UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STEPHEN SULLIVAN, WHITE OAK FUND LP, CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM, SONTERRA CAPITAL MASTER FUND, LTD., FRONTPOINT PARTNERS TRADING FUND, L.P., AND FRONTPOINT AUSTRALIAN OPPORTUNITIES TRUST on behalf of themselves and all others similarly situated, Plaintiffs, - *against* - BARCLAYS PLC, BARCLAYS BANK PLC, BARCLAYS CAPITAL INC., BNP PARIBAS S.A., CITIGROUP, INC., CITIBANK, N.A., COÖPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A., CRÉDIT AGRICOLE S.A., CRÉDIT AGRICOLE CIB, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, HSBC HOLDINGS PLC, HSBC BANK PLC, ICAP PLC, ICAP EUROPE LIMITED, J.P. MORGAN CHASE & CO., JPMORGAN CHASE BANK, N.A., THE ROYAL BANK OF SCOTLAND PLC, SOCIÉTÉ GÉNÉRALE SA, UBS AG AND JOHN DOE NOS. 1-50, Defendants.	Docket No. 13-cv-02811 (PKC)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT WITH CITIGROUP INC., CITIBANK, N.A., JPMORGAN CHASE & CO. AND JPMORGAN CHASE BANK, N.A.

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INTRODUCTION

Under Rule 23 of the Federal Rules of Civil Procedure ("Federal Rules") and Paragraph 38 of the Order Preliminarily Approving Proposed Settlement with JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., Citigroup Inc., and Citibank, N.A., Scheduling Hearing for Final Approval Thereof, and Approving the Proposed Form and Program of Notice to the Class dated December 19, 2018, ECF No. 454 (the "Preliminary Approval Order"), Plaintiffs,[1] through their counsel, Lowey Dannenberg, P.C. and Lovell Stewart Halebian Jacobson LLP ("Class Counsel"), respectfully submit this Memorandum of Law, the accompanying Joint Declaration of Vincent Briganti and Christopher Lovell ("Joint Decl."), and Declaration of Brian J. Bartow ("Bartow Decl.") in support of Plaintiffs' motion for an order granting final approval of the settlement with Defendants Citi[2] and JPMorgan[3] (the "Settlement"), certification of the Settlement Class, and approval of the Plan of Distribution.

The terms of the Settlement are fair, reasonable, and adequate, and satisfy the criteria for final approval under Rule 23 of the Federal Rules of Civil Procedure. The Settlement was the result of more than six years of hard-fought litigation and months of arm's-length negotiations between highly sophisticated parties and their experienced counsel.

Pursuant to the Preliminary Approval Order, the Settlement Administrator executed the Class Notice plan and distributed the mailed notice to Class members informing them, *inter alia*, that Citi and JPMorgan agreed to pay $182,500,000 and provide non-monetary cooperation to settle the

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[1] "Plaintiffs" are California State Teachers' Retirement System ("CalSTRS"), Stephen Sullivan, White Oak Fund LP, Sonterra Capital Master Fund, Ltd., FrontPoint Partners Trading Fund, L.P., and FrontPoint Australian Opportunities Trust ("FrontPoint"). Unless otherwise defined, capitalized terms herein have the same meaning as in the Settlement Agreement. ECF No. 452-1.

[2] "Citi" means Citigroup Inc. and Citibank, N.A.

[3] "JPMorgan" means JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. Together, Citi and JPM are referred to as the "Settling Defendants." The Settling Defendants consent to the instant motion for final approval of their settlement with Plaintiffs and without prejudice to any position Settling Defendants may take in any other action, or in this Action if the Settlement is terminated.

Action. *See* Miller Aff. ¶¶ 5-15 (ECF No. 465-1). The Class Notice plan was set forth at length in Exhibit A to the Affidavit of Linda Young (ECF No. 452-2) submitted in connection with Plaintiffs' motion for preliminary approval of the Settlement. As Eric J. Miller, the Vice President of Client Services for A.B. Data, Ltd., described in his affidavit previously filed with the Court, the Settlement Administrator implemented the Class Notice plan in accordance with the Preliminary Approval Order. *See* Miller Aff. (ECF No. 465-1).

This motion is being filed before the deadline for objecting to the Settlement. No objections have been received to date. *See* Joint Decl. ¶ 72. Plaintiffs will separately address any objections in accordance with the schedule set by the Court for filing oppositions to any objections.

This Court previously approved the Plan of Distribution that Class Counsel developed with the assistance, knowledge, and opinions of several experts. *See, e.g.,* ECF No. 424 (Final Approval Order of Settlements with Barclays plc, Barclays Bank plc, Barclays Capital Inc., Deutsche Bank AG and DB Group Services (UK) Ltd., HSBC Holdings plc and HSBC Bank plc) ¶ 21. Class Counsel has litigated this Action for over six years and, based on its extensive experience in class actions and its knowledge of this Action, recommends that the Court once again finally approve the Plan of Distribution.

The Settlement is in the best interest of Plaintiffs and the Class. Therefore, Plaintiffs respectfully request that the Court grant Final Approval of the Settlement, approve the Plan of Distribution, and enter Final Judgment dismissing the claims against Citi and JPMorgan with prejudice on the merits to provide the Settlement Class with the substantial relief that Plaintiffs and their counsel worked so diligently to obtain.

BACKGROUND

On November 21, 2018, Plaintiffs moved for preliminary approval of the Settlement with Citi and JPMorgan. *See* ECF Nos. 444-47. On November 30, 2018, the Court issued an order

denying Plaintiffs' initial motion for preliminary approval without prejudice, in order to obtain additional information regarding the amount of attorneys' fees that Plaintiffs would seek. On December 14, 2018, Plaintiffs renewed their motion for preliminary approval of the Citi and JPMorgan settlement. *See* ECF Nos. 450-53 (the "Preliminary Approval Motion"). On December 19, 2018, the Court issued an order preliminarily approving Plaintiffs' motion. ECF No. 454. Through the negotiated settlement with Citi and JPMorgan, the Settlement Class will receive a substantial monetary recovery of $182,500,000 (less fees and expenses as approved by the Court), in addition to the cooperation that Citi and JPMorgan will provide to Plaintiffs to assist in prosecuting claims against the non-settling Defendants.

ARGUMENT

I. THE SETTLEMENT MEETS THE REQUIREMENTS FOR FINAL APPROVAL UNDER AMENDED RULE 23(e)(2)

Public policy favors the resolution of class actions through settlement. *Bano v. Union Carbide Corp.*, 273 F.3d 120, 129-30 (2d Cir. 2001); *see also In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 439, 455 (S.D.N.Y. 2004). "[C]ourts encourage early settlement of class actions, when warranted, because early settlement allows class members to recover without unnecessary delay and allows the judicial system to focus resources elsewhere." *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 474-75 (S.D.N.Y. 2013).

Under Rule 23, as amended, the Court may approve the settlement upon a showing that the settlement is "fair, reasonable, and adequate . . . ." FED. R. CIV. P. 23(e)(2) (2018). The settlement should be approved if it is both procedurally and substantively fair. *Cf. In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. 05-md-1720-MKB-JO, 2019 WL 359981, at *13 (E.D.N.Y. Jan. 28, 2019) ("*Payment Card*") (analyzing the amended Rule 23(e)(2) standards to be applied at both preliminary and final approval). The amended rule sets out a number of factors to guide the Court's analysis, with the factors in Rule 23(e)(2)(A) and (B) focusing on procedural fairness and those in

Rule 23(e)(2)(C) and (D) focusing on substantive fairness. The factors in amended Rule 23(e) are complementary with the factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), which courts in this Circuit have long used to assess the fairness of a class settlement. *See id.*

A. The Settlement is procedurally fair

In order to approve a settlement, Rule 23 requires courts 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). There is a presumption of procedural fairness 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), 2009 WL 3077396, at *7 (E.D.N.Y. Sept. 25, 2009); *see also 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) (same).

The presumption is bolstered where, as here, a qualified and experienced mediator assists in negotiating the settlement. *See In re Indep. Energy Holdings PLC Sec. Litig.*, No. 00 Civ. 6689, 2003 WL 22244676, at *4 (S.D.N.Y. Sept. 29, 2003) ("[T]he fact that the [s]ettlement was reached after exhaustive arm's-length negotiations, with the assistance of a private mediator experienced in complex litigation, is further proof that it is fair and reasonable."); *deMunecas v. Bold Food, LLC,* No. 09 Civ. 00440 (DAB), 2010 WL 3322580, at *4 (S.D.N.Y. Aug. 23, 2010) ("Arm's-length negotiations involving counsel and a mediator raise a presumption that the settlement they achieved meets the requirements of due process."); *In re Elec. Books Antitrust Litig.*, No. 11-md-2293 (DLC), 2014 WL 3798764, at *2 (S.D.N.Y. Aug. 1, 2014) ("The assistance of a well-known mediator . . . reinforces the conclusion that the [s]ettlement [a]greement is non-collusive."). Here, Class Counsel and counsel and representatives from Citi and JPMorgan participated in three all-day mediation sessions with mediator David Geronemus. Joint Decl. ¶¶ 53-58. The mediation sessions with Mr.

Geronemus were integral, laying the ground work that permitted Plaintiffs and Settling Defendants to reach an agreement. As a result of the extended and extensive negotiation process, Plaintiffs and Settling Defendants had numerous opportunities to articulate and refine their positions, discussing in-person, on the phone and through email their specific and considered arguments related to liability and damages. *Id.* ¶¶ 52-57. The exchange of extensive information facilitated well-informed settlement discussions. *Id.*

Additionally, CalSTRS' General Counsel Brian Bartow was involved throughout the settlement process and participated in the mediation sessions with Citi and JPMorgan. Bartow Decl. ¶¶ 18-23. CalSTRS is the largest educator-only pension fund in the world and the second largest pension fund in the United States, with over 950,000 members and beneficiaries and an investment portfolio with a market value of $226.5 billion as of February 28, 2019. Bartow Decl. ¶ 4. Mr. Bartow traveled to New York to attend each mediation session, delivering CalSTRS' view of Defendants' alleged conduct and the importance CalSTRS places on the Action, as well as safeguarding the interests of the Plaintiffs and the Class. *See* Bartow Decl. ¶¶ 19, 21.

Plaintiffs have been represented by counsel with extensive class action, antitrust, Commodity Exchange Act ("CEA"), and trial experience, which is strong evidence that the Settlement is procedurally fair. *See 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); ECF Nos. 452-6, 452-7 (Class Counsel's firm resumes).

The Class has benefitted from being represented by Class Counsel who were well informed about the strengths and weaknesses of the claims and defenses presented. Class Counsel closely reviewed and analyzed the documents and information obtained throughout the course of Class

Counsel's extensive investigation, including: (i) government settlements, *e.g.*, plea, non-prosecution, and deferred prosecution agreements; (ii) publicly available information relating to the conduct alleged in Plaintiffs' complaints; (iii) discovery produced by Settling Defendants, amounting to 134,000 pages of documents and one gigabyte of data; (iv) expert and industry research regarding Euribor and Euribor-based derivatives traded in both the futures and over-the-counter markets; (iv) expert discovery; (v) prior decisions of this Court and others deciding similar issues; and (vi) settlement cooperation materials, including Barclays' cooperation materials and proffers pursuant to ACPERA[4] and the materials provided under the terms of Plaintiffs' settlements with Barclays, HSBC, and Deutsche Bank . *See, e.g.*, Joint Decl. ¶¶ 32-33, 46, 54, 70. Class Counsel conducted extensive legal research to assess the merits of Plaintiffs' claims in light of the factual record.

Plaintiffs also served Citi and JPMorgan with Notices of Deposition pursuant to FED. R. CIV. P. 30(b)(6), and Citi and JPMorgan provided extensive responses to those notices. Joint Decl. ¶¶ 37-38. Plaintiffs CalSTRS and FrontPoint collectively produced over 3,900 documents totaling more than 49,000 pages in response to numerous document requests, in addition to responses and objections to Settling Defendants' document requests. *Id.* ¶ 45. FrontPoint responded to interrogatories propounded by Settling Defendants and participated in numerous meet and confers concerning its interrogatory responses and the scope of its data production. *Id.* ¶¶ 40-41. CalSTRS and FrontPoint also interposed responses and objections to Rule 30(b)(6) Notices issues by Settling Defendants. *Id.* ¶ 40; Bartow Decl. ¶ 16. Plaintiffs each took steps to identify their Rule 30(b)(6) witnesses and, with Class Counsel's assistance, began to prepare for the depositions. *Id.* ¶ 40; Bartow Decl. ¶ 16.

[4] "ACPERA" means the Antitrust Criminal Penalty Enhancement and Reform Act (Pub. L. No. 108-237, tit. II, 118 State. 661, 665, extended by Pub. L. No. 111-190, 124 Stat. 1275)

Class Counsel worked closely with two experts to develop evidence and testimony relating to Settling Defendants' alleged violations of customs and standards in the industry, and Plaintiffs' ability to show common impact and common proof of damages. Joint Decl. ¶¶ 46-48. The experts ultimately produced two reports, and both sat for depositions in which they vigorously defended their analyses. *Id.* ¶¶ 50-51. These same experts assisted Class Counsel to analyze Settling Defendants' expert report. After the third mediation session did not produce a settlement, Class Counsel prepared to take the deposition of Settling Defendants' expert. At the same time Class Counsel and counsel for Citi and JPMorgan continued the marathon negotiation process. After many calls and just moments before Settling Defendants' expert was to be deposed, the parties broke the impasse and agreed in principle on the Settlement. *Id.* ¶¶ 62-65. In addition, Class Counsel had already begun preparing its class certification motion. All of this work and analysis enabled Class Counsel to negotiate the best possible settlement, with a clear view of the claims' strengths and weaknesses.

Given Class Counsel's considerable prior experience in complex class action litigation involving antitrust claims (among others), their knowledge of the strengths and weaknesses of Plaintiffs' claims, their assessment of the Settlement Class' likely recovery following trial and appeal, CalSTRS' direct involvement in the negotiations that ultimately led to the Settlement, and the involvement of an experienced mediator with respect to the Settlement (*id.* ¶¶ 53-64), the Settlement is entitled to a presumption of procedural fairness.

B. The Settlement is substantively fair

To assess the substantive fairness of the Settlement, the Court must consider whether, "the relief provided for the class is adequate," and account for the following factors: "(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 attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." 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).

Courts in this Circuit have long considered the nine *Grinnell* factors in deciding whether a settlement is substantively fair, reasonable, and adequate:

> (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.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974) ("*Grinnell*"); *abrogated on other grounds by Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43 (2d Cir. 2000); *see also Maywalt v. Parker & Parsley Petroleum*, 67 F.3d 1072, 1079-80 (2d. Cir. 1995) (holding that fundamental to a determination of whether a settlement is fair, reasonable and adequate "is the need to compare the terms of the compromise with the *likely* rewards of litigation"); *In re Take Two Interactive Sec. Litig.*, No. 06 Civ. 803 (RJS), 2010 WL 11613684, at *9 n.8 (S.D.N.Y. June 29, 2010) ("A court reviewing a settlement for final approval must address the nine factors laid out in" *Grinnell*).

As the Committee Notes prepared in connection with amended Rule 23 make clear, "[t]he goal of [amended Rule 23] is not to displace any factor [previously applied by the court], but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." FED. R. CIV. P. 23 committee notes 2018 amendment. Consequently, the amended Rule 23(e)(2) factors have been interpreted to be complementary to *Grinnell*. *See Payment Card*, 2019 WL 359981, at *13 ("Indeed, there is significant

overlap between the *Grinnell* factors and the Rule 23(e)(2)(C–D) factors . . . ."). Here, the factors set forth in Rule (23)(e) and *Grinnell* weigh heavily in favor of final approval.

1. The Settlement provides superior relief for the Class

a. The costs, risks, and delay of trial and appeal favor this Settlement

To determine whether a settlement provides adequate relief to the class, the Court must assess "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*, 2019 WL 359981, at *20 (internal quotation marks and citations omitted). 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.* Therefore, it is appropriate to address Rule 23(e)(2)(C)(i) in conjunction with these *Grinnell* factors.

"Class actions have a well-deserved reputation as being most complex," *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998) ("*NASDAQ III*"), with antitrust and commodities cases standing out as some of the most "complex, protracted, and bitterly fought." *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 670 (S.D.N.Y. 2015); *see also In re Platinum and Palladium Commodities Litig.,* No. 10 Civ. 3617, 2014 WL 3500655, at *12 (S.D.N.Y. July 15, 2014) (noting that commodities cases are "complex and expensive" to litigate); *In re Vitamin C Antitrust Litig.*, No. 06-md-1738 (BMC), 2012 WL 5289514, at *4 (E.D.N.Y. Oct. 23, 2012). This case is no different. The Action involved, *inter alia,* antitrust claims, complex financial instruments, novel legal questions and an evolving view of those questions by many courts.

With respect to the Settling Defendants here, there was substantial risk of an adverse outcome for Plaintiffs. Citi has not been accused by any regulator of manipulating Euribor, and none of its employees have faced any criminal or civil charges relating to Euribor. While the

European Commission ("EC") has accused JPMorgan of being a member of the Euro interest rate derivatives ("EIRD") cartel and fined JPMorgan for its involvement, JPMorgan's alleged participation in the EIRD cartel lasted only five months, far shorter than any of the other alleged members. Further, JPMorgan is contesting its fine, publicly challenging the Commission's findings that it acted with the intent to manipulate Euribor. *See* Application, *JPMorgan Chase and Others v. Commission*, Case No. T-106/17 (Eur. Ct. of Justice Feb. 17, 2017), *available at* http://curia.europa.eu/juris/document/document.jsf?text=&docid=189908&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4951726. Like Citi, none of JPMorgan's employees have yet been criminally charged for participating in the alleged manipulation of Euribor. Consequently, relatively little information was available concerning the extent of Citi's and JPMorgan's involvement in allegedly manipulating Euribor.[5]

The litigation risk presented by this information gap regarding Citi's and JPMorgan's involvement is mitigated by the Settlement. In addition to the Settlement Amount, the Settlement provides for the production of cooperation materials that may facilitate Plaintiffs' ability to pursue claims against previously dismissed Defendants ("Dismissed Defendants") in this Action. Plaintiffs negotiated for access to, among other things, documents and communications potentially probative of the personal jurisdiction of this Court over the Dismissed Defendants. ECF No. 452-1

[5] In contrast, the evidence of liability as to the Barclays, Deutsche Bank and HSBC entities that previously settled was more substantial. The EC alleged that Barclays and Deutsche Bank were members of the EIRD cartel for at least 32 months. *See* Press Release, European Commission, AMENDED - Antitrust: Commission fines banks € 1.49 billion for participating in cartels in the interest rate derivatives industry (Dec. 4, 2013), http://europa.eu/rapid/press-release_IP-13-1208_en.htm#footnote-1 (hereinafter, "EC EIRD Release"). Cartel members allegedly discussed their bank's submissions, trading and pricing strategies with the aim of distorting prices for Euribor Products. *Id.* Barclays received full immunity from the EC for revealing the existence of EIRD cartel. *Id.* Barclays also sought antitrust immunity from the U.S. Department of Justice under ACPERA with respect to its role in manipulating Euribor. *See* Fourth Amended Complaint ¶ 4 (ECF No. 174). After agreeing to cooperate with Plaintiffs under ACPERA and provide documents it had relating to the Euribor manipulation, Barclays ultimately produced more than 740,000 pages of documents, 10,000 audio files (reflecting hundreds of hours of discussions), and data concerning thousands of transactions. ECF No. 403 ¶ 54. Deutsche Bank agreed to settle charges with the EC for its participation in the Euro interest rate derivatives ("EIRD") cartel and paid a fine totaling €465,861,000. EC EIRD Release. Former employees of both Barclays and Deutsche Bank have been convicted for their roles in manipulating Euribor, and at least three others have been tried in U.K. courts for their alleged manipulative conduct. Joint Decl. ¶ 11.

(Settlement Agreement) ¶ 25. Absent the Settlement, not only would Plaintiffs face substantial risk to achieving success in their claims against Citi and JPMorgan, Plaintiffs would not otherwise have access to information that may help them reinstate the Action against the Dismissed Defendants.

This litigation has been massive, complex, and expensive to prosecute, and may continue to be. The expert work alone in this case has been costly. *See* Declaration of Geoffrey M. Horn ¶ 10 and Declaration of Christopher M. McGrath ¶ 9, filed herewith. This case also presents an inherent level of risk and uncertainty because it involves a financial market unfamiliar to the average juror. *See Meredith Corp.*, 87 F. Supp. 3d at 663 ("The greater the 'complexity, expense and likely duration of the litigation,' the stronger the basis for approving a settlement."). As appellate decisions potentially impacting this case are announced (*see, e.g.*, *Charles Schwab Corp. v. Bank of Am. Corp.*, 883 F.3d 68 (2d Cir.); *Sonterra Capital Master Fund Ltd. v. UBS AG*, No. 17-944 (2d Cir) (appeal fully briefed and currently pending)), the duration of this Action was likely to be extended further absent this Settlement. Approving the Settlement mitigates the risks inherent in this complex, multi-party litigation. *See In re Initial Pub. Offering Sec. Litig.*, 243 F.R.D. 79, 93 (S.D.N.Y. 2007) ("The prospect of an immediate monetary gain may be more preferable to class members than the uncertain prospect of a greater recovery some years hence.").

i. The Remaining *Grinnell* Factors Also Support Final Approval of This Settlement

The remaining *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.

(a) The reaction of the class to the settlement

The second *Grinnell* factor is "the reaction of the class to the settlement." *Grinnell*, 495 F.2d at 463. This motion is being filed before the deadline for objecting to the Settlement. Plaintiffs will respond to any objections separately. However, as detailed in the Preliminary Approval Motion, all of the named Plaintiffs favor the Settlement. ECF No. 451 at 11; *see also* Bartow Decl. ¶¶ 26-28. Plaintiff CalSTRS' general counsel Brian Bartow has been directly involved in overseeing this Action participating in strategy sessions, settlement negotiations, and mediations, in addition to monitoring Class Counsel's time and expenses. *See* Bartow Decl. ¶¶ 10-25. Plaintiffs are sophisticated investors with significant financial expertise and are fully capable of assessing the benefits of the Settlement. Their approval is highly probative of the likely reaction of other members of the Settlement Class upon reviewing the Settlement. Any Class member who does not favor the Settlement may opt out. Additionally, the Settlement is similar to the Barclays, Deutsche Bank and HSBC settlements that were previously approved, for which there were no objections. *See* ECF No. 424 ¶ 8.

In accordance with the Preliminary Approval Order, the Class Notice plan has been carried out as described in the Miller Aff. (ECF No. 465-1). To provide additional information for members of the Settlement Class to evaluate the Settlement, we have filed this motion in advance of the deadline for objecting and may supplement this argument to address any objections. To date, A.B. Data has received three requests for exclusion and there have been no objections. Joint Decl. ¶ 72.

(b) The stage of the proceedings and the amount of discovery completed

In assessing the risks of continuing to litigate, the Court should also consider "the stage of the proceedings and the amount of discovery completed." *Grinnell*, 495 F.2d at 463. The Court may approve a settlement at any stage of litigation. *See In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, MDL No. 1500, 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006). The Court's primary concern in examining the stage of litigation and the extent of discovery undertaken is to assess whether the

settling parties "have engaged in sufficient investigation of the facts" to understand the strengths and weaknesses of their cases, and whether the settlement is adequate given those risks. *Id.*

As described above (*see supra* Part I.A), Class Counsel's extensive investigation, analysis, and participation in discovery provided them ample opportunity to evaluate Plaintiffs' claim in the context of the risks faced. In light of the ostensible risks of litigation, Class Counsel's considered judgment is that the total consideration provided by the Settlement, together with the non-monetary cooperation that Plaintiffs have received and will continue to receive, is fair, reasonable, and adequate in light of all of the circumstances. Therefore, the consideration that the Settlement provides is well within the range of consideration held to be "fair, reasonable, and adequate" at final approval. *In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997) ("*NASDAQ II*").

(c) The ability of Settling Defendants to withstand greater judgment

The seventh *Grinnell* factor, "the ability to withstand a greater judgment" (*Grinnell*, 495 F.2d at 463), does not weigh against granting final approval. Citi and JPMorgan have the ability to withstand a greater judgment than a combined $182,500,000, but this factor alone does not bear on the appropriateness of the Settlement. *See In re Global Crossing Sec. and ERISA Litig.*, 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."). While Settling Defendants could survive a greater judgment, courts routinely observe that "'this determination in itself does not carry much weight in evaluating the fairness of the Settlement.'" *See In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL. 1695 (CM), 2007 WL 4115809, at *11 (S.D.N.Y. Nov. 7, 2007). With all other criteria

satisfied, this factor is insignificant. *Cf.* Tr. of Nov. 21, 2014 Final Approval Hearing, *In re Elec. Books Antitrust Litig.*, 11-md-2293 (DLC) (S.D.N.Y. Nov. 21, 2014), ECF No. 686 at 13:22-24 (granting final approval where defendant's ability to withstand greater judgment was not "in dispute").

(d) The Settlement is reasonable in light of the risks and potential range of recovery

Grinnell factors eight and nine are "(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. The recovery in this Settlement is substantial. This is particularly true in light of (a) the cooperation Plaintiffs received; (b) the comparatively smaller scope of JPMorgan's alleged misconduct by governmental authorities and the lack of any regulatory findings against Citi; (c) the number of defendants dismissed from the Action on personal jurisdiction grounds; and (d) the risks involved in not settling, as described *supra,* at 11-13. The monetary relief that Citi and JPMorgan have paid and the cooperation that they have agreed to provide is very substantial. Even if Plaintiffs are unable to reinstate claims against the Dismissed Defendants, Class Counsel effectively implemented a strategy that has achieved a "maximum aggregate recovery for the class." *In re Corrugated Container Antitrust Litigation*, MDL No. 310, 1981 WL 2093, at *23 (S.D. Tex. June 4, 1981) (approving several settlements achieved, including ice-breaker settlements that strategically helped facilitate other settlements).

"The adequacy of the amount achieved in settlement is not to be judged '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.'" *Meredith Corp.*, 87 F. Supp. 3d at 665-66; *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 718 F. Supp. 1099, 1103 (S.D.N.Y. 1989) (same). This is a multi-million-dollar Settlement that was achieved prior to briefing on class certification, in which each Settling Defendant would have vigorously argued against certification of the Class. "The fact that a

proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *Grinnell*, 495 F.2d at 455; *In re Top Tankers, Inc., Sec. Litig.*, No. 06 Civ. 13761 (CM), 2008 WL 2944620, at *6 (S.D.N.Y. July 31, 2008) (McMahon, J.) (holding settlements of 3.8% of plaintiffs' estimated damages to be within the range of reasonableness, and recovery of 6.25% of estimated damages to be "at the higher end of the range of reasonableness of recovery in class action securities litigations.").

The range of possible recoveries here is broad. Some Defendants have avoided liability thus far by arguing that the Court lacks personal jurisdiction over them. Citibank and JPMorgan could potentially defeat liability as to one or more of the claims for relief. Even if Plaintiffs established liability, numerous variables would remain that could substantially affect the amount of recoverable damages. Plaintiffs would need to prove that Defendants' alleged manipulation of Euribor affected the prices of Euribor Products. Plaintiffs would then have to demonstrate the amount of harm suffered due to transacting in these price-fixed financial products.

Based on Class Counsel's preliminary damages estimates, if Plaintiffs were to prevail at trial, and the Court upheld the Class Period that Plaintiffs allege at class certification and through appeals, Plaintiffs and the Class could possibly recover billions of dollars. While the monetary compensation provided under the Settlement is a small percentage of the potential maximum amount of damages, it is still acceptable under the *Grinnell* factors. *See Grinnell*, 495 F.2d at 455 n.2 ("satisfactory settlement" could be "a thousandth part of a single percent of the potential recovery."). The Settlement here is advantageous to the Class in that it provides both monetary compensation to the Class as well as non-monetary compensation to assist Class Counsel in the continued prosecution of the non-settling Defendants.

b. The plan of distribution provides an effective method for distributing relief, satisfying Rule 23(e)(2)(c)(ii)

The Plan of Distribution, which was previously approved by the Court (*see* ECF Nos. 392, 424) provides a fair and effective method of distributing relief to the Class as required by Rule 23(e)(2)(C)(ii). Ninety percent (90%) of the Net Settlement Fund will divided *pro rata* among Qualified Claimants with Total Adverse Impact to qualifying transactions. ECF No. 382-1 (Plan of Distribution), at 2-3. The *pro rata* distribution of the settlement proceeds provided for by the Plan is "designed to fairly and rationally allocate the proceeds of this Settlement among the Class." *City of Providence v. Aeropostale, Inc.*, No. 11 CIV. 7132 CM GWG, 2014 WL 1883494, at *10 (S.D.N.Y. May 9, 2014).

In addition, the remaining 10% of the Net Settlement Fund will be distributed according to each Qualified Claimant's total adjusted volume of transactions subject to a guaranteed minimum payment. ECF No. 382-1, at 2. Distributions based on transaction volume are also commonly accepted in this District. *See, e.g.,* Order Approving the Plan of Distribution*, In re Foreign Exchange Benchmark Rates Antitrust Litig.*, No. 13-cv-7789 (S.D.N.Y.), ECF No. 1095. Further, the minimum claim amount "is necessary in order to save the settlement fund from being depleted by the administrative costs associated with claims unlikely to exceed those costs . . . ." *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 180 (S.D.N.Y. 2014) (internal quotation marks and citations omitted) (collecting cases).

The Claims Administrator has been and will continue to scrutinize the claims submitted by the Class to ensure that the claims are valid and reflect accurate information. ECF No. 452-5 (Proof of Claim and Release), at 4, 7. The Claims Administrator has the right to and will request additional information to verify any claims where necessary. *Id.* This type of work is performed both by automated screens and human intervention to ensure, to the best of the Claims Administrator's

ability, that only those Class Members who have been harmed by Settling Defendants' misconduct will receive proceeds from the Net Settlement Fund.

c. The requested attorneys' fees are limited to ensure that the Class receives adequate relief

As more fully described in the accompanying Class Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Expenses, the percentage of attorneys' fees requested is reasonable given Class Counsel's retainer agreement with CalSTRS and in light of awards made in similar cases in this District.

Pursuant to the retainer with CalSTRS, Class Counsel's recovery is limited to 19% of the Settlement Fund, which may be paid upon final approval. Bartow Decl. ¶¶ 7, 29; ECF No. 452-1 (Settlement Agreement) ¶ 30. The retainer agreement between Class Counsel and CalSTRS was negotiated at arm's length and contains a contingent fee structure that uses a graduated fee scale that provides for a 19% fee at this level of recovery. Bartow Decl. ¶ 7. The fee schedule set forth in Class Counsel's retainer agreement with CalSTRS is entitled to deference. *See In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 133 (2d Cir. 2008) ("In many cases, the agreed-upon fee will offer the best indication of a market rate.").

Courts have routinely awarded similar amounts in cases of similar size and complexity. *See* Order Granting Class Counsel's Motion for Award of Attorneys' Fees, *Sonterra Capital Master Fund, Ltd., et al, v. UBS AG et al.*, No. 15-cv-5844 (GBD) (S.D.N.Y Dec. 7, 2017), ECF No. 338 ("*Sonterra* Fee Order") (based on retainer agreement with CalSTRS, awarding 23.57% of the $148 million common fund in cases settling manipulation claims relating to Yen LIBOR and Euroyen TIBOR); *Dial Corp. v. News Corp.*, 317 F.R.D. 426, 438 (S.D.N.Y. 2016) (awarding 20% of the $244 million common fund as attorneys' fees in an antitrust class action); *In re Amaranth Natural Gas Commodities Litig.*, No. 07 Civ. 6377 (SAS), 2012 WL 2149094, at *2 (S.D.N.Y. Jun. 11, 2012) (awarding 30% of a common fund of $77.1 million as attorneys' fees in a complex CEA class action). Further, 19% is

less than what the Court approved in connection with the earlier settlement in the Action. *See* ECF No. 425 (approving fee of 22.24% from a $309 million common fund). Equally relevant is that absent an appeal and/or other settlement in this Action, Class Counsel is not entitled to any further payments, including in connection with its work is distributing the Net Settlement Fund, pursuant to its agreement with CalSTRS. Consequently, Class Counsel will continue to experience a growing lodestar that it must absorb in its entirety. The impact of an award of attorneys' fees on the relief for the Class is reasonable.

d. There are no unidentified agreements that would impact the adequacy of the relief for the Settlement Class

Rule 23(c)(3) requires that "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal." Here, all agreements that could potentially impact the Settlement have been disclosed in the Settlement.

The Settlement provides Citi and JPMorgan a limited right to terminate the Settlement under certain conditions. Settlement Agreement ¶ 36. The Settlement also identifies a supplemental agreement that provides each Settling Defendant the right to terminate the agreement under certain circumstances. *Id.* ¶ 39. This type of supplemental agreement, commonly referred to as a "blow" provision, is common in class action settlements. *See, e.g.*, *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 948 (9th Cir. 2015); *Erica P. John Fund, Inc. v. Halliburton Co.*, No. 02CV1152, 2018 WL 1942227, at *5 (N.D. Tex. Apr. 25, 2018). The allocation agreement between the Settling Defendants, Settlement Agreement ¶ 39, only impacts how Citi and JPMorgan have allocated their respective responsibility for the settlement. This agreement does not impact the adequacy of the relief provided to the Class.

e. The Settlement does not provide any preferences to any Class representatives or members

The Plan of Distribution "treats class members equitably relative to each other." FED. R. CIV. P. 23(e)(2)(D). The Plan of Distribution provides for a *pro rata* distribution of 90% of the New Settlement Fund among eligible claimants, and distributes the remaining 10% via an objective measure involving the total adjusted volume of transactions. ECF No. 382-1 (Plan of Distribution), at 2-3. While there are certain discount factors applied under the Plan of Distribution, these discounts reflect the relative legal risks faced by claimants based upon the instruments that they traded and their counterparties. *See* Plan of Distribution at 3 (ECF No. 382-1). These discounts were determined through an arms-length negotiation where each interest was represented by independent allocation counsel. The discounts were ultimately determined following a mediation among allocation counsel with Kenneth Feinberg, who served as a neutral allocation mediator. *See generally* Declaration of Kenneth R. Feinberg (ECF No. 382-2).

Based on all of the foregoing factors, including all of the risks that Plaintiffs would face in continuing to litigate this matter, the Settlement should be finally approved.

II. THE SETTLEMENT CLASS SATISFIES ALL REQUIREMENTS OF RULE 23

For all of the reasons detailed in the Preliminary Approval Motions and as held most recently in the Court's Preliminary Approval Order, the Settlement Class satisfies all requirements of Rule 23(a)—numerosity, commonality, typicality, and adequacy—as well as the predominance and superiority requirements of Rule 23(b)(3). The preliminarily certified Settlement Class should therefore be granted final certification for settlement purposes.[6]

[6] The Settling Defendants consent to certification of the Settlement Class solely for the purposes of the Settlement and without prejudice to any position Settling Defendants may take with respect to class certification in any other action or in this Action if the Settlement is terminated. ECF No. 452-1 ¶ 4.

There are at least hundreds, if not thousands, of geographically dispersed persons and entities that fall within the Settlement Class definition. *See* ECF No. 220 ¶ 19; ECF No.276 ¶ 21; ECF No. 360 ¶ 38. Over 35,000 claims have been filed in connection with the Barclays, Deutsche Bank and HSBC settlements. ECF No. 456-1 ¶ 3. Commonality is easily satisfied here where there are numerous common questions of law and fact and where each Plaintiff and Settlement Class member would have to answer the same liability and impact questions through the same body of common class-wide proof. *See*, *e.g.,* ECF No. 359, at 13.

Plaintiffs' claims are typical of those of the entire Settlement Class because Plaintiffs' and Class members' claims all arise from the same course of conduct involving Defendants' alleged false reporting and manipulation of Euribor and the prices of Euribor Products.

The named Plaintiffs in this action are adequate representatives because they share the same overriding interest (1) in obtaining the largest financial recovery possible; and (2) in securing the non-monetary cooperation from Citi and JPMorgan to use in any reinstated prosecution of the litigation against the Dismissed Defendants.[7] In addition, Class Counsel are highly experienced attorneys who have litigated these and other complex class actions for decades.

Lastly, common questions predominate and a class action is the superior method for resolving this case. Predominance exists because the question of whether defendants engaged in the alleged false reporting and manipulation of Euribor and the prices of Euribor Products is common across the Settlement Class. A class action is superior because Settlement Class members have no substantial interest in proceeding individually given the complexity and expense of the litigation.

[7] Certain defendants in other "IBOR" actions have challenged Sonterra's and certain FrontPoint plaintiffs' capacity to sue under FED. R. CIV. P. 17. *See FrontPoint Asian Event Driven Fund, L.P. v. Citibank, N.A. et al.*, No. 16-cv-5263, ECF No. 243 at 13-16 (S.D.N.Y. Oct. 18, 2017); *Dennis v. JPMorgan Chase & Co. et al.*, No. 16-cv-6496, ECF No. 184 (S.D.N.Y. Oct. 19, 2017). Such arguments are meritless because Sonterra's and FrontPoint's claims are brought in their names pursuant to a valid assignment and power of attorney. In any event, the capacity to sue issue raised in these other actions with respect to Sonterra (who is currently not a named plaintiff in this case) and FrontPoint (which are only some of the Representative Plaintiffs here) do not impact the Court's ability to grant final approval of the Settlement.

III. THE APPROVED CLASS NOTICE WAS ADEQUATE AND SATISFIED DUE PROCESS

Rule 23(e)(1) provides that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the [settlement]." FED. R. CIV. P. 23(e)(1). For actions certified under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." FED. R. CIV. P. 23(c)(2)(B). The standard for the adequacy of notice to the class is reasonableness. "There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice must 'fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.'" *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 114 (2d Cir. 2005). The Settlement Class members have received adequate notice and have been given sufficient opportunity to weigh in on or exclude themselves from the Settlement.

The Class Notice plan has been carried out in accordance with the Preliminary Approval Order and Superseding Order. *See* Miller Aff. (ECF No. 465-1). Information regarding the Settlement, including downloadable copies of the Settlement Agreement, mailed notice, Proof of Claim and Release form, Preliminary Approval Order, and other relevant documents (as well as a toll-free telephone number to answer questions and facilitate filing of claims) were also posted on a dedicated website created and maintained by the Settlement Administrator at www.EuriborSettlement.com. Miller Aff. ¶¶ 15, 16, 22, 24 (ECF No. 465-1).

The Class Notice plan, as well as the mailed notice and published notice, satisfy due process. The mailed notice and published notice are written in clear and concise language, which "'may be understood by the average class member.'" *See Wal-Mart*, 396 F.3d at 114. Members of the Settlement Class were provided with a full and fair opportunity to consider the proposed Settlement and to respond and/or appear in Court. The Supreme Court has consistently found that mailed

notice satisfies the requirements of due process. *See, e.g., Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 319 (1950). In addition to an extensive mailed notice program, Plaintiffs' Class Notice plan consists of published and online notice—which easily satisfies the Rule 23(c)(2)(B) factors and due process. *See Weigner v. City of New York*, 852 F.2d 646, 649 (2d Cir. 1988) (due process does not require actual notice to every class member as long as class counsel "acted reasonably in selecting means likely to inform persons affected."). Because Plaintiffs' Class Notice plan is the best under the circumstances, the Court should finally approve the forms and methods of notice as implemented.

IV. THE PREVIOUSLY-APPROVED PLAN OF DISTRIBUTION SHOULD BE GRANTED FINAL APPROVAL

A. The standard for final approval of a Plan of Distribution

A plan of distribution that is supported by competent and qualified counsel is reviewed only to determine whether it has a "reasonable, rational basis." *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 497 (S.D.N.Y. 2009); *see also In re NASDAQ Market Makers Antitrust Litig.*, No. 94 Civ. 3996 (RWS), 2000 WL 37992, at *2 (S.D.N.Y. Jan. 18, 2000) ("[a]n allocation formula need only have a reasonable, rational basis, particularly if recommended by 'experienced and competent' Class Counsel.") (citation omitted). Class Counsel, who have litigated this Action for the past six years and are highly experienced in litigation, including antitrust and commodities manipulation class actions, recommend the Plan of Distribution. *See, generally*, Joint Decl.; *see also* ECF Nos. 452-6 (Lowey's firm resumes), 452-7 (Lovell's firm resume).

Courts have stated that, under Rule 23, "'[t]o warrant approval, the plan of allocation must also meet the standards by which the settlement was scrutinized—namely, it must be fair and adequate.'" *Maley v. Del Global Technologies Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002); *see also In re Oracle Sec. Litig.*, No. C-90-0931-VRW, 1994 WL 502054, at *1 (N.D. Cal. Jun. 18, 1994) ("A plan of allocation that reimburses class members based on the extent of their injuries is generally

reasonable."); *Maley,* 186 F. Supp. 2d at 367. Here, the Plan of Distribution complies fully with these standards.

B. The Plan of Distribution here fully satisfies the standards for final approval

Class Counsel has given notice of the Plan of Distribution to the Settlement Class as preliminarily approved by this Court. *See* ECF No. 465-1; *see also* www.EuriborSettlement.com. The Court previously approved the Plan of Distribution, which includes (1) a *pro rata* payment, subject to guaranteed minimum, to each Authorized Claimant (referred to as "Qualified Claimant" in the Plan of Distribution) from ten percent (10%) of the Net Settlement Fund relating to their Total Adjusted Volume of transactions in specified transactions; and (2) a *pro rata* payment from ninety percent (90%) of the Net Settlement Fund to each Authorized Claimant with Total Adverse Impact to qualifying transactions caused by Euribor Artificiality. ECF No. 424 ¶ 21.

This methodology of allocating settlement proceeds in accordance with what is anticipated to be the amounts of provable artificial impact has repeatedly been approved as a fair, reasonable, and adequate method of allocating settlement funds in antitrust and CEA manipulation class action settlements. *See, e.g.*, *In re Platinum and Palladium Commodities Litig.*, 2014 WL 3500655, at *3 (allocations based on net artificiality on each trading day); *In re Amaranth Natural Gas Commodities Litig.*, No. 07 Civ. 6377, ECF No. 413 ¶ 6 (S.D.N.Y. May 23, 2012) (modifying final judgment to reflect plan of allocation); *In re Natural Gas Commodities Litig.*, No. 03 Civ. 6186, ECF Nos. 615, 618 (S.D.N.Y. June 4 and 7, 2010) (modifying plan of allocation to reflect net artificial impact at various times). Class Counsel developed and participated in the development of the plans of distribution approved in such prior cases. Here, Class Counsel developed and once again strongly recommends the Plan of Distribution.

C. Approval of the Plan of Distribution should be considered separate and apart from the other aspects of the Settlement

Settlements of class action claims can be approved and final judgment entered before a plan of distribution has been adopted. *See, e.g., NASDAQ III,* 187 F.R.D. at 480 ("[I]t is appropriate, and often prudent, in massive class actions to follow a two-stage procedure, deferring the Plan of Allocation until after final settlement approval."). Further, courts have repeatedly recognized that the equitable power to determine, amend, or supplement a fair method of allocation may be exercised after final judgment has been entered. *See In re Platinum and Palladium Commodities Litig.*, 2014 WL 3500655, at *3 (stating that the plan of allocation was "subject to revision by this court"); *In re Amaranth Natural Gas Commodities Litig.*, No. 07 Civ. 6377 (S.D.N.Y. May 23, 2012), ECF No. 413 ¶ 6 (modifying final judgment to reflect plan of allocation).

Here, as is common in complex class actions, the Settlement contemplates that the approval of the Settlement should be considered separate and apart from the consideration of the plan of allocation. *See* ECF No. 452-1, ¶¶ 18-20.

For all the reasons set forth above, the Plan of Distribution fully satisfies the standards for final approval. Any concerns that the Court may have regarding the Plan of Distribution should be considered separately from any other aspects of the Settlement, and Final Approval of the Settlement can proceed even if the Court does not extend the previously approved Plan of Distribution to apply to the Citi and JPMorgan Settlement.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court: (i) grant Final Approval; (ii) approve the Proposed Plan of Distribution; (iii) certify the Settlement Class; and (iv) overrule the objections, if any are received. A Proposed Final Judgment and Order of Dismissal for the Settling Defendants and a Proposed Final Approval Order have been filed pursuant to Southern District ECF Rule 13.18.

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White Plains, New York

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