UNITED STATES DISTRICT COURT - SOUTHERN DISTRICT OF NEW YORK

IN RE LIBOR-BASED FINANCIAL INSTRUMENTS ANTITRUST LITIGATION	Master File No. 11 MD 2262 (NRB)
THIS DOCUMENT RELATES TO:	
METZLER INVESTMENT GmbH, *et al.*, Plaintiffs, *v.* CREDIT SUISSE GROUP AG, *et al.*, Defendants.	No. 11 Civ. 2613

CORRECTED PLAN OF DISTRIBUTION FOR THE EXCHANGE-BASED UNITED STATES DOLLAR LIBOR SETTLEMENTS

I. Overview of the Plan

1. This **Plan of Distribution ("Plan")** exclusively relates to the Exchange-Based Action (described herein at Section II). This Plan specifies the method of distributing the Net Settlement Fund[1] to the Settlement Class[2] from those settlements with the following "Settling Defendants," which are subject to Final Approval by the Court:

- Barclays plc ("Barclays"), (dated October 7, 2014, amended September 15, 2017) [ECF No. 2307-3];[3]
- HSBC Bank plc ("HSBC") (dated July 6, 2017), [ECF No. 2307-6];
- Deutsche Bank AG, Deutsche Bank Securities Inc., and DB Group Services (UK) Limited ("Deutsche Bank") (dated July 13, 2017), [ECF No. 2307-5];
- Citigroup, Inc., Citibank, N.A., and Citigroup Global Markets Inc. ("Citi") (dated July 27, 2017) [ECF No. 2307-4]; and
- JPMorgan Chase & Co., JPMorgan Chase Bank, N.A. ("JPMorgan"), Bank of America Corporation and Bank of America, N.A. ("BOA") (joint agreement dated June 14, 2018) [ECF No. 2728-5].

2. This Plan provides that approximately 75% of the Net Settlement Fund will be distributed to Eligible Claimants[4] on the basis of their Recognized Net Loss[5] in the Legal Risk Periods.[6] The Plan provides that approximately 25% of the Net Settlement Fund will be distributed to Eligible Claimants on the basis of their Recognized Volume[7] in the Legal Risk Periods. There is a Guaranteed Minimum Payment of $20 to each Eligible Claimant. *See* ¶7 below. It is estimated that more than 99% of the Net Settlement Fund will be distributed on the basis of Recognized Net Loss and Recognized Volume, and less than 1% of the Net Settlement Fund will be distributed through the Guaranteed Minimum Payment.

3. **Who May Participate In The Distribution of The Net Settlement Fund?** In order to participate in the distribution of the Net Settlement Fund, you must be an Eligible Claimant. That is, you must be a member of the Settlement Class who timely submits a properly verified, adequately supported and otherwise valid proof of claim showing that such member of the Settlement Class transacted in Eurodollar futures or options during the Settlement Class Period. If you are not an Eligible Claimant, you will not receive any payment from the Net Settlement Fund.

4. **How Much Will Each Eligible Claimant Receive?** Each Eligible Claimant will be entitled to receive the distribution due them, if any, from the sum of (a) their *pro rata* entitlement under Recognized Net Loss and (b) their *pro rata* entitlement under Recognized Volume, all as determined by the Settlement Administrator (A.B. Data, Ltd.). *See* ¶¶5-6 below (explaining Recognized Net Loss entitlement and Recognized Volume entitlement). If such amount is less than $20, then the Eligible Claimant will be

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[1] As used herein, **"Net Settlement Fund"** means the Total Settlement Fund from the Settlements approved by the Court, minus the costs, expenses, and fees approved by the Court.

[2] The **"Settlement Class"** is defined as follows: All Persons, corporations and other legal entities that transacted in Eurodollar futures contracts and/or options on Eurodollar futures on United States exchanges, including without limitation, the Chicago Mercantile Exchange, between January 1, 2003 and May 31, 2011.

Excluded from the Settlement Class are: (i) Defendants, their employees, affiliates, parents, subsidiaries, and coconspirators; (ii) the Releasees (as defined in the Settlement Agreements); and (iii) any Class Member who files a timely and valid request for exclusion. Notwithstanding these exclusions, and solely for the purposes of the Settlements and the Settlement Class, Investment Vehicles shall not be excluded from the Settlement Class solely on the basis of being deemed to be Defendants or affiliates or subsidiaries of Defendants. However, to the extent that any Defendant or any entity that might be deemed to be an affiliate or subsidiary thereof (i) managed or advised, and (ii) directly or indirectly held a beneficial interest in, said Investment Vehicle during the Class Period, that beneficial interest in the Investment Vehicle is excluded from the Settlement Class.

[3] All references to **"ECF No."** herein refer to documents in the docket of the MDL Action, 11 MD 2262-NRB unless otherwise specified. Copies of each Settlement Agreement are available on the **"Settlement Website:"** www.USDLiborEurodollarSettlements.com.

[4] An Eligible Claimant is a Settlement Class member whose proof of claim is found to be timely, adequately supported, properly verified and otherwise valid.

[5] Recognized Net Loss is defined in ¶¶ 5 and 8 of this Plan.

[6] The Legal Risk Periods are defined in ¶ 8 of this Plan.

[7] Recognized Volume is defined in ¶¶ 6 and 8 of this Plan.

entitled to receive the Guaranteed Minimum Payment of $20. *See* ¶7 below.

5. **How Will an Eligible Claimant's Distribution In Respect Of Recognized Net Loss Be Calculated?** The Settlement Administrator will first calculate the amount of "Net Loss," if any, which each Eligible Claimant has in respect of each Legal Risk Period as specifically set forth in the eight Legal Risk Periods in paragraph 8 below. An Eligible Claimant will have a Net Loss under a particular Legal Risk Period if such Eligible Claimant's losses exceed such Eligible Claimant's gains pursuant to the specific calculations for that Legal Risk Period. *See* ¶8 below. The Settlement Administrator will adjust each Eligible Claimant's losses or gains, if any, for each Legal Risk Period based on any applicable Legal Risk Adjustments (*see* ¶8 below) and/or Hedger or Swaps Dealer discounts (*see* ¶9 below). The Settlement Administrator will then sum the Adjusted Net Loss, if any, in each Legal Risk Period in which an Eligible Claimant has an Adjusted Net Loss to determine each Eligible Claimant's Recognized Net Loss. Only Legal Risk Periods in which an Eligible Clamant has an Adjusted Net Loss will be summed for purposes of calculating an Eligible Claimant's Recognized Net Loss. However, gains and losses within each Legal Risk Period are netted as provided in paragraph 8 below. Approximately seventy-five percent (75%) of the Net Settlement Fund shall be distributed to each Eligible Claimant in a *pro rata* manner based on their respective amounts of Recognized Net Loss, if any, compared to the total Recognized Net Loss of all Eligible Claimants. Example: If an Eligible Claimant has a Recognized Net Loss that constitutes one-half of 1% of the total Recognized Net Loss of all Eligible Claimants, then the distribution amount to that Eligible Claimant in respect of Recognized Net Loss shall equal one-half of 1% of the portion of the Net Settlement Fund allocated to pay Recognized Net Losses.

6. **How Will An Eligible Claimant's Distribution In Respect Of Recognized Volume Be Calculated?** The Settlement Administrator will first determine the "Volume" of qualifying transactions in Eurodollar futures contracts and options on Eurodollar futures contracts which each Eligible Claimant has in respect of each Legal Risk Period. Volume shall equal the total quantity of Eurodollar futures contracts and option contracts on Eurodollar futures contracts bought and sold in a given Legal Risk Period (*see* ¶8 below), provided that options on Eurodollar futures contracts shall be subject to a discount of 70%. Example: If an Eligible Claimant purchased 5 Eurodollar futures contracts and sold 3 Eurodollar futures contracts during a particular Legal Risk Period, such Eligible Claimant's Volume for that particular Legal Risk Period would be 8 contracts. Example: If an Eligible Claimant purchased 5 options on Eurodollar futures contracts and sold 3 options on Eurodollar futures contracts during a particular Legal Risk Period, such Eligible Claimant's Volume for that particular Legal Risk Period would be 2.4 contracts, *i.e.*, 8 contracts multiplied by 0.3. The Settlement Administrator will then adjust each Eligible Claimant's Volume in each Legal Risk Period pursuant to any applicable Legal Risk Adjustment (*see* ¶8 below) and any applicable Hedging or Swaps-Dealer discounts (*see* ¶9 below) in order to determine each Eligible Claimant's Adjusted Volume, if any, in each Legal Risk Period. The Settlement Administrator will then sum the Adjusted Volume, if any, in each Legal Risk Period to determine each Eligible Claimant's Recognized Volume. Approximately twenty-five percent (25%) of the Net Settlement Fund shall be distributed to Eligible Claimants in a *pro rata* manner based on their respective amounts of Recognized Volume, if any, compared to the total Recognized Volume of all Eligible Claimants. Example: If an Eligible Claimant has a Recognized Volume that constitutes one-half of 1% of the total Recognized Volume of all Eligible Claimants, then the amount of the distribution to that Eligible Claimant in respect of Recognized Volume shall equal one-half of 1% of the portion of the Net Settlement Fund allocated to pay Recognized Volume.

7. **How Much Is The Guaranteed Minimum Payment and How Is It Determined**? If an Eligible Claimant's pro rata distribution due in respect of Recognized Net Loss and Recognized Volume totals less than $20, then the amount of the payment to such Eligible Claimant shall be increased to $20 ("Guaranteed Minimum Payment"). It is estimated that significantly less than one percent of the Net Settlement Fund will be distributed due to the Guaranteed Minimum Payment.

8. **What Are The Legal Risk Periods and The Legal Risk Adjustments?** Based on the Court's prior rulings and the history of this case, each of the eight Legal Risk Periods set forth in sub-sections (a)-(h) below has been assigned a "**Legal Risk Adjustment"** that reflects the relative legal risk associated with the qualifying transactions in that Legal Risk Period. The Legal Risk Adjustments in this paragraph apply to the determinations of Recognized Net Loss and Recognized Volume. *See* ¶¶5-6 above.

(a) There shall be no Legal Risk Adjustment for transactions between April 15, 2009 and May 17, 2010 inclusive.[8]

(b) There shall be no Legal Risk Adjustment for transactions on any the following specific days: September 29, 2005, November 28, 2005, April 7, 2006, June 30, 2006, August 17, 2006, September 1, 2006, October 26, 2006, November 29, 2006, December 22, 2006, February 28, 2007, March 1, 2007, July 30, 2007, or August 6, 2007.[9]

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[8] Net Loss under this Legal Risk Period (a) shall be calculated as follows: (1) the mark-to-market gain and/or loss on each Eurodollar futures contract or option on a Eurodollar futures contract opened prior to Legal Risk Period (a) and closed during Legal Risk Period (a), plus (2) the gain and/or loss on each position in a Eurodollar futures contract or option on a Eurodollar futures contract opened and closed during Legal Risk Period (a), plus (3) the mark-to-market gain and/or loss of each position in a Eurodollar futures contract or option on a Eurodollar futures contract opened during Legal Risk Period (a) and that remained open at the end of Legal Risk Period (a).

For purposes of calculating Net Loss under sub-sections (a)-(h) of paragraph 8 of the Plan, if the Settlement Administrator is unable to determine from the records submitted by an Eligible Claimant the price at which a particular position was opened and/or closed, the Settlement Administrator may use the settlement price on the day the position was opened and/or closed.

[9] Net Loss under this Legal Risk Period (b) shall be calculated as follows: the gain and/or loss on each position in a Eurodollar futures contract or option on a Eurodollar futures contract opened and/or closed on any day specified in Legal Risk Period (b).

(c) There shall be no Legal Risk Adjustment for **"Efficient Enforcer Transactions."** Efficient Enforcer Transactions refer to transactions in which an opening[10] sale is made of a Eurodollar futures contract or option on a Eurodollar futures contract prior to August 9, 2007, and such short position is maintained, including through roll forwards, until it is liquidated on or after August 9, 2007 by a purchase that closes out (or liquidates) such short position at the final settlement price on the last day of trading of an expiring Eurodollar futures contract.[11] For purposes of Efficient Enforcer Transactions, a short position includes a short position in a Eurodollar futures contract, a short position in a Eurodollar futures call option, or a long position in a Eurodollar futures put option. For purposes of Efficient Enforcer Transactions, a purchase includes closing (or liquidating) a short position in a Eurodollar futures contract by financial settlement on the last day of trading of an expiring Eurodollar futures contract, closing (or liquidating) a short position in a Eurodollar futures call option settled by assignment at the final settlement price of the underlying Eurodollar futures contract on the last day of trading of such Eurodollar futures contract, or closing (liquidating) a long position in a Eurodollar futures put option settled by exercise at the final settlement price of the underlying Eurodollar futures contract on the last day of trading of such Eurodollar futures contract. There is no Legal Risk Adjustment for Efficient Enforcer Transactions because the Court upheld the legal claims in respect of these transactions against motions to dismiss.

(d) There shall be a 10% Legal Risk Adjustment for trades on any of the following specific days: August 2, 2005, August 3, 2005, September 5, 2005, September 28, 2005, November 14, 2005, February 1, 2006, February 2, 2006, February 3, 2006, February 7, 2006, February 8, 2006, February 9, 2006, February 14, 2006, February 15, 2006, February 16, 2006, February 17, 2006, February 22, 2006, March 13, 2006, March 16, 2006, March 17, 2006, May 9, 2006, May 10, 2006, June 1, 2006, June 13, 2006, August 15, 2006, August 16, 2006, August 18, 2006, September 13, 2006, September 14, 2006, September 15, 2006, September 18, 2006, September 26, 2006, September 27, 2006, September 28, 2006, October 4, 2006, October 10, 2006, October 31, 2006, November 14, 2006, November 15, 2006, November 28, 2006, December 1, 2006, December 14, 2006, December 18, 2006, December 19, 2006, December 20, 2006, December 21, 2006, February 27, 2007, March 5, 2007, March 19, 2007, March 28, 2007, March 29, 2007, April 9, 2007, May 24, 2007, and June 18, 2007.[12] Example: If an Eligible Claimant has a Net Loss of $100 based on the calculation of Net Loss applicable to this Legal Risk Period, then there shall be a reduction of 10% to such Net Loss, resulting in a Net Loss of $90 for this Legal Risk Period (assuming no applicable Hedger or Swaps Dealer discount).

(e) There shall be a 60% Legal Risk Adjustment for trades between January 1, 2005 and August 8, 2007 which are not specified in subsections (b) or (d) of this paragraph.[13]

(f) There shall be a 60% Legal Risk Adjustment for trades between August 9, 2007 and April 14, 2009 which do not qualify as Efficient Enforcer Transactions in subsection (c) of this paragraph.[14]

(g) There shall be a 95% Legal Risk Adjustment for trades between January 1, 2003 to December 31, 2004 inclusive.[15]

(h) There shall be an 80% Legal Risk Adjustment for trades between May 18, 2010 to May 31, 2011 inclusive.[16]

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[10] As used in this Plan, "opening" means the initiating or the first of the transactions in any trade. The opening transaction establishes a position or a portion of the position. A closing transaction liquidates a position or a portion of a position.

[11] Net Loss under this Legal Risk Period (c) shall be calculated as follows: the gain and/or loss on each opening sale of a Eurodollar futures contract or option contract prior to August 9, 2007 that is liquidated on or after August 9, 2007 and on the last day of an expiring Eurodollar futures contract at the final settlement price.

[12] Net Loss under this Legal Risk Period (d) shall be calculated as follows: the gain and/or loss on each position in a Eurodollar futures contract or option on a Eurodollar futures contract opened and/or closed on any day specified in Legal Risk Period (d).

[13] Net Loss under this Legal Risk Period (e) shall be calculated as follows: (1) the mark-to-market gain and/or loss on each Eurodollar futures contract or option on a Eurodollar futures contract opened prior to Legal Risk Period (e) and closed during Legal Risk Period (e), plus (2) the gain and/or loss on each position in a Eurodollar futures contract or option on a Eurodollar futures contract opened and closed during Legal Risk Period (e), plus (3) the mark-to-market gain and/or loss of each position in a Eurodollar futures contract or option on a Eurodollar futures contract opened during Legal Risk Period (e) and that remained open at the end of Legal Risk Period (e).

[14] Net Loss under this Legal Risk Period (f) shall be calculated as follows: (1) the mark-to-market gain and/or loss on each Eurodollar futures contract or option on a Eurodollar futures contract opened prior to Legal Risk Period (f) and closed during Legal Risk Period (f), plus (2) the gain and/or loss on each position in a Eurodollar futures contract or option on a Eurodollar futures contract opened and closed during Legal Risk Period (f), plus (3) the mark-to-market gain and/or loss of each position in a Eurodollar futures contract or option on a Eurodollar futures contract opened during Legal Risk Period (f) and that remained open at the end of Legal Risk Period (f).

[15] Net Loss under this Legal Risk Period (g) shall be calculated as follows: (1) the mark-to-market gain and/or loss on each Eurodollar futures contract or option on a Eurodollar futures contract opened prior to Legal Risk Period (g) and closed during Legal Risk Period (g), plus (2) the gain and/or loss on each position in a Eurodollar futures contract or option on a Eurodollar futures contract opened and closed during Legal Risk Period (g), plus (3) the mark-to-market gain and/or loss of each position in a Eurodollar futures contract or option on a Eurodollar futures contract opened during Legal Risk Period (g) and that remained open at the end of Legal Risk Period (g).

[16] Net Loss under this Legal Risk Period (h) shall be calculated as follows: (1) the mark-to-market gain and/or loss on each Eurodollar futures contract or option on a Eurodollar futures contract opened prior to Legal Risk Period (h) and closed during Legal Risk Period (h), plus (2) the gain and/or loss on each position in a Eurodollar futures contract or option on a Eurodollar futures contract opened and closed during Legal Risk Period (h), plus (3) the mark-to-market gain and/or loss of each position in a Eurodollar futures contract or option on a Eurodollar futures contract opened during Legal Risk Period (h) and that remained open at the end of Legal Risk Period (h).

9. **How Are Discounts for Hedgers and Swaps Dealers Applied To Recognized Net Losses and Recognized Volume?** If the Settlement Administrator determines that an Eligible Claimant is a "Hedger[17]" for the transactions in a Legal Risk Period, but is not a "Swaps Dealer[18]," then there shall be a 10% deduction in that Eligible Claimant's Net Loss and/or Volume for that Legal Risk Period. If the Settlement Administrator determines that an Eligible Claimant is a Swaps Dealer for the transactions in a Legal Risk Period, then there shall be a 65% deduction in that Eligible Claimant's Net Loss and Volume for that Legal Risk Period. Example*:* If an Eligible Claimant has a Net Loss of $100 in a particular Legal Risk Period with no Legal Risk Adjustment but is determined to be a Hedger, then such Eligible Claimant's Adjusted Net Loss in that Legal Risk Period shall be reduced to $90.00. Example: If an Eligible Claimant has a Volume of 100 futures contracts in a Legal Risk Period with no Legal Risk Adjustment but is determined to be a Swaps-Dealer, then such Eligible Claimant's Adjusted Volume for that Legal Risk Period shall be 35 contracts.

II. The History and Status of the Exchange-Based Action

10. This case arises out of the alleged manipulation of the London Interbank Offered Rate ("LIBOR"), an interest rate benchmark used in numerous types of financial transactions. Plaintiffs are traders of Eurodollar futures contracts and options on Eurodollar futures contracts ("Eurodollar Futures"), which are available in various expiration periods and which trade on exchanges, including the Chicago Mercantile Exchange ("CME"). The settlement price payable at the expiration date equals 100 minus 3-month LIBOR. *In re LIBOR-Based Fin. Instruments Antitrust Litig. ("LIBOR I")*, 935 F. Supp. 2d 666, 720 (S.D.N.Y. 2013). Plaintiffs allege that Defendants manipulated LIBOR in violation of the Sherman Antitrust Act, 15 U.S.C. §1 *et seq*. and the Commodity Exchange Act ("CEA"), 7 U.S.C. §1 *et seq*. This allegedly caused Eurodollar futures prices to become artificial, injuring Plaintiffs and a class of Eurodollar Futures traders. The Settling Defendants are six of the sixteen panel banks that submitted daily LIBOR rates to the British Banking Association.[19]

11. The Court sustained claims arising from what it described as two distinct forms of alleged LIBOR manipulation: alleged trader-based manipulation, which varied in direction to benefit Defendants' particular market positions ("TBM"), and alleged LIBOR suppression. The Court restricted claims for TBM to the period between January 1, 2005 and August 8, 2007 ("Period 0"). Suppression claims relate to the alleged collusive and persistent suppression of LIBOR during the financial crisis, motivated in part to protect Defendants' reputations for financial soundness, between August 9, 2007 and May 17, 2010 (*i.e.*, the periods known as Periods 1-3 or the "Suppression Period").

12. Since the April 15, 2011 filing of the first civil LIBOR action, the Court has limited Plaintiffs' claims in various ways. The Court dismissed portions of Plaintiffs' antitrust claims under the efficient enforcer standard, dismissed most foreign Defendants for lack of personal jurisdiction, and dismissed portions of Plaintiffs' CEA claims as untimely based on the Court's findings that the two-year statute of limitations had expired on Plaintiffs' CEA claims in respect to transactions made between August 2007 and April 14, 2009 ("Periods 1 and 2").

13. Plaintiffs sought to certify the CEA claims on behalf of a class of persons that transacted in Eurodollar Futures on exchanges, including the CME, between January 1, 2005 and May 17, 2010, inclusive. In its ruling, *In re LIBOR-Based Fin. Instruments Antitrust Litig.* ("*LIBOR VII*"), 299 F.Supp.3d 430 (S.D.N.Y. 2018), the Court denied class certification, rejected various econometric models and opinions of Plaintiffs' experts as to liability and damages, and ruled that Plaintiffs had not fully satisfied the requirements of Federal Rule of Civil Procedure 23.

14. Pursuant to Rule 23(f) of the Federal Rules of Civil Procedure, Plaintiffs filed a petition seeking immediate review of the Court's denial of class certification by the United States Court of Appeals for the Second Circuit, which was denied on November 6, 2018. The District Court subsequently posed various questions to Class Counsel, including whether the Net Settlement Fund could be distributed on the basis of net losses. In response, Class Counsel engaged in the process that produced this Plan.

15. If the remaining non-settling Defendants in the Exchange-Based Action do not settle, members of the Exchange-Based class may be unable to recover any monies against non-settling Defendants and may be limited to any monetary recoveries against Settling Defendants payable under the current Settlement Agreements, if and as approved by the Court.

III. Plan Amendments and Administrative Determinations

16. All determinations and interpretations of this Plan shall be made by the Settlement Administrator subject to review by the Court as appropriate.

17. This Plan shall be subject to change by the Court, at its own initiative, without further notice to Settlement Class members.

18. This Plan shall be subject to amendment by motion of Class Counsel provided that (a) notice is provided to Settlement Class members on the Settlement Website, with at least 21 days' time for any Settlement Class member to file an objection to such amendment, and (b) the Court approves, in whole or in part, such amendment.

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[17] As used herein, "Hedger" means any person or entity who (a) enters into positions in the futures market opposite to positions held off the futures exchange in order to minimize the risk of financial loss from an adverse price change; or (b) purchases or sells futures as a temporary substitute for a transaction off the futures exchange that will occur later.

[18] As used herein, a "Swaps Dealer" is any person or entity who (a) holds itself out as a dealer in swaps; (b) makes a market in swaps; (c) regularly enters into swaps with counterparties as an ordinary course of business for its own account, or (d) engages in activity causing itself to be commonly known in the trade as a dealer or market maker in swaps.

[19] Plaintiffs have agreed to resolve their claims against Bank of America, Barclays, Citibank, Deutsche Bank, HSBC, and JP Morgan. If the Court grants final approval to each of those proposed settlements, the total Settlement Fund will be $181,875,000, exclusive of costs, expenses and fees as the Court may award. Claims against the remaining panel banks were dismissed and are on appeal.