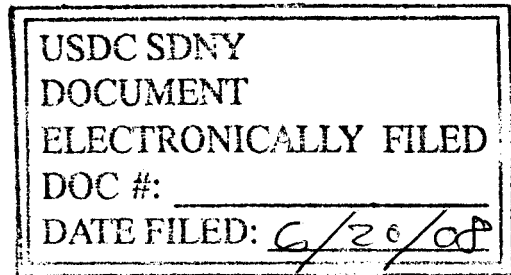


**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**



IN RE BAYER AG SECURITIES :
LITIGATION :
:
THIS DOCUMENT RELATES TO :
ALL ACTIONS :

03 CV 1546 (WHP)

**~~PROPOSED~~ ORDER WITH RESPECT TO NOTICE
AND SETTLEMENT HEARING**

WHEREAS:

Lead Plaintiff, Thomas DiNapoli, Comptroller of the State of New York, Administrative Head of the New York State and Local Retirement Systems and the sole Trustee of the New York State Common Retirement Fund (“Lead Plaintiff”), and Defendants Bayer AG, Bayer Corporation (together, “Bayer”), David Ebsworth, and Wolfgang Plischke (the “Individual Defendants”) (Bayer and the Individual Defendants are referred to herein collectively as the “Defendants”), have entered into a settlement of the claims asserted in the above-captioned action (the “Litigation”), the terms of which (the “Settlement”) are set forth in a Stipulation and Agreement of Settlement, dated as of May 23, 2008 (the “Stipulation”);

Lead Plaintiff and Defendants have moved, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an Order preliminarily approving the Settlement in accordance with the Stipulation and providing notice to the Class; and

The Court having read and considered the Stipulation, the proposed forms of notice to the Class and the proposed form of the Proof of Claim, the proposed form of Final Order and Judgment, and other exhibits annexed thereto and finding that substantial and sufficient grounds exist for entering this Order;

IT IS HEREBY ORDERED:

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

2. The Court preliminarily approves the Settlement of the Litigation on the terms set forth in the Stipulation as being sufficiently fair, just, reasonable, and adequate to warrant notice thereof to the members of the Class, pending a final approval hearing on the Settlement (the “Fairness Hearing”) to be held on September 26, 2008, at 2:00 p.m.

3. Lead Plaintiff shall cause notice of pendency of the Litigation, of the proposed Settlement, and of the Fairness hearing to be provided to members of the Class as follows:

(a) Defendants have previously provided plaintiffs with records reflecting the names and addresses of certain shareholders of Bayer AG during the Class Period. The Administrator shall use this information to identify the names and addresses of those persons and entities who may be class members (“Class List”).

(b) The Administrator shall: (i) within twenty-one (21) calendar days of this Order, cause (a) the Notice of Pendency of Settlement and Class Action, and (b) the Proof of Claim Form and Release to be sent by regular mail, postage prepaid, to those persons identified pursuant to paragraph 3(a) above; and (ii) within twenty-one (21) calendar days of the date of this Order cause the Summary Notice of Pendency and Settlement of Class Action (the “Summary Notice”), to be published one time each in the U.S. edition of The Wall Street Journal, and the global editions of The Financial Times and The International Herald Tribune; and on the PR Newswire.

4. The Court approves the form of Notice and Summary Notice (together, the “Notices”) and Proof of Claim and finds that the procedures established for publication, mailing

and distribution of such Notices substantially in the manner and form set forth above, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and constitute the best notice practicable under the circumstances.

5. Securities brokers or other nominees who purchased Bayer AG securities during the Class Period for the beneficial interest of another person or entity that is a Class member (or depositaries that held securities for any such brokers or nominees during the Class Period) shall, within twenty (20) calendar days of the date of their receipt of the Class Notice, either: (i) provide to the Administrator the name and last known address of each such person or entity (a) for whom or which the securities broker purchased or otherwise acquired ordinary shares of Bayer AG on the U.S. Over-the-Counter market or purchased ADRs of Bayer AG on the New York Stock Exchange, regardless of the person's or entity's country of residence at the time of purchase; and (b) for whom or which the securities broker purchased or otherwise acquired ordinary shares or ADRs of Bayer AG on any other stock exchange provided the person or entity was a resident or citizen of the United States at the time of purchase; and the Administrator shall forward the Class Notice to such beneficial owners; or (ii) obtain from the Administrator the requisite number of Class Notices meeting the criteria set forth above and, within seven (7) calendar days of receipt of such Class Notices, mail the Class Notice directly to such beneficial owners of the Bayer AG securities. Upon any mailing pursuant to subparagraph (ii) of this paragraph, such securities broker, depositary or nominee shall send a statement to the Administrator confirming that the mailing was made as directed.

6. Lead Plaintiff may designate an Administrator of the Settlement. The Administrator shall administer the Settlement as set forth in the Stipulation. In accordance with paragraph 23 of the Stipulation, without further order of the Court, Lead Counsel is hereby

authorized to provide for payment of the reasonable costs of notice and administration up to \$150,000 from the Notice and Administration Fund.

7. The Fairness Hearing shall be held before this Court at 2 o'clock p.m. on September 26, 2008, Courtroom 11D, U.S. Courthouse, 500 Pearl Street, New York, New York, to determine: (i) whether the Settlement should be approved as fair, reasonable and adequate, and dismissing the claims asserted by Lead Plaintiff and all Class Members in the Litigation against Defendants with prejudice; (ii) whether the Plan of Allocation is fair and reasonable and should be approved; and (iii) whether to approve Lead Counsel's application for an award of attorneys' fees and payment of costs and expenses, and Lead Plaintiff's application for reimbursement of out-of-pocket expenses.

8. All members of the Class who wish to exclude themselves from the Class shall do so by mailing, by first-class mail, a valid request for exclusion to the Administrator, at the address set forth in the Notice, which shall be timely if postmarked on or before August 20, 2008. If the Settlement is approved, any and all Class Members who do not exercise their right to be excluded from the Class shall be bound by the Judgment and deemed to have released the Released Claims against the Released Parties in this Litigation as set forth in the Stipulation.

9. Any member of the Class who did not elect to be excluded from the Class may appear at the Fairness Hearing, in person or by counsel, and be heard in support of or in opposition to the fairness, reasonableness, and adequacy of the proposed settlement or plan of allocation, and/or Lead Counsel's request for fees and expenses and Lead Plaintiffs' request for expenses, provided that any such member of the Class who wishes to appear for the purpose of objecting to the Settlement shall file with the Clerk of the Court a written statement of his or her objections and any papers in support thereof, and proof of Class membership. No Class Member

will be heard or entitled in any way to contest the approval of the proposed Settlement unless, on or before August 20, 2008, such Class Member files with the Clerk of the Court, United States District Court, Southern District of New York, a notice of intention to appear and a written statement of the basis of his or her objection, along with all other papers or briefs he wishes the Court to consider, and on or before that date, serves copies of all such papers with the Court, in person or by mail, on (a) Thomas M. Skelton, Esq., Lowey Dannenberg Cohen & Hart, P.C., 1 North Broadway, White Plains, NY 10601 and (b) James W. Ducayet, Esq., Sidley Austin LLP, One South Dearborn, Chicago, Illinois 60603. Any member of the Class who does not timely file and serve such written objection shall not be permitted to raise such objection, except for good cause shown, and any member of the Class who fails to object in the manner prescribed herein shall be deemed to have waived and shall be foreclosed from raising such objection.


10. In order to be entitled to share in the proceeds of the Settlement, if it is approved, a member of the Class must file a Proof of Claim and Release in the manner set forth in the Stipulation postmarked no later than November 25, 2008. Any member of the Class who does not file a Proof of Claim and Release shall not be entitled to share in the proceeds of this Settlement but nonetheless shall be bound by the Judgment and deemed to have released the Released Claims against the Released Parties in this Litigation as set forth in the Stipulation. The Administrator shall be responsible for processing all Proofs of Claim and Release and administering the Settlement pursuant to the procedures set forth in the Stipulation.

11. In the event the Stipulation is not approved by the Court or the approval does not become final pursuant to the terms of the Settlement, or for any reason the Settlement is terminated or does not become effective, then the Settlement shall become null and void and of no further force and effect, and shall not be referred to for any purpose whatsoever. In such

event, the Settlement and all negotiations and proceedings relating thereto shall be withdrawn without prejudice as to the rights of any and all parties thereto who shall be restored to their respective positions prior to the execution of the Settlement.

12. The Court hereby reserves the right to adjourn the Fairness Hearing without further written notice.

Dated: June 20, 2008


United States District Judge