

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE BOARD OF TRUSTEES OF THE
CITY OF BIRMINGHAM EMPLOYEES'
RETIREMENT SYSTEM, ET AL,

Case No. 09-cv-13201

Hon. Stephen J. Murphy, III

Plaintiffs,

v.

COMERICA BANK,

Defendant/Third-Party Plaintiff,

v.

MUNDER CAPITAL MANAGEMENT,

Third-Party Defendant.

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT, APPROVING FORM AND MANNER OF NOTICE AND
SETTING DATE FOR HEARING ON FINAL
APPROVAL OF SETTLEMENT**

WHEREAS, this Action involves class action lawsuits brought by the Board of Trustees of the City of Birmingham Employees' Retirement System, the Board of Trustees of the Road Commission for Oakland County Retirement System, the Board of Trustees of the Iron Workers' Local No. 25 Pension Fund, the Board of Trustees of the Iron Workers' Health Fund of Eastern Michigan, the Board of Trustees of the Roofers Local No. 149 Pension Fund, the Board of Trustees of Carpenters Pension Fund Trust-Detroit & Vicinity, and the Board of Trustees of Line Construction Benefit Fund (together, the "Named Plaintiffs"), on behalf of themselves and as representatives of a class described herein (the "Class") (collectively, "Plaintiffs") against defendant Comerica Bank ("Comerica") for claims of declaratory judgment, breach of fiduciary duty under common law, ERISA violations, violations of the Michigan Public Employee Retirement System Investment Act, breach of contract, and breach of the implied covenant of good faith and fair dealing arising out of Comerica's investment of its Securities Lending Program's assets in the Sigma Notes;¹

WHEREAS, (i) Plaintiffs, (ii) defendant/third-party plaintiff Comerica, (iii) third-party defendant Munder Capital Management ("Munder") (collectively, the "Settling Parties") reached a preliminary agreement to settle the Settled Claims and the Action and all claims asserted therein;

¹ Capitalized terms not otherwise defined in this Order shall have the same meaning as ascribed

WHEREAS, the Settling Parties executed a Stipulation of Settlement (“Stipulation”) on September __, 2013;

WHEREAS, the Stipulation, together with the exhibits thereto, set forth the terms and conditions for the proposed settlement (the “Settlement”) of the claims alleged in Plaintiffs’ Consolidated Class Action Complaint (the “Complaint”); and

WHEREAS, the Settling Parties having presented the Settlement of the Action to the Court for preliminary approval, pursuant to Rule 23 of the Federal Rules of Civil Procedure, in accordance with the Stipulation.

Now, pursuant to Plaintiffs’ Motion for Preliminary Approval and the Memorandum in Support thereof, the Court has preliminarily considered the Settlement to determine, among other things, whether the Settlement is sufficient to warrant the issuance of notice to members of the Class. Upon reviewing the Settlement, Plaintiffs’ Motion for an Order Preliminarily Approving Settlement, Approving the Form and Manner of Notice, and Setting Final Approval Hearing Date, and the supporting memorandum of law, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. The Court, for purposes of this Order, adopts all defined terms as set forth in the Stipulation unless otherwise defined herein.

to them in the Stipulation.

2. The Court hereby preliminarily certifies, for settlement purposes only, a Class pursuant to Rules 23(a) & (b)(3) of the Federal Rules of Civil Procedure consisting of:

all participants in Comerica's securities lending program that, through one or more of the investment vehicles offered or managed by Comerica or its affiliates, incurred losses relating to investments in the Sigma Notes and that have not previously released Comerica from all liability related to such losses.

3. For purposes of effectuating the Settlement, the Court appoints the Named Plaintiffs as Class Representatives and appoints Plaintiffs' Counsel (The Miller Law Firm, P.C.; Glancy Binkow & Goldberg LLP; Robbins Geller Rudman & Dowd LLP; and Sullivan, Ward, Asher & Patton, P.C.) as Class Counsel.

4. The Court preliminarily finds and concludes that the requirements of Rule 23(a) & (b)(3) of the Federal Rules of Civil Procedure are satisfied as: (a) the members of the Class are so numerous and geographically dispersed that joinder of all members of the Class is impracticable; (b) there are questions of law and fact common to the Class, and those common issues predominate over any individual issues; (c) the claims of the Named Plaintiffs are typical of the claims of the Class; (d) Named Plaintiffs and Plaintiffs' Counsel have and will continue to fairly and adequately represent and protect the interests of all members of the Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering: (i) the interests of the members of the

Class in individually controlling the prosecution of separate actions, (ii) the extent and nature of any litigation concerning the controversy already commenced by members of the Class, (iii) the desirability or undesirability of continuing the litigation of these claims in this particular forum, and (iv) the difficulties likely to be encountered in the management of the class action.

5. The Court preliminarily finds that (i) the proposed Settlement resulted from extensive arms'-length negotiations; (ii) the proposed Settlement was agreed to after Plaintiffs' Counsel had conducted extensive legal and factual research and discovery regarding the strengths and weaknesses of Named Plaintiffs' and the Class's claims; (iii) Plaintiffs' Counsel have concluded that the proposed Settlement is fair, reasonable and adequate; and (iv) the proposed Settlement is sufficiently fair, reasonable and adequate to warrant sending notice of the proposed Settlement to the Class. Having considered the essential terms of the Settlement under the recommended standards for preliminary approval of settlements as set forth in relevant jurisprudence, the Court finds that those members of the Class whose claims would be settled, compromised, dismissed and/or released pursuant to the Settlement should be given notice and an opportunity to be heard regarding final approval of the Settlement and other matters.

6. Plaintiffs' Counsel is authorized to act on behalf of the Class with respect to all acts required by, or which may be given pursuant to, the Stipulation,

or such other acts that are reasonably necessary to consummate the proposed Settlement set forth in the Stipulation.

7. The Court appoints Garden City Group as Settlement Administrator to supervise and administer the Notice, receive Requests for Exclusion and make payments to Authorized Recipients. The Settling Parties and their counsel shall not be liable for any act or omission of the Settlement Administrator.

8. The Court appoints Garden City Group as the Escrow Agent. The Escrow Agent is authorized and directed to act in accordance with the Escrow Agreement. The Settling Parties and their counsel shall not be liable for any act or omission of the Escrow Agent.

9. The Court preliminarily approves: (a) the Settlement of the Action as set forth in the Stipulation, and (ii) the Notice, subject to the right of any member of the Class to challenge the fairness, reasonableness and adequacy of the Settlement, Stipulation or the proposed Plan of Allocation, and to show cause, if any exists, why a final judgment dismissing the Action based on the Stipulation should not be ordered herein after adequate notice to the Class has been given in conformity with this Order.

10. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, a hearing (the “Final Approval Hearing”) shall be held on **12/19/2013**, at **10:00**

a.m., in the United States District Court for the Eastern District of Michigan, the Honorable Stephen J. Murphy, III presiding, to:

a. determine whether the Settlement should be approved by the Court as fair, reasonable and adequate, and in the best interests of the Class;

b. determine whether the notice method utilized by the Settling Parties:

(i) constituted the best practicable notice;

(ii) constituted notice reasonably calculated, under the circumstances, to apprise members of the Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Final Approval Hearing;

(iii) was reasonable and constituted due, adequate, and sufficient notice to all Persons entitled to notice; and

(iv) meets all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law;

c. determine whether the Judgment should be entered pursuant to the Stipulation, *inter alia*, dismissing the Action against Comerica with prejudice, extinguishing and releasing all Settled Claims as set forth in the Stipulation and barring all claims as set forth in the Stipulation;

d. determine whether the Class preliminarily certified for purposes of effectuating the Settlement should be finally certified pursuant to Rules 23(a) & (b)(3) of the Federal Rules of Civil Procedure;

e. determine whether to approve the Plan of Allocation;

f. determine whether the applications for attorneys' fees and Litigation Expenses are fair and reasonable and should be approved; and

g. rule on such other matters as the Court may deem appropriate.

11. The Court reserves the right to adjourn the Final Approval Hearing or any aspect thereof, including the consideration of the application for attorneys' fees and reimbursement of expenses, without further notice to the Class.

12. The Court reserves the right to approve the Settlement at or after the Final Approval Hearing without further notice to the Class.

13. Named Plaintiffs have presented to the Court proposed a form of Notice, appended to the Stipulation as Exhibit B. The Court finds that such Notice fairly and adequately: (a) describes the terms and effect of the Settlement and the Plan of Allocation; (b) notifies the Class that Plaintiffs' Counsel will seek attorneys' fees and reimbursement of Litigation Expenses from the Gross Settlement Fund; (c) gives notice to the Class of the time and place of the Final Approval Hearing; (d) describes how Class Members may exclude themselves

from the Class and the Settlement; and (e) describes how Class Members may object to all or any aspect of the Settlement.

14. Named Plaintiffs have proposed the following manner of communicating the Notice to members of the Class:

a. By no later than thirty (30) calendar days after the date of this Order, Plaintiffs' Counsel shall cause the Notice, with such non-substantive modifications thereto as may be agreed upon by the Settling Parties, to be (i) provided by first-class mail, postage prepaid, to the last known address of each member of the Class who can be identified by reasonable effort; (ii) placed on the dedicated website for this Action; and (iii) in the event any of the Class Member's initial mailings are returned, delivered using all reasonable secondary efforts (e.g. second mailing, telephone call and email);

b. Within ten (10) business days from the date of this Order, Comerica shall provide Plaintiffs' Counsel, in electronic format, the names and last known addresses of the members of the Class and also shall timely respond to any reasonable written requests for accessible data in Comerica's custody or control necessary to allow Plaintiffs' Counsel or the Settlement Administrator to effectuate notice and to implement, enforce or determine the administrability of a Plan of Allocation (as described and/or provided for herein); and

c. The Settling Parties shall reasonably cooperate with one another to accomplish the requirements of this paragraph, as provided in the Stipulation. The costs and expenses of preparing and disseminating the Notice shall be paid from the Gross Settlement Fund, as provided in the Stipulation.

15. The form and method of Notice specified herein is the best notice practicable, shall constitute due and sufficient notice to all Persons entitled to receive such notice, and fully satisfies the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure.

16. Class Members that wish to be excluded from the Settlement pursuant to Rule 23(e)(4) of the Federal Rules of Civil Procedure must submit to the Settlement Administrator a written Request for Exclusion. Requests for Exclusion must be received at least twenty eight (28) calendar days prior to the Final Approval Hearing to the address below. In order to be valid, each Request for Exclusion must set forth the name and address of the Person requesting exclusion, must state clearly that such Person requests exclusion from the Class and the Settlement, and must be signed by a representative of the Person requesting exclusion. Requests for Exclusion must be mailed to the Settlement Administrator at:

In re Comerica Securities Lending Litig.
Claims Administrator
c/o GCG
P.O. Box 35100

Seattle, WA 98124-1100

Class Members that request exclusion (a) will not participate in any distribution of the Net Settlement Fund and will not receive a Settlement payment; (b) will not be bound by the terms of the Settlement, including the releases, and will retain the right, if any, to file their own lawsuits concerning the Settled Claims; and (c) will not be able to object to the Settlement. Each member of the Class that does not request exclusion from the Class in a valid and timely manner will be considered a Class Member and will be bound by the Settlement.

17. Any Class Member who wishes to object to the fairness, reasonableness or adequacy of the Settlement, to any term of the Settlement, to the Plan of Allocation, or to the proposed award of attorneys' fees and expenses may file an objection. An objector must file with the Court and serve upon counsel as listed in the Notice: (a) a written notice containing the Person's name, address, telephone number and signature; (b) a statement of such Person's objection(s) to any matters before the Court specifying the ground(s) or reason(s), if any, for each such objection made, including any legal support and/or evidence that such objector wishes to bring to the Court's attention or introduce in support of such objection.

The objector or his, her or its counsel (if any) must effect service of copies of the objection on counsel as outlined in the Notice and file it with the Court at

least twenty eight (28) calendar days prior to the Final Approval Hearing. If an objector hires an attorney to represent him, her, or it for the purposes of making such objection pursuant to this paragraph, the attorney must both effect service of a notice of appearance on counsel as outlined in the Notice and file it with the Court at least twenty eight (28) calendar days prior to the Final Approval Hearing. Any member of the Class or other Person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived and shall be foreclosed from raising any objection to the Settlement, and any untimely objection shall be barred absent an Order from the Court. Any Settling Party who wishes to file a reply or response to any objection shall do so at least seven (7) calendar days prior to the Final Approval Hearing.

18. Any objector who files and serves a timely, written objection in accordance with this Order and the Notice above may also appear at the Final Approval Hearing, either in person or through qualified counsel retained at the objector's expense. Objectors or their attorneys intending to appear at the Final Approval Hearing must comply with the Local Rules of this Court and must effect service of a notice of intention to appear setting forth the name, address, and telephone number of the objector (and, if applicable, the name, address, and telephone number of the objector's attorney) on the counsel for the Settling Parties (at the addresses set out in the Notice) and file it with the Court at least twenty

eight (28) calendar days prior to the Final Approval Hearing. Any objector who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the Final Approval Hearing, except by Order of the Court for good cause shown.

19. No later than thirty five (35) calendar days prior to the Final Approval Hearing, Named Plaintiffs and Plaintiffs' Counsel shall file their motion for (a) final approval of the Settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, (b) entry of a Judgment substantially in the form annexed as Exhibit C to the Stipulation, (c) approval of the Plan of Allocation, (d) a collective award of attorneys' fees to Plaintiffs' Counsel, and (e) reimbursement of Litigation Expenses. Plaintiffs' Counsel shall also post such motion on the dedicated website for this Action as soon thereafter as possible. Subject to applicable court rules, the Named Plaintiffs shall be entitled to file a Reply Brief in support of their motion 14 days prior to the Final Approval Hearing.

20. If this Settlement is not approved by the Court, is terminated in accordance with the terms of the Stipulation or otherwise does not become Final for any reason whatsoever, the Settlement, the Stipulation, the preliminary class certification set forth in this Order and any actions taken or to be taken in connection therewith (including this Order and any Judgment entered herein), shall be terminated and shall become void and of no further force and effect, except that

any obligations or provisions relating to payment of Notice and Administration Costs, and any other obligation or provision that is expressly designated in the Stipulation to survive termination of the Settlement, shall survive termination of the Stipulation and Settlement.

21. All proceedings in the Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this Court. Pending final approval of the Settlement, Named Plaintiffs and all members of the Class are barred, enjoined, and restrained from commencing, prosecuting, continuing, or asserting in any forum, either directly or indirectly, on their own behalf or on behalf of any class or other Person, any Settled Claim against any Comerica Releasee or Munder Releasee.

22. The Stipulation, whether or not consummated, and the negotiations thereof and any related communications made, proceedings taken, or orders entered pursuant thereto, is not admissible as evidence for any purpose against any of the Settling Parties in any pending or future litigation involving any of the Settling Parties, other than an action to enforce the terms of the Stipulation or the Comerica-Munder Agreement.

23. The Court authorizes payment out of the Gross Settlement Fund of the Notice and Administration Costs as set forth in the Stipulation.

24. The passage of title and ownership of the Gross Settlement Fund to the Escrow Agent in accordance with the terms of the Stipulation is approved. No Person that is not a Class Member or counsel for Named Plaintiffs shall have any right to any portion of, or in the distribution of, the Gross Settlement Fund or Net Settlement Fund unless otherwise ordered by the Court or otherwise provided in the Stipulation.

25. This Order supercedes any prior orders regarding the subject matters herein.

26. The Court hereby retains jurisdiction over this Action to consider all further matters arising out of or connected with the Settlement reflected in the Stipulation, including enforcement of the releases provided for in the Stipulation.

27. The Court may, for good cause, extend any of the deadlines set forth in this Order without further written notice.

S/Stephen J. Murphy, III
Stephen J. Murphy, III
United States District Judge

Dated: October 9, 2013

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on October 9, 2013, by electronic and/or ordinary mail.

S/Carol Cohron
Case Manager
