

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE TREMONT SECURITIES LAW, STATE :
LAW AND INSURANCE LITIGATION : Master File No.: 08 Civ. 11117 (TPG)
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**SUPPLEMENTAL REPLY MEMORANDUM IN FURTHER SUPPORT OF MOTION
FOR APPROVAL OF DISTRIBUTION OF NET SETTLEMENT FUND**

PRELIMINARY STATEMENT

Settling Class Plaintiffs¹ respectfully submit this Supplemental Reply Memorandum in further support of their Motion for Approval of Distribution of the Net Settlement Fund to Authorized Claimants (the “Distribution Motion”) and to update the Court as to certain recent developments related to this application.

BACKGROUND

As set forth in Settling Class Plaintiffs’ Reply Memorandum, five groups of investors originally filed responses to the Distribution Motion: Austin Capital BMP Fund (“ACM”);² Calabrese Parties and Boston Class Members Group (the “Calabrese Boston Group”);³ Collins Capital;⁴ Meritage Capital LLC, which simply joined in ACM’s submission; and the self-described “Tremont Fund Objectors.”⁵

Following the filing of the Reply Memorandum, ACM and Collins Capital withdrew their objections (ECF No. 1046 and ECF No. 1047, respectively) (and Meritage has taken no steps to advance an objection apart from its earlier joinder in ACM’s objection, which is now moot by

¹ Capitalized terms not defined herein shall have the meanings attributed to them in the Stipulation of Partial Settlement, dated as of February 23, 2011 (the “Stipulation”), (ECF No. 392-1), the Memorandum in Support of Motion for Approval of Distribution of Net Settlement Fund (the “Opening Memo”) (ECF No. 1004); and the Reply Memorandum in further support of their Motion for Approval of Distribution of the Net Settlement Fund (ECF 1029).

² ACM filed its Corrected Response By ACM In Opposition To Motion For Approval of Distribution of Net Settlement Fund (ECF No. 1019) (the “ACM Opp.”). Meritage Capital, LLC (“Meritage”) joined in ACM’s submission (ECF No. 1020).

³ Antonio Calabrese, Stephen Calabrese, Calco Printing, Inc., Lawrence J. Rothschild, Richard A. Scherr, Family Swimmers, L.P., Arthur Simons, Paul Funk, Joseph Ludwig, Judith Ludwig, Stuart Levey, Deborah Levey, Levey Fishman Trust, Nicholas P. Kardasis IRA and Jean-Marc Chouraqui filed their Memorandum Of Law Of Calabrese Parties And Boston Class Members Group In Partial Opposition To Motion For Approval Of Distribution Of Net Settlement Fund (the “Calabrese Boston Opp.”) (ECF No. 1021).

⁴ Collins Capital Investments LLC, Collins Capital Master Fund I, LP and Collins Capital Master Fund II, LP (collectively, “Collins Capital”) filed their Memorandum Of Law In Opposition To Motion For Approval Of Distribution Of Net Settlement Fund By Settling Class Plaintiffs And Settling Plaintiffs (the “Collins Capital Opp.”) (ECF No. 1012).

⁵ George Turner, Bindler Living Trust, Madelyn Haines (“Haines”), William J. Millard Trust, Stella Ruggiano Trust and Paul Zamrowski (“Zamrowski”) (collectively, the “Tremont Fund Objectors”) filed their Objection Relating To Distributions And Allocations Filed In Opposition To The Memorandum In Support For Approval Of Distribution Of The Net Settlement Fund (the “Tremont Objectors Opp.”) (ECF No. 1022).

virtue of ACM's withdrawal). In addition, Tremont previously tendered to Tremont Fund Objectors Haines and Zamrowski their Madoff-related investments plus statutory interest, leaving them without standing to object and rendering their objection moot. *See In re Tremont Sec. Law, State Law & Ins. Litig.*, 561 F. App'x 61, 63 (2d Cir. 2014); *In re Tremont Sec. Law, State Law & Ins. Litig.*, 542 F. App'x 43, 47 (2d Cir. 2013) (in which the Second Circuit concluded Tremont's tender to Haines and Zamrowski made them whole and thus negated any personal stake in the outcome, defeating their standing to appeal the class settlement). Tremont has also now tendered to Tremont Fund Objectors George Turner, Bindler Living Trust, William J. Millard Trust and Stella Ruggiano Trust their Madoff-related net losses, leaving them without standing to object and rendering their objection moot as well.⁶ Exhibit A.

The result of these developments is that, absent some further argument by Meritage, only the objection by the group calling itself the Calabrese Boston Group remains to be heard.

ARGUMENT

A. The Objection by the Calabrese Boston Group Should be Overruled

The Calabrese Boston Group does not oppose the distribution of the unreserved portion of the Net Settlement Fund. *See* ECF No. 1029 at 3. It does, however, appear to misapprehend the makeup of the \$15 million Reserve, objecting to the creation and distribution of the entire Reserve even though only approximately \$7.5 million of this amount is set aside for the readmission of the Settling Plaintiffs. *See* Reply Memorandum at 3-4. The remainder of the Reserve was set aside for the Claims-in-Progress of "***45 existing Class Members*** which the

⁶ In any event, the objection contained in the Tremont Fund Objectors' Opposition and Sur-Reply (ECF No. 1033) has no merit and would be properly overruled even if they had standing. Among other reasons more fully set forth in Settling Class Plaintiffs' Reply Memorandum, the Tremont Fund Objectors fail to demonstrate that Class Members will suffer any prejudice from the proposed distribution of the NSF in that the projected *pro rata* recovery of Class Members is greater than the amount estimated in the notice of settlement and the fact that Class Members did not rely on the decision of the Opt-Out Plaintiffs to exclude themselves from the Class. They also fail to demonstrate any basis to disturb the confidentiality of the mediation process. *See* ECF No. 1029.

Claims Administrator believes can be perfected but are not yet resolved and other administrative contingencies.” *Id.* Any funds remaining in the NSF Reserve after the Claims-in-Process distribution is completed will be distributed *pro rata* to eligible NSF Settlement Class Members at large and the objection by the Calabrese Boston Group should not properly be read to relate to the creation or to the distribution of the approximately \$7.5 million of the Reserve that is unrelated to the group seeking readmission.

The Calabrese Boston Group’s objections related to the portion of the Reserve set aside for the readmitted group and for readmission of that group should be overruled for the reasons set forth in Settling Class Plaintiffs’ Reply Memorandum (*See* ECF No. 1029), including that they cannot demonstrate that Class Members will suffer any prejudice from the proposed distribution of the NSF in that (1) the projected *pro rata* recovery of Class Members is greater than the amount estimated in the notice of settlement and (2) Class Members did not base their decision to approve the Class Settlement on the later decision of the Opt-Out Plaintiffs to exclude themselves from the Class.

B. The Consensus FDA POA Provides A Substantial Benefit To The Class As A Whole

As explained more fully on Reply, the readmission application grew out of a mediated settlement in which the claimants seeking readmission agreed to support a “Consensus FDA POA.” Ongoing mediation efforts have resulted in a situation in which it now appears the Consensus FDA POA is supported by former Tremont and Rye investors representing the vast majority of the aggregate net ownership interests in those funds. A copy of the current draft of the Consensus FDA POA is attached as Exhibit B to this Memorandum.

Lead Counsel believe the Consensus FDA POA establishes a fair, reasonable and equitable method of allocating for the benefit of and distributing to Fund Distribution Claimants the

proceeds contained in the FDA. This Consensus FDA POA is the product of many hours of discussions, calls and meetings in a mediation context lasting almost two years. Under the Consensus FDA POA, the Claims Administrator will distribute all money remaining in the FDA after payment of Court-approved attorney's fees and expenses and the costs associated with the administration of the FDA and the FDA POA.

The Consensus FDA POA gives deference to notions of fund structure, preserves all cross investments between funds (on a net loss basis), treats all funds participating in the Madoff Trustee Settlement on an equal footing by giving all funds an equivalent claim for their contribution to the Trustee Settlement as that provided to the funds with recognized bankruptcy claims, and it provides that money virtually allocated under the FDA POA on a fund-by-fund basis will be distributed on a *pro rata* net loss basis to Fund Distribution Claimants that were previously individual investors within those funds.

In this regard, the Consensus FDA POA reflects a compromise between the various interested parties and, in the view of Lead Counsel, it provides a substantial benefit to all claimants in the FDA which includes all of the members of the Class. It is true that there are some claimants to the FDA that opted out of the Class, but it is not true -- as some objectors implied -- that the Class Members (all of whom are claimants to the FDA) do not derive a substantial and direct benefit by the compromise that the Consensus FDA POA represents. It is for that reason that Lead Counsel has supported the readmission of the Settling Plaintiffs and that Lead Counsel believe that any remaining objection to readmission should be overruled.

C. **Lead Counsel Will Move The Court For Approval Of The Consensus FDA POA In Short Order And Seek The Court's Guidance On The Issue Of Notice To The Class Members**

Settling Class Plaintiffs expect to move for approval of the Consensus FDA POA, a related procedure for FDA distribution and for fees and expenses within the next few weeks. Settling

Class Plaintiffs respectfully seek the Court's guidance as to the type of notice to be provided and specifically whether Lead Counsel should: (1) follow the procedure for notice approved for the NSF POA -- where Lead Counsel filed the relevant papers by ECF, sent them to interested parties and posted them to the websites of Co-Lead Counsel, the Claims Administrator and the Tremont Litigation Settlements; (2) adopt a procedure whereby the FDA POA motion papers are sent to investors in the same manner as the Claims Administrator provided notice of the Class Action Settlement; or (3) follow such other and different procedure as the Court may direct.

CONCLUSION

For the foregoing reasons, Settling Class Plaintiffs' Motion for Approval of Distribution of the Net Settlement Fund should be granted and the various objections should be overruled in all respects.

Dated: May 21, 2015
New York, New York

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