UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re DEUTSCHE BANK AG SECURITIES LITIGATION	Master File No. 1:09-cv-01714-GHW-RWL
	CLASS ACTION
This Document Relates To: ALL ACTIONS.	REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF CLASS PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION AND FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AN AWARD TO CLASS PLAINTIFFS PURSUANT TO 15 U.S.C. §77z-1(a)(4), AND IN RESPONSE TO OBJECTION

Class Plaintiffs Norbert G. Kaess and Maria Farruggio ("Plaintiffs" or "Class Plaintiffs"), together with Lead Counsel, respectfully submit this reply memorandum of law in further support of final approval of the Settlement and Plan of Allocation and approval of Lead Counsel's motion for an award of attorneys' fees and expenses and an award to Class Plaintiffs, as well as to respond to the objection of Richard D. Agay (ECF No. 320) ("Objector" or "Objection").[1]

I. PRELIMINARY STATEMENT

The Settlement resolves this Litigation in its entirety and establishes a common fund of $18,500,000 for the benefit of Class Members. As detailed in Class Plaintiffs' and Lead Counsel's opening papers (ECF Nos. 306-314), the Settlement is the product of over a decade of hard-fought litigation and extensive arm's-length negotiations with the assistance of mediator Judge Layn R. Phillips. It represents a very favorable result for the Class in light of the substantial risks and challenges that Class Plaintiffs and the Class faced in proving liability and defeating Defendants' many arguments in response, as well as the costs and delays of continued litigation.

In response to the extensive notice program, which involved mailing 112,397 copies of the Notice of Pendency and Proposed Settlement of Class Action ("Notice") to potential Class Members and nominees and publishing the Summary Notice in *The Wall Street Journal* and over *Business Wire*, only four requests for exclusion (none by institutional investors) and only one objection have been received. Further, unlike a typical objection to a substantive aspect of a settlement, this

[1] Unless otherwise noted, all capitalized terms are defined in the November 11, 2019 Stipulation of Settlement ("Stipulation") (ECF No. 290) or in Plaintiffs' opening memorandum of law in support of this motion, dated May 7, 2020. ECF No. 307. The Supplemental Declaration of Ross D. Murray Regarding Notice Dissemination, Requests for Exclusion Received to Date, and Review of Objection Filed by Richard Agay ("Suppl. Murray Decl."), dated June 4, 2020, is submitted herewith. All citations and internal quotation marks are omitted and emphasis is added, unless otherwise indicated.

Objection does not challenge the Settlement or the resolution of this case.[2] It also does not challenge the reasons for this Settlement or the manner in which Class Plaintiffs and Lead Counsel prosecuted the Litigation. It does not challenge the work Lead Counsel performed or Lead Counsel's fee and expense application. Instead, this Objection argues that Mr. Agay received his copy of the Notice late, that the Class definition (common in Section 11 cases) is confusing, that the Claims Administrator Gilardi & Co. LLC ("Gilardi") did not sufficiently respond to Mr. Agay's telephonic inquiry, and to various aspects of the release.

The first issue raised by Mr. Agay, the timing of his receipt of the Notice, was the fault of Mr. Agay's broker for his Deutsche Bank securities transactions, UBS Financial Services Inc. ("UBS"), not Gilardi. While Mr. Agay did not receive his Notice until May 9, 2020, this is because UBS did not provide his name and address to Gilardi until April 27, 2020, following two reminder notifications from Gilardi. Suppl. Murray Decl., ¶¶9-11. In any event, Mr. Agay was able to submit his objection by the May 21, 2020 deadline. Further, while Mr. Agay is frustrated that he could not determine his eligibility to participate in the Settlement, his broker confirmations, attached to his Objection, reflect that he redeemed his securities at the offering price of $25.00 on February 20, 2018, and therefore, as a matter of law, his damages (offering price less what he received) are zero. Moreover, the Plan of Allocation (Notice at 11) states that for redemptions "on or after February 16, 2018, the claim per security is zero." Thus, Mr. Agay's statutory damages, as well as his claim

[2] While the Objector makes an unsupported request that "Claimant, if not all those submitting Proof[s] of Claim, receive payment of not less than sixty-six percent of the amount for claim . . . whether or not the shares '*purchased or otherwise acquired*' are or were '*pursuant or traceable to the Offering Materials*'" (Objection at 1-2), it is not clear exactly what Mr. Agay is asking. To the extent he is suggesting that the Settlement Amount be increased, such unsupported requests for larger recoveries are meritless objections. *In re Facebook Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 411-12 (S.D.N.Y. 2018). To the extent he is asking that non-Class Members be included in the Settlement, of course, this is similarly meritless and would not be fair to Class Members who are providing a release of claims to Defendants.

amount under the Plan of Allocation, are both zero. To the extent Mr. Agay is unhappy with his discussion with certain Gilardi representatives, the Gilardi representative followed the Frequently Asked Questions ("FAQ") script and encouraged Mr. Agay to submit a claim just to be safe. Suppl. Murray Decl., ¶16. And with respect to the release (*see* "Released Claims," n.4 below): (i) it only applies to Plaintiffs, Class Members, and certain related parties; (ii) it properly applies to all Class Members, regardless of whether the Class Member submits a Proof of Claim and Release ("Proof of Claim") or receives a distribution under the Settlement; and (iii) it is sufficiently limited in scope to the Offerings and is not overbroad.[3] Accordingly, Mr. Agay's Objection is not well-taken and should be overruled in its entirety.

In short, the Settlement, Plan of Allocation, and request for fees and expenses are fair and reasonable and warrant approval.

II. THE CLASS OVERWHELMINGLY SUPPORTS THE SETTLEMENT

The absence of objections, with the exception of one retail investor, coupled with the minimal number of requests for exclusion, strongly supports a finding that the Settlement, Plan of Allocation, and fee and expense requests are fair, reasonable, and adequate. *See, e.g.*, *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 382 (S.D.N.Y. 2013) (approving settlement); *In re Bisys Sec. Litig.*, No. 04 Civ. 3840(JSR), 2007 WL 2049726, at *1 (S.D.N.Y. July 16, 2007) (approving fee request); *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 U.S. Dist. LEXIS 85629, at *40 (S.D.N.Y. Nov. 7, 2007) (approving plan of allocation). "[T]he favorable reaction of the overwhelming majority of class members . . . is perhaps the most significant factor." *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 119 (2d Cir. 2005); *see*

[3] Mr. Agay questions why he had to provide his purchase and sale information in order to submit an objection (Objection at 2,3 and n.1). This is to establish Class membership as only class members have standing to object to a class settlement. *See In re Libor-Based Fin. Instruments Antitrust Litig.*, 327 F.R.D. 483, 499 (S.D.N.Y. 2018).

also In re Advanced Battery Techs., Inc. Sec. Litig., 298 F.R.D. 171, 176 (S.D.N.Y. 2014) (absence of objections and minimal opt-outs were evidence of approval).

III. THE LONE OBJECTION IS WITHOUT MERIT

A. "Timing" of Notice Package (Objection at 3)

Mr. Agay first complains that although the Notice and Proof of Claim ("Notice Package") is dated February 27, 2020, he did not receive it until May 9, 2020. Objection at 3. Gilardi's investigation into Mr. Agay's Notice Package reveals that it was processed promptly for mailing upon receipt of his data (name and address) from UBS, who appears to be Mr. Agay's broker for transactions in the relevant Deutsche Bank securities. However, for whatever reason, Mr. Agay's mailing information was not received from UBS until April 27, 2020, which followed two reminder solicitations from Gilardi to UBS. Suppl. Murray Decl., ¶10. The relevant timeline is as follows:

Initial mailing with cover letter to UBS:	March 12, 2020 (Notice Date)
Follow up/reminder solicitation 1 from Gilardi to UBS:	April 2, 2020
Follow up/reminder solicitation 2 from Gilardi to UBS:	April 21, 2020
Data provided to Gilardi by UBS:	April 27, 2020
Data downloaded by Gilardi for processing:	April 28, 2020
Processed data released for fulfillment (mailing):	May 4, 2020
Actual mail date:	May 7, 2020

Accordingly, the delay in mailing the Notice Package to Mr. Agay was due to the fact that Mr. Agay's mailing information was not received from UBS until April 27, 2020.

B. "Class Membership" (Objection at 4) and "Gilardi Misinformation" (Objection at 4-5)

First, Mr. Agay complains that no email address was included in the Notice. Objection at 4. However, in addition to the toll-free telephone number contained in the Notice, allowing Class Members to contact Gilardi, the case email is provided on the "Contact Us" page of the Settlement

website, www.DeutscheBankSecuritiesSettlement.com, which is set forth in the Notice (at 3, 5, 9, 10, 12), the Proof of Claim (*id.* at 7), and the General Instructions that accompany the Proof of Claim (*id.* at 1).

Next, Mr. Agay expresses frustration with the definition of the Class, which was certified by Judge Batts by order dated October 2, 2018, and which is set forth in the Stipulation (¶1.3), Notice (at 1), and Proof of Claim (at 1). Objection at 4. The Class is defined as those who purchased or otherwise acquired 7.35% Preferred Securities and/or 7.60% Preferred Securities "pursuant or traceable to the public offerings that commenced on or about November 6, 2007 and February 14, 2008." Stipulation, ¶1.3. The "pursuant or traceable to the offering" qualifier is not unusual for a Securities Act case like this. *See, e.g.*, *In re IndyMac Mortg.-Backed Sec. Litig.*, 286 F.R.D. 226, 231 (S.D.N.Y. 2012) (certifying class defined as "'[a]ll persons or entities who purchased or otherwise acquired beneficial interests in Certificates offered to the public . . . ***pursuant or traceable to*** . . . .'"); *New Jersey Carpenters Health Fund v. DLJ Mortg. Capital, Inc.*, No. 08 Civ. 5653(PAC), 2011 WL 3874821, at *1 (S.D.N.Y. Aug. 16, 2011) (certifying class defined as "[a]ll persons who purchased . . . ***pursuant or traceable to*** . . . ."); Suppl. Murray Decl., ¶18.

Mr. Agay has provided his transaction information with his Objection. Mr. Agay redeemed all of his 7.60% Preferred Securities on February 20, 2018 for $25.00, which was the offering price. Because under Section 11 Mr. Agay's purchase price is limited to the offering price,[4] as a matter of law, he has no damages. Likewise, the Plan of Allocation provides that for securities "held as of February 16, 2018, or redeemed on or after February 16, 2018, the claim per security is zero." Accordingly, not only does he not have any damages, his claim under the Plan of Allocation is "zero."

[4] The measure of damages under Section 11(e) limits the purchase price to "the difference between the amount paid for the security (***not exceeding the price at which the security was offered to the public***) . . . ."

Gilardi provides its call center representative staff with a FAQ script to ensure accurate responses are provided to callers. Suppl. Murray Decl., ¶14. Furthermore, all call center representatives have access to the case documents. *Id.* Call center representatives are instructed not to "go off script" and are trained to repeat the Class definition as specified in the FAQ script and in the case documents, state that they cannot be more specific than the information provided in the Notice, and instead encourage investors to submit a claim if they want Gilardi to determine their eligibility. *Id.* Without specific proof of a caller's transactions, which Gilardi does not have, it does not wish to advise callers they are not Class Members and therefore potentially incorrectly discourage someone from submitting a claim. *Id.*

Regarding Mr. Agay's call to Gilardi, Gilardi researched its call logs, and its records do not indicate that they received any inquiries from Mr. Agay via telephone or the case specific email address. *Id.*, ¶15. On May 29, 2020, Gilardi reviewed all "anonymous" call logs between May 9, 2020 to May 17, 2020, and it believes it has identified a call from Mr. Agay on May 13, 2020 (based on the noted question which references trade dates that correspond with his documented trades in the Objection). *Id.*, ¶16. According to the call log, this caller asked "I purchased shares in 2012, do I qualify for the claim settlement process?", and the log notes that this caller was provided with the FAQ script reply providing the Class definition, which was also copied into the call log. *Id.*

C. "Class Offering" Definition (Objection at 6-7)

Mr. Agay criticizes the Proof of Claim with respect to the term "Class Offerings." Objection at 6. While Mr. Agay refers to the Proof of Claim form, apparently in connection with the eligibility of his trades, the form does not define the eligibility of any of the requested transactions. The Proof of Claim form requests ***all*** information required by Gilardi to accurately process a claim. This includes performing multiple kinds of transaction-specific and overall claim data reviews for potential

concerns that Gilardi may have, including, for instance, to insure that all identified trades balance, *i.e.*, that the claim is not missing any transactions or holding information. Suppl. Murray Decl., ¶17.

D. The Release Is Appropriately Applied and Not Overbroad (Objection at 7-9)

Mr. Agay criticizes the Class's release of all "Released Claims" under the Settlement. Objection at 7-9. First, Mr. Agay argues that "as drafted, it applies whether the signer is a Class Member or not." *Id.* at 7. This is incorrect. The term "Released Claim," defined in the Stipulation (at ¶1.23)[5] and again in the Notice (at 6) and Proof of Claim (at 6), only applies to "Class Plaintiffs . . . and each of the Class Members and their predecessors, successors, agents, representatives, attorneys, affiliates and the heirs, executors, administrators, successors and assigns of each of them, in their capacity as such." These are the only persons or entities, *i.e.*, Class Members and their related entities, that are releasing the Released Claims against the Released Persons (the Defendants and their Related Parties).

Second, Mr. Agay complains that Class Members are releasing all "Released Claims" regardless of whether or not they receive a distribution under the Settlement. *Id.* at 8. This is true. Whether or not a Class Member submits a Proof of Claim or shares in the distribution of the Net

---

[5] "Released Claims" means any and all claims, rights, duties, controversies, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, losses, judgments, liabilities, allegations, arguments and causes of action of every nature and description, whether known or unknown, whether arising under federal, state, local, common, statutory, administrative or foreign law, or any other law, rule, ordinance, administrative provision or regulation, at law or in equity, whether class or individual in nature, whether fixed or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, which arise out of or relate in any way to ***both: (i) the purchase or acquisition of the securities in the Offerings; and (ii) the acts, facts, statements, or omissions that were or could have been alleged by Class Plaintiffs in the Litigation***. For avoidance of doubt, this release will apply: (i) to all defendants named in any complaint filed in the Litigation, or in any actions consolidated with the Litigation, whether or not they are named as defendants in the Third Consolidated Amended Complaint, and their Related Parties (*i.e.*, their directors, officers, employees, parents, subsidiaries, agents, assigns, insurers, partners, predecessors, successors and counsel); and (ii) to each of the six Offerings of trust preferred securities guaranteed by Deutsche Bank. "Released Claims" does not include claims to enforce the Settlement. "Released Claims" includes "Unknown Claims" as defined in ¶1.32 of the Stipulation.

Settlement Fund, he, she, or it is deemed to have released all Released Claims against the Released Persons. Stipulation, ¶5.1. This is a standard provision in securities class action settlements, if not class action settlements in general. *See, e.g.*, *In re Altair Nanotechnologies Sec. Litig.*, No. 14 Civ. 7828 (AT), 2016 WL 7647043, at *2 (S.D.N.Y. Jan. 22, 2016) ("All Class Members . . . shall be bound by all determinations and judgments in the Action . . . including . . . the releases . . . regardless of whether such Persons seek or obtain by any means, including, without limitation, by submitting a Proof of Claim . . . any distribution from the Settlement Fund . . . ."); *In re Acclaim Entm't, Inc. Sec. Litig.*, No. 2:03-CV-1270 (JS) (ETB), 2007 WL 9676533, at *4 (E.D.N.Y. Oct. 2, 2007) ("All Class Members shall, as of the Effective Date, be bound by the releases set forth herein whether or not they submit a valid and timely Proof of Claim and Release."). Defendants would not settle a class action unless they received a release from all class members, regardless of whether each class member decided to submit a claim. *See Wal-Mart*, 396 F.3d at 106 ("Practically speaking, '[c]lass action settlements simply will not occur if the parties cannot set definitive limits on defendants' liability.'"). Defendants are entitled to a global release under Rule 23. *See id.* ("Broad class action settlements are common since defendants and their cohorts would otherwise face nearly limitless liability from related lawsuits throughout the country.").

Third, Mr. Agay takes issue with the language at page 7 of the Proof of Claim in which the signer states, "I (We) have not submitted any other claim . . ." compared to page 2 of the Proof of Claim which states, "Separate Proofs of Claim should be submitted for each separate legal entity . . . ." Objection at 8. While Mr. Agay implies that these two provisions are not compatible, in fact, they are. The first provision simply insures that a Claimant does not submit two Proofs of Claim with respect to the same security. This insures that the same claim is not paid twice. The second provision provides that each separate legal entity that is the beneficial owner file his, her, or

its separate Proof of Claim for any securities they hold. This insures that only the beneficial owner of a security submits a claim for that security and receives payment for that security.

Next, Mr. Agay claims that the definition of Released Claims has "no requirement that it relate to the Class Offerings." Objection at 8. This is incorrect. The definition of "Released Claims" specifically states that in order for any claim to be released, it must relate "to both: (i) the purchase or acquisition ***of the securities in the Offerings***; and (ii) the acts, facts, statements or omissions that were or could have been alleged by Class Plaintiffs in the Litigation." *See* n.4, above. Mr. Agay further argues that the inclusion of "Defendants' Related Parties" renders the release overbroad. Objection at 9. However, this is standard language in securities class action settlements and, as Mr. Agay concedes, it is not "a problem if the scope of the release of the Related Parties were limited to matters relating to the Class Offerings." *Id.* Again, the definition of "Released Claims" is strictly tethered to the Offerings.

Finally, Mr. Agay complains that the Proof of Claim refers to "Released Defendants' Claims" without defining this term in the Proof of Claim. Objection at 9. The definition of "Released Defendants' Claims," however, is clearly defined in the Notice (at 6) as well as the Stipulation (¶1.24).[6] The Notice was part of the mailing, along with the Proof of Claim, mailed to potential Class Members, including Mr. Agay. Suppl. Murray Decl., ¶3.

[6] "Released Defendants' Claims" means any and all claims, rights, duties, controversies, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, losses, judgments, liabilities, allegations, arguments, and causes of action of every nature and description (including Unknown Claims), whether arising under federal, state, local, common, statutory, administrative, or foreign law, or any other law, rule or regulation, at law or in equity, that arise out of or relate in any way to the institution, prosecution or settlement of the claims against Defendants in the Litigation, except for claims relating to the enforcement of the Settlement.

IV. CONCLUSION

For each of these reasons, the Court should finally approve the Settlement and Plan of Allocation and award the requested attorneys' fees and expenses and awards to Class Plaintiffs pursuant to 15 U.S.C. §77z-1(a)(4). Further, the Objection by Mr. Agay should be overruled for all the reasons stated herein.[7]

DATED: June 4, 2020

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
LUCAS F. OLTS
ERIC I. NIEHAUS
CHRISTOPHER D. STEWART
KEVIN S. SCIARANI
KEVIN A. LAVELLE
JUAN CARLOS SANCHEZ

s/Eric I. Niehaus
ERIC I. NIEHAUS (admitted *pro hac vice*)

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
lolts@rgrdlaw.com
ericn@rgrdlaw.com
cstewart@rgrdlaw.com
ksciarani@rgrdlaw.com
klavelle@rgrdlaw.com
jsanchez@rgrdlaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
SAMUEL H. RUDMAN (SR 2564680)
58 South Service Road, Suite 200
Melville, NY 11747
Telephone: 631/367-7100
631/367-1173 (fax)
srudman@rgrdlaw.com

[7] The proposed: (i) Final Judgment; (ii) Order Approving Plan of Allocation; and (iii) Order Awarding Attorneys' Fees and Expenses and Award to Class Plaintiffs Pursuant to 15 U.S.C. §77z-1(a)(4), are submitted herewith.

GLANCY PRONGAY & MURRAY LLP
BRIAN P. MURRAY (BM 9954)
LEE ALBERT
GARTH A. SPENCER
THOMAS J. KENNEDY
230 Park Avenue, Suite 530
New York, NY 10169
Telephone: 212/682-5340
212/884-0988 (fax)
bmurray@glancylaw.com
lalbert@glancylaw.com
gspencer@glancylaw.com
tkennedy@glancylaw.com

Co-Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I Eric I. Niehaus, hereby certify that on June 4, 2020, I authorized a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such public filing to all counsel registered to receive such notice.

s/ Eric I. Niehaus

ERIC I. NIEHAUS

ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)

E-mail: ericn@rgrdlaw.com