UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE LIBOR-BASED FINANCIAL INSTRUMENTS ANTITRUST LITIGATION	
THIS DOCUMENT RELATES TO:	No. 1:11-md-2262-NRB
The OTC Action	

DECLARATION OF SETH ARD IN SUPPORT OF OTC PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT WITH DEFENDANTS MUFG BANK, LTD., THE NORINCHUKIN BANK, AND SOCIÉTÉ GÉNÉRALE

Pursuant to 28 U.S.C. § 1746, I, Seth Ard, declare:

1. I am a partner in the law firm of Susman Godfrey L.L.P. My firm serves as interim co-lead counsel for the putative class of over-the-counter plaintiffs ("OTC Plaintiffs")[1] in the above-captioned litigation (the "OTC Action"). *See* ECF No. 66.

2. I submit this declaration in support of OTC Plaintiffs' Motion for Preliminary Approval of Settlement with Defendants MUFG Bank, Ltd. ("MUFG"), The Norinchukin Bank ("Norinchukin"), and Société Générale ("SocGen"). I have been actively involved in prosecuting and resolving this action, am familiar with its proceedings, and have personal knowledge of the matters set forth herein, and if called upon and sworn as a witness, I could competently testify thereto.

3. Because this declaration is submitted in support of a Settlement, it is inadmissible in any subsequent proceedings, other than in connection with the Settlement. In the event the Settlement is not approved by the Court, this declaration and the statements contained herein are

[1] OTC Plaintiffs are Mayor and City Council of Baltimore, City of New Britain, Vistra Energy Corp., Yale University, and Jennie Stuart Medical Center, Inc.

without prejudice to OTC Plaintiffs' position on the merits of the OTC Action.

4. Attached hereto as Exhibit A is a true and correct copy of the Settlement Agreement between the OTC Plaintiffs and MUFG, Norinchukin, and SocGen (together, the "Parties").

5. Attached as Exhibit B is a true and correct copy of the proposed Plan of Distribution.

6. If approved, the proposed settlement, consisting of an agreement by MUFG, Norinchukin, and SocGen to pay $90 million in cash and to provide cooperation to OTC Plaintiffs in pursuing their case against the non-settling defendants, will resolve this complex case against the Settling Defendants MUFG, Norinchukin, and SocGen.

7. The following is a summary of the nature of OTC Plaintiffs' claims, the principal events that have occurred in the litigation to date, the settlement negotiations and the terms of the Settlement.

I. SUMMARY OF CLAIMS AND THE PROCEDURAL HISTORY OF THE LITIGATION

8. On April 15, 2011, the first complaint alleging an interbank conspiracy to artificially suppress U.S. Dollar LIBOR was filed in this Court. *See* Class Action Compl., *FTC Capital GMBH v. Credit Suisse Grp. AG*, No. 11-2613 (S.D.N.Y.).

9. OTC Plaintiff Mayor and City Council of Baltimore, represented by Susman Godfrey L.L.P. and Hausfeld LLP ("OTC Plaintiffs' Counsel"), filed its complaint shortly thereafter. *See* Class Action Compl., *Mayor and City Council of Baltimore v. Bank of America*, No. 11-5450 (S.D.N.Y. filed Aug. 5, 2011) (the "Baltimore Action").

10. On August 12, 2011, the Judicial Panel on Multidistrict Litigation ("JPML") centralized the various actions in this Court "for coordinated and consolidated pretrial proceedings." Transfer Order, ECF No. 1, No. 11-md-2262-NRB.

11. On November 29, 2011, the Court consolidated the various LIBOR class actions pending before the Court under Federal Rule of Civil Procedure 42(a) and appointed OTC Plaintiffs' Counsel as "interim class counsel for the putative class of over-the-counter plaintiffs." ECF No. 66.

12. On April 30, 2012, OTC Plaintiffs, on behalf of themselves and a putative Class, filed their Consolidated Amended Complaint ("CAC"). ECF No. 130. This complaint built on OTC Plaintiffs' Counsel's extensive research pre-filing and included substantial additional information garnered from (i) counsel's work with industry and economic experts, (ii) the Defendants' filings with the United States Securities and Exchange Commission ("SEC"), (iii) court documents filed in other LIBOR proceedings in Canada, Singapore, and Japan, and (iv) scholarly articles concerning the suppression of U.S. Dollar LIBOR during the Class Period. In relevant part, this complaint alleged that the Defendants, the banks that comprised the U.S. dollar LIBOR panel during the Class Period, conspired to manipulate LIBOR in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. *Id.* ¶¶ 220-26.

13. On June 29, 2012, the Defendants moved to dismiss the OTC Plaintiffs' complaint. ECF No. 165.

14. On March 29, 2013, the Court granted the Defendants' motion to dismiss the OTC Plaintiffs' antitrust claim. ECF No. 286 ("*LIBOR I*"). The Court reached this conclusion based on its belief that the OTC Plaintiffs had not adequately alleged antitrust injury because the LIBOR-setting process was designed to be cooperative rather than competitive. *Id.* at 31.

15. On May 17, 2013, OTC Plaintiffs sought leave to amend the complaint to add additional allegations with respect to their antitrust injury, reassert their unjust enrichment claim, and assert a claim for breach of the implied covenant of good faith and fair dealing. ECF No. 333.

On August 23, 2013, the Court denied OTC Plaintiffs' request to reassert their antitrust claim but granted their request to assert their state law claims. ECF No. 389 ("*LIBOR II*"). Consistent with this order, OTC Plaintiffs filed their Second Consolidated Amended Complaint on September 10, 2013. ECF No. 406.

16. On November 26, 2013, the Defendants moved to dismiss the OTC Plaintiffs' unjust enrichment and breach of the implied covenant of good faith and fair dealing claims, ECF No. 507, and on June 23, 2014 the Court granted in part and denied in part this motion. ECF No. 568 ("*LIBOR III*"). Specifically, the Court permitted the OTC Plaintiffs to proceed on these claims as to those Defendants with whom they "directly transacted." *Id.* On August 20, 2014, OTC Plaintiffs thereafter filed a Proposed Third Consolidated Amended Complaint, which added additional named plaintiffs that are in privity with one or more of the Defendants. ECF No. 627.

17. Certain Defendants made additional motions to dismiss the Second Consolidated Amended Complaint and/or requested that the Court deny leave to file the Proposed Third Consolidated Amended Complaint, *see* ECF Nos. 958, 971, 974, and on November 3, 2015, the Court granted in part these motions. ECF No. 1234 ("*LIBOR V*").

18. In March 2016, OTC Plaintiffs began receiving and reviewing the millions of documents and audio tapes defendants had previously produced to regulators in investigations concerning alleged U.S. Dollar LIBOR misconduct, as well as voluminous transactional data.

19. On March 9, 2016, OTC Plaintiffs sought preliminary approval of a settlement with Barclays Bank plc ("Barclays Settlement"). ECF Nos. 1335–38. On December 21, 2016, the Court granted preliminary approval of the Barclays Settlement. ECF No. 1678.

20. On May 23, 2016, the Second Circuit reversed the Court's ruling in *LIBOR I*, reinstated OTC Plaintiffs' antitrust claim, and remanded the case for further proceedings. *Gelboim*

v. Bank of Am. Corp., 823 F.3d 759 (2d Cir. 2016).

21. Thereafter, OTC Plaintiffs served document requests and interrogatories on each Defendant except for Barclays, which had settled with OTC Plaintiffs. The parties had numerous and lengthy meet and confers over Defendants' responses and objections. Ultimately, Defendants agreed to produce their regulatory productions related to U.S. Dollar LIBOR as well as voluminous trade and borrowing data. Additionally, OTC Plaintiffs engaged in third-party discovery, obtaining documents and data from four inter-dealer brokers.

22. OTC Plaintiffs also responded to 64 Requests for Production served by Defendants and negotiated the terms of document production, ultimately producing 25,739 documents totaling over 437,000 pages.

23. While discovery was ongoing, the remaining Defendants sought to dismiss OTC Plaintiffs' antitrust claim on antitrust standing grounds, and certain Defendants sought to dismiss OTC Plaintiffs' claim on personal jurisdiction grounds. The Court granted the motion to dismiss with respect to personal jurisdiction on December 20, 2016. ECF No. 1676 ("*LIBOR VI*"). OTC Plaintiffs appealed the dismissal decision to the Second Circuit.

24. On April 20, 2017, OTC Plaintiffs filed their Corrected Third Consolidated Amended Complaint ("TCAC"). ECF No. 1857. The non-dismissed Defendants filed answers to the TCAC on June 7, 2017. ECF Nos. 1952, 1954–59.

25. On May 9, 2017, OTC Plaintiffs moved for class certification of their antitrust and state law claims. ECF Nos. 1904-06. OTC Plaintiffs filed a reply brief in support of class certification on August 4, 2017. ECF Nos. 2190, 2191. As part of the class certification proceedings, Defendants took seven depositions of OTC Plaintiffs as well as depositions of OTC Plaintiffs' experts, Dr. B. Douglas Bernheim and Dr. Joseph Stiglitz, all of which OTC Plaintiffs'

Counsel defended. OTC Plaintiffs conducted depositions of Defendants' three class certification experts.

26. On August 7, 2017, OTC Plaintiffs sought preliminary approval of a settlement with Citibank, N.A. and Citigroup Inc. (collectively, "Citi"), ECF Nos. 2195, 2196, which the Court granted on August 31, 2017. ECF No. 2247.

27. On October 23, 2017, following notice to the settlement class, the Court held a final Fairness Hearing for the Barclays Settlement and granted final approval on August 1, 2018. ECF No. 2655.

28. On January 18, 2018, the Court held a hearing on OTC Plaintiffs' motion for class certification.

29. On January 23, 2018, following notice to the settlement class, the Court held a final Fairness Hearing for the Citi Settlement and granted final approval on August 1, 2018. ECF No. 2655.

30. On February 6, 2018, OTC Plaintiffs executed a settlement with Deutsche Bank AG ("Deutsche Bank") and on February 27, 2018, OTC Plaintiffs sought preliminary approval of that settlement, ECF Nos. 2448-2450, which the Court granted on April 5, 2018. ECF No. 2481.

31. On February 15, 2018, OTC Plaintiffs executed a settlement with HSBC Bank plc ("HSBC") and on March 29, 2018, OTC Plaintiffs sought preliminary approval of that settlement, ECF Nos. 2472-2474, which the Court granted on April 5, 2018. ECF No. 2480.

32. On February 28, 2018, the Court issued a class certification opinion. ECF No. 2452 ("*LIBOR VII*"). That decision granted class certification as to OTC Plaintiffs' antitrust claims and denied class certification as to OTC Plaintiffs' unjust enrichment and breach of implied covenant claims. OTC Plaintiffs' proposed class was the only class in the multi-district litigation to be

certified. Defendants JPMorgan and Bank of America sought appellate review of that decision pursuant to Rule 23(f) on March 14, 2018. The Second Circuit denied that Rule 23(f) petition on September 5, 2018. ECF No. 2725.

33. On July 13, 2018, Defendants Bank of America, N.A. and JPMorgan Chase Bank, N.A. moved for an order pursuant to Rule 12(c) of the Federal Rules of Civil Procedure for partial judgment on the pleadings as to OTC Plaintiffs' claims that are based on transactions with Panel Banks' subsidiaries or affiliates, *see* ECF Nos. 2620; 2621, which OTC Plaintiffs opposed, ECF No. 2669. On March 25, 2019, the Court issued an order granting in part and denying in part the motion. ECF No. 2837 ("*LIBOR VIII*").

34. On October 25, 2018, following notice to the settlement classes, the Court held a final Fairness Hearing for the Deutsche Bank and HSBC Settlements and granted final approval. ECF No. 2746.

35. OTC Plaintiffs' Counsel worked with the Claims Administrators to finalize the distribution of settlement proceeds from the Barclays, Citi, Deutsche Bank, and HSBC settlements and successfully distributed the net common fund to class members.

36. On December 30, 2021, the Second Circuit reversed the Court's personal jurisdiction ruling in *LIBOR VI* as to OTC Plaintiffs' antitrust claims and remanded the case for further proceedings. *Schwab Short-Term Bond Market Fund v. Lloyds Banking Group PLC*, 22 F.4th 103 (2d Cir. 2021).

37. On August 16, 2022, OTC Plaintiffs filed their Fourth Amended Complaint, which re-added certain Defendants as parties given the ruling in *Schwab*, 22 F.4th 103 (2d Cir. 2021). ECF No. 3462. On October 12, 2022, OTC Plaintiffs filed their Corrected Fourth Amended Complaint. ECF Nos. 3553, 3555.

38. On July 5, 2022, the Court entered a Scheduling Order that lifted the stay in all previously stayed cases and set a schedule for discovery relating to the alleged suppression of LIBOR and/or any conspiracy to suppress LIBOR ("Upstream Issues"). ECF No. 3425.

39. On June 30, 2022, OTC Plaintiffs and Direct Action Plaintiffs served requests for production relating to Upstream Issues. OTC Plaintiffs, Direct Action Plaintiffs, and non-settling Defendants engaged in extensive meet and confers over Defendants' objections to these requests as well as the custodians and search terms to be used for locating and producing documents responsive to these requests.

40. OTC Plaintiffs successfully negotiated and reached agreement on custodians and search terms with four Defendant groups: Lloyds Banking Group plc, Lloyds Bank plc (formerly known as Lloyds TSB Bank plc), Bank of Scotland plc, and HBOS plc (collectively, "Lloyds"); Credit Suisse AG and Credit Suisse International (collectively, "Credit Suisse"); MUFG; and Coöperatieve Rabobank U.A. ("Rabobank"). In addition, OTC Plaintiffs reached agreement on custodians with Portigon AG ("Portigon").

41. On October 6, 2022, OTC Plaintiffs and Direct Action Plaintiffs filed letter briefs seeking an order to compel Defendants to (1) apply search terms to electronically stored information found in certain current and former employees' custodial files, and (2) produce all non-privileged and responsive documents that hit on those search terms and are relevant to Upstream Issues. ECF No. 3549. At the Court's request, OTC Plaintiffs and Direct Action Plaintiffs supplemented their briefing on January 12, 2023 with (i) a list of Plaintiffs with and without access to workspaces that allow search terms to be run across produced documents; (ii) a list of significant documents that Plaintiffs have identified that were not produced by Defendants and, where applicable additional search terms that, if used, would have resulted in their production;

and (iii) a chart of custodians from whom Plaintiffs seek documents. ECF No. 3626. The Parties filed a joint chart listing search terms used by all Defendants, search terms used by some but not all Defendants, and search terms Plaintiffs sought to compel and indicating which Defendants, if any, used the search terms. ECF No. 3624. On April 10, 2023, the Court issued an order granting in part and denying in part the requested relief. ECF No. 3655.

42. Throughout class, expert, and merits discovery, OTC Plaintiffs have submitted numerous letter briefs on contested issues, including: (i) Defendants' cross-production of documents produced to regulators, ECF No. 115; (ii) bifurcation of class and merits discovery, ECF No. 1244; (iii) production of documents responsive to a subpoena served on third-party broker, Tradition America LLC, ECF No. 1554; (iv) Defendants' responses to OTC Plaintiffs' interrogatory requesting identification of Defendants' LIBOR submitters, ECF No. 1599; (v) document production in response to a subpoena served on third-party interdealer brokers Tullett Prebon Americas Corp., Tullett Prebon Financial Services LLC, and Tullett Prebon Liberty Brokerage Inc., ECF No. 1677; (vi) Defendants JPMorgan's and Bank of America's production of privilege logs, internal bank policies, organizational charts, BBA meeting minutes, and recordings during the pendency of the *LIBOR VI* appeal, ECF Nos. 2528, 2535 2537; and (vii) procedures for Plaintiffs' motion to compel on custodians and search terms, ECF No. 3540.

43. OTC Plaintiffs have also submitted briefing on contested issues related to the four previously approved settlements, including issues concerning claims submitted by Managed Care Advisory Group to share in the Barclays and Citi Settlements. ECF Nos. 2603, 2639.

44. OTC Plaintiffs' Counsel has participated in 17 hearings before the Court on various issues, including Defendants' motions to dismiss and motion for judgment on the pleadings, class certification, settlement approval, and discovery disputes.

45. In summary, this litigation has been uniquely complex and hard-fought. OTC Plaintiffs have defended various iterations of the OTC Complaint from eight Rule 12(b) motions to dismiss, a Rule 12(c) motion for judgment on the pleadings, and two motions opposing OTC Plaintiffs' requests for leave to amend. These motions have involved complex and sometimes novel legal arguments regarding, *inter alia*, the plausibility of the alleged conspiracy; pleading requirements for a conspiracy and the sufficiency of Plaintiffs' allegations; standing under the antitrust laws; the role of corporate subsidiaries and affiliates in an alleged antitrust conspiracy; standing and pleading requirements for contractual and quasi-contractual claims; personal jurisdiction for state law and federal antitrust claims; and the application of tolling doctrines to the statute of limitations.

46. OTC Plaintiffs have analyzed 4.8 million documents produced in discovery, which in turn led to the eyes on review and further analysis of over 3 million documents. They have also listened to and analyzed more than 100,000 audio files, totaling over 140,000 hours of recorded conversation, produced by the Defendants, and have worked closely with renowned economic experts on issues including suppression and but-for LIBOR, conspiracy, and damages. They have briefed numerous motions before the Court and the Second Circuit, including their class certification motion, which was supported by more than sixty pages of briefing, more than sixty pages of attorney declarations, hundreds of pages of expert reports, and 149 exhibits.

47. OTC Plaintiffs have entered into settlements with four other Defendants totaling $590 million: a $120 million settlement with Barclays in November 2015; a $130 million settlement with Citi in July 2017; a $240 million settlement with Deutsche Bank in February 2018; and a $100 million settlement with HSBC in February 2018. As part of their respective settlements, Barclays, Citi, Deutsche Bank, and HSBC have provided and will continue providing cooperation

to OTC Plaintiffs in the pursuit of claims against the non-settling Defendants.

II. THE SETTLMENT NEGOTIATIONS WITH MUFG, NORINCHUKIN, AND SOCGEN

48. OTC Plaintiffs' settlement with MUFG, Norinchukin, and SocGen is the fifth settlement in the litigation and represents another significant step forward in the prosecution of the OTC Action. The settlement is the product of hard-fought, arm's-length negotiations by counsel highly experienced in complex antitrust matters.

49. Counsel for MUFG, Norinchukin, and SocGen and OTC Plaintiffs' Counsel first discussed the possibility of settlement in mid-February 2023. The Honorable Layn Phillips, a former federal judge, was engaged as a mediator to facilitate settlement. Counsel for MUFG, Norinchukin, and SocGen and OTC Plaintiffs' Counsel engaged in telephonic discussions and negotiations thereafter, including communications facilitated by Judge Phillips.

50. On March 10, 2023, the Parties, with the assistance of Judge Phillips, reached an agreement in principle to settle. Over the next several weeks, the Parties engaged in negotiations regarding the terms of the final Settlement Agreement, which was executed on May 12, 2023.

51. At all times, both sides vigorously negotiated their respective positions. These negotiations were accompanied by an honest and frank discussion on the relative strengths and weaknesses of the parties' claims and defenses. OTC Plaintiffs' Counsel were well-informed of the facts and issues concerning liability and damages and the relative strengths and weaknesses of each side's litigation position.

52. In addition to $90 million, MUFG, Norinchukin and SocGen have agreed to provide cooperation to OTC Plaintiffs in their ongoing litigation of the OTC Action. *See* Ex. A at ¶ 15.

53. With the proposed MUFG, Norinchukin, and SocGen settlement, OTC Plaintiffs have secured $680 million in monetary settlements to date.

III. THE PROPOSED PLAN OF DISTRIBUTION

54. Attached hereto as Exhibit B is a true and correct copy of the proposed Plan of Distribution. OTC Plaintiffs' Counsel developed the Plan of Distribution with the assistance of experts at Bates White consulting firm.

55. The proposed Plan of Distribution would distribute the Net Settlement Funds to the settlement class members *pro rata*, in proportion to their notional stakes for each Settlement.

56. The proposed Plan of Distribution is recommended by OTC Plaintiffs' Counsel, who finds it to be fair and reasonable. OTC Plaintiffs' Counsel has determined that the fairest and most efficient manner of distributing funds to Class Members is the method used in the proposed plan.

I certify under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Executed on May 19, 2023, in New York, NY.

/s/ Seth Ard
Seth Ard

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE LIBOR-BASED FINANCIAL INSTRUMENTS ANTITRUST LITIGATION	No. 11-md-2262-NRB
THIS DOCUMENT RELATES TO:	
The OTC Action	No. 11-cv-5450

SETTLEMENT AGREEMENT BETWEEN
OTC PLAINTIFFS AND DEFENDANTS MUFG BANK, LTD., THE NORINCHUKIN BANK, AND SOCIÉTÉ GÉNÉRALE

TABLE OF CONTENTS

1. RECITALS 1

2. DEFINITIONS 3

3. SETTLEMENT CLASS CERTIFICATION 12

4. GOOD FAITH EFFORTS TO EFFECTUATE THIS SETTLEMENT AGREEMENT . 13

5. PRELIMINARY APPROVAL ORDER, NOTICE, AND FAIRNESS HEARING 13

6. EFFECTIVE DATE OF SETTLEMENT 19

7. CLAIMS ADMINISTRATOR 20

8. SCOPE AND EFFECT OF SETTLEMENT 20

9. FEE AND EXPENSE APPLICATION 22

10. THE SETTLEMENT FUND 24

11. ADMINISTRATION OF THE SETTLEMENT 27

12. TAXES 32

13. TERMINATION OF THE SETTLEMENT 34

14. COOPERATION OBLIGATIONS 35

15. RESERVATION OF CLASS MEMBERS' RIGHTS AGAINST OTHER DEFENDANTS 41

16. MISCELLANEOUS 41

17. SIGNATURES 45

1. RECITALS

This Settlement Agreement ("Agreement") is made and entered into on May 12, 2023 (the "Execution Date"), between Plaintiffs Mayor and City Council of Baltimore, City of New Britain, Vistra Energy Corp., Yale University, and Jennie Stuart Medical Center, Inc. (collectively, the "OTC Plaintiffs" or "Class Plaintiffs"), individually and on behalf of the OTC Class in the OTC Action, and defendants MUFG Bank, Ltd., The Norinchukin Bank, and Société Générale (named as Société Générale S.A.) (together, the "Settling Defendants," and with OTC Plaintiffs, the "Parties"), by and through OTC Plaintiffs' Counsel and Settling Defendants' Counsel. This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof.

WHEREAS, the OTC Plaintiffs have alleged, among other things, that Settling Defendants: (1) violated the Sherman Act, 15 U.S.C. § 1, by conspiring to manipulate the U.S. Dollar LIBOR rate; (2) breached the covenant of good faith and fair dealing by manipulating the U.S. Dollar LIBOR rate; and (3) were unjustly enriched as a result of their manipulative acts in connection with U.S. Dollar LIBOR (collectively, the factual predicate of the OTC Action);

WHEREAS, the OTC Plaintiffs contend that they and the OTC Class suffered monetary damages as a result of Settling Defendants' (and the other Defendants') alleged conduct;

WHEREAS, Settling Defendants dispute OTC Plaintiffs' allegations and maintain that they have meritorious defenses to the claims of liability and damages made by the OTC Plaintiffs in the OTC Action, to the maintenance of the OTC Action as a class action, and to all charges of liability and damages against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the OTC Action;

WHEREAS, the OTC Plaintiffs, for themselves individually and on behalf of the OTC Class, and Settling Defendants agree that neither this Agreement nor any statement made in

negotiation thereof shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Settling Defendants or of the truth of any of the claims or allegations alleged in the OTC Action;

WHEREAS, OTC Plaintiffs' Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the OTC Action, the legal and factual defenses thereto, and the applicable law, that: (1) it is in the best interests of the OTC Class to enter into this Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein, including the value of the Settlement Amount to be paid by Settling Defendants under this Agreement and the cooperation to be provided to the OTC Plaintiffs by Settling Defendants under this Agreement, are obtained for the OTC Class; and (2) the settlement set forth in this Agreement is fair, reasonable, and adequate and in the best interests of the OTC Class;

WHEREAS, Settling Defendants, while continuing to deny that they are liable for the claims asserted against them in the OTC Action, have nevertheless agreed to enter into this Agreement to avoid the further risk, expense, inconvenience, and distraction of burdensome and protracted litigation, and thereby to resolve this controversy, to avoid the risks inherent in complex litigation, and to obtain complete dismissal of the OTC Action as to Settling Defendants and a release of the claims as set forth herein;

WHEREAS, this Agreement is the product of arm's-length negotiations between OTC Plaintiffs' Counsel and Settling Defendants' Counsel under the guidance and oversight of Mediator Layn R. Phillips, and this Agreement embodies all of the terms and conditions of the settlement agreed upon between Settling Defendants and the OTC Plaintiffs, both for themselves individually and on behalf of the OTC Class;

NOW, THEREFORE, in consideration of the covenants, terms, and releases in this Agreement, it is agreed, by and between the OTC Plaintiffs (individually and on behalf of the OTC Class) and Settling Defendants, by and through the OTC Plaintiffs' Counsel and Settling Defendants' Counsel, respectively, that, subject to the approval of the Court, the OTC Action be settled, compromised, and dismissed with prejudice as to Settling Defendants and the other Released Parties only, without costs, except as stated herein, and releases be extended, as set forth in this Agreement.

2. DEFINITIONS

As used in this Agreement, the following capitalized terms have the meanings specified below:

(a) Agreement: This Settlement Agreement.

(b) Alternative Judgment: A Final Judgment and Order of Dismissal entered by the Court but in a form materially different than what was proposed by OTC Plaintiffs' Counsel and Settling Defendants.

(c) Authorized Claimant: Any OTC Class Member who will be entitled to a distribution from the Net Settlement Fund pursuant to the Plan of Distribution approved by the Court in accordance with the terms of this Agreement.

(d) BBA: British Bankers' Association.

(e) Business Day: Any day except Saturdays, Sundays, and those days designated as federal legal holidays in the United States.

(f) Claims Administrator: The third party to be retained by OTC Plaintiffs' Counsel and approved by the Court to manage and administer the process by which the Class will be notified of this Agreement and by which each eligible member of a Class is paid pursuant to this Agreement.

(g) Class Distribution Order: An order approving the Claims Administrator's determinations concerning the acceptance and rejection of the claims submitted herein and approving any fees and expenses not previously applied for, including the fees and expenses of the Claims Administrator, and, if the Effective Date has occurred, directing payment of the Net Settlement Fund to or for the account of Authorized Claimants, as the case may be.

(h) Class Notice: The Notice and Summary Notice, collectively.

(i) Class Plaintiffs or OTC Plaintiffs: Mayor and City Council of Baltimore, City of New Britain, Vistra Energy Corp., Yale University, and Jennie Stuart Medical Center, Inc.

(j) Court: The United States District Court for the Southern District of New York.

(k) Defendants: Barclays Bank plc; Citigroup Inc.; Citibank, N.A.; Credit Suisse AG; Credit Suisse Group AG; Credit Suisse International; Credit Suisse (USA) Inc.; Bank of America Corporation; Bank of America, N.A.; JPMorgan Chase & Co.; JPMorgan Chase Bank, NA; HSBC Holdings plc; HSBC Bank plc; Lloyds Banking Group plc; HBOS plc; WestLB AG n/k/a Portigon; Westdeutsche Immobilienbank AG n/k/a Portigon; UBS AG; The Royal Bank of Scotland Group plc; Citizens Bank of Massachusetts a/k/a RBS Citizens Bank N.A.; Deutsche Bank AG; Coöperatieve Centrale Raiffeisen Boerenleenbank B.A. n/k/a Westdeutsche Immobilien Servicing AG; Coöperatieve Rabobank U.A.; The Norinchukin Bank; The Bank of Tokyo-Mitsubishi UFJ, Ltd., n/k/a MUFG Bank, Ltd.; HBOS PLC; Société Générale; Royal Bank of Canada; and any other Person or Persons who are or were named as defendants in the OTC Action at any time up to and including the date a Preliminary Approval Order is issued. These Defendants are also referred to herein as "OTC Defendants."

(l) Effective Date or Effective Date of Settlement: *See* Paragraph 6(a).

(m) Escrow Agent: Huntington Bank.

(n) Exchange-Based Plaintiffs' Action: *FTC Capital GmbH, et al. v. Credit Suisse Group AG, et al.*, Case No. 11-cv-2613 (NRB), and related class action cases on behalf of Exchange-Based Plaintiffs that are currently pending in the multi-district litigation in the U.S. District Court for the Southern District of New York.

(o) Execution Date: The date of execution of this Agreement by counsel for all Parties thereto.

(p) Fairness Hearing: The hearing to be held by the Court to determine whether the settlement set forth in this Agreement shall receive final approval pursuant to Federal Rule of Civil Procedure 23.

(q) Fee and Expense Application: *See* Paragraph 9(a).

(r) Final Judgment and Order of Dismissal: The order of the Court finally approving the settlement set forth in this Agreement and dismissing the OTC Action against Settling Defendants with prejudice. The Final Judgment and Order of Dismissal shall become final when (i) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (ii) an appeal has been filed and either (1) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (2) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times.

(s) LIBOR: The London Interbank Offered Rate.

(t) Mediator: Layn R. Phillips, or if he is unable or unwilling to serve in that capacity, the parties shall select another mutually agreeable mediator.

(u) MUFG Bank, Ltd.: MUFG Bank, Ltd., f/k/a The Bank of Tokyo-Mitsubishi UFJ, Ltd., is a Japanese company headquartered in Tokyo, Japan.

(v) Non-OTC Bondholder Action: *Ellen Gelboim v. Credit Suisse Group AG, et al.*, Case No. 12-CV-1025 (NRB), filed in the multi-district litigation in the U.S. District Court for the Southern District of New York.

(w) Net Settlement Fund: *See* Paragraph 10.

(x) Notice: The Notice of Proposed Settlement of Class Action to be provided to the Class as provided in this Agreement and the Preliminary Approval Order.

(y) OTC Action: *Mayor and City Council of Baltimore v. Credit Suisse AG, et al.*, Case No. 11-cv-5450 (NRB), and related class action cases on behalf of OTC Plaintiffs currently pending in the multi-district litigation in the U.S. District Court for the Southern District of New York.

(z) OTC Class or Class: *See* Paragraph 3(a).

(aa) OTC Class Member: A Person who is a member of the OTC Class and has not timely and validly excluded himself, herself, or itself in accordance with the procedures established by the Court.

(bb) OTC Plaintiffs' Counsel: Hausfeld LLP and Susman Godfrey L.L.P.

(cc) Parties: Settling Defendants and the OTC Plaintiffs.

(dd) Person(s): An individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, municipality, state, state agency, any entity that is a creature of any state, any government or any political subdivision,

authority, office, bureau or agency of any government, and any business or legal entity, and any spouses, heirs, predecessors, successors, representatives, or assignees of the foregoing.

(ee) Plan of Distribution: A plan or formula of allocation of the Net Settlement Fund whereby the Settlement Fund shall be distributed to Authorized Claimants after payment of expenses for notice and administration of the settlement, Taxes and tax expenses, and such attorneys' fees, costs, interest, and other expenses as may be awarded by the Court. At a time and in a manner determined by the Court, OTC Plaintiffs' Counsel shall submit for Court approval a Plan of Distribution for the OTC Class that will provide for the distribution of the applicable Net Settlement Fund.

(ff) Preliminary Approval Order: An order of the Court that preliminarily approves the settlement set forth in this Agreement and directs Notice thereof to the Class.

(gg) Released Claims: Any and all manner of claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys' fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, arising from or relating in any way to any conduct alleged or that could have been alleged in and arising from the factual predicate of the OTC Action; provided, however, that Released Claims does not include (1) claims concerning Eurodollar futures contracts or options arising from or relating in any way to the conduct alleged in the Exchange-Based Plaintiffs' Action; (2) claims concerning U.S. Dollar LIBOR-Based Debt Securities that were not issued or sold directly to the claimant by a Defendant

(or its subsidiaries or affiliates) arising from or relating to conduct that is alleged in the Non-OTC Bondholder Action; (3) claims arising solely under foreign law related to transactions entirely outside the United States; or (4) claims to enforce any of the terms of this Agreement. Additionally, excluded from the release are any claims that OTC Plaintiffs or any absent class members may have arising out of the purchase, sale or ownership of any U. S. Dollar LIBOR-linked instruments that were issued by a non-panel bank or which were not directly sold to a claimant by or purchased from a Defendant (or its subsidiaries or affiliates). For the avoidance of doubt, Released Claims does not include claims relating to or arising out of the purchase of non-U.S. Dollar LIBOR-Based Instruments or any other claims that do not arise out of the factual predicate of the OTC Action, such as a claim to complete the settlement of, or otherwise enforce the terms of, a U.S. Dollar LIBOR-Based Instrument.

(hh) Released Party or Released Parties: Settling Defendants, and each of their respective past or present direct and indirect parents (including holding companies), subsidiaries, affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), joint ventures, predecessors, successors, and each of their respective current and former officers, directors, employees, members, agents, attorneys, insurers, legal or other representatives, trustees, heirs, executors, administrators, advisors, and assigns. Released Parties does not include: (i) any of the other Defendants that are unaffiliated with Settling Defendants; or (ii) any other Person unaffiliated with Settling Defendants formerly named as a party in the OTC Action.

(ii) Releasing Party or Releasing Parties: Individually and collectively, Class Plaintiffs and each OTC Class Member, on behalf of themselves and any of their respective past or present officers, directors, stockholders, agents, employees, legal representatives, partners, associates,

trustees, beneficiaries, beneficial owners, parents, subsidiaries, divisions, affiliates, heirs, executors, administrators, purchasers, predecessors, successors, and assigns, whether or not they object to the settlement set forth in this Agreement and whether or not they make a claim for payment from the Net Settlement Fund.

(jj) Settlement Amount: Ninety million dollars ($90 million).

(kk) Settlement Fund: The escrow account established pursuant to Paragraph 10 of this Agreement, including all monies held therein in accordance with the terms of this Agreement.

(ll) Settling Defendants: MUFG Bank, Ltd., The Norinchukin Bank, and Société Générale.

(mm) Settling Defendants' Counsel: Sullivan & Cromwell LLP, Sidley Austin LLP, and Mayer Brown LLP.

(nn) Settling Defendants' Claims: Claims, including "Unknown Claims" as defined below, that any Released Party may have against a Releasing Party or OTC Plaintiffs' Counsel solely relating to the institution, prosecution, or settlement of the OTC Action, except for claims to enforce any of the terms of this Agreement. For the avoidance of doubt, Settling Defendants' Claims does not include claims relating to or arising out of the purchase of non-U.S. Dollar LIBOR-Based Instruments or any other claims that do not arise out of the factual predicate of the OTC Action, such as a claim to complete the settlement or otherwise enforce the terms of a U.S. Dollar LIBOR-Based Instrument.

(oo) Société Générale: Société Générale is a financial services company headquartered in Paris, France.

(pp) Summary Notice: The summary notice of proposed settlement and hearing for publication.

(qq) Taxes: *See* Paragraph 12(c).

(rr) The Norinchukin Bank: The Norinchukin Bank is a Japanese cooperative bank organized under the laws of Japan and headquartered in Tokyo, Japan.

(ss) Unknown Claims: Any and all Released Claims against the Released Parties which Releasing Parties do not know or suspect to exist in his, her, or its favor as of the Effective Date, and the Settling Defendant's Claims against Releasing Parties which Released Parties do not know or suspect to exist in his, her, or its favor as of the Effective Date, which if known by the Releasing Parties or Released Parties might have affected his, her, or its decision(s) with respect to the settlement. With respect to any and all Released Claims and Settling Defendant's Claims, the Parties stipulate and agree that by operation of the Final Judgment and Order of Dismissal, upon the Effective Date, Releasing Parties and Released Parties shall have expressly waived, and each OTC Class Member shall be deemed to have waived, and by operation of the Final Judgment and Order of Dismissal shall have expressly waived, the provisions, rights and benefits of California Civil Code § 1542, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

and any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code § 1542.

The Releasing Parties and Released Parties may hereafter discover facts other than or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims and Settling Defendant's Claims. Nevertheless, Class Plaintiffs and the

Released Parties shall expressly, fully, finally, and forever settle and release, and each OTC Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal shall have, fully, finally, and forever settled and released, any and all Released Claims and Settling Defendant's Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Class Plaintiffs and the Released Parties acknowledge, and OTC Class Members shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Claims and Settling Defendant's Claims was separately bargained for and was a key element of the Agreement.

(tt) U.S. Dollar LIBOR-Based Debt Securities: Any U.S. dollar-denominated debt security (a) that was assigned a unique identification number by the CUSIP[1] system; (b) on which interest was payable at any time during the Class Period; and (c) where that interest was payable at a rate expressly linked to U.S. Dollar LIBOR ("USD LIBOR"). U.S. Dollar LIBOR-Based Debt Securities include, but are not limited to, any such bonds, corporate bonds, municipal bonds, government bonds, asset backed securities, residential mortgage backed securities, commercial mortgage backed securities, collateralized debt obligations and collateralized loan obligations. Excluded from the definition of U.S. Dollar LIBOR-Based Debt Securities are any such securities that were issued by any Defendant or its subsidiaries or affiliates as obligor.

(uu) U.S. Dollar LIBOR-Based Instrument: An instrument that includes any term, provision, obligation or right to be paid by or to receive interest from a Defendant (or its subsidiaries or affiliates) based upon the U.S. Dollar LIBOR rate, including but not limited to asset swaps, bonds/floating rate notes, collateralized debt obligations, credit default swaps, forward rate agreements, inflation swaps, interest rate swaps, total return swaps, options or floating rate notes.

[1] "CUSIP" stands for Committee on Uniform Securities Identification Procedures.

For the avoidance of doubt, U.S. Dollar LIBOR-Based Instrument does not include instruments for which a Defendant (or a Defendant's subsidiaries or affiliates) does not pay interest based upon any U.S. Dollar LIBOR rate, such as corporate or municipal bonds issued by non-Defendants. Nor does it include instruments that include only a term, provision, or obligation requiring the purchaser to pay interest based upon the U.S. Dollar LIBOR rate, such as business, home, student or car loans, or credit cards.

3. SETTLEMENT CLASS CERTIFICATION

(a) The Parties hereby stipulate for purposes of settlement only that the requirements of Federal Rule of Civil Procedure 23(a) and 23(b)(3) are satisfied, and, subject to Court approval, the following settlement class shall be certified as to Settling Defendants (the "Class" or "OTC Class"):

> All persons or entities (other than Defendants and their employees, affiliates, parents, and subsidiaries) that purchased in the United States, directly from a Defendant (or a Defendant's subsidiaries or affiliates), a U.S. Dollar LIBOR-Based Instrument and that owned the U.S. Dollar LIBOR-Based Instrument any time during the period August 2007 through May 2010 (the "Class Period").

(b) Specifically excluded from the Class are Defendants; Released Parties; co-conspirators; the officers, directors, or employees of any Defendant, Released Party, or co-conspirator; any entity in which any Defendant, Released Party, or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant, Released Party, or co-conspirator and any person acting on their behalf. Also excluded from the Class are any judicial officers presiding over this action and the members of his/her immediate families and judicial staff, and any juror assigned to the OTC Action.

(c) The Parties' agreement as to certification of the Class is only for purposes of effectuating a settlement and for no other purpose. Settling Defendants retain all of their

objections, arguments, and defenses with respect to class certification, and reserve all rights to contest class certification, if the settlement set forth in this Agreement does not receive the Court's final approval, if the Court's approval is reversed or vacated on appeal, if this Agreement is terminated as provided herein, or if the settlement set forth in this Agreement otherwise fails to become effective. The Parties acknowledge that there has been no stipulation to any Class or certification of any Class for any purpose other than effectuating the settlement, and that if the settlement set forth in this Agreement does not receive the Court's final approval, if the Court's approval is reversed or vacated on appeal, if this Agreement is terminated as provided herein, or if the settlement set forth in this Agreement otherwise fails to become effective, this agreement as to certification of the OTC Class becomes null and void *ab initio*. This Agreement or any other settlement-related statement may not be cited regarding certification of the OTC Class, or in support of an argument for certifying a class for any purpose related to this proceeding.

4. GOOD FAITH EFFORTS TO EFFECTUATE THIS SETTLEMENT AGREEMENT

The Parties agree to cooperate with one another in good faith to effectuate and implement the terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the terms of this Agreement. This includes Settling Defendants serving notice on those persons and entities required to receive notice pursuant to 28 U.S.C. § 1715.

5. PRELIMINARY APPROVAL ORDER, NOTICE, AND FAIRNESS HEARING

(a) Within thirty (30) days of execution of this Agreement, OTC Plaintiffs' Counsel shall submit to the Court and Settling Defendants shall support a motion requesting entry of the Preliminary Approval Order. OTC Plaintiffs' Counsel shall share drafts of the papers for this motion with Settling Defendants' Counsel at least one week before the anticipated filing date in order to give Settling Defendants a reasonable opportunity to comment. This motion shall:

(i) Seek certification of the Class for purposes of settlement only, pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3);

(ii) Request preliminary approval of the settlement set forth in this Agreement as fair, reasonable, and adequate within the meaning of Federal Rule of Civil Procedure 23;

(iii) Seek the appointment of the OTC Plaintiffs as Class representatives of the OTC Class under Federal Rule of Civil Procedure 23;

(iv) Seek appointment of OTC Plaintiffs' Counsel as interim Class counsel under Federal Rule of Civil Procedure 23(g);

(v) If practicable at the time the motion is filed or otherwise at a later time, seek approval of the form and method of dissemination of (1) the Notice, which shall be mailed along with a proof of claim form via first-class mail, and (2) the Summary Notice, which shall be published based upon the recommendations of the Claims Administrator. The Claims Administrator will also establish and maintain a dedicated settlement website, from which each member of the Class can view and download relevant documents, including the Notice, Summary Notice, and proof of claim form;

(vi) If practicable at the time the motion is filed or otherwise at a later time, seek appointment of a Claims Administrator selected by OTC Plaintiffs' Counsel;

(vii) Seek appointment of Huntington Bank as Escrow Agent;

(viii) Stay all proceedings in the OTC Action, including all discovery, except as provided in Paragraph 15, against Settling Defendants until the Court

renders a final decision on approval of the settlement set forth in this Agreement; and

(ix) Attach a proposed form of order, which shall include such provisions as are typical in such orders, including (1) a finding that the proposed plan of notice complies with Federal Rule of Civil Procedure 23 and the requirements of due process, and (2) a provision that, if final approval of the settlement is not obtained, the settlement is null and void, and the Parties will revert to their positions *ex ante* without prejudice to their rights, claims, or defenses, including any objection or defense based on a lack of personal jurisdiction.

(b) Class Notice shall apprise each member of the Class of his, her or its right to exclude themselves from the settlement Class, or object to the settlement.

(c) Settling Defendants shall, at their own expense and as reasonably available to Settling Defendants and permissible by law, supply to OTC Plaintiffs' Counsel or the Claims Administrator in electronic format or such other form as may be reasonably requested by OTC Plaintiffs' Counsel or the Claims Administrator, the names and addresses of all U.S. domiciled clients, who, between August 1, 2007 and May 31, 2010, entered into a U.S. Dollar LIBOR-Based Instrument and who can be reasonably identified based on client records that Settling Defendants have in their possession, custody, or control. Any information provided pursuant to this provision shall be covered by the protective order in effect in the OTC Action, or, if no protective order is in effect, shall nevertheless be maintained as confidential. Moreover, any information provided pursuant to this provision shall be used solely for purposes of providing notice and administering and verifying claims, as set forth in Paragraphs 5 and 11, and any distribution of such information

shall be limited to what is necessary for those purposes. If the Parties are unable to agree on the scope of the client-identifying data to be produced, the issue shall be submitted to the Mediator for resolution. Notice shall be mailed to those Persons that are identified by Settling Defendants and any other Released Party. Notice to other members of the Class shall be by mail and/or by publication, as approved by the Court. If any of the Settling Defendants concludes in good faith that it is advisable, as a result of foreign law, it or they may retain, at their own expense, an agent to provide notice to its or their customers.

(d) Any Person seeking exclusion from the Class must file a timely written request for exclusion ("Request for Exclusion"). Any Person that files such a request shall be excluded from the Class, shall have no rights with respect to this Agreement, and shall receive no payment provided for in this Agreement. A Request for Exclusion must meet all of the following criteria:

(i) Be in writing;

(ii) Be signed by the Person or his, her, or its authorized representative;

(iii) State the name, address and phone number of that Person;

(iv) Include (1) proof of membership in the Class and (2) a signed statement that "I/we hereby request that I/we be excluded from the proposed OTC Class in the *In re LIBOR-Based Financial Instruments Antitrust Litigation*";

(v) Be mailed to the Claims Administrator at the address provided in the Class Notice and postmarked no later than fourteen (14) days prior to the date set for the Fairness Hearing or any other date set by the Court.

(e) A Request for Exclusion that does not include all of the foregoing information, that does not contain the proper signature, that is sent to an address other than the one designated in the Class Notice, or that is not sent within the time specified, shall be invalid, and the Person(s)

filing such an invalid request shall be an OTC Class Member and shall be bound by the settlement set forth in this Agreement, if approved. OTC Plaintiffs' Counsel agrees to provide Settling Defendants with notice of any Person who requests to be excluded from the Class, together with all documents and information provided by such Person, within three (3) Business Days of receipt by OTC Plaintiffs' Counsel of that exclusion request.

(f) Any Person who has not requested exclusion from the Class and who objects to the settlement set forth in this Agreement may appear in person or through counsel, at that Person's own expense, at the Fairness Hearing to present any evidence or argument that the Court deems proper and relevant. However, no such Person shall be heard, and no papers, briefs, pleadings, or other documents submitted by any such Person shall be received and considered by the Court, unless such Person properly submits a written objection that includes all of the following:

(i) A notice of intention to appear;

(ii) Proof of membership in the Class, including documentation evidencing the ownership of a U.S. Dollar LIBOR-Based Instrument during the Class Period; and

(iii) The specific grounds for the objection and any reasons why such Person desires to appear and be heard, as well as all documents or writings that such Person desires the Court to consider.

(g) Such a written objection must be both filed with the Court no later than fourteen (14) days prior to the date set for the Fairness Hearing and mailed to OTC Plaintiffs' Counsel and Settling Defendants' Counsel at the addresses provided in the Class Notice and postmarked no later than fourteen (14) days prior to the date set for the Fairness Hearing. Any Person that fails to object in the manner prescribed herein shall be deemed to have waived his, her or its objections

and will forever be barred from making any such objections in the OTC Action, unless otherwise excused for good cause shown, as determined by the Court.

(h) If the Preliminary Approval Order is entered by the Court, Class Plaintiffs shall seek, and Settling Defendants shall not oppose, entry of a Final Judgment and Order of Dismissal. OTC Plaintiffs' Counsel shall share drafts of the proposed Final Judgment and Order of Dismissal with Settling Defendants' Counsel at least one week before the anticipated filing date in order to give Settling Defendants a reasonable opportunity to comment. The Final Judgment and Order of Dismissal shall meet all of the following criteria (in addition to any additional criteria specified elsewhere in this Agreement):

(i) Certifies the Class pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3) solely for the purpose of the settlement;

(ii) Approves finally the settlement set forth in this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Class within the meaning of Federal Rule of Civil Procedure 23 and directing its consummation according to its terms;

(iii) Finds that the Class Notice constituted due, adequate, and sufficient notice of the settlement set forth in this Agreement and the Fairness Hearing and meets the requirements of due process and the Federal Rules of Civil Procedure;

(iv) Directs that, as to the Released Parties, the OTC Action shall be dismissed with prejudice and, except as provided for in this Agreement, without costs; provided, however, that such dismissal shall not affect, in any way, the right

of Class Plaintiffs or OTC Class Members to pursue claims, if any, outside the scope of the Released Claims;

(v) Orders that the Releasing Parties are permanently enjoined and barred from instituting, commencing, or prosecuting any action or other proceeding asserting any Released Claims against any Released Party;

(vi) Retains with the Court exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of the settlement; and

(vii) Determines under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directs that the judgment of dismissal as to Settling Defendants shall be final and entered forthwith.

6. EFFECTIVE DATE OF SETTLEMENT

(a) The Effective Date of Settlement shall be the date when all of the following events shall have occurred and shall be conditioned on the occurrence of all of the following events:

(i) The contribution to the Settlement Fund has been made pursuant to this Agreement;

(ii) Entry of the Preliminary Approval Order;

(iii) Final approval by the Court of the settlement set forth in this Agreement, following Class Notice and the Fairness Hearing;

(iv) No Party has exercised his, her, or its rights to terminate this Agreement pursuant to Paragraphs 10(c), 13(a), or 13(d); and

(v) Entry by the Court of a Final Judgment and Order of Dismissal, and the Final Judgment and Order of Dismissal becomes final, or, in the event that the Court enters an Alternative Judgment and neither Class Plaintiffs nor

any Settling Defendant elects to terminate this Agreement, and such Alternative Judgment becomes final.

(b) Notwithstanding any other provision herein, any proceeding or order, or motion for reconsideration, appeal, petition for a writ of certiorari or its equivalent, pertaining solely to any Plan of Distribution and/or Fee and Expense Application, shall not in any way delay or preclude the Effective Date.

7. CLAIMS ADMINISTRATOR

(a) Pursuant to the Preliminary Approval Order and subject to Court approval, OTC Plaintiffs' Counsel shall engage a qualified claims administrator as the Claims Administrator to assist with the settlement claims process as set forth herein.

(b) The Claims Administrator shall effectuate the notice plan approved by the Court in the Preliminary Approval Order, shall administer and calculate the claims submitted by OTC Class Members, and shall oversee distribution of the Net Settlement Fund to Authorized Claimants in accordance with the Plan of Distribution. To the extent deemed necessary and appropriate by OTC Plaintiffs' Counsel, OTC Plaintiffs' Counsel may engage experts to assist the Claims Administrator with the calculation of claims and distribution amounts.

8. SCOPE AND EFFECT OF SETTLEMENT

(a) The obligations incurred pursuant to this Agreement shall be in full and final disposition of the following:

(i) The OTC Action against Settling Defendants;

(ii) Any and all Released Claims as against all Released Parties; and

(iii) Any and all Settling Defendant's Claims as against all Releasing Parties.

(b) Upon the Effective Date of Settlement, each of the Releasing Parties:

(i) Shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal, shall have, fully, finally, and forever waived, released, relinquished, and discharged all Released Claims against the Released Parties, regardless of whether such Releasing Party executes and delivers a proof of claim;

(ii) Shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; and

(iii) Agrees and covenants not to sue any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Party related in any way to any Released Claims.

(c) Upon the Effective Date of Settlement, each of the Released Parties:

(i) Shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal shall have fully, finally, and forever released and discharged Class Plaintiffs, OTC Plaintiffs' Counsel, and each and all OTC Class Members from each and every one of the Settling Defendant's Claims;

(ii) Shall forever be enjoined from prosecuting the Settling Defendant's Claims; and

(iii) Agrees and covenants not to sue on the basis of the Settling Defendant's Claims, or to assist any third party in commencing or maintaining any such suit related to the Settling Defendant's Claims.

(d) The releases provided in this Agreement shall become effective immediately upon occurrence of the Effective Date of Settlement without the need for any further action, notice, condition, or event.

(e) As an express and material condition of this Agreement, the Court shall enter an order, in the Final Judgment and Order of Dismissal, to the fullest extent permitted by law, barring claims by or against the Released Parties for contribution or indemnification (however denominated) for all or a portion of any amounts paid or awarded in the OTC Action by way of settlement, judgment, or otherwise by or against any of the following:

(i) Any of the other Defendants currently named in the OTC Action;

(ii) Any other Person formerly named as a party in the OTC Action; or

(iii) Any other Person subsequently added or joined as a party in the OTC Action.

(f) In the event that this Agreement is terminated pursuant to Paragraphs 10(c), 13(a), or 13(d), or any condition for the final approval of this Agreement is not satisfied, the release and covenant not to sue provisions of the foregoing paragraphs shall be null and void and unenforceable.

9. FEE AND EXPENSE APPLICATION

(a) OTC Plaintiffs' Counsel will submit an application or applications (the "Fee and Expense Application") to the Court for an award from the Settlement Fund of the following:

(i) Attorneys' fees not to exceed 33-1/3% of the Settlement Fund;

(ii) Reimbursement of litigation expenses, plus interest, incurred in connection with the prosecution of the OTC Action; and

(iii) May also seek service awards for Class Plaintiffs in conjunction with their representation of the Class.

(b) Settling Defendants will take no position regarding nor shall they have any responsibility for, or liability whatsoever with respect to, the Fee and Expense Application or Fee and Expense Award. Attorneys' fees, expenses, incentive awards, and interest as are awarded by the Court ("Fee and Expense Award") to OTC Plaintiffs' Counsel shall be paid from the Settlement Fund to OTC Plaintiffs' Counsel immediately upon entry by the Court of an order awarding such amounts, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the settlement or any part thereof, subject to OTC Plaintiffs' Counsel's joint and several obligation to repay those amounts to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if and when, as a result of any appeal and further proceedings on remand, or successful collateral attack, the Fee and Expense Award is reduced or reversed, or return of the Settlement Fund is required consistent with the provisions of Paragraph 13(c) hereof. In such event, OTC Plaintiffs' Counsel shall, within ten (10) Business Days from the event which requires repayment of the Fee and Expense Award, refund to the Settlement Fund the Fee and Expense Award paid to them, along with interest.

(c) Notwithstanding any other provision of this Agreement to the contrary, the Fee and Expense Application shall be considered by the Court separate and apart from its consideration of the fairness, reasonableness, and adequacy of the settlement, and any order or proceeding relating to the Fee and Expense Application, or any appeal of any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement or the settlement of the OTC Action, or affect the finality or binding nature of any of the releases granted hereunder. The Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment of attorneys' fees or expenses to OTC Plaintiffs' Counsel.

10. THE SETTLEMENT FUND

(a) The Settlement Fund shall be established as an escrow account and administered by the Escrow Agent, subject to approval by the Court. The Settlement Fund shall be administered pursuant to this Agreement and subject to the Court's continuing supervision and control. No monies shall be paid from the Settlement Fund without the specific authorization of OTC Plaintiffs' Counsel. Prior to the Court granting final approval of the settlement, the Escrow Agent shall only act in accordance with instructions mutually agreed upon by the Parties in writing. Counsel for the Parties agree to cooperate, in good faith, to form an appropriate escrow agreement in conformance with this Agreement.

(b) Settling Defendants shall cause the Settlement Amount, ninety million dollars ($90 million), to be paid to the Escrow Agent by wire transfer within ten (10) Business Days of the Execution Date. These funds, together with any and all interest earned thereon, shall constitute the Settlement Fund. Prior to the Court granting final approval of the Settlement, OTC Plaintiffs' Counsel may pay from the Settlement Fund on a nonrefundable basis, without further approval from the Court, up to one million dollars ($1,000,000) to cover the costs and expenses reasonably and actually incurred in connection with providing Class Notice and the administration of the settlement, including, without limitation, locating members of the Class, soliciting OTC Class Members' claims, assisting with the filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants, and processing proof of claim and release forms. All costs and expenses in excess of one million dollars ($1,000,000) reasonably and actually incurred in connection with providing Class Notice and the administration of the settlement shall be paid from the Settlement Fund, subject to approval from the Court, only after the Court grants final approval of the Settlement. If for any reason the settlement set forth in this Agreement fails to

become effective, the amounts paid or incurred for such expenses up to $1,000,000 shall not be recoupable by Settling Defendants from OTC Plaintiffs' Counsel or any other Person.

(c) Without prejudice to the Class Plaintiffs' right to seek enforcement of this Agreement by motion or otherwise, if the Settlement Amount is not timely transferred to the escrow account, OTC Plaintiffs' Counsel may terminate this Agreement if the following occur:

(i) OTC Plaintiffs' Counsel has notified Settling Defendants' Counsel in writing of OTC Plaintiffs' Counsel's intention to terminate this Agreement; and

(ii) The entire Settlement Amount is not transferred to the Settlement Fund within ten (10) Business Days after OTC Plaintiffs' Counsel has provided such written notice.

(d) The Settlement Fund shall be invested exclusively in accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either: (i) fully insured by the Federal Deposit Insurance Corporation ("FDIC"); or (ii) secured by instruments backed by the full faith and credit of the United States Government. The proceeds of these accounts shall be reinvested in similar instruments at their then-current market rates as they mature. All risks related to the investment of the Settlement Fund in accordance with the investment guidelines set forth in this paragraph shall be borne by the Settlement Fund.

(e) All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement and the Plan of Distribution approved by the Court.

(f) The Settlement Fund shall be applied as follows:

(i) To pay any Fee and Expense Award, if and to the extent allowed by the Court;

(ii) To pay all the costs and expenses reasonably and actually incurred in connection with providing Class Notice and the administration of the settlement, including, without limitation, locating members of the Class, soliciting OTC Class Members' claims, assisting with the filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants, and processing proof of claim and release forms;

(iii) To pay the Taxes and tax expenses described in Paragraph 12 hereof;

(iv) To pay any other Court approved fees and expenses; and

(v) To distribute the balance of the Settlement Fund (the "Net Settlement Fund") to Authorized Claimants as allowed by the Court pursuant to the Class Distribution Order.

(g) With the object of reducing the costs of Class Notice, OTC Plaintiffs' Counsel shall use their reasonable best efforts to coordinate the provision of Class Notice pertaining to this Agreement with the provision of notice for any other settlements arising out of or related to the OTC Action that may be reached. In all events, Settling Defendants shall have no liability for the costs of provision of notice beyond those set forth in Paragraph 10(b).

(h) As set forth above, Settling Defendants shall be responsible for paying the Settlement Amount. Settling Defendants shall have no responsibility under any circumstances for any other amounts or costs, including, as further detailed in this Agreement, any attorneys' fees

and expenses or any Taxes or tax-related costs relating to the Settlement Fund, but all such fees, expenses, and costs shall be paid from the Settlement Fund, as approved by the Court.

11. ADMINISTRATION OF THE SETTLEMENT

(a) Any OTC Class Member who does not submit a valid proof of claim will not be entitled to receive any of the proceeds from the Net Settlement Fund, but will otherwise be bound by all of the terms of this Agreement and the settlement, including the terms of the Final Judgment and Order of Dismissal to be entered in the OTC Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Released Claims.

(b) The Claims Administrator shall process this settlement based upon proofs of claim submitted in connection with the settlement, and, after entry of the Class Distribution Order, distribute the Net Settlement Fund in accordance with the Class Distribution Order. Except for its obligation to fund the settlement or cause it to be funded as detailed in this Agreement, Settling Defendants shall have no liability, obligation, or responsibility for the administration of the settlement or disbursement of the Net Settlement Fund. OTC Plaintiffs' Counsel shall have the right but not the obligation to advise the Claims Administrator to waive what OTC Plaintiffs' Counsel reasonably deems to be formal or technical defects in any proofs of claim submitted, including, without limitation, failure to submit a document by the submission deadline, in the interests of achieving substantial justice.

(c) For purposes of determining the extent, if any, to which an OTC Class Member shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

(i) Each OTC Class Member, at a time determined by the Court, shall be required to submit a proof of claim (as shall be approved by the Court) which, *inter alia*, releases all Released Claims against all Released Parties,

is signed under penalty of perjury by an authorized Person, and is supported by such documents or proof as OTC Plaintiffs' Counsel and the Claims Administrator, in their discretion, may deem acceptable;

(ii) All proofs of claim must be submitted by the date specified by the Court, unless such period is extended by order of the Court. Any OTC Class Member who fails to submit a proof of claim by such date shall be forever barred from receiving any payment pursuant to this Agreement (unless, by order of the Court, a later submitted proof of claim by such OTC Class Member is approved) but shall in all other respects be bound by all of the terms of this Agreement and the settlement, including the terms of the Final Judgment and Order of Dismissal to be entered in the OTC Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Released Claims. Provided that it is received before the motion for the Class Distribution Order is filed, a proof of claim shall be deemed to have been submitted when posted, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the proof of claim shall be deemed to have been submitted when actually received by the Claims Administrator;

(iii) Each proof of claim shall be submitted to and reviewed by the Claims Administrator who shall determine whether the proof of claim is in accordance with this Agreement and any applicable orders of the Court, and the extent, if any, to which each claim shall be allowed, subject to review

by the Court pursuant to Paragraph 11(c)(v), *infra*. The Claims Administrator will review each approved proof of claim and determine, in accordance with the Plan of Distribution, the amount to be distributed to that claimant. The Released Parties shall not have any role in, or responsibility or liability to any Person for, the solicitation, review, or evaluation of proofs of claim;

(iv) Proofs of claim that do not meet the submission requirements may be rejected. The Claims Administrator shall notify, in a timely fashion and in writing, all claimants whose proofs of claim it proposes to reject, in whole or in part, setting forth the reasons therefor. If the claimant so desires and complies with the requirements of Paragraph 11(c)(v), *infra*, the claimant may seek further review by the Court;

(v) If any claimant whose claim has been rejected, in whole or in part, desires to contest such rejection, the claimant must, within fourteen (14) days after the date of mailing of the notice required in Paragraph 11(c)(iv), *supra*, serve upon the Claims Administrator a notice and statement of reasons indicating the claimant's grounds for contesting the rejection along with any supporting documentation. If a dispute concerning a claim cannot be resolved, the claimant may present the dispute to the Court; and

(vi) The distribution amounts calculated by the Claims Administrator shall be presented to the Court for approval by the Court in the Class Distribution Order (as defined in Paragraph 2(g)).

(d) Each claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant's claim, and the claim will be subject to investigation and discovery pursuant to the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that claimant's status as an OTC Class Member and the validity and amount of the claimant's claim. No discovery shall be allowed to be directed to Settling Defendants or any of the Released Parties, and no discovery shall be allowed on the merits of the OTC Action or settlement in connection with processing of the proofs of claim.

(e) Payment pursuant to this Agreement and the Plan of Distribution shall be deemed final and conclusive against all OTC Class Members. All OTC Class Members whose claims are not approved shall be barred from any participation in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Agreement and the settlement, including the terms of the Final Judgment and Order of Dismissal to be entered in the OTC Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Released Claims.

(f) All proceedings with respect to the administration, processing, and determination of claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

(g) The Net Settlement Fund shall be distributed by the Claims Administrator to, or for the account of, Authorized Claimants, as the case may be, only after the Effective Date and after all of the following have occurred:

(i) All claims have been processed and evaluated by the Claims Administrator, and all claimants whose claims have been rejected or disallowed, in whole

or in part, have been notified and provided the opportunity to be heard concerning such rejection or disallowance;

(ii) All disputes with respect to all rejected or disallowed claims have been resolved by Claims Administrator or, if necessary, by the Court pursuant to Paragraph 11(c)(v), *supra*, and all appeals therefrom have been resolved or the time therefor has expired;

(iii) All matters with respect to the Fee and Expense Application have been resolved by the Court and all appeals therefrom have been resolved or the time therefor has expired; and

(iv) All fees and costs of administration have been paid.

(h) OTC Plaintiffs' Counsel will apply to the Court for the Class Distribution Order.

(i) Class Plaintiffs and OTC Class Members shall look solely to the Settlement Fund as full, final, and complete satisfaction of all Released Claims. Except as set forth in Paragraph 10(b), Settling Defendants shall have no obligation under this Agreement or the settlement to pay or cause to be paid any amount of money, and Settling Defendants shall have no obligation to pay or reimburse any fees, expenses, costs, liability, losses, Taxes, or damages whatsoever alleged or incurred by Class Plaintiffs, by any OTC Class Member, or by any Releasing Parties, including, but not limited to, by their attorneys, experts, advisors, agents, or representatives, with respect to the OTC Action and Released Claims. Class Plaintiffs and OTC Class Members acknowledge that as of the Effective Date, the releases given herein shall become effective immediately by operation of the Final Judgment and Order of Dismissal and shall be permanent, absolute, and unconditional.

(j) Settling Defendants shall not have a reversionary interest in the Net Settlement Fund. OTC Plaintiffs and the Claims Administrator shall use their reasonable best efforts to maximize distribution of the Net Settlement Fund to Authorized Claimants.

12. TAXES

(a) The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and agree not to take any position for Tax purposes inconsistent therewith. The Settlement Fund, less any amounts incurred for notice, administration, and/or Taxes (as defined below), plus any accrued interest thereon, shall be returned to Settling Defendants, as provided in Paragraph 13(c), if the settlement does not become effective for any reason, including by reason of a termination of this Agreement pursuant to Paragraph 13(a) or 13(d).

(b) For the purpose of § 468B of the Internal Revenue Code and the Treasury regulations thereunder, OTC Plaintiffs' Counsel shall be designated as the "administrator" of the Settlement Fund. OTC Plaintiffs' Counsel shall timely and properly file all income, informational, and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)). Such returns shall be consistent with this Paragraph 12 and in all events shall reflect that all Taxes (as defined below) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

(c) The following, collectively "Taxes," shall be promptly paid out of the Settlement Fund by the Escrow Agent without prior order from the Court:

(i) Taxes or other similar imposts or charges (including any estimated taxes, interest, penalties, or additions to tax) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that

may be imposed upon the Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a "Qualified Settlement Fund" within the meaning of Treasury Regulation § 1.468B-1 (or any relevant equivalent for state tax purposes); and

(ii) Other taxes or tax expenses imposed on or in connection with the Settlement Fund.

(d) The Claims Administrator shall also be obligated to, and shall be responsible for, withholding from distribution to OTC Class Members any funds necessary to pay any Taxes, including the establishment of adequate reserves for any Taxes. The Parties agree to cooperate with the Claims Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

(e) Neither the Parties nor their counsel shall have any responsibility for or liability whatsoever with respect to the following:

(i) Any act, omission, or determination of the Escrow Agent, Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement Fund or otherwise;

(ii) The Plan of Distribution;

(iii) The determination, administration, calculation, or payment of any claims asserted against the Settlement Fund;

(iv) Any losses suffered by, or fluctuations in the value of, the Settlement Fund; or

(v) The payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

(f) The Escrow Agent shall indemnify and hold harmless the Parties out of the Settlement Fund from and against any claims, liabilities, or losses relating to the matters addressed in Paragraph 12(e).

13. TERMINATION OF THE SETTLEMENT

(a) Class Plaintiffs, through OTC Plaintiffs' Counsel, and Settling Defendants, through Settling Defendants' Counsel, shall, in each of their separate discretions, have the right to terminate the settlement set forth in this Agreement by providing written notice of their election to do so ("Termination Notice") to all other Parties hereto within thirty (30) days of the date on which any of the following occur:

(i) The Court enters an order declining to enter the Preliminary Approval Order in any material respect adverse to the terminating party;

(ii) The Court enters an order refusing to approve this Agreement or any material part of it adverse to the terminating party;

(iii) The Court enters an order declining to enter the Final Judgment and Order of Dismissal in any material respect adverse to the terminating party;

(iv) The Court enters an Alternative Judgment;

(v) The Final Judgment and Order of Dismissal is modified or reversed by a court of appeal or any higher court in any material respect adverse to the terminating party; or

(vi) An Alternative Judgment is modified or reversed by a court of appeal or any higher court in any material respect adverse to the terminating party.

(b) Notwithstanding this paragraph, the Court's determination as to the Fee and Expense Application, any application for service awards to any Class Plaintiff, or any Plan of Distribution, or any determination on appeal from any such order, shall not provide grounds for termination of this Agreement or settlement.

(c) Except as otherwise provided herein, in the event the settlement is terminated in accordance herewith or pursuant to Paragraph 14(a)(i), is vacated, is not approved, or the Effective Date fails to occur for any reason, then the Parties to this Agreement shall be deemed to have reverted to their respective status in the OTC Action as of the Execution Date without prejudice to any of Settling Defendants' defenses (including, for the avoidance of doubt, its personal jurisdiction defense), and, except as otherwise expressly provided herein, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered, and any portion of the Settlement Fund previously paid by or on behalf of Settling Defendants, together with any interest earned thereon (and, if applicable, repayment of any Fee and Expense Award referred to in Paragraph 9(b) hereof), less any Taxes due, if any, with respect to such income, and less costs of administration and notice actually incurred and paid or payable from the Settlement Fund (not to exceed $1,000,000 without the prior approval of the Court) shall be returned to Settling Defendants within ten (10) Business Days from the date of the Termination Notice. At the request of Settling Defendants' Counsel, the Escrow Agent shall apply for any tax refund owed on the Settlement Fund and pay the proceeds to Settling Defendants.

(d) Neither Settling Defendants nor Settling Defendants' Counsel shall directly, or indirectly, solicit or encourage any Person to request exclusion from the Class.

14. SUPPLEMENTAL AGREEMENTS

(a) There are two supplemental agreements:

(i) In addition to the provisions contained in Paragraph 13, the Settling Defendants may terminate this Agreement upon the terms set forth in a confidential supplemental letter agreement between the Parties. The supplemental letter shall not be submitted to the Court except in the event of a dispute thereunder or a separate Court order, in which case the Parties shall seek to file it only under seal.

(ii) Pursuant to Fed. R. Civ. P. 23(e)(3), Settling Defendants state that they have entered into a confidential agreement among themselves regarding the amount of the Settlement Amount for which each Settling Defendant shall be responsible. That agreement shall not be submitted to the Court except in the event of a dispute thereunder or a separate Court order, in which case the Settling Defendants shall seek to file it only under seal.

15. COOPERATION OBLIGATIONS

(a) As part of the consideration for the dismissal of the OTC Plaintiffs' and the OTC Class Members' claims against Settling Defendants in the OTC Action and the release of the Released Claims, subject to any order from the Court, Settling Defendants shall provide cooperation as set forth below. For the avoidance of doubt, nothing in this agreement waives OTC Plaintiffs' right to take additional discovery against any other party or non-party under the Federal Rules of Civil Procedure.

(b) All cooperation shall be coordinated in such a manner so that all unnecessary duplication and expense is avoided. Settling Defendants' cooperation obligations shall apply only to Releasing Parties who act with, by or through OTC Plaintiffs' Counsel pursuant to this Agreement, including but not limited to OTC Plaintiffs' good faith efforts to utilize documents and data already produced by Settling Defendants to reduce the burdens of cooperation when

practicable. Settling Defendants' cooperation obligations shall in all events be limited to facts and events involving U.S. Dollar LIBOR and shall not extend to other financial benchmarks. Settling Defendants reserve all of their rights to vigorously defend themselves against any claims asserted by other plaintiffs involving U.S. Dollar LIBOR, or any other, allegations.

(c) Nothing in this Agreement shall impose on Settling Defendants an obligation to produce or provide any materials or information protected from disclosure by the work-product doctrine, the attorney-client privilege, the common interest privilege, the joint defense privilege, the bank regulatory or examination privilege, obligations under applicable data privacy or bank secrecy laws or regulations, and/or any other applicable privilege or protection, including without first complying with channeling or blocking statutes such as through a request for judicial assistance under the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, with respect to any documents, interviews, declarations and/or affidavits, depositions, testimony, material, and/or information requested under this Agreement. For any documents withheld from production pursuant to this Agreement on the basis of a protection from disclosure, Settling Defendants shall, if directed by the Mediator, create a privilege log describing withheld documents in sufficient detail so as to explain the nature of the privilege asserted or the basis of any law, regulation, policy, or other rule of any governmental body protecting disclosure of such documents. In the event of a disagreement between Settling Defendants and OTC Plaintiffs' Counsel regarding a claim of any privilege or protection, the Parties will seek resolution of such disputes from the Court.

(d) Any documents, declarations, affidavits, deposition testimony, and information provided to OTC Plaintiffs pursuant to this provision shall be covered by the protective order in

effect in the OTC Action, or, if no protective order is in effect, shall be maintained as confidential and available only to OTC Plaintiffs' Counsel and Settling Defendants' Counsel.

(e) None of the cooperation provisions are intended to, nor do they, waive any applicable privilege or protection.

(f) The information provided by Settling Defendants' Counsel may be utilized by OTC Plaintiffs or OTC Plaintiffs' Counsel to assist in the prosecution of the OTC Action or any action against non-Released Parties related to any Released Claim; provided, however, the Parties expressly agree that any of the information provided in connection with the cooperation obligations set forth in this Paragraph 14 may be used directly or indirectly by OTC Plaintiffs or OTC Plaintiffs' Counsel solely in connection with the prosecution of the OTC Action, but not for the prosecution of any action or proceeding against any Released Party nor for any other purpose whatsoever.

(g) Subject to the foregoing, Settling Defendants will provide OTC Plaintiffs and the OTC Class the following cooperation and shall not disclose the contents of any of this cooperation in this matter to any Defendant in any manner that would identify such information as having been provided as cooperation. Nothing herein is intended to prevent the use in pre-trial, trial, or appellate proceedings in this Action of information and/or documents produced in discovery or through the cooperation provisions set forth below:

(i) **Preliminary Approval:** Settling Defendants shall cooperate to the extent reasonably necessary in connection with OTC Plaintiffs' Counsel's preparation of the motion for preliminary approval and any related documents necessary to effectuate and implement the terms and conditions of this Agreement.

(ii) **Transactional Data:** To the extent consistent with applicable foreign law, Société Générale will respond to reasonable and proportionate questions regarding its transactional data as set forth in OTC Plaintiffs' Counsel's March 4, 2023 email to Société Générale's Counsel.

(iii) **Documents:** Within ten (10) days of the Execution Date, Settling Defendants shall produce to OTC Plaintiffs, to the extent not already produced, all documents produced by them to other parties in any other action in the above-captioned U.S. Dollar LIBOR MDL. For any documents produced by them to other parties in any other action in the above-captioned U.S. Dollar LIBOR MDL after the Execution Date, Settling Defendants shall produce such documents to OTC Plaintiffs, to the extent not already produced, within ten (10) days of their production. For purposes of clarity, the term "document" is defined to be synonymous in meaning and equal in scope to the usage of the term "documents or electronically stored information" in Federal Rule of Civil Procedure 34(a)(1)(A).

(iv) **Depositions:** Settling Defendants shall permit OTC Plaintiffs' Counsel to attend depositions and participate in the examination of the Settling Defendants' witnesses, if any, in depositions properly noticed and taken in other actions pending in the U.S. Dollar LIBOR MDL.

(v) **Authentication of Documents:** Settling Defendants will use their reasonable best efforts to assist OTC Plaintiffs in authenticating documents that the Settling Defendants produced in the OTC Action, including by

stipulation, where the facts indicate that the documents and/or things at issue are authentic.

(vi) **Testimony at Trial:** Settling Defendants shall comply in good faith with their obligations to make witnesses available to testify at trial pursuant to any valid trial subpoenas issued by the OTC Plaintiffs in accordance with the requirements of Rule 45 of the Federal Rules of Civil Procedure and any other applicable rules or orders.

(vii) **Additional Information:** Settling Defendants shall respond to reasonable requests for additional relevant information about OTC Plaintiffs' claims in the OTC Action, taking into account the information they have or will produce in discovery, and whether providing the requested information will be burdensome.

(h) In the event of a disagreement between Settling Defendants' Counsel and OTC Plaintiffs' Counsel with respect to this Paragraph 15, the Parties will seek resolution from the Mediator, if necessary.

(i) Settling Defendants' obligations to cooperate under this Paragraph are continuing until and shall terminate upon the earlier of: (i) the date when final judgment has been rendered, with no remaining rights of appeal, in the OTC Action against all Defendants; or (ii) for the obligations set forth in Paragraphs 15(g)(iii-vi) above, seven (7) years after the Court enters the Preliminary Approval Order; for the obligations set forth in Paragraphs 15(g)(ii and vii) above, two (2) years after the Court enters the Preliminary Approval Order; and for the obligations set forth in Paragraph 15(g)(i) above, when the Court orders final approval of the settlement reflected in this Agreement.

16. RESERVATION OF CLASS MEMBERS' RIGHTS AGAINST OTHER DEFENDANTS

All rights of any OTC Class Member against other former, current, or future defendants or co-conspirators who are not Released Parties, or any other Person other than the Released Parties, with respect to any of the Released Claims are specifically reserved by Class Plaintiffs and the OTC Class Members. The purchase, sale, and trading of a U.S. Dollar LIBOR-Based Instrument by Settling Defendants shall, to the extent permitted or authorized by law, remain in the case against the other current or future Defendants in the OTC Action who are not Released Parties as a potential basis for damage claims and shall be part of any joint and several liability claims against the other former, current, or future Defendants in the OTC Action or any other Persons other than the Released Parties.

17. MISCELLANEOUS

(a) The Parties to this Agreement intend the settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Class Plaintiffs and any OTC Class Member against the Released Parties with respect to the OTC Action and the Released Claims. Accordingly, Class Plaintiffs and Settling Defendants agree not to assert in any judicial proceeding that the OTC Action was brought by Class Plaintiffs or defended by Settling Defendants in bad faith or without a reasonable basis. The Parties further agree not to assert in any judicial proceeding that any Party violated Federal Rule of Civil Procedure 11. The Parties agree that the amount paid and the other terms of the settlement were negotiated at arm's length in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel and the Mediator.

(b) The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

(c) The administration and consummation of the settlement as embodied in this Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders relating to the Fee and Expense Application, the Plan of Distribution, and enforcing the terms of this Agreement. Notwithstanding the foregoing, nothing in this Paragraph shall be deemed an admission or waiver by Settling Defendants of any defense or objection to personal jurisdiction in the OTC Action other than for matters pertaining to this Agreement.

(d) For the purpose of construing or interpreting this Agreement, Class Plaintiffs and Settling Defendants agree that it is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.

(e) This Agreement, including any exhibits hereto and agreements referenced herein, shall constitute the entire agreement between Class Plaintiffs and Settling Defendants pertaining to the settlement of the OTC Action against Settling Defendants and supersedes any and all prior and contemporaneous undertakings of Class Plaintiffs and Settling Defendants in connection therewith. All terms of this Agreement are contractual and not mere recitals. The terms of this Agreement are and shall be binding upon each of the Parties hereto, their heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, and upon all other Persons claiming any interest in the subject matter hereto through any of the Parties hereto including any OTC Class Members.

(f) This Agreement may be modified or amended only by a writing executed by Class Plaintiffs, through OTC Plaintiffs' Counsel, and Settling Defendants, through Settling Defendants' Counsel, subject (if after preliminary or final approval by the Court) to approval by the Court.

Amendments and modifications may be made without notice to the Class unless notice is required by law or by the Court.

(g) Nothing in this Agreement constitutes an admission by Settling Defendants as to the merits of the allegations made in the OTC Action, the validity of any defenses that could be asserted by Settling Defendants, or the appropriateness of certification of any class other than the Class under Federal Rule of Civil Procedure 23 for purposes of settlement only. This Agreement is without prejudice to the rights of Settling Defendants to do any of the following:

(i) Challenge the Court's certification of any class, including the Class, in the OTC Action should the Agreement not be approved or implemented for any reason;

(ii) Oppose any certification or request for certification in any other proposed or certified class action; and/or

(iii) Challenge the Court's personal jurisdiction over Settling Defendants for the claims and conduct alleged in the OTC Action should the Agreement not be approved or implemented for any reason.

(h) All terms of this Agreement shall be governed by and interpreted according to the substantive laws of New York without regard to its choice-of-law principles.

(i) Except as provided in Paragraph 11, Settling Defendants, Class Plaintiffs, their respective counsel, and the OTC Class Members hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York solely for the purpose of any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein.

(j) The Parties acknowledge that this Agreement makes no determination as to which OTC Class Members are entitled to distribution of the Settlement Fund or as to the formula for determining the amounts to be distributed.

(k) The proposed Plan of Distribution is not a necessary term of this Agreement, and it is not a condition of this Agreement that any particular Plan of Distribution be approved. The Released Parties will take no position with respect to the proposed Plan of Distribution or such Plan of Distribution as may be approved by the Court. The Plan of Distribution is a matter separate and apart from the settlement between the Parties, and any decision by the Court solely concerning a particular Plan of Distribution shall not affect the validity or finality of the proposed settlement, including the scope of the release.

(l) This Agreement may be executed in counterparts by Class Plaintiffs and Settling Defendants and their respective counsel, and a facsimile or .pdf signature shall be deemed an original signature for purposes of executing this Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument.

(m) Class Plaintiffs and Settling Defendants acknowledge that they have been represented by counsel and have made their own investigations of the matters covered by this Agreement to the extent they have deemed it necessary to do so. Therefore, Class Plaintiffs and Settling Defendants and their respective counsel agree that they will not seek to set aside any part of this Agreement on the grounds of mistake. Moreover, Class Plaintiffs and Settling Defendants and their respective counsel understand, agree, and expressly assume the risk that any fact may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that this Agreement shall be effective in all respects

notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

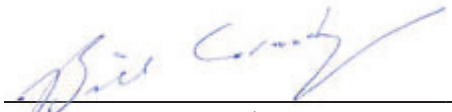
(n) The terms of the Agreement shall remain confidential until the earlier of (i) the filing of the Agreement with the Court, or (ii) Settling Defendants' public disclosure of it.

(o) Each of the undersigned attorneys represents that he is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval; and the undersigned OTC Plaintiffs' Counsel represent that they are authorized to execute this Agreement on behalf of Class Plaintiffs. Each of the undersigned attorneys shall use their best efforts to effectuate this Agreement.

18. SIGNATURES

WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Agreement as of the date first herein written above.

OTC Plaintiffs and the OTC Class:



William C. Carmody
Seth Ard
SUSMAN GODFREY L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel: 212-336-8330
bcarmody@susmangodfrey.com
sard@susmangodfrey.com

Marc M. Seltzer
SUSMAN GODFREY L.L.P.
1901 Avenue of the Stars, Suite 950
Los Angeles, CA 90067
Tel: 310-789-3100
mseltzer@susmangodfrey.com

Defendant MUFG Bank, Ltd.:

Christopher Viapiano
SULLIVAN & CROMWELL LLP
1700 New York Avenue, N.W. Suite 700
Washington, DC 20006
Tel: 202-956-7500
viapianoc@sullcrom.com

Defendant The Norinchukin Bank:

Andrew W. Stern
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
Tel: 212-839-5397
astern@sidley.com

notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

(n) The terms of the Agreement shall remain confidential until the earlier of (i) the filing of the Agreement with the Court, or (ii) Settling Defendants' public disclosure of it.

(o) Each of the undersigned attorneys represents that he is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval; and the undersigned OTC Plaintiffs' Counsel represent that they are authorized to execute this Agreement on behalf of Class Plaintiffs. Each of the undersigned attorneys shall use their best efforts to effectuate this Agreement.

18. SIGNATURES

WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Agreement as of the date first herein written above.

OTC Plaintiffs and the OTC Class:

_____

William C. Carmody
Seth Ard
SUSMAN GODFREY L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel: 212-336-8330
bcarmody@susmangodfrey.com
sard@susmangodfrey.com

Marc M. Seltzer
SUSMAN GODFREY L.L.P.
1901 Avenue of the Stars, Suite 950
Los Angeles, CA 90067
Tel: 310-789-3100
mseltzer@susmangodfrey.com

Defendant MUFG Bank, Ltd.:

Christopher M. Viapiano /JOH

Christopher Viapiano
SULLIVAN & CROMWELL LLP
1700 New York Avenue, N.W. Suite 700
Washington, DC 20006
Tel: 202-956-7500
viapianoc@sullcrom.com

Defendant The Norinchukin Bank:

_____

Andrew W. Stern
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
Tel: 212-839-5397

notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

(n) The terms of the Agreement shall remain confidential until the earlier of (i) the filing of the Agreement with the Court, or (ii) Settling Defendants' public disclosure of it.

(o) Each of the undersigned attorneys represents that he is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval; and the undersigned OTC Plaintiffs' Counsel represent that they are authorized to execute this Agreement on behalf of Class Plaintiffs. Each of the undersigned attorneys shall use their best efforts to effectuate this Agreement.

18. SIGNATURES

WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Agreement as of the date first herein written above.

OTC Plaintiffs and the OTC Class:

_____

William C. Carmody
Seth Ard
SUSMAN GODFREY L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel: 212-336-8330
bcarmody@susmangodfrey.com
sard@susmangodfrey.com

Marc M. Seltzer
SUSMAN GODFREY L.L.P.
1901 Avenue of the Stars, Suite 950
Los Angeles, CA 90067
Tel: 310-789-3100
mseltzer@susmangodfrey.com

Defendant MUFG Bank, Ltd.:

_____

Christopher Viapiano
SULLIVAN & CROMWELL LLP
1700 New York Avenue, N.W. Suite 700
Washington, DC 20006
Tel: 202-956-7500
viapianoc@sullcrom.com

Defendant The Norinchukin Bank:

Andrew W. Stern /PJM

Andrew W. Stern
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
Tel: 212-839-5397

Michael D. Hausfeld
Hilary K. Scherrer
Nathaniel Giddings
HAUSFELD LLP
888 16th Street NW, Suite 300
Washington, DC 20006
Tel: 202-540-7200
mhausfeld@hausfeld.com
hscherrer@hausfeld.com
ngiddings@hausfeld.com

Scott Martin
HAUSFELD LLP
33 Whitehall Street, 14th Floor
New York, NY 10004
Tel: 646-357-1100
smartin@hausfeld.com

Gary I. Smith, Jr.
HAUSFELD LLP
600 Montgomery Street, Suite 3200
San Francisco, CA 94111
Tel: 415-633-1908
gsmith@hausfeld.com

Defendant Société Générale:

Steven Wolowitz
Henninger S. Bullock
Andrew J. Calica
MAYER BROWN LLP
1221 Avenue of the Americas
New York, NY 10020
Tel: 212-506-2500
swolowitz@mayerbrown.com
hbullock@mayerbrown.com
acalica@mayerbrown.com

EXHIBIT B

PLAN OF DISTRIBUTION
OVER-THE-COUNTER U.S. DOLLAR LIBOR SETTLEMENT:

MUFG BANK, LTD.
THE NORINCHUKIN BANK
SOCIÉTÉ GÉNÉRALE

1. **Settlement Funds**. The Settlement Fund for the Settlement with MUFG Bank, Ltd. ("MUFG"), The Norinchukin Bank ("Norinchukin"), and Société Générale ("SocGen") and OTC Plaintiffs is $90,000,000. The Settlement Agreement can be found at www.USDollarLiborSettlement.com. All capitalized terms herein are used as defined in the Settlement Agreement.

2. **Net Settlement Funds**. Each Settlement Fund, less all taxes, expenses of Class Notice and administration of the Settlement, and other Court-approved expenses, attorneys' fees, and class representative incentive awards (the "Net Settlement Fund") shall be distributed to members of the Class who timely submit valid Proofs of Claim ("Authorized Claimants") as described below.

3. **Qualifying LIBOR Instruments**. For purposes of this Plan of Distribution, a "qualifying LIBOR Instrument" is a U.S. Dollar LIBOR-Based Instrument that qualifies its holder to be a member of either Settlement Class, and for which a Proof of Claim has been filed. A "U.S. Dollar LIBOR-Based Instrument" is an instrument that includes any term, provision, obligation or right to be paid by or to receive interest from a Defendant (or its subsidiaries or affiliates) based upon the U.S. Dollar LIBOR rate, including but not limited to asset swaps, bonds/floating rate notes, collateralized debt obligations, credit default swaps, forward rate agreements, inflation swaps, interest rate swaps, total return swaps, options or floating rate notes. *See*

Settlement Agreement ¶ 1(tt) (defining U.S. Dollar LIBOR-Based Instrument) . Each Settlement Class includes, subject to certain exceptions set forth in the Settlement Agreement, all persons or entities (other than Defendants and their employees, affiliates, parents, and subsidiaries) that purchased in the United States, directly from a Defendant (or a Defendant's subsidiaries or affiliates), a U.S. Dollar LIBOR-Based Instrument and that owned the U.S. Dollar LIBOR-Based Instrument any time during the period August 2007 through May 2010 (the "Class Period"). *See* Settlement Agreement ¶ 3(a)-(b) (defining the "Class" or "OTC Class").

4. **Proof of Claim**. In order for an instrument to be a qualifying LIBOR Instrument, and to earn benefits from the Settlement Fund, a Class Member must submit a timely Proof of Claim that is accepted in whole or in part by the Claims Administrator.

5. ***Pro Rata* Claim.** The Claims Administrator will determine the *Pro Rata* Claim of each Authorized Claimant by calculating each Authorized Claimant's *pro rata* share of the Net Settlement Fund. This will be calculated in the following four steps:

a. First, each Authorized Claimant's "overall notional stake" is calculated. The notional stake of a qualifying LIBOR Instrument equals the sum of the "suppressed daily underpayments" for that instrument. An Authorized Claimant's overall notional stake equals the sum of the notional stakes for each of its qualifying LIBOR Instruments. The suppressed daily underpayments for an instrument are calculated as follows:

For each day during the Class Period when the Authorized Claimant had the right to be paid or to receive interest based upon the U.S. Dollar LIBOR rate, the suppressed daily underpayment equals: the dollar amount of the LIBOR-based payment that was due to the Authorized Claimant that day (using historical reported LIBOR rates and payment

frequency) multiplied by the magnitude of suppression applicable for that day and then divided by the historical reported LIBOR rate for that day.[1]

For example, if an Authorized Claimant had a qualifying interest-rate swap, executed on January 1, 2007, paid annually, where it was due three LIBOR-based payments during the Class Period, measured for each day by the notional amount ($1 million) multiplied by the historical 1-month USD LIBOR rate for that day (reported as 3%, 4%, and 3.5% respectively), then the dollar amount of the LIBOR-based payments due to the Authorized Claimant for each of those days was $30,000, $40,000, and $35,000 respectively. If LIBOR was suppressed by 0.1%, 0.15%, and 0.2% during those 3 days respectively, then the notional stake of that instrument would be $4,500, calculated as follows:

Suppressed daily payment (Day 1): (LIBOR payment = $30,000) * (suppression: 0.001) / (1-month USD LIBOR rate for that day = 0.03) = $1,000

Suppressed daily payment (Day 2): (LIBOR payment = $40,000) * (suppression: 0.0015) / (1-month USD LIBOR rate for that day = 0.04) = $1,500

Suppressed daily payment (Day 3): (LIBOR payment = $35,000) * (suppression: 0.002) / (1-month USD LIBOR rate for that day = 0.035) = $2,000

Total suppressed daily payments: $4,500.

b. Second, each Authorized Claimant's "*pro rata* share" is calculated. This is calculated by dividing each Authorized Claimant's overall notional stake by the sum of the

[1] The magnitude of suppression for a day is based on the weekly average of suppression for that tenor, as reported in the expert modelling offered on behalf of the OTC plaintiffs, and as adjusted to reflect tenors and periods not reported on in that report. Prior to the date when the Proof of Claim is due, a chart depicting the weekly averages of suppression for each tenor will be posted on the website. If the transaction requires both parties to make LIBOR-based payments (e.g., a basis swap), then the but-for payments will be calculated in both directions and netted.

overall notional stakes of all Authorized Claimants. For example, if an Authorized Claimant has an overall notional stake of $20,000, and the total overall notional stake of all claimants combined is $100 million, then that Authorized Claimant's *pro rata* share will be 0.0002.

c. Third, the *Pro Rata* Claim for each Authorized Claimant is calculated by multiplying the amount in the Net Settlement Fund by that Authorized Claimant's *pro rata* share.

d. Fourth, the *Pro Rata* Claim for each Authorized Claimant may be subject to adjustment based upon compensation received from any other source relating to the claims at issue this case.

6. **Distribution**. The Claims Administrator shall distribute the *Pro Rata* Claims to the Authorized Claimants from the Net Settlement Fund, upon application to the Court. In the opinion of Class Counsel, this method of distributing funds represents the most appropriate way of distributing the Net Settlement Fund under the circumstances of this case. The Claims Administrator shall have the discretion to resolve any disputes regarding the meaning and application of this Plan of Distribution, subject to review by the Court as appropriate.

7. **De Minimis Amount.** In order to avoid paying claims in situations where the cost of processing the claim exceeds the payment made, no claim will be paid to any claimant if the total payment to that claimant would be $10 or less; in such an event, the payment amount will revert back to the Net Settlement Fund.

8. **Rounding**. The distribution to each Authorized Claimant from the Net Settlement Fund will be rounded off to the nearest dollar. The Plan of Distribution may be modified upon further order of the Court. Any updates to the Plan of Distribution will be published on the website www.USDollarLiborSettlement.com, and Class Members should check the website for updates

to this Plan of Distribution regularly, including on the day of the final deadline for the filing of Proofs of Claim.