UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALASKA ELECTRICAL PENSION FUND, et al., Plaintiffs, v. BANK OF AMERICA, N.A., et al., Defendants.	Lead Case No.: 14-cv-7126 (JMF)

PLAINTIFFS' NOTICE OF MOTION FOR FINAL APPROVAL OF SETTLEMENT WITH FIVE DEFENDANTS, FINAL APPROVAL OF PLAN OF DISTRIBUTION, AND CERTIFICATION OF SETTLEMENT CLASS

PLEASE TAKE NOTICE that upon the filing of the accompanying Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Settlement With Remaining Five Defendants, Final Approval of Plan of Distribution, and Certification of Settlement Class; the declarations in support of the Motion, any papers filed in reply, and oral and documentary evidence as may be presented at any hearing on the Motion, Plaintiffs, through their undersigned counsel, hereby respectfully move this Court for entry of the [Proposed] Judgment and Order of Dismissal that will be filed along with Plaintiffs' reply brief.

Dated: September 28, 2018

/s/ Daniel L. Brockett
Daniel L. Brockett
Daniel Cunningham
Marc L. Greenwald
Steig D. Olson
Jonathan B. Oblak
Justin Reinheimer

/s/ David W. Mitchell
David W. Mitchell
Patrick J. Coughlin
Brian O. O'Mara
Steven M. Jodlowski
Lonnie Browne
ROBBINS GELLER RUDMAN

/s/ Christopher M. Burke
Christopher M. Burke
Julie A. Kearns (*pro hac vice*)
Hal Cunningham (*pro hac vice*)
SCOTT+SCOTT ATTORNEYS AT LAW LLP
600 W. Broadway, Suite 3300

Kevin A. Janus
Toby E. Futter
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue
22nd Floor
New York, New York 10010
Telephone: (212) 849-7000
Fax: (212) 849-7100
danbrockett@quinnemanuel.com
danielcunningham@quinnemanuel.com
marcgreenwald@quinnemanuel.com
steigolson@quinnemanuel.com
jonoblak@quinnemanuel.com
justinreinheimer@quinnemanuel.com
kevinjanus@quinnemanuel.com
tobyfutter@quinnemanuel.com

Jeremy D. Andersen (*pro hac vice*)
865 South Figueroa Street
10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
Fax: (213) 443-3100
jeremyandersen@quinnemanuel.com

& DOWD LLP
655 West Broadway
Suite 1900
San Diego, California 92101
Telephone: (619) 231-1058
Fax: (619) 231-7423
patc@rgrdlaw.com
davidm@rgrdlaw.com
bomara@rgrdlaw.com
sjodlowski@rgrdlaw.com
lbrowne@rgrdlaw.com

San Diego, CA 92101
Telephone: 619-233-4565
Fax: 619-233-0508
cburke@scott-scott.com
jkearns@scott-scott.com
hcunningham@scott-scott.com

David R. Scott
Beth A. Kaswan
Peter A. Barile III
Thomas K. Boardman
The Helmsley Building
230 Park Avenue, 17th Floor
New York, NY 10169
Telephone: 212-223-6444
Fax: 212-223-6334
david.scott@scott-scott.com
bkaswan@scott-scott.com
pbarile@scott-scott.com
tboardman@scott-scott.com

Amanda A. Lawrence
156 South Main Street
P.O. Box 192
Colchester, CT 06415
Telephone: 860-537-5537
Fax: 860-537-4432
alawrence@scott-scott.com

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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT WITH FIVE DEFENDANTS, FINAL APPROVAL OF PLAN OF DISTRIBUTION, AND CERTIFICATION OF SETTLEMENT CLASS

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Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs respectfully submit this Memorandum of Law in Support of their Motion for Final Approval of Settlement with Five Defendants, Final Approval of Plan of Distribution, and Certification of Settlement Class.

INTRODUCTION

All told, Plaintiffs have secured $504.5 million in settlements with Defendants, placing this case among the largest antitrust class actions ever settled. As discussed below, the aggregate settlement proceeds represent approximately 35% to 73% of Plaintiffs' anticipated trial demand. The Court has already granted final approval to ten settlements, and Plaintiffs now request that the Court grant final approval to this last Settlement with the five remaining Defendants—BNP Paribas SA ("BNP"); ICAP Capital Markets LLC ("ICAP"); Morgan Stanley & Co. LLC ("Morgan Stanley"); Nomura Securities International, Inc. ("Nomura"); and Wells Fargo Bank, N.A. ("Wells Fargo").

The Settlement at issue is the result of lengthy and intense negotiations, and was reached after years of hard-fought litigation. On the eve of what would have been a pivotal evidentiary hearing concerning the five Newly Settling Defendants'[1] numerous *Daubert* challenges to the expert work that underlay Plaintiffs' motion for class certification, the parties reached a compromise. The Newly Settling Defendants agreed collectively to pay $96 million, giving the Settlement Class a certain and substantial monetary recovery and sparing it the risk and delay of further litigation. We submit that the Settlement is fair and reasonable and easily satisfies the criteria for final approval. The terms and benefits of the Settlement, as well as the procedural history that led to it, are described in detail below.

[1] Capitalized terms not defined herein have the same meanings as supplied in Plaintiffs' motion for preliminary approval of settlement with BNP, ICAP, Morgan Stanley, Nomura, and Wells Fargo. *See* Dkt. Nos. 665 & 666. All internal citations and quotations are omitted and all emphases are added unless indicated.

The Plan of Distribution outlined below has previously been approved by the Court and is again recommended by experienced counsel who have litigated this case for nearly four years. Accordingly, Plaintiffs respectfully request that the Court grant this motion and enter judgment to provide the Settlement Class with the further relief that Lead Counsel worked hard to obtain.

SUMMARY OF THE ACTION

In September 2014, Plaintiffs brought this action against fourteen banks that dominate the market for interest rate derivatives and ICAP, an interdealer broker. Plaintiffs alleged that Defendants entered into an unlawful agreement to manipulate ISDAfix, a global benchmark reference rate used to price interest rate derivatives. Defendants allegedly conspired to rig the USD ISDAfix rate-setting process to the detriment of Defendant Banks' counterparties as well as the broader market for interest rate swaps. To redress harms to investors, Plaintiffs asserted federal antitrust claims and state law claims for breach of contract and unjust enrichment.

Prior to filing the original complaint, Lead Counsel carried out an extensive, months-long investigation, initiating the case only after uncovering substantial evidence of wrongdoing. Notably, the original complaint was filed *before* news broke that the CFTC had referred ISDAfix-related conduct to the U.S. Department of Justice upon uncovering evidence of possible criminal wrongdoing.[2] In connection with counsel's pre-suit investigation, Lead Counsel retained renowned economists who analyzed trading patterns and ISDAfix submissions and concluded that they revealed indicia of collusion. Lead Counsel also consulted with industry insiders with knowledge about ISDAfix and financial instruments tied to ISDAfix. Lead Counsel's investigation went far beyond the public record and resulted in initial complaints that

[2] At the time the Settlement at issue was agreed upon, the CFTC had only entered into settlements with five Defendants arising out of ISDAfix-related misconduct: Barclays, Citibank, Deutsche Bank, Goldman Sachs, and RBS.

were well-developed and supported by economic and other evidence. *See also* Dkt. No. 125 at 11-14 (details of pre-suit investigation). The results of this wide-ranging investigation were set forth at length in the pleadings.

Plaintiffs filed their Consolidated Amended Complaint in February 2015, Dkt. No. 164, and Defendants moved to dismiss, Dkt. Nos. 172-75. On March 28, 2016, the Court issued its Opinion largely denying Defendants' motion to dismiss. Dkt. No. 209. The Court denied the motion as to the antitrust claims against all Defendants and the state law breach of contract and unjust enrichment claims against all Defendants other than Nomura (and ICAP, against which they were not brought). *Id*. at 34.

Discovery commenced shortly after the Court's ruling, which Plaintiffs believe confirmed their assertion that Defendants repeatedly sought to and did manipulate ISDAfix throughout the Class Period pursuant to a rigged and corrupted system that Defendants collusively established. The parties conducted voluminous document discovery, with Defendants collectively producing over 21 million pages of documents. The parties took more than 40 fact depositions, with over 30 of these taken by Plaintiffs. Plaintiffs also subpoenaed documents from non-party ISDA and deposed its corporate designee and former CEO. Plaintiffs themselves produced approximately five million pages of documents and their corporate designees were deposed.[3] On February 7, 2017, Plaintiffs filed their Second Consolidated Amended Complaint. Those Defendants that had not yet settled again moved to dismiss (Dkt. Nos. 396-403), and on February 2, 2018, the Court again largely denied the motions. Dkt. No. 568.

[3] The details of discovery are provided in Lead Counsel's Motion for Attorneys' Fees, Payment of Litigation Expenses, and Incentive Awards, filed contemporaneously herewith, as well as the Joint Declaration of Lead Counsel ("Joint Decl.") submitted in support thereof.

Following the June 2017 deadline for the completion of fact discovery relating to class certification, Plaintiffs marshaled their considerable discovery efforts to present a compelling motion for class certification in July 2017. The motion was accompanied by three detailed expert reports, each of which supported Plaintiffs' theory of why class treatment was not only possible, but necessary to secure any meaningful relief for investors harmed by the alleged collusive scheme. After deposing Plaintiffs' experts, in November 2017 the Newly Settling Defendants strenuously opposed Plaintiffs' motion, including by seeking to exclude each of the experts who offered opinions in support of class certification. Lead Counsel defended Plaintiffs' experts in depositions, deposed Newly Settling Defendants' own experts (after extensively analyzing their theories and relevant literature), and filed papers (briefs and expert reports) in January 2018 in support of class certification as well as in opposition to the motions to exclude. Newly Settling Defendants filed their reply in support of their motions to exclude in February 2018. In all, the Court received over 300 pages of briefing on class certification and related expert issues, not to mention hundreds of pages of expert reports.

Plaintiffs and various Newly Settling Defendants were in contact throughout February, March, and April of 2018 to explore the possibility of settlement. At certain times these negotiations were with individual Newly Settling Defendants, and at other times the discussions involved multiple Defendants. The parties were not initially able to come to a resolution.

In mid-April 2018, the Court scheduled for May 16, 2018 an evidentiary hearing concerning the contentious and highly complex issues raised in the pending class certification and *Daubert* briefing. The significant preparation that this hearing entailed proved to be a catalyst for accelerated settlement negotiations, as all parties assessed the risks and likely outcomes. At this critical juncture, the parties revisited settlement discussions toward a

collective resolution involving all the Newly Settling Defendants on May 10. Over the course of four days, through the evening of Sunday, May 13, Plaintiffs and the Newly Settling Defendants were in near-constant communication, engaging in intensive negotiations that ultimately proved fruitful, producing terms of a settlement in principle agreeable to all sides. Ironing out the many details of the Settlement would take several more weeks. The final Settlement Agreement was executed on June 22, 2018.

Plaintiffs had great confidence in each position taken in their class certification briefing. But there was no guarantee that the Class would be certified, and the Class risked recovering little or nothing from the Newly Settling Defendants if certification were denied. Indeed, as the Court itself observed, Plaintiffs' "success was by no means guaranteed." *See* May 30, 2018 Fairness Hr'g Tr. ("Tr.") at 28:1-5.

The arm's-length negotiations ultimately arrived at a total figure that all parties—based on their extensive knowledge of the relevant legal landscape and experience in the case—believed reasonably balanced a variety of competing factors, including the value of the claims, the risk of non-recovery, and the benefit of a guaranteed and faster resolution.

SUMMARY OF THE SETTLEMENT AND NOTICE

Plaintiffs and the Newly Settling Defendants entered into a Settlement Agreement (Dkt. Nos. 667-1) that provides for a total payment of $96 million to the Settlement Class. Plaintiffs moved for preliminary approval of the Settlement on June 22, 2018 (Dkt. Nos. 665 & 666), and the Court granted preliminary approval on June 26, 2018 (Dkt. No. 669). The Court also approved the plan of notice and preliminarily approved the Plan of Distribution. Dkt. No. 669. The deadline for any objections or exclusions is October 13, 2018, and the fairness hearing is scheduled for November 8, 2018.

With the exception of the absence of provisions concerning confirmatory discovery, proffer sessions, and cooperation, the terms of the Settlement Agreement are substantially similar to those ten settlements to which the Court granted final approval. *See* Dkt. Nos. 222-1, 222-2, 222-3, 222-4, 222-5, 222-6, 222-7, 331-1, 490-1, 490-2 (settlement agreements); Dkt. Nos. 648-657 (final judgments and orders of dismissal that, inter alia, grant motion for final approval as to each of the ten previously-settling Defendants). Upon the Effective Date of the Settlement Agreement, Plaintiffs and members of the Settlement Class that do not exclude themselves will release their claims against the Released Defendant Parties. *See* Dkt. No. 667-1 (Stipulation and Agreement of Settlement, "Stip.") §§7.1, 7.2.

A. Certification Stipulation and Monetary Payment

The Settlement Agreement is made on behalf of a Settlement Class functionally identical to the Settlement Class already approved. Subject to specified exclusions, the Class is defined as "all Persons or entities who entered into, received or made payments on, settled, terminated, transacted in, or held an ISDAfix Instrument during the Settlement Class Period [January 1, 2006 through January 31, 2014]." Stip., §§1.49, 1.51.

The aggregate Settlement Amount of $96 million is comprised of individual amounts, as set out in Schedule A to the Settlement Agreement. The Settlement Agreement is non-recapture, meaning that as of the Effective Date, Newly Settling Defendants have no right to the return of the settlement fund. Stip., §10.3. The Settlement Agreement also obligates Newly Settling Defendants to provide reasonable confirmatory discovery that may be necessary to address certain issues that could arise in connection with the Settlement, including any Requests for Exclusion or objections. Stip., §11.1.

B. Release of Claims and Termination

The Settlement Agreement provides that upon the Effective Date, the Action, all claims asserted in the Action, and all Released Class Claims belonging to Plaintiffs and Releasing Class Parties will be dismissed with prejudice as against each Newly Settling Defendant. It also provides that Plaintiffs and each of the Settlement Class Members will be permanently barred and enjoined from asserting any of the Released Class Claims against each Newly Settling Defendant and Released Defendant Parties in any action or proceeding. Stip., §§7.1, 7.2. Consistent with the law governing the release of class action claims, the releases cover only those claims "arising from or relating to the factual predicate of the Action." Stip., §1.42.

If there are any opt-outs from the Settlement, the Settlement Agreement provides that the Newly Settling Defendants may elect to invoke certain procedures relating to reductions or termination under certain specified circumstances and conditions. Stip., §10.4(a)-(d).

C. Class Notice

To inform potential Settlement Class Members of the latest Settlement, Plaintiffs used a notice plan virtually identical to that employed to inform potential Class Members of the Approved Settlements. This extensive plan included direct mail, publication, and internet notice, among other procedures. The Court previously found such a plan to satisfy both Rule 23(e)(1) and due process. *See* Dkt. Nos. 648-57 (final judgments and orders of dismissal), ¶15.

Pursuant to the Court's June 26, 2018 Order Preliminarily Approving an Additional Settlement and the Related Plan of Distribution, and Approving the Manner and Forms for Notice (the "Notice Order"), Plaintiffs instructed the Court-appointed Claims Administrator, Epiq Systems Inc. ("Epiq" or the "Claims Administrator"), to provide notice to all reasonably identifiable potential Settlement Class Members. Lead Counsel similarly facilitated the distribution of notice to foreign counterparties by Rust Consulting ("Rust"), and worked with

numerous Settling Defendants to disseminate notice to any remaining Persons directly. The notice plan preliminarily approved by the Court (and previously deemed to satisfy Rule 23 and due process in the context of the ten Approved Settlements), and effectuated as set forth herein, included a robust notice plan involving direct notice by mail, printed publication notice, and notice via the Internet. A dedicated Settlement Website, telephone information line, and email address were also maintained for potential Settlement Class Members.

Direct Notice by Mail: Plaintiffs worked with Epiq, Rust, and certain Settling Defendants to provide direct notice by mail to all potential Settlement Class Members identified through reasonable efforts. *First*, as of August 14, 2018, Epiq mailed direct notice to a total of 39,973 potential Settlement Class Members that were primarily domiciled in the U.S., based on name and address information that was primarily obtained from the Settling Defendants' business records. *See* Decl. of Cameron R. Azari, Esq., on the Implementation and Adequacy of Class Notice Plan for Proposed Settlement, dated September 26, 2018 ("Azari Decl.") ¶12, 17. The "Notice Packet" Epiq disseminated to Class Members included the Notice of an Additional Proposed Settlement of Class Action (the "Notice") and the Proof of Claim and Release Form (the "Claim Form"), both of which were preliminarily approved by the Court. *See* Notice Order ¶¶10-12.[4]

As of August 14, 2018, the Claims Administrator also mailed the Notice Packet to a total of 1,358 banks, brokers, and other nominees that may have executed relevant transactions on behalf of potential Settlement Class Members. Azari Decl. ¶19; *see also* Notice Order ¶16.

[4] The Notice Packet also contained a full page insert stating in English, as well as in 12 other languages, that translated versions of the Notice and Claim Form are available on the Settlement Website in these languages. The Settlement Agreement provides for Plaintiffs' right to request attorneys' fees, payment of litigation expenses in connection with prosecuting the Action, and/or incentive awards. Stip., §§9.1, 9.2. The Court-approved Notice informs the Settlement Class of counsel's intent to seek such fees and expenses, subject to Court approval.

These packets were accompanied by a cover letter instructing the nominees to either mail the Notice Packet to any such beneficial owner(s) or provide the Claims Administrator with a list of names and addresses of any beneficial owner(s) so that Epiq may distribute the Notice Packet accordingly. *See* Azari Decl., Attachment 2; *see also* Notice Order ¶16.

Second, Rust, as agent of certain Settling Defendants, mailed the Notice Packet to 20,032 potential Settlement Class Members that required special handling due to foreign privacy concerns asserted by the Settling Defendants. *See* Decl. of Jason Rabe Regarding Mailing of the Proposed Settlement Notice and Proof of Claim Forms to Certain Settlement Class Members ("Rabe Decl.") ¶¶8-9, 17; *see also* Notice Order ¶15. *Third*, eight (8) of the fifteen (15) Settling Defendants (the "Direct Notice Defendants") provided direct notice to certain of their own counterparties that required further consideration, primarily to accommodate foreign privacy laws.[5] *See* Direct Notice Defs.' Decls.; *see also* Notice Order ¶15. Finally, a separate third-party claims administrator agent, Garden City Group ("GCG"), provided mail notice to certain foreign

[5] *See* Decl. of Abigail Deering Regarding Distribution of Additional Settlement Notice and Proof of Claim Form to Mexican-Domiciled Class Members ("Deering Decl."); Decl. of Marc Leuzinger Regarding Mailing of the Notice and Proof of Claim Form to Certain Potential Members of the Settlement Class in Connection with an Additional Settlement ("Leuzinger Decl."); Decl. of Audrey Ng Regarding Mailing of the Notice and Proof of Claim Form to Certain Potential Members of the Settlement Class in Connection with an Additional Settlement ("Ng Decl."); Decl. of Manuel F. Gomez Regarding Mailing of the Notice of an Additional Proposed Settlement of Class Action and Proof of Claim and Release Form to Potential Settlement Class Members ("Gomez Decl."); Decl. of Sandra Adams Regarding Self-Mailing of Class Notice by Certain Foreign HSBC Affiliates in Connection with Proposed Settlement Agreement ("Adams Decl."); Decl. of Michael T. Lee Regarding Mailing of the Settlement Notice and Proof of Claim Forms ("Lee Decl."); Decl. of Alan S. Gruber Regarding Mailing of the Proposed Settlement Notice and Proof of Claim Forms ("Gruber Decl."); Decl. of Matthew Popowsky Regarding Mailing of the Additional Settlement Notice and Proof of Claim Form ("Popowsky Decl."); and Decl. of Jamuna D. Kelley Regarding Mailing of the Settlement Notice and Proof of Claim Forms ("Kelley Decl.," and collectively, the "Direct Notice Defs.' Decls."), concurrently filed herewith.

counterparties due to foreign privacy law concerns asserted by Settling Defendant Deutsche Bank.[6]

Printed Publication Notice: Beginning on August 14, 2018, Epiq issued the Court-approved Summary Notice of an Additional Proposed Settlement of Class Action ("Summary Notice") in numerous publications. Azari Decl. ¶22; *see also* Notice Order ¶14. These publications included *Risk Magazine* (global edition); *Financial Times* (global edition); *The Wall Street Journal* (national edition, U.S.); *The New York Times* (national edition, U.S.); *The Daily Telegraph* (national edition, England); *South China Morning Post* (national edition, Hong Kong); and *The Straits Times* (national edition, Singapore). Azari Decl. ¶¶22-23. The Claims Administrator also issued a press release on August 14, 2018 through PR Newswire. Azari Decl. ¶¶29-30; *see also* Notice Order ¶14.

Settlement Website, Telephone Number, and Email Address: On August 13, 2018, Lead Counsel directed Epiq to update the existing Settlement Website located at www.IsdafixAntitrustSettlement.com, to reflect information related to the new, Proposed Settlement. Azari Decl. ¶31. These updates enabled potential Settlement Class Members to obtain information about the Proposed Settlement, in addition to the Approved Settlements, and to file claims electronically. *Id.* As of September 19, 2018, the Settlement Website has had 26,586 visitors, individual pages of the Settlement Website have been loaded 83,506 times, and the Notice has been downloaded 396 times. Azari Decl. ¶32.

Epiq also maintains a dedicated telephone information line, both a toll-free domestic number as well as an international number, and an email address to which inquiries or other requests may be directed. Azari Decl. ¶¶33-35. The telephone information line and email

[6] *See* Decl. of Loree Kovach Regarding Mailing of the Notice of Proposed Settlement of Class Action ("GCG Decl."), concurrently filed herewith; *see also* Notice Order ¶8.

address have been continuously maintained since January 18, 2018, when they were established in connection with the Approved Settlements. *Id.*

The Settlement Website and phone line information were displayed on each page of the Notice and Claim Form mailed to potential Settlement Class Members, as well as in the published Summary Notice. As of September 19, 2018, Epiq mailed an additional three (3) Notice Packets requested via the Settlement Website, the toll-free telephone number, or otherwise. Azari Decl. ¶20.

Notice via the Internet: Beginning August 14, 2018, the Claims Administrator also published digital banner advertisements on the global edition websites of *FinancialTimes.com* and *WSJ.com.* Azari Decl. ¶24-25; *see also* Notice Order ¶14. Each Internet display, which ran through September 12, 2018, linked any user that clicked on the banner advertisement to the dedicated Settlement Website. Azari Decl. ¶25. Epiq also caused sponsored links to the Settlement Website to be listed through various Internet search engines as of August 14, 2018, and will continue these postings through the October 13, 2018 deadline to opt out of or object to the Proposed Settlement. Azari Decl. ¶¶26-28.

ARGUMENT

I. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

Final approval is appropriate where the court determines that a class action settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Public policy favors the settlement of disputed claims among private litigants, particularly class actions. *See Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005). In assessing final approval, courts consider both procedural and substantive fairness. *See id.*

A. The Settlement is Presumptively Fair, Reasonable, and Adequate

"To determine procedural fairness, courts examine the negotiating process leading to the settlement." *Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 618 (S.D.N.Y. 2012). Where a settlement is the "product of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation," the settlement enjoys a "presumption of fairness." *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74 (S.D.N.Y. 2000), *aff'd sub nom., D'Amato v. Deutsche Bank*, 236 F.3d 78 (2d Cir. 2001); *see also In re Air Cargo Shipping Servs. Antitrust Litig.*, 2009 WL 3077396, at *7 (E.D.N.Y. Sept. 25, 2009). Courts grant "'great weight' [] to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation." *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 576 (S.D.N.Y. 2008).

Here, the Settlement Agreement is the product of intensive negotiations among counsel (on both sides) well-versed in complex class actions. These discussions began in February 2018 with individual Newly Settling Defendants and, at times, small groups of Newly Settling Defendants. They consisted of both face-to-face meetings and phone calls. They took on renewed urgency in late spring 2018, at a time of intense work and focus by all parties. Briefing of lengthy and complex class certification and *Daubert* motions had concluded, and an evidentiary hearing related to those filings was imminent. On May 10, the parties revisited the possible global resolution of the action. The parties engaged in intensive negotiations for nearly four days until terms were reached that were acceptable to all sides, all while preparing in parallel for the upcoming evidentiary hearing. These terms provide a substantial recovery to the Class while avoiding the significant risks and lengthy delay of continued litigation.

The basic terms of the global Settlement with the Newly Settling Defendants were reached only after detailed and protracted discussions regarding multiple issues of relevance to

the parties. These issues included the parties' views on: (i) the likelihood of Plaintiffs succeeding in certifying the proposed classes, (ii) the possibility of Defendants succeeding in their efforts to preclude various expert testimony, (iii) the possible grounds for and potential outcomes of summary judgment motion practice should the case proceed as a certified class, (iv) the strength of Plaintiffs' evidence at trial, (v) Newly Settling Defendants' relative culpability in respect of Plaintiffs' allegations of wrongdoing, (vi) the extent of Newly Settling Defendant's share of the market for interest rate derivatives (including, especially, derivatives expressly linked to ISDAfix), and (vii) whether the Newly Settling Defendants had been or might be subject to penalties imposed by a government regulator. Joint Decl. ¶¶39-43 ("History of Settlement Negotiations").

The settlement negotiations and the aggregate Settlement Amount were informed by Lead Counsel's quantitative and qualitative liability analyses. Before settlement discussions, we tasked our experts at Compass Lexecon ("Compass") with assessing Defendants' potential exposure. This analysis drew on extensive research to assess Defendants' respective shares of the market for interest rate derivatives—including, where possible, Defendants' shares of the market for interest rate derivatives that were expressly-linked to the ISDAfix benchmark. The results allowed Lead Counsel to gauge the relative degrees of motive, opportunity, and potential impact of each Defendant's conduct with respect to Plaintiffs' allegations of wrongdoing.

In connection with settlement discussions, Lead Counsel also reviewed the evidence that extensive discovery had revealed about each Defendant's role in the alleged scheme. The aggregate Settlement Amount reflects Lead Counsel's informed view of the value of Plaintiffs' claims against the Newly Settling Defendants, New Settling Defendants' respective role in the interest rate derivatives market and scheme alleged, as well as the benefits of settlement to the

Class. Lead Counsel believes that the Settlement Amount reasonably reflects the aggregate liability of the five remaining Defendants in light of the many unknowns and risks inherent in continued litigation. The Newly Settling Defendants later determined among themselves how to allocate the Settlement Amount.

The lengthy negotiations with the Newly Settling Defendants were intense, time-consuming, hard-fought, at times very contentious, and always at arm's-length. Ultimately, the Settlement resulted from extended discussions with experienced defense counsel, and—in Lead Counsel's view—represents an excellent outcome under the circumstances. Lead Counsel believe Plaintiffs' claims have substantial merit, but acknowledge the expense and uncertainty of continued litigation against Newly Settling Defendants. As fiduciaries to the Class, Lead Counsel took this risk seriously, and weighed the uncertain outcome of further litigation in the negotiations. Based on these considerations, there is "a strong initial presumption that the compromise is fair and reasonable." *In re Michael Milken and Assocs. Sec. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993); *see also In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 258 (E.D. Va. 2009) (same).

B. The *Grinnell* Factors Support Final Approval of the Settlement

In evaluating the substantive fairness of a proposed class action settlement, the Second Circuit has identified nine factors courts should consider:

> (1) the complexity, expense and likely duration of the litigation, (2) the reaction of the class to the settlement, (3) the stage of the proceedings and the amount of discovery completed, (4) the risks of establishing liability, (5) the risks of establishing damages, (6) the risks of maintaining the class action through the trial, (7) the ability of the defendants to withstand a greater judgment, (8) the range of reasonableness of the settlement fund in light of the best possible recovery, [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974). Not every factor must weigh in favor of approval; instead, courts consider "'the totality of these factors in light of the particular circumstances'" in making an ultimate final approval determination. *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 189 (S.D.N.Y. 2012).

1. Complexity, Expense, and Likely Duration of the Litigation

"Antitrust class actions 'are notoriously complex, protracted, and bitterly fought.'" *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 669 (S.D.N.Y. 2015); *see also Virgin Atl. Airways Ltd. v. British Airways PLC*, 257 F.3d 256, 263 (2d Cir. 2001) (noting the "factual complexities of antitrust cases"); *In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *4 (E.D.N.Y. Oct. 23, 2012) (noting that federal antitrust cases are "complicated, lengthy," and "costly"). This case is no different, and is especially complex given the global nature and size of the interest rate derivatives market, the number of Defendants, and the length of the conspiracy alleged. "[T]he more complex, expensive, and time consuming the future litigation, the more beneficial settlement becomes as a matter of efficiency to the parties and the Court." *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 381-82 (S.D.N.Y. 2013).

Absent the Settlement, Plaintiffs would have needed to undertake additional fact discovery to prove that each Newly Settling Defendant participated in the unlawful conspiracy alleged. *See Ross v. Am. Express Co.*, 35 F. Supp. 3d 407, 438 (S.D.N.Y. 2014), *aff'd sub nom., Ross v. Citigroup, Inc.*, 630 F. App'x 79 (2d Cir. 2015). As demonstrated by this litigation to date, such an undertaking would have been formidable to say the least. Plaintiffs have reviewed millions of pages of documents from just the Newly Settling Defendants and taken nearly 40 depositions as well. These figures would have only grown without the Settlement, as merits discovery would have continued through summary judgment.

The Newly Settling Defendants would also have continued to fiercely contest every issue at every juncture. In addition to their opposition to class certification and *Daubert* motions, Newly Settling Defendants almost certainly would have moved for summary judgment prior to trial, and would have appealed any adverse determination. This much is clear by the hundreds of pages filed by the Newly Settling Defendants in connection with class certification briefing and expert reports, as well as *Daubert* motions. Indeed, Newly Settling Defendants repeatedly and strenuously contended throughout that this case is uniquely complex and difficult to prove.

Lead Counsel had to master issues related to complex financial instruments in order effectively to litigate questions of plausibility, antitrust standing, tolling, and contract interpretation. Some of the key evidence in this case, such as trade data and communications between traders and brokers, often required careful, detailed interpretation and analysis. The case demanded that Lead Counsel master the intricacies of sophisticated financial products and derivatives in order to understand and marshal evidence, effectively take depositions, build a damages model, and brief dispositive, discovery, and class certification motions. These and other unique features presented risks and challenges at each stage of the litigation. Indeed, the Court acknowledged as much at the May fairness hearing. *See* Tr. at 27:11-15 ("Plaintiffs faced considerable risks in proceeding all the way to judgment. That risk was exacerbated by the complexity of the sophisticated financial instruments involved in this case, the nature and size of the derivatives market, and the number and resources of the defendants.").

Class certification proved to be a heated battle, with Newly Settling Defendants vigorously contesting nearly every element under Rule 23. If the parties had not settled, after the Court made its class certification ruling, the losing party could very well have sought interlocutory review under Rule 23(f), which would have further extended the litigation and

increased risks to the Class. *See In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 986 F. Supp. 2d 207, 212 n.13 (E.D.N.Y. 2013) ("In the *Wal-Mart* case, twenty months elapsed between the order certifying the class and the Second Circuit's divided opinion affirming that decision.").

Even with a certified class, many risks remained for the Class. Summary judgment and pre-trial motion practice likely would have been extensive and protracted. Trial would also have been lengthy, with the losing party almost certain to have appealed any adverse jury verdict. Given this risk, "[t]here can be no doubt that this class action would be enormously expensive to continue, extraordinarily complex to try, and ultimately uncertain of result." *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998); *see also In re Initial Public Offering Sec. Litig.*, 243 F.R.D. 79, 93 (S.D.N.Y. 2007) ("The prospect of an immediate monetary gain may be more preferable to class members than the uncertain prospect of a greater recovery some years hence."); *Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003) (noting that "in light of the time value of money," future recoveries can be "less valuable" than present recovery).

In short, the possibility of protracted litigation with its attendant risk (and ongoing cost) was significant, and the Settlement provides Class members with the certainty of substantial relief. As such, the Settlement provides a resolution that powerfully promotes efficiency and minimizes substantial uncertainty. *See Meredith Corp.*, 87 F. Supp. 3d at 663 ("The greater the complexity, expense and likely duration of the litigation, . . . the stronger the basis for approving a settlement.").

2. Reaction of the Class to the Settlement

"It is well settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy." *Allen v. Dairy Farmers of Am.*,

Inc., 2011 WL 3361233, at *6 (D. Vt. Aug. 3, 2011); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002) ("the lack of objections may well evidence the fairness of the Settlement"). Notably, in a large Settlement Class comprised principally of sophisticated investors in complex financial instruments, there have been no objections filed to date. *See* Azari Decl. ¶38. This reaction weighs strongly in favor of approval. *Wal-Mart*, 396 F.3d at 118 ("If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.").

While the deadline to object or request exclusion has not yet passed, the comprehensive notice program began in mid-August, and there have been no objections or requests for exclusion from any Settlement Class Member as to these Settlements. *See* Azari Decl. ¶38. Should any objections be submitted to Lead Counsel or the Claims Administrator instead of the Court (the correct recipient per the Notice instructions), Plaintiffs will promptly submit a copy to the Court.

3. Stage of the Proceedings

The relevant inquiry presented by this factor is "whether the plaintiffs have obtained a sufficient understanding of the case to gauge the strengths and weaknesses of their claims and the adequacy of the settlement." *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006). This factor requires only that counsel "have engaged in sufficient investigation of the facts to enable the Court to intelligently make . . . an appraisal of the settlement." *Id.*[7]

Here, the Settlement at issue was reached after extensive discovery and motion practice, and at a more advanced stage than the ten settlements to which the Court has granted final

[7] *See, e.g.*, *In re Nissan Radiator/Transmission Cooler Litig.*, 2013 WL 4080946, at *7 (S.D.N.Y. May 30, 2013) (granting final approval where "plaintiffs conducted an investigation prior to commencing the action, retained experts, and engaged in confirmatory discovery in support of the proposed settlement").

approval. Final approval is routinely granted to settlements reached at similarly mature procedural postures. *See, e.g., Thompson v. Metro. Life Ins. Co.*, 216 F.R.D. 55, 62 (S.D.N.Y. 2003) (granting approval to settlement reached after over a year of litigation, where "some 450,000 pages of documents were produced," 31 depositions were taken, and motions for summary judgment and class certification had been considered and finding that there had been sufficient discovery to assure plaintiffs' ability to weigh their position based on a full consideration of all possibilities facing them).

As noted above, this case was vigorously litigated for nearly four years and generated a sizable record. Lead Counsel developed a comprehensive understanding of the Class' claims and was thus well-situated to negotiate the Settlement at issue. Lead Counsel's knowledge of the strengths and potential weaknesses of their claims—based, *inter alia*, on extensive document discovery, depositions, confirmatory discovery, consultation with experts, and regulatory settlements—is more than adequate to support the Settlement. Where such extensive discovery and litigation has occurred, the court "may assume that the parties have a good understanding of the strengths and weaknesses of their respective cases and hence that the settlement's value is based upon such adequate information." Newberg on Class Actions § 13:50 (5th ed.).

Accordingly, Lead Counsel's well-informed views of the strengths and potential weaknesses of Plaintiffs' claims weigh in favor of final approval.

4. Risks of Establishing Liability and Damages

In assessing this factor, "the Court should balance the benefits afforded the Class, including the *immediacy* and *certainty* of a recovery, against the continuing risks of litigation." *Payment Card*, 986 F. Supp. 2d at 224 (emphasis in original). In so doing, the Court need not "adjudicate the disputed issues or decide unsettled questions; rather, the Court need only assess

the risks of litigation against the certainty of recovery under the proposed settlement." *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 459 (S.D.N.Y. 2004).

The Court is well aware that Newly Settling Defendants contested virtually every aspect of this case. As noted, they filed motions to dismiss, arguing, *inter alia*, that Plaintiffs failed: (i) plausibly to allege a violation of Section 1 of the Sherman Act; (ii) adequately to allege injury-in-fact and damages as to all claims; (iii) adequately to plead a breach of contract; and (iv) to assert their claims in time. They also filed a second round of motions to dismiss challenging antitrust standing and certain contract claims.

Plaintiffs have the burden of proving class-wide damages, requiring expert analysis to demonstrate that damages for each of the classes as a whole and individual members' damages could be computed on a common, formulaic basis. With respect to these elements, Newly Settling Defendants vehemently opposed Plaintiffs' efforts to establish class-wide and individual damages in their *Daubert* motions and opposition to class certification. How these issues would have been resolved was uncertain, to say the least. *See* Tr. at 28:1-5 (regarding class certification, noting "suffice it to say, my engagement with those motion papers, the many hundreds if not thousands of pages of them, certainly gives me a firm basis on which to conclude that the matters here are complicated and plaintiff's success was by no means guaranteed").

Plaintiffs would have also faced the complexities inherent in proving class-wide antitrust damages to the jury. Trial damages issues would inevitably involve a "battle of the experts" in which "it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than [] myriad nonactionable factors . . . ." *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986). Thus, there was an inherent risk that a

jury might accept one or more of Newly Settling Defendants' damages arguments and award nothing at all or award much less than the $96 million that, if approved, would be available to the Settlement Class. "Indeed, the history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal." *NASDAQ*, 187 F.R.D. at 476. *See also* Tr. at 27:17-20 ("had the case proceeded to final judgment there is no guarantee that plaintiffs would have satisfied their burdens of proving the existence of an antitrust conspiracy, injury, causation and damages").

Each Newly Settling Defendant is represented by able lawyers from some of the most skilled law firms in the world. There is every indication that the five Newly Settling Defendants were prepared, and had the wherewithal, to vigorously contest the existence and extent of liability, impact, and damages—through class certification, summary judgment, trial, and on appeal. Thus, when weighing the risks of establishing liability and damages against the certainty of the significant recoveries achieved by the Settlement, the balance weighs strongly in support of final approval.

5. Risks of Maintaining a Class Action Through Trial

As discussed, the inherent risks in maintaining an antitrust class action through trial are undeniably present in this case. This factor, too, weighs in favor of final approval.

6. Ability of Defendants to Withstand a Greater Judgment

As the Court recently observed, "in litigation of this nature, [this] factor does not weigh heavily in the balance." Tr. at 30:4-6. "[I]n any class action against a large corporation, the defendant entity is likely to be able to withstand a more substantial judgment, and, against the

weight of the remaining factors, this fact alone does not undermine the reasonableness of the instant settlement." *Weber v. Gov't Emps. Ins. Co.*, 262 F.R.D. 431, 447 (D.N.J. 2009).[8]

The $96 million in additional recovery is an excellent outcome for the Class in the eyes of very well-informed and experienced Lead Counsel, and is a compromise position that reasonably reflects the many considerations and risks inherent in both the settlement negotiation and continued prosecution of this action. Thus, the ability of Newly Settling Defendants to withstand greater judgment does not undermine the reasonableness of the Settlement when all other factors weigh in favor of approval.

7. Reasonableness of the Settlement in Light of the Best Possible Recovery and Attendant Litigation Risks

The last two factors take into account "the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Wal-Mart*, 396 F.3d at 119; *see also In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff'd*, 818 F.2d 145 (2d Cir. 1987). This assessment does not result in a "'mathematical equation yielding a particularized sum.'" *Massiah v. MetroPlus Health Plan, Inc.*, 2012 WL 5874655, at *5 (E.D.N.Y. Nov. 20, 2012).

In Lead Counsel's view, and given the posture of the litigation at the time of settlement, the $96 million Settlement proposed here, and the $504.5 million aggregate settlement fund, constitute an excellent result. *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997) ("'great weight' is accorded to the recommendations of counsel, who are most

[8] Courts routinely observe that the ability to withstand a greater judgment "does not carry much weight in evaluating the fairness of the Settlement." *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at *14 (S.D.N.Y. Nov. 7, 2007); Tr. of Final Approval Hr'g, *In re Elec. Books Antitrust Litig.*, No. 11-md-2293, Dkt. No. 686 at 13:22-24 (S.D.N.Y. Nov. 21, 2014) (granting approval where defendant's ability to withstand greater judgment was undisputed).

closely acquainted with the facts of the underlying litigation"). "The adequacy of the amount achieved in settlement is not to be judged in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *Meredith Corp.*, 87 F. Supp. 3d at 665-66. As one prominent case observed, because "the essence of a settlement is compromise[, a] just result is often no more than an arbitrary point between competing notions of reasonableness." *In re Corrugated Container Antitrust Litig*., 659 F.2d 1322, 1325 (5th Cir. 1981); *see also Grinnell*, 495 F.2d at 455 ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.").[9]

The reasonableness of the Settlement is confirmed by Plaintiffs' analysis of potential damages should the case have instead proceeded to trial. There are, of course, many steps remaining between here and a verdict. This includes the normal risks inherent in any case, such as an adverse finding by the Court or jury on issues such as whether there was a conspiracy, causation, or the statute of limitations. There would also be case-specific risks such as whether the Court accepts and the jury finds persuasive arguments that manipulation in one tenor could move rates in other tenors, and what instances of manipulation (and supposed corrective disclosures) are even discovered and then found persuasive by the jury.

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[9] With respect to the Court's question #5 concerning whether and how to value the cooperation provisions of the previously-approved settlements (*see* Dkt. No. 646), such provisions are generally not assigned a monetary value. Rather, the benefit derived from such provisions is considered in the reasonableness of a settlement in the final approval determination. *See, e.g.*, *In re Air Cargo Shipping Servs. Antitrust Litig.*, 2015 WL 5918273, at *3 (E.D.N.Y. Oct. 9, 2015) ("though the monetary value of the agreements to cooperate with plaintiffs have not been factored into the overall value of these settlements, that value is no doubt significant"); *Precision Assocs., Inc. v. Panalpina World Transp. (Holding) Ltd.*, 2013 WL 4525323, at *9 (E.D.N.Y. Aug. 27, 2013) ("This cooperation [provision in the settlement agreement] adds considerable value to the Settlement and must be factored into an analysis of the overall reasonableness of the agreement.").

As part of Plaintiffs' work in connection with approval of the prior settlements in this matter, analyses were undertaken to ensure the strength of the settlements achieved. Counsel consulted all available information, including, without limitation, the data produced by all Defendants; the arguments, briefs, and expert opinions submitted to date; and rate movements and other market-wide data. Based on an assessment of such information, along with statistical analyses performed by Compass, Lead Counsel estimated that Plaintiffs would likely have demanded between $689 million and $1.435 billion if the case had gone to trial. The aggregate *$504.5 million* in settlement proceeds thus represents approximately *35% to 73%* of Plaintiffs' anticipated trial demand. It is important to again note, however, that these are just estimated *demand* figures. Actual recovery at trial—*if any*—would be subject to the risks outlined above and many others.

These comparisons show the Settlement—properly considered together with the prior settlements—exceeds the pertinent standards for final approval. *See Grinnell*, 495 F.2d at 455 n.2. *See also In re Med. X-Ray Film Antitrust Litig.*, 1998 WL 661515, at *5-6 (E.D.N.Y. Aug. 7, 1998) (granting final approval to antitrust class action settlement representing approximately 17% of the estimated best possible recovery); *id.*, at *6 (collecting cases, including those granting final approval of settlements for "less than 2%" and "6.4-11%" of potential recovery); *In re Automotive Refinishing Paint Antitrust Litig.*, 2004 WL 1068807, at *2 (E.D. Pa. May 11, 2004) (preliminarily approving partial settlements, noting the settlement amounts "represent[ed] approximately two percent of [settling defendants'] sales," and 4.2% of sales in the four years during the class period when the respective defendants registered their highest sales).

II. NOTICE TO THE SETTLEMENT CLASS SATISFIED RULE 23 AND DUE PROCESS

Rule 23(c)(2)(B) requires the "best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974). Under Rule 23(e)(1), notice must also be "reasonable," meaning it must "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Wal-Mart*, 396 F.3d at 114. Actual notice to every class member is not required; rather, counsel need only act "reasonably in selecting means likely to inform the persons affected." *Jermyn v. Best Buy Stores, L.P.*, 2010 WL 5187746, at *3 (S.D.N.Y. Dec. 6, 2010); *see also In re Adelphia Commc'ns Corp. Sec. & Derivatives Litig.*, 271 F. App'x 41, 44 (2d Cir. 2008). Plaintiffs have employed a virtually identical notice plan for the Proposed Settlement as was done (and finally approved by the Court) for the Approved Settlements. As discussed above, this included extensive direct mail and publication notice, internet notice, and other procedures that the Court previously held satisfied both Rule 23(e)(1) and due process.

A. The Class Received the Best Practicable Notice Under the Circumstances

Pursuant to the Court's June 26, 2018 Notice Order, the Claims Administrator, other third-party agents, and certain Settling Defendants mailed the Notice Packet to all reasonably identifiable potential Settlement Class Members. As of September 28, 2018, a total of over 62,600 Notice Packets had been disseminated to these Persons.[10] This direct distribution was

[10] *See* Azari Decl. ¶12 (39,973 Notice Packets mailed); Rabe Decl. ¶¶8-9 (20,032 Notice Packets mailed); GCG Decl. ¶4 (395 Notice Packets mailed); Deering Decl. ¶6 (26 Notice Packets mailed); Leuzinger Decl. ¶7 (14 Notice Packets mailed); Ng Decl. ¶7 (2 Notice Packets mailed); Gomez Decl. ¶9 (41 Notice Packets mailed); Adams Decl. ¶3 (1,297 Notice Packets mailed); Lee Decl. ¶2 (40 Notice Packets mailed); Gruber Decl. ¶2 (98 Notice Packets mailed); Popowsky Decl. ¶¶7-8 (649 Notice Packets mailed); Kelley Decl. ¶3 (111 Notice Packets mailed).

supplemented by extensive publication notice, which included, as described above, publication of the Summary Notice in numerous sources, notice via the Internet and a press release over PR Newswire, and the establishment of a Settlement Website, telephone line, and email address for those seeking further information. *See* Azari Decl. ¶¶22-37.

This comprehensive notice plan constitutes "the best notice . . . practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B). Comparable multi-faceted notice programs combining direct mail and publication are routinely approved. *See, e.g.*, *Vitamin C*, 2012 WL 5289514, at *8 ("The notice was also distributed widely, through the internet, print publications, and targeted mailings. . . . [T]he distribution of the class notice was adequate."); *In re Credit Default Swaps Antitrust Litig.*, 2016 WL 2731524, at *5 ("*CDS*") (S.D.N.Y. Apr. 26, 2016) (notice adequate where counsel mailed notice "to each of 13,923 identified Class members," published the summary notice, and launched a settlement website which posted key relevant information).

And, as noted above, the Court previously approved a substantially identical notice program used in connection with the ten Approved Settlements. *See* Dkt. Nos. 648-657, ¶15 ("The mailing of the Notice to all members of the Settlement Class who could be identified through reasonable effort, the publication of the Summary Notice, and the other Notice distribution efforts described in the Motion for Final Approval . . . satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all Persons entitled to notice.").

B. The Notice Fairly Apprised Potential Settlement Class Members of the Settlements and Their Options

The contents of a class notice must (i) "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings" and (ii) be written as to "be understood by the average class member." *Wal-Mart*, 396 F.3d at 114-15. "There are no rigid rules to determine whether a settlement notice satisfies constitutional or Rule 23(e) requirements . . . ." *In re Vitamin C*, 2012 WL 5289514, at *8 (quotation omitted). Courts typically consider: (i) "whether there has been a succinct description of the substance of the action and the parties' positions;" (ii) "whether the parties, class counsel, and class representatives have been identified;" (iii) "whether the relief sought has been indicated;" (iv) "whether the risks of being a class member, including the risk of being bound by the judgment have been explained;" (v) "whether the procedures and deadlines for opting out have been clearly explained;" and (vi) "whether class members have been informed of their right to appear in the action through counsel." *Id.*

The Notice disseminated to potential Settlement Class Members for the Proposed Settlement contains all the information required by Rule 23(c)(2)(B). This includes a plain language explanation of: (i) the nature of the case, Plaintiffs' allegations, and the Settlement Class definition; (ii) the background of the Settlements, and how the Settlement Fund will be allocated upon final approval; (iii) the right to opt out of the Settlement Class, object to the Settlement, and appear at the Fairness Hearing, as well as the processes and deadlines for doing so; and (iv) the binding effect of judgment on those who do not exclude themselves from the Settlement Class, and the effect of the Court's final approval of the Settlement.

The Notice also contains other important information, such as Lead Counsel's intent to request fees and expenses. It prominently features various modes of contact information for the

Claims Administrator and Lead Counsel, and displays the Settlement Website address on each page. It also provides recipients with instructions on how to submit a Claim Form. On its own, and particularly when supported by publication and other means of notice, the Notice directly sent to potential claimants "provide[s] sufficient information for [Settlement] Class Members to understand the Settlement and their options." *Sykes v. Harris*, 2016 WL 3030156, at *10 (S.D.N.Y. May 24, 2016).

III. THE PLAN OF DISTRIBUTION SHOULD BE GRANTED FINAL APPROVAL

The Plan of Distribution Plaintiffs intend to employ in connection with the Proposed Settlement is substantively identical to that presented to, and granted final approval by, the Court in connection with the previous ten Approved Settlements. *See* Dkt. Nos. 648-657, ¶16 ("The Plan of Distribution, which was submitted by Plaintiffs in their Motion for Final Approval, and posted to the Settlement Website on March 29, 2018, is approved as fair, reasonable, and adequate."). Plaintiffs employed the same "pooling" and "multiplier" techniques to determine the distribution of the Proposed Settlement's monetary fund as was previously approved for use in distributing the funds from the Approved Settlements.

As noted in connection with the Approved Settlements, Courts do not demand perfection of a plan of distribution in complex antitrust cases. *PaineWebber*, 171 F.R.D. at 133 ("[I]t is obvious that in the case of a large class action the apportionment of a settlement can never be tailored to the rights of each plaintiff with mathematical precision.").[11] Courts hold plans of distribution—especially in antitrust cases—to realistic standards given practical limitations. *See CDS*, 2016 WL 2731524, at *9 (granting final approval and noting that "[t]he challenge of

[11] *See also In re Elec. Books Antitrust Litig.*, 2014 WL 1282293, at *16 (S.D.N.Y. Mar. 28, 2014) ("[A]ntitrust jurisprudence . . . expressly refuses to impose extraordinary burdens on a plaintiff to construct the but-for price . . . . [T]he wrongdoer shall bear the risk of the uncertainty which his own wrong has created.").

precisely apportioning damages to victims is often magnified in antitrust cases, as damage issues in antitrust cases are rarely susceptible of the kind of concrete, detailed proof of injury which is available in other contexts").

> To secure final approval, a plan of distribution need only
>
> meet the standards by which the settlement is scrutinized—namely, it must be fair and adequate. A plan need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel. A principal goal of a plan of distribution must be the equitable and timely distribution of a settlement fund without burdening the process in a way that will unduly waste the fund.

CDS, 2016 WL 2731524, at *9. The Plan of Distribution proposed for this Settlement satisfies these requirements.

As Plaintiffs noted in connection with the Approved Settlements, Lead Counsel worked extensively with experts, including Dr. Christopher Fiore of Compass, to develop the Plan of Distribution.[12] The plan was the result of months of collaborative work among Lead Counsel and economists at Compass, who assisted in evaluating, *inter alia*, the comparative sensitivities of the various instruments and their relative size. Compass also devised a "multiplier" model to fairly account for those (and other) factors. Epiq was also consulted with respect to the costs and burdens, including to Settlement Class Members, in administrating the plan. The Plan of Distribution has been available on the Settlement Website since late March 2018 for the Approved Settlements, and has also been posted to conform to the Proposed Settlements since September 26, 2018. The Plan of Distribution as to the Proposed Settlements is attached hereto as Exhibit A.

[12] As noted in the Declaration of Christopher Fiore in Support of Preliminary Approval of Class Action Settlement (Dkt. No. 514, the "Fiore Decl."), Dr. Fiore has extensive experience in legal matters involving market manipulation, including in developing plans of distributions for class action settlements. *See* Fiore Decl. ¶1. Dr. Fiore also testified at length about the Plan of Distribution at the Fairness Hearing for the Approved Settlements in response to inquiries from the Court.

Lead Counsel, who have litigated this case for years and who are highly experienced in antitrust class actions and banking litigation, are confident the Plan of Distribution presents a fair and reasonable method to equitably allocate the common fund. "As with other aspects of settlement, the opinion of experienced and informed counsel is entitled to considerable weight." *In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 430 (S.D.N.Y. 2001). As detailed in Plaintiffs' motion for final approval of the Approved Settlements and the Fiore Declaration, the plan divides the settlement proceeds into recovery pools based on the type of instrument at issue. Providing a different recovery pool for different instrument types is reasonable, most notably because each type did not face the same litigation risk. When cognizable differences exist between the "likelihood of ultimate success" for different claims, "it is appropriate to weigh distribution of the settlement[.]" *PaineWebber*, 171 F.R.D. at 133; *see also In re Worldcom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 343 (S.D.N.Y. 2005). The plan also specifies how much will go into each pool.

The plan provides for a *pro rata* distribution, adjusting each class member's share by way of an "Economic Multiplier." The Economic Multipliers are applied on a category-level, as calculated by Compass. This category-driven approach is reasonable because the significant burden-reducing effects to class members, and the administrative-cost savings, more than justifies any (minimal) differences in relative claim size as compared to a transaction-by-transaction approach.

Claim amounts within a pool will also be adjusted by use of a "Litigation Multiplier" to account for differing litigation risk vis-à-vis other transactions in the same pool. And once all class members' claims are adjusted by way of the Multipliers, and totaled for each pool, the plan provides that each class member will be allocated a *pro rata* share of that pool. This is a

standard, reasonable, rational way of allocating a common fund. *See, e.g.*, *CDS*, 2016 WL 2731524, at *4; *U.S. Commodity Futures Trading Comm'n v. Rolando*, 2008 WL 5225851, at *3 (D. Conn. Dec. 10, 2008); *In re Lloyds' Am. Trust Fund Litig.*, 2002 WL 31663577, at *19 (S.D.N.Y. Nov. 26, 2002) ("pro rata allocations . . . are not only reasonable and rational, but appear to the fairest method of allocating" settlement funds).

In sum, and as Plaintiffs articulated in connection with the previously Approved Settlements, the Plan of Distribution is fair and reasonable, and should be approved for the Proposed Settlement as well.

IV. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

The Court's Preliminary Approval Order preliminarily certified the Settlement Class. Dkt. No. 669. For the reasons detailed in Plaintiffs' Preliminary Approval Motion (*see* Dkt. No. 666) and the Court's Preliminary Approval Order, the Proposed Settlement Class satisfies all requirements of Rule 23(a)—numerosity, commonality, typicality, and adequacy—as well as the predominance and superiority requirements of Rule 23(b)(3). *See also* Dkt. Nos. 648-657, ¶¶4-5 (final judgments and orders of dismissal certifying essentially identical Settlement Class in context of prior ten settlements). The preliminarily certified Settlement Class should therefore be granted final certification for settlement purposes under Rules 23(a) and 23(b)(3).

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court certify the Settlement Class, grant final approval to the Settlement, and grant final approval of the Plan of Distribution. A proposed order entering judgment and dismissing claims against the Newly Settling Defendants will be submitted with Plaintiffs' October 23 reply papers.

Dated: September 28, 2018

/s/ Daniel L. Brockett
Daniel L. Brockett
Daniel Cunningham
Marc L. Greenwald
Steig D. Olson
Jonathan B. Oblak
Justin Reinheimer
Kevin A. Janus
Toby E. Futter
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue
22nd Floor
New York, New York 10010
Telephone: (212) 849-7000
Fax: (212) 849-7100
danbrockett@quinnemanuel.com
danielcunningham@quinnemanuel.com
marcgreenwald@quinnemanuel.com
steigolson@quinnemanuel.com
jonoblak@quinnemanuel.com
justinreinheimer@quinnemanuel.com
kevinjanus@quinnemanuel.com
tobyfutter@quinnemanuel.com

Jeremy D. Andersen (*pro hac vice*)
865 South Figueroa Street
10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
Fax: (213) 443-3100
jeremyandersen@quinnemanuel.com

/s/ David W. Mitchell
David W. Mitchell
Patrick J. Coughlin
Brian O. O'Mara
Steven M. Jodlowski
Lonnie Browne
ROBBINS GELLER RUDMAN & DOWD LLP
655 West Broadway
Suite 1900
San Diego, California 92101
Telephone: (619) 231-1058
Fax: (619) 231-7423
patc@rgrdlaw.com
davidm@rgrdlaw.com
bomara@rgrdlaw.com
sjodlowski@rgrdlaw.com
lbrowne@rgrdlaw.com

/s/ Christopher M. Burke
Christopher M. Burke
Julie A. Kearns (*pro hac vice*)
Hal Cunningham (*pro hac vice*)
SCOTT+SCOTT ATTORNEYS AT LAW LLP
600 W. Broadway, Suite 3300
San Diego, CA 92101
Telephone: 619-233-4565
Fax: 619-233-0508
cburke@scott-scott.com
jkearns@scott-scott.com
hcunningham@scott-scott.com

David R. Scott
Beth A. Kaswan
Peter A. Barile III
Thomas K. Boardman
The Helmsley Building
230 Park Avenue, 17th Floor
New York, NY 10169
Telephone: 212-223-6444
Fax: 212-223-6334
david.scott@scott-scott.com
bkaswan@scott-scott.com
pbarile@scott-scott.com
tboardman@scott-scott.com

Amanda A. Lawrence
156 South Main Street
P.O. Box 192
Colchester, CT 06415
Telephone: 860-537-5537
Fax: 860-537-4432
alawrence@scott-scott.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALASKA ELECTRICAL PENSION FUND, et al., Plaintiffs, v. BANK OF AMERICA, N.A., et al., Defendants.	Lead Case No.: 14-cv-7126 (JMF)

PLAN OF DISTRIBUTION AS TO THE PROPOSED NEW AND ADDITIONAL SETTLEMENT

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DEFINED TERMS

For purposes of the Plan of Distribution, the following terms are defined as follows:

"Authorized Claimant" means any Class Member who will be entitled to a distribution from the Net Settlement Fund pursuant to the Settlement Agreements and Plan of Distribution approved by the Court.

"Claimant" means a Person who submits a Claim Form.

"Claim Deficiency Notice" means the notice sent by the Claims Administrator to a Claimant whose Claim Form is deficient in one or more ways such as, for example, failure to provide required information or documentation.

"Claim Form" means the proof of claim and release form provided to or requested by member(s) of the Settlement Class.

"Claims Administrator" means Epiq Systems Inc.

"Claims Bar Date" means the deadline established by the Court by which Class Members must submit Claim Forms to the Claims Administrator.

"Class Counsel" means Robbins Geller Rudman & Dowd LLP, Scott+Scott Attorneys at Law LLP, and Quinn Emanuel Urquhart & Sullivan, LLP.

"Class Member" means a Person who is a member of the Settlement Class and who has not timely and validly excluded himself, herself, or itself in accordance with the procedures approved by the Court.

"Class Plaintiffs" are Alaska Electrical Pension Fund; Genesee County Employees' Retirement System; County of Montgomery, Pennsylvania; County of Washington, Pennsylvania; City of New Britain, Connecticut; Pennsylvania Turnpike Commission; Erste Abwicklungsanstalt; and Portigon AG.

"Court" means the United States District Court for the Southern District of New York.

"Defendants" means Original Settling Defendants and Newly Settling Defendants, collectively, and each of their respective subsidiaries, affiliates, divisions, predecessors, and successors including, but not limited to, ABN AMRO, Bear Stearns Companies, Inc., Lehman Brothers Holdings Inc., Merrill Lynch & Co., Inc., Countrywide Financial, Fortis, LaSalle Bank Corporation, Smith Barney, Wachovia, and Washington Mutual, Inc., and each of their respective subsidiaries, affiliates, and divisions.

"Economic Multiplier" means a factor that reflects the economic sensitivity of a transaction to ISDAfix rates, market swap rates, and relevant market interest rates relative to other transactions in the same Pool or Sub-group in the Plan of Distribution.

"Investment Vehicle" means any investment company or pooled investment fund, including, but not limited to, mutual fund families, exchange-traded funds, fund of funds and hedge funds, in which a Defendant has or may have a direct or indirect interest, or as to which its affiliates may act as an investment advisor, but of which a Defendant or its respective affiliates is not a majority owner or does not hold a majority beneficial interest.

"Litigation Multiplier" means a factor that reflects the relative degree of risk that claims arising out of a transaction of that type may have faced at trial relative to other transactions in the same Pool or Sub-group in the Plan of Distribution.

"ISDAfix Benchmark Rates" means any and all tenors of USD ISDAfix, including any and all USD ISDAfix rates and USD ISDAfix spreads.

"ISDAfix Instrument" means (a) any and all interest rate derivatives, including, but not limited to, any and all swaps, swap spreads, swap futures, and swaptions, denominated in USD or related to USD interest rates, and (b) any financial instruments, products, or transactions related in any way to any ISDAfix Benchmark Rates, including but not limited to, any and all instruments, products, or transactions that reference ISDAfix Benchmark Rates and any and all

instruments, products, or transactions that are relevant to the determination or calculation of ISDAfix Benchmark Rates.

"Net Settlement Fund" means the Settlement Fund, less payment of attorneys' and expenses in connection with prosecuting the Action, costs and expenses reasonably and actually incurred in connection with providing class notice and the administration of the settlement, taxes and tax expenses, and any other Court-approved fees and expenses.

"Newly Settling Defendants" means BNP Paribas (named in the Action as "B.N.P. Paribas SA"); ICAP Capital Markets LLC (now known as Intercapital Capital Markets LLC); Morgan Stanley & Co. LLC; Nomura Securities International, Inc.; and Wells Fargo Bank, N.A.

"Original Settling Defendants" means Bank of America N.A.; Barclays Bank PLC and Barclays Capital Inc.; Citigroup Inc.; Credit Suisse AG, New York Branch; Deutsche Bank AG; The Goldman Sachs Group, Inc.; HSBC Bank USA, N.A.; JPMorgan Chase & Co.; Royal Bank of Scotland PLC; and UBS AG.

"Person" means an individual or entity, and his, her, or its spouses, heirs, predecessors, successors, representatives, or assignees.

"Pool" or "Pools" mean the respective divisions in the Plan of Distribution across ISDAfix Instrument types.

"Settlement Agreement" means the Stipulation and Agreement of Settlement with the Newly Settling Defendants.

"Settlement Class" means all Persons or entities who entered into, received or made payments on, settled, terminated, transacted in, or held an ISDAfix Instrument during the Settlement Class Period. Excluded from the Settlement Class are Defendants and their employees, affiliates, parents, subsidiaries, and co-conspirators, should any exist, whether or not named in the Amended Complaint, and the United States Government, and all of the Released

Defendant Parties (as defined in the Settlement Agreement), provided, however, that Investment Vehicles shall not be excluded from the definition of the Settlement Class.

"Settlement Class Period" means between January 1, 2006 and January 31, 2014, inclusive.

"Settlement Fund" means the $96,000,000 in payments made pursuant to the Settlement Agreement by the Newly Settling Defendants, and held in the escrow accounts established pursuant to the Settlement Agreement, including all monies held therein and interest earned thereon.

"Transaction Claim Amount" means the amount of an Authorized Claimant's claim before any *pro rata* adjustments are applied, and is equal to the Transactional Notional Amount multiplied by the applicable Economic Multipliers and Litigation Multipliers, as described in §III, *infra*.

"Transaction Notional Amount" means the amount of money on which interest rate payments are based for a transaction.

Unless otherwise defined, all other capitalized terms have the same meaning as set forth in the Settlement Agreement.

I. THE NET SETTLEMENT FUND FOR DISTRIBUTION

The Newly Settling Defendants have entered into a proposed Settlement Agreement with Plaintiffs that provide for total payments of $96,000,000 into the Settlement Fund. If the Settlement Agreement is approved, the Net Settlement Fund will be distributed to all Authorized Claimants in accordance with the Plan of Distribution approved by the Court. No monies will revert to the Newly Settling Defendants if there is final approval of the Settlement Agreement by the Court.

II. ADMINISTRATIVE AND DISTRIBUTION PROCEDURES

The proceeds of the Net Settlement Fund will be paid to Authorized Claimants who submit a valid Claim Form by the Claims Bar Date. This section describes the administrative procedures that will apply to determine eligibility and the effect of Class Members submitting (or not submitting) Claim Forms. This section then discusses the procedures for distributing funds to Authorized Claimants.

A. Administrative Procedures

To be eligible to submit a Claim Form, a Claimant must be a member of the Settlement Class. For purposes of determining whether a Claimant is entitled to be treated as an Authorized Claimant, the following conditions apply:

1. Each Class Member wishing to receive proceeds from the Net Settlement Fund must submit a Claim Form, which, *inter alia*, releases all Released Claims against all Released Parties (as defined in the Settlement Agreement), is signed under penalty of perjury by an authorized Person, consents to the disclosure, waiver, and instruction paragraph contained in §IV-2 of the Claim Form, and is supported by such documents or proof as set out in the Claim Form.

2. Any Class Member who does not submit a Claim Form by the Claims Bar Date will not be entitled to receive any of the proceeds from the Net Settlement Fund, but will otherwise be bound by the terms of the Settlement Agreement, including the terms of the final judgments and orders of dismissal to be entered in the Action and the releases provided for therein, and will be enjoined from, and, upon final approval of the Settlement Agreement, barred from bringing any action against any of the Released Parties concerning the Released Claims. Lead Counsel shall have the discretion, but not the obligation, to accept late-submitted claims for

processing by the Claims Administrator, so long as the distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed.

3. Each Claim Form must be submitted to and reviewed by the Claims Administrator, who will determine: (a) whether the Claimant is an eligible Class Member; (b) whether the Claim Form is in accordance with the Settlement Agreement and any applicable orders of the Court; and (c) the extent, if any, to which each claim will be allowed, subject to review by the Court.

4. Claim Forms that do not meet the submission requirements may be rejected. Prior to rejection of a Claim Form, the Claims Administrator will provide the Claimant with a Claim Deficiency Notice. The Claim Deficiency Notice will, in a timely fashion and in writing, notify all Claimants whose Claim Forms the Claims Administrator proposes to reject, in whole or in part, and set out the reason(s) therefore, and the Claimant will have an opportunity to respond and/or cure within 35 days of the date when the Claim Deficiency Notice was issued.

5. If a dispute concerning a Claimant's claim cannot be resolved, Class Counsel will thereafter present such disputes to the Court in Class Plaintiffs' motion for a distribution order.

B. Claimant's Submission of Data

Claimants will be required to electronically submit data relating to their eligible transactions in ISDAfix Instruments using the template available on the Settlement Website (https://www.IsdafixAntitrustSettlement.com), as well as documentation of such transactions only to the extent required and/or requested (as described in §III of the Claim Form).

C. Claims Procedures and Timing

On receipt and processing of Claimants' data and records, the Claims Administrator will:

1. determine the appropriate Pool for each type of transaction, as described in §III, *infra*;

2. determine if a Claim Deficiency Notice is required for any transaction; and

3. calculate the Claimant's Transaction Claim Amount, as described in §III, *infra*.

Following receipt of a Claimant's Claim Form, data, and any required or requested records, the Claims Administrator will issue a "Confirmation of Claim Receipt" to the Claimant via an automated email response after the Claim Form is submitted on the Settlement Website.

III. CALCULATION OF TRANSACTION CLAIM AMOUNTS

The Plan of Distribution for eligible ISDAfix Instruments is divided into two pools, "Pool A" and "Pool B." Pool A comprises transactions directly linked to an ISDAfix Benchmark Rate. Pool B comprises transactions where the cash flows of the instrument were not directly linked to an ISDAfix Benchmark Rate. Pool B is further divided into sub-groups that reflect differences in instrument type and how the instrument relates to the conduct alleged in the Action.

The Plan of Distribution assigns all transactions of ISDAfix Instruments that are part of the Settlement Class into one – and only one – Pool or Pool sub-group. If a transaction in an ISDAfix Instrument is found to reasonably fit the definition of more than one Pool or sub-group, the transaction is assigned to the Pool or sub-group that is allocated the greatest portion of the Net Settlement Fund. Each transaction forms the basis for a claim only against the portion of the Net Settlement Fund allocated to the same Pool or sub-group to which the transaction is assigned. The relative allocation of the Net Settlement Fund among Pools and sub-groups is described in §IV, *infra*.

A. Pool A – Instruments Directly Linked to an ISDAfix Benchmark Rate

Pool A includes ISDAfix Instruments in which the cash flows of that instrument are directly linked to one or more ISDAfix Benchmark Rates. Pool A includes transactions in (a) cash-settled swaptions, and (b) ISDAfix Instruments with payments linked to ISDAfix during the Settlement Class Period. Transaction Claim Amounts in Pool A instruments are calculated as follows:

1. Cash-settled Swaptions

a. Cash-Settled Swaptions include the following:

i. Swaptions held by Claimant during the Settlement Class Period that were exercised and cash-settled; and

ii. Swaptions held by Claimant during the Settlement Class Period that were designated as cash-settled and were not exercised prior to expiration.

1. If the designation changed from cash-settled to physically-settled swaption over the life of the swaption, then the last reasonably ascertainable designation will be used to classify the method of settlement associated with the swaption. If the last reasonably ascertainable designation is a physically-settled swaption, the transaction will be assigned to Pool B.1. A swaption may be submitted as cash-settled or physically-settled, but not both, for distribution purposes.

b. From information submitted by Claimant, the Claimant's Transaction Notional Amount(s) is determined for each of the following 26 categories:

Relevant ISDAfix Benchmark Rate	Counterparty is a Defendant Bank	Counterparty is not a Defendant
1-year	[Category 1]	[Category 2]
2-year	[Category 3]	[Category 4]
3-year	[Category 5]	[Category 6]
4-year	[Category 7]	[Category 8]
5-year	[Category 9]	[Category 10]

6-year	[Category 11]	[Category 12]
7-year	[Category 13]	[Category 14]
8-year	[Category 15]	[Category 16]
9-year	[Category 17]	[Category 18]
10-year	[Category 19]	[Category 20]
15-year	[Category 21]	[Category 22]
20-year	[Category 23]	[Category 24]
30-year	[Category 25]	[Category 26]

c. For each category, the appended Table 1 is used to select the applicable Economic Multiplier, which reflects the average sensitivity of the cash-settlement value of a swaption to a given change in the ISDAfix Benchmark Rate.

d. The categorization of transactions by whether the counterparty is or is not a Defendant, as defined *supra*, is for the purpose of assigning the applicable Litigation Multiplier. For each category in which the counterparty is a Defendant, the Litigation Multiplier is 4.5. For each category in which the counterparty is not a Defendant, the Litigation Multiplier is 1.

e. Claimant's Transaction Notional Amount for each category is multiplied by the category's corresponding Economic Multiplier and Litigation Multiplier to obtain the Transaction Claim Amount.

Transaction Claim Amount = **Transaction Notional Amount** × **Economic Multiplier** × **Litigation Multiplier**

f. The Transaction Claim Amounts for all categories for which there is a claimed transaction are summed.

2. Other ISDAfix-linked Transactions with Payments Linked to an ISDAfix Benchmark Rate During the Class Period

a. From information submitted by Claimant, the Claimant's Transaction Notional Amount(s) is determined for all other ISDAfix-linked transactions with

payments linked to an ISDAfix Benchmark Rate, that were held during the Settlement Class Period, for each of the following 13 categories:

Year	Counterparty is a Defendant	Counterparty is not a Defendant
2006	[Category 1a]	[Category 1b]
2007	[Category 2a]	[Category 2b]
2008	[Category 3a]	[Category 3b]
2009	[Category 4a]	[Category 4b]
2010	[Category 5a]	[Category 5b]
2011	[Category 6a]	[Category 6b]
2012	[Category 7a]	[Category 7b]
2013	[Category 8a]	[Category 8b]
2014	[Category 9a]	[Category 9b]
2015	[Category 10a]	[Category 10b]
2016	[Category 11a]	[Category 11b]
2017	[Category 12a]	[Category 12b]
2018	[Category 13a]	[Category 13b]

b. The categorization of transactions by whether the counterparty is or is not a Defendant, as defined *supra*, is for the purpose of assigning the applicable Litigation Multiplier. For each category in which the counterparty is a Defendant, the Litigation Multiplier is 4.5. For each category in which the counterparty is not a Defendant, the Litigation Multiplier is 1.

c. The Transaction Notional Amount is accounted for in each year payment was linked to an ISDAfix rate in that year. *For example*: for a Claimant with a $100 million notional 5-year constant maturity swap with resets to an ISDAfix Benchmark Rate in years 2006 through 2010, with Defendant Citigroup as a counterparty, $100 million is added to the Transactional Notional Amounts of Categories 1a, 2a, 3a, 4a, and 5a.

d. Claimant's Transaction Notional Amount for each category is multiplied by the transaction's corresponding Litigation Multiplier to obtain the Transaction Claim Amount.

Transaction Claim Amount = **Transaction Notional Amount** × **Litigation Multiplier**

e. The Transaction Claim Amounts for all categories for which there is a claimed transaction are summed.

3. Pool A Allocation

The Transaction Claim Amounts for (a) cash-settled swaptions and (b) other ISDAfix-linked transactions with payments linked to an ISDAfix Benchmark Rate during the Class Period are summed for distribution *pro rata* from the Net Settlement Fund allocated to Pool A, which is described in §IV, *infra*.

B. Pool B – Instruments Not Directly Linked to an ISDAfix Benchmark Rate

Pool B includes ISDAfix Instruments where the cash flows of that instrument were not directly linked to one or more ISDAfix Benchmark Rates.

1. Pool B.1

a. Fixed-for-float swaps that referenced LIBOR

i. From information submitted by Claimant, the Claimant's Transaction Notional Amount(s) for all fixed-for-float swaps that referenced LIBOR, that were held during the Settlement Class Period, is determined for each of the following 60 categories:

Category	Swap Tenor	Counterparty is a Defendant?
1	At most 1 year	Yes
2	At most 1 year	No
3	More than 1, at most 2 years	Yes
4	More than 1, at most 2 years	No
5	More than 2, at most 3 years	Yes
6	More than 2, at most 3 years	No
7	More than 3, at most 4 years	Yes
8	More than 3, at most 4 years	No
9	More than 4, at most 5 years	Yes
10	More than 4, at most 5 years	No

Category	Swap Tenor	Counterparty is a Defendant?
11	More than 5, at most 6 years	Yes
12	More than 5, at most 6 years	No
13	More than 6, at most 7 years	Yes
14	More than 6, at most 7 years	No
15	More than 7, at most 8 years	Yes
16	More than 7, at most 8 years	No
17	More than 8, at most 9 years	Yes
18	More than 8, at most 9 years	No
19	More than 9, at most 10 years	Yes
20	More than 9, at most 10 years	No
21	More than 10, at most 11 years	Yes
22	More than 10, at most 11 years	No
23	More than 11, at most 12 years	Yes
24	More than 11, at most 12 years	No
25	More than 12, at most 13 years	Yes
26	More than 12, at most 13 years	No
27	More than 13, at most 14 years	Yes
28	More than 13, at most 14 years	No
29	More than 14, at most 15 years	Yes
30	More than 14, at most 15 years	No
31	More than 15, at most 16 years	Yes
32	More than 15, at most 16 years	No
33	More than 16, at most 17 years	Yes
34	More than 16, at most 17 years	No
35	More than 17, at most 18 years	Yes
36	More than 17, at most 18 years	No
37	More than 18, at most 19 years	Yes
38	More than 18, at most 19 years	No
39	More than 19, at most 20 years	Yes
40	More than 19, at most 20 years	No
41	More than 20, at most 21 years	Yes
42	More than 20, at most 21 years	No
43	More than 21, at most 22 years	Yes
44	More than 21, at most 22 years	No
45	More than 22, at most 23 years	Yes
46	More than 22, at most 23 years	No
47	More than 23, at most 24 years	Yes
48	More than 23, at most 24 years	No
49	More than 24, at most 25 years	Yes
50	More than 24, at most 25 years	No
51	More than 25, at most 26 years	Yes
52	More than 25, at most 26 years	No
53	More than 26, at most 27 years	Yes

Category	Swap Tenor	Counterparty is a Defendant?
54	More than 26, at most 27 years	No
55	More than 27, at most 28 years	Yes
56	More than 27, at most 28 years	No
57	More than 28, at most 29 years	Yes
58	More than 28, at most 29 years	No
59	More than 29 years	Yes
60	More than 29 years	No

ii. The tenor range is used to select the applicable Economic Multiplier from the appended Table 2.

iii. For each category in which the counterparty is a Defendant, as defined *supra*, the Litigation Multiplier is 4.5. For each category in which the counterparty is not a Defendant, the Litigation Multiplier is 1.

iv. The Transaction Notional Amount for each category is multiplied by its corresponding Economic Multiplier and by its corresponding Litigation Multiplier to obtain the Transaction Claim Amount.

Transaction Claim Amount = **Transaction Notional Amount** × **Economic Multiplier** × **Litigation Multiplier**

v. The Transaction Claim Amounts for all categories for which there is a claimed transaction are summed.

b. Physically-settled swaptions

i. From information submitted by Claimant, the Claimant's Transaction Notional Amount(s) is determined for all physically-settled swaptions that were held during the Settlement Class Period for each of the following 60 categories, where Swap Tenor refers to the tenor of the swap underlying the physically-settled swaption:

Category	Swap Tenor	Counterparty is a Defendant?
1	At most 1 year	Yes

Category	Swap Tenor	Counterparty is a Defendant?
2	At most 1 year	No
3	More than 1, at most 2 years	Yes
4	More than 1, at most 2 years	No
5	More than 2, at most 3 years	Yes
6	More than 2, at most 3 years	No
7	More than 3, at most 4 years	Yes
8	More than 3, at most 4 years	No
9	More than 4, at most 5 years	Yes
10	More than 4, at most 5 years	No
11	More than 5, at most 6 years	Yes
12	More than 5, at most 6 years	No
13	More than 6, at most 7 years	Yes
14	More than 6, at most 7 years	No
15	More than 7, at most 8 years	Yes
16	More than 7, at most 8 years	No
17	More than 8, at most 9 years	Yes
18	More than 8, at most 9 years	No
19	More than 9, at most 10 years	Yes
20	More than 9, at most 10 years	No
21	More than 10, at most 11 years	Yes
22	More than 10, at most 11 years	No
23	More than 11, at most 12 years	Yes
24	More than 11, at most 12 years	No
25	More than 12, at most 13 years	Yes
26	More than 12, at most 13 years	No
27	More than 13, at most 14 years	Yes
28	More than 13, at most 14 years	No
29	More than 14, at most 15 years	Yes
30	More than 14, at most 15 years	No
31	More than 15, at most 16 years	Yes
32	More than 15, at most 16 years	No
33	More than 16, at most 17 years	Yes
34	More than 16, at most 17 years	No
35	More than 17, at most 18 years	Yes
36	More than 17, at most 18 years	No
37	More than 18, at most 19 years	Yes
38	More than 18, at most 19 years	No
39	More than 19, at most 20 years	Yes
40	More than 19, at most 20 years	No
41	More than 20, at most 21 years	Yes
42	More than 20, at most 21 years	No
43	More than 21, at most 22 years	Yes
44	More than 21, at most 22 years	No

Category	Swap Tenor	Counterparty is a Defendant?
45	More than 22, at most 23 years	Yes
46	More than 22, at most 23 years	No
47	More than 23, at most 24 years	Yes
48	More than 23, at most 24 years	No
49	More than 24, at most 25 years	Yes
50	More than 24, at most 25 years	No
51	More than 25, at most 26 years	Yes
52	More than 25, at most 26 years	No
53	More than 26, at most 27 years	Yes
54	More than 26, at most 27 years	No
55	More than 27, at most 28 years	Yes
56	More than 27, at most 28 years	No
57	More than 28, at most 29 years	Yes
58	More than 28, at most 29 years	No
59	More than 29 years	Yes
60	More than 29 years	No

ii. The tenor range is used to select the applicable Economic Multiplier from the appended Table 2.

iii. For each category in which the counterparty is a Defendant, as defined *supra*, the Litigation Multiplier is 4.5. For each category in which the counterparty is not a Defendant, the Litigation Multiplier is 1.

iv. The Transaction Notional Amount for each category will be multiplied by its corresponding Economic Multiplier, its corresponding Litigation Multiplier, and a Swaption Adjustment Multiplier of 0.47 to obtain the Transaction Claim Amount. The Swaption Adjustment Multiplier accounts for swaptions' sensitivity to changes in market swap rates relative to swaps.

Transaction Claim Amount = **Transaction Notional Amount** × **Economic Multiplier** × **Litigation Multiplier** × **Swaption Adjustment Multiplier**

v. The Transaction Claim Amounts for all categories for which there is a claimed transaction are summed.

c. Pool B.1 allocation

Claimant's Transaction Claim Amounts for Fixed-for-float swaps the reference LIBOR and physically-settled swaptions are summed for distribution *pro rata* from the Net Settlement Fund allocated to Pool B.1, which is described in §IV, *infra*.

2. Pool B.2

a. Treasury Bills, Treasury Notes, and Treasury Bonds

i. From information provided by Claimant, the volume in terms of face value of all Treasury securities that were held during the Settlement Class Period is identified for all of the following 30 annual categories in which a claim is made.

Category	Swap Tenor
1	Time to maturity was at most 1 year
2	Time to maturity was greater than 1 year, but less than or equal to 2 years
3	Time to maturity was greater than 2 years, but less than or equal to 3 years
4	Time to maturity was greater than 3 years, but less than or equal to 4 years
5	Time to maturity was greater than 4 years, but less than or equal to 5 years
6	Time to maturity was greater than 5 years, but less than or equal to 6 years
7	Time to maturity was greater than 6 years, but less than or equal to 7 years
8	Time to maturity was greater than 7 years, but less than or equal to 8 years
9	Time to maturity was greater than 8 years, but less than or equal to 9 years
10	Time to maturity was greater than 9 years, but less than or equal to 10 years
11	Time to maturity was greater than 10 years, but less than or equal to 11 years
12	Time to maturity was greater than 11 years, but less than or equal to 12 years
13	Time to maturity was greater than 12 years, but less than or equal to 13 years
14	Time to maturity was greater than 13 years, but less than or equal to 14 years
15	Time to maturity was greater than 14 years, but less than or equal to 15 years
16	Time to maturity was greater than 15 years, but less than or equal to 16 years
17	Time to maturity was greater than 16 years, but less than or equal to 17 years
18	Time to maturity was greater than 17 years, but less than or equal to 18 years
19	Time to maturity was greater than 18 years, but less than or equal to 19 years

Category	Swap Tenor
20	Time to maturity was greater than 19 years, but less than or equal to 20 years
21	Time to maturity was greater than 20 years, but less than or equal to 21 years
22	Time to maturity was greater than 21 years, but less than or equal to 22 years
23	Time to maturity was greater than 22 years, but less than or equal to 23 years
24	Time to maturity was greater than 23 years, but less than or equal to 24 years
25	Time to maturity was greater than 24 years, but less than or equal to 25 years
26	Time to maturity was greater than 25 years, but less than or equal to 26 years
27	Time to maturity was greater than 26 years, but less than or equal to 27 years
28	Time to maturity was greater than 27 years, but less than or equal to 28 years
29	Time to maturity was greater than 28 years, but less than or equal to 29 years
30	Time to maturity was greater than 29 years, but less than or equal to 30 years

ii. The time to maturity is calculated as of the date on which the Treasury security was purchased.

iii. The applicable Economic Multiplier from appended Table 3 is selected for each category for which there is a claimed transaction.

iv. The face value of all Treasury securities claimed in each category is multiplied by the applicable Economic Multiplier to obtain the Transaction Claim Amounts.

Transaction Claim Amount = **Face Value of Security** × **Economic Multiplier**

v. The Transaction Claim Amounts for all categories for which there is a claimed transaction are summed.

b. Treasury futures

i. From information provided by Claimant, the number of contracts, ***not*** face value equivalent, that were held during the Settlement Class Period is identified in each of the following six categories:

1. 2-year T-Note Futures
2. 3-year T-Note Futures
3. 5-Year T-Note Futures
4. 10-Year T-Note Futures
5. Classic T-Bond Futures
6. Ultra T-Bond Futures

Contract	Face Value	Category
2-year T-Note Futures	$200,000	2
3-year T-Note Futures	$200,000	3
5-year T-Note Futures	$100,000	5
10-year T-Note Futures	$100,000	10
Classic T-Bond Futures	$100,000	25
Ultra T-Bond Futures	$100,000	30

ii. For each contract, the applicable Economic Multiplier for the contract category is identified using appended Table 3.

iii. For each category, the number of contracts traded is multiplied by the Face Value of the contract (as given in the table above) and by the applicable Economic Multiplier to obtain the Transaction Claim Amounts.

Transaction Claim Amount = **Number of Contracts** × **Face Value (from table)** × **Economic Multiplier**

iv. The Transaction Claim Amounts for all categories for which there is a claimed transaction are summed.

c. Options on Treasury futures

i. From information provided by Claimant, the number of option contracts,***not*** face value equivalents, held during the Settlement Class Period is identified

in each of the following six categories corresponding to the type of Treasury futures contract underlying the option:

1. 2-year T-Note Futures
2. 3-year T-Note Futures
3. 5-Year T-Note Futures
4. 10-Year T-Note Futures
5. Classic T-Bond Futures
6. Ultra T-Bond Futures

Contract	Face Value	Category
2-year T-Note Futures	$200,000	2
3-year T-Note Futures	$200,000	3
5-year T-Note Futures	$100,000	5
10-year T-Note Futures	$100,000	10
Classic T-Bond Futures	$100,000	25
Ultra T-Bond Futures	$100,000	30

ii. For each contract, the applicable Economic Multiplier for the contract category is identified using appended Table 3.

iii. For each category, the number of contracts traded is multiplied by the face value of the contract (as given in the table above), by the applicable Economic Multiplier, and by a "Treasury Option Adjustment Factor" of 0.22, to obtain the Transaction Claim Amount. The Treasury Option Adjustment Factor accounts for an option on Treasury futures' sensitivity to changes in treasury yields relative to its underlying Treasury futures contract.

Transaction Claim Amount = **Number of Contracts** × **Face Value (from table)** × **Economic Multiplier** × **Treasury Option Adjustment Factor**

iv. The Transaction Claim Amounts for all categories for which there is a claimed transaction are summed.

d. Pool B.2 allocation

Claimant's Transaction Claim Amounts of Treasury bills, Treasury notes, Treasury bonds, Treasury futures, and options on Treasury futures are summed for distribution *pro rata* from the Net Settlement Fund allocated to Pool B.2, which is described in §IV, *infra*.

3. Pool B.3

a. Eurodollar futures

From information provided by Claimant, the number of Eurodollar future contracts, ***not*** notional equivalents, that were held during the Settlement Class Period is identified. This is the Transaction Claim Amount.

b. Options on Eurodollar futures

i. From information provided by Claimant, the number of Eurodollar futures option contracts,***not*** notional equivalents, that were held during the Settlement Class Period is identified.

ii. The number of Eurodollar futures options contracts is multiplied by a "Eurodollar Option Adjustment Factor" of 0.13 to obtain the Transaction Claim Amount. The Eurodollar Option Adjustment Factor accounts for an option on Eurodollar futures' sensitivity to changes in the underlying interest rate relative to Eurodollar futures.

Transaction Claim Amount	=	**Number of Eurodollar futures option contracts**	×	**Eurodollar Option Adjustment Factor**

c. Pool B.3 allocation

Claimant's Transaction Claim Amounts for Eurodollar futures and options on Eurodollar futures are summed for distribution *pro rata* from the Net Settlement Fund allocated to Pool B.3, which is described in §IV, *infra*.

4. Pool B.4

From information provided by Claimant, the notional amount of contracts for all other interest rate derivatives not covered under Pool A or Pool B sub-groups B.1, B.2, or B.3 that were held during the Settlement Class Period is identified. This is the Transaction Claim Amount.

a. Pool B.4 allocation

The Transaction Claim Amount for all other interest rate derivatives is distributed *pro rata* from the Net Settlement Fund allocated to Pool B.3, which is described in §IV, *infra*.

IV. CALCULATING *PRO RATA* ADJUSTMENTS FOR DISTRIBUTION

After each Authorized Claimant's Transaction Claim Amounts are determined as described in §III, *supra*, and the Court approves the distribution order and all claim disputes are resolved, the Claims Administrator calculates each Authorized Claimant's share of the Net Settlement Fund as follows:

A. Allocation of Net Settlement Fund Among Pools

Each Pool and Pool sub-group's allocation of the Net Settlement Fund is as follows:

Pool/Pool sub-group	Percentage of Net Settlement Fund Allocated Pool/Pool sub-group
A	45%
B.1	40%
B.2	6%
B.3	6%
B.4	3%

B. *Pro Rata* Share Calculation

For each Pool and Pool sub-group, the Authorized Claimants' *pro rata* share of the respective Pool's allocation of the Net Settlement Fund, subject to Section C, *infra*, is as follows:

$$\text{Claimant's } \textit{pro rata} \text{ share of the Pool A or Pool B sub-group's allocation of the Net Settlement Fund} = \frac{\text{Claimant's Transaction Claim Amount in the Pool or Pool sub-group}}{\text{Total of All Claimants' Transaction Claim Amounts in the Pool or Pool sub-group}}$$

C. Alternative Minimum Payment

For each Pool and Pool sub-group, where it is reasonably determined that the cost of administering a claim would exceed the value of the claim under the Plan of Distribution, Class Counsel will direct the Claims Administrator to preserve the value of the Settlement Fund and make an alternative minimum payment to satisfy such claims. The alternative minimum payment will be a set amount for all such Authorized Claimants and will be based on the participation rate of the class in the settlement.

D. Distribution

Following the Effective Date and the Claims Administrator calculations of each Authorized Claimant's *pro rata* share of the Net Settlement Fund or alternative minimum payment amount, the Claims Administrator shall distribute the Net Settlement Fund to Authorized Claimants pursuant to the Plan of Distribution approved by the Court.

E. Remaining Balance in the Net Settlement Fund

If there is any balance remaining in the Net Settlement Fund after a reasonable period of time after the initial date of distribution of the Net Settlement Fund, the Claims Administrator shall, if feasible, allocate such balance among Authorized Claimants in an equitable and economic fashion. These redistributions shall be repeated until the remaining balance in the Net Settlement Fund is *de minimis*, and any such remaining balance shall be donated to an

appropriate 501(c)(3) non-profit organization selected by Lead Counsel and approved by the Court.