

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

LOCAL 703, I.B. OF T. GROCERY
AND FOOD EMPLOYEES WELFARE
FUND, et al.,

PLAINTIFFS,

vs.

CASE NO. CV 10-J-2847-S

REGIONS FINANCIAL CORPORATION,
et al.,

DEFENDANTS.

ORDER

Pending before the court is Regions Financial Corporation's motion to amend the Class definition (doc. 270), and the plaintiffs' response to said motion (doc. 274). Plaintiffs' having stated that they do not oppose defendant's proposed amendment, to clarify that the class is comprised of holders of "common stock" rather than "securities;"

It is therefore **ORDERED** by the court that defendant Regions Financial Corporation's motion to amend be and hereby is **GRANTED**. The Class to be certified is therefore defined as:

All persons or entities who, between February 27, 2008, and January 19, 2009 (the "Class Period"), purchased or otherwise acquired the common stock of Regions Financial Corporation ("Regions"), and were damaged thereby. Excluded from the Class are current and former defendants, members of the immediate family of any current or former defendants, the directors, officers, subsidiaries and affiliates of Regions, any person, firm, trust, corporation, officer, director, or other individual or entity in

which any current or former defendant has a controlling interest, and the legal representatives, affiliates, heirs, successors-in-interest or assigns of any such excluded party.

The court has also considered the plaintiffs' motion to approve the form and manner of Class Notice (doc. 269) and defendant Regions Financial Corporation's ("Regions") opposition to said motion (doc. 271). To the extent that defendant Regions opposed the term "securities" and sought to substitute the term "common stock," the defendant's opposition is **MOOT**, for the reasons set forth above.

However, in its opposition Regions also challenges the Class Notice language that "defendants made materially false and misleading statements and omissions about the quality of Regions' loans..." *See e.g.*, doc. 271 at 3-4. Defendant argues that plaintiffs only raised defendants "false and misleading statements" and not "omissions." *Id.*, at 4-5. The court finds this distinction to be one without meaning.

As the Eleventh Circuit noted in its opinion in this case,

... a confirmatory misrepresentation is like an omission, because it is an affirmative representation that omits negative information. Thus, like we do here, the District Court noted that this type of misrepresentation would likely yield price stability rather than volatility, just as we would expect with a traditional omission. All the District Court did in this case was recognize the similarity between two different but closely related factual scenarios and draw on precedent from both areas to render its decision. The District Court's decision to do so evidences good, reasoned judging, not an abuse of discretion.

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Corp., 762 F.3d 1248, 1256, n.5 (11th Cir. 2014). The failure to disclose a material fact when a duty to do so exists is just as much of a misrepresentation as the affirmative disclosure of a misleading fact. In *Basic, Inc. v. Levinson*, 485 U.S. 224, 231, 108 S.Ct. 978, 983, 99 L.Ed.2d 194 (1988), the Court held that, “for a misrepresentation or omission to be ‘material,’ a substantial likelihood must exist that the true, disclosed fact ‘would have been viewed by the reasonable investor as having significantly altered the “total mix” of information made available.’” The Eleventh Circuit previously noted that, “[t]he test for materiality in the securities fraud context is ‘whether a reasonable man would attach importance to the fact misrepresented or omitted in determining his course of action.’” *S.E.C. v. Merchant Capital*, 483 F.3d 747, 766 (11th Cir.2007)(quoting *SEC v. Carriba Air*, 681 F.2d 1318, 1323 (11th Cir.1982) (citation omitted)). Falsehoods perpetuated through silence are indistinguishable from falsehoods perpetuated through statements when relied on by investors. In either case, the plaintiffs allege the misrepresentations caused them harm.

Having considered the foregoing, and being of the opinion that the plaintiffs’ motion to approve the form and manner of class notice (doc. 269) is due to be granted,

It is therefore **ORDERED** by the court that said motion be and hereby is

GRANTED to the extent set forth herein. Plaintiffs' shall change the Class Notice to conform to the Class Definition, as set forth above.

In accordance with this Court's Order of December 4, 2014 (doc. 268), it is further **ORDERED** that the plaintiffs shall withhold the notification of class members until such time as the Eleventh Circuit rules on the defendant's pending Rule 23(f) petition.

DONE and **ORDERED** this the 18th day of December, 2014.



INGE PRYTZ JOHNSON
SENIOR U.S. DISTRICT JUDGE