



# GRANTED WITH MODIFICATIONS

EFiled: Dec 21 2017 09:34AM EST  
Transaction ID: 451797  
Case No. 10319-CB



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE TIBCO SOFTWARE INC.  
STOCKHOLDERS LITIGATION

Consolidated  
C.A. No. 10319-CB

## **[PROPOSED] ORDER GRANTING PLAINTIFFS’ MOTION IN SUPPORT OF DISTRIBUTION**

The Plaintiff, having moved to modify the Final Order and Judgment, dated September 7, 2016, with regard to the Plan of Allocation of the Settlement Fund, and the entire matter having been considered by the Court:

**IT IS ORDERED THIS \_\_\_ DAY OF \_\_\_\_\_, 2017, AS FOLLOWS:**

1. The Plan of Allocation of the Settlement Fund is hereby modified as follows:

(a) Certain Definitions.<sup>1</sup>

(i) “Closing Beneficial Ownership Position” means, for each Eligible Beneficial Owner, the number of shares of TIBCO common stock beneficially owned by such Eligible Beneficial Owner as of the Closing of the December 5, 2014 Merger, for which the Eligible Beneficial Owner received payment of the \$24.00 per share Merger Consideration; provided, however, that no Excluded Shares may comprise any part of any Closing Beneficial Ownership Position.

<sup>1</sup> All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated June 20, 2016 (the “Stipulation”), which was incorporated by reference into the September 7, 2016 Final Order and Judgment.

(ii) “Closing Security Position” means, for each DTC Participant, the number of shares of TIBCO common stock reflected on the DTC allocation report used by DTC to distribute the \$24.00 per share Merger Consideration.

(iii) “DTC Participants” means the DTC participants to which DTC distributed the \$24.00 per share Merger Consideration.

(iv) “Eligible Beneficial Owner” means the ultimate beneficial owner of any shares of TIBCO common stock as of the Closing of the December 5, 2014 Merger; provided, however, that no Excluded Person may be an Eligible Beneficial Owner.

(v) “Excluded Person” means the persons excluded from the definition of the Class set forth in the Final Order and Judgment.

(vi) “Excluded Shares” means shares of TIBCO common stock and stock equivalents beneficially owned by Excluded Persons.

(b) With Respect To TIBCO Common Stock Held Of Record By Cede, As Nominee For DTC: Co-Lead Counsel shall pay \$21,068,987.05 to DTC from the Settlement Fund. DTC shall then distribute the \$21,068,987.05 among the DTC Participants by paying each DTC Participant \$0.1406 times its respective Closing Security Position, using the same mechanism that DTC used to distribute the Merger Consideration. The

DTC Participants and their respective customers, including any intermediaries, shall then ensure payment to each Eligible Beneficial Owner of an amount equaling \$0.1406 times the Eligible Beneficial Owner's Closing Beneficial Ownership Position.

(c) In the event that a DTC Participant receives payment with respect to Excluded Shares, that DTC Participant is directed to return such payment with respect to Excluded Shares to the Settlement Administrator.

(d) With Respect To TIBCO Common Stock Held Of Record Other Than By Cede, As Nominee For DTC, and With Respect to Shares of TIBCO Restricted Common Stock, Restricted Stock Units, And Shares Underlying In-The-Money Options To Acquire TIBCO Common Stock: To the extent any portion of any Eligible Beneficial Owner's Closing Beneficial Ownership Position was not held of record by Cede as of the Closing of the December 5, 2014 Merger (a "Closing Non-Cede Record Position"), the payment with respect to each such Closing Non-Cede Record Position shall be made as follows: A.B Data shall pay from the Settlement Fund directly to the record holder of each Closing Non-Cede Record Position an amount equal to \$0.1406 times the number of shares of TIBCO common stock, restricted common stock, restricted stock units, and shares underlying in-the-

money options to acquire TIBCO common stock comprising such Closing Non-Cede Record Position.

(e) For the avoidance of doubt, to the extent that any record holder, or any DTC Participants or their respective customers, including any intermediaries, took or permitted actions that had the effect of increasing the number of shares of TIBCO common stock entitled to payment of the \$24.00 per share Merger Consideration or to the equivalent thereof, whether through permitting naked short-selling or the cash settlement of short positions or through any other means (“Increased Merger Consideration Entitlements”), such record holder, DTC Participants, and DTC Participants’ customers (including intermediaries) shall be responsible for paying to the ultimate beneficial owners of such Increased Merger Consideration Entitlements an amount equal to \$0.1406 times the number of the Increased Merger Consideration Entitlements. Whether DTC, any DTC Participant or DTC Participants’ customers are entitled to receive such funds from any such short-seller is not before this Court. However, in no event shall the payments of \$0.1406 per share described in Paragraph 1(b) and 1(c), above, be in any way diluted or reduced to cover amounts due as a result of any Increased Merger Consideration Entitlements.

(f) For the avoidance of doubt, no payment described in Paragraph 1 hereof shall be made (i) in respect of any Excluded Shares, (ii) to any Excluded Person, or (iii) to any former stockholder of TIBCO for any shares of TIBCO common stock that such stockholder sold into the market at any time before the Closing of the December 5, 2014 Merger.

(g) Notwithstanding the foregoing, pursuant to paragraph 1(g) of the Stipulation, A.B. Data shall pay to (i) Murray Rode and William Hughes an amount equal to \$0.1406 times the number of shares with respect to which each submitted claims; and (ii) shall pay to each of the Individual Defendants an amount equal to the product of (x) \$250,000 and (y) the number of shares with respect to which the particular Individual Defendant submitted claims divided by the aggregate number of shares with respect to which all Individual Defendants submitted claims.

2. The Notice of Modification to Method of Distribution of the Settlement Fund (“Proposed Notice”) is hereby approved.

3. The distribution of the Proposed Notice (a) by mail to Class members, as well as to other individuals who submitted Proofs of Claim, and (b) by posting a copy of the Proposed Notice on the website created by the Settlement Administrator for this litigation, is hereby approved.

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Chancellor

This document constitutes a ruling of the court and should be treated as such.

**Court:** DE Court of Chancery Civil Action

**Judge:** Andre G Bouchard

**File & Serve**

**Transaction ID:** 61490284

**Current Date:** Dec 21, 2017

**Case Number:** 10319-CB

**Case Name:** CLOSED CONF ORDER - CONS W/ 10198,10204,10274,10278,10286,10288 CB IMO  
TIBCO Software Inc Stockholders Litigation

**Court Authorizer**

**Comments:**

This order is being entered in response to the request of plaintiff's counsel, and supersedes the one entered on December 19, 2017.

/s/ **Judge Bouchard, Andre G**