

**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)

This Document Relates To:

ECF Case

Consolidated Securities Action

**DECLARATION OF STEPHEN J. CIRAMI IN SUPPORT
OF LEAD PLAINTIFFS' MOTION FOR APPROVAL OF
ADDITIONAL DISTRIBUTIONS FROM NET SETTLEMENT FUND**

1. I am the Executive Vice President and Chief Operating Officer for Garden City Group, LLC ("GCG").¹ Pursuant to its Order Preliminarily Approving Proposed Settlement and Providing for Notice (ECF No. 771) (the "Preliminary Approval Order"), the Court authorized the retention of GCG as the Claims Administrator for the Settlement in the above-captioned action (the "Action").² I make this declaration in support of Lead Plaintiffs' motion for approval of additional distributions from the Net Settlement Fund in the Action. The following statements are based on my personal knowledge as well as information provided by other experienced GCG employees working under my supervision.

¹ GCG was formerly known as The Garden City Group, Inc.

² All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated November 30, 2012 (ECF No. 767-1) (the "Stipulation"), the Declaration of Stephen J. Cirami in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan dated April 13, 2015 (ECF No. 1001) (the "Cirami Declaration"), the Order Approving Distribution Plan dated May 4, 2015 (ECF No. 1002) (the "Initial Distribution Order") and the Declaration of Stephen J. Cirami in Support of Lead Plaintiffs' Motion for Approval of Recommendations Regarding Post-Distribution Issues and Modification of Distribution Order to Allow the Acceptance of Late Claims dated November 14, 2016 (ECF No. 1025) (the "Cirami Post-Distribution Issues Declaration").

STATUS OF THE INITIAL DISTRIBUTION OF THE NET SETTLEMENT FUND

2. Pursuant to the Initial Distribution Order, GCG conducted an initial distribution of the Net Settlement Fund to eligible Authorized Claimants on June 26, 2015 (the “Initial Distribution”). In connection with the Initial Distribution, GCG issued 491,639 payments in the aggregate amount of \$2,029,715,470.97 to eligible Authorized Claimants.

3. To date, payments in the Initial Distribution for total proceeds of \$1,971,931,345.12 have been cashed, which is approximately 97.2% of the amount distributed in that distribution.

STATUS OF THE POST-DISTRIBUTION ISSUES DISTRIBUTION

4. Pursuant to the Initial Distribution Order, a reserve from the Net Settlement Fund (the “Reserve”) was established to address any contingencies that might arise from the Initial Distribution. As set forth in the Cirami Post-Distribution Issues Declaration, more than 42,000 communications were received in response to the Initial Distribution and publication of the Distribution Notice. Cirami Post-Distribution Issues Declaration ¶ 6. The issues that arose from the Initial Distribution were detailed in the Cirami Post-Distribution Issues Declaration. On December 21, 2016, the Court entered the Order Regarding Post-Distribution Issues and Modification of Distribution Order to Allow the Acceptance of Late Claims (ECF No. 1027) (the “Post-Distribution Issues Order”) which allowed GCG to make payments with respect to adjusted claims, Late Cures and Alleged Submissions.

5. Pursuant to the Post-Distribution Issues Order, GCG conducted a distribution to eligible Authorized Claimants on January 17, 2017 (the “January 2017 Distribution”). In connection with the January 2017 Distribution, GCG issued 292 payments in the aggregate amount of \$5,785,131.92 to eligible Authorized Claimants.

6. To date, payments in the January 2017 Distribution for total proceeds of \$5,764,761.06 have been cashed, which is approximately 99.6% of the amount distributed in that distribution.

LATE CLAIMS

7. In the Post-Distribution Issues Order, this Court modified the terms of the Initial Distribution Order to allow the acceptance and processing of Late Claims (*i.e.*, all Claims received or cured since the cut-off date for the Initial Distribution (November 5, 2014) through August 31, 2016). At the time of the filing of Lead Plaintiffs' Post-Distribution Issues Motion, the Late Claims had not yet been processed. The Post-Distribution Issues Order further provided that once all claims administration procedures with respect to the Late Claims were completed, GCG's recommendations should be presented to the Court and those Claimants whose Late Claims are approved for payment shall be paid their distribution amount on a *pro rata* basis, to the extent possible, that would bring them into parity with other Authorized Claimants that were paid in the Initial Distribution or pursuant to the Post-Distribution Issues Order. *Id.* at ¶ 3(i).

8. Since November 5, 2014 and through August 31, 2016, GCG received 13,526 Late Claims. Once the Court entered the Post-Distribution Issues Order, GCG began processing the Late Claims. GCG has completed the processing of all Late Claims in accordance with the terms of the Stipulation and the Court-approved Plan of Allocation and hereby submits its administrative determinations accepting and rejecting those Late Claims.

9. Of the 13,526 Late Claims received, GCG has determined that 10,867 should be accepted in whole or in part and 2,659 should be rejected because they are either ineligible, wholly deficient, or have no Recognized Claim when calculated in accordance with the Court-approved Plan of Allocation. GCG mailed rejection letters to the Claimants whose Late Claims

were determined to be deficient or ineligible describing the defect(s) in their Claims and, if the defect was curable, stating what was necessary to complete the Claim. All rejection letters specifically advised the Claimant that he, she or it had the right, within twenty (20) days after the date of mailing of the rejection letter, to contest the rejection of the Claim and request Court review of GCG's determination. With respect to the 2,659 Late Claims that are recommended for rejection, there are no outstanding requests for Court review of GCG's determination.

10. The following are the reasons for the rejection of the 2,659 Late Claims:

<u>Rejected Claims Category</u>	<u>Number of Claims</u>
Claim Did Not Fit Definition of Class	1,305
Withdrawn or Duplicate Claim	20
Deficient Claim Never Cured	268
Claim Did Not Result in a Recognized Claim	1,066
TOTAL	2,659

11. A list of the Late Claims submitted and their ultimate disposition is contained in the Administrator's Report (the "Report") attached hereto as Exhibit A. Exhibit A-1, entitled "Eligible Late Claims," lists all provisionally accepted Late Claims and states each Claim's Recognized Claim and distribution amount. Exhibit A-2, entitled "Ineligible Late Claims," lists all wholly rejected Late Claims and states the reason for each Claim's ineligibility. For privacy reasons, Exhibit A provides only the Claimant's Claim number, Recognized Claim and distribution amount or Reason for Ineligibility (no names, addresses, or social security or other taxpayer identification numbers are disclosed).

12. The Eligible Late Claims represent a total of \$375,535,045.53 in Recognized Claims. According to the Court-approved Plan of Allocation and the Post-Distribution Issues

Order, each Authorized Claimant, to the extent possible, shall receive a *pro rata* share of the Net Settlement Fund, which shall be the Authorized Claimant's Recognized Claim divided by the sum total of the Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. However, as set forth in the Court-approved Plan of Allocation, if an Authorized Claimant's *pro rata* share, *i.e.*, distribution amount, calculates to less than \$20, it will not be included in the calculation and the Claimant will not receive any distribution. Based on the amount in the Reserve and the total Recognized Claims for all the Late Claims that are being recommended for payment (the "Late Claims Distribution"), and the proration factor used in the earlier distributions, each Late Claim that is approved by the Court shall receive an initial distribution ("Late Claim Initial Distribution Amount") that will put it in parity with the Authorized Claimants paid in the Initial Distribution or in the January 2017 Distribution.

GCG'S FEES AND EXPENSES

13. GCG agreed to be the Claims Administrator in exchange for payment of its fees and expenses. Pursuant to the Initial Distribution Order, GCG has been paid its fees and expenses incurred from the inception of the engagement through January 31, 2015 which included an estimate for conducting the Initial Distribution but not the Deferred Payment Amount.³

14. As discussed in the Cirami Declaration, this was an extremely large and complicated notice and administration process up to the Initial Distribution. As reflected in the

³ Under the terms of the Initial Distribution Order, the Deferred Payment Amount as well as any unpaid costs incurred in conducting the Second Distribution will be paid, to the extent possible, at the earliest, six months after the Second Distribution is concluded. *See* Initial Distribution Order at ¶ 3(i).

Cirami Post-Distribution Issues Declaration and as noted herein, the issues dealt with and efforts expended by GCG in and subsequent to the Initial Distribution were also complex and considerable. As reflected in the invoices attached hereto as Exhibit B, from February 1, 2015 through July 31, 2017, GCG has incurred additional fees and expenses in the amount of \$2,598,147.59.

15. As set forth below, GCG, in consultation with Co-Lead Counsel, propose to conduct the Second Distribution of the Net Settlement Fund simultaneously with the Late Claims Distribution. GCG's estimate of fees and expenses for the Late Claims and Second Distributions, \$1,106,161.67, is detailed in invoice no. 22604 included in Exhibit B. Accordingly, there is a current outstanding balance owed to GCG of \$2,598,147.59, which amount includes GCG's anticipated fees and expenses for the Late Claims and Second Distributions.⁴

ADDITIONAL DISTRIBUTIONS

16. GCG, in consultation with Co-Lead Counsel, recommends that the Second Distribution of the Net Settlement Fund occur simultaneously with the Late Claims Distribution. GCG and Co-Lead Counsel see no reason to delay the Second Distribution.

17. Once the distribution amounts for the approved Late Claims have been calculated so as to put them in parity with other Authorized Claimants who received distributions in the Initial Distribution, and after deducting those amounts and the fees and expenses allowed by the

⁴ Should GCG's estimate to conduct the Late Claims and Second Distributions exceed its actual cost to conduct the distributions, the excess shall be returned to the Net Settlement Fund and will be available for subsequent distribution to Authorized Claimants. Conversely, if the estimate to conduct the Late Claims and Second Distributions is less than the actual cost, GCG shall, in accordance with the provisions of the Initial Distribution Order, recoup the overage prior to the next distribution contemplated in the Distribution Plan.

Court pursuant to the Initial Distribution Order and this motion, GCG will calculate the *pro rata* share of the balance of the Net Settlement Fund pursuant to the terms of the Initial Distribution Order for all Authorized Claimants who received a distribution in the Initial Distribution or the January 2017 Distribution and who cashed their check as well as those Claimants whose Late Claims are approved for payment pursuant to this motion. Those Claimants who are eligible to receive a payment in the Second Distribution will be sent their payment in accordance with the terms and provisions as set forth in the Initial Distribution Order. With respect to the approved Late Claims, if they are eligible to receive an initial distribution payment, *i.e.*, their initial distribution amount satisfies the \$20 *de minimis* threshold provided for in the Initial Distribution Order, and if they are not Claims Paid-in-Full based on their initial distribution amount as provided for in the Initial Distribution Order, and their *pro rata* share of the balance available for the Second Distribution makes them eligible to receive such distribution under the terms of the Initial Distribution Order, their Second Distribution amount will be included in the payment sent to them.

18. In addition, GCG, in consultation with Co-Lead Counsel, recommends that the Distribution Plan be modified in two respects.

- a. First, it is recommended that the Distribution Plan be modified to permit the reissue of replacement checks from the Initial Distribution and the January 2017 Distribution with respect to requests that are received up through and including five (5) business days after entry of the Order approving the Late Claims Distribution. Such reissues will not delay the Late Claims or Second Distributions. GCG recommends that the void date on any such reissues be 30 days from the date of issue. Additionally, with respect to the payments being

made to Late Claims, the Second Distribution, and any subsequent distributions that may occur, reissuance of checks to Claimants from the last distribution that occurred should be permitted as long as the request for the reissue is received by the Claims Administrator no later than 60 days prior to the next planned distribution.

- b. Second, with respect to the acceptance of new Claims or modifications to previously submitted Claims received after August 31, 2016 (the Court-approved deadline for the acceptance of Late Claims), when it is no longer cost effective to conduct further re-distributions to previously approved Authorized Claimants, Co-Lead Counsel should have the discretion to decide if any such Claims and modifications should be accepted before there is a donation of residual funds to 501(c)(3) organizations as provided for in the Initial Distribution Order (*see* Initial Distribution Order ¶ 3(k)(2)). If any of those Claims and modifications are accepted, to the extent they are eligible for payment or additional payment under the terms of the Court-approved Plan of Allocation and the Initial Distribution Order, they will be paid their *pro rata* share of the balance remaining in the Net Settlement Fund after the payment of all Court-authorized fees and expenses pursuant to the Initial Distribution Order, to put them in parity with other Authorized Claimants to the extent possible.


19. No further modifications to the Distribution Plan or the Initial Distribution Order are proposed. Thus, in all other respects, the Initial Distribution Order will remain unmodified.

CONCLUSION

20. Should the Court concur with GCG's determinations concerning the acceptance and rejection of the Late Claims as well as its recommendations to modify the Initial Distribution Order as set forth herein, GCG will issue payments accordingly. In all other respects, GCG will continue implementing the Distribution Plan previously approved in the Initial Distribution Order. GCG further respectfully submits that its fees and expenses, as reflected on the invoices attached hereto as Exhibit B, should be approved for payment from the Net Settlement Fund as set forth in this declaration.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed in Lake Success, New York on August 28, 2017.



STEPHEN J. CIRAMI