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

EXCHANGE-BASED PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS WITH DEFENDANTS BANK OF AMERICA, BARCLAYS BANK PLC, CITI, DEUTSCHE BANK, HSBC BANK PLC, JPMORGAN, AND SOCIÉTÉ GÉNÉRALE

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The following defined terms are used in this Memorandum:

Parties	
Term	**Definition**
Bank of Tokyo	The Bank of Tokyo-Mitsubishi UFJ, Ltd.
Barclays	Barclays Bank plc.
BOA	Bank of America Corporation and Bank of America, N.A.
Citi	Citigroup Inc., Citibank, N.A., and Citigroup Global Markets Inc.
Credit Suisse	Credit Suisse Group AG, Credit Suisse International, and Credit Suisse (USA) Inc.
Defendants	Credit Suisse, BOA, JPMorgan, HSBC, Barclays, Lloyds, WestLB, UBS, RBS, Deutsche Bank, Citi, Rabobank, Norinchukin, Bank of Tokyo, HBOS, SG, and RBC.
Deutsche Bank	Deutsche Bank AG, Deutsche Bank Securities Inc., and DB Group Services (UK) Ltd.
Exchange-Based Plaintiffs or Plaintiffs	Metzler Asset Management GmbH (f/k/a Metzler Investment GmbH), FTC Futures Fund SICAV, FTC Futures Fund PCC Ltd., Atlantic Trading USA, LLC, 303030 Trading LLC, Gary Francis, and Nathanial Haynes.
HBOS	HBOS plc.
HSBC	HSBC Bank plc.
JPMorgan	JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A.
Lloyds	Lloyds Banking Group plc.
Norinchukin	Norinchukin Bank.
Rabobank	Coöperatieve Centrale Raiffeisen Boerenleenbank B.A.
RBC	Royal Bank of Canada.
RBS	Royal Bank of Scotland Group plc.
Settling Defendants	BOA, Barclays, Citi, Deutsche Bank, HSBC, JPMorgan, and SG.
Settling Parties	Settling Defendants and Settlement Class Members.
SG	Société Générale.
UBS	UBS AG.
WestLB	WestLB AG and Westdeutsche Immobilienbank AG.

Settlement Agreements	
Term	**Definition**
Barclays Settlement Agreement	Settlement Agreement with Barclays, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262, (Oct. 7, 2014) [ECF No. 680-3] and Barclays Amendment to Settlement Agreement, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (Sept. 15, 2017) [ECF. 2307-3].
Citi Settlement Agreement	Settlement Agreement with Citi, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (July 27, 2017) [ECF. 2307-4].

Settlement Agreements	
Term	**Definition**
Deutsche Bank Settlement Agreement	Settlement Agreement with Deutsche Bank, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (July 13, 2017) [ECF. 2307-5].
HSBC Settlement Agreement	Settlement Agreement with HSBC, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (July 6, 2017) [ECF. 2307-6].
JPMorgan/BOA Settlement Agreement	Stipulation and Agreement of Settlement with JPMorgan and BOA, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (June 14, 2018) [ECF. 2728-5].
SG Settlement Agreement	Stipulation and Agreement of Settlement with SG, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (January 13, 2020) [ECF. 3023-4].

Settlement Classes	
Term	**Definition**
Barclays Settlement Class	All Persons (other than Defendants, their employees, affiliates, parents, subsidiaries, and co-conspirators) that transacted in LIBOR-based Eurodollar futures or options on exchanges such as the Chicago Mercantile Exchange between January 1, 2003 through May 31, 2011.
Citi Settlement Class	All Persons, corporations and other legal entities (other than Defendants, their employees, affiliates, parents, subsidiaries, and co- conspirators) that transacted in Eurodollar futures and/or options on Eurodollar futures on exchanges, including without limitation, the Chicago Mercantile Exchange, between January 1, 2003 and May 31, 2011. Excluded from the Class are: (i) Defendants, their employees, affiliates, parents, subsidiaries, and co- conspirators; (ii) the Releasees (as defined in Section 1(GG)); and (iii) any Class Member who files a timely and valid request for exclusion.
Deutsche Bank Settlement Class	All Persons that transacted in Eurodollar futures and/or options on Eurodollar futures on exchanges, including, without limitation, the Chicago Mercantile Exchange, between January 1, 2003 and May 31, 2011. Excluded from the Class are: (i) Defendants, their employees, Affiliates, parents, subsidiaries, and co-conspirators; (ii) the Releasees (as defined in Section 1(GG)); and (iii) any Class Member who files a timely and valid request for exclusion.
HSBC Settlement Class	All Persons, corporations and other legal entities (other than Defendants, their employees, affiliates, parents subsidiaries, and co- conspirators) that transacted in Eurodollar futures and/or options on Eurodollar futures on exchanges, including without limitation, the Chicago Mercantile Exchange, between January 1, 2003 and May 31, 2011. Excluded from the Class are: (i) Defendants, their employees, affiliates, parents, subsidiaries, and co- conspirators; (ii) the Releasees (as defined in Section 1(GG)); and (iii) any Class Member who files a timely and valid request for exclusion.

Settlement Classes	
Term	**Definition**
JPMorgan/BOA Settlement Class	All persons, corporations and other legal entities that transacted in Eurodollar futures and/or options on Eurodollar futures, including without limitation transactions on the Chicago Mercantile Exchange, between January 1, 2003 and May 31, 2011; provided that, if Exchange-Based Plaintiffs expand the class period in any subsequent amended complaint, motion or settlement, the class period in the Settlement Class definition in this Agreement shall be expanded so as to include such expansion. Excluded from the Class are: (i) Defendants, their employees, affiliates, parents, subsidiaries, and alleged co- conspirators; (ii) the Releasees (as defined in Section 1(II)); (iii) any Class Member who files a timely and valid request for exclusion; and (iv) any Persons dismissed from this Action with prejudice. Solely for purposes of the Settlement, the parties agree that Investment Vehicles are not 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.
SG Settlement Class	All persons, corporations and other legal entities that transacted in Eurodollar futures and/or options on Eurodollar futures on exchanges, including, without limitation, the Chicago Mercantile Exchange, between January 1, 2003 and May 31, 2011, inclusive; provided that if Exchange-Based Plaintiffs expand the class period in any subsequent amended complaint, motion or settlement, the period in the Settlement Class definition in this Agreement shall be modified so as to include that expanded class period. Excluded from the Settlement Class are: (i) Defendants, their employees, affiliates, parents, subsidiaries, and alleged co-conspirators; (ii) the Releasees (as defined in Section 1(CC)); (iii) any Settlement Class Member who files a timely and valid request for exclusion; and (iv) any Persons dismissed from this Action with prejudice.
Settlement Class Members	All persons falling within the definition of the Settlement Classes.
Settlement Classes	Barclays Settlement Class, Citi Settlement Class, Deutsche Bank Settlement Class, HSBC Settlement Class, JPMorgan/BOA Settlement Class, and SG Settlement Class.

Settlement Terminology	
Term	**Definition**
Citibank, N.A.	Escrow agent for the BOA, Barclays, HSBC, Deutsche Bank, JPMorgan, and SG settlements.

Settlement Terminology	
Term	**Definition**
Claim Form	The Proof of Claim and Release for the Exchange-Based Plaintiffs' Settlements with Bank of America, Barclays, Citi, Deutsche Bank, HSBC, JPMorgan, and Société Générale, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (January 23, 2020) [ECF. 3025-5].
Claims Administrator or Settlement Administrator	A.B. Data, Ltd.
Exchange-Based Settlements or Settlements	The Barclays Settlement Agreement, Citi Settlement Agreement, Deutsche Bank Settlement Agreement, HSBC Settlement Agreement, JPMorgan/BOA Settlement Agreement, and SG Settlement Agreement.
Internet Notice	Internet Notice provided additional notice opportunities through targeted digital media such as banner ads, e-newsletters, email blasts, Google AdWords/Search campaign and press release over *PR Newswire* which, in addition to print format, included broadcast and digital websites across the United States.
Mail Notice or Notice	The Notice of Class Action Settlements, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (January 23, 2020) [ECF. 3025-3].
Net Settlement Fund	The total Settlement Fund from the Settlements approved by the Court, minus the costs, expenses, and fees approved by the Court.
Notice Program	The notice protocol detailed in the Declaration of Linda V. Young Regarding Notice Program, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (January 23, 2020) [ECF. 3025-2].
Period 0	January 1, 2005 through August 8, 2007.
Periods 1 and 2	August 2007 through April 14, 2009.
Period 3	April 15, 2009 through May 2010.
Preliminary Approval Order	The Order (1) Preliminarily Approving Settlements with Defendants Bank of America, Barclays Bank PLC, Citi, Deutsche Bank, HSBC Bank PLC, JPMorgan, and Société Générale; (2) Approving the Proposed Form and Program of Notice; and (3) Scheduling a Fairness Hearing, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262, 2020 WL 1059489 (S.D.N.Y. Mar. 2, 2020) [ECF. 3038].
Revised Plan of Distribution	The Corrected Plan of Distribution for the Exchange-Based United States Dollar LIBOR Settlement, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (June 23, 2020) [ECF. 3106].
Settlement Class Counsel	Kirby McInerney LLP and Lovell Stewart Halebian Jacobson LLP.
Settlement Class Period	January 1, 2003 through May 31, 2011.
Settlement Fund	The aggregate cash consideration provided for in the Settlements, which were reached separately, is $187,000,000: BOA has agreed to pay $15 million; Barclays has agreed to pay $19.975 million; Citi has agreed to

Settlement Terminology	
Term	**Definition**
	pay $33.4 million; Deutsche Bank has agreed to pay $80 million; HSBC has agreed to pay $18.5 million; JPMorgan has agreed to pay $15 million; and SG has agreed to pay $5.125 million.
Settlement Website	www.USDLiborEurodollarSettlements.com.
Signature Bank	The escrow agent for the Citi settlement.
Summary Notice	The Summary Notice of Class Action Settlements, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (January 23, 2020) [ECF. 3025-4].

Declarations	
Term	**Definition**
Joint Decl.	The accompanying Joint Declaration of David E. Kovel and Christopher Lovell in Support of Exchange-Based Plaintiffs' Motion for Final Approval of Class Action Settlements with Defendants Bank of America, Barclays Bank plc, Citi, Deutsche Bank, HSBC Bank plc, JPMorgan and Société Générale and Exchange-Based Plaintiffs' Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards for Named Plaintiffs.
Straub Decl.	The accompanying Declaration of Steven Straub on Behalf of A.B. Data, Ltd. Regarding Notice and Claims Administration for Class Action with Settling Defendants.

Other Defined Terms	
Term	**Definition**
2018 Advisory Note	Fed. R. Civ. P. 23(e), Adv. Comm. Notes to 2018 Amendments.
Action	The action captioned *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (S.D.N.Y.).
CEA	Commodity Exchange Act.
CFTC	United States Commodity Futures Trading Commission.
DOJ	The United States Department of Justice.
Eurodollar Futures	Eurodollar futures contracts and options on Eurodollar futures contracts.
FCA	United Kingdom Financial Conduct Authority.
LIBOR	London Interbank Offered Rate.
Operative Complaint	[Corrected] Fourth Amended Consolidated Class Action Complaint, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 [ECF. 2363].
Partial OTC LIBOR Settlement	The OTC Barclays Settlement Agreement, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (November 11, 2015) [ECF. 1338-1] and OTC Citi Settlement Agreement, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (July 27, 2017) [ECF. 2226-1].
SEC	United States Securities and Exchange Commission.
Second Circuit	United States Court of Appeals for the Second Circuit.

I. INTRODUCTION

Pursuant to Rule 23 of the Federal Rules of Civil Procedure and Paragraph 10 of the Preliminary Approval Order, Exchange-Based Plaintiffs,[1] through their counsel Lovell Stewart Halebian Jacobson LLP and Kirby McInerney LLP ("Settlement Class Counsel"), respectfully submit this Memorandum of Law, the accompanying Joint Declaration, and the Straub Declaration, in support of Exchange-Based Plaintiffs' motion for an order granting final approval of the settlements with Settling Defendants, certification of the Settlement Classes, and final approval of the Revised Plan of Distribution.

Pursuant to its Preliminary Approval Order, the Court found, under the new, more exacting standards of amended Rule 23(e)(2), that the Court would likely be able to grant final approval to the Settlements following the fairness period. *Compare* Fed. R. Civ. P. 23(e)(1)(B) *with* the Preliminary Approval Order. There are substantial risks of continued prosecution of the claims in the absence of approval of the proposed Settlements. These risks have been revealed by extensive motion practice in this case, a developed discovery record, and this Court's numerous detailed decisions issued prior to the Court's preliminary approval of these settlements.[2]

This Court also previously approved the proposed Revised Plan of Distribution of the

[1] Unless otherwise defined in the "Table of Defined Terms" or herein, all capitalized terms have the same meaning as set out in the Settlement Agreements. All references to "ECF No." herein refer to documents in the docket of the MDL Action, No. 11 MDL 2262 (NRB) unless otherwise specified.

[2] *E.g.*, *In re LIBOR-Based Fin. Instruments Antitrust Litig.* ("*LIBOR I*"), 935 F. Supp. 2d 666 (S.D.N.Y. 2013) [ECF No. 286]; *In re LIBOR-Based Fin. Instruments Antitrust Litig.* ("*LIBOR II*"), 962 F. Supp. 2d 606 (S.D.N.Y. 2013) [ECF No. 389]; *In re LIBOR-Based Fin. Instruments Antitrust Litig.* ("*LIBOR III*"), 27 F. Supp. 3d 447 (S.D.N.Y. 2014) [ECF No. 568]; *In re LIBOR-Based Fin. Instruments Antitrust Litig.* ("*LIBOR IV*"), No. 11 Md. 2262 (NRB), 2015 WL 4634541 (S.D.N.Y. Aug. 4, 2015) [ECF No. 1164]; *In re LIBOR-Based Fin. Instruments Antitrust Litig.* ("*LIBOR V*"), No 11 Md. 2262 (NRB), 2015 WL 6696407 (S.D.N.Y. Nov. 3, 2015) [ECF No. 1234]; *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (NRB), 2016 WL 1558504 (S.D.N.Y. Apr. 15, 2016) [ECF No. 1380]; *In re LIBOR-Based Fin. Instruments Antitrust Litig.* ("*LIBOR VI*"), No. 11 Md. 2262 (NRB), 2016 WL 7378980 (S.D.N.Y. Dec. 20, 2016) [ECF No. 1676]; *In re LIBOR-Based Fin. Instruments Antitrust Litig.* ("*LIBOR VII*"), 299 F. Supp. 3d 430 (S.D.N.Y. Feb. 28, 2018) [ECF No. 2452]; and *In re LIBOR-Based Fin. Instruments Antitrust Litig.* ("*LIBOR VIII*"), No. 11 Md. 2262, 2019 WL 1331830 (S.D.N.Y. Mar. 25, 2019) [ECF No. 2837].

settlement proceeds. *See* ECF Nos. 2973 (Order Preliminarily Approving Exchange-Based Plaintiffs' Revised Plan of Distribution), 3106 (Order approving Plaintiffs' correction to the end date of the legal risk period set forth in paragraph 8(a) of the Revised Plan of Distribution as May 17, 2010, not May 31, 2010).

In the context of the foregoing and the other considerations developed below, the terms of the Settlements are fair, reasonable, and adequate. The Settlements satisfy the criteria for final approval under Rule 23 of the Federal Rules of Civil Procedure.[3] Risks of proving the elements of the claims, if the Settlements are not approved, include (a) establishing a violation of law, (b) proving that any such violation had an impact on Eurodollar futures and options ("EDF") prices, and (c) reasonably quantifying the amount of any impact which might be proved. *See* Sections II, *infra*. Also, there are risks of establishing a litigation class and, as to certain Settling Defendants, there are risks of establishing this Court's personal jurisdiction over and/or the timely commencement of the claims against them. *Id.*

Nonetheless, if approved, the proposed Settlements, consisting of $187,000,000[4] in payments as well as agreements by Settling Defendants to provide certain non-monetary cooperation to Plaintiffs, will constitute the largest "futures and options on futures only" class action settlement of claims under the Commodity Exchange Act, and provide compensation to Authorized Claimants.

Pursuant to the Preliminary Approval Order, the Settlement Administrator executed the

[3] The Settling Defendants consent to certification of the Settlement Classes soley for the purposes of the Settlements and without prejudice to any position any of the Settling Defendants may take with respect to class certification in any other action and reserve all rights should their respective Settlement not receive this Court's final approval.

[4] The aggregate Settlements, if all receive final approval from the Court, will create a $187 million Settlement Fund: BOA has agreed to pay $15 million; Barclays has agreed to pay $19.975 million; Citi has agreed to pay $33.4 million; Deutsche Bank has agreed to pay $80 million; HSBC has agreed to pay $18.5 million; JPMorgan has agreed to pay $15 million; and SG has agreed to pay $5.125 million.

Notice Program and distributed the mailed notice to Class members informing them, *inter alia*, that Settling Defendants separately agreed to pay a combined $187,000,000 and provide non-monetary cooperation to settle the Action. *See* Straub Decl. ¶¶ 3-30; Straub Ex. A (Notice Packet). The Notice Program was set forth at length in Exhibit B to the Declaration of Linda V. Young Regarding Notice Program (ECF No. 3025-2) submitted in connection with Exchange-Based Plaintiffs' motion for preliminary approval of the Settlements. The Settlement Administrator implemented the Notice Program in accordance with the Preliminary Approval Order. *See* Straub Decl. ¶¶ 3-30.

Finally, each Settlement is the result of months (and in some cases, years) of arm's-length negotiations between highly sophisticated parties and their experienced counsel. Having litigated this Action for nine years, Settlement Class Counsel, who have extensive experience in class actions of this type, believe that the Settlements are in the best interest of the Settlement Classes and recommend as follows: the Court should grant Final Approval of each Settlement, approve the Revised Plan of Distribution, and enter Final Judgment dismissing the claims against the Settling Defendants with prejudice on the merits to provide the Settlement Classes with substantial relief.

II. BACKGROUND

A. Pertinent Procedural History

Plaintiffs have alleged that Defendants conspired to manipulate Eurodollar Futures prices in violation of Section 1 of the Sherman Antitrust Act, and conspired or acted individually to manipulate Eurodollar Futures prices in violation of the Commodity Exchange Act. This Court's detailed decisions indicate that Plaintiffs face great difficulty in establishing (a) a conspiracy for

antitrust or CEA manipulation purposes,[5] (b) antitrust injury and efficient enforcer standing to sue for any such antitrust violation;[6] (c) defendants' intent to manipulate EDF prices,[7] (d) the impact on EDF prices if any violation is proved,[8] and (e) quantifying such impact.[9] Should Plaintiffs overcome all of the foregoing risks, there would be additional risks of certifying this Action as a class action.[10]

In addition, this Court entered orders which dismissed the claims against Defendant SG on grounds of untimeliness[11] and personal jurisdiction;[12] and dismissed the claims against Defendant HSBC on grounds of lack of personal jurisdiction.[13] The Court's personal jurisdiction rulings likely would have applied to Defendants Barclays and Deutsche Bank in the absence of settlements with Plaintiffs.[14]

B. Pertinent Settlement History

Exchange-Based Plaintiffs previously filed their letter motion for preliminary approval of the settlement with Barclays on October 8, 2014. *See* ECF No. 680. The Court granted preliminary approval but deferred granting settlement class certification until Plaintiffs proposed a plan of notice, form of notice, and summary notice. *In re LIBOR-Based Fin. Instruments Antitrust Litig.*,

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[5] *See*, *e.g.*, *LIBOR I*, 935 F. Supp. 2d at 685-724; *LIBOR II*, 962 F. Supp. 2d at 620-28; *LIBOR III*, 27 F. Supp. 3d at 460-77.

[6] *See*, *e.g.*, *LIBOR VI*, 2016 WL 7378980, at *15-17, 21-23.

[7] *See*, *e.g.*, *LIBOR III*, 27 F. Supp. 3d at 462-71; *LIBOR VII*, 299 F.Supp.3d at 540-41.

[8] *See*, *e.g.*, *LIBOR VII*, 299 F. Supp. 3d at 484-89, 491-94; 511-15.

[9] *See*, *e.g.*, *LIBOR VII*, 299 F. Supp.3d at 495-96.

[10] *See generally LIBOR VII*, 299 F. Supp. 3d at 471-556.

[11] *See LIBOR III*, 27 F. Supp. 3d at 484-86.

[12] *See LIBOR VI*, 2016 WL 7378980, at *8-12.

[13] *See LIBOR V*, 2015 WL 6696407, at *19-20; *LIBOR VI*, 2016 WL 7378980, at *8-12.

[14] *See LIBOR V*, 2015 WL 6696407, at *19-20 (citing *LIBOR IV*, 2015 WL 6243526, at *32 n.55); *LIBOR VI*, 2016 WL 7378980, at *8-12.

No. 11 Md. 2262, 2014 WL 6851096 (S.D.N.Y. Dec. 2, 2014) [ECF No. 861]. The Court subsequently denied Plaintiffs' motion concerning the proposed process for allocating settlement proceeds without prejudice. *See* ECF Nos. 953, 1165.

On October 11, 2017, Plaintiffs filed their letter motion for preliminary approval of settlements with Defendants Barclays, Citi, Deutsche Bank, and HSBC. *See* ECF No. 2307-1. On September 7, 2018, Plaintiffs filed their motion for preliminary approval of a settlement with Defendants JPMorgan and BOA (*see* ECF No. 2728-1), and filed their motion for an order preliminarily approving Plaintiffs' Notice Program for settlements with Defendants BOA, Barclays, Citi, Deutsche Bank, HSBC, and JPMorgan. *See* ECF No. 2729-1.

On August 12, 2019, Plaintiffs moved for preliminary approval of the Revised Plan of Distribution, which the Court subsequently granted on September 4, 2019. *See* ECF Nos. 2954-57, 2973.

On September 4, 2019, the Court issued an order preliminarily approving Plaintiffs' Revised Plan of Distribution. *See* ECF No. 2973.[15]

On January 23, 2020, Plaintiffs filed their letter motion for preliminary approval of a settlement with Defendant SG. *See* ECF No. 3023-1.

On March 2, 2020, the Court granted preliminary approval to the Settlements between Exchange-Based Plaintiffs and Settling Defendants BOA, Barclays, Citi, Deutsche Bank, HSBC, JPMorgan, and SG, preliminarily approved Plaintiffs' Notice Program for the settlements with Settling Defendants, and appointed Lovell Steward Halebian Jacobson LLP and Kirby McInerney LLP as Settlement Class Counsel. *See* Preliminary Approval Order, 2020 WL 1059489, at *4.

[15] On June 23, 2020, the Court approved Plaintiffs' correction to the end date for the legal risk period set forth in paragraph 8(a) of the Plan of Distribution as May 17, 2010, not May 31, 2010. ECF No. 3106.

The Court's March 2, 2020 order further granted Plaintiffs' request to appoint A.B. Data, Ltd. as the Settlement Administrator, Signature Bank as the Escrow Agent for the Citi Settlement, and Citibank, N.A. as the Escrow Agent for the BOA, Barclays, HSBC, Deutsche Bank, JPMorgan, and SG Settlements. *Id.* at *4, 8. Through the negotiated Settlement Agreements with Settling Defendants, the Settlement Classes will receive a substantial monetary recovery of $187 million (less attorneys' fees and expenses as approved by the Court).

C. Class Notice

At preliminary approval, the Court approved the substance of the direct-mail and publication notice communications to the Class as well as the manner in which they were to be disseminated. Preliminary Approval Order, 2020 WL 1059489, at *4-5. Exchange-Based Plaintiffs established a settlement website and a toll-free information line to provide further information to potential class members and to facilitate the filings of settlement claims.

Direct Mailed Notice. Exchange-Based Plaintiffs provided direct notice to: (i) customers of Settling Defendants who executed Eurodollar futures and options on Eurodollar futures transactions during the Settlement Class Period, and whose names and addresses (1) could be reasonably identified based on client records that Settling Defendants have in their possession, custody, or control, and (2) could be permissibly supplied to the Settlement Administrator and Exchange-Based Plaintiffs' Counsel under applicable data-protection law and other law; (ii) Futures Commission Merchants that cleared transactions and "large traders" identified by productions made in response to a subpoena to the CME Group, Inc.; and (iii) brokers and entities included on A.B. Data's proprietary mailing list. *See* Straub Decl. ¶¶ 3-5.[16]

[16] On June 23, 2020, the Court granted Plaintiffs' request for, *inter alia*, a limited extension of the mail notice deadline set forth in Paragraphs 9(a) and 9(b) of the Court's Preliminary Approval Order by four weeks – from June 2 until

Summary Notice. Summary Notice was widely disseminated and published: (1) once in financial newspapers, namely *The Wall Street Journal*, *Financial Times*, *The Bond Buyer*, and *Investor's Business Daily* (*see* Straub Decl. at ¶ 20); and (2) once in consumer investment magazines and financial trade magazines including: *The Economist*, *Barron's*, *CFO*, *FA-Financial Advisor*, *Global Capital*, *Grant's Interest Rate Observer*, *Hedge Fund Alert*, *Investment Advisor*, *InvestmentNews*, *Pensions & Investments* and *Stocks & Commodities*, and (3) twice in *Bloomberg* and *Businessweek* (*see id*.).

Internet Notice. Internet Notice provided potential Settlement Class Members with additional notice opportunities and was achieved using digital media to further reach decision makers in the financial investment field. Banner ads – which included an embedded link to this Action's settlement website – were purchased on websites such as, *inter alia*, Traders.com, HFAlert.com, and GlobalInvestorgroup.com. *See* Straub Decl. ¶ 21; Straub Decl. Ex. I. The banner ads also appeared in e-newsletters including, *inter alia*, *Global Investor*, *Stocks & Commodities*, and *Money Manager*. *Id.* at ¶ 22; Straub Decl. Ex. J. Further media outlets included: (1) sending a custom email "blast" to subscribers of Traders.com who could "opt in" to participate in the proposed Settlements (Straub Decl. ¶ 23); (2) "microtargeted" digital media; and (3) an eight-week Google AdWords/Search campaign. *Id.* at ¶ 24. Finally, an earned media program

June 30, 2020 – for notices with destinations subject to mailing restrictions or suspensions due to the ongoing global health crisis. *See* ECF No. 3106. Because most of the impacted notices have destinations in the Cayman Islands, Settlement Class Counsel directed the Settlement Administrator to publish the Summary Notice one time in three different local Cayman Island newspapers. *See* Straub Decl. ¶¶ 14-15. Settlement Class Counsel and the Settlement Administrator will continue to monitor the mailing suspensions in the affected destinations. In the event that mail service returns to the affected destinations prior to the claims filing deadline, the Settlement Administrator intends to re-mail Notice Packets to the 145 potentially affected potential Settlement Class members (*id.* at ¶ 16), and additionally, Settling Defendants intend to cause Notice Packets to be re-mailed to 1,246 potentially affected potential Settlement Class members. *Id.* at ¶ 17. Even without these extra steps, Plaintiffs believe that due process requirements have been met as "due process notice requirements are not dependent on whether all potential class members physically receive mailed notice." *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Civ. 5450, 2019 WL 3006262, at *4 (S.D.N.Y. July 10, 2019).

was utilized whereby the Summary Notice was disseminated via PR Newswire to the financial news desks of approximately 10,000 newsrooms, including print, broadcast, and digital websites across the United States. *Id*. at ¶ 19; Straub Decl. Ex. H.

Settlement Website and Toll-Free Information Line. On March 12, 2020, the Settlement Administrator launched the Settlement Website to enable Settlement Class Members to obtain all information about the Settlements and to file a claim electronically. Straub Decl. ¶ 25. Exchange-Based Plaintiffs also caused a dedicated toll-free telephone number for this Action to be set up, 1-800-918-8964, in order for potential class members to call for additional information. *Id*. at ¶ 29. The line is available 24 hours a day, seven days a week, with live operators available during business hours. *Id.*

Settlement Class Counsel and the Claims Administrator confirm that the notice plan was implemented as described in Plaintiffs' preliminary approval motions. *See id.* ¶¶ 3-30.

III. ARGUMENT

A. The Settlements Are Fair, Reasonable and Adequate

1. Judicial Policy Favors Settlement

"The compromise of complex litigation is encouraged by the courts and favored by public policy." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005) (citation and quotation omitted). The Second Circuit therefore acknowledges "the 'strong judicial policy in favor of settlements, particularly in the class action context.'" *Id.*

2. Courts Approve Class Action Settlements When They Are Fair, Reasonable, and Adequate

Under the Federal Rules of Civil Procedure, class settlements must be "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e). Because the circuits implemented this standard through various formulations, the 2018 amendments to Rule 23 articulated a four-pronged test that was

intended to harmonize the circuits' varying articulations of the standard. *See* 2018 Advisory Note. The first two of these prongs (Rule 23(e)(2)(A)-(B)) address the "procedural fairness" of the settlement, while the last two (Rule 23(e)(2)(C)-(D)) address the "substantive fairness." *Id.*

Courts in the Second Circuit have traditionally considered the nine factors listed in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43 (2d Cir. 2000), known as the *Grinnell* factors, to assist in weighing final approval and determining whether a settlement is substantively "fair, reasonable, and adequate."[17] There is a significant overlap between the Rule 23(e) factors and the *Grinnell* factors, which complement each other. *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 692 (S.D.N.Y. 2019).

3. The Proposed Settlements Are Procedurally Fair

Rules 23(e)(2)(A)-(B) "constitute the 'procedural' analysis" of the fairness inquiry. *Christine Asia Co., Ltd. v. Ma*, No. 15 Md. 02631, 2019 WL 5257534, at *9 (S.D.N.Y. Oct. 16, 2019) (quoting *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019)). "A strong initial presumption of fairness attaches to a proposed settlement if it is reached by experienced counsel after arm's-length negotiations, and great weight is accorded to counsel's recommendation." *Guevoura Fund Ltd. v Sillerman*, No. 15 Civ. 07192, 2019 WL 6889901, at *6 (S.D.N.Y. Dec. 18, 2019) (citations omitted). The presumption of fairness and adequacy applies here.

[17] The *Grinnell* factors are: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *See Grinnell*, 495 F.2d at 463.

Additionally, the 2018 revisions to Rule 23(e) are consistent with the long-standing Second Circuit rule that "a strong initial presumption of fairness attaches to [a] proposed settlement," when the "integrity of the arm's length negotiation process is preserved . . . ." *See* Fed. R. Civ. P. 23(e)(2)(B); *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997), *aff'd*, 117 F.3d 721 (2d Cir. 1997). Rule 23(e)(2)(B) evaluates whether the proposed settlement "was negotiated at arm's length." A proposed settlement that is the "product of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation" enjoys a "presumption of fairness." *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74 (S.D.N.Y. 2000); *see also In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 576 (S.D.N.Y. 2008). In such circumstances, "'great weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation." *In re PaineWebber*, 171 F.R.D. at 125 (internal citation omitted).

Here, this Court previously found that Settlement Class Counsel have the requisite qualifications and experience in class actions to lead this litigation on behalf of the proposed Settlement Classes. *See generally In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262, 2011 WL 5980198 (S.D.N.Y. Nov. 29, 2011) [ECF No. 66] (appointing Interim Co-Lead Counsel for the Plaintiffs); *see also* Preliminary Approval Order, 2020 WL 1059489 (appointing Exchange-Based Plaintiffs' Counsel as Settlement Class Counsel). Additionally, Settlement Class Counsel were well-informed of all material facts, having litigated these claims for over nine years, and the negotiations were non-collusive. *See* Joint Decl. ¶¶ 11-53, 63-99. Each of the Settlements was reached through arm's length negotiations by experienced counsel over an extended period of time, which included multiple efforts and extensive negotiations, numerous in-person meetings, telephone calls, emails, and other communications. *Id.* at ¶¶ 63-99.

In appointing Exchange-Based Plaintiffs' Counsel as interim Settlement Class Counsel, the Court has already made initial determinations of counsel's adequacy. *See* Preliminary Approval Order, 2020 WL 1059489; *see also* 2018 Advisory Note (interim appointment entails an evaluation of counsel's adequacy to represent the class). At final approval, however, the focus is on the actual performance of counsel, as judged by the litigation required to reach settlement, counsel's conduct of settlement negotiations, and the results obtained. *See* 2018 Advisory Note; *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (directing courts to analyze the negotiating process and discovery undertaken by class counsel). This Rule 23(e) factor also overlaps with the third *Grinnell* factor that evaluates the stage of the proceedings and the amount of discovery completed.

Settlement Class Counsel have actively litigated the claims in this Action, have committed massive time, resources, and skills to the successful representation of Exchange-Based Plaintiffs, and at all times have acted in the best interests of the proposed Settlement Classes. Settlement Class Counsel further negotiated the Settlements as vigorously as they litigated them. As discussed in Section III.A.4(a)(iii), *infra*, the considerable recovery obtained by the Settlements in the face of persistent litigation risks also demonstrates that Settlement Class Counsel adequately represented the Settlement Classes. *See* Joint Decl. ¶¶ 11-53; 63-99.

4. The Proposed Settlements Are Substantively Fair

At final approval, the Court's role is not to "'decide the merits of the case or resolve unsettled legal questions,'" or "'foresee with absolute certainty the outcome of the case,'" *Shapiro v. JPMorgan Chase & Co.*, No. 11 Civ. 8331, 2014 WL 1224666, at *10 (S.D.N.Y. Mar. 24, 2014), but rather to "assess the risks of litigation against the certainty of recovery under the proposed settlement." *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 459 (S.D.N.Y. 2004). Each of the Settlements return substantial cash payments and non-cash benefits to improve the

short-term return to Settlement Class Members. In addition, as set forth below, the *Grinnell* factors strongly merit final approval of the Settlements.

a) Rule 23(e)(C)(i) – the Relief Provided to the Settlement Classes is Superior to Continued Litigation

Rule 23(e)(C)(i) codifies many of the Second Circuit's *Grinnell* factors, which guide the assessment of the fairness of proposed settlements. Seven of the pre-amendment factors are captured by Rule 23(e)(2)(C)(i): the complexity, expense, and likely duration of the litigation (factor 1); the risks of establishing liability (factor 4); the risks of establishing damages (factor 5); the risks of maintaining the class action through trial (factor 6); the ability of the defendants to withstand a greater judgment (factor 7); and the range of reasonableness of the settlement fund in light of the best possible recovery (factor 8) and in light of all the attendant risks of litigation (factor 9).

i. The Risks of Establishing Liability and Damages

"In assessing the Settlement, the Court should balance the benefits afforded the Class, including the *immediacy* and *certainty* of a recovery, against the continuing risks of litigation." *In re Top Tankers, Inc. Sec. Litig.*, No. 06 Civ. 13761, 2008 WL 2944620, at *4 (S.D.N.Y. July 31, 2008) (emphasis in original). In this case, Plaintiffs face significant risks in continuing to litigate this case, which are amplified by the complexity of the LIBOR market and the fact that Defendants are global financial institutions that can afford to litigate this case indefinitely.

This case involves complicated issues of antitrust law and the CEA, and the subject matter – the intersection between benchmark manipulation and futures trading – can be complex. "The complexity of Plaintiff's claims ipso facto creates uncertainty . . . . A trial on these issues would likely be confusing to a jury." *Park v. The Thomson Corp.*, No. 05 Civ. 2931, 2008 WL 4684232, at *4 (S.D.N.Y. Oct. 22, 2008); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465,

475 (S.D.N.Y. 1998) ("*NASDAQ II*") (noting difficulty and uncertainty of proving liability to a jury, "especially in a case of this complexity and magnitude").

Settling Defendants are well-financed and represented by some of the most able law firms in the world. Had Settling Defendants not agreed to settle, they were prepared to vigorously contest liability and damages, as well as any renewed attempt to certify a litigation class. Indeed, Settling Defendants have denied, and continue to deny, any liability to Class Plaintiffs. "Establishing otherwise [would] require considerable additional pre-trial effort and a lengthy trial, the outcome of which is uncertain." *Charron v. Pinnacle Grp. N.Y. LLC*, 874 F. Supp. 2d 179, 199 (S.D.N.Y. 2012), *aff'd sub nom.*, *Charron v. Wiener*, 731 F.3d 241 (2d Cir. 2013).

Even if liability were established, Plaintiffs would face the difficulties and complexities inherent in proving damages to the jury. "As the Second Circuit has noted, 'the history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal.'" *In re GSE Bonds*, 414 F. Supp. 3d at 694 (quoting *Wal-Mart*, 396 F.3d at 118). Complex cases often involve "battle[s] of the experts" on proof of damages, which makes it "'difficult to predict with any certainty which testimony would be credited.'" *NASDAQ II*, 187 F.R.D. at 476. In such cases, the theory of damages would be hotly contested at trial, and there is no doubt that, at trial, the issue would inevitably involve a "battle of the experts." *Id*.

This case is no exception. At trial, both sides would have offered expert testimony on damages in addition to liability. There is a substantial risk that a jury might accept one or more of Settling Defendants' damages arguments, or award far less than the funds secured by the Settlements, or nothing at all. Even if Plaintiffs "'prevail[ed] at trial, post-trial motions and the

potential for appeal could prevent the class members from obtaining any recovery for several years, if at all.'" *In re GSE Bonds*, 414 F. Supp. 3d at 693 (internal citation omitted).

'"[B]alanc[ing] the benefits afforded the Class, including immediacy and certainty of recovery, against the continuing risks of litigation,'" these factors weigh in favor of approval of the Settlements. *Id.* at 694 (quoting *In re Payment Card Interchange Fee*, 330 F.R.D. at 37).

ii. The Risks of Maintaining the Class Action Through Trial

On February 28, 2018, the Court denied Exchange-Based Plaintiffs' motion for class certification, *LIBOR VII*, 299 F. Supp. 3d 430, and on November 6, 2018, the Second Circuit denied Exchange-Based Plaintiffs' interlocutory appeal pursuant to Fed. R. Civ. P. 23(f). *See In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 18-728 (2d Cir. Nov. 6, 2018), ECF No. 84. As a result, the proceeds that Settlement Class Counsel secured on behalf of the Settlement Class Members through the Settlements are likely the only recovery the Settlement Class members can hope for as a result of the alleged manipulation of Defendants' LIBOR submissions unless Exchange-Based Plaintiffs successfully appeal the Court's denial of class certification. Thus, the risks associated with class certification weigh in favor of approving the Settlements. *See Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 665 (S.D.N.Y. 2015).

iii. The Recovery Is Reasonable in Light of the Best Possible Recovery and the Risks of Litigation

Fundamental to a determination of whether a settlement is fair, reasonable, and adequate "'is the need to compare the terms of the compromise with the likely rewards of litigation.'" *Maywalt v. Parker & Parsley Petroleum Co.*, 67 F.3d 1072, 1079 (2d Cir. 1995) (citation omitted). In making the determination, the settlement agreement must be considered as a whole. *Id.* The determination of what dollar amount constitutes a reasonable settlement, given the risks of litigation, is not a simple "mathematical equation yielding a particularized sum." *Massiah v.*

MetroPlus Health Plan, Inc., No. 11 Civ. 05669, 2012 WL 5874655, at *5 (E.D.N.Y. Nov. 20, 2012) (citation and quotation omitted). Rather, "there is a range of reasonableness with respect to a settlement." *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 327 F.R.D. 483, 495 (S.D.N.Y. 2018) (citation and quotation omitted). In considering these factors, "'the settlement amount's ratio to the maximum potential recovery need not be the sole, or even the dominant, consideration when assessing the settlement's fairness.'" *Id.* at 495 (quoting *In re Global Crossing*, 225 F.R.D. at 460-61). As the Second Circuit has explained, "'[t]he fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.'" *LIBOR*, 327 F.R.D. at 495 (quoting *Grinnell*, 495 F.2d at 455).

The reasonableness of the aggregate $187 million Settlement amount is only bolstered when considering the likelihood of a reduced recovery or no recovery at all in continued litigation. *See In re Bear Stearns Cos., Inc. Sec., Derivative & ERISA Litig.*, 909 F. Supp. 2d 259, 270 (S.D.N.Y. 2012) ("[T]he propriety of a given settlement amount is a function of both (1) the size of the amount relative to the best possible recovery; and (2) the likelihood of non-recovery (or reduced recovery)."). Continuing this Action against the Settling Defendants would be time-consuming, expensive, and would involve complex legal and factual issues and vigorously contested motion practice, including (1) renewing class certification, (2) defeating Settling Defendants' class-related *Daubert* challenges, (3) surviving summary judgment in whole on liability, (4) defeating all or most of Settling Defendants' merits-related *Daubert* challenges, (5) prevailing in challenges to the admissibility of key evidence at trial, through *in limine* motions or otherwise, (6) defeating inevitable motions for judgment as a matter of law, (7) obtaining a favorable jury verdict on liability and damages, and (8) defeating inevitable motions for judgment

notwithstanding the verdict. Additionally, even after trial is concluded, there could potentially be one or more lengthy appeals. *See In re Michael Milken & Assocs. Sec. Litig.*, 150 F.R.D. 57, 68 (S.D.N.Y. 1993). Given this uncertainty, "[a] very large bird in the hand in this litigation is surely worth more than whatever birds are lurking in the bushes." *In re Chambers Dev. Sec. Litig.*, 912 F. Supp. 822, 838 (W.D. Pa. 1995); *see also In re IPO Sec. Litig.*, 260 F.R.D. 81, 118-19 (S.D.N.Y. 2009).

In comparison to the risks of continuing litigation, each Settlement provides Exchange-Based Plaintiffs and the Settlement Classes substantial benefits, including significant cash compensation in an aggregate amount of $187 million. And in spite of the litigation risks, the Settlements still represent the largest historical recovery for a "futures and options on futures only" settlement class.[18] Given the substantial risks here and that these early, partial settlements are a judicially well-recognized strategic step to assist Plaintiffs in the case against the Non-Settling Defendants, each of the relevant *Grinnell* factors weighs in favor of this Court granting final approval.

iv. The Ability of Settling Defendants to Withstand a Greater Judgment

There is little reason to doubt that the Settling Defendants could withstand a greater judgment than the amount paid in settlement, but "'fairness does not require that the [defendant] empty its coffers before this Court will approve a settlement.'" *LIBOR*, 327 F.R.D. at 494. This factor, standing alone, does not warrant declining to approve a settlement. *In re GSE Bonds*, 414

[18] The five next largest "futures only" settlements are: *In re Sumitomo Copper Litig.* ("*Sumitomo*"), No. 96 Civ. 4854 (S.D.N.Y.) (monetary settlement of $149,000,000); *Hershey v. Pac. Inv. Mgmt. Co. LLC*, No. 05 Civ. 4681 (N.D. Ill. 2010) (monetary settlement of $118,750,000); *In re Natural Gas Commodity Litig.*, No. 03 Civ. 6186 (VM) (S.D.N.Y.) (monetary settlement of $101,000,000); *In re Amaranth Natural Gas Commodities Litig.*, No. 07 Civ. 6377 (S.D.N.Y) (monetary settlement of $77,100,000); and *White v. Moore Capital Management, L.P.*, No. 10 Civ. 3634 (S.D.N.Y.) (monetary settlement of $70,000,000).

F. Supp. 3d at 696 (noting that "[s]ome courts have held . . . that 'in any class action against a large corporation, the defendant entity is likely to be able to withstand a more substantial judgment, and, against the weight of the remaining factors, this fact alone does not undermine the reasonableness of the instant settlement'"); *accord LIBOR*, 327 F.R.D. at 495 (stating that "this factor is intended to 'strongly favor settlement' when 'there is a risk that an insolvent defendant could not withstand a greater judgment' but that 'the ability of defendants to pay more, on its own, does not render the settlement unfair'").

b) Rule 23(e)(2)(C)(ii) – the Claims Process Is Fair and Rational

Settlement Class Counsel developed the Revised Plan of Distribution in consultation with Plaintiffs' experts. Joint Decl. ¶¶ 104-08. *See In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 414 (S.D.N.Y. 2018) ("Plaintiffs' Plan of Allocation was prepared by experienced counsel along with a damages expert – both indicia of reasonableness."); *In re Bear Stearns*, 909 F. Supp. 2d at 270 (finally approving plan of allocation developed by lead counsel with assistance from their damages expert).

"Rule 23(e)(2)(C)(ii) requires courts to examine 'the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims.'" *In re GSE Bonds*, 414 F. Supp. 3d at 694 (quoting Fed. R. Civ. P. 23(e)(2)(C)(ii)). Further, a "'claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding.'" *Id*. (quoting 2018 Advisory Note). A plan of distribution "'must be fair and adequate,'" but "it 'need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.'" *Id.* Thus, a plan of distribution "'need not be perfect'" in order to be approved. *LIBOR*, 327 F.R.D. at 496 (quoting *Hart v. RCI Hosp. Holdings, Inc.*, No. 09 Civ. 3043, 2015 WL 5577713, at *12 (S.D.N.Y. Sept. 22, 2015)).

If the Court grants final approval, under the Revised Plan of Distribution, each Authorized Claimant will receive his, her, or its *pro rata* share of the Net Settlement Fund. Specifically, the Plan provides for distribution of 75% of the Net Settlement Fund on the basis of *pro rata* "Recognized Net Loss" and 25% on the basis of *pro rata* "Recognized Volume," subject to a guaranteed minimum payment of $20.

Courts in this District have repeatedly approved plans of distribution of class action settlements of antitrust and manipulation claims which were based on net loss and volume metrics.[19] Similarly, courts in this and other Circuits also endorse *pro rata* distribution by volume as an acceptable method for allocating net settlement funds.[20] Further, courts routinely utilize *pro rata* distributions[21] and guaranteed minimum payments[22] in class action settlements. To date, the

[19] *See, e.g.*, *In re Nat. Gas Commodity Litig.*, No. 03 Civ. 6186 (S.D.N.Y.) [ECF No. 618] [Joint Decl. Ex. Q, Tab 5] (approving plan of distribution providing that a total of 74.6% of settlement proceeds be distributed by net loss, and 25.4% by volume subject to a guaranteed minimum payment); *In re Crude Oil Commodity Futures Litig.*, No. 11 Civ. 3600 (S.D.N.Y.) [ECF Nos. 287-5, ¶¶ 4, 6, 12-15 (plan of distribution), 339 (order granting final approval of, *inter alia*, plan of distribution] [Joint Decl. Ex. Q, Tab 3].

[20] *See, e.g.*, *In re Foreign Exch. Benchmark Rates Antitrust Litig.*, No. 13 Civ. 7789 (S.D.N.Y. Aug. 6, 2018) [ECF No. 1095, ¶4] [Joint Decl. Ex. Q, Tab 4] (granting final approval of plan of distribution that distributes settlement funds based on relative volume of futures and options contracts); *Alaska Elec. Pension Fund v. Bank of Am. Corp.*, No. 14 Civ. 7126, (S.D.N.Y. May 30, 2018), "Trs. of Final Approval Hearing", ECF Nos. 602-1 (plan of distribution), 661 at 30-32 [Joint Decl. Ex. Q, Tab 1] (granting final approval of plan of distribution that distributes settlement funds based on relative volume of derivative products including futures); *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1028 (E.D. Cal. 2019) (approving settlement of state law claims arising from the misreporting of pricing data to the USDA, and *pro rata* distribution of each Claimant's *pro rata* share of the settlement to be determined by claimant's pro rata share of volume of Grade A milk produced relative to the volume of Grade A milk produced by all eligible claimants); *Four in One Co., Inc., v. S.K. Foods, L.P.*, No. 08 Civ. 3017, 2014 WL 4078232, at *15 (E.D. Cal. Aug. 14, 2014) (in settlement of antitrust action for price-fixing processed tomato products, holding that the "plan of allocation providing for a pro rata distribution of the net settlement fund based on verified claimants' volume of qualifying purchases, is fair, adequate, and reasonable, and is hereby approved").

[21] *See LIBOR*, 327 F.R.D. at 496 (approving distribution plans where they "provide for pro rata distributions of the respective settlement funds"); *In re Payment Card Interchange Fee and Merch. Disc. Antitrust Litig.*, No. 05 Md. 1720, 2019 WL 6875472, at *20 (E.D.N.Y. Dec. 16, 2019) (approving allocation plan where "each claimant will receive a *pro rata* share of the settlement fund based on its interchange fees paid"); *In re Credit Default Swaps Antitrust Litig.*, No. 13 Md. 2476, 2016 WL 2731524, at *4 (S.D.N.Y. Apr. 26, 2016) (same); *Shapiro*, 2014 WL 1224666, at *13 (approving an allocation plan where the settlement amount, less administration costs, would be distributed on a *pro rata* basis of net losses); *Yang v. Focus Media Holding Ltd.*, No. 11 Civ. 9051, 2014 WL 4401280, at *10 (S.D.N.Y. Sept. 4, 2014) ("Pro-rata distribution of settlement funds based on investment loss is clearly a reasonable approach) (citation omitted)).

[22] *See City of Livonia Emps'. Ret. Sys. v. Wyeth*, No. 07 Civ. 10329, 2013 WL 4399015, at *3 (S.D.N.Y. Aug. 7, 2013) (collecting cases).

Settlement Administrator has not received any objections to the Revised Plan of Distribution. Straub Decl. ¶ 31. Also, because the Revised Plan of Distribution does not provide preferential treatment to any Settlement Class member or to Plaintiffs, this factor supports final approval of the Settlements.

c) Rule 23(e)(2)(C)(iii) – the Proposed Award of Attorneys' Fees Supports Final Approval

Settlement Class Counsel seek a percentage fee of 30% of the Net Settlement Fund (*i.e.*, after Court-approved litigation expenses are deducted) (representing a lodestar multiplier of 1.04) to compensate them for the services they have rendered on behalf of the Settlement Class, and expense reimbursement of $5,613,578.86, the basis for which is set out in the Exchange-Based Plaintiffs' Counsel's Notice of Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards for Named Plaintiffs, filed contemporaneously herewith (the "Fee and Expenses Application").[23] For purposes of final approval, however, the requested fee is firmly within the range of fees granted from comparable class action settlements[24] and therefore weighs in favor of this Court granting final approval. *See* Fee and Expense Application, Section III.A, filed contemporaneously herewith.

[23] The Notice advised potential Settlement Class members that Settlement Class Counsel may apply for fees up to one-third of the settlement fund from the Settlements. *See* Straub Decl. Ex. A (Notice) at 10.

[24] *See, e.g.*, *In re Linerboard Antitrust Litig.*, No. 98 Civ. 5055, 2004 WL 1221350, at *16, 19 (E.D. Pa. June 2, 2004), *amended* 2004 WL 1240775 (E.D. Pa. June 4, 2004) (awarding 30% fee on $202,572,489 settlement fund, representing 2.66 multiplier); *In re Domestic Drywall Antitrust Litig.*, No. 13 Md. 2437, 2018 WL 3439454, at *20 (E.D. Pa. July 17, 2018) (awarding one-third fee on settlements totaling $190 million, representing 1.66 multiplier); *In re Neurontin Antitrust Litig.*, No. 02 Civ. 1830 (D.N.J. Aug. 6, 2014) (ECF No. 114) [Joint Decl. Ex. Q, Tab 6 (awarding one-third fee on $190,416,438 settlement fund, representing 1.99 multiplier); *In re Relafen Antitrust Litig.*, No. 01-12239 (D. Mass. Apr. 9, 2004) (ECF No. 297) [Joint Decl. Ex. Q, Tab 7] (awarding one-third fee on $175 million settlement, representing 4.88 multiplier); *In re Titanium Dioxide Antitrust Litig.*, No. 10 Civ. 00318, 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (awarding one-third fee from $163.5 million settlement fund, representing 2.39 multiplier); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 748-52 (E.D. Pa. 2013) (granting attorneys' fees of one-third from a $150 million settlement fund, representing 2.99 multiplier).

d) Rule 23(e)(2)(C)(iv) – the Supplemental Agreements Do Not Weigh Against Final Approval

"Rule 23(e)(2)(C)(iv) requires courts to consider 'any agreement required to be identified by Rule 23(e)(3),' that is, 'any agreement made in connection with the proposal.'" *In re GSE Bonds*, 414 F. Supp. 3d at 696 (quoting Fed. R. Civ. P. 23(e)(2)(C)(iv) and 23(e)(3)). The Settling Parties have entered into confidential agreements which establish certain conditions under which the Settling Defendants may terminate their respective Settlements if Settlement Class Members request exclusion (or "opt out") from the Settlements.[25] These types of agreements are standard in complex class action settlements and have no negative impact on the fairness of the Settlements.[26] To date, the Settlement Administrator and the Settling Defendants have mailed over 20,978 Notice Packets and has only received four opt out requests from the proposed Settlements. Straub Decl. ¶¶ 10, 32. Therefore, the Supplemental Agreements do not weigh against final approval.

e) Rule 23(e)(2)(D) – the Proposed Settlements Treat Class Members Equitably to Each Other

As detailed in Section III.A.4(b), *supra*, the Revised Plan of Distribution allocates funds among class members on a *pro rata* basis, which courts have approved as equitable. The proposed Settlements therefore meet the requirements of Rule 23(e)(2)(D).

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[25] *See* Citi Settlement Agreement [ECF No. 2307-4 at ¶ 21(B)], Deutsche Bank Settlement Agreement [ECF No. 2307-5 at ¶ 21(B)], HSBC Settlement Agreement [ECF No. 2307-6 at ¶ 21(B)], JPMorgan/BOA Settlement Agreement [ECF No. 2728-5 at ¶ 21(B)], and SG Settlement Agreement [ECF No. 3023-4 at ¶ 21(B)].

[26] *See, e.g.*, *In re Carrier IQ, Inc., Consumer Privacy Litig.*, No. 12 Md. 2330, 2016 WL 4474366, at *5, 7 (N.D. Cal. Aug. 25, 2016) (observing that such "opt-out deals are not uncommon as they are designed to ensure that an objector cannot try to hijack a settlement in his or her own self-interest," and granting final approval of class action settlement); *accord* MANUAL FOR COMPLEX LITIGATION, Fourth (2004) § 21.631 ("[k]nowledge of the specific number of opt outs that will vitiate a settlement might encourage third parties to solicit class members to opt out."). *See also* Fed. R. Civ. P. 23(e), 2003 Advisory Committee Note, Subdiv. (e).

B. The Court Should Appoint Exchange-Based Plaintiffs' Counsel as Counsel for the Class

Under Rule 23(g), a court that certifies a class must appoint class counsel, who is charged with fairly and adequately representing the interests of the class. Fed. R. Civ. P. 23(g)(1). In determining class counsel, the Court must consider: (1) the work undertaken by counsel in identifying or investigating the potential claims; (2) counsel's experience in handling class actions, other complex litigation, and similar claims; (3) counsel's knowledge of the applicable law; and (4) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A).

Lovell Stewart Halebian Jacobson LLP and Kirby McInerney LLP readily meet these requirements and should be appointed as counsel for the Settlement Class, for the reasons set forth in the prior briefing on this issue. *See* ECF No. 3023-2.

C. Notice To The Class Comported With Rule 23 And Due Process

A notice program must satisfy both Rule 23(c)(2)(B) and Rule 23(e)(1). Rule 23(c)(2)(B) requires the "best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). However, neither individual nor actual notice to every class member is required; instead, "class counsel [need only] act[] reasonably in selecting means likely to inform the persons affected." *Jermyn v. Best Buy Stores, L.P.*, No. 08 Civ. 00214, 2010 WL 5187746, at *3 (S.D.N.Y. Dec. 6, 2010) (citing *Weigner v. The City of New York*, 852 F.2d 646, 649 (2d Cir. 1988)). As for Rule 23(e)(1), it requires that notice of a settlement be "reasonable" – *i.e.*, it must "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceeding." *Wal-Mart*, 396 F.3d at 114 (internal citation and quotation omitted). Accordingly, courts in this circuit have held that notice plans are adequate when they combine first-class mail, reasonably calculated to reach nearly all

class members, with extensive publication notice. *See, e.g.*, *id.* at 104. The contents of a notice are adequate when they explain the general terms of the settlement and the proposed attorneys' fees, along with the date, time, and place of the fairness hearing, in a way that may be '"understood by the average class member."' *Id.* at 114. At preliminary approval, the Court approved and ordered a direct mail and robust print and media Notice Program to notify Class Members of the proposed Settlements. The Settlement Administrator carried out the notice plan as ordered. *See* Straub Decl. ¶¶ 3-30. As explained below, the approved notice program satisfies both of these requirements and should be finally approved.

1. Notice Was the Best Practicable Under the Circumstances

As described above, notice was provided to potential members of the Settlement Classes in three ways: direct Mail Notice, Summary Notice and Internet Notice. Courts routinely approve notice programs that combine multiple means of notice, such as this one.[27] The Court should similarly find the Notice here adequate.

2. The Notice Program "Fairly Appraised" Potential Settlement Class Members of the Settlements and their Options Thereunder

The contents of a class action settlement notice must (1) "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings" and (2) be written as to "be understood by the average class member." *Wal-Mart*, 396 F.3d at 114 (citations omitted). "There are no rigid rules to

[27] *See LIBOR*, 327 F.R.D. at 492 (granting final approval of, *inter alia*, notice comprised of long-form notices, publication notices, dedicated settlement website and toll-free telephone number in OTC plaintiffs' settlements); ECF Nos. 2579 (order approving notice program comprised of long form notice, publication notice in OTC plaintiffs' settlements), 2777 (granting final approval of, *inter alia*, notice in Lender Class plaintiffs' settlements); *see also In re Vitamin C Antitrust Litig.*, No. 06 Md. 1738, 2012 WL 5289514, at *8 (E.D.N.Y. Oct. 23, 2012) (approving notice disseminated "widely, through the internet, print publications, and targeted mailings"); *In re Credit Default Swaps*, 2016 WL 2731524, at *5 (approving program involving "mailed notice packets," publication of notice "in several important business publications," and "a website for the Settlement which posted the Settlement agreements, notices, court documents, and other information relevant to the Settlement.").

determine whether a settlement notice satisfies constitutional or Rule 23(e) requirements[.]" *In re Vitamin C*, 2012 WL 5289514, at *8 (quotation omitted). Some courts consider (a) "whether there has been a succinct description of the substance of the action and the parties' positions"; (b) "whether the parties, class counsel, and class representatives have been identified"; (c) "whether the relief sought has been indicated"; (d) "whether the risks of being a class member, including the risk of being bound by the judgment have been explained"; (e) "whether the procedures and deadlines for opting out have been clearly explained"; and (f) "whether class members have been informed of their right to appear in the action through counsel." *Id*. (citation omitted).

The Notice Program previously approved by the Court here complied with these directives in all respects, Straub Decl. ¶¶ 3-30, Exs. A-L, and their contents "provided sufficient information for Class Members to understand the settlement and their options." *Sykes v. Harris*, No. 09 Civ 8466, 2016 WL 3030156, at *10 (S.D.N.Y. May 24, 2016).

Here, both the long form Notice's substance and method of dissemination to potential members of the Settlement Class assure conveyance of the information required by Rule 23(c)(2)(B), including a plain language explanation of (a) the nature of the case, the claims and defenses, the class definitions, the background of the Settlements, and how the settlement funds will be allocated upon final approval; (b) the right to opt out of the Settlements, to object to the Settlements, and to appear at the Fairness Hearing − and the processes and deadlines for doing so; and (c) the binding effect of judgment on those who do not exclude themselves from the Settlements. *See* Straub Decl., Ex. A (Notice).

Further, the long form Notice contains other information, such as Settlement Class Counsel's intent to request attorneys' fees, expense reimbursement, and service awards. The long form Notice also prominently features contact information for the Settlement Administrator and

Settlement Counsel, which Class Members can utilize to obtain further information, if desired. The long form Notice also provides recipients with information on how to submit a Claim Form in order to be potentially eligible to receive a distribution from the settlement funds. Straub Decl. ¶¶ 25-27.

Finally, the Settlement Website and a toll-free information line provided means by which potential members of the Settlement Classes could get more information regarding the Settlements, including key dates, access to important case documents, answers to their questions, and a Claim Form and an electronic filing template. *See* Straub Decl. ¶¶ 25-27, 29.

Thus, the Notice procedures satisfy Rule 23 and due process.

D. The Reaction Of The Class Favors Approval

"'It is well settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy. In fact, the lack of objections may well evidence the fairness of the Settlement.'" *In re Payment Card Interchange Fee*, 2019 WL 6875472, at *16 (quoting *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 333 (E.D.N.Y. 2010)). Although the deadline to file an objection or request for exclusion is August 27, 2020 objection and opt-out deadline, the initial reaction to the Settlements favors final approval. *Wal-Mart*, 396 F.3d at 118 ("'If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.'"). To date, no objections have been filed, and 4 exclusion requests have been received.[28] *See* Straub Decl., ¶¶ 31-32. The Settlement Administrator will submit an updated report following the August 27, 2020 objection and opt-out

[28] The Settlement Administrator mailed deficiency letters to those entities requesting exclusions that did not provide the required information stated in the Notice for a valid Request for Exclusion. The Settlement Administrator will submit a supplemental declaration after the August 27, 2020 exclusion and objection deadline that will address any objections received, additional requests for exclusion received, or updates on exclusions received in response to the deficiency letters. *See* Straub Decl. ¶¶ 32-35. Additionally, after the August 27, 2020 exclusion deadline has expired, Plaintiffs will submit to the Court a list of potential Settlement Class Members who have requested exclusion.

deadline (*id.* at ¶ 35), and Exchange-Based Plaintiffs will address any objections in their September 10, 2020 reply brief.

E. The Proposed Settlement Classes Should Be Finally Certified

In accordance with the Settlement Agreements, Exchange-Based Plaintiffs respectfully request that the Court certify the Settlement Classes for settlement purposes only.[29] Certification of a settlement class is proper where the proposed settlement class satisfies the four requirements of Rule 23(a) and at least one subsection of Rule 23(b). *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). "'Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems' precluding findings of predominance under Rule 23(b)(3)." *LIBOR*, 327 F.R.D. 489 (quoting *Amchem Prods.*, 521 U.S. at 620). For the reasons set forth in Exchange-Based Plaintiffs' prior motions for preliminary approval of the Settlement Classes (ECF Nos. 2307-1, 2728-1, 3023-1), and the Court's Order granting preliminary approval of the Settlements (*LIBOR*, 2020 WL 1059489), the proposed Settlement Classes satisfy the requirements for certification and should be finally certified.

IV. CONCLUSION

For the foregoing reasons, the Exchange-Based Plaintiffs respectfully request that the Court grant final approval to the Settlements, certify the Settlement Classes, grant final approval to the Revised Plan of Distribution, find that notice to the Settlement Classes comports with due process, and appoint Lovell Stewart Halebian Jacobson LLP and Kirby McInerney LLP as Settlement Class Counsel.

[29] The Settling Defendants consent to certification of the Settlement Classes solely for the purposes of the Settlements and without prejudice to any position any of the Settling Defendants may take with respect to class certification in any other action and reserve all rights should their respective Settlement not receive this Court's final approval.

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