

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

GREGORY BOUTCHARD and SYNOVA
ASSET MANAGEMENT, LLC, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

KAMALDEEP GANDHI, YUCHUN MAO
a/k/a BRUCE MAO, KRISHNA MOHAN,
TOWER RESEARCH CAPITAL LLC, and
JOHN DOE Nos. 1 – 5,

Defendants.

Case No. 1:18-cv-07041

Hon. John J. Tharp, Jr.

**MEMORANDUM OF LAW IN SUPPORT OF CLASS PLAINTIFFS' MOTION FOR
ENTRY OF AN ORDER APPROVING DISTRIBUTION
OF THE NET SETTLEMENT FUND TO AUTHORIZED CLAIMANTS**

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Plaintiffs Gregory Boutchard (“Boutchard”) and Synova Asset Management, LLC (“Synova” and, collectively with Boutchard, “Class Plaintiffs”) by and through their undersigned counsel, Lowey Dannenberg, P.C. (“Class Counsel”), respectfully submit this memorandum and the accompanying Declaration of Jack Ewashko (the “Ewashko Decl.”) in support of their motion seeking approval of the proposed distribution of the Net Settlement Fund.

INTRODUCTION

Class Counsel is pleased to submit this motion seeking distribution of the settlement proceeds to Authorized Claimants impacted by the alleged manipulation of the prices of E-Mini Index Futures and Options on E-Mini Index Futures. The Court-appointed Settlement Administrator, A.B. Data, Ltd. (“A.B. Data”) and Class Counsel have worked quickly and diligently to process Claims, answer questions, and implement the Distribution Plan approved by the Court in this Action. *See* ECF No. 153 at ¶ 15. After a thorough review of all Claims, A.B. Data determined that 5,136 Claims are eligible to receive a payment from the Net Settlement Fund. Ewashko Decl. ¶ 16. Following the Court’s entry of the accompanying Distribution Order, each Authorized Claimant will receive its *pro rata* share of the Net Settlement Fund.¹

A.B. Data proposes distributing the Net Settlement Fund in two phases. In the first phase (the “Primary Distribution”), each Authorized Claimant whose *pro rata* share of the Net Settlement Fund (the “Distribution Amount”) is less than \$20,000 will receive the full Distribution Amount. Ewashko Decl. ¶ 42(b)(2)-(4). The remaining Authorized Claimants whose Distribution Amount is greater than or equal to \$20,000 will receive ninety percent (90%) of their Distribution Amount from the Primary Distribution. *Id.* The remaining ten percent (10%) of the Distribution

¹ “Net Settlement Fund” means the Settlement Fund provided by the settlement in this Action with Defendant Tower Research Capital LLC, plus any accrued interest, less deductions for tax payments, claims administration and escrow costs, and any Court-approved awards. As of February 29, 2024, the Net Settlement Fund (including interest) totals \$9,794,090.17. Interest will continue to accrue on the Net Settlement Fund until the time of distribution.

Amounts will be held in reserve for contingencies and later distribution. *Id.*; see *In re Folding Carton Antitrust Litig.*, 557 F. Supp. 1091, 1099 (N.D. Ill. 1983), *aff'd in part*, 744 F.2d 1252 (7th Cir. 1984) (allocated approximately 3% of the settlement funds to a reserve fund); *In re Spectrum Brands Sec. Litig.*, No. 19-CV-178-JDP, 2022 WL 17082787, at *1 (W.D. Wis. Nov. 18, 2022) (reserving 5% of the Net Settlement Fund “to address any tax liability or claims administration-related contingencies that may arise following the Initial Distribution.”). The reserve plus any amount of the Primary Distribution that has gone unclaimed by Authorized Claimants will be reallocated *pro rata* during the Secondary Distribution to those Authorized Claimants that had a portion of their Distribution Amounts held in reserve.

Importantly, there are no objections to A.B. Data’s determinations.

I. CLAIMS ADMINISTRATION PROCESS

The sections below summarize A.B. Data’s efforts to: (a) identify eligible Claims; (b) advise Claimants of A.B. Data’s deficiency findings and final dispositions concerning their Claims; (c) audit Claims; and (d) complete a quality assurance review. A summary of A.B. Data’s determinations is also provided.

A. Identification of Eligible Claims and Transactions

A.B. Data reviewed each Claim to determine whether it was eligible on both the claim-level and on the transaction-level. Ewashko Decl. ¶¶ 18-23. To be eligible, a Claim had to include:

- eligible E-Mini Index Futures² and Options on E-Mini Index Futures transaction(s) during the Class Period and related data;

² “E-Mini Index Futures” means E-mini Dow Futures contract(s), E-mini S&P 500 Futures contract(s), or E-mini NASDAQ 100 Futures contract(s) and “Options on E-Mini Index Futures” means any option on any E-Mini Index Futures.

- valid documentation to support the E-Mini Index Futures and Options on E-Mini Index Futures transactions included in the Claim.

Id. ¶¶ 20-21. In addition, each Claim needed to remain in good standing, meaning that the Claim was not withdrawn, replaced, or duplicative of another Claim. *Id.* ¶ 22.

B. Deficiency and Final Disposition Letters

After reviewing all filed Claims, A.B. Data notified each Claimant of the final disposition of the Claim and further identified any Claim-level or transaction-level deficiencies. Ewashko Decl. ¶¶ 24-31. If the Claim was rejected in part or in whole, the reason(s) for the rejection was referenced. *Id.* The final disposition information provided the Transaction Claim Amount calculation pursuant to the Distribution Plan (if applicable) for each Authorized Claimant whose Claim was accepted. *Id.*

A.B. Data's correspondence also advised Claimants of their right to object to A.B. Data's determination. *Id.* ¶¶ 24(c), 28. A Claimant seeking to object to A.B. Data's determination was required to submit a written statement requesting additional review of their Claim and setting forth the basis for the objection. *Id.* ¶¶ 24(d), 28. For Claimants that provided additional information in response to the deficiency notice, an updated final disposition was provided to the extent that the Claimant's response resolved the noted deficiency. *Id.* ¶ 27. As of this filing, A.B. Data has not received any objections or requests for Court review of its administrative determination. *Id.* ¶¶ 30, 31.

C. Claims Auditing

A.B. Data also performed targeted audits of transactions from certain Claims. Audited Claimants were asked to provide broker/custodian statements, confirmation slips or other transaction-specific documentation supporting the specific sample transaction(s) selected by A.B.

Data for audit. Ewashko Decl. ¶¶ 32-37. These targeted audits helped to ensure that transaction data supplied by Claimants did not contain false or inaccurate information. *Id.* ¶ 33. The Claims selected to submit their underlying confirmations and other documentation for audit included:

- Large Claims: A.B. Data requested supporting documentation from the Claimants comprising the top 30% of the Transaction Claim Amounts under the Distribution Plan. *Id.* ¶ 33(a).
- Bulk Filer Claims: Certain Claims submitted by (a) financial institutions on behalf of multiple customers and (b) agents such as claims aggregators and law firms on behalf of their customers/clients (collectively, “Bulk Filer Claims”) were also selected to be included in the audit. *Id.* ¶ 33(b).

A.B. Data sent an e-mail (or letter) to each auditee (the “Audit Letter”), asking that these Claimants provide the requested documentation or data. *Id.* ¶ 34. Each Claimant was advised that failing to timely respond and provide the requested information within a specified time period would result in the Claim’s rejection. *Id.* In total, A.B. Data audited eleven Claims (the “Audited Claims”). All eleven Claimants responded to the Audit Letter. *Id.* ¶¶ 35-36.

Upon receiving data from the Audited Claims, A.B. Data’s Electronic Claim Filing Team evaluated all transaction-level data provided to confirm the eligibility of each audited transaction. *Id.* ¶ 36. As a result of the audit, all of the Audited Claims passed with no rejections or adjustments. *Id.* ¶ 37. These Claims are included in either **Exhibit A** (Timely Eligible Claims) or **Exhibit B** (Late But Otherwise Eligible Claims).

D. Quality Assurance Review

A.B. Data’s Quality Assurance Department operated as an independent auditor to ensure that the settlement administration followed the Distribution Plan and commonly accepted claims

administration practices. Ewashko Decl. ¶ 38. The department performed a quality assurance review of the Claims during which A.B. Data: (a) verified that all Claim Forms were signed by authorized individuals; (b) verified that true duplicate Claims were identified and rejected; (c) verified that persons and entities excluded from the Class 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* allocation of the Net Settlement Fund; (d) audited Claims and all supporting documentation to ensure completeness of Claims; (e) reviewed Claims flagged as deficient or invalid; (f) confirmed all Claimants that were to receive a deficiency and/or rejection notice were sent such notification; (g) performed additional reviews of Claims with a high *pro rata* share of the Net Settlement Fund; (h) audited Claims whose Transaction Claim Amount calculation equaled zero; (i) audited the approved calculation specifications based on the Distribution Plan; and (j) re-tested the accuracy of the program that calculated the allocation from Net Settlement Fund. *Id.* ¶ 38. A.B. Data also confirmed that it compared the Claimant list against its list of known questionable claim filers. *Id.* ¶ 39.

E. A.B. Data's Claim Determinations

A total of 4,684 Claims were submitted on or before the Claim deadline of August 12, 2021, of which 4,218 were determined by A.B. Data to have eligible E-Mini Index Futures and/or Options on E-Mini Index Futures transactions (“Timely Eligible Claims”). Ewashko Decl. ¶ 14.

A total of 1,183 Claims were submitted after the August 12, 2021 Claim submission deadline (“Late Claims”). *Id.* ¶¶ 15, 40. Of those, 918 were determined by A.B. Data to have eligible E-Mini Index Futures and/or Options on E-Mini Index Futures transactions. *Id.* ¶¶ 15, 40. These otherwise eligible Late Claims are recommended for payment because the late submission

did not delay the distribution of the Net Settlement Fund. *Id.* ¶¶ 15, 40. Late Claims were ineligible for reasons other than timeliness. *Id.* ¶¶ 15, 40.

In total, there are 5,136 Claims with eligible E-Mini Index Futures and/or Options on E-Mini Index Futures transactions that may receive their Distribution Amount pursuant to the Distribution Plan. *Id.* ¶ 16.

A.B. Data further recommends that the Court reject the remaining 731 Claims, which include Claims that: were withdrawn (14), replaced (355), submitted in duplicate (32), or did not have eligible transactions or failed to provide acceptable data or documentation concerning the transactions (330). *Id.* ¶ 17. Finally, A.B. Data also recommends that any order approving the proposed distribution provide that no Claim received after March 22, 2024 be eligible for payment from the Net Settlement Fund for this Settlement for any reason whatsoever and that no further adjustments or corrections to Claims submitted after March 22, 2024 may be accepted. *Id.* ¶ 42.

II. DISTRIBUTION PROCEDURE FOR THE NET SETTLEMENT FUND

A.B. Data proposes that the *pro rata* distribution of the Net Settlement Fund occur in two phases, starting with the Primary Distribution and followed by the Secondary Distribution involving any remaining funds. The proposed *pro rata* distribution of the Settlement Fund is fair and consistent with distribution plans approved in price-fixing litigation. *See, e.g., In re Brand Name Prescription Drugs Antitrust Litig.*, No. 94 C 897, 1999 WL 639173, at *4 (N.D. Ill. Aug. 17, 1999) (approving *rata pro* distribution); *see also Greenville v. Syngenta*, 904 F. Supp. 2d 902, 911 n.8 (S.D. Ill. 2012) (finding proposed allocation plan to be fair where it ensured that every class member who submitted a valid claim would receive a portion of the settlement fund).

A. Claimants Receiving the \$15.00 Minimum Payment

All Authorized Claimants whose Distribution Amount is less than \$15.00 will receive a minimum payment of \$15.00 (“Minimum Payment”) during the Primary Distribution (the

“Minimum Payment Claims”). Ewashko Decl. ¶ 42(b)(2). Awarding a Minimum Payment ensures these Authorized Claimants will receive a meaningful payment without substantially reallocating the Net Settlement Fund. The implementation of a payment floor also provides administrative savings that ensures the cost to administer these Claims does not exceed their value under the Distribution Plan. *Id.* A total of 2,566 Authorized Claimants will receive the Minimum Payment, which totals 0.39% of the Net Settlement Fund. *Id.* ¶ 42(b)(2). If these Minimum Payment Claims received their *pro rata* share of the Net Settlement Fund, 0.07% of the Net Settlement Fund would be distributed. *Id.* ¶ 42(b)(2). The Minimum Payment, which reallocates 0.32% of the Net Settlement Fund, is within the range of minimum payments accepted by courts. *See, e.g.,* Final Approval Order, *Harden v. The Results Companies, LLC*, No. 1:19-cv-01353 (C.D. Ill.), ECF No. 86 (Oct. 20, 2021) (approving \$50 minimum payment in FLSA action, *see* Mem. of Law in Support of Plaintiffs Motion for Final Approval of the Parties Collective and Class Action Settlement, *Harden v. The Results Companies, LLC*, No. 1:19-cv-01353 (C.D. Ill.), ECF No. 84 (Sep. 3, 2021)); *Alaska Elec. Pension Fund v. Bank of Am., Corp.*, No. 14-cv-7126 (JMF), 2020 WL 916853, at *2 (S.D.N.Y. Feb. 26, 2020) (approving \$100 minimum payment, which totaled less than 1% of the settlement fund on basis that the minimum payment reduced claims administration costs).

B. Claimants Receiving Their Full *Pro Rata* Distribution Amount during the Primary Distribution

All Authorized Claimants whose *pro rata* Distribution Amount is between \$15.00 and less than \$20,000 will receive their full Distribution Amount in the Primary Distribution. Ewashko Decl. ¶ 42(b)(4). There are 2,488 Authorized Claimants whose Distribution Amount is between \$15.00 and less than \$20,000 based on their *pro rata* share calculation. *Id.* ¶ 42(b)(4). Paying these Authorized Claimants in full during the Primary Distribution means fewer Authorized Claimants

will need to be included in any subsequent distributions, reducing the administrative costs associated with such an effort.

C. Claimants Receiving 90% of Their Distribution Amount in the Primary Distribution

The remaining 82 Authorized Claimants, whose *pro rata* share of the Net Settlement Fund results in a Distribution Amount equal to or greater than \$20,000, will receive 90% of their Distribution Amount in the Primary Distribution. Ewashko Decl. ¶ 42(b)(5). So, for example, if Claimant X's Distribution Amount under the Distribution Plan is \$60,000, it will receive \$54,000 in the Primary Distribution.

The remaining 10% will be set aside in reserve to address any contingencies that may arise as well as to pay any further tax obligations, fees or expenses incurred through the administration of the Net Settlement Fund. *Id.* ¶ 42(b)(6). The establishment of a reserve is a customary practice of claim administrators in complex cases and has been approved by courts. *See, e.g., In re Motorola Secs. Litig.*, 03-cv-0287 (N.D. Ill. Sept. 2, 2008) (approximately 13% of settlement funds allocated to a reserve fund for the payment of taxes); *In re Folding Carton Antitrust Litig.*, 557 F. Supp. at 1099 (approximately 3% of the settlement funds allocated to a reserve fund “to cover expenses, costs and fees related to the administrative portion of the action, corrections to claims arising after the first distribution and to cover payment of late claims against the fund”); *In re Spectrum Brands Sec. Litig.*, 2022 WL 17082787, at *1 (approving initial distribution with a 5% reserve).

D. Payment Terms and Secondary Distribution

Once the time to negotiate the distribution checks from the Primary Distribution has elapsed (approximately 90 days), and after reasonable efforts have been made to encourage Authorized Claimants to cash their checks, the proceeds from all void, stale-dated, or returned

checks and failed wire transfers from the Primary Distribution will be combined with any funds set aside in reserve and made available for reallocation in a subsequent distribution. Ewashko Decl. ¶ 42(e).

After accounting for any outstanding fees and expenses of administration or other contingencies, and unless the Court approves a request by Class Counsel to do otherwise, a Secondary Distribution (and any subsequent distributions) will allocate any funds that remain in reserve to all Authorized Claimants that: (a) received a Distribution Amount of \$20,000 or more; and (b) negotiated their first distribution payments; and (c) are entitled to at least \$15.00 from such redistribution based on their *pro rata* share of the remaining funds. *Id.* ¶ 42(e).

III. RECORD RETENTION AND DESTRUCTION

Class Counsel requests that A.B. Data be permitted to destroy paper and electronic copies of Claims one year after the Net Settlement Fund has been distributed. *See* Ewashko Decl. ¶ 42(f).

IV. SETTLEMENT ADMINISTRATOR EXPENSES TO DATE AND COST TO COMPLETE DISTRIBUTION

To date, the costs of notice and administration for the Settlement total \$523,141.30, for which A.B. Data has been or will be paid in full. Ewashko Decl. ¶ 43. A.B. Data anticipates that the additional cost to complete the administration for this Settlement and distribution of the Net Settlement Fund will be \$36,560.36. *Id.* ¶ 43. This cost includes the work described in the Ewashko Decl. Class Counsel respectfully request that the Court enter the Distribution Order, which authorizes payment of up to \$36,560.36 for the costs and expenses expected to be incurred with the distribution of the Net Settlement Fund.³

³ To the extent additional expenses are incurred beyond the \$36,560.36 estimate, Class Counsel will make an application to the Court to pay any additional administration expenses.

