

Carter, K.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re BANK OF AMERICA CORP.
SECURITIES, DERIVATIVE, AND
EMPLOYEE RETIREMENT INCOME
SECURITY ACT (ERISA) LITIGATION

Master File No. 09 MD 2058 (PKC)

ECF CASE

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This Document Relates To:

Consolidated Securities Action

PKC 9 PROPOSED ORDER APPROVING DISTRIBUTION PLAN

Lead Plaintiffs, on notice to Defendants' Counsel, moved this Court for an order approving a distribution plan for the Net Settlement Fund in the above-captioned class action (the "Action"), and the Court having considered all the materials and arguments submitted in support of the motion, including the Declaration of Stephen J. Cirami in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan (the "Cirami Declaration"), and the Memorandum in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan, submitted therewith;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated November 30, 2012 (ECF No. 767-1) (the "Stipulation") and in the Cirami Declaration and all capitalized terms used herein and not otherwise defined shall have the same meanings as ascribed to them in the Stipulation or in the Cirami Declaration.
2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Class Members.
3. Lead Plaintiffs' plan for distribution of the Net Settlement Fund to Authorized Claimants is **APPROVED**. Accordingly:

(a) The administrative recommendations of the Court-approved Claims Administrator, Garden City Group, LLC (“GCG”)¹, 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 wholly Ineligible Claims, as set forth in Exhibit C-3 to the Cirami Declaration, including the Disputed Claims discussed in paragraphs 58-65 and Exhibit B to the Cirami Declaration, are adopted.

(c) GCG is directed to conduct an initial distribution (the “Initial Distribution”) of the Net Settlement Fund, after deducting the payments previously allowed and those currently payable as authorized herein, and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, as set forth in paragraph 81(a) of the Cirami Declaration. Specifically, as set forth in paragraph 81(a) of the Cirami Declaration, (1) any Authorized Claimant whose Distribution Amount based on the total amount of the Net Settlement Fund after the deduction of all currently payable allowed costs and expenses calculates to less than \$20.00 shall not receive any payment from the Net Settlement Fund and he, she or it will be so notified by a postcard substantially in the form attached hereto as Exhibit I (any such Claimant who or which does not submit his, her or its objection to the calculation of his, her or its Claim in the manner and by the date set forth in the postcard notice shall have waived all objections to the calculation); (2) Authorized Claimants whose calculated Distribution Amount (after removing from the calculation all Claims that fall under the \$20.00 minimum payment threshold) is less than \$200.00 shall be

¹ At the time GCG was approved as Notice and Claims Administrator for this Action, it was known as The Garden City Group, Inc.

paid their full Distribution Amount (“Claims Paid in Full”) and shall not be eligible for payment in subsequent distributions of the Net Settlement Fund; and (3) after deducting the payments to the Claims Paid in Full, 90% of the remaining balance of the Net Settlement Fund shall be distributed on a *pro rata* basis to Authorized Claimants whose calculated Distribution Amount (after removing from the calculation all Claims that fall under the \$20.00 minimum payment threshold) is \$200.00 or more, with the remaining 10% held in reserve (the “Reserve”) to address any contingencies that may arise.

(d) In order to encourage Authorized Claimants to cash their checks promptly, and to avoid or reduce future expenses relating to unpaid checks, all Initial Distribution checks shall bear the following notation: “CASH PROMPTLY. VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED BY [DATE 120 DAYS AFTER ISSUE DATE].” Co-Lead Counsel and GCG are authorized to take appropriate action to locate and/or contact any Authorized Claimant who has not cashed his, her, or its check within said time as detailed in paragraph 81(a)(6) footnote 15 of the Cirami Declaration.

(e) Each Authorized Claimant who receives a distribution from the Net Settlement Fund in connection with the Initial Distribution shall simultaneously receive notice informing the Authorized Claimant that should he, she or it disagree with the calculation of his, her or its Recognized Claim or the amount of the Initial Distribution check, the Authorized Claimant must send a written statement detailing the disagreement to GCG, postmarked no later than 30 days from the date of such notice. The notice to be sent to Claims Paid in Full shall be substantially in the form attached hereto as Exhibit 2, and the notice to be sent to all other Authorized Claimants who receive a distribution shall be substantially in the form attached hereto as Exhibit 3. Any Authorized Claimant who does

not submit his, her or its objection in the manner described in the notices and by the date set forth above shall have waived all objections to the calculation of his, her or its Claim or the amount of his, her or its distribution(s) from the Net Settlement Fund.

(f) Co-Lead Counsel shall cause to be published notice to the Class of the Initial Distribution once in the national editions of *The Wall Street Journal* and *The New York Times* and once in the *Financial Times*, and to be transmitted once over the *PR Newswire*, substantially in the form set forth in Exhibit 4 hereto, within three weeks after the date the Initial Distribution checks are mailed. The amount necessary to pay the costs of such notice shall be paid from the Settlement Fund.

(g) Authorized Claimants who do not cash their Initial Distribution checks within the time allotted or on the conditions set forth in paragraph 81(a)(6) footnote 15 of the Cirami Declaration or pursuant to the terms of subparagraphs 3(e) and 3(f) above, shall irrevocably forfeit all recovery from the Net Settlement Fund. The funds allocated to all such checks shall be available to be redistributed to other Authorized Claimants in the Second Distribution as described below. Similarly, Authorized Claimants who do not cash subsequent distributions within the time allotted or on the conditions set forth in footnote 15 of the Cirami Declaration shall irrevocably forfeit any further recovery from the Net Settlement Fund.

(h) After GCG has made reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution checks (as set forth in footnote 15 of the Cirami Declaration) and after any disputes that may be brought to GCG's attention pursuant to the terms of subparagraphs 3(c)(1), 3(e) and 3(f) above have been resolved, but no earlier than one year after the Initial Distribution, GCG shall conduct a second distribution (the "Second

Distribution”) of the Net Settlement Fund. Any amount remaining in the Net Settlement Fund after the Initial Distribution (including from the Reserve and the funds for all void stale-dated checks), after deducting GCG’s estimated costs of such Second Distribution, and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, shall be distributed to all Authorized Claimants from the Initial Distribution who (1) were not Claims Paid in Full; (2) cashed their Initial Distribution check; and (3) would receive at least \$20.00 from such distribution.

(i) After the Second Distribution and after the follow-up efforts described in footnote 15 of the Cirami Declaration have been completed, but not less than six (6) months after the Second Distribution is conducted, to the extent funds remain in the Net Settlement Fund, GCG shall be paid any unpaid costs incurred in conducting the Second Distribution as well as the Deferred Payment Amount.

(j) To the extent funds remain in the Net Settlement Fund after the payments referred to in subparagraph (i) are made, Claimants who or which submitted Proofs of Claim received after November 5, 2014 up through and including five (5) business days after the date of entry of this Order that would have been eligible for payment under the Plan of Allocation if timely received, at the discretion of Co-Lead Counsel, may be paid their distribution amounts 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.

(k) In order to allow a final distribution of any funds remaining in the Net Settlement Fund after completion of the Second Distribution and the payments referred to in

subparagraphs (i) and (j) above are made, whether by reason of uncashed checks, returned funds, tax refunds, or otherwise:

(1) If cost effective, not less than six (6) months after the payments referred to in subparagraph (j) are made, GCG shall conduct a further distribution of the Net Settlement Fund, pursuant to which the funds remaining in the Net Settlement Fund after deducting GCG's costs incurred in connection with administering the Settlement for which it has not yet been paid (including the costs incurred in connection with the payments made pursuant to subparagraph (j) above and the estimated costs of such distribution), and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, shall be distributed to Authorized Claimants who cashed their most recent distribution checks and who would receive at least \$20.00 from such redistribution. Additional redistributions, after deduction of costs as described above and subject to the same conditions, may occur thereafter in six-month intervals until Co-Lead Counsel, in consultation with GCG, determine that further redistribution is not cost effective; and

(2) At such time as Co-Lead Counsel, in consultation with GCG, determine that further redistribution of funds remaining in the Net Settlement Fund is not cost effective, the remaining balance of the Net Settlement Fund, after payment of any unpaid costs incurred in connection with administering the Net Settlement Fund and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, shall be contributed to non-sectarian, not-for-profit

501(c)(3) organization(s) recommended by Co-Lead Counsel and approved by the Court.

(l) Proofs of Claim received after November 5, 2014 up through and including five (5) business days after the date of entry of this Order, shall be eligible for payment on the terms set forth in subparagraph (j) above. No further Proofs of Claim may be accepted after five (5) business days after entry of this Order.

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

(n) All of GCG's fees and expenses incurred in connection with the provision of notice and the administration of the Settlement and estimated to be incurred in connection with the Initial Distribution of the Net Settlement Fund as set forth in the invoices attached as Exhibit D to the Cirami Declaration are approved. Co-Lead Counsel are directed to now pay \$9,141,559.15 out of the Settlement Fund to GCG against the unpaid balance of \$13,059,370.22 with the remaining \$3,917,811.07 to be paid in accordance with the terms of subparagraph (i) above. And,

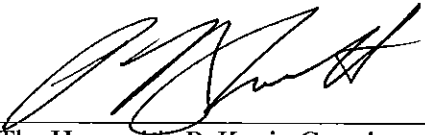
(o) Unless otherwise ordered by the Court, one year after the Second Distribution, GCG shall destroy the paper copies of the Proofs of Claim and all supporting documentation and, one year after all funds in the Net Settlement Fund have been distributed, GCG shall destroy electronic copies of the same.

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:

Dated: New York, New York

May 4, 2015



The Honorable P. Kevin Castel
United States District Judge *km*

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