

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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YAO-YI LIU, TUNG-HUNG HSIEH, and  
CHIU-PAO TSAI Individually and on Behalf  
of All Others Similarly Situated,  
Plaintiffs,

vs.

Civil No. 6:14-cv-06631-EAW-MJP

WILMINGTON TRUST COMPANY, and  
WILMINGTON TRUST, NATIONAL  
ASSOCIATION,  
Defendants.

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**NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED SETTLEMENT,  
MOTION FOR ATTORNEYS' FEES AND EXPENSES, AND SERVICE AWARDS**

**If you invested money in the Bio Profit Funds (BPS I, BPS II, BPS III, BPS V, or Velocity Valley & Grand) offered by Velocity Investment Group, Inc., and lost money as a result of your investment (the "Class"), you may be entitled to a payment from a class action settlement.**

*A Federal Court authorized this Notice. This is not a solicitation from a lawyer.*

- The purpose of this Notice is to inform you of the pendency of this class action lawsuit (the "Action"), the proposed settlement of the Action (the "Settlement"),<sup>1</sup> and a hearing to be held by the Court to consider: (i) whether the Settlement should be approved; (ii) whether the proposed plan for allocating the proceeds of the Settlement (the "Plan of Allocation") should be approved; (iii) Class Counsel's application for attorneys' fees and expenses, and (iv) Class Counsel's application for Service Awards to the Class Representatives (*see* pages 3 and 9 below). This Notice describes important rights you may have and what steps you must take if you wish to participate in the Settlement, wish to object, or wish to be excluded from the Settlement Class.
- If approved by the Court, the Settlement will create a \$4.35 million cash fund, plus earned interest, for the benefit of eligible Settlement Class Members, after the deduction of attorneys' fees and expenses, any Service Awards awarded by the Court, Notice and Administration Expenses, and Taxes.
- The Settlement resolves claims by Court-appointed Class Representatives Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai (collectively, "Plaintiffs" or "Class Representatives") that have been asserted on behalf of the Settlement Class (defined below) against Wilmington Trust Company and Wilmington Trust, National Association ("Wilmington" or "Defendants"). It avoids the costs and risks of continuing the litigation; pays money to eligible investors; and releases the Released Defendant Parties (defined below) from liability.

**If you are a Settlement Class Member, your legal rights will be affected by this Settlement whether you act or do not act. Please read this Notice carefully.**

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<sup>1</sup> The terms of the Settlement are in the Stipulation and Agreement of Settlement, dated August 12, 2022 (the "Stipulation"), which can be viewed at [www.strategicclaims.net/BioProfit/](http://www.strategicclaims.net/BioProfit/). All capitalized terms not defined in this Notice have the same meanings as defined in the Stipulation.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM BY JANUARY 4, 2023</b>	The <u>only</u> way to get a payment. <i>See</i> Question 8 below for details.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY DECEMBER 21, 2022</b>	Get no payment. This is the only option that, assuming your claim is timely brought, might allow you to ever bring or be part of any other lawsuit against Defendants and/or the other Released Defendant Parties concerning the Released Claims. <i>See</i> Question 11 below for details.
<b>OBJECT BY DECEMBER 21, 2022</b>	Write to the Court about why you do not like the Settlement, the Plan of Allocation, and/or Class Counsel’s Fee and Expense Application, and application for Service Awards. If you object, you will still be a member of the Settlement Class. <i>See</i> Question 16 below for details.
<b>GO TO A HEARING ON JANUARY 11, 2023, AND FILE A NOTICE OF INTENTION TO APPEAR BY DECEMBER 21, 2022</b>	Ask to speak in Court at the Settlement Hearing about the Settlement. <i>See</i> Question 20 below for details.
<b>DO NOTHING</b>	Get no payment. Give up rights.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made to all Settlement Class Members who timely submit valid Claim Forms, if the Court approves the Settlement and after any appeals are resolved. Please be patient.

## **SUMMARY OF THE NOTICE**

### **Summary of the Settlement Terms**

1. Wilmington will pay \$4.35 million (the “Settlement Fund”) to resolve the claims of Plaintiffs and the Class. The Settlement Class and each member of the Class is limited solely to the Settlement Fund for satisfaction of all Released Claims against the Released Defendant Parties.

### **Reasons for the Settlement**

2. For Plaintiffs, the principal reason for the Settlement is the guaranteed cash benefit to the Settlement Class. This benefit must be compared to the uncertainty of being able to survive contested motions for class certification; prove the allegations in the Amended Complaint, particularly with respect to Wilmington’s actual knowledge of the Bio Profit Scheme and/or Michael Wang’s breach of fiduciary duty; obtaining certification of the Class and maintaining certification through trial; the risk that the Court may grant some or all of Defendants’ likely motion for summary judgment; the uncertainty of a greater recovery after a trial and appeals; the risks of litigation, especially in complex actions like this; as well as the difficulties and delays inherent in such litigation (including any trial and appeals).

3. For Defendants, who deny all allegations of wrongdoing or liability whatsoever and deny that the Settlement Class Members were damaged, the principal reason for entering into the Settlement is to end the burden, expense, uncertainty, and risk of further litigation.

### **Statement of Attorneys' Fees and Expenses Sought**

4. Class Counsel, on behalf of itself and other Plaintiffs' Counsel, will apply to the Court for an award of attorneys' fees from the Settlement Fund in an amount not to exceed 30% of the Settlement Fund, which includes any accrued interest. Class Counsel will also apply for payment of litigation expenses incurred by Plaintiffs' Counsel in prosecuting the Action in an amount not to exceed \$700,000.00, plus accrued interest, and an application for Service Awards for the Class Representatives to compensate them for their efforts in representing the interests of the Class not to exceed \$96,000 in the aggregate. A copy of the Fee and Expense Application will be posted on [www.strategicclaims.net/BioProfit/](http://www.strategicclaims.net/BioProfit/) after it has been filed with the Court.

### **Identification of Attorneys' Representatives**

5. Class Representatives and the Settlement Class are represented by Class Counsel, Alan Rosca and Paul Scarlato, Rosca Scarlato, LLC, 161 Washington Street, Suite 1025, Conshohocken, PA 19428, (888) 998-0530, [www.rscounsel.law](http://www.rscounsel.law).

6. Further information regarding this Action, the Settlement, and this Notice may be obtained by contacting the *Bio Profit Litigation*, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson Street, Suite 205, Media, PA 19063 or [info@strategicclaims.net](mailto:info@strategicclaims.net) or visit the website at [www.strategicclaims.net/BioProfit/](http://www.strategicclaims.net/BioProfit/).

**Please Do Not Call the Court with Questions About the Settlement.**

## **BASIC INFORMATION**

### **1. Why did I get this Notice?**

7. You or someone in your family may have invested money in the Bio Profit Funds (BPS I, BPS II, BPS III, BPS V, or Velocity Valley & Grand) offered by Velocity Investment Group, Inc. and lost money as a result of your investment. **Receipt of this Notice does not mean that you are a Member of the Settlement Class or that you will be entitled to receive a payment. If you wish to be eligible for a payment, you are required to submit the Claim Form that is being distributed with this Notice. See Questions 5 and 8 below.**

8. The Court directed that this Notice be sent to Settlement Class Members because they have a right to know about the proposed Settlement of this class action lawsuit, and about all of their options, before the Court decides whether to approve the Settlement.

9. The Court in charge of the Action is the United States District Court for the Western District of New York, and the case is known as *Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai v. Wilmington Trust Company, et al.*, No. 6:14-cv-06631. The Action is assigned to the Honorable Elizabeth A. Wolford, Chief United States District Judge.

### **2. What is this case about and what has happened so far?**

10. Wilmington is a United States-based financial institution that provides wealth management and trust services. Plaintiffs allege that Wilmington served as the escrow agent and custodian for each of the BPS Funds.

11. On November 11, 2014, Plaintiffs Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai filed a class action complaint in the United States District Court for the Western District of New York alleging that Wilmington knowingly assisted in a Ponzi scheme conceived by Michael Wang through his company, Velocity Investment Group, Inc., during the time period of June 2005 and October 2013 (the "Bio Profit Scheme"). Plaintiffs' Complaint asserted claims for: 1) aiding and abetting fraud; 2) aiding and abetting

conversion; 3) aiding and abetting breach of fiduciary duty; 4) breach of fiduciary duty; and 5) gross negligence.

12. Wilmington filed a motion to dismiss Plaintiffs' Complaint, and Plaintiffs filed an Amended Complaint in response thereto on May 22, 2015.

13. Wilmington moved to dismiss the Amended Complaint and the Court denied Wilmington's motion as to Plaintiffs' aiding and abetting a breach of fiduciary duty, gross negligence and breach of fiduciary duty claims, and granted Wilmington's motion as to Plaintiffs' claims for aiding and abetting fraud and aiding and abetting conversion, thus dismissing those claims.

14. The May 22, 2015 Amended Complaint is the operative complaint in the Action.

15. On October 23, 2017, Wilmington filed an Answer denying all allegations asserted in the Amended Complaint, and filed an Amended Answer on November 14, 2017.

16. On November 15, 2017, the Parties participated in a Court-Ordered mediation pursuant to the Court's Alternative Dispute Resolution Plan. That mediation was not successful.

17. Class Representatives, through Plaintiffs' Counsel, have conducted a robust investigation relating to the claims, defenses, and underlying events and transactions that are the subject of the Action, as set forth below. The Parties have engaged in substantial discovery concerning Plaintiffs' claims and Wilmington's defenses, including exchanging tens of thousands of pages of documents, obtaining several million pages of documents from the court-appointed Receiver in the action captioned *Securities and Exchange Commission v. Yin Nan "Michael" Wang, et al.*, Case No. CV 13-7553 (C.D. Cal. Oct. 15, 2013) (the "SEC Action"), conducting depositions of each of the named Plaintiffs and Defendants' witnesses. The Class Representatives traveled from Taiwan to Buffalo, New York to have their depositions taken. The Parties have also briefed many of the issues in this matter through motion practice and mediation statements.

18. On February 13, 2020, the Parties participated in an all-day arm's length mediation before Michael D. Young of JAMS to attempt resolve the Action. The Parties were unable to resolve the Action at that time. The Parties resumed discovery.

19. On March 23, 2021, the Court issued an Order directing the Parties to participate in a settlement conference before the Honorable Mark W. Pederson. (ECF 199).

20. On April 30, 2021, the Parties participated in a settlement conference before Judge Pederson. (ECF 203). The Parties were unable to resolve the Action at that time and resumed discovery.

21. The Parties reengaged the assistance of Mr. Young to resume settlement discussions in November 2021. Based upon the Parties' discovery, investigation, and evaluation of the facts and law relating to the matters in the pleadings, and the mediation and further negotiations before Mr. Young, the Parties have agreed to settle this Action pursuant to the provisions of this Agreement.

### **3. Why is this a class action?**

22. In a class action, one or more persons or entities (in this case, Class Representatives Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai), sue on behalf of people and entities who have similar claims. Together, these people and entities are a "class," and each is a "class member." Class actions allow the adjudication of many individuals' similar claims that might be too small economically to bring as individual actions. One court resolves the issues for all class members at the same time, except for those who exclude themselves, or "opt-out," from the class.

### **4. What are the reasons for the Settlement?**

23. The Court did not finally decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement. Plaintiffs and Class Counsel believe that the claims asserted in the Action have merit. They recognize, however, the expense and length of continued proceedings needed to pursue the claims through trial and appeals, as well as the difficulties in establishing liability. For example,

Defendants have raised a number of arguments and defenses (which they would likely raise in opposition to a motion to certify a class, in their affirmative motion for summary judgment, and at trial) countering Plaintiffs' allegations, such as this case did not meet the rigorous standards for certification of a litigation class, that Plaintiffs would be unable to establish Wilmington's actual knowledge that the Bio Profit Scheme was a Ponzi scheme, or that Wilmington substantially assisted the Scheme, or that Wilmington's conduct was the cause of the Bio Profit investors' losses. In addition, Wilmington would be expected to advance an argument that the relationship between the Class Members and Velocity was that of a borrower/lender, and thus Velocity and its manager Michael Wang did not owe a fiduciary duty to the BPS investors. In the absence of a settlement, the Parties would present factual and expert testimony on each of these issues, and there is a substantial risk that the Court or jury would resolve these issues unfavorably against Plaintiffs and the Settlement Class. Class Representatives and Class Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

24. Defendants have denied and continue to deny each and every one of the claims alleged by Plaintiffs in the Action, including all claims in the Amended Complaint. Nonetheless, Defendants have concluded that continuation of the Action would be protracted and expensive and have taken into account the uncertainty and risks inherent in any litigation, especially a complex case like this Action, and believe that the Settlement is in the best interests of Defendants.

## WHO IS IN THE SETTLEMENT

### 5. How do I know if I am part of the Settlement Class?

25. The Court directed, for the purposes of the proposed Settlement, that everyone who fits the following description is a Settlement Class Member and subject to the Settlement unless they are an excluded person (*see* Question 6 below) or take steps to exclude themselves from the Settlement Class (*see* Question 11 below):

*All persons and entities who invested in the Bio Profit Scheme and were damaged thereby.*

26. You are a Settlement Class Member if you invested money in any of the Bio Profit Funds, BPS I, BPS II, BPS III, BPS V, or Velocity Valley & Grand, and lost money on your investment. You are not a Class Member if you received interest payments equal to or greater than the amount of money you invested. Check your investment records or contact your broker to see if you have any eligible investments.

### 6. Are there exceptions to being included?

27. Yes. There are some individuals and entities who are excluded from the Settlement Class by definition. Excluded from the Settlement Class are (i) Defendants; (ii) any person who was an officer or director of Defendants; (iii) any firm or entity in which any Defendants have or had a controlling interest; (iv) the parents or subsidiaries of Defendants; (v) the legal representatives, agents, heirs, beneficiaries, successors-in-interest, or assigns of any excluded person or entity, in their respective capacity as such; and (vi) any persons or entities who or which exclude themselves by submitting a valid request for exclusion that is accepted by the Court in accordance with the procedures described in Question 11 below.

## THE SETTLEMENT BENEFITS

### 7. What does the Settlement provide?

28. In exchange for the Settlement and the release of the Released Claims against the Released Defendant Parties (*see* Question 10 below), Defendants have agreed to pay \$4,350,000 (U.S.), which,

along with any interest earned, will be distributed after deduction of Court-awarded attorneys' fees and litigation expenses, Notice and Administration Expenses, Taxes, any Service Awards, and any other fees or expenses approved by the Court (the "Net Settlement Fund"), to Settlement Class Members who send in valid and timely Claim Forms that are eligible for a payment.

#### **8. How can I receive a payment?**

29. To qualify for a payment from the Net Settlement Fund, you must submit a timely and valid Claim Form. A Claim Form is included with this Notice. **Please note that for most Class Members, the Claim Form you received has been pre-populated with the information you submitted in connection with the claims process conducted by the Receiver in the SEC Action. If you agree with that information, please sign and return the pre-populated Claim Form to receive a payment from the Settlement. If you disagree with that information, please provide corrected information along with supporting documentation to prove the amount of your claim.** You may also obtain blank (not pre-populated) Claim Forms from the website of the Claims Administrator: [www.strategicclaims.net/BioProfit/](http://www.strategicclaims.net/BioProfit/). You can also request that a Claim Form be mailed to you by calling the Claims Administrator toll-free at 1-866-274-4004, or by emailing the Claims Administrator at [info@strategicclaims.net](mailto:info@strategicclaims.net).

30. Please read the instructions in the Claim Form carefully. **If you have received a pre-populated Claim Form and you agree with that information, you simply need to sign the Claim Form and return it by mail to receive a payment from the Settlement. Otherwise,** fill out the Claim Form, include all the documents the form requests, sign it, and either mail it to the Claims Administrator using the address listed in the Claim Form or submit it by email at [info@strategicclaims.net](mailto:info@strategicclaims.net). Claim Forms must be **postmarked (if mailed) or received no later than January 4, 2023. You may also file a claim online at [www.strategicclaims.net/BioProfit/](http://www.strategicclaims.net/BioProfit/).**

#### **9. When will I receive my payment?**

31. The Court will hold a Settlement Hearing on **January 11, 2023** to decide, among other things, whether to finally approve the Settlement. Even if the Court approves the Settlement, there may be appeals which can take time to resolve, perhaps more than a year. It also takes a long time for all of the Claim Forms to be accurately reviewed and processed. Please be patient.

#### **10. What am I giving up to receive a payment and by staying in the Settlement Class?**

32. If you are a Settlement Class Member and do not timely and validly exclude yourself from the Settlement Class, you will remain in the Settlement Class and that means that, upon the "Effective Date" of the Settlement, you will release all "Released Claims" against the "Released Defendant Parties."

(a) **"Released Claims"** means any and all claims and causes of action of every nature and description, whether known or Unknown (as defined below), contingent or absolute, mature or not mature, discoverable or undiscoverable, liquidated or unliquidated, accrued or not accrued, including those that are concealed or hidden, regardless of legal or equitable theory and whether arising under federal, state, common, or foreign law, that Plaintiffs or any other member of the Settlement Class (a) asserted in the Action; or (b) could have asserted in any forum that arise out of, are based upon, or relate to, directly or indirectly, in whole or in part: (1) the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Action and that relate to an investment in the Bio Profit Funds; or (2) Defendants' and/or their attorneys' defense or settlement of the Action and/or the claims alleged therein. For the avoidance of doubt, Released Claims does not include claims to enforce the Settlement.

(b) **“Released Defendant Parties”** means , collectively, (1) Wilmington; (2) each of Wilmington’s past, present, or future parents, holding companies, subsidiaries, affiliates, vendors, agents, successors, assignors, assignees, and/or assigns and their respective subsidiaries, affiliates, vendors, agents, successors, assignors, assignees, and/or assigns, and each of their respective present, former, or future officers, directors, shareholders, employees, representatives, consultants, accountants, and attorneys. Releasees will not include any retail brokers, investment advisors, broker-dealers, and/or investment advisory firms not affiliated with Wilmington, or any of its respective subsidiaries or affiliates, that may have recommended, suggested, brought to the attention of any investor, offered, and/or sold the Bio Profit Funds investments to investors.

(c) **“Unknown Claims”** means any and all Released Claims that Class Representatives or any other Settlement Class Member do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendant Parties, and any and all Released Defendants’ Claims that Defendants do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Plaintiff Parties, which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement, including the decision to object to the terms of the Settlement or to exclude himself, herself, or itself from the Settlement Class. With respect to any and all Released Claims and Released Defendants’ Claims, the Parties stipulate and agree that, upon the Effective Date, Class Representatives and Defendants shall expressly, and each Settlement Class Member shall be deemed to have, and by operation of the Judgment or Alternative Judgment shall have, to the fullest extent permitted by law, expressly waived and relinquished any and all provisions, rights and benefits conferred by any law of any state or territory of the United States or foreign law, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Class Representatives, all Settlement Class Members, or Defendants may hereafter discover facts, legal theories, or authorities in addition to or different from those which any of them now knows, suspects, or believes to be true with respect to the Action, the Released Claims, or the Released Defendant’s Claims, but Class Representatives and Defendants shall expressly, fully, finally, and forever settle and release, and each Settlement Class Member shall be deemed to have fully, finally, and forever settled and released, and upon the Effective Date and by operation of the Judgment or Alternative Judgment shall have settled and released, fully, finally, and forever, any and all Released Claims and Released Defendant’s Claims as applicable, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. Class Representatives and Defendants acknowledge, and all Settlement Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims and Released Defendants’ Claims was separately bargained for and was a material element of the Settlement.

33. The “Effective Date” will occur when an Order entered by the Court approving the Settlement becomes Final and is not subject to appeal. If you remain a member of the Settlement Class, all of the Court’s orders, whether favorable or unfavorable, will apply to you and legally bind you.

34. Upon the “Effective Date,” Defendants will also provide a release of any claims against Class Representatives and the Settlement Class arising out of or related to the institution, prosecution, or settlement of the claims in the Action.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT CLASS**

35. If you want to keep any right you may have to sue or continue to sue Defendants and the other Released Defendant Parties on your own concerning the Released Claims, then you must take steps to remove yourself from the Settlement Class. This is called excluding yourself or “opting out.” **Please**

**note:** If you decide to exclude yourself, there is a risk that any lawsuit you may file to pursue claims alleged in the Action may be dismissed, **including because the suit is not filed within the applicable time periods required for filing suit.**

**11. How do I exclude myself from the Settlement Class?**

36. To exclude yourself from the Settlement Class, you must mail a signed letter stating that you request to be “excluded from the Settlement Class in *Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai v. Wilmington Trust Company, et al.*, No. 6:14-cv-06631 (W.D.N.Y.)” You cannot exclude yourself by telephone or e-mail. Each request for exclusion must also: (i) state the name, address, e-mail, and telephone number of the person or entity requesting exclusion; (ii) state the amount of each investment in the Bio Profit Funds, as well as the dates and prices of each such investment; (iii) state the amount received as interest payments for each investment in the Bio Profit Funds, as well as the dates and prices of each interest payment; (iv) state the amount of each sale of an investment in the Bio Profit Funds, as well as the dates and prices of each such sale; and (v) be signed by the Person requesting exclusion or an authorized representative. Alternatively, you can submit copies of documentation showing this information. Depending on the size of your holdings, you may be required to submit such documentation. A request for exclusion must be submitted so that it is **received no later than December 21, 2022** to: *Bio Profit Litigation, EXCLUSIONS, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson Street, Suite 205, Media, PA 19063.*

37. This information is needed to determine whether you are a member of the Settlement Class and the amount of your potential losses. Your exclusion request must comply with these requirements in order to be valid. If you ask to be excluded, do not submit a Claim Form because you cannot receive any payment from the Net Settlement Fund. Also, you cannot object to the Settlement because you will not be a Settlement Class Member. However, if you submit a valid exclusion request, you will not be legally bound by anything that happens in the Action, and you may be able to sue (or continue to sue) Defendants and the other Released Defendant Parties in the future.

**12. If I do not exclude myself, can I sue Defendant and the other Released Defendant Parties for the same thing later?**

38. No. Unless you properly exclude yourself, you will give up any rights to sue Defendants and the other Released Defendant Parties for any and all Released Claims. If you have a pending lawsuit against any of the Released Defendant Parties, **speak to your lawyer in that case immediately.** You must exclude yourself from this Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is **December 21, 2022.**

**13. If I exclude myself, can I get money from the proposed Settlement?**

39. No, only Settlement Class Members are eligible to recover money from the Settlement.

**THE LAWYERS REPRESENTING YOU**

**14. Do I have a lawyer in this case?**

40. Rosca Scarlato, LLC is Class Counsel in the Action and represents all Settlement Class Members. You will not be separately charged for these lawyers. The Court will determine the amount of attorneys’ fees and expenses, which will be paid from the Settlement Fund. If you want to be represented by your own lawyer, you may hire one at your own expense.



## 15. How will the lawyers be paid?

41. Class Counsel have been prosecuting the Action, along with other Plaintiffs' Counsel, on a contingent basis and have not been paid for any of their work. Class Counsel will apply to the Court, on behalf of themselves and all other Plaintiffs' Counsel, for an award of attorneys' fees of no more than 30% of the Settlement Fund, which will include any accrued interest. Class Counsel was assisted in this case by Labaton Sucharow LLP ("Labaton"), Goldman Scarlato & Penny, P.C., and Peiffer, Wolf, Carr & Kane, APLC (collectively with Class Counsel, "Plaintiffs' Counsel"). Class Counsel have agreed to share the awarded attorneys' fees with other Plaintiffs' Counsel, except as to Labaton as explained below, and payment to them will in no way increase the fees that are deducted from the Settlement Fund. Labaton will not be seeking attorney's fees in connection with the Action, but does intend to seek payment of its expenses which amounts are included in the expense number below. Class Counsel will also seek payment of litigation expenses incurred by Plaintiffs' Counsel in the prosecution and settlement of the Action of no more than \$700,000.00, plus accrued interest, and in addition will make an application for Service Awards for the Class Representatives of no more than \$96,000.00 in the aggregate to compensate them for their considerable efforts in representing the interests of the Settlement Class. Any attorneys' fees and expenses awarded by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

## OBJECTING TO THE SETTLEMENT, THE PLAN OF ALLOCATION, OR THE FEE AND EXPENSE APPLICATION

## 16. How do I tell the Court that I do not like something about the proposed Settlement?

42. If you are a Settlement Class Member, you can object to the Settlement or any of its terms, the proposed Plan of Allocation of the Net Settlement Fund, and/or Class Counsel's Fee and Expense Application, and application for Service Awards. You may write to the Court about why you think the Court should not approve any or all of the Settlement terms or related relief. If you would like the Court to consider your views, you must file a proper objection within the deadline, and according to the following procedures.

43. To object, you must send a signed letter stating that you object to the proposed Settlement, the Plan of Allocation, the Fee and Expense Application, and/or the application for Service Awards in *Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai v. Wilmington Trust Company, et al.*, No. 6:14-cv-06631 (W.D.N.Y.). Your objection must state why you are objecting and whether your objection applies only to you, a subset of the Settlement Class, or the entire Settlement Class. The objection must also state: (i) the name, address, telephone number, and e-mail address of the objector and must be signed by the objector; (ii) contain a statement of the Settlement Class Member's objection or objections and the specific reasons for each objection, including any legal and evidentiary support (including witnesses) the Settlement Class Member wishes to bring to the Court's attention; and (iii) include information sufficient to prove the objector's membership in the Settlement Class, including the amount of investment in the BPS Funds as well as the dates of each such investment and sale. Unless otherwise ordered by the Court, any Settlement Class Member who does not object in the manner described in this Notice will be deemed to have waived any objection and will be forever foreclosed from making any objection to the proposed Settlement, the Plan of Allocation, and/or Class Counsel's Fee and Expense Application, and application for Service Awards. Your objection must be filed with the Court **no later than December 21, 2022 and** be mailed or delivered to the following counsel so that it is **received no later than December 21, 2022:**

<u>Court</u>	<u>Class Counsel</u>	<u>Defendants' Counsel Representatives</u>
<p><b>Clerk of the Court</b>  United States District Court  United States Courthouse  100 State Street  Rochester, NY 14614</p>	<p><b>Rosca Scarlato, LLC</b>  Alan L. Rosca, Esq.  Paul J. Scarlato, Esq.  161 Washington Street,  Suite 1025  Conshohocken, PA 19428</p>	<p><b>Hodgson Russ LLP</b>  Melissa N. Subjeck, Esq.  140 Pearl Street,  Suite 100  Buffalo, NY 14202</p>

44. You do not need to attend the Settlement Hearing to have your written objection considered by the Court. However, any Settlement Class Member who has complied with the procedures described in this Question 16 and below in Question 20 may appear at the Settlement Hearing and be heard, to the extent allowed by the Court. An objector may appear in person or arrange, at his, her, or its own expense, for a lawyer to represent him, her, or it at the Settlement Hearing.

**17. What is the difference between objecting and seeking exclusion?**

45. Objecting is telling the Court that you do not like something about the proposed Settlement, Plan of Allocation, or Class Counsel's Fee and Expense Application, or application for Service Awards. You can still recover money from the Settlement. You can object *only* if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself from the Settlement Class, you have no basis to object because the Settlement and the Action no longer affect you.

**THE SETTLEMENT HEARING**

**18. When and where will the Court decide whether to approve the proposed Settlement?**

46. The Court will hold the Settlement Hearing on **January 11, 2023 at 2:00 p.m.**, in Courtroom 3 at Kenneth B. Keating Federal Building, 100 State Street, Rochester, NY 14614.

47. At this hearing, the Court will consider whether: (i) the Settlement is fair, reasonable, adequate, and should be approved; (ii) the Plan of Allocation is fair and reasonable, and should be approved; and (iii) the application of Class Counsel for an award of attorneys' fees, payment of litigation expenses, and for a Service Award is reasonable and should be approved. The Court will take into consideration any written objections filed in accordance with the instructions in Question 16 above. We do not know how long it will take the Court to make these decisions.

48. You should be aware that the Court may change the date and time of the Settlement Hearing without another notice being sent to Settlement Class Members. If you want to attend the hearing, you should check with Class Counsel or visit the website [www.strategicclaims.net/BioProfit/](http://www.strategicclaims.net/BioProfit/) beforehand to be sure that the hearing date and/or time has not changed.

**19. Do I have to come to the Settlement Hearing?**

49. No. Class Counsel will answer any questions the Court may have. But, you are welcome to attend at your own expense. If you submit a valid and timely objection, the Court will consider it and you do not have to come to Court to discuss it. You may have your own lawyer attend (at your own expense), but it is not required. If you do hire your own lawyer, he or she must file and serve a Notice of Appearance in the manner described in the answer to Question 20 below **no later than December 21, 2022**.

## 20. May I speak at the Settlement Hearing?

50. You may ask the Court for permission to speak at the Settlement Hearing. To do so, you must, **no later than December 21, 2022**, submit a statement that you, or your attorney, intend to appear in “in *Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai v. Wilmington Trust Company, et al.*, No. 6:14-cv-06631 (W.D.N.Y.)” Persons who intend to present evidence at the Settlement Hearing must also include in their objections (prepared and submitted in accordance with the answer to Question 16 above) the identities of any witnesses they may wish to call to testify and any exhibits they intend to introduce into evidence at the Settlement Hearing. You may not speak at the Settlement Hearing if you exclude yourself from the Settlement Class or if you have not provided written notice of your intention to speak at the Settlement Hearing in accordance with the procedures described in this question and Question 16 above.

### IF YOU DO NOTHING

## 21. What happens if I do nothing at all?

51. If you do nothing and you are a member of the Settlement Class, you will receive no money from this Settlement and you will be precluded from starting a lawsuit, continuing with a lawsuit, or being part of any other lawsuit against Defendants and the other Released Defendant Parties concerning the Released Claims. To share in the Net Settlement Fund, you must submit a Claim Form (*see* Question 8 above). To start, continue, or be a part of any other lawsuit against Defendants and the other Released Defendant Parties concerning the Released Claims, you must exclude yourself from the Settlement Class (*see* Question 11 above).

### GETTING MORE INFORMATION

## 22. Are there more details about the Settlement?

52. This Notice summarizes the proposed Settlement. More details are contained in the Stipulation. You may review the Stipulation filed with the Court or other documents in the case during business hours at the Office of the Clerk of the United States District Court, Western District of New York, Kenneth B. Keating Federal Building, 100 State Street, Rochester, NY 14614. Subscribers to PACER, a fee-based service, can also view the papers filed publicly in the Action through the Court’s on-line Case Management/Electronic Case Files System at <https://www.pacer.gov>.

53. You can also get a copy of the Stipulation, and other documents related to the Settlement, as well as additional information about the Settlement by visiting the Claims Administrator’s website, [www.strategicclaims.net/BioProfit/](http://www.strategicclaims.net/BioProfit/). You may also call the Claims Administrator toll free at (866) 274-4004 or write to the Claims Administrator at *Bio Profit Litigation*, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson Street, Suite 205, Media, PA 19063. **Please do not call the Court with questions about the Settlement.**

### PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND

## 23. How will my claim be calculated?

54. The Plan of Allocation (the “Plan of Allocation” or “Plan”) set forth below is the plan that is being proposed by Plaintiffs and Class Counsel to the Court for approval. The Court may approve this Plan of Allocation or modify it without additional notice to the Settlement Class. Any order modifying the Plan will be posted on the Claims Administrator website at: [www.strategicclaims.net/BioProfit/](http://www.strategicclaims.net/BioProfit/).

55. The Settlement Amount and the interest it earns is the “Settlement Fund.” The Settlement Fund, after deduction of Court-approved attorneys’ fees and expenses, Service Awards, Notice and

Administration Expenses, Taxes, and any other fees or expenses approved by the Court is the “Net Settlement Fund.” The Net Settlement Fund will be distributed to members of the Settlement Class who timely submit valid Claim Forms that show a Recognized Claim according to the Plan of Allocation approved by the Court.

56. The objective of this Plan of Allocation is to equitably distribute the Net Settlement Fund among Authorized Claimants who suffered economic losses allegedly as a result of the asserted violations of law set forth in Plaintiffs’ Amended Complaint that survived Defendants’ motion to dismiss.

57. Under the proposed Plan of Allocation, the Claims Administrator will first calculate each Authorized Claimant’s Alleged Loss.

58. The Alleged Loss shall mean the principal amount each Authorized Claimant paid for their BPS Fund investments, less any amounts received in return as either payments of interest or return of principal.

59. The Claims Administrator will then calculate each Authorized Claimant’s recovery under the Settlement by multiplying the Net Settlement Fund by a fraction, (a) the numerator of which is the Class Member’s Alleged Loss and (b) the denominator of which is the sum of each and every claiming Class Member’s Alleged Loss.

60. The Plan is not a part of or a condition of approval of the Settlement. Under the Agreement, the Net Settlement Fund may be distributed in accordance with the proposed Plan or such other plan as the Court may approve.

61. The calculations made pursuant to the Plan are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund. An individual Settlement Class Member’s recovery will depend on, for example: (a) the total number and value of claims submitted; (b) how much interest a Settlement Class Member received in return, if any; and (c) whether and when the claimant sold his, her, or its investment(s) in the BPS Funds.

62. Because the Net Settlement Fund is less than the total losses alleged to be suffered by Settlement Class Members, the formulas described below for calculating Recognized Losses are not intended to estimate the amount that will actually be paid to Authorized Claimants. Rather, these formulas provide the basis on which the Net Settlement Fund will be distributed among Authorized Claimants on a *pro rata* basis. An Authorized Claimant’s “Recognized Claim” shall be the amount used to calculate the Authorized Claimant’s *pro rata* share of the Net Settlement Fund. The *pro rata* share shall be the Authorized Claimant’s Recognized Claim divided by the total of the Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

63. Defendants, their respective counsel, and all other Released Defendant Parties will have no responsibility or liability for the investment of the Settlement Fund, the distribution of the Net Settlement Fund, the Plan of Allocation or the payment of any claim. Plaintiffs, Class Counsel, and anyone acting on their behalf, likewise will have no liability for their reasonable efforts to execute, administer, and distribute the Settlement.

### **CALCULATION OF RECOGNIZED LOSS AMOUNTS**

64. The Claims Administrator will calculate a “Recognized Loss Amount,” as set forth below, for each investment in the BPS Funds that is listed in the Claim Form and for which adequate documentation is provided. To the extent that the calculation of a Claimant’s Recognized Loss Amount results in a negative number, that number shall be set to zero.

65. For each investment in the BPS Funds, an “Out of Pocket Loss” will be calculated. Out of Pocket Loss is defined as the purchase price (excluding all fees, taxes, and commissions) minus the sale price (excluding all fees, taxes, and commissions). To the extent that the calculation of the Out of Pocket Loss results in a negative number, that number shall be set to zero.

66. The sum of a claimant's Recognized Loss Amounts will be the claimant's "Recognized Claim."

### **ADDITIONAL PROVISIONS**

67. The Net Settlement Fund will be allocated among all Authorized Claimants whose prorated payment is \$10.00 or greater. If the prorated payment to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation and a distribution will not be made to that Authorized Claimant.

68. Payment according to this Plan of Allocation will be deemed conclusive against all Authorized Claimants. Recognized Claims will be calculated as defined herein by the Claims Administrator and cannot be less than zero.

69. Distributions will be made to eligible Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement. If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) after at least six (6) months from the date of initial distribution of the Net Settlement Fund, the Claims Administrator shall, if feasible and economical after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, redistribute such balance among Authorized Claimants who have cashed their initial checks in an equitable and economic fashion. Once it is no longer feasible or economical to make further distributions, any balance that still remains in the Net Settlement Fund after re-distribution(s) and after payment of outstanding Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, and a Service Award, if any, shall be contributed to the Council of Institutional Investors, or such other non-profit and non-sectarian organization(s) approved by the Court.

70. Payment pursuant to the Plan of Allocation or such other plan as may be approved by the Court shall be conclusive against all Authorized Claimants. No person shall have any claim against Plaintiffs, Plaintiffs' Counsel, Defendants, Defendants' respective counsel, the Claims Administrator, or any agent designated by Class Counsel, arising from determinations or distributions to claimants made substantially in accordance with the Stipulation, the Plan of Allocation approved by the Court, or further orders of the Court. Plaintiffs, Defendants, their respective counsel, and all other Released Parties shall have no responsibility for or liability whatsoever for the investment or distribution of the Settlement Fund, the Net Settlement Fund, the Plan of Allocation or the determination, administration, calculation, or payment of any Claim Form or non-performance of the Claims Administrator, the payment or withholding of taxes owed by the Settlement Fund or any losses incurred in connection therewith.

71. Each claimant is deemed to have submitted to the jurisdiction of the United States District Court for the Western District of New York with respect to his, her, or its claim.

### **SPECIAL NOTICE TO SECURITIES BROKERS AND NOMINEES**

72. If you are aware of the names and contact information of persons who invested in the BPS Funds, you are requested to **WITHIN TEN (10) CALENDAR DAYS OF YOUR RECEIPT OF THE NOTICE, EITHER:** (a) provide to the Claims Administrator the name, last known address, and/or email address of each person or entity who invested in the BPS Funds; or (b) request copies of this Notice and the Claim Form from the Claims Administrator, which will be provided to you free of charge, and **WITHIN TEN (10) CALENDAR DAYS** of receipt, mail the Notice and Claim Form directly to all the beneficial owners of those securities. You are entitled to reimbursement from the Settlement Fund of your reasonable out-of-pocket expenses incurred in providing notice to beneficial owners in an amount not to exceed \$0.05 plus postage, at the current pre-sort rate used by the Claims Administrator per Notice and Claim Form you mail; or \$0.05 per name, mailing address, and email address (to the extent available) provided to the Claims Administrator. Expenses will be paid upon request and submission of appropriate supporting documentation and timely compliance with the above directives. Any disputes as to the

reasonableness or documentation of expenses incurred will be subject to review by the Court. All communications concerning the foregoing should be addressed to the Claims Administrator:

*Bio Profit Litigation*  
c/o Strategic Claims Services  
P.O. Box 230  
600 N. Jackson Street, Suite 205  
Media, PA 19063

Dated: October 11, 2022

BY ORDER OF THE  
UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK