

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE LIBOR-BASED FINANCIAL INSTRUMENTS ANTITRUST LITIGATION	MDL No. 11-md-2262 (NRB)
THIS DOCUMENT RELATES TO:	
The OTC Action	No. 11-cv-5450

**JOINT REPLY MEMORANDUM IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF SETTLEMENT WITH COÖPERATIEVE
RABOBANK U.A., LLOYDS BANKING GROUP PLC, LLOYDS BANK PLC, HBOS
PLC, BANK OF SCOTLAND PLC, ROYAL BANK OF CANADA, PORTIGON AG, AND
WESTDEUTSCHE IMMOBILIEN SERVICING AG**

Court-appointed co-lead class counsel Susman Godfrey L.L.P. and Hausfeld LLP (“Class Counsel”) respectfully submit this reply memorandum in support of the OTC Plaintiffs’ Motion for Final Approval of Settlement with Defendants Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. (n/k/a Cooperatieve Rabobank U.A.) (“Rabobank”), Lloyds Banking Group plc, Lloyds Bank plc, HBOS plc, and Bank of Scotland (together, “Lloyds”), Royal Bank of Canada (“RBC”), and WestLB AG (n/k/a Portigon AG) and Westdeutsche Immobilienbank AG (n/k/a Westdeutsche Immobilien Servicing AG) (together, “Portigon”) (ECF Nos. 3870–3872) (“Final Approval Motion”) and Motion for Attorneys’ Fees, Reimbursement of Litigation Expenses, and Incentive Awards (ECF Nos. 3865–3868) (“Fees and Expenses Motion”).

Since those filings, the November 17, 2023 deadline for class members to exclude themselves from the Settlement has passed. *Not one* member of the vast class of sophisticated institutions has objected to (i) the final approval of the Settlement, (ii) the appointment of Class Counsel as Settlement Class Counsel, (iii) the plan of distribution, (iv) the application for attorneys’ fees, expense reimbursement, and incentive awards, or (v) the other components of the OTC Plaintiffs’ requests. And the Claims Administrator has received only 9 requests for exclusion, almost all of which were received from entities that had long-ago filed their own complaints in this multi-district litigation.¹ See Declaration of Kay Ruvolo of Angeion Group LLC Re: Requests for Exclusion and Objections, ¶¶ 3-5 & Ex. A.²

The “[f]avorable reaction of a class of sophisticated investors evidences fairness, reasonableness, and adequacy” of a proposed settlement. *In re Luxottica Grp. S.p.A. Sec. Litig.*, 233 F.R.D. 306, 312 (E.D.N.Y. 2006) (citing *In re Am. Bank Note Holographics, Inc.*, 127 F.

¹ Accompanying this filing is a proposed order that enumerates each entity that requested exclusion from the Settlement and thus will not be bound by the Settlement.

² The Declaration of Kay Ruvolo of Angeion Group LLC is being filed contemporaneously with this submission.

Supp. 2d 418, 425 (S.D.N.Y. 2001)). Indeed, in this District “[i]t is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy.” *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 362-63 (S.D.N.Y. 2002). Because of the importance of the class's reaction, the Second Circuit has long observed that “[i]f only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.” *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) (internal quotation omitted).

Naturally, then, the receipt of *no objections* here overwhelmingly supports the reasonableness of Class Counsel’s proposals. *E.g.*, *Am. Bank Note*, 127 F. Supp. 2d at 425 (no objections and low number of exclusions warrants settlement approval); *In re Milken & Assocs. Sec. Litig.*, 150 F.R.D. 46, 56 (S.D.N.Y. 1993) (observing “the absence of any negative response of the members of the Class,” and noting the fact that “there have been no objections” supports settlement approval); *Luxottica*, 233 F.R.D. at 312 (settlement approval warranted where “not a single objection to the settlement” was received).

Similarly, the absence of any negative reaction to the application for attorneys’ fees, expense reimbursement, and incentive awards demonstrates that the request appropriately compensates Class Counsel for their efforts-taking into consideration both the tremendous results achieved and Class Counsel’s continued and contingent investments of attorney time and financial resources into the case, without any guarantee of recovery.

For these reasons and those stated in OTC Plaintiffs’ prior submissions to the Court, *see* ECF Nos. 3871 & 3866, OTC Plaintiffs’ Final Approval Motion, ECF No. 3870, and Fees and Expenses Motion, ECF No. 3865, should be granted.

Dated: November 22, 2023

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