

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

Plaintiff,

No. 11-cv-10230-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

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

Plaintiffs,

No. 11-cv-12049-MLW

vs.

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,

No. 12-cv-11698-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

SPECIAL MASTER'S RESPONSE TO COURT'S
JUNE 25, 2020 ORDER

On April 7, 2020, the Special Master filed his Report in Response to the Court's February 27, 2020 Order [Dk t# 599]. With his Report, the Special Master, as directed by the Court, provided a proposed plan for distribution and a proposed Notice to the Class. On June 25, 2020, the Court issued its Memorandum & Order ("June 25 Order") [Dkt # 613] in which it directed that the Special Master confer with Customer Class Counsel and ERISA Counsel and submit, consistent with the June 25 Order, a motion for approval of the Master's [revised] plan for distribution in an editable word-processing format; a proposed Order for the distribution of the remainder of the settlement fund; and a proposed [revised] notice to the class in an editable word-processing format.

As directed by the Court, the Special Master conferred with Class Counsel and ERISA Counsel and, either directly or through co-counsel, provided draft copies of the proposed distribution plan and notice.¹

Also, as directed by the Court, the following are submitted in support of the Special Master's Response:

Exhibit A: Motion for Approval of the Master's Plan for Distribution²
Attachment 1: Proposed Timeline and Plan for Distribution, Revised per Court's 6-25-20 Order

Exhibit B: Proposed Order for Distribution

Exhibit C: Proposed Notice to the Class

As with his April 7, 2020 Report, the Special Master's recommendations attempt to balance the class's right to receive timely payment with the fairness of compensating ERISA

¹ The Thornton Law Firm, Labaton Sucharow and the McTigue Law Firm had no objection to the plan or notice. Keller Rohrback and Zuckerman Spaeder requested that Customer Class Counsel payments into escrow be secured before the end of 2020. As of the time of filing, Lief Cabraser's position was unknown.

² Because ECF filing is not compatible with an editable word-processing format, editable Word copies of this filing will be emailed to the Court's clerk and to counsel.

counsel for their efforts toward achieving that result and their expenses incurred during the Special Master’s investigation. Under the proposed plan for distribution, the class will receive the entirety of the \$17 million repayment by April 2021, bringing much-needed and well-deserved relief to the class members. The timelines described in the plan for distribution and the Notice have been negotiated among counsel and are intended to provide such relief to the class members in as timely a fashion as possible; any delays may place those payment dates at risk.

Dated: July 7, 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

CERTIFICATE OF SERVICE

I hereby certify that this foregoing document was filed electronically on July 7, 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

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM,
on behalf of itself and all others
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Defendant.

**SPECIAL MASTER'S MOTION FOR APPROVAL OF THE PLAN FOR
DISTRIBUTION OF REMAINDER OF SETTLEMENT FUND**

The Special Master respectfully moves for the Court to approve the Proposed Timeline and Plan for Distribution, Revised per Court's 6-25-20 Order, attached hereto as Attachment 1.¹

The Special Master's plan effectively strikes a balance between the class's right to receive timely payment with the fairness of compensating ERISA counsel for their efforts toward achieving that result and their expenses incurred during the Special Master's investigation. If approved, under the proposed plan for distribution, the class will receive the entirety of the \$17 million repayment by April 2021, bringing much-needed and well-deserved relief to the class members.

Dated: July 7, 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

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-participants on July 7, 2020.

/s/ William F. Sinnott
William F. Sinnott

¹ As the Court will observe, the plan's timelines are predicated upon timely approval by the Court of this motion.

Attachment 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM,
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_____ /

PROPOSED PAYMENT OF FUNDS PURSUANT TO COURT’S JUNE 25, 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
9/1/20	Lead Counsel to file motion for authorization to conduct First Distribution to ERISA and Public & Other Class members; deadline by which Final Distribution to Registered Investment Companies (RICs) shall be conducted	\$128.75 million				All

1/4/21	First Customer Class Counsel payment into escrow	\$8,607,807.51	\$4,793,742.18	\$569,728.50	\$3,244,336.83	
1/15/21	First Supplemental Distribution to Class and ERISA counsel					\$6,622,685.09 to Class \$1,415,393.92 to ERISA Counsel
3/30/21	Second Customer Class Counsel payment into escrow	\$8,607,807.49	\$4,793,742.17	\$569,728.50	\$3,244,336.82	
3/16/21	45 days before the second supplemental distribution to the Class/ERISA counsel is scheduled to be made, the Special Master, Lieff, and/or other Customer Counsel shall seek guidance from the court concerning Lieff escrowed funds.					

4/30/21	Second Supplemental Distribution to Class and ERISA counsel					At least \$6,622,685.07 to Class \$1,415,393.92 to ERISA Counsel
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Exhibit B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

Plaintiff,

No. 11-cv-10230-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

_____ /

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

Plaintiffs,

No. 11-cv-12049-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

_____ /

THE ANDOVER COMPANIES EMPLOYEE
SAVINGS AND PROFIT SHARING PLAN, on
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Plaintiffs,

No. 12-cv-11698-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

_____ /

[Proposed] ORDER

WOLF, D.J.

July __, 2020

On June 25, 2020, the court issued a Memorandum and Order directing that, among other items, the Special Master submit, consistent with the Court's Order, a motion for approval of the plan for distribution of the remainder of the settlement fund, in an editable word-processing format, and a proposed Order for the distribution of the remainder of the settlement fund. The Court is satisfied that he has done so.

The Special Master's Motion for Approval is ALLOWED and it is hereby ORDERED that the plan for distribution be implemented.

UNITED STATES DISTRICT JUDGE

Exhibit C

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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

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, 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 Lief, Cabraser, Heimann & Bernstein, LLP (“Lief 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. Lief 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” in September 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 January 2021, 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, when the appeal from the Court’s Order contesting the adjusted attorneys’ fee award 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 April 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.

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 [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

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.

