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)

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF RENEWED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT WITH DEFENDANTS CITIBANK, N.A., CITIGROUP INC., JPMORGAN CHASE & CO., AND JPMORGAN CHASE BANK, N.A., SCHEDULING HEARING FOR FINAL APPROVAL THEREOF AND APPROVAL OF THE PROPOSED FORM AND PROGRAM OF NOTICE TO THE SETTLEMENT CLASS

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INTRODUCTION

Plaintiffs renew their motion under Rule 23 of the Federal Rules of Civil Procedure ("Federal Rules") for preliminary approval of a $182,500,000 settlement with Defendants Citibank, N.A. and Citigroup Inc. (collectively "Citi") and JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. (collectively, "JPMorgan" and, collectively with Citi, the "Settling Defendants"). This Court has already approved three similar settlements in this Action between Plaintiffs'[1] and Barclays,[2] HSBC,[3] and Deutsche Bank,[4] respectively, which provided the Settlement Class an outstanding recovery of $309,000,000 along with substantial cooperation that facilitated the prosecution of this case. ECF No. 424 (Order Granting Final Approval of Barclays, HSBC, and Deutsche Bank Settlements). If approved, the Settlement would bring the Settlement Class's total recovery to $491,500,000.

In connection with the Settlement and consistent with prior representations to the Court, Plaintiffs' Counsel will seek up to 19% or $34,675,000 in attorneys' fees pursuant to CalSTRS' retention agreement with Interim Lead Counsel. Because of the declining percentage fee under the retention agreement with CalSTRS, this payment, on a percentage basis, is somewhat less than that which CalSTRS previously supported and this Court previously approved; once again, the fee would be payable upon final approval. *See* Mem. of Law in Support of Class Counsel's Mot. for Award of Attorneys' Fees and Reimbursement of Expenses (ECF No. 402) at 6 (Mar. 23, 2018); Decl. of Brian

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[1] "Plaintiffs" are Stephen Sullivan, White Oak Fund LP, California State Teachers' Retirement System ("CalSTRS"), Sonterra Capital Master Fund, Ltd., FrontPoint Partners Trading Fund, L.P., FrontPoint Australian Opportunities Trust, any subsequently named plaintiff(s), and any of their assignees that may exist now or in the future, including but not limited to Fund Liquidation Holdings, LLC. Unless otherwise noted, capitalized terms used herein have the same meaning as defined in the Settlement Agreement Between Plaintiffs, Citigroup Inc., Citibank, N.A., JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A., dated November 21, 2018 (the "Settlement Agreement" or "Agreement"), attached as Exhibit 1 to the Declaration of Vincent Briganti and Christopher Lovell dated December 14, 2018 ("December 2018 Joint Decl."). Unless otherwise noted, internal citations and quotation marks are omitted.

[2] "Barclays" means Barclays plc, Barclays Bank plc, and Barclays Capital Inc. The "Barclays settlement" means the Settlement Agreement between Plaintiffs and Barclays, dated October 7, 2015. ECF No. 218-1.

[3] "HSBC" means HSBC Holdings plc and HSBC Bank plc. The "HSBC settlement" means the Settlement Agreement between Plaintiffs and HSBC, dated December 27, 2016. ECF No. 276-1.

[4] "Deutsche Bank" means Deutsche Bank AG and DB Group Services UK Limited. The "Deutsche Bank settlement" means the Settlement Agreement between Plaintiffs and Deutsche Bank, dated May 10, 2017. ECF No. 360-1.

J. Bartow in Supp. of Pls.' Mot. for Final Approval of the Class Action Settlements with Barclays plc, Barclays Bank plc, Barclays Capital Inc., Deutsche Bank AG, DB Group Services (UK) Ltd., HSBC Holdings plc and HSBC Bank plc and Mot. for Award of Attorneys' Fees and Reimbursement of Expenses (ECF No. 405) ¶¶ 6-7 (Mar. 23, 2018) ("Bartow Decl.").

Like the Barclays, HSBC, and Deutsche Bank settlements, this Settlement fully satisfies the requirements for preliminary approval: it is likely to receive final approval after notice is provided and any objections are heard. The Settlement itself is procedurally and substantively fair, and the proposed Settlement Class may be certified pursuant to Rule 23. *Compare* ECF Nos. 234, 279, 364 (Judge Castel's preliminary approval orders), *with* December 2018 Joint Decl. Ex. 1 (Agreement).

The Settling Parties completed the Settlement after more than a year of negotiations between experienced counsel, assisted by three mediation sessions before a nationally recognized mediator, David Geronemus, Esq., of the JAMS mediation service. *See* Biography of David Geronemus, Esq., *https://www.jamsadr.com/geronemus/* (listing credentials of Mr. Geronemus). These mediation sessions ended with the Parties still at a substantial impasse. Negotiations continued and a settlement in principle was not reached until minutes before the start of the deposition of Defendants' expert economist on class certification. December 2018 Joint Decl. ¶¶ 42-51. The parties have since negotiated all terms of and executed the Settlement, which now requires Citi and JPMorgan to provide cooperation to the Settlement Class and contribute a total of $182,500,000 to the Settlement Fund. Agreement ¶¶ 1.39, 9, 19-21. Plaintiffs' Counsel intends to seek a smaller percentage of the Settlement Fund as attorneys' fees as compared to the fees sought in connection with the Barclays, Deutsche Bank and HSBC settlements, leaving more money to be distributed to Authorized Claimants. Compare ECF No. 425 ¶ 3 (Order Granting Class Counsel's Motion for Award of Attorneys' Fees) *with* December 2018 Joint Dec. Ex. 3 at 7 (Proposed Mailed Notice). Further, the Settlement fully satisfies all prerequisites under Rule 23 for conditional class certification as to Citi

and JPMorgan.[5] *See* Argument.

Plaintiffs respectfully move the Court to enter an order that:

(a) preliminarily approves Plaintiffs' proposed Settlement, subject to later, final approval;

(b) conditionally certifies a Settlement Class on the claims against Citi and JPMorgan solely for purposes of effectuating the Settlement;

(c) appoints Lowey Dannenberg, P.C. ("Lowey Dannenberg") and Lovell Stewart Halebian Jacobson LLP ("Lovell Stewart") as Class Counsel for the Settlement Class;

(d) appoints Amalgamated Bank as Escrow Agent for purposes of the Settlement Fund;

(e) appoints A.B. Data, Ltd. as the Claims Administrator for the Settlement;

(f) approves Plaintiffs' proposed forms of Notice to the Settlement Class of the Settlement with Citi and JPMorgan (December 2018 Joint Decl. Exs. 3-5) and the proposed Notice plan (December 2018 Joint Decl. Ex. 2 at Ex. A);

(g) approves Plaintiffs' previously-approved Distribution Plan (ECF No. 382, Ex. 1) with respect to the Settlement; and

(h) sets a schedule leading to the Court's consideration of final approval of the Settlement, including: (i) the date, time, and place for a hearing to consider the fairness, reasonableness, and adequacy of the Settlement; (ii) the deadline for members of the Settlement Class to exclude themselves (*i.e.*, opt out) from the Settlement; (iii) the deadline for Class Counsel to submit a petition for attorneys' fees and reimbursement of expenses, and incentive awards for Settlement Class representatives; and (iv) the deadline for Settlement Class Members to object to the Settlement and any of the related petitions.

See [Amended Proposed] Preliminary Approval Order, filed herewith.

ARGUMENT

I. The Court should preliminarily approve the Settlement.

A. The preliminary approval standard.

There is a "strong judicial policy in favor of settlements, particularly in the class action context." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (internal quotation

[5] Citi and JPMorgan each consent to preliminary certification of the Settlement Class solely for the purpose of the Settlement and without prejudice to any position they may take with respect to class certification in any other action or in the event that the Settlement is terminated. Agreement ¶¶ 4.2, 4.3. Citi and JPMorgan expressly deny all allegations and liability to Plaintiffs.

marks and citation omitted). Proposed settlements like this one require notice to class members, an opportunity for class members to object, and final approval by the Court after a hearing at which class members may appear. *See* FED. R. CIV. P. 23(e). "Where the proposed settlement appears to be the product of serious, informed, non–collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, preliminary approval is granted." *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997) ("*NASDAQ II*").

In conducting the preliminary approval inquiry, a court considers the "negotiating process leading up to the settlement, *i.e.*, procedural fairness, as well as the settlement's substantive terms, *i.e.*, substantive fairness." *In re Platinum & Palladium Commodities Litig.*, No. 10-cv-3617, 2014 WL 3500655, at *13 (S.D.N.Y. July 15, 2014) (internal quotation marks and citation omitted) ("*Platinum*"). The settlement terms must be "at least sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard." *NASDAQ II*, 176 F.R.D. at 102 (internal quotation marks and citation omitted).

B. The Settlement is procedurally fair because it was produced by well-informed, arm's-length negotiations by experienced counsel with the assistance of a mediator.

"To determine procedural fairness, courts examine the negotiating process leading to the settlement." *Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 618 (S.D.N.Y. 2012). Where a settlement "is the product of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation," the settlement enjoys a "presumption of fairness." *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74 (S.D.N.Y. 2000), *aff'd sub nom. D'Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d Cir. 2001).

Here, the process leading up to the Settlement fully supports preliminary approval. *See* December 2018 Joint Decl. The Settlement is the result of, in Citi's case, three years, and for JPMorgan, more than one year, of arm's-length negotiations by experienced counsel, with an

agreement reached after the involvement of experienced private mediator David Geronemus, Esq. *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) ("the fact that the Settlement 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.").

Interim Lead Counsel were extremely well informed about the strengths and weaknesses of the claims against JPMorgan and Citi in advance of negotiating the Settlement. Before and during negotiations with Citi and JPMorgan, Interim Lead Counsel had the benefit of much of Barclays' ACPERA production and settlement cooperation, in addition to the cooperation materials produced as part of the HSBC and Deutsche Bank settlements. December 2018 Joint Decl.¶ 12. Although the Barclays, HSBC, and Deutsche Bank information related to their own respective conduct, the disclosures provided insights into the conduct of other Defendants, including Citi and JPMorgan.

Further, Plaintiffs had the benefit of substantial discovery from JPMorgan and Citi in this Action as well as the Parties' submissions of their expert reports on Plaintiffs' class certification motion herein. December 2018 Joint Decl. ¶¶ 47-49. Also, Defendants took the depositions of Plaintiffs' experts who offered reports in support of class certification. *Id.* Plaintiffs, JPMorgan, and Citi engaged in extensive negotiations over other litigation issues. *Id.* ¶ 47.

Plaintiffs' joint settlement negotiations with JPMorgan and Citi were conducted over more than one year's time. *Id.* ¶ 53. Prior negotiations with Citi since 2015 had been unsuccessful. *Id.* ¶¶ 40-41. Plaintiffs' joint negotiations with JPMorgan and Citi included an unsuccessful mediation session before Mr. Geronemus on November 21, 2017, and two unsuccessful mediation sessions before Mr. Geronemus on July 11 and July 12, 2018. *Id.* ¶¶ 42-50. The General Counsel for CalSTRS, Brian Bartow, Esq., attended all three mediation sessions and was fully conversant and actively involved with the negotiations. *Id.* ¶¶ 44, 48. Plaintiffs, Citi, and JPMorgan then resumed

negotiating on Friday, July 13 and these negotiations continued until 9:30 a.m. on Tuesday, July 17 when the parties reached an agreement in principle minutes before the deposition of Defendants' expert economist on the class certification issues was to begin. *Id.* ¶ 51. By this point, Class Counsel were well informed of the strengths and weaknesses of the claims against JPMorgan and Citi.

Finally, Interim Lead Counsel have long experience in complex class litigation involving antitrust claims and manipulation of derivatives (among other things). This experience, combined with Class Counsel's detailed knowledge of the strengths and weaknesses of Plaintiffs' claims, their assessment of the Settlement Class's likely recovery following trial and appeal, and the assistance and feedback from an experienced mediator, all combine to demonstrate that the Settlement is entitled to a presumption of procedural fairness.

C. The Settlement is substantively fair because it provides a sizable benefit to the Settlement Class.

If approved, this $182,500,000 Settlement, along with the earlier settlements in this matter, would provide the Settlement Class with a combined financial recovery of $491,500,000. As with the HSBC, Barclays, and Deutsche Bank settlements, Plaintiffs successfully negotiated with Citi and JPMorgan to provide that, if the Settlement is finally approved, then none of the Settlement Amount will revert to Citi and JPMorgan regardless of how many Class members submit proofs of claims. Agreement ¶¶ 9, 21. Because claim rates typically fall below 100%, the non-reversion term of the Settlement will substantially enhance the recovery that Authorized Claimants will receive.

The Settlement is a significant achievement because this case provides the Class one of the few (if not only) means to recover against Citi and JPMorgan for Euribor-related misconduct claims. The $182,500,000 to be paid by Citi and JPMorgan will provide a direct source of recovery to those Settlement Class Members who allegedly suffered losses on account of Euribor-related misconduct.

Under the Settlement, Citi and JPMorgan will also provide potentially valuable non-monetary cooperation to Plaintiffs and the Class to aid in the pursuit of claims against the Dismissed

Defendants. *See Sullivan v. Barclays PLC*, No. 13-CV-2811 (PKC), 2017 WL 685570 (S.D.N.Y. Feb. 21, 2017) (granting motions of foreign defendants to dismiss for lack of personal jurisdiction). The initial cooperation is targeted to uncover additional evidence that Dismissed Defendants are subject to the Court's personal jurisdiction. Agreement ¶ 23.[6] To the extent any Dismissed Defendant is later found to be subject to the Court's personal jurisdiction, Citi and JPMorgan will have additional cooperation obligations to the Settlement Class. This second stage cooperation will focus on cooperation materials designed to address merits and damages issues likely to be raised in the case.[7] Citi and JPMorgan will also provide proffers of fact concerning the Euribor-related conduct alleged in the Action. *Id.* ¶ 26.10.

In exchange for these benefits, the Settlement Class Members will release Citi and JPMorgan from all U.S.-based claims relating to Euribor or the Euribor Products the prices of which Citi and JPMorgan allegedly manipulated. *Id.* ¶¶ 14-15.[8] Plaintiffs will also voluntarily dismiss their claims against Citi and JPMorgan on the merits and with prejudice. These terms are substantively fair and easily fall within "the range of possible approval." *NASDAQ II*, 176 F.R.D. at 102.

D. <u>There are no obvious or other deficiencies in the Settlement.</u>

The Settlement contains a structure and terms that are commonly used in class action settlements in this District. *See NASDAQ II*, 176 F.R.D. at 102; *see also* December 2018 Joint Decl. ¶ 55. This includes Citi and JPMorgan's qualified right to terminate the Settlement Agreement under

[6] While Plaintiffs believe they sufficiently alleged the Court's personal jurisdiction over Dismissed Defendants, this evidence will nonetheless assist in the prosecution of the case against Dismissed Defendants.

[7] This may include, among other things: (i) trade data pertaining to certain of Citi's and JPMorgan's transactions in Euro-denominated interbank money market instruments; (ii) trade data pertaining to certain of Citi's and JPMorgan's transactions in Euribor Products; (iii) non-privileged declarations, affidavits, witness statements, or other sworn or unsworn statements of Citi and JPMorgan directors, officers, or employees; and (iv) documents reflecting substantially the same information as that reflected in Citi's and JPMorgan'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. Agreement ¶ 26.

[8] Plaintiffs are unaware of any other domestic cases involving Euribor that would be impacted by the release in this Action.

certain circumstances before final approval. Settlement Agreement ¶ 36. This qualified right is directly tied to the number and significance of the Class Members, if any, who request to be excluded from the Settlement Class. These "blow" provisions are commonly included in class action settlements based on the defendant's desire to quiet the litigation through settlement and without leaving open any material exposure. *See 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); *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 329-330 (C.D. Cal. 2016). Citi and JPMorgan's qualified right clearly does not constitute an obvious or other deficiency; therefore, the Settlement amply satisfies the "no obvious deficiency" requirement of *NASDAQ II*.

E. The Settlement does not favor Plaintiffs or any Settlement Class Members, and it does not create any preferences.

The Settlement does not favor or disfavor any of the Plaintiffs or Settlement Class Members; nor does it discriminate against, create any limitations, or exclude from payments any persons or groups within the Settlement Class. *See NASDAQ II*, 176 F.R.D. at 102. Plaintiffs, aided by experts, developed a Distribution Plan that this Court has already approved as fair, reasonable, and adequate. ECF No. 392 at 1. This same Distribution Plan will now be used to distribute the Settlement Fund. The daily Euribor artificiality matrix is available on the Settlement Website to inform Class Members of how valid and timely submitted claims will be compensated. To the extent new information requires, the artificiality matrix may be adjusted, and any changes will be immediately posted on the Settlement Website. Because the Settlement wholly avoids any improper preferences or discriminations, the Settlement satisfies the third *NASDAQ II* preliminary approval factor.

F. The relief provided by the Settlement is well within the range of what may be found, at final approval, to be fair and reasonable in light of the costs, risks and delay associated with trial and appeal.

The consideration that the Settlement provides falls well within the range of what the Court might consider reasonable at final approval. *NASDAQ II*, 176 F.R.D. at 102. The range of

reasonableness "recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion . . . ." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972).

The factual and legal issues in this Action are complex and expensive to litigate. They involve esoteric financial products and damages models. As is always true in cases involving large document productions, the duration of the case will depend on the time that the non-settling Defendants require to produce their documents, and that the parties require to review the Defendants' and non-party documents. The cost of discovery and expert work to reach this point alone has been expensive and time consuming, totaling almost $2.3 million. *See* December 2018 Joint Decl. ¶ 59; ECF Nos. 404, 411 (summarizing Interim Lead Counsel's expenses related to document review and management, mediators, consultants and other experts). If litigation against Settling Defendants had continued, these costs (among others) would only have increased. Furthermore, this case presents an inherent level of risk and uncertainty because it involves a market unfamiliar to the average juror. *See Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 663 (S.D.N.Y. 2015).

Private antitrust plaintiffs, unlike the government, have the burden to prove anticompetitive impact and damages. *Gottesman v. General Motors Corp.*, 436 F.2d 1205, 1210 (2d Cir. 1971). "Indeed, the history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal." *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 476 (S.D.N.Y. 1998) ("*NASDAQ III*").

Citi's and JPMorgan's monetary consideration alone, $182,500,000, is greater than the maximum potential damages for which Citi and JPMorgan would have argued they were liable had the case proceeded to trial. Plaintiffs' impact and damages theories would have been sharply disputed prior to and at trial, triggering a "battle of the experts." *See NASDAQ III*, 187 F.R.D. at 476. "In this 'battle of experts,' it is virtually impossible to predict with any certainty which

testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors . . . ." *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985).

In addition to the challenge of proving impact and damages at trial, Plaintiffs (before the Settlement) faced the far greater task of establishing the other elements of liability. The facts and claims here are intricate. *See In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 123 (S.D.N.Y. 2009) ("The complexity of Plaintiffs' claims *ipso facto* creates uncertainty." (internal quotation marks and citations omitted)). Establishing liability would involve obtaining and proving the meaning and significance of instant messages, trading patterns, and other facts or evidence. Evidence of manipulation and collusion would likely raise ambiguities and require the factfinder to make reasonable inferences. This creates significant risks in establishing liability. To the extent any claims should remain, Interim Lead Counsel would zealously prosecute the key common questions of fact and law underlying the Class Members' claims and would seek to overcome the foregoing risks.

For the Settlement Class, the Settlement represents a reasonable, favorable hedge against the risk of taking Plaintiffs' claims against Citi and JPMorgan to trial. It provides "the immediacy and certainty of the recovery, against the continuing risks of litigation." *See In re Marsh ERISA Litig.*, 265 F.R.D. 128, 139 (S.D.N.Y. 2010). Accordingly, the consideration that the Settlement provides, including the substantial cooperation, is well within the range of that which may later be found to be fair, reasonable, and adequate at final approval. *NASDAQ II*, 176 F.R.D. at 102; December 2018 Joint Decl. ¶ 56.

1. *Application of the* Grinnell *"final approval" Factors to the Settlement is unnecessary at preliminary approval.*

The factors this Court is to consider in preliminarily approving the Settlement are fewer than those involved in a full-blown settlement analysis for final approval. At final approval, the Court considers:

> (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*"). For preliminary approval, the only appropriate considerations are *Grinnell* Factors 1, 4-6 and 8-9, which Plaintiffs have addressed above. *See In re Warner Chilcott Ltd. Secs. Litig.*, No. 06 Civ. 11515, 2008 WL 5110904, at *2 (S.D.N.Y. Nov. 20, 2008) ("Although a complete analysis of [the *Grinnell*] factors is required for final approval, at the preliminary approval stage, the [c]ourt need only find that the proposed settlement fits within the range of possible approval to proceed." (internal quotation marks and citations omitted); *see also* FED. R. CIV. P. 23(e)(2).[9] Plaintiffs nonetheless address the remaining *Grinnell* Factors below.

***Grinnell* Factor 2 (the reaction of the class to the settlement).** Consideration of *Grinnell* Factor 2 is premature. Plaintiff CalSTRS, the largest education-only retirement fund in the U.S. with approximately $229.2 billion in assets under management (as of September 30, 2018) and serving more than 933,000 public school educators and their families, is a sophisticated investor with significant financial expertise. CalSTRS' General Counsel, Brian Bartow, Esq., participated in all three mediation sessions and was fully conversant with the negotiations. All Plaintiffs favor the Settlement. Plaintiffs' approval likely is probative of the other Settlement Class Members' reaction to the Settlement. Moreover, any Class Member who does not favor the deal can opt out. Plaintiffs will therefore be able to more fully address the Settlement Class's reaction to the Settlement in their final approval motion, after providing Notice to the Settlement Class.

[9] The Court similarly recognized this and did not address the remaining *Grinnell* Factors when it granted preliminary approval of the Barclays, HSBC, and Deutsche Bank settlements. *See* ECF Nos. 234, 279, 364.

***Grinnell* Factor 3 (the stage of the proceedings and the amount of discovery completed).** The Court may approve a settlement at any stage of litigation. *See In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, MDL No. 1500, 02-civ-5575 (SWK), 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006). The Court's primary task 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 case, and whether the settlement is adequate given those risks. *Id.*

Plaintiffs have conducted extensive factual and legal research and consulted experts to assess the merits of their claims. *See* December 2018 Joint Decl. ¶ 58. Plaintiffs reviewed public information, including government pleas, non-prosecution agreements, and deferred prosecution agreements. Plaintiffs also had the benefit of ACPERA and settlement cooperation produced under the Barclays, HSBC, and Deutsche Bank settlements, and three separate mediation sessions with Citi and JPMorgan that included information exchanges and expert presentations on important issues. Further, Plaintiffs had the benefit of substantial discovery and the exchange of the Parties' class certification expert reports by Plaintiffs and JPMorgan and Citi, as well as the depositions of Plaintiffs' class certification experts taken by Defendants, and the full preparation by Plaintiffs for the deposition of Defendants' expert economist. His deposition was about to start when the Parties finally broke through and reached an agreement in principle on the Settlement Amount and related issues. Because discovery is not required to support even final approval of a settlement, *Plummer v. Chemical Bank*, 668 F.2d 654, 658 (2d Cir. 1982), Plaintiffs' extremely extensive information and discovery here made them more than adequately informed of the strengths and weaknesses of the claims, and the advantages and disadvantages of the Settlement.

***Grinnell* Factor 7 (defendants' ability to withstand a greater judgment).** Citi and JPMorgan and Citi can withstand a greater judgment than $182,500,000, but this *Grinnell* Factor

alone does not determine whether the Settlement is reasonable. *See In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 439, 460 (S.D.N.Y. 2004) ("[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.").

2. *The attorneys' fees, expenses and incentive awards that may be requested will comprise a small percentage of the common fund and do not impact the adequacy of the Settlement.*

Any motion for attorneys' fees, reimbursement of expenses and Incentive Awards will be made at least twenty-one (21) days prior to the deadline for Class Members to object or opt out of the Settlement, giving the Class sufficient time to evaluate such requests before deciding whether to accept the benefits of the Settlement. The memorandum that will accompany the motion will provided audited information supporting each of the requests, as summarized below. The relative size of the requests themselves makes it clear that the Class will be left with a substantial portion of the Settlement Fund from which they can recover.

Plaintiffs previously disclosed that CalSTRS negotiated a retention agreement with Interim Lead Counsel that included a graduated fee schedule to govern contingency payments from any common fund settlements in this Action. *See* ECF No. 402 at 6; Bartow Decl. ¶¶ 6-7. Under the fee schedule, Plaintiffs' Counsel may seek up to 19% of any recoveries that raised the total settlements in this Action to between $300,000,000 and $500,000,000. Bartow Decl. ¶¶ 6-7. The Settlement, totaling $182,500,000, would increase the total recoveries from $309,000,000 to $491,500,000. Based on the agreed-upon scale, Plaintiffs' Counsel will seek no more than $34,675,000 in attorneys' fees. CalSTRS' retention agreement also includes a second cap that limits the total attorneys' fees to no more than 3.5 times the aggregate lodestar. *Id.* ¶ 7. Plaintiffs' Counsel have spent approximately 140,000 hours on this case, resulting in a lodestar of approximately $65 million. December 2018

Joint Decl. ¶ 59. When the lodestar is compared against the total potential awarded attorneys' fees in this Action (consisting of the award of attorneys' fees in connection with the earlier settlements [$68.71 million] and the likely request here [$34.675 million]), the lodestar multiplier is approximately 1.63, well below the negotiated multiplier cap.[10]

Compared to the attorneys' fee award, the requests for reimbursement of expenses and payment of an incentive award are likely to have a much smaller impact on the size of the Net Settlement Fund. Plaintiffs' Counsel's voluntarily capped their expense reimbursement in connection with the earlier settlements in this Action to $1,600,000 (or approximately 0.52% of the $309,000,000 settlement fund). *See* Order Granting Class Counsel's Motion for Reimbursement of Expenses (ECF No. 406) ¶ 3 (May 18, 2018). Plaintiffs' Counsel will similarly limit their request for reimbursement of expenses for this Settlement, and Interim Lead Counsel propose that the cap be set at $1,300,000 (approximately 0.71% of the Settlement) in light of the significant amount of fact and expert discovery that took place after the period covered by the Court's previous award for reimbursement of expenses. December 2018 Joint Decl. ¶ 59. Class Counsel may apply to the Court, at the time of any application for distribution to qualifying Settlement Class Members, for an award from the Settlement Fund for reimbursement of costs and expenses incurred in connection with the administration of the Settlement Agreement after the date of the Settlement Hearing. *Id.*

Plaintiffs are still considering whether it is appropriate to seek an incentive award relating to the costs and expenses of serving as named plaintiffs in this Action. No firm determination has yet been made, but Plaintiffs have agreed that the incentive award request(s) will not exceed a total of

[10] The time and lodestar figures include unaudited data generated to address the Court's November 30, 2018 Order. ECF No. 449. Further, while CalSTRS' agreement with Interim Lead Counsel is based on aggregate settlements in the Action, to the extent the Court is concerned whether Plaintiffs' Counsel have continued to add value and vigorously litigate the case, it has. Plaintiffs' Counsel worked approximately 30,000 hours since March 1, 2018, resulting in a lodestar of approximately $14.5 million (or a multiplier of approximately 2.4 on the anticipated attorneys' fee request of $34.675 million).

$400,000 (approximately 0.08% of the $491.5 million in total settlements in this Action). *Id.*

II. The Court should conditionally certify the Settlement Class solely for purposes of the Settlement.

As the Court already found when preliminarily approving the Barclays, HSBC, and Deutsche Bank settlements, the Settlement Class meets the requisites of Rule 23(a) and Rule 23(b)(3) for preliminary approval. *Compare* Settlement Agreement ¶ 4, *with* ECF No. 234 ¶ 4, ECF No. 279 ¶ 4, ECF No. 364 ¶ 4. Thus, the Court should conditionally certify the Settlement Class as to the claims against Citi and JPMorgan for purposes of the Settlement.

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

1. Numerosity

Rule 23(a) requires that the class be "so numerous that joinder of all class members is impracticable." FED. R. CIV. P. 23(a). Joinder need not be impossible, it may "merely be difficult or inconvenient, rendering use of a class action the most efficient method to resolve plaintiffs' claims." *In re Initial Pub. Offering Sec. Litig.*, 260 F.R.D. 81, 90 (S.D.N.Y. 2009) ("*IPO*"). "Sufficient numerosity can be presumed at a level of forty members or more." *Id.*; *see also* ECF No. 234 ¶ 5, ECF No. 279 ¶ 5; ECF No. 364 ¶ 4. Here, there are at least hundreds, if not thousands, of geographically dispersed persons and entities that fall within the Settlement Class definition. *See* December 2018 Joint Decl. ¶ 57. Thus, joinder of all these individuals and entities would be impracticable.

2. Commonality

Commonality only requires the presence of a single question of law or fact common to the class capable of class-wide proof. *See Wal-Mart Stores, Inc. v. Dukes*, 546 U.S. 338, 359 (2011); *see also* FED. R. CIV. P. 23(a)(2). This case presents scores of common questions of law and fact, including personal and subject matter jurisdiction, the standards for an unlawful agreement, and multiple questions that Defendants raised in their motions to dismiss. For example:

1. What constitutes a false or manipulative submission by a Euribor contributor panel bank? This threshold question involves issues of fact that will be of overriding importance in this litigation. As their traders talked and colluded about the optimal level of Euribor to profit their proprietary positions held in Euribor Products, certain Defendants allegedly (and in some cases, admittedly) adjusted their Euribor submissions in the direction of their financial self-interest.

2. Which of the Defendants were engaged in conspiratorial conduct in Euribor, and for what period(s) were they involved in the same?

3. What would the non-manipulated Euribor be in the "but-for" world for each day of the class period?

These common questions involve dozens of common sub-questions of law and fact that are also common to all Class Members. The Settlement easily satisfies Rule 23(a)(2) for purposes of the Settlement.

3. Typicality

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." FED. R. CIV. P. 23(a)(3). A proposed class action meets this standard when "each class member's claim arises from the same course of events[,] and each class member makes similar legal arguments to prove the defendant's liability." *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 35 (2d Cir. 2009). Here, Plaintiffs' and Class Members' claims arise from the same course of conduct involving Defendants' alleged false reporting and manipulation of Euribor and the prices of Euribor Products. Plaintiffs' claims are typical of the Class Members' claims for purposes of the Settlement. *See, e.g.*, *Marisol A. by Forbes v. Giuliani*, 126 F.3d 372, 376-77 (2d Cir. 1997).

4. Adequacy

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." FED. R. CIV. P. 23(a)(4); *Baffa v. Donaldson, Lufkin & Jenrette Secs. Corp.*, 222 F.3d 52, 61 (2d Cir. 2000). Generally, courts consider whether: 1) Plaintiffs' interests are antagonistic to the interest of other members of the class; and 2) Plaintiffs' attorneys are qualified, experienced,

and able to conduct the litigation. *Id.* at 60.

a. Plaintiffs suffer no disabling conflicts with the Settlement Class Members.

"[O]nly a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." *Martens v. Smith Barney Inc.*, 181 F.R.D. 243, 259 (S.D.N.Y. 1998) (internal quotation marks and citations omitted). Here, no fundamental conflict exists for purposes of the Settlement.

First, all Settlement Class Members share an overriding interest in obtaining the largest possible monetary recovery from Citi and JPMorgan. *See Global Crossing*, 225 F.R.D. at 453 ("There is no conflict between the class representatives and the other class members. All share the common goal of maximizing recovery.").

Second, all Settlement Class Members share a common interest in obtaining Citi and JPMorgan's cooperation so that they can evaluate whether any additional evidence supports the Court's personal jurisdiction over Dismissed Defendants. They are equally interested in later obtaining information and data that may support liability and damages against any Dismissed Defendant, should such Defendant be found to be subject to this Court's jurisdiction.

Third, all Settlement Class Members share the same interest in overcoming adverse dispositive motions, developing the enormous factual record, overcoming the ambiguities and competing explanations for Defendants' conduct, and establishing liability. Further, all Settlement Class Members have an interest in showing that Defendants' alleged Euribor manipulation injured them, and in quantifying the impact of that manipulation on the prices of Euribor-Based Derivatives.

b. Interim Lead Counsel are adequate.

Plaintiffs and the Settlement Class are represented by experienced and skilled counsel. Interim Lead Counsel have prosecuted this litigation for over five years. In appointing Lowey

Dannenberg and Lovell Stewart as Class Counsel for the Barclays, HSBC, and Deutsche Bank settlements, the Court found that counsel's experience was sufficient. ECF No. 424.

As set forth above, Lowey Dannenberg and Lovell Stewart, as Interim Lead Counsel, have vigorously prosecuted this Action and represented the Settlement Class. In addition to such vigorous prosecution of the Claims, they have negotiated the three prior settlements with Barclays, HSBC and Deutsche Bank, respectively, and then vigorously continued to prosecute the claims against JPMorgan and Citi. This continued through hard fought negotiations and three mediation sessions which ended in impasse. Finally, minutes before the deposition of Defendants' class certification expert economist was scheduled to begin, the Parties broke through and reached a settlement in principle. With over 50 years of experience litigating complex class actions, Lowey Dannenberg has achieved historic class action settlements under the both the CEA and the Sherman Act. *See* December 2018 Joint Decl. Ex. 6. Lovell Stewart has successfully tried antitrust and derivatives claims and, as Court appointed lead counsel, has obtained what were at the time the largest class action recoveries ever under the CEA and Sherman Act. *See id.*, Ex. 7. The Court should find that Lowey Dannenberg and Lovell Steward are adequate Class Counsel here for the same reasons as in the Barclays, HSBC, and Deutsche Bank settlements.

Because Interim Lead Counsel are both adequate and have no fundamental conflicts with the Class, the Settlement satisfies both Rule 23(a)(4) requirements for purposes of the Settlement.

c. The Court should appoint Class Counsel under Rule 23(g)(1).

Rule 23(g)(1) provides that "a court that certifies a class must appoint class counsel." FED. R. CIV. P. 23(g)(1). Where, as here, only one application is made seeking appointment as class counsel, "the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4)." FED. R. CIV. P. 23(g)(2). For the reasons described above, Lowey Dannenberg and Lovell Stewart are adequate and should be appointed as Class Counsel for the Settlement Class.

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

To satisfy Rule 23(b)(3) for purposes of the Settlement, Plaintiffs must conditionally establish: (1) "that the questions of law or fact common to class members predominate over any questions affecting only individual members"; and (2) "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." FED. R. CIV. P. 23(b)(3).

1. Predominance

Certification is proper under Rule 23(b)(3) where "a class action would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Brown v. Kelly*, 609 F.3d 467, 483 (2d Cir. 2010). To satisfy the predominance requirement, a plaintiff must show "that the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole . . . predominate over those issues that are subject only to individualized proof." *Id.* (ellipses in original). "If the most substantial issues in controversy will be resolved by reliance primarily upon common proof, class certification will generally achieve the economies of litigation that Rule 23(b)(3) envisions." *In re Air Cargo Shipping Servs. Antitrust Litig.*, MDL No. 1775, 2014 WL 180914, at *35 (E.D.N.Y. Oct. 15, 2014).

"Predominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws[,]" as opposed to mass tort cases in which the "individual stakes are high and disparities among class members are great." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 594, 625 (1997); Alba Conte & Herbert Newberg, *NEWBERG ON CLASS ACTIONS* §§ 18:28 & 18:29 (4th ed. 2002); *see also IPO*, 260 F.R.D. at 92 (the "predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation"). Liability focuses on the defendants' alleged unlawful actions, not the actions of individual plaintiffs, making antitrust claims particularly well suited for class treatment. *Compare Amchem*, 521 U.S. at 624, *with Messner v. Northshore*

Univ. HealthSystem, 669 F.3d 802, 815 (7th Cir. 2012). The "predominance inquiry will sometimes be easier to satisfy in the settlement context." *In re Am. Int'l Grp. Secs. Litig.*, 689 F.3d 229, 240 (2d Cir. 2012). Unlike class certification for litigation purposes, a settlement class presents no management difficulties for the court as settlement, not trial, is proposed. *Amchem*, 521 U.S. at 620; *In re NASDAQ Market-Makers Antitrust Litig.,* 169 F.R.D. 493, 517 (S.D.N.Y. 1996) (*"NASDAQ I"*) (the predominance standard is met "unless it is clear that individual issues will overwhelm the common questions and render the class action valueless").

Here, if the claims against Citi and JPMorgan were not settled, common questions would have predominated over individual ones. All Plaintiffs and Class Members must answer the same questions regarding personal jurisdiction, subject matter jurisdiction, conspiracy, unlawful Euribor manipulation, and the amount of such manipulation. *See Cordes & Co. Fin. Servs., Inc. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 105 (2d Cir. 2007) ("allegations of the existence of a price-fixing conspiracy are susceptible to common proof"). Therefore, the Settlement Class satisfies Rule 23(b)(3) for purposes of the Settlement.

2. Superiority

Rule 23(b)(3)'s "superiority" requirement requires a plaintiff to show that a class action is superior to other methods for "fairly and efficiently adjudicating the controversy." FED. R. CIV. P. 23(b). The Court balances the advantages of class action treatment against those of alternative methods of adjudication. *See* FED. R. CIV. P. 23(b)(3)(A)-(D) (listing four non-exclusive factors relevant to this determination). The superiority requirement is applied leniently in the settlement context because the court "need not inquire whether the case, if tried, would present intractable management problems." *Amchem*, 521 U.S. at 620; *Am. Int'l Group*, 689 F.3d at 239-40.

A class action is the superior method for the fair and efficient adjudication of this Action. *First*, Settlement Class Members are significant in number and geographically disbursed, making a

"class action the superior method for the fair and efficient adjudication of the controversy." *See In re Currency Conversion Fee Antitrust Litig.*, 224 F.R.D. 555, 566 (S.D.N.Y. 2004).

Second, many Class Members have neither the incentive nor the means to litigate these claims individually. The damages most of the Class Members suffered are likely small compared to the considerable expense and burden of individual litigation. This makes it uneconomic for an individual to protect his/her rights through an individual suit. That is why no Class Member "has displayed any interest in bringing an individual lawsuit." *See Meredith Corp.*, 87 F. Supp. 3d at 661. A class action allows claimants to "pool claims which would be uneconomical to litigate individually," as "no individual may have recoverable damages in an amount that would induce him to commence litigation on his own behalf." *Currency Conversion*, 224 F.R.D. at 566.

Third, the prosecution of separate actions by hundreds (or thousands) of individual Settlement Class Members would impose heavy burdens upon the Court. It would create a risk of inconsistent or varying adjudications of the questions of law and fact common to the Settlement Class. Thus, both prongs of Rule 23(b)(3) are satisfied for purposes of the Settlement.

III. The Court should appoint Amalgamated Bank as Escrow Agent.

Interim Lead Counsel has designated Amalgamated Bank to serve as Escrow Agent, to which Citi and JPMorgan have consented. Amalgamated Bank currently serves as Escrow Agent for the Barclays, HSBC, and Deutsche Bank settlements in this Action and has agreed to provide its services at market rates. The Court should similarly appoint Amalgamated Bank to serve here.

IV. The Court should approve the Class Notice plan, forms of notice, and Proposed Distribution Plan.

A. Plaintiffs' proposed Notice program.

Due process and the Federal Rules require that the Class receive adequate notice of a class action settlement. *Wal-Mart Stores, Inc.*, 396 F.3d at 114. The adequacy of a settlement notice is measured by reasonableness. *See Soberal-Perez v. Heckler*, 717 F.2d 36, 43 (2d Cir. 1983); *see also* FED.

R. CIV. P. 23 (e)(1)(B) ("The court must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified . . . ."); *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.").

Rule 23(c)(2) requires only that Rule 23(b)(3) class members be given "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). Notice must clearly state: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3). *Id.* Courts are afforded "considerable discretion" in fashioning class notice. *In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 145, 168 (2d Cir. 1987).

The proposed Notice itself comports with Rule 23(c)(2)(B) and due process. It carefully details the nature of the Action and the Class of U.S. investors that are included in the Settlement, provides an ample "Background of the Litigation," which describes the claims, issues, and/or defenses presented in the Action, and advises that the Court's Final Judgment will be binding for all Class Members that remain in the Settlement Class. Class Members are also provided with a full and fair opportunity to consider the proposed Settlement and to respond and/or appear in Court.

Further, Plaintiffs intend to use a notice program—consisting of mailed, published, and online notice—similar to the program previously approved and successfully used for the Barclays, HSBC, and Deutsche Bank settlements. *See* ECF No. 364. The notice program previously resulted in the submission of thousands of claims reflecting millions of lines of transactions for trillions of

Euros in notional value.[11] By using a similar notice program, claimants from the last settlements will receive notice of their ability to enhance their recovery and collect from Citi and JPMorgan. Claimants in the Barclays, HSBC and Deutsche Bank settlements will not have to file a new Proof of Claim and Release if they wish to participate in the Settlement.

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). The direct-mailing notice component of the notice program will involve sending the Mailed Notice (December 2018 Joint Decl. Ex. 3) and the Proof of Claim and Release form (*id.* at Ex. 5) via First-Class Mail, postage prepaid to potential Settlement Class Members including, among others: (i) large traders of Chicago Mercantile Exchange ("CME") Euro currency futures contracts; (ii) Euro currency traders; (iii) pension fund managers and derivatives traders; (iv) foreign exchange and interest rate derivatives traders and dealers; (v) International Swaps and Derivatives Association ("ISDA") members; (vi) direct counterparties of Citi, JPMorgan, Barclays, HSBC, and Deutsche Bank in OTC Euribor Products; (vii) counterparties of U.S. subsidiaries of the Dismissed Defendants; and (viii) the largest banks and brokerage houses.

By mailing individual notice to these various persons and entities, notice is reasonably calculated to reach all Settlement Class Members that traded Euribor Products. This list is several times larger than the anticipated number of OTC Euribor Products market participants and should effectively reach a large percentage of the Class. The database of these recipients was compiled in connection with the Barclays, HSBC and Deutsche Bank settlements, and will be updated to capture any address changes to the extent possible.

[11] These transactions are presently being reviewed by the Claims Administrator for completeness, accuracy, and legitimacy, and to the extent the Claims Administrator has any questions, it will issue letters to claimant seeking additional materials to support the claim.

The Claims Administrator also will publish the Publication Notice (December 2018 Joint Decl. Ex. 4) in The Wall Street Journal, Investor's Business Daily, The Financial Times, Barron's, Stocks & Commodities, Global Capital, Hedge Fund Alert, Grant's Interest Rate Observer, and on the following websites: (i) Zacks.com; (ii) traders.com; (iii) HFAlert.com; (iv) FOW.com; and (v) GlobalCapital.com. In addition, the Claims Administrator will publish the summary notice in e-newsletters from Futures & Options World, Stocks & Commodities, Zacks.com and Barchart.com, as well as in email "blasts" to subscribers of Stocks & Commodities and Zacks.com. *See, e.g.*, *In re Sony Corp. SXRD Rear Projection TV Mktg.*, No. 09-MD-2102, 2010 WL 1993817, at *5 (S.D.N.Y. May 19, 2010) (approving notice by direct mail and email to class members). The Claims Administrator will disseminate a news release to announce the Settlement via PR Newswire's US1 Newsline distribution list, which reaches the news desks of approximately 10,000 newsrooms, including print, broadcast, and digital websites across the United States. Any Settlement Class Members that do not receive Notice via direct mail will likely receive Notice through the foregoing publications or word of mouth.

The existing settlement Website, www.EuriborSettlement.com, will continue to serve as a source to obtain necessary information regarding the Settlement. Settlement Class Members can find: (i) a blank Proof of Claim and Release form for the Settlement; (ii) the full and summary notices; (iii) the proposed plan of allocation; (iv) the settlement agreement between Plaintiffs, Citi and JPMorgan; and (v) key pleadings and Court orders. The Claims Administrator will continue operating a toll-free telephone number to answer questions and facilitate the filing of claims.

B. The Distribution Plan.

This Court has previously found Plaintiffs' Distribution Plan is fair and adequate. ECF No. 392; *see Maley v. Del. Global Technologies Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) ("To warrant approval, the plan of allocation must also meet the standards by which the settlement was

scrutinized -- namely, it must be fair and adequate."). As previously described (ECF No. 392), Plaintiffs created an "artificiality matrix" for Euribor, which is posted on the Settlement Website. The [Proposed] Plan of Distribution includes (1) a pro rata payment, subject to a guaranteed minimum, to each Authorized Claimant (referred to as "Qualified Claimant" in the [Proposed] Plan of Distribution) from ten percent (10%) of the Net Settlement Fund relating to their Total Adjusted Volume of transactions in specified transactions; and 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 the Euribor artificiality. ECF No. 382-1 at C-D. This methodology of allocating settlement proceeds based on the amounts of provable artificial impact has been approved as a fair, reasonable, and adequate method of allocating settlement funds not only by this Court but repeatedly by courts in other antitrust and CEA manipulation class action settlements as well. *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). This method will again be used to determine the amount to be paid to each Class Member.

CONCLUSION

Plaintiffs respectfully request that the Court enter the accompanying proposed order that, among other things: (1) preliminarily approves Plaintiffs' proposed Settlement, subject to later, final approval; (2) conditionally certifies a Settlement Class on the claims against Citi and JPMorgan; (3) appoints Lowey Dannenberg and Lovell Stewart as Class Counsel; (4) appoints Amalgamated Bank as Escrow Agent for purposes of the Settlement Fund; (5) appoints A.B. Data, Ltd. as the Claims Administrator under the Settlement with Citi and JPMorgan; (6) approves Plaintiffs' proposed forms of Class Notice and Notice plan; (7) approves the proposed Distribution Plan; and (8) sets a schedule leading to the Court's consideration of final approval of the Settlement.

Dated: December 14, 2018
White Plains, New York

LOWEY DANNENBERG, P.C.

By: /s/Vincent Briganti
Vincent Briganti
Geoffrey M. Horn
Peter D. St. Phillip
44 South Broadway, Ste. 1100
White Plains, New York 10601
Tel.: 914-997-0500
vbriganti@lowey.com
ghorn@lowey.com
pstphillip@lowey.com

LOVELL STEWART HALEBIAN JACOBSON LLP

By: /s/Christopher Lovell
Christopher Lovell
Gary S. Jacobson
61 Broadway, Suite 501
New York, NY 10006
Tel.: 212-608-1900
clovell@lshllp.com
gsjacobson@lshllp.com

Interim Lead Counsel

Joseph J. Tabacco, Jr.
Todd A. Seaver
BERMAN TABACCO
44 Montgomery Street, Ste. 650
San Francisco, CA 94104
Tel.: 415-433-3200
Fax: 415-433-6282

Patrick T. Egan
BERMAN TABACCO
One Liberty Square
Boston, MA 02109
Tele.: 617-542-8300
Fax: 617-542-1194

Brian P. Murray
Lee Albert (pro hac vice to be filed)
GLANCY PRONGAY & MURRAY LLP
122 East 42nd Street, Suite 2920
New York, NY 10168
Tel.: 212-682-5340
Fax: 212-884-0988

David E. Kovel
KIRBY MCINERNEY LLP
825 Third Avenue
New York, NY 10022
Tel.: 212-371-6600
Fax: 212-751-2540

Additional Counsel for Plaintiffs