

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

LOUISIANA FIREFIGHTERS' RETIREMENT SYSTEM, THE BOARD OF TRUSTEES OF THE PUBLIC SCHOOL TEACHERS' PENSION AND RETIREMENT FUND OF CHICAGO, THE BOARD OF TRUSTEES OF THE CITY OF PONTIAC POLICE & FIRE RETIREMENT SYSTEM, and THE BOARD OF TRUSTEES OF THE CITY OF PONTIAC GENERAL EMPLOYEES RETIREMENT SYSTEM, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

NORTHERN TRUST INVESTMENTS, N.A., and THE NORTHERN TRUST COMPANY,

Defendants.

Case No. 09-7203

Hon. Jorge L. Alonso

Magistrate Judge Susan E. Cox

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT
OF (I) SETTLING PLAINTIFFS' MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION, AND
(II) CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

Plaintiffs Louisiana Firefighters' Retirement System, The Board of Trustees of the Public School Teachers' Pension and Retirement Fund of Chicago, and The Board of Trustees of the City of Pontiac Police and Fire Retirement System (collectively, the "Settling Plaintiffs"), on behalf of themselves and the Settlement Class, and Co-Lead Counsel respectfully submit this reply memorandum of law in further support of (i) Settling Plaintiffs' motion for final approval of the proposed Settlement and approval of the proposed Plan of Allocation, and (ii) Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.¹

I. PRELIMINARY STATEMENT

The proposed Settlement provides for a cash payment of \$24 million for the resolution of the Indirect Lending claims asserted in this Action. As detailed in Settling Plaintiffs' opening papers (Docs. 469-475), the Settlement is the product of hard-fought litigation and extensive, arm's-length negotiations, and represents a very favorable result for the Settlement Class in light of the considerable risks of the continued litigation of the settled claims. Pursuant to the Court's Preliminary Approval Order (Doc. 433), direct notice of the Settlement has been provided to the Settlement Class Members identified by Defendants, supplemented by publication notice. In response to the notice program, *not a single Settlement Class Member has objected* to the proposed Settlement, Plan of Allocation, or Co-Lead Counsel's motion for an award of attorneys' fees and expenses, and there have been *no requests for exclusion* from the Settlement Class. It is well established that the absence of any objections and requests for exclusion is strong evidence that the proposed Settlement warrants final approval, particularly when the

¹ Unless otherwise defined herein, any capitalized terms shall have the meanings ascribed to them in the Stipulation and Agreement of Partial Settlement of Class Action dated February 17, 2015 (the "Stipulation") (Doc. 425-1) or in the Joint Declaration of Avi Josefson, Derek W. Loeser and Mark T. Johnson in Support of (I) Settling Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (II) Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Joint Declaration" or "Joint Decl.") (Doc. 475).

Settlement Class is comprised entirely of sophisticated institutional investors, as is the situation here. For the reasons set forth below and in the prior papers, the proposed Settlement, Plan of Allocation, and request for attorneys' fees and reimbursement of Litigation Expenses are fair and reasonable, and should be approved.

II. BACKGROUND

1. Mailing of the Settlement Notice, Publication of Summary Notice, and Filing of Final Approval Papers

Pursuant to the Preliminary Approval Order, the Settlement Notice was mailed to Settlement Class Members identified by Defendants on May 15, 2015. *See* ¶ 3 of the Declaration of Gerard Hanshe Regarding (A) Mailing of the Settlement Notice Packet; (B) Publication of the Summary Notice; and (C) Report on Challenges and Requests for Exclusion Received to Date, submitted by the Court-approved Settlement Administrator, GCG ("GCG Decl.") (Doc. 475-1), at ¶ 4. Additionally, the Summary Notice was published in *The Wall Street Journal* and transmitted over the *PR Newswire* on May 28, 2015. *Id.* at ¶ 6 and Exhibits B and C. Also, the notices and other information pertaining to the Settlement was made available on the Settlement website. *Id.* at ¶ 7.

As required by the Preliminary Approval Order, Settling Plaintiffs and Co-Lead Counsel filed detailed papers in support of the Settlement, the Plan Allocation, and the fee and expense request on July 1, 2015. These papers were posted on the public docket (Docs. 469-475), and placed on the website established for the Settlement. *See* Declaration of Jose C. Fraga Regarding Report on Challenges and Requests for Exclusions Received ("Supplemental GCG Declaration" or "Suppl. GCG Decl."), submitted herewith, at ¶ 5.

2. No Settlement Class Members Have Objected to the Settlement

The Settlement Notice informed Settlement Class Members of the terms of the proposed Settlement and Plan of Allocation, and that Co-Lead Counsel would apply to the Court for an award of attorneys' fees in an amount not to exceed 33.3% of the Settlement Fund and reimbursement of Litigation Expenses in an amount not to exceed \$600,000.00. *See* Settlement Notice ¶ 31.

Paragraphs 18 and 19 of the Preliminary Approval Order provide that any Settlement Class Member that wishes to enter an appearance at the Settlement Hearing and/or to object to the Settlement, the proposed Plan of Allocation, or the motion for an award of attorneys' fees and reimbursement of Litigation Expenses, is required to file with the Court and deliver to the specified representative Co-Lead Counsel and to Defendants' Counsel, a notice of appearance and/or written objections, as applicable. Such documents were required to be submitted so that they were received no later than twenty-one (21) calendar days before the Settlement Hearing Date, *i.e.* July 15, 2015. The Settlement Notice informed members of the Settlement Class of this deadline and the manner in which notices of appearance and objections were to be submitted.

The Representative Co-Lead Counsel designated in the Settlement Notice for receiving notices of appearance or written objections is Derek W. Loeser of Keller Rohrback. *See* Settlement Notice ¶ 40. As of the July 15, 2015 deadline, neither Mr. Loeser nor any other person from his firm had received any notices of appearance or written objections to the Settlement, and none have been received since that date. *See* Declaration of Derek W. Loeser Regarding Objections to the Settlement, the Proposed Plan of Allocation, and Co-Lead Counsel's Motion for an Award of Attorney's Fees and Reimbursement of Litigation Expenses (the "Loeser Declaration" or "Loeser Decl."), submitted herewith, at ¶ 5. In addition, Representative

Co-Lead Counsel has checked with both the Clerk of the Court and with Defendants' Counsel, and has been informed that neither has received a notice of appearance or a written objection from any Settlement Class Member. *Id.* at ¶¶ 6, 7.

3. No Settlement Class Members Have Excluded Themselves from the Settlement Class

Pursuant to paragraph 13 of the Preliminary Approval Order, and as set forth in the Settlement Notice and Summary Notice provided to Settlement Class Members, any member of the Settlement Class desiring to exclude itself from the class was required to do so by submitting a written request for exclusion in the manner specified in the Settlement Notice. Requests for Exclusion, to be valid, were required to be mailed or delivered to the Settlement Administrator so that they would be received by no later than twenty-one (21) calendar days prior to the Settlement Hearing Date, *i.e.* July 15, 2015. Preliminary Approval Order, ¶ 13.

As stated in the Supplemental GCG Declaration, no Requests for Exclusion were received by the Settlement Administrator by the July 15, 2015 deadline, and none have been received since that date. Suppl. GCG Decl. ¶ 4.

4. Investment Challenges, Status Challenges and the Plan of Allocation.

As approved by the Preliminary Approval Order, the Settlement Notice also provides that Settlement Class Members could contest the investment data set forth in the cover letter they received with their Settlement Notice. The deadline for submitting an "Investment Challenge" was June 12, 2015, thirty (30) calendar days after the deadline for the mailing of the Settlement Notice. Preliminary Approval Order, ¶ 11. Also, the Summary Notice informed entities that were not identified as Settlement Class Members based on Defendants' records that they could file a "Status Challenge" to establish their membership in the Settlement Class. The deadline for

submitting a Status Challenge was June 29, 2015, thirty (30) calendar days after publication of the Summary Settlement Notice. *Id.* ¶ 12.

As set forth in the opening papers, as of June 29, 2015, the Settlement Administrator had not received any Investment Challenges or Status Challenges. *See* GCG Decl. ¶¶ 9-10. Since that date, the Settlement Administrator has not received any Investment Challenges and has received just one Status Challenge from a pension plan that had been identified by Defendants as a member of the class in the *Diebold* ERISA settlement. Supp. GCG Decl. ¶ 3. The Status Challenge requested inclusion of the plan in the Settlement Class in this Action and removal of the plan from the settlement class in *Diebold*, on the basis that the entity is a church plan as defined in Section 414(e) of the Internal Revenue Code and Section 3(33) of ERISA and therefore not subject to ERISA. Representatives of Co-Lead Counsel² in this case conferred with counsel for the *Diebold* class and Defendants' Counsel, and it was determined that this entity should be treated as a member of the Settlement Class in this case rather than in *Diebold*. Representatives of Co-Lead Counsel have notified this plan in writing that it has been removed from the *Diebold* settlement class and moved to the Settlement Class in this Action.

As a result of the movement of this plan into the Settlement Class, a slight modification to the proposed Plan of Allocation set forth in the Settlement Notice mailed to the class members was necessary. Specifically, the movement of this plan required minor adjustments to the allocations among the Lending Funds set forth in Table A to the Plan of Allocation.³ A revised

² Representatives from the law firm of Keller Rohrback L.L.P. did not participate in this decision.

³ In addition to the modifications to the mailed version of Table A resulting from the one Status Challenge received, some changes were required to be made to the version of Table A previously submitted to the Court based on inaccuracies in Northern Trust's initial determinations as to the composition of the classes in this action and the *Diebold* action. These inaccuracies were discovered after the entry of the Preliminary Approval Order, when the identity of Settlement Class Members was first provided by Northern Trust to plaintiffs' counsel. Based on plaintiffs' counsel's review of Northern Trust's list of

version of Table A incorporating the adjustments made to the Table A that had been mailed to Settlement Class Members has been posted to the Settlement website, and a copy of the revised table is attached as Exhibit A to the Supplemental GCG Declaration. Suppl. GCG Decl. ¶ 5 and Exhibit A. Settlement Class Members were informed in the Settlement Notice that a modified Plan of Allocation may be approved by the Court without further notice to the Settlement Class. See Plan of Allocation, attached as Appendix 2 to the Settlement Notice, at ¶ 15.

III. THE REACTION OF THE SETTLEMENT CLASS STRONGLY SUPPORTS APPROVAL OF THE SETTLEMENT, THE PLAN OF ALLOCATION AND THE REQUESTED ATTORNEYS' FEES AND LITIGATION EXPENSES

Among the factors that may be considered by a district court in evaluating the fairness of a class action settlement are the following:

- 1) the strength of the plaintiffs' case on the merits measured against the terms of the settlement; 2) the complexity, length, and expense of continued litigation; 3) the amount of opposition to the settlement among affected parties; 4) the presence of collusion in gaining a settlement; 5) the stage of the proceedings; and 6) the amount of discovery completed.

GE Capital Corp. v. Lease Resolution Corp., 128 F.3d 1074, 1082 (7th Cir. 1997); *see also Isby v. Bayh*, 75 F.3d 1191, 1199 (7th Cir. 1996). All of these the factors but one – the amount of opposition from class members – were fully addressed in Settling Plaintiffs' opening papers. At the time of Settling Plaintiffs' prior submission, no objections had been received, but the deadline of July 15, 2015 for submitting such objections had not yet passed. As of this filing two weeks after the deadline, however, it remains the case that not a single Class Member has

identified class members and plaintiffs' counsel's communications with certain identified class members, it was agreed among Co-Lead Counsel, *Diebold* counsel, and Defendants' Counsel that a small number of class members needed to be shifted from one class to the other. These adjustments to Northern Trust's initial class determinations required some modifications to the allocations set forth in Table A to the Plan of Allocation provided to the Court with the Preliminary Approval Motion, which were made prior to the mailing of the Settlement Notice to class members.

submitted an objection. Loeser Decl. ¶¶ 5-7. Nor has any Settlement Class Member requested exclusion from the Settlement. Suppl. GCG Decl. ¶ 4.

Courts in this Circuit have consistently viewed the absence of objections and/or opt-outs from class members as strong support for approval of a class action settlement. *See, e.g. Myszka v. Nat'l Collegiate Scouting Ass'n, Inc.*, No. 13-CV-01259, 2014 WL 1364468, at *1 (N.D. Ill. Mar. 19, 2014) (“No objections to the Settlement were made by the Class Members, and this fact likewise supports approval”); *Young v. City of Chicago*, No. 10-C-989, 2013 WL 9947387, at *2 (N.D. Ill. Dec. 16, 2013); *Am. Civil Liberties Union of Illinois v. U.S. Gen. Servs. Admin.*, 235 F. Supp. 2d 816, 819 (N.D. Ill. 2002); *Retsky Family Ltd. P’ship v. Price Waterhouse LLP*, No. 97-C-7694, 2001 WL 1568856, at *3 (N.D. Ill. Dec. 10, 2001) (“The absence of objection to a proposed class settlement is evidence that the settlement is fair, reasonable and adequate”); *Goldsmith v. Tech. Solutions Co.*, No. 92-C-4374, 1995 WL 17009594, at *1 (N.D. Ill. Oct. 10, 1995). Here, the fact that no Settlement Class Member objected to the Settlement or sought to be excluded from the Settlement Class is particularly significant given the nature of the notice provided to Settlement Class Members and the composition of the Settlement Class.

The Settlement Class is comprised entirely of sophisticated institutional investors that were indirect participants in Defendant Northern Trust’s securities lending program during the Settlement Class Period. In this case, direct mail notice was able to be effected to Settlement Class Members. Each Settlement Class Member purchased shares in one or more of Northern Trust’s commingled Lending Funds and received periodic statements and other mailings from Northern Trust regarding their investments. As a result, Defendants had contact information for each member of the Settlement Class, who were Northern Trust’s current or former customers. Pursuant to the terms of the Stipulation and the Preliminary Approval Order, Defendants provided the Settlement Administrator with the names and addresses of all Identified Settlement

Class Members. Using that information, and as discussed above, the Settlement Administrator mailed the Settlement Notice Packet to Identified Settlement Class Members on May 15, 2015. GCG Decl. ¶ 4. In addition, the Summary Notice approved by the Court was published in *The Wall Street Journal* and transmitted over the *PR Newswire* on May 28, 2015. *Id.* ¶ 6.

Of further significance is the fact that members of the Settlement Class are typically government retirement plans or other institutions which invested in Defendants' Lending Funds on behalf of participants in their plan. As such, they are sophisticated institutional investors who, in most cases, have their own fiduciary obligations to plan participants with respect to the investment of plan assets. In that capacity, they are extremely likely to have responsible employees, officials and/or in-house counsel who reviewed the Settlement Notice and made an informed decision as to whether to object to or request exclusion from the Settlement Class. The absence of any objections or opt-out requests, therefore, should be seen as an affirmative statement from Settlement Class Members that the Settlement is fair and reasonable and should be approved.

The same analysis applies to approval of Co-Lead Counsel's request for attorneys' fees equal to 22% of the Settlement Fund and reimbursement of Litigation Expenses in the amount of \$445,187.92, and to approval of the Plan of Allocation. Where class members have asserted no objections to a fee request or a plan for distributing the proceeds of a settlement, courts take that fact as support for the proposed fee or distribution plan. In *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 959 (7th Cir. 2013), for example, the Court noted that, as here, the class was comprised largely of institutional investors with in-house counsel and fiduciary duties to protect beneficiaries. The fact that none of these institutional investors protested the requested fee award was cited by the Court as a basis for approving the award, even though it was otherwise considered to be a generous award. *Id. See also, Standard Iron Works v. ArcelorMittal*, No. 08-

C-5214, 2014 WL 7781572, at *2 (N.D. Ill. Oct. 22, 2014) (finding that the absence of objections to a fee request from a Class that included sophisticated business entities “indicates that the fee is fair and reasonable and consistent with market rates”); *Goldsmith*, 1995 WL 17009594, at *1 (identifying the total lack of objections to the proposed settlement and the plan of distribution as a basis for approving both); *Serv. Spring, Inc. v. Cambria Spring Co.*, No. 81-C-1835, 1984 WL 2872, at *3 (N.D. Ill. Nov. 30, 1984) (approving the award of a 2.6 multiplier above class counsel’s lodestar based, in part, on the fact that “there have been no objections made by any class members to any of the settlements or the petitioners’ Application for Fees”). Here, the requested percentage fee, 22%, or \$5,280,000, plus interest, is only approximately 35% of counsel’s lodestar. This fact, coupled with the absence of objections strongly supports approval of counsel’s request for fees and reimbursement of Litigation Expenses.

IV. CONCLUSION

As established in the opening papers, the Settlement here is an excellent result given the substantial recovery, the presence of skilled opposing counsel, the extensive settlement negotiations, the considerable risk, expense, and delay if the litigation of the Indirect Lending claims were to continue, and the certain and immediate benefit of the Settlement to the Settlement Class. All of these factors remain unchanged and support approval of the Settlement. In addition, the Court now has the benefit of knowing that there is no opposition from Settlement Class Members to the Settlement, the Plan of Allocation, or the requested award of attorneys’ fees and Litigation Expenses, and that Settlement Class Members have unanimously elected to participate in the Settlement rather than exclude themselves. Accordingly, Settling Plaintiffs and Co-Lead Counsel respectfully request that the Court: (i) approve the proposed Settlement as fair, reasonable and adequate and enter the proposed Judgment; (ii) finally certify the Settlement

Class; (iii) approve the proposed Plan of Allocation; and (iv) award attorneys' and reimbursement of Litigation Expenses in the full amount requested.

Dated: July 29, 2015

Respectfully submitted,

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Co-Lead Counsel for Settling Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2015, I electronically filed the foregoing document with the Clerk of the Court using the Court's CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

/s/ Mark Johnson

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