

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM,
on behalf of itself and all others
similarly situated,

Plaintiff,

vs.

No. 11-cv-10230-MLW
**Leave to file granted
on April 22, 2020**

STATE STREET BANK AND TRUST COMPANY,

Defendant.

ARNOLD HENRIQUEZ, MICHAEL T. COHN,
WILLIAM R. TAYLOR, RICHARD A.
SUTHERLAND, and those similarly situated,

Plaintiffs,

vs.

No. 11-cv-12049-MLW

STATE STREET BANK AND TRUST COMPANY,

Defendant.

THE ANDOVER COMPANIES EMPLOYEE
SAVINGS AND PROFIT SHARING PLAN, on
behalf of itself, and JAMES PEHOUSHEK-
STANGELAND and all others similarly situated,

Plaintiffs,

vs.

No. 12-cv-11698-MLW

STATE STREET BANK AND TRUST COMPANY,

Defendant.

**SPECIAL MASTER'S SUPPLEMENTAL REPORT IN RESPONSE TO COURT'S
FEBRUARY 27 ORDER**

On April 7, 2020, the Special Master submitted his Report in Response to Court's February 27 Order and Memorandum [Dkt# 590] ("April 7th Report"). *See* Dkt # 599. Along with his written report, the Master submitted a Proposed Notice to the Class (Exhibit A) and a Proposed Payment Plan (Exhibit B). The Special Master herein supplements and amends the recommendations made in those pleadings.

In the April 7 Report, the Special Master made four main recommendations: (1) to circulate a new notice to the class and post to the class website a full copy of the Court's February 27 Order (making it available free of charge in hard copy for all class members that want one); (2) to distribute existing and reallocated funds according to a three-tiered payment plan – first, to remit the balance of approximately \$125 million (less a 5% withholding) to Registered Investment Companies (RICs) and ERISA and Public & Other class members in July 2020; second, to direct Customer Class counsel to pay \$8,607,807.51 (half the total \$17,215,615 reallocated under the Court's February 27th Order) into an escrow account managed by a third-party funds manager for distribution to the class and ERISA counsel in September 2020; and third, to direct Customer Class counsel to remit \$8,607,807.49 into the selected escrow account for a final distribution to the class and ERISA Counsel in March 2021; (3) that Labaton continue as Lead Counsel responsible for distributing the existing and newly reallocated funds to the class; and, (4) to order Lief Cabraser to pay its complete share (\$1,139,457) of the reallocated amount in lieu of an appeal bond unless or until it succeeds in seeking relief from this obligation¹, at which time Lief Cabraser may petition the District Court to order that the other

¹ On April 13, 2020, the Court entered an Order [Dkt# 601] which, in part, ordered that Lief "shall, by April 20, 2020, move for a stay pending appeal and file a supporting memorandum addressing the *Hilton* factors." In its Response [Dkt#603] filed on April 15, 2020, Lief declined to do so, stating that "Lief Cabraser has not sought and is not seeking the stay of any operational order."

Customer Class counsel compensate Lieff Cabraser for any overpayment consistent with the relief awarded on appeal.

After further consultation with Labaton, the Special Master wishes to clarify and amend his prior recommendations relating to the future distribution of class and ERISA counsel funds in three respects.

First, the Master recommends that, in order to save costs, Labaton utilize the existing, interest-bearing escrow account at Citibank, the institution currently holding class funds for distribution, to receive the reallocated funds (\$17,215,615) paid by Customer Class counsel. Citibank, as the escrow agent, will assume responsibility to adhere to the terms of the settlement agreement, including to prudently invest the reallocated funds. Labaton, as lead counsel, will have the signatory authority and control needed to distribute funds in accordance with the Court's directives and carry out its other responsibilities. Distributions from the account should be made only at the explicit direction of the Court through a court order or other directive. Consistent with its current responsibilities, AB Data will continue to collect all bank records issued by Citibank for the escrow account to timely file taxes on the reallocated funds.

Second, the Master clarifies that the July 2020 payment proposed in the first phase of the three-tiered payment plan constitutes a second distribution to the RICs and the first payment to be made to the ERISA and Public & Other class members. The intent is for all class funds authorized under the settlement agreement to be distributed by July 31, 2020, subject to industry standard set-asides and withholdings. The July 2020 payment will include disbursement of funds currently set aside (approximately \$10 million) for disputes arising out of the initial payment to the RICs, as well as distribution of the remaining account balance (approximately \$125 million) less a 5% withholding for disputes and other contingencies, or, in other words, a distribution of

approximately \$118.75 million to the class. Thus, the July 2020 payment will remit a total of \$128.75 million to RICs and ERISA and Public & Other class members (\$10 million plus \$118.75 million).²

Third, if Lieff Cabraser succeeds in challenging the Court's order to reallocate \$1,139,457 to the class and ERISA counsel, Labaton and the Thornton Law Firm are entitled to advocate for a lesser payment and/or to contest responsibility for repaying Lieff Cabraser any amount. The Master previously recommended that the firms should reimburse Lieff Cabraser – to the extent it is entitled to recover previously-paid funds – to ensure the class receives the full \$14.4 million awarded by the Court. The Master's recommendation that the firms petition the Court for, and the Court order, timely reimbursement to Lieff Cabraser is not intended to preclude Labaton and the Thornton Law Firm from advocating for a lesser payment if Lieff Cabraser is successful. However, should Lieff Cabraser's appeal succeed, the Special Master, while skeptical of Lieff Cabraser's prospects for success on appeal, believes that it was the Court's intention that the class is entitled to receive the full \$14.4 million reallocated to it under the February 27th Order. Therefore, should Lieff Cabraser succeed on appeal, it is the Special Master's view that the difference in Lieff Cabraser's allocation would necessarily have to be made up from Labaton's and the Thornton Law Firm's share.³

² The April 7 Report had previously calculated the phase one payment due in July 2020 as \$125 million. This number did not take into account the 10% currently set-aside specifically for contested claims or disputes arising out of the funds paid to the RICs nor did it factor in the 5% withholding held back as a reserve for any future contested claims or disputes arising out of distribution to ERISA and Public & Other class members.

³ The Special Master acknowledges that Labaton and the Thornton Law Firm do not share his view that they should be required to make up the difference to the class in the event that Lieff Cabraser is successful in obtaining reallocation on appeal, and that they wish to preserve their right to challenge any such reallocation. Should this eventuality occur, the Special Master does not contest Labaton's and the Thornton Law Firm's right to challenge any further reallocation, but the Special Master will not be in a position to support their position. Obviously, if the First Circuit gives different and inconsistent guidance bearing on any reallocation among the law firms from that recommended by the Special Master, the Special Master would request leave to revisit his recommendation.

Finally, the Special Master has revised the Proposed Notice to the Class⁴ and Proposed Payment Plan⁵ to reflect the clarifications and amendments discussed above as well as to update the contact for the class.⁶ For the convenience of the Court and parties, a redlined copy of the Proposed Notice to the Class and of the Proposed Payment Plan are also submitted with this pleading.⁷

Dated: April 22, 2020

Respectfully submitted,

**SPECIAL MASTER HONORABLE
GERALD E. ROSEN (RETIRED),**

By his attorneys,

/s/ William F. Sinnott

William F. Sinnott (BBO #547423)
Elizabeth J. McEvoy (BBO #683191)
BARRETT & SINGAL, P.C.
One Beacon Street, Suite 1320
Boston, MA 02108
Telephone: (617) 720-5090
Facsimile: (617) 720-5092
Email: wsinnott@barrettsingal.com
Email: emcevoy@barrettsingal.com

⁴ The revised Proposed Notice to the Class is attached as Exhibit A to this pleading.

⁵ The revised Proposed Payment Plan is attached as Exhibit B to this pleading.

⁶ The Special Master has also modified the language on pg. 1 of the original Proposed Notice to the Class – taken from the Court’s March 8, 2017 Appointment Order – to more fairly describe the November 16, 2017 letter which was the byproduct of all three Customer Class firms and submitted by Labaton as lead counsel for the putative class.

⁷ Redlined versions of the revised Proposed Notice to the Class and Proposed Payment Plan are attached as Exhibits C and D, respectively

CERTIFICATE OF SERVICE

I hereby certify that this foregoing document was filed electronically on April 22, 2020 and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing (“NEF”). Paper copies were sent to any person identified in the NEF as a non-registered participant.

/s/ William F. Sinnott
William F. Sinnott

UNITED STATES DISTRICT COURT
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EXHIBIT A

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

<i>ARKANSAS TEACHER RETIREMENT SYSTEM, et al.</i>)	No. 11-cv-10230 MLW
<i>v. STATE STREET BANK AND TRUST COMPANY</i>)	
<i>ARNOLD HENRIQUEZ, et al. v. STATE STREET</i>)	No. 11-cv-12049 MLW
<i>BANK AND TRUST COMPANY, et al.</i>)	
<i>THE ANDOVER COMPANIES EMPLOYEE SAVINGS</i>)	No. 12-cv-11698 MLW
<i>AND PROFIT SHARING PLAN, et al. v. STATE</i>)	
<i>STREET BANK AND TRUST COMPANY</i>)	

NOTICE OF FURTHER PROCEEDINGS, INCLUDING NEW AND REDUCED ATTORNEYS’ FEE AWARD

This notice is being sent to you as a member of the class in the above-captioned cases to inform you of further proceedings, including a new, and reduced, attorneys’ fees award, which will result in an increase in the amount of money to be distributed to class members. This notice explains the reason for the new award and how you can access documents filed in these further proceedings, how you can communicate with counsel for class members, and how you can communicate with counsel for the Special Master who has been appointed by Senior United States District Judge Mark L. Wolf (the “Court”) to investigate and report on the issues that arose after the Court approved the settlement of this class action on November 2, 2016. As explained below, class members now have an opportunity to be heard concerning the Court’s February 27, 2020 Memorandum and Order that modified the Special Master’s Report and Recommendation by, among other things, reducing the award of attorneys’ fees from nearly \$75 million to \$60 million. The Court’s February 27, 2020 Memorandum and Opinion can be found at <http://www.statestreetindirectfxclasssettlement.com/>. If you wish to receive a hard copy of this order, it will be sent to you at no cost. Please contact AB Data at 1-877-240-3540, 2020 by _____, 2020.

By way of background, following a hearing on November 2, 2016, the Court originally approved a \$300,000,000 settlement of this class action, in which it was alleged that defendant State Street Bank and Trust overcharged its customers in connection with certain foreign exchange transactions. The Court awarded the attorneys for Plaintiffs (“Plaintiffs’ Counsel”) more than \$75,000,000 in attorneys’ fees and expenses and made awards of \$10,000 to \$25,000 to the seven class representatives.

In November 2016, as described in a previous notice to the class dated April 11, 2017, questions were raised concerning the inadvertent double-counting by Labaton Sucharow LLP (“Labaton”), Thornton Law Firm LLP (“Thornton”), and Lieff, Cabraser, Heimann & Bernstein, LLP (“Lieff Cabraser,” and collectively “Customer Counsel”) of the number of hours worked by certain attorneys on the case, which inflated the “lodestar” the Court had relied upon in awarding attorneys’ fees as well as concerns about the hourly rates assigned to certain attorneys on the fee petitions of Customer Counsel; and whether the hours reportedly worked by certain attorneys were actually all worked. (The “lodestar” is the number of hours the attorneys worked multiplied by what Customer Counsel represented to be a reasonable hourly billing rate for each attorney.) On March 6, 2017, the Court appointed Retired United States District Judge Gerald Rosen as a Special Master to investigate and submit a Report and Recommendation addressing, at least: (a) the accuracy and reliability of the representations made by the parties in their requests for awards of attorneys’ fees and expenses, including but not limited to whether counsel employed the correct legal standards and had a proper factual basis for what was represented to be the lodestar for each firm; (b) the accuracy and reliability of the representations made in the November 10, 2016 letter from Labaton Sucharow, LLP to the court [Docket No. 116]; (c) the accuracy and reliability of the representations made by the parties requesting service awards; (d) the reasonableness of the amounts of attorneys’ fee, expenses, and service awards previously ordered, and whether any or all of them should be reduced; (e) whether any misconduct occurred in connection with such awards; and, if so, (f) whether it should be sanctioned.

During the Special Master’s investigation, questions also arose concerning Labaton’s undisclosed payment of approximately \$4.1 million of the nearly \$75 million total attorneys’ fee award to a Texas lawyer who had not worked on the

case or entered a court appearance but who had initially connected Labaton with the Arkansas Teacher Retirement System (“ATRS”), the lead plaintiff and Labaton’s client in this case long before the filing in this case. The \$4.1 million payment was funded collectively by Customer Counsel from their respective shares of the fee award, which derived from class funds.

On May 14, 2018, the Special Master submitted a 377-page Report and Recommendation, together with an executive summary and exhibits, to the Court under seal. The Special Master found that the \$75 million fee award was a reasonable starting point, but ultimately recommended that Customer Counsel return approximately \$10.7 million to counsel for the other six class representatives (“ERISA Counsel”) and the class based on the conduct by Customer Counsel referenced above. The Special Master also recommended the imposition of monetary sanctions on one Thornton attorney and his referral to the Massachusetts Board of Bar Overseers. Further, the Special Master found that the \$4.1 million payment to the Texas lawyer, and the failure to disclose that payment to the Court, ERISA counsel, or the class, violated certain ethical and procedural rules.

Thereafter, all Customer Counsel objected to some or all of the Special Master’s findings and recommendations. On September 18, 2018, the Special Master reported to the Court that Labaton, ERISA Counsel, and he had reached a proposed agreement for the Court’s consideration, which resolved various disputed issues as to these firms.

Beginning on June 24, 2019, the Court held three days of further hearings, including argument and testimony, to address all of the objections to the Special Master’s Report and Recommendation and his proposed resolution with Labaton and ERISA Counsel. The hearings focused on: (a) whether the initial \$75 million fee award was reasonable or whether another amount should be awarded; (b) whether a certain empirical study that had been cited to the Court in support of the requested \$75 million fee had been misrepresented; (c) whether Customer Counsel’s reported lodestar, in addition to the double-counting, was accurate; (d) whether the above-referenced Thornton attorney intentionally filed a false fee declaration; and (e) issues relating to Labaton’s payment to the Texas lawyer.

On February 27, 2020, the Court issued a 159-page Memorandum and Order that significantly modified the Special Master’s Report and Recommendation. The Court awarded attorneys’ fees totaling \$60 million instead of the previous \$75 million fee award, reducing the fee as a percentage of the settlement from 25% to 20%, and reallocated the fee among each of Customer Counsel and ERISA Counsel, increasing ERISA Counsel’s fee award. The Court reduced the service award to ATRS from \$25,000 to \$10,000. The Court denied the proposed resolution among the Special Master, Labaton, and ERISA Counsel. The Court also referred the matter to the Massachusetts Board of Overseers. Finally, the Court directed Labaton and Thornton to deposit \$250,000 (in addition to the \$4,850,000 previously paid by Customer Counsel) to pay past and future reasonable fees and expenses of the Special Master and enable the implementation of the Memorandum and Order. The Court’s rulings will shift more than \$17 million from Customer Counsel to the class and ERISA Counsel. Under this new allocation, the class will receive \$14,384,827.16 additional and ERISA Counsel will receive \$2,830,787.84 to compensate ERISA Counsel, who were not involved in the conduct described in the Court’s Order, for the costs incurred in the Special Master’s investigation. Lieff Cabraser has appealed from the February 27, 2020 Memorandum and Order, but no other Customer Class Counsel or ERISA Counsel has appealed from the Memorandum and Order.

CCAF may be permitted to file an application for attorneys’ fees. This matter has not yet been adjudicated. An award may or may not be paid from class funds.

In making its determinations, the Court found, among other things, that various sworn and unsworn written submissions and testimony implicating the double-counting issue contained inaccurate or misleading statements and information. The Court also found that important data from the study was not included in the memorandum filed in support of the fee award that represented that a 25% award was “right in line” with the findings of the author of the empirical study and that the memorandum did not disclose that the author had written that “fee percentage is strongly and inversely associated with settlement size” and that when “a settlement size of \$100 million was reached . . . fee percentages plunged well below 20 percent,” or the author’s finding that in settlements between \$250 million and \$500 million, the mean fee award was 17.8% and the median award was 19.5%. The Court also found that Labaton’s arrangement with and payment to the Texas lawyer, and the nondisclosure of these matters to ATRS, ERISA Counsel, the other six class representatives, or the Court, violated certain ethical rules and, with respect to the Court, the general duty of candor to the tribunal.

Distribution of Net Class Settlement Fund

To distribute payments to class members as expeditiously and efficiently as possible, Plaintiffs' Counsel will use best efforts to implement a three-step distribution process for the payment of settlement funds. A tiered process will expedite the distribution of known funds to the class, while final fee awards are finalized by the Court as set forth above.

First, it is anticipated that Plaintiffs' Counsel will seek Court authorization of an initial distribution of all existing and remaining funds, totaling about \$128.75 million to class members with "ERISA Recognized Claims" and "Public and Other Recognized Claims" by approximately July 2020.¹ Prior to Plaintiffs' Counsel requesting authorization from the Court, the Claims Administrator will notify class members of their "ERISA Recognized Claim" amounts and their "Public and Other Recognized Claim" amounts, and class members will have an opportunity to review their payment amounts before Court authorization is sought. A reserve fund of 5% will be withheld from distribution in order to satisfy any payment disputes, or other contingencies, that arise after the initial distribution is completed. It may take time for the Court to authorize a distribution and the distribution will commence approximately 30 days after the Court's order becomes Final.

Second, it is anticipated that by approximately September 2020, the Claims Administrator will provide a supplemental distribution to all class members of the first installment of additional funds resulting from the adjusted attorneys' fee awards to Customer Counsel discussed above. Half of ERISA Counsel's additional payments, approximately \$1.4 million will be paid to ERISA Counsel at this time. The timing of this supplemental distribution will depend upon whether objections to the Court's Order are received, when objections are heard and determined, whether there is an appeal from the Court's Order contesting the adjusted attorneys' fee award, when that appeal is heard and determined, and whether CCAF files an application for attorneys' fees and the amount of any fees awarded to CCAF.

Third, it is anticipated that by approximately March 2021, the Claims Administrator will provide a final distribution of any unclaimed funds from the prior distributions, unused portions of the reserve, and Customer Counsel's last installment of adjusted attorneys' fee awards to class members along with an equal payment to ERISA Counsel. If there is any further unclaimed balance thereafter, the Claims Administrator will, if feasible and economical given the costs of conducting distributions, redistribute the unclaimed balance to class members that have cashed their checks. Any balance that still remains after redistribution, which is not feasible or economical to reallocate, shall be contributed to one or more nonsectarian, not-for-profit, 501(c)(3) organizations serving the public interest approved by the Court.

¹ Class members are referred to the original Notice of the Settlement for a description of the Court-approved Plan of Allocation and the discussion of ERISA Recognized Claims, Public and Other Recognized Claims, and RIC Recognized Claims, which is available at www.StateStreetIndirectFXClassSettlement.com. Because of certain requirements relating to SSBT's settlement with the SEC, an initial distribution to class members with RIC Recognized Claims has already been conducted. Additional distributions to class members with RIC Recognized Claims will be folded into the distribution process discussed above.

Any Settlement Class Member may object to the Court’s Memorandum and Order, including the \$60 million, 20% attorneys’ fee awarded to Plaintiffs’ Counsel. To object, you must mail a written statement to the Court, and the parties listed below, **by no later than** _____, **2020** [30/45 days from the date of the notice]:

Clerk of the Court
 United States District Court for the District of Massachusetts
 John Joseph Moakley United States Courthouse
 1 Courthouse Way
 Boston, Massachusetts 02210

Special Master	A.B. Data
William Sinnott, Esq., Barrett & Singal, P.C. One Beacon Street Suite 1320 Boston, MA 02108-3106	<i>State Street Indirect FX Trading Class Action</i> Claims Administrator c/o A.B. Data, Ltd. P.O. Box 173000 Milwaukee, WI 53217

All submissions to the court or the Special Master concerning these proceedings will continue to be made part of the District Court record in these cases and will be available to class members on the settlement website, www.statestreetindirectfxclasssettlement.com, and at www.labaton.com.

Class members may contact Labaton, as Lead Counsel for the class, by calling (888) 219-6877 or emailing settlementquestions@labaton.com. Class members may contact counsel to the Special Master, William Sinnott, Esq., by calling (617) 720-5090 or emailing wsinnott@barrettsingal.com.

PLEASE DO NOT CONTACT THE COURT OR DEFENDANTS REGARDING THIS NOTICE.

Dated: _____, 2020

/s/ Mark L. Wolf
 UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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EXHIBIT B

**PROPOSED PAYMENT OF FUNDS PURSUANT TO COURT'S FEBRUARY 27, 2020
ORDER**

Reallocation of funds

Date	Purpose/recipient	Total amount paid	Payment by Labaton	Payment by Lieff Cabraser	Payment by Thornton	Funds paid to the class
7/1/20	Final Distribution to Registered Investment Companies (RICs) and First Distribution to ERISA and Public & Other class members	\$128.75 million				All
8/15/20	First Customer Class payment into escrow	\$8,607,807.51	\$4,793,742.18	\$569,728.50	\$3,244,336.83	
9/15/20	First Distribution to class and ERISA counsel					\$7,192,413.59 to Class \$1,415,393.92 to ERISA Counsel
1/15/21	Second Customer Class payment into escrow	\$8,607,807.49	\$4,793,742.17	\$569,728.50	\$3,244,336.82	
3/15/21	Second Distribution to class and ERISA counsel					\$7,192,413.57 to Class \$1,415,393.92 to ERISA Counsel

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Reallocation of funds

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7/1/20	Final Distribution to Registered Investment Companies (RICs) and <u>First Distribution to ERISA and Public & Other</u> -class members	\$125 -128.75 million				All
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In November 2016, as described in a previous notice to the class dated April 11, 2017, questions were raised concerning the inadvertent double-counting by Labaton Sucharow LLP (“Labaton”), Thornton Law Firm LLP (“Thornton”), and Lieff, Cabraser, Heimann & Bernstein, LLP (“Lieff Cabraser,” and collectively “Customer Counsel”) of the number of hours worked by certain attorneys on the case, which inflated the “lodestar” the Court had relied upon in awarding attorneys’ fees as well as concerns about the hourly rates assigned to certain attorneys on the fee petitions of Customer Counsel; and whether the hours reportedly worked by certain attorneys were actually all worked. (The “lodestar” is the number of hours the attorneys worked multiplied by what Customer Counsel represented to be a reasonable hourly billing rate for each attorney.) On March 6, 2017, the Court appointed Retired United States District Judge Gerald Rosen as a Special Master to investigate and submit a Report and Recommendation addressing, at least: (a) the accuracy and reliability of the representations made by the parties in their requests for awards of attorneys’ fees and expenses, including but not limited to whether counsel employed the correct legal standards and had a proper factual basis for what was represented to be the lodestar for each firm; (b) the accuracy and reliability of the representations made in the November 10, 2016 letter from [David Goldsmith, Esq.](#) of Labaton Sucharow, LLP to the court [Docket No. 116]; (c) the accuracy and reliability of the representations made by the parties requesting service awards; (d) the reasonableness of the amounts of attorneys’ fee, expenses, and service awards previously ordered, and whether any or all of them should be reduced; (e) whether any misconduct occurred in connection with such awards; and, if so, (f) whether it should be sanctioned.

During the Special Master’s investigation, questions also arose concerning Labaton’s undisclosed payment of approximately \$4.1 million of the nearly \$75 million total attorneys’ fee award to a Texas lawyer who had not worked on the

case or entered a court appearance but who had initially connected Labaton with the Arkansas Teacher Retirement System (“ATRS”), the lead plaintiff and Labaton’s client in this case long before the filing in this case. The \$4.1 million payment was funded collectively by Customer Counsel from their respective shares of the fee award, which derived from class funds.

On May 14, 2018, the Special Master submitted a 377-page Report and Recommendation, together with an executive summary and exhibits, to the Court under seal. The Special Master found that the \$75 million fee award was a reasonable starting point, but ultimately recommended that Customer Counsel return approximately \$10.7 million to counsel for the other six class representatives (“ERISA Counsel”) and the class based on the conduct by Customer Counsel referenced above. The Special Master also recommended the imposition of monetary sanctions on one Thornton attorney and his referral to the Massachusetts Board of Bar Overseers. Further, the Special Master found that the \$4.1 million payment to the Texas lawyer, and the failure to disclose that payment to the Court, ERISA counsel, or the class, violated certain ethical and procedural rules.

Thereafter, all Customer Counsel objected to some or all of the Special Master’s findings and recommendations. On September 18, 2018, the Special Master reported to the Court that Labaton, ERISA Counsel, and he had reached a proposed agreement for the Court’s consideration, which resolved various disputed issues as to these firms.

Beginning on June 24, 2019, the Court held three days of further hearings, including argument and testimony, to address all of the objections to the Special Master’s Report and Recommendation and his proposed resolution with Labaton and ERISA Counsel. The hearings focused on: (a) whether the initial \$75 million fee award was reasonable or whether another amount should be awarded; (b) whether a certain empirical study that had been cited to the Court in support of the requested \$75 million fee had been misrepresented; (c) whether Customer Counsel’s reported lodestar, in addition to the double-counting, was accurate; (d) whether the above-referenced Thornton attorney intentionally filed a false fee declaration; and (e) issues relating to Labaton’s payment to the Texas lawyer.

On February 27, 2020, the Court issued a 159-page Memorandum and Order that significantly modified the Special Master’s Report and Recommendation. The Court awarded attorneys’ fees totaling \$60 million instead of the previous \$75 million fee award, reducing the fee as a percentage of the settlement from 25% to 20%, and reallocated the fee among each of Customer Counsel and ERISA Counsel, increasing ERISA Counsel’s fee award. The Court reduced the service award to ATRS from \$25,000 to \$10,000. The Court denied the proposed resolution among the Special Master, Labaton, and ERISA Counsel. The Court also referred the matter to the Massachusetts Board of Overseers. Finally, the Court directed Labaton and Thornton to deposit \$250,000 (in addition to the \$4,850,000 previously paid by Customer Counsel) to pay past and future reasonable fees and expenses of the Special Master and enable the implementation of the Memorandum and Order. The Court’s rulings will shift more than \$17 million from Customer Counsel to the class and ERISA Counsel. Under this new allocation, the class will receive \$14,384,827.16 additional and ERISA Counsel will receive \$2,830,787.84 to compensate ERISA Counsel, who were not involved in the conduct described in the Court’s Order, for the costs incurred in the Special Master’s investigation. Lieff Cabraser has appealed from the February 27, 2020 Memorandum and Order, but no other Customer Class Counsel or ERISA Counsel has appealed from the Memorandum and Order.

CCAF may be permitted to file an application for attorneys’ fees. This matter has not yet been adjudicated. An award may or may not be paid from class funds.

In making its determinations, the Court found, among other things, that various sworn and unsworn written submissions and testimony implicating the double-counting issue contained inaccurate or misleading statements and information. The Court also found that important data from the study was not included in the memorandum filed in support of the fee award that represented that a 25% award was “right in line” with the findings of the author of the empirical study and that the memorandum did not disclose that the author had written that “fee percentage is strongly and inversely associated with settlement size” and that when “a settlement size of \$100 million was reached . . . fee percentages plunged well below 20 percent,” or the author’s finding that in settlements between \$250 million and \$500 million, the mean fee award was 17.8% and the median award was 19.5%. The Court also found that Labaton’s arrangement with and payment to the Texas lawyer, and the nondisclosure of these matters to ATRS, ERISA Counsel, the other six class representatives, or the Court, violated certain ethical rules and, with respect to the Court, the general duty of candor to the tribunal.

Distribution of Net Class Settlement Fund

To distribute payments to class members as expeditiously and efficiently as possible, Plaintiffs' Counsel will use best efforts to implement a three-step distribution process for the payment of settlement funds. A tiered process will expedite the distribution of known funds to the class, while final fee awards are finalized by the Court as set forth above.

First, it is anticipated that Plaintiffs' Counsel will seek Court authorization of an initial distribution of all existing and remaining funds, totaling about \$128.755 million to class members with "ERISA Recognized Claims" and "Public and Other Recognized Claims" by approximately July 2020.¹ Prior to Plaintiffs' Counsel requesting authorization from the Court, the Claims Administrator will notify class members of their "ERISA Recognized Claim" amounts and their "Public and Other Recognized Claim" amounts, and class members will have an opportunity to review their payment amounts before Court authorization is sought. A reserve fund of 5% will be withheld from distribution in order to satisfy any payment disputes, or other contingencies, that arise after the initial distribution is completed. It may take time for the Court to authorize a distribution and the distribution will commence approximately 30 days after the Court's order becomes Final.

Second, it is anticipated that by approximately September 2020, the Claims Administrator will provide a supplemental distribution to all class members of the first installment of additional funds resulting from the adjusted attorneys' fee awards to Customer Counsel discussed above. Half of ERISA Counsel's additional payments, approximately \$1.4 million will be paid to ERISA Counsel at this time. The timing of this supplemental distribution will depend upon whether objections to the Court's Order are received, when objections are heard and determined, whether there is an appeal from the Court's Order contesting the adjusted attorneys' fee award, when that appeal is heard and determined, and whether CCAF files an application for attorneys' fees and the amount of any fees awarded to CCAF.

Third, it is anticipated that by approximately ~~January~~ March 2021, the Claims Administrator will provide a final distribution of any unclaimed funds from the prior distributions, unused portions of the reserve, and Customer Counsel's last installment of adjusted attorneys' fee awards to class members along with an equal payment to ERISA Counsel. If there is any further unclaimed balance thereafter, the Claims Administrator will, if feasible and economical given the costs of conducting distributions, redistribute the unclaimed balance to class members that have cashed their checks. Any balance that still remains after redistribution, which is not feasible or economical to reallocate, shall be contributed to one or more nonsectarian, not-for-profit, 501(c)(3) organizations serving the public interest approved by the Court.

¹ Class members are referred to the original Notice of the Settlement for a description of the Court-approved Plan of Allocation and the discussion of ERISA Recognized Claims, Public and Other Recognized Claims, and RIC Recognized Claims, which is available at www.StateStreetIndirectFXClassSettlement.com. Because of certain requirements relating to SSBT's settlement with the SEC, an initial distribution to class members with RIC Recognized Claims has already been conducted. Additional distributions to class members with RIC Recognized Claims will be folded into the distribution process discussed above.

