

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE SMART TECHNOLOGIES, INC.  
SHAREHOLDER LITIGATION

No. 11-CV-7673-(KBF)

ECF CASE

~~PROPOSED~~ ORDER PRELIMINARILY APPROVING  
PROPOSED SETTLEMENT AND PROVIDING FOR NOTICE

WHEREAS, the above-captioned consolidated securities class action is pending in this Court (the “U.S. Action” or “Action”);

WHEREAS, (i) Lead Plaintiff the City of Miami General Employees’ and Sanitation Employees’ Retirement Trust (the “U.S. Lead Plaintiff”), individually and on behalf of the proposed U.S. Settlement Class (as hereinafter defined), and (ii) SMART Technologies Inc. (“SMART”); Nancy L. Knowlton, G.A. (Drew) Fitch, David A. Martin, Salim Nathoo, Arvind Sodhani, Michael J. Mueller, and Robert C. Hagerty (the “Individual Defendants”); Apax Partners L.P. and Apax Partners Europe Managers Ltd (“Apax Partners”); Intel Corporation (“Intel”); and Morgan Stanley & Co. LLC (f/k/a Morgan Stanley & Co. Incorporated), Deutsche Bank Securities, Inc., RBC Dominion Securities Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Credit Suisse Securities (USA) LLC, CIBC World Markets Inc., Cowen and Company, LLC, Piper Jaffray & Co., and Stifel Nicolaus & Company (the “U.S. Underwriters”) (collectively, the “U.S. Settling Defendants” and, together with U.S. Lead Plaintiff, the “U.S. Settling Parties”) have entered into a Stipulation and Agreement of Settlement of Class Actions dated as of April 30, 2013 (the “Stipulation”), which is subject to review by this Court under Rule 23 of the Federal Rules of Civil Procedure, and which, together with the exhibits thereto, sets forth the terms and conditions of the proposed settlement (the “Settlement”) of the U.S.

Action as well as the securities class action pending in the Ontario Superior Court of Justice (the “Canadian Court”) entitled *Tucci v. SMART Technologies Inc., et al.*, Case No. CV-12-447546-00CP (the “Canadian Action”);

WHEREAS, it is a condition of the effectiveness of the proposed Settlement that, in addition to obtaining the approval of this Court, the Canadian Court must also approve the Settlement, and the class claims asserted in the action styled *Harper v. SMART Technologies Inc., et al.*, Case No. CGC-11-514673 pending in the Superior Court of the State of California, County of San Francisco (the “California Action”) must be dismissed with prejudice, and all appeal rights with respect to such dismissal must be exhausted;

WHEREAS, U.S. Lead Plaintiff has made an application, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an order of the Court preliminarily approving the Settlement in accordance with the Stipulation, certifying the U.S. Settlement Class for purposes of the Settlement only, and approving notice to the U.S. Settlement Class as more fully described herein;

WHEREAS, the Court having read and considered (i) U.S. Lead Plaintiff’s motion for preliminary approval of the Settlement and the papers filed and arguments made in connection therewith; and (ii) the Stipulation and its exhibits, including the proposed (a) Notice; (b) Proof of Claim Form; (c) Summary Notice; and (d) U.S. Judgment, and finding that substantial and sufficient grounds exist for entering this Order; and

WHEREAS, unless otherwise defined herein, all capitalized words contained herein shall have the same meanings as they have in the Stipulation;

NOW THEREFORE, IT IS HEREBY ORDERED:

1. **Certification of U.S. Settlement Class for Settlement Purposes** – Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of effectuating the proposed Settlement, a class consisting of all Persons who purchased or otherwise acquired, from July 14, 2010 through and including May 18, 2011 (the “U.S. Settlement Class Period”), SMART common stock in the United States, and were damaged thereby (the “U.S. Settlement Class”). Excluded from the U.S. Settlement Class are the Settling Defendants; the members of each Individual Defendant’s Immediate Family; the respective current or former officers or directors of each entity Settling Defendant; the respective past or present parents, subsidiaries or affiliates of each entity Settling Defendant and each of their respective current or former officers, directors, partners, or members; any entity in which any Settling Defendant has or had a controlling interest, *provided, however*, that any Investment Vehicle (as defined in the Stipulation) shall not be excluded from the U.S. Settlement Class; and, in their capacity as such, the legal representatives, heirs, beneficiaries, successors or assigns of any such excluded party. Also excluded from the U.S. Settlement Class are any Persons who exclude themselves by submitting a request for exclusion from one or both of the Classes that is accepted by either of the Courts.

2. **Class Findings** – Solely for purposes of the proposed Settlement, the Court finds that each element required for certification of the U.S. Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure has been met: (a) the members of the U.S. Settlement Class are so numerous that their joinder in the U.S. Action would be impracticable; (b) there are questions of law and fact common to the U.S. Settlement Class; (c) the claims of U.S. Lead Plaintiff are typical of the claims of the U.S. Settlement Class; (d) U.S. Lead Plaintiff and U.S.

Lead Counsel have fairly and adequately represented and protected the interests of the U.S. Settlement Class; and (e) the questions of law and fact common to the U.S. Settlement Class predominate over any individual questions and a class action is superior to other available methods for the fair and efficient adjudication of the U.S. Action.

3. The Court hereby finds and concludes that, pursuant to Rule 23 of the Federal Rules of Civil Procedure and for the purposes of the Settlement only, that the U.S. Lead Plaintiff is an adequate class representative of the U.S. Settlement Class and certifies U.S. Lead Plaintiff as class representative for that class. The Court also appoints U.S. Lead Counsel Bernstein Litowitz Berger & Grossmann LLP as class counsel for the U.S. Settlement Class.

4. **Preliminary Approval of the Settlement** – The Court has, by endorsed letter dated May 15, 2013, preliminarily approved the Settlement (“May 15, 2013 Order”), as embodied in the Stipulation, as being fair, reasonable and adequate to the U.S. Settlement Class, subject to further consideration at the Settlement Hearing to be conducted as described below.

5. **Settlement Hearing** – The Court will hold a settlement hearing (the “Settlement Hearing”) on September 17, 2013 at 1:00 p.m., at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 15A, New York, NY 10007-1312, for the following purposes: (a) to determine whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable and adequate, and should be approved by the Court; (b) to determine whether a Judgment substantially in the form attached as Exhibit B to the Stipulation should be entered dismissing the U.S. Action with prejudice; (c) to determine whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable and should be approved; (d) to determine whether the motion by U.S. Lead Counsel for an award of attorneys’ fees and for reimbursement of U.S. Litigation Expenses should be approved; and

(e) to consider any other matters that may properly be brought before the Court in connection with the Settlement. Notice of the Settlement and the Settlement Hearing shall be given to U.S. Settlement Class Members as set forth in paragraph 7 of this Order.

6. The Court may adjourn the Settlement Hearing and approve the proposed Settlement with such modifications as the Settling Parties may agree to, if appropriate, without further notice to the U.S. Settlement Class.

7. **Retention of Claims Administrator and Manner of Notice** – U.S. Lead Counsel is hereby authorized to retain Rust Consulting, Inc. (the “Claims Administrator” or “Rust”) to supervise and administer the notice procedure in connection with the proposed Settlement as well as the processing of Claims as more fully set forth below. Notice of the Settlement and the Settlement Hearing shall be given by U.S. Lead Counsel as follows:

(a) within seven (7) business days of the date of entry of the May 15, 2013 Order, SMART and the Underwriters (on best efforts basis) shall provide or cause to be provided to the Claims Administrator (at no cost to the Settlement Fund, U.S. Lead Counsel, Canadian Class Counsel, or the Claims Administrator) their security holders lists (consisting of names and addresses) of purchasers of SMART common stock from July 14, 2010 through and including May 18, 2011, in an electronic form suitable to the Claims Administrator;

(b) not later than June 6, 2013 (the “Notice Date”), the Claims Administrator shall cause a copy of the Notice and the Proof of Claim Form, substantially in the forms attached hereto as Exhibits 1 and 2, respectively (the “Notice Packet”), to be mailed by first-class mail to U.S. Settlement Class Members at the addresses set forth in the records provided by SMART and the Underwriters, or who may otherwise be identified through reasonable effort;

(c) contemporaneously with the mailing of the Notice Packet, the Claims Administrator shall cause copies of the Notice and the Proof of Claim Form to be posted on a website to be developed for the Settlement, from which Class Members may download copies of the Notice and Proof of Claim Form;

(d) not later than ten (10) calendar days after the Notice Date, the Claims Administrator shall cause the Summary Notice, substantially in the form attached hereto as Exhibit 3, to be published once in the national edition of *Investor's Business Daily* and to be transmitted once over the *PR Newswire*; and

(e) not later than seven (7) calendar days prior to the Settlement Hearing, U.S. Lead Counsel shall serve on U.S. Settling Defendants' Counsel and file with the Court proof, by affidavit or declaration, of such mailing and publication.

8. **Approval of Form and Content of Notice** – The Court (a) approves, as to form and content, the Notice, the Proof of Claim Form, and the Summary Notice, attached hereto as Exhibits 1, 2, and 3, respectively, and (b) finds that the mailing and distribution of the Notice and Proof of Claim Form and the publication of the Summary Notice in the manner and form set forth in paragraph 7 of this Order (i) is the best notice practicable under the circumstances, (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise U.S. Settlement Class Members of the proposed Settlement, of the effect of the proposed Settlement (including the Releases contained therein) and of their right to exclude themselves from the U.S. Settlement Class or object to any aspect of the proposed Settlement and appear at the Settlement Hearing; (iii) constitutes due, adequate and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the



Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 77z-1(a)(7), and all other applicable law and rules. The date and time of the Settlement Hearing shall be included in the Notice and Summary Notice before they are mailed and published, respectively.

9. **Nominee Procedures** – Brokers and other nominees who purchased or otherwise acquired SMART common stock in the United States during the U.S. Settlement Class Period for the benefit of another person or entity shall (a) within seven (7) calendar days of receipt of the Notice, request from the Claims Administrator sufficient copies of the Notice Packet to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notice Packets forward them to all such beneficial owners; or (b) within seven (7) calendar days of receipt of the Notice, send a list of the names and addresses of all such beneficial owners to the Claims Administrator in which event the Claims Administrator shall promptly mail the Notice Packet to such beneficial owners. Upon full compliance with this Order, such nominees may seek reimbursement of their reasonable expenses actually incurred in complying with this Order by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Such properly documented expenses incurred by nominees in compliance with the terms of this Order shall be paid from the Settlement Fund, with any disputes as to the reasonableness or documentation of expenses incurred subject to review by the Court.

10. **Participation in the Settlement** – U.S. Settlement Class Members who wish to be eligible to receive a distribution from the Net Settlement Fund must complete and submit a Proof of Claim Form in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proof of Claim Forms must be postmarked no later than one hundred and twenty (120) calendar days after the Notice Date. Notwithstanding the foregoing, U.S. Lead

Counsel may, at its discretion, accept for processing late Claims provided such acceptance does not delay the distribution of the Net Settlement Fund. By submitting a Claim, a U.S. Settlement Class Member shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its Claim and the subject matter of the Settlement.

11. Each Proof of Claim Form submitted must satisfy the following conditions: (a) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding paragraph; (b) it must be accompanied by adequate supporting documentation for the transactions and holdings reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by U.S. Lead Counsel or the Claims Administrator; (c) if the person executing the Proof of Claim Form is acting in a representative capacity, a certification of his, her or its current authority to act on behalf of the U.S. Settlement Class Member must be included in the Proof of Claim Form to the satisfaction of U.S. Lead Counsel or the Claims Administrator; and (d) the Proof of Claim Form must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

12. Any U.S. Settlement Class Member that does not timely and validly submit a Proof of Claim Form or whose Claim is not otherwise approved by the Court: (a) shall be deemed to have waived his, her or its right to share in the Net Settlement Fund; (b) shall forever be barred from participating in any distributions therefrom; (c) shall be bound by the provisions of the Stipulation and the Settlement and all proceedings, determinations, orders and judgments in this Action relating thereto, including, without limitation, the U.S. Judgment and the Releases



provided for therein, whether favorable or unfavorable to the U.S. Settlement Class; and (d) will be barred from commencing, maintaining or prosecuting any of the Released Plaintiffs' Claims against each and all of the Defendants' Releasees, as more fully described in the Stipulation and Notice. Notwithstanding the foregoing, late Proof of Claim Forms may be accepted for processing as set forth in paragraph 10 above.

13. **Exclusion From the U.S. Settlement Class** – Any member of the U.S. Settlement Class who wishes to exclude himself, herself or itself from the U.S. Settlement Class must request exclusion in writing within the time and in the manner set forth in the Notice, which shall provide: (a) that any such request for exclusion from the U.S. Settlement Class must be mailed or delivered such that it is received no later than forty-five (45) calendar days after the Notice Date to: *SMART Technologies Shareholder Litigation*, EXCLUSIONS, c/o Rust Consulting, Inc., P.O. Box 2434, Faribault, MN 55021-9134, and (b) that each request for exclusion must (i) state the name, address and telephone number of the person or entity requesting exclusion; (ii) state that such person or entity “requests exclusion from the U.S. Settlement Class in *SMART Technologies Shareholder Litigation*, No. 11-CV-7673-(KBF)”; (iii) state the number of shares of SMART common stock that the person or entity requesting exclusion purchased/acquired in the United States during the U.S. Settlement Class Period, as well as the number of shares of SMART common stock sold/disposed of during the U.S. Settlement Class Period or thereafter through April 30, 2013, as well as the dates and prices of each such purchase/acquisition and sale; and (iv) be signed by the person or entity requesting exclusion or an authorized representative. A request for exclusion shall not be valid and effective unless it provides all the required information and is received within the time stated above, or is otherwise accepted by the Court.

14. Any person or entity who or which timely and validly requests exclusion from the U.S. Settlement Class and/or the Canadian Class and whose request is accepted by the Court to which it was submitted, shall not be a U.S. Settlement Class Member, shall not be bound by the terms of the Settlement or any orders or judgments in the U.S. Action, and shall not receive any payment out of the Net Settlement Fund.

15. Any U.S. Settlement Class Member who or which does not timely and validly request exclusion from the U.S. Settlement Class in the manner stated in this Order: (a) shall be deemed to have waived his, her or its right to be excluded from the U.S. Settlement Class; (b) shall be forever barred from requesting exclusion from the U.S. Settlement Class in this or any other proceeding; (c) shall be bound by the provisions of the Stipulation and the Settlement and all proceedings, determinations, orders and judgments in the U.S. Action, including, but not limited to, the U.S. Judgment and the Releases provided for therein, whether favorable or unfavorable to the U.S. Settlement Class; and (d) will be barred from commencing, maintaining or prosecuting any of the Released Plaintiffs' Claims against any of the Defendants' Releasees, as more fully described in the Stipulation and Notice, unless such person or entity is excluded from the U.S. Settlement Class by virtue of having filed a request for exclusion in the Canadian Action that is accepted by the Canadian Court.

16. **Appearance and Objections at Settlement Hearing** – Any Class Member who does not request exclusion may enter an appearance in the U.S. Action, at his, her or its own expense, individually or through counsel of his, her or its own choice, by filing with the Clerk of Court and delivering a notice of appearance to U.S. Lead Counsel and Representative U.S. Settling Defendants' Counsel, at the addresses set forth in paragraph 17 below, such that it is received no later than forty-five (45) calendar days after the Notice Date, or as the Court may

otherwise direct. Any U.S. Settlement Class Member who does not enter an appearance will be represented by U.S. Lead Counsel.

17. Any Class Member who does not request exclusion may file a written objection to any aspect of the proposed Settlement, the proposed Plan of Allocation, and/or the motion for an award of attorneys' fees and for reimbursement of Litigation Expenses and appear and show cause, if he, she or it has any cause, why the proposed Settlement, the proposed Plan of Allocation and/or the motion for an award of attorneys' fees and for reimbursement of Litigation Expenses should not be approved; *provided, however*, that no Class Member shall be heard or entitled to contest the approval of the terms and conditions of any aspect of the proposed Settlement, the proposed Plan of Allocation, and/or the motion for an award of attorneys' fees and for reimbursement of Litigation Expenses unless that Person has filed a written objection with the Court and served copies of such objection on U.S. Lead Counsel and Representative U.S. Settling Defendants' Counsel at the addresses set forth below such that they are received no later than forty-five (45) calendar days after the Notice Date.

**U.S. Lead Counsel**

**Bernstein Litowitz Berger  
& Grossmann LLP**  
Hannah G. Ross, Esq.  
1285 Avenue of the Americas  
New York, NY 10019

**Representative U.S. Settling  
Defendants' Counsel**

**Sidley Austin LLP**  
Andrew W. Stern, Esq.  
787 Seventh Avenue  
New York, NY 10019

18. Any objections, filings and other submissions (a) must state the name, address and telephone number of the person or entity objecting and must be signed by the objector; (b) must contain a statement of the Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Class Member wishes to bring to the Court's attention; and (c) must include documents sufficient to prove membership in a Class,

including proof of the number of shares of SMART common stock that the objecting Class Member purchased/acquired during the relevant period (*i.e.*, from July 14, 2010 through and including May 18, 2011 in the United States with respect to U.S. Class Members and from July 15, 2010 through and including July 20, 2010 from an underwriter domiciled in Canada (*i.e.*, a Canadian Underwriter as defined in the Stipulation) with respect to Canadian Class Members), as well as the number of shares of SMART common stock sold from July 14, 2010 through April 30, 2013 as to U.S. Class Members and from July 15, 2010 through April 30, 2013 as to Canadian Class Members, and the dates and prices of each such purchase/acquisition and sale. Additionally, U.S. Settlement Class Members must provide proof that their purchases/acquisitions were made in the United States and Canadian Class Members must provide proof that their purchases/acquisitions were made from an underwriter domiciled in Canada.

19. Any U.S. Settlement Class Member who does not make his, her or its objection in the manner provided herein or before the Canadian Court as provided for in the Canadian Action shall be deemed to have waived his, her or its right to object to any aspect of the proposed Settlement, the proposed Plan of Allocation, and the motions for awards of attorneys' fees and for reimbursement of Litigation Expenses and shall forever be barred and foreclosed from objecting to the fairness, reasonableness or adequacy of the Settlement, the Plan of Allocation or the requested attorneys' fees and Litigation Expenses, or from otherwise being heard concerning the Settlement, the Plan of Allocation or the requested attorneys' fees and Litigation Expenses in this or any other proceeding.

20. **Stay** – Until otherwise ordered by the Court, the Court stays all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the

Stipulation. Pending final determination of whether the Settlement should be approved, the Court enjoins U.S. Lead Plaintiff and all other U.S. Settlement Class Members from commencing or prosecuting any and all of the Released Plaintiffs' Claims against each and all of the Defendants' Releasees.

21. **Settlement Administration Fees and Expenses** – All reasonable costs incurred in notifying U.S. Settlement Class Members of the Settlement as well as administering the Settlement shall be paid as set forth in the Stipulation without further order of the Court.

22. **Settlement Fund** – The contents of the Settlement Fund held by Valley National Bank (which the Court approves as the Escrow Agent) shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as they shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

23. **Taxes** – U.S. Lead Counsel is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect of the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Stipulation.

24. **Termination** – If the Stipulation is terminated, the Settlement is not approved, or the Effective Date of the Settlement does not occur, this Order shall become null and void and be without prejudice to the rights of U.S. Lead Plaintiff, the other U.S. Settlement Class Members and the U.S. Settling Defendants, and the U.S. Settling Parties shall be deemed to have reverted to their respective status in this Action immediately prior to March 11, 2013, as provided in the Stipulation.

25. **Use of this Order** – Neither this Order, nor the Term Sheet or the Stipulation (whether or not consummated) or their negotiation, nor any proceedings taken pursuant thereto shall: (a) be offered against any of the Defendants’ Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendants’ Releasees with respect to the truth of any fact alleged by U.S. Lead Plaintiff or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Defendants’ Releasees; (b) be offered against any of the Plaintiffs’ Releasees, as evidence of any presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiffs’ Releasees, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to enforce the terms of the Stipulation; provided, however, that if the Stipulation is approved by the Court, the Settling Parties and the Releasees and their respective counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement; (c) be construed against any of Releasees as an admission, concession, or presumption that the Settlement Amount represents the amount which could be or would have been recovered after trial; nor (d) be construed against Plaintiffs’ Releasees as an admission, concession or presumption that any of their claims are without merit, that any of the Defendants’ Releasees had meritorious defenses, or that damages recoverable in the Action would not have exceeded the Settlement Amount.

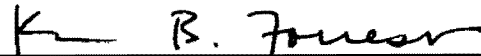
26. **Supporting Papers** – U.S. Lead Counsel shall file and serve papers in support of the proposed Settlement, the Plan of Allocation, and U.S. Lead Counsel’s motion for an award of



attorneys' fees and for reimbursement of U.S. Litigation Expenses no later than fourteen (14) calendar days prior to the deadline for the submission of objections as set forth in paragraph 16 above; and reply papers, if any, shall be filed and served no later than seven (7) calendar days prior to the Settlement Hearing.

27. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

SO ORDERED this 23<sup>rd</sup> day of May, 2013.



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The Honorable Katherine B. Forrest  
United States District Judge

# 719975