



## I. INTRODUCTION

Plaintiffs, through Co-Lead Counsel, respectfully request the Court to direct the transfer of the settlement funds from the Court Registry Investment System (“CRIS”) to The Huntington National Bank (“Huntington Bank”), which specializes in the administration of class action settlement funds and distributions. The funds must be transferred and available to the Claims Administrator<sup>1</sup> in liquid form before the Claims Administrator can begin distributing refund checks to claimants, as CRIS does not provide settlement distribution services. Taking this administrative step now is necessary to facilitate the efficient administration of the distribution to valid claimants.

Plaintiffs have just learned that CRIS has on at least one very recent occasion disbursed funds via a wire transfer. *See SEC v. J.P. Morgan Chase & Co.*, Order Directing the Clerk of the Court to Transfer All Amounts in the Fair Fund to the Custody of the Distribution Agent (S.D. Texas Sept. 13, 2011) (attached at Exhibit A). Plaintiffs respectfully request that the Court direct CRIS to wire transfer the settlement funds directly into the “Foreign Currency Fee Litigation Settlement Fund” account to be maintained by Huntington Bank. Upon entry of the Order directing the transfer, Plaintiffs would provide CRIS with a completed “Wire Transfer Instruction Sheet,” in the form utilized in *SEC v. J.P. Morgan Chase & Co.*

In the alternative, should the Court prefer, CRIS may transfer the settlement funds via checks<sup>2</sup> made payable to the “Foreign Currency Fee Litigation Settlement Fund,” which will be

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<sup>1</sup> In an Order dated November 8, 2006 (Dkt. No. 471), the Court appointed Heffler, Radetich & Saitta, L.L.P. as Claims Administrator.

<sup>2</sup> It is Plaintiffs’ understanding that CRIS cannot issue a check in an amount greater than eight figures, and, therefore, CRIS will be required to issue multiple checks to effect the transfer to Huntington Bank.

released to Plaintiffs' Co-Lead Counsel, Berger & Montague, P.C., who will deposit the checks with Huntington Bank. This disbursement method incurs delays, including the time needed for CRIS to issue the checks, and for the checks to be deposited and cleared. Generally, during the course of the settlement administration, CRIS has issued checks on average approximately two weeks after the issuance of a Court Order authorizing payment of costs.

For the Claims Administrator to complete the mailing of the refund checks before the end of the year, the mailing should commence on or about November 1, 2011. *See* Affidavit of Edward J. Radetich, Jr., C.P.A. Regarding Claims Administration, ¶ G.17 (“Radetich Affidavit”)<sup>3</sup> (stating the mailings will take up to 60 days to complete). To start on that date, the funds needed to pay the costs associated with the distribution should be available to the Claims Administrator no later than ten (10) days in advance of the start date, and the funds for the distribution should be available no later than five (5) days prior to the date the printing of the checks commences as the mailing of the refund checks will start within days of when printing begins. *Id.*

Accordingly, to assure that the mailing of the refunds checks will be completed by the end of 2011, Plaintiffs respectfully request that the Court issue an Order on or before October 1, 2011 directing CRIS to transfer all the settlement funds to Huntington Bank. Transferring all of the settlement funds at that time will ensure sufficient time to receive, clear and make available the funds in advance of a November 1 start date (including the above-referenced minimum

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<sup>3</sup> The Radetich Affidavit has been submitted as Exhibit 1 in support of Plaintiffs' Motion to Approve the Distribution of the Net Settlement Fund in Accordance with the Affidavit of Edward J. Radetich, Jr., C.P.A. Regarding Claims Administration. In the affidavit, the Claims Administrator details the refund amounts under each Claim option and the methodology for calculating these amounts. The cost data used to make these determinations assumes that Huntington Bank is the Court-approved bank for the distribution.

periods) for the printing of the refund checks. In the event the funds are released from CRIS via checks, an Order on or before October 1 is absolutely necessary to accommodate the check processing period by CRIS.

## **II. FINAL SETTLEMENT APPROVAL HAS OCCURRED**

Releasing the settlement funds from CRIS is warranted now that the Settlement Agreement (Dkt. No. 452, Vol. I) has become final, pursuant to ¶ 9 of the Settlement Agreement.

The Court granted final approval of the settlement and approved awards to the named Plaintiffs and awarded attorneys' fees and expenses on October 22, 2009 (Dkt. No. 755). The Final Judgment and Order of Dismissal (Dkt. No. 763) was entered on November 4, 2009. On May 10 and 11, 2011, the Court received the Mandates of the Court of Appeals for the Second Circuit dismissing the final two appeals (respectively, Appeal Nos. 10-1145(con) (S.D.N.Y. Docket No. 873) and 06-5327cv (S.D.N.Y. Docket No. 874)). With no other appeals of the Final Judgment and Order of Dismissal or of the awards to the named Plaintiffs or of attorneys' fees and expenses pending, the time for further judicial review of the Settlement Agreement has expired.<sup>4</sup>

Because all conditions for finality have been met, pursuant to ¶ 9 of the Settlement Agreement, the process for distributing the net settlement fund may now commence in the manner set forth in the Radetich Affidavit. Before that distribution plan may be implemented, however, it is necessary to first secure the services of a bank with the ability, resources and experience to process the distribution of more than 10 million refund checks.

The Claims Administrator recommends that the Court approve the designation of Huntington Bank to provide these banking services. Radetich Affidavit, at ¶ G.20. Huntington

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<sup>4</sup> The Mandates dismissing the other appeals are at S.D.N.Y. Docket Nos. 813, 828, 836, 838, 839, 841, 859, 863, 864, 865 and 867.

Bank has matched the lowest bid from among those supplied by several banks, and, in addition, has offered a .10% earnings credit.<sup>5</sup> *Id.* at ¶¶ G.21-22. The bank has an experienced team devoted to assisting with class settlement administration services, which has worked closely with the Claims Administrator on a number of cases over the past several years. *Id.* at ¶ G.23.

### **III. THE CLAIMS ADMINISTRATOR'S RECOMMENDATION CONCERNING THE REQUIRED BANKING SERVICES FOR THE DISTRIBUTION**

Following dismissal of the last two appeals, Co-Lead Counsel requested that the Claims Administrator solicit bids from financial institutions for the banking services necessary to issue refund checks to Valid Claimants and to manage the settlement funds.

The Claims Administrator solicited bids from a number of banks and subsequently received bids from: (i) Huntington Bank; (ii) Wells Fargo; (iii) PNC Bank; and (iv) The Bancorp Bank. *Id.* at ¶ G.21. Analyzing each bid, the Claims Administrator determined that Bancorp offered the lowest bid, that the Huntington Bank and Wells Fargo bids were comparable, and that PNC Bank submitted the highest cost bid. *Id.* However, only Huntington Bank offered to match the lowest bid offered by another bank, and it subsequently agreed to match the Bancorp bid, and, in addition, offered a 0.10% earnings credit not offered by Bancorp.<sup>6</sup> *Id.* Huntington Bank will provide the check processing services at a cost of \$0.045 per cleared check (*e.g.*, if 10 million checks are cleared, the bank charge will be \$450,000.00, an amount which will be

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<sup>5</sup> While distribution accounts do not ordinarily earn interest, Huntington Bank is offering a functional equivalent, in the form of an earnings credit of 0.10%, from the date it receives the distribution from CRIS to the date the distribution commences. In contrast, in June, 2011, the CRIS funds earned interest at a rate of only 0.00173%. Huntington Bank will maintain the funds in an FDIC-insured checking account, which provides unlimited insurance through December 31, 2012. The earnings credit will reduce the approximately \$450,000.00 charge to process the approximately 10 million checks.

<sup>6</sup> Huntington Bank's bid proposal supersedes its prior proposals, dated February 25, 2011 and May 9, 2011, which were provided to the Court on March 18, 2011 and May 25, 2011, respectively. The bank's current bid is lower than the prior bids.

reduced via Huntington Bank's 0.10% earnings credit). *Id.* at ¶ G.22. Further, the funds will be fully protected by the unlimited deposit insurance coverage provided by the FDIC, under the Dodd-Frank Act, which guarantees this protection through December 31, 2012. *Id.*

Huntington is one of the largest banks in the country. It is ranked in the top 1% of banks nationwide. *Id.* at ¶ G.23. The bank maintains over 600 offices in 17 states, including an office in New York. *Id.*

In addition to its low bid, Huntington Bank possesses substantial experience with managing settlement distributions. *Id.* The bank's national class action settlement team has handled more than 600 settlement administrations. *Id.* The Claims Administrator has partnered with Huntington Bank to process settlement distributions on numerous occasions over the last several years, and, in each instance, Huntington Bank has performed its duties to the highest professional standards. *Id.*; *see also* letter from Huntington Bank Senior Vice President Christopher W. Ritchie (Exhibit B) for additional information on Huntington Bank's settlement distribution experience.

Given Huntington Bank's low bid and its experience managing settlement distributions, the Claims Administrator recommends that Huntington Bank serve as the financial institution for providing the necessary settlement distribution and fund management services. Radetich Affidavit, at ¶ G.20.

#### **IV. TRANSFER OF THE SETTLEMENT FUNDS FROM CRIS TO HUNTINGTON BANK**

The CRIS accounts containing the settlement funds were created pursuant to the Court's October 22, 2007 Amended Order (Dkt. No. 533). The funds are segregated into two separate accounts: (i) the CRIS Principal Settlement Fund (account number 07-cc-0001-1), with a balance of \$334,982,098.00 as of June 30, 2011; and (ii) the CRIS Notice and Cost Administration Fund

(account number 07-cc-0001-2), with a balance of \$709,685.03 as of June 30, 2011. See Affidavit of Ronald A. Bertino, CPA Regarding the Costs of Administration Through June 30, 2011 (“Bertino Affidavit”) ¶3 and Exhibit A (“Cash & Investments as of June 30, 2011”).<sup>7</sup>

Plaintiffs respectfully request that both CRIS accounts be transferred to Huntington Bank. After, the funds will be segregated into three accounts: (i) the “Foreign Currency Fee Litigation Settlement Fund”;<sup>8</sup> (ii) the “Currency Conversion Fee Attorneys’ Fees, Expenses and Awards Account”; and (iii) the “Currency Conversion Fee Distribution Costs Account.”

The “Currency Conversion Fee Attorneys’ Fees, Expenses and Awards Account” will contain the sum of the following amounts:

- (i) the approved awards to the named Plaintiffs (\$83,500.00);
- (ii) the awarded attorneys’ fees (\$51,250,000.00);
- (iii) the pro-rata share of the interest earned on the attorneys’ fees award in accord with the Court’s October 22, 2009 Memorandum and Order, *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 131 (S.D.N.Y. 2009), which amount will be capped as of June 30, 2011 at \$47,325.89;<sup>9</sup> and
- (iv) the awarded reimbursement of expenses (\$3,708,072.00).

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<sup>7</sup> The Bertino Affidavit was submitted with Co-Lead Counsel’s Report Regarding the Cost of Settlement Notice and Administrative Costs and Motion for Approval of Settlement Notice and Administration Costs for the Second Quarter 2011, filed on July 26, 2011.

<sup>8</sup> For processing purposes, the bank requires that the top line of the refund checks (*i.e.*, the reference line in the upper-left corner) contain the name of the account containing the funds.

<sup>9</sup> The Claims Administrator has determined that the interest earned by the funds from October 22, 2009 through June 30, 2011 was \$310,272.68. Applying a pro-rata percentage of 15.253%, the interest on the attorneys’ fees award as of June 30, 2011 is \$47,325.89. See Radetich Affidavit, Exhibit J.

Co-Lead Counsel intend to promptly distribute the Court's awards to the representative Plaintiffs and to disburse the litigation expenses to those firms which incurred the expenses. Co-Lead Counsel will allocate the attorneys' fees among counsel, taking into account the contributions of all counsel.

The "Currency Conversion Fee Distribution Costs Account" will consist of the funds needed to pay the costs associated with the distribution of the settlement in the manner set forth in the Radetich Affidavit. The Claims Administrator determined that the following costs will be incurred in connection with the distribution:

- (a) \$4,329,433.85 (associated with printing and postage costs);
- (b) \$452,148.26 (bank fees); and
- (c) \$200,000.00 (operation of an IVR telephone system).

Radetich Affidavit, at ¶¶ G.7, 8, 17 & 22; Radetich Affidavit, Exhibit J. The total amount of these costs is \$4,981,582.11.

The "Foreign Currency Fee Litigation Settlement Fund" will contain all of the remaining funds (*i.e.*, the "net settlement fund"), which will be used for the distribution to claimants.

The Claims Administrator's proposed timeline targets completing the refund distribution by the end of 2011. *Id.* at ¶ G.17. Mailing the checks will occur over period of several weeks, not to exceed sixty (60) days, which requires that the mailing commence on or about November 1, 2011. *Id.* (mailing will occur on a rolling basis as checks are printed). Printing the checks will commence thirty (30) days after the Order authorizing the distribution. *Id.* The funds needed to pay the costs associated with printing and mailing must be available (*i.e.*, in liquid form in the "Currency Conversion Fee Claimant Distribution Account") to the Claims Administrator at least ten (10) days in advance of the commencement of printing the checks. *Id.*

Additionally, to meet the timeline, the remaining funds for the distribution (*i.e.*, the net settlement fund) must also be available (in liquid form in the distribution bank account) no later than five (5) days prior to the date the printing of the checks commences. *Id.*

To ensure that the necessary funds are available (*i.e.*, all funds for the costs plus the net settlement fund), an order directing CRIS to transfer the entire settlement fund (including the amounts for awards, attorney's fees and awarded litigation expenses) should issue on or before October 1. Further, releasing the funds in two tranches, one for costs (along with the awards, fees and expenses) and another for the net settlement fund, would only permit CRIS to hold the net settlement fund for an insignificantly short period (an additional week, or maybe two), while increasing the risk of delay to subsequently process the second tranche.

As discussed above, CRIS has recently disbursed funds via wire transfer on at least one occasion. Plaintiffs respectfully request that CRIS transfer the funds using this method.

Alternatively, should CRIS disburse the funds via checks, and assuming a typical period of two weeks for CRIS to issue the checks, the funds will not be received, cleared and available for use until around the end of the third week in October (circa Friday, October 21). While that timing permits the printing of the checks to commence on or about November 1, 2011, Plaintiffs respectfully recommend that CRIS issue the checks within one week of the Court's Order.<sup>10</sup>

In the event that the settlement funds are transferred via checks, Plaintiffs recommend the following procedure: (1) CRIS draws the checks no later than seven (7) days from the date of the Court's Order directing the transfer; (2) upon drawing the checks, CRIS promptly contacts by telephone Plaintiffs' Co-Lead Counsel, Merrill Davidoff, Berger & Montague, P.C., 215-875-

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<sup>10</sup> By way of example, two weeks after an Order issued Monday, October 3, would have the CRIS checks available on or about Monday, October 17.

3000, to inform them that a representative of Berger & Montague, P.C. may pick up the checks; and (3) a representative of Plaintiffs' Co-Lead Counsel, Berger & Montague, P.C., picks up the checks directly from CRIS at its offices, located at Daniel Patrick Moynihan U.S. Courthouse, 500 Pearl Street, New York, New York 10007, and deposits the checks into the "Foreign Currency Fee Litigation Settlement Fund" account at Huntington Bank.

Accordingly, Plaintiffs respectfully request that the Court authorize, on or before October 1, 2011, a single transfer of all the settlement funds held in CRIS accounts to Huntington Bank, to be deposited into three separate bank accounts, as described above.

**V. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court authorize the transfer of the CRIS settlement funds to Huntington Bank, to be deposited into three separate bank accounts, as described above.

DATED: September 14, 2011

Respectfully submitted,

BERGER & MONTAGUE, P.C.  
MERRILL G. DAVIDOFF  
RUTHANNE GORDON  
DAVID A. LANGER



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MERRILL G. DAVIDOFF

1622 Locust Street  
Philadelphia, PA 19103  
Telephone: 215/875-3000  
215/875-4604 (fax)

- and -

ROBBINS GELLER RUDMAN  
& DOWD LLP  
BONNY E. SWEENEY

  
BONNY E. SWEENEY

655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: 619/231-1058  
619/231-7423 (fax)

*Co-Lead Counsel for Plaintiffs*

ka1776111