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

MEMORANDUM OF LAW IN SUPPORT OF EXCHANGE-BASED PLAINTIFFS' COUNSEL'S MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS FOR NAMED PLAINTIFFS

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TABLE OF DEFINED TERMS

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.

Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure and Paragraph 10 of 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 Notice; and (3) Scheduling a Fairness Hearing dated March 2, 2020, *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"), Court-appointed interim co-lead class counsel Lovell Stewart Halebian Jacobson LLP and Kirby McInerney LLP ("Settlement Class Counsel" or "Class Counsel") for the Exchange-Based Plaintiffs hereby respectfully submit this Memorandum of Law and the accompanying Joint Declaration in support of Settlement Class Counsel's motion for an award of attorneys' fees, litigation expenses, and service awards for named plaintiffs in connection with the settlements between Exchange-Based Plaintiffs and Defendants Barclays, BOA, Citi, Deutsche Bank, HSBC, JPMorgan, and SG (the "Exchange-Based Settlements" or "Settlements").[1]

I. INTRODUCTION

As this case approaches its tenth year, Settlement Class Counsel have performed legal services on a fully contingent basis and advanced $5,613,578.86 million in expenses on behalf of Plaintiffs and the Settlement Class without receiving any remuneration to date. As a result of their zealous representation of Plaintiffs, Class Counsel have succeeded in obtaining one hundred and eighty-seven million dollars ($187,000,000) in Settlements, which this Court preliminarily approved on March 2, 2020. *See LIBOR*, 2020 WL 1059489.[2] If and to the extent that any

[1] Unless otherwise defined herein, all capitalized terms not defined herein shall have the meaning ascribed in the "Table of Defined Terms." All references to "¶" are to the Joint Declaration unless otherwise noted. All "Exhibit" or "Ex." references are to the Joint Declaration. All "ECF No." references are to the MDL docket unless otherwise noted.

[2] 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;

Settlement is finally approved, Class Counsel respectfully request that the Court (1) grant reimbursement of litigation expenses in the amount of $5,613,578.86, (2) award attorneys' fees, and (3) award plaintiffs service awards.

Attorneys' Fee Request. As discussed herein (*see* Section III.A, *infra*), Settlement Class Counsel pursued this case on a wholly contingent basis without any guarantee of success or compensation. Class Counsel now respectfully request that the Court award attorneys' fees in the amount of **thirty percent (30%)** of the remainder of the Settlement Fund minus Class Counsel's litigation expenses approved by the Court.[3] This nature of this request is consistent with the Court's previously articulated view "that awarding fees as a percentage of net recovery is more consistent with notions of public policy in that doing so encourages class counsel's prudence and discretion in incurring expenses." *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Civ. 5450, 2018 WL 3863445, at *4 (S.D.N.Y. Aug. 14, 2018) (emphasis in original). Settlement Class Counsel respectfully submits that the percentage fee award is justified by, *inter alia*, the following considerations.

As an initial matter, the $187 million recovered for members of the Exchange-Based Settlement Classes is unquestionably substantial. If all the Settlements are approved, then this Action would represent the largest class action settlement of manipulation claims in the history of

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.

[3] Example: if $5,613,578.86 in litigation expenses are reimbursed, then the requested fee is for 30% of $181,386,421.14, which is the remainder of $187,000,000 minus $5,613,578.86. 30% of $181,386,421.14 is $54,415,926.34. As reflected in the declarations attached to the Joint Declaration, the total "lodestar" value of Class Counsel's fee compensable services is $52,134,123.35. Multiplying $52,134,123.35 by 1.04 equals approximately $54,219,488.28. Courts frequently award percentage fees based on the total common fund rather than the common fund minus expenses. If $5,613,578.86 in litigation expenses were reimbursed, and this fee request were granted, it would actually represent a percentage fee of 28.99%. Thus, Class Counsel's actual fee request made herein of (approximately) 28.99% if calculated on a gross basis of the common fund is materially less than the up to one-third of the Settlement Fund from the Settlements which was specified in the notice given to members of the Settlement Classes.

the Commodity Exchange Act, 7 U.S.C. § 1 *et seq*. ("CEA").[4] Even so, the requested fee would provide Class Counsel with a modest **1.04 risk** multiplier. This is because the requested fee represents 1.04 times the total "lodestar" value of the more than nine years of fee compensable professional services performed by Class Counsel.

There were very substantial risks of prosecuting Plaintiffs' claims that arose in the "esoteric"[5] commodity futures markets and involved "complex and difficult" issues of proof,[6] which characterize commodity futures manipulation claims. *Compare In re LIBOR-Based Fin. Instruments Antitrust Litig*., No. 11 Md. 2262 (NRB), 2016 WL 7378980, at *22-23 (S.D.N.Y. Dec. 20, 2016) ("*LIBOR VI*"); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (NRB), 299 F. Supp. 3d 430, 489 (S.D.N.Y. Feb. 28, 2018) ("*LIBOR VII*"). For example, this Court previously found that the over-the-counter ("OTC") plaintiffs' claims were "undeniably complex and fraught with risks."[7] But unlike the OTC plaintiffs, the Exchange-Based Plaintiffs were not in privity and did not have a contract with each Defendant specifying the amount of interest to be paid or received as arithmetically calculated from LIBOR. *Id.* Instead, Plaintiffs made open market purchases and sales in the "volatile" commodity futures markets, and confronted the "complex and difficult" task of establishing the fact and amounts of impact in such

[4] 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).

[5] *Dunn v. CFTC*, 519 U.S. 465, 468-69 (1997) (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 356 (1982)).

[6] *See Sumitomo*, 74 F. Supp. 2d 393, 395 (S.D.N.Y. 1999) (noting that CEA manipulation cases are "complex and difficult").

[7] This Court recognized that the OTC Action "has undisputedly been complex and fraught with risk." *LIBOR*, 2018 WL 3863445, at *4 (awarding a fee of 18.5% in connection with settlements totaling $235 million, which constituted a 1.65 lodestar multiplier).

"esoteric" markets of Defendants' alleged manipulations of LIBOR upon the EDF prices at which Plaintiffs transacted. *See, e.g., id.* Thus, Plaintiffs faced more substantial risks in establishing the fact and amount of price impact and injury than were present in the OTC plaintiffs' claims which were "undeniably complex and fraught with risks." *See* n. 7, *supra*.

Given these and many other risks, as well as the more than 9.5 years of delay before **any** attorneys' fees or reimbursement of expenses may be received, Class Counsel respectfully submit that 30% of the remainder of the Settlement Fund after counsel's litigation expenses are reimbursed, representing a 1.04 risk multiplier, is fair, reasonable, and equitable. *See Sumitomo*, 74 F. Supp. 2d at 395 (fee of **27.5%** of the $134 million settlement amount on claims of copper futures manipulation, representing a **2.5 risk multiplier** after a delay in payment from inception of **3.5 years**.); *In re Deutsche Telekom AG Sec. Litig*., No. 00 Civ. 9475, 2005 WL 7984326, at *4 (S.D.N.Y. June 14, 2005) (Buchwald, J.) (awarding attorneys' fees of 28% of a $120 million settlement, representing a 3.96 risk multiplier after 5 years from inception); *see also* n.3, *supra*; *LIBOR*, 2018 WL 3863445, at *4 (noting "mean multiplier in this Circuit is approximately 1.55, with multipliers in antitrust and securities cases recently averaging 1.77 and 1.43, respectively" (citing 4 William B. Rubenstein, Newberg on Class Actions § 15:89 tbls.3, 4 (5th ed.)); *id.* (noting study identifying "an average multiplier of 3.18 for settlements above $175.5 million).[8]

Litigation Expense Reimbursement. Settlement Class Counsel also respectfully seek reimbursement for $5,613,578.86 in litigation expenses, composed largely ($4,127,205.68) of

[8] *See, e.g.*, *Christine Asia Co., Ltd. v Ma*, No. 15 Md. 2631, 2019 WL 5257534, at *17 (S.D.N.Y. Oct. 16, 2019), *appeal withdrawn sub nom. Tan Chao v William*, No. 19 Civ. 3823, 2020 WL 763277 (2d Cir. Jan. 2, 2020) ("When determining whether a fee request is reasonable in relation to a settlement amount, the court compares the fee application to fees awarded in similar [] class-action settlements of comparable value." (quotation omitted)); *In re Neurontin Antitrust Litig.*, No. 02 Civ. 1830, slip op. (D.N.J. Aug. 6, 2014) (ECF No. 114) [Joint Decl. Ex. Q, Tab 6] (awarding 33⅓% representing a 1.99 multiplier of a $191 million settlement 12 years after inception); *In re Steel Antitrust Litig.*, No. 08 Civ. 5214, slip op. (N.D. Ill. Oct. 22, 2014) (ECF No. 539) [Joint Decl. Ex. Q, Tab 9] (awarding 33% representing a 1.97 multiplier on a $163 million settlement).

expert fees. Courts regularly approve reimbursement of such litigation expenses in class actions as a matter of course. *See, e.g.*, *LIBOR*, 2018 WL 3863445, at *1 (approving $14,855,689.55 in costs and expenses to OTC Plaintiffs); *In re Credit Default Swaps Antitrust Litig.*, No. 13 Md. 2476, 2016 WL 2731524, at *18 (S.D.N.Y. Apr. 26, 2016) (approving $10 million in expenses "[m]ost of which "were incurred in connection with retention of experts"). *See* Section III.B, *infra*.

Service Award Request. Settlement Class Counsel also respectfully request service awards in the amount of $25,000 each for 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 Nathanial Haynes. *See* Section III.C, *infra*.

II. RELEVANT BACKGROUND

At the outset of and continuing throughout this litigation, the risks of successfully pleading, proving, and otherwise prosecuting the claims in this Action were substantial. There was no government settlement or complaint prior to the commencement of this Action, nor until well after the filing of the motion to dismiss the consolidated amended complaint. *See generally* ¶¶ 11-53. In fact, there was never any government settlement or complaint asserting a conspiracy or antitrust violation among or by any Defendants. And there was never any government settlement or complaint even for individual wrongdoing against three of the Settling Defendants (BOA, HSBC, and JPMorgan), relating to the alleged manipulation of U.S. Dollar LIBOR. Further, the remaining government orders or complaints focused on individual B.B.A. U.S. Dollar LIBOR panel banks' wrongdoing related to LIBOR, and the regulatory settlements did not primarily focus on how alleged manipulation impacted Eurodollar Futures prices.

In investigating and drafting the complaints and preparing to defend the motions to dismiss, Class Counsel faced numerous pleading, proof, and personal jurisdiction risks. On the antitrust claims, the risks included whether the alleged conduct injured competition, constituted a conspiracy, impacted LIBOR, impacted EDF prices, and/or caused antitrust injury in a way that conferred on Plaintiffs "efficient enforcer" standing to sue. On the CEA claims, the risks included, but were not limited to, whether Defendants (i) acted to suppress LIBOR, (ii) did so with scienter to manipulate EDF prices, (iii) did impact EDF prices, and (iv) did so knowing what one another was doing for purposes of aiding and abetting or other joint liability. To take just one of many examples, if one or more Defendants did intend to suppress LIBOR to help their own reputation, how did that produce a conspiracy? Or scienter to manipulate EDF prices? Or aiding and abetting another bank's suppression of its LIBOR quote?

In preparing the complaint, defending the numerous motions to dismiss, preparing multiple amended complaints, and engaging in extensive discovery, Class Counsel worked with economists and market experts, performed factual investigation and legal research, and otherwise performed professional services to try to overcome these risks. Class Counsel sought to plead that LIBOR was suppressed compared to the Federal Reserve Deposit Rate and other benchmarks. *E.g., In re LIBOR-Based Fin. Instruments Antitrust Litig.*, ("*LIBOR I*"), No. 11 Md. 2262 (NRB), 935 F. Supp. 2d 666, 716 (S.D.N.Y. 2013). Class counsel successfully alleged facts and developed legal arguments to plead that Defendants' conduct, even if aimed predominantly or exclusively at LIBOR alone (and not EDF prices), was sufficient for a reasonable inference of the requisite scienter. *See, e.g.*, *id.* at 715; *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, (*"LIBOR II"*), No. 11 Md. 2262 (NRB), 962 F. Supp. 2d 606, 615-16 (S.D.N.Y. 2013); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Md. 2262 (NRB) ("*LIBOR III"*), 27 F. Supp. 3d 447, 466-71

(S.D.N.Y. 2014). And Class Counsel sought to develop multiple fact allegations and legal theories to support aiding and abetting. *See LIBOR I*, 935 F. Supp. 2d at 722-23.

Defendants, represented by the highest caliber defense counsel, made no fewer than four motions to dismiss Plaintiffs' claims on the foregoing and additional grounds (also including for lack of personal jurisdiction). In a series of four detailed opinions, this Court not only repeatedly rejected Defendants' multiple efforts to dismiss large portions of the CEA claims but also granted Plaintiffs leave to amend to substantially enlarge the Class. ¶¶ 15, 17, 20, 27; *see also In re Initial Public Offering Sec. Litig.*, 21 MC 92, 2011 WL 2732563, at *2 (S.D.N.Y. July 8, 2011) (Scheindlin, J) (Executive Committee incurred "significant risk that it would never be compensated for its time and effort. . . " including "[b]riefing multiple rounds of motions to dismiss. . . .").

As a result, after Defendants' motions to dismiss were resolved, Plaintiffs had broader CEA claims than they did at the case's outset. Even so, after appeal and further motion practice, Plaintiffs' "efficient enforcer" status to pursue their antitrust claim was almost entirely eliminated. *LIBOR VI*, 2016 WL 7378980, at *15-17, 21-23. Class Counsel repeatedly sought to appeal portions of the motions to dismiss on which they did not prevail. *E.g.*, Joint Decl. ¶¶ 22, 38. In this context, both before and after this period, Class Counsel also coordinated and worked extensively with counsel from other *LIBOR* cases on the various joint appeals stemming from this Court's rulings. *See, e.g.*, ¶ 21; Joint Decl. Ex. B (Declaration of David E. Kovel) at ¶ 2.

Risks of Proving the Remaining Claims. Given the liberal federal pleading standards, the risks of proving all the elements of Plaintiffs' claims that survived Defendants' lengthy motions to dismiss were much greater than the risks of surviving the motions to dismiss in the first place. *See LIBOR VI*, 2016 WL 7378980, at *17 (denying motion to dismiss, but expressing skepticism

about the ability to prove the allegations). Through discovery, Plaintiffs developed and later submitted on May 2, 2017 extensive evidence that they contended established a prima facie claim for members of the Settlement Classes. ECF Nos. 1885, 1890-91 (Plaintiffs' class motion).

During discovery, Class Counsel worked diligently to find in the approximately 18 million pages of productions incriminating documents supporting claims against each of the Defendants for suppression and/or TBM manipulation, establishing impact, and supporting class certification. ¶¶ 57-59.[9]

During discovery, Plaintiffs faced arguments from Defendants that the jargon in the conversations which Plaintiffs' market experts construed to be manipulative, actually was harmless. Defendants argued that non-harmless communications were not acted upon in a suppressed or inflated LIBOR submission. Defendants argued that the daily release of LIBOR supposedly did not appreciably change EDF prices. Among other points, Class Counsel responded to the last of such arguments by arguing that the futures markets are anticipatory markets, accordingly EDF prices anticipated and adjusted to the falsity in LIBOR **before** the British Banking Association released LIBOR and while the Defendants were making their false submissions in London. In reply, Defendants argued that there was no causation by any suppressed LIBOR of inflated EDF prices and, instead, the movement in EDF prices caused changes in LIBOR. Plaintiffs argued that the only changes in EDF prices were changes of what anticipated LIBOR would be when it was released or at the final expiration of the trading in the EDF contract.

On May 2, 2017, Plaintiffs filed their motion for class certification. ¶ 34. However, as discovery and the foregoing arguments were progressing, Class Counsel entered into settlement negotiations with various Settling Defendants. Class Counsel sought to use their investigation and

[9] *See* generally Exhibit 4 to the Declaration of Benjamin M. Jaccarino (Ex. C to Joint Decl.).

discovery to convince these Defendants to settle. Notwithstanding the greater risks of proving the claims than pleading them, Class Counsel succeeded in concluding agreements to settle with five Defendants (Citi, Deutsche Bank, HSBC, BOA, and JPMorgan) after the filing of Plaintiffs' class certification motion. ¶¶ 75-88. The last two Settlements (with BOA and JPMorgan) were not reached in principle until after the completion of class certification briefing and on the day before oral argument on the class certification motion. ¶ 91.

Through Class Counsel's efforts in investigating and pleading the Class's claims, defending motions to dismiss, preparing amended complaints, moving for leave to amend, reviewing extensive document productions, conducting oral arguments, briefing for class certification, negotiating settlements, and multiple other tasks, Class Counsel were able to conclude $162 million in Settlements after the filing of the class motion.[10]

Class Counsel faced the substantial risks of proving the claims described above. By virtue of their extensive professional services, Class Counsel overcame those risks sufficiently to create the $187 million in Settlements for the Class, which, if approved, will constitute the largest class action settlement of CEA manipulation claims in the history of the CEA.

III. ARGUMENT

A. Settlement Class Counsel Are Entitled to A Reasonable Fee from the Common Fund They Recovered For The Benefit of the Settlement Classes

Under the common fund doctrine, "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from

[10] The initial "icebreaker" $19,975,000 Barclays settlement came before, and the $5,250,000 Société Générale settlement came well after, the class certification briefing process. But even as to the Barclays initial icebreaker Settlement, Class Counsel engaged in negotiations with Barclays after the filing of the class motion in order to amend the Barclays settlement and obtain material improvements in the terms. ¶¶ 72-73. Class Counsel negotiated extensively to make the Barclays and Société Générale settlements and obtained valuable cooperation, especially from Barclays. ¶¶ 65-74, 94-99.

the fund as a whole." *Boeing v. Van Gemert*, 444 U.S. 472, 478 (1980). If the Settlements receive final approval, Eligible Claimants will receive distributions from the $187 million common fund generated by the efforts of Settlement Class Counsel. An award of attorneys' fees and the reimbursement of litigation expenses would compensate Settlement Class Counsel for bringing and prosecuting the Action on a wholly contingent basis without any remuneration for well in excess of nine years.

1. The Requested Fee Is Fair and Reasonable Under the Preferred "Percentage Method"

Under the percentage method, the Court "sets some percentage of the recovery as a fee" for class counsel. *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). This Court has recognized in this proceeding that "'[i]t remains the case that adoption of the percentage method continues to be the trend of district courts in the Second Circuit but . . . an analysis of counsel's lodestar as a cross check on the reasonableness of the requested percentage remains common.'" *LIBOR*, 2018 WL 3863445, at *3 quoting *In re IMAX Sec. Litig.*, No. 06 Civ. 6128 (NRB), 2012 WL 3133476, at *5 (S.D.N.Y. Aug. 1, 2012)).

Courts in the Second Circuit have routinely awarded attorneys' fees in an amount equal to 30 percent or more of the common fund in cases where there was a comparably sized common fund. *See Velez v Novartis Pharm. Corp.*, No. 04 Civ. 9194, 2010 WL 4877852, at *21 (S.D.N.Y. Nov. 30, 2010) (collecting cases awarding 30 percent or more); *In re Beacon Assoc. Litig.*, No. 09 Civ. 3907, 2013 WL 2450960, at *5 (S.D.N.Y. May 9, 2013) ("In this Circuit, courts routinely award attorneys' fees that run to 30% and even a little more of the amount of the common fund.").[11]

[11] *See, e.g.*, *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); *In re Mun. Derivatives Antitrust Litig.*, No. 08 Civ. 2516, 2016 WL 11543257, at *1 (S.D.N.Y. July 8, 2016) (one-third fee from $101 million settlement fund); *In re Titanium Dioxide Antitrust Litig.*, No. 10 Civ. 00318, 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (one-third fee from $163.5 million settlement fund); *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); *In re Initial Public Offering Secs. Litig.*,

The requested 30% fee is also in line with prior CEA manipulation class actions that have awarded fees constituting one-third of the common fund. *See, e.g.*, *In re Nat. Gas Commodity Litig.*, No. 03 Civ. 6186, slip op. (S.D.N.Y. May 24, 2006) (ECF No. 445) [Joint Decl. Ex. Q, Tab 5] (33⅓% fee award that resulted in a 1.44 lodestar multiplier); *In re Soybeans Futures Litig.*, No. 89 Civ. 7009, slip op. (N.D. Ill. Nov. 27, 1996) (ECF No. 470) [Joint Decl. Ex. Q, Tab 8] (33⅓% fee award that resulted in a 1.03 lodestar multiplier); *In re BP Propane Direct Purchaser Antitrust Litig.*, No. 06 Civ. 3541, slip op. (N.D. Ill. Feb. 10, 2010) (ECF No. 209) [Joint Decl. Ex. Q, Tab 2] (33% fee award that resulted in a 2.7 lodestar multiplier).

2. The Requested Fee Would Result In A Lodestar Multiplier of 1.04, Confirming the Reasonableness of the Requested Fee

Settlement Class Counsel have spent over 80,758 hours litigating the Action, representing a total lodestar of $52,134,123.35 based on counsel's current hourly rates. ¶¶ 125-26. The requested fee of 30% of the Settlement Fund (after deducting counsel's requested out-of-pocket expenses totaling $ $5,613,578.86) would result in a lodestar multiplier of approximately 1.04.

A Lodestar Multiplier of 1.04 is Reasonable. The requested 1.04 risk multiplier is well *below* what this Court recently recognized as the mean multiplier in this Circuit of approximately 1.55 for antitrust and securities actions. *See LIBOR*, 2018 WL 3863445, at *4 (awarding of a fee that yielded a 1.65 multiplier and noting that such a multiplier "fits comfortably within the range of lodestar multipliers generally observed.").[12] Indeed, numerous courts have awarded attorneys'

671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding plaintiffs' counsel one-third of the $586 million settlement fund); *In re Deutsche Telekom AG*, 2005 WL 7984326, at *4 (awarding attorneys' fees of 28% of a $120 million settlement); *see also Sumitomo*, 74 F. Supp. 2d at 395 (awarding attorneys' fees equal to 27.5% of the $134 million settlement amount on claims of copper futures manipulation); *In re Neurontin*, ECF No. 114 [Joint Decl. Ex. Q, Tab 6] (awarding 33⅓% of a $191 million settlement); *In re Steel*, ECF No. 539 [Joint Decl. Q, Tab 9] (awarding 33% of a $163,900,000 settlement); *Kurzweil v. Philip Morris Cos., Inc.*, No. 94 Civ. 2373, 1999 WL 1076105, at *3 (S.D.N.Y. Nov. 30, 1999) (awarding 30% of a $123 million settlement); *In re Polyurethane Foam Antitrust Litig.*, No. 10 Md. 2196, 2015 WL 1639269, at *7 (N.D. Ohio Feb. 26, 2015) (awarding attorneys' fees of 30% of $147.8 million fund).

[12] *See also In re GSE Bonds Antitrust Litig.*, No. 19 Civ. 1704 (JSR), 2020 WL 3250593, at *5 (S.D.N.Y. June 16, 2020) ("Although on the high end, a 4.09 multiplier is within the range of what has considered reasonable by courts.");

fees in antitrust class actions of 30% or more and that yielded substantially higher lodestar multipliers between 1.66 and 4.88.[13] The requested 1.04 risk multiplier is extremely reasonable.

The Hours Expended By Counsel are Reasonable. Settlement Class Counsel and counsel for Plaintiffs have spent a total of over 80,758 hours litigating the Action for the last nine years (excluding time relating to this motion). ¶¶ 125, 127.[14] Counsel's work in this case overcame many of the substantial risks associated with the claims here (*see* Section II, *supra*) and resulted in the largest historical "futures and options on futures only" settlement class for manipulation claims under the CEA. *See* n.4, *supra.*

Settlement Class Counsel's and additional Plaintiffs' counsel's professional services in this case are summarized above and set forth in detail in the individual declarations submitted by each firm. *See* Joint Decl. Exs. B-O.

CDS Litig., 2016 WL 2731524, at *17 (approving a lodestar multiplier of "just over 6" in a complex antitrust class action); *Sewell v. Bovis Lend Lease, Inc.*, No. 09 Civ. 6548, 2012 WL 1320124, at *13 (S.D.N.Y. Apr. 16, 2012) ("Courts commonly award lodestar multipliers between two and six."); *Johnson v. Brennan*, No. 10 Civ. 4712, 2011 WL 4357376, at *13 (S.D.N.Y. Sept. 16, 2011) ("Courts routinely award counsel two to three times lodestar in class action settlements."); *In re Lloyd's Am. Tr. Fund Litig.*, No. 96 Civ. 1262 RWS, 2002 WL 31663577, at *27 (S.D.N.Y. Nov. 26, 2002) ("Here, the resulting multiplier of 2.09 is at the lower end of the range of multipliers awarded by courts within the Second Circuit.").

[13] *See, e.g.*, *In re Relafen Antitrust Litig.*, No. 01-12239, slip op. (D. Mass. Apr. 9, 2004) (ECF No. 297, at 7) [Joint Decl. Ex. Q, Tab 7] (awarding a 33⅓% fee in connection with $175 million settlement, which constituted a 4.88 lodestar multiplier); *In re Linerboard Antitrust Litig.*, No. 98 Civ. 5055, 2004 WL 1221350, at *19 (E.D. Pa. June 2, 2004), *amended*, No. 98 Civ. 5055, 2004 WL 1240775 (E.D. Pa. June 4, 2004) (awarding a 30% fee in connection with settlements totaling $202.5 million, which constituted a 2.66 lodestar multiplier); *In re Neurontin*, (ECF No. 114) [Joint Decl. Ex. Q, Tab 6] (awarding a 33⅓ % fee in connection with settlements totaling $190.4 million, which constituted 1.99 lodestar multiplier); *In re Domestic Drywall*, 2018 WL 3439454, at *20 (awarding a 33⅓% fee in connection with settlements totaling $190 million, which constituted a 1.66 lodestar multiplier); *In re Steel*, (ECF No. 539) [Joint Decl. Ex. Q, Tab 9] (awarding a 33% fee in connection with settlements totaling $163.9 million, which constituted a 1.97 risk multiplier); *In re Titanium Dioxide*, 2013 WL 6577029, at *1 (awarding a 33⅓% fee in connection with settlements totaling $163.5 million, which constituted a 2.39 lodestar multiplier); *In re Flonase*, 951 F. Supp. 2d at 748-52 (awarding a 33⅓% fee in connection with settlements totaling $150 million, which constituted a 2.99 lodestar multiplier); *Kurzweil*, 1999 WL 1076105, at *3 (awarding a 30% fee in connection with a $123.8 million settlement, which constituted a 2.46 lodestar multiplier).

[14] For purposes of this fee application, Settlement Class Counsel excluded time incurred by non-lead counsel prior to the period between November 29, 2011 (*i.e.*, the date the Court appointed Kirby and Lovell as interim co-lead counsel for the Exchange-Based Plaintiffs) and following December 31, 2019. ¶ 127.

Counsel's Hourly Rates are Reasonable. The hourly rates for the professional services undertaken by Plaintiffs' counsel have been billed at the regular current hourly rates in cases involving complex class action litigation and/or have been accepted in other antitrust or complex class action litigations. ¶ 128.[15] The hourly billing rates for attorneys working on this case ranged from $125 to $1,140.[16] Billing rates in the same range have been previously approved by this Court and others in this District as reflective of market rates in New York for work of comparable size and complexity.[17] The hourly rates charged by Plaintiffs' counsel are well within the range of reasonable fees for attorneys working on complex class action litigation in this District and are comparable to peer plaintiff and defense firms litigating matters of similar magnitude. *See* Joint Decl. Ex. P (table reflecting comparable billing rates).[18]

In sum, Settlement Class Counsel's requested 30% fee award is reasonable as a percentage of the Settlement Fund and also satisfies the "lodestar cross-check" because such a fee would result in a lodestar multiplier of 1.04—well below the average multiplier in this Circuit generally and

[15] Courts use "prevailing market rates" and current rates to calculate the lodestar figure to account for the delay in payment. *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) (citing *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 283-84 (1989)).

[16] *See* Plaintiffs' Counsel Declarations attached to the Joint Declaration at Exhibits B through O.

[17] *See, e.g.*, *In re GSE Bonds*, 2020 WL 3250593, at *6 (granting fee award using partner rates of $575 to $1,050 and associate rates of $340 to $795, *see also* ECF Nos. 355-56); *In re Foreign Exch. Benchmark Rates Antitrust Litig.*, No. 13 Civ. 7789, 2018 WL 5839691 (S.D.N.Y. Nov. 8, 2018) (granting fee award using partner rates up to $1,375 and associate rates of $350 to $500, *see also* ECF No. 939-3); *CDS Litig*, 2016 WL 2731524, at *17 (granting fee award using partner rates of $834 to $1,125 and associate rates of $411 to $714, *see also* ECF No. 482).

[18] Settlement Class Counsel's hourly billing rates are also lower than those charged by defense counsel in this Action. *See* Joint Decl. Ex. P. For example, according to recent filings in federal bankruptcy cases, (1) Paul, Weiss, Rifkind, Wharton & Garrison LLP's rates are (a) partner, between $1,165-$1,560, and (b) for associates and counsel, between $640-$1,160; (2) Simpson Thacher & Bartlett LLP's rates are (a) for partners, between $1,350-$1,550, and (b) $540-$1,170 for non-partners; (3) Mayer Brown LLP's rates are (a) for partners, between $960-$1,130, and (b) $605-$895 for non-partners; (4) Sullivan & Cromwell LLP's rates are (a) for partners, between $1,140-$1,295, (b) $995 for special counsel, and (c) for associates, between $460-$865; (5) Davis Polk Wardwell LLP's rates are (a) for partners, between $1,445-$1,685, (b) for counsel, between $1,075-$1,295, and (c) for associates, between $525-$1,095; (6) Covington & Burling LLP's rates are (a) for partners, between $825-$1,110, (b) senior of counsel and special counsel, between $775-$1,215, and (c) for associates, between $490-$730; and (7) Locke Lord LLP's rates are (a) for partners, between $660-$1,040, (b) for senior counsel, between $670-$855, and (c) for associates, between $390-$450. *Id.*

well below the 1.6 multiplier awarded by this Court in the OTC Action. As discussed below, the requested fee is also supported by each of the *Goldberger* factors considered by courts in this Circuit.

3. Each *Goldberger* Factor Supports the Requested Fee Award

In the Second Circuit, courts evaluating whether a fee is "reasonable" must consider: "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *Goldberger*, 209 F.3d at 50. Each *Goldberger* factor weighs in favor of the reasonableness of Settlement Class Counsel's fee request in this Action.

a) The Risk of the Litigation

The risk of the litigation is perhaps "the most important *Goldberger* factor." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 440 (E.D.N.Y. 2014); *see also Goldberger*, 209 F.3d at 54 ("We have historically labeled the risk of success as 'perhaps the foremost' factor to be considered in determining whether to award an enhancement.") (internal citation omitted). Claims for manipulation in violation of the CEA have been recognized as "notoriously difficult to prove" and "more difficult and risky than securities fraud cases." *Sumitomo*, 74 F. Supp. 2d at 395, 397. The numerous and very substantial, pleading, proof and personal jurisdiction risks inherent in the settled claims have been set forth in Section II, *supra*. They strongly support the requested fee.

b) The Magnitude and Complexities of the Litigation

It is hard to overstate the complexity and magnitude of this litigation, which is now entering its tenth year. This Court previously recognized that the prosecution of price manipulation claims in violation of the CEA is notoriously "complex and difficult." *Compare Sumitomo*, 74 F. Supp.

2d at 395, *with Merrill Lynch v. Curran*, 456 U.S. at 356 (commodity futures markets are "esoteric"); *see also In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998) ("Class actions have a well-deserved reputation as being most complex") (internal citation and quotations omitted); *In re Vitamin C Antitrust Litig.*, No. 06 MDL 1738, 2012 WL 5289514, at *4 (E.D.N.Y. Oct. 23, 2012) (antitrust cases involving collusion and price manipulation is "complicated, lengthy, and bitterly fought.").

With regard to magnitude of the litigation, Plaintiffs have alleged that the sixteen U.S. Dollar LIBOR Panel Banks, many of which are among the largest banks in the world, conspired to fix and manipulate USD LIBOR over a period of more than five years. *See* [Corrected] Fourth Amended Consolidated Class Action Complaint, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 MD 2262, [ECF No. 2363], ¶¶ 5-21, 93-705. The operative complaint is more than 320 pages long. *Id*. The Court has issued numerous lengthy decisions on substantive issues. More than 18 million pages of documents have been produced to Plaintiffs' counsel by Defendants and non-parties. ¶ 57. The docket specific to the Exchange Based action has more than 780 entries and the primary docket for this action has more than 3,100 entries. *See In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 MD 2262. Settlement Class Counsel respectfully submit that the complexity and magnitude of the Exchange-Based Action fully support the requested fee.

c) The Quality of Representation Supports The Requested Fee

"[T]he quality of representation is best measured by results," *Goldberger*, 209 F.3d at 55, which are evaluated in light of "the recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 141 (S.D.N.Y. 2008).

The Results. The proposed partial Settlements of this Action have resulted in a combined Settlement Fund of $187 million for the benefit of the Settlement Classes and collectively represent the largest class-wide recovery for a "futures only" settlement class.

The Representation. Settlement Class Counsel have extensive experience prosecuting commodity manipulation and antitrust cases. *See* Joint Decl. Exs. B-3, C-3. The Lovell Stewart Firm has forty years' experience litigating commodity futures manipulation cases and, as sole lead or co-lead counsel, has obtained several of the largest settlements in the history of the CEA. The Kirby Firm similarly has decades of experience representing investors in litigation relating to the manipulation of physical commodities, commodity futures, and related derivative products, and as sole lead or co-lead counsel, has recovered millions in manipulation cases.

The quality of representation provided by opposing counsel is also a relevant consideration. *Maley v. Del Global Tech. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002). The Settling Defendants are represented by several of the nation's biggest and most highly regarded defense firms. The fact that Settlement Class Counsel prosecuted this Action for more than nine years against such formidable opponents to successfully produce these results, further supports the requested fee. *See Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 670 (S.D.N.Y. 2015) (noting that counsel's achievement in "obtaining valuable recompense . . . for its clients is particularly noteworthy given the caliber and vigor of its adversaries").

d) The Time and Labor Expended by Settlement Class Counsel Support the Requested Fee

As detailed in Section III.A.2 above and in the Joint Declaration, Settlement Class Counsel devoted over 80,758 hours to the successful prosecution of the claims here. The lodestar value of this time totals $52,134,123.35.

e) The Requested Fee in Relation to the Settlements

As detailed above, the requested fee of 30% of the Settlement Fund (after deducting Court-approved expenses) is well within the range of fees approved within this Circuit in actions that involved similarly-sized common funds. *See* n.8, 11, 13, *supra* (collecting cases that awarded fees totaling 30% or more of common funds).[19] The requested 30% fee would result in a lodestar multiplier of 1.04. *See* Section III.A.2, *supra*. As detailed above, a lodestar multiplier of 1.04 is well below multipliers in actions that awarded fees equal to or greater than 30% of similarly-sized common funds. *Id.*; *see also* n. 8, 11-13, *supra* (collecting cases that awarded fees totaling 30% or more of common funds and that yielded lodestar multipliers between 1.66 and 4.88).

f) Public Policy Supports Approval of the Fee Request

Private lawsuits asserting claims for manipulation further the overarching purpose of the CEA which is "to deter and prevent price manipulation." 7 U.S.C. § 5(b) (the "purpose" of the CEA is to "deter and prevent price manipulation"). Indeed, private lawsuits such as this one are regarded by Congress as "**critical** to protecting the public and fundamental to maintaining the credibility of the futures market." *Cange v. Stotler & Co.,* 826 F.2d 581, 584 (7th Cir. 1987) (emphasis added) *citing* to H.R. Rep. No. 565, 97th Cong., 2d Sess., pt. 1 at 56-7, *reprinted* in 1982 U.S. Code Cong. & Admin. News 3871, 3905-06; *see also Am. Soc'y of Mech. Eng'rs v. Hydrolevel Corp.*, 456 U.S. 556, 572 n.10 (1982) ("[p]rivate suits are an important element of the Nation's antitrust enforcement effort."); *Pillsbury Co. v. Conboy*, 459 U.S. 248, 262-63 (1983)

[19] Reducing the percentage award as the settlement size increases disincentivizes class counsel from creating incremental value for the class by holding out for more money on the class's behalf. *See In re Auction Houses Antitrust Litig.*, 197 F.R.D. 71, 80 (S.D.N.Y. 2000) ("By adjusting downward the percentage of the recovery awarded to counsel as plaintiffs' recovery increases . . . this method may give rise to an attorney incentive problem by creating declining marginal returns to effort for counsel . . . . Again, this method can create an incentive to settle quickly and cheaply, when the returns to effort are highest, rather than investing additional time and maximizing plaintiffs' recovery."). *See also In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1114 (D. Kan. Dec. 7, 2018) (articulating same "incentive" problem and therefore awarding 33⅓% fee on a $1.51 billion settlement).

("[t]his Court has emphasized the importance of the private action as a means of furthering the policy goals of certain federal regulatory statutes, including the federal antitrust laws.").

Awarding a reasonable percentage of the common fund "provid[es] lawyers with sufficient incentive to bring common fund cases that serve the public interest." *See Goldberger*, 209 F.3d at 51. Settlement Class Counsel respectfully submit that the requested fee award would further these important public policies and help promote the future integrity of the county's important financial markets. Without this private action, the vast majority of investors in the Eurodollar futures markets would have no other source of potential recovery for the alleged manipulation of USD LIBOR and its impact on Eurodollar futures prices.

g) The Reaction of the Class to Date Supports the Requested Fee

Through August 11, 2020, the Settlement Administrator has disseminated the long form Notice to 20,978 potential members of the Settlement Class informing them, among other things, that the Settlement Class intended to apply to the Court for an award of attorneys' fees in an amount up to one-third of the aggregate Settlement Fund. *See* Joint Decl. Ex. A (Straub Declaration) at ¶ 10; Straub Ex. A (Notice) at 10. The deadline for objections is August 27, 2020, but to date, no objections have been received. ¶ 104.[20]

B. Settlement Class Counsel's Costs and Expenses Are Reasonable and Were Necessary to the Result

"[C]ourts in the Second Circuit normally grant expense requests in common fund cases as a matter of course." *LIBOR*, 2018 WL 3863445, at *1 (citation omitted). It is not uncommon that in complex antitrust cases such as this one, "substantial expenses [are] necessary," including costs related to initial investigations and research, testifying and consultant experts, discovery expenses,

[20] Should any objections be received, Settlement Class Counsel will address them in their reply papers, due on September 10, 2020.

travel, postage and mailing, and copying costs. *Meredith Corp.*, 87 F. Supp. 3d at 671; *see also Guevoura Fund Ltd. v. Sillerman*, No. 15 Civ. 07192, 2019 WL 6889901, at *22 (S.D.N.Y. Dec. 18, 2019). Such costs are "compensable if they are of the type normally billed by attorneys to paying clients." *Guevoura Fund*, 2019 WL 6889901, at *22.

Here, Settlement Class Counsel incurred litigation expenses relating to this Action totaling $5,613,578.86 for out-of-pocket expenses reasonably and necessarily incurred in connection with the prosecution of this case. ¶ 131. These expenses have been itemized by category for the Court's convenience. ¶¶ 131-32; Exs. B-O. Approximately 73.52% of the requested expenses are associated with payments to experts. *See* ¶ 132; Exs. B-O.[21] Further, the requested expenses total approximately 3% of the total Settlement Funds, which is consistent with the ratio previously approved by this Court in connection with partial OTC LIBOR Settlements. *See LIBOR*, 2018 WL 3863445, at *1 (noting "given the complexities of this case and the necessity for extensive expert involvement" that "we are persuaded that 5.94% is not so high as to be unreasonable.").

C. Service Awards for the Named Plaintiffs Are Appropriate

Exchange-Based Plaintiffs seek service awards of $25,000 (for a total aggregate award of $150,000) for named 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 Nathanial Haynes, as stated in the Notice.

[21] Additional categories of expenses include computerized legal research, the creation and maintenance of an electronic document database, travel and lodging expenses, copying, court reports, deposition transactions, and mediation. *Id.* These are all the type of out-of-pocket expenses that are routinely reimbursed from common funds. *Yang v. Focus Media Holding Ltd.*, No. 11 Civ. 9051, 2014 WL 4401280, at *19 (S.D.N.Y. Sept. 4, 2014) (finding computer research, photocopying, postage, meals, and court filing fees "necessary for Lead counsel to successfully prosecute this case").

This Court and others in this District have approved similar service awards in similar circumstances. *See, e.g.*, *LIBOR*, 2018 WL 3863445, at *2 (awarding $25,000 to each of the five named OTC plaintiffs); *Anwar v. Fairfield Greenwich Ltd.*, No. 09 Civ. 118, 2012 WL 1981505, at *3-4 (S.D.N.Y. June 1, 2012) (awarding $25,000 to class representative and holding that "[c]ourts consistently approve awards in class action lawsuits to compensate named plaintiffs for the services they provide and burdens they endure during litigation."). The requested service awards represent only a small fraction (approximately 0.08%) of the total Settlement Funds. *See, e.g.*, *Dial Corp. v. News Corp.*, 317 F.R.D. 426, 438-39 (awarding 0.12% of a settlement fund to six class representatives).

The Exchange-Based Plaintiffs provided invaluable services to the Settlement Classes over the course of the litigation. ¶¶ 133-34. These services helped to achieve recovery of $187 million for the benefit of the Settlement Classes. Among other things, the Exchange-Based Plaintiffs provided factual information to assist in the development of Exchange-Based Plaintiffs' claims, collected discovery, prepared and sat for lengthy depositions by the defendants, and conferred with Settlement Class Counsel throughout the case. *Id.*

Courts routinely approve incentive awards to class representatives who provide these types of services. *See, e.g.*, *Sewell*, 2012 WL 1320124, at *15 (approving incentive awards where the named plaintiffs "served class members by providing counsel with relevant documents in their possession, assisting counsel to prepare for the mediation, participating in litigation strategy, and reviewing and commenting on the terms of the settlement.") (internal quotation marks omitted). Plaintiffs' duties in this Action required them to dedicate considerable time and take key personnel away from their normal duties.

Accordingly, Settlement Class Counsel respectfully submit that the Court should grant service awards of $25,000 to each of the individual Exchange-Based Plaintiffs.

IV. CONCLUSION

For the reasons set forth above and in the Joint Declaration, Settlement Class Counsel respectfully request that this Court enter an Order reimbursing expenses in the amount of $5,613,578.86, awarding Class attorneys' fees in the amount of 30% of the remainder of $187,000,000 minus the amount of litigation expenses reimbursed (*see* n. 3, *supra*), and approving service awards of $25,000 for each named plaintiff for their efforts on behalf of the Settlement Classes.

Dated: August 13, 2020
New York, New York

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