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HSBC, Deutsche Get $340M In Libor Settlements Approved

By **Matthew Perlman**

Law360 (April 6, 2018, 8:02 PM EDT) -- A New York federal judge granted preliminary approval on Thursday for separate settlements by HSBC Bank and Deutsche Bank AG totaling $340 million in the multidistrict litigation accusing several large financial institutions of manipulating the London Interbank Offered Rate.

U.S. District Judge Naomi Reice Buchwald issued short orders granting approval of the settlements, which were inked with a group of so-called over-the-counter investors who purchased Libor-tied products directly from the banks. HSBC agreed last month to pay the investors **$100 million** to release their claims, while Deutsche Bank cut a **$240 million** deal back in February.

Both banks also agreed to cooperate in the ongoing litigation. The settlements are similar to agreements previously reached by the same investors with Citigroup Inc. and Barclays PLC totaling $250 million.

The allegations in the long-running suit stem from a multiyear investigation into banks' alleged rigging of Libor, which tracks how much banks charge one another to borrow funds. Probes by government enforcers around the globe sparked a series of lawsuits that were eventually gathered into multidistrict litigation in New York's Southern District in August 2011, court records show.

The MDL is on remand from the Second Circuit, which reversed Judge Buchwald's 2013 ruling that the plaintiffs had not experienced an antitrust injury since the Libor-setting process was not supposed to be about competition in the first place.

The OTC investors in the instant suit, which include Yale University and Baltimore city officials, were granted **class certification** by Judge Buchwald in March for a period between 2007 and 2010 after she found disagreements among experts about alleged Libor suppression and other factors showed that their claims were based on common issues.

The same 366-page order denied class certification for a group of exchange-based investors, including investment manager Metzler Investment GmbH, which purchased instruments on the Chicago Mercantile Exchange between 2005 and 2010. The judge found those investors had failed to meet the typicality and adequacy requirements of a class action.

Berkshire Bancorp Inc. also sought to lead a class of U.S.-based lenders that performed any loan transactions with interest rates tied to Libor between Aug. 1, 2007, and May 31, 2010. But the judge denied that request in the March order as well after finding the lender would not be an adequate representative based on a previously undisclosed fee arrangement between a son of Berkshire Bank's CEO Moses Krausz and plaintiffs' firm Pomerantz LLP.

Barclays was the first bank to settle with the OTC plaintiffs, striking a **$120 million** icebreaker deal in November 2015 that was granted preliminary approval in December of the following year. Judge Buchwald said when approving the agreement that it was the product of two years of negotiations and that it offered the investors "a significant recovery," especially considering Barclays' vow to cooperate.

Citi struck a **$130 million** deal with the OTC investors in August 2017, which was approved later the same month, according to court records.

The HSBC and Deutsche settlements bring the total up to $590 million for the group of investors. The banks remaining in the case include Bank of America Corp., JPMorgan Chase & Co. and UBS AG.

Attorneys for the OTC investors and the settling banks did respond to requests for comment Friday.

The class is represented by Michael D. Hausfeld, Hilary Scherrer, Nathaniel C. Giddings, Scott A. Martin and Gary I. Smith of Hausfeld LLP and William Christopher Carmody, Arun Subramanian, Seth Ard, Geng Chen, Marc M. Seltzer, Glenn C. Bridgman, Matthew Berry, Drew D. Hansen, Barry C. Barnett, Karen Oshman and Michael Kelso of Susman Godfrey LLP.

HSBC is represented by Gregory T. Casamento, Roger B. Cowie, J. Matthew Goodin of Locke Lord LLP.

Deutsche Bank is represented by Aidan John Synnott, Moses Silverman and Elizabeth M. Sacksteder of Paul Weiss Rifkind Wharton & Garrison LLP

The case is In Re: Libor-Based Financial Instruments Antitrust Litigation, case number 1:11-md-02262, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Tom Zanki, Kat Greene, Pete Brush, Dave Simpson and Bonnie Eslinger. Editing by Alanna Weissman.
