

Federal Court in New York Grants Preliminary Approval of Settlement in Consolidated “Laddering” Cases

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The United States District Court for the Southern District of New York has granted preliminary approval of a proposed settlement between plaintiffs and the securities issuers and individual defendants in 298 out of 310 consolidated lawsuits against underwriters of initial public offerings, securities issuers and officers of the issuers. *In re Initial Public Offering Sec. Litig.*, 2005 WL 356961 (S.D.N.Y. Feb. 15, 2005). The court held that it was proper for proposed settlement classes to include plaintiffs who were excluded from litigation classes, that the proposed settlement fell within the range of possible approval and that it was within the court's discretion to condition preliminary approval of the settlement on adoption by the parties of a proposed bar order consistent with the settlement discharge provisions of the Private Securities Litigation Reform Act (PSLRA).

Under the proposed settlement: 1) 298 settlement classes will be certified and will be broader in scope than the classes previously certified by the court, 2) the issuers' insurers agreed to guarantee that plaintiffs will recover \$1 billion less recoveries from the underwriters, any recovery in pending antitrust litigation, and issuers' "excess compensation" claims against the underwriters, 3) the non-bankrupt issuers assigned all excess compensation claims against the underwriters to the plaintiffs, 4) the issuers' insurers agreed to pay up to \$15 million in costs for providing class notice, 5) the court will enter a proposed bar order precluding any further litigation "arising out of, relating to, or in connection with the securities involved in" the settled cases, 6) the issuers agreed to provide reasonable cooperation to the plaintiffs and 7) plaintiffs agreed to release all claims against the individual defendants without receiving any compensation from them.

The court granted preliminary approval of the settlement outlined above, but conditioned its approval on adoption of a modified bar order. Responding to objections filed by the underwriters, the court noted that "the PSLRA's settlement discharge provision both mandates a mutual bar order and limits the scope of the bar order as to contribution claims." Concluding that it had "no authority to deviate from the express wording of the statute," the court held that the proposed bar order was invalid because it was not mutual—the bar order would preclude the underwriters from seeking contribution, but the settlement expressly conferred on plaintiffs the right to pursue claims for contribution assigned by the issuers. Accordingly, the court preliminarily approved the settlement on the condition that the settling parties propose a new bar order in conformance

with the PSLRA.

For more information, please contact us at 202.719.7130.