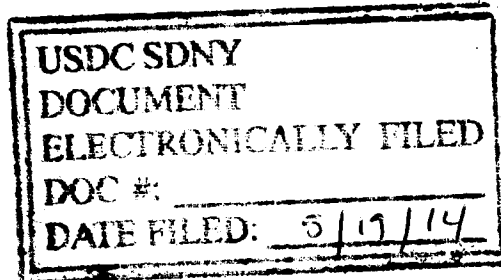


Gaudin

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____ x
In re AUSTIN CAPITAL MANAGEMENT, : No. 1:09-md-02075-TPG
LTD., SECURITIES & EMPLOYEE :
RETIREMENT INCOME SECURITY ACT : ~~PROPOSED~~ ORDER PRELIMINARILY
(ERISA) LITIGATION : APPROVING SETTLEMENT
x AND PROVIDING FOR NOTICE



WHEREAS, a multidistrict class-action litigation captioned *In re Austin Capital Management, Ltd., Securities & Employee Retirement Income Security Act (ERISA) Litigation*, No. 1:09-MD-2075-TPG (S.D.N.Y.), and all of the lawsuits constituting that litigation (the “MDL”), are pending before this Court;

WHEREAS, the parties having made application, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the settlement of the MDL, in accordance with a Settlement Agreement dated April 10, 2014 (the “Stipulation”), which, together with the Exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the MDL and for dismissal of the MDL on the merits with prejudice upon the terms and conditions set forth therein; and the Court having read and considered the Stipulation and the Exhibits annexed thereto; and

WHEREAS, all capitalized terms herein have the same meanings as set forth in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court does hereby preliminarily approve the Stipulation and the settlement set forth therein, subject to further consideration at the Settlement Hearing described below.

2. The Court hereby certifies an “Investor Class,” pursuant to Fed. R. Civ. P. 23(b)(3), preliminarily and for settlement purposes only, defined as: (a) all Persons who held an interest in the Austin Capital All Seasons Offshore Fund, the Austin Capital Safe Harbor ERISA Dedicated Fund, the Austin Capital Safe Harbor Offshore Fund, the Austin Capital Safe Harbor QP Fund, or the Austin Capital Safe Harbor Portable Alpha 1 Fund as of December 11, 2008; and (b) all fiduciaries of employee benefit plans covered by ERISA that held an interest in the Austin Capital All Seasons Offshore Fund, the Austin Capital Safe Harbor ERISA Dedicated Fund, the Austin Capital Safe Harbor Offshore Fund, the Austin Capital Safe Harbor QP Fund, or the Austin Capital Safe Harbor

Portable Alpha 1 Fund as of December 11, 2008 (but only to the extent those fiduciaries are acting on behalf of their plans). Excluded from the Investor Class are Defendants and those Persons who timely and validly request exclusion from the Investor Class pursuant to the Notice to be provided to members of the Investor Class as set forth below.

3. The Court hereby certifies a “Participant and Beneficiary Class,” pursuant to Fed. R. Civ. P. 23(b)(1), preliminarily and for settlement purposes only, defined as: all Persons (excluding Defendants) who are or were participants or beneficiaries of any employee benefit plan covered by ERISA that held an interest in the Austin Capital All Seasons Offshore Fund, the Austin Capital Safe Harbor ERISA Dedicated Fund, the Austin Capital Safe Harbor Offshore Fund, the Austin Capital Safe Harbor QP Fund, or the Austin Capital Safe Harbor Portable Alpha 1 Fund as of December 11, 2008.

4. The Court appoints the Pension Trust for Operating Engineers, Operating Engineers Pension Plan, Operating Engineers Health and Welfare Trust Fund, International Brotherhood of Teamsters Local 705 Pension Fund, John Witt, Sheet Metal Workers’ National Pension Fund, Michael J. Sullivan, Ronald Palmerick, Laborers Local 17 Pension Plan, Daniel Jackson, New Mexico Educational Retirement Board, and Texas Treasury Safekeeping Trust Company as the Class Representatives for the Investor Class, and Russell E. Burns as Class Representative of the Participant and Beneficiary Class, and appoints Robbins Geller Rudman & Dowd LLP and Hagens Berman Sobol Shapiro LLP as Co-Lead Counsel for the Classes.

5. The Court preliminarily finds that:

(a) The proposed settlement results from informed, extensive arm’s-length negotiations, including a mediation under the direction of a well-known, respected, and experienced professional mediator, Jed Melnick of JAMS;

(b) Co-Lead Counsel have concluded that the proposed settlement is fair, reasonable, and adequate; and

(c) The proposed settlement appears sufficiently fair, reasonable, and adequate to warrant providing notice to the Classes.

6. A hearing (the "Settlement Hearing") shall be held before this Court **[no less than one hundred (100) days after the filing of the Stipulation]**, on Sept. 12, 2014, at 11:00 A.m., at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007-1312, to determine whether the proposed Classes should be certified on a final basis under Rule 23; whether the proposed settlement of the MDL on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate and should be approved by the Court; whether a Judgment as provided in ¶1.12 of the Stipulation should be entered; whether the proposed Plan of Allocation should be approved; and whether to approve Co-Lead Counsel's application, if any, for an award of fees and expenses to Plaintiffs' Counsel. The Court may adjourn the Settlement Hearing without further notice to the members of the Classes.

7. The Court reserves the right to enter its Judgment approving the Stipulation and dismissing the MDL on the merits and with prejudice regardless whether it has approved the Plan of Allocation or awarded attorneys' fees and expenses.

8. The Court approves, as to form and content, the Investor Class Notice, the Investor Class Summary Notice and the Proof of Claim and Release form (the "Proof of Claim"), annexed as Exhibits A-1, A-2, and A-3 hereto and finds that the mailing and distribution of the Investor Class Notice and publishing of the Investor Class Summary Notice substantially in the manner and form set forth in this Notice Order meet the requirements of Federal Rule of Civil Procedure 23, the

Securities Act of 1933 as amended, the Securities Exchange Act of 1934 as amended, due process, and any other applicable law and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

9. The Court approves, as to form and content, the Participant and Beneficiary Class Notice and the Participant and Beneficiary Class Summary Notice, annexed as Exhibits A-4 and A-5 hereto and finds that individual notice to the Participant and Beneficiary Class is impracticable and not required by Rule 23. Therefore, the Court finds that distribution of the Participant and Beneficiary Class Notice, to be effectuated by the ERISA plans that are members of the Investor Class to their participants and beneficiaries using whatever method is most practicable, and the publication of the Participant and Beneficiary Class Summary Notice substantially in the manner and form set forth in this Notice Order, meet the requirements of Federal Rule of Civil Procedure 23, due process, and any other applicable law and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

10. Co-Lead Counsel are hereby authorized to retain the firm of Gilardi & Co. LLC (the "Claims Administrator") to supervise and administer the notice procedure and processing of claims, as more fully set forth below:

(a) The Claims Administrator shall make reasonable efforts to identify all Persons who are Investor Class Members. Not later than **[five (5) calendar days after the Court enters this Notice Order]** May 26, 2014, Defendants shall provide the Claims Administrator with reasonably accessible information from their records to assist in identifying the Persons who are Investor Class Members. Not later than fourteen (14) calendar days after entry of this Notice Order ("Notice Date"), the Claims Administrator shall cause a copy of the Investor Class Notice and the Proof of Claim, substantially in the form annexed as Exhibits A-1 and A-3 hereto, to be mailed by

first-class mail, postage prepaid, to all Investor Class Members who can be identified with reasonable effort;

(b) The Claims Administrator shall make reasonable efforts to provide all ERISA plans who are members of the Investor Class with the Participant and Beneficiary Class Notice and instruct each ERISA plan to disseminate the Participant and Beneficiary Class Notice to its participants and beneficiaries using whatever method is most practicable;

(c) Not later than ten (10) calendar days after the Notice Date, the Claims Administrator shall cause the Investor Class Summary Notice and the Participant and Beneficiary Class Summary Notice to be published once in *Investor's Business Daily* and once over the *Business Wire*;

(d) Not later than the Notice Date, the Claims Administrator shall post on its website the Stipulation and all of its Exhibits; and

(e) At least seven (7) calendar days prior to the Settlement Hearing, Co-Lead Counsel shall cause to be served on Defendants' counsel and filed with the Court proof, by affidavit or declaration, of such mailing and publishing.

11. All members of the Classes shall be bound by all determinations and judgments in the MDL concerning the settlement, whether favorable or unfavorable to the Classes.

12. Investor Class Members who wish to participate in the settlement shall complete and submit Proofs of Claim in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proofs of Claim must be postmarked no later than ninety (90) days from the Notice Date. Any Investor Class Member who does not submit a Proof of Claim within the time provided shall be barred from sharing in the distribution of the proceeds of the Settlement Fund, unless otherwise ordered by the Court, but in any event will be bound by the Judgment.

Notwithstanding the foregoing, Co-Lead Counsel may, in their discretion, accept late-submitted claims for processing by the Claims Administrator so long as distribution of the Net Settlement Fund is not materially delayed thereby.

13. Any member of the Classes may enter an appearance in the MDL, at his, her, or its own expense, individually or through counsel of his, her, or its own choice. If a member of the Investor Class or the Participant and Beneficiary Class does not enter an appearance, he, she, or it will be represented by Co-Lead Counsel.

14. Any Person falling within the definition of the Investor Class may, upon request, be excluded from the Investor Class. Any such Person must submit to the Claims Administrator a request for exclusion (“Request for Exclusion”), postmarked no later than **[twenty (20) days before the Settlement Hearing]** Aug. 22, 2014. A Request for Exclusion must be signed by the Person seeking exclusion and must contain all of the information specified in the Investor Class Notice, including: (a) the name, address, telephone number, and signature of the Person requesting exclusion; (b) whether the Person requesting exclusion held an interest in the Austin Capital All Seasons Offshore Fund, the Austin Capital Safe Harbor ERISA Dedicated Fund, the Austin Capital Safe Harbor Offshore Fund, the Austin Capital Safe Harbor QP Fund, or the Austin Capital Safe Harbor Portable Alpha 1 Fund as of December 11, 2008 or whether the Person is a fiduciary of an employee benefit plan covered by ERISA that held such interest; (c) the amount of that interest; and (d) a statement that the Person wishes to be excluded from the Investor Class. All Persons who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or the Judgment.

15. Any Person falling within the definition of the Participant and Beneficiary Class *may not* request to be excluded from the Class.

16. Any member of either the Participant and Beneficiary Class or Investor Class may appear and show cause, if he, she, or it has any reason why the proposed settlement should or should not be approved as fair, reasonable, and adequate, why a judgment should or should not be entered thereon, why the Plan of Allocation should or should not be approved, or why attorneys' fees and expenses should or should not be awarded to Plaintiffs' Counsel; provided, however, that no member of either Class or any other Person shall be heard or entitled to contest such matters unless that Person has delivered by hand or sent by first-class mail written objections and copies of any papers and briefs in support thereof such that they are received on or before **[fourteen (14) days before the Settlement Hearing]** Aug. 29, 2014, by Robbins Geller Rudman & Dowd LLP, Samuel H. Rudman, David A. Rosenfeld, 58 South Service Road, Suite 200, Melville, New York 11747; Hagens Berman Sobol Shapiro LLP, Reed R. Kathrein, 715 Hearst Avenue, Suite 202, Berkeley, California 94710; Jones Day, Richard J. Bedell, Jr., Geoffrey J. Ritts, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114, and has filed said objections, papers, and briefs with the Clerk of the United States District Court for the Southern District of New York, on or before **[fourteen (14) days before the Settlement Hearing]** Aug. 29, 2014. Any objection must include: (a) the name, address, and telephone number of the objecting Person and of his, her, or its counsel, if any; (b)(1) for members of the Investor Class, proof of an interest in the Austin Capital All Seasons Offshore Fund, the Austin Capital Safe Harbor ERISA Dedicated Fund, the Austin Capital Safe Harbor Offshore Fund, the Austin Capital Safe Harbor QP Fund, or the Austin Capital Safe Harbor Portable Alpha 1 Fund as of December 11, 2008; (b)(2) for members of the Participant and Beneficiary Class, proof of the Person's status as a participant or beneficiary of an employee

benefit fund covered by ERISA that had an interest in one of the aforementioned Austin Capital funds as of December 11, 2008; (c) a statement of all of the Person's reasons for opposing the settlement, the Plan of Allocation, and/or Co-Lead Counsel's request for an award of attorneys' fees and expenses; and (d) all documents and writings such Person desires the Court to consider. Objecting Persons are not required to attend the Settlement Hearing; however, anyone wishing to be heard orally at the Settlement Hearing in opposition to the proposed settlement, the Plan of Allocation, and/or Co-Lead Counsel's request for an award of attorneys' fees and expenses must indicate in his, her, or its written objection his, her, or its intention to appear at the Settlement Hearing and must include in the written objection copies of any exhibits such Person intends to display or introduce into evidence at the Settlement Hearing. Any member of either Class who does not make his, her, or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection (in this proceeding, on any appeal, or in any other proceeding) to the fairness or adequacy of the proposed settlement as set forth in the Stipulation, to the Plan of Allocation, or to the award of attorneys' fees and expenses to counsel for the Plaintiffs, unless otherwise ordered by the Court. Defendants' counsel and Co-Lead Counsel shall promptly furnish each other with copies of any and all objections that come into their possession.

17. All opening briefs and supporting documents in support of the settlement, the Plan of Allocation, and any application by Co-Lead Counsel for attorneys' fees and expenses shall be filed and served fourteen (14) calendar days prior to the deadline for objections in ¶16. Replies to any objections shall be filed and served seven (7) calendar days prior to the Settlement Hearing.

18. In accordance with the Stipulation, KeyCorp, on behalf of Defendants, will transfer or cause to be transferred the Settlement Amount into the Escrow Account within ten (10) business days of the Court's entry of this Notice Order.

19. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

20. Neither Defendants and their Related Parties nor the Defendants' counsel shall have any responsibility for the Plan of Allocation or any application for attorneys' fees or expenses submitted by Co-Lead Counsel, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the settlement.

21. At or after the Settlement Hearing, the Court shall determine whether the Plan of Allocation proposed by Co-Lead Counsel and any application for attorneys' fees or payment of expenses shall be approved.

22. All reasonable expenses incurred in identifying and notifying members of both Classes, as well as administering the Settlement Fund, shall be paid as set forth in the Stipulation. In the event the settlement is not approved by the Court or otherwise fails to become effective, neither Plaintiffs nor any of their counsel shall have any obligation to repay any amounts incurred or properly disbursed pursuant to ¶¶2.6 or 2.7 of the Stipulation.

23. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, nor this Notice Order, shall be construed as an admission or concession by Defendants or any Related Party of the truth of any of the allegations in the MDL, or of any liability, fault, or wrongdoing of any kind, or of the appropriateness of certifying a class other than in the specific circumstances of the Stipulation and this settlement, or that Plaintiffs, Plaintiffs'

Counsel, the members of the Classes, or any other Person has suffered any damage attributable to any Defendant or Related Party.

24. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, nor this Notice Order, shall be construed as an admission or concession by Plaintiffs or any member of the Classes of any infirmity in any of the allegations in the MDL, or of the absence of any liability, fault, or wrongdoing as alleged in the MDL, or that a class would not or could not be certified in the MDL for litigation purposes, or that Plaintiffs, the members of the Classes, or any other Person did not suffer damages as alleged in the MDL.

25. Pending final determination of whether the settlement should be approved, all members of the Classes and anyone who acts or purports to act on their behalf, are barred and enjoined from initiating, instigating, commencing, maintaining, or prosecuting, either directly or indirectly, any action or proceeding in any court or tribunal that asserts any Released Claim against any Released Person, or assisting any third party in the initiation, instigation, commencement, maintenance, or prosecution, either directly or indirectly, of any action or proceeding in any court or tribunal that asserts any Released Claim against any Released Person unless legally required to do so.

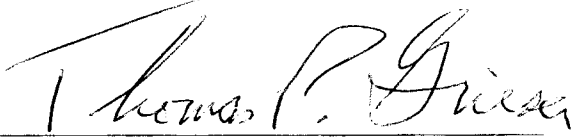
26. The Court reserves the right to adjourn the date of the Settlement Hearing without further notice to the members of the Classes, and retains jurisdiction to consider all further applications arising out of or connected with the proposed settlement. The Court may approve the settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Members of the Classes.

27. If the Stipulation and the settlement set forth therein is not approved or consummated for any reason whatsoever, the Stipulation and settlement and all proceedings had in connection

therewith shall be null and void, of no further force or effect, and without prejudice to the rights of the Settling Parties *status quo ante*, and may not be introduced as evidence or referred to in any action or proceeding by any Person.

IT IS SO ORDERED.

DATED: May 19, 2014


THE HONORABLE THOMAS P. GRIESA
UNITED STATES DISTRICT JUDGE