

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

FUND LIQUIDATION HOLDINGS LLC, as assignee and successor-in-interest to FrontPoint Asian Event Driven Fund L.P., MOON CAPITAL PARTNERS MASTER FUND LTD., and MOON CAPITAL MASTER FUND LTD., on behalf of themselves and all others similarly situated,

Docket No. 16-cv-05263 (AKH)

Plaintiffs,

-v.-

CITIBANK, N.A., BANK OF AMERICA, N.A., JPMORGAN CHASE BANK, N.A., THE ROYAL BANK OF SCOTLAND PLC, UBS AG, BNP PARIBAS, S.A., OVERSEA-CHINESE BANKING CORPORATION LTD., BARCLAYS BANK PLC, DEUTSCHE BANK AG, CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, CREDIT SUISSE AG, STANDARD CHARTERED BANK, DBS BANK LTD., ING BANK, N.V., UNITED OVERSEAS BANK LIMITED, AUSTRALIA AND NEW ZEALAND BANKING GROUP, LTD., THE BANK OF TOKYO-MITSUBISHI UFJ, LTD., THE HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED, COMMERZBANK AG, AND JOHN DOES NOS. 1-50,

Defendants.

**DECLARATION OF VINCENT BRIGANTI IN SUPPORT OF REPRESENTATIVE PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT WITH DEFENDANTS CITIBANK, N.A. AND CITIGROUP INC., CREDIT SUISSE AG, DEUTSCHE BANK AG, ING BANK N.V., THE HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED, JPMORGAN CHASE & CO. AND JPMORGAN CHASE BANK, N.A.**

Pursuant to 28 U.S.C. § 1746, I, Vincent Briganti, hereby declare as follows:

1. I am the Chairman and a shareholder of the law firm Lowey Dannenberg, P.C., Plaintiffs' Counsel in the above-referenced Action ("Lowey" or "Plaintiffs' Counsel").<sup>1</sup>

2. I submit this Declaration in connection with Representative Plaintiffs' Motion for Preliminary Approval of Class Action Settlements with (a) Citibank, N.A. and Citigroup Inc. ("Citi"), (b) JPMorgan Chase & Co. ("JPMorgan"), (c) The Hongkong and Shanghai Banking Corporation Limited ("HSBC"), (d) Credit Suisse AG ("Credit Suisse"), (e) Deutsche Bank AG ("Deutsche Bank"), and (f) ING Bank N.V. ("ING").<sup>2</sup>

3. Annexed hereto are true and correct copies of the following documents:

<b>TABLE OF EXHIBITS</b>	
Exhibit 1	Stipulation and Agreement of Settlement with Citi dated May 22, 2018 (the "Citi Agreement").
Exhibit 2	Stipulation and Agreement of Settlement with JPMorgan dated November 14, 2018 (the "JPM Agreement").
Exhibit 3	Stipulation and Agreement of Settlement with HSBC dated May 3, 2022 (the "HSBC Agreement").
Exhibit 4	Stipulation and Agreement of Settlement with Credit Suisse dated April 22, 2022 (the "Credit Suisse Agreement").
Exhibit 5	Stipulation and Agreement of Settlement with Deutsche Bank dated March 17, 2022 (the "Deutsche Bank Agreement").
Exhibit 6	Stipulation and Agreement of Settlement with ING dated March 17, 2022 (the "ING Agreement").
Exhibit 7	Declaration of Linda V. Young, dated May 13, 2022 ("Young Decl.").
Exhibit 8	Proposed Long Form notice.
Exhibit 9	Proposed Short Form notice.
Exhibit 10	Proof of Claim and Release form.
Exhibit 11	Proposed Distribution Plan.
Exhibit 12	Lowey's firm resume.

<sup>1</sup> All capitalized terms not defined herein have the same meaning as defined in the Settlement Agreements.

<sup>2</sup> Citi, JPMorgan, HSBC, Credit Suisse, Deutsche Bank, and ING are collectively referred to herein as the "Settling Defendants."

The Citi Agreement, JPM Agreement, HSBC Agreement, Credit Suisse Agreement, Deutsche Bank Agreement, and ING Agreement are collectively referred to as the “Settlement Agreements.”

### **I. Procedural History**

4. On July 5, 2016, Fund Liquidation Holdings, LLC filed the initial Complaint in the names of Plaintiffs FrontPoint<sup>3</sup> and Sonterra.<sup>4</sup> Plaintiffs filed their First Amended Class Action Complaint on October 31, 2016. ECF No. 119.<sup>5</sup>

5. On November 18, 2016, Defendants filed their motions to dismiss, including two memoranda of law and 28 declarations, based on alleged lack of personal jurisdiction as to certain Defendants, for lack of venue as to certain Defendants, and for failure to state a claim upon which relief can be granted and lack of subject matter jurisdiction as to all Defendants. ECF Nos. 144-74. On December 16, 2016, Plaintiffs submitted their opposition briefs and a supporting declaration. ECF Nos. 176-78. Four weeks later, on January 13, 2017, Defendants filed their replies. ECF Nos. 184-85. After the motions were fully briefed, but prior to oral argument, the parties filed letters advising the Court of newly-decided supplemental authority that may have a bearing on the motions. *See* ECF Nos. 187, 189, 193, 195, 199, 209.

6. On April 27, 2017, the Court held oral argument on Defendants’ motions to dismiss. On August 18, 2017, the Court entered an order denying in part and granting in part Defendants’ motion to dismiss and granting Plaintiffs leave to file a Second Amended Class Action Complaint. ECF No. 225.

---

<sup>3</sup> “FrontPoint” refers to Plaintiff FrontPoint Asian Event Driven Fund, Ltd.

<sup>4</sup> “Sonterra” refers to Plaintiff Sonterra Capital Master Fund, Ltd.

<sup>5</sup> Unless otherwise noted, all docket citations are to the docket in this Action, Docket No. 16-cv-05263 (AKH) (S.D.N.Y.).

7. One month later, on September 18, 2017, Plaintiffs filed their Second Amended Class Action Complaint. ECF No. 230. On October 18, 2017, Defendants again moved to dismiss, filing two briefs, two appendices and three declarations arguing: (1) lack of personal jurisdiction as to certain Defendants; (2) lack of venue as to certain Defendants; (3) lack of subject matter jurisdiction; and (4) Plaintiffs failed to state a claim upon which relief can be granted as to all Defendants. ECF Nos. 238-44. Plaintiffs filed two opposition briefs and a declaration on November 27, 2018 (*see* ECF Nos. 248-50) as well as a motion to seal certain documents. *See* ECF No. 251-252. Defendants filed their reply memoranda, a supporting declaration, and a corresponding motion to seal certain documents on December 21, 2017. ECF Nos. 253-57. Plaintiffs sought leave to file a sur-reply on December 28, 2017 (ECF Nos. 258-59), which Defendants opposed. ECF No. 262. The Court denied Plaintiffs' request to file a sur-reply on January 8, 2018. ECF No. 264.

8. On April 12, 2018, the Court held oral argument on Defendants' second motion to dismiss. The Court ruled from the bench that Plaintiffs would be permitted to file a Third Amended Class Action Complaint to substitute Fund Liquidation Holdings, LLC, the assignee of FrontPoint and Sonterra, and the real party in interest, as the named Plaintiff. *See* ECF No. 282 (Tr. of April 12, 2018 Oral Arg.) at 11. The Court entered an order denying in part and granting in part Defendants' second motion to dismiss on October 4, 2018. *See* ECF No. 302. In the order, the Court granted Plaintiffs leave to file a Third Amended Complaint ("TAC") and substitute the real party in interest, and ordered Defendants remaining in the action to file answers or otherwise respond to the TAC. *Id.* Plaintiffs filed the TAC on October 25, 2018. ECF No. 308.

9. On October 18, 2018, DBS Bank Ltd. ("DBS"), Oversea-Chinese Banking Corporation Limited ("OCBC"), United Overseas Bank Limited ("UOB"), and HSBC (the

“Reconsideration Movants”) moved for reconsideration of, and alternatively for certification of an interlocutory appeal from, the Court’s October 4, 2018 Order concerning the Second Amended Complaint. Plaintiffs filed an opposition to that motion on November 1, 2018. ECF Nos. 303-06, 310-11. On November 8, 2018, the Reconsideration Movants filed their replies. ECF Nos. 312-13.

10. On November 15, 2018, Plaintiffs filed a motion for preliminary approval of the proposed class action settlements with Citi and JPMorgan. ECF Nos. 314-317.

11. On November 15, 2018, Bank of America, N.A. (“BOA”), The Royal Bank of Scotland plc (“RBS”), UBS AG (“UBS”), BNP Paribas, S.A. (“BNPP”), OCBC, Deutsche Bank, Crédit Agricole Corporate and Investment Bank (“CACIB”), Credit Suisse, Standard Chartered Bank (“SCB”), DBS, UOB, Australia and New Zealand Banking Group, Ltd. (“ANZ”), MUFG Bank Ltd. (f/k/a The Bank of Tokyo-Mitsubishi UFJ, Ltd.) (“MUFG”), and HSBC (the “TAC Defendants”) filed a joint motion to dismiss the Third Amended Complaint asserting that, as to these Defendants, the Court lacked subject matter jurisdiction, Plaintiffs failed to state a claim and, as to certain Defendants,<sup>6</sup> that the Court lacked personal jurisdiction. ECF Nos. 318-329. On December 10, 2018, Plaintiffs filed their opposition to TAC Defendants’ motion to dismiss. ECF No. 344.

12. On December 26, 2018, Plaintiffs moved for leave to file a Fourth Amended Complaint that proposed to add Moon Capital Partners Master Fund, Ltd. (“Moon Capital Partners”) and Moon Capital Master Fund, Ltd. (“Moon Capital Master”) (collectively the “Moon Plaintiffs”) as Plaintiffs and reassert Sherman Act claims against Barclays Bank PLC (“Barclays”),

---

<sup>6</sup> The Royal Bank of Scotland plc, UBS AG, BNP Paribas, S.A., Oversea-Chinese Banking Corporation Ltd., Credit Agricole Corporate and Investment Bank, Credit Suisse AG, Standard Chartered Bank, DBS Bank Ltd., United Overseas Bank Limited, Australia and New Zealand Banking Group, Ltd., The Bank of Tokyo-Mitsubishi UFJ, Ltd., and The Hongkong and Shanghai Banking Corporation Limited.

Commerzbank AG (“Commerzbank”), and ING. ECF Nos. 347-348. The TAC Defendants, Barclays, Commerzbank, and ING, opposed that motion on January 23, 2019. ECF Nos. 359, 361. Plaintiffs filed their reply on February 8, 2019. ECF No. 364.

13. On February 22, 2019, Plaintiffs sent a letter to the Court regarding their pending motion for preliminary approval of the proposed class action settlements with Citi and JPMorgan. ECF No. 374. Non-Settling Defendants filed a letter in response on March 5, 2019. ECF No. 376. Plaintiffs filed a reply letter on March 8, 2019. ECF No. 377.

14. On April 29, 2019, the Court denied Reconsideration Movants’ motions because the same issues would be addressed as part of the Court’s review of Defendants’ joint motion to dismiss the TAC. ECF No. 386.

15. On May 2, 2019, the Court held a hearing on TAC Defendants’ motion to dismiss the TAC.

16. On July 25, 2019, the Court granted TAC Defendants’ motion to dismiss the TAC, denied Plaintiffs’ motion for preliminary approval of the proposed class action settlements, and denied Plaintiffs’ motion for leave to file a Fourth Amended Complaint. ECF No. 393 (the “July 25 Order”).

17. On August 26, 2019, Plaintiffs filed a Notice of Appeal to the United States Court of Appeals for the Second Circuit (“Second Circuit”) from the Court’s July 25 Order. ECF No. 397.

18. On March 17, 2021, the Second Circuit issued an Opinion reversing the July 25, 2019 Order and remanding this action back to this Court. ECF No. 412. On April 14, 2021, Defendants moved for rehearing *en banc* and/or panel rehearing. ECF No. 242. That motion was denied on May 6, 2021. ECF No. 246. On May 12, 2021, Defendants moved to stay the mandate.

ECF No. 249. Plaintiffs opposed that motion on May 14, 2021 (ECF No. 251), and the motion was denied on May 24, 2021. ECF No. 257.

19. Defendants ANZ, BOA, MUFG, Barclays, BNPP, Commerzbank, CACIB, DBS, Deutsche Bank, HSBC, OCBC, RBS, SCB, UBS, and UOB (the “Petitioners”) filed their petition for writ of certiorari with the U.S. Supreme Court on October 1, 2021. *See Bank of America Corporation, et al. v. Fund Liquidation Holdings LLC, et al.*, No. 21-505. Plaintiffs filed their opposition on November 4, 2021, and the Petitioners’ reply was filed on December 22, 2021. The U.S. Supreme Court denied the petition on January 10, 2022.

20. On October 21, 2021, a telephonic status conference was held regarding Plaintiffs’ motion for leave to file a Fourth Amended Complaint. On October 22, 2021, the Court granted Plaintiffs’ motion for leave to file Fourth Amended Complaint. ECF No. 436.

21. On October 25, 2021, Plaintiffs filed the Fourth Amended Complaint. ECF No. 437.

22. On November 24, 2021, Defendants ANZ, Barclays, BNPP, BOA, Commerzbank, CACIB, DBS, MUFG, OCBC, RBS, SCB, UBS, and UOB (the “FAC Defendants”) filed a motion to dismiss the Fourth Amended Complaint for lack of subject matter jurisdiction and failure to state a claim as to all named defendants, and for lack of personal jurisdiction as to all named defendants except BOA. ECF Nos. 445-49. Plaintiffs opposed the motion to dismiss on December 23, 2021. ECF Nos. 451-52. The FAC Defendants filed their reply on January 13, 2022. ECF Nos. 456-57.

23. On January 24, 2022, Plaintiffs moved for leave to file a sur-reply to FAC Defendants’ motion to dismiss. ECF Nos. 459-60. The Court granted the motion on January 25, 2021 (ECF No. 461), and Plaintiffs filed their sur-reply on January 28, 2021. ECF No. 463. On

February 8, 2022, the Court granted the FAC Defendants' motion for leave to file a response to Plaintiffs' sur-reply. ECF No. 466. On February 10, 2022, the FAC Defendants filed their response to Plaintiffs' sur-reply to the Motion to Dismiss. ECF No. 467. The Court scheduled oral argument on the FAC Defendants' Motion to Dismiss the Fourth Amended Complaint for March 23, 2022 (ECF No. 469), which was subsequently cancelled by the Court in light of a proposed settlement in the Action between Plaintiffs and the remaining Defendants in the Action. ECF No. 470.

## **II. Details of the Settlement Negotiations**

### **A. Citi Settlement Negotiations**

24. The negotiations with Citi took place over several months starting in January 2018 and continuing until the Agreement was executed on May 22, 2018.

25. Following initial phone calls with Citi's counsel in January 2018, Lowey engaged in lengthy negotiations with Citi's counsel over the material terms of the settlement, including the amount of the settlement consideration, the scope of the cooperation to be provided by Citi, the scope of the releases, and the circumstances under which the Parties would have the right to terminate the settlement.

26. During the course of the negotiations, Lowey and Citi each presented their views on the strengths and weaknesses of the claims and defenses, as well as Citi's litigation exposure. Throughout the negotiations, Citi's counsel argued that Citi was not liable for the claims asserted against it in the Action, and maintained that Citi had good and meritorious defenses to the claims brought against it in the Action.

27. In April 2018, Representative Plaintiffs reached an agreement with Citi on the amount of the settlement, subject to the negotiation of other material terms of the deal. For example, as this was the first settlement in the case, Plaintiffs' Counsel viewed the cooperation



provisions of the deal as extremely important to maximizing the overall recovery for the Class against the Non-Settling Defendants.

28. On April 9, 2018, counsel for Citi and Plaintiffs' Counsel signed a binding Settlement Term Sheet ("Term Sheet"). The Term Sheet set forth the terms on which the Parties agreed to negotiate the Agreement in good faith and to settle Representative Plaintiffs' claims against Citi. At the time the Term Sheet was executed, Plaintiffs' Counsel was well-informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the claims and defenses asserted.

29. By letter dated April 9, 2018, the Parties reported to the Court that the binding Term Sheet had been executed, and advised the Court that the Term Sheet would be superseded by a formal Agreement.

30. On May 22, 2018, several months of negotiations culminated with the Parties executing the Citi Agreement. Among the various terms negotiated, the Representative Plaintiffs and Citi agreed that Citi's obligation to provide cooperation would be triggered by the entry of an order preliminarily approving the Settlement. Ex. 1 (Citi Agreement, at § 4(K)).

**B. JPMorgan Settlement Negotiations**

31. The negotiations with JPMorgan took more than one year, starting in April 2017 and continuing until the Agreement was executed on November 14, 2018.

32. Following initial phone calls with JPMorgan's counsel in April 2017, Lowey engaged in multiple negotiation sessions over the next year with JPMorgan's counsel during which the parties discussed the strengths and weakness of Plaintiffs' liability and damages claim and JPMorgan's litigation exposure. Throughout the negotiations, JPMorgan's counsel argued that

JPMorgan was not liable for the claims asserted against it in the Action, and maintained that JPMorgan had good and meritorious defenses to the claims brought against it in the Action.

33. During these negotiations, Lowey and counsel for JPMorgan discussed the material terms of the settlement, including the amount of the settlement consideration, the scope of the cooperation to be provided by JPMorgan, the scope of the releases, and the circumstances under which the Parties would have the right to terminate the settlement.

34. In May 2018, Representative Plaintiffs reached an agreement with JPMorgan on the amount of the settlement, subject to the negotiation of other material terms of the deal. As with the Citi Agreement, Plaintiffs' Counsel viewed the cooperation provisions of the JPMorgan Agreement as extremely important to maximizing the overall recovery for the Class against the Non-Settling Defendants.

35. On June 5, 2018, counsel for JPMorgan and Plaintiffs' Counsel signed a Term Sheet setting forth the terms on which the Parties agreed to negotiate the JPMorgan Agreement in good faith and to settle Representative Plaintiffs' claims against JPMorgan. At the time the Term Sheet was executed, Plaintiffs' Counsel was well-informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the claims and defenses asserted.

36. By letter dated June 5, 2018, the Parties reported to the Court that the Term Sheet had been executed and advised the Court that the Term Sheet would be superseded by a formal Agreement.

37. On November 14, 2018, several months of negotiations culminated with Lowey and counsel for JPMorgan executing the JPMorgan Agreement. *See* Ex. 2 (JPMorgan Agreement). Among the various terms negotiated, Representative Plaintiffs and JPMorgan agreed that

JPMorgan's obligation to provide cooperation would be triggered by the entry of an order preliminarily approving the Settlement. *See Id.* at § 4(K).

**C. HSBC Settlement Negotiations**

38. The negotiations with HSBC took place over several months starting in approximately September 2021 and continuing until the Agreement was executed on May 3, 2022.

39. Following initial phone calls with HSBC's counsel in approximately September 2021, Lowey engaged in lengthy negotiations with HSBC's counsel over the material terms of the settlement, including the amount of the settlement consideration, the scope of the cooperation to be provided by HSBC, the scope of the releases, and the circumstances under which the Parties would have the right to terminate the settlement.

40. During the course of the negotiations, Lowey and HSBC each presented their views on the strengths and weaknesses of the claims and defenses, as well as HSBC's litigation exposure. Throughout the negotiations, HSBC's counsel argued that HSBC was not liable for the claims asserted against it in the Action, and maintained that HSBC had good and meritorious defenses to the claims brought against it in the Action.

41. On October 19, 2021, counsel for HSBC and Plaintiffs' Counsel signed a Term Sheet setting forth the terms on which the Parties agreed to negotiate the HSBC Agreement in good faith and to settle Representative Plaintiffs' claims against HSBC. At the time the Term Sheet was executed, Plaintiffs' Counsel was well-informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the claims and defenses asserted.

42. By letter dated October 19, 2021, Plaintiffs and HSBC reported to the Court that the Term Sheet had been executed and advised the Court that the Term Sheet would be superseded by a formal Agreement.

43. On May 3, 2022, several months of negotiations culminated with Lowey and counsel for HSBC executing the HSBC Agreement. *See* Ex. 3 (HSBC Agreement). Among the various terms negotiated, Representative Plaintiffs and HSBC agreed that HSBC's obligation to provide cooperation would be triggered by the entry of an order preliminarily approving the Settlement. *See Id.* at § 4(K).

**D. Credit Suisse Settlement Negotiations.**

44. The negotiations with Credit Suisse took place over several months starting in approximately July 2021 and continuing until the Agreement was executed on April 22, 2022.

45. Following initial phone calls with Credit Suisse's counsel in approximately July 2021, Lowey engaged in lengthy negotiations with Credit Suisse's counsel over the material terms of the settlement, including the amount of the settlement consideration, the scope of the cooperation to be provided by Credit Suisse, the scope of the releases, and the circumstances under which the Parties would have the right to terminate the settlement.

46. During the course of the negotiations, Lowey and Credit Suisse each presented their views on the strengths and weaknesses of the claims and defenses, as well as Credit Suisse's litigation exposure. Throughout the negotiations, Credit Suisse's counsel argued that Credit Suisse was not liable for the claims asserted against it in the Action, and maintained that Credit Suisse had good and meritorious defenses to the claims brought against it in the Action.

47. On September 20, 2021, counsel for Credit Suisse and Plaintiffs' Counsel signed a Term Sheet setting forth the terms on which the Parties agreed to negotiate the Credit Suisse

Agreement in good faith and to settle Representative Plaintiffs' claims against Credit Suisse. At the time the Term Sheet was executed, Plaintiffs' Counsel was well-informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the claims and defenses asserted.

48. By letter dated September 20, 2021, Plaintiffs and Credit Suisse reported to the Court that the Term Sheet had been executed and advised the Court that the Term Sheet would be superseded by a formal Agreement.

49. On April 22, 2022, several months of negotiations culminated with Lowey and counsel for Credit Suisse executing the Credit Suisse Agreement. *See* Ex. 4 (Credit Suisse Agreement). Among the various terms negotiated, Representative Plaintiffs and Credit Suisse agreed that Credit Suisse's obligation to provide cooperation would be triggered by the entry of an order preliminarily approving the Settlement. *See Id.* at § 4(K).

**E. Deutsche Bank Settlement Negotiations.**

50. The negotiations with Deutsche Bank took place over several months starting in September 2021 and continuing until the Agreement was executed on March 17, 2022.

51. Following initial phone calls with Deutsche Bank's counsel in September 2021, Lowey engaged in lengthy negotiations with Deutsche Bank's counsel over the material terms of the settlement, including the amount of the settlement consideration, the scope of the cooperation to be provided by Deutsche Bank, the scope of the releases, and the circumstances under which the Parties would have the right to terminate the settlement.

52. During the course of the negotiations, Lowey and Deutsche Bank each presented their views on the strengths and weaknesses of the claims and defenses, as well as Deutsche Bank's litigation exposure. Throughout the negotiations, Deutsche Bank's counsel argued that Deutsche

Bank was not liable for the claims asserted against it in the Action, and maintained that Deutsche Bank had good and meritorious defenses to the claims brought against it in the Action.

53. On October 20, 2021, counsel for Deutsche Bank and Plaintiffs' Counsel signed a Term Sheet setting forth the terms on which the Parties agreed to negotiate the Deutsche Bank Agreement in good faith and to settle Representative Plaintiffs' claims against Deutsche Bank. At the time the Term Sheet was executed, Plaintiffs' Counsel was well-informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the claims and defenses asserted.

54. By letter dated October 20, 2021, Plaintiffs and Deutsche Bank reported to the Court that the Term Sheet had been executed and advised the Court that the Term Sheet would be superseded by a formal Agreement.

55. On March 17, 2022, several months of negotiations culminated with Lowey and counsel for Deutsche Bank executing the Deutsche Bank Agreement. *See* Ex. 5 (Deutsche Bank Agreement). Among the various terms negotiated, Representative Plaintiffs and Deutsche Bank agreed that Deutsche Bank's obligation to provide cooperation would be triggered by the entry of an order preliminarily approving the Settlement. *See Id.* at § 4(K).

**F. ING Settlement Negotiations.**

56. The negotiations with ING took place over several months starting in May 2021 and continuing until the Agreement was executed on March 17, 2022.

57. Following initial phone calls with ING's counsel in May 2021, Lowey engaged in lengthy negotiations with ING's counsel over the material terms of the settlement, including the amount of the settlement consideration, the scope of the cooperation to be provided by ING, the

scope of the releases, and the circumstances under which the Parties would have the right to terminate the settlement.

58. During the course of the negotiations, Lowey and ING each presented their views on the strengths and weaknesses of the claims and defenses, as well as ING's litigation exposure. Throughout the negotiations, ING's counsel argued that ING was not liable for the claims asserted against it in the Action, and maintained that ING had good and meritorious defenses to the claims brought against it in the Action.

59. On August 13, 2021, counsel for ING and Plaintiffs' Counsel signed a Term Sheet setting forth the terms on which the Parties agreed to negotiate the ING Agreement in good faith and to settle Representative Plaintiffs' claims against ING. At the time the Term Sheet was executed, Plaintiffs' Counsel was well-informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the claims and defenses asserted.

60. By letter dated August 23, 2021, Plaintiffs and ING reported to the Court that the Term Sheet had been executed and advised the Court that the Term Sheet would be superseded by a formal Agreement.

61. On March 17, 2022, several months of negotiations culminated with Lowey and counsel for ING executing the ING Agreement. *See* Ex. 6 (HSBC Agreement). Among the various terms negotiated, Representative Plaintiffs and HSBC agreed that HSBC's obligation to provide cooperation would be triggered by the entry of an order preliminarily approving the Settlement. *See Id.* at § 4(K).

### III. Key Settlement Terms

62. The Settling Defendants have agreed to pay a combined **\$64,458,000** to Representative Plaintiffs and the Settlement Class. In particular, Citi agreed to pay \$9,990,000, JPMorgan agreed to pay \$10,989,000, HSBC agreed to pay \$11,000,000, Credit Suisse agreed to pay \$10,989,000, Deutsche Bank agreed to pay \$11,000,000, and ING agreed to pay \$10,490,000.

63. The Settlement Class is defined as:

All Persons (including both natural persons and entities) who purchased, sold, held, traded, or otherwise had any interest in SIBOR- and/or SOR-Based Derivatives during the Class Period. Excluded from the Settlement Class are the Defendants and any parent, subsidiary, affiliate or agent of any Defendant or any co-conspirator whether or not named as a Defendant, and the United States Government.

*See* Exs. 1 and 2 (Citi and JPM Agreements) at § 1(G); Exs. 3-6 (HSBC, Credit Suisse, Deutsche Bank, and ING Agreements) at § 1(F).

64. The consideration that the Settling Defendants have agreed to pay is within the range of that which may be found to be fair, reasonable, and adequate at final approval. The Settlements also involve a structure and terms that are common in class action settlements in this District, including a confidential Supplemental Agreement that provides each Settling Defendant with a qualified right to terminate their Settlement in the event that the volume of SIBOR and/or SOR-Based Derivatives transacted by Class Members who timely exercise their right to request exclusion from the Settlement Class exceeds a certain percentage. *See* Exs. 1-6, § 23.

65. Plaintiffs' Counsel believes that there are at least hundreds, if not thousands, of geographically dispersed persons and entities that fall within the Settlement Class definition. This belief is based on data from the Federal Reserve Bank of New York, which shows that hundreds of billions of dollars in notional value of SIBOR- and SOR-Based Derivatives were traded within the United States from 2007 through 2011. *See* Fourth Amended Complaint, ECF No. 437, ¶¶ 71-73 (citing, *inter alia*, 2007 and 2010 surveys by the Federal Reserve Bank of New York).



66. Class Members that do not request exclusion from the Settlement Class and submit a valid claim will receive a *pro rata* share of the Net Settlement Fund, based on the notional amount of their SIBOR and/or SOR-Based Derivatives transactions and adjusted by certain factors as described in the accompanying Distribution Plan. *See* Ex. 11, at ¶¶ 1-2.

67. In the event that any Settlement is terminated pursuant to the terms of the Settlement Agreement, any amount paid by that Settling Defendant into an Escrow Account, less any reasonable costs incurred for notice and claims administration up to \$500,000 will be returned to that Settling Defendant within 10 business days of termination. *See* Exs. 1-6, §§ 3, 22(A).

68. If approved, the Settlement provides that “the Releasing Parties shall release and be deemed to have released and forever discharged and shall be forever enjoined from prosecuting the Released Claims against the Released Parties,” and the Action will be completely resolved. *See* Exs. 1-2, § 11; Exs. 3-6 § 12.

69. Plaintiffs’ Counsel intends to seek attorneys’ fees of no more than one-third of the common fund created by the Settlement and reimbursement of its expenses and costs incurred in litigating this Action, and for interest on such attorneys’ fees and litigation expenses and costs at the same rate as the earnings in the Settlement Fund, accruing from the inception of the Settlement Fund until the attorneys’ fees and litigation expenses and costs are paid. *See* Exs. 1-6, § 5(E).

70. Representative Plaintiffs may also make an application for Incentive Awards for their efforts in prosecuting this Action as class representatives on behalf of the Settlement Class. *See* Exs. 1-6, § 5(B) and (E).

#### **IV. Non-Collusive Settlement Negotiations**

71. The Settlements with the Settling Defendants were not the product of collusion. Before any financial numbers were discussed in the settlement negotiations and before any demand

or counter-offer was ever made, I was well-informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of Representative Plaintiffs' claims against the Settling Defendants. Further, Settling Defendants are each represented by skilled counsel from top law firms with extensive experience in antitrust and class action cases.

#### **V. Well Informed and Arm's-Length Negotiations**

72. Before reaching the Settlements, Plaintiffs' Counsel extensively reviewed and analyzed the following documents and information: (i) government settlements or proposed regulatory frameworks involving Defendants and the Monetary Authority of Singapore ("MAS"), the U.S. Commodity Futures Trading Commission ("CFTC"), and the U.K. Financial Services Authority ("FSA") as they may relate to SIBOR, SOR, or other benchmarks; (ii) publicly-available information relating to the conduct alleged in Plaintiffs' complaints; (iii) expert and industry research regarding SIBOR, SOR, and the SIBOR- and/or SOR-Based Derivatives; and (iv) prior decisions of courts deciding similar issues, including this Court's decision in *FrontPoint Asian Event Driven Fund, L.P. v. Citibank, N.A.*, No. 16 CIV. 5263 (AKH), 2017 WL 3600425 (S.D.N.Y. Aug. 18, 2017); *FrontPoint Asian Event Driven Fund, L.P. v. Citibank, N.A.*, No. 16 CIV. 5263 (AKH), 2018 WL 4830087, at \*1 (S.D.N.Y. Oct. 4, 2018), *vacated and remanded sub nom. Fund Liquidation Holdings LLC v. Bank of Am. Corp.*, 991 F.3d 370 (2d Cir. 2021).

73. In addition, Lowey: (a) conducted an extensive pre-complaint investigation into the facts and legal issues in this action; and (b) after filing the complaint, continued to research and analyze the strengths and weaknesses of the claims, including through ongoing consultations with leading economic experts. Further, prior to negotiating with Credit Suisse, Deutsche Bank, HSBC, and ING, Plaintiffs' Counsel had the benefit of the Court's decisions on Defendant's second and

third motions to dismiss in this Action, as well as the Second Circuit's opinion remanding the Action for further proceedings.

74. I was personally involved in all aspects of the settlement negotiations on behalf of Plaintiffs. Representative Plaintiffs engaged in hard-fought and principled negotiations with the Settling Defendants using the information gathered from their extensive investigation, industry and expert analysis, and information shared by the Settling Defendants during the settlement discussion. After carefully weighing the risks and potential outcomes of continued prosecution of the Settling Defendants against the immediate benefit that the Settlements would provide to the Settlement Class, and the cooperation that would be supplied to advance the litigation against non-settling Defendants, Representative Plaintiffs and Plaintiffs' Counsel concluded the Settlements were in the best interest of the Settlement Class.

#### **VI. Experience of Plaintiffs' Counsel**

75. Lowey has significant experience litigating complex class actions involving benchmark manipulation claims brought under the Sherman Act and the Commodity Exchange Act. *See* Lowey Firm Resume, attached hereto as Exhibit 12. At the time these Settlements were negotiated, my firm and I were experienced in prosecuting class action lawsuits brought under the Sherman Antitrust Act, 15 U.S.C. §§ 1 *et seq.*, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, the Commodity Exchange Act ("CEA"), 7 U.S.C. §§ 1 *et seq.*, and the common law. We have obtained landmark settlements on behalf of some of the nation's largest pension funds and institutional investors.

76. Many of these settlements arose from similar benchmark manipulation cases, including recent cases alleging manipulation of Yen-LIBOR, Euroyen TIBOR, Euribor, and Swiss franc LIBOR, respectively. Specifically, Judge P. Kevin Castel approved settlements negotiated

by Lowey totaling \$491.5 million, relating to alleged manipulation of the Euro Interbank Offered Rate (“Euribor”) and prices of Euribor-based derivatives. *See Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC) (S.D.N.Y.), ECF No. 424 (Final Approval Order of Settlements with three benchmark rate defendants, Barclays, Deutsche Bank and HSBC); ECF No. 498 (Final Approval Order of Settlement with two benchmark rate defendants Citi and JPMorgan). On May 9, 2022, Judge Castel also granted preliminary approval to a \$55 million settlement with Crédit Agricole. *Id.* ECF No. 520 (Preliminary Approval Order of Settlement with defendant Crédit Agricole). If final approval is granted, the total settlements achieved to date in Euribor would be \$546.5 million.

77. Lowey also negotiated settlements totaling \$307 million on behalf of class members relating to manipulation of the London Interbank Offered Rate for Japanese Yen (“Yen-LIBOR”) and the Tokyo Interbank Offered Rate (“Euroyen TIBOR”). *See Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (S.D.N.Y.) ECF Nos. 1013-14 (Dec. 19, 2019), 891 (Jul. 12, 2018), 838 (Dec. 7, 2017), 720 (Nov. 10, 2016) & *Sonterra Capital Master Fund Ltd. et al v. UBS AG et al*, No. 15-cv-5844 (S.D.N.Y.), ECF Nos. 423 (Jul. 12, 2018), 389 (Dec. 7, 2017), 298 (Nov. 10, 2016).

78. I have over twenty-five years of experience in successfully developing and leading the prosecution of benchmark rate antitrust, commodity manipulation, and federal securities litigation matters. This experience includes cases in which my firm and I have successfully prosecuted, as court-appointed lead or co-lead counsel or individual plaintiff’s counsel, what were at the time the first, second, third, and fourth largest class action recoveries under the CEA.<sup>7</sup>

---

<sup>7</sup> *See In re Sumitomo Copper Litigation*, Master File No. 96 CV 4854 (S.D.N.Y.) (Pollack, J.) (\$149 million settlement); *Hershey v. Pacific Investment Management Corp.*, Case No. 05-C-4681 (RAG) (N.D. Ill.) (\$118.75 million settlement); *In re Natural Gas Commodity Litigation*, Master File No. 03 CV 6186 (S.D.N.Y.) (Marrero, J.) (\$101 million settlement); and *In re Amaranth Natural Gas Commodities Litigation*, Master File No. 07 Civ. 6377 (S.D.N.Y.) (Scheidlin, J.) (\$77.1 million settlement).

79. In this case, Lowey has diligently represented the interests of the Class in the Action. The firm's attorneys investigated and brought the Action. Lowey preserved the statute of limitations. As described above, Lowey negotiated the Settlements with each of the Settling Defendants. The firm has performed all of the necessary work to prosecute this litigation for over 5½ years, including successfully taking issues up on appeal to the Second Circuit and the Supreme Court of the United States. Lowey will continue to zealously represent the Class to prosecute the Class's claims against the remaining Defendants.

## **VII. Distribution Plan**

80. Plaintiffs' Counsel, together with consulting experts, developed the proposed Distribution Plan. *See* Exhibit 11. The Distribution Plan calculates a score (the "Transaction Claim Amount") that represents an estimate of the impact of Defendants' alleged market manipulation on the payment streams for SIBOR and/or SOR-Based Derivatives eligible Class Member transacted in during the Class Period. *See* Ex. 11 at ¶¶ 6-16. The Net Settlement Fund will be allocated on a *pro rata* basis based on the claimants Transaction Claim Amount.

81. Lowey has unparalleled experience in building plans of allocation for complex financial products. The plans of allocation Lowey developed in the Euribor, Yen-LIBOR, and Euroyen TIBOR litigation have been approved as fair, reasonable and adequate. *See, e.g., Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC), ECF No. 424, ¶ 21; *Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (S.D.N.Y.), ECF No. 891, ¶ 20; *In re London Silver Fixing Antitrust Litig.*, Case No. 14-MD-2573 (VEC) (S.D.N.Y. Aug. 5, 2020) ECF No. 451-5; *In re Mexican Government Bonds Antitrust Litigation*, No. 1:18-cv-02830 (S.D.N.Y. Dec. 16, 2020), ECF. No. 211-7; *Boutchard, et al., v. Gandhi et al.*, No. 18-cv-7041 (JJT) (N.D. Ill. Mar. 5, 2021). ECF No. 125-6.

82. Plaintiffs' Counsel recommends the proposed Distribution Plan as fair, reasonable, and adequate to the proposed Settlement Class, having determined it to be the most fair and efficient manner for distributing funds to Class Members.

### **VIII. Notice Plan**

83. Plaintiffs' Counsel propose that A.B. Data, Ltd. (A.B. Data) be appointed as the Settlement Administrator in this Action based on its experience, institutional knowledge, and price competitiveness. A.B. Data developed the proposed Notice Plan in coordination with Plaintiffs' Counsel. *See* Ex. 7. The proposed Notice Plan is consistent with notice plans that courts have repeatedly approved in prior benchmark manipulation cases and other complex class action settlements. *See*, Ex. 7, at ¶ 15 (Young Decl.).

84. A.B. Data's proposal reflects a detailed understanding of the instruments and trading volume involved, and the need for a noticing process that included both direct mail notice to people and entities (*e.g.*, brokers) that likely traded in such products as well as publication notice to inform Class Members whose contact information is not available. A.B. Data has extensive experience administering class action settlements and designing notice plans that have been approved in numerous complex class actions, including class actions involving exchange-traded and over-the-counter products, including in the following cases: *In re Silver Fixing Antitrust Litigation.*, Nos. 14-md-02573 & 14-mc-02573 (VEC) (S.D.N.Y.), ECF No. 464; *Boutchard v. Gandhi et al.*, No. 18-cv-7041 (N.D. Ill.), ECF No. 125-2 at 14-40; and *In re LIBOR-Based Financial Instruments Antitrust Litigation.*, Nos. 11-md-2262 & 11-cv-2613 (NRB) (S.D.N.Y.), ECF No. 3038; *In re Crude Oil Commodity Futures Litig.*, No. 11-cv-3600 (S.D.N.Y.); *In re JPMorgan Precious Metals Spoofing Litig.*, No. 18-cv-10356 (GHW) (S.D.N.Y.), ECF No. 91; *In re JPMorgan Treasury Futures Spoofing Litig.*, No. 20-cv-3515 (PAE) (S.D.N.Y.), ECF No. 74;

