

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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| AXIOM INVESTMENT ADVISORS, | : | |
| LLC, by and through its Trustee, Gildor | : | |
| Management LLC, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Case No. 15-cv-9323-LGS |
| | : | |
| BARCLAYS BANK PLC and | : | |
| BARCLAYS CAPITAL, INC., | : | |
| | : | |
| Defendants. | : | |
| | : | |
| ----- | X | |

**AMENDED DECLARATION OF GEORGE A. ZELCS IN SUPPORT OF PLAINTIFF’S
MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT**

Pursuant to 28 U.S.C. §1746, I, George A. Zelcs, declare:

1. I am a partner in the law firm of Korein Tillery LLC (“Korein Tillery”).
2. I have been actively involved in prosecuting and resolving this action, am familiar with its proceedings, and have personal knowledge of the matters set forth herein. If called upon and sworn as a witness, I could competently testify thereto.
3. Korein Tillery, along with Scott+Scott, Attorneys at Law, LLP (“Scott+Scott”); Hausfeld LLP (“Hausfeld”); and Nussbaum Law Group, P.C. (“Nussbaum”) (together, “Plaintiff’s Counsel”) represents Axiom Investment Advisors, LLC, by and through its Trustee, Gildor Management, LLC (“Plaintiff”).¹

¹ Unless otherwise defined herein, all capitalized terms have the meaning ascribed to them in the Amended Stipulation and Agreement of Settlement with Barclays Bank PLC and Barclays Capital Inc. (“Amended Settlement Agreement”), attached hereto as Exhibit 1.

4. I submit this declaration in support of Plaintiff's motion, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for preliminary approval of a proposed settlement with Barclays Bank PLC and Barclays Capital, Inc. (collectively, "Barclays," and together with Plaintiff, the "Parties"). If approved, the settlement set forth in the Amended Settlement Agreement will provide a significant recovery for the proposed settlement class including, among other things, Barclays' payment of \$50,000,000 in cash and its agreement to provide information that Plaintiff's Counsel believe will assist Plaintiff in pursuing its claims (and those of similarly situated persons) against other banks that engaged in similar "Last Look" practices, and will resolve this complex class action.

5. Because this declaration is submitted in support of a settlement, it is inadmissible in any subsequent proceedings, other than in connection with the settlement. In the event the Amended Settlement Agreement is not approved by the Court, this declaration and the statements contained herein are without prejudice to Plaintiff's position on the merits of this Action.

I. SUMMARY OF CLAIMS AND THE PROCEDURAL HISTORY OF THE LITIGATION

6. On November 25, 2015, Plaintiff filed *Axiom Investment Advisors, LLC v. Barclays Bank PLC*, Case No. 15-cv-9323. The Complaint was based on Plaintiff's Counsel's year-long investigation. *See* §II., *infra*.

7. Approximately a week earlier, on November 18, 2015, Barclays entered into a Consent Order with the New York Department of Financial Services ("NYDFS"), admitting to certain internal controls failings; agreeing to pay a \$150 million civil monetary penalty; agreeing to terminate a Managing Director and Global Head of Electronic Fixed Income, Currencies, and Commodities Automated Flow Trading; and agreeing to work with an independent monitor on

remediation. *In the Matter of Barclays Bank PLC, Barclays Bank, PLC, New York Branch*, Consent Order Under New York Banking Law §44 (Nov. 18, 2015) (available at www.dfs.ny.gov/about/ea/ea15117.pdf).

8. The Complaint alleges that Plaintiff and members of the class placed electronic orders for foreign exchange (“FX”) trades via Barclays’ own proprietary electronic trading platform (known as BARX) and through multi-dealer electronic trading platforms (known as “Electronic Communications Networks,” or “ECNs”) (such as Currenex, Hotspot, and FXall). Complaint, ¶3. As alleged in the Complaint, Barclays streamed prices into these systems, and its customers placed orders by hitting a price Barclays was showing. *Id.*, ¶¶33-35, 40. The Complaint alleges that these orders constituted offers to transact at the best, immediately available prices and, at the same time, operated as an acceptance of Barclays’ outstanding unilateral offer to trade. *Id.*, ¶¶3, 99, 106. The Complaint alleges, however, that many times Plaintiff and the members of the class did not receive the agreed-on contract price (*i.e.*, the best, immediately available price), but rather, received a worse price. *Id.*, ¶4. The Complaint further alleges that Barclays delayed the execution of matched trades and when it determined during the delay that the trade would be unfavorable to its position or that it could extract a larger profit, it reneged on the agreed-on price and often then filled Plaintiff’s and class members’ orders at worse prices. *Id.*, ¶¶4, 45-53. This practice has been dubbed “Last Look,” and Plaintiff alleges that Barclays’ Last Look practices caused Barclays to breach its contracts with Plaintiff and class members, as well as breach the covenant of good faith and fair dealing. *Id.*, ¶¶4, 5, 99-115. Plaintiff further alleges that by promoting its prices as “executable” when they were not, Barclays has unfairly deceived Plaintiff and class members and caused significant damages to Plaintiff and the class while unjustly enriching Barclays. *Id.*, ¶¶5, 119-44.

9. On January 7, 2016, the Court held an initial pretrial conference during Plaintiff's Counsel publicly disclosed a settlement in principle resolving this Action, set a briefing and hearing schedule for Plaintiff's motion for preliminary approval of the settlement, adjourned the time for Barclays to answer the Complaint, and stayed discovery pending further order of the Court. ECF No. 28.

II. SUMMARY OF PRE-SUIT INVESTIGATION

10. Plaintiff's Counsel's pre-suit investigation of the facts underlying this matter began as early as March 2014 when certain members of Plaintiff's Counsel were investigating the FX market as part of their prosecution of the claims asserted in *In re Foreign Exchange Benchmark Rates Antitrust Litig.*, No. 13-cv-7789 (S.D.N.Y.).

11. In the course of those investigations, Plaintiff's Counsel uncovered a pattern of high reject rates and low fill rates of purportedly executable trades by banks on electronic FX trading platforms. Plaintiff's Counsel's investigation turned to determining the scope of this behavior, including whether the practice was used on single-dealer platforms (like BARX) and/or ECNs (like Currenex, Hotspot, and FXall). Plaintiff's Counsel, among other things, interviewed numerous FX traders and market experts and examined publicly available documentation to determine whether the Last Look practice was disclosed.

12. During the pre-filing investigation, Plaintiff's Counsel coordinated with NYDFS, which, as described in §I, *supra*, had a parallel investigation into Barclays' Last Look practices. The coordination included meeting with NYDFS attorneys and economists to discuss Last Look practices and the sharing of a draft complaint. Given the contemporaneous and parallel investigation, Plaintiff waited for NYDFS to complete its investigation of Barclays before filing this Action.

III. SUMMARY OF THE SETTLEMENT NEGOTIATIONS

13. The settlement set forth in the Amended Settlement Agreement was reached under the guidance and with the assistance of a well-respected mediator, Kenneth R. Feinberg. The Amended Settlement Agreement was the product of hard-fought, arm's-length negotiations by counsel highly experienced in complex litigation. Barclays was represented by Sullivan & Cromwell LLP ("Barclays' Counsel"). Plaintiff was represented by myself; Christopher M. Burke of Scott+Scott; Michael D. Hausfeld of Hausfeld; and Linda Nussbaum of Nussbaum.

14. Plaintiff's Counsel and Barclays' Counsel began the discussion of resolution of these claims in early 2015 while Plaintiff's Counsel's pre-suit investigation was ongoing. On April 20, 2015, Plaintiff's Counsel and Barclays' Counsel engaged in a supervised mediation with Mr. Feinberg and reached an agreement on the framework of a settlement.

15. Over the course of negotiations during the following months, Plaintiff received certain confirmatory discovery, including attorney proffers by Barclays. These proffers included information, among other things, about Barclays' Last Look practices and industry practices generally.

16. By October 29, 2015, negotiations had progressed to the point that the Parties executed a term sheet.

17. The Parties continued to exchange information and at the same time negotiate the terms of a long-form settlement agreement. On February 10, 2016, the Parties executed the Stipulation and Agreement of Settlement with Barclays Bank PLC and Barclays Capital Inc., which was attached as Exhibit 1 to my Declaration filed with Plaintiff's Motion for Preliminary Approval of Settlement on February 17, 2016 as ECF No. 42-1 (the "Settlement Agreement").

18. Pursuant to the Court's request at the April 7, 2016 hearing on the motion for preliminary approval of settlement, Plaintiff is re-submitting the attached Exhibit 1 (the "Amended Settlement Agreement") which will become the operative settlement agreement.

19. Plaintiff is also submitting a redline comparison of the Settlement Agreement and the Amended Settlement Agreement, attached hereto as Exhibit 8.

IV. SUMMARY OF THE SETTLEMENT TERMS

20. Plaintiff moves for preliminary approval of the Settlement Agreement, which provides for \$50,000,000 in monetary relief, and the provision of extensive confirmatory discovery and cooperation obligations from Barclays, which Plaintiff's Counsel believe will assist Plaintiff in pursuing its claims (and those of similarly situated persons) against other banks that engaged in similar practices. All funds are non-reversionary if there is final approval of the Settlement Agreement by the Court. Amended Settlement Agreement, ¶10(j).

21. The "Class" consists of "[a]ll persons who, between June 1, 2008 and the date of preliminary approval of the settlement (the "Class Period"), submitted a trade or trade instruction for an FX Instrument to Barclays over BARX (whether submitted on BARX or via an ECN or any other connection to BARX) to which Barclays applied Last Look, or as to which Barclays engaged in any other conduct that is the subject of a Released Claim and who were either (i) domiciled in the United States, or (ii) (a) domiciled outside the United States and (b) had such trade or trade instruction routed over a Barclays server in the United States." Amended Settlement Agreement, ¶3(a)(i).²

² Specifically excluded from this Class are Barclays and any Platform; the officers, directors, or employees of Barclays or a Platform; any entity in which Barclays or a Platform have a controlling interest; any affiliate, legal representative, heir, or assign of Barclays or a Platform and any person acting on their behalf. Also excluded from this Class are any judicial

22. It is estimated that there are less than 1,000 members of the Class. It is difficult to predict claims volume and the settlement fund subscription rate at this time, but Class Members are likely to receive significant monetary compensation.

A. Confirmatory Discovery and Cooperation Obligations

23. Barclays' provision of confirmatory discovery and cooperation obligations has assisted in the development of the claims set forth in this Action. In addition, Plaintiff's Counsel expect that Barclays' further provision of information will assist Plaintiff and members of the Class in further understanding the electronic trading market for FX and in prosecuting Last Look claims against banks that engaged similar practices. Plaintiff's Counsel further believe this will apply pressure on banks that are defendants in other Last Look actions to consider engaging in settlement discussions. Based on information known to date, Plaintiff's Counsel believe there is substantial overlap between the Class in this Action and class members in similar actions against other banks. Access to Barclays' transaction data will also permit Plaintiff's experts to assess factual and legal class certification and damages issues that may arise in similar actions against other banks.

24. The scope of Barclays' confirmatory discovery and cooperation obligations mirror the scope of the release. A summary of Barclays' cooperation obligations is set forth in the following paragraphs:

25. **Attorney Proffers:** Barclays agreed to provide attorney proffers covering the following topics: (1) a general description of FX E-Trading, including the market participants that offer FX E-Trading platforms and the features and practices of those platforms, to the extent

officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action. Amended Settlement Agreement, ¶3(a)(i).

known by Barclays; (2) a description of the facts relevant to any and all Released Claims, including but not limited to any code or logic similar to Last Look; (3) the features and practices of Platforms offered by other market participants, including the use of any code or logic similar to Last Look, to the extent known by Barclays; and (4) to the extent not prohibited by any law, regulation, policy, or other rule of any governmental body protecting disclosure of such information, the identity and last known contact information of all current and former officers, directors, and employees of Barclays who already have been interviewed by any United States or European country governmental body (and specifically excluding any third-party and/or independent consultant engaged at the direction of such governmental body) investigating conduct in, or affecting, FX E-Trading, including Last Look. Barclays will also respond to reasonable follow-up inquiries of Plaintiff's Counsel for further attorney proffers. Amended Settlement Agreement, ¶13(d)(ii).

26. ***Production of Transaction Data:*** As soon as possible after the Execution Date, and for the purposes of allowing Plaintiff's Counsel to effectuate notice and a plan of distribution, for other purposes as set forth in paragraph 13(d) of the Amended Settlement Agreement, and for any other purposes mutually agreed upon by the Parties, the Parties will agree on a schedule to meet and confer about production of transaction data related to the subject matter of the Action. Barclays will produce the transaction data agreed upon (or, in the event no agreement can be reached, that the Mediator directs) as expeditiously as practicable. Amended Settlement Agreement, ¶13(d)(iii).

27. ***Production of Documents Produced to Governmental Bodies:*** Within twenty (20) business days following entry of the Preliminary Approval Order, and to the extent not prohibited by any law, regulation, policy, or other rule of any governmental body protecting

disclosure of such information, Barclays will produce to Plaintiff, in a mutually agreeable electronic format, the documents (*i.e.* electronic communications such as e-mails and chats) that it has already produced or made available to any grand jury or United States or European country governmental body (and specifically excluding any third-party and/or independent consultant engaged at the direction of such governmental body) investigating FX E-Trading, including but not limited to Last Look. Amended Settlement Agreement, ¶13(d)(iv).

28. ***Production of Additional Documents and Data:*** After the entry of the Preliminary Approval Order, at the request of Plaintiff's Counsel, the Parties will meet and confer over any reasonable requests by Plaintiff for additional documents and data. Amended Settlement Agreement, ¶13(d)(v).

29. ***Interviews:*** After the entry of the Preliminary Approval Order, upon reasonable notice, at Barclays' expense, Barclays will use its reasonable best efforts to make available for interviews with Plaintiff's Counsel and/or their experts no more than three (3) current Barclays employees designated by Plaintiff's Counsel. Each interview will take place on a single day and will not exceed eight hours. The interviews will not be videotaped, recorded, or professionally transcribed. Barclays will also respond to reasonable follow-up inquiries of Plaintiff's Counsel. At Plaintiff's Counsel's request, and for good cause, Barclays will meet and confer regarding no more than two (2) additional interviews of current Barclays employees sought by Plaintiff's Counsel, but failing agreement between the Parties, the Parties will seek resolution of such disputes from the Mediator. Amended Settlement Agreement, ¶13(d)(vi).

B. Release of Claims

30. In consideration for Barclays' payment of \$50,000,000 to the Class and its provision of cooperation and confirmatory discovery, and upon the Effective Date of the

Settlement, Plaintiff and Releasing Parties who do not exclude themselves from the Class will give up any rights to sue Barclays or any of the Released Parties for the Released Claims. Amended Settlement Agreement, ¶¶1, 2(kk).

31. The release limited to only those claims that arise from or relate to any of the factual predicates of the Action. Amended Settlement Agreement, ¶¶1, 2(kk).

32. The release carves out claims arising under foreign laws where, based upon orders or trades either in or over BARX (whether placed directly or indirectly via an ECN, or via any other connection to BARX) that used a Barclays server solely outside the United States and belonging to any Releasing Party that is domiciled outside the United States or Person that is domiciled outside the United States, as well as claims brought by plaintiffs in *In re Foreign Exchange Benchmark Rates Antitrust Litig.*, No. 13-cv-7789 (S.D.N.Y.). Amended Settlement Agreement, ¶2(kk).

33. The Amended Settlement Agreement defines Released Claims as:

any and all manner of claims, including “Unknown Claims” as defined below, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys’ fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, arising from or related to any of the factual predicates of the Action, or any amended complaint or pleading therein, from the beginning of time until the date of the preliminary approval of the settlement, specifically including but not limited to: (i) Barclays’ application of Last Look to trades or trade instructions for FX Instruments submitted to Barclays over BARX (whether submitted on BARX or via an ECN or any other connection to BARX) that resulted in delayed or rejected trades or trade instructions; (ii) Barclays’ use of information obtained through Last Look, including, but not limited to, for pricing or trading purposes; (iii) Barclays’ application of any other rule, process, functionality, procedure, format, file, algorithm, programming, code, logic or method associated with BARX to trades or trade instructions for FX Instruments submitted to Barclays over BARX (whether submitted on BARX or via an ECN

or any other connection to BARX) that delays, modifies, alters, rejects, prevents or in any way affects the execution or pricing of an order or trade instruction; or (iv) Barclays' representations or omissions relating to the foregoing. Provided however, Released Claims do not include (i) claims brought by plaintiffs in *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 13-cv-7789 (S.D.N.Y.); or (ii) claims arising under foreign laws based upon trades or trade instructions for FX Instruments submitted to Barclays over BARX (whether submitted on BARX or via an ECN or any other connection to BARX) where that trade or trade instruction used a Barclays server solely outside the United States and belonging to any Releasing Party that is domiciled outside the United States or Person that is domiciled outside the United States.

Amended Settlement Agreement, ¶2 (kk).

V. SELECTION OF ESCROW AGENT AND CLAIMS ADMINISTRATOR

34. Plaintiff's Counsel propose Huntington National Bank ("HNB") to serve as Escrow Agent, having the duties and responsibilities as described in the Settlement Agreement. Amended Settlement Agreement, ¶¶9, 11. As indicated in HNB's résumé, attached hereto as Exhibit 6, HNB was established in 1866, holds over \$60 billion in assets, and has more than 700 branches nationwide. HNB's National Settlement Team has handled more than 1,000 settlements for law firms, claims administrators, and regulatory agencies.

35. Plaintiff's Counsel propose Garden City Group ("GCG") to serve as Claims Administrator, having the duties and responsibilities as described in the Settlement Agreement. Amended Settlement Agreement, ¶10. GCG is offering the Class the same pricing as offered in *In re Foreign Exchange Benchmark Rates Antitrust Litig.*, No. 14-cv-7789 (S.D.N.Y.), which allows the Class to benefit from a rigorous bidding process conducted before GCG was selected to administer claims in that action. As indicated in GCG's résumé, attached hereto as Exhibit 7, GCG has been administering class action settlements for 20 years and has administered hundreds of class action settlements. GCG has substantial experience in carrying out class action notice

and payment projects and has handled the administration of complex, data-driven settlements, including those with international components.

VI. EXHIBITS

36. Attached hereto as Exhibit 1 is a true and correct copy of the Amended Stipulation and Agreement of Settlement with Barclays Bank PLC and Barclays Capital Inc., dated April 20, 2016.

37. Attached hereto as Exhibit 2 is a true and correct copy of Korein Tillery's firm résumé.

38. Attached hereto as Exhibit 3 is a true and correct copy of Scott+Scott's firm résumé.

39. Attached hereto as Exhibit 4 is a true and correct copy of Hausfeld's firm résumé.

40. Attached hereto as Exhibit 5 is a true and correct copy of Nussbaum's firm résumé.

41. Attached hereto as Exhibit 6 is a true and correct copy of HNB's résumé.

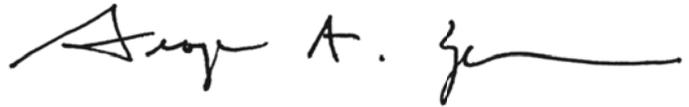
42. Attached hereto as Exhibit 7 is a true and correct copy of GCG's résumé.

43. Attached hereto as Exhibit 8 is a redline comparison of the February 10, 2016 Settlement Agreement (ECF No. 42-1) and the April 19, 2016 Amended Settlement Agreement.

VII. CONCLUSION

For the reasons set forth herein, in Plaintiff's Motion for Preliminary Approval of Settlement, and in the documents filed in support thereof, I believe the settlement is fair, reasonable, and adequate. As such, I believe that the Court should grant Plaintiff's application for preliminary approval of the Settlement Agreement and preliminarily certify the Class for the purpose of settlement.

I certify under penalty of perjury that the foregoing is true and correct. Executed on
April 20, 2016, in Chicago, Illinois.

A handwritten signature in black ink, appearing to read "George A. Zeles". The signature is written in a cursive style with a long horizontal flourish at the end.

George A. Zeles

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2016, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List, and I hereby certify that I caused the foregoing document or paper to be mailed via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice List.

s/ Christopher M. Burke
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