

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

_____)	
ARKANSAS TEACHER RETIREMENT SYSTEM,)	
on behalf of itself and all others similarly situated,)	No. 11-cv-10230 MLW
)	
Plaintiffs,)	
)	
v.)	
)	
STATE STREET BANK AND TRUST COMPANY,)	
)	
Defendants.)	
_____)	

_____)	
ARNOLD HENRIQUEZ, MICHAEL T. COHN,)	
WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND,)	No. 11-cv-12049 MLW
and those similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
STATE STREET BANK AND TRUST COMPANY,)	
STATE STREET GLOBAL MARKETS, LLC and)	
DOES 1-20,)	
)	
Defendants.)	
_____)	

_____)	
THE ANDOVER COMPANIES EMPLOYEE SAVINGS)	
AND PROFIT SHARING PLAN, on behalf of itself, and)	No. 12-cv-11698 MLW
JAMES PEHOUSHEK-STANGELAND, and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
STATE STREET BANK AND TRUST COMPANY,)	
)	
Defendants.)	
_____)	

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’
MOTION FOR AUTHORIZATION TO DISTRIBUTE
TO ELIGIBLE ERISA AND PUBLIC & OTHER CLASS MEMBERS**

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Plaintiffs,¹ by and through the undersigned counsel, respectfully submit this memorandum of law in support of their motion for an Order, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, authorizing the distribution of proceeds from the Settlement in the above-captioned actions (“Class Settlement” or “Settlement”) to eligible Settlement Class Members (“Class Members”) that are ERISA Plans, Group Trusts, or Class Members that are non-ERISA public pension funds, private entities, and other customers (“Public & Other”).

I. BACKGROUND ON THE CLASS SETTLEMENT

Plaintiffs, on behalf of themselves and the Settlement Class, and SSBT (together, the “Parties”) entered into the Settlement Agreement wherein the Parties agreed that in exchange for \$300,000,000 in cash (the “Class Settlement Amount”), there would be a full and complete settlement of all Released Class Claims against the Defendants.

By its Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, dated August 11, 2016 (the “Preliminary Approval Order,” ECF No. 97), the Court preliminarily certified, solely for purposes of effectuating the Settlement, a class pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, consisting of all custody and trust customers of State Street Bank and Trust Company (including customers for which SSBT served as directed trustee, ERISA Plans, and Group Trusts), reflected in SSBT’s records as having a United States tax address at any time during the period from January 2, 1998 through December 31, 2009, inclusive (the “Class Period”), and that executed one or more Indirect FX Transactions with

¹ Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement, dated as of July 26, 2016 (the “Settlement Agreement,” ECF No. 89), the Court-approved Plan of Allocation for the proceeds of the Settlement, or the accompanying supporting Declaration of Eric J. Miller on Behalf of A.B. Data, Ltd. in Support of Motion for Authorization to Distribute to Eligible ERISA and Public & Other Class Members.

SSBT and/or its subcustodians during the period from January 2, 1998 through December 31, 2009, inclusive.² *See* Settlement Agmt. ¶ 1(hhh).

By the Preliminary Approval Order, the Court also directed, among other things, that the Notice be mailed to all Class Members who could be identified through reasonable effort. The Court also approved the retention of A.B. Data to facilitate notice, to administer the Settlement, and to effectuate distribution of the settlement proceeds. ECF No. 97, ¶ 8.

The Notice advised Class Members about the Settlement and their rights and options in connection therewith, including the rights to object or seek exclusion. The Notice also informed Class Members that there would be no claims process and that payments would be made to them pursuant to the Plan of Allocation, which was described in full in the Notice. *See* Exhibit A to Exhibit 1 annexed to the accompanying supporting Declaration of Eric J. Miller on Behalf of A.B. Data, Ltd. in Support of Motion for Authorization to Distribute to Eligible ERISA and Public & Other Class Members (“A.B. Data Decl.”).

On November 2, 2016, following a hearing, the Court issued an Order and Final Judgment approving the Settlement as fair, reasonable, and adequate (“Judgment,” ECF No. 110); an Order Approving Plan of Allocation, which approved the plan for allocating the net settlement proceeds among eligible Class Members (“Plan of Allocation Order,” ECF No. 112); and an Order Awarding Attorneys’ Fees, Payment of Litigation Expenses, and Payment of

² The Settlement Class does not include Defendants; the California Public Employees’ Retirement System (CalPERS), the California State Teachers’ Retirement System (CalSTRS), and the State of Washington Investment Board; the predecessors and affiliates of the foregoing, or any entity in which they have a controlling interest; and the officers, directors, legal representatives, heirs, successors, subsidiaries and/or assigns of any such excluded individual or entity in their capacities as such. *See* Settlement Agmt. ¶ 1(hhh).

Service Awards to Plaintiffs (“Fee Order,” ECF No. 111).³ The Settlement became effective on December 7, 2016. *See* Settlement Agmt. ¶ 55.

By Order entered December 13, 2017, the Court authorized a distribution of Settlement proceeds to Class Members classified by SSBT as Registered Investment Companies (“RICs”). ECF No. 213. Because of certain requirements relating to SSBT’s settlement with the U.S. Securities and Exchange Commission, a distribution to such class members needed to be conducted by December 2017.

II. OVERVIEW OF THE PLAN OF ALLOCATION

The Net Class Settlement Fund, which consists of \$300 million plus any accrued interest, and minus all costs and expenses incurred with respect to the fund, including Taxes and Tax Expenses, Notice and Administration Expenses, attorneys’ fees, Litigation Expenses, and Service Awards, is to be distributed to eligible Class Members according to the Court-approved Plan of Allocation, which was negotiated by the Parties and reported in full in Question 8 of the Notice. *See* Settlement Agmt. ¶ 1(kk); A.B. Data Decl. Ex. 1-A.

As explained in the Plan of Allocation, and the A.B. Data Declaration, the Net Class Settlement Fund is to be allocated among three groups: (A) ERISA Plans and those Group Trusts that are shown to have ERISA Volume, which will share the ERISA Settlement Allocation; (B) Registered Investment Companies (RICs), which have shared the RIC Settlement Allocation; and

³ On March 8, 2017, the Court appointed a Special Master to investigate and submit a Report and Recommendation concerning issues that emerged concerning the awards made in the Fee Order. *See* Mem. & Order, ECF No. 173. The Special Master submitted his Report and Recommendation to the Court under seal on or about May 14, 2018. On February 27, 2020, the Court issued a decision modifying the Special Master’s Report and Recommendations. ECF No. 590. As ordered by the Court, on July 24, 2020, a second supplemental notice was issued to the Settlement Class advising Class Members of the additional proceedings and the February 27 Order, and providing Class Members the opportunity to object to the February 27, 2020 Order on or before September 8, 2020. ECF No. 624. The work and findings of the Special Master have not impacted the finality of the Judgment or Plan of Allocation Order.

(C) Class Members that are non-ERISA public pension funds, private entities, and other customers, including Group Trusts that have not certified to having ERISA Volume (*i.e.*, Public & Other), which will share the Public & Other Settlement Allocation. Each Class Member's Recognized Claim will depend upon its Indirect FX Trading Volume during the Class Period, and how its volume compares to that of other Class Members. *See* Notice, A.B. Decl. Ex. 1 at Ex. A, pp. 8-12.

Using data provided by SSBT, A.B. Data has divided each Class Member's total Indirect FX Trading Volume during the Class Period into three parts: (i) Registered Investment Company Indirect FX Trading Volume during the Class Period ("RIC Volume"); (ii) ERISA Plan Indirect FX Trading Volume during the Class Period ("ERISA Volume"); and (iii) their remaining Indirect FX Trading Volume during the Class Period ("Public & Other Volume"). *See id.* at 10. To facilitate the calculations under the Plan of Allocation, SSBT provided A.B. Data with (1) the total Indirect FX Trading Volume for each Class Member during the Class Period; and (2) information concerning whether each Class Member was an ERISA Plan, RIC, Group Trust, or not during the Class Period. *See* A.B. Data Decl. ¶ 3.

As part of the Settlement notification procedures, Class Members identified as Group Trusts were asked to provide certifications to A.B. Data in order to identify their ERISA Volume and Public & Other Volume—they may have both types of volume or only one. The certifications were to report the average proportion of the Group Trust's SSBT custodied assets that were held by ERISA Plans during the Class Period and/or the average volume of Indirect FX Trades made by ERISA Plans during the Class Period. *See* A.B. Data Decl. ¶ 14. To the extent Group Trusts have ERISA Volume, they will share in the ERISA Settlement Allocation. To the

extent Group Trusts have Public & Other Volume, they will share in the Public & Other Settlement Allocation. *See* A.B. Data Decl. ¶ 14.

A.B. Data has processed all Group Trust certifications received and categorized the Indirect FX Trading Volume accordingly. A.B. Data received 30 certifications on behalf of 22 Settlement Class Members, which represent 251 funds or accounts. *See* A.B. Data Decl. ¶ 15. The certifying class members have certified ERISA Volume of \$3,031,891,391.06 and Public & Other Volume of \$8,607,070,915.50. Accordingly, the total of ERISA Volume for all class members is \$83,147,303,937.41 and the total Public & Other Volume for all class members is \$321,208,699,119.43. Given this result, none of the events that would trigger a modification of the Plan of Allocation have occurred. *See* Notice at 10.⁴

A.B. Data has identified all ERISA and Public & Other Class Members and calculated their Recognized Claims pursuant to the Plan of Allocation, using information about each Class Member's Indirect FX Trading Volume during the Class Period and about each Class Member's classification as an ERISA Plan, Group Trust, or Public & Other. *See* A.B. Data Decl. ¶¶ 16-23, Exs. 3 - 5. All of the ERISA and Public & Other Class Members have been informed of the amounts of their Recognized Claims and to date none have disputed A.B. Data's determinations. *See* A.B. Data Decl. ¶ 20. A.B. Data will continue to process any incoming correspondence pertaining to ERISA and Public & Other Recognized Claims. Any required adjustments to Recognized Claims will be made prior to the distribution. *Id.* ¶ 27(b)(i).

⁴ More specifically, the total amount of certifying Group Trusts' ERISA Volume is not in excess of 2/3 of the total amount of Group Trusts' Indirect FX Trading Volume, as reported by State Street on July 25, 2016. *See* Notice at 10. And, the actual total percentage of Indirect FX ERISA Trading Volume executed by ERISA Plans and Group Trusts does not exceed 15.25% of the overall Indirect FX Trading Volume for the Settlement as reported on July 25, 2016. *Id.* The actual total percentage of Indirect FX ERISA Trading Volume executed by ERISA Plans and Group Trusts totals approximately 9.5% of the overall volume. A.B. Data Decl. ¶ 15.

III. DISTRIBUTION TO ERISA AND PUBLIC & OTHER CLASS MEMBERS

The Effective Date for the Settlement has occurred and the Plan of Allocation Order is Final. As set forth in the A.B. Data Declaration, the ERISA and Public & Other Settlement Allocations are ready to be distributed.⁵ Therefore, Lead Counsel respectfully seeks an Order that approves the proposed plan for distributing the ERISA Settlement Allocation and the Public & Other Settlement Allocation, as set forth in the A.B. Data Declaration and below (the “ERISA and Public & Other Distribution Plan”). A.B. Data will conduct the ERISA and Public & Other Initial Distribution as follows:

A.B. Data will consult with Lead Counsel concerning the Court’s Distribution Order. A.B. Data will confirm each ERISA and Public & Other Class Member’s *pro rata* share of the Settlement Allocations. A.B. Data Decl. ¶ 27(b)(i)-(ii).

A.B. Data will, pursuant to the terms of the Plan of Allocation, eliminate from the distribution any Recognized Claim that calculates to less than \$10.00. After excluding Recognized Claims of less than \$10.00, A.B. Data will recalculate the *pro rata* shares of the ERISA and Public & Other Settlement Allocations for eligible ERISA and Public & Other Class Members. This *pro rata* share is the Settlement Class Member’s “ERISA Distribution Amount” or “Public & Other Distribution Amount.” A.B. Data Decl. ¶ 27(b)(iii)-(iv).

A.B. Data recommends the establishment of a reserve to allow for any necessary adjustments in payments upon sufficient proof, to pay additional Taxes, Tax Expenses, and Notice and Administration Expenses. Based on A.B. Data’s experience with similarly sized class action settlements, settlement reserves are commonly used and an additional distribution of

⁵ Pursuant to the Special Master’s distribution plan (ECF No. 619-2, Ex. 2), any previously awarded and reduced attorneys’ fees will be refunded to the Net Class Settlement Fund and distributed to class members in 2021.

remaining funds due to uncashed and returned checks is a virtual certainty. Consequently, establishing a reserve here will not add to the overall administration costs. A.B. Data Decl. ¶ 27(a). A.B. Data will distribute to eligible ERISA and Public & Other Class Members, 95% of their Distribution Amounts, with the remaining 5% to be set aside and held in reserve (the “Reserves”) to address any contingencies that may arise. To the extent the Reserves are not depleted, the remainder will be distributed in subsequent distributions. *Id.* ¶ 27(v)-(vi).

A.B. Data will make reasonable and diligent efforts to have ERISA and Public & Other Class Members cash their Initial Distribution checks. A.B. Data Decl. ¶ 27(b)(x). Consistent with the Special Master’s distribution plan (ECF No. 619-2, Ex. 2), the Plan of Allocation and the Settlement Agreement ¶ 40, any portion of the ERISA and Public & Other Settlement Allocations remaining following the ERISA and Public & Other Initial Distribution (including from the Reserves and the funds for void stale-dated checks), after deduction of A.B. Data’s fees and costs, any Taxes or Tax Expenses owed, the costs of preparing appropriate tax returns, and any escrow fees will, on or before March 30, 2021, be redistributed to ERISA and Public & Other Class Members that cashed their Initial Distribution checks (the “Second ERISA and Public & Other Distribution”). Additional re-distributions, after deduction of A.B. Data’s fees and costs, any Taxes or Tax Expenses owed, the costs of preparing appropriate tax returns, and any escrow fees, may occur thereafter until it would not be economically feasible to continue. A.B. Data Decl. ¶ 28.

Once it is determined that further re-distribution of any balance remaining is no longer economically feasible, Lead Counsel will seek an order from the Court concerning the treatment of the remaining funds. *See* Settlement Agmt. ¶ 40.

IV. FEES AND EXPENSES OF CLAIMS ADMINISTRATOR

A.B. Data has been responsible for mailing and publishing notice to the Settlement Class, creating and maintaining a settlement website and toll-free telephone helpline, processing Group Trust certifications, corresponding with Class Members, and calculating claims.

Pursuant to the Settlement Agreement, to date, approximately \$128,000 has been paid to A.B. Data in connection with its ERISA and Public & Other work. *See* Settlement Agmt. ¶ 29; A.B. Data Decl. ¶ 25. A.B. Data estimates that it will incur costs and fees totaling \$95,794.51 to conduct the initial distribution of the ERISA and Public & Other Settlement Allocations to eligible class members, which will be paid to A.B. Data prior to the initial distribution. *See* A.B. Data Decl. Ex. 6 (estimate of the administration fees and expenses to be incurred in connection with the initial distribution). If the estimate to conduct the distribution is greater than the actual costs, A.B. Data will refund the difference.

By this motion, A.B. Data respectfully requests payment of this \$95,794.51 estimate to conduct the ERISA and Public & Other Initial Distribution.

V. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court allow this motion in its entirety, and issue the proposed Order Authorizing Distribution to ERISA and Public & Other Class Members submitted herewith.

Dated: September 1, 2020

Respectfully submitted,

LABATON SUCHAROW LLP

By: /s/ David J. Goldsmith
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System and the Settlement Class*

Certificate of Compliance with Local Rule 7.1(a)(2)

I certify pursuant to Local Rule 7.1(a)(2) that my partner Nicole M. Zeiss and I conferred with counsel for Defendant State Street Bank and Trust Company (“SSBT”) on August 31, 2020 and today concerning the relief sought in the foregoing motion. Counsel confirmed that SSBT does not oppose the relief sought in the motion.

We also conferred with other Plaintiffs’ Counsel about the motion. Counsel at Thornton Law Firm LLP and Keller Rohrback LLP do not oppose the relief sought in the motion. No other counsel responded.

/s/ David J. Goldsmith

David J. Goldsmith

Certificate of Service

I certify that on September 1, 2020, I caused the (1) foregoing Plaintiffs' Motion for Authorization to Distribute to Eligible ERISA and Public & Other Class Members; (2) accompanying Memorandum of Law; and (3) accompanying Declaration of Eric J. Miller on Behalf of A.B. Data, Ltd. in Support of Motion for Authorization to Distribute to Eligible ERISA and Public & Other Class Members, with exhibits; to be filed through the ECF system in the above-captioned actions, and accordingly to be served electronically upon all registered participants identified on the Notices of Electronic Filing.

/s/ David J. Goldsmith
David J. Goldsmith