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 This Document Relates To: Consolidated Securities Action	Master File No. 09 MD 2058 (PKC) ECF CASE

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

STEPHEN J. CIRAMI declares as follows:

1. I am the Executive Vice President and Chief Operating Officer for Garden City Group, LLC ("GCG").[1] After the Class in the above-captioned action (the "Action") was certified, the Court approved the retention of GCG as the Notice Administrator pursuant to its Order Approving Notice and Summary Notice of Pendency of Class Action entered March 1, 2012 (ECF No. 531) (the "Notice Order"). Pursuant to its December 4, 2012 Order Preliminarily Approving Proposed Settlement and Providing for Notice (ECF No. 771) (the "Preliminary Approval Order"), the Court also approved the retention of GCG as the Claims Administrator for the Settlement of the Action.[2] I make this declaration in support of Lead Plaintiffs' Motion for

[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"), in the Declaration of Stephen J. Cirami in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan (ECF No. 1001) (the "Cirami Declaration"), and in the Order Approving Distribution Plan (ECF No. 1002) (the "Distribution Order").

Approval of Recommendations Regarding Post-Distribution Issues and Modification of Distribution Order to Allow the Acceptance of Late Claims. The following statements are based on my personal knowledge as well as information provided by other experienced GCG employees working under my supervision and Co-Lead Counsel.

2. Prior to the filing of Lead Plaintiffs' Motion for Approval of Distribution Plan (the "Distribution Motion") (ECF Nos. 999 – 1001), GCG processed 719,771 Proofs of Claim that were received through November 5, 2014,[3] and determined that 519,644 were acceptable in whole or in part and 200,127 (including the 15 Disputed Claims) should be rejected because they were either ineligible, wholly deficient, or had no Recognized Claim when calculated in accordance with the Court-approved Plan of Allocation.

3. On May 4, 2015, the Court entered the Distribution Order (ECF No. 1002), which, among other things, approved GCG's recommendations as to the acceptance and rejection of Claims covered by the Distribution Motion and directed GCG to conduct the Initial Distribution. The Distribution Order further directed that:

(a) 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 that also informed the Claimant of his, her or its right to dispute the calculation (Distribution Order ¶ 3(c));

[3] Co-Lead Counsel had instructed GCG to process all Claims received on or before November 5, 2014, the date the Court of Appeals issued its decision with respect to the appeals that had been taken from the Court's approval of the Settlement and award of fees and expenses. The Distribution Order provides for deferring the processing of Claims received after November 5, 2014 up through and including five (5) business days after entry of the Order until after the Second Distribution. (*See* Distribution Order ¶ 3(j).)

(b) each Authorized Claimant receiving a distribution in the Initial Distribution shall simultaneously receive notice that, should the Claimant disagree with the calculation of his, her or its Recognized Claim or the amount received in the Initial Distribution, the Authorized Claimant had the right to dispute the calculations (Distribution Order ¶ 3(e)); and

(c) Notice of Initial Distribution of Net Settlement Fund ("Distribution Notice") shall be published once in the national editions of *The Wall Street Journal* and *The New York Times* and once in the *Financial Times*, and transmitted once over the *PR Newswire* within three weeks after the date the Initial Distribution checks are mailed informing Claimants who had submitted Claims that if they had not received notice that (i) their Claim was being recommended for complete rejection; (ii) the amount of their Claim fell below the minimum level to receive a payment; or (iii) because their Claim had been received after November 5, 2014, it was not eligible for payment in the distribution, they must contact GCG (Distribution Order ¶ 3(f)).[4]

The issues referred to in subparagraphs (a) – (c) above, *i.e.*, calculation challenges and failure to receive any communication regarding submitted Claims are referred to herein as "Post-Distribution Issues."

4. On June 26, 2015, GCG conducted the Initial Distribution. Pursuant to the Distribution Order, 380,820 checks were mailed and wire transfers on behalf of 110,819

[4] The language for the postcard notice, the check stub notice of the right to dispute calculations, and the Distribution Notice were attached as Exhibits 1 - 4 to the then proposed Order Approving Distribution Plan. (*See* ECF No. 999-1.)

Authorized Claimants were made.[5] In the Initial Distribution, $2,029,715,470.97 was distributed. The Court-approved check stub that accompanied the Initial Distribution checks advised the recipient of his, her or its right to dispute the calculation of their Recognized Claim or payment amount. (*See* Exhibits A and B hereto, respectively, for samples of the check stubs that accompanied checks to Claims Paid-in-Full and Claims that were subject to the Reserve established pursuant to the Distribution Order[6]). Claimants whose payments were issued by wire were notified by email of their right to dispute the calculation of their Recognized Claim or payment amount. Authorized Claimants whose Distribution Amounts calculated to less than the $20.00 threshold payment amount established by the Distribution Order, were sent a postcard in the form that had been approved by the Court informing them of the reason why they would not receive any payment from the proceeds of the Settlement and of their right to object to the calculation (s*ee* Exhibit C hereto).

5. Pursuant to the Distribution Order, on July 16, 2015, GCG Communications caused the Distribution Notice to be published in the national editions of *The Wall Street Journal* and *The New York Times* and in the *Financial Times*, and to be transmitted over the *PR Newswire*. (*See* Exhibit D hereto for proof of publication.)

6. In response to the Initial Distribution and publication of the Distribution Notice,

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[5] The difference between the number of Claims that were found acceptable in whole or part and the number of distributions is mainly attributable to the Claims that did not satisfy the "de minimis" requirement for payment.

[6] The Distribution Order provides that, after deducting the payments to the Claims Paid-in-Full, 90% of the remaining balance of the Net Settlement Fund will be distributed to Authorized Claimants whose Distribution Amount calculates to $200.00 or more on a *pro rata* basis based on their Distribution Amounts. *See* Distribution Order ¶ 3(a) and paragraph 81(a) of the Cirami Declaration referred to therein. The remaining 10% of the Net Settlement Fund will be held in reserve (the "Reserve") to address any contingencies that may arise. (Distribution Order ¶ 3(c).)

more than 42,000 communications were received.[7] The large majority of the communications related to administrative inquiries of the type received in connection with all settlement administrations and these were handled by GCG in the same manner as is done with other administrations. Those administrative communications are not the subject of Lead Plaintiffs' motion and they are not included in the discussion below.

7. The Distribution Order contemplated communications limited to the Post-Distribution Issues. While many of the communications did address these issues, many were general communications raising issues that went beyond the scope contemplated by the Distribution Order[8] and many were received after the deadlines established by the Order. Notwithstanding that these communications went beyond the scope of the Distribution Order and/or were untimely, GCG worked with Co-Lead Counsel to respond to each communication. The responses addressed the issues raised and, where relevant, letters enclosed a calculation chart reflecting how the Claim was calculated to determine the Recognized Claim and the application of the relevant proration factor. The Class Member or potential Class Member was advised that, if they had additional questions or disagreed with the calculations (where relevant), they had twenty-one (21) days from the date of the letter to contact GCG. The name of the designated individual at GCG to receive such communications as well as the toll-free direct dial number for that individual were set forth in the letters. In some instances, communications from Claimants were responded to by telephone calls from GCG and/or Co-Lead Counsel.

8. Additionally, as discussed below, communications were received from persons

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[7] Communications came in the form of letters, emails and telephone calls to GCG and/or Co-Lead Counsel.

[8] For example, communications were received objecting to the terms of the Settlement or questioning the award of attorneys' fees and expenses.

who had not submitted Claim Forms and now wished to do so. Those persons were advised that the Distribution Order contemplated that a motion would be made with respect to the Post-Distribution Issues and that, while under the current Distribution Order we could not now accept additional Claims,[9] if they wished to submit a letter in support of their request to be allowed to submit a late Claim, Co-Lead Counsel would present their request to the Court in connection with the Post-Distribution Issues motion.

9. As set forth below, GCG and Co-Lead Counsel believe that, for among other reasons, the size of the Reserve created as compared to the amount required to satisfy the adjustments for Post-Distribution Issues and the objective to compensate as many Class Members as possible, all Claims received or cured through August 31, 2016 ("Late Claims"), should be allowed to participate in the Settlement and receive a payment from the Net Settlement Fund to the extent that they are otherwise eligible for payment or additional payment under the Court-approved Plan of Allocation.[10]

I. CALCULATION DISPUTES

10. As noted above, the Distribution Order provided the opportunity for Authorized Claimants who believed that their Recognized Claim and/or payment amount had been incorrectly calculated to bring their dispute to the attention of GCG and Co-Lead Counsel.

11. GCG and Co-Lead Counsel received more than 300 letters relating to Recognized

[9] The Distribution Order provides that no further Proofs of Claim may be accepted after five (5) business days after entry of the Order. (Distribution Order ¶ 3(l).)

[10] For these purposes, requests to file a late claim received up through this date shall be deemed a received Late Claim.

Claims and/or payment amounts.[11] The opportunity to dispute "calculations" of Recognized Claims and/or payment amounts was intended to address situations in which there had been an error in applying the Court-approved Plan of Allocation or in the application of the proration factor to the Recognized Claim. A large majority of the communications received, however, did not assert any error in the application of the Plan of Allocation or the calculation of Recognized Claims and/or payment amounts. Rather, they reflected a misreading of the terms of the Plan of Allocation. Thus, for example, many Claimants did not dispute the calculation of their Recognized Claim and/or payment amount, but asserted that they should have been paid their Recognized Claim amount (as opposed to their actual payment amount) notwithstanding that the check stubs noted that the total of all Recognized Claims exceeded the amount available for distribution[12] and the Plan of Allocation specifically explained that:

> If the sum total of Recognized Claims of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized Claimant shall receive his, her, or its *pro rata* share of the Net Settlement Fund. The *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

Settlement Notice ¶ 91. Similarly, other Claimants objected to the fact that a "de minimis"

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[11] In some cases, communications with respect to a Claim were submitted to both GCG and Co-Lead Counsel. The numbers have been adjusted to eliminate the duplicate submissions.

[12] In accordance with the provisions of the Distribution Order, after eliminating the Recognized Claims of Claimants who would have received less than $20, GCG recalculated the proportional shares of the remaining Claimants to determine which Claimants Distribution Amount calculated to less than $200, and then recalculated the proportional shares of the remaining Claimants. *See* Distribution Order ¶ 3(a)-(c). Claimants whose Distribution Amount was less than $200, were paid the entirety of their Distribution Amount in the Initial Distribution, *i.e.*, they were Claims Paid in Full. *Id.* at ¶ 3(c). After deducting the amount required for the Claims Paid in Full, 10% of the remaining Net Settlement Fund was established as the Reserve, and the proportional shares of the balance after the Reserve was set aside of the remaining Claimants were then calculated. *Id*. Because of the calculation formula set forth in the Distribution Order, the check stub that went to Paid-in Full Claims and the one that went to Claims subject to the Reserve reflected the respective total Recognized Claims and Net Settlement Fund amounts used for purposes of calculating the proration factor applicable to each group of Claims.

payment threshold had been applied notwithstanding the fact that the Plan of Allocation specifically stated that:

> The Net Settlement Fund will be allocated among all Authorized Claimants whose prorated payment is $20.00 or greater. If the prorated payment to any Authorized Claimant calculates to less than $20.00, it will not be included in the calculation (*i.e.*, the Recognized Claim will be deemed to be zero) and no distribution will be made to that Authorized Claimant.

Settlement Notice ¶ 93.

12. As noted above, each communication was responded to by letter and/or telephone call. When a letter was sent, it explained the calculation of the Claim pursuant to the Court-approved Plan of Allocation (including references to relevant paragraphs of the Plan of Allocation and/or Distribution Order where appropriate), and the Claimant was advised that if they had further questions or still disputed the calculation of their Claim, they must contact GCG within twenty-one (21) days of the date of the letter. The letter also informed the Claimant that, if GCG did not hear from them within that time period, GCG would take that as confirmation that the Claimant had no further questions and no longer disputed the calculation of their Claim. Samples of the letters sent to Claimants disputing the calculation of their Claims are attached hereto as Exhibit E.

13. Before responding to a Claimant, a detailed review of the Claim was undertaken by GCG and, in many cases, by Co-Lead Counsel as well. Of the more than 300 letters received relating to the calculation of Claims, GCG determined that 37 Claims were rejected in error or were underpaid. Exhibit F-1 hereto lists the Claims that were determined to have been previously rejected in error and the amount that should have been paid on these Claims. Exhibit F-2 hereto lists the Claims that were determined to have been underpaid in the Initial

Distribution and the additional amount that should have been paid on these Claims.[13]

14. Of the Claimants who were sent letters explaining why their Claims had been properly calculated, 16 have stated that they wish to maintain their dispute. Additionally, of the Claimants who were contacted by telephone, one wishes to maintain his dispute. Each of the outstanding disputed Claims is discussed in Section III below.

II. LATE CURES AND ALLEGED SUBMISSIONS

15. The purpose of the Distribution Notice was to reach Claimants who had submitted Claims but did not hear from the Claims Administrator in order to identify situations where submissions to the Claims Administrator or communications from the Claims Administrator went astray. In response to the Distribution Notice as well as Claimants learning of the receipt of Initial Distribution payments from others when they had not received any, GCG and Co-Lead Counsel received communications from persons and entities submitting late cures ("Late Cures") or stating that they had timely submitted Claims ("Alleged Submissions") but had never heard from GCG.

A. Late Cures

16. Since the Initial Distribution, GCG and/or Co-Lead Counsel have received 229 communications from Claimants attempting to cure their timely submitted Claims. GCG's records reflect that Notices of Rejection of Claim had been sent to these Claimants during the Claims processing phase but no response had been received by GCG. Some communications from Claimants were accompanied by letters stating that the Notice of Rejection of Claim had not been received and/or explaining why the Claim had not been timely cured. Other Late Cures

[13] As all the relevant amounts used for purposes of calculating payment amounts were set in the Initial Distribution, GCG is able, on this motion, to list the payment amounts or additional payment amounts Claimants will receive if the Court approves GCG's recommendations.

were sent without explanation.

17. Given that the efforts undertaken throughout the administration process have been to assure that as many Class Members as possible perfect their Claims, GCG and Co-Lead Counsel believe that: (a) in furtherance of this goal; (b) in light of the practical implications of trying to determine the reason for each of these Late Cures; and (c) in the interest of judicial economy, each of these submissions should be evaluated on the basis of whether the Claim has now been cured as opposed to why it was not cured sooner. GCG and Co-Lead Counsel, therefore, recommend that, to the extent a Claim has been cured, it should be eligible to receive a payment.

18. Exhibit G-1 hereto lists Claims that were previously rejected in their entirety that have been cured since the Initial Distribution and provides the payment amount for each. Exhibit G-2 hereto lists Claims that were previously partially rejected that have been cured since the Initial Distribution and are now eligible for an additional payment and provides the additional payment amount payable on the Claim. Exhibit G-3 hereto lists Claims for which additional information was submitted following the Initial Distribution, however, the new information does not cure the Claim and the original determination as to the Claim remains unaltered.

B. <u>Alleged Submissions</u>

19. GCG and/or Co-Lead Counsel also have received communications from Claimants that assert that they timely submitted Claims but never received any notification regarding their Claims. These communications relate to 57 Alleged Submissions.

20. GCG has processed each of the Alleged Submissions and, together with Co-Lead Counsel, have reached out to these Claimants to assist them in perfecting their Claims where necessary.

21. Of the 57 Claims in this category, GCG has determined that 50 are acceptable in whole or in part and 7 should be rejected because they are either ineligible or have no Recognized Claim when calculated in accordance with the Court-approved Plan of Allocation. With respect to the Claims that are recommended for rejection, the reason for the rejection was explained to the Claimant and they do not dispute the determination. Exhibit H-1 hereto lists the Alleged Submissions that are recommended for payment and the payment amount for each and Exhibit H-2 hereto lists the Alleged Submissions that are recommended for rejection and the reason for the rejection.

III. UNRESOLVED CALCULATION DISPUTES

22. As noted above, 17 Claimants have stated that they wish to maintain their calculation disputes and have them put before the Court. These disputes relate to 22 Claims.[14] As previously stated, a large majority of the communications received subsequent to the Initial Distribution reflected a misreading of the terms of the Plan of Allocation or a general desire to obtain a larger recovery, as opposed to a dispute with the application of the Plan of Allocation and/or the Distribution Order to the Claims. This is clearly reflected with respect to the Claims that remain disputed. As set forth below and in the attached chart summarizing the disputes, only one dispute actually relates to the application of the Plan of Allocation and the Distribution Order in determining the payment amount on the Claim and, for the reasons stated, that dispute is misplaced.

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[14] The number of Claims that remain the subject of dispute exceeds the number of Claimants who are disputing the calculations, as often a single Claimant will file multiple Claims. As set forth in the Proof of Claim, separate Claim Forms are to be submitted for each separate legal entity. (*See* Claim Form, General Instructions, ¶12.) Thus, for example, if a Claimant has an individual brokerage account, is a joint tenant on another account, and has a trust or IRA account, a separate Claim should be submitted for each.

23. Exhibit I attached hereto contains a chart describing each of the unresolved calculation disputes. A separate appendix containing copies of the correspondence from the Claimants setting forth the basis of their dispute, the responsive letter from GCG where applicable,[15] the Claims and supporting documentation submitted by the disputing Claimants, and other documents related to each disputed Claim is being submitted herewith.[16] The disputes are labeled Calculation Disputes 1-17 and are categorized as follows:

Calculation Dispute Category	**Number of Claimants**
Claimants requesting Recognized Claim amount	8
Claimants requesting "out-of-pocket" loss amount	3
Claimants challenging the proration factor	1
Claimants disputing "de minimis" provision of Plan of Allocation	4
Claimant disputing ERISA Plan provision of the Plan of Allocation	1
TOTAL	**17**

24. **Category A: Claimants requesting Recognized Claim amount**. As set forth in the Calculation Dispute Chart, GCG recommends Calculation Dispute Nos. 1 through 8 for rejection because, as to seven of the eight disputes, the Claimants' only dispute to the payment

[15] As noted above, in certain instances communications were addressed by telephone. With respect to the Claims in Exhibit I, one Claimant was contacted by telephone and the exhibit contains a summary of the discussion.

[16] For privacy reasons, the documents included in the appendix have been redacted to remove all personal information such as street addresses, email addresses, telephone numbers, account numbers, Taxpayer ID, Social Security or Social Insurance Numbers, and all transaction information not related to the Claimant's transactions in Bank of America securities or Merrill Lynch securities involved in the Merger.

amount they received is that they did not receive their Recognized Claim amount and, as to the eighth dispute, it is predicated on a misunderstanding of the Distribution Order.

25. With respect to Calculation Dispute Nos. 1-6 and 8, there is no assertion by the Claimants that their Recognized Claim was incorrectly calculated under the Plan of Allocation or that the proration factor was incorrectly applied to their Recognized Claim amount. Rather, each of these Claimants wants to receive their full Recognized Claim amount. However, as noted above, the Plan of Allocation specifically provides that if the total Recognized Claims exceeds the Net Settlement Fund, *i.e.*, the amount available for distribution, Authorized Claimants will receive their *pro rata* share of the Net Settlement Fund. *See* Settlement Notice ¶ 91. Here, the total Recognized Claims exceeded $15 billion and the Net Settlement Fund was approximately $2.25 billion, thus, each Claimant's Recognized Claim was prorated.

26. With respect to Calculation Dispute No. 7, the Claimant does not assert that there were any calculation errors with respect to his Claim. Rather, the Claimant asserts that he should have received his Recognized Claim amount because Claimants whose Distribution Amount calculated to under $200 were to be paid their full Distribution Amount in the Initial Distribution. As set forth in the Calculation Dispute Chart, it appears that this Claimant has erroneously ascribed the same meaning to Recognized Claim and Distribution Amount − two defined terms with distinctly different definitions. The Recognized Claim is the total of a Claimant's Recognized Losses as calculated pursuant to the terms of the Plan of Allocation. The Distribution Amount is the proportional share of the Net Settlement Fund to which a Claimant is entitled based on how his, her or its Recognized Claim compares to the Recognized Claims of the other Authorized Claimants after eliminating Claimants whose proportionate shares would have been under $20. *See* Distribution Order ¶ 3(c) and Cirami Declaration ¶ 81(a) referred to

therein. Because this Claimant's Distribution Amount was under $200, as required by the Distribution Order, he was paid his full Distribution Amount in the Initial Distribution.

27. **Category B: Claimants requesting "out-of-pocket" loss amount.** As set forth in more detail in the Calculation Dispute Chart, GCG recommends Calculation Dispute Nos. 9-11 for rejection because these Claimants' only dispute is that the payment amount they received does not cover their "out-of-pocket" losses. These Claimants do not assert that their Recognized Claims were incorrectly calculated under the Plan of Allocation or that the proration factor was incorrectly applied to their Recognized Claim amounts. As set forth in the Settlement Notice, only losses attributable to the alleged wrongdoing are recoverable from the Settlement Fund and losses attributable to unrelated factors, such as market or industry forces have to be eliminated from the calculus.[17]

28. **Category C: Claimant disputing application of the proration factor**. As set forth in more detail in the Calculation Dispute Chart, GCG recommends Calculation Dispute No. 12 for rejection because this Claimant's challenge to the formulation of the proration factor and its application to his Claim is misplaced. As set forth in Exhibit I, the proration factor was arrived at by application of the provisions of the Distribution Order. Pursuant to those

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[17] The Settlement Notice explains that the objective of the Plan of Allocation is to equitably distribute the settlement proceeds to those Class Members who suffered economic losses as a proximate result of the alleged wrongdoing and that, in developing the Plan of Allocation, Lead Plaintiffs' damages expert calculated the amount of estimated alleged artificial inflation in the closing prices of the securities covered by the Action which purportedly was proximately caused by Defendants' alleged misrepresentations and material omissions. Settlement Notice ¶ 71. The Settlement Notice further explains that Recognized Loss Amounts, which form the basis for determining the amount of a Recognized Claim, were calculated based on the change in the level of alleged artificial inflation in the prices of BoA Securities with respect to the Section 10(b) calculation and the decline in the prices of BoA Securities proximately caused by the revelation of information that Lead Plaintiffs alleged was concealed from BoA's shareholders voting on the Merger, as adjusted for, among other things, price changes that were attributable to market or industry forces. *Id.* at ¶¶ 72-74. The Settlement Notice further explains that the calculated Recognized Claim, which would be prorated as necessary, would be the amount of an Authorized Claimant's recovery.

provisions, this Claimant's Recognized Claim of $1,488.36 put it in the category of Claims subject to the Reserve. As such, the applicable proration factor applied to his Recognized Claim was 13.461369% of his Recognized Claim. This yielded a payment amount of $200.35 which is the amount of the check that was sent to him.

29. **Category D: Claimants disputing "de minimis" provision of Plan of Allocation.** As set forth in more detail in the Calculation Dispute Chart, GCG recommends Calculation Dispute Nos. 13-16 for rejection because these Claimants dispute the "de minimis" provision contained in the Court-approved Plan of Allocation. None of these Claimants assert that the provision was incorrectly applied to their Claims, rather they express their dissatisfaction with the inclusion of the provision in the Plan of Allocation. During GCG's communications with these Claimants, it was explained to the Claimants that the provision was in the proposed plan, that Class Members had had the opportunity to present their views to the Court before the plan was approved and that the "de minimis" provision is part of the Plan of Allocation approved by the Court.

30. **Category E: Claimant disputing ERISA Plan provision.** Disputed Calculation Claim No. 17 is an Alleged Submission. After the Claim was reviewed, this Claimant was sent a letter explaining that, even if the Claim had been timely received, it would have been rejected as ineligible because the shares that were the subject of the Claim were not, under the Plan of Allocation, eligible for inclusion in an individual Claim. The documentation provided by the Claimant reflects that all of the shares he was claiming were acquired through ERISA Plans. The Settlement Notice provides that participants in an ERISA Plan should not include shares held through the ERISA Plan in their individual Claim. *See* Settlement Notice ¶ 66. The Claimant was advised that he had the right to have his Claim submitted to the Court on this

motion but that we would be recommending that it be rejected because the shares being claimed should not be included in an individual Claim; instead, they were covered by the Claim submitted by the plan(s).[18] As set forth in the Calculation Dispute Chart, while the Claimant did not assert that the shares were not acquired through ERISA Plans and he was going to contact the plan fiduciary to whom GCG referred him, he still wished to maintain his dispute. In order not to delay the Court's ability to rule with respect to all issues other than the Calculation Disputes until the time for the disputing Claimants to make further submissions, if they wish to do so, has expired, this Claim has not been included in Exhibit H-2 as an Alleged Submission being recommended for rejection.

IV. LATE CLAIMS

31. As noted above, subsequent to the Initial Distribution, GCG and Co-Lead Counsel received requests from or on behalf of persons and entities who or which wished to submit a late Claim. Additionally, many late Claims were submitted without prior communication or an explanation for the failure to timely submit.

32. In response to requests from persons and entities who or which offered reasons for the failure to submit a timely Claim,[19] it was explained that, under the terms of the current Distribution Order, additional Claims could not be accepted for processing. It was further explained that, if the person or entity wished, Co-Lead Counsel would address their request to submit a late Claim when the motion to address the Post-Distribution Issues was made and they

[18] Claims were filed by the trustees for each of the following plans: the Bank of America 401(k) Plan, the Bank of America 401(k) Plan for Legacy Companies, the Merrill Lynch & Co., Inc. 401(k) Savings & Investment Plan, and the Merrill Lynch & Co., Inc. Retirement Accumulation Plan.

[19] Among the reasons provided were that the person or entity had never received notice, or that the person or entity had learned that third-parties that were supposed to have filed a Claim on their behalf, for various reasons, had not done so.

would be afforded the opportunity to make a further submission in support of their request in response to Co-Lead Counsel's submission. Given that the current Distribution Order bars the acceptance of additional Claims, based on consultations with Co-Lead Counsel, GCG has not processed these Claims nor asked that all necessary documentation in support of a Claim be provided.

33. Since November 5, 2014 through August 31, 2016, we have received 13,524 late Claims or requests to submit late Claims of which 12,375 were received after the Initial Distribution.[20]

34. The Late Claims have not yet been processed and, thus, there is no way of knowing how many of these Claims will actually be eligible for payment. However, based on GCG's and Co-Lead Counsel's analysis of the Post-Distribution Issues that are the subject of Lead Plaintiffs' motion and the amount of the Reserve that will be needed to resolve them,[21] it is estimated, based on a preliminary review of the Late Claims, that it is likely that sufficient funds will remain so as to be able to make payments on the eligible Late Claims as to put them in near, if not complete, parity with Authorized Claimants who were paid in the Initial Distribution.

[20] The Distribution Order provides that, "to the extent funds remain in the Net Settlement Fund after the payments referred to in subparagraph 3(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." (Distribution Order ¶ 3(j).)

[21] Currently there is $218,271,405.51 in the Reserve. Additionally, GCG has completed its outreach efforts to get Class Members to cash their Initial Distribution checks and, there currently remains $47,709,370.17 in the Net Settlement Fund (net of still outstanding checks) from uncashed or returned checks. If the Court accepts all of GCG' recommendations with respect to the Post-Distribution Issues addressed in Lead Plaintiffs' motion, $5,785,132.64 will be required ($206,063.77 for calculation adjustments, $5,139,015.70 for Late Cures, and $440,053.17 for Alleged Submissions) to make payment on all of those Claims leaving in excess of $212,000,000 in the Reserve as well as $47,709,370.17 in the Net Settlement Fund.

35. GCG and Co-Lead Counsel believe that the interest of compensating as many Class Members as possible, as well as the interests of judicial efficiency, would best be served by permitting the acceptance of all Late Claims received through August 31, 2016, a cut-off date selected so that finalization of this motion could occur, to the extent these Claims are otherwise eligible to receive payment under the Court-approved Plan of Allocation. Should the Court not grant the request for modification of the Distribution Order to allow for the acceptance of Late Claims, the individual requests of Claimants would have to be put before the Court and the merits of each such request would have to be parsed and ruled upon.[22]

V. CONCLUSION

36. GCG respectfully requests that the Court enter an Order approving its administrative determinations with respect to the adjustments to Claims as set forth herein as well as the request to modify the Distribution Order so as to allow the acceptance of Late Claims as set forth herein.

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 November 14, 2016.

STEPHEN J. CIRAMI

[22] GCG has received a request from one individual who had requested exclusion from the Class to be allowed to opt back into the Class so that he can file a Late Claim. The letter from this individual setting forth the explanation for how his opt-out request was based on a misunderstanding and detailing his circumstances is attached hereto as Exhibit J.