

April 13, 2016

Via ECF

Honorable Lorna G. Schofield
U.S. District Court
Southern District of New York
Thurgood Marshall Courthouse
40 Foley Square
New York, NY 10007

Re: *Axiom Investment Advisors, LLC, by and through its Trustee, Gildor Management LLC v. Barclays Bank PLC, et al.*
Case No. 1:15-cv-09323-LGS (S.D.N.Y.)

Dear Judge Schofield:

In response to the Court's request during the April 7, 2016 hearing on Plaintiff's Motion for Preliminary Approval of the Stipulation and Agreement of Settlement with Barclays Bank PLC and Barclays Capital Inc. (ECF No. 42-1), Plaintiff Axiom Investment Advisors, LLC, by and through its Trustee, Gildor Management LLC ("Plaintiff") submits this letter providing the Court with a description of how Plaintiff, through its counsel, estimated the proposed settlement as a percentage of damages.

I. Estimated Damages Range Assuming Total Success on the Merits

Based on counsel's investigation to date (including consultation with experts), Plaintiff estimates that the \$50,000,000 cash component represents approximately 20% to 30% of damages obtainable (\$167,000,000 to \$250,000,000), assuming total success on the merits. The factors we used to calculate the range of damages are: (1) Barclays' estimated foreign exchange "FX" market share; (2) estimates of the volume of the FX market trading electronically on venues that allow Last Look; and (3) estimates of impact of Last Look by volume traded.

Market share. As reported in EUROMONEY FX Surveys results, Barclays' estimated FX volume weighted market share during the class period was between 10% and 11%.

Market volume subject to Last Look. For the next factor, we estimated the volume of trade between Barclays and class members that is subject to Last Look. We first derive the global volume of FX spot and forward transactions¹ by year using the Bank for International Settlements Triennial Central Bank Surveys ("BIS Surveys"). Second, we multiplied our estimates of FX spot and forward volume by the percentage of the overall market traded on U.S. sales desks, as reported in the BIS Surveys.²

¹ Based on our investigation to date, Last Look is not regularly used with respect to other instruments, e.g., swaps and options.

² The Bank of International Settlements collects data for its Surveys based on the location of dealers' sales desks and reports market shares by country. The volumes traded on sales desks in the United States correspond most closely to the geographic scope of the class definition,

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Then, relying on publicly available market research, we estimated the percentage of the FX market that is traded electronically during the class period. We then multiplied the resulting volumes by an estimated percentage of the electronic FX market that trades on venues that allow Last Look to factor out those electronic trades that would occur on venues where Last Look is not employed (*e.g.*, on EBS Market and Reuters Matching).

When multiplied by Barclays' market share, these calculations provide an estimate of Barclays' volume of electronically-traded FX spot and forward transactions subject to Last Look per class period year.

Impact of Last Look by volume traded. We estimated the impact of Last Look by volume traded analyzing data from actual trades in accounts subject to Last Look. We applied these results to our estimate of the volume of commerce subject to Barclays' use of Last Look. Based on the assumptions set out above, we currently estimate the total range of damages in this Action at approximately \$167,000,000 to \$250,000,000.

II. Application of Litigation Risk Factors to Estimated Damages Range

Plaintiff's Counsel applied no "litigation risk discount" to this damages estimate. The estimated range of damages was not discounted to take into account the risks of, *inter alia*, certifying a class, proceeding past summary judgment and proving liability and damages at trial, and finally, prevailing on appeal. *See also* Memo in Support of Motion for Preliminary Approval of Settlement, ECF No. 41, at 13-14.

While Plaintiff's Counsel has not applied such a discount, the range of reasonableness factor for evaluating settlements does employ such as discount, "recogniz[ing] the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972). Such damages-reducing factors are recognized elements in practically assessing the true value of settlements; "[d]ollar amounts [in class action settlement agreements] are judged not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984). If Plaintiff's Counsel were to discount the damages estimate by the likelihood of recovering the full damages amount after class certification, summary judgment, and trial, the \$50,000,000 settlement figure would represent a greater percentage than the current 20% to 30% of the estimated recovery.

We hope this letter addresses the Court's request for additional information, and we stand ready to provide further explanation if so requested.

Respectfully submitted,

SCOTT+SCOTT, ATTORNEYS AT LAW, LLP

/s/Christopher M. Burke
Christopher M. Burke

which includes U.S.-domiciled persons and non-U.S. domiciled persons whose trades traveled into the United States via a Barclays server located in the United States.

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