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# Credit Default Swap Settlement – Antitrust Cases Provide Recovery Opportunities for Institutional Investors

Article By:

Joel D. Rothman

Recently, class plaintiffs moved for the preliminary approval of a $1.865 billion settlement of the Credit Default Swap Antitrust Litigation. In this case the plaintiffs alleged that, in and around 2008 and 2009, a number of financial institutions conspired to prevent new entrants from successfully introducing exchange trading venues and electronic platforms that would have increased competition and transparency in the credit default swap ("CDS") market. The case is part of growing list of antitrust actions against financial institutions where mutual funds and other institutional investors are potential class members. Others include the previously filed LIBOR class action, and the ongoing litigation involving the market for U.S. Treasuries, the Foreign Exchange market and the precious metals markets. Because these cases differ from settlements arising from alleged violations of the securities laws, and provide additional avenues to recover assets, institutional investors should closely monitor the developments in this area.

The proposed settlement class in the CDS case includes "[a]ll Persons who, during the period of January 1, 2008 through September 25, 2015, purchased CDS from or sold CDS to the Dealer Defendants, a Released Party, or any purported co-conspirator, in any Covered Transaction." The settlement defines "CDS" to include "any and all types of credit default swap(s) and CDS-based products, including, without limitation, single-name CDS, CDS on corporate, sovereign and municipal reference entities, tranche CDS, basket CDS, index CDS, and CDS futures." Under the settlement agreements , a purchase or sale of CDS shall be deemed to be a "Covered Transaction" in each of the following circumstances: (i) if the purchase or sale was by or on behalf of a Person either domiciled or located (e.g., had a principal place of business) in the United States or its territories at the time of such purchase or sale; (ii) if the Person was domiciled and located outside the United States and its territories at the time of any such purchase or sale, where such purchase or sale was in United States commerce; or (iii) where such purchase or sale otherwise falls within the scope of the U.S. antitrust laws. The "Dealer Defendants" include BNP Paribas, Bank Of America Corporation, Bank of America, N. A., Barclays Bank PLC, Citibank, N.A., Citigroup Global Markets Inc., Citigroup, Inc., Credit Suisse AG, Deutsche Bank AG, Goldman, Sachs & Co., HSBC Bank PLC, HSBC Bank USA N.A., JP Morgan Chase & Co., JPMorgan Chase Bank, N.A., Morgan Stanley & Co. L.L.C., Royal Bank of Scotland N.V., Royal Bank of Scotland PLC, UBS AG, and UBS Securities LLC.

One important way that the recovery process for antitrust settlements can differ from securities law

settlements is in how settlement proceeds are distributed. While it appears based on the preliminary notice that potential settlement class members will have to file a proof of claim form in the CDS settlement, in other antitrust settlements (such as the some of the settlements arising from the Foreign Exchange litigation), class members did not file claim forms because the defendants' records were a sufficient basis for allocating the settlement funds. In those cases, institutions could receive checks without any direction as to how the funds should be allocated. Our Institutional Investor Class Action Recovery Practice monitors all of these cases, and we make sure that our clients know how to properly file claims and when to expect recoveries.



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