT PROCEEDS**

The second distribution includes the \$120 million reserve amount, \$2,015,836 in interest earned on the settlement funds during claims administration, and \$1,015,845 in funds payable to class members who after the first distribution withdrew their claims. Thus, the total payout to the eligible class members from the first and second distributions will be \$1,603,031,681.

Between late October 2015 when Defendants begin making their settlement payments and the date of this second and final distribution, the settlement funds earned a total of \$8,885,117 in interest and dividends all from investments in debt instruments of 12 months or less maturity and backed by the full faith and credit of the U.S. Government. Claims Administration expenses through April 30, 2017 were \$6,525,435. The Claims Administrator estimates that claims administration expenses through completion, including preparation of the settlement funds 2017 and final tax return, will be \$665,000. The settlement fund paid \$350,125 in federal taxes in 2016. It had no tax liability in 2015 and the settlement fund's accountant opines that it will owe no taxes in 2017. Thus, through the income earned on the settlement funds, all claims administration expenses have been covered without recourse to the fund's corpus.

While Co-Lead Counsel and the Claims Administrator have made every effort to calculate the second distribution payout amounts accurately, there will likely be some small amount of residual funds remaining after the second distribution is complete. As in the first distribution, a few class members may decide to withdraw their claims or not to cash their checks. The final claims administration expenses also may be less than the above estimates. In light of the costs of making a third distribution of what is likely to be a de minimus amount, Co-Lead Counsel propose that any residual funds remaining following the second distribution be donated, *cy pres*, to Better Markets, a 501(c) (3) non-profit based in Washington, D.C. As it describes itself on its website: “Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street and make our financial system work for all Americans again. Better Markets also works to restore layers of protection between hardworking Americans on Main Street and Wall Street’s riskiest activities.” Additional information about Better Markets mission and its past work is available at <http://www.bettermarkets.com>. Co-Lead Counsel are familiar with Better Markets work on financial regulatory reform particularly its work on greater transparency in financial markets including CDS. In light of issues involved in this litigation, Better Markets is an appropriate beneficiary should any residual funds remain after completion of the final distribution.

The timing for the second and final distribution will be as follows:

1. Distribution of Settlement Funds: As soon as practicable following entry of the Court’s order approving the final distribution.
2. Last Date for Class Members to request check reissues: 75 days from final distribution date.

3. Last Day for Class Members to cash outstanding checks: 120 days from final distribution date.

4. Date for making *cy pres* award of any residual funds and final payments for claims administration expenses: 140 days from final distribution date.

Under the above schedule all claims administration work will be finished prior to December 31, 2017 and this case will be fully concluded.

#### **IV. CONCLUSION**

As set forth in the Proposed Order submitted with the filing of this Motion for a Second and Final Distribution of Settlement Funds, Plaintiffs respectfully request that the Court:

1. Authorize the Second and Final Distribution of Net Settlement Funds to eligible class members;

2. Approve the compromise of Natixis' claim for \$3.1 million as fair and reasonable;

3. Bar any additional claims against the Net Settlement Fund;

4. Discharge any and all claims against persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the claims; and

5. Designate Better Markets as the beneficiary of any residual funds remaining after completion of the second and final distribution.

6. Upon payment of remaining residual funds, if any, to Better Markets, the Claims Administrator is authorized to close all settlement accounts, file the final tax return and close the administration of this class action.

Respectfully submitted,

DATED: July 6, 2017

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