

Bekker v. Neuberger Berman Group 401(k) Investment Committee
c/o KCC Class Action Services
P.O. Box 43434
Providence, RI 02940-3434

NUB

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NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

A federal court has authorized this Notice. This is not a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS

You are receiving this notice (the “Notice”) because the records of the Neuberger Berman Group 401(k) Plan (the “Plan”) indicate that you have been a participant in the Plan and invested some or all of your Plan account in the Neuberger Berman Value Equity Fund (“VEF”) between June 15, 2010 and December 16, 2019. As such, your rights may be affected by a proposed Settlement of the class action litigation in the U.S. Federal Court for the Southern District of New York titled *Bekker v. Neuberger Berman Group 401(k) Plan Investment Committee*, Case No. 16-cv-06123-LTS-BCM (the “Action”).

This Notice summarizes the proposed Settlement. Capitalized terms not defined in this Notice are defined in the Settlement Agreement. The complete terms and conditions of the Settlement are described in the Settlement Agreement, which is available at www.nb401ksettlement.com, by contacting Class Counsel, Mark G. Boyko at mboyko@baileyglasser.com, by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Southern District of New York, during public service hours, provided the office is not closed to the public due to COVID-19.

DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.

What this Litigation is About

This class action litigation is brought on behalf of participants in the Plan. Arthur Bekker is the Named Plaintiff and the representative on behalf of all members of the Class in the litigation. The lawsuit was originally filed on August 2, 2016. The Class is generally defined as All Participants in the Neuberger Berman Group 401(k) Plan during the period from June 15, 2010 through December 16, 2019, who had any portion of their Plan accounts, at any time during that period, invested in the VEF.

Plaintiff originally sued Neuberger Berman Group LLC, Neuberger Berman LLC, Neuberger Berman Trust Company N.A, Marvin Schwartz, and the Neuberger Berman Group 401(k) Plan Investment Committee (the “Committee” or “Defendant”). At the time of settlement, only the Committee remained as a defendant. The complaint alleges that Defendant violated its fiduciary duties by continuing to offer the VEF in the Plan after it began charging fees to participants and after its performance weakened.

Plaintiff alleges that there were superior, less expensive investment options available that Defendant should have chosen for the Plan. Plaintiff also alleges that, once the VEF began charging fees, the payment of those fees constituted transactions prohibited by the Employee Retirement Income Security Act of 1974 (“ERISA”).

Defendant denies all allegations of wrongdoing, fault, liability or damage to the Plaintiff and the Class and denies that it engaged in any wrongdoing or violation of law or breach of fiduciary duties. Defendant maintains that it acted in the best interests of Plan participants at all times and complied with its fiduciary obligations to the Plan and its participants. Among other things, Defendant contends that the Plan fiduciaries employed a robust and thorough process for selecting, monitoring, and removing Plan investment options and for monitoring fees.

The Terms of the Settlement

To avoid the time and expense of further litigation, Plaintiff and Defendant have agreed to resolve the litigation. The Settlement is the product of extensive negotiations between the parties, who were assisted in their negotiations by a neutral private mediator. The parties have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. If the Settlement is approved by the Court, the Class will obtain the benefits of the Settlement without the further delay and uncertainty of additional litigation. The Settlement resolves all issues regarding the Plan’s inclusion of the VEF and its fees from June 15, 2010 through December 16, 2019, when the VEF was removed from the Plan.

The terms of the Settlement are set forth in the Settlement Agreement and Release dated June 10, 2020 (the “Settlement Agreement”), which is available on the Settlement Website at www.nb401ksettlement.com. Those terms are summarized below. This Notice is a summary, and in the event of any inconsistency, the Settlement Agreement controls. Nothing in the Settlement Agreement is an admission or concession on Defendant’s part of any fault or liability, nor is it an admission or concession on Plaintiff’s part that his claims lacked merit.

1. Who Is Covered by the Settlement?

Plaintiff will request that the Court certify a Class, and the Settlement will apply to, and be binding on, that Class. The Class is defined as:

All participants in the Neuberger Berman Group 401(k) Plan during the Class Period who had any portion of their Plan accounts, at any time during the Class Period, in the VEF. Excluded from the Settlement Class are: (i) Defendant Neuberger Berman Group 401(k) Plan Investment Committee and those of its current and past members who served from June 15, 2010 through December 16, 2019; (ii) non-party Marvin Schwartz; and (iii) beneficiaries, immediate family members, estates, and executors of (i) and (ii).

Plan records indicate that you may be a member of the Class because you are a current or former participant in the Plan who invested in the VEF from June 15, 2010 through December 16, 2019.

2. Relief Provided to the Class by the Settlement.

Under the proposed Settlement, Defendant will arrange for \$17,000,000 to be paid into a Settlement Fund. After payment of Settlement Administration Costs (such as the cost of distributing this Notice), Class Counsel’s attorneys’ fees and costs, and other expenses, the remaining Distributable Settlement Amount will be paid to the Class.

The Distributable Settlement Amount will be distributed to eligible Settlement Class Members pursuant to a Plan of Allocation to be approved by the Court.¹ Individual payments under the Settlement for each Settlement Class Member will be determined in accordance with that Plan of Allocation, and cannot be quantified with certainty for any individual Settlement Class Member at this time. That is in part because the exact Distributable Settlement Amount and number of Settlement Class Members are not known at this time, although a preliminary review of Plan records suggests that approximately 1,500 individuals will be included in the Class. The proposed Plan of Allocation, and other case and Settlement documents, are available at www.nb401ksettlement.com.

On a summary level, the Plan of Allocation will work as follows: The Settlement Administrator will determine the Distributable Settlement Amount to be allocated to Settlement Class Members. The Settlement Administrator will then calculate the portion of the Distributable Settlement Amount to be allocated to each Settlement Class Member, based on that Settlement Class Member's quarter-ending account balances in the VEF throughout the Class Period. Thus, a Settlement Class Member's allocation will depend on the amount he or she had invested in the VEF during the Class Period, and for what amount of time. To ensure that no Settlement Class Member receives less than \$10, any Settlement Class Member entitled to receive less than \$10 will be allocated \$10, and the remaining allocations will be adjusted proportionally. If enough assets remain in the Settlement Fund following the initial distribution, one or more subsequent distributions may be made pursuant to the Plan of Allocation.

Settlement benefits will be distributed as follows: Current Plan participants with a balance in the Plan on the Distribution Date will receive their distributions through an electronic transfer directly into their Plan accounts, which will be invested in accordance with the Participant's instructions for new contributions or, absent instruction, in the Plan's applicable default investment, which is currently the Plan's target date funds. Settlement Class Members who no longer maintain a balance in their Plan account as of the Distribution Date will receive a check automatically mailed to them at the address provided in the Settlement Administrator's records (generally, the address where this Notice has been mailed).

Actual allocation amounts will depend on the final Distributable Settlement Amount, the final number of Settlement Class Members, and the individual Settlement Class Member's aggregate quarterly VEF Plan investment balances and number of quarters in the Plan during the Class Period. It is possible that some Settlement Class Members may receive the minimum recovery of \$10.

All inquiries related to distributions should be addressed solely to the Settlement Administrator at the address listed below. In addition, if you are no longer a Plan Participant, you can contact the Administrator to request a roll-over of your distribution into a Qualified Retirement Account via email at info@nb401ksettlement.com. If you are still a Plan Participant, your distribution will be made into your Plan account automatically and you do not need to request a roll-over.

The Settlement Administrator can also be reached by mail at:

Bekker v. Neuberger Berman Group
c/o KCC Class Action Services
P.O. Box 43434
Providence, RI 02940-3434

¹ The Distributable Settlement Amount is the Settlement Amount, minus (i) the amounts approved by the Court for Class Counsel's Attorneys' Fees and Expenses and Case Contribution Awards to the Named Plaintiff, (ii) Administration Costs, (iii) Independent Fiduciary Fees and Costs, and (iv) Taxes and Tax-Related Costs.

3. **Summary of the Claims Released by the Class.** In exchange for the Settlement Amount and other terms of the Settlement, if the Settlement is approved, all members of the Class will release the “Released Claims,” which are defined in the Settlement Agreement as any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys’ fees and costs, whether under local, state or federal law, whether by statute, contract, common law or equity, whether brought in an individual, representative or any other capacity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, against the Released Parties through the date the Court enters the Final Approval Order and Judgment (including, without limitation, any Unknown Claims) arising out of or in any way related to: (a) the conduct alleged in the Complaint or the First Amended Complaint and any subsequent pleading or legal memorandum filed in the Action; (b) the selection, retention, and monitoring of the VEF as a Plan investment option; (c) the performance, fees, and any other characteristic of the VEF; and (d) the approval by the Independent Fiduciary of the Settlement.

Settlement Class Members will not have the right to bring any Released Claims against the Defendant or other Released Parties. “Released Parties” is defined in the Settlement Agreement and means (1) Defendant and, as applicable, each of its predecessors, successors, past, present and future members, fiduciaries, affiliates, agents, and representatives and each of their descendants, dependents, beneficiaries, marital community, heirs, executors, and administrators; (2) the Company (Neuberger Berman Group LLC) and each of its past, present and future parents, subsidiaries, affiliates, divisions, businesses, employee benefit plans, and related entities; (3) the Plan and each of its past, present and future trustees, fiduciaries (except the Independent Fiduciary), parties in interest, committees and committee members, employees, service providers, investment consultants, managers, administrators, actuaries, agents, representatives; (4) the VEF; and (5) each of the past, present, and future officers, directors, partners, shareholders, trustees, fiduciaries, employees, managers, insurers, attorneys, experts, agents and representatives of the entities and individuals in (1) through (4).

The entire release is set forth in the Settlement Agreement, which can be viewed online at www.nb401ksettlement.com, or requested from the Settlement Administrator or Class Counsel.

The Settlement Approval Process

The Court has granted preliminary approval of the proposed Settlement and approved this Notice. The Settlement will not take effect, and there will be no benefits distributed under the Settlement, however, if the Court does not enter a Final Approval Order and Judgment or the Settlement otherwise does not become effective. The Court will hold a Final Approval Hearing on November 19, 2020 at 10:00 a.m. The Court and the Parties anticipate the hearing will be conducted in Courtroom 17C at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan Building & United States Courthouse, 500 Pearl Street, New York, New York, but the Court may, by order filed on the public record, change the format, time or place of the hearing. Class Counsel will attend the hearing to answer any questions the Court may have. You are not required to attend the Final Approval Hearing.

The date, modality and location of the Final Approval Hearing are subject to change by order of the Court without further notice to the Class. If you would like to attend the Final Approval Hearing, you should check the Settlement Website, www.nb401ksettlement.com, or the Court’s online docket to confirm that the date, modality or location has not been changed. Prior to the Final Approval Hearing, an Independent Fiduciary will be asked to approve the Settlement and Released Claims on behalf of the Plan, as may be required by ERISA Prohibited Transaction Exemption 2003-39 or any other applicable class or statutory exemptions. The Court will be informed as to whether the Independent Fiduciary approved the

Settlement and Released Claims on behalf of the Plan prior to ruling on the application for final approval of the Settlement.

The Opportunity to Object to the Settlement

As a Settlement Class Member, you can ask the Court to deny approval of the Settlement by filing an objection. You cannot, however, ask the Court to order a settlement on different terms; the Court can approve or reject the Settlement only on the terms reached by the Parties. If the Court denies approval, the Settlement Amount will not be distributed and the litigation will resume.

Any objection to the proposed Settlement must be made in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must be served upon Class Counsel and counsel for Defendant, and submitted to the Court either by mailing to the Clerk of the Court, United States District Court for the Southern District of New York, 500 Pearl Street, Room 120, New York, NY 10007, or by filing in person at any location of the United States District Court for the Southern District of New York. The objection must be filed (actually received by the Court) on or before November 5, 2020. Each objection must contain (a) the name and case number of the Action (*Bekker v. Neuberger Berman Group 401(k) Plan Investment Committee*, Case No. 16-cv-06123-LTS-BCM); (b) the Settlement Class Member’s full name, address, telephone number, and signature; (c) a statement that the person submitting the comments or objections is a Settlement Class Member and an explanation of the basis upon which the person claims to be a Settlement Class Member; (d) all grounds for the objection, accompanied by any legal support known to the objector or his or her counsel; (e) a statement as to whether the Settlement Class Member or his or her counsel intends to personally appear and/or testify at the Final Approval Hearing; and (f) a list of any persons the objector or his or her counsel may call to testify at the Final Approval Hearing in support of the objection.

Those Settlement Class Members or their attorneys intending to appear at the Final Approval Hearing must give notice of their intention to appear setting forth, among other things, the name, address, and telephone number of the Settlement Class Member (and, if applicable, the name, address, and telephone number of that Settlement Class Member’s attorney) to Class Counsel and Defendant’s Counsel and file it with the Court Clerk on or before November 5, 2020.

If the Court approves the Settlement, you will be bound by it and will receive whatever benefits you are entitled to under its terms. You cannot exclude yourself (or “opt out”) from the Settlement. The Court has conditionally certified the Class under Federal Rule of Civil Procedure 23(b)(1), which does not permit Class Members to opt out of the Class.

Attorneys’ Fees and Case Contribution Award for Named Plaintiff

The Class is represented by Class Counsel. The attorneys for the Class are as follows:

Gregory Y. Porter
Mark G. Boyko
BAILEY & GLASSER LLP
1055 Thomas Jefferson Street NW
Suite 540
Washington, DC 20007
mboyko@baileyglasser.com
314-863-5446

Class Counsel and the Named Plaintiff have devoted many hours to investigating the claims, bringing this litigation, and pursuing it for four years. During that time, Class Counsel incurred litigation expenses in addition to the time spent by attorneys, paralegals, and others. Class Counsel also took the risk of litigation and have not been paid for their time and expenses while this litigation has been pending before the Court.

Class Counsel will file a motion with the Court seeking approval of reasonable attorneys' fees and reimbursement of the expenses they incurred in prosecuting the litigation, to be paid from the Settlement Fund. Their request will not exceed (1) attorneys' fees of one-third of the Settlement Amount, or \$5,666,667, and (2) reimbursement of expenses of up to \$60,000.

Plaintiff will also request that the Court approve a Case Contribution Award of \$20,000 for Plaintiff Bekker from the Settlement Fund.

Plaintiff's preliminary approval motion and supporting papers were filed on June 10, 2020, and the final approval motion and fee and expense motion will be filed on or before October 20, 2020 and September 21, 2020 respectively. You may review these filings at www.nb401ksettlement.com. Any award of Attorneys' Fees and Expenses and Case Contribution Awards approved by the Court, in addition to the Administration Costs, Independent Fiduciary Fees and Costs, and Taxes and Tax-Related Costs, will be paid from the Settlement Fund.

Getting More Information

You do not need to do anything to be a part of this Class or, if the Settlement is approved, to be eligible to receive your share of the Settlement Fund. If you still have a Plan account with a positive balance when Settlement Fund distributions are made, your Settlement benefits will be distributed to your Plan account. If you no longer have a Plan account, a check will be mailed to you.

You can visit the Settlement Website at www.nb401ksettlement.com, where you will find the full Settlement Agreement, the Court's order granting preliminary approval, this Notice, and other relevant documents. If there are any changes to the deadlines identified in this Notice, the date of the Final Approval Hearing, or the Settlement Agreement, those changes will be posted to the Settlement Website. You will not receive an additional mailed notice with those changes, unless separately ordered by the Court. If you cannot find the information you need on the Settlement Website, you may also call **1-866-795-5076** for more information. Please do not contact the Court or counsel for Defendant to get additional information.

Dated: September 10, 2020

By Order of the United States District Court
District Judge Laura Taylor Swain