

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

IN RE SMITH BARNEY TRANSFER
AGENT LITIGATION

No. 05 Civ. 7583 (WHP)

**LEAD PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AN
ORDER APPROVING THE FINAL DISTRIBUTION OF THE NET SETTLEMENT
FUND, PLAINTIFFS' CO-LEAD COUNSEL'S REQUEST FOR POST FINAL
SETTLEMENT HEARING FEES AND REIMBURSEMENT OF EXPENSES
RELATED TO ADMINISTERING THE SETTLEMENT**

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PRELIMINARY STATEMENT

Lead Plaintiff in the above-entitled securities class action (the “Action”), through Court-appointed Co-Lead Counsel, respectfully moves this Court for an order in the form of the accompanying proposed Class Distribution Order (the “Class Distribution Order”), providing for: (1) final approval of the claims administration process; (2) approval of the Recognized Loss of Class members, as calculated by RG/2 Claims Administration LLC (“RG/2 Claims”), who have filed properly completed claim forms no later than September 20, 2016 and those Class Members for whom RG/2 Claims or Co-Lead Counsel obtained sufficient transactional data to be able to determine a Class Members’ Recognized Loss even if that Class Member did not submit a formal claim form, disapproval of claims that have been rejected by the claims administrator and Plaintiffs’ Co-Lead Counsel, and directing final distribution of each Authorized Claimant’s Recognized Loss amount from the Net Settlement Fund and then any remaining funds or unclaimed funds to be distributed to successors of certain Smith Barney Legacy Funds; (3) approval of transfer of the settlement fund from the CRIS account, after payment of any further Court approved award of attorneys’ fees or award to RG/2 Claims, to a qualified settlement fund at a branch of Huntington National Bank by way of check payable to Smith Barney Transfer Agent Litigation Settlement Fund for purposes of making distribution, (4) allowance of Stull, Stull & Brody’s request for attorneys’ fees incurred since the final fairness hearing conducted May 31, 2016, exclusively in administration and distribution of the Settlement Fund, (5) approval of the claims administrator’s final fees and expenses for administering the settlement; (6) and such other relief as the Court may deem appropriate. Defendant does not oppose this motion.

PROCEDURAL BACKGROUND

On March 21, 2013 [Dkt. 273], this Court certified the Action to proceed as a class action on behalf of a class of investors consisting of all persons and entities, and their successors in interest, that purchased or redeemed shares of the following Smith Barney funds between September 11, 2000 and June 24, 2004 (“Class Period”) pursuant to a prospectus signed by Lewis E. Daidone and who were damaged thereby (“Smith Barney Funds”): Smith Barney Aggressive Growth Fund, Inc.; Smith Barney Allocation Series, Inc.-Allocation Growth Portfolio; Smith Barney Appreciation Fund, Inc.; Smith Barney Income Fund Series-Smith Barney Convertible Fund; Smith Barney Income Fund Series-Smith Barney Diversified Strategic Income Fund; Smith Barney Income Fund Series-Smith Barney High Income Fund; Smith Barney Income Fund Series-Smith Barney Premium Total Return Fund; Smith Barney Fundamental Value Fund, Inc.; Smith Barney World Funds, Inc.-International All Cap Growth Portfolio; Smith Barney Managed Governments Fund, Inc.; Smith Barney Investment Funds, Inc.-Peachtree Growth Fund; Smith Barney Investment Funds, Inc.-Investment Grade Bond Fund; Smith Barney Investment Funds, Inc.-Small Cap Growth Fund; Smith Barney Investment Trust-Large Capitalization Growth; Smith Barney Managed Municipals Fund, Inc.; Smith Barney Money Funds, Inc.-Cash Portfolio; and Smith Barney Equity Funds, Inc.-Social Awareness Fund (the “Class”); and

On March 21, 2013 [Dkt. 273], the Court also certified David Zagunis, Jeffrey Weber, the DVL 401(k) Plan, Bharat U. Shah, Steven W. Hall, David Zagunis, Richard W. Rees, and Renee Miller as Class Representatives.

On August 8, 2013, Lead Plaintiff David Zagunis and Named Plaintiffs Jeffrey Weber, the DVL 401(k) Plan, Bharat U. Shah, Steven W. Hall, David Zagunis, Richard W. Rees, and Renee Miller (collectively “Plaintiffs”), individually and on behalf of the Court-certified Class,

and defendant Lewis Daidone (“Daidone”) and dismissed defendants Smith Barney Fund Management LLC and Citigroup Global Markets, Inc. (the “Dismissed Citi Defendants” and collectively with Daidone and the Plaintiffs, the “Parties”) entered into the Stipulation, which, together with the Exhibits thereto and the Side Letter referred to in the Stipulation, sets forth the terms and conditions of the proposed settlement, which provides for a complete dismissal on the merits and with prejudice of the claims asserted in the Action, upon the terms and conditions set forth in the Stipulation (the “Settlement”); and

On October 7, 2013, [Dkt. 297] (the “Preliminary Approval Order”), this Court (a) preliminarily approved the Settlement; (b) ordered that notice of the proposed Settlement be provided to potential Class Members; (c) provided Class Members with the opportunity to: (i) opt out of the Class if submitted a request for exclusion from the Class in connection with the Class Notice, or (ii) object to the proposed Settlement and/or appear at the hearing regarding final approval of the Settlement (the “Settlement Hearing”); and (d) scheduled the Settlement Hearing,

On March 1, 2016, [Dkt. 332] the Court approved the Amended Plan of Allocation substantially in the form set forth in Exhibit A attached to that Order and set final settlement hearing and briefing schedule. Following extensive briefing and a hearing on May 31, 2016 (the “Fairness Hearing”), the Court on August 16, 2016 issued an Opinion and Final Judgment (the “Final Judgment”), [Dkt. 366], that approved the Settlement pursuant to Fed. R. Civ. P. 23(e). The Final Judgment finally approved the certification of the class, terms of the Stipulation and the Amended Plan of Allocation of the proceeds of the Settlement as fair, reasonable, and adequate. *See* Final Judgment at ¶ 6.

The postmark deadline for filing a Claim Form was June 25, 2014. As of September 16, 2016, RG/2 Claims has received a total of 64,563 Claims, submitted by paper, transmitted online, and through transactional data supplied by brokers. Baldwin Decl. at ¶ 5. Of the 65,563 Claims received by RG/2 Claims, 3,747 were submitted timely and 60,816 were postmarked after June 25, 2014. *Id.* The majority of the late-filed claims were the transactional data claims submitted by select brokers. *Id.* RG/2 Claims previously recommended that the Court approve the payment of late claims otherwise eligible for payment and RG/2 Claims further recommends that otherwise valid claims filed after the June 25, 2014 cut off but on or prior to September 16, 2016 be accepted. It is recommended that the recommendation be approved by the Court. Because of the difficulty of identifying and reaching class members we believe it would be unfair to disqualify claims solely because they were filed late. Of the 60,816 claims postmarked after June 25, 2014, 2,516 were otherwise valid claims with a total Recognized Loss of \$173,230.74. *Id.*

Since the submission of the previous Corrected Declaration of Melissa Baldwin, dated April 21, 2016, RG/2 Claims has continued to correspond with Claimants regarding deficient and rejected claims and processed all responses to deficiency and rejection notices received through November 24, 2016. Baldwin Decl. at ¶ 6. Adjustments have been made to the claims where Claimants have provided the necessary documentation or information needed to cure deficiencies and rectify rejections. *Id.* No Claimant has requested a hearing by the Court regarding the determination of their claim. *Id.*

As, RG/2 Claims has now completed all steps in the administration process and is prepared to distribute the Net Settlement Fund to eligible Class members. (*i.e.*, “Authorized Claimants”), Lead Plaintiff requests that this Court: (1) final approval of the claims

administration process; (2) approval of the Recognized Loss of Class members, as calculated by RG/2 Claims Administration LLC (“RG/2 Claims”), who have filed properly completed claim forms no later than September 20, 2016 and those Class Members for whom RG/2 Claims or Co-Lead Counsel obtained sufficient transactional data to be able to determine a Class Members’ Recognized Loss even if that Class Member did not submit a formal claim form, disapproval of claims that have been rejected by the claims administrator and Plaintiffs’ Co-Lead Counsel, and directing final distribution of each Authorized Claimant’s Recognized Loss amount from the Net Settlement Fund and then any remaining funds or unclaimed funds to be distributed to successors of certain Smith Barney Legacy Funds; (3) approval of transfer of the settlement fund from the CRIS account, after payment of any further Court approved award of attorneys’ fees or award to RG/2 Claims, to a qualified settlement fund at a branch of Huntington National Bank by way of check payable to Smith Barney Transfer Agent Litigation Settlement Fund for purposes of making distribution, (4) allowance of Co-Lead Counsel’s request for attorneys’ fees incurred since the final fairness hearing conducted May 31, 2016, exclusively in administration and distribution of the Settlement Fund, and (5) approval of the claims administrator’s final fees and expenses for administering the settlement

I. APPROVAL OF CLAIMS ADMINISTRATION PROCEDURES

By way of a Memo Endorsement [Dkt. 371], the Court directed Co-Lead Plaintiffs to file a motion for disbursement of the Net Settlement Fund by November 4, 2016. The Baldwin Declaration demonstrates that the proposed distribution complies with the Amended Plan of Allocation. As such, the Court should approve the claims administration procedures.

II. APPROVAL OF DISTRIBUTION OF THE NET SETTLEMENT FUND TO APPROVED CLAIMANTS

Following the Amended Plan of Allocation approved by the Court, RG/2 has completed the processing of all Proof of Claims submitted by Class members, and calculated from data obtained from sources such as brokers. RG/2 Claims recommends the acceptance of 3,190 non-deficient Claims representing a total Recognized Loss of \$371,392.13, including claims which were created from transactional data provided by select brokers. These claims are documented on Exhibit A to the Baldwin Declaration. Plaintiffs' Co-Lead Counsel are thus ready to perform the next step in the Settlement administration process—the distribution of the proceeds of the Settlement to Class Members who qualify to be paid. Because the Net Settlement Fund, even if the Court awards the required attorney's fees and expenses and fees and expenses for RG/2 as requested, is greater than the sum of all Recognized Claims, the distribution will equal 100% of each claimant's Recognized Claim under the Amended Plan of Allocation.

After distribution of the settlement fund to Class Members and upon the expiration of the any uncashed checks sent to Class Members the Class Distribution Order provides for RG/2 to distribute any undistributed Settlement Funds to the successors to the Smith Barney Legacy Funds identified in Exhibit B to the Order Approving Amended Plan of Allocation on a pro rata basis based on the amount of shortfall identified in that exhibit.

III. THE SETTLEMENT FUND SHOULD BE TRANSFERRED TO HUNTINGTON NATIONAL BANK

The Settlement Fund was previously deposited in a CRIS account pursuant Court order. No funds have come out of the settlement fund without court order. It would be impractical and likely impossible for RG/2 to coordinate the distribution of the settlement to class members or the successors to the designated Smith Barney mutual funds from the CRIS account. Typically, claims administrators such as RG/2 arrange for deposit of settlement funds into a bank as a

Qualified Settlement Fund and issue checks to the class members from a checking account established. There would be records of each check issued whether to a class member or one of the mutual funds. Co-lead counsel request that an Order be issued so that the remaining fund be transferred, through the issuance of a check in the remaining amount of the fund after payment of any awarded attorney's fees or fees and expenses to RG/2 Claims to Huntington National Bank, a bank owned by Huntington Bancshares, Inc, the thirty second largest bank holding company in the United States. RG/2 regularly works with Huntington Bank in the distribution of settlements to class members. To facilitate the transfer, there should be a check issued payable to the Smith Barney Transfer Agent Litigation Settlement Fund.

IV. APPROVAL OF FEES AND EXPENSES FOR ADMINISTERING THE SETTLEMENT

This Court has maintained jurisdiction in this action.

The Final Judgment states:

Retention of Jurisdiction- Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (i) implementation of this Settlement and any award or distribution of the Settlement Fund, including any interest earned thereon; (ii) disposition of the Settlement Fund; and (iii) all parties hereto for the purpose of construing, enforcing and administering the Stipulation.

[Dkt. 366] at ¶ 26. Thus, the Court has the power to consider the applications of Counsel and RG/2 Claims.¹

¹ Moreover, the Final Judgment stated, "This award is without prejudice to RG/2 making an application for reimbursement of fees and out of pocket expenses for work performed to complete the distribution of the proceeds of the settlement to Class members in accord with the Amended Plan of Allocation. [Dkt.366] at ¶22.

A. Approval of Co-Lead Counsel's Fees and Expenses for Administration

Stull, Stull & Brody has incurred \$24,512.50 in lodestar spending 26.5 hours since the time of the Final Settlement Hearing on May 31, 2016 in connection with administering and distributing the settlement proceeds to Class members with Recognized Claims, above and beyond the attorneys' fees and expenses awarded in the Judgment. *See* Levine Decl. at ¶ 13.

The declaration submitted by on behalf of Stull, Stull & Brody reflects the time spent subsequent to the Final Settlement Hearing solely in connection with administration of the Settlement, including coordinating with RG/2, resolving issues relating to the treatment of claims, and preparing documentation necessary to make the final distribution to Claimants. *See* Levine Decl. at ¶ 13.

It is submitted that the time that devoted to administration and distribution after the Final Hearing was reasonable and necessary to discharge the responsibilities as class and co-lead counsel. Therefore, Stull, Stull & Brody submits that the Court should allow it \$24,512.50 in attorneys' fees for its work in administering and preparatory work regarding the distribution of the Settlement Fund since May 31, 2016.

B. Approval of the Claims Administrator's Fees and Expenses

RG/2 Claims, the Court-appointed claims administrator, was retained to administer the Settlement notice and claims processing. RG/2 Claims has performed the administration of the Settlement, under the supervision of Plaintiffs' Co-Lead Counsel and has fulfilled, or will fulfill, all of the agreed upon tasks, including, but not limited to, creating databases and computer programming services and an online claims filing portal, creating lists of potential claimants for the initial mailing, arranging for the printing and initial mailing of the Notice, arranging for the publication of the Summary Notice, fulfilling all subsequent requests from nominees and beneficial owners for copies of the Notice, reviewing and analyzing claim forms, conducting

emailed, faxed and telephoned follow-ups to those nominees who were delayed in providing the names and addresses of their beneficial owners, providing telephone and email assistance to claimants, calculating the Recognized Claims for ultimate distribution of the Net Settlement Fund, preparing various reports and affidavits of mailing and publication as well as the Declaration of Melissa Baldwin in Support of Plaintiff's Motion for the Order of Distribution, arranging for the preparation and filing of income tax returns in connection with the Settlement Fund, calculating the amounts to be distributed to each Authorized Claimant, generating and mailing distribution checks to eligible Authorized Claimants, responding to claimants' questions regarding distribution payments and reissuing checks where necessary, re-mailing returned checks to forwarding addresses received or that could be locate through a search service, preparing and mailing any required IRS 1099 forms, and reconciling bank statements and outstanding checks for a period of twelve (12) months following distribution. *See* Baldwin Decl. at ¶ 14.

RG/2 has received in reimbursement of fees and out-of-pocket costs up to and including December 24, 2015 in the amount of \$433,109.95 pursuant to various orders of the Court. Baldwin Decl. at ¶ 14. RG/2 has now rendered a final bill which includes its fees for all remaining services rendered since December 24, 2015, in the total amount of \$27,972.95 fees and out of pocket expenses. *See* Baldwin Decl. at ¶ 14. The final bill includes the remainder of its unpaid out-of-pocket costs and an estimate of the expenses related to distribution, such as the costs for check stock, mailing envelopes, postage and the storage of materials relative to the case. *See* Baldwin Decl. Exhibit D. Therefore, it is requested that the Court approve payment of \$27,972.95 to RG/2 from the CRIS account for the cost of unpaid services rendered and for the balance of out of pocket expenses incurred and to be incurred.

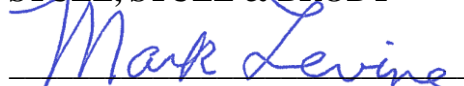
CONCLUSION

For these reasons, Lead Plaintiff and Plaintiffs' Co-Lead Counsel request that the Court enter the proposed Class Distribution order (1) final approval of the claims administration process; (2) allowance of Stull, Stull & Brody's request for attorneys' fees and reimbursement of expenses accrued since the final fairness hearing conducted May 31, 2016, exclusively in administration of the Settlement; (3) approval of the claims administrator's final fees and expenses for administering the settlement; (4) approval of the Recognized Loss of Class members who have filed properly completed timely, those who filed late proof of claims forms no later than September 30, 2016 and those Class Members for whom RG/2 obtained transactional data such that it was able to determine their Recognized Loss even if they did not submit claims, disapproval of claims that have been rejected by the claims administrator and Plaintiffs' Co-Lead Counsel, and (5) directing final distribution of each Authorized Claimant's Recognized Loss amount from the Net Settlement Fund.

Dated: November 10, 2016

Respectfully submitted,

By: **STULL, STULL & BRODY**



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