

**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.,

No. 11 Civ. 2613

Plaintiffs,

v.

CREDIT SUISSE GROUP AG, et al.

Defendants.

**JOINT DECLARATION OF DAVID E. KOVEL AND CHRISTOPHER LOVELL IN  
SUPPORT OF (A) 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 (B) EXCHANGE-BASED  
PLAINTIFFS' COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES,  
REIMBURSEMENT OF LITIGATION EXPENSES, AND  
SERVICE AWARDS FOR NAMED PLAINTIFFS**

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 2

II. SUMMARY OF CLAIMS AND THE PROCEDURAL HISTORY OF THE LITIGATION..... 5

III. DISCOVERY EFFORTS OF PLAINTIFFS’ COUNSEL ..... 17

    A. Discovery From Defendants and Third Parties..... 17

    B. Plaintiffs’ Responsive Discovery Efforts..... 19

IV. THE SETTLEMENT NEGOTIATIONS ..... 20

    A. Settlement Negotiations with Barclays and Procedural History..... 21

    B. Settlement Negotiations with Citi..... 23

    C. Settlement Negotiations with Deutsche Bank..... 24

    D. Settlement Negotiations with HSBC ..... 25

    E. Settlement Negotiations with JPMorgan/BOA..... 25

    F. Settlement Negotiations with SG..... 26

V. EXECUTING THE COURT’S PRELIMINARY APPROVAL ORDER RELATING TO CLASS NOTICE ..... 28

VI. THE REVISED PLAN OF DISTRIBUTION ..... 29

VII. PLAINTIFFS’ COUNSEL’S APPLICATION FOR AN AWARD OF ATTORNEYS’ FEES AND REIMBURSEMENT OF EXPENSES, AND REQUEST FOR SERVICE AWARDS FOR NAMED PLAINTIFFS ..... 31

    A. Plaintiffs’ Counsel’s Fee Request..... 31

    B. Plaintiffs’ Counsel’s Litigation Expenses..... 36

    C. Service Award Request for the Exchange-Based Plaintiffs..... 37

VIII. ADDITIONAL EXHIBITS ..... 38

IX. CONCLUSION..... 38

**TABLE OF DEFINED TERMS**

The following defined terms are used in this Joint Declaration:

<b>Parties</b>	
<b>Term</b>	<b>Definition</b>
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 Nathaniel 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.

<b>Settlement Agreements</b>	
<b>Term</b>	<b>Definition</b>
Barclays Settlement Agreement	Settlement Agreement with Barclays, <i>In re LIBOR-Based Fin. Instruments Antitrust Litig.</i> , No. 11 Md. 2262, (Oct. 7, 2014) [ECF No. 680-3] and Barclays Amendment to Settlement Agreement, <i>In re LIBOR-Based Fin. Instruments Antitrust Litig.</i> , No. 11 Md. 2262 (Sept. 15, 2017) [ECF. 2307-3].
Citi Settlement Agreement	Settlement Agreement with Citi, <i>In re LIBOR-Based Fin. Instruments Antitrust Litig.</i> , No. 11 Md. 2262 (July 27, 2017) [ECF. 2307-4].
Deutsche Bank Settlement	Settlement Agreement with Deutsche Bank, <i>In re LIBOR-Based Fin. Instruments Antitrust Litig.</i> , No. 11 Md. 2262 (July 13, 2017) [ECF.

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

<b>Settlement Classes</b>	
<b>Term</b>	<b>Definition</b>
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.

<b>Settlement Classes</b>	
<b>Term</b>	<b>Definition</b>
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.

<b>Settlement Terminology</b>	
<b>Term</b>	<b>Definition</b>
Citibank, N.A.	Escrow agent for the BOA, Barclays, HSBC, Deutsche Bank, JPMorgan, and SG settlements.
Claim Form	The Proof of Claim and Release for the Exchange-Based Plaintiffs'

<b>Settlement Terminology</b>	
<b>Term</b>	<b>Definition</b>
	Settlements with Bank of America, Barclays, Citi, Deutsche Bank, HSBC, JPMorgan, and Société Générale, <i>In re LIBOR-Based Fin. Instruments Antitrust Litig.</i> , 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 <i>PR Newswire</i> 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, <i>In re LIBOR-Based Fin. Instruments Antitrust Litig.</i> , 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, <i>In re LIBOR-Based Fin. Instruments Antitrust Litig.</i> , 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, <i>In re LIBOR-Based Fin. Instruments Antitrust Litig.</i> , 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, <i>In re LIBOR-Based Fin. Instruments Antitrust Litig.</i> , 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 pay \$33.4 million; Deutsche Bank has agreed to pay \$80 million; HSBC

<b>Settlement Terminology</b>	
<b>Term</b>	<b>Definition</b>
	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, <i>In re LIBOR-Based Fin. Instruments Antitrust Litig.</i> , No. 11 Md. 2262 (January 23, 2020) [ECF. 3025-4].

<b>Declarations</b>	
<b>Term</b>	<b>Definition</b>
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.

<b>Other Defined Terms</b>	
<b>Term</b>	<b>Definition</b>
2018 Advisory Note	Fed. R. Civ. P. 23(e), Adv. Comm. Notes to 2018 Amendments.
Action	The action captioned <i>In re LIBOR-Based Fin. Instruments Antitrust Litig.</i> , 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, <i>In re LIBOR-Based Fin. Instruments Antitrust Litig.</i> , No. 11 Md. 2262 [ECF. 2363].
Partial OTC LIBOR Settlement	The OTC Barclays Settlement Agreement, <i>In re LIBOR-Based Fin. Instruments Antitrust Litig.</i> , No. 11 Md. 2262 (November 11, 2015) [ECF. 1338-1] and OTC Citi Settlement Agreement, <i>In re LIBOR-Based Fin. Instruments Antitrust Litig.</i> , 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.



Pursuant to 28 U.S.C. §1746, we, David E. Kovel and Christopher Lovell, declare:

1. We are, respectively, partners of the law firms of Kirby McInerney LLP (“Kirby”) and Lovell Stewart Halebian Jacobson LLP (“Lovell,” and together with Kirby, “Settlement Class Counsel” or “Interim Co-Lead Counsel”). The Court appointed Kirby and Lovell as interim co-lead counsel for the Exchange-Based Plaintiffs (“Plaintiffs”) and the putative class in the above-captioned action (the “Action”). *See generally In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (NRB), 2011 WL 5980198 (S.D.N.Y. Nov. 29, 2011) [ECF No. 66]; *see also* Pre-Trial Order No. 1 [ECF No. 90] at ¶ 18.<sup>1</sup> The Exchange-Based Plaintiffs represent a proposed Settlement Class of those persons who transacted in Eurodollar Futures and options on Eurodollar Futures (“Eurodollar Futures” or “EDFs”). By Order dated March 2, 2020, the Court appointed Kirby and Lovell as Settlement Class Counsel for the proposed Settlement Classes. *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262, 2020 WL 1059489 (S.D.N.Y. Mar. 2, 2020) [ECF No. 3038] (the “Preliminary Approval Order”). We have significant experience litigating antitrust and commodity futures class actions, including settlements thereof, have been actively involved in prosecuting this Action since its inception, are familiar with its proceedings, and have personal knowledge of matters set forth herein.

2. We respectfully submit this Declaration in support of the motions by Exchange-Based Plaintiffs for final approval of the Settlements with Defendants Barclays, BOA, Citi, Deutsche Bank, HSBC, JPMorgan, and SG (the “Exchange-Based Settlements” or “Settlements”), certification of the Settlement Classes, approval of the Revised Plan of Distribution for allocating the proceeds of the Settlements to eligible Class Members (the “Revised Plan of Distribution”),

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed in the “Table of Defined Terms.” All references to “ECF No.” herein refer to documents in the docket of the MDL Action, No. 11-MD-2262 (NRB) unless otherwise specified.



and an award of attorneys' fees and payments of litigation expenses and service awards for the named plaintiffs (the "Fee and Expense Application").

3. This Declaration is submitted in support of the Settlements and we believe is inadmissible in any subsequent proceedings, other than in connection with the approval of the Settlements. If the Settlements are not approved by the Court, we believe that this Declaration and the statements contained herein are without prejudice to the Exchange-Based Plaintiffs' position on the merits of the Exchange-Based Action.

## I. INTRODUCTION

4. The aggregate Settlements provide for a total of \$187,000,000 in cash payments (the "Settlement Fund"). If approved, the Settlements would resolve all claims asserted in the Action against the Settling Defendants.<sup>2</sup> The settlement amounts agreed to by Settling Defendants are set forth in the following table:

<b>Table 1: Settlement Amount by Defendant</b>	
<b>Defendant</b>	<b>Settlement Amount</b>
BOA	\$15,000,000
Barclays	\$19,975,000
Citi	\$33,400,000
Deutsche Bank	\$80,000,000
HSBC	\$18,500,000
JPMorgan	\$15,000,000
SG	\$5,125,000
<b>Total</b>	<b>\$187,000,000</b>

5. The respective settlement amounts paid by Settling Defendants are non-reversionary; if the Court grants final approval of the Settlements and the Settlements otherwise become effective and final as defined in the Settlements, no money will be returned to Settling Defendants regardless of how many settlement class members submit proofs of claim or are

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<sup>2</sup> "Settling Defendants" collectively refers to BOA, Barclays, Citi, Deutsche Bank, HSBC, JPMorgan, and SG.

entitled to payment. Further, the Settlements provide an immediate cash benefit to the Settlement Classes while avoiding the substantial risk, expense, and delay of seeking to take this Action to trial against Settling Defendants and seeking to obtain a litigated class. These risks include that the Settlement Classes would recover less than the amount of the Settlement Fund at trial, or nothing at all, after additional years of litigation. We respectfully submit that the fact that Exchange-Based Plaintiffs achieved these results in spite of the significant legal risks to the Exchange-Based Plaintiffs that repeatedly manifested throughout the litigation underscores the reasonableness of the settlements.

6. In addition, the Settlements provided non-monetary consideration. The Settlement Agreements for Barclays, Citi, Deutsche Bank, and also HSBC (against which the claims had been dismissed at the time of the Settlements) all specified cooperation from these defendants in the continuing prosecution of Plaintiffs' claims against the (then) remaining defendants. Similarly, the Settlement Agreements included non-monetary cooperation that required Settling Defendants to provide, to the extent that the information was reasonably available to them, the names and addresses of their affiliates' customers who traded Eurodollar futures or options on Eurodollar futures on the CME. This information increased the likelihood that members of the Settlement Classes received notice of the Settlements.

7. Settlement Class Counsel believe that the Settlements are procedurally and substantively fair and respectfully recommend the Court's approval. We personally conducted the extensive settlement negotiations on behalf of Plaintiffs with each of the counsel for Settling Defendants. Plaintiffs and Settlement Class Counsel had a thorough understanding of the strengths and weaknesses of the claims asserted in the Action at the time they reached each of the Settlements. There was no collusion or preference among counsel for the parties to the Settlements

at any time during the settlement negotiations. Instead, the Settlements were reached only after extensive, hard-fought, arm's-length negotiations that were undertaken in good faith by experienced legal counsel for the parties. We believe the Settlements confer a substantial immediate benefit to the Settlement Classes and are eminently fair, reasonable, and adequate given the legal hurdles and risks involved in proving liability and damages.

8. The Revised Plan of Distribution, which was enclosed with the Notice and is available for download and review at the Settlement website, provides that a Class Member who submits an acceptable Proof of Claim will receive his, her, or its *pro rata* share of the "Net Settlement Fund," *i.e.*, the Settlement Fund less specific court-approved fees and expenses. 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. *See* Section VI, *infra*.

9. Although the deadline to file requests for exclusions and objections is not until August 27, 2020, the initial reaction of the Settlement Class to the Settlements is favorable. Significantly, following the distribution of over 20,000 Notices to potential Settlement Class Members, no objections have been filed to date to any aspect of the Settlements, the Revised Plan of Distribution, Settlement Class Counsel's fee request, or request for service awards. *See* Sections V-VII, *infra*. Additionally, to date, there have been 4 exclusion requests received but none of them have yet provided proof of membership in the Settlement Class. The deadline for Settlement Class Members to file objections and requests for exclusions from the Settlements is August 27, 2020. *Id.*

10. Since the inception of this litigation, Settlement Class Counsel (together with additional Plaintiffs' Counsel)<sup>3</sup> have committed a substantial amount of time and resources to this Action and have prosecuted this case on a wholly contingent basis and by doing so, assumed the risk of an unfavorable result. *See* Section VII, *infra*. The work performed by Settlement Class Counsel and additional Plaintiffs' Counsel is described herein as well as in individual declarations submitted by each firm. *See* Section VII, *infra*; Exs. B-O. For the reasons set forth in these Declarations and the accompanying memorandum of law, we respectfully request that the Court award attorneys' fees (*see* Section VII.A, *infra*), reimburse litigation expenses (*see* Section VII.B, *infra*), and grant service awards to each of the named plaintiffs (*see* Section VII.C, *infra*).

## II. SUMMARY OF CLAIMS AND THE PROCEDURAL HISTORY OF THE LITIGATION

11. On April 15, 2011, an Exchange-Based Plaintiff, FTC Capital GmbH, and its associated entities, represented by Kirby, as well as its co-counsel Motley Rice LLC and Sturman LLC, filed the first complaint in what became the consolidated LIBOR actions. The complaint alleged that Defendants and others manipulated the price of U.S. Dollar LIBOR ("LIBOR") and Eurodollar futures in violation of Section 9(a) of the CEA, 7 U.S.C. §13(a), agreed to fix and suppress LIBOR in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. §1 ("Sherman Act"), and were unjustly enriched by such manipulation and agreement in violation of the common law. *See* Class Action Complaint, *FTC Capital GmbH et al. v. Credit Suisse Group AG et al.*, No. 11 Civ. 2613 (S.D.N.Y. Apr. 15, 2011) [ECF No. 1].

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<sup>3</sup> For purposes of the Fee and Expense Application, "Plaintiffs' Counsel" refers to Settlement Class Counsel and additional plaintiffs' counsel that contributed to the prosecution and resolution of the Action.

12. On November 29, 2011, the Court consolidated all LIBOR-related class action complaints pending before the Court. ECF No. 66. The Court appointed Kirby and Lovell as Interim Co-Lead Counsel for the Exchange-Based Plaintiffs. *Id.*

13. On December 22, 2011, this Court entered Pretrial Order No. 1. ECF No. 90. Among other things, this Order invested Interim Co-Lead Counsel with both the responsibility and the authority to “negotiate with defense counsel with respect to settlement and other matters,” “[t]o request that the Court approve settlements, if any, and fee awards,” and “[t]o perform such other duties and to undertake such other responsibilities as [Interim Co-Lead Counsel] deem[s] necessary or desirable in the prosecution of this litigation.” *Id.* at ¶ 18. In addition, Interim Co-Lead Counsel were invested with being “solely responsible for coordinating and organizing plaintiffs in the conduct of the Exchange-Based Plaintiff Action.” *Id.*

14. On April 30, 2012, Plaintiffs filed their Amended Consolidated Class Action Complaint. ECF No. 134. It alleged that Defendants and others manipulated the LIBOR rate and the price of Eurodollar futures and options contracts in violation of Section 9(a) of the CEA, were liable for the manipulative acts of agents, representatives and/or other persons acting for Defendants under Section 2(a)(1) of the CEA, 7 U.S.C. §2(a)(1), aided and abetted violations of Section 9(a) of the CEA, agreed to fix and suppress LIBOR in violation of the Sherman Act, and were unjustly enriched.

15. On March 29, 2013, after extensive motion practice by Plaintiffs and Defendants, the Court issued a 161-page Memorandum and Order. *In re LIBOR-Based Fin. Instruments Antitrust Litig.* (“*LIBOR I*”), 935 F. Supp. 2d 666 (S.D.N.Y. 2013) [ECF No. 286]. Therein, the Court, among other things: (1) granted Defendants’ motion to dismiss Plaintiffs’ federal antitrust claim and unjust enrichment claim; (2) granted Defendants’ motion to dismiss with respect to

Plaintiffs' commodity manipulation claims based on Eurodollar futures and options contracts purchased during Period 1 (August 9, 2007 to May 29, 2008); (3) denied Defendants' motion to dismiss with respect to Plaintiffs' commodity manipulation claims based on Eurodollar futures and options contracts purchased during Period 2 (May 30, 2008 to April 14, 2009) and Period 3 (April 15, 2009 to May 2010); and (4) allowed Plaintiffs to move to amend their complaint to include allegations based on information derived from Barclays' settlements (made on and after June 27, 2012) with government agencies. *See generally LIBOR I.*

16. Among many other things, Exchange-Based Plaintiffs initiated, developed, and drafted allegations that included econometric analyses showing the suppression of LIBOR relative to the Federal Reserve Deposit Rate ("FRED") and that Defendants' conduct caused such suppression. *LIBOR I* found that such allegations were plausible. *See LIBOR I*, 935 F. Supp. 2d at 716. Further, Settlement Class Counsel successfully developed and pleaded market and conduct allegations sufficient to sustain all the elements of a Commodity Exchange Act ("CEA") claim for manipulation of the price of Eurodollar futures contracts, together with secondary claims of aiding and abetting and vicarious liability. *Id.* at 715 (ability to manipulate through false quotes submitted to BBA); *id.* (manipulative intent in standing to gain from concrete benefits of manipulation; actionable conduct from Barclays LIBOR submissions at levels requested from swaps traders to benefit their derivatives positions); *id.* at 716 (connection between artificially high LIBOR and artificial Eurodollar futures contract prices; defendants' trading caused the artificiality); *id.* at 722 (vicarious liability of defendants' employees who contributed to the manipulation by conduct within the scope of their employment); *id.* at 722-23 (aiding and abetting; defendants' shared common interest in Eurodollar futures prices being manipulated).

17. On August 23, 2013, after further extensive motion practice by Plaintiffs and Defendants, the Court issued a 65-page Memorandum and Order. Therein, the Court, among other things: (1) denied Plaintiffs' motion to add allegations with respect to antitrust and trader-based manipulation; (2) denied Defendants Bank of Tokyo-Mitsubishi UFJ, Ltd., Credit Suisse Group AG, and Norinchukin Bank's motion for reconsideration without prejudice; and (3) allowed Plaintiffs to file a second amended complaint in conformity with that Memorandum and Order, which included allowing Plaintiffs leave to name SG as a defendant. *See generally In re LIBOR-Based Fin. Instruments Antitrust Litig.* (“LIBOR IP”), 962 F. Supp. 2d 606 (S.D.N.Y. 2013) [ECF No. 389].

18. On September 10, 2013, Plaintiffs filed the Second Amended Consolidated Class Action Complaint, ECF No. 407, and as corrected ECF No. 438 (“CSAC”). Notably, Plaintiffs' CSAC materially expanded the scope of the existing claims in the MDL to allege LIBOR manipulation pre-dating August 2007 and trader-based manipulation based on evidence obtained from government settlements. Exchange-Based Plaintiffs continue to be the only putative class representatives to actively pursue such claims in the MDL. We believe that Plaintiffs' “Period 0” trader-based manipulation theory of liability materially enhanced claims against Defendants.

19. On October 7, 2013, after still further extensive motion practice by Defendants and Plaintiffs, the Court issued a Memorandum and Order. Therein, the Court: (1) granted Defendants' request for leave to file their renewed motion to dismiss Plaintiffs' Period 2 CEA Claims; and (2) stayed a decision on the permissible content of the CSAC until resolution of other then-pending motions. *See In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (NRB), 2013 WL 5570424 (S.D.N.Y. Oct. 7, 2013) [ECF No. 452].



20. On June 23, 2014, after even more substantial motion practice by Plaintiffs and Defendants, the Court issued an 80-page Memorandum and Order. *See generally In re LIBOR-Based Fin. Instruments Antitrust Litig.* (“*LIBOR IIP*”), No. 11 Md. 2262 (NRB), 27 F. Supp. 3d 447 (S.D.N.Y. 2014) [ECF No. 568]. Therein, the Court: (1) denied Plaintiffs’ motion for reconsideration of the Court’s August 23, 2013 Order; (2) granted Plaintiffs’ motion for leave to amend their complaint to add certain allegations of day-to-day, trader-based manipulation; (3) denied Defendants’ motion for reconsideration of the Court’s holding that Plaintiffs had adequately pled scienter in connection with their CEA claims; and (4) granted Defendants’ motion to dismiss Plaintiffs’ commodity manipulation claims based on Eurodollar futures and options contracts purchased during Period 2 (May 30, 2008 to April 14, 2009). *Id.* Notably, the Court sustained certain of Plaintiffs’ trader-based manipulation claims against Defendants Barclays and Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. (“Rabobank”). However, the Court also dismissed Plaintiffs’ CEA claims against SG as untimely and applied its prior rulings to dismiss Plaintiffs’ antitrust and unjust enrichment claims against SG. *LIBOR III*, 27 F. Supp. 3d at 485.

21. On August 5, 2014, David E. Kovel (Kirby) for the Exchange-Based Plaintiffs together with William Carmody (Susman Godfrey) for the OTC Plaintiffs agreed to serve as Co-Liaison Counsel on behalf of the Class Plaintiffs to facilitate coordination across the Class Plaintiffs and before the Court. *See* ECF No. 574. In this coordinating capacity, both before and after this formal appointment, Class Counsel also coordinated and worked extensively on the various appeals stemming from the Court’s decisions.

22. On May 27, 2015, Plaintiffs respectfully requested that the Court reconsider its *LIBOR I* and *LIBOR III* decisions based on the Second Circuit’s summary order in *BPP III, LLC v. Royal Bank of Scotland Grp. PLC* (“*BPP IIP*”), 603 F. App’x 57 (2d Cir. 2015) as it related to

the timeliness of portions of Plaintiffs' CEA claims. *See* ECF No. 1142. On September 30, 2015, Plaintiffs renewed their request for reconsideration and in the alternative sought interlocutory review of the Court's *In re LIBOR-Based Fin. Instruments Antitrust Litig.* ("LIBOR IV"), No. 11 Md. 2262 (NRB), 2015 WL 6243526 (S.D.N.Y. Oct. 2, 2015) [ECF No. 1164] [as amended] statute of limitations analysis as it related to the CEA claims. *See* ECF No. 1214. On October 29, 2015, the Court denied Plaintiffs' request for reconsideration of *LIBOR I* and *LIBOR III* and in the alternative for interlocutory review. ECF No. 1229.

23. On January 16, 2015, certain Defendants moved to dismiss Plaintiffs' CEA suppression claims for lack of personal jurisdiction. *See* ECF No. 966.

24. On June 29, 2015, Plaintiffs submitted a letter motion requesting leave to file Plaintiffs' [Proposed] Third Amended Complaint ("PTAC"). ECF No. 1159. In this complaint, Plaintiffs relied heavily on cooperation material provided pursuant to the "icebreaker" Barclays Settlement to develop allegations against new Defendants and strengthen existing allegations.

25. On November 3, 2015, after further extensive motion practice by Defendants and Plaintiffs, the Court issued a 67-page Memorandum and Opinion that, among other things, granted in part and denied in part Defendants' motion to dismiss for lack of personal jurisdiction. Specifically, the Court granted certain foreign defendants' motion to dismiss on jurisdictional grounds. *See 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].

26. On January 29, 2016, Rabobank filed a pre-motion letter concerning a proposed motion to strike Plaintiffs' class action allegations insofar as they related to trader-based manipulation claims. ECF No. 1308. On May 13, 2016, after further extensive motion practice by Rabobank and Plaintiffs, the Court issued a Memorandum and Order that, among other things,

denied Rabobank's request to file a motion to strike class allegations from Plaintiffs' complaint. *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 MDL 2262 (NRB), 2016 WL 2851333, at \*2 (S.D.N.Y. May 13, 2016) [ECF No. 1408].

27. On April 15, 2016, the Court issued a Memorandum and Order granting Plaintiffs leave to file the PTAC within the confines of the Order. *See In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (NRB), 2016 WL 1558504, at \*8-11 (S.D.N.Y. Apr. 15, 2016) [ECF No. 1380]. In particular, the Court sustained trader-based manipulation allegations against Deutsche Bank. *Id.* at \*10. Also, in this opinion, the Court articulated class standing requirements for episodic trader-based manipulation claims against specific Defendants. *Id.* at \*8.

28. On May 23, 2016, the Second Circuit vacated the Court's ruling in *LIBOR I*, reinstated Exchange-Based Plaintiffs' antitrust claim, and remanded the case for further proceedings. *See Gelboim v. Bank of Am. Corp.*, 823 F.3d 759 (2d Cir. 2016). Subsequently, all remaining Defendants, including SG, sought to dismiss Exchange-Based Plaintiffs' antitrust claim on antitrust standing grounds, and certain Defendants, including SG, sought to dismiss Exchange-Based Plaintiffs' antitrust claims on personal jurisdiction grounds.

29. On June 17, 2016, the Court issued an Order denying a stay of class action discovery because of the pendency of the anticipated motions to dismiss. ECF No. 1461. Plaintiffs subsequently engaged in extensive review of discovery materials previously produced to government regulators by Defendants. *See* Section III, *infra*.

30. On December 2, 2016, C2 Capital Management, LLC ("C2C"), represented by Settlement Class Counsel, sought leave to intervene as of right or, in the alternative, through permissive intervention, as an additional named Exchange-Based Plaintiff. ECF No. 1659. In accord with the Court's April 15, 2016 Order, C2C's intervention as an additional named plaintiff

would benefit the class by ensuring an additional class representative whose trades covered substantial portions of the class period. *Id.*

31. On December 20, 2016, the Court granted in part Defendants' motion to dismiss the antitrust claims for lack of antitrust standing and granted certain Defendants' motion to dismiss the antitrust claims with respect to personal jurisdiction. *See 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 particular, Plaintiffs' antitrust claims against SG were dismissed pursuant to this order.

32. On January 13, 2017, Plaintiffs sought leave to file a [Proposed] Fourth Amended Complaint in light of the Second Circuit's *Gelboim* decision and this Court's ruling in *LIBOR VI*. ECF No. 1726. On April 20, 2017, after further motion practice, the Court issued a Memorandum and Order granting Plaintiffs' request for leave to file their proposed Fourth Amended Complaint within the confines of the Order, while denying the request of C2C for leave to intervene, as well as Plaintiffs' motion for reconsideration of *LIBOR VI*. ECF No. 1859. In accordance with the April 20, 2017 Order, Plaintiffs filed their Fourth Amended Complaint on September 29, 2017 which conformed to the Court's prior rulings and supplemented Plaintiffs' efficient enforcer analysis. ECF Nos. 2292, 2294.

33. On March 24, 2017, Plaintiffs asked the Court for leave to file a motion pursuant to Rule 54(b) to certify as a partial final judgment the Court's orders in Exchange-Based Plaintiffs' case dismissing Plaintiffs' persistent suppression claims on personal jurisdiction grounds against certain foreign Defendants based on claims arising under the CEA and antitrust law.<sup>4</sup> ECF No.

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<sup>4</sup> *See LIBOR V*, 2015 WL 6696407, at \*19-20 (dismissing persistent suppression CEA claims against certain Foreign Defendants on personal jurisdiction grounds); *LIBOR VI*, 2016 WL 7378980, at \*2-13, (dismissing Foreign Defendants on personal jurisdiction grounds on remand of antitrust claims).

1828. In an Order dated May 3, 2017, the Court suggested that Plaintiffs submit a proposed Rule 54(b) order. ECF No. 1896.

34. On May 2, 2017, Plaintiffs submitted their motion to certify this action as a class action for their antitrust and CEA claims against the remaining non-settling defendants. ECF Nos. 1885, 1890-91. After filing such motion, Settlement Class Counsel were able to conclude or continued to negotiate settlements with five Defendants. On July 6, 2017, Plaintiffs reached a settlement with HSBC for \$18,500,000. On July 13, 2017, Plaintiffs reached a settlement with Deutsche Bank for \$80,000,000. On July 27, 2017, Plaintiffs reached a settlement with Citi for \$33,400,000.

35. Following this Court's judgment dismissing the 2011 Schwab Plaintiffs action in its entirety, filed on April 27, 2017 [ECF No. 1877], Plaintiffs submitted a proposed Rule 54(b) order on May 16, 2017. ECF No. 1922.

36. In an Order dated June 8, 2017, the Court advised those plaintiffs who had previously sought an order entering partial final judgment of *LIBOR VI*, and who were identified in the appendix to the June 8, 2017 Order, to revise their proposed orders to parallel the wording of the OTC Plaintiffs' order. ECF No. 1962.

37. On June 19, 2017, Plaintiffs submitted a revised proposed amended Rule 54(b) order. ECF No. 1986.

38. On June 26, 2017, the Court entered an Order for Entry of Partial Final Judgment dismissing Plaintiffs' antitrust claims against the foreign bank defendants that were dismissed on personal jurisdiction grounds for the reasons given in *LIBOR VI*. ECF No. 1989. The appeal of *LIBOR VI*'s personal jurisdiction ruling, as it pertains to Exchange-Based Plaintiffs and various other plaintiffs in the MDL, is currently pending before the Second Circuit following oral argument

on May 24, 2019. *See In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 17-1569 (2d Cir.). On January 14, 2020, Exchange-Based Plaintiffs' Counsel filed a Motion for (1) Partial Severance of Appeal, (2) Stay of the Severed Appeal, and (3) Limited Remand thereof for the District Court to Consider Settlement Approval Under Fed. R. Civ. P. 23(E) with respect only to SG in the Second Circuit Court of Appeals. *See* ECF No. 433 in Case No. 17-2056; Master Docket No. 17-1569. On January 17, 2020, the Second Circuit granted Exchange-Based Plaintiffs' motion. ECF No. 3022.

39. On August 4, 2017, Plaintiffs submitted their reply papers in further support of class certification. *See* ECF Nos. 2173-76, 2187-89, 2192 (as corrected 2199). As detailed herein, *see* Section IV, *infra*, Settlement Class Counsel continued to negotiate settlements with Defendants. Thereafter, on January 17, 2018, Exchange-Based Plaintiffs reached binding agreements in principle regarding class wide settlements with BOA and JPMorgan and disclosed those settlements to the Court. On the following day, the Court held oral argument on the class certification motion.

40. On February 28, 2018, the Court issued a Memorandum and Order denying Plaintiffs' motion for class certification ("the February 28, 2018 Order"). *See 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].

41. On March 16, 2018, Plaintiffs filed a Fed. R. Civ. P. 23(f) petition for permission to appeal the February 28, 2018 Order ("the March 16, 2018 Petition") with the Second Circuit. Motion for Leave to Appeal, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 18-728 (2d Cir. Mar. 16, 2018) [ECF No. 1]. On March 26, 2018, Defendants UBS AG and Rabobank filed

an answer to the March 16, 2018 Petition. Opp. to Motion for Leave to Appeal, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 18-728 (2d Cir. Mar. 26, 2018), ECF Nos. 20-21.

42. On April 2, 2018, Plaintiffs filed their reply in support of the March 16, 2018 Petition. Reply Br., *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 18-728 (2d Cir. Apr. 2, 2018) [ECF No. 56].

43. On November 6, 2018, following oral argument in the Second Circuit in support of Plaintiffs' March 16, 2018 Petition, the Second Circuit denied Plaintiffs' Rule 23(f) petition because "an immediate appeal is not warranted." *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 18-728 (2d Cir. filed Nov. 6, 2018), ECF No. 84.

44. On March 25, 2019, the Court issued a lengthy opinion involving multiple related cases. *In re LIBOR-Based Fin. Instruments Antitrust Litig. ("LIBOR VIII")*, No. 11 Md. 2262 (NRB), 2019 WL 1331830 (S.D.N.Y. Mar. 25, 2019) [ECF No. 2837].

45. On October 11, 2017, Plaintiffs filed their letter motion for preliminary approval of four separate settlements with (i) Barclays;<sup>5</sup> (ii) Citi; (iii) Deutsche Bank; and (iv) HSBC. ECF No. 2307-1.

46. On December 12, 2017, Plaintiffs filed their motion for an order preliminarily approving a plan of distribution for the settlements with Barclays, Citi, Deutsche Bank and HSBC. ECF Nos. 2365, 2383-85.

47. On June 18, 2018, the Court held a settlement conference during which the Court, *inter alia*, made recommendations and asked questions about the contents of the proposed plan of

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<sup>5</sup> On December 2, 2014, the Court granted preliminary approval of the Barclays Settlement. *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262, 2014 WL 6851096 (S.D.N.Y. Dec. 2, 2014) [ECF No. 861]. Accordingly, Plaintiffs' motion for preliminary approval only concerned the Amendment to the Settlement Agreement with Barclays.



distribution. Further, the Court requested that Plaintiffs implement revisions to the proposed plan of distribution. ECF No. 2633.

48. On September 7, 2018, Plaintiffs filed their letter motion for preliminary approval of a settlement with JPMorgan and BOA. ECF No. 2728-1.

49. Additionally, on September 7, 2018, Plaintiffs filed their motion for an order preliminarily approving Plaintiffs' (1) notice program for settlements with Defendants BOA, Barclays, Citi, Deutsche Bank, HSBC, and JPMorgan; and (2) amended plan of distribution. ECF No. 2729-1. This submission included Plaintiffs' redlined amended plan of distribution responding to the Court's comments and suggestions from the June 18, 2018 settlement conference. ECF No. 2729-6.

50. On April 16, 2019, the Court sent a letter concerning Plaintiffs' redlined amended plan of distribution. The Court pointed out the denial of the Rule 23(f) petition by the Second Circuit, and the findings made in *LIBOR VII* about the unreliability of Plaintiffs' experts and the reliability of Defendants' experts. ECF No. 2853. Noting the use in the prior proposed plan of net loss as one of the metrics of compensation, the Court posed various questions including whether all the settlement monies could or should be distributed by means of the net loss method. *Id.* On May 24, 2019, Plaintiffs responded to the Court's questions. ECF No. 2875.

51. On August 12, 2019, Plaintiffs filed their motion for an order preliminarily approving a Revised Plan of Distribution. ECF Nos. 2954-2957. On September 4, 2019, the Court granted Plaintiffs' motion for preliminary approval of the Revised Plan of Distribution. ECF No. 2973. *See* Section VI *infra*.

52. On March 2, 2020, the Court granted Plaintiffs' motion for preliminary approval of the Settlements with BOA, Barclays, Citi, Deutsche Bank, HSBC, JPMorgan and SG, and

approved Plaintiffs' proposed form and program of notice. *See* Section V, *infra* (discussing the declaration submitted by Steven Straub of A.B. Data, the Court-appointed settlement administrator, attesting that the notice program has been substantially implemented).

53. On June 23, 2020, the Court granted Plaintiffs' request for, *inter alia*, (i) 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 June 30, 2020 – for notices with destinations subject to mailing restrictions or suspensions due to the ongoing global health crisis; and (ii) correcting the applicable date range for the legal risk period set forth in paragraph 8(a) of the Revised Plan of Distribution (ECF No. 2971-1) to reflect an end date of May 17, 2010. *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262, ECF No. 3106 (S.D.N.Y. June 23, 2020).

### **III. DISCOVERY EFFORTS OF PLAINTIFFS' COUNSEL**

#### **A. Discovery From Defendants and Third Parties**

54. Settlement Class Counsel consistently pursued discovery from Defendants prior to seeking class certification, as summarized in the following paragraphs. In addition, Kirby, in its capacity as Co-Liaison Counsel for the Class Plaintiffs, worked closely with the other class plaintiffs as well as Defendants to resolve discovery disputes affecting all plaintiffs and present discovery disputes to the Court in a streamlined manner.

55. *Document Requests to Defendants.* Settlement Class Counsel worked with counsel for the other classes to develop initial document requests to Defendants. The Court ultimately limited Defendants' initial productions to prior regulatory productions. However, Settlement Class Counsel still actively met-and-conferred with counsel for other class actions and Defendants to resolve the exact contours of Defendants' regulatory productions. In particular, the meet-and-confer process relating to Defendants' transactional data productions was hard fought after expert

analysis of the data identified various deficiencies and obvious gaps in Defendants' regulatory productions.

56. *Third Party Subpoenas.* Settlement Class Counsel also served subpoenas on four third party broker groups (BGC Partners, Tullett Prebon, Tradition, and ICAP), as well as subpoenas on Bloomberg and Thomson Reuters, seeking documents and transactional data. Many of these productions required extensive meet-and-confers regarding the production of documents located both inside and outside of the United States as well as the availability and accessibility of requested data.

57. *Document Review.* Defendants and third parties collectively produced more than 4 million documents, totaling nearly 18 million pages. Settlement Class Counsel sought to minimize costs and promote efficiency in connection with the effort to review these document productions. To reduce costs to the Class, Settlement Class Counsel negotiated a cost sharing agreement with the other class actions, including the Bondholder, Lender, and OTC Plaintiffs, and the discovery vendor Transperfect. Under the terms of this agreement, each class bore a proportional share of that cost of "hosting" Defendants' productions in a Relativity database; however, each class action retained access to its individual segment of the database and conducted its own independent document review.

58. To promote efficiency, Settlement Class Counsel sought to reduce "linear" review of documents. Instead, Settlement Class Counsel worked with Transperfect to streamline the document review process through the development of technology assisted review ("TAR") workflows. Specifically, Settlement Class Counsel and Transperfect employed Relativity's analytics software, Relativity Assisted Review ("RAR"), which relies on a textual analytics protocol and is designed to capture "concepts" embedded in documents as opposed to mere

“keywords.” Starting from a sample of documents gleaned from regulatory settlements as well as targeted searches, Settlement Class Counsel and Transperfect relied on RAR to categorize each Defendant’s document production and to isolate documents more likely to be relevant to the litigation. Following initial rounds of review, Settlement Class Counsel worked closely to recategorize the database on two vectors: i) documents more likely to be relevant based on prior coding of individual Defendant’s documents; and ii) documents more likely to be relevant based on prior coding of every Defendant’s documents.

59. This iterative process continued through successive rounds of document review. This multi-layered approach sought to ensure that concepts identified in one Defendant’s documents would not be overlooked while review of other Defendants’ documents was ongoing. This analytics-based workflow also helped identify inconsistently coded documents throughout the review process. Employing an analytics-based workflow enabled Plaintiffs’ Counsel to efficiently and effectively prioritize relevant documents, while simultaneously deprioritizing and minimizing review of non-relevant documents.

#### **B. Plaintiffs’ Responsive Discovery Efforts**

60. Plaintiffs’ Counsel worked closely with each of the Plaintiffs to comply with their discovery obligations in advance of a hotly contested class certification motion. Plaintiffs’ Counsel engaged in a protracted meet-and-confer process regarding the scope of Plaintiffs’ discovery obligations.

61. In response to Defendants’ document requests and interrogatories, Plaintiffs’ Counsel, together with technical consultants at Transperfect, worked closely with each of the Plaintiffs to identify, collect, and produce responsive documents to the Defendants. In total, Plaintiffs produced over 6,159 responsive documents, totaling more than 193,460 pages, to Defendants.

62. In addition, Settlement Class Counsel spent significant time with additional Plaintiffs' Counsel to coordinate the preparation of Plaintiffs in advance of depositions relating to the class certification. Defendants noticed depositions of each individual Plaintiff, including Rule 30(b)(6) depositions of Plaintiffs 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Futures Fund PCC Ltd., FTC Futures Fund SICAV, and Metzler Investment GmbH. Plaintiffs' Counsel defended the deposition of each Plaintiff.

#### **IV. THE SETTLEMENT NEGOTIATIONS**

63. In the nine-year pendency of the Exchange-Based Plaintiffs Action, Settlement Class Counsel undertook extensive legal and factual analyses of the Exchange-Based Plaintiffs' claims. Settlement Class Counsel have reviewed transcripts of LIBOR-related material, analyzed class certification discovery (which consisted of documents previously produced by each of the Defendants to government regulators), and worked in depth with consulting experts. As a result, Settlement Class Counsel were well-informed of the facts and issues concerning liability and damages and the relative strengths and weaknesses of each side's litigation position.

64. If finally approved, the proposed Barclays, Citi, Deutsche Bank, HSBC, JPMorgan/BOA, and SG Settlements, which were reached separately, consisting of an aggregate fund of \$187,000,000 cash, will resolve this complex case against these Settling Defendants. Under the terms of the Settlements, 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; and JPMorgan has agreed to pay \$15 million. The aggregate Settlement Fund, minus fees and expenses awarded by the Court, will be available to be distributed to eligible members of the Exchange-Based Settlement Class. The respective settlement amounts paid by Settling Defendants are non-reversionary; if the Court grants final approval of the Settlements and the Settlements otherwise becomes effective and final as defined

in the Settlements, no money will be returned to Settling Defendants, regardless of how many settlement class members submit proofs of claim or are entitled to payment.

**A. Settlement Negotiations with Barclays and Procedural History**

65. Beginning in August 2013, Settlement Class Counsel entered arm's-length negotiations with counsel for Barclays in order to attempt to reach a settlement of the Exchange-Based Plaintiffs' claims based upon their Eurodollar futures and options contract transactions against Barclays. These negotiations included numerous telephone conferences, meetings, emails, and other communications. In connection with these settlement negotiations, Settlement Class Counsel were informed concerning liability and damages issues and the relative strengths and weaknesses of each side's litigation position. Settlement Class Counsel analyzed and evaluated many contested legal and factual issues posed by the Action. To settle the claims against them, Barclays agreed to pay \$19,975,000 without any rights to any reversion, and to provide important cooperation to Plaintiffs that would (and did) assist in the prosecution of this litigation against the remaining Defendants. At no time was there any collusion.

66. On August 22, 2014, after extensive and hard-fought negotiations, a memorandum of understanding was executed. The Settlement Agreement was executed on October 7, 2014.

67. On October 8, 2014, Plaintiffs filed their letter motion for preliminary approval of the Settlement with Barclays. ECF No. 680.

68. On December 2, 2014, the Court granted preliminary approval of the proposed Settlement with Barclays but deferred addressing preliminary approval of the settlement class until Plaintiffs proposed a plan of notice, form of notice, and summary notice. *See In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Civ. 2613 (NRB), 2014 WL 6851096 (S.D.N.Y. Dec. 2, 2014) [ECF No. 861]. Specifically, the Court expressed one "serious doubt" about approving the Settlement – whether the fiduciaries of the class "can 'fairly and adequately protect' the interests

of class members with time-barred and of those with timely claims.” *Id.* at \*2 (citing and quoting Federal Rules 23(a)(4) and 23(b)(3)). On this issue, the Court stated that it would require a more developed record, including the proposed plan of notice, form of notice and summary notice. *Id.*

69. On January 16, 2015, Plaintiffs filed their motion to approve their proposed process of allocation and class notice to address the allocation issues and adequacy concerns raised by the Court in the December 2, 2014 Order. ECF Nos. 953-57.

70. Subsequently, on January 27, 2015, Plaintiffs filed a letter motion seeking leave to lift any stay of discovery sufficient to permit Plaintiffs to serve a proposed Rule 34 Document demand on Defendants and a proposed subpoena on the CME in connection with the Barclays Settlement. ECF No. 1001.

71. On February 5, 2015, the Court held a hearing to address, *inter alia*, Plaintiffs’ January 27, 2015 letter motion. At that hearing, the Court denied Plaintiffs’ request for discovery sought from Defendants, finding it unnecessary for the approval process relating to the Barclays Settlement. *See* ECF No. 2307-7 (Feb. 5, 2015 Hr’g Tr. at 5:9-12). With respect to the proposed subpoena to the CME, the Court raised concerns about whether some of the requests went beyond the scope of determining who the potential class members were as recipients of the Barclays Settlement. *Id.* at 7:16-19. As a result, the Court directed Exchange-Based Plaintiffs’ Counsel and Defendants to agree on a modified proposal of the proposed subpoena to the CME. *Id.* at 7:24-8:4.

72. Settlement Class Counsel and Barclays began discussions of a potential amendment to the existing Barclays Settlement in June 2017. The negotiations, which consisted of telephone conferences, emails, and other communications, over the terms of the proposed amendment



continued until Plaintiffs and Barclays executed the Amendment on September 15, 2017 (the “Amendment” or “Barclays Amendment”).

73. The Amendment materially improved on the existing Barclays Settlement. The Amendment was the product of arm’s-length negotiations by counsel highly experienced in complex antitrust and CEA litigation. The Amendment expanded the Barclays Settlement Class definition to harmonize it with the subsequent Citi, Deutsche Bank, and HSBC Settlements. In addition, Barclays agreed to release the remaining settlement funds to the Class. This will allow the Class to earn interest on the settlement funds during the pendency of the settlement approval. The Amendment further provided for additional settlement consideration in the form of additional cooperation materials. Namely, Barclays agreed to provide Plaintiffs with lists of its clients who traded Eurodollar Futures during the Class Period. This additional cooperation aided Plaintiffs in formulating a Notice Plan and Distribution Plan. In addition, this information increased the likelihood that settlement proceeds are distributed in a reasonable and equitable manner to putative class members. Pursuant to the Amendment, Barclays also agreed to provide further discovery cooperation materials including facts relating to personal jurisdiction and litigation transcripts.

74. At all times, both sides vigorously negotiated their respective positions. Settlement Class Counsel were well-informed of the facts and issues concerning liability and damages and the relative strengths and weaknesses of each side’s litigation position.

**B. Settlement Negotiations with Citi**

75. Plaintiffs’ Settlement with Citi is the second settlement by Exchange-Based Plaintiffs in the Action. The Settlement represents the culmination of hard-fought, arm’s length negotiations by counsel highly experienced in complex antitrust matters and was reached over the course of more than fifteen (15) months of settlement discussions.

76. Plaintiffs and counsel for Citi began discussions of a potential settlement of the claims against Citi alleged in the Exchange-Based Plaintiffs action in June 2015. Settlement negotiations consisted of telephone conferences, emails, in-person discussions, and other communications.

77. On October 25, 2016, the parties executed a term sheet that reflected agreement on material terms, including a settlement amount of \$33.4 million, the scope of the release of claims, and the extent of non-monetary cooperation to be provided by Citi.

78. Over the next several months, the parties negotiated the complete terms of the Settlement Agreement, which was executed by the parties on July 27, 2017.

79. At all times, both sides vigorously negotiated their respective positions. Exchange-Based Plaintiffs' Counsel were well-informed of the facts and issues concerning liability and damages and the relative strengths and weaknesses of each side's litigation position.

**C. Settlement Negotiations with Deutsche Bank**

80. Plaintiffs' Settlement with Deutsche Bank is the third settlement by Exchange-Based Plaintiffs in the Action. The Settlement is the culmination of hard-fought, arm's-length negotiations by counsel highly experienced in complex antitrust matters and was reached over the course of more than five (5) months of settlement discussions.

81. Plaintiffs and counsel for Deutsche Bank began discussions of a potential settlement of the claims against Deutsche Bank alleged in the Exchange-Based Plaintiffs Action in September 2016. Settlement negotiations consisted of telephone conferences, emails, in-person discussions, and other communications.

82. On January 10, 2017, the parties executed a term sheet that reflected agreement on material terms, including a settlement amount of \$80 million, the scope of the release of claims, and the extent of non-monetary cooperation to be provided by Deutsche Bank.

83. Over the next several months, the parties negotiated the complete terms of the Settlement Agreement, which was executed by the parties on July 13, 2017.

84. At all times, both sides vigorously negotiated their respective positions. Exchange-Based Plaintiffs' Counsel were well-informed of the facts and issues concerning liability and damages and the relative strengths and weaknesses of each side's litigation position.

**D. Settlement Negotiations with HSBC**

85. Plaintiffs and counsel for HSBC began discussions of a potential settlement of the claims against HSBC alleged in the Exchange-Based Plaintiffs Action in September 2016. The settlement negotiations occurred over a 10-month period and included numerous telephone conferences, emails, and other communications.

86. Following the dismissal of Plaintiffs' antitrust claims for lack of personal jurisdiction in accord with the Court's *LIBOR VI* opinion, settlement discussions resumed in earnest after Plaintiffs sought leave to file the [Proposed] Fourth Amended Complaint.

87. After months of negotiating material terms of the Settlement Agreement, including a settlement amount of \$18.5 million, the scope of the release of claims, and the extent of non-monetary cooperation to be provided by HSBC, the parties executed the Settlement Agreement on July 6, 2017.

88. At all times, both sides vigorously negotiated their respective positions. Exchange-Based Plaintiffs' Counsel were well-informed of the facts and issues concerning liability and damages and the relative strengths and weaknesses of each side's litigation position.

**E. Settlement Negotiations with JPMorgan/BOA**

89. The JPMorgan/BOA Settlement is the culmination of hard-fought, arm's length negotiations by counsel highly experienced in complex antitrust matters and was reached over the course of approximately six (6) months of joint settlement discussions.

90. Plaintiffs negotiated the Settlement jointly with counsel for BOA and JPMorgan after previously negotiating independently with each bank. Specifically, Plaintiffs engaged in periodic settlement discussion with BOA from November 2014 and more continuous negotiations from February 2017. Plaintiffs engaged in separate negotiations with JPMorgan in May 2017. Plaintiffs and counsel for BOA and JPMorgan began joint discussions of a potential settlement of the claims against JPMorgan/BOA alleged in the Exchange-Based Plaintiffs action in July 2017. Settlement negotiations consisted of telephone conferences, emails, in-person discussions, and other communications.

91. On January 17, 2018, a day before the class certification oral argument, the Settlement Class Counsel and counsel for BOA and JPMorgan executed a term sheet that reflected agreement on material terms, including a settlement amount of \$30 million, the scope of the release of claims, and the extent of non-monetary cooperation to be provided by JPMorgan and BOA. Accordingly, the BOA and JPMorgan Settlement was negotiated while Plaintiffs' efforts to certify the litigation class were ongoing. In addition, neither of those Defendants were subject to a government order or settlement relating to alleged manipulation of U.S. Dollar LIBOR.

92. Over the next several months, the Settlement Class Counsel and counsel for JPMorgan and BOA negotiated the complete terms of the settlement agreement, which was executed by the parties on June 14, 2018.

93. At all times, both sides vigorously negotiated their respective positions. Settlement Class Counsel were well-informed of the facts and issues concerning liability and damages and the relative strengths and weaknesses of each side's litigation position.

#### **F. Settlement Negotiations with SG**

94. Plaintiffs' Settlement with SG is the seventh settlement by Exchange-Based Plaintiffs in the litigation following its settlements with Defendants Barclays, BOA, Citi, Deutsche

Bank, HSBC, and JPMorgan. The Settlement is the culmination of hard-fought, arm's-length negotiations by counsel highly experienced in complex antitrust matters and was reached following settlement discussions that spanned more than ten (10) months.

95. Plaintiffs negotiated the Settlement with counsel for SG. Settlement negotiations consisted of a series of in-person discussions, telephone conferences, emails, and other communications.

96. On October 18, 2019, counsel for Plaintiffs and for SG advised the Court of the Settlement subject to further documentation. Subsequently, counsel for the settling parties negotiated the remaining terms of the Settlement Agreement.

97. The Stipulation, which was executed by the parties on January 13, 2020, reflects the terms of the Settlement, including a settlement amount of \$5,125,000, the scope of the release of claims, and the extent of non-monetary cooperation to be provided by SG.

98. Notably, Defendant SG joined the B.B.A. U.S. Dollar LIBOR panel in February 2009. Settlement Class Counsel previously dismissed Plaintiffs' CEA claims against SG as untimely. *LIBOR III*, 27 F. Supp. 3d at 484–86. In addition, the Court previously dismissed Plaintiffs' antitrust claims against SG for lack of personal jurisdiction. *LIBOR VI*, 2016 WL 7378980, at \*2-14. As such, we respectfully submit that Settlement Class Counsel negotiated the SG settlement despite significant litigation risks.

99. At all times, both sides vigorously negotiated their respective positions. Exchange-Based Plaintiffs' Counsel were well-informed of the facts and issues concerning liability and damages and the relative strengths and weaknesses of each side's litigation position.

**V. EXECUTING THE COURT’S PRELIMINARY APPROVAL ORDER RELATING TO CLASS NOTICE**

100. Pursuant to the Preliminary Approval Order, Settlement Class Counsel and the Court-approved Settlement Administrator, A.B. Data, Ltd. (“A.B. Data”) implemented a robust notice program whereby notice was given to potential Settlement Class Members by mail and publication.

101. The Court-approved Notice disclosed, among other things, the following information to Settlement Class Members: (1) the \$187 million aggregate Settlement Fund; (2) the Plan of Distribution; (3) that Settlement Class Counsel would apply for an award of attorneys’ fees in an amount not to exceed one third of the Settlement Fund, reimbursement for litigation costs and expenses incurred, and service awards for the settlement class representatives, and that any Settlement Class Member could object to the requested fees and expenses; (4) a detailed explanation of the reasons for the Settlements; (5) that requests for exclusion from the Settlements must be mailed to the Settlement Administrator postmarked no later than August 27, 2020; (6) that objections to the Settlements, Plan of Distribution, or the Fee and Expense Application must be received and filed (not simply postmarked) no later than August 27, 2020; and (7) that the deadline for filing Claim Forms is December 1, 2020.

102. Annexed hereto as Exhibit A is the Declaration of Steven Straub on Behalf of A.B. Data, Ltd. Regarding Notice and Claims Administration for Exchange-Based Plaintiffs’ Class Action Settlements With Settling Defendants (the “Straub Decl.”). Pursuant to the Court-approved notice program, on May 27, 2020, A.B. Data mailed by first-class mail, copies of the Notice, Claim Form, and Plan of Distribution (together, the “Notice Packet”) to potential Settlement Class Members. Additionally, Defendants caused to be mailed Notice Packets to potential Settlement Class Members. Straub Decl. ¶ 9. In addition, the Straub Declaration describes, *inter alia*, A.B.

Data's efforts to provide direct mail notice (¶¶ 3-10); publication notice (¶¶ 19-20); internet notice (¶¶ 21-24); efforts to respond to Settlement Class Members' inquiries (¶¶ 26, 29-30).

103. As of August 13, 2020 (the date of execution of the Straub Declaration), only four (4) requests for exclusion had been received. None of the four exclusions received to date have provided proof of membership in the Settlement Class. *See* Straub Decl. ¶ 32. To date, no objections to the Settlements, the Revised Plan of Allocation, or the maximum amounts listed in the Notice that Settlement Class Counsel would seek for an award of attorneys' fees and reimbursement of litigation expenses or service awards for the named plaintiffs, have been entered on this Court's dockets or have otherwise been received by Settlement Class Counsel. Settlement Class Counsel will file reply papers on September 10, 2020 to address any additional requests for exclusion, any updates on the proof of membership in the Settlement Class for the four exclusions received, and any objections that may be received.

## **VI. THE REVISED PLAN OF DISTRIBUTION**

104. After obtaining all Settlements except for the Société Générale Settlement, Class Counsel undertook an allocation mediation supervised by Kenneth Feinberg, Esq., which developed appropriate risk discounts for different litigation risks. This was intended to attempt to overcome the Court's "serious doubt" about the adequacy of representation expressed in the December 2, 2014 Order, which did not approve the settlement class for the Barclays Settlement.

105. In an attempt to address the Court's concerns regarding differing interest of Settlement Class Members, Class Counsel designed a formal allocation mediation process oriented towards addressing legal risks during the Settlement Class Period. By way of summary, both the Plan of Distribution and the Revised Plan of Distribution were formulated through a process of separate representation by competent and experienced counsel with the assistance of a nationally recognized mediator, Kenneth Feinberg, Esq., who facilitated the negotiated allocation process.

*See* ECF Nos. 2384, 2956 (Declarations of Kenneth Feinberg, Esq.). Allocation Counsel included members of the following Plaintiffs' Counsel: Berger Montague; Cafferty Clobes Meriwether & Sprengel LLP; Cohen Milstein PLLC; Finkelstein Thompson LLP; Louis F. Burke P.C.; Miller Law LLC; and Motley Rice LLC. *Id.*

106. As discussed above, the Court expressed concerns about how the Plan of Distribution proposed to allocate funds to Settlement Class Members. *See* ¶¶ 46-51, *supra*. After Class Counsel attempted to address those concerns, the Court subsequently preliminarily approved the Revised Plan of Distribution on September 4, 2019. ECF No. 2973. On June 23, 2020, the Court granted Plaintiffs' request to, *inter alia*, correct the applicable date range for the legal risk period set forth in paragraph 8(a) of the Revised Plan of Distribution (ECF No. 2971-1) to reflect an end date of May 17, 2010. *See* ECF No. 3106.

107. The payment methods employed by the Revised Plan of Distribution have been previously approved in prior futures contract price manipulation litigation and have a rational basis. The Revised Plan of Distribution provides each Authorized Claimant 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. The details of how each Authorized Claimants' *pro rata* share will be calculated are set forth in the Revised Plan of Distribution previously filed with the Court on August 12, 2019. ECF Nos. 2954-2957.

108. As noted above, more than 20,000 copies of the Notice, which includes a copy of the Revised Plan of Distribution, have been disseminated. *See* Straub Decl. ¶ 10. The Corrected Plan of Distribution is also posted on the Settlement Website. *Id.* at ¶ 8 and Ex. B. To date, no objections to the Revised Plan of Distribution have been received. *Id.* at ¶ 31.



**VII. PLAINTIFFS' COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES, AND REQUEST FOR SERVICE AWARDS FOR NAMED PLAINTIFFS**

109. For their efforts on behalf of the Settlement Classes, Plaintiffs' Counsel seek an award of attorneys' fees to compensate them for the services they have rendered on behalf of the Settlement Classes. *See* Section VII.A, *infra*. Plaintiffs' Counsel also requests reimbursement of expenses incurred in connection with the prosecution of this Action in the amount of \$5,613,578.86. *See* Section VII.B, *infra*. Class Counsel respectfully requests service awards in the amount of \$25,000 for each of the Exchange-Based Plaintiffs. *See* Section VII.C, *infra*.

**A. Plaintiffs' Counsel's Fee Request**

110. Since the inception of this litigation (in March 2011), Settlement Class Counsel (together with Class Counsel)<sup>6</sup> has committed a substantial amount of time and resources to this Action and have prosecuted this case on a wholly contingent basis and by doing so, assumed the risk of an unfavorable result. The work performed by Settlement Class Counsel and additional Plaintiffs' Counsel is described above as well as in the following individual declarations submitted by each firm. Plaintiffs' Counsel seek an award of attorneys' fees in the amount of 30% of the remainder of the Settlement Fund minus the amount of the reimbursement ordered by the Court of Counsel's litigation expenses, to compensate them for the services they have rendered on behalf of the Settlement Classes.

111. Annexed hereto as Exhibit B is the Declaration of David E. Kovel in Support of Interim Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Kirby McInerney LLP with Exhibits 1 (lodestar report), 2 (litigation expenses report), and 3 (firm resume).

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<sup>6</sup> For purposes of the Fee and Expense Application, "Plaintiffs' Counsel" refers to Settlement Class Counsel and additional plaintiffs' counsel that contributed to the prosecution and resolution of the Action.

112. Annexed hereto as Exhibit C is the Declaration of Benjamin M. Jaccarino in Support of Interim Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Lovell Stewart Halebian Jacobson LLP with Exhibits 1 (lodestar report), 2 (expenses report), 3 (firm resume), and 4 ((chronological summary of principal professional services).

113. Annexed hereto as Exhibit D is the Declaration of Michael Dell'Angelo in Support of Interim Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Berger Montague PC with Exhibits 1 (lodestar report), 2 (expenses report), and 3 (firm resume).

114. Annexed hereto as Exhibit E is the Declaration of Anthony F. Fata in Support of Interim Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Cafferty Clobes Meriwether & Sprengel LLP with Exhibits 1 (lodestar report), 2 (expenses report), and 3 (firm resume).

115. Annexed hereto as Exhibit F is the Declaration of Thomas C. Bright in Support of Interim Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Cera LLP with Exhibits 1 (lodestar report), 2 (expenses report), and 3 (firm resume).

116. Annexed hereto as Exhibit G is the Declaration of Robert A. Braun in Support of Interim Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Cohen Milstein Sellers & Toll, PLLC with Exhibits 1 (lodestar report), 2 (expenses report), and 3 (firm resume).

117. Annexed hereto as Exhibit H is the Declaration of Kevin B. Love in Support of Interim Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of

Litigation Expenses Filed on Behalf of Criden & Love, P.A. with Exhibits 1 (lodestar report), 2 (expenses report), and 3 (firm resume).

118. Annexed hereto as Exhibit I is the Declaration of Jeffrey Brett Kaplan in Support of Interim Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Dimond Kaplan & Rothstein, P.A. with Exhibits 1 (lodestar report), 2 (expenses report), and 3 (firm resume).

119. Annexed hereto as Exhibit J is the Declaration of Douglas G. Thompson Jr. in Support of Interim Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Finkelstein Thompson LLP with Exhibits 1 (lodestar report), 2 (expenses report), and 3 (firm resume).

120. Annexed hereto as Exhibit K is the Declaration of Michelle J. Looby in Support of Interim Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Gustafson Gluek PLLC with Exhibits 1 (lodestar report), 2 (expenses report), and 3 (firm resume).

121. Annexed hereto as Exhibit L is the Declaration of Louis F. Burke in Support of Interim Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Louis F. Burke P.C. with Exhibits 1 (lodestar report), 2 (expenses report), and 3 (firm resume).

122. Annexed hereto as Exhibit M is the Declaration of Vincent Briganti in Support of Interim Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Lowey Dannenberg with Exhibits 1 (lodestar report), 2 (expenses report), and 3 (firm resume).

123. Annexed hereto as Exhibit N is the Declaration of Marvin A. Miller in Support of Interim Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Miller Law LLC with Exhibits 1 (lodestar report), 2 (expenses report), and 3 (firm resume).

124. Annexed hereto as Exhibit O is the Declaration of William H. Narwold in Support of Interim Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Motley Rice LLC with Exhibits 1 (lodestar report), 2 (expenses report), and 3 (firm resume).

125. Based upon the foregoing Declarations, we make the following statements as summaries. Class Counsel devoted a total of 80,758.76 hours in the prosecution of this Action, for a total lodestar of \$52,134,123.35. As set forth herein and by the lodestar reports of Class Counsel, attached hereto as Ex. 1 in each of Plaintiffs' Counsel's attached declarations (Exs. B-O), Class Counsel have already devoted a significant amount of time in the prosecution of this Action.

126. From inception of the Action, for attorneys and professional support staff who billed fifteen or more hours to the Action, the total number of hours expended by Plaintiffs' Counsel is 80,758.76 hours. The total lodestar is \$52,134,123.35, consisting of \$49,536,522.10 for attorneys' time and \$2,597,601.25 for professional support staff time. *See* Table 3, *infra*. The requested fee of \$54,415,926.34 (or 30% of the Settlement Fund less total expenses of \$5,613,578.86) results in a multiplier of 1.04 to Plaintiffs' Counsel's total submitted lodestar of \$52,134,123.35.

127. Settlement Class Counsel restricted time submitted by additional Plaintiffs' Counsel to the period between November 29, 2011 and December 31, 2019, inclusive. For the

Court's reference, on November 29, 2011, the Court appointed Settlement Class Counsel as Interim Co-Lead Counsel for the Exchange-Based Class. *See In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (NRB), 2011 WL 5980198, at \*4 (S.D.N.Y. Nov. 29, 2011). In addition, time expended on Settlement Class Counsel's application for attorneys' fees and reimbursement of litigation expenses has also been excluded. Each firm also reviewed its time and expenses for accuracy, necessity, and reasonableness. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment. *See* ¶ 3 in each of Plaintiffs' Counsel's attached declarations (Exs. B-O).

128. In addition, as set forth in their Declarations, Plaintiffs' Counsel's lodestar figures are based upon the firms' current billing rates (subject to annual increases), reduced rates for document review-related work, and do not include charges for expense items. For personnel who are no longer employed by the firm, the lodestar calculation is based on the billing rates for such personnel in his or her final year of employment by the firm (and capped at the reduced document-review rate). The declarants from each firm comprising Plaintiffs' Counsel attest that the hourly rates for the attorneys and professional support staff are in line with the rates by other lawyers at law firms handling large, complex class action litigation and/or which have been accepted in other complex or class action litigation, subject to subsequent annual increases. Annexed hereto as Exhibit P is a table prepared by Kirby in order to reflect billing rates for partners and non-partners for plaintiffs' firms in cases involving antitrust and other comparable complex class actions and for firms that regularly defend antitrust and comparable class actions compiled by Settlement Class Counsel from fee applications submitted by such firms.

129. The following chart summarizes the aggregate hours, lodestar, and expenses of Plaintiffs' Counsel set forth in the attached declarations. See ¶¶ 5, 7 and Exs. 1 and 2 in each of Plaintiffs' Counsel's attached declarations (Exs. B-O).

<b>TABLE 3: Plaintiffs' Counsel's Summary Hours, Lodestar, and Expenses</b>			
<b>FIRM NAME</b>	<b>HOURS</b>	<b>LODESTAR</b>	<b>EXPENSES</b>
Kirby McInerney LLP	33,416.40	\$22,044,760.50	\$2,463,666.39
Lovell Stewart Halebian Jacobson	32,370.96	\$20,418,434.35	\$2,427,464.02
Berger Montague	931.30	\$519,416.50	\$130,451.77
Cafferty Clobes Meriwether & Sprengel LLP	3,695.80	\$2,870,620.00	\$129,316.97
Cera LLP	320.25	\$159,637.50	\$7,863.34
Cohen Milstein PLLC	3,709.50	\$2,057,541.25	\$135,136.59
Criden & Love, P.A.	212.10	\$174,982.50	\$7,582.04
Dimond Kaplan & Rothstein, P.A.	318.80	\$143,460.00	\$3,711.56
Finkelstein Thompson LLP	164.00	\$109,217.50	\$34,725.17
Gustafson Gluek PLLC	86.25	\$44,343.75	\$1,245.19
Louis F. Burke P.C.	67.00	\$56,950.00	\$0.00
Lowey Dannenberg, P.C.	98.90	\$96,922.00	\$14,851.42
Miller Law LLC	157.60	\$124,205.00	\$1,717.79
Motley Rice LLC	5,209.90	\$3,313,632.50	\$255,846.61
<b>TOTAL:</b>	<b>80,758.76</b>	<b>\$52,134,123.35</b>	<b>\$5,613,578.86</b>

130. Based upon the attached declarations, we believe that Settlement Class Counsel's requested fee award is fair, reasonable, and justified, whether calculated as a percentage of the fund or as a multiple of counsel's lodestar.

#### **B. Plaintiffs' Counsel's Litigation Expenses**

131. Our statements and summaries in this section are based on the Declarations set forth in Exhibits B through O. Through the pendency of this litigation, Settlement Class Counsel have sought to ensure that sufficient resources were dedicated to prosecuting Plaintiffs' claims. Plaintiffs' Counsel advanced the litigation expenses required to pursue and complete such complex litigation with no guarantee of repayment. Based on the attached declarations, Plaintiffs' Counsel have incurred a total of \$5,613,578.86 (or 3% of the Settlement Fund) in unreimbursed expenses in connection with the prosecution of this Action. We believe these expenses were reasonably

necessary to the prosecution of this Action and are of the type that Plaintiffs' Counsel normally incurs in litigation and that would be reimbursed by clients under fee arrangements where the client was paying expenses.

132. The following schedule was prepared from Exhibit 2 in each of the attached declarations. Out of town travel, hotels, meals, internal copying, and online research charges were all subject to caps. See ¶ 8 in each of Plaintiffs' Counsel's attached declarations (Exs. B-O).

<b>TABLE 4: CUMULATIVE EXPENSES BY CATEGORY</b>	
<b>EXPENSE CATEGORY</b>	<b>CUMULATIVE EXPENSES</b>
Court Fees	\$2,975.54
Service of Process (Including Notices)	\$9,195.37
Online Legal Research	\$236,895.54
Document Retrieval (Including Pacer)	\$17,880.14
Document Management/Litigation Support	\$741,714.40
Telephones/Faxes	\$9,601.32
Postage & Express Mail	\$6,548.99
Hand Delivery Charges	\$306.50
Local Travel	\$22,548.73
Out of Town Travel	\$96,983.88
Meals	\$29,630.97
Internal Copying	\$6,753.20
Outside Copying	\$68,846.31
Court Reporters and Transcripts	\$55,659.25
Experts	\$4,127,205.68
Investigative Services	\$2,475.00
Mediation Fees	\$178,358.04
<b>TOTAL EXPENSES</b>	<b>\$5,613,578.86</b>

### **C. Service Award Request for the Exchange-Based Plaintiffs**

133. Plaintiffs' Counsel are requesting a \$25,000 service award for each of the six representative plaintiffs: Metzler Asset Management GmbH (f/k/a Metzler Investment GmbH), FTC Capital GmbH (advisor to Plaintiffs FTC Futures Fund SICAV and FTC Futures Fund PCC Ltd.), Atlantic Trading USA, LLC, 303030 Trading LLC, Gary Francis, and Nathaniel Haynes, to be paid *pro rata* across the settlement funds created by the Settlements between Exchange-Based

Plaintiffs and Barclays, BOA, Citi, Deutsche Bank, HSBC, JPMorgan, and SG. The \$150,000 in total service awards requested represents only 0.08% of the Settlement Fund.

134. To the best of our knowledge, we believe that the named plaintiffs have consistently contributed time for the benefit of the class and provided service to the class by, for example, participating in this Action, filing suit, providing factual information to assist in the development of Exchange-Based Plaintiffs' claims, collecting and producing discovery, preparing and sitting for depositions by the Defendants in connection with class certification, and conferring with Plaintiffs' Counsel. The named plaintiffs, in the opinion of Plaintiffs' Counsel, are deserving of the requested incentive award.

#### **VIII. ADDITIONAL EXHIBITS**

135. Annexed hereto as Exhibit Q is a compendium of unreported cases, documents, and transcripts, in alphabetical order by case name, cited in the accompanying final approval settlement brief and fee brief.

#### **IX. CONCLUSION**

136. In view of the recovery to the Settlement Classes and the substantial risks of this Action, Settlement Class Counsel respectfully submit that: the Settlements should be approved as fair, reasonable and adequate; and the Revised Plan of Allocation should be approved as fair and reasonable.

137. Settlement Class Counsel respectfully seek reimbursement of litigation expenses; an award of attorneys' fees in the amount of 30% of the remainder of the Settlement Fund minus the amount of the reimbursement ordered by the Court of Counsel's litigation expenses. We also respectfully request service awards of \$25,000 for each of the named plaintiffs to be paid *pro rata* from the settlement funds from those of the Settlements between Exchange-Based Plaintiffs and Barclays, BOA, Citi, Deutsche Bank, HSBC, JPMorgan and SG.



We certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 13, 2020 in New York, New York.

/s/ David E. Kovel  
David E. Kovel

/s/ Christopher Lovell  
Christopher Lovell