

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

IN RE: REGIONS MORGAN KEEGAN)	
SECURITIES, DERIVATIVE, AND)	
ERISA LITIGATION)	
)	No. 07-cv-2784-SHM-dkv
)	
)	MDL No. 2009
IN RE: REGIONS MORGAN KEEGAN)	
OPEN-END MUTUAL FUND)	
LITIGATION)	
)	
)	

ORDER

Before the Court is the July 31, 2017 Unopposed Motion for Approval of Distribution of Net Settlement Fund (the "Motion") submitted by the Estate of Kathryn S. Cashdollar "Cashdollar"); Dajalis Ltd. ("Dajalis"); Jeanette H. Landers ("J. Landers"); H. Austin Landers ("H. Landers"); and Frank D. Tutor ("Tutor") (collectively, "Lead Plaintiffs").¹ (ECF No. 439.) Defendants do not oppose the Motion.² (ECF No. 439-16.)

¹ For purposes of this Order, the Court adopts all defined terms as set forth in the Class Settlement Agreement unless otherwise defined in this Order.

² Defendants in this action are PricewaterhouseCoopers LLP ("PwC"); Morgan Keegan & Company, Inc. ("Morgan Keegan"), Morgan Asset Management, Inc., and MK Holding, Inc. (collectively, the "Morgan Keegan Defendants"); Regions Financial Corporation ("RFC"); Regions Bank ("RB"); Regions Morgan Keegan Select Short Term Bond Fund ("STF"), Regions Morgan Keegan Select Intermediate Bond Fund ("IBF"), and Regions Morgan Keegan Select High Income Fund ("HIF") (collectively, the "Open-End Funds"); Carter E. Anthony, Brian B. Sullivan, Joseph C. Weller, J. Thompson Weller, G. Douglas Edwards, Charles D. Maxwell, David M. George, Michelle F. Wood, James C. Kelsoe, Jr., David H. Tannehill, and Thomas R. Gamble (collectively, the "Officer Defendants"); and Allen B. Morgan, Jr., J.

For the following reasons, the Motion is GRANTED.

I. Background

This litigation arose from the 2007-2008 collapse of the Open-End Funds. (Vander Weide Decl., ECF No. 424-2 at ¶ 14.) Plaintiffs allege that the Open-End Funds collapsed because of mismanagement and investment in risky securities when compared to respective peers. (Id. at ¶¶ 14-16.) Plaintiffs allege that Defendants misled investors about the degree of investment risk. (Id.) Plaintiffs allege that PwC failed to audit the Funds properly. (Id. at ¶ 17.) The litigation also relates to Landers, et al. v. Morgan Asset Management, Inc., et al., No. 2:08-cv-02260 (W.D. Tenn.), a derivative action brought by the shareholders of the Open-End Funds. The settlement of the derivative action has been addressed and finally approved in a separate order, dated August 2, 2016. (Landers, et al. v. Morgan Asset Management, Inc., et al., No. 2:08-cv-02260 (W.D. Tenn.), ECF No. 189.)

Since 2013, the Lead Plaintiffs and the Derivative Plaintiffs³, in consultation with the defendants in both

Kenneth Alderman, Jack R. Blair, Albert C. Johnson, William Jefferies Mann, James Stillman R. McFadden, W. Randall Pittman, Mary S. Stone, and Archie W. Willis III (collectively, the "Director Defendants") (collectively, "Defendants"). The Open-End Funds have been renamed as the Helios Select Short Term Bond Fund, the Helios Select Intermediate Bond Fund, and Helios Select High Income Fund.

³ Derivative Plaintiffs include H. Landers; J. Landers; the Estates of Charles M. Crump and Diana W. Crump ("Estate of Crump"); James H. Frazier

actions, have engaged in negotiations led by a mediator, United States District Court Judge Layn Phillips (Ret.). (Id. at ¶¶ 33-43.) After the total settlement amount of \$125 million was determined in consultation with Judge Phillips, the amount to be allocated to the Open-End Funds in the Derivative Settlement was negotiated separately and approved by the Open-End Funds' board of directors. (Id. at ¶¶ 40-42.)

On November 30, 2015, the Court granted Preliminary Settlement Approval. (ECF No. 420.) On March 1, 2016, the Court extended the Notice Date to March 21, 2016. (ECF No. 422.) On May 27, 2016, the Court held a Final Approval Hearing. The parties sought to extend the objection and opt out date for certain class members to July 18, 2016, and extend the deadline to return Claim Forms for those class members to October 19, 2016. The Court granted the extensions and continued the Final Approval Hearing to August 1, 2016. (ECF No. 431.)

On August 1, 2016, the Court held a Final Approval Hearing. The Lead Plaintiffs, Derivative Plaintiffs, and Defendants in the Class Action and Derivative Action were represented. (ECF No. 434.)

("Frazier"); James P. Whitaker ("J. Whitaker"); and Peggy C. Whitaker ("P. Whitaker") (collectively, "Derivative Plaintiffs").

On August 2, 2016, the Court granted Lead Plaintiffs' final approval of the Class Settlements, certification of the Class, and approval of the Plan of Allocation. (ECF No. 435.) The Court also granted Derivative Plaintiffs' motion for attorney's fees. (Id.) The Court reserved jurisdiction over all matters for purposes of effecting the Settlement, including all matters relating to the administration, consummation, enforcement, and interpretation of the Settlement and Plan of Allocation. (Id. at 21970.)⁴

The settlement class (the "Class") consists of all Persons who (1) purchased any class of redeemable shares of STF, IBF, or HIF at any time during the period from December 6, 2004, through December 6, 2007, inclusive; or (2) held and/or redeemed on or after July 3, 2006, through the end of the Settlement Class Period (December 6, 2004, through May 29, 2009) shares of STF, IBF, or HIF and were damaged thereby, subject to the exclusions listed in the Class Settlement Agreement. (Id.)

The settlement agreements provide for the payment of \$125 million for the benefit of the Class and the Open-End Funds. (Vander Weide Decl., ECF No. 424-2 at ¶ at 3.) Of the \$125 million, \$110 million will be allocated to a Class Settlement

⁴ Unless otherwise noted, all in-cite page numbers to this case refer to the PageID number.

Fund. (Id.) The Class Settlement Fund will first be used to pay attorneys' fees and expenses awarded by the Court, notice and administration expenses, and taxes and related expenses. (Class Settlement Agreement, ECF No. 415-1.) The remaining amount will be distributed among all Class Members who submit timely and valid Proofs of Claim accepted by the Claims Administrator and approved by the Court in accordance with the Plan of Allocation. (Id.)

The remaining \$15 million in the escrow account will be allocated to the Funds Settlement Fund for the benefit of the Open-End Funds and will be paid to the Open-End Funds Shareholders as part of the Derivative Settlement Agreement. (Id.) Any share of the Class Settlement Fund paid to Class members who are also Open-End Funds Shareholders will be reduced by their share of the Funds Settlement Fund distribution. (Id.)

On July 31, 2017, Lead Plaintiffs filed an Unopposed Motion for Approval of Distribution of Net Settlement Fund. (ECF No. 439.) Lead Plaintiffs seek (1) approval of the administrative determinations of Garden City Group, LLC ("GCG"), the Court-authorized Claims Administrator, in consultation with Lead Counsel, accepting and rejecting Claim Forms submitted by Class Members and other persons for the Net

Settlement Fund; (2) authorization of GCG to deem timely those claims that are otherwise eligible but were submitted after the October 6, 2016 claim-submission deadline but received no later than July 19, 2017; (3) authorization of an initial distribution of the Net Settlement Fund to Class Members whose claims have been accepted, with subsequent re-distributions to those who have cashed their checks until it is no longer economically feasible to conduct distributions; (4) authorization that claims received after July 19, 2017, shall not be accepted for any reason; (5) authorization of the establishment of a reserve of five percent of the Net Settlement Fund to address any unanticipated contingencies; (6) authorization of GCG to destroy paper Claim Forms and all related documents one year after the initial distribution of the Net Settlement Fund and electronic claims data three years after final distribution of the Net Settlement Fund; and (7) authorization of payment to GCG of its outstanding fees and expenses for services performed and to be performed in administering the Settlement and carrying out the initial distribution of the Net Settlement Fund, in the amount of \$820,606.61. (ECF No. 439-1 at 22011-12.)

Lead Plaintiffs have informed the Court that five claimants disputed their determination of ineligibility to

participate in the Class Settlement. (Id. at 22021; ECF Nos. 439-11 - 439-14.) After reviewing their claims, GCG found those five claimants are ineligible to participate in the Class Settlement. (ECF No. 439-1 at 22021-22.)

Defendants did not oppose the Motion. (ECF No. 439-16.) The five claimants did not file a response to the Motion despite having been served the motion papers. (ECF Nos. 440.) The time for the claimants to respond has passed. See LR 7.2(a)(2).

II. Analysis

A. Eligible, Late Claims

GCG received and processed 17,084 claims (of which 9,605 were paper claims and 7,479 were filed electronically) submitted on behalf of persons and entities ("Claimants"). (Ferrante Aff., ECF No. 439-3 at ¶¶ 12-19.) GCG recommends that 14,523 of those claims be approved by the Court as claims eligible for payment in whole or in part ("Eligible Claims") (Id. at ¶¶ 38-40.) Those claims represent an aggregated Recognized Claim Amount of approximately \$264,857,626.67, which includes \$264,138,064.58 from timely claims and \$719,562.09 from claims postmarked or received after October 19, 2016. (Id. at ¶¶ 39-40.)

Of those 14,523 claims, 23 claims were not timely submitted ("Late Postmarked/Received but Otherwise Authorized Claims"). (Id.) GCG recommends that the Court accept the 23 Late Postmarked/Received but Otherwise Authorized Claims because the claims only represent approximately 0.27% of the aggregated Recognized Claim amount of all 14,523 Eligible Claims and no delay has resulted from their provisional acceptance. (Id. at ¶ 40.) The Settlement Agreement provides that the cut-off date may be extended by Lead Counsel in their discretion and approved by Court. (Settlement Agreement, ECF No. 415-1 at ¶ 29(b).) The Late Postmarked/Received but Otherwise Authorized Claims represent a small percentage of the Eligible Claims. The evidence does not suggest that the Late Postmarked/Received but Otherwise Authorized Claims will cause any delay in distribution. The 23 Late Postmarked/Received but Otherwise Authorized Claims are APPROVED. The proposed revised cut-off date of July 19, 2017 is APPROVED.

B. Rejected and Disputed Claims

GCG recommends rejecting and excluding certain claims. GCG recommends rejecting 2,561 claims ("Rejected Claims"). (Ferrante Aff., ECF No. 439-3 at ¶ 42.) Two of the Rejected Claims are disputed ("Disputed Claims"). A Court review of the Disputed Claims has been requested by GCG and the Claimants. (Ferrante Aff., ECF No. 439-3 at ¶¶ 48-54.)

GCG recommends that two Disputed Claims, Claims 26446 (ECF No. 439-14) and 30380 (ECF No. 439-13), be rejected because they do not have a Recognized Claim pursuant to the Plan of Allocation.

Both Disputed Claimants contest GCG's determination that their Proofs of Claim do not have a Recognized Claim pursuant to the Court-approved Plan of Allocation. Both Claimants contend that, because they had a market loss on their investments, they should be eligible for payment in the Settlement. GCG asserts that a market loss is relevant to, but not determinative of, a Recognized Claim under the Plan of Allocation. (Ferrante Aff., ECF No. 439-3 at ¶¶ 53-54.) GCG recommends that the Court approve GCG's and Class Counsel's administrative determinations to reject both Disputed Claims. (Id. at ¶ 54)

GCG also recommends excluding approximately 8,700 individuals or entities, who were identified as Excluded Persons prior to the Initial Mailing and were sent Claim Packets that included a buck slip advising them that they were ineligible to participate in this Settlement because they were Excluded Persons. (Id. ¶ 46.) The definition of Excluded Persons is set forth in the Settlement Agreement, as well as the Notice at Question 6. The Notice informed Class Members

of their right to object to the Settlement or their designation as Excluded Persons prior to the Final Approval Hearing. No such objections were received. (Id. ¶ 45.)

Of the approximately 8,700 Excluded Persons, 167 filed claims. (Id. ¶ 46). These persons were sent Conditional Rejection Letters advising them that a review of their claim indicated that they were Excluded Persons, set forth a detailed description of an Excluded Person, and advised them that if they believed the determination was made in error they needed to return a copy of the letter along with documentation supporting their position that they were not Excluded Persons. (Id.) Three Excluded Persons, Ira Seidenfrau, M. Thomas Risner, and Margaret Risner, submitted correspondence disputing their designation as Excluded Persons and have filed claims. (Id. at ¶ 47.)

Claimant Ira Seidenfrau submitted a letter with his claim stating that he is not an "excluded person in the Morgan Keegan Open-End Litigation" and that he was advised by his lawyer that he may participate "in any class action lawsuit." (ECF No. 439-11.)

Claimants M. Thomas Risner and Margaret Risner submitted letters (ECF No. 439-12) disputing their designation as Excluded Persons because any FINRA action in which they were

involved was dismissed and did not relate to the securities at issue in this Settlement. (Ferrante Aff., ECF No. 439-3 at ¶ 49.)

Class Counsel has received confirmation from Defendants' Counsel that these claimants, Ira Seidenfrau, M. Thomas Risner, and Margaret Risner, were properly deemed excluded. GCG recommends that the Court approve GCG and Class Counsel's administrative determinations to reject these Excluded Persons' claims. (Id. ¶ 50.)

The record supports GCG's recommendation that the rejected and excluded claimants were properly rejected and excluded. The five disputed claims are DISMISSED.

C. Approval of Distribution of Net Settlement Fund

The Court has considered all submissions presented as to the Motion and for good cause shown the Court hereby ORDERS, FINDS, CONCLUDES, ADJUDGES, AND DECREES AS FOLLOWS:

1. Unless otherwise defined herein, all of the capitalized terms used shall have the same meaning as set forth in the Stipulation and Agreement of Settlement, dated January 19, 2015, filed with the Court. (ECF No. 415-1.)
2. The procedures and methods used in the administration of the Settlement and the review, processing, validation, calculation, and distribution of claims submitted by Claimants fully complied with the Settlement Agreement.

3. Lead Counsel has fully and properly discharged its duties and responsibilities in the administration, implementation, and oversight of the Settlement.
4. The administrative recommendations of GCG to accept the Proof of Claim and Release forms ("Proofs of Claim"), including the late but otherwise eligible Proofs of Claim, listed in Exhibits C-1 and C-2 to the Affidavit of Angela Ferrante of GCG, dated July 26, 2017 ("Ferrante Affidavit"), are APPROVED.
5. As determined by the Claims Administrator, wholly Rejected or otherwise ineligible Proofs of Claim, listed in Exhibit C-3 to the Ferrante Affidavit, are REJECTED.
6. As determined in this Order, the disputed Proofs of Claim, listed in Exhibits D1-D2 to the Ferrante Affidavit, are REJECTED.
7. The distribution of the Net Settlement Fund to Authorized Claimants is AUTHORIZED and shall be conducted in accordance with the Settlement Agreement, Plan of Allocation, and distribution plan for payment of the Net Settlement Fund set forth in paragraphs 55-65 of the Ferrante Affidavit, which is APPROVED.
8. No Proofs of Claim received by the Claims Administrator on or after July 17, 2017 will be accepted.
9. Pursuant to the Settlement Agreement, if any funds remain in the Net Settlement Fund by reason of tax refunds, uncashed checks or otherwise, after at least six (6) months from the date of the initial distribution, then, after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants who are entitled to participate in the distribution of the Net Settlement Fund cash their distribution checks and after the payment of Taxes and outstanding Notice and Administration Expenses, if any,

the funds remaining in the Net Settlement Fund, plus five percent (5%) reserve, to the extent that it has not been depleted, shall be redistributed in a second distribution among claimants who have cashed their checks, in an equitable and economical fashion. Thereafter, GCG, at direction of Lead Counsel, shall, if feasible, continue to reallocate any further balance remaining in the Net Settlement Fund among eligible claimants who have cashed their checks in an equitable and economical fashion.

10. Once Lead Counsel determines that further redistribution of any balance is no longer feasible, that balance, after payment of outstanding Notice and Administrative Fees and Expenses and Taxes, if any, shall be disposed of pursuant to terms of the Settlement Agreement.
11. A payment in the amount of \$820,606.61 from the Settlement Fund for the outstanding fees and expenses of GCG in payment for the balance of its fees and expenses in the administration of the Settlement and its fees and expenses to be incurred in the initial distribution of the Net Settlement Fund as reflected in Exhibit F to the Ferrante Affidavit is APPROVED.
12. GCG is authorized to destroy paper copies of the Proofs of Claim and all supporting documents one (1) year after the initial distribution of the Net Settlement Fund, and to destroy electronic copies of the same three (3) years after the final distribution of the Net Settlement Fund.
13. The Court retains jurisdiction to consider any further applications addressing the administration of the Settlement, and such other and further relief as the Court deems appropriate.

III. Conclusion

For the foregoing reasons, the Unopposed Motion for Approval of Distribution of Net Settlement Fund is GRANTED.

So ordered this 27th day of October, 2017.

/s/ Samuel H. Mays, Jr.
SAMUEL H. MAYS, JR.
UNITED STATES DISTRICT COURT JUDGE