

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

METZLER INVESTMENT GmbH, FTC FUTURES  
FUND SICAV, and FTC FUTURES FUND PCC LTD.,  
ATLANTIC TRADING USA, LLC, 303030 TRADING  
LLC, GARY FRANCIS AND NATHANIAL HAYNES,  
on behalf of themselves and all others similarly situated,

11-md-2262 (NRB)  
11-cv-2613

Plaintiffs,

- against -

**STIPULATION AND  
AGREEMENT OF  
SETTLEMENT**

CREDIT SUISSE GROUP AG, CREDIT SUISSE AG,  
BANK OF AMERICA CORPORATION, BANK OF  
AMERICA, N.A., J.P. MORGAN CHASE & CO., J.P.  
MORGAN CHASE BANK, N.A., HSBC HOLDINGS  
PLC, HSBC BANK PLC, HBOS PLC, BANK OF  
SCOTLAND PLC, CITI BANK PLC, LLOYDS  
BANKING GROUP PLC, LLOYDS BANK PLC,  
PORTIGON AG F/K/A WESTLB AG,  
WESTDEUTSCHE IMMOBILIENBANK AG, UBS  
GROUP AG, UBS AG, THE ROYAL BANK OF  
SCOTLAND GROUP PLC, THE ROYAL BANK OF  
SCOTLAND PLC, RBS SECURITIES, INC.,  
DEUTSCHE BANK AG, DEUTSCHE BANK  
SECURITIES, INC., DB GROUP SERVICES (UK)  
LIMITED, THE NORINCHUKIN BANK, ROYAL  
BANK OF CANADA, RBC CAPITAL MARKETS LLC,  
THE BANK OF TOKYOMITSUBISHI UFJ, LTD.,  
COOPERATIVE CENTRAL RAIFFEISEN-  
BOERENLEENBANK B.A., SOCIÉTÉ GÉNÉRALE  
S.A., CITIGROUP, INC., CITIBANK N.A., CITIGROUP  
GLOBAL MARKETS, INC., MERRILL LYNCH  
INTERNATIONAL, ICAP PLC, ICAP EUROPE  
LIMITED, TRADITION (UK) LIMITED, TULLETT  
PREBON PLC, and JOHN DOES 4-25,

Defendants.

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**STIPULATION AND AGREEMENT OF SETTLEMENT**

THIS STIPULATION AND AGREEMENT OF SETTLEMENT (the “**Settlement Agreement**”) is made and entered into on July 6, 2017. This Settlement Agreement is entered into by and between Exchange-Based Plaintiffs (as defined in Section 1(O)) and the Settlement Class (as defined in Section 1(G)), by and through Exchange-Based Plaintiffs’ Counsel (as defined in Section 1(P)), and Defendant HSBC Bank plc (“HSBC”), by and through its undersigned counsel of record in this Action.

WHEREAS, Exchange-Based Plaintiffs have filed a civil class action and have alleged, among other things, that Defendants (as defined in Section 1(K)), including HSBC, (i) violated Sections 9(a) and 22(a) of the Commodity Exchange Act, 7 U.S.C. §§ 13(a) and 25(a) by manipulating and aiding and abetting in manipulation of the U.S. Dollar LIBOR rate (as defined in Section 1(MM)) and Eurodollar futures prices, (ii) incurred vicarious liability under Section 2(a)(1) of the Commodity Exchange Act, 7 U.S.C. § 2(a)(1) by manipulative acts of employees, (iii) violated Section 1 of the Sherman Act, 15 U.S.C. § 1 by conspiring to manipulate the U.S. Dollar LIBOR rate; and (iv) were unjustly enriched as a result of their allegedly manipulative acts in connection with U.S. Dollar LIBOR.

WHEREAS, Exchange-Based Plaintiffs further contend that they and the Settlement Class suffered monetary damages as a result of HSBC’s and other Defendants’ conduct;

WHEREAS, Exchange-Based Plaintiffs, for themselves and on behalf of each Class Member, and HSBC agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission or evidence of: (i) any violation of any statute or law, (ii) any liability or wrongdoing by HSBC, or (iii) the truth of any of the claims or allegations alleged in the Action;

WHEREAS, HSBC denies the material allegations in Exchange-Based Plaintiffs' pleadings and maintains that it has meritorious defenses to the claims of liability and damages made by Exchange-Based Plaintiffs;

WHEREAS, after arms-length settlement negotiations between Exchange-Based Plaintiffs, Exchange-Based Plaintiffs' Counsel and HSBC, this Settlement Agreement has been reached, subject to the preliminary and final approval of the Court;

WHEREAS, HSBC agrees to cooperate with Exchange-Based Plaintiffs and Exchange-Based Plaintiffs' Counsel as set forth in this Settlement Agreement;

WHEREAS, Exchange-Based Plaintiffs' Counsel has determined that (i) it is in the best interests of the Settlement Class to enter into this Settlement Agreement in order to avoid the uncertainties of complex litigation and to assure a benefit to the Settlement Class, and (ii) the Settlement Agreement set forth herein is fair, reasonable, and adequate, and in the best interests of the Class Members;

WHEREAS, HSBC, despite believing that it is not liable for the claims asserted against it in the Action and that it has good and meritorious defenses thereto, has nevertheless agreed to enter into this Settlement Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, thereby putting this controversy to rest and avoiding the risks inherent in complex litigation; and

NOW, THEREFORE, Exchange-Based Plaintiffs, on behalf of themselves and the Settlement Class by and through Exchange-Based Plaintiffs' Counsel, and HSBC, by and through the undersigned counsel, agree that the Action and Released Claims (as defined in Section 1(FF)) be fully and finally settled, compromised, and dismissed on the merits and with

prejudice as to HSBC and without costs as to Exchange-Based Plaintiffs, the Settlement Class or HSBC, subject to the approval of the Court, on the following terms and conditions:

**1. Terms Used In This Settlement Agreement**

The words and terms used in this Stipulation and Settlement Agreement, which are expressly defined below, shall have the meaning ascribed to them.

(A) **“Action”** means *Metzler Inv. GmbH, et al. v. Credit Suisse Group AG, et al.*, 11-cv-2613 (NRB), and related class action cases on behalf of Exchange-Based Plaintiffs that are currently pending in the Multi-District Litigation in the U.S. District Court for the Southern District of New York.

(B) **“Affiliates”** means entities controlling, controlled by, or under common control by another entity.

(C) **“Agreement”** or **“Settlement Agreement”** means this Stipulation and Agreement of Settlement, together with any exhibits attached hereto, which are incorporated herein by reference.

(D) **“Any”** means each and every.

(E) **“Authorized Claimant”** means any Class Member who, in accordance with the terms of this Settlement Agreement, is entitled to a distribution from the Net Settlement Fund pursuant to any Distribution Plan or order of the Court.

(F) **“Class”** or **“Settlement Class”** shall have the meaning set forth in Section 2.

(G) **“Class Member”** or **“Settlement Class Member”** means a Person who is a member of the Class and has not timely and validly excluded itself from the Class in accordance with the procedure to be established by the Court.

(H) **“Class Notice”** means the form of notice of the proposed Settlement Agreement to be distributed to the Settlement Class as provided in this Settlement Agreement and the Preliminary Approval Order.

(I) **“Court”** means the United States District Court for the Southern District of New York.

(J) **“Defendants”** means the defendants currently named in the Action and any parties that may be added to the Action as defendants through amended or supplemental pleadings.

(K) **“Distribution Plan”** means any plan or formula of allocation of the Net Settlement Fund, to be approved by the Court, upon notice to the Class as may be required, whereby the Net Settlement Fund shall in the future be distributed to Authorized Claimants.

(L) **“Effective Date”** means the date when this Settlement Agreement becomes final as set forth in Section 18 of this Settlement Agreement.

(M) **“Escrow Agent”** means any person or entity jointly designated by Exchange-Based Plaintiffs’ Counsel and HSBC, and any successor agent, and approved by the Court to act as escrow agent for the Settlement Fund.

(N) **“Exchange-Based Plaintiffs”** means Metzler Investment GmbH, FTC Futures Fund SICAV, FTC Futures Fund PCC Ltd., Atlantic Trading USA, LLC, 303030 Trading LLC, Gary Francis, and Nathaniel Haynes, and any other Person named as a plaintiff in the Action who was not subsequently withdrawn as a named plaintiff, and any named plaintiff who may be added to the Action through amended or supplemental pleadings. This Settlement Agreement is entered with each and every Exchange-Based

Plaintiff. In the event that one or more Exchange-Based Plaintiff(s) fails to secure court approval to act as an Exchange-Based Plaintiff, the validity of this Settlement Agreement as to the remaining Exchange-Based Plaintiffs, the Settlement Class, and Exchange-Based Plaintiffs' Counsel shall be unaffected.

(O) **“Exchange-Based Plaintiffs’ Counsel”** means (i) the law firms of Lovell Stewart Halebian Jacobson LLP and Kirby McInerney LLP and (ii) any other attorney or law firm that represents Exchange-Based Plaintiffs and seeks to receive any portion of the attorneys’ fees that may be awarded by the Court in connection with this Settlement Agreement.

(P) **“Execution Date”** means the date on which this Settlement Agreement is executed by the last Party to do so.

(Q) **“Fairness Hearing”** means a hearing scheduled by the Court, following the issuance of the Preliminary Approval Order, to consider the fairness, adequacy and reasonableness of the proposed Settlement Agreement and to determine whether the Settlement Agreement shall receive final approval pursuant to Fed. R. Civ. P. 23.

(R) **“Fee and Expense Application”** means the procedures for, and the allowance or disallowance by the Court of, any application for approval of fees, or expenses and costs.

(S) **“Final”** means, with respect to any court order, including, without limitation, the Final Judgment, that such order represents a final and binding determination of all issues within its scope and it not subject to further review on appeal or otherwise. An order becomes “Final” when: (i) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (ii) an appeal has been filed

and either (a) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (b) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. Any appeal or other proceeding pertaining solely to any order adopting or approving the Distribution Plan, and/or any order issued in respect of a Fee and Expense Application pursuant to Sections 5 and 6 below, shall not in any way delay or prevent the Final Judgment from becoming Final.

(T) **“Final Approval Order”** means an order from the Court approving the Settlement Agreement following (i) preliminary approval of the Settlement Agreement, (ii) the issuance of the Class Notice pursuant to the Preliminary Approval Order, and (iii) the Fairness Hearing.

(U) **“Final Judgment”** means the order of judgment and dismissal of the Action with prejudice as to HSBC and HSBC Holdings plc, the form of which shall be mutually agreed upon by the Parties and submitted to the Court for approval thereof.

(V) **“HSBC”** means Defendant HSBC Bank plc.

(W) **“Lead Counsel”** means Kirby McInerney LLP and Lovell Stewart Halebian Jacobson LLP.

(X) **“LIBOR”** means the London Interbank Offered Rate.

(Y) **“Multi-District Litigation”** means *LIBOR-Based Financial Instruments Antitrust Litigation*, No. 11-MD-2262 (NRB), currently pending in the U.S. District Court for the Southern District of New York.

(Z) **“Net Settlement Fund”** means the Settlement Fund less Court-approved disbursements, including: (i) notice, claims administration and escrow costs; (ii) any

attorneys' fees and/or expenses awarded by the Court; and (iii) all other expenses, costs, taxes and other charges approved by the Court.

(AA) **“Other Settlement”** means any settlement agreement or binding term sheet between Exchange-Based Plaintiffs and any other Defendant involving this Action that has been entered before, or that Lead Counsel believes, in good faith, will be submitted to the Court, up to 30 days after this Settlement Agreement is submitted to the Court for final notice and approval purposes.

(BB) **“Parties”** means HSBC and Exchange-Based Plaintiffs collectively, and **“Party”** applies to each individually.

(CC) **“Person(s)”** means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint-stock company, estate, legal representative, trust, unincorporated association, proprietorship, municipality, state, state agency, any entity that is a creature of any state, any government, governmental or quasi-governmental body or political subdivision, authority, office, bureau, agency or instrumentality of the government, any business or legal entity, or any other entity or organization; and any spouses, heirs, predecessors, successors, representatives or assignees of any of the foregoing.

(DD) **“Preliminary Approval Order”** means an order by the Court issued in response to the Motion for Preliminary Approval in Section 13 providing for, *inter alia*, preliminary approval of the Settlement Agreement, including certification of the Settlement Class for purposes of the Settlement Agreement only, and for a stay of all proceedings in the Action against HSBC until the Court renders a final decision on

approval of the Settlement.

(EE) **“Proof of Claim and Release”** means the form to be sent to Class Members, upon further order(s) of the Court, by which any Class Member may make a claim against the Net Settlement Fund.

(FF) **“Released Claims”** means any and all manner of claims, including any unknown claims described in Section 12(B) below, debts, demands, rights, interests, actions, suits, causes of action, cross-claims, counter-claims, charges, judgments, obligations, setoffs, or liabilities for any obligations of any kind whatsoever (however denominated), whether class, individual or otherwise in nature, for fees, costs, penalties, damages whenever incurred, and liabilities of any nature whatsoever (including, without limitation, direct or indirect claims or demands for rescission, damages, interest, attorneys’ fees, and any other costs, expenses or liabilities whatsoever, including joint and several), whether based on federal, state, local, statutory or common law, in equity, or on any other law, rule, regulation, ordinance, contract, or the law of any foreign jurisdiction, whether fixed or contingent, known or unknown, liquidated or unliquidated, suspected or unsuspected, asserted or unasserted, matured or unmatured, which Releasers or any of them, whether directly, representatively, derivatively, or in any other capacity, now or ever had against Releasees, arising from or relating in any way to any conduct alleged in the Action or that could have been alleged in the Action against the Releasees concerning Eurodollar future contracts or options by Exchange-Based Plaintiffs, any Class Members, or Releasers, including, but not limited to, any purported manipulation of U.S. Dollar LIBOR (“LIBOR”) under the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.*, or any purported conspiracy or collusion between HSBC and any other Defendant

(including, but not limited to, all claims under Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1; California's Cartwright Act, Cal. Bus. & Prof. Code §§16720, *et seq.*; New York's Donnelly Act, N.Y. Gen. Bus. Law §§ 340, *et seq.*; any other federal, state, local, statutory or common law, in equity, or on any other law, rule or regulation; or the law of any foreign jurisdiction).

(GG) “**Releasees**” means HSBC, HSBC Holdings plc, and each of their respective predecessors, successors and assigns; each of their direct and indirect parents, subsidiaries, Affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), divisions, predecessors, and successors; and each of the foregoing's respective current and former officers, directors, employees, managers, members, partners, agents (in their capacity as agents of HSBC or HSBC Holdings plc), shareholders (in their capacity as shareholders of HSBC or HSBC Holdings plc), attorneys, trustees, and legal or other representatives; and the predecessors, successors, heirs, executors, administrators, advisors, and assigns of each of the foregoing.

(HH) “**Releasers**” means Exchange-Based Plaintiffs and each and every Class Member on their own behalf and on behalf of their respective predecessors, successors, assigns, beneficiaries, members, participants, investors, direct and indirect parents, subsidiaries, divisions, and Affiliates, and their current and former officers, directors, employees, agents, stockholders, trustees, fiduciaries, and legal or other representatives, and the predecessors, successors, heirs, executors, administrators, beneficiaries, and assigns of each of the foregoing, whether or not they object to the settlement set forth in this Settlement Agreement, and whether or not they make a claim for payment from the

Net Settlement Fund. For the avoidance of doubt, Releasors include all Persons entitled to bring claims on behalf of a Class Member relating to Eurodollar futures or options or LIBOR manipulation or suppression. With respect to any Class Member that is a government entity, Releasor also includes any Person as to which the government entity has the legal right to release such claims.

(II) **“Settlement Administrator”** means A.B. Data, who shall perform the tasks necessary to provide notice of the Settlement Agreement to the Class and to otherwise administer the Settlement Fund, as described further herein.

(JJ) **“Settlement Amount”** means eighteen million five hundred thousand dollars (\$18,500,000).

(KK) **“Settlement Fund”** means the Settlement Amount plus any interest that may accrue.

(LL) **“Settling Party” or “Settling Parties”** means HSBC and any Exchange-Based Plaintiff.

(MM) **“U.S. Dollar LIBOR rate” or “LIBOR”** means the London Interbank Offered Rate for the U.S. Dollar.

## 2. Settlement Class

(A) Exchange-Based Plaintiffs will file an application pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, seeking the certification of the following 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) The Parties' agreement as to certification of the Settlement Class is solely for the purposes of effectuating a settlement and for no other purpose. HSBC retains all of its objections, arguments, and defenses with respect to class certification, and reserves all rights to contest class certification if the settlement set forth in this Settlement Agreement does not receive the Court's final approval, if the Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to become effective. Should any of the foregoing occur, the Parties agree that the agreement as to certification of the Settlement Class becomes null and void *ab initio*, and this Settlement Agreement or any other settlement-related statement may not be cited regarding certification of the Settlement Class, or in support of an argument for certifying a class for any purpose related to this or any other proceeding.

### **3. Settlement Payment**

(A) HSBC shall cause 50% of the Settlement Amount (\$9,250,000) to be deposited into an interest-bearing Escrow Account controlled by Lead Counsel within ten (10) business days of the entry of the Preliminary Approval Order, and shall cause the remainder to be deposited within seven (7) business days after entry of the Final Approval Order, provided that within three (3) business days of the entry of the Preliminary Approval Order, Lead Counsel shall provide HSBC with such information as HSBC may require to complete a wire transfer of the required funds. HSBC shall have the right to consent to the Escrow Agent chosen by Lead Counsel, which consent shall not be unreasonably withheld. The Escrow Agent shall invest any

funds in excess of \$250,000 in short-term United States Treasury Securities (or a mutual fund invested solely in such instruments), or in a fully United States Government-insured account, and shall collect and reinvest all interest accrued thereon. Any funds held in escrow up to \$250,000 may be held in a bank account insured to the extent possible by the FDIC. All interest earned by any portion of the Settlement Amount paid into the Settlement Fund shall be added to and become part of the Settlement Fund. Except as provided in Section 22, below, the Settlement Amount shall not be subject to reduction upon the occurrence of the Effective Date, and no funds may be returned to HSBC through reversion or other means. The Escrow Agent shall only act in accordance with instructions mutually agreed upon by the Settling Parties in writing.

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

(C) Under no circumstances will HSBC be required to pay more than the Settlement Amount. For purposes of clarification, and as provided in Section 8, below, the payment of any fee and expense award, costs of Class Notice and administration, Taxes and Tax Expenses, Escrow Agent costs, and any other costs associated with the implementation of this Settlement Agreement, shall be paid exclusively from the Settlement Fund. This settlement is not a claims-made settlement and, if all conditions of the Settlement Agreement are satisfied, and there is a Final Approval Order and Final Judgment, no portion of the Settlement Fund will be returned to HSBC, irrespective of the number of claims filed, the collective amount of losses of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants. If any portion of the Net Settlement Fund remains after six (6) months from the date

of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) pursuant to Section 8, or reasonably soon thereafter, the Settlement Administrator shall, if logistically feasible and economically justifiable, reallocate such balances among Authorized Claimants in an equitable fashion. These redistributions shall be repeated until the remaining balance in the Net Settlement Fund is *de minimis* and such remaining balance is not cost effective or efficient to redistribute to the Settlement Class, then such remaining balance of funds, after payment of any further costs of Class Notice and administration and Taxes and Tax Expenses and other costs and expenses related to the Action, shall be donated to an appropriate §501(c)(3) non-profit charitable organization selected by Exchange-Based Plaintiffs' Counsel and approved by the Court.

#### **4. Cooperation**

(A) All cooperation shall be coordinated in such a manner so that all unnecessary duplication and expense is avoided. HSBC and Exchange-Based Plaintiffs will attempt in good faith to complete the reasonable cooperation contemplated herein as soon as it is practicable.

(B) Notwithstanding any other provision in this Settlement Agreement, HSBC may assert, where applicable, the attorney work-product doctrine, the attorney-client privilege, the common interest doctrine, the joint defense privilege, bank regulatory or examination privilege, foreign bank secrecy laws, foreign data protection laws, or any other applicable privilege or protection with respect to any documents, interviews, declarations and/or affidavits, depositions, testimony, material, and/or information requested under this Settlement Agreement. Any information provided to Exchange-Based Plaintiffs' Counsel pursuant to this Settlement Agreement shall be covered by the Amended Stipulation and Protective Order entered by the Court in the Action on May 12, 2016 (Dkt. No. 1405) (the "Protective Order"), and any

subsequent protective orders in place in the Action. If no protective order is in effect, any such documents, declarations, affidavits, deposition testimony, and information shall be maintained as confidential and available only to Exchange-Based Plaintiffs' Counsel and HSBC's counsel. None of the cooperation provisions are intended to, nor do they, waive any applicable privileges or protections. Nothing in this Settlement Agreement shall impose on HSBC an obligation to produce or provide any materials or information that would be unduly burdensome to produce or provide or would be disproportionate to the needs of the Action. Nor shall anything in this Settlement Agreement obligate HSBC to produce any communications with regulatory or governmental authorities who were investigating USD LIBOR-related matters or any documents created during the course of such investigations for the purpose of communicating with or cooperating with these authorities. HSBC agrees that its counsel will meet with Exchange-Based Plaintiffs' Counsel as is reasonably necessary to discuss any applicable privilege, protection or restriction. Any disputes regarding any privilege, protection or restriction that cannot be resolved amongst the Parties shall be reserved for resolution by the Court. If any document protected by the attorney-client privilege, attorney work-product doctrine, common interest doctrine, joint defense privilege, bank regulatory or examination privilege, foreign bank secrecy laws, foreign data protection laws, or any other applicable privilege or protection, law, regulation, policy and/or rule of any regulatory agency or governmental body restricting disclosure of such documents is accidentally or inadvertently produced, the document and any copies shall be returned to HSBC's counsel within five (5) days of discovery of the document and any work product containing such information shall be destroyed, and its production shall in no way be construed to have waived any privilege, protection or restriction attached to such document or information.

(C) Exchange-Based Plaintiffs acknowledge that HSBC's production of documents to date plus the production of further documents contemplated pursuant to Section (D) below, will substantially complete HSBC's document production obligations. Exchange-Based Plaintiffs shall have the right to make limited, targeted requests to HSBC, without subpoena, for reasonably-accessible documents, including electronically stored information ("ESI"), relating to LIBOR, that are non-duplicative of requests made by non-settling plaintiffs and HSBC shall cooperate (by, among other ways, allowing Exchange-Based Plaintiffs to provide search terms for electronic searches of specific HSBC custodians' files), and produce documents and ESI related to LIBOR for the period January 1, 2005 through May 31, 2010. This provision shall be terminated when the Exchange-Based Plaintiffs' claims against all other Defendants have been dismissed in their entirety and the dismissal has been upheld on appeal, if any. If HSBC declines to produce documents in response to a request by the Exchange-Based Plaintiffs, Exchange-Based Plaintiffs shall have the right to seek production of documents from HSBC by making a motion in the Court., unless Exchange-Based Plaintiffs' claims against all other Defendants have been dismissed in their entirety and the dismissal has been upheld on appeal, if any.

(D) Subject to the terms of this Settlement Agreement (including, without limitation, Sections 4(A), (B), (C), and (G)), and in settlement and release of all claims of the Settlement Class Members as set forth in this Settlement Agreement, HSBC agrees to do the following, to the extent not prevented from doing so by any court order or any law, regulation, policy, or other rule of any regulatory agency or governmental body restricting disclosure of documents or information, and in all events limited to the subject matter of the Released Claims:

- (i) HSBC will produce to Exchange-Based Plaintiffs the documents in its possession, custody or control from the following categories, to the extent that such

documents have not already been produced in the course of litigation discovery:

- a. Direct communications between HSBC employees/or and employees of other financial institutions, including LIBOR panel banks, that represent possible requests to or among other panel banks for LIBOR submissions to be made at a certain level or in a certain direction;
  - b. Documents reflecting HSBC's knowledge of other panel banks' expected LIBOR submissions including those which were created after August 7, 2007;
  - c. Documents that reflect or may reflect jurisdictional facts as relating to foreign defendants other than HSBC, provided (a) that this cooperation shall be supplied only after final approval of this settlement, and (b) Plaintiffs shall present targeted word searches to HSBC which shall perform reasonable, non-burdensome searches for, and supply documents that pertain or may pertain to personal jurisdiction of foreign defendants other than HSBC. and
  - d. To the extent HSBC later produces to other plaintiffs in the Multi-District Litigation documents in these categories, HSBC will produce them to Exchange-Based Plaintiffs.
- (ii) HSBC will produce documents identifying each of HSBC's Eurodollar unsecured borrowings or loans in the London interbank market for the period between August 7, 2005 and May 31, 2012. HSBC shall produce such information with unredacted counterparty information to the extent HSBC is permitted to do so without violating any data privacy, confidentiality or bank

secrecy laws.

- (iii) In the event and at the time that HSBC produces any documents to other class plaintiffs in the Multi-District Litigation, pursuant to discovery, settlement or other reason, HSBC will promptly produce those documents to Exchange-Based Plaintiffs unless the Exchange-Based Plaintiffs' claims against all other Defendants have been dismissed in their entirety and the dismissal has been upheld on appeal, if any. Notwithstanding the foregoing, HSBC will have no obligation to produce to Exchange-Based Plaintiffs documents relevant only to a particular party's claim or downstream transactional data for over-the-counter transactions.

(E) HSBC will reasonably cooperate to provide information necessary for Exchange-Based Plaintiffs to authenticate or otherwise make usable at trial the cooperation materials and other materials produced in this action.

(F) HSBC and Exchange-Based Plaintiffs' Counsel agree to work in good faith to resolve any issues relating to electronic discovery, including the form of production for electronic data files.

(G) The Parties expressly agree that any use of the information provided in connection with the confirmatory discovery and cooperation obligations set forth in this Section 4 may be used by Exchange-Based Plaintiffs' Counsel solely in connection with the prosecution of the Action, but not for the prosecution of any action or proceeding against any Releasee nor for any other purpose whatsoever. Such information may not be used in connection with the prosecution of any claims that are not Released Claims. Nothing in this Settlement Agreement shall exclude Exchange-Based Plaintiffs from using any documents and testimony obtained in connection with

Section 4 as necessary to continue to prosecute the Action. Exchange-Based Plaintiffs and Exchange-Based Plaintiffs' Counsel shall not disclose any of the information provided in connection with the confirmatory discovery and/or cooperation obligations to any other counsel or party in the Multi-District Litigation. However, Exchange-Based Plaintiffs' Counsel's may use information provided in connection with the confirmatory discovery and/or cooperation obligations with other counsel in the Multi-District Litigation, and with their experts and consultants where such information is otherwise already in their possession and such use is permissible under the protective order in the Action. Neither this Settlement Agreement nor the settlement, nor any act performed or document executed pursuant to or in furtherance of this Settlement Agreement or the settlement shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement, and except that the Releasees may file this Settlement Agreement and/or the Final Judgment in any action for any purpose, including, but not limited to, in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The limitations described in this Section 4(G) apply whether or not the Court enters the Preliminary Approval Order, the Final Approval Order, or the Final Judgment.

**5. Payment of Attorneys' Fees and Reimbursement of Expenses**

(A) Subject to Court approval, Exchange-Based Plaintiffs and Exchange-Based Plaintiffs' Counsel shall be reimbursed and paid solely out of the Settlement Fund for all fees and expenses including, but not limited to, attorneys' fees, and past, current or future litigation expenses incurred in the Action. HSBC shall have no interest or right in or to any portion of the Settlement Fund based on any ruling that the Court makes on any application by Exchange-

Based Plaintiffs' Counsel for fees, costs or expenses. Further, HSBC shall have no responsibility for, and no liability with respect to, any costs, fees, or expenses incurred for or by Exchange-Based Plaintiffs' or Class Members' respective attorneys, experts, advisors, agents, or representatives. Nothing in this provision shall expedite the date(s) for HSBC's payments as set forth in Section 3.

(B) Exchange-Based Plaintiffs' Counsel may apply to the Court for an award from the Settlement Fund of attorneys' fees. Exchange-Based Plaintiffs' Counsel also may apply to the Court for reimbursement from the Settlement Fund of Exchange-Based Plaintiffs' Counsels' litigation expenses. HSBC shall take no position with respect to Exchange-Based Plaintiffs' Counsel's motion for attorneys' fees and expenses.

(C) The procedures for, and the allowance or disallowance by the Court, of any Fee and Expense Application are not part of the settlement set forth in this Settlement Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement set forth in this Settlement Agreement. Any order or proceeding solely relating to any Fee and Expense Application, or any appeal from any fee and expense award or any other order relating thereto or the reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement, or affect or delay the finality of the Final Judgment and the settlement of the Action as set forth herein. No order of the Court or modification or reversal on appeal of any order of the Court solely concerning any Fee and Expense Application or the Distribution Plan shall constitute grounds for termination of this Settlement Agreement.

(D) At least thirty-five (35) calendar days prior to the Fairness Hearing, Exchange-Based Plaintiffs' Counsel and Exchange-Based Plaintiffs shall file any Fee and Expense Application.

(E) Subject to the requirements in Section 9(B), attorneys' fees and expenses awarded by the Court shall be payable from the Escrow Account within ten (10) business days after the Court executes the Final Approval Order awarding such fees and expenses, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Exchange-Based Plaintiffs' Counsel's joint and several obligation to make appropriate refunds or repayments to the Settlement Fund, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or cost award is reduced or reversed.

(F) Subject to the requirements in Sections 5(B), 5(D), 5(E) and 9(B), attorneys' fees may be distributed pursuant to the terms of a fee and expense award, provided however that any Exchange-Based Plaintiffs' Counsel seeking to draw down their share of the attorneys' fees prior to the Final Approval Order or the fee and expense award becoming Final shall unconditionally guarantee the repayment of the amount drawn down. In order to receive a distribution of funds prior to the Final Approval Order or the fee and expense award becoming Final, Exchange-Based Plaintiffs' Counsel shall be required to agree in writing to reimburse the Settlement Fund (or HSBC, if the Settlement Fund has otherwise been liquidated) within thirty (30) business days for all or the pertinent portion of the draw-down with interest, calculated at the rate of interest published in the *Wall Street Journal* for 3-month U.S. Treasury Bills as of the close on the date that the draw-down was distributed, if a Final Judgment is not entered or if the fee and expense award is reduced or overturned on appeal.

**6. Application for Approval of Fees, Expenses, and Costs of Settlement Fund Administration**

Exchange-Based Plaintiffs' Counsel may apply, at the time of any application for distribution to Authorized Claimants, for an award from the Settlement Fund of attorneys' fees for services performed and reimbursement of expenses incurred in connection with the administration of the Settlement Agreement after the date of the Fairness Hearing. Exchange-Based Plaintiffs' Counsel reserves the right to make additional applications for payment from the Settlement Fund for attorneys' fees for services performed and reimbursement of expenses incurred.

**7. No Liability for Fees and Expenses of Exchange-Based Plaintiffs' Counsel**

HSBC and the Releasees shall have no responsibility for, and no liability whatsoever with respect to, any payment(s) to Exchange-Based Plaintiffs' Counsel for attorneys' fees, costs and expenses and/or to any other Person who may assert some claim thereto, or any fee and expense award the Court may make in the Action.

**8. Distribution of and/or Disbursements from Settlement Fund**

A. The Settlement Administrator, subject to such supervision and direction by the Court and/or Exchange-Based Plaintiffs' Counsel as may be necessary or as circumstances may require, shall administer the Proof of Claim and Release forms submitted by the Settlement Class Members and shall oversee the distribution of the Net Settlement Fund pursuant to the Distribution Plan. Subject to the terms of this Settlement Agreement and any order(s) of the Court, upon the Effective Date (or earlier if provided in Section 5), the Settlement Fund shall be applied as follows:

- (i) to pay costs and expenses reasonably and actually incurred in connection with the distribution of the Class Notice and administration of

the Settlement Agreement as provided in this Section 8 and Section 6, including locating members of the Class, soliciting Class Members' claims, assisting Class Members with the filing and processing of claims against the Net Settlement Fund at any time after HSBC makes payments described in Section 3, and distributing the Net Settlement Fund to Authorized Claimants;

(ii) to pay Escrow Agent costs;

(iii) to pay Taxes assessed on the Settlement Fund, and tax preparation fees in connection with such Taxes;

(iv) to pay any attorneys' fees, costs and expenses approved by the Court upon submission of a Fee and Expense Application, as provided in Sections 5; and

(v) to pay the Net Settlement Fund to Authorized Claimants as allowed by the Settlement Agreement, the Distribution Plan, or order of the Court.

B. The Releasees and their counsel shall have no responsibility for, interest in, or liability whatsoever with respect to the investment or distribution of the Settlement Fund, the Distribution Plan, the determination, administration, or calculation of claims, the payment or withholding of Taxes or Tax Expenses, the distribution of the Net Settlement Fund, or any losses incurred in connection with any such matters. Effective immediately upon the Effective Date, the Releasers hereby fully, finally, and forever release, relinquish, and discharge the Releasees and their counsel from any and all such liability. No Person shall have any claim against Exchange-Based Plaintiffs' Counsel or the Settlement Administrator based on distributions made

substantially in accordance with the Settlement Agreement and the settlement contained herein, the Distribution Plan, or further orders of the Court.

C. The Distribution Plan is based upon Lead Counsel's assessment of the merits and the relative strengths and weaknesses, including recoverable damages, of the claims of the Settlement Class Members. HSBC does not and shall not take any position with respect to the proposed Distribution Plan.

#### **9. Disbursements Prior to Effective Date**

(A) No distribution to any Settlement Class Member may be made from the Settlement Fund until the Effective Date. Except as provided in Section 9(B) herein or by Court order, no distribution or disbursement of fees, costs and expenses of any kind may be made from the Settlement Fund until the Effective Date. As of the Effective Date, all fees, and costs and expenses as approved by the Court may be paid out of the Settlement Fund.

(B) Upon written notice to the Escrow Agent by Exchange-Based Plaintiffs' Counsel with a copy to HSBC, the following may be disbursed prior to the Effective Date: (i) reasonable costs of Class Notice and administration may be paid from the Settlement Fund as they become due (up to a maximum of \$250,000); (ii) reasonable costs of the Escrow Agent may be paid from the Settlement Fund as they become due; (iii) Taxes and Tax Expenses may be paid from the Settlement Fund as they become due; and (iv) up to thirty percent (30%) of Exchange-Based Plaintiffs' Counsel's attorneys' fees and costs and expenses as approved by the Court. In the event the Settlement Agreement does not become final, HSBC shall be entitled to return of all such funds, except for up to \$250,000 for reasonable costs of Class Notice and administration that have been actually disbursed prior to the date the Settlement Agreement was terminated.

(C) Exchange-Based Plaintiffs' Counsel will attempt in good faith to minimize the costs of the Escrow Agent, Class Notice and administration.

**10. Distribution of Net Settlement Fund to Authorized Claimants**

Upon the Effective Date and thereafter, and in accordance with the terms of this Settlement Agreement, the Distribution Plan, and any order(s) of the Court, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the following:

(i) Each Class Member who claims to be an Authorized Claimant shall be required to submit to the Settlement Administrator a verified completed Proof of Claim and Release supported by such documents as specified in the Proof of Claim and Release and as are reasonably available to such Class Member;

(ii) Except as otherwise ordered by the Court, each Class Member who fails to submit a Proof of Claim and Release within such period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments pursuant to this Settlement Agreement and the settlement set forth herein, but shall in all other respects be subject to and bound by the provisions of this Settlement Agreement, the releases contained in this Settlement Agreement, and the Final Judgment, and will be barred from bringing any action or proceeding against the Releasees concerning any Released Claims;

(iii) The Net Settlement Fund shall be distributed to Authorized Claimants and, except as provided in Sections 9(B) or 22, there shall be no reversion to HSBC. The distribution to Authorized Claimants shall be in accordance with the Distribution Plan as approved by the Court upon such notice to the Class as may be required. Any

such Distribution Plan is not a part of this Settlement Agreement. No funds from the Net Settlement Fund shall be distributed to Authorized Claimants until the later of (i) the Effective Date or (ii) the date by which the Distribution Plan has received final approval and the time for any further appeals with respect to the Distribution Plan has expired. Should there be any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise), Exchange-Based Plaintiffs' Counsel shall submit an additional distribution plan to the Court for its approval, unless the Distribution Plan already provides for the distribution of such balance remaining;

(iv) Each Class Member shall be subject to and bound by the provisions of this Settlement Agreement, the releases contained herein, and the Final Judgment, regardless of whether such Class Member seeks or obtains by any means, including, without limitation, by submitting a Proof of Claim and Release or any similar document, any distribution from the Net Settlement Fund; and

(v) Each claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant's claim, and the claim will be subject to investigation and discovery pursuant to the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that claimant's status as a Class Member and the validity and amount of the claimant's claim. No discovery shall be allowed to be directed against Releasees, and no discovery shall be allowed on the merits of the Action or settlement in connection with the processing of the Proof of Claim and Release forms.

**11. Administration/Maintenance of Settlement Fund**

A. The Settlement Fund shall be maintained by Exchange-Based Plaintiffs' Counsel under supervision of the Court and shall be distributed solely at such times, in such manner and to such Persons as shall be directed by subsequent orders of the Court (except as provided for in this Settlement Agreement) consistent with the terms of this Settlement Agreement. The Parties and the Escrow Agent intend that the Settlement Fund be treated at all times as a "qualified settlement fund" within the meaning of Treasury Regulation § 1.468B-1 and agree not to take any position for tax purposes inconsistent therewith. Exchange-Based Plaintiffs' Counsel shall ensure that the Settlement Fund at all times complies with Treasury Regulation § 1.468B-1 in order to maintain its treatment as a qualified settlement fund. To this end, Exchange-Based Plaintiffs' Counsel shall ensure that the Settlement Fund is approved by the Court as a qualified settlement fund and that any Escrow Agent, Settlement Administrator or other administrator of the Settlement Fund complies with all requirements of Treasury Regulation § 1.468B-1. Any failure to ensure that the Settlement Fund complies with Treasury Regulation § 1.468B-1, and the consequences thereof, shall be the sole responsibility of Exchange-Based Plaintiffs' Counsel. The Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this Section 11(A), including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and deliver timely and properly the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

B. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The Escrow Agent shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2

by, *e.g.*, (i) obtaining a taxpayer identification number, (ii) satisfying any information reporting or withholding requirements imposed on distributions from the Settlement Fund, and (iii) timely and properly filing applicable federal, state and local tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)) and paying any taxes reported thereon. Such returns (as well as the election described in this Section 11(A) shall be consistent with Section 11(A) and in all events shall reflect that all Taxes as defined in Section 11(C), below, on the income earned by the Settlement Fund shall be paid from the Settlement Fund as provided in Section 8, above.

C. All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed upon HSBC or its counsel with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (collectively, “Taxes”), and (ii) expenses and costs incurred in connection with the operation and implementation of this Section 11, including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Section 11 (collectively, “Tax Expenses”), shall be paid or reimbursed from the Settlement Fund. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall timely be paid by the Escrow Agent out of the Settlement Fund without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required

to be withheld under Treas. Reg. § 1.468B-2(I)(2)); neither HSBC nor its counsel is responsible therefor, nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section 11.

D. Neither the Parties nor their counsel shall have any responsibility for or liability whatsoever with regard to: (i) any act, omission, or determination of the Escrow Agent or Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement Fund or otherwise; (ii) the Distribution Plan; (iii) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of, the Settlement Fund; or (v) the payment or withholding of any Taxes, Tax Expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns. The Escrow Agent shall indemnify and hold harmless the Parties out of the Settlement Fund from and against any claims, liabilities, or losses relating to the matters addressed in the preceding sentence.

## **12. Release and Covenant Not To Sue**

(A) Upon the Effective Date, and in exchange for the receipt of the Settlement Amount provided for herein, the receipt and sufficiency of which is hereby acknowledged, the Releasors, and any other Person claiming against the Settlement Fund (now or in the future) through or on behalf of any Releasor, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged Releasees from any and all Released Claims, and shall be permanently barred and enjoined from instituting, commencing, or prosecuting any such Released Claim in any lawsuit, arbitration or other proceeding against Releasee in any court or venue in any jurisdiction worldwide. Releasors

further agree and covenant not to assist any third party in commencing or maintaining any suit against any Releasee related in any way to the Released Claims. Each Releasor shall be deemed to have released all Released Claims against the Releasees regardless of whether any such Releasor ever seeks or obtains by any means, including, without limitation, by submitting a Proof of Claim and Release, any distribution from the Settlement Fund or Net Settlement Fund. The releases set forth herein are given pursuant to New York law and are to be construed under New York law, including N.Y. General Obligations Law § 15-108, which bars claims for contribution by joint tortfeasors and other similar claims. This Settlement Agreement is expressly intended to absolve Releasees from any claims for contribution, indemnification or similar claims from other Defendants in the Action and other alleged co-conspirators, arising out of or related to the Released Claims, in the manner and to the fullest extent permitted under the laws of New York or any other jurisdiction that might be construed or deemed to apply to any claims for contribution, indemnification or similar claims against any Releasee. Notwithstanding the foregoing, should any court determine that any Defendant or other co-conspirator is/was legally entitled to any kind of contribution or indemnification from a Releasee arising out of or related to Released Claims, the Releasors agree that any money judgment subsequently obtained by the Releasors against any Defendant or other co-conspirator shall be reduced to an amount such that, upon paying the entire amount, the Defendant or other co-conspirator would have no claim for contribution, indemnification or similar claims against the Releasee. Except in the event of termination of this Settlement Agreement, the Settling Parties agree not to assert under Rule 11 of the Federal Rules of Civil Procedure or any similar law, rule or regulation, that the Action was brought or defended in bad faith or without a reasonable basis.

(B) This release constitutes a waiver of Section 1542 of the California Civil Code (to

the extent it applies to the Action), which provides as follows:

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

This release also constitutes a waiver of any and all provisions, rights, and benefits of any federal, state or foreign law, rule, regulation, or principle of law or equity that is similar, comparable, equivalent to, or which has the effect of, Section 1542 of the California Civil Code. The Settling Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Settlement Agreement, but that it is their intention to release fully, finally, and forever all of the Released Claims, and in furtherance of such intention, the release shall be irrevocable and remain in effect notwithstanding the discovery or existence of any such additional or different facts. In entering and making this Settlement Agreement, the Parties assume the risk of any mistake of fact or law and the release shall be irrevocable and remain in effect notwithstanding any mistake of fact or law. The Parties acknowledge, and Class Members shall be deemed to have acknowledged, that the release of such unknown claims was separately bargained for and was a key element of the Settlement Agreement.

### **13. Motion for Preliminary Approval**

At a time after the Execution Date to be mutually agreed by HSBC and Exchange-Based Plaintiffs' Counsel, Exchange-Based Plaintiffs' Counsel shall submit this Settlement Agreement to the Court and shall file a motion for entry of the Preliminary Approval Order requesting, *inter alia*, preliminary approval of the Settlement, including certification of the Class for purposes of the Settlement Agreement only, and for a stay of all proceedings of all of the Exchange-Based

Plaintiffs' claims against HSBC in the Action pending final approval of the Settlement. The motion shall include a proposed order preliminarily approving the Settlement Agreement substantially in the form attached hereto as Exhibit A.

**14. Class Notice**

A. In the event that the Court preliminarily approves the Settlement, Exchange-Based Plaintiffs' Counsel shall, in accordance with Rule 23 of the Federal Rules of Civil Procedure and the Preliminary Approval Order, provide Class Members, whose identities can be determined after reasonable efforts and with HSBC's assistance pursuant to Section 14(B) below, with notice of the Settlement Agreement and the date of the Fairness Hearing. The Class Notice may be sent solely for this Settlement Agreement or combined with notice of Other Settlements or of any litigation class. The Class Notice shall also explain the general terms of the Settlement Agreement, the general terms of the proposed Distribution Plan, the general terms of the Fee and Expense Application, and a description of Class Members' rights to object to the settlement, request exclusion from the Class pursuant to the schedule and terms provided in the Preliminary Approval Order, and appear at the Fairness Hearing. The text of the Class Notice shall be agreed upon by the Parties before its submission to the Court for approval thereof.

B. HSBC shall, at its own expense and as reasonably available to HSBC and permissible by law (including, for the avoidance of doubt, any applicable foreign data privacy, confidentiality or bank secrecy laws), supply to Exchange-Based Plaintiffs' Counsel in electronic format, or other such form as may be reasonably requested by Exchange-Based Plaintiffs' Counsel and/or the Claims Administrator, the names and addresses of all clients, who, between January 1, 2003 and May 31, 2011, entered into Eurodollar futures and options transactions on the Chicago Mercantile Exchange ("CME") and who can be reasonably identified based on client

records that HSBC has in its possession, custody, or control. Any information provided pursuant to this provision shall be covered by the Protective Order in effect in the Action, or, if no protective order is in effect, shall nevertheless be maintained as confidential. Moreover, any information provided pursuant to this provision shall be used solely for purposes of providing notice and administering and verifying claims, and any distribution of such information shall be limited to what is necessary for those purposes. If the Parties are unable to agree on the scope of the client-identifying data to be produced, the issue shall be submitted to a mediator, mutually agreed upon, for resolution. Class Notice shall be mailed to, among others who can be identified by Exchange-Based Plaintiffs using reasonable efforts, those Persons that are identified by HSBC.

C. With respect to the serving of notice upon the “Appropriate State Official” and “Appropriate Federal Official” as required and defined by the Class Action Fairness Act (“CAFA”), 28 U.S.C. §1715(a), HSBC shall bear the costs and responsibility of timely serving such notice.

## **15. Publication**

Exchange-Based Plaintiffs’ Counsel shall cause to be published a summary in accord with the Class Notice submitted to the Court by the Parties and approved by the Court. HSBC shall have no responsibility for providing publication or distribution of the Settlement Agreement or any notice of the Settlement Agreement to Class Members (except for identifying certain Class Members as provided in Section 14(B)) or for paying for the cost of providing notice of the Settlement Agreement to Class Members except as provided for in Section 9(B). The Parties shall mutually agree on any content relating to HSBC that will be used by Exchange-Based Plaintiffs’ Counsel and/or the Settlement Administrator in any settlement-related press release or

other media publication, including on websites.

**16. Motion for Final Approval and Entry of Final Judgment**

(A) After Class Notice is issued, and at least thirty-five (35) calendar days prior to the Fairness Hearing, Exchange-Based Plaintiffs' Counsel shall make a motion to the Court for the final approval of the settlement, and the Parties shall jointly seek entry of the Final Approval Order and Final Judgment on substantially the following terms:

(i) finally certifying solely for settlement purposes the Settlement Class;

(ii) finding that the Class Notice constituted the best notice practicable under the circumstances and complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process;

(iii) fully and finally approving this Settlement Agreement and its terms as being a fair, reasonable and adequate settlement of the Settlement Class' claims under Rule 23 of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms and conditions;

(iv) directing that the Action be dismissed with prejudice as to HSBC and, except as provided for herein, without costs;

(v) discharging and releasing the Released Claims as to the Releasees;

(vi) permanently barring and enjoining the institution and prosecution by Exchange-Based Plaintiffs, Releasers, and any Class Member of any lawsuit, arbitration or other proceeding against the

Releasees in any jurisdiction asserting any of the Released Claims;

(vii) permanently barring and enjoining any claim(s) by any Person against HSBC or any other Releasee(s) for contribution or indemnification (however denominated) for all or any portion of amounts paid or awarded in the Action by way of settlement, judgment, or otherwise;

(viii) determining pursuant to Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing entry of a Final Judgment as to HSBC;

(ix) reserving the Court's continuing and exclusive jurisdiction over the Settlement Agreement, including all future proceedings concerning the administration and enforcement of this Settlement Agreement; and

(x) containing such other and further provisions consistent with the terms of this Settlement Agreement to which HSBC and the Exchange-Based Plaintiffs expressly consent in writing.

**17. Reasonable Best Efforts to Effectuate This Settlement**

The Parties agree to cooperate with one another to the extent reasonably necessary to effectuate and implement the terms and conditions of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the terms and conditions of this Settlement Agreement.

**18. Effective Date**

Unless terminated earlier as provided in this Settlement Agreement, this Settlement Agreement shall become effective and final as of the date upon which all of the following

conditions have been satisfied:

- (A) The Settlement Agreement has been fully executed by HSBC and the Exchange-Based Plaintiffs' Counsel;
- (B) The Court has certified a Settlement Class, granted preliminary approval of this Settlement Agreement, and approved the program and form for the Class Notice;
- (C) Class Notice has been issued as ordered by the Court;
- (D) The Court has finally approved the Settlement Agreement in all respects as required by Rule 23(e) of the Federal Rules of Civil Procedure;
- (E) The Court has entered its Final Judgment of dismissal with prejudice as to the Releasees with respect to Exchange-Based Plaintiffs and Class Members;
- (F) No Party has exercised its right to termination under Section 21; and
- (G) The Final Judgment has become Final and the time for any appeal has lapsed.

**19. Occurrence of Effective Date**

Upon the occurrence of all of the events in Section 18, any and all remaining interest or right of HSBC in or to the Settlement Fund, if any, shall be absolutely and forever extinguished, and the Net Settlement Fund shall be transferred from the Escrow Agent to the Settlement Administrator at the written direction of Exchange-Based Plaintiffs' Counsel.

**20. Failure of Effective Date to Occur**

If any of the conditions specified in Section 18 are not satisfied, then this Settlement Agreement shall be terminated, subject to and in accordance with Section 21, unless the Parties mutually agree in writing to continue with it, including such revisions to which the Parties may agree.

**21. Termination**

(A) Either Party shall have the right, but not the obligation, in its sole discretion, to terminate this Settlement Agreement by providing written notice to the other Party within fifteen (15) business days of any of the following events:

- (i) the Court denies, in whole or in material part, Exchange-Based Plaintiffs' Motion for Preliminary Approval pursuant to Section 13 or the Motion for Final Approval pursuant to Section 16;
- (ii) Final Judgment is withdrawn, rescinded, or modified in material part by the Court or Final Judgment is reversed, vacated, or modified in material part on appeal; or
- (iii) the Court declines to enter the Final Judgment.

(B) HSBC may terminate the Settlement Agreement, or may elect to proceed with the Settlement Agreement, if a mediator, to be mutually selected by the Parties, determines that the persons that exclude themselves from the Class would likely have been eligible to receive collectively (but for their exclusion) a material part, calculated in a manner to be mutually agreed upon by Exchange-Based Plaintiffs and HSBC, of the potential distributions from the Net Settlement Fund, provided that Exchange-Based Plaintiffs and HSBC agree that a material part of the class is defined to be an amount greater than or equal to the sum specified in a separate Supplemental Agreement between the Settling Parties. The Supplemental Agreement shall not be filed with the Court and its terms shall not be disclosed in any other manner (other than the statements herein and in the Notice, to the extent necessary, or as otherwise provided in the Supplemental Agreement) unless and until a dispute arises among the Settling Parties concerning its interpretation or application. If submission of the Supplemental Agreement is required for resolution of a dispute or is otherwise ordered by the Court, the Settling Parties will undertake to

have the Supplemental Agreement submitted to the Court *in camera*. Lead Counsel shall cause to be provided to HSBC's counsel copies of any requests for exclusion at the addresses shown below, and any written revocation of requests for exclusion, within three (3) business days after receipt of the request by the Settlement Administrator.

## **22. Effect of Termination**

Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Settlement Agreement should terminate or be cancelled, or otherwise fail to become effective for any reason, including, without limitation, in the event that the Settlement Agreement as described herein is not finally approved by the Court or the Final Judgment is reversed or vacated following any appeal, then:

(A) Within ten (10) business days after written notification of such event is sent by counsel for HSBC or Lead Counsel to all Parties and the Escrow Agent, the Settlement Amount, and all interest earned in the Settlement Fund will be refunded, reimbursed, and repaid by the Escrow Agent to HSBC, except as provided in Section 9(B).

(B) The Escrow Agent or its designee shall apply for any tax refund owed to the Settlement Fund and pay the proceeds to HSBC, after deduction of any fees or expenses reasonably incurred in connection with such application(s) for refund; and

(C) Upon termination of this Settlement Agreement, then:

(i) the terms and provisions of this Settlement Agreement, with the exception of Sections 5, 22, 31, and 35 (which shall continue in full force and effect), shall be null and void and of no further force or effect with respect to the Settling Parties, and neither HSBC, the Exchange-Based Plaintiffs, or members of the Settlement Class shall be bound by

any of its terms;

(ii) neither the existence nor the terms of this Settlement Agreement (nor any negotiations preceding this Settlement Agreement nor any acts performed pursuant to, or in furtherance of, this Settlement Agreement) shall be used in the Action or in any other lawsuit, arbitration or other proceeding for any purpose (other than to enforce the terms remaining in effect);

(iii) any and all releases shall be of no further force and effect;

(iv) the litigation between the Parties shall be returned, to the maximum extent possible, to the position that existed on May 11, 2017, without waiver or prejudice to the Parties rights, claims, or defenses as they existed on that date, including without limitation HSBC's and HSBC Holdings plc's objection to and defense based on a lack of personal jurisdiction, which is expressly preserved; and

(v) any judgment or order entered by the Court in accordance with the terms of this Settlement Agreement shall be treated as vacated, *nunc pro tunc*, and any judgment or order vacated as part of the implementation of this Settlement Agreement shall be treated as reinstated, *nunc pro tunc*.

### **23. Impact of Any Other Settlement**

(A) If any Other Settlement (as defined in Section 1(AA)) is reached, the "Settlement Class" definition in Section 2 and the terms contained within the "Cooperation," "Release and Covenant Not to Sue," and "Termination" provisions herein (as described in Sections 4, 12, and

21 respectively) shall be no less favorable to HSBC than the corresponding term or provision applicable to any Other Settlement.

(B) If HSBC believes one or more terms or provisions referenced in Section 23(A) is less favorable than a corresponding term or provision in the Other Settlement, HSBC will provide written notice of such belief to Exchange-Based Plaintiffs' Counsel as prescribed in this Settlement Agreement within ten (10) business days of the filing of the Other Settlement with the Court. Following receipt of the written notice, HSBC and Exchange-Based Plaintiffs' Counsel will confer as to whether the relevant term or provision in this Settlement Agreement is less favorable as compared to the Other Settlement. If there is agreement between HSBC and Exchange-Based Plaintiffs' Counsel that the provision at issue is less favorable, HSBC and Exchange-Based Plaintiffs' Counsel will execute an amendment to the Settlement Agreement, adopting and incorporating the provision as drafted in the Other Settlement into the Settlement Agreement, and will submit the amendment to the Court for its approval. If HSBC and Exchange-Based Plaintiffs' Counsel are unable to reach an agreement on the relevant provision, HSBC or Exchange-Based Plaintiffs' Counsel may move the Court to resolve the dispute.

#### **24. Confidentiality Protection**

Exchange-Based Plaintiffs, Exchange-Based Plaintiffs' Counsel, and HSBC agree to keep private and confidential the terms of this Settlement Agreement until this document is filed with the Court, provided, however, that nothing in this Section shall prevent HSBC from making any disclosures it deems necessary to comply with any relevant laws, contracts, subpoena or other form of judicial process. The Parties will consult with each other with a view towards coordinating the timing of any disclosure to the Court concerning the fact that the Settlement Agreement has been reached or the amount of the Settlement. Nothing in this provision shall

preclude HSBC from complying with any legal or contractual obligation requiring it to disclose the fact or amount of the settlement as a result of bank regulatory requirements, SEC requirements, or otherwise. Breach of this provision before this Settlement Agreement is submitted to the Court without the other Party's consent, constitutes a ground on which HSBC or Exchange-Based Plaintiffs, in their respective discretion as the non-breaching Party, may terminate this Settlement Agreement.

#### **25. Binding Effect**

(A) This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of HSBC, the Releasees, the Exchange-Based Plaintiffs, and Settlement Class Members. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Exchange-Based Plaintiffs, and Exchange-Based Plaintiffs' Counsel, shall be binding upon all Settlement Class Members.

(B) This Settlement Agreement shall not be modified in any respect except by a writing executed by all the Settling Parties, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving Party. The waiver by any Party of any breach of this Settlement Agreement by another Party shall not be deemed or construed as a waiver of any other prior, contemporaneous or subsequent breach of this Settlement Agreement.

#### **26. Integrated Agreement**

This Settlement Agreement, including any exhibits hereto and agreements referenced herein, contains the entire, complete, and integrated statement of each and every term and provision agreed to by and among the Parties and is not subject to any condition not provided for or referenced herein. This Settlement Agreement supersedes all prior or contemporaneous

discussions, agreements, and understandings among the Parties to this Settlement Agreement with respect hereto.

**27. No Conflict Intended**

The headings used in this Settlement Agreement are for the convenience of the reader only and shall not have any substantive effect on the meaning and/or interpretation of this Settlement Agreement.

**28. Neither Party is the Drafter**

None of the Parties shall be considered to be the drafter of this Settlement Agreement or any provision herein for the purpose of any statute, case law, or rule of interpretation or construction that might cause any provision to be construed against the drafter.

**29. Choice of Law**

All terms within the Settlement Agreement and its exhibits hereto shall be governed by and interpreted according to the substantive laws of the State of New York, without regard to its choice of law or conflict of laws principles.

**30. Execution in Counterparts**

This Settlement Agreement may be executed in one or more counterparts. Facsimile and scanned/PDF signatures shall be considered valid signatures. All executed counterparts and each of them shall be deemed to be one and the same instrument. There shall be no agreement until the fully signed counterparts have been exchanged and delivered on behalf of all Parties.

**31. Submission to and Retention of Jurisdiction**

The Parties, their respective counsel, Releasers, Releasees and the Settlement Class irrevocably submit, to the exclusive jurisdiction of the United States District Court for the Southern District of New York solely for the purpose of any suit, action, proceeding, or dispute

arising out of or relating to this Settlement Agreement. Solely for the purpose of such suit, action, or proceeding, the Parties, their respective counsel, Releasers, Releasees and any Settlement Class Member irrevocably waive and agree not to assert, by way of motion, as a defense, or otherwise, any claim or objection that they are not subject to the jurisdiction of such Court, or that such Court is, in any way, an improper venue or an inconvenient forum or that the Court lacked power to approve this Settlement Agreement or enter any of the orders contemplated hereby. For the avoidance of doubt, HSBC expressly preserves and does not waive its right and the right of any Releasee to contest personal jurisdiction in the Action if the Effective Date does not occur or the Settlement Agreement is terminated.

### **32. Reservation of Rights**

This Settlement Agreement does not settle or compromise any claims by Exchange-Based Plaintiffs or any Settlement Class Member asserted in the Action against any Defendant or any potential defendant other than HSBC and the Releasees. Except as expressly stated in Section 12(A) relating to potential contribution and indemnity claims, the rights of any Settlement Class Member against any other Person other than HSBC and the Releasees are specifically reserved by Exchange-Based Plaintiffs and the Settlement Class Members. Nothing in this Settlement Agreement shall limit HSBC's or Releasees' ability to fully defend against litigation brought by other class and non-class plaintiffs in the Multi-District Litigation or otherwise, including without limitation their right to contest personal jurisdiction.

### **33. Notices**

All notices and other communications required to be given hereunder, or which may be given pursuant to the provisions hereof, shall be in writing. Each such notice shall be given either by (i) e-mail; (ii) hand delivery; (iii) registered or certified mail, return receipt requested,

postage pre-paid; (iv) FedEx or similar overnight courier; or (v) facsimile and first class mail, postage pre-paid, and, if directed to any Class Member, shall be addressed to Exchange-Based Plaintiffs' Counsel at their addresses set forth on the signature page hereof; and if directed to HSBC, shall be addressed to its attorneys at the address set forth on the signature pages hereof or such other addresses as Exchange-Based Plaintiffs' Counsel or HSBC may designate, from time to time, by giving notice to all Parties hereto in the manner described in this paragraph.

**34. Authority**

In executing this Settlement Agreement, Exchange-Based Plaintiffs' Counsel represent and warrant that they have been fully authorized to execute this Settlement Agreement on behalf of the Exchange-Based Plaintiffs and the Settlement Class (subject to final approval by the Court after notice to all Class members), and that all actions necessary for the execution of this Settlement Agreement have been taken. HSBC represents and warrants that the undersigned is fully empowered to execute the Settlement Agreement on behalf of HSBC, and that all actions necessary for the execution of this Settlement Agreement have been taken.

**35. No Admissions**

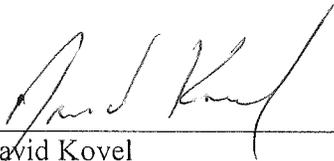
Nothing in this Settlement Agreement constitutes an admission by HSBC as to the merits of the allegations made in the Action, the validity of any defenses that could be asserted by HSBC, or the appropriateness of certification of any class other than the Settlement Class under Fed. R. Civ. P. 23 solely for settlement purposes. This Settlement Agreement is without prejudice to the rights of HSBC to: (i) challenge the Court's certification of any class, including the Settlement Class, in the Action should the Settlement Agreement not be approved or implemented for any reason; and/or (ii) oppose any certification or request for certification in

any other proposed or certified class action; and/or (iii) contest personal jurisdiction in any court except as expressly agreed in Section 31.

*On Behalf of Exchange-Based Plaintiffs  
individually and all Class Members:*

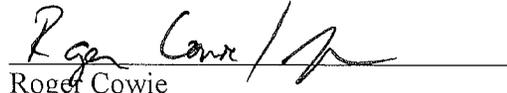


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