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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANK OF NEW YORK MELLON CORP.
FOREX TRANSACTIONS LITIGATION

No. 12-MD-2335 (LAK) (JLC)

THIS DOCUMENT RELATES TO:

*Southeastern Pennsylvania Transportation Authority v.
The Bank of New York Mellon Corporation, et al.*

No. 12-CV-3066 (LAK) (JLC)

*International Union of Operating Engineers, Stationary
Engineers Local 39 Pension Trust Fund v. The Bank of
New York Mellon Corporation, et al.*

No. 12-CV-3067 (LAK) (JLC)

*Ohio Police & Fire Pension Fund, et al. v. The Bank of
New York Mellon Corporation, et al.*

No. 12-CV-3470 (LAK) (JLC)

Carver, et al. v. The Bank of New York Mellon, et al.

No. 12-CV-9248 (LAK) (JLC)

Fletcher v. The Bank of New York Mellon, et al.

No. 14-CV-5496 (LAK) (JLC)

~~PROPOSED~~ ORDER APPROVING DISTRIBUTION PLAN FOR
THE NET SETTLEMENT PROCEEDS AND REQUEST FOR
REIMBURSEMENT OF LITIGATION EXPENSE

WHEREAS, by its Order and Final Judgment (ECF No. 638) and Order Approving Plan of Allocation (ECF No. 636), both dated September 24, 2015, this Court approved the terms of settlement set forth in the Stipulation and Agreement of Settlement dated as of March 19, 2015 (the "Settlement" or "Stipulation") and the plan for allocating the net settlement proceeds to Settlement Class Members (the "Plan of Allocation"), respectively;

WHEREAS, this Court had directed the parties to consummate the terms of the Settlement and Plan of Allocation;

WHEREAS, the Settlement provided for the payment of \$335,000,000 by Defendants (the "Settlement Amount") and the Settlement Amount has been deposited into an account established by Lead Settlement Counsel at Citibank, N.A. for the benefit of the Settlement Class (the "Settlement Fund Escrow Account");

WHEREAS, as set forth in the Notice of (I) Pendency of Class Action, (II) Proposed Settlement, (III) Settlement Hearing, (IV) Plan of Allocation for Distribution, and (V) Lead Settlement Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice") and the Plan of Allocation set forth therein, Settlement Class Members were also informed that, in addition to the Settlement Amount, \$155,000,000 obtained pursuant to a settlement between the New York Attorney General and BNYM (the "NYAG Settlement Amount") and \$14,000,000 obtained pursuant to a settlement between the United States Department of Labor and BNYM (the "DOL Settlement Amount") would be deposited into the Settlement Fund Escrow Account and distributed to Settlement Class Members in accordance with the Plan of Allocation;

WHEREAS, Lead Plaintiffs, through their counsel, now seek authorization to distribute the Settlement Amount, plus any interest earned thereon, after deduction of any taxes, fees and expenses approved by this Order or previously approved by the Court (the "Net Settlement Fund"), along with the NYAG Settlement Amount and DOL Settlement Amount (collectively, the "Net Settlement Proceeds") to Settlement Class Members in accordance with the Plan of Allocation set forth in the Notice; and

WHEREAS, this Court has retained jurisdiction of the above-captioned action (the "Litigation") for the purpose of considering, *inter alia*, any further application or matter which

may arise in connection with the administration and execution of the Settlement and the distribution of the Net Settlement Proceeds to members of the Settlement Class;

NOW, THEREFORE, upon reading: (1) the Affidavit of Stephen J. Cirami in Support of Motion for Approval of Distribution Plan for the Net Settlement Proceeds (the "Cirami Affidavit" or "Cirami Aff.") submitted on behalf of the Court-approved Claims Administrator, Garden City Group, LLC ("GCG"); (2) the Affidavit of Sharan Nirmul in Support of Request for Reimbursement of Litigation Expense, submitted on behalf of Kessler Topaz Meltzer & Check, LLP; (3) the Memorandum in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan for the Net Settlement Proceeds and Request for Reimbursement of Litigation Expense; (4) the other submissions and papers on file with the Court; and upon all prior proceedings heretofore and herein, and after due deliberation, it is hereby

ORDERED, that all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation, previously filed with the Court, and the Cirami Affidavit submitted herewith; and it is further

ORDERED, that the Distribution Plan proposed by GCG and set forth in the Cirami Affidavit is hereby approved; and it is further

ORDERED, that payments to the 1,219 Settlement Class Members listed on Exhibit B to the Cirami Affidavit, be and the same hereby are approved; and it is further

ORDERED, that GCG be paid the sum of \$135,174.39 from the Net Settlement Fund as payment for the balance of its fees and expenses incurred and to be incurred in connection with the administration of the Settlement and the Initial Distribution of the Net Settlement Proceeds; and it is further

ORDERED, that Kessler Topaz Meltzer & Check, LLP be reimbursed \$147,469.55 from the Net Settlement Fund for a Litigation Expense not previously applied for in Lead Settlement Counsel's application for fees and expenses filed with the Court in August 2015; and it is further

ORDERED, that the Net Settlement Proceeds, after deduction of any amounts authorized pursuant to this Order or pursuant to previous Orders entered by the Court in this Litigation, shall be distributed to the Settlement Class Members listed on Exhibit B to the Cirami Affidavit in accordance with the Plan of Allocation (the "Initial Distribution") and the Distribution Plan set forth in the Cirami Affidavit; and it is further

ORDERED, that Settlement Class Members whose Distribution Amounts calculate to more than \$0.00 but less than \$1,000.00 will be paid their full distribution amount in the Initial Distribution ("Claims Paid in Full") and these Settlement Class Members will get no additional funds in subsequent distributions; and it is further

ORDERED, that after deducting the payments to the Claims Paid in Full, GCG will distribute to all other Settlement Class Members on Exhibit B (i.e., Settlement Class Members whose Distribution Amounts calculate to \$1,000.00 or more) 90% of their Distribution Amounts, with the remaining aggregate 10% to be set aside and held in reserve (the "Reserve") to address any contingencies that may arise; and it is further

ORDERED, that for those Settlement Class Members who will receive their distribution by check, the checks shall bear the notation "CASH PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED BY [90 DAYS AFTER ISSUE DATE]." Lead Settlement Counsel and GCG are authorized to take appropriate action to locate and/or contact any Settlement Class Member who has not cashed his, her or its check within said time; and it is further

ORDERED, that Settlement Class Members who do not cash their distribution checks within the time allotted shall irrevocably forfeit all recovery from the Settlement and the funds allocated to all such stale-dated checks shall be available to be redistributed to other Settlement Class Members in the Second Distribution (as described below). Similarly, Settlement Class Members who do not cash subsequent distribution checks within in the time allotted shall irrevocably forfeit any further recovery from the Settlement; and it is further


ORDERED, that after GCG has made reasonable and diligent efforts to have Settlement Class Members cash their Initial Distribution checks, any portion of the Net Settlement Proceeds remaining six (6) months following the Initial Distribution (including from the Reserve and the funds for all void stale-dated checks), after deducting GCG's estimated costs of conducting such re-distribution, any taxes owed, the costs of preparing appropriate tax returns, and any escrow fees, will be redistributed to Settlement Class Members who (i) were not Claims Paid in Full; and (ii) cashed their Initial Distribution check (the "Second Distribution"); and it is further

ORDERED, that after the Second Distribution, and after GCG makes reasonable and diligent efforts to have Settlement Class Members cash their Second Distribution checks, to the extent funds remain in the Net Settlement Proceeds (whether by reason of uncashed checks, return funds, or otherwise), GCG will conduct a further distribution of the Net Settlement Proceeds if it is determined by GCG and Lead Settlement Counsel that a further distribution of the Net Settlement Proceeds is cost effective. Additional redistributions, after deduction of GCG's costs, any taxes owed, the costs of preparing appropriate tax returns, and any escrow fees, may occur thereafter until Lead Settlement Counsel, in consultation with GCG, determine that a further redistribution is not cost effective; and it is further

ORDERED, that once Lead Settlement Counsel determine that further re-distribution of any balance remaining is no longer cost effective or efficient, Lead Settlement Counsel shall seek an order from the Court: (i) approving the recommendation that any further re-distribution is not cost effective or efficient; and (ii) ordering the contribution of the balance of the Net Settlement Proceeds to one or more nonsectarian, not-for-profit, 501(c)(3) organizations that are independent of Lead Settlement Counsel so that Lead Settlement Counsel do not derive a direct or indirect benefit from the selection of such organization as of the recipient of a charitable contribution; and it is further

ORDERED, that the Court finds that the administration of the Settlement and the proposed distribution of the Net Settlement Proceeds comply with the terms of the Stipulation and the Plan of Allocation and that all Persons involved in the review, verification, calculation, tabulation, or any other aspect of the Recognized Claims and payment amounts to Settlement Class Members, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund are released and discharged from any and all claims arising out of such involvement, and all Settlement Class Members, whether or not they are to receive payment from the Net Settlement Proceeds, are barred from making any further claims against the Net Settlement Proceeds, Plaintiffs, Plaintiffs' Counsel, the Claims Administrator, the Escrow Agent or any other agent retained by Lead Plaintiffs or Lead Settlement Counsel in connection with the administration and taxation of the Settlement Fund or the Net Settlement Fund beyond the amounts allocated to them pursuant to this Order; and it is further

ORDERED, that this Court retain jurisdiction to consider any further applications or matters which may arise in connection with this Litigation, and it is further *ORDERED, that the Clerk terminate DI 667.*
SO ORDERED this *27* day of *Feb.*, 2016.



The Honorable Lewis A. Kaplan
United States District Judge