IN THE UNITED STATES DISTRICT COURT
FOR THE 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,

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.

Docket No. 16-cv-05263 (AKH)

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

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INTRODUCTION

Representative Plaintiffs[1] move under Rule 23 of the Federal Rules of Civil Procedure for preliminary approval of the: (i) $10,989,000 Settlement with Credit Suisse AG ("Credit Suisse"); (ii) $11,000,000 Settlement with Deutsche Bank AG ("Deutsche Bank"); (iii) $11,000,000 Settlement with The Hongkong and Shanghai Banking Corporation Limited ("HSBC"); and (iv) $10,490,000 Settlement with ING Bank N.V. ("ING"), joining Plaintiffs' previously proposed Settlements of (v) $9,990,000 with Citibank, N.A. and Citigroup Inc. (collectively, "Citi"); and (vi) $10,989,000 with JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. (together "JPMorgan," and collectively with Credit Suisse, Deutsche Bank, HSBC, ING, and Citi, the "Settling Defendants"). Representative Plaintiffs achieved these additional Settlements with Credit Suisse, Deutsche Bank, HSBC, and ING after the United States Court of Appeals for the Second Circuit ("Second Circuit") remanded the Action upon finding that this Court had subject matter jurisdiction over the Action and following months of settlement negotiations. If approved, these Settlements will recover for the Settlement Class a total of $64,458,000.[2]

As discussed below, the Settlements fully satisfy the requirements for preliminary approval. First the Settlements[3] are procedurally fair, as Representative Plaintiffs and Plaintiffs'

[1] Representative Plaintiffs are Fund Liquidation Holdings, LLC, individually and as assignee and successor-in-interest to FrontPoint Asian Event Driven Fund, L.P. and Sonterra Capital Master Fund, Ltd., Moon Capital Partners Master Fund Ltd., and Moon Capital Master Fund Ltd. Unless otherwise noted, ECF citations are to the docket in *Fund Liquidation Holdings LLC, et al. v. Citibank, N.A., et al.*, No. 16-cv-05263 (AKH) (S.D.N.Y.) and internal citations and quotation marks are omitted.

[2] Plaintiffs have also reached an agreement in principle with thirteen additional defendants that, if approved by this Court, would fully resolve this action. As stated in Plaintiffs' May 11, 2022 letter faxed to Chambers, Plaintiffs and the thirteen additional defendants need two more weeks to finalize their settlement agreement. If permitted by the Court, Plaintiffs intend to file their motion for preliminary approval with the thirteen additional defendants on or before May 27, 2022.

[3] Attached as Exhibits 1-6 to the Declaration of Vincent Briganti dated May 13, 2022 ("Briganti Decl.") are the Stipulation and Agreement of Settlement as to Defendants Citibank, N.A. and Citigroup Inc. dated May 22, 2018 (the "Citi Agreement"), the Stipulation and Agreement of Settlement as to Defendants JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. dated November 14, 2018 (the "JPMorgan Agreement"), the Stipulation and Agreement

Counsel are adequate representatives for the Settlement Class, and the Settlements themselves resulted from hard-fought arm's length negotiations with each Settling Defendant. The terms of the Settlements are substantively fair, providing considerable relief to eligible Class Members in exchange for the complete resolution of the Action. Finally, as described herein, the Court may certify the Settlement Class under Rule 23(a) and (b)(3), and Plaintiffs' Counsel have prepared a robust notice program that will fully apprise Class Members of their rights and options. The Court should therefore grant Representative Plaintiffs' motion and enter the orders filed herewith (the "Preliminary Approval Orders") that:

(a) preliminarily approve Representative Plaintiffs' proposed Settlement with each Settling Defendant, subject to later, final approval;

(b) conditionally certify a Settlement Class on the claims against Settling Defendants, subject to later, final approval of such Settlement Class;

(c) preliminarily approve the proposed Distribution Plan (Briganti Decl. Ex. 11);

(d) appoint Representative Plaintiffs as representatives of the Settlement Class;

(e) appoint Lowey Dannenberg, P.C. ("Lowey") as Class Counsel;

(f) appoint Citibank, N.A. ("Citibank") as the Escrow Agent for the Settlements with the JPMorgan, Credit Suisse, Deutsche Bank, HSBC, and ING Settlements, and A.B. Data, Ltd. ("A.B. Data") as the Escrow Agent for the Citi Settlement;

(g) appoint A.B. Data as the Settlement Administrator;

(h) approve the proposed forms of Class Notice to the Settlement Class (*id.*, Exs. 8-10) and the proposed Class Notice plan (*id.*, Ex. 7);

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of Settlement as to Defendant The Hongkong and Shanghai Banking Corporation Limited dated May 3, 2022 (the "HSBC Agreement"), the Stipulation and Agreement of Settlement as to Defendant Credit Suisse AG dated April 22, 2022 (the "Credit Suisse Agreement"), the Stipulation and Agreement of Settlement as to Defendant Deutsche Bank AG dated March 17, 2022 (the "Deutsche Bank Agreement"), the Stipulation and Agreement of Settlement as to Defendant ING Bank N.V. dated March 17, 2022 (the "ING Agreement" and collectively with the Citi Agreement, the JPMorgan Agreement, the Credit Suisse Agreement, the Deutsche Bank Agreement, and the HSBC Agreement, the "Settlement Agreements"). Unless otherwise defined, capitalized terms in this memorandum of law have the same meaning as in the Settlement Agreements.

(i) set a schedule leading to the Court's evaluation of whether to finally approve the Settlements, including the date, time, and place of the Fairness Hearing; and

(j) stay all proceedings in the Action related to each Settling Defendant except those relating to approval of the Settlement.

OVERVIEW OF THE LITIGATION[4]

Procedural History

In June 2013, the Monetary Authority of Singapore ("MAS"), Singapore's central bank and financial regulator, imposed penalties on Defendants after finding Defendants entered into a profit-motivated antitrust conspiracy from 2007 through 2011 to rig the prices of financial derivatives priced to SIBOR and SOR. Among other remedial measures, MAS mandated that Defendants deposit approximately S$9.6 billion interest free with MAS for a year as the penalty for Defendants' alleged manipulation impacting SIBOR and/or SOR-Based Derivatives. *See* Fourth Amended Class Action Complaint ("Fourth Amended Complaint") ¶¶ 9-12, ECF No. 437.

Plaintiffs brought this Action in July 2016 alleging Defendants violated the Sherman Act, 15 U.S. C. § 1, *et seq.*, the Racketeer Influence and Corrupt Organizations Act ("RICO") 18 U.S.C. § 1961, *et seq.* and common law. *See* ECF No. 4 (Class Action Complaint). After Plaintiffs filed their First Amended Class Action Complaint on October 31, 2016, Defendants filed their motions to dismiss based on an alleged lack of personal jurisdiction, lack of venue, failure to state a claim upon which relief can be granted, and lack of subject matter jurisdiction. After the motions were fully briefed and the Court held oral argument, the Court entered an order on August 18, 2017 denying in part and granting in part Defendants' motion to dismiss and granting Plaintiffs leave to file a Second Amended Class Action Complaint.

[4] The full procedural history of this Action is set forth in the Briganti Decl. ¶¶ 4-23.

One month later, on September 18, 2017, Plaintiffs filed their Second Amended Class Action Complaint and, thirty days later, Defendants again moved to dismiss 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) failure to state a claim upon which relief can be granted as to all Defendants. After the motion was fully briefed, the Court held oral argument on April 12, 2018 and ruled from the bench that Plaintiffs would be permitted to file a Third Amended Class Action Complaint to substitute Fund Liquidation Holdings, LLC ("FLH"), the assignee for FrontPoint Asian Event Driven Fund, Ltd. and Sonterra Capital Master Fund, Ltd., as the named Plaintiff. On October 4, the Court entered a written order denying in part and granting in part Defendants' second motion to dismiss, granting Plaintiffs leave to file a Third Amended Complaint ("TAC") and substitute the real party in interest, and ordering Defendants remaining in the action to file answers or otherwise respond to the TAC.

After Plaintiffs filed the TAC on October 25, 2018, the TAC Defendants[5] filed a joint motion to dismiss on November 15, 2018, asserting that, as to these Defendants, the Court lacked subject matter jurisdiction, Plaintiffs failed to state a claim and, as to certain Defendants, that the Court lacked personal jurisdiction. Plaintiffs filed their opposition to the TAC Defendants' motion to dismiss on December 10, 2018 and on December 26, 2018, Plaintiffs moved for leave to file a Fourth Amended Complaint that proposed, among other things, adding 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 defendants Barclays Bank PLC

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[5] The TAC Defendants means Bank of America, N.A. ("BOA"), The Royal Bank of Scotland plc (n/k/a NatWest Markets plc) ("RBS"), UBS AG ("UBS"), BNP Paribas, S.A. ("BNPP"), Oversea-Chinese Banking Corporation Ltd. ("OCBC"), Deutsche Bank, Credit Agricole Corporate and Investment Bank ("CACIB"), Credit Suisse, Standard Chartered Bank ("SCB"), DBS Bank Ltd. ("DBS"), United Overseas Bank Limited ("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.

("Barclays"), Commerzbank AG ("Commerzbank"), and ING. The TAC Defendants, Barclays, Commerzbank, and ING opposed Plaintiffs' motion on January 23, 2019.

After oral argument, on July 25, 2019, the Court granted the TAC Defendants' motion to dismiss the TAC, denied Plaintiffs' motion for preliminary approval of the proposed class action settlements with Citi and JPMorgan, and denied Plaintiffs' motion for leave to file a Fourth Amended Complaint. Plaintiffs timely appealed to the Second Circuit and on March 17, 2021, the Second Circuit issued an Opinion reversing the July 25, 2019 Order and remanding this action back to this Court. Defendants petitioned for rehearing and moved to stay the mandate, both of which applications the Second Circuit denied. 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 of the Second Circuit's opinion with the U.S. Supreme Court on October 1, 2021, which the Supreme Court denied on January 10, 2022.

After the Action was remanded and Plaintiffs filed the Fourth Amended Complaint, 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. Plaintiffs opposed the motion, including on the grounds that the Second Circuit's decision resolved any question as to this Court's jurisdiction. After the motion was fully briefed, the Court scheduled oral argument for March 23, 2022, which was subsequently cancelled by the Court in light of a proposed settlement between Representative Plaintiffs and the remaining Defendants in the Action.

Summary of Settlement Negotiations

In April 2017, months before the Court entered its order resolving Defendants' first motion to dismiss, settlement negotiations started with JPMorgan. 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.

In January 2018, while Defendants' second motion to dismiss was pending, Plaintiffs and Citi separately begin settlement negotiations to resolve the litigation as to Citi only. After several months of discussions concerning their views on liabilities and damages, Citi and Plaintiffs executed a binding settlement term sheet ("Term Sheet") on April 9, 2018 and signed the Citi Settlement Agreement on May 22, 2018. Shortly afterward, in June 2018, JPMorgan and Plaintiffs executed their Term Sheet and subsequently negotiated the terms of the JPMorgan Settlement Agreement, which they executed in November 2018. Plaintiffs filed a motion for preliminary approval of the Citi and JPMorgan Settlements on November 15, 2018, which the Court denied in its July 25, 2019 Order.

In May 2021, ING and Plaintiffs began settlement discussions. Credit Suisse and Plaintiffs separately began settlement negotiations in July 2021. After several weeks of discussions in which views on liability and damages were exchanged, Plaintiffs and ING executed a Term Sheet on August 13, 2021 and Credit Suisse and Plaintiffs signed the Term Sheet in September 2021.

In September 2021, Plaintiffs began separate settlement negotiations with Deutsche Bank and HSBC. After exchanging their views on the case, HSBC and Plaintiffs executed a Term Sheet on October 19, 2021 and Deutsche Bank and Plaintiffs executed a Term Sheet on October 20, 2021. Negotiations over the specific terms of the Settlement Agreement for ING, Credit Suisse,

HSBC and Deutsche Bank lasted several months, resulting in the execution of the ING Settlement on March 17, 2022, Credit Suisse Settlement on April 22, 2022, HSBC on May 3, 2022, and Deutsche Bank on March 17, 2022.

SUMMARY OF KEY SETTLEMENT TERMS

The proposed Settlement Class under the Settlements 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.

Briganti Decl., Ex. 1 (Citi Agreement) § 1(G); Ex. 2 (JPM Agreement) § 1(F); Ex. 3 (HSBC Agreement) § 1(F); Ex. 4 (Credit Suisse Agreement) § 1(F); Ex. 5 (Deutsche Bank Agreement) § 1(F); Ex. 6 (ING Agreement) § 1(F). In total, the Settling Defendants have agreed to pay $64,458,000 to settle the claims of Representative Plaintiffs and the Settlement Class as follows: (i) Citi: $9,990,000; (ii) JPMorgan: $10,989,000; (iii) ING: $10,490,000; (iv) Credit Suisse: $10,989,000; (v) HSBC: $11,000,000; and (vi) Deutsche Bank: $11,000,000. *See* Briganti Decl., Exs. 1 and 2 (Citi and JPM Agreements) § 1(KK); Exs. 3-6 (HSBC, Credit Suisse, Deutsche Bank, and ING Agreements) § 1(KK). In addition, each Settling Defendant has agreed to provide Cooperation Materials that will be used to advance the litigation (should any of the Settlements not be approved); identify potential Class Members, and (if necessary) to further validate the Distribution Plan proposed by Representative Plaintiffs to distribute the Net Settlement Funds. Briganti Decl., Exs. 1 and 2 (Citi and JPM Agreements) § 1(X); Exs. 3-6 (HSBC, Credit Suisse, Deutsche Bank, and ING Agreements) § 1(X).

In exchange, the Settlements provide that the Releasing Parties will:

> finally and forever release and discharge from and covenant not to sue the Released Parties for any and all manner of claims, including unknown claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments,

> suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class, derivative, or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys' fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, which Settling Class Members or any of them ever had, now has, or hereafter can, shall or may have, representatively, derivatively or in any other capacity, against the Released Parties arising from or relating in any way to conduct alleged in the Action, or which could have been alleged in the Action against the Released Parties concerning any SIBOR- and/or SOR-Based Derivatives or any similar financial instruments priced, benchmarked, or settled to SIBOR or SOR purchased, sold, held, traded, and/or transacted by the Representative Plaintiffs, Class Members, and/or Settling Class Members (to the extent such similar financial instruments were entered into by a U.S. Person, or by a Person from or through a location within the U.S.), or in which any of the foregoing otherwise had any interest, including, but not limited to, any alleged manipulation of SIBOR and/or SOR under any statute, regulation, or common law, or any purported conspiracy, collusion, racketeering activity, or other improper conduct relating to SIBOR and/or SOR (including, but not limited to, all claims under Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1 et seq., the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, and any other federal or state statute, regulation, or common law).

See Briganti Decl., Exs. 1 and 2 (Citi and JPM Agreements) § 12(A); Exs. 3-6 (HSBC, Credit Suisse, Deutsche Bank, and ING Agreements) § 12(A). In light of the uncompensated work Plaintiffs' Counsel has performed for the benefit of the Settlement Class since 2016, Plaintiffs' Counsel intends to seek an attorneys' fee award of no more than one-third of the Settlement and no more than $500,000 as payment for costs and expenses incurred in litigating this action. Representative Plaintiffs will also seek Incentives Awards in an amount to be determined, but not exceeding $500,000.

Representative Plaintiffs and Plaintiffs' Counsel worked tirelessly to obtain this excellent result for the Settlement Class. After investigating the factual and legal issues in the Action, Representative Plaintiffs and Plaintiffs' Counsel are confident that this Settlement is a highly favorable result and is in the best interest of Class Members. As described below, the Settlement meets the standard for preliminary approval, and notice of the Settlement may be issued.

ARGUMENT

I. THE SETTLEMENTS ARE LIKELY TO BE APPROVED UNDER RULE 23(e)(2)

A. The Preliminary Approval Standard

"The compromise of complex litigation is encouraged by the courts and favored by public policy." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005) ("*Wal-Mart Stores*"). The Second Circuit, therefore, acknowledges the "strong judicial policy in favor of settlements," particularly in the class action context. *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 474-75 (S.D.N.Y. 2013) (noting that courts encourage early settlements as they provide immediate relief to class members and allow the judicial system to reallocate its limited resources elsewhere).

Rule 23 requires that courts approve settlements of class action litigation. *See In re Currency Conversion Fee Antitrust Litig.*, No. 01MDL1409, 2006 WL 3247396, at *5 (S.D.N.Y. Nov. 8, 2006). This Court is empowered to approve the Settlements because it has subject matter jurisdiction over this Action, as the Second Circuit determined in its decision of March 17, 2021. *See Fund Liquidation Holdings LLC v. Bank of Am. Corp. et al.*, 991 F.3d 370 (2d Cir. 2021).[6] "Preliminary approval is generally the first step in a two-step process before a class action settlement is [finally] approved." *In re Stock Exchanges Options Trading Antitrust Litig.*, No. 99 Civ. 0962, 2005 WL 1635158, at *4 (S.D.N.Y. July 8, 2005). The Court may preliminarily approve and direct notice of the proposed Settlements if it is likely that the Court, after a hearing, will find the Settlements satisfy FED. R. CIV. P. 23(e)(2) and the proposed Class may be certified.

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[6] As part of their respective Settlement Agreements, the FAC Defendants withdrew their motion to dismiss the Fourth Amended Complaint, which challenged this Court's subject matter jurisdiction. Regardless, this Court has subject matter jurisdiction pursuant to the Second Circuit's reversal of this Court's decision regarding the Third Amended Complaint. *See id.*; *see also* Pls' Mem. in Opp. To Defs' Mot. to Dismiss the Fourth Amended Class Action Complaint, ECF 451.

FED. R. CIV. P. 23(e)(1); *see In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019) ("*Payment Card*") (analyzing the Rule 23(e)(2) standards to be applied at preliminary approval).

In conducting a preliminary approval inquiry under Rule 23, a court considers both the "negotiating process leading up to the settlement, *i.e.*, procedural fairness, as well as the settlement's substantive terms, *i.e.*, substantive fairness." *In re Platinum & Palladium Commodities Litig.*, No. 10-cv-3617, 2014 WL 3500655, at *11 (S.D.N.Y. July 15, 2014); *see also Payment Card*, 330 F.R.D. at 30 n.25. The proposed Settlements in this Action merit preliminary approval, having satisfied these considerations.

B. The Settlements are Procedurally Fair

The Settlements are entitled to a presumption of procedural fairness and adequacy. To assess procedural fairness, Rule 23(e)(2) requires the Court to find that "the class representatives and class counsel have adequately represented the class [and] the proposal was negotiated at arm's length." FED. R. CIV. P. 23(e)(2)(A)-(B). Where a settlement is the "product of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation," the settlement enjoys a "presumption of fairness." *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74 (S.D.N.Y. 2000), *aff'd sub nom.*, *D'Amato v. Deutsche Bank*, 236 F.3d 78 (2d Cir. 2001).

1. The Class Has Been Adequately Represented

Adequate representation under Rule 23(e)(2)(A) (and 23(a)(4))[7] requires that the "interests . . . served by the Settlement [are] compatible with" those of settlement class members. *Wal-Mart*

[7] Courts analyze the adequacy of representation requirement of Rule 23(e)(2)(A) using the same considerations for representative adequacy under Rule 23(a)(4). *See Payment Card*, 330 F.R.D. at 30 n.25 ("This adequate representation factor [under Rule 23(e)(2)(A)] is nearly identical to the Rule 23(a)(4) prerequisite of adequate representation in the class certification context. As a result, the Court looks to Rule 23(a)(4) case law to guide its assessment of this factor."); *see also In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 701 (S.D.N.Y. 2019).

Stores, 396 F.3d at 110. This requirement is met when the class representatives do not have interests that are antagonistic to those of the class and their chosen counsel is qualified, experienced, and able to conduct the litigation. *See In re Currency Conversion Fee Antitrust Litig.*, 264 F.R.D. 100, 111-12 (S.D.N.Y. 2010); *see also Wal-Mart Stores*, 396 F.3d at 106-07 ("Adequate representation of a particular claim is established mainly by showing an alignment of interests between class members, not by proving vigorous pursuit of that claim.").

Representative Plaintiffs' interests are aligned with those of the Settlement Class. The Moon Plaintiffs (directly) and FLH (through its assignors) transacted in numerous SIBOR- and/or SOR-Based Derivatives during the Class Period. *See, e.g.*, ECF No. 437 (Fourth Amended Complaint) at ¶¶ 86-88. Settling Defendants' alleged manipulation caused artificial market prices not just for Representative Plaintiffs' transactions, but for the entire market for SIBOR- and/or SOR-Based Derivatives. *Id.* ¶¶ 224-240. Consequently, the interests of Representative Plaintiffs in proving liability and damages are entirely aligned with those of the Settlement Class. Moreover, there are no conflicting interests among Representative Plaintiffs and the Settlement Class regardless of whether their interest arise directly from an impacted SIBOR and/or SOR-Based Derivatives transaction or through an assignment of such transaction. *See Wal-Mart Stores*, 396 F.3d at 110-11 (class representatives are adequate if their injuries encompass those of the class they seek to represent); *Payment Card*, 330 F.R.D. at 31 ("Defendants' imposition of 'supracompetitive interchange and merchant-discount fees on purchases using Visa- and/or Mastercard-Branded cards, and anti-steering and other restraints'" similarly injured class representatives and absent class members); *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1175 (JG) (VVP), 2014 WL 7882100, at *34 (E.D.N.Y. Oct. 15, 2014) ("Even if there was a conflict here [relating to the interests of class members that assigned recovery rights] (and

there is not), it would under no conceivable circumstances be so 'fundamental'" to cause class representatives to be inadequate), *report and recommendation adopted*, No. 06-MD-1775 (JG) (VVP), 2015 WL 5093503 (E.D.N.Y. July 10, 2015).

Courts evaluating adequacy of representation also consider the adequacy of plaintiffs' counsel. *Payment Card*, 330 F.R.D. at 30 (considering whether "plaintiff's attorneys are qualified, experienced and able to conduct the litigation."); *accord* FED. R. CIV. P. 23(g). Lowey serves as Plaintiffs' Counsel, having led the prosecution of this action from its inception, and negotiated these Settlements. Lowey's extensive class action and antitrust experience is strong evidence that the Settlements are procedurally fair. *See* Briganti Decl., Ex. 12 (firm resume); *see also In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 122 (S.D.N.Y. 2009) (noting the "extensive" experience of counsel in granting final approval of settlement); *see also Shapiro v. JPMorgan Chase & Co.*, No. 11 Civ. 8331 (CM) (MHD), 2014 WL 1224666, at *2 (S.D.N.Y. Mar. 24, 2014) (giving "great weight" to experienced class counsel's opinion that the settlement was fair). Plaintiffs' Counsel have extensive experience in litigating Sherman Antitrust Act claims and have obtained landmark settlements on behalf of some of the nation's largest pension funds and institutional investors. Briganti Decl. ¶ 75. Many of these settlements arose from similar benchmark manipulation cases, including recent cases alleging manipulation of Euribor, Yen-LIBOR, and Euroyen TIBOR. *See, e.g., Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC) (S.D.N.Y. May 18, 2018), ECF No. 424 (finally approving $309 million in settlements related to manipulation of the Euro Interbank Offered Rate ("Euribor")), ECF No. 498 (approving an additional settlement of $182.5 million); *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) (finally approving a total of $307 million in settlements to date related to manipulation of Yen-LIBOR and Euroyen TIBOR). Plaintiffs' Counsel also have considerable expertise in developing distribution plans for complex financial instruments and have access to knowledge and resources to successfully implement settlements. Briganti Decl. ¶ 81.

Moreover, in this Action, Plaintiffs' Counsel have diligently prosecuted the case by, among other things: (i) conducting a thorough pre-filing investigation of relevant factual events; (ii) drafting the initial and amended complaints; (iii) opposing Defendants' motions to dismiss; (iv) successfully appealing the Court's denial of the motion for preliminary approval of the Citi and JPMorgan Settlements and dismissal of the Action, and defending that appellate success in the Second Circuit and the U.S. Supreme Court; (v) negotiating the proposed Settlements; and (vi) developing the proposed Distribution Plan for allocating the Net Settlement Funds for the benefit of the Class. *See* Briganti Decl. ¶¶ 72-74, 80. Plaintiffs' Counsel's extensive antitrust and complex class action experience, combined with their extensive efforts in this litigation, provide direct evidence of Plaintiffs' Counsel's adequacy.

2. The Settlements are the Product of Arm's Length Negotiations

Procedural fairness is presumed where a settlement is "the product of arm's length negotiations between experienced and able counsel on all sides." *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-md-1775 (JG)(VVP), 2009 WL 3077396, at *7 (E.D.N.Y. Sept. 25, 2009); *see also* FED. R. CIV. P. 23(e)(2)(B) (courts must consider whether settlement "was negotiated at arm's length"). That presumption applies here, as the Settlements were negotiated by knowledgeable counsel for Representative Plaintiffs and Settling Defendants, each with a deep understanding of the case's risks and the individual Settlements' benefits. Settling Defendants are

each represented by skilled counsel from top law firms with extensive experience in litigating antitrust and class action cases. *See* Briganti Decl. ¶ 71.

The process leading up to the Settlements fully supports preliminary approval. Briganti Decl. ¶¶ 24-61. Each of the Settlements was the product of weeks, if not months, of arm's-length, non-collusive negotiations between the various counsel representing the respective Settling Defendant and Plaintiffs' Counsel. *Id.* ¶¶ 24, 31, 38, 44, 50, 56. Numerous communications took place, during which counsel for each party expressed their views of the Action and the respective Settling Defendant's potential liability, the risks and challenges of continuing litigation, and the appropriate measure of damages. *Id.* ¶¶ 26, 32, 40, 46, 52, 58. At all times, Settling Defendants' counsel argued that they were not liable for the claims asserted against it in the Action. None admitted to any wrongdoing or liability as part of its Settlement, and each Settling Defendant maintained that it had good and meritorious defenses to the claims brought against it in the Action. *Id.*

The process of reaching these Settlements benefitted from the involvement of informed advocates. Prior to negotiating with Citi and JPMorgan, Plaintiffs' Counsel had researched and considered a wide range of relevant legal issues and analyzed the facts known to date, including the Court's prior decision on Defendants' first motion to dismiss in this Action and government settlements involving similar or related conduct involving other benchmarks. Briganti Decl. ¶¶ 72-73. In addition, prior to negotiating with Credit Suisse, Deutsche Bank, HSBC, and ING, Plaintiffs' Counsel also 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. Briganti Decl. ¶ 73. Separately, Plaintiffs' Counsel continued to enhance

their understanding of the alleged manipulation through ongoing consultations with consulting experts. *Id*.

Plaintiffs' Counsel believe that Representative Plaintiffs' claims have substantial merit but acknowledge the expense and uncertainty of continued litigation against Settling Defendants. In recommending that the Settlements reached with Settling Defendants are in the best interests of the Settlement Class, Plaintiffs' Counsel have accounted for the uncertain outcome and risks of further litigation and believe the Settlements confer significant benefits on the Settlement Class in light of the circumstances here. Considering Plaintiffs' Counsel's extensive prior experience in complex class action litigation, their knowledge of the strengths and weaknesses of Representative Plaintiffs' claims, and their assessment of the Settlement Class's likely recovery following trial and appeal, the Settlements are entitled to a presumption of procedural fairness. *See In re Michael Milken and Assocs. Sec. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993); *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1977) (observing that "great weight" is given to advice of experienced counsel).

C. The Settlements are Substantively Fair

If all Settlements receive final approval, a total of $64,458,000 will be recovered on behalf of the Settlement Class. Representative Plaintiffs successfully negotiated with the Settling Defendants that none of the Settlement Amounts will revert, regardless of how many Class Members submit proofs of claim. *See* Citi Agreement § 3; JPMorgan Agreement § 3; Credit Suisse Agreement § 3; Deutsche Bank Agreement § 3; HSBC Agreement § 3; ING Agreement § 3.

Because claim rates typically fall below 100%, the non-reversion term will substantially enhance Authorized Claimants' recovery.[8]

The Settlements provide significant relief, providing the Settlement Class one of the few (if not the only) means of obtaining any recovery for the alleged manipulation of SIBOR and/or SOR-Based Derivatives. Under the Settlement Agreements, the Settling Defendants also provide cooperation that can be used to facilitate the issuance of notice, further validate the Distribution Plan (should Plaintiffs' Counsel consider it necessary) and, in the event the litigation continues against any Defendant, inform Representative Plaintiffs litigation strategy going forward. In exchange, the Settling Defendants will receive a release from claims based on the alleged manipulation of SIBOR and/or SOR-Based Derivatives, and the Action will be dismissed with respect to each Settling Defendant on the merits and with prejudice. These terms are substantively fair and easily fall within "the range of possible approval." *In re NASDAQ Mkt.-Makers Antitrust Litig*., 176 F.R.D. 99, 102 (S.D.N.Y. 1997) ("*NASDAQ II*").

Under Rule 23(e), the substantive fairness of a settlement is assessed by considering whether "the relief provided for the class is adequate," in light of "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreement required to be identified under FED. R. CIV. P. 23 (e)(2)(C). The Court is also required to confirm that the Settlement "treats class members equitably relative to each other." FED. R. CIV. P. 23(e)(2)(D). In the Second Circuit, courts also consider the factors provided in *City of Detroit v. Grinnell Corp.,* 495 F.2d 448, 463

[8] *See Guerrero v. Wells Fargo Bank, N.A.*, No. C 12-04026 WHA, 2014 WL 1365462, at *2 (N.D. Cal. Apr. 7, 2014) (finding the lack of reversion to defendant of remaining portions of the net settlement an important benefit to the class).

(2d Cir. 1974) ("*Grinnell*"),[9] which overlap with the consideration of Rule 23(e)(2)(C)-(D). *See Payment Card*, 330 F.R.D. at 29. Both the Rule 23(e)(2)(C)-(D) and *Grinnell* factors support preliminary approval of the Settlement.

1. The Substantial Relief Provided by the Settlements and the Complexity, Costs, Risks, and Delay of Trial and Appeal Favor the Settlements

To determine whether a settlement provides adequate relief to the class, the Court must evaluate "the costs, risks, and delay of trial and appeal," FED. R. CIV. P. 23(e)(2)(C)(i), "to forecast the likely range of possible classwide recoveries and the likelihood of success in obtaining such results." *Payment Card*, 330 F.R.D. at 36. Satisfying this factor necessarily "implicates several Grinnell factors, including: (i) the complexity, expense, and likely duration of the litigation; (ii) the risks of establishing liability; (iii) the risks of establishing damages; and (iv) the risks of maintaining the class through the trial." *Id.* Relatedly, to assess whether the recovery is within the range of reasonableness, courts weigh the settlement relief against the strength of the plaintiff's case, including the likelihood of a recovery at trial. *See Grinnell*, 495 F.2d at 463. This approach "recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion . . . ." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972). As a result, "[d]ollar amounts [in class settlement agreements] are judged not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff'd* 818 F.2d 145 (2d Cir. 1987).

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

Representative Plaintiffs faced significant litigation risks in this case, which were amplified by the complexity of the alleged manipulation involving SIBOR and/or SOR-Based Derivatives. To start, the factual and legal issues in this Action are complex and expensive to litigate. *See In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d at 693 (recognizing the complexity of federal antitrust claims and finding that the "complex issues of fact and law related to the [transactions occuring] at different points in time" weighed in favor of preliminary approval); *Currency Conversion Fee,* 263 F.R.D. at 123 ("The complexity of Plaintiffs' claims *ipso facto* creates uncertainty."). This Action alleged manipulative and collusive conduct between and among at least nineteen institutions over a five-year time period. As is evident from the number of motions to dismiss and amended pleadings, in addition to the proceedings in the Second Circuit and Supreme Court, Defendants have forcefully challenged the sufficiency of Representative Plaintiffs' allegations, providing clear evidence of the complexity of this case.

If the Court denied the most recent motion to dismiss and the case proceeded to discovery, advancing this Action would have required the collection and analysis of years' worth of documents and data to understand the full impact of Settling Defendants' alleged manipulation of specific financial products and rates, and the development of a sophisticated damages model. Relevant transactional data and documents, including chat room transcripts involving industry jargon, will have to be deciphered and placed into context, and Representative Plaintiffs would need to prove the meaning and significance of instant messages, trading patterns, and other facts to their claims. Defendants would have undertaken their own discovery, with the aim to provide its own evidence to create ambiguities that may refute or weaken Representative Plaintiffs' evidence of market manipulation. *See In re GSE Bonds*, 414 F. Supp. 3d at 694 ("Given that [ ]

defendants contend that they can present a strong case against plaintiffs after discovery, there is no guarantee that plaintiffs will be able to prove liability.”).

Based on their experience in similar antitrust and benchmark litigation cases, Plaintiffs' Counsel anticipates discovery will be lengthy and costly if this Action is not fully resolved. As is always true in cases involving complex financial markets, the duration of the case depends in significant part on the time that the Defendants require to produce their documents, the time required to review Defendants' and non-party documents, and the time required to use those documents to depose witnesses, conduct expert analyses, and otherwise prepare for trial. Representative Plaintiffs (as well as Defendants) would likely engage experts to provide econometric and industry analysis to educate them about the characteristics of the market, adding to the cost and duration of the case. *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 410 (S.D.N.Y. 2018) (experts “tend[] to increase both the cost and duration of litigation”). This expert discovery would likely have led to *Daubert* motion practice by both sides, further increasing the cost and risks of the litigation, and delaying any resolution. Given the complexities of this Action and its focus on a market that would likely be unfamiliar to the average juror, this case presents a significant level of risk and uncertainty. *See Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 663 (S.D.N.Y. 2015); *see also In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985) (“In this 'battle of experts,' it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors . . . .”).

Class certification in this action would raise complex legal and factual issues given the nature of the financial products and markets involved. *See Currency Conversion Fee*, 263 F.R.D.

at 123 ("the complexity of Plaintiffs' claims *ipso facto* creates uncertainty"). While Plaintiffs are confident the Court would certify a litigation class, Settling Defendants would have vigorously opposed the motion. *See In re GSE Bonds*, 414 F. Supp. 3d at 694 (the risk of maintaining a class through trial "weighs in favor of settlement where it is likely that defendants would oppose class certification if the case were to be litigated"). The losing party would have undoubtedly sought interlocutory review, thus further extending the timeline of the litigation. *See In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 986 F. Supp. 2d 207, 222 n.13 (E.D.N.Y. 2013) ("In the *Wal-Mart* case, twenty months elapsed between the order certifying the class and the Second Circuit's divided opinion affirming that decision.").

Settling Defendants almost certainly would have pursued extensive pre-trial motions, including summary judgment and motions *in limine*. If Representative Plaintiffs overcame any summary judgment motion and established liability at trial, they would still bear the risk of proving actual damages to a jury. *See, e.g.*, *Bolivar v. FIT Int'l Grp. Corp.*, No. 12-cv-781, 2019 WL 4565067, at *1 (S.D.N.Y. Sept. 20, 2019) ("it is Plaintiffs who bear the burden of establishing their claimed damages to a reasonable certainty" in relation to a class action alleging commodity law violations among other claims). Even where the government has secured a criminal guilty plea, civil juries have found no damages. *See, e.g.*, Special Verdict on Indirect Purchases, *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 07 MD 1827 (N.D. Cal. Sept. 3, 2013), ECF No. 8562. Thus, there is a substantial risk that a jury might accept one or more of the Settling Defendants' damages arguments and award nothing at all or award less than the $64,458,000 that, if approved, would be available to the Settlement Class. Even if Representative Plaintiffs "were to prevail at trial, post-trial motions and the potential for appeal could prevent the class members from obtaining any recovery for several years if at all." *In re GSE Bonds*, 414 F. Supp. 3d at 693

(cleaned up).[10] Accordingly, each of these and other risks[11] weighs in favor of preliminary approval.

2. The Grinnell Factors Not Expressly Addressed Above Also Support Approval of the Settlement

The Second Circuit *Grinnell* factors not expressly encompassed in Rule 23(e)(2)(C)(i) also guide the Court in assessing whether the relief provided to the Class is adequate; they include: "(2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; . . . (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation." *Grinnell*, 495 F.2d at 463. Each factor supports approval of the Settlements.

a. The reaction of the Settlement Class to the Settlements

Consideration of this *Grinnell* factor is premature prior to the Settlement Class receiving notice of the Settlements. *See In re GSE Bonds*, 414 F. Supp. 3d at 699 n.1. Nonetheless, the Representative Plaintiffs favor the Settlements. Experienced and knowledgeable in similar transactions as those at issue here, Representative Plaintiffs' approval is highly probative of the likely reaction by other Class Members upon similarly reviewing the Settlements with Settling Defendants. Any Class Member who does not favor the deal can opt out. After the Settlement

[10] *See also In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998) ("[t]here can be no doubt that this class action would be enormously expensive to continue, extraordinarily complex to try, and ultimately uncertain of result.").

[11] Plaintiffs' Counsel must be wary in describing in detail its proof risks in the event any Settlement is not approved. *See In re Prudential Secs. Inc. Ltd. P'ships Litig.*, No. M-21-67 (MP), 1995 WL 798907, at *15 (S.D.N.Y. Nov. 20, 1995) ("*Prudential*") (Pollack, J.) (where many non-settling defendants are present, class counsel appropriately omitted detailed discussion of all risks to recovery, the reasons for such risks, and their relative seriousness).

Class has been provided the Class Notice of the Settlements, Representative Plaintiffs will address the Settlement Class's reaction in their motion for final approval.

b. The stage of the proceedings

"[C]ourts encourage early settlement of class actions . . . because early settlement allows class members to recover without unnecessary delay and allows the judicial system to focus resources elsewhere." *Beckman,* 293 F.R.D. at 474-75. The relevant inquiry for this factor, therefore, is "whether the plaintiffs have obtained a sufficient understanding of the case to gauge the strengths and weaknesses of their claims and the adequacy of the settlement." *In re AOL Time Warner, Inc.*, No. 02 CIV. 5575 (SWK), 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 458 (S.D.N.Y. 2004) ("[T]he question is whether the parties had adequate information about their claims."). This factor does not require extensive discovery, or indeed any discovery at all, "as long as '[counsel] have engaged in sufficient investigation . . . to enable the Court to 'intelligently make . . . an appraisal' of the settlement.'" *AOL Time Warner*, 2006 WL 903236, at *10.

Representative Plaintiffs conducted extensive factual and legal research and consulted experts to assess the merits of their claims. Briganti Decl. ¶¶ 72-73. Representative Plaintiffs reviewed publicly-available information, including government pleas, non-prosecution agreements, and deferred prosecution agreements in cases involving other benchmarks. Plaintiffs' Counsel also had the benefit of this Court's decisions on Defendants' motions to dismiss, the Second Circuit's opinion on Representative Plaintiffs' appeal, and decisions in other cases involving the manipulation of financial benchmarks or other financial products. *Id.* ¶¶ 72-73. The information gathered during this process greatly informed Representative Plaintiffs of the advantages and disadvantages of entering into the Settlements with Settling Defendants. Although

Representative Plaintiffs have not received discovery from Settling Defendants, discovery is not required even at final approval of a settlement. *See Plummer v. Chemical Bank*, 668 F.2d 654, 658 (2d Cir. 1982). Accordingly, Plaintiffs' Counsel's well-informed views of the strength of claims and likely defenses weigh in favor of preliminary approval.

c. The Ability of Settling Defendants to withstand greater judgment

Citi, JPMorgan, Credit Suisse, Deutsche Bank, HSBC, and ING have the ability to withstand a judgment greater than their respective Settlement Amounts, but this *Grinnell* factor alone does not bear on the appropriateness of the Settlements. *See In re Global Crossing,* 225 F.R.D. at 460 ("[T]he fact that a defendant is able to pay more than it offers in settlement does not, standing alone, indicate that the settlement is unreasonable or inadequate"); *In re Tronox Inc.*, No. 14-cv-5495 (KBF), 2014 WL 5825308, at *6 (S.D.N.Y. Nov. 10, 2014) ("The law does not require a defendant to completely empty its pockets before a settlement may be approved—indeed, if it did, it is hard to imagine why a defendant would ever settle a case."). Accordingly, this factor does not militate against approval of the Settlements.

d. Reasonableness of the Settlement in Light of the Best Possible Recovery and Attendant Litigation Risks

The range of reasonableness factor weighs the settlement relief against the strength of the plaintiff's case, including the likelihood of a recovery at trial. This factor "recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion . . . ." *Newman,* 464 F.2d at 693 (2d Cir. 1972). In applying this factor, "[d]ollar amounts [in class settlement agreements] are judged not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re "Agent Orange,"* 597 F. Supp. at 762. At

preliminary approval, this factor is satisfied when there are no obvious doubts as to the adequacy of the settlement amount.

In Plaintiffs' Counsel's view, the $64,458,000 aggregate settlement fund is an excellent result for the Settlement Class. *PaineWebber*, 171 F.R.D. at 125 (stating "'great weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation"). This Action remains in the pre-discovery stage, meaning that Representative Plaintiffs have not yet had access to Settling Defendants' data and documents.

As a result, Plaintiffs' Counsel relied on the information disclosed by MAS and other publicly available sources to assess the potential damages involved in this Action. MAS collectively required most of the Settling Defendants to deposit with the central bank a total of S$9.6 billion interest-free for one year, thereby depriving Settling Defendants of the ability to generate a profit on those funds. The amount of the deposit penalty was determined considering three factors: "the number of traders within the bank who attempted to inappropriately influence the benchmarks, the number of banks with which the traders had collaborated, and the number of times these attempts occurred." *See* Fourth Amended Complaint ¶ 209. Fairly read, these criteria would suggest that the penalty was correlated to deprive Settling Defendants of any profits that would have resulted from using the funds in its banking operations; in effect, it appears to Representative Plaintiffs and Plaintiffs' Counsel to be an effort to force Settling Defendants to disgorge any windfall arising from the alleged manipulation. Based on interest rates in 2016, the impact of those deposits would have deprived Settling Defendants of at least S$494.4 million, or approximately US$355,376,653. This amount is likely the minimum damages experienced by the Settlement Class.

Representative Plaintiffs' experts performed additional analysis using publicly available derivatives trading volume data from Reuters and the triennial surveys titled "The Foreign Exchange and Interest Rate Derivatives Markets: Turnover in the United States" conducted by the Federal Reserve Bank of New York. After considering various factors, including the transaction volume and outstanding notional amount in SIBOR- and/or SOR-Based Derivatives, length of the class period, and the potential impact of the alleged manipulation, Representative Plaintiffs' experts calculated a damages range of between $389 million and $560 million. Based on this calculation, the Settlements recover between 11.51% and 16.57% of the initial estimated class wide damages.

3. The Distribution Plan Provides an Effective Method for Distributing Relief, Satisfying Rule 23(e)(2)(c)(ii)

"To warrant approval, the plan of allocation must also meet the standards by which the settlement was scrutinized—namely, it must be fair and adequate." *Payment Card*, 330 F.R.D. at 40. In addition, "[a]n allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *Id.*

Lowey consulted with industry and economics experts to develop the proposed Distribution Plan. *See* Briganti Decl., ¶ 80, Ex. 11. It is structured to be efficient to administer and simple for Settlement Class Members, encouraging participation. *See* William B. Rubenstein, 4 NEWBERG ON CLASS ACTIONS § 13:53 (5th ed. 2021) ("the goal of any distribution method is to get as much of the available damages remedy to class members as possible and in as simple and expedient a manner as possible"). This distribution method is similar to plans approved in other cases. *See* Plan of Distribution, *Alaska Elec. Pension Fund, et. al., v. Bank of Am., N.A., et. al.*, No. 14-cv-7126 (S.D.N.Y. Mar. 30, 2018), ECF No. 602-1; Plan of Distribution, *Alaska Elec. Pension Fund, et. al., v. Bank of Am., N.A., et. al.*, No. 14-cv-7126 (S.D.N.Y. Sept. 28, 2018), ECF No. 681-1; Final

Judgments and Orders of Dismissal at ¶ 16, *Alaska Elec. Pension Fund, et. al., v. Bank of Am., N.A., et. al.*, No. 14-cv-7126 (S.D.N.Y. June 1, 2018), ECF Nos. 648-57 (approving plan of distribution as fair, reasonable, and adequate); Final Judgment and Order of Dismissal at ¶ 15, *Alaska Elec. Pension Fund, et. al., v. Bank of Am., N.A., et. al.*, No. 14-cv-7126 (S.D.N.Y. Nov. 13, 2018), ECF No. 738 (same); Distribution Plan, *In re London Silver Fixing, Ltd. Antitrust Litig.,* Nos. 14-md-2573, 14-mc-2573 (S.D.N.Y. June 25, 2020), ECF No. 451-5; Final Approval Order, *In re London Silver Fixing, Ltd. Antitrust Litig.,* Nos. 14-md-2573, 14-mc-2573 (S.D.N.Y. June 15, 2021), ECF No. 536 (approving plan of distribution as fair, reasonable, and adequate); Plan of Allocation for the Third Settlement Agreement, *In re Commodity Exchange, Inc., Gold Futures and Options Trading Litig.,* Nos. 14-md-2548, 14-mc-2548 (S.D.N.Y. Nov. 12, 2021), ECF No. 610-3; Updated Plan of Allocation for Deutsche Bank and HSBC Settlements, *In re Commodity Exchange, Inc., Gold Futures and Options Trading Litig.,* Nos. 14-md-2548, 14-mc-2548 (S.D.N.Y. Nov. 12, 2021), ECF No. 610-4; Order Regarding Notice of a Revised Plan of Allocation, *In re Commodity Exchange, Inc., Gold Futures and Options Trading Litig.,* Nos. 14-md-2548, 14-mc-2548 (S.D.N.Y. Jan. 13, 2022), ECF No. 624 at ¶ 4 (preliminarily approving updated Plan of Allocation and Plan of Allocation for a subsequent settlement, with final approval to follow at or after the Fairness Hearing). Accordingly, the Distribution Plan should be preliminarily approved.

To receive a portion of the Net Settlement Fund, Class Members will be required to submit a Proof of Claim and Release form ("Claim Form"). The Claim Form is straight-forward and simple, only requiring a claimant to provide certain background information and readily accessible data about their SIBOR- and/or SOR-Based Derivatives transactions, including the transaction type, trade date, applicable SGD or SOR rate, and notional (face) value of the transaction. *See*

Briganti Decl., Ex. 10. This information is comparable to the information requested in other benchmark litigation cases.[12]

Substantively, the Distribution Plan allocates the Net Settlement Fund *pro rata* to Authorized Claimants based on an estimate of the impact of Defendants' alleged manipulation on SIBOR- and/or SOR-Based Derivatives. *Id.* In particular, it calculates for each SIBOR and/or SOR-Based Derivatives transaction a "Transaction Notional Amount," which is a score that reflects the interest rate impact of the alleged manipulation on the SIBOR and/or SOR-Based Derivatives. If all other factors are held constant, claimants with a higher trading volume can expect a proportionally higher Transaction Notional Amount. Further, SIBOR and/or SOR-Based Derivatives transactions that include multiple interest payments based on the notional value of the transaction (*e.g.*, interest rate swaps) will have higher Transaction Notional Amounts than SIBOR and/or SOR-Based Derivatives transactions that have the same notional value but are based on fewer interest rate payments. An Authorized Claimant's Transaction Notional Amounts for all of its eligible SIBOR and/or SOR-Based Derivatives transactions will be summed together (the "Transaction Claim Amount") and divided by the sum of all calculated Transaction Claim Amounts to determine the Authorized Claimants *pro rata* fraction, which will then be multiplied against the Net Settlement Fund to determine the Authorized Claimant's payment amount.

Authorized Claimants whose expected distribution based on their *pro rata* fraction is less than the costs of administering the Claim will instead receive a Minimum Payment Amount in an amount to be determined after the Claim Forms are reviewed, calibrated to ensure that a minimal portion of the Net Settlement Funds is reallocated towards Authorized Claimants receiving the

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[12] *See* Proof of Claim and Release Form, *Alaska Elec. Pension Fund, et. al., v. Bank of Am., N.A., et. al.*, No. 14-cv-7126, (S.D.N.Y.), ECF No. 512-3 (claim form requiring submission of, *inter alia*, transactions entered into, received or made payments on, settled, terminated, transacted in, or held during the Settlement Class Period).

Minimum Payment Amount. Any claims payments that go uncollected after a set time period will be reallocated to Authorized Claimants who have cashed their payments. Should there be any balance remaining in the Net Settlement Fund that cannot be redistributed, Plaintiffs' Counsel will submit an additional plan of allocation to the Court for its approval. *See* Citi Agreement § 10; JPMorgan Agreement § 10; Credit Suisse Agreement § 10; Deutsche Bank Agreement § 10; HSBC Agreement § 10; ING Agreement § 10.

The Distribution Plan satisfies Rule 23(e)(2)(C)(ii). It is a fair and adequate allocation of the Net Settlement Fund that ensures that the Settlements do not favor or disfavor any Class Members, create any limitations, or exclude from payment any persons or groups within the Settlement Class.

4. The Requested Attorneys' Fees and Other Awards are Limited to Ensure that the Settlement Class Receives Adequate Relief

Lead Counsel will limit their attorneys' fee request to no more than one-third of the Settlement Amounts ($21.486 million), which may be paid upon final approval. Briganti Decl., Ex. 8, at 28; *see In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 216, 223 (2d Cir. 1987). This fee request is comparable to the fees awarded in other cases of similar size and complexity. *See, e.g.*, Order (as Modified) at 4, *In re Lidoderm Antitrust Litig.*, No. 3:14-md-02521-WHO (N.D. Cal. Sept. 20, 2018), ECF No. 1055 (End Payor Plaintiffs) (awarding one-third of $104.75 million common fund in attorneys' fees); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 749 (E.D. Pa. 2013) (awarding attorneys' fees of 33.33% on a $150 million settlement); *In re Titanium Dioxide Antitrust Litig.*, No. 10-CV-00318 (RDB), 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (awarding 33.33% of a $163.5 million settlement as attorneys' fees); Memorandum at 39, *In re Domestic Drywall Antitrust Litig.*, No. 2:13-MD-2437, (E.D. Pa. July 17, 2018), ECF No. 767 (Direct Purchaser Plaintiffs) (granting attorneys' fee award of 33.33% of $190.06 million

settlement); Order and Final Judgment at 5, *In re Buspirone Antitrust Litig.*, No. 1:01-cv-07951 (JGK), (S.D.N.Y. Apr. 17, 2003), ECF No. 22; *see also Velez v. Novartis Pharms. Corp.*, No. 04 CIV 09194 CM, 2010 WL 4877852, at *21 (S.D.N.Y. Nov. 30, 2010) ("District courts in the Second Circuit routinely award attorneys' fees that are 30 percent or greater." (collecting cases)). In addition to attorneys' fees, Lead Counsel will seek payment for litigation costs and expenses not to exceed $500,000 and Incentive Awards not to exceed a total of $500,000. *See Meredith Corp.,* 87 F. Supp. 3d at 671 (reasonable expenses may be reimbursed from the settlement); *Dial Corp. v. News Corp.*, 317 F.R.D. 426, 439 (S.D.N.Y. 2016) (class representatives may be awarded an incentive award for their efforts); *see also* Briganti Decl., Ex. 8, at 28. Plaintiffs' Counsel will separately file their Fee and Expense Application seeking approval of the requested awards. That application and all supporting papers will be posted on a website (the "Settlement Website") promptly after filing for Class Members to review prior to the objection deadline.

5. There Are No Unidentified Agreements That Impact the Adequacy of the Relief for the Settlement Class

Rule 23(e)(3) requires that "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal." Here, the Settlement Agreements set forth all such terms or specifically identify all other agreements that relate to the Settlements (namely, the Supplemental Agreements). *See* Briganti Decl., ¶ 64; Exs. 1-6, §§ 23. The Supplemental Agreements provides Settling Defendants a qualified right to terminate the Settlement Agreements under certain circumstances before final approval. *Id.* This type of agreement is standard in complex class action settlements and does not impact the fairness of the Settlement.[13]

[13] *See, e.g., Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (S.D.N.Y. June. 22, 2016), ECF No. 659 ¶¶ 10-11; *Erica P. John Fund, Inc. v. Halliburton Co.*, No. 02CV1152, 2018 WL 1942227, at *5 (N.D. Tex. Apr. 25, 2018); *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 329-330 (C.D. Cal. 2016); *Resnick v. Frank*, Nos. 12-15705, 12-15889, 12-15957, 12-15996, 12-16010, 12-16038, 2012 WL 4845923, at *41 (9th Cir. Oct. 9, 2012); *In re Carrier IQ, Inc.,*

6. The Settlements Treat the Settlement Class Equitably and Do Not Provide Any Preferences

The Settlements also "treat[] class members equitably relative to each other." FED. R. CIV. P. 23(e)(2)(D). As discussed, the Distribution Plan provides for a *pro rata* distribution of the Net Settlement Fund among Authorized Claimants, a method this Court has already approved as fair, reasonable, and adequate. *See, e.g., Payment Card*, 330 F.R.D. at 47 (finding that "pro rata distribution scheme is sufficiently equitable"). All Class Members would release Settling Defendants for claims based on the same factual predicate of this Action. Where class members have received sufficient notice of the effect of the settlement and judgment, courts have enforced the bar on prosecuting released claims so long as they were based on the identical factual predicate and the class members were adequately represented. *See In re Gen. Am. Life Ins. Co. Sales Practices Litig.*, 357 F.3d 800 (8th Cir. 2004) (affirming injunction against prosecution of claim released by a related class action where adequate notice of the release was given, and the class was adequately represented); *Wal-Mart Stores*, 396 F.3d at 112-13 (adopting the analysis of *In re Gen. Am. Life*). As is customary, the proposed Class Notice provides information on how to opt out of the Settlements; absent opting out, each Class Member will be bound by the releases.

Because the Settlements' releases and the Distribution Plan do not include any improper intra-class preferences or prejudice, the Court should find that the Settlements satisfy this factor.

II. THE COURT SHOULD CONDITIONALLY CERTIFY THE PROPOSED CLASS

The proposed Settlement Class to be certified for settlement purposes is:

Consumer Privacy Litig., No. 12-md-2330, 2016 WL 4474366, at *5, 7 (N.D. Cal. Aug. 25, 2016) (observing that such "opt-out deals are not uncommon as they are designed to ensure that an objector cannot try to hijack a settlement in his or her own self-interest," and granting final approval of class action settlement); *accord* MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.631 (2004) (explaining that "[k]nowledge of the specific number of opt outs that will vitiate a settlement might encourage third parties to solicit class members to opt out."). These types of qualified rights to terminate, however, are common in class action settlements and are generally included based on the defendant's desire to quiet the litigation through a class-wide settlement, without leaving open any material exposure.

> 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.[14] 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.

As demonstrated below, the proposed Settlement Class meets the requirements of Rule 23(a), as well as Rule 23(b)(3). *See In re Am. Int'l Grp., Inc. Sec. Litig.*, 689 F.3d 229, 242 (2d Cir. 2012). Accordingly, the Court should conditionally certify the Settlement Class for each of the Settlements.[15]

A. The Settlement Class meets the Rule 23(a) requirements.

Rule 23(a) permits an action to be maintained as a class action if (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. FED. R. CIV. P. 23(a).

1. Numerosity

Rule 23(a) requires that the class be "so numerous that joinder of all class members is impracticable." FED. R. CIV. P. 23(a). Joinder need not be impossible, only "merely be difficult or inconvenient, rendering use of a class action the most efficient method to resolve plaintiffs' claims." *In re Initial Pub. Offering Sec. Litig.,* 260 F.R.D. 81, 90 (S.D.N.Y. 2009). There are at least hundreds, if not thousands, of geographically dispersed persons and entities that fall within

[14] "Class Period" means the period of January 1, 2007 through December 31, 2011.

[15] Settling Defendants each consent to preliminary certification of the Settlement Class solely for the purpose of the Settlements and without prejudice to any position they may take with respect to class certification in any other action or in the event that the Settlements are terminated. Citi Agreement § 22(E); JPMorgan Agreement § 22(E); Credit Suisse Agreement § 2 (C); Deutsche Bank Agreement § 2(C); HSBC Agreement § 2(C); ING Agreement § 2(C).

the Settlement Class definition. *See* Briganti Decl. ¶ 65. Thus, joinder of all of these individuals and entities would be impracticable.

2. Commonality

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." FED. R. CIV. P. 23(a)(2). This is a "'low hurdle' easily surmounted." *In re Prudential Sec. Inc. Ltd. Pshps. Litig.*, 163 F.R.D. 200, 206 n.8 (S.D.N.Y. 1995). Commonality requires the presence of only a single question common to the class. *See Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011).

This case involves numerous common questions of law and fact. Liability and impact questions that Representative Plaintiffs and Class Members have to answer through the same body of common class-wide proof include, among others:

i. whether Defendants and their co-conspirators engaged in a combination or conspiracy to manipulate SIBOR, SOR, and the prices of SIBOR-and/or SOR-Based Derivatives in violation of the Sherman Act, RICO and common law;

ii. what constitutes a false or manipulative submission by a SIBOR or SOR contributor panel bank;

iii. which Defendants conspired to manipulate SIBOR and SOR during which period(s); and

iv. what would the non-manipulated SIBOR or SOR rates have been in the "but-for" world for each day of the Class Period?

These common questions involve dozens of sub-questions of fact and law that are also common to all members of the Settlement Class. Rule 23(a)(2) is overwhelmingly satisfied for purposes of conditional certification.

3. Typicality

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." FED. R. CIV. P. 23(a)(3). This permissive standard is

satisfied when "each class member's claim arises from the same course of events and each class member makes similar legal arguments to prove the defendant's liability." *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 35 (2d Cir. 2009); *see also Bolanos v. Norwegian Cruise Lines Ltd.*, 212 F.R.D. 144, 155 (S.D.N.Y. 2002) ("Since the claims only need to share the same essential characteristics, and need not be identical, the typicality requirement is not highly demanding.").

The Representative Plaintiffs' and Class Members' claims arise from the same course of conduct arising from the alleged false reporting and manipulation of SIBOR, SOR, and SIBOR and/or SOR-Based Derivatives by Defendants. Courts generally find typicality in cases alleging a theory of manipulative conduct that affects all class members in the same fashion. *See, e.g.*, *In re GSE Bonds*, 414 F. Supp. 3d at 700-01 ("Courts have repeatedly found that typicality is met when plaintiffs allege an antitrust price-fixing conspiracy because Plaintiffs must prove a conspiracy, its effectuation, and damages therefrom--precisely what the absent class members must prove to recover."); *In re Air Cargo Shipping Servs.,* 2014 WL 7882100, at *31 ("Because the representative plaintiffs will seek to prove that they were harmed by the same overall course of conduct and in the same way as the remainder of the class, their claims are by all appearances typical of the class."); *Ploss v. Kraft Foods Grp., Inc.*, 431 F. Supp. 3d 1003, 1011 (N.D. Ill. 2020) (finding typicality where named representative and class members bought and lost money on wheat futures due to defendants' alleged scheme to create artificial prices). Thus, Representative Plaintiffs' claims are typical of the Class Members' claims for purposes of conditional certification.

4. Adequacy

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." FED. R. CIV. P. 23(a)(4); *Baffa v. Donaldson, Lufkin & Jenrette Secs. Corp.*, 222 F.3d 52, 61 (2d Cir. 2000). As discussed in Argument I.B.1. above, there are no conflicts between Representative Plaintiffs and Class Members, and Representative Plaintiffs' interest in proving liability and damages wholly aligns with the Settlement Class' interest. Further, Plaintiffs' Counsel are highly experienced in complex class action antitrust litigation and are adequate class counsel. Accordingly, the requirements of both Rule 23(a)(4) and Rule 23(g) are satisfied.

B. The proposed Settlement Class satisfies Rule 23(b)(3).

Rule 23(b)(3) certification is proper where the action "would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Brown v. Kelly*, 609 F.3d 467, 483 (2d Cir. 2010). To satisfy Rule 23(b)(3), Plaintiffs must conditionally establish: (1) "that the questions of law or fact common to class members predominate over any questions affecting only individual members;" and (2) "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." FED. R. CIV. P. 23(b)(3). Both prongs are satisfied.

1. Predominance

"If the most substantial issues in controversy will be resolved by reliance primarily upon common proof, class certification will generally achieve the economies of litigation that Rule 23(b)(3) envisions." *In re Air Cargo Shipping Servs.,* 2014 WL 7882100, at *35. To satisfy the predominance requirement, a plaintiff must show "that the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole . . . predominate over those issues that are subject only to individualized proof." *Brown*, 609 F.3d at 483 (ellipses in original).

"Predominance is a test readily met in certain cases alleging . . . violations of the antitrust laws." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997). Predominance can be established in antitrust cases because the elements of the claims lend themselves to common proof. *See, e.g.,* William B. Rubenstein, 6 NEWBERG ON CLASS ACTIONS §§ 18:28 & 18:29 (5th ed. 2021) (noting that allegations of antitrust conspiracies generally establish predominance of common questions). Additionally, the "predominance inquiry will sometimes be easier to satisfy in the settlement context." *In re Am. Int'l Grp.,* 689 F.3d at 240. Unlike class certification for litigation purposes, a settlement class presents no management difficulties for the court as settlement, not trial, is proposed. *Amchem*, 521 U.S. at 620; *see also In re NASDAQ Mkt.-Makers Antitrust Litig.*, 169 F.R.D. 493, 517 (S.D.N.Y. 1996) ("*NASDAQ I*") (stating that the predominance test is met "unless it is clear that individual issues will overwhelm the common questions and render the class action valueless").

If the claims against Settling Defendants had not been settled, dozens of common questions would have predominated over individual questions in the prosecution of the claims against them. Representative Plaintiffs and the Class Members would address the same questions regarding allegations of conspiracy, unlawful manipulation of the SIBOR, SOR and the prices of SIBOR and/or SOR-Based Derivatives, and the damages caused by such alleged manipulation. *See Cordes & Co. Fin. Servs., Inc. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 105 (2d Cir. 2007) ("allegations of the existence of a price-fixing conspiracy are susceptible to common proof"); *In re GSE Bonds*, 414 F. Supp. 3d at 701-02 ("whether a price-fixing conspiracy exists is the central question in this case, outweighing any questions that might be particular to individual plaintiff").

2. Superiority

Rule 23(b)(3)'s "superiority" requirement obliges a plaintiff to show that a class action is superior to other methods available for "fairly and efficiently adjudicating the controversy." FED. R. CIV. P. 23(b)(3). The Court balances the advantages of class action treatment against alternative available methods of adjudication. *See* FED. R. CIV. P. 23(b)(3)(A)-(D) (listing four non-exclusive factors relevant to this determination). The superiority requirement is applied leniently in the settlement context because the court "need not inquire whether the case, if tried, would present intractable management problems." *Amchem*, 521 U.S. at 620.

A class action is the superior method for the fair and efficient adjudication and settlement of this Action. *First*, Class Members are numerous and geographically disbursed, making a "class action the superior method for the fair and efficient adjudication of the controversy." *See In re Currency Conversion Fee Antitrust Litig.*, 224 F.R.D. 555, 566 (S.D.N.Y. 2004).

Second, the majority of Class Members have neither the incentive nor the means to litigate these claims. The damages most Class Members suffered are likely to be small compared to the very considerable expense and burden of individual litigation. This makes it uneconomical for an individual to protect his/her rights through an individual suit. Notably, no other Class Member "has displayed any interest in bringing an individual lawsuit" by seeking to join this Action or by commencing a separate action. *See Meredith Corp.,* 87 F. Supp. 3d at 661. A class action allows claimants to "pool claims which would be uneconomical to litigate individually." *Currency Conversion*, 224 F.R.D. at 566. "Under such circumstances, a class action is efficient and serves the interest of justice." *Id.*

Third, the prosecution of separate actions by hundreds (or thousands) of individual Class Members would impose heavy burdens upon the Court. It would also create a risk of inconsistent

or varying adjudications of the questions of law and fact common to the Settlement Class. Thus, both prongs of Rule 23(b)(3) are satisfied for purposes of conditional certification.

III. THE COURT SHOULD APPROVE THE PROPOSED CLASS NOTICE PLAN AND A.B. DATA, LTD. AS SETTLEMENT ADMINISTRATOR

Due process and Rule 23 require that the Class receive adequate notice of the Settlements. *Wal-Mart Stores*, 396 F.3d at 114. To be adequate, the method(s) used to issue notice must be reasonable. *See Soberal-Perez v. Heckler*, 717 F.2d 36, 43 (2d Cir. 1983); *Weigner v. City of New York*, 852 F.2d 646, 649 (2d Cir. 1988) (due process only requires that counsel "acted reasonably in selecting means likely to inform persons affected").

The proposed Class Notice plan and related forms of notice (see Briganti Decl. Exs. 7-10) are "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). The direct-mailing notice component of the notice program will involve sending the Long-Form Notice (Briganti Decl. Ex. 8) and the Proof of Claim and Release form (*id*. Ex. 10) via First-Class Mail, postage prepaid to potential Class Members. *See id.* Ex. 7 (Declaration of Linda V. Young). The Supreme Court has consistently found that mailed notice satisfies the requirements of due process. *See, e.g., Mullane*, 339 U.S. at 319. The Settlement Administrator also will publish the Short-Form Notice in various periodicals, in industry publications, and through a digital campaign on websites. *See* Briganti Decl. Ex. 9. Any Class Members that do not receive the Class Notice via direct mail likely will receive the Class Notice through the foregoing publications or word of mouth. The Settlement Website, www.siborsettlement.com, will serve as an information source regarding the Settlements. Class Members can review and obtain: (i) a blank Proof of Claim and Release form for the Settlements; (ii) the Long-Form and Short-Form Notices; (iii) the proposed Distribution Plan; (iv)

the Settlement Agreements with each Settling Defendant; and (v) key pleadings and Court orders. The Settlement Administrator will also operate a toll-free telephone number to answer Class Members' questions and facilitate claims filing.

Plaintiffs' Counsel recommends that A.B. Data, Ltd. ("A.B. Data") be appointed as Settlement Administrator. A.B. Data developed the Class Notice plan in coordination with Lead Counsel and has experience in administering class action settlements involving financial instrument in over-the-counter and exchange markets, including in complex cases involving benchmarks and complex financial products.[16]

IV. THE COURT SHOULD APPOINT CITIBANK, N.A. AND A.B. DATA AS ESCROW AGENTS.

The Settlement Agreements require Plaintiffs' Counsel, with Settling Defendants' consent, to designate an Escrow Agent to maintain the Settlement Funds. Plaintiffs' Counsel have designated A.B. Data, Ltd. to serve as Escrow Agent for Citi Settlement, and Citibank, N.A. to serve as Escrow Agent for the JPMorgan, Credit Suisse, Deutsche Bank, HSBC and ING Settlements. Citibank has served as escrow agent in a number of settlements, including *Boutchard v. Gandhi et al.*, No. 18-cv-7041 (N.D. Ill.); *Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (GBD) (S.D.N.Y), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 15-cv-5844 (GBD), and has agreed to provide its services at market rates. In addition to its experience administering class action settlements, A.B. Data has served as escrow agent for settlements, including in *Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (GBD) (S.D.N.Y), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 15-cv-5844 (GBD).

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[16] *See*, *e.g.*, *In re Libor-Based Fin. Instruments Antitrust Litig.*, No. 11-md-2262 (S.D.N.Y.) (NRB); *Sullivan v. Barclays plc,* No. 13-cv-2811 (S.D.N.Y.) (PKC); *Laydon v. Mizuho Bank Ltd., et al.*, No. 12-cv-3419 (S.D.N.Y.) and *Sonterra Capital Master Fund, Ltd., et al. v. UBS AG, et al.,* No. 15-cv-5844 (S.D.N.Y.) (GBD); *In re London Silver Fixing, Ltd., Antitrust Litig.,* 14-md-2573, 14-mc-2573 (S.D.N.Y.) (VEC); *In re GSE Bonds Antitrust Litig.*, 19-cv-1704 (S.D.N.Y.) (JSR); *In re JPMorgan Precious Metals Spoofing Litig.,* No. 18-cv-10356 (S.D.N.Y) (GHW).

V. PROPOSED SCHEDULE OF EVENTS

In Appendix A, Representative Plaintiffs propose a schedule for issuance of Class Notice, objection and opt-out opportunities for Settlement Class Members, and Representative Plaintiffs' motions for final approval, attorneys' fees, expense reimbursements, and Incentive Awards. If the Court agrees, Representative Plaintiffs request that the Court schedule the Fairness Hearing for a date one hundred twenty (120) calendar days after entry of the Preliminary Approval Order, or at the Court's earliest convenience thereafter. If the Court grants preliminary approval as requested, the only date that would require scheduling by the Court is the date for the Fairness Hearing. The remaining dates will be determined by the date the Preliminary Approval Order is entered and the Fairness Hearing date.

CONCLUSION

For the foregoing reasons, Representative Plaintiffs respectfully request that the Court grant Representative Plaintiffs' Motion for Preliminary Approval of Settlement Agreement with Settling Defendants and enter the accompanying Preliminary Approval Order.

Dated: May 13, 2022
White Plains, New York

LOWEY DANNENBERG, P.C.

By: /s/ Vincent Briganti

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APPENDIX A

PROPOSED SCHEDULE OF SETTLEMENT EVENTS	
Event	**Timing**
Deadline to begin mailing of Class Notice to Class Members and post the Notice and Claim Form on the Settlement Website (Preliminary Approval Order ("PAO")	30 days after entry of the Preliminary Approval Order
Substantial completion of initial distribution of mailed notices	60 days after entry of the Preliminary Approval Order
Deadline for Representative Plaintiffs to file papers in support of final approval and application for fees and expenses	50 days prior to the Fairness Hearing
Deadline for requesting exclusion and submitting objections	35 days prior to the Fairness Hearing
Deadline for filing reply papers	7 days prior to the Fairness Hearing
Fairness Hearing	120 days after the Preliminary Approval Order
Deadline for submitting Claim Forms	30 days after the Fairness Hearing