

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____)	
IN RE LIBOR-BASED FINANCIAL)	
INSTRUMENTS ANTITRUST LITIGATION)	MDL No. 2262
_____)	
THIS DOCUMENT RELATES TO:)	Master File No. 1:11-md-2262-NRB
Case No. 12-CV-1025 (NRB))	ECF Case
_____)	

**DECLARATION OF KAREN L. MORRIS AND ROBERT S. KITCHENOFF
IN SUPPORT OF BONDHOLDER PLAINTIFFS’ MOTION FOR FINAL
APPROVAL OF THE SETTLEMENTS WITH MUFG BANK, LTD.,
CREDIT SUISSE GROUP AG, AND THE NORINCHUKIN BANK**

Pursuant to 28 U.S.C. § 1746, Karen L. Morris and Robert S. Kitchenoff declare:

1. Karen L. Morris is a partner in the law firm of Morris and Morris LLC Counselors At Law (“Morris and Morris”). Robert S. Kitchenoff is a member of the law firm of Weinstein Kitchenoff & Asher LLC (“Weinstein Kitchenoff”).
2. Morris and Morris and Weinstein Kitchenoff (collectively “Class Counsel”) serve as the attorneys for Ellen Gelboim and Linda Zacher (“Bondholder Plaintiffs”) and as Court-appointed Class Counsel for the Bondholder Settlement Classes, certified by the Court for settlement purposes only in the above-captioned action (ECF Nos. 2048, 3246, 3578¹).
3. Class Counsel submit this declaration in support of Bondholder Plaintiffs’ Motion for Final Approval of Settlements with MUFG Bank, Ltd., f/k/a The Bank of Tokyo-Mitsubishi UFJ, Ltd., Credit Suisse Group AG, and The Norinchukin Bank (the “Subsequent Settlements”),

¹ References to “ECF No.” herein refer to documents in the docket of the MDL Action, 11-md-2262-NRB.

with MUFG, Credit Suisse, and Norinchukin collectively referred to as the “Settling Defendants”).

4. Ms. Morris and Mr. Kitchenoff have been actively involved in prosecuting and resolving this action, are familiar with its proceedings, and have personal knowledge of the matters set forth herein. If called upon and sworn as witnesses, we could completely testify thereto.

I. THE SUBSEQUENT SETTLEMENTS

5. The value of the Subsequent Settlements is \$1.749 million. The settlement paid by each of the Settling Defendants is non-reversionary; if the Court grants final approval of each Subsequent Settlement, no money will be returned to the any Settling Defendant.

6. On December 30, 2021, the Court of Appeals upheld the District Court’s dismissal of the Bondholder Action on the merits as against the non-settling defendants. That dismissal is now final. The Subsequent Settlements are the only remaining opportunity for members of the Bondholder class to recover on the claims in the litigation.²

7. Bondholder Counsel entered into separate and independent settlement negotiations with counsel for MUFG, counsel for Credit Suisse, and counsel for Norinchukin, each beginning in July 2021.

8. Pursuant to the Settlement Agreement with MUFG, executed on September 20, 2021, MUFG has paid \$750,000.00. ECF 3563-4.

² For a detailed discussion of the procedural history of the litigation of the Bondholder Action, see the Declaration of Karen L. Morris and Robert S. Kitchenoff in Support of Preliminary Approval of the Subsequent Settlements, filed on October 19, 2022. ECF No. 3563-3.

9. Pursuant to the Settlement Agreement with Credit Suisse, executed on September 21, 2021, Credit Suisse has paid \$550,000.00. ECF 3563-5.

10. Finally, pursuant to the Settlement Agreement with Norinchukin, executed on September 27, 2021, Norinchukin has paid \$449,000.00. ECF 3563-6.

11. The Subsequent Settlements were each the product of hard-fought and arm's-length negotiations by counsel highly experienced in complex antitrust matters. At all times in the negotiations with the Settling Defendants, each side vigorously negotiated its respective position. Class Counsel were well-informed of the facts and issues concerning liability and damages and the relative strengths and weaknesses of each side's litigation position. Each of the Subsequent Settlements was negotiated and executed following this Court's second dismissal of the Bondholder Action, but prior to the Second Circuit's decision in *Schwab Short-Term Bond Market Fund, et al. v. Lloyds Banking Group PLC, et al.*, 22 F.4th 103 (2d Cir.).

II. THE PLAN OF ALLOCATION

12. Class Counsel developed the Plan of Allocation based on suppression modeling prepared by Dr. Fernando Alvarez, the William C. Norby Professor in Economics at the University of Chicago.

13. The proposed Plan of Allocation provides a *pro rata* distribution to members of the Settlement Classes in proportion to their *pro rata share* of the net settlement funds. The proposed Plan of Allocation was finally approved by the Court in connection with prior settlements between Bondholder Plaintiffs and other defendant banks by Final Order and Judgment, dated December 16, 2020. ECF No. 3246. The Plan of Allocation sets forth how each Authorized Claimants' *pro rata share* will be calculated

14. Class Counsel believe the proposed Plan of Allocation to be fair and reasonable.

15. Class Counsel have determined that the fairest and most efficient manner of distributing funds to eligible members of the Subsequent Settlement Classes is the method proposed in the Plan of Allocation.

III. OBJECTIONS AND EXCLUSIONS TO DATE

16. As of this filing, Class Counsel have received no objections. Four (4) exclusion requests have been received to date.

17. We believe the Subsequent Settlements are fair, reasonable and adequate, and reflect an excellent result for the Subsequent Settlement Classes.

We each declare under penalty of perjury that the forgoing is true and correct.

Executed on February 15, 2023

/s/ Karen L. Morris
Karen L. Morris

/s/ Robert S. Kitchenoff
Robert S. Kitchenoff