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DOC #:
DATE FILED: 8/23/2017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re TREASURY SECURITIES AUCTION ANTITRUST LITIGATION

ORDER

15 MD 2673 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

Pending before the Court are numerous motions for the appointment of interim lead counsel for the plaintiff class. The firms that are the subject of the motions include: (1) a triumvirate of Quinn Emanuel Urquhart & Sullivan, LLP, Cohen Milstein Sellers & Toll PLLC, and Labaton Sucharow LLP (the "Quinn-Cohen-Labaton group"), which is currently serving as Temporary Co-Lead Counsel; (2) Robbins Geller Rudman & Dowd LLP, which seeks to serve as an additional co-lead counsel with the Quinn-Cohen-Labaton group; (3) Berger & Montague, P.C.; (4) Hagens Berman Sobol Shapiro LLP; (5) Korein Tillery, LLC, Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., and Scott + Scott LLP; (6) Hausfeld LLP, Kaplan Fox & Kilsheimer LLP, and Spector Roseman Kodroff & Willis, P.C.; (7) a reconfigured group consisting of Korein Tillery, LLC, Scott + Scott LLP, Hausfeld LLP, and Kaplan Fox & Kilsheimer LLP (the "Korein-Scott-Hausfeld-Kaplan group"; (8) the Nussbaum Law Group, P.C.; (9) Pomerantz LLP; and (10) Kirby McInerney LLP, to represent the interests of futures-only investors. The Court has received thirty or more briefs and other submissions concerning the lead counsel issue, totaling several hundred pages. For the reasons stated below, the Quinn-Cohen-Labaton group will be appointed interim co-lead counsel.

BACKGROUND

This case presents significant and challenging legal issues. The consolidated actions allege that more than twenty of the world's largest banks conspired to suppress competition in the multi-trillion dollar market for U.S. Treasury securities. Essentially, Plaintiffs claim that Defendants conspired to buy securities from the Treasury at artificially low prices, and conspired to sell these securities at artificially high prices. Plaintiffs claim that Defendants shared information about their customers' orders and agreed to artificially inflate their ask price on the when-issued market. At present, Plaintiffs' claims rely to a large extent on complex economic analyses.

Plaintiffs have brought claims under the Sherman Act for anti-competitive behavior and under the Commodity Exchange Act for various acts of manipulation. Certain plaintiffs also plead state law claims, including for unjust enrichment and breach of the implied covenant of good faith and fair dealing. Although the time period of the alleged conspiracy varies among the complaints, the class period generally begins in 2007 or 2008 and ends in 2012 or later.

The first complaint, State Boston Retirement System v. Bank of Nova Scotia, et al., was filed on July 23, 2015. The panel on multi-district litigation certified this case as an MDL and transferred related cases to this Court on December 16, 2015. (Dkt. No. 1) This Court issued a scheduling order appointing temporary lead counsel, held a conference on August 22, 2016, and requested motions for the appointment of interim lead counsel. (Aug. 22, 2016 Tr. (Dkt. No. 120); Dkt. No. 70)

I. APPOINTMENT OF LEAD COUNSEL

A. Legal Standard

Courts appointing interim lead class counsel "generally look to the same factors used in determining the adequacy of class counsel under Rule 23(g)(1)(A)." In re Mun. Derivatives Antitrust Litig., 252 F.R.D. 184, 186 (S.D.N.Y. 2008). Accordingly, this Court must consider "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A). The Court may also consider "any other matter pertinent to class counsel's ability to fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B). "If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class." Fed. R. Civ. P. 23(g)(2).

B. Analysis

Here, this Court concludes that the interests of the purported class are best served by appointing no more than three firms as co-lead counsel. See, e.g., In re Interest Rate Swaps Antitrust Litig., No. 16-md-2704 (S.D.N.Y.) (Dkt. No. 99 at 7) (appointing two co-lead firms and observing that a small leadership team would "produce efficient and effective representation"); In re Gold Fixing Antitrust Litig. ("Gold"), No. 14-cv-2917 (S.D.N.Y.) (Dkt. No. 19 at 4) (noting that coordinating activity among multiple firms "would prove unnecessarily costly to the . . . class"). Representation by more than three firms would likely lead to unnecessary duplication of work, hinder efficient decision making, and pose organizational and management challenges.

1. Investigation of Potential Claims

The Quinn-Cohen-Labaton group has already worked cooperatively and efficiently for the benefit of the class for a number of months. As the first-filer, Labaton developed a complaint that presents extensive expert analysis supporting the claim that sale prices were higher and the bid-ask spread wider in the when-issued market during the alleged period of the conspiracy, as opposed to thereafter. (See Cmplt. (Dkt. No. 1 in 15-cv-5794)) The Quinn-Cohen complaint – filed six weeks before the Korein-Scott complaint – likewise contain numerous analyses addressing a wide variety of Treasury securities and maturities. The Quinn-Cohen complaint considers general market trends, the competitive allocation won at auction by Defendants, and changes in price patterns over time. (See Cmplt. (Dkt. No. 1 in 15-cv-6782)) Moreover, Quinn and Labaton successfully argued the motion to transfer the actions to this Court, and also conducted the negotiations with defense counsel concerning the proposed conference agenda and case schedule that formed the basis for the August 22, 2016 court conference. (See Dkt. No. 98 at 13) The Quinn-Cohen-Labaton group has demonstrated a commitment to prioritizing this case and the Court is confident that the plaintiff class will be best served by their continued representation.

2. Experience in Handling Complex Class Action Litigation

Each component of the Quinn-Cohen-Labaton group has litigated some of the nation's most complex antitrust cases and recovered billions of dollars in damages for injured plaintiffs. (See Dkt. No. 86 at 11-12; Dkt. No. 88 at 8; Dkt. No. 98 at 16) All three firms have been appointed co-lead counsel in multiple class actions, including cases involving fraud and market manipulation in the financial sector. (See Dkt. No. 86 at 7; Dkt. No. 88 at 4-5; Dkt. No. 98 at 7; see also Dkt. No. 91 at 7) The Quinn-Cohen-Labaton group also has extensive expertise

in developing and prosecuting financial market antitrust claims in the class action context. This Court has reviewed the group's lists of former and current cases in which they served as lead counsel, and concludes that the Quinn-Cohen-Labaton group has the experience necessary to serve as interim co-lead counsel in this case.

3. Knowledge of the Applicable Law

The Quinn, Cohen, and Labaton firms each have a reputation for successfully litigating high-value cases against sophisticated adversaries. The group's knowledge of the applicable law is demonstrated by the multiple complex antitrust cases these firms have successfully litigated, in some instances through trial.

4. Resources Committed to Representing the Plaintiff Class

Given the magnitude and complexity of this case, the availability of resources is an important factor in determining what firm or firms will serve as interim lead counsel. This action has required, and will continue to require, the investment of enormous resources. Quinn and Cohen have invested nearly $1 million and hundreds of hours in analyzing the structure of the Treasuries market, and in working closely with leading experts in the field in connection with filing their complaint. (See Dkt. No. 86 at 9) Collectively, the Quinn-Cohen-Labaton group has demonstrated a commitment to investing the resources and hours necessary to effectively litigate this matter. These firms have interviewed confidential witnesses and industry insiders, worked with leading experts to parse the data, and have cooperated with the U.S. Department of Justice with respect to its ongoing investigation. (See Dkt. No. 127 at 4)

The Quinn-Cohen-Labaton group also has the personnel and physical resources necessary to effectively litigate this matter. These firms maintain large New York offices, as well as multiple offices throughout the United States and overseas. The firms have access to as

many as 250 lawyers in New York, as well as more than 800 attorneys worldwide. Quinn has an in-house Litigation Support Group and numerous analytic tools it is prepared to offer the class at no extra charge, including "predictive coding, e-mail threading, duplicate detection, and concept clustering" which will help reduce the cost of the voluminous electronic discovery that is anticipated. (See Dkt. No. 86 at 16)

Finally, the lawyers that the Quinn-Cohen-Labaton group has designated to serve in leadership positions are well-equipped by prior experience to represent the plaintiff class. Having reviewed the resumes of, and background information concerning, these attorneys, the Court notes that a number have prior prosecutorial experience, and are capable of both properly investigating the facts and successfully presenting the evidence at trial, if necessary. These lawyers have a successful track record in multidistrict litigation, and a demonstrated commitment to litigating commercial cases both at trial and on appeal. Indeed, a number of these attorneys are now serving, or have previously served as, lead or co-lead counsel in other prominent securities cases. The Court concludes that the Quinn-Cohen-Labaton group is qualified to serve as interim co-lead counsel in this matter.

II. SEPARATE REPRESENTATION FOR FUTURES-ONLY INVESTORS

Kirby McInerney LLP asks that it be appointed to represent futures-only investors. (See Dkt. No. 82 at 5) Kirby McInerney has not demonstrated that there is an actual conflict between class members that requires independent representation, however. "Absent a fundamental conflict between class members, . . . the Court is not required to divide the class." In re Gold Fixing Antitrust Litig. ("Gold"), No. 14-cv-2917 (S.D.N.Y.) (Dkt. 17 at 2). That claims brought under the Sherman Act and the Commodity Exchange Act contain separate elements does not mean that a conflict between class members exists. Such claims are often

brought together in the same case. At this stage of the litigation, any potential conflict is no more than hypothetical. Should the potential conflict become real, "the district court can certify subclasses with separate representation." Kohen v. Pac. Inv. Mgmt. Co. LLC, 571 F.3d 672, 680 (7th Cir. 2009); see In re NYSE Specialists Secs. Litig., 260 F.R.D. 55, 74 (S.D.N.Y. 2009). Separate representation for futures-only investors is not warranted at this time.

CONCLUSION

For the reasons set forth above, the motions of the Quinn-Cohen-Labaton group (Dkt. Nos. 86, 88, 98) for appointment as interim co-lead counsel are granted. Motions by other movants (Dkt. Nos. 78, 81, 85, 91-92, 94, 100, 103, 113) are denied.

Lead counsel will make a recommendation to the Court as to the membership and size of the plaintiffs' steering committee by August 31, 2017. Any party objecting to lead counsel's recommendation will file its objection by September 7, 2017. The Consolidated Amended Complaint will be filed by September 22, 2017. Any motion to dismiss will be filed by October 23, 2017.

Winston & Strawn LLP, Paul, Weiss, Rifkind, Wharton & Garrison LLP, and Simpson Thacher & Bartlett LLP will serve as liaison counsel for Defendants.

The Clerk of the Court is directed to terminate the motions (Dkt. Nos. 78, 85-86, 88, 91, 94, 98, 100, 113 and 135 in 15-cv-7688).

Dated: New York, New York
August 23, 2017

SO ORDERED.

Paul G. Gardephe
United States District Judge