

**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)

ECF Case

DECLARATION OF VINCENT BRIGANTI, ESQ.

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

1. I am a shareholder with the law firm Lowey Dannenberg Cohen & Hart, P.C. (“Lowey Dannenberg”). I submit this Declaration in connection with the pending Motion for Preliminary Approval of the Class Action Settlement with Defendants HSBC Holdings plc, HSBC Bank plc, and their subsidiaries and affiliates (collectively, “HSBC”).

2. A true and correct copy of the Settlement Agreement between Plaintiffs¹ and the HSBC Defendants, dated December 27, 2016, is attached as Exhibit 1.

3. **Experience.** Interim Lead Counsel,² Lowey Dannenberg and Lovell Stewart Halebian Jacobson LLP (“Lovell Stewart”), are experienced with antitrust and commodity futures claims. *See* Lowey Dannenberg Resume, annexed hereto as Exhibit 2; *see also* Lovell Stewart Resume annexed as Exhibit 1 to the Declaration of Christopher Lovell, Esq. (“Lovell Decl.”).

4. **Well-Informed.** Before reaching the HSBC Settlement, Interim Lead Counsel was well-informed regarding the strengths and weaknesses of Plaintiffs’ claims. Lowey Dannenberg and Lovell Stewart extensively reviewed and analyzed the following documents and information: (i) settlement cooperation provided by Defendants Barclays plc, Barclays Bank plc, and Barclays Capital Inc. (collectively, “Barclays”); (ii) government settlements, including plea, non-prosecution, and deferred prosecution agreements; (iii) publicly-available information relating to the conduct alleged in Plaintiffs’ complaints; (iv) expert and industry research regarding Euribor and Euribor Products; and (v) proffers from Barclays’ counsel pursuant to the Antitrust Criminal Penalty Enhancement and Reform Act of 2004, Pub. L. No. 108-237, tit. II, 118 Stat. 661 (2004) (“ACPERA”). In

¹ “Plaintiffs” are 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.

² Unless otherwise noted, capitalized terms referenced herein shall have the meaning set forth in the HSBC Settlement Agreement.

addition, Lowey Dannenberg and Lovell Stewart: (a) conducted an extensive investigation into the facts and legal issues in this Action; (b) engaged in extensive negotiations with HSBC; and (c) took many other steps to research and analyze the strengths and weaknesses of the claims, including ongoing consultations with a leading commodity manipulation consulting expert.

5. **Procedural History.** The procedural history of this Action detailed in my prior declaration in support of preliminary approval of the settlement with Barclays is hereby incorporated by reference. *See* ECF No. 220 ¶¶ 2-6. Since my prior declaration, the following events have occurred in the Action:

6. On October 14, 2015, Defendants moved to dismiss the Fourth Amended Complaint under FED. R. CIV. P. 12(b)(6) and 12(b)(2), filing two separate memoranda of law and fifteen declarations challenging Plaintiffs' claims. ECF Nos. 197-214.

7. On December 4, 2015, Plaintiffs filed their memoranda of law in opposition to Defendants' motion to dismiss. ECF Nos. 228-30.

8. On December 15, 2015, the Court issued an Order preliminarily approving the proposed settlement with Barclays and conditionally certifying a settlement class for the claims against Barclays. ECF No. 234.

9. On December 23, 2015, Defendants filed their reply memoranda of law and two declarations in support of their motion to dismiss. ECF Nos. 236-40.

10. **Arm's-Length.** Negotiations leading to the HSBC Settlement were entirely non-collusive and strictly arm's-length. During the course of negotiations, Plaintiffs had the benefit of developing information from various sources, including the Barclays' settlement cooperation, government settlements and orders, other public accounts of manipulation involving Euribor, Interim Lead Counsel's investigation into Plaintiffs' claims, industry and expert analysis, and information shared by HSBC during the settlement negotiations. I was involved in all aspects of the

settlement negotiations on behalf of Plaintiffs.

11. **HSBC Settlement Negotiations.** The negotiations with HSBC took place over fourteen months, starting approximately in October 2015 and continuing until the Settlement Agreement was executed on December 27, 2016.

12. Following initial phone calls with HSBC's counsel in October 2015, Interim Lead Counsel and HSBC met in person on October 21, 2015. At the October 21 meeting, Lowey Dannenberg and Lovell Stewart presented to HSBC's counsel and a representative for HSBC what the firms perceived to be the strengths and weaknesses of the litigation as well as HSBC's litigation exposure. The October 21 meeting did not result in a settlement.

13. Over the next several months, Interim Lead Counsel and counsel for HSBC had numerous phone calls and continued to present to each other the perceived strengths and weaknesses of the litigation, but the parties reached an impasse in their settlement negotiations.

14. On May 2, 2016, Interim Lead Counsel, the general counsel from the California State Teachers' Retirement System, and a representative of HSBC, together with HSBC's counsel, participated in an all-day mediation session before Gary McGowan at the New York offices of HSBC's counsel, Locke Lord LLP. At the end of the May 2 mediation, Plaintiffs and HSBC reached an impasse. The Mediator then made a Mediator's proposal, which was ultimately accepted by Plaintiffs on May 2 and HSBC on May 3. The parties immediately began drafting a Memorandum of Understanding ("MOU").

15. On May 4, 2016, counsel for HSBC, Lowey Dannenberg, and Lovell Stewart signed a MOU. The MOU set forth the terms on which the Settling Parties agreed, subject to the preparation of a full Settlement Agreement, to settle Plaintiffs' claims against HSBC. At the time the MOU was executed, Interim Lead Counsel was well-informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses asserted herein.

16. On the next day, the Settling Parties reported to the Court and Defendants that a Settlement had been reached. *See* Ltr. From Vincent Briganti to Hon. P. Kevin Castel (May 5, 2016). Following months of arm's-length negotiations, consisting of in-person meetings and presentations to HSBC, teleconferences, and exchanges of draft settlement terms, Interim Lead Counsel, on behalf of Plaintiffs, and HSBC executed a Settlement Agreement on December 27, 2016.

17. The HSBC Settlement was not the product of collusion. Before any financial numbers were discussed in the settlement negotiations and before any demand or counter-offer was ever made, I was well informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the claims against HSBC.

18. The HSBC Settlement involves a structure and terms that are common in class action settlements in this District.

19. For example, the HSBC Settlement provides Plaintiffs with the right to terminate the Settlement if Interim Lead Counsel determines that the confirmatory discovery that HSBC produces does not support HSBC's representation that its affiliate's alleged manipulation of Euribor was limited to the March 2007 IMM date (March 19, 2007).

20. The consideration that HSBC has agreed to pay is within the range of that which may be found to be fair, reasonable, and adequate at final approval.

21. Lowey Dannenberg and Lovell Stewart have strong reason to believe that there are at least hundreds of geographically dispersed persons and entities that fall within the Settlement Class definition. This belief is based on data from the Bank of International Settlements which shows that trillions of dollars of Euribor-based interest rate swaps and forward rate agreements were traded within the United States from 2005 through 2011, as well as settlement cooperation produced to date by Barclays.

22. Lowey Dannenberg and Lovell Stewart have diligently represented the interests of

the Class in this litigation. The firms investigated and brought this action. Interim Lead Counsel preserved the statute of limitations. Lowey Dannenberg and Lovell Stewart negotiated with HSBC. The firms performed all of the necessary work to prosecute this litigation for the past 48 months. Lowey Dannenberg and Lovell Stewart will continue to zealously represent the Class to prosecute the Class's claims against the Co-Defendants.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 11, 2017
White Plains, New York



Vincent Briganti

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 HSBC DEFENDANTS**

This Settlement Agreement is made and entered into this 27th day of December, 2016, by and between HSBC Holdings plc, and HSBC Bank plc (collectively, “HSBC”) 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 (collectively, “Plaintiffs”), for themselves and on behalf of each Settlement Class Member¹ 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 HSBC 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 HSBC’s conduct;

WHEREAS, Plaintiffs, for themselves and on behalf of each Settlement Class Member, and HSBC 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 HSBC, or (iii) the truth of any of the claims or allegations alleged in the Action;

WHEREAS, HSBC agrees to cooperate with Plaintiffs’ Counsel and Plaintiffs as set forth in this Agreement;

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

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

¹ All capitalized terms shall have the meaning set forth herein.

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, HSBC 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 HSBC, by and through their respective counsel or attorneys of record, that, subject to the approval of the Court, the Action as against HSBC 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. “Co-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, 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 their direct and indirect subsidiaries and direct and indirect affiliates.

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

1.9. “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.

1.10. “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 ¶ 33, have occurred.

1.12. “Escrow Agent” means the entity jointly designated by Plaintiffs’ Counsel and HSBC, and any successor agent, to maintain the Settlement Fund.

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 any court order, including, without limitation, the Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. An order becomes “Final” when: (i) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (ii) an appeal has been filed and either (a) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (b) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. 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 ¶ 29, 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. “HSBC” means HSBC Holdings plc and/or HSBC Bank plc.

1.19. “Incentive Award” means any award by the Court to Plaintiffs as described in ¶¶ 16, 29.

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

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

1.22. “Mediator” means Gary McGowan 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 HSBC’s Counsel.

1.23. “Net Settlement Fund” means the Settlement Fund less the payments set forth in ¶¶ 18.1 to 18.7.

1.24. “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.

1.25. “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 purposes at the same time as this Agreement.

1.26. “Person(s)” means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, municipality, state, state agency, any entity that is a creature of any state, any government or any political subdivision, authority, office, bureau or agency of any government, and any business or legal entity, and any spouses, heirs, predecessors, successors, representatives or assignees of any of the foregoing.

1.27. “Plaintiffs” means 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.

1.28. “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.

1.29. “Proof of Claim and Release” means the form to be sent to Class Members, upon further order(s) of 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 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 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 or common law). The following claims shall not be released by this Settlement: (i) any claims against former HSBC employees arising from those former employees’ conduct that occurred while not employed by HSBC or not otherwise acting within the scope of employment or agency of HSBC; (ii) any claims against the named Defendants in this Action other than HSBC; or (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. 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 HSBC, their predecessors, successors and assigns, their direct and indirect parents, direct and indirect subsidiaries and direct and indirect affiliates, and their respective current and former officers, directors, employees, managers, members, partners, agents (in their capacity as agents of HSBC or its affiliates or subsidiaries), shareholders (in their capacity as shareholders of HSBC or its affiliates or subsidiaries), attorneys, or legal representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing. “Affiliates” in this provision means entities controlling, controlled by, or under common control with a Releasee. For the avoidance of doubt, HSBC France is 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, their current and former officers, directors, employees, agents, fiduciaries, beneficiaries or legal representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing, and any other Person legally entitled to bring Released Claims on their behalf or by reason of their relationship to any of the foregoing Persons. 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 Releaser. For the avoidance of doubt, the Releasers include all persons entitled to bring claims on behalf of Settlement Class Members relating to their transactions in Euribor Products.

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

1.34. “Settlement Amount” means forty-five million dollars (\$45,000,000.00) of which up to five-hundred thousand 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. “Settling Party” means HSBC or any Plaintiff (for itself 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 an order (the “Preliminary Approval Order”), the form and substance of which shall be agreed upon by the Settling Parties and submitted to the Court, requesting, *inter alia*, preliminary approval of the Settlement, including certification of the Class for purposes of the Settlement only. In addition, Plaintiffs’ Counsel shall file a motion to stay all proceedings in the Action against HSBC until the Court renders a final decision on approval of the Settlement. Such a motion shall be filed immediately upon execution of this Agreement.

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.

If the Settlement as described herein is finally 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 HSBC reserves all rights to contest that the Action should be certified as a class 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 hearing scheduled by the Court to consider the fairness, adequacy and reasonableness of the proposed Settlement ("Settlement Hearing"). The Notice may be sent solely for this Settlement or combined with notice of other settlements 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 ¶ 29), 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 HSBC before its submission to the Court for approval thereof. HSBC 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 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. HSBC 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 HSBC 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 HSBC 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;

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 HSBC; 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 ¶ 29). As set forth in ¶ 30, a 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 HSBC.

C. SETTLEMENT FUND

9. **Payments made by HSBC.** HSBC shall pay by wire transfer \$45,000,000 into the Settlement Fund within fourteen (14) days of the entry of an order by the Court preliminarily approving the settlement with HSBC or directing that notice of such settlement be provided to Class Members and establishing the date of a hearing on final approval. All interest earned by 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 ¶ 36, the Settlement Amount shall not be subject to reduction, and, upon the occurrence of the Effective Date, no funds may be returned to HSBC 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 unless and until the Effective Date, except that, upon written notice to the Escrow Agent by Plaintiffs' Counsel with a copy to HSBC: (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 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 ¶ 29, shall be payable from to the Settlement Fund upon award, to the extent permitted pursuant to ¶ 30. 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 HSBC within ten (10) business days after receiving notice.

12. **No Additional Payments by HSBC.** Under no circumstances will HSBC be required to pay more than the Settlement Amount. For purposes of clarification, and as provided in ¶ 18, the payment of any Fee and Expense Award (as defined in ¶ 29), 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, the Judgment is entered and becomes Final, no portion of the Settlement Fund will be returned to HSBC, 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 HSBC 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, HSBC 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 HSBC 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 HSBC 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, 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, 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/was legally entitled to any kind of contribution or indemnification from HSBC 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 HSBC. 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.** The release set forth in ¶ 14, above, 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, above, 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 Releasors 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 Releasors 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. HSBC 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, HSBC 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 HSBC may have to enforce this Agreement, or any claim or right HSBC 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 HSBC, 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 Plaintiffs' 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;

18.6. To pay any Incentive Award; 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, or 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 HSBC. 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 Releasors 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. HSBC's COOPERATION

22. **Stay of Discovery Except As Provided Herein.** The Settling Parties agree to a stay of all discovery as to HSBC, except as provided in ¶¶ 23 to 27. 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 the Settling Parties, in their sole discretion within thirty (30) calendar days from the date of the mailing of such ruling to such 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.

23. **HSBC's Cooperation.** HSBC shall provide reasonable cooperation in the Action, including discovery cooperation, requested by Plaintiffs' Counsel, to benefit the Settlement Class, as provided by ¶¶ 23 to 27 herein. All cooperation shall be coordinated in such a manner so that all unnecessary duplication and expense is avoided.

23.1. HSBC's cooperation obligations shall apply only to Releasers who act with, by or through Plaintiffs' Counsel pursuant to this Agreement.

23.2. Notwithstanding any other provision in this Agreement, HSBC shall have no obligation to produce any document or provide any information that is either: (a) privileged under the attorney client, work product, joint defense or other applicable privilege; (b) restricted from disclosure under any applicable domestic or foreign data privacy, bank secrecy, or other law; or (c) consists of communications with any domestic or foreign regulator relating to a governmental investigation. None of the cooperation provisions are intended to, nor do they, waive any such privileges or protections. HSBC agrees that its counsel will meet with Plaintiffs' Counsel as is reasonably necessary to discuss any applicable privilege or protection. Any disputes regarding privilege that cannot be resolved amongst the parties shall be reserved for resolution by the Court. At a reasonable time to be negotiated in good faith, HSBC agrees to provide Plaintiffs with (a) privilege logs for any relevant documents reasonably requested by Plaintiffs as cooperation discovery in accordance with this Settlement Agreement that HSBC withholds on the basis of any privilege, doctrine, immunity or regulatory objection, and (b) any existing privilege logs for documents that HSBC withheld from the U.S. government as part of its investigation into HSBC's alleged manipulation of Euribor and Euribor Products. The 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 HSBC's privilege logs. To the extent the parties cannot resolve any such disputes, they shall be reserved for resolution by the Court.

23.3. If any document protected by the attorney-client privilege, attorney work-product doctrine, the common interest doctrine, the joint defense privilege and/or any other applicable privilege or protection is accidentally or inadvertently produced, the document shall promptly be returned to HSBC's counsel, and its production shall in no way be construed to have waived any privilege or protection attached to such document or information.

23.4. Notwithstanding any other provision of this Agreement, in the event that HSBC believes that Plaintiffs' Counsel has unreasonably requested cooperation, its counsel and Plaintiffs' Counsel agree to meet and confer with each other regarding such disagreement and seek resolution from the Court if necessary. If Court resolution is sought, the disputed aspect of cooperation shall be held in abeyance until such resolution by the Court, and such abeyance shall not constitute a breach of this Agreement.

23.5. Plaintiffs' Counsel agree to use any and all of the information and documents obtained from HSBC only for the purpose of the Action, and agree to be bound by the terms of the Stipulation and Protective Order to be negotiated by HSBC and Interim Lead Counsel.

23.6. Plaintiffs' Counsel agree, unless ordered by a court or upon agreement by HSBC, that under no circumstances shall Plaintiffs' Counsel produce documents obtained from HSBC to any Person, including, without limitation, counsel for any other plaintiff in the Action or any Class Member who excludes itself from the Class for purposes of the Settlement.

24. **Document Production.** Subject to the restrictions of paragraph 23 above, HSBC will provide cooperation to Plaintiffs by producing to Interim Lead Counsel the following categories of documents in their native format, with metadata intact (where such metadata was either produced in government productions or is reasonably available for documents not yet produced in any government production), to the extent that such documents are reasonably available to HSBC. Unless otherwise indicated, the time period of the documents subject to production shall be June 1, 2005 – March 31, 2011.

24.1. All underlying documents and data produced by HSBC to the DOJ, CFTC, FSA, European Commission or any other governmental regulatory authority in connection with such regulator's investigation of Euribor-related conduct;

24.2. Communications between HSBC employees and between HSBC employees and employees of other financial institutions, including Euribor panel banks and inter-dealer brokers or other entities, concerning (a) possible requests to or among other panel banks for Euribor submissions to be made at a certain level or in a certain direction; (b) 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 HSBC employees.

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

24.4. To the extent, if any, not included in the above productions, any other documents relating to any attempts to manipulate Euribor;

24.5. Trade data pertaining to HSBC's transactions in Euro-denominated inter-bank money market instruments, including loans, deposits and certificates of deposit. Such trade data shall include reasonably available information for the years 2005 through 2011 (HSBC will produce transaction information for 2004 to the extent it is reasonably available to HSBC);

24.6. Trade data pertaining to HSBC's transactions in Euribor Products. HSBC will produce such trade data for the years 2004 through 2011. HSBC will anonymize the counterparty identifying information using a unique code for each counterparty but will disclose the counterparty identifying information for any counterparty who consents to such disclosure. Additionally, for any transaction with an affiliate of HSBC, HSBC will specifically identify that affiliated entity unless prohibited by applicable law.

24.7. Documents quoted in Plaintiffs' Fourth Amended Class Action Complaint that are in HSBC's possession, custody or control;

24.8. Documents reflecting HSBC's submissions to the Federal Reserve Bank of New York, Bank of International Settlement, 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 permitted by relevant authorities and reasonably available, for the years 2004, 2007 and 2010;

24.9. 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 HSBC with the EBF and any other Euribor panel banks; and

24.10. Such further documents which Plaintiffs may reasonably request that are relevant to the claims or defenses in this Action.

25. **Further Document Requests.** Pursuant to ¶ 24.10, Plaintiffs shall have the right to make requests to HSBC, without subpoena, for documents, including electronically stored information ("ESI"), relating to Euribor, and HSBC shall cooperate (by, among other ways, allowing Plaintiffs to provide search terms for electronic searches of specific HSBC custodians' files), and produce reasonably requested and available documents and ESI related to Euribor for the period June 1, 2005 through and including March 31, 2011. This provision shall be terminated if the Plaintiffs' claims against all other defendants have been dismissed in their entirety and the dismissal has been upheld after the exhaustion of all avenues of further review on appeal. If HSBC declines to produce documents in response to a request by Plaintiffs and the parties cannot resolve the dispute through discussions of counsel, Plaintiffs shall have the right to seek production of documents from HSBC by making a motion in the S.D.N.Y., unless Plaintiffs' claims against all other defendants have been dismissed in their entirety and the dismissal has been upheld after the exhaustion of all avenues of further review on appeal. Plaintiffs and HSBC agree that the standards for production set forth in Rule 34 of the Federal Rules of Civil Procedure and the terms of this Agreement shall apply to any request or motion made pursuant to ¶¶ 23 and 24. Plaintiffs shall be prohibited from making any requests to HSBC for documents pursuant to ¶¶ 23 and 24 and after the passage of four (4) years from the Effective Date of the Settlement Agreement.

26. **Other Information.** HSBC will cooperate to provide reasonably available information necessary for Plaintiffs to authenticate or otherwise make usable at trial the aforementioned documents or other documents as Plaintiffs may request pursuant to ¶¶ 23 and 24 of this Agreement. HSBC also will provide Plaintiffs with proffers of fact regarding conduct

known to HSBC. HSBC also will provide Plaintiffs with a description of the data fields included in the trade data referenced in ¶¶ 24.5 to 24.6.

27. **Witnesses.** HSBC recognizes that provision of deposition and trial witnesses is an important part of the cooperation and consideration, and the witness testimony may be important in proving Plaintiffs' claims. HSBC shall cooperate to provide reasonable access to witnesses for purposes of the Action to the extent HSBC has control over those witnesses, and to the extent permitted by relevant authorities.

28. **Plaintiffs' Right to Terminate.** HSBC shall provide Plaintiffs with discovery appropriate to confirm HSBC's representations concerning its affiliate's alleged manipulation of the March 2007 IMM date (March 19, 2007). HSBC shall commence providing this discovery within 60 days of execution of this Settlement Agreement. If, after reviewing the documents provided by HSBC under paragraphs 24.1-24.7 and this paragraph 28, Interim Class Counsel reasonably determines that such documents (along with other discovery or information available to Interim Class Counsel) do not support HSBC's representation, Plaintiffs shall have the right to terminate this Agreement within 90 days of receiving all of the relevant discovery materials from HSBC, including any documents provided by HSBC France pursuant to authorization by the Ministère de la Justice of France of the Settling Parties' request for international judicial assistance pursuant to Chapters I and II of the Hague Convention of 18 March 1970 on the Taking of Evidence in Civil and Commercial Matters. Plaintiffs and Interim Class Counsel agree not to use any facts currently known to them or currently available to them from public information or Barclays' proffer as a basis for terminating this Agreement, provided that if the new discovery combines with information already known to Interim Class Counsel to create a materially different impression of the information already known to Interim Class Counsel, then that does not preclude the use of the already known information.

F. ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

29. **Fee and Expense Application.** HSBC 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 for an award of attorneys' fees or reimbursement of expenses 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, which amount constitutes an Incentive Award.

30. **Payment of Fee and Expense Award.** Upon the Court's approval of an award of attorneys' fees, costs and expenses, Interim Lead Counsel, on behalf of all Plaintiffs' Counsel, may immediately withdraw up to thirty percent (30%) of any such approved amount. The remainder may be withdrawn from the Settlement Fund only upon occurrence of the Effective Date. Any Plaintiffs' Counsel seeking to draw down their share of the attorneys' fees and expenses prior to the occurrence of the Effective Date unconditionally guarantee the repayment of the amount drawn down. If an event occurs that will cause Settlement Agreement not to become final pursuant to ¶ 36, or if Plaintiffs or HSBC terminates the Settlement Agreement

pursuant to ¶ 28, ¶ 37 or ¶ 38, then within ten (10) business days after receiving written notice of such an event from counsel for HSBC or from a court of appropriate jurisdiction, Plaintiffs' Counsel shall refund to the Settlement Fund any attorneys' fees, costs and expenses that were withdrawn plus interest thereon at the same rate at which interest is accruing for the Settlement Fund. 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 previously in paragraph 10 and 11.

31. **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.

32. **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

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

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

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

33.3. The Judgment has become Final.

34. **Occurrence of Effective Date.** Upon the occurrence of all of the events referenced in ¶ 33, above, any and all remaining interest or right of HSBC 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.

35. **Failure of Effective Date to Occur.** If all of the conditions specified in ¶ 33, above, are not satisfied, then this Agreement shall be terminated, subject to and in accordance

with ¶ 39, unless the Settling Parties mutually agree in writing to continue with it for a specified period of time.

36. Failure to Enter Proposed Preliminary Approval Order, Final Approval Order or Judgment. If the Court does not enter the Preliminary Approval Order, the Final Approval Order or the Judgment, or if this 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, HSBC 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 HSBC and a full release of the Releasees as set forth in ¶¶ 14 and 15 of this Agreement.

37. Termination by HSBC. Upon application to the Mediator, HSBC may terminate this Agreement and withdraw from the settlement if the Mediator determines that all Persons that excluded themselves from the Settlement Class would likely have been eligible to receive collectively (but for their exclusion) a material part of the potential distributions from the Settlement Fund. Following the deadline approved by the Court for all Persons to exclude themselves from the Class, Plaintiffs' Counsel shall provide a list to HSBC of all Persons that have requested exclusion from the Class. Any application to terminate under this paragraph must be made by HSBC in writing within fifteen (15) days following the receipt by HSBC from Plaintiffs' Counsel of the list of all Persons that have requested to exclude themselves from the Class.

38. Termination by Plaintiffs. In addition to Plaintiffs' right to terminate under ¶ 28, 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 HSBC 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 HSBC'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 HSBC's counsel within fifteen (15) business days after HSBC fails to comply with ¶ 9 and the time to cure such non-compliance has passed.

39. Effect of Termination. Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Agreement should terminate or be cancelled, or otherwise fail to become effective for any reason, including, without limitation, in the event that HSBC exercises its right pursuant to ¶ 37, Plaintiffs exercise their rights pursuant to ¶ 28 or ¶ 38,

or the Settlement as described herein is not finally approved by the Court or the Judgment is reversed or vacated following any appeal taken therefrom, or pursuant to ¶ 36, above, then:

39.1. Within ten (10) business days after written notification of such event is sent by counsel for HSBC or Plaintiffs' Counsel to the Escrow Agent, the Settlement Fund, including the Settlement Amount and all interest earned in the Settlement Fund and all payments disbursed, including all expenses, costs, excluding any Notice and Administrative Costs that have either already been properly disbursed or are due and owing pursuant to ¶¶ 5 to 6, above, 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 HSBC.

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

39.3. 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;

39.4. The terms and provisions of this Agreement, with the exception of ¶¶ 11, 12, 33 to 41, and 44 to 45 (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

39.5. 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

40. **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.

41. **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 in connection with ¶¶ 23 to 27, above, as necessary to continue to prosecute the Action. 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, support 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 similar defense or counterclaim. The limitations described in this ¶ 41 apply whether or not the Court enters the Preliminary Approval Order, the Final Approval Order or the Judgment.

I. MISCELLANEOUS PROVISIONS

42. **HSBC's Right to Communicate.** Plaintiffs' Counsel acknowledges and agrees that HSBC 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 HSBC 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 HSBC or who seek to become clients of HSBC; and (c) communications that might be necessary to conduct HSBC's business. However, HSBC 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.

43. **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.

44. **Impact of Any Other Settlement.** If any Other Settlement (as defined in paragraph 1.25) is reached, the "Class" definition in paragraph 4, as well the terms contained within the "Release and Covenant Not to Sue," and "Termination" provision of paragraph 37 herein shall be no less favorable to HSBC than the corresponding term or provision applicable to any Other Settlement. If HSBC believes one or more terms or provisions is less favorable than a corresponding term or provision in the Other Settlement, HSBC will provide written notice of such belief to Interim Lead Counsel within ten (10) business days of the filing of the Other Settlement with the Court. Following receipt of the written notice, HSBC and Interim Lead Counsel will confer as to whether the relevant term or provision in this Settlement Agreement is less favorable as compared to the Other Settlement. If there is agreement between HSBC and Interim Lead Counsel that the provision at issue is less favorable, HSBC and Interim Lead Counsel will execute an amendment to this Agreement, adopting and incorporating the provision as drafted in the Other Settlement into this Agreement, and will submit the amendment to the Court for its approval. If HSBC and Interim Lead Counsel, with the assistance of the Mediator if necessary, are unable to reach an agreement on the relevant provision, HSBC or Interim Lead Counsel may move the Court to resolve the dispute.

45. **Consent to Jurisdiction.** HSBC, 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, HSBC 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.

46. **Resolution of Disputes; Retention of Exclusive Jurisdiction.** Any disputes between or among HSBC 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.

47. **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.

48. **Authorization to Enter Settlement Agreement.** The undersigned representatives of HSBC represent that they are fully authorized to enter into and to execute this Agreement on behalf of HSBC. 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.

49. **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 HSBC, shall be addressed to its attorneys at the address set forth on the signature pages hereof or such other addresses as Plaintiffs' Counsel or HSBC may designate, from time to time, by giving notice to all parties hereto in the manner described in this paragraph.

50. **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.

51. **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.

52. **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.

53. **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.

54. **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.


55. **Integrated Agreement.** This Agreement constitutes the entire agreement between the Settling Parties and no representations, warranties or inducements have been made to any Settling Party concerning this Agreement other than the representations, warranties and covenants contained and memorialized herein.

[Continued from the previous page]

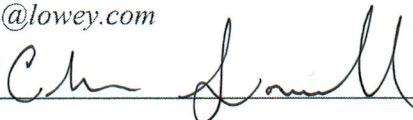
IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Agreement as of the date set forth below.

Dated: December 27, 2016

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

By: 

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Dated: 12/27/16

*Counsel for Defendants HSBC Holdings plc and
HSBC Bank plc*

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EXHIBIT 2



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RESUME

Since the 1960s, Lowey Dannenberg Cohen & Hart, P.C. (“Lowey Dannenberg”) has represented sophisticated clients in complex litigation involving federal securities, commodities and antitrust violations, healthcare cost recovery actions, and shareholder and board actions.

Lowey Dannenberg has recovered hundreds of millions of dollars for these clients, which include Fortune 100 companies such as Aetna, Inc., Anthem, Inc., CIGNA, Humana, and Verizon, Inc.; some of the nation’s largest pension funds, *e.g.*, the California State Teachers’ Retirement System, the New York State Common Retirement Fund, and the New York City Pension Funds; and sophisticated institutional investors, including Federated Investors, Inc., who has more than \$355 billion in assets under management.

For its more than ten years of service to Fortune 100 health insurers in opt-out litigation involving state and federal fraud claims, Aetna and Humana publicly lauded Lowey Dannenberg their “Go To” outside counsel in a 2013 and 2014 survey published in Corporate Counsel Magazine.

LOWEY DANNENBERG’S COMMODITY PRACTICE

LANDMARK COMMODITY CLASS ACTION RECOVERIES

Lowey Dannenberg successfully prosecuted, as court appointed lead or co-lead counsel or individual plaintiff’s counsel, the most important and complex commodity manipulation actions since the enactment of the Commodity Exchange Act (“CEA”).



Sumitomo

In *In re Sumitomo Copper Litigation* (“*Sumitomo*”), Master File No. 96 CV 4854 (S.D.N.Y.) (Pollack, J.), Lowey Dannenberg was appointed as one of three executive committee members. Stipulation and Pretrial Order No. 1, dated October 28, 1996, at ¶ 13. Plaintiffs’ counsel’s efforts in *Sumitomo* resulted in a settlement on behalf of the certified class of more than \$149 million, which at the time was, **the largest** class action recovery in the history of the CEA. *In re Sumitomo Copper Litig.*, 182 F.R.D. 85, 95 (S.D.N.Y. 1998). One of the most able and experienced United States District Court judges in the history of the federal judiciary, the Honorable Milton Pollack, took note of counsel’s efforts in *Sumitomo* in various respects, including the following:

The unprecedented effort of Counsel exhibited in this case led to their successful settlement efforts and its vast results. Settlement posed a saga in and of itself and required enormous time, skill and persistence. Much of that phase of the case came within the direct knowledge and appreciation of the Court itself. Suffice it to say, the Plaintiffs’ counsel did not have an easy path and their services in this regard are best measured in the enormous recoveries that were achieved under trying circumstances in the face of natural, virtually overwhelming, resistance.

In re Sumitomo Copper Litig., 74 F. Supp. 2d 393, 396 (S.D.N.Y. 1999). What Judge Pollack found to be “the skill and persistence” of counsel in *Sumitomo* will be brought to bear to represent the Class here as well.

In re Natural Gas

Lowey Dannenberg served as co-lead counsel in *In re Natural Gas Commodity Litigation*, Case No. 03 CV 6186 (VM) (S.D.N.Y.) (“*In re Natural Gas*”), which involved manipulation by more than 20 large energy companies of the price of natural gas futures



contracts traded on the NYMEX. Plaintiffs alleged that defendants, including El Paso, Duke, Reliant, and AEP Energy Services, Inc., manipulated the prices of NYMEX natural gas futures contracts by making false reports of the price and volume of their trades to publishers of natural gas price indices across the United States, including Platts. Lowey Dannenberg won significant victories throughout the litigation including:

- defeating defendants' motions to dismiss (*In re Natural Gas*, 337 F. Supp. 2d 498 (S.D.N.Y. 2004));
- prevailing on a motion to enforce subpoenas issued to two publishers of natural gas price indices for the production of trade report data (*In re Natural Gas*, 235 F.R.D. 199 (S.D.N.Y. 2005)); and
- successfully certifying a class of NYMEX natural gas futures traders who were harmed by defendants' manipulation of the price of natural gas futures contracts traded on the NYMEX from January 1, 2000 to December 31, 2002. *In re Natural Gas*, 231 F.R.D. 171, 179 (S.D.N.Y. 2005) (granting class certification), *petition for review denied*, *Cornerstone Propane Partners, LP, et al. v. Reliant Energy Services, Inc., et al.*, Docket No. 05-5732 (2d Cir. August 1, 2006).

The total settlement obtained in this complex litigation—\$101 million—was at the time, the **third largest** recovery in the history of the CEA.

Amaranth

Lowey Dannenberg serves as co-lead counsel in *In re Amaranth Natural Gas Commodities Litigation*, Master File No. 07 Civ. 6377 (S.D.N.Y) (SAS) (“*Amaranth*”).



Amaranth is a certified CEA class action alleging manipulation of NYMEX natural gas futures contract prices in 2006 by Amaranth LLC, one of the country's largest hedge funds, prior to its widely-publicized multi-billion dollar collapse in September 2006. Significant victories Lowey Dannenberg has achieved in the *Amaranth* litigation include:

- On April 27, 2009, plaintiffs' claims for primary violations and aiding-and-abetting violations of the CEA against Amaranth LLC and other Amaranth defendants were sustained. *Amaranth*, 612 F. Supp. 2d 376 (S.D.N.Y. 2009).
- On April 30, 2010, the Court granted plaintiffs' motion for pre-judgment attachment pursuant to Rule 64 of the Federal Rules of Civil Procedure and Section 6201 of the New York Civil Practice Law and Rules against Amaranth LLC, a Cayman Islands company and the "Master Fund" in the Amaranth master-feeder-fund hedge fund family. *Amaranth*, 711 F. Supp. 2d 301 (S.D.N.Y. 2010).
- On September 27, 2010, the Court granted plaintiffs' motion for class certification. *Amaranth*, 269 F.R.D. 366 (S.D.N.Y. 2010). In appointing Lowey Dannenberg as co-lead counsel for plaintiffs and the Class, the Court specifically noted "the impressive resume" of Lowey Dannenberg and that "plaintiffs' counsel has vigorously represented the interests of the class throughout this litigation." On December 30, 2010, the Second Circuit Court of Appeals denied Amaranth's petition for appellate review of the class certification decision.
- On April 11, 2012, the Court entered a final order and judgment approving the \$77.1 million dollar settlement reached in the action. The \$77.1 million dollar settlement is **more than ten times greater** than the \$7.5 million joint settlement achieved by the Federal Energy



Regulatory Commission (“FERC”) and the Commodity Futures Trading Commission (“CFTC”) against Amaranth Advisors LLC and at that time, represented the **fourth largest** class action recovery in the 85-plus year history of the CEA.

Pacific Inv. Mgmt. Co. (“PIMCO”)

Lowey Dannenberg served as counsel to certified class representative Richard Hershey in a class action alleging manipulation by PIMCO of the multi-billion dollar market of U.S. 10-Year Treasury Note futures contracts traded on the Chicago Board of Trade (“CBOT”). *Hershey v. Pacific Inv. Management Co. LLC*, 571 F.3d 672 (7th Cir. 2009). The case settled in 2011 for \$118,750,000, the **second largest** recovery in the history of the CEA at that time.

CURRENT PROSECUTION OF COMMODITY CLASS ACTIONS

Lowey Dannenberg continues to prosecute, as court appointed lead or co-lead counsel or individual plaintiff’s counsel, the most important and complex commodity manipulation actions since the enactment of the CEA.

Sullivan, et al. v. Barclays plc, et al.

Lowey Dannenberg is leading the prosecution against numerous global financial institutions responsible for the setting of the Euro Interbank Offered Rate (“Euribor”), a global reference rate used to benchmark, price and settle over \$200 trillion of financial products. Several defendants in this litigation, which alleges violations of the CEA, Sherman Act, and RICO, have already paid billions in fines to regulators for manipulating Euribor, and defendant Barclays Bank plc has been granted conditional leniency from the U.S. Department of Justice (“DOJ”) pursuant to the Antitrust Criminal Penalty Enhancement and Reform Act (“ACPERA”)



for alleged anticompetitive conduct relating to Euribor. On December 15, 2015, Judge Castel preliminarily approved a \$94 million settlement with Barclays plc and related Barclays' entities and appointed Lowey Dannenberg as Co-Class Counsel to the Settlement Class. *See* Order Preliminarily Approving Class Action Settlement and Conditionally Certifying a Settlement Class, *Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC) (S.D.N.Y. Dec. 15, 2015), ECF No. 234. On December 27, 2016, Lowey Dannenberg executed a \$45 million settlement agreement with HSBC Holdings plc and HSBC Bank plc.

Laydon v. Mizuho Bank, Ltd., et al.; Sonterra Capital Master Fund Ltd., et al. v. UBS AG, et al.

Lowey Dannenberg serves as court-appointed sole lead counsel in *Laydon v. Mizuho Bank, Ltd. et al.* 12-cv-03419 (S.D.N.Y.) (Daniels, J.) ("*Euroyen*"), a proposed class action against some of the world's largest financial institutions arising from their intentional and systematic manipulation of the London Interbank Offered Rate ("LIBOR") for the Japanese Yen and Euroyen TIBOR (the Tokyo Interbank Offered Rate). The case alleges violations of the CEA, the Sherman Act, RICO, and common law. Several defendants named in the Euroyen rate-rigging lawsuit have already pled guilty to criminal charges of price fixing and paid billions in fines to regulators, and defendant UBS AG has been granted conditional leniency from the DOJ pursuant to ACPERA for alleged anticompetitive conduct relating to the Euroyen market.

Recently, Magistrate Judge Pitman credited Lowey Dannenberg's argument that discovery should proceed under the Federal Rules of Civil Procedure and rejected defendants' motion to conduct discovery under the Hague Convention on the Taking of Evidence Abroad in



Civil and Commercial Matters. *See Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419, 2016 WL 1718387 (S.D.N.Y. Apr. 29, 2016).

Judge Daniels has also granted final approval to a \$35,000,000 settlement with HSBC Holdings plc and HSBC Bank plc, a \$23,000,000 settlement with Citigroup, Inc. and several Citi entities, and a cooperation settlement with R.P. Martin. *See* Final Approval Order of Settlements with R.P. Martin Holdings Limited, Martin Brokers (UK) Ltd., Citibank, N.A., Citigroup Inc., Citibank Japan Ltd., Citigroup Global Markets Japan Inc., HSBC Holdings plc and HSBC Bank plc, *Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (S.D.N.Y. Nov. 10, 2016), ECF No. 720; Final Approval Order of Settlements with R.P. Martin Holdings Limited, Martin Brokers (UK) Ltd., Citibank, N.A., Citigroup Inc., Citibank Japan Ltd., Citigroup Global Markets Japan Inc., HSBC Holdings plc and HSBC Bank plc, *Sonterra Capital Master Fund Ltd., et al. v. UBS AG, et al.*, No. 15-cv-5844 (S.D.N.Y. Nov. 10, 2016), ECF No. 298. The case is currently pending in the Southern District.

Sonterra Capital Master Fund Ltd., et al. v. Credit Suisse Group AG, et al.

Lowey Dannenberg is court-appointed sole lead counsel against the numerous global financial institutions responsible for the setting of the Swiss Franc LIBOR. The case alleges that the institutions manipulated Swiss Franc LIBOR and Swiss Franc LIBOR-based derivatives prices, in violation of the CEA, Sherman Act, and RICO. The case is currently pending before Judge Sidney H. Stein. *Sonterra Capital Master Fund Ltd. v Credit Suisse Group AG et al.*, Case No. 15-cv-871 (S.D.N.Y.).



Sonterra Capital Master Fund Ltd., et al. v. Barclays Bank plc, et al.

Lowey Dannenberg is leading the prosecution against the numerous global financial institutions responsible for the setting of Pound Sterling LIBOR, alleging the manipulation of Sterling LIBOR and the prices of Sterling LIBOR-based derivatives, in violation of the CEA, Sherman Act, and RICO. The case is currently pending before Judge Vernon S. Broderick. *Sonterra Capital Master Fund Ltd. v Barclays Bank plc et al.*, Case No. 15-cv-3538 (VSB) (S.D.N.Y.).

Dennis, et al. v. JPMorgan Chase & Co., et al.; FrontPoint Asian Event Driven Fund, Ltd., et al. v. Citibank, N.A., et al.

Lowey Dannenberg is leading the prosecution against numerous global financial institutions responsible for setting the Bank Bill Swap Reference Rate (“BBSW”), pending before Judge Lewis A. Kaplan. *Dennis, et al. v. JPMorgan Chase & Co., et al.*, No. 16-cv-6496 (LAK) (S.D.N.Y.). Lowey Dannenberg also is litigating a separate action alleging the manipulation of the Singapore Interbank Offered Rate (“SIBOR”), Singapore Offer Rate (“SOR”), and the prices of financial derivatives that incorporate SIBOR and/or SOR as a component of price. The case is currently pending before Judge Alvin K. Hellerstein. *FrontPoint Asian Event Driven Fund, Ltd., et al. v. Citibank, N.A., et al.*, No. 16-cv-5263 (AKH) (S.D.N.Y.).

In re London Silver Fixing Ltd., Antitrust Litig.

Lowey Dannenberg is serving as co-lead counsel on behalf of a class of silver investors, including Commodity Exchange Inc. (“COMEX”) silver futures contracts traders, against the banks that allegedly colluded to fix the London Silver Fix, a global benchmark that impacts the



value of more than \$30 billion in silver and silver financial instruments. The case alleges violations of the CEA and antitrust laws. In appointing Lowey Dannenberg, the Court praised Lowey Dannenberg's experience, approach to developing the complaint, attention to details, and the expert resources that the firm brought to bear on behalf of the class. *See In re London Silver Fixing Ltd., Antitrust Litig.*, Case No. 14-md-2573 (VEC), ECF No. 17 (Nov. 25, 2014) (S.D.N.Y.) (Caproni, J.). On October 3, 2016, the Court sustained plaintiffs' claims for price fixing and conspiracy in restraint of trade under Section 1 of the Sherman Act and claims for primary violations and aiding-and-abetting violations of the CEA. *See In re London Silver Fixing Ltd., Antitrust Litig.*, No. 14-md-2573, 2016 WL 5794777 (S.D.N.Y. Oct. 3, 2016). On November 23, 2016, Judge Caproni granted preliminary approval of a \$38 million settlement with Deutsche Bank AG and several of its subsidiaries. *See Order Preliminarily Approving Class Action Settlement and Conditionally Certifying a Settlement Class, In re London Silver Fixing, Ltd., Antitrust Litig.*, No. 14-md-2573 (S.D.N.Y. Nov. 23, 2016), ECF No. 166. The case is currently pending in the Southern District.

Kraft Wheat Manipulation

Lowey Dannenberg is court-appointed co-lead counsel for a class of wheat futures and options traders pursuing claims against Kraft Foods Group, Inc. and Mondelēz Global LLC alleging Kraft manipulated the prices of Chicago Board of Trade wheat futures and options contracts. In a recent decision, Judge Edmond E. Chang denied defendants' motion to dismiss in large part, sustaining plaintiffs' claims under the CEA, the Sherman Act, and unjust enrichment. *See Ploss v. Kraft Foods Group, Inc.*, No. 15 C 2937, 2016 WL 3476678 (N.D. Ill. June 27,



2016). The case is currently pending in the Northern District of Illinois. *See Ploss v. Kraft Foods Group, Inc. et al.*, No. 15-cv-2937 (N.D. Ill.).

Optiver

Lowey Dannenberg serves as co-lead counsel in a proposed class action alleging Optiver US, LLC and other Optiver defendants manipulated NYMEX light sweet crude oil, heating oil, and gasoline futures contracts prices in violation of the CEA and antitrust laws. *In re Optiver Commodities Litigation*, Case No. 08 CV 6842 (S.D.N.Y.) (LAP), Pretrial Order No. 1, dated February 11, 2009. The Honorable Loretta A. Preska of the Southern District of New York granted final approval of a \$16.75 million settlement in June 2015.

In re Rough Rice Futures Litigation

Lowey Dannenberg serves as co-lead counsel in a putative class action involving the alleged manipulation of rough rice futures and options traded on the CBOT, in violation of the CEA. *In re Rough Rice Futures Litigation*, Case No. 11-cv-618 (JAN) (N.D. Ill.). Plaintiffs allege that, between at least October 1, 2007 and July 31, 2008, defendants repeatedly exceeded CBOT rough rice position limits for the purpose of manipulating CBOT rough rice futures and option contract prices. The Honorable John W. Darrah of the Northern District of Illinois granted final approval of the settlement in August 2015.

White v. Moore Capital Management, L.P.

Lowey Dannenberg is counsel to a class representative in an action alleging manipulation of NYMEX palladium and platinum futures prices in 2007 and 2008. *White v. Moore Capital*



Management, L.P., Case No. 10 CV 3634 (S.D.N.Y.) (Pauley, J.). Judge Pauley granted final approval of a settlement in the amount of \$70 million in 2015.

In re Crude Oil Commodity Futures Litigation

Lowey Dannenberg is counsel to a proposed class representative and large crude oil trader in a proposed class action involving the alleged manipulation of NYMEX crude oil futures and options contracts. *In re Crude Oil Commodity Futures Litigation*, Case No. 11-cv-03600 (S.D.N.Y.) (Forrest, J.). The Court granted final approval to a \$16.5 million settlement in January 2016.

LOWEY DANNENBERG'S OTHER PRACTICE AREAS

ANTITRUST AND PRESCRIPTION OVERCHARGE LITIGATION

Lowey Dannenberg is the nation's premier litigation firm for health insurers to recover overcharges for prescription drug and other medical products and services. Our skills in this area are recognized by the largest payers for pharmaceuticals in the United States, including Aetna, CIGNA, Humana, and Anthem, Inc. (formerly WellPoint), who consistently retain Lowey Dannenberg, either on an individual or a class basis, to assert claims against pharmaceutical manufacturers for conduct, including monopoly and restraint of trade, resulting in overpriced medication.

In 1998, Lowey Dannenberg filed the first-ever generic delay class action antitrust cases for endpayers (a term reflecting consumers and health insurers). Those cases were centralized by the JPML under the caption *In re Cardizem CD Antitrust Litigation*, MDL No. 1278 (E.D. Mich.).



Lowey Dannenberg serves as the lead class counsel for indirect purchaser endpayers in the following generic delay antitrust class action lawsuits:

- *In re Cardizem CD Antitrust Litigation*, MDL No. 1278 (E.D. Mich.). Class certification, 200 F.R.D. 326 (E.D. Mich. 2001), Affirmance of partial summary judgment for plaintiffs, 332 F.3d 896 (6th Cir. 2003), \$80 million class settlement.
- *In re Terazosin Hydrochloride Antitrust Litigation*, MDL No. 1317 (S.D. Fla.). Certification of 17-state litigation class, 220 F.R.D. 672 (S.D. Fla. 2004), Approval of 17-state settlement (after submission of final pretrial order, jury interrogatories and *motions in limine*) for \$28.7 million, 2005 WL 2451958 (S.D. Fla. July 8, 2005).
- *In re Wellbutrin XL Antitrust Litigation*, Civ. No. 08-2433. Partial settlement for \$11.75 million (unreported). The case is currently on appeal against the non-settling defendant.

Lowey Dannenberg has prosecuted and won three landmark decisions in favor of third party payer health insurers in prescription drug cases:

- *In re Avandia Marketing Sales Practices and Products Liability Litigation*, 685 F.3d 353 (3d Cir. 2012), *cert. denied, sub nom. GlaxoSmithKline v. Humana Med. Plans, Inc.*, 81 U.S.L.W. 3579 (Apr. 15, 2013) (establishing Medicare Advantage Organization's reimbursement recovery rights under the Medicare Secondary Payer Act).
- *Desiano v. Warner-Lambert*, 326 F.3d 339 (2d Cir. 2003) (establishing the direct (non-subrogation) rights of commercial health insurers to recover overcharges from drug companies for drugs prescribed to their insureds). The case was subsequently settled for a confidential amount for 35 health insurers.
- *In re Neurontin Mktg. & Sales Practices Litigation*, 712 F.3d 51 (1st Cir. 2013) (holding drug manufacturers accountable to health insurers for RICO claims attributable to marketing fraud).

Lowey Dannenberg has defended and won dismissals for health insurers in the following class actions: *Roche v. Aetna, Inc.*, 165 F. Supp. 3d 180 (D.N.J. 2016), *appeal pending*, No. 16-



1712 (3d Cir.); *Meek-Horton v. Trover Solutions*, 910 F. Supp. 2d 690 (S.D.N.Y. 2013); *Potts v. Rawlings Co., LLC*, 897 F. Supp. 2d 185 (S.D.N.Y. 2012); *Kesselman v. The Rawlings Company, LLC*, 668 F. Supp. 2d 604 (S.D.N.Y. 2009); *Elliot Plaza Pharmacy v. Aetna U.S. Healthcare*, No. 06-cv-623, 2009 WL 702837 (N.D. Okla. Mar. 16, 2009); *Main Drug, Inc. v. Aetna U.S. Healthcare*, 475 F.3d 1228 (11th Cir. 2007), *aff'g*, *Main Drug, Inc. v. Aetna U.S. Healthcare*, 455 F. Supp. 2d 1323 (M.D. Ala. 2006) and 455 F. Supp. 2d 1317 (M.D. Ala. 2005); and *Medfusion Rx, LLC v. Humana Health Plan, Inc.*, Case No. CV-08-PWG-0451-S (N.D. Ala.) (2008). We are also currently defending the class action lawsuits *Roche, et al. v. Aetna, Inc., et al.*, Civ. 13-1377 (JHR) (D.N.J.) and *Wurtz v. Rawlings Co., LLC*, No. 12-CV-1182 (JMA) (AKT), 2016 WL 7174674 (E.D.N.Y. Nov. 17, 2016).

In 2013, America's Health Insurance Plans, a national association representing the health insurance industry, hired Lowey Dannenberg to represent it before the United States Supreme Court as *amicus curiae* in *FTC v. Actavis, Inc.*, 133 S. Ct. 2223 (2013), concerning how "pay-for-delay" agreements between brand name drug companies and generic companies should be evaluated under federal antitrust law. We also successfully secured the first reported precedent reinvigorating class certification under New York's Donnelly (Antitrust) Act in federal court in the wake of the Supreme Court's *Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 130 S. Ct. 1431 (2010) decision. See *In re Wellbutrin XL Antitrust Litig.*, 756 F. Supp. 2d 670, 677-80 (E.D. Pa. 2010).

Lowey Dannenberg is also currently prosecuting on behalf of its clients the following cases:



- *Cariten Insurance Company, et al. v. AstraZeneca AB, et al.*, No. 002106 (Pa. Court of Common Pleas); *Time Insurance Company, et al. v. AstraZeneca AB, et al.*, No. 001903 (Pa. Court of Common Pleas). Lowey Dannenberg represents 116 individual third party payer health insurers who have opted out of the certified litigation class in *Nexium* and filed separate actions in Pennsylvania state court. *In re Nexium (Esomeprazole) Antitrust Litig.*, 12-md-02409-WGY (D. Mass.). After being removed, two separate federal courts granted our motions for remand. *Time Ins. Co. v. AstraZeneca AB*, 52 F. Supp. 3d 705 (E.D. Pa. 2014); *Cariten Insurance Company, et al. v. AstraZeneca AB*, 1:14-cv-13873-WGY, ECF No. 52 (D. Mass. Nov. 20, 2014).
- *Humana Inc. v. Boehringer Ingelheim Pharma GmbH & Co. KG, et al.*, No. 3:14-cv-00572 (D. Conn.) (SRU). Lowey Dannenberg represents Humana Inc. in a generic delay antitrust case against defendant Boehringer Ingelheim Pharmaceuticals, Inc., the Aggrenox brand manufacturer, and generic manufacturer Barr Pharmaceuticals Inc. (later acquired by Teva Pharmaceuticals), before Judge Underhill in the District of Connecticut. Class actions on behalf of direct and indirect purchaser plaintiffs are pending in the same multidistrict litigation. *In re Aggrenox Antitrust Litigation*, MDL No. 2516 (D. Conn.) (SRU). The litigation asserts claims under state antitrust law, claiming a \$100 million co-promotion agreement was a disguised pay-for-delay, and as a result, Humana has overpaid and continues to overpay for Aggrenox. On March 23, 2015 and August 9, 2016, the Court sustained several of Humana's state law antitrust claims. *In re Aggrenox Antitrust Litig.*, 94 F. Supp. 3d 224 (D. Conn. Mar. 23, 2015); *see also In re Aggrenox Antitrust Litig.*, No. 14-md-2516, 2016 WL 4204478 (D. Conn. Aug. 8, 2016).
- *Government Employees Health Association v. Endo Pharmaceuticals, Inc., et al.*, No. 3:14-cv-02180-WHO (N.D. Cal.). Lowey Dannenberg represents Government Employees Health Association ("GEHA") in a generic delay antitrust case pending before Judge Orrick in the Northern District of California, concerning Lidoderm, the brand name for a prescription pain patch for the treatment of after-shingles pain, sold by Endo Pharmaceuticals, Inc., Teikoku Pharma USA, and Teikoku Seiyaku Co., Ltd. Class actions on behalf of direct and indirect purchaser plaintiffs are pending in the same multidistrict litigation. *In re Lidoderm Antitrust Litigation*, MDL No. 2521 (N.D. Cal.). On May 5, 2015, Judge Orrick granted in part and denied in part defendants' motion to dismiss GEHA's second amended complaint, sustaining GEHA's claims under the laws of 32 states. *In re Lidoderm Antitrust Litig.*, 103 F. Supp. 3d 1155 (N.D. Cal. May 5, 2015).



SECURITIES LITIGATION

Our clients' cases have involved financial fraud, auction rate securities, options backdating, Ponzi schemes, challenges to unfair mergers and tender offers, statutory appraisal proceedings, proxy contests and election irregularities, failed corporate governance, stockholder agreement disputes, and customer/brokerage firm arbitration proceedings.

Our investor litigation practice group has recovered billions of dollars in the aggregate. But the value of our accomplishments is measured by more than dollars. We have also achieved landmark, long term corporate governance changes at public companies, including reversing results of elections and returning corporate control to the companies' rightful owners, its stockholders.

Lowey Dannenberg's public pension fund clients include the New York City Pension Funds, the New York State Common Retirement Fund, the Maryland Employees' Retirement System, the Ohio Public Employees' Retirement Plan, and the Commonwealth of Pennsylvania State Employees' Retirement System. Representative institutional investor clients include Federated Investors, Inc., Glickenhau & Co., Millennium Partners LLP, Karpus Investment Management LLP, Amegy Bank, Monster Worldwide Inc., Zebra Technologies, Inc., and Delcath Systems, Inc.

Notable Recoveries

Notable achievements for our securities clients include the following:

- *In re Beacon Associates Litigation*, Civ. Act. No. 09-CV-0777 (S.D.N.Y.); *In re J.P. Jeanneret Associates, Inc., et al.*, 09-cv-3907 (S.D.N.Y.). Lowey Dannenberg represented several unions, which served as Lead Plaintiffs, in litigation arising from



Bernie Madoff's Ponzi scheme. On March 15, 2013, the Honorable Colleen McMahon of the United States District Court for the Southern District of New York granted final approval of the \$219.9 million settlement of Madoff feeder-fund litigation encompassing the *In re Beacon* and *In re Jeanneret* class actions. Lowey Dannenberg as Liaison Counsel was instrumental in achieving this outstanding result. The settlement covered several additional lawsuits in federal and New York state court against the settling defendants, including suits brought by the United States Secretary of Labor and the New York Attorney General. Plaintiffs in these cases asserted claims under the federal securities laws, ERISA, and state laws arising out of hundreds of millions of investment losses sustained by unions and other investors in Bernard Madoff feeder funds. The extraordinary recovery represents approximately 70% of investors' losses. This settlement, combined with money the victims are expected to recover from a separate liquidation of Madoff assets, is expected to restore the bulk of the pension funds for the local unions and other class members. In granting final approval, Judge McMahon praised both the result and the lawyering in these coordinated actions, noting that "[i]n the history of the world there has never been such a response to a notice of a class action settlement that I am aware of, certainly, not in my experience," and that "[t]he settlement process really was quite extraordinary." In her written opinion, Judge McMahon stated that "[t]he quality of representation is not questioned here, especially for those attorneys (principally from Lowey Dannenberg) who worked so hard to achieve this creative and, in my experience, unprecedented global settlement." *In re Beacon Associates Litig.*, 09 CIV. 777 CM, 2013 WL 2450960, at *14 (S.D.N.Y. May 9, 2013).

- *In re Juniper Networks, Inc. Sec. Litig.*, No. C-06-04327 JW (N.D. Cal). In 2010, as lead counsel for the Lead Plaintiff, the New York City Pension Funds, we achieved a settlement in the amount of \$169.5 million, one of the largest settlements in an options backdating case, after more than three years of hard-fought litigation.
- *In re ACS Shareholder Litigation*, Consolidated C.A. No. 4940-VCP (Del. Ch.). We successfully challenged a multi-billion-dollar merger between Xerox Corp. and Affiliated Computer Systems ("ACS") which favored Affiliated's CEO at the expense of our client, Federated Investors, and other ACS shareholders. In following expedited proceedings, we achieved a \$69 million settlement as well as structural protections in the shareholder vote on the merger. The settlement was approved in 2010.



- *In re Bayer AG Securities Litigation*, 03 Civ. 1546 (WHP) (S.D.N.Y.). We represented the New York State Common Retirement Fund as Lead Plaintiff in a securities fraud class action arising from Bayer's marketing and recall of its Baycol drug. Lowey Dannenberg was appointed as lead counsel for the New York State Common Retirement Fund at the inception of merits discovery, following the dismissal of the New York State Common Retirement Fund's former counsel. The class action was settled for \$18.5 million in 2008.
- *In re WorldCom Securities Litigation*, Master File No. 02 Civ. 3288 (DLC) (S.D.N.Y.). Lowey Dannenberg's innovative strategy and aggressive prosecution produced an extraordinary recovery in the fall of 2005 for the New York City Pension Funds in the *WorldCom Securities Litigation*, substantially superior to that of any other WorldCom investor in either class or opt-out litigation. Following our advice to opt out of a class action in order to litigate their claims separately, the New York City Pension Funds recovered almost \$79 million, including 100% of their damages resulting from investments in WorldCom bonds.
- *Federated American Leaders Fund, Inc.*, No. 08-cv-01337-PB (D.N.H.). In 2008, Lowey Dannenberg successfully litigated an opt-out case on behalf of our client Federated Investors, Inc., arising out of the *Tyco Securities Litigation*. The client asserted claims unavailable to the class (including a claim for violation of § 18 of the Securities Exchange Act of 1934 and a claim for violations of the New Jersey RICO statute). Pursuit of an opt-out strategy resulted in a recovery of substantially more than the client would have received had it merely remained passive and participated in the class action settlement.
- *In re Philip Services Corp., Securities Litigation*, No. 98 Civ. 835 (AKH) (S.D.N.Y.). On March 19, 2007, the United States District Court for the Southern District of New York approved a \$79,750,000 settlement of a class action, in which Lowey Dannenberg acted as Co-Lead Counsel, on behalf of United States investors of Philip Services Corp., a bankrupt Canadian resource recovery company. \$50,500,000 of the settlement was paid by the Canadian accounting firm of Deloitte & Touche, LLP, which Lowey Dannenberg believes is the largest recovery from a Canadian auditing firm in a securities class action, and among the largest obtained from any accounting firm. Earlier in the litigation, the United States Court of Appeals for the Second Circuit issued a landmark decision protecting the rights of United States citizens to sue foreign companies who fraudulently sell their securities in the United States. *DiRienzo v. Philip Services Corp.*, 294 F.3d (2d Cir. 2002).



- *In re New York Stock Exchange/Archipelago Merger Litigation*, No. 601646/05 (N.Y. Sup. Ct.). Lowey Dannenberg acted as co-lead counsel for a class of seatholders seeking to enjoin the merger between the New York Stock Exchange (“NYSE”) and Archipelago Holdings, Inc. As a result of the action, the merger terms were revised, providing the seatholders with more than \$250 million in additional consideration. In addition, the NYSE agreed to retain an independent financial adviser to report to the court as to the fairness of the deal to the NYSE seatholders. Plaintiffs also provided the court with their expert’s analysis of the new independent financial adviser’s report. Both reports were provided to the seatholders prior to the merger vote. The court noted that “these competing presentations provide a fair and balanced view of the proposed merger and present the NYSE Seatholders with an opportunity to exercise their own business judgment with eyes wide open. The presentation of such differing viewpoints ensures transparency and complete disclosure.” *In re New York Stock Exchange/Archipelago Merger Litigation*, No. 601646/05, 2005 WL 4279476, at *14 (N.Y. Sup. Ct. Dec. 5, 2005).
- *Delcath Systems, Inc. v. Ladd, et al.*, No. 06 Civ. 6420 (S.D.N.Y.). On September 25, 2006, Lowey Dannenberg helped Laddcap Value Partners win an emergency appeal, reversing a federal district court’s order disqualifying the votes Laddcap had solicited to replace the board of directors of Delcath Systems, Inc. Prior to our involvement in the case, on September 20, 2006, Laddcap, which was Delcath’s largest stockholder, had been enjoined by the district court from submitting stockholder consents it had solicited on the grounds of unproven claimed violations of federal securities law. After losing an injunction proceeding in the district court on September 20, 2006, and with the election scheduled to close on September 25, 2006, Laddcap hired Lowey Dannenberg to prosecute an emergency appeal, which was won on September 25, 2006, the last day of the election period. *Delcath Systems, Inc. v. Ladd*, 466 F.3d 257 (2d Cir. 2006). Shortly thereafter, the case was settled with Laddcap gaining seats on the board, reimbursement of expenses, and other benefits.
- *Salomon Brothers Municipal Partners Fund, Inc. v. Thornton*, No. 05-cv-10763 (S.D.N.Y.). Lowey Dannenberg represented Karpus Investment Management in its successful proxy contest and subsequent litigation to prevent the transfer of management by Citigroup to Legg Mason of the Salomon Brothers Municipal Partners Fund. We defeated the Fund’s preliminary injunction action which sought to compel Karpus to vote shares it had solicited by proxy but withheld from voting in order to defeat a quorum and prevent approval of the transfer. *Salomon Brothers Mun. Partners Fund, Inc. v. Thornton*, 410 F. Supp. 2d 330 (S.D.N.Y. 2006).



- *In re DaimlerChrysler AG Sec. Litigation*, Master Docket No. 00-993-JJF (D. Del.). Lowey Dannenberg represented Glickenhau & Co., a major registered investment advisor and, at the time, the second largest stockholder of Chrysler, in an individual securities lawsuit against DaimlerChrysler AG. Successful implementation of the firm's opt-out strategy led to a recovery for its clients far in excess of that received by other class members. See *Tracinda Corp. v. DaimlerChrysler AG*, 197 F. Supp. 2d 42 (D. Del. 2002); *In re DaimlerChrysler AG Sec. Litig.*, 269 F. Supp. 2d 508 (D. Del. 2003).
- *Doft & Co. v. Travelocity.com, Inc.*, No. Civ. A. 19734 (Del. Ch.). Following a three-day bench trial in a statutory appraisal proceeding, the Delaware Chancery Court awarded our clients, an institutional investor and investment advisor, \$30.43 per share plus compounded prejudgment interest, for a transaction in which the public shareholders who did not seek appraisal were cashed out at \$28 per share. *Doft & Co. v. Travelocity.com, Inc.*, No. Civ. A. 19734, 2004 WL 1152338 (Del. Ch. May 20, 2004), *modified*, 2004 WL 1366994 (Del. Ch. June 10, 2004).
- *MMI Investments, LP v. NDCHealth Corp., et al.*, 05 Civ. 4566 (S.D.N.Y.). Lowey Dannenberg filed an individual action on behalf of hedge fund, MMI Investments, asserting claims for violations of the federal securities laws and the common law, including claims not available to the class, most notably a claim for violation of § 18 of the Securities Exchange Act of 1934 and a claim for common law fraud. After aggressively litigating the client's claims, the Firm obtained a substantial settlement, notwithstanding the fact that the class claims were dismissed.
- *Omnicare, Inc. v. NCS Healthcare, Inc.* Lowey Dannenberg, as Co-Lead Counsel on behalf of an institutional investor, obtained an injunction from the Delaware Supreme Court, enjoining a proposed merger between NCS Healthcare, Inc. and Genesis Health Ventures, Inc., which accepted our argument that the NCS board had breached its fiduciary obligations by agreeing to irrevocable merger lock-up provisions. As a result of the injunction, the NCS shareholders were able to obtain the benefit of a competing takeover proposal by Omnicare, Inc. of 300% more than that offered in the enjoined transaction, providing NCS's shareholders with an additional \$99 million. *Omnicare, Inc. v. NCS Healthcare, Inc.*, 818 A.2d 914 (Del. 2003).
- *meVC Draper Fisher Jurvetson Fund 1, Inc. v. Millennium Partners*. Lowey Dannenberg successfully represented an affiliate of Millennium Partners, a major private investment fund, in litigation in the Delaware Chancery Court that resulted in the voiding of two elections of directors of meVC Draper Fisher Jurvetson Fund 1, Inc., a NYSE-listed closed end mutual fund, on grounds of breach of fiduciary duty, and in a subsequent proxy contest litigation in the United States District Court for the



Southern District of New York, that resulted in the replacement of the entire board of directors with Millennium's slate. *meVC Draper Fisher Jurvetson Fund 1, Inc. v. Millennium Partners*, 260 F. Supp. 2d 616 (S.D.N.Y. 2003); *Millenco L.P. v. meVC Draper Fisher Jurvetson Fund 1, Inc.*, 824 A.2d 11 (Del. Ch. 2002).

- *In re CINAR Securities Litigation*, Master File No. 00 CV 1086 (E.D.N.Y. Dec. 2, 2002). In a case in which Lowey Dannenberg acted as Lead Counsel, we obtained a \$27.25 million settlement on behalf of our client the Federated Kaufmann Fund and a class of purchasers of securities of CINAR Corporation. The court found that "the quality of [Lowey Dannenberg's] representation has been excellent."
- *In re Reliance Securities Litigation*, MDL No. 1304 (D. Del. 2002). In proceedings in which Lowey Dannenberg acted as co-counsel to a Bankruptcy Court-appointed estate representative, the firm obtained recoveries in a fraudulent conveyance action totaling \$106 million.

OTHER LITIGATION

- *United States, et al. v. Trinity HomeCare, LLC, et al.*, No. 09-cv-3919 (S.D.N.Y.). In 2015, Lowey Dannenberg, working with the State of New York, acting through the New York State Office of the Attorney General, Medicaid Fraud Control Unit, concluded a Whistleblower representation for a Relator alleging Medicaid fraud. The defendants agreed to pay \$22.4 million to settle the allegations, which is one of New York State's largest single-state recoveries.
- *Nicosia v. Amazon.com*, No. 14-4513 (E.D.N.Y.). On August 25, 2016, the United States Court of Appeals for the Second Circuit credited Lowey Dannenberg's argument regarding the enforceability of an "arbitration clause," holding that the so-called "arbitration clause" on Amazon.com's order page may not have been "reasonably conspicuous" enough to provide its customers with sufficient notice about the existence or terms of the arbitration clause. *Nicosia v. Amazon.com*, No. 15-423-cv, 2016 WL 4473225 (2d Cir. Aug. 25, 2016). The Second Circuit reversed the lower court, in part, and remanded the case for further proceedings. The case remains pending in the Eastern District of New York.

LOWEY DANNENBERG'S RECOGNIZED EXPERTISE

The attorneys of Lowey Dannenberg have been repeatedly recognized by the courts as expert practitioners in the field of complex litigation.



For example, on March 15, 2013, the Honorable Colleen McMahon of the United States District Court for the Southern District of New York granted final approval of the \$219 million settlement of Madoff feeder-fund litigation encompassing the *In re Beacon* and *In re Jeanneret* class actions. In a subsequent written decision, with glowing praise, Judge McMahon stated:

- “The quality of representation is not questioned here, especially for those attorneys (principally from Lowey Dannenberg) who worked so hard to achieve this creative and, in my experience, unprecedented global settlement.”
- “I thank everyone for the amazing work that you did in resolving these matters. **Your clients - all of them - have been well served.**”
- “Not a single voice has been raised in opposition to this remarkable settlement, or to the Plan of Allocation that was negotiated by and between the Private Plaintiffs, the NYAG and the DOL.”
- “All formal negotiations were conducted with the assistance of two independent mediators - one to mediate disputes between defendants and the investors and another to mediate claims involving the Bankruptcy Estate. Class Representatives and other plaintiffs were present, in person or by telephone, during the negotiations. The US Department of Labor and the New York State Attorney General participated in the settlement negotiations. **Rarely has there been a more transparent settlement negotiation. It could serve as a prototype for the resolution of securities-related class actions, especially those that are adjunctive to bankruptcies.**”
- “**The proof of the pudding is that an astonishing 98.72% of the Rule 23(b)(3) Class Members who were eligible to file a proof of claim did so (464 out of 470), and only one Class Member opted out [that Class Member was not entitled to recover anything under the Plan of Allocation]. I have never seen this level of response to a class action Notice of Settlement, and I do not expect to see anything like it again.**”
- “**I am not aware of any other Madoff-related case in which counsel have found a way to resolve all private and regulatory claims simultaneously and with the concurrence of the SIPC/Bankruptcy Trustee.** Indeed, I am advised by Private Plaintiffs’ Counsel that the Madoff Trustee is challenging settlements reached by the NYAG in other



feeder fund cases [Merkin, Fairfield Greenwich] which **makes the achievement here all the more impressive.**”

In *Juniper Networks, Inc. Securities Litigation*, the Court, in approving the settlement, acknowledged that “[t]he successful prosecution of the complex claims in this case required the participation of highly skilled and specialized attorneys.” *In re Juniper Networks, Inc.*, C06-04327, Order dated August 31, 2010 (N.D. Cal.). In the *WorldCom Securities Litigation*, the Court repeatedly praised the contributions and efforts of the firm. On November 10, 2004, the Court found that “the Lowey Firm . . . has worked tirelessly to promote harmony and efficiency in this sprawling litigation. . . . [Lowey Dannenberg] has done a superb job in its role as Liaison Counsel, conducting itself with professionalism and efficiency” *In re WorldCom, Inc. Securities Litigation*, No. 02 Civ. 3288, 2004 WL 2549682, at *3 (S.D.N.Y. Nov. 10, 2004).

In the *In re Bayer AG Securities Litigation*, 03 Civ. 1546, 2008 WL 5336691, at *5 (S.D.N.Y. Dec. 15, 2008) order approving a settlement of \$18.5 million for the class of plaintiffs, Judge William H. Pauley III noted that the attorneys from Lowey Dannenberg are “nationally recognized complex class action litigators, particularly in the fields of securities and shareholder representation,” that “provided high-quality representation.”

In the *In re Luminent Mortgage Capital, Inc., Securities Litigation*, No. C07-4073 (N.D. Cal.) hearing for final approval of settlement and award of attorneys’ fees, Judge Phyllis J. Hamilton noted that “[t]he \$8 million settlement . . . is excellent, in light of the circumstance.” Judge Hamilton went on to say that “most importantly, the reaction of the class has been exceptional with only two opt-outs and no objections at all received.” *See* Tr. of Hearing on



Plaintiff's Motion for Final Approval of Settlement/Plan of Allocation and for an Award of Attorneys' Fees and Reimbursement of Expenses, *In re Luminent Mortgage Capital, Inc., Securities Litigation*, No. C07-4073-PJH (N.D. Cal. Apr. 29, 2009), ECF No. 183.