

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

IN RE LIBOR-BASED FINANCIAL
INSTRUMENTS ANTITRUST LITIGATION

Master File No. 11-md-2262 (NRB)

THIS DOCUMENT RELATES TO:

METZLER INVESTMENT GmbH, et al.,

No. 11 Civ. 2613

Plaintiffs,

v.

CREDIT SUISSE GROUP AG, et al.

Defendants.

**EXCHANGE-BASED PLAINTIFFS' REPLY MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR ENTRY OF AN ORDER APPROVING THE DISTRIBUTION OF
THE BANK OF AMERICA, BARCLAYS BANK PLC, CITI, DEUTSCHE BANK,
HSBC BANK PLC, JPMORGAN, AND SOCIÉTÉ GÉNÉRALE NET
SETTLEMENT FUNDS AND FOR REIMBURSEMENT OF
CLAIMS ADMINISTRATION EXPENSES**

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I. INTRODUCTION

Exchange-Based Plaintiffs¹ respectfully submit this reply memorandum of law in support of their Motion for Entry of an Order Approving the Distribution of the Bank of America, Barclays Bank Plc, Citi, Deutsche Bank, HSBC Bank Plc, JPMorgan, and Société Générale Net Settlement Funds and for Reimbursement of Claims Administration Expenses.

As detailed in Plaintiffs' Opening Memorandum, *see* ECF No. 3724, and the Declaration of Steve Straub, dated September 6, 2023, ("A.B. Data Decl."), ECF No. 3726, Class Counsel and the Court-appointed Claims Administrator, A.B. Data, Ltd. ("A.B. Data" or "Claims Administrator") have worked diligently to provide notice to Class Members and administer the claims process consistent with the Court-approved Plan of Distribution. Apart from the sole objector, Mr. Todd Rowan,² no other settlement claimant objected to the Distribution Motion or the claims administration process. The silence of the remaining 99.99% of Settlement Class Members strongly supports distribution under the Plan without further delay.

That leaves Mr. Rowan's objection. Mr. Rowan did not dispute A.B. Data's calculations of his Claims; rather, Mr. Rowan challenges the calculations of *other* Claimants. It appears that Mr. Rowan is unsatisfied with his anticipated recovery and contends that other Claimants are disproportionately benefiting at his expense. He also seeks to scrutinize the claims administration process by speculating about purported issues. Class Counsel³ and A.B. Data have thoroughly

¹ "Exchange-Based Plaintiffs" or "Plaintiffs" are Metzler Asset Management GmbH (f/k/a Metzler Investment GmbH), FTC Futures Fund SICAV, FTC Futures Fund PCC Ltd., Atlantic Trading USA, LLC, and Nathaniel Haynes. All references to "ECF No." herein refer to documents in the docket of the MDL Action, No. 11 MDL 2262 (NRB) (S.D.N.Y.) unless otherwise specified.

² Mr. Rowan previously objected to the Revised Plan of Distribution, arguing that Net Settlement Fund should be distributed equally between Recognized Net Loss and Recognized Volume. *See* ECF No. 3171-1 at 5-8 (Objection from Mr. Rowan to the Plan of Distribution). The Court overruled Mr. Rowan's objection and approved the Revised Plan of Distribution. *See* ECF Nos. 3175-80.

³ "Class Counsel" is Kirby McInerney LLP and Lovell Stewart Halebian Jacobson LLP.

considered and researched Mr. Rowan objections, held multiple telephonic meet-and-confers with Mr. Rowan, and have exchanged numerous emails with him. *See* Supplemental Declaration of Steve Straub dated October 12, 2023 (“Supp. A.B. Data Decl.”), filed contemporaneously herewith. In response to Mr. Rowan’s objection, A.B. Data re-reviewed claims within the top 90% of the distribution to determine if any issues were inadvertently missed, and while there were two (2) claims requiring corrections, the results of the distribution did not change materially. As such, Class Counsel therefore respectfully requests that the Court authorize, *inter alia*, the distribution of the Net Settlement Funds to Authorized Claimants, as identified in the revised Exhibits A and C, and Exhibit B, to the Supplemental A.B. Data Declaration.

II. ARGUMENT

A. The Court Should Approve Plaintiffs’ Distribution Motion.

Authorizing the Distribution Motion will promote judicial economy and avoid any further delays, resulting in the distribution of over \$140 million of the Net Settlement Funds to Authorized Claimants. As set forth in Plaintiffs’ Opening Memorandum, *see* ECF No. 3724, Class Counsel and the Claims Administrator have diligently and fairly performed their respective duties in overseeing the implementation of the Settlements. The claims determination process has been rigorous, and A.B. Data made substantial efforts to ensure that Claims were processed accurately and consistent with the Plan of Distribution. *See* A.B. Data Decl. ¶ 43. The fact that there was just a single claimant who opposed the Distribution Motion, out of the 4,116 submitted Claims, underscores that the settlement administration was well received by Class Members. *Id.* ¶¶ 17-18. Accordingly, and for the reasons discussed herein, Class Counsel respectfully submit that the Court authorize distribution of the Net Settlement Funds to Authorized Claimants.

B. Mr. Rowan Acknowledges that A.B. Data Accurately Calculated his Personal Claims Under the Plan of Distribution.

A review of Mr. Rowan's objections should begin with the fact that Mr. Rowan does not challenge the Claims Administrator's determination or calculation of his Claims. *See* Opposition of Todd Rowan to Distribution Motion, ECF No. 3756-1 ("Rowan Obj.") at 2-3. While Mr. Rowan now expresses "great concern" due to "severe issues with [his] own claims process," Rowan Obj. at 1, as detailed below, such issues primarily stemmed from how Mr. Rowan made his own claim submissions, which A.B. Data diligently worked through with him, and ultimately were resolved. *See* Supp. A.B. Data Decl. ¶¶ 6-16.

By way of background, in May 2020, Mr. Rowan submitted two (2) Claims and provided the Claims Administrator with approximately 1,783 PDF commodities trading statements containing transactions relating to multiple accounts and entities. *See* Supp. A.B. Data Decl. ¶ 9.⁴ Consistent with standard practices, A.B. Data endeavored to capture the transaction data by an extraction process of generated PDF statements. Supp. A.B. Data Decl. ¶ 11. A.B. Data then performed a manual review to ensure the accuracy of the extraction, including reviewing sampling from random days and months (*e.g.*, quantity, price, direction). *Id.* ¶ 12. In October 2022, A.B. Data began corresponding directly with Mr. Rowan to resolve and process his Claims, explaining to Mr. Rowan that based on the supporting documentation, Mr. Rowan should have submitted three (3) separate Claims rather than two (2) separate Claims. *Id.* ¶¶ 8, 10. Upon review, Mr. Rowan agreed, and A.B. Data began the process of reallocating the millions of eligible Eurodollar transactions among the three (3) separate Claims. *Id.* ¶ 8.

⁴ Mr. Rowan did not use the electronic claims filing template, which applies to those filing multiple Proof of Claims on behalf of themselves and/or others, but rather submitted a bespoke Excel spreadsheet that "detailed [his] claims broken down to the daily basis." Rowan Obj. at 2; *see also* Supp. A.B. Data Decl. ¶ 9.

Following an extensive process of reallocating transactions, on April 7, 2023, A.B. Data provided Mr. Rowan with three (3) Final Disposition Letters detailing the Recognized Net Loss and Recognized Volume for each Claim and advising Mr. Rowan of his right to request additional review of his Claims if he objected to A.B. Data's calculations. *See id.* ¶ 13; A.B. Data Decl. ¶¶ 41-42. Mr. Rowan subsequently requested additional review and informed A.B. Data that millions of transactions were omitted from the calculations. *See Rowan Obj.* at 2. Here, Mr. Rowan's Claims presented unique challenges due to the required reallocation of eligible transactions from originally two (2) Claims to three (3) Claims, which resulted in the partial omission of transactions. *Supp. A.B. Data Decl.* ¶ 14.⁵

On April 19, 2023, Mr. Rowan provided A.B. Data with additional, clarifying information including Excel spreadsheets, which A.B. Data utilized to carefully parse through and allocate Mr. Rowan's transactions to his satisfaction. *See Supp. A.B. Data Decl.* ¶¶ 14-15, Exhibit E (email chain between T. Rowan and P. Nogalski); *see also Rowan Obj.* at 2 (acknowledging that he "worked with an A.B. Data employee to ensure that all of the statements were properly accounted for."). After completing the thorough review and revision for Mr. Rowan, A.B. Data provided Mr. Rowan with the revised Final Disposition Letters, which Mr. Rowan does not contest. *Rowan Obj.* at 2-3.

⁵ Mr. Rowan argues that A.B. Data's "algorithm didn't properly pick up a portion of my statement volume on a large quantity of my statements," which purportedly resulted in his Claim "deficient in over 2 million contracts." *Rowan Obj.* at 2. The omitted transactions were not due to any such "algorithm," but rather a result of the manual reallocation of transactions among the Claims and isolated bespoke issues relating to Mr. Rowan changing his clearing firms during the Settlement Period. *Supp. A.B. Data Decl.* ¶¶ 14-15. These issues were unique to Mr. Rowan and not present to the same degree with respect to other Claimants.

While Mr. Rowan now “take[s] issue with how the claims process handled [his] losses,” Rowan Obj. at 2, the claims determination process worked as designed.⁶ A.B. Data processed Mr. Rowan’s complex Claims, conducted transaction-level reviews, and provided Mr. Rowan with Final Disposition Letters and the opportunity to request an additional review. Supp. A.B. Data Decl. ¶¶ 13-14. Mr. Rowan requested such a review, and A.B. Data and Mr. Rowan collaborated over several months to arrive at accurate calculations for Mr. Rowan’s Claims, which Mr. Rowan does not challenge. *Id.* ¶¶ 14-16. A.B. Data engaged in a similar collaborated process with all Claimants that requested further review of their Claims. *Id.* ¶ 15.

Further, Mr. Rowan’s recovery from the Net Settlement Funds is primarily attributable to the Recognized Volume component with Mr. Rowan’s Claim No. 103936109 constituting the 29th largest Claim by Recognized Volume. *Id.* ¶ 16. Mr. Rowan benefited tremendously from the claims process insofar as he was a successful trader who did not suffer substantial losses under the Plan of Distribution, but he is nevertheless receiving substantial compensation for trading in a market alleged to be manipulated.

As such, Mr. Rowan achieved the desired result (*i.e.*, settlement consideration for high-volume traders) and does not dispute A.B. Data’s calculations for his specific Claims. Mr. Rowan’s present dissatisfaction relates to his anticipated *pro rata* settlement recovery from the Net Settlement Funds. Rowan Obj. at 8 (noting concerns that his Claims were “massively diluted in the pro rata calculation”). However, for the reasons discussed herein, Class Counsel respectfully submits that Mr. Rowan’s challenges to the claims determinations of *other* claimants received due consideration, but those challenges are largely unfounded.

⁶ Mr. Rowan questions how A.B. Data calculated his Recognized Net Loss, *see* Rowan Obj. at 3. The methodology for the calculation of Recognized Net Loss is detailed in the Revised Plan of Distribution, which A.B. Data implemented, and Class Counsel supervised accordingly. A.B. Data Decl. ¶¶ 9, 43-44.

C. Mr. Rowan’s Challenges to A.B. Data’s Claim Determinations Do Not Withstand Scrutiny.

Class Counsel and A.B. Data considered Mr. Rowan’s objections and conducted additional reviews and audits in connection with the submitted claims to ensure the accuracy and completeness of the claims process. *See* Sections II.C.1. and II.C.2., *infra*. The fact remains that Mr. Rowan’s concerns are without merit, and Class Counsel continues to believe that granting the Distribution Motion is in the best interests of the Class Members. *See James Contant, et al., v. Bank of Am. Corp.*, No. 17 Civ. 3139, 2022 WL 46606, at *3 (S.D.N.Y. Jan. 5, 2022) (“declin[ing] to transform the motion for disbursement into an opportunity for the sole objecting claimant to scrutinize and seek justification for every decision made by Class Counsel and the Claims Administrator in the administration of the settlement”).

1. Mr. Rowan’s Recognized Volume Based Challenges Are Contrary to the Public Record.

The gravamen of Mr. Rowan’s objections is that the reported Recognized Volume purportedly “yields over 100% participation in this settlement” and that “the CME Group data does not support the findings of the claim’s administrator” Rowan Obj. at 3-4. Respectfully, Mr. Rowan’s conclusion is inconsistent with publicly reported data and reflects a misunderstanding as to the calculation of Recognized Volume.

During the Settlement Class Period, CME Eurodollar futures contracts were the CME’s biggest product in terms of volume, with daily trading volume regularly exceeding three to four million contracts.⁷ According to the Futures Industry Association (“FIA”), a prominent trade

⁷ *See* Elizabeth Stanton, *The Once-Mighty Eurodollar Futures Contract Fades Away*, BLOOMBERG (Apr. 13, 2023), <https://www.bloomberg.com/news/articles/2023-04-13/the-once-mighty-eurodollar-futures-contract-will-soon-be-no-more?sref=DkDOJxYw>; *see also* Will Acworth, *FIA Annual Volume Survey: 2010 Record Volume*, Futures Industry, at 9 (Mar. 2011), <https://www.fia.org/sites/default/files/2019-05/Volume-Mar-FI%28R%29.pdf> (noting that the CME Eurodollar futures contract has the highest volume traded of any interest rate contract worldwide).

organization for the futures and options industry, the reported volume of CME Eurodollar futures and options on Eurodollar futures between 2003 and 2010 was collectively 5.039 billion contracts.

See Table 1, below.

Table 1 – Number of Contracts Traded in Millions⁸

Year	CME Eurodollar Futures (In Millions)	CME Eurodollar Options (In Millions)	Total Volume
2003	208.77	100.82	309.59
2004	297.58	130.60	428.18
2005	410.36	188.00	598.36
2006	502.08	268.96	771.04
2007	621.47	313.03	934.5
2008	596.97	228.24	825.21
2009	437.58	117.55	555.13
2010	510.95	106.89	617.84
Total	3,585.76	1,454.09	5,039.9

The FIA total reported volume, not including the Settlement Class Period (*i.e.*, the period between January 2011 and May 2011), far exceeds Mr. Rowan’s calculated volume of 3.1 billion Eurodollar futures contracts. Rowan Obj. at 3-4.

In addition to the above-noted discrepancy, Mr. Rowan’s calculations reflect a fundamental misunderstanding as to the Claims Administrator’s calculation of Recognized Volume. Rowan Obj. at 4 (noting, “I’ve been told by A.B. Data and Class Council [*sic*] that some of the larger claims involved we’re able to capture both the buy side and sell side volume. This raises several questions with respect to how these claims were treated.”). For the avoidance of doubt, Class

⁸ See *FIA Annual Volume Survey: The Invigorating Effects of Electronic Trading*, Futures Industry, at 6 (Mar. 1, 2005), <https://www.fia.org/marketvoice/articles/fia-annual-volume-survey-invigorating-effects-electronic-trading>; *Derivatives Exchange Volume Accelerates in 2006*, Futures Industry, at 5 (Mar. 13, 2007), <https://www.fia.org/fia/articles/derivatives-exchange-volume-accelerates-2006>; Galen Burghardt and Will Acworth, *FIA Annual Volume Survey: 2008 A Wild Ride*, Futures Industry, at 10 (Mar. 2009), <https://www.fia.org/sites/default/files/2019-05/March-Volume.pdf>; Will Acworth, *FIA Annual Volume Survey: 2010 Record Volume*, Futures Industry, at 9 (Mar. 2011), <https://www.fia.org/sites/default/files/2019-05/Volume-Mar-FI%28R%29.pdf>.

Counsel and the Claims Administrator applied the Plan of Distribution equally and fairly to all Claimants. *See generally* A.B. Data Decl.

Rather, as Class Counsel and A.B. Data explained to Mr. Rowan on prior telephonic meet-and-confers and in written correspondence, Mr. Rowan's purported methodology for determining eligible volume on the CME failed to consider that a single reported transaction has two distinct counterparties (*i.e.*, buy-side and sell-side), each of which may be eligible to submit a Claim. Class Counsel informed Mr. Rowan that in calculating the volume of CME Eurodollar futures and options on Eurodollar futures contracts, the CME determines volume by strictly counting the number of contracts bought and sold, notwithstanding that each contract has two distinct counterparties.⁹ However, in calculating the Recognized Volume under the Plan of Distribution, the Claims Administrator is required to credit the same transaction potentially two Claimants (*i.e.*, the buy-side and sell-side) because Claimants, collectively, could submit both sides of a transaction for the Recognized Volume component. *See* ECF No. 2971-1 ¶ 6.

To illustrate, assume Trader-A purchases one (1) Eurodollar futures contract and is matched with Trader-B who is the seller of one (1) Eurodollar futures contract. According to the CME, the reported CME volume is one (1) contract. *Supra*, n.9. If both Trader-A and Trader-B submit eligible Claims, then pursuant to the Plan of Distribution Trader-A has a Recognized Volume of one (1) and Trader-B has a Recognized Volume of one (1). Collectively, the total Recognized Volume is two (2) in this hypothetical, not adjusting for Legal Risk under the Plan of Distribution. As such, Mr. Rowan miscalculates the total eligible volume during the Settlement

⁹ *What is Volume?*, CME Group, Inc., <https://www.cmegroup.com/education/courses/introduction-to-futures/what-is-volume.html> (“For example, a trader closes a short position in the E-mini S&P 500 (ES) futures contract by buying one contract in the ES, so volume will increase by 1.”).

Class Period by a multiple of two and thus, by Mr. Rowan's own calculations, the participation rate by volume would be approximately 50%.¹⁰

A.B. Data also performed extensive quality controls and audits relating to the Recognized Volume, including auditing certain Bulk Filer Claims based on the volume of transaction data they submitted to ensure all filing requirements were satisfied. *See* A.B. Data Decl. ¶ 33(c). A.B. Data utilized various financial information services in order to provide historical price and volume data, and performed various calculations to confirm that the total claimed volume on a given day did not exceed the reported daily trading volume. *See* Supp. A.B. Data Decl. ¶ 19. For example, A.B. randomly selected thirteen (13) different eligible contracts and compared the reported historical trading volume to the number of claimed contracts within A.B. Data's database for this Action. *Id.* In no instance did the number of claimed contracts exceed historical trading volume. *See id.*, Table 1.

Given the widespread notice program and the fact that large institutional investors submitted Claims in connection with the class action, the fact that the total claimed Recognized Volume exceeds 1.5 billion is unsurprising.

2. Mr. Rowan's Challenges to Individual Claim Determinations for Other Claimants Miss the Mark.

a) Mr. Rowan is Not Entitled to Review Other Claimants' Confidential Claim Submissions.

Mr. Rowan states that "Class Council [sic] and the Claims Administrator won't allow me to see other claimants' filings." Rowan Obj. at 4. *First*, other Claimants' submissions and

¹⁰ Mr. Rowan's suggestion that his percentage of the volume should be "double, perhaps even triple," Rowan Obj. at 4, underscores that the crux of Mr. Rowan's challenge is A.B. Data's calculation of other Claimants (*i.e.*, denominator). As noted above, *supra*, Section II.B., Mr. Rowan does not challenge A.B. Data's calculation of Mr. Rowan's Recognized Volume (*i.e.*, numerator).

documents are irrelevant to Mr. Rowan’s claim determination as each Claim was considered independently in accordance with the Plan of Distribution.

Second, as Class Counsel explained to Mr. Rowan, Class Counsel cannot provide transactions of other trading firms (*i.e.*, competitors) because such transaction data is treated as confidential, and disclosure risks serious substantial injury to other Claimants. *See In re Credit Default Swaps Antitrust Litig.*, No. 13 MD 2476, 2016 WL 2731524, at *13 (S.D.N.Y. Apr. 26, 2016) (noting that providing an objector with the model used for the plan of distribution “risks substantial injury to other Class members if its competitors’ data is used.”).

Third, permitting the Objector access to the transaction data of competitors—to presumably devise a way to reduce other Claimants’ Recognized Net Loss and Recognized Volume—would place the Objector directly against other Claimants and impose unnecessary and extensive delays to the detriment of the 99.99% of Settlement Class Members that desire to receive their *pro rata* distribution under the Plan without further delay. *See In re Citigroup Inc. Sec. Litig.*, No. 07 Civ. 9901, 2014 WL 2445714, at *2 (S.D.N.Y. May 30, 2014) (noting that “[t]he Court [] analyzes lead counsel’s motion based on the interests of the entire class—objecting and non-objecting members alike” and that “non-objecting class members are due an expeditious recovery”).

b) Mr. Rowan’s Recognized Net Loss Challenges Do Not Withstand Scrutiny.

Mr. Rowan challenges the Recognized Net Loss associated with the largest 50 Claims (or approximately 84.5% of total Recognized Net Loss), positing that many of these Claims have “a very high loss per contract ratio,” which leads him “to be highly skeptical that these figures are real losses and that proper calculations were applied to them.” Rowan Obj. at 5-7. This challenge falls short for two primary reasons: (i) Mr. Rowan improperly conflates Recognized Net Loss as

calculated under the Plan of Distribution with actual trading losses; and (ii) he is not considering that the Claims Administrator audited the largest Claims based on their Recognized Net Loss and Recognized Volume. *See* Supp. A.B. Data Decl. ¶¶ 21-23, 29-36.

First, Recognized Net Loss under the Plan of Distribution *does not* equal realized trading losses that a typical trader experiences in the course of business.¹¹ By design, the Plan of Distribution requires the Claims Administrator adjust each Claimant’s losses by the Legal Risk Adjustment, which attributes losses to the time periods and transactions most impacted based upon the Court’s prior rulings and the history of this case. ECF Nos. 2971-1 ¶ 8, 2973, 3106. Notably, Efficient Enforcer Transactions, for which there is no such Legal Risk Adjustment, comprise approximately 27.5% of Recognized Net Loss. *See* Supp. A.B. Data Decl. ¶ 23.

Furthermore, pursuant to the Plan of Distribution, “gains and losses within each Legal Risk Period [were] netted,” with the Claims Administrator then summing only the “Legal Risk Period in which an Eligible Claimant has an Adjusted Net Loss” for purposes of calculating each Claimant’s Recognized Net Loss. ECF No. 2971-1 ¶ 5. For example, a Claimant with 1,000,000 net gains for one Legal Risk Period and net losses of 2,000,000 for another Legal Risk Period would, all things being equal, have a Recognized Net Loss of 2,000,000 under the Plan of Distribution. *Id.*

Second, A.B. Data audited the Recognized Loss calculation as part of its claims review process. *See* A.B. Data Decl. ¶ 43; *see also* Supp. A.B. Data Decl. ¶¶ 29-31. Specifically, A.B. Data utilized its Quality Assurance Department to assess the accuracy of all Claims and calculations, including performing “additional review of Claims with a high *pro rata* share of the

¹¹ To the extent Mr. Rowan is reasserting an objection as to the “lack of clarity” concerning the calculation of Recognized Net Loss under the Revised Plan of Distribution, the Court has already overruled such an objection. *See* ECF Nos. 3175-80 (approving the Revised Plan of Distribution [ECF Nos. 2973, 3106]).

Net Settlement Funds” and testing the “accuracy of the program that calculated the allocation from the Net Settlement Funds.” *See* A.B. Data Decl. ¶ 43. A.B. Data also collaborated with subject matter experts from Williamsburg Expert Financial Analysis, LLC to verify the implementation of the Plan of Distribution. *Id.* ¶ 9.

In response to Mr. Rowan’s challenge, A.B. Data re-reviewed the 112 largest Claims based on their estimated distribution, and only two (2) Claims required correction following this thorough and diligent audit. *See* Supp. A.B. Data Decl. ¶¶ 29-36 (noting that the top 112 Claims constitute 90% of estimated distribution of the Net Settlement Funds). Specifically, A.B. Data re-reviewed the calculations for the 112 largest Claims based on the estimated distribution to confirm that there were no issues with duplicative claims, claims being replaced, incorrect pricing, or unreasonably large quantities. *Id.* ¶ 30. While there were minor modifications to the calculations for Recognized Net Loss and Recognized Volume,¹² the additional reviews overwhelmingly confirmed that the calculations of Recognized Net Loss and Claimants’ pro-rata shares of the Net Settlement Funds are in conformance with the Plan of Distribution. *See* Supp. A.B. Data Decl. ¶¶ 30-31. For these reasons, Class Counsel submits that Mr. Rowan’s challenges to Recognized Net Loss are without merit.

c) Mr. Rowan Incorrectly Asserts that Duplicate Claims Were Submitted.

Mr. Rowan’s assertion that Claims may be “duplicated” is without merit, and is not considering that A.B. Data has already attested to verifying and assessing all Claims to determine whether more than one Claim involved the same transactions. *See* A.B. Data Decl. ¶ 24. Through

¹² As noted in detail in the Supp. A.B. Data Decl., Claim No. 75351795 was withdrawn by the Claimant and the calculations for Claim No. 75181984 were revised to exclude fifty-nine (59) deficient transactions. *See* Supp. A.B. Data Decl. ¶¶ 32-36.

A.B. Data’s quality assurance reviews, A.B. Data identified a total of 85 duplicate Claims, which were marked as ineligible and rejected accordingly. *Id.* ¶¶ 24, 43(b).

d) Mr. Rowan Incorrectly Purports that Defendants, Broker Dealers, and Clearing Firms Submitted Claims.

Mr. Rowan’s assertion—that Defendants may have submitted Claims through their broker dealer(s) and clearing firm(s), and that broker dealers and clearing firms may have submitted Claims—is wholly conclusory and simply false. *See* Rowan Obj. at 5-7. No Claims were submitted from any Defendant, broker dealer, and clearing firm. *See* Supp. A.B. Data Decl. ¶ 20; *see also* A.B. Data Decl. ¶ 43(c) (noting that A.B. Data’s Quality Assurance Department “[v]erified that persons and entities excluded from the Class or particular Settlements 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 applicable Net Settlement Fund(s)”).

D. Mr. Rowan Has Not Provided Evidence of Real—As Opposed to Hypothetical—Issues with the Proof of Qualifying Transactions.

Mr. Rowan further speculates that the utilization of third-party brokerage commodity trading statements (“Trading Statements”) as proof of qualifying transactions is fraught with issues ranging from fraud to decipherability. *See* Rowan Obj. at 5-7. His arguments are unavailing.

Preliminarily, Mr. Rowan’s concerns as to using Trading Statements as proof of qualifying transactions are belated objections to the Proof of Claim and Release (“Claim Form”), which the Court previously approved. *See* ECF No. 3038 ¶ 8 (approving the Claim Form).¹³ Courts also routinely permit claims administrators to use Trading Statements to validate eligible transactions

¹³ To the extent Mr. Rowan is asserting that the Claims Administrator lacks the necessary experience to administer the claims due to the complexities of Eurodollars and/or futures contracts, such arguments are a belated objection to the appointment of the Claims Administrator and should be disregarded. *See* ECF No. 3038 (appointing A.B. Data, Ltd. to administer the Settlements).

in class action settlements,¹⁴ and Mr. Rowan himself acknowledges his reliance on Trading Statements to support his Claims. Rowan Obj. at 1.

Mr. Rowan's assertions of "fraudulent activity," *id.* at 6, are baseless. Notably, each claimant has declared and affirmed under penalties of perjury that the documentation and information are "true, correct and complete" and acknowledged that "misrepresentation of any information . . . may constitute a criminal offense subject to penalties." Claim Form, ECF No. 3025-5 at 10. Mr. Rowan provides no evidence supporting such serious accusations and neither A.B. Data nor Class Counsel are aware of any such fraudulent or suspicious activity in connection with this claim administration. A.B. Data has cross-checked all Claims against its database of known questionable filers, and identified and rejected four (4) Questionable Claim Filers. A.B. Data Decl. ¶ 44.

Mr. Rowan's assertions—that Claimants could have "cherry picked" Trading Statements to "inflate a claim's losses," Rowan Obj. at 5, or failed to disclose that they were a Hedger or Swaps Dealer—are equally without merit.¹⁵ Such allegations do not fully appreciate that each Claimant was required to provide "proof for each and every transaction . . . regardless of whether such transaction resulted in a gain or a loss" and certify that they "were not a Hedger" or "Swaps Dealer with respect to any" transactions. Claim Form, ECF No. 3025-5 at 5, 8.

Mr. Rowan's concerns that Trading Statements are "hard to decipher," have varying styles of displaying pricing, and contain consolidated transactions, Rowan Obj. at 6, neglects that A.B. Data accounted for such variations in processing claims and has extensive experience processing

¹⁴ See, e.g., Proof of Claim and Release, *Sullivan, et al. v. Barclays plc, et al.*, No. 13 Civ. 2811 (S.D.N.Y. July 13, 2023), ECF No. 572 at 23 (noting the use of Trading Statements as proof of qualifying transactions); see also Proof of Claim and Release Form, *Ali Karimi v. Deutsche Bank Aktiengesellschaft*, No. 22 Civ. 02854 (S.D.N.Y. Oct. 20, 2022), ECF No. 102 ¶ 8 (approving the use of stockbroker's statements as proof of qualifying transactions).

¹⁵ A.B. Data also reviewed transactions with large losses and where appropriate, flagged the transaction as ineligible if a corresponding closing transaction was not provided. See Supp. A.B. Data Decl. ¶ 30.

futures and options transactions. *See* Supp. A.B. Data Decl. ¶¶ 11, 27-28. A.B. Data further performed additional targeted audits of the 112 largest Claims based on their estimated distribution specifically for incorrect trading pricing, such as ‘95.23 representing 9523.0.’ Supp. A.B. Data Decl. ¶ 30. Lastly, Mr. Rowan’s concern “as to [the] authenticity” of Trading Statements is not considering that Claimants certify that the documentation provided (*e.g.*, Trading Statements) is “true, correct and complete.” Claim Form, ECF No. 3025-5 at 10. At bottom, Mr. Rowan, while offering no alternatives to the utilization of Trading Statements, conjectures a series of issues that miss the mark.

III. CONCLUSION

For the foregoing reasons, Class Counsel respectfully requests that this Court issue the accompanying proposed Order Authorizing Distribution of Net Settlement Funds granting the relief sought herein and overruling the objection in all respects.

Dated: October 12, 2023
New York, New York

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*Counsel for the Exchange-Based Plaintiffs and
the Settlement Classes*

CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

I hereby also certify that on October 12, 2023, I caused a copy of the foregoing to be served via email and First Class Mail to Mr. Rowan.

/s/ David E. Kovel
David E. Kovel

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

IN RE LIBOR-BASED FINANCIAL
INSTRUMENTS ANTITRUST LITIGATION

Master File No. 11-md-2262 (NRB)

THIS DOCUMENT RELATES TO:

METZLER INVESTMENT GmbH, et al.,

No. 11 Civ. 2613

Plaintiffs,

v.

CREDIT SUISSE GROUP AG, et al.

Defendants.

**[PROPOSED] ORDER AUTHORIZING EXCHANGE-BASED
PLAINTIFFS' MOTION FOR DISTRIBUTION OF
CLASS ACTION SETTLEMENT FUNDS**

WHEREAS, by its Final Judgments and Orders dated September 17, 2020 (ECF Nos. 3175, 3176, 3177, 3178, 3179, and 3180), this Court approved the terms of the Settlements¹ and the Plan of Distribution for distributing the settlement proceeds to Class Members; and

WHEREAS, this Court has directed the parties to administer the terms of the Stipulations and Plan of Distribution; and

WHEREAS, as set forth in the Court-approved Notice, the deadline for Class Members to submit Proof of Claim and Release forms to the claims administrator for the Settlement, A.B. Data,

¹ All capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Settlements. "Settlements" collectively refer to the "Stipulations of Settlement," or the "Settlement Agreements." See Barclays Settlement Agreement (ECF Nos. 680-3, 2307-3), Citi Settlement Agreement (ECF No. 2307-4); Deutsche Bank Settlement (ECF No. 2307-5); HSBC Settlement Agreement (ECF No. 2307-6); JPMorgan/BOA Settlement Agreement (ECF No. 2728-5); SG Settlement Agreement (ECF No. 3023-4).

Ltd. (“A.B. Data” or the “Claims Administrator”), in order to participate in the distribution of the Settlement Funds was December 1, 2020; and

WHEREAS, in satisfaction of due process requirements, all Class Members who filed claims that were in any way ineligible or deficient were: (i) informed that their claims were ineligible or deficient; and (ii) given opportunities to correct any deficiency prior to their claims being finally rejected, or to contest the determination as to the deficiency; and

WHEREAS, the process of reviewing all Proofs of Claim has been completed; and

WHEREAS, Class Counsel now seeks authorization to distribute the proceeds of the Settlement Funds to Authorized Claimants, after the payment of any taxes and unpaid costs or expenses; and

WHEREAS, this Court has retained jurisdiction of this Action with respect to enforcement of the terms of the Stipulations, including considering any further application or matter which may arise in connection with the implementation of the Settlements and the processing of Proofs of Claim and the distribution of the Net Settlement Funds to the Authorized Claimants;

NOW, THEREFORE, upon reading and filing of: (1) Exchange-Based Plaintiffs’ memorandum of law in support of their Motion for Entry of an Order Approving the Distribution of the Bank of America, Barclays Bank Plc, Citi, Deutsche Bank, HSBC Bank Plc, JPMorgan, and Société Générale Net Settlement Funds and for Reimbursement of Claims Administration Expenses; (2) the supporting Declaration of David E. Kovel dated September 7, 2023; (3) the supporting Declaration of Steven Straub of A.B. Data, Ltd. dated September 6, 2023 (“A.B. Data Declaration”) and the exhibits attached thereto; (4) Exchange-Based Plaintiffs’ reply memorandum of law; (5) the supporting Supplemental Declaration of Steven Straub dated October

12, 2023 (“Supp. A.B. Data Decl.”) and the exhibits attached thereto; and (6) upon all prior proceedings heretofore, and after due deliberation, it is hereby:

ORDERED, that the administrative determinations of A.B. Data to accept the Revised - Timely Eligible Claims, as set forth in Exhibit A of the Supplemental A.B. Data Declaration, and the Late But Otherwise Eligible Claims, as set forth in Exhibit B of the Supplemental A.B. Data Declaration, are adopted and said claims are hereby accepted; and it is further

ORDERED, that the administrative determinations of A.B. Data to reject the claims on the list of Revised - Rejected Claims, as set forth in Exhibit C of the Supplemental A.B. Data Declaration, are adopted and said claims are hereby rejected; and it is further

ORDERED, that any claim submitted after July 1, 2023 is and will be rejected, and that no further claims against the Settlement Funds be permitted; and it is further

ORDERED, that no further adjustments or corrections to claims submitted after August 16, 2023 may be accepted; and it is further

ORDERED, that payment be made from the Settlement Funds to the Internal Revenue Service for the proper amount of taxes due and owing on the interest earned on the Settlement Funds while in escrow, if any; and it is further

ORDERED, that the balance of the Settlement Funds, after deducting payments previously allowed or set forth herein, shall be distributed to the Authorized Claimants listed on Exhibits A and B of the A.B. Data Declaration under the court-approved Plan of Distribution in proportion to: (i) each Authorized Claimant’s Recognized Net Loss as compared to the total Recognized Net Loss of all accepted claimants and multiplied by 75% of the amount of the Net Settlement Funds; and/or (ii) each Authorized Claimant’s Recognized Net Volume as compared to the total

Recognized Net Volume of all accepted claimants and multiplied by 25% of the amount of the Net Settlement Funds, as shown on such printout; and it is further

ORDERED, that any Authorized Claimant whose *pro rata* Distribution Amount is greater than \$0 and \$19.99 or less shall receive a minimum payment of \$20.00 (the “Minimum Payment”) in the Initial Distribution and will not be eligible to receive any further distribution from the Net Settlement Funds; and it is further

ORDERED, that after excluding Authorized Claimants who will receive the Minimum Payment, any Authorized Claimant whose Distribution Amount recalculates to \$20.00 or more and less than \$10,000.00 will receive their full *pro rata* Distribution Amount in the Initial Distribution and will not be eligible to receive any further distribution from the Net Settlement Funds; and it is further

ORDERED, that 90% of the remaining balance of the Net Settlement Funds will be distributed *pro rata* to Authorized Claimants whose Distribution Amount calculates to \$10,000.00 or more, with the remaining 10% of the Net Settlement Funds held in reserve; and it is further

ORDERED, that after payments of any additional fees and expenses incurred in connection with administering the Settlements, estimated taxes, the costs of preparing appropriate tax returns, any escrow and administrative fees, and any claims administration-related contingencies, and the reserve is not depleted, following consultation with Class Counsel, in a reasonable amount of time after the Initial Distribution, A.B. Data will conduct a Second Distribution to Authorized Claimants (i) whose *pro rata* Distribution Amount in the Initial Distribution calculated to \$10,000.00 or more, (ii) who cashed their first distribution check, and (iii) who would receive at least \$10.00 from such distribution based on their *pro rata* share of the remaining funds; and it is further

ORDERED, that any checks for distribution to Authorized Claimants shall bear the notation “CASH PROMPTLY. VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED WITHIN 90 DAYS AFTER ISSUE DATE.” Class Counsel and A.B. Data are authorized to take appropriate action to locate and/or contact any Authorized Claimant who has not cashed his, her, or its check within said time; and it is further

ORDERED, that the costs of such services to locate and reissue payments to such Authorized Claimants shall be payable from the monies remaining in the Net Settlement Funds; and it is further

ORDERED, that: (a) in a reasonable amount of time after the Second Distribution, any funds remaining in the Net Settlement Funds, by reason of uncashed checks, or otherwise, after the Claims Administrator has made reasonable efforts to have Authorized Claimants who are entitled to participate in the distribution of the Net Settlement Funds cash their distribution checks and following consultation with Class Counsel, shall be redistributed, if economically feasible, to Settlement Class Members who have cashed their distributions and who would receive at least \$10.00 from such redistribution, after payment of any unpaid costs or fees incurred in administering the Net Settlement Funds for such redistribution; and (b) if there is any balance remaining in the Net Settlement Funds after redistribution to Authorized Claimants, and further redistribution is not economically feasible, then such remaining funds, after payment of any further notice and administration expenses and taxes, shall be donated to a nonsectarian, not-for-profit 501(c)(3) organization(s) recommended by Class Counsel and approved by the Court; and it is further

ORDERED, that the Court finds that the administration of the Settlement and the proposed distribution of the Net Settlement Funds comply with the terms of the Stipulations and the Plan of

Distribution and that all Persons who are involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Proofs of Claim filed in this Action, or who are otherwise involved in the administration or taxation of the Settlement Funds, or the Net Settlement Funds, are released and discharged from any and all claims arising out of such involvement, and, pursuant to the release terms of the Settlement, all Class Members, whether or not they are to receive payment from the Net Settlement Funds, are barred from making any further claims against the Net Settlement Funds, beyond the amount allocated to Authorized Claimants, and to provide that all Persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Proofs of Claim submitted herein, or otherwise involved in the administration or taxation of the Settlement Funds or Net Settlement Funds, be released and discharged from any and all claims arising out of such involvement; and it is further

ORDERED, that this Order shall not release any claim by Exchange-Based Plaintiffs against the Claims Administrator with respect to distributions, if any, if later discovered to have been made not substantially in accordance with the Stipulations, the Plan of Distribution, or any order of the Court; and it is further

ORDERED, that A.B. Data's request for payment of its estimate for the distributions as set forth above in the amount of \$44,945.93, is approved; and it is further

ORDERED, that A.B. Data is permitted to destroy paper and electronic copies of the Claims and all supporting documentation one year after all funds from these Settlements have been distributed, and the Action has finally terminated; and it is further

ORDERED, that this Court retains jurisdiction over any further application or matter which may arise in connection with this Action.

IT IS SO ORDERED

This _____ day of _____, 2023
New York, New York

Honorable Naomi Reice Buchwald
United States District Judge