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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re LEHMAN BROTHERS SECURITIES
AND ERISA LITIGATION

Case No. 09-MD-2017 (LAK)

ECF CASE

This Document Applies To:

*In re Lehman Brothers Equity/Debt
Securities Litigation, 08-CV-5523-LAK*

**ORDER APPROVING DISTRIBUTION PLAN
FOR ERNST & YOUNG LLP NET SETTLEMENT FUND**

Plaintiffs, on notice to counsel for Ernst & Young LLP (“EY”), moved this Court for an order approving a distribution plan for the net settlement proceeds recovered in connection with the Settlement with Ernst & Young LLP, which the Court approved by its Judgement and Order Approving Settlement Between Plaintiffs and Ernst & Young LLP (ECF No. 571); and the Court having considered all the materials and arguments submitted in support of Plaintiffs’ Motion, including the Memorandum in Support of Plaintiffs’ Motion for Approval of Distribution Plan for Ernst & Young LLP Net Settlement Fund and the Declaration of Stephen J. Ciriame in Support of Plaintiffs’ Motion for Approval of Distribution Plan for Ernst & Young LLP Net Settlement Fund (the “Ciriame Declaration”), submitted therewith;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in (a) the Stipulation of Settlement and Release entered into between and among Plaintiffs and EY (ECF No. 535-1, the “EY Stipulation” or the “Stipulation”); (b) the Notice of Pendency of Class Action and Proposed Settlement with Defendant Ernst & Young LLP, Settlement Fairness Hearing and Motion for Attorneys’ Fees and Reimbursement of Litigation Expenses (the “EY Settlement Notice”); and

(c) the Cirami Declaration, and all terms used herein shall have the same meanings as set forth in the Stipulation, the EY Settlement Notice, and the Cirami Declaration.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all members of the Settlement Class.

3. Plaintiffs' proposed plan for distribution of the EY Net Settlement Fund to Authorized Claimants is **APPROVED**. Accordingly,

(a) The administrative recommendations of the Court-appointed Claims Administrator, Garden City Group, LLC ("GCG"), to accept the Timely Eligible Claims set forth in Exhibit C-1 to the Cirami Declaration and the Late But Otherwise Eligible Claims set forth in Exhibit C-2 to the Cirami Declaration, are adopted;

(b) The Claims Administrator's administrative recommendations to reject the Ineligible Claims, as set forth in Exhibit C-3 to the Cirami Declaration, including the Disputed Claims set forth in Exhibit B, are adopted;

(c) GCG shall conduct an initial distribution (the "Initial Distribution") of the available balance of the EY Net Settlement Fund, which amount shall include the \$7 million in disgorgement of audit fees paid to EY by Lehman and recovered by the New York Attorney General's Office ("NYAG")¹, as follows:

(1) GCG will distribute 100% of the available balance of the EY Net Settlement Fund, after deducting all payments previously allowed and approved

¹ References to the EY Net Settlement Fund herein include the \$7 million in disgorgement of audit fees paid to EY by Lehman that the NYAG separately recovered from EY (the "NYAG Funds"), and which the NYAG requested and Lead Counsel and the Claims Administrator agreed, would be distributed to Authorized Claimants along with the Net Settlement Fund obtained from EY in this Action. Distribution of the NYAG Funds along with the Net Settlement Fund obtained from EY in this Action is approved.

herein, and after the payment of any estimated taxes and the costs of preparing appropriate tax returns, and any escrow fees,² as follows:

(i) Pursuant to the EY Plan of Allocation, GCG shall calculate each Authorized Claimant's *pro rata* share of the EY Net Settlement Fund based on the amount of each Authorized Claimant's Overall Recognized Claim in comparison to the total Overall Recognized Claims of all Authorized Claimants;

(ii) GCG shall, pursuant to the terms of the EY Plan of Allocation, eliminate from the distribution of the EY Net Settlement Fund any Authorized Claimant whose *pro rata* share as calculated under ¶ 3(c)(1)(i) above calculates to less than \$10.00. Such Claimants shall not receive any payment from the EY Net Settlement Fund; and

(iii) After eliminating Claimants who would have received less than \$10.00, GCG shall re-calculate the *pro rata* share of the EY Net Settlement Fund for Authorized Claimants who would have received \$10.00 or more pursuant to the calculation described in ¶ 3(c)(1)(i) above. This *pro rata* share is the Authorized Claimant's "Distribution Amount".

(2) In order to encourage Authorized Claimants to cash their checks promptly, and to avoid or reduce future expenses relating to uncashed checks, all distribution checks shall bear the notation: "CASH PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED BY [DATE 120 DAYS AFTER ISSUE DATE]".

² The NYAG Funds are not subject to any deductions, including for attorneys' fees, litigation expenses, or for notice and claims administration expenses.

(3) Authorized Claimants who do not cash their distribution checks within the time allotted or on the conditions set forth in footnote 11 of the Cirami Declaration shall irrevocably forfeit all recovery from the EY Settlement. The funds allocated to all such stale-dated checks will be available to be redistributed to other Authorized Claimants in subsequent distributions described below. Similarly, Authorized Claimants who do not cash their subsequent distribution checks within the time allotted or on the conditions set forth in footnote 11 of the Cirami Declaration will irrevocably forfeit any further recovery from the EY Settlement.

(d) After GCG has made reasonable and diligent efforts to have Authorized Claimants cash their distribution checks (as set forth in footnote 11 of the Cirami Declaration), to the extent any monies remain in the EY Net Settlement Fund one (1) year after the Initial Distribution, if Lead Counsel, in consultation with GCG, determine that it is cost effective to do so, GCG will conduct a second distribution of the EY Net Settlement Fund (the "Second Distribution"). Any balance remaining in the EY Net Settlement Fund, after deducting GCG's unpaid costs and expenses incurred in connection with administering the EY Net Settlement Fund (including the estimated costs of such Second Distribution), and after the payment of any estimated taxes and the costs of preparing appropriate tax returns, will be distributed to Authorized Claimants who cashed their distribution check from the Initial Distribution and would receive at least \$10.00 in the Second Distribution.

(e) GCG shall make further re-distributions of balances remaining in the EY Net Settlement Fund, after deducting GCG's unpaid costs and expenses incurred in connection with administering the EY Net Settlement Fund (including the estimated costs of such further re-distributions), and after the payment of any estimated taxes and costs of preparing

appropriate tax returns, to such Authorized Claimants to the extent such re-distributions are determined to be cost-effective.

(f) At such time as Lead Counsel, in consultation with GCG, determine that the redistribution of funds remaining in the EY Net Settlement Fund is not cost-effective, if sufficient funds remain to warrant processing Proofs of Claim received after November 15, 2017, such Proofs of Claim will be processed, and any such Proofs of Claim that are otherwise valid, as well as any earlier received Proofs of Claim for which an adjustment was received after November 15, 2017 that resulted in an increased Overall Recognized Claim, will be paid in accordance with ¶ 3(g) of this Order. If any funds shall remain in the EY Net Settlement Fund after payment of such valid late or adjusted claims, Lead Counsel will seek an order approving the contribution of the balance to one or more non-sectarian, not-for-profit 501(c)(3) organizations.³

(g) No further Proofs of Claim may be accepted after November 15, 2017, and no further adjustments to Proofs of Claim received on or before November 15, 2017 that would result in an increased Overall Recognized Claim may be made for any reason after November 15, 2017, subject to the following exception. If Proofs of Claim are received or modified after November 15, 2017 that would have been eligible for payment or additional payment under the EY Plan of Allocation if timely received then, at the time that Lead Counsel, in consultation with GCG, determine that a redistribution of the EY Net Settlement

³ In accordance with the EY Plan of Allocation, Lead Counsel's motion shall identify at least three proposed recipients. The proposed recipients shall have been selected by one or more of the following individuals: the President of the New York City Bar Association, the President of the New York State Bar Association, and the President of the American Bar Association. The proposed recipients shall not include any organization listed in the preceding sentence and shall be independent of Lead Counsel so that Lead Counsel do not derive a direct or indirect benefit from the selection of such organization as the recipient of a charitable organization. Lead Counsel's motion will include a declaration of the means by which the proposed recipients were selected.

Fund is not cost effective as provided in ¶ 3(f) above, then, after payment of any unpaid fees or expenses incurred in connection with administering the EY Net Settlement Fund and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, such Claimants may be paid their Distribution Amounts or additional Distribution Amounts from the EY Net Settlement Fund on a *pro rata* basis that would bring them into parity with other Authorized Claimants who have cashed all their prior distribution checks to the extent possible.

(h) All persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of Proofs of Claim submitted herein, or otherwise involved in the administration or taxation of the Settlement Fund, Net Settlement Fund, or EY Net Settlement Fund, are hereby released and discharged from any and all claims arising out of such involvement, and all members of the Settlement Class, whether or not they receive payment from the EY Net Settlement Fund, are hereby barred from making any further claims against the EY Net Settlement Fund, Plaintiffs, Lead Counsel, the Claims Administrator, the Escrow Agent, or any other agent retained by Plaintiffs or Lead Counsel in connection with the administration or taxation of the Settlement Fund, Net Settlement Fund, or EY Net Settlement Fund beyond the amounts allocated to Authorized Claimants.

(i) Unless otherwise ordered by the Court, one year after the Initial Distribution, GCG shall destroy the paper copies of the Proofs of Claim and all supporting documentation and, one year after all funds in the EY Net Settlement Fund have been distributed, GCG shall destroy electronic copies of the same.

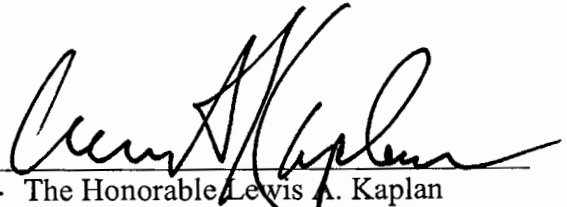
(j) GCG's fees and expenses incurred in connection with the administration of the EY Settlement and estimated to be incurred in connection with the Initial Distribution of

the EY Net Settlement Fund as reflected in Exhibit D to the Cirami Declaration are approved, and Lead Counsel are directed to pay GCG's outstanding balance of \$441,532.45 from the Net Settlement Fund to GCG.

4. This Court retains jurisdiction to consider any further applications concerning the administration of the Settlement, and such other and further relief as this Court deems appropriate.

SO ORDERED:

5. The Clerk shall forward DI 590 in 08-cv-5523 and DI 1702 in 09-md-2017.
May 22, 2018


The Honorable Lewis A. Kaplan
United States District Judge