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Societe Generale Gets French Oversight Of Libor MDL Docs

By **Kelly Knaub**

Law360, New York (July 29, 2016, 1:22 PM ET) -- A New York federal judge Thursday granted an unopposed request by French banking giant Société Générale SA to issue a request for international judicial assistance in order to not run afoul of French law when producing documents in multidistrict litigation alleging SG conspired with other banks to fix yen-denominated Libor.

U.S. District Judge Naomi Reice Buchwald also granted the bank's request to appoint Paris-based attorney Alexander Blumrosen as a commissioner — pending the approval of the French Justice Ministry — to receive its French-originated documents, pursuant to an international agreement on taking evidence abroad known as the Hague Convention. The bank's attorney Andrew Calica of Mayer Brown LLP said in a declaration accompanying the bank's motion on Thursday that producing the documents in U.S. court would otherwise be illegal under French law.

The motion came in response to renewed requests made by the two proposed classes, which include the city of Baltimore and Vienna-based asset management company FTC Capital GmbH as named plaintiffs. The documents in question are the U.S. dollar Libor documents that the bank previously provided to U.S. governmental authorities during their investigations into the alleged price-fixing scheme.

Libor, or the London Interbank Offered Rate, is a key benchmark interest rate that is used to set rates for everything from derivatives contracts to mortgage rates and credit card interest rates.

The documents, Calica said, will be produced according to the terms outlined in an amended stipulation and protective order that was entered by the court on May 12.

Attorneys for SG, FTC Capital and Baltimore did not respond to requests for comment Thursday.

In May, U.S. Magistrate Judge Henry B. Pitman **rejected a bid** by SG, HSBC and other banks to have an investor pursue documents in the U.K. via the Hague Convention in a separate proposed antitrust class action in the MDL, saying the Federal Rules of Civil Procedure take precedence.

SG and other banks, including Bank of America NA, JPMorgan Chase & Co. and Citibank NA, **filed motions to dismiss** earlier this month.

They told U.S. District Judge Naomi Reice Buchwald that several groups of investors pursuing antitrust claims in the MDL, including Baltimore, can’t satisfy the test for antitrust standing that the Second

Circuit invoked in May, when the appeals court **reversed the dismissal** of the price-fixing claims.

Judge Buchwald had eliminated the core antitrust claims from the litigation in 2013, finding that the Libor-setting process was not supposed to be about competition in the first place.

But the Second Circuit reinstated those claims, saying that the investors had adequately alleged a price-fixing scheme and did not need to allege competitive harm separately to survive a motion to dismiss.

Specifically, the Second Circuit said that the plaintiffs had sufficiently alleged both a violation of antitrust law and antitrust injury in a series of complaints alleging that the 16 banks, including SG, Barclays PLC, Credit Suisse AG and UBS AG, engaged in a wide-ranging, horizontal conspiracy to rig Libor.

Barclays, UBS and the Royal Bank of Scotland PLC all entered into criminal plea deals with U.S. authorities over Libor manipulation claims.

Financial instrument buyers in the MDL are represented by Hausfeld LLP, Susman Godfrey LLP, Lovell Stewart Halebian LLP, Kirby McInerney LLP, Lieff Cabraser Heimann & Bernstein LLP, Weinstein Kitchenoff & Asher LLC and Morris and Morris LLC, among others.

Bank defendants in the MDL are represented by Davis Polk & Wardwell LLP, Hogan Lovells, Simpson Thacher & Bartlett LLP, Sidley Austin LLP, Gibson Dunn, Mayer Brown LLP and WilmerHale, among others.

The two cases related to the motion are Mayor and City Council of Baltimore v. Bank of America Corporation et al., case number 1:11-cv-05450, and FTC Capital GmbH et al. v. Credit Suisse Group AG et al., case number 1:11-cv-02613, in the U.S. District Court for the Southern District of New York.

The MDL is In re: Libor-Based Financial Instruments Antitrust Litigation, case number 1:11-md-02262, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Evan Weinberger. Editing by Mark Lebetkin.
