

# EXHIBIT 1

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 DOES NOS. 1-50,

Defendants.

Docket No.  
13-cv-02811 (PKC)

**SETTLEMENT AGREEMENT  
BETWEEN PLAINTIFFS AND THE DEUTSCHE BANK DEFENDANTS**

This Settlement Agreement is made and entered into this 10th day of May, 2017, by and between Deutsche Bank AG and DB Group Services (UK) Ltd. (collectively, “Deutsche Bank”) and named Plaintiffs 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, and any subsequently named plaintiff(s) (collectively, “Plaintiffs”), for themselves and on behalf of each Settlement Class Member<sup>1</sup> in *Sullivan v. Barclays PLC*, No. 13-cv-02811. This Agreement is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Released Claims, upon and subject to the terms and conditions hereof.

WHEREAS, on August 13, 2015, Plaintiffs filed their fourth amended class action complaint (“Fourth Amended Class Action Complaint”), asserting ten claims against Deutsche Bank and ten other banks and an interdealer broker: (i) a conspiracy to restrain competition in and to fix the prices of Euribor-based derivatives in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1; (ii) bid rigging in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1; (iii) concerted refusal to deal in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1; (iv) the manipulation of Euribor and the prices of Euribor-based derivatives, in violation of the Commodity Exchange Act (“CEA”), 7 U.S.C. §§ 1, *et seq.*; (v) vicarious liability for manipulation of Euribor and prices of Euribor-based derivatives, in violation of Section 2(a)(1) of the CEA, 7 U.S.C. § 2(a)(1); (vi) aiding and abetting the manipulation of Euribor and the prices of Euribor-based derivatives, in violation of Section 22(a)(1) of the CEA, 7 U.S.C. § 25(a)(1); (vii) racketeering by engaging in wire fraud to transmit false Euribor submissions, in violation of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961, *et seq.*; (viii) conspiracy to violate RICO, in violation of 18 U.S.C. § 1962(d); (ix) unjust enrichment; and (x) breach of the implied covenant of good faith and fair dealing. Plaintiffs further contend that they suffered monetary damages as a result of Deutsche Bank’s conduct;

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

WHEREAS, Deutsche Bank agrees to cooperate with Plaintiffs’ Counsel and Plaintiffs as set forth in Section E of this Agreement;

WHEREAS, arm’s-length settlement negotiations have taken place, through counsel, between Deutsche Bank and Plaintiffs, including mediation before Mediator the Honorable Daniel Weinstein, and this Agreement embodies all of the terms and conditions of the Settlement between Deutsche Bank and Plaintiffs, both individually and on behalf of each Class Member;

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<sup>1</sup> All capitalized terms shall have the meaning set forth herein.

WHEREAS, on January 24, 2017, Interim Lead Counsel and Deutsche Bank jointly requested a stay of all litigation proceedings and deadlines between Plaintiffs and Deutsche Bank in the Action pending the submission of this Agreement to the Court;

WHEREAS, Plaintiffs' Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Action, the legal and factual defenses thereto, and the applicable law, that: (i) it is in the best interests of the Settlement Class to enter into this Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein are obtained for the Settlement Class, and (ii) the Settlement set forth herein is fair, reasonable and adequate, and in the best interests of Settlement Class Members; and

WHEREAS, Deutsche Bank has agreed to enter into this Agreement to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation, and thereby to resolve this controversy and avoid the risks inherent in complex litigation;

NOW, THEREFORE, IT IS HEREBY AGREED by and among Plaintiffs (for themselves and each Settlement Class Member) and Deutsche Bank, by and through their respective counsel or attorneys of record, that, subject to the approval of the Court, the Action as against Deutsche Bank shall be finally and fully settled and releases extended, as set forth below:

#### **A. DEFINITIONS**

1. As used in this Agreement the following capitalized terms have the meanings specified below.

1.1. "Action" means *Sullivan, et al. v. Barclays PLC, et al.*, No. 13-cv-02811, currently pending in the S.D.N.Y.

1.2. "Agreement" means this Settlement Agreement.

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

1.4. "Claims Administrator" means the Notice and/or Claims Administrator(s) to be approved by the Court.

1.5. "Class" or "Settlement Class" shall have the meaning set forth in ¶ 4.

1.6. "Class Member" or "Settlement Class Member" means a Person who is a member of the Settlement Class and has not timely and validly excluded itself from the Settlement Class in accordance with the procedure to be established by the Court.

1.7. "Court" means the U.S. District Court for the Southern District of New York, also referred to herein as the S.D.N.Y.

1.8. “Defendants” means Barclays plc, Barclays Bank plc, Barclays Capital Inc., Citigroup, Inc., Citibank, N.A., Coöperatieve Rabobank U.A. (f/k/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 Does Nos. 1-50.

1.9. “Deutsche Bank” means Deutsche Bank AG and DB Group Services (UK) Ltd.

1.10. “Distribution Plan” means any plan or formula of allocation of the Settlement Fund, to be approved by the Court, whereby the Net Settlement Fund shall in the future be distributed to Authorized Claimants.

1.11. “Effective Date” means the first date by which all of the events and conditions specified in ¶ 36 have occurred.

1.12. “Escrow Agent” means the entity designated by Plaintiffs’ Counsel with the consent of Deutsche Bank, and any successor agent, to maintain the Settlement Fund. Interim Lead Counsel anticipates that the Escrow Agent will be Amalgamated Bank.

1.13. “Euribor” means the Euro Interbank Offered Rate.

1.14. “Euribor Products” means any and all interest rate swaps, forward rate agreements, futures, options, structured products, and any other instrument or transaction related in any way to Euribor, including but not limited to, NYSE LIFFE Euribor futures contracts and options, CME Euro currency futures contracts and options, Euro currency forward agreements, Euribor-based swaps, Euribor-based forward rate agreements and/or any other financial instruments that reference Euribor.

1.15. “Execution Date” means the date on which this Agreement is executed by the last party to do so.

1.16. “Final” means, with respect to the Judgment, that it represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. For purposes of this ¶ 1.16, an “appeal” includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind. Any appeal or other proceeding pertaining solely to any order adopting or approving the Distribution Plan, and/or any order issued in respect of an application for attorneys’ fees and expenses pursuant to ¶ 32, shall not in any way delay or prevent the Judgment from becoming Final.

1.17. “Final Approval Order” means the Court’s approval of the Settlement following preliminary approval thereof, notice to the Class and a hearing on the fairness of the Settlement, the form and substance of which shall be mutually agreed upon by the Settling Parties and submitted to the Court for approval thereof.

1.18. “Incentive Award” means any award by the Court to Plaintiffs as described in ¶¶ 16, 32.

1.19. “Interim Lead Counsel” means Lowey Dannenberg Cohen & Hart, P.C., and Lovell Stewart Halebian & Jacobson LLP.

1.20. “Judgment” means the order of judgment and dismissal of the Action with prejudice as to Deutsche Bank, the form and substance of which shall be mutually agreed upon by the Settling Parties and submitted to the Court for approval thereof.

1.21. “Mediator” means the Honorable Daniel Weinstein or, if he is unable or unwilling to serve in that capacity, an alternate neutral mediator jointly selected in good faith by Plaintiffs’ Counsel and Deutsche Bank’s Counsel.

1.22. “Net Settlement Fund” means the Settlement Fund less the payments set forth in ¶¶ 18.1 to 18.6.

1.23. “Notice” means the form of notice of the proposed Settlement to be provided to Class Members as provided in this Agreement and the Preliminary Approval Order, the form and substance of which shall be mutually agreed upon by the Settling Parties and submitted to the Court for approval thereof.

1.24. “Other Settlement” means any stipulation and settlement agreement Plaintiffs reach with any other Defendant involving this Action that will be submitted to the Court for notice and approval at the same time as this Agreement.

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

1.26. “Plaintiffs” means Stephen Sullivan, White Oak Fund LP, California State Teachers’ Retirement System, Sonterra Capital Master Fund, Ltd., FrontPoint Partners Trading Fund, L.P., FrontPoint Australian Opportunities Trust, and any subsequently named plaintiff(s).

1.27. “Plaintiffs’ Counsel” means (i) Interim Lead Counsel and (ii) any other attorney or law firm that represents Plaintiffs and seeks to receive any portion of the attorneys’ fees that may be awarded by the Court in connection with this Settlement.

1.28. “Preliminary Approval Order” means an order entered by the Court providing for preliminary approval of the Settlement, including certification of the Class

for purposes of the Settlement only, the form and substance of which shall be mutually agreed upon by the Settling Parties and submitted to the Court for approval thereof.

1.29. “Proof of Claim and Release” means the form to be sent to Class Members, as ordered by the Court, by which any Class Member may make a claim against the Net Settlement Fund.

1.30. “Released Claims” means all claims, rights, demands, suits, matters, issues or causes of action, in law or in equity, that were asserted in the Action by the Plaintiffs, or that have arisen, could have arisen, arise now or relate in any manner to the subject matter of the claims that were asserted by the Plaintiffs in the Action relating to Euribor or Euribor Products including, but not limited to, any alleged manipulation of Euribor under the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.*, or any other statute, regulation, or common law, or any purported conspiracy, collusion, racketeering activity, or other improper conduct relating to Euribor (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). The following claims shall not be released by this Settlement: (i) any claims against former Deutsche Bank employees arising from those former employees’ conduct that occurred while not employed by Deutsche Bank; (ii) any claims against the named Defendants in this Action other than Deutsche Bank; (iii) any claims against inter-dealer brokers or their employees or agents when and to the extent they were engaged as employees or agents of the other Defendants or inter-dealer brokers; or (iv) any claims against any defendant who may be subsequently added in this Action. For the avoidance of doubt, Released Claims does not include claims arising under foreign law based on transactions executed entirely outside the United States by Settlement Class Members domiciled outside the United States.

1.31. “Releasees” means Deutsche Bank, its predecessors, successors and assigns, its direct and indirect parents, subsidiaries and affiliates, and its respective current and former officers, directors, employees, managers, members, partners, agents (in their capacity as agents of Deutsche Bank), shareholders (in their capacity as shareholders of Deutsche Bank), attorneys, or legal representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing. As used in this provision, “affiliates” means entities controlling, controlled by, or under common control with a Releasee.

1.32. “Releasers” means Plaintiffs and each and every Settlement Class Member on their own behalf and on behalf of their respective predecessors, successors and assigns, direct and indirect parents, subsidiaries and affiliates, and on behalf of their current and former officers, directors, employees, agents, principals, members, trustees, participants, representatives, fiduciaries, beneficiaries or legal representatives in their capacities as such, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing in their capacities as such. With respect to any Settlement Class Member that is a government entity, Releaser includes any Settlement Class Member as to which the government entity has the legal right to release such claims. As

used in this provision, “affiliates” means entities controlling, controlled by, or under common control with a Releasor.

1.33. “Settlement” means the settlement of the Released Claims set forth herein.

1.34. “Settlement Amount” means one hundred and seventy million U.S. dollars (\$170,000,000.00) of which up to five-hundred thousand U.S. dollars (\$500,000.00) may be used for the costs of notice, claims administration, and other steps taken pursuant to Court order in order to seek to obtain Court approval of the Settlement.

1.35. “Settlement Fund” means the Settlement Amount plus any interest that may accrue.

1.36. “Settlement Hearing” means the hearing scheduled by the Court to consider the fairness, adequacy, and reasonableness of the proposed Settlement.

1.37. “Settling Party” means Deutsche Bank or any Plaintiff (for itself and on behalf of each Settlement Class Member).

1.38. “Settling Parties” means Deutsche Bank and Plaintiffs (for themselves and on behalf of each Settlement Class Member).

## **B. PRELIMINARY APPROVAL ORDER, NOTICE ORDER AND SETTLEMENT HEARING**

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

3. **Motions for Preliminary Approval and Stay.** Within forty-five (45) calendar days after the Execution Date, Plaintiffs’ Counsel shall submit this Agreement to the Court and shall file a motion for entry of the Preliminary Approval Order. On January 24, 2017, Plaintiffs and Deutsche Bank jointly requested that all litigation proceedings and deadlines between Plaintiffs and Deutsche Bank be temporarily stayed pending the parties’ drafting, execution, and presentation of the Agreement for Court approval. Immediately upon execution of this Agreement, Plaintiffs’ Counsel shall file a motion to stay all proceedings in the Action against Deutsche Bank until the Court renders a final decision on approval of the Settlement.

4. **Stipulation to Certification of a Settlement Class.** The Settling Parties hereby stipulate for purposes of the Settlement only that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied and, subject to Court approval, the following Class shall be certified:

All Persons who purchased, sold, held, traded or otherwise had any interest in Euribor Products from June 1, 2005 through and including March 31, 2011, who were either domiciled in the United States or its territories or, if domiciled outside the United



States or its territories, transacted Euribor Products in the United States or its territories from June 1, 2005 through and including March 31, 2011, including, but not limited to, all Persons who traded CME Euro currency futures contracts, all Persons who transacted in NYSE LIFFE Euribor futures and options from a location within the United States, and all Persons who traded any other Euribor Product from a location within the United States, provided that, if Plaintiffs expand the Class in any subsequent amended complaint, class motion, or settlement, the defined Class in this Agreement shall be expanded so as to be coterminous with such expansion. 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.

If the Settlement as described herein is disapproved by any court, is terminated as provided herein, or is reversed or vacated following any appeal taken therefrom, then this stipulation for the purposes of Settlement that the above Class should be certified becomes null and void, and Deutsche Bank reserves all rights to contest that the Action should be certified as a class action. Nothing in this Agreement shall preclude Deutsche Bank from opposing motions for class certification or from taking positions in actions other than this Action.

5. **Notice to Class.** In the event that the Court preliminarily approves the Settlement, Plaintiffs' Counsel shall, in accordance with Rule 23 of the Federal Rules of Civil Procedure and the Preliminary Approval Order, provide Class Members whose identities can be determined after reasonable efforts with notice of the date of the Settlement Hearing. The Notice may be sent solely for this Settlement or combined with notice of any Other Settlement or of any litigation class. The Notice shall also explain the general terms of the Settlement set forth in this Agreement, the general terms of the proposed Distribution Plan, the general terms of the Fee and Expense Application (as defined in ¶ 32), and a description of Class Members' rights to object to the Settlement, request exclusion from the Class, and appear at the Settlement Hearing. The text of the Notice shall be agreed upon by Plaintiffs' Counsel and Deutsche Bank before its submission to the Court for approval thereof. Deutsche Bank agrees to provide the Claims Administrator with reasonably available contact information for Settlement Class counterparties to Euribor Products it transacted with during the class period (the period of June 1, 2005 through and including March 31, 2011) for the purpose of mailing the Notice, to the extent not prevented from doing so by any court order or any law, regulation, policy, or other guidance or rule of any regulatory agency or governmental body restricting disclosure of such information. Such contact information shall be subject to the Protective Order in the Action.

6. **Publication.** Plaintiffs' Counsel shall cause to be published a summary ("Summary Notice") in accord with the Notice submitted to the Court by Plaintiffs' Counsel and approved by the Court. Deutsche Bank shall have no responsibility for providing publication or distribution of the Settlement or any notice of the Settlement to Class Members or for paying for the cost of providing notice of this Settlement to Class Members. The Settling Parties shall mutually agree on any content relating to Deutsche Bank that will be used by Plaintiffs' Counsel

and/or the Claims Administrator in any Settlement-related press release or other media publications, including on websites.

7. **Motion for Final Approval and Entry of Final Judgment.** Prior to the date of the Settlement Hearing set by the Court in the Preliminary Approval Order, to the extent permitted by the Court, Plaintiffs' Counsel shall make a motion to the Court for the final approval of the Settlement, and the Settling Parties shall jointly seek entry of the Final Approval Order and Judgment on substantially the following terms:

7.1. Fully and finally approving the Settlement contemplated by this Agreement as fair, reasonable and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure, and directing its consummation pursuant to its terms and conditions;

7.2. Finding that the Notice constituted the best notice practicable under the circumstances and complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process;

7.3. Directing that the Action be dismissed with prejudice as to Deutsche Bank and, except as provided for herein, without costs;

7.4. Discharging and releasing the Released Claims as to the Releasees;

7.5. Permanently barring and enjoining the institution and prosecution by Plaintiffs and any Settlement Class Member of any lawsuit, arbitration or other proceeding against the Releasees in any jurisdiction asserting any of the Released Claims;

7.6. Barring claims by any Person against the Releasees for contribution or indemnification (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise;

7.7. Reserving the Court's continuing and exclusive jurisdiction over the Settlement, including all future proceedings concerning the administration and enforcement of this Agreement, subject to the terms of ¶ 23.5;

7.8. Determining pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay and directing entry of a Final Judgment as to Deutsche Bank; and

7.9. Containing such other and further provisions consistent with the terms of this Agreement to which the Settling Parties expressly consent in writing.

8. Sufficiently before the Settlement Hearing, Plaintiffs' Counsel will timely request that the Court approve the Fee and Expense Application (as defined in ¶ 32). As set forth in ¶ 34, the Fee and Expense Application and the Distribution Plan are matters separate and apart from the Settlement between the Settling Parties. If the Fee and Expense Application or the Distribution Plan are not approved, in whole or in part, it will have no effect on the finality of the

Final Approval Order approving the Settlement and the Final Judgment dismissing the Action with prejudice as to Deutsche Bank.

### C. SETTLEMENT FUND

9. **Payments Made by Deutsche Bank.** Deutsche Bank shall pay the Settlement Amount by wire transfer into the Settlement Fund within fifteen (15) business days after the Execution Date. All interest earned on any portion of the Settlement Amount paid into the Settlement Fund shall be added to and become part of the Settlement Fund. Except as provided in ¶ 39, the Settlement Amount shall not be subject to reduction, and, upon the occurrence of the Effective Date, no funds may be returned to Deutsche Bank through reversion or other means. The Escrow Agent shall only act in accordance with instructions mutually agreed upon by the Settling Parties in writing.

10. **Disbursements Prior to Effective Date.** No amount may be disbursed from the Settlement Fund prior to the Effective Date, except that, upon written notice to the Escrow Agent by Plaintiffs' Counsel with a copy to Deutsche Bank: (a) reasonable costs of the Notice ("Notice and Administrative Costs") may be paid from the Settlement Fund as they become due; (b) Taxes and Tax Expenses as defined in ¶ 13.2 may be paid from the Settlement Fund as they become due; (c) reasonable costs of the Escrow Agent ("Escrow Agent Costs") may be paid from the Settlement Fund as they become due; and (d) any attorneys' fees and expenses awarded by the Court, as set forth in ¶ 32, shall be payable from the Settlement Fund upon award, to the extent permitted pursuant to ¶ 33. Plaintiffs' Counsel will attempt in good faith to minimize the amount of Notice and Administrative Costs to the extent consistent with providing reasonable notice to Class Members and/or acting in accordance with Court orders.

11. **Refund by Escrow Agent.** If Plaintiffs do not file a motion for final approval of the Settlement at least thirty (30) calendar days prior to the Settlement Hearing date set by the Court in the Preliminary Approval Order, or on such other date as ordered by the Court, or the Settlement is finally disapproved by any court or is terminated as provided herein, or the Judgment is overturned on appeal or by writ, the Settlement Fund, including all interest earned on such amount while held in the escrow account, and excluding any amounts for any proper, already disbursed Notice and Administrative Costs, Taxes and Tax Expenses, Escrow Agent Costs or reasonable administrative costs of other steps taken pursuant to Court order in order to seek to obtain Court approval of the Settlement, will be refunded, reimbursed and repaid by the Escrow Agent to Deutsche Bank as provided in ¶ 42.

12. **No Additional Payments by Deutsche Bank.** Under no circumstances will Deutsche Bank be required to pay more than the Settlement Amount. For purposes of clarification, and as provided in ¶¶ 16 and 18, the payment of any Fee and Expense Award (as defined in ¶ 32), Notice and Administrative Costs, Taxes and Tax Expenses, Escrow Agent Costs, and any other costs associated with the implementation of this Agreement, shall be paid exclusively from the Settlement Fund. This Settlement is not a claims-made settlement and, if all conditions of the Settlement are satisfied, and the Judgment is entered and becomes Final, no portion of the Settlement Fund will be returned to Deutsche Bank, irrespective of the number of claims filed, the collective amount of losses of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants.

13. **Taxes.** The Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. The Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶ 13, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and deliver timely and properly the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

13.1. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2 by, *e.g.*, (a) obtaining a taxpayer identification number, (b) satisfying any information reporting or withholding requirements imposed on distributions from the Settlement Fund, and (c) timely and properly filing applicable federal, state and local tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)) and paying any taxes reported thereon. Such returns (as well as the election described in this ¶ 13) shall be consistent with this ¶ 13 and in all events shall reflect that all Taxes, as defined in ¶ 13.2, on the income earned by the Settlement Fund shall be paid from the Settlement Fund as provided in ¶ 18.

13.2. All (a) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed upon Deutsche Bank or its counsel with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (collectively, “Taxes”), and (b) expenses and costs incurred in connection with the operation and implementation of this ¶ 13, including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this ¶ 13 (collectively, “Tax Expenses”), shall be paid from the Settlement Fund; in all events, Deutsche Bank and its counsel shall have no liability or responsibility for the Taxes or the Tax Expenses. With funds from the Settlement Fund, the Escrow Agent shall indemnify and hold harmless Deutsche Bank and its counsel for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall timely be paid by the Escrow Agent out of the Settlement Fund without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(I)(2)); neither Deutsche Bank nor its counsel is responsible therefor, nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶ 13.

14. **Plaintiffs' Release and Covenant Not to Sue.** Upon the Effective Date, and in exchange for the receipt of the Settlement Amount provided for herein, the receipt and sufficiency of which is hereby acknowledged, the Releasors, and any other Person claiming against the Settlement Fund (now or in the future) through or on behalf of any Releasor, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged Releasees from any and all Released Claims, and shall be permanently barred and enjoined from instituting, commencing or prosecuting any such Released Claim in any lawsuit, arbitration or other proceeding against any Releasee in any court or venue in any jurisdiction worldwide. Each Releasor shall be deemed to have released all Released Claims against the Releasees regardless of whether any such Releasor ever seeks or obtains by any means, including, without limitation, by submitting a Proof of Claim and Release, any distribution from the Settlement Fund or Net Settlement Fund. The releases set forth herein are given pursuant to New York law and are to be construed under New York law without regard to its conflict of law principles, including N.Y. General Obligations Law § 15-108, which bars claims for contribution by joint tortfeasors and other similar claims. This Agreement is expressly intended to absolve Releasees against any claims for contribution, indemnification, or similar claims from other Defendants in the Action or any defendant who may be subsequently added in this Action, arising out of or related to the Released Claims, in the manner and to the fullest extent permitted under the law of New York or any other jurisdiction that might be construed or deemed to apply to any claims for contribution, indemnification or similar claims against any Releasee. Notwithstanding the foregoing, should any court determine that any Defendant is or was legally entitled to any kind of contribution or indemnification from Deutsche Bank arising out of or related to Released Claims, the Releasors agree that any money judgment subsequently obtained by the Releasors against any Defendant shall be reduced to an amount such that, upon paying the entire amount, the Defendant would have no claim for contribution, indemnification or similar claims against Deutsche Bank. Except in the event of termination of this Settlement, the Settling Parties agree not to assert under Rule 11 of the Federal Rules of Civil Procedure, or any similar law, rule or regulation, that the Action was brought or defended in bad faith or without a reasonable basis.

15. **Unknown Claims/California Civil Code Section 1542.** Although the release set forth in ¶ 14 is not a general release, such release constitutes a waiver of Section 1542 of the California Civil Code (to the extent it applies to the Action), which provides as follows:

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

The release set forth in ¶ 14 also constitutes a waiver of any and all provisions, rights, and benefits of any federal, state, or foreign law, rule, regulation, or principle of law or equity that is similar, comparable, equivalent to, or which has the effect of, Section 1542 of the California Civil Code. The Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention to

release fully, finally, and forever all of the Released Claims, and in furtherance of such intention, the release shall be irrevocable and remain in effect notwithstanding the discovery or existence of any such additional or different facts. In entering and making this Agreement, the Settling Parties assume the risk of any mistake of fact or law, and the release shall be irrevocable and remain in effect notwithstanding any mistake of fact or law.

16. **Payment of Fees and Expenses.** Subject to Court approval, Plaintiffs and Plaintiffs' Counsel shall be reimbursed and paid solely out of the Settlement Fund for all expenses including, but not limited to, attorneys' fees and past, current, or future litigation expenses, and any Incentive Award approved by the Court. Deutsche Bank shall have no responsibility for any costs, fees, or expenses incurred for or by Plaintiffs' or Class Members' respective attorneys, experts, advisors, agents, or representatives.

17. **Defendants' Release.** Upon the Effective Date of the Settlement, Deutsche Bank shall release and be deemed to release and forever discharge, and shall forever be enjoined from prosecuting any and all claims against Plaintiffs, the Settlement Class Members, and their counsel arising out of or relating to the institution, prosecution, and resolution of the Released Claims in the Action; provided, however, that this paragraph does not release or discharge any claim or right Deutsche Bank may have to enforce this Agreement, or any claim or right Deutsche Bank may otherwise have arising out of or relating to any Euribor Product that any Plaintiff or Class Member purchased from, sold to, or otherwise transacted with Deutsche Bank, including any claim or right to enforce the terms of any such Euribor Product.

#### **D. ADMINISTRATION AND DISTRIBUTION OF SETTLEMENT FUND**

18. **Distribution of Settlement Fund.** The Claims Administrator, subject to such supervision and direction of the Court and/or Interim Lead Counsel as may be necessary or as circumstances may require, shall administer the claims submitted by Settlement Class Members and shall oversee the distribution of the Settlement Fund pursuant to the Distribution Plan. Subject to the terms of this Agreement and any order(s) of the Court, the Settlement Fund shall be applied as follows:

18.1. To pay Notice and Administrative Costs;

18.2. To pay Escrow Agent Costs;

18.3. To pay all costs and expenses reasonably and actually incurred in assisting Settlement Class Members with the filing and processing of claims against the Net Settlement Fund;

18.4. To pay the Taxes and Tax Expenses;

18.5. To pay any Fee and Expense Award, as defined in ¶ 32;

18.6. To pay any Incentive Award, as defined in ¶ 32; and

18.7. To distribute the Net Settlement Fund to Authorized Claimants as allowed by the Agreement, any Distribution Plan or order of the Court.

19. **Distribution of Net Settlement Fund.** Upon the Effective Date and thereafter, and in accordance with the terms of this Agreement, the Distribution Plan, and any order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the following:

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

19.2. Except as otherwise ordered by the Court, each Settlement Class Member who fails to submit a Proof of Claim and Release within such period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments pursuant to this Agreement and the Settlement set forth herein, but shall in all other respects be subject to and bound by the provisions of this Agreement, the releases contained in this Agreement, and the Judgment;

19.3. The Net Settlement Fund shall be distributed to Authorized Claimants, and in no event shall there be any reversion to Deutsche Bank. The distribution to Authorized Claimants shall be substantially in accordance with the Distribution Plan to be approved by the Court upon such further notice to the Class as may be required. Any such Distribution Plan is not a part of this Agreement. No funds from the Net Settlement Fund shall be distributed to Authorized Claimants until the Effective Date; and

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

20. **No Liability for Distribution of Settlement Funds.** The Releasees and their counsel shall have no responsibility for, interest in, or liability whatsoever with respect to the investment or distribution of the Settlement Fund, the Distribution Plan, the determination, administration or calculation of claims, the payment or withholding of Taxes or Tax Expenses, the distribution of the Net Settlement Fund, or any losses incurred in connection with any such matters. Effective immediately upon the Execution Date, the Releasers hereby fully, finally, and forever release, relinquish, and discharge the Releasees and their counsel from any and all such liability. No Person shall have any claim against Plaintiffs' Counsel or the Claims Administrator based on distributions made substantially in accordance with the Agreement and the Settlement contained herein, the Distribution Plan, or further orders of the Court.

21. **Balance Remaining in Net Settlement Fund.** If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) following distribution pursuant to ¶ 19, Plaintiffs' Counsel shall submit an additional distribution plan to the Court for approval. If any portion of the Net Settlement Fund remains following distribution pursuant to ¶ 19 and is of such an amount that in the discretion of the Claims Administrator it is not cost effective or efficient to redistribute to the Settlement Class, then such

remaining funds, after payment of any further Notice and Administration Costs and Taxes and Tax Expenses and other costs and expenses related to the Action, shall be donated to a non-profit charitable organization recommended by Plaintiffs and approved by the Court.

#### **E. DEUTSCHE BANK'S COOPERATION**

22. **Stay of Discovery Except As Provided Herein.** The Settling Parties agree to a stay of all discovery as to Deutsche Bank, except with respect to Deutsche Bank's cooperation obligations as provided in ¶¶ 23 to 31. The stay will automatically be dissolved if (a) the Court does not enter the Preliminary Approval Order, the Final Approval Order or the Judgment, or (b) the Court enters the Final Approval Order and the Judgment and appellate review is sought and, on such review, the Final Approval Order or the Judgment is finally vacated, modified or reversed, unless, as set forth in ¶ 39, the Settling Parties, in their sole discretion within thirty (30) calendar days from the date of the mailing of such ruling to such Settling Parties, provide written notice to all other Settling Parties hereto of their intent to proceed with the Settlement under the terms of the Preliminary Approval Order, the Final Approval Order or the Judgment, as modified by the Court or on appeal.

23. **Deutsche Bank's Cooperation.** Deutsche Bank shall provide reasonable cooperation in the Action, including discovery cooperation, requested by Plaintiffs' Counsel, to benefit the Settlement Class, as provided by ¶¶ 23 to 31 herein. All cooperation shall be coordinated in such a manner so that all unnecessary duplication and expense are avoided.

23.1. Notwithstanding any other provision in this Agreement, Deutsche Bank shall have no obligation to produce any document or provide any information that is privileged under the attorney-client, work product, joint defense, bank examination, or other applicable privilege or immunity from disclosure. None of the cooperation provisions set forth herein are intended to, nor do they, waive any such privileges or immunities. Deutsche Bank agrees that its counsel will meet with Interim Lead Counsel as is reasonably necessary to discuss any applicable privilege. Any disputes regarding privilege that cannot be resolved among the Settling Parties shall be reserved for resolution pursuant to the alternative dispute resolution procedures set forth in ¶ 23.5. At a reasonable time to be negotiated in good faith, Deutsche Bank agrees to provide Plaintiffs with (a) privilege logs for any relevant documents reasonably requested by Plaintiffs as cooperation discovery in accordance with this Agreement that Deutsche Bank withholds on the basis of any privilege, doctrine, immunity, or regulatory objection, if and to the extent such privilege logs are reasonably necessary to establish the basis for Deutsche Bank's withholding of the documents and (b) any existing privilege logs for documents that Deutsche Bank withheld from the U.S. government as part of its investigation into Deutsche Bank's alleged manipulation of Euribor and Euribor Products, to the extent such privilege logs relate to documents reasonably requested by Plaintiffs under Section E herein. The Settling Parties agree that their counsel shall meet and confer with each other regarding any dispute as to the privileges and protections described in this paragraph or as to the documents contained in Deutsche Bank's privilege logs. To the extent the Settling Parties cannot resolve any such disputes, they shall be reserved for resolution pursuant to the alternative dispute resolution procedures set forth in ¶ 23.5. If any document protected by the attorney-client privilege, work



product doctrine, the common interest doctrine, the joint defense privilege, the bank examination privilege, and/or any other applicable privilege or protection is accidentally or inadvertently produced, the document and all copies of it shall promptly be returned to Deutsche Bank's counsel, it shall not be used or referred to in any way by Plaintiffs and their counsel, and its production shall in no way be construed to have waived any privilege attached to such document or information.

23.2. Notwithstanding any other provision in this Agreement, Deutsche Bank shall have no obligation to produce any document or provide any information that is restricted from disclosure under any applicable domestic or foreign data privacy, bank secrecy, or other law. In the event that Plaintiffs reasonably request documents or information otherwise within the scope of the materials to be provided under Section E of this Agreement that Deutsche Bank reasonably believes in good faith to be restricted from disclosure under any applicable domestic or foreign data privacy, bank secrecy, or other law and the restriction can be avoided without undue burden to Deutsche Bank through a workaround, such as by anonymizing identifying information or redacting protected information or by producing substantially the same information in a different form, Deutsche Bank shall cooperate in good faith with Plaintiffs to implement such a workaround.

23.3. Notwithstanding any other provision of this Agreement, in the event that Deutsche Bank believes that Interim Lead Counsel has requested cooperation of a kind or to an extent that is not reasonable or not within the scope of Deutsche Bank's obligations as set forth herein, Deutsche Bank's counsel and Interim Lead Counsel agree to meet and confer with each other regarding such disagreement and to seek resolution pursuant to the alternative dispute resolution procedures set forth in ¶ 23.5, if necessary.

23.4. Interim Lead Counsel agree to use any and all of the information and documents obtained from Deutsche Bank only for the purpose of the Action, and agree to be bound by the terms of a Protective Order to be negotiated by Deutsche Bank and Interim Lead Counsel with respect to such use.

23.5. Any dispute or controversy arising out of the cooperation set forth in Section E of this Agreement shall be resolved exclusively by mediation, or, if mediation fails to resolve the dispute, by arbitration, in each case administered by the Mediator (unless and to the extent that all Settling Parties agree on another neutral for resolution of a particular dispute) at JAMS, Inc., formerly known as Judicial Arbitration and Mediation Services ("JAMS"), in accordance with its procedures and Comprehensive Arbitration Rules & Procedures then in effect ("Rules") and in accordance with the Expedited Procedures in those Rules (or such other alternative dispute resolution organization and/or rules as all Settling Parties shall agree upon), except as modified herein. The mediation or arbitration, as the case may be, shall be conducted on a strictly confidential basis, and the Settling Parties shall not disclose the existence or nature of any claim; any documents, correspondence, briefing, exhibits, or information exchanged or presented in connection with any claim; or any rulings, decisions, or results of any claim or argument (collectively, the "Arbitration Materials") to any third party, with the sole exception of legal counsel (who shall also be bound by these confidentiality terms). The arbitral

decision shall be final and binding upon the Settling Parties hereto. Any arbitral award may be entered as a judgment or order in any court of competent jurisdiction. Except as the Rules may provide, the Settling Parties shall share JAMS's administrative fees and the arbitrator's fees and expenses. Each Settling Party shall be responsible for such Settling Party's attorneys' fees and costs, except as otherwise provided by any applicable statute. Any Settling Party may commence litigation in any state or federal court of competent jurisdiction located in New York County, New York, to obtain injunctive relief in aid of arbitration, to compel arbitration, or to confirm or vacate an arbitrator's award. The Settling Parties agree to take all steps necessary to protect the confidentiality of the Arbitration Materials in connection with any such proceeding, agree to use their best efforts to file all confidential information (and documents containing confidential information) under seal, and agree to the entry of an appropriate protective order encompassing the confidentiality terms of any settlement agreement. The seat of arbitration shall be New York, New York.

24. **Document Production.** Subject to the restrictions set forth in ¶ 23 above, Deutsche Bank will provide cooperation to Plaintiffs by producing to Interim Lead Counsel the following categories of documents in the format in which they were produced to U.S. government regulators, including any metadata included in such productions, or with respect to any documents not previously produced to U.S. government regulators, in a format to be agreed, to the extent that such documents are reasonably available and accessible to Deutsche Bank. Unless otherwise indicated, the time period of the documents subject to production shall be June 1, 2005 - March 31, 2011. Promptly after the Execution Date, the Settling Parties shall meet and confer to agree on a schedule for a rolling production by Deutsche Bank of any materials reasonably requested by Plaintiffs pursuant to Section E herein.

25. All underlying documents and data produced by Deutsche Bank to any U.S. governmental regulatory authority (including without limitation the Department of Justice, the Commodity Futures Trading Commission, and the New York State Department of Financial Services) in connection with such regulator's investigation of Euribor-related conduct. Documents and data relating to investigation of Euribor-related conduct, as opposed to conduct involving other benchmarks, shall be identified using criteria or methodologies to be agreed by the Settling Parties. Such documents and data shall include, to the extent produced to a U.S. governmental regulatory authority in connection with such regulator's investigation of Euribor-related conduct:

25.1. Communications between Deutsche Bank employees, and communications between Deutsche Bank employees and employees of other financial institutions, including Euribor panel banks and inter-dealer brokers or other entities, (a) concerning possible requests to or among other panel banks for Euribor submissions to be made at a certain level or in a certain direction; (b) concerning requests to engage in other conduct to attempt to cause Euribor to be set at a certain level or to move in a certain direction; (c) reflecting the exchange of information among competitors related to the quoting of Euribor-referenced derivatives transactions; and/or (d) relating to the determination of Euribor submissions by Deutsche Bank employees.

25.2. Trade data pertaining to transactions of Deutsche Bank's Global Finance and FX Forwards ("GFF") unit in Euro-denominated inter-bank money market instruments, including unsecured loans, deposits, and certificates of deposit, for the years 2004 through 2011;

25.3. Trade data pertaining to transactions of Deutsche Bank's GFF unit in Euribor Products for the years 2004 through 2011. Deutsche Bank will produce counterparty information in such trade data for any U.S. counterparty to the extent the counterparty information is reasonably available and not prohibited or protected from disclosure by any applicable data privacy or other legal obligation. For any counterparty (domestic or foreign) whose identity Deutsche Bank reasonably believes in good faith to be protected from disclosure under any applicable foreign data privacy, bank secrecy, or other law, Deutsche Bank shall anonymize the counterparty using a unique code for each counterparty, provided, however, that Plaintiffs may raise with the neutral pursuant to ¶ 23.5 any concern as to whether counterparty information has been properly withheld with respect to domestic counterparties. Additionally, Deutsche Bank shall use a unique identifier for each counterparty that is a defendant identifying the entity as a defendant, to the extent that such information is available to Deutsche Bank and reasonably accessible. For any transaction with an affiliate of Deutsche Bank, Deutsche Bank will specifically identify that affiliated entity unless prohibited by applicable law; and

25.4. Communications with the European Banking Federation ("EBF") regarding: (a) Euribor reporting rules or standards; (b) information reflecting Euribor-based derivatives volume or market share data by panel banks; and (c) meetings attended by Deutsche Bank with the EBF and any other Euribor panel banks.

26. Documents reflecting substantially the same information as that reflected in Deutsche Bank's submissions to the Federal Reserve Bank of New York, Bank of International Settlements, and OTC Derivatives Supervisors Group relating to their surveys on turnover in foreign exchange and interest rate derivatives markets for Euribor Products, to the extent such information exists and is reasonably accessible, and to the extent such disclosure is permitted by relevant authorities and under applicable banking or other laws and regulations, for the years 2004, 2007, and 2010.

27. Non-privileged declarations, affidavits, witness statements, or other sworn or unsworn written statements of former and/or current Deutsche Bank directors, officers or employees concerning the allegations set forth in this Action with respect to Euribor to the extent such documents exist, are reasonably accessible to Deutsche Bank, and may be disclosed under applicable confidentiality or regulatory restrictions.

28. Subject to ¶ 23.3 of this Settlement Agreement, Plaintiffs may request as cooperation materials such further documents and information as Interim Lead Counsel may reasonably request that are relevant to the claims or defenses in this Action and are reasonably accessible to Deutsche Bank and not unduly burdensome to produce, provided, however, that except as set forth above or below Deutsche Bank shall be under no obligation to collect or review documents or data that have not previously been collected and reviewed for the purposes of government investigations into Euribor-related conduct.

29. **Other Information.** Deutsche Bank will cooperate to provide reasonably available information necessary for Plaintiffs to authenticate or otherwise make usable at trial the aforementioned documents or such other documents as Plaintiffs may reasonably request. Deutsche Bank also will provide Plaintiffs with proffers of fact regarding conduct known to Deutsche Bank. Deutsche Bank also will provide Plaintiffs with a description of the data fields included in any trade data produced by Deutsche Bank to the extent reasonably requested by Plaintiffs.

30. **Witnesses.** Deutsche Bank shall cooperate to provide reasonable access to witnesses for purposes of laying a foundation for the admission of documents as evidence in the Action to the extent Deutsche Bank has control over those witnesses.

31. **Continuation, Scope, and Termination of Deutsche Bank's Obligations.** Deutsche Bank's obligations to cooperate are continuing until and shall terminate upon the earlier of: (a) the date when a final judgment has been rendered, with no remaining rights of appeal, in the Action against all defendants; or (b) four (4) years after the Court enters the Preliminary Approval Order.

#### **F. ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

32. **Fee and Expense Application.** Deutsche Bank shall have no interest or right in or to any portion of the Settlement Fund based on any ruling that the Court makes on any application by Plaintiffs' Counsel for fees, costs or expenses. Interim Lead Counsel, on behalf of all Plaintiffs' Counsel, may, at their discretion and election, choose to submit an application or applications to the Court (collectively, "Fee and Expense Application") for distributions to them from the Settlement Fund of an award of attorneys' fees or reimbursement of expenses ("Fee and Expense Award") incurred in connection with prosecuting the Action. Plaintiffs may also make an application to the Court for an award in connection with their representation of the Settlement Class in this litigation ("Incentive Award").

33. **Payment of Fee and Expense Award.** Upon the Court's approval of a Fee and Expense Award, Interim Lead Counsel, on behalf of all Plaintiffs' Counsel, may withdraw the awarded attorney's fees and expenses within ten (10) business days after the Court enters the Final Approval Order. Deutsche Bank shall take no position with respect to Interim Lead Counsel's motion for attorneys' fees and expenses. Any Plaintiffs' Counsel seeking to draw down their share of a Fee and Expense Award prior to the occurrence of the Effective Date shall unconditionally guarantee the repayment of the amount drawn down. In the event that the Effective Date does not occur or this Agreement is terminated or cancelled, or otherwise fails to become effective for any reason, including, without limitation, in the event that any of the Settling Parties exercise their respective rights in ¶¶ 39 to 41, then within ten (10) business days after such event, Plaintiffs' Counsel shall refund to the Settlement Fund any portion of any Fee and Expense Award that was withdrawn plus interest thereon at the same rate at which interest is accruing for the Settlement Fund, and the Escrow Agent shall refund the Settlement Fund to Deutsche Bank in accordance with ¶ 42, including any Fee and Expense Award refunded to the Settlement Fund by Plaintiffs' Counsel pursuant to this ¶ 33. For the avoidance of doubt, Plaintiffs' Counsel need not refund any proper, already disbursed Notice and Administrative

Costs, Taxes and Tax Expenses, Escrow Agent Costs or other reasonable settlement administration costs incurred pursuant to Court order as set forth in ¶¶ 10 and 11.

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

35. **No Liability for Fees and Expenses of Plaintiffs' Counsel.** The Releasees shall have no responsibility for, and no liability whatsoever with respect to, any payment(s) to Plaintiffs' Counsel for fees and expenses and/or to any other Person who may assert some claim thereto, or any Fee and Expense Award that the Court may make in the Action.

#### **G. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL OR TERMINATION**

36. **Effective Date.** The Effective Date of this Agreement shall be conditioned on the occurrence of all of the following events:

36.1. Deutsche Bank no longer has any right under the terms of this Agreement to terminate the Agreement or, if Deutsche Bank does have such right, it has given written notice to Plaintiffs' Counsel that it will not exercise such right;

36.2. The Court has entered the Final Approval Order and the Judgment; and

36.3. The Judgment has become Final.

37. **Occurrence of Effective Date.** Upon the occurrence of all of the events referenced in ¶ 36, above, any and all remaining interest or right of Deutsche Bank in or to the Settlement Fund, if any, shall be absolutely and forever extinguished, and the Net Settlement Fund shall be transferred from the Escrow Agent to the Claims Administrator at the written direction of Plaintiffs' Counsel.

38. **Failure of Effective Date to Occur.** If all of the conditions specified in ¶ 36, above, are not satisfied, then this Agreement shall be terminated, subject to and in accordance with ¶ 42, unless the Settling Parties mutually agree in writing to continue with it for a specified period of time.

39. **Failure to Enter Proposed Preliminary Approval Order, Final Approval Order or Judgment.** If the Court does not enter in any material respect the Preliminary Approval Order, the Final Approval Order, or the Judgment, or if the Court enters the Final Approval Order and the Judgment and appellate review is sought and, on such review, the Final

Approval Order or the Judgment is finally vacated, modified, or reversed, then this Agreement and the Settlement incorporated therein shall be terminated, unless all of the Settling Parties, in their sole discretion within thirty (30) days from the date of the mailing of such ruling to such Settling Parties provide written notice to all other parties hereto of their intent to proceed with the Settlement under the terms of the Preliminary Approval Order, the Final Approval Order or the Judgment as modified by the Court or on appeal. Such notice may be provided on behalf of Plaintiffs and the Class by Plaintiffs' Counsel. No Settling Party shall have any obligation whatsoever to proceed under any terms other than substantially in the form provided and agreed to herein, provided, however, that no order of the Court concerning any Fee and Expense Application or the Distribution Plan, or any modification or reversal on appeal of such an order, shall constitute grounds for termination of this Agreement by any Settling Party. Without limiting the foregoing, Deutsche Bank shall have, in its sole and absolute discretion, the option to terminate the Settlement in its entirety in the event that the Judgment, upon becoming Final, does not provide for the dismissal with prejudice of the Action as to Deutsche Bank and a full release of the Releasees as set forth in ¶¶ 14 and 15 of this Agreement.

40. **Termination by Deutsche Bank.** Deutsche Bank shall have the right, but not the obligation, in its sole discretion, to terminate this Settlement Agreement pursuant to the terms and conditions of a Supplemental Agreement to be filed with the Court under seal at the same time as the motion for entry of the Preliminary Approval Order.

41. **Termination by Plaintiffs.** Interim Lead Counsel, acting on behalf of the Plaintiffs, shall have the right, but not the obligation, in their sole discretion, to terminate this Agreement if Deutsche Bank fails to comply with ¶ 9 and fails to cure such non-compliance within ten (10) business days after Interim Lead Counsel provides written notice to Deutsche Bank's counsel of such non-compliance. Any election to terminate this Agreement pursuant to this paragraph must be made by Interim Lead Counsel in writing to Deutsche Bank's counsel within fifteen (15) business days after Deutsche Bank fails to comply with ¶ 9 and the time to cure such non-compliance has passed.

42. **Effect of Termination.** Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Agreement is terminated or cancelled, or otherwise fails to become effective for any reason, including, without limitation, in the event that any of the Settling Parties exercise their respective rights in ¶¶ 39 to 41, then:

42.1. Within ten (10) business days after written notification of such event is sent by counsel for Deutsche Bank or Plaintiffs' Counsel to the Escrow Agent, the Settlement Fund, including the Settlement Amount and all interest earned in the Settlement Fund, but excluding any reasonable Notice and Administrative Costs that have either already been properly disbursed or are due and owing pursuant to ¶¶ 5 to 6, Taxes and Tax Expenses that have been properly paid or that have accrued and will be properly payable at some later date, and Escrow Agent Costs that have either already been properly disbursed or are due and owing, will be refunded, reimbursed, and repaid by the Escrow Agent to Deutsche Bank.

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

42.3. The Settling Parties shall be restored to their respective positions in the Action as of the Execution Date, with all of their respective legal claims and defenses, preserved as they existed on that date, including, without limitation, any challenge or objection to personal jurisdiction;

42.4. The terms and provisions of this Agreement, with the exception of ¶¶ 11, 12, 36 to 44, and 47 (which shall continue in full force and effect), shall be null and void and shall have no further force or effect with respect to the Settling Parties, and neither the existence nor the terms of this Agreement (nor any negotiations preceding this Agreement nor any acts performed pursuant to, or in furtherance of, this Agreement) shall be used in the Action or in any other lawsuit, arbitration or other proceeding for any purpose (other than to enforce the terms remaining in effect); and

42.5. Any Judgment or order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

## **H. NO ADMISSION OF LIABILITY**

43. **Final and Complete Resolution.** The Settling Parties intend the Settlement as described herein to be a final and complete resolution of all disputes between them with respect to the Action, and it shall not be deemed or construed as an admission by any Settling Party of anything, including, without limitation, the merit or lack of merit of any claim or defense, or an admission of liability by any Person, including, without limitation, Releasees.

44. **Use of Agreement as Evidence.** Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, of any allegation made in the Action, or of any wrongdoing or liability of Releasees; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault or omission of the Releasees in any civil, criminal, or administrative proceeding before any court, administrative agency, arbitration panel or other tribunal. Nothing in this paragraph or Agreement shall exclude Plaintiffs from using any documents and testimony obtained pursuant to Section E herein as necessary to continue to prosecute the Action against Defendants other than Releasees. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement, shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement, and except that the Releasees may file this Agreement and/or the Judgment in any action for any purpose, including, but not limited to, in support of a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion, or any similar defense or counterclaim. The limitations described in this ¶ 44 apply whether or not the Court enters the Preliminary Approval Order, the Final Approval Order or the Judgment.

## I. MISCELLANEOUS PROVISIONS

45. **Deutsche Bank's Right to Communicate.** Plaintiffs' Counsel acknowledges and agrees that Deutsche Bank has the right to communicate orally and in writing with, and to respond to inquiries from, Class Members, including (without limitation): (a) communications between Class Members and representatives of Deutsche Bank whose responsibilities include client relations to the extent such communications are initiated by Class Members; (b) communications between Class Members who are ongoing clients of Deutsche Bank or who seek to become clients of Deutsche Bank; (c) communications that might be necessary to conduct Deutsche Bank's business, (d) disclosures Deutsche Bank deems necessary to comply with any relevant laws, regulations (including without limitation banking and securities regulations), subpoenas, or other form of judicial process, and (e) disclosures of the fact or amount of the Settlement to Deutsche Bank's external auditors. However, Deutsche Bank shall not communicate with a material and/or substantial portion of Class Members about the Settlement without prior approval of the contents and subject of the communication from the Court or Interim Lead Counsel.

46. **Voluntary Settlement.** The Settling Parties agree that the Settlement Amount and the other terms of the Settlement as described herein were negotiated in good faith by the Settling Parties, and reflect a Settlement that was reached voluntarily after consultation with competent legal counsel.

47. **Consent to Jurisdiction.** Deutsche Bank, each Plaintiff and each Settlement Class Member hereby irrevocably submits to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement. For avoidance of doubt, Deutsche Bank expressly preserves its right to challenge personal jurisdiction in the Action should the Effective Date not occur and this Agreement is terminated in accordance with the provisions hereof.

48. **Resolution of Disputes; Retention of Exclusive Jurisdiction.** Except as set forth in ¶ 23.5, any disputes between or among Deutsche Bank and any Plaintiff or Class Member (or their counsel) concerning matters contained in this Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court. The Court shall retain exclusive jurisdiction over the implementation and enforcement of this Agreement.

49. **Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Plaintiffs and Plaintiffs' Counsel shall be binding upon all Class Members.

50. **Authorization to Enter Settlement Agreement.** The undersigned representatives of Deutsche Bank represent that they are fully authorized to enter into and to execute this Agreement on behalf of Deutsche Bank. Plaintiffs' Counsel, on behalf of Plaintiffs, represent that they are, subject to Court approval, authorized to take all action required or permitted to be taken by or on behalf of the Class pursuant to this Agreement to effectuate its terms and to enter into and execute this Agreement and any modifications or amendments to the Agreement on behalf of the Class that they deem appropriate.



51. **Notices.** All notices and other communications required to be given hereunder which may be given pursuant to the provisions hereof, other than the Notice (the form and delivery of which shall be determined by the Court), shall be in writing. Each such notice shall be given either by (a) e-mail; (b) hand delivery; (c) registered or certified mail, return receipt requested, postage pre-paid; (d) FedEx or similar overnight courier; or (e) facsimile and first class mail, postage pre-paid, and, if directed to any Settlement Class Member, shall be addressed to Plaintiffs' Counsel at their addresses set forth on the signature page hereof; and if directed to Deutsche Bank, shall be addressed to its attorneys at the address set forth on the signature pages hereof or such other addresses as Plaintiffs' Counsel or Deutsche Bank may designate, from time to time, by giving notice to all parties hereto in the manner described in this paragraph.

52. **No Conflict Intended.** The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement.

53. **No Party Deemed to Be the Drafter.** No Settling Party shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter.

54. **Choice of Law.** This Agreement and the exhibit(s) hereto shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of New York, and the rights and obligations of the parties to this Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New York without giving effect to that State's choice of law principles, including N.Y. General Obligations Law § 15-108, which bars claims for contribution by joint tortfeasors and other similar claims.

55. **Amendment; Waiver.** This Agreement shall not be modified in any respect except by a writing executed by all the Settling Parties, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach of this Agreement, whether prior, subsequent, or contemporaneous.

56. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the parties to this Agreement shall exchange among themselves original signed counterparts and a complete set of executed counterparts shall be filed with the Court.

57. **Integrated Agreement.** This Agreement, including any exhibits hereto and agreements referenced herein, contains the entire, complete, and integrated statement of each and every term and provision agreed to by and among the Settling Parties and is not subject to any condition not provided for or referenced herein. This Agreement supersedes all prior or contemporaneous discussions, agreements, and understandings among the Settling Parties with respect hereto. This Agreement may not be modified in any respect except by a writing that is executed by all the Settling Parties hereto.

58. **Confidentiality:** Plaintiffs, Interim Lead Counsel, and Deutsche Bank agree to keep private and confidential the terms of this Agreement, except for disclosure at the Court's direction or disclosure in camera to the Court, until this document is filed with the Court, provided, however, that nothing in this Section shall prevent Deutsche Bank, upon notice to Interim Lead Counsel, from making any disclosures it deems necessary to comply with any relevant laws, regulations (including without limitation banking and securities regulations), subpoena or other form of judicial process, or from disclosing the fact or amount of the Settlement to Deutsche Bank's external auditors.

[Continued from the previous page]

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Agreement as of the date set forth below.

Dated: May 10, 2017

*Plaintiffs' Counsel, on behalf of Plaintiffs  
individually and the Settlement Class*

By: Vincent Briganti

Vincent Briganti  
Geoffrey Milbank Horn  
Lowey Dannenberg Cohen & Hart, P.C.  
White Plains Plaza  
One North Broadway  
Suite 509  
White Plains, New York 10601  
Tel: (914) 997-0500  
Fax: (914) 997-0035  
*vbriganti@lowey.com*  
*ghorn@lowey.com*

By: Christopher Lovell

Christopher Lovell  
Benjamin M. Jaccarino  
Lovell Stewart Halebian Jacobson LLP  
61 Broadway, Suite 501  
New York, New York 10006  
Tel: (212) 608-1900  
Fax: (212) 719-4677  
*clovell@lshllp.com*  
*bjaccarino@lshllp.com*

Dated: May 10, 2017

*Counsel for Defendants Deutsche Bank AG and DB  
Group Services (UK) Ltd.*

By: 

Elizabeth M. Sacksteder  
Aidan Synnott  
PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP  
1285 Avenue of the Americas  
New York, New York 10019-6064  
Tel: (212) 373-3000

*esacksteder@paulweiss.com  
asynnott@paulweiss.com*