IN THE UNITED STATES DISTRICT COURT
FOR THE 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

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT WITH DEUTSCHE BANK AG AND DB GROUP SERVICES (UK) LTD. AND FOR PRELIMINARY APPROVAL OF THE PROPOSED FORM AND PROGRAM OF NOTICE TO THE SETTLEMENT CLASS

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INTRODUCTION

The Court has preliminarily approved two separate class action settlements between the Plaintiffs[1] and Barclays[2] and HSBC[3] in this Action, providing the Settlement Class with $139,000,000 and valuable cooperation. ECF Nos. 234, 279. Plaintiffs now move under Rule 23(e) of the Federal Rules of Civil Procedure ("Federal Rules") and submit this memorandum of law and accompanying Declarations of Vincent Briganti, Christopher Lovell ("June 2017 Lovell Decl."), and the Honorable Daniel Weinstein ("Weinstein Decl.") in support of preliminary approval of the (1) $170,000,000 Settlement with Deutsche Bank AG and DB Group Services (UK) Ltd. (collectively, "Deutsche Bank") (the "Settlement" or "Deutsche Bank Settlement"); and (2) proposed Class Notice for the Barclays, HSBC, and Deutsche Bank settlements (collectively, the "Settlements"). The Settlements will collectively provide $309,000,000 in recoveries for Plaintiffs and the Settlement Class.

Like the Barclays and HSBC Settlements, the Deutsche Bank Settlement meets the two requirements for preliminary approval—it is procedurally and substantively fair. The Settlement was reached after months-long negotiations between experienced counsel, with the assistance of a skilled mediator, the Honorable Daniel Weinstein. The Settlement is substantively fair, reasonable, and adequate, requiring Deutsche Bank to provide valuable cooperation to Plaintiffs and the Settlement Class and to pay $170,000,000 into a Settlement Fund. Settlement Agreement ¶¶ 9, 23-31. Further, all the prerequisites under Rule 23 for conditional certification of a Settlement Class on the claims

[1] "Plaintiffs" are Stephen Sullivan, White Oak Fund LP, California State Teachers' Retirement System ("CalSTRS"), Sonterra Capital Master Fund, Ltd., FrontPoint Partners Trading Fund, L.P., and FrontPoint Australian Opportunities Trust. Unless otherwise noted, capitalized terms used herein have the same meaning as defined in the Settlement Agreement Between Plaintiffs and the Deutsche Bank Defendants (the "Settlement Agreement"), dated May 10, 2017, attached as Exhibit 1 to the Declaration of Vincent Briganti ("June 2017 Briganti Decl."). Unless otherwise noted, internal citations and quotation marks are omitted.

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

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

against Deutsche Bank are fully satisfied.

Thus, Plaintiffs respectfully move the Court to enter an order that:

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

(b) conditionally certifies a Settlement Class on the claims against Deutsche Bank;

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

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

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

(f) approves Plaintiffs' proposed forms of Notice to the Settlement Class of the Settlements with Barclays, HSBC, and Deutsche Bank (June 2017 Briganti Decl. Exs. 3, 4) and the proposed Notice plan (*id.* Ex. 2); and

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

See Proposed Order annexed to Notice of Motion.

ARGUMENT

I. The Court should preliminarily approve the Deutsche Bank Settlement.

A. The preliminary approval standard.

There is a "strong judicial policy in favor of settlements, particularly in the class action context." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005). Proposed Rule 23(b)(3) settlements, like this one, require notice to class members, an opportunity for class members to object, and final approval by the Court after a hearing at which class members may

appear. *See* FED. R. CIV. P. 23(e). The judicially created requirements for preliminary approval have been expressed as follows:

> Where the proposed settlement appears to be the product of serious, informed, non–collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval, preliminary approval is granted.

In re NASDAQ Mkt.-Makers Antitrust Litig., 176 F.R.D. 99, 102 (S.D.N.Y. 1997) ("*NASDAQ II*").

In conducting the preliminary approval inquiry, a court considers the "negotiating process leading up to the settlement, i.e., procedural fairness, as well as the settlement's substantive terms, i.e., substantive fairness." *In re Platinum & Palladium Commodities Litig.*, No. 10-cv-3617, 2014 WL 3500655, at *11 (S.D.N.Y. July 15, 2014) ("*Platinum*"). The terms must be "at least sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard." *NASDAQ II*, 176 F.R.D. at 102; *see also* Superseding Order Preliminarily Approving Settlements, *Laydon v. Mizuho Bank, Ltd. et al.*, No. 12-cv-3419 (GBD) (S.D.N.Y. June 22, 2016), ECF No. 659 ("Euroyen Order") (preliminarily approving $35 million and $23 million settlements in a proposed class action alleging the manipulation of the Tokyo Interbank Offered Rate ("Euroyen TIBOR") and the London Interbank Offered Rate for the Japanese yen ("Yen-LIBOR")).

B. The Deutsche Bank Settlement provides a sizable benefit to the Settlement Class.

The $170,000,000 Deutsche Bank Settlement, along with the $94,000,000 Barclays Settlement and $45,000,000 HSBC Settlement, will provide the Settlement Class with a financial recovery of $309,000,000. Like the HSBC and Barclays Settlements, the Deutsche Bank Settlement Amount will **not** revert to Deutsche Bank unless the Settlement is not approved or is otherwise terminated in accordance with the Settlement Agreement's terms. Settlement Agreement ¶¶ 9, 42. Given the reality that claim rates often fall below 100%, the non-reversion term of the Deutsche Bank Settlement likely will enhance the benefits and the recovery that qualifying claimants will receive.

The Deutsche Bank Settlement is a significant achievement when viewed in context with the regulatory actions involving Euribor. The Deutsche Bank Settlement is approximately one-third of the fine Deutsche Bank paid in connection with its settlement with the European Commission ("EC") for Deutsche Bank's role in the "Euro interest rate derivatives" cartel (€465,861,000 or approximately $494,350,000).[4] The magnitude of the $170,000,000 Deutsche Bank Settlement becomes even more apparent when one considers that the EC fine was based in part on the value of Deutsche Bank's derivatives sales in the European Economic Area, a market covering 31 member states.[5] The fines and penalties imposed on Deutsche Bank in connection with its settlements with other regulators and government agencies, including the Department of Justice ("DOJ") ($775,000,000), the Commodity Futures Trading Commission ("CFTC") ($800,000,000), the New York State Department of Financial Services ("NYSDFS") ($600,000,000), and the U.K. Financial Conduct Authority ("FCA") (£226,800,000 or approximately $282,070,000) addressed Deutsche Bank's misconduct with respect to various interbank offered rates, including, Euribor, USD LIBOR, Yen-LIBOR, Euroyen TIBOR, Sterling LIBOR, and Swiss Franc LIBOR. These fines and penalties did not compensate investors, including Settlement Class Members, for their losses.

Deutsche Bank will also provide cooperation to Plaintiffs and the Class to aid them in pursuing their case against the non-settling Defendants. This cooperation will include, among other things: (i) documents and data Deutsche Bank produced to any U.S. governmental regulatory authority (including the DOJ, CFTC, and NYSDFS) in connection with such regulator's investigation of Euribor-related conduct, including (a) Deutsche Bank employee communications; (b) trade data pertaining to certain of Deutsche Bank's transactions in Euro-denominated interbank

[4] *See AMENDED - Antitrust: Commission fines banks € 1.49 billion for participating in cartels in the interest rate derivatives industry*, EUROPEAN COMMISSION (Dec. 13, 2013), available at http://europa.eu/rapid/press-release_IP-13-1208_en.htm#footnote-1.

[5] *See* http://www.efta.int/eea/eea-agreement (describing the European Economic Area agreement).

money market instruments from 2005 through 2011; and (c) trade data pertaining to certain of Deutsche Bank's transactions in Euribor Products from 2004 through 2011; (ii) non-privileged declarations, affidavits, witness statements, or other sworn or unsworn statements of Deutsche Bank directors, officers, or employees; and (iii) documents reflecting substantially the same information as that reflected in Deutsche Bank's submissions to the Federal Reserve Bank of New York, Bank of International Settlement, and OTC Derivatives Supervisors Group relating to their surveys on turnover in foreign exchange and interest rate derivatives markets for Euribor Products for the years 2004, 2007, and 2010. Settlement Agreement ¶¶ 25-27. Deutsche Bank will also provide proffers of fact concerning the Euribor-related conduct alleged in the Action. *Id.* ¶ 29.

In exchange for these benefits, the Settlement Class Members will release Deutsche Bank from all claims relating to Euribor or the Euribor Products that were allegedly distorted by Deutsche Bank's manipulation of Euribor. *Id.* ¶¶ 14-15. Plaintiffs' claims against Deutsche Bank will also be dismissed on the merits with prejudice.

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

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

The process leading up to the Deutsche Bank Settlement fully supports preliminary approval. *See* Weinstein Decl. *passim*. The Deutsche Bank Settlement is the result of more than 22 months of arm's-length, non-collusive negotiations by experienced counsel with the assistance of an experienced private mediator, the Honorable Daniel Weinstein. *See In re Indep. Energy Holdings PLC Sec. Litig.*, No. 00 Civ. 6689, 2003 WL 22244676, at *4 (S.D.N.Y. Sept. 29, 2003) ("the fact that the

Settlement was reached after exhaustive arm's-length negotiations, with the assistance of a private mediator experienced in complex litigation, is further proof that it is fair and reasonable."). Judge Weinstein has mediated over 3,000 complex disputes, including numerous high-profile antitrust, securities, and intellectual property cases, and has received various awards for his dispute resolution services. Weinstein Decl. ¶¶ 4, 5.

The Settlement Class also benefitted from informed advocates. Before beginning negotiations with Deutsche Bank in July 2015, Interim Lead Counsel had the benefit of much of Barclays' ACPERA production and settlement cooperation. June 2017 Briganti Decl. ¶ 8, 25; June 2017 Lovell Decl. ¶ 6. Although the Barclays proffers related to Barclays' conduct, the conduct involved other Defendants, including Deutsche Bank. Plaintiffs also had the benefit of Deutsche Bank's settlements with the DOJ, CFTC, EC, FCA, and NYSDFS. June 2017 Briganti Decl. ¶¶ 8, 25. The Deutsche Bank Settlement is the product of hard-fought, extensive negotiations, which involved numerous in-person meetings and telephone conferences and an in-depth investigation using available, relevant information.

Considering Interim Lead Counsel's considerable prior experience in complex class action litigation involving Commodity Exchange Act ("CEA") and antitrust claims (among others), their knowledge of the strengths and weaknesses of Plaintiffs' claims, their assessment of the Settlement Class's likely recovery following trial and appeal, and the oversight of an experienced mediator, the Deutsche Bank Settlement is entitled to a presumption of procedural fairness.

D. There are no obvious or other deficiencies in the Deutsche Bank Settlement.

The Deutsche Bank Settlement contains a structure and terms that are commonly used in class action settlements in this District. *See NASDAQ II*, 176 F.R.D. at 102; *see also* June 2017 Briganti Decl. ¶ 36.

Deutsche Bank's right to terminate the Settlement Agreement under certain circumstances does not depart from this requirement. Settlement Agreement ¶ 40. Under ¶ 40, Plaintiffs agreed that Deutsche Bank has a qualified right to terminate the Settlement Agreement before final approval. This qualified right begins with the number and significance of the Class Members, if any, who request to be excluded from the Settlement Class. These "blow" provisions are common in class action settlements and are included based on the defendant's desire to quiet the litigation through settlement and without leaving open any material exposure. Deutsche Bank's qualified right clearly does not constitute an obvious or other deficiency; therefore, the Deutsche Bank Settlement amply satisfies the "no obvious deficiency" requirement of *NASDAQ II*.

E. The Deutsche Bank Settlement does not favor Plaintiffs or any Settlement Class Members or create any preferences.

The Deutsche Bank Settlement does not favor or disfavor any of the Plaintiffs or Settlement Class Members; nor does it discriminate against, create any limitations, or exclude from payments any persons or groups within the Settlement Class. *See NASDAQ II*, 176 F.R.D. at 102.

Making rational distinctions is allowable and expected in plans of allocation. Plaintiffs need transactional records from Deutsche Bank before formulating the plan of allocation. Deutsche Bank has informed Interim Lead Counsel that Deutsche Bank is in the process of isolating and collecting those records for production, as contemplated by ¶¶ 25.2 and 25.3 of the Settlement Agreement.

As the Court found when preliminarily approving the Barclays and HSBC Settlements, preliminary approval is routinely granted to settlements before any plan of allocation exists. *See* ECF Nos. 234, 279; *see also In re Wachovia Equity Secs. Litig.*, No. 08-6171 (RJS), 2012 WL 2774969, at *5 (S.D.N.Y. June 12, 2012) (approving plan of allocation after preliminary approval of proposed settlement and certification of settlement class). Even final approval of a class action settlement is appropriate before preparing a plan of allocation, especially in a complex case in which few

defendants have settled and sufficient records for determination as to the distribution of the proceeds are unavailable. *See In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 145, 170 (2d Cir. 1987).

But here, Plaintiffs do fully anticipate publishing their proposed plan of allocation on the Settlement Website prior to the deadline for the Settlement Class Members to decide to accept its benefits, opt-out, or object to final approval of the Settlements (and any other settlements that have been preliminarily approved by that time). Accordingly, after receiving Deutsche Bank's and the non-settling Defendants' transaction records, Plaintiffs will pursue the process for formulating a plan of allocation and submit it to the Court for preliminary approval on January 3, 2018 (or 35 days after Class Notice commences). Interim Lead Counsel has arranged that this will include, if appropriate, an allocation mediation, with representation as appropriate for any different interests.

In these circumstances, the Deutsche Bank Settlement wholly avoids any preferences or discrimination. Whether any such preferences or discrimination will even be proposed (and, if so, which ones), will be determined by an appropriate process. Accordingly, this third *NASDAQ II* preliminary approval element is fully satisfied.

F. The Deutsche Bank Settlement consideration is well within the range of what possibly may be found, at final approval, to be fair and reasonable.

The consideration that the Deutsche Bank Settlement provides falls well within the possible range of reasonable consideration at final approval. *NASDAQ II*, 176 F.R.D. at 102. The range of reasonableness "recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion . . . ." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972).

Private antitrust plaintiffs, unlike the government, have the burden to prove anticompetitive impact and damages. *Gottesman v. General Motors Corp.*, 436 F.2d 1205, 1210 (2d Cir. 1971). Even where the DOJ has secured a criminal guilty plea, civil juries have found no damages. *See, e.g.*, Special Verdict on Indirect Purchases, *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI (N.D.

Cal. Sept. 3, 2013), ECF No. 8562. "Indeed, the history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal." *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 476 (S.D.N.Y. 1998) ("*NASDAQ III*").

Deutsche Bank's monetary consideration alone, $170,000,000, is greater than the amount of maximum potential damages Deutsche Bank would have argued it was liable for had the case proceeded to trial. *Compare Maywalt v. Parker & Parsley Petroleum Co.*, 67 F.3d 1072, 1079 (2d Cir. 1995) ("*Maywalt*") (maximum "likely" damages is the appropriate test), *with In re Prudential Secs. Ltd P'ships Litig.*, No. M-21-67 (MP), 1995 WL 798907, at *15 (S.D.N.Y. Nov. 20, 1995) ("*Prudential*") (Pollack, J.) (where non-settling defendants are present, class counsel must be circumspect in stating facts that may aid the non-settling defendants). Deutsche Bank would have disputed Plaintiffs' impact and damages theory at trial, invoking a "battle of the experts." *See NASDAQ III*, 187 F.R.D. at 476. "In this battle of experts, it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors . . . ." *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985).

Before confronting the risks of proving impact and damages, Plaintiffs faced the complexities, challenges, and risk of a far-greater task: establishing the other elements of liability. The facts and claims here are intricate. *See In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 123 (S.D.N.Y. 2009) ("the complexity of Plaintiffs' claims *ipso facto* creates uncertainty."). Establishing liability involves obtaining and proving the meaning and significance of instant messages, trading patterns, and other facts or evidence. Evidence of manipulation and collusion will likely raise ambiguities and inferences. This creates many risks in establishing liability in this case. The answers to the key common questions of fact and law for all Class Members' claims will be

disputed and Interim Lead Counsel will zealously seek to overcome all the foregoing risks.

Considering these risks, the Deutsche Bank Settlement beneficially diversifies the Settlement Class's position. In assessing the Deutsche Bank Settlement, Interim Lead Counsel was mindful of the "benefits afforded the Class including the immediacy and certainty of the recovery, against the continuing risks of litigation." *See In re Marsh ERISA Litig.*, 265 F.R.D. 128, 139 (S.D.N.Y. 2010). Due to the ostensible risks of litigation, Interim Lead Counsel's considered judgment is that the consideration that the Deutsche Bank Settlement provides, including the substantial cooperation, is well within the range of that which may possibly later be found to be fair, reasonable, and adequate at final approval. *NASDAQ II*, 176 F.R.D. at 102; June 2017 Briganti Decl. ¶ 37.

1. Applying the *Grinnell* "final approval" Factors to the Deutsche Bank Settlement is unnecessary at preliminary approval.

At final approval, the Court considers:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974) ("*Grinnell*"). Plaintiffs have already addressed *Grinnell* Factors 4-6 and 8-9 above, the only appropriate consideration on a motion for preliminary approval. *See In re Warner Chilcott Ltd. Secs. Litig.*, No. 06 Civ. 11515, 2008 WL 5110904, at *2 (S.D.N.Y. Nov. 20, 2008) ("Although a complete analysis of [the *Grinnell*] factors is required for final approval, at the preliminary approval stage, the [c]ourt need only find that the proposed settlement fits within the range of possible approval to proceed.").[6] Plaintiffs nonetheless address

[6] The Court did not address the remaining *Grinnell* Factors when it granted preliminary approval of the Barclays or HSBC Settlements. ECF Nos. 234, 279.

the remaining *Grinnell* Factors below.

***Grinnell* Factor 1.** The factual and legal issues in this Action involve esoteric financial complexities, but the future litigation may be handled pursuant to standard case management procedures. As is always true in cases involving large document productions by defendants, a key component of the duration of the case will be the time that the non-settling Defendants require to produce their documents, and that the parties require to review the different Defendants' documents as well as non-party documents. The litigation is likely to be expensive.

***Grinnell* Factor 2.** Consideration of *Grinnell* Factor 2 is premature. Nonetheless, all the named Plaintiffs favor the Deutsche Bank Settlement. Plaintiff CalSTRS, the largest U.S. education-only retirement fund, with approximately $206.5 billion in assets under management (as of April 30, 2017) and close to one million members, is a sophisticated investor with significant financial expertise. Plaintiffs' approval is probative of the likely reaction by other Settlement Class Members upon reviewing the Deutsche Bank Settlement. Any Class Member who does not favor the deal can opt out. After Notice to the Settlement Class, Plaintiffs will address the Settlement Class's reaction in their final approval motion.

***Grinnell* Factor 3.** The Court may approve a settlement at any stage of litigation. *See In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, MDL No. 1500, 02-civ-5575 (SWK), 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006). The Court's primary concern in examining the stage of litigation and the extent of discovery undertaken is to assess whether the settling parties "have engaged in sufficient investigation of the facts" to understand the strengths and weaknesses of their case, and whether the settlement is adequate given those risks. *Id.* at *37.

Plaintiffs conducted extensive factual and legal research and consulted experts to assess the merits of their claims. *See* June 2017 Briganti Decl. ¶¶ 8, 25; June 2017 Lovell Decl. ¶ 6. Plaintiffs reviewed public information, including government pleas, non-prosecution agreements, and deferred

prosecution agreements. Plaintiffs also had the benefit of ACPERA and settlement cooperation produced under the Barclays Settlement. The information gathered during this process greatly informed Plaintiffs of the advantages and disadvantages of entering the Deutsche Bank Settlement. Although Plaintiffs did not receive discovery prior to settling with Deutsche Bank, discovery is not required even at final approval. *See Plummer v. Chemical Bank*, 668 F.2d 654, 658 (2d Cir. 1982).

***Grinnell* Factor 7.** Deutsche Bank can withstand a greater judgment than $170,000,000, but this *Grinnell* Factor does not indicate the appropriateness of the Deutsche Bank Settlement. *See In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 439, 460 (S.D.N.Y. 2004) ("[T]he fact that a defendant is able to pay more than it offers in settlement does not, standing alone, indicate that the settlement is unreasonable or inadequate").

II. The Court should certify the Settlement Class for the Deutsche Bank Settlement.

As the Court already found when preliminarily approving the Barclays and HSBC Settlements, the Settlement Class meets the requisites of Rule 23(a) and Rule 23(b)(3) for preliminary approval. *Compare* Settlement Agreement ¶ 4, *with* ECF No. 234 ¶ 4, ECF No. 279 ¶ 4. Thus, the Settlement Class should be preliminarily certified for the claims against Deutsche Bank.

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

1. Numerosity

Rule 23(a) requires that the class be "so numerous that joinder of all class members is impracticable." FED. R. CIV. P. 23(a). Joinder need not be impossible, "joinder may merely be difficult or inconvenient, rendering use of a class action the most efficient method to resolve plaintiffs' claims." *In re Initial Pub. Offering Sec. Litig.*, 260 F.R.D. 81, 90 (S.D.N.Y. 2009) ("*IPO*"). "Sufficient numerosity can be presumed at a level of forty members or more." *Id.*; *see also* ECF No. 234 ¶ 5, ECF No. 279 ¶ 5. There are at least hundreds, if not thousands, of geographically dispersed

persons and entities that fall within the Settlement Class definition. *See* June 2017 Briganti Decl. ¶ 38. Thus, joinder of all these individuals and entities would be impracticable.

2. Commonality

Commonality requires the presence of only a single question of law or fact common to the class. *See Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011); *see also* FED. R. CIV. P. 23(a)(2). This case presents scores of common questions of law and fact, including personal jurisdiction, subject matter jurisdiction, the standards for an unlawful agreement, and multiple questions that were raised by Defendants' motions to dismiss. Adding to the common questions of law and fact are the same liability and impact questions that every Plaintiff and Class Member must answer through the same body of common class-wide proof. For example:

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

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

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

These common questions involve dozens of common sub-questions of law and fact that are also common to all Class Members. Rule 23(a)(2) is overwhelmingly satisfied.

3. Typicality

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." FED. R. CIV. P. 23(a)(3). This permissive standard is satisfied when "each class member's claim arises from the same course of events and each class member makes similar legal arguments to prove the defendant's liability." *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 35 (2d Cir. 2009). Here, Plaintiffs' and Class Members' claims arise from the

same course of conduct involving Defendants' alleged false reporting and manipulation of Euribor and the prices of Euribor Products. Thus, Plaintiffs' claims are typical of the Class Members' claims. *See, e.g.*, *Marisol A. by Forbes v. Giuliani*, 126 F.3d 372, 376-77 (2d Cir. 1997).

4. Adequacy

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." FED. R. CIV. P. 23(a)(4); *Baffa v. Donaldson, Lufkin & Jenrette Secs. Corp.*, 222 F.3d 52, 60 (2d Cir. 2000). Generally, courts consider "whether: 1) plaintiff's interests are antagonistic to the interest of other members of the class and 2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation." *Id.* at 61.

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

"[O]nly a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." *Martens v. Smith Barney Inc.*, 181 F.R.D. 243, 259 (S.D.N.Y. 1998). No such fundamental conflict exists here.

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

Second, all Settlement Class Members share a common interest in obtaining Deutsche Bank's early and substantial cooperation to prosecute the claims against the non-settling Defendants.

Third, all Settlement Class Members share the same overriding interest to overcome the procedural dismissal motions, develop the enormous fact record during discovery, overcome the ambiguities and competing explanations, and establish the collusive, successful manipulation of Euribor and Euribor Products. Further, all Settlement Class Members share the interest to

successfully show that such manipulation of Euribor was sufficient to cause injury and to quantify the impact of such manipulation on Euribor and the prices of Euribor Products.

b. Interim Lead Counsel is adequate.

Plaintiffs and the Settlement Class are represented by experienced and skilled counsel. Class Counsel, Lowey Dannenberg and Lovell Stewart, has prosecuted this litigation for over four years. This Court has already authorized and appointed Lowey Dannenberg and Lovell Stewart as Class Counsel for the Barclays and HSBC Settlements, having found counsel's experience sufficient and relevant. ECF No. 234 ¶ 6; ECF No. 279 ¶ 6.

Lowey Dannenberg has vigorously represented the Settlement Class in the Action, having negotiated the Deutsche Bank Settlement. Lowey Dannenberg has obtained and will obtain valuable information provided by Deutsche Bank. With over 50 years of experience litigating complex class actions, Lowey Dannenberg has achieved some of the most significant class action recoveries under the CEA and has secured almost a billion dollars in recoveries on behalf of Fortune 100 Companies and other sophisticated investors in antitrust and competition-related litigation. *See* Lowey Dannenberg Resume, ECF No. 276-2; *see also* Euroyen Order ¶ 5 (appointing Lowey Dannenberg as settlement class counsel in $58 million settlements with HSBC and Citibank).

Lovell Stewart has successfully tried antitrust and commodities claims, and also has obtained as Lead Counsel or Co-Lead Counsel what were at the times the largest class action recoveries under three federal statutes, two of which (the antitrust laws and commodity laws) are the primary statutes at issue here. *See* Lovell Stewart Resume, ECF No. 277-1.

The same bases justifying the Court's appointment of Lowey Dannenberg and Lovell Stewart as Class Counsel for the Barclays and HSBC Settlements applies to Lowey Dannenberg's and Lovell Stewart's ability and adequacy to serve as Class Counsel for the Settlement Class for the Deutsche Bank Settlement. Therefore, upon certifying the Settlement Class, the Court should also

appoint Lowey Dannenberg and Lovell Stewart as Class Counsel. The Rule 23(a)(4) requirements that there be no fundamental conflict and that counsel is adequate are both satisfied.

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

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

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

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

1. Predominance

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

"Predominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws[,]" as opposed to mass tort cases in which the "individual stakes are high and disparities among class members are great." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997); Alba Conte & Herbert Newberg, Newberg on Class Actions §§ 18:28 & 18:29 (4th ed. 2002). Liability focuses on the defendants' alleged unlawful actions, not the actions of individual plaintiffs, making most antitrust claims particularly well suited for class treatment. *Compare Amchem*, 521 U.S. at 624, *with Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 815 (7th Cir. 2012). The "predominance inquiry will sometimes be easier to satisfy in the settlement context." *In re Am. Int'l Grp. Secs. Litig.*, 689 F.3d 229, 240 (2d Cir. 2012). Unlike class certification for litigation purposes, a settlement class presents no management difficulties for the court as settlement, not trial, is proposed. *Amchem*, 521 U.S. at 620; *NASDAQ I*, 169 F.R.D. at 517 (the predominance standard is met "unless it is clear that individual issues will overwhelm the common questions and render the class action valueless").

If the claims against Deutsche Bank were not settled, dozens of common questions would have predominated over individual questions in the prosecution of the claims against Deutsche Bank. The "predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *IPO*, 260 F.R.D. at 92. All Plaintiffs and Class Members must answer the same common factual and legal questions to establish personal jurisdiction, subject matter jurisdiction, conspiracy, unlawful Euribor manipulation, the amount of such manipulation, and many additional matters of proof. These common questions predominate over individual questions, thus the Settlement Class satisfies Rule 23(b)(3). *See Cordes & Co. Fin. Servs., Inc. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 105 (2d Cir. 2007) ("allegations of the existence of a price-fixing conspiracy are susceptible to common proof").

2. Superiority

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

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

Second, many Class Members have neither the incentive nor the means to litigate these claims individually. The damages most of the Class Members suffered are likely small compared to the considerable expense and burden of individual litigation. This makes it uneconomic for an individual to protect his/her rights through an individual suit. That is why no Class Member "has displayed any interest in bringing an individual lawsuit." *See Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 661 (S.D.N.Y. 2015). A class action allows claimants to "pool claims which would be uneconomical to litigate individually," as "no individual may have recoverable damages in an amount that would induce him to commence litigation on his own behalf." *Currency Conversion*, 224 F.R.D. at 566.

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

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

Interim Lead Counsel and Deutsche Bank have jointly designated Amalgamated Bank to serve as Escrow Agent. Amalgamated Bank currently serves as Escrow Agent for the Barclays and HSBC Settlements and has agreed to provide its services at market rates.

IV. The Court should approve the proposed forms and methods of Notice of the Settlements to the Settlement Class.

Due process and the Federal Rules require that the class receive adequate notice of a class action settlement. *Wal-Mart Stores, Inc.*, 396 F.3d at 114. The adequacy of a settlement notice is measured by reasonableness. *See Soberal-Perez v. Heckler*, 717 F.2d 36, 43 (2d Cir. 1983); *see also* FED. R. CIV. P. 23(e)(1) ("The court must direct notice in a reasonable manner to all class members who would be bound by the proposal."); *Weigner v. City of New York*, 852 F.2d 646, 649 (2d Cir. 1988) (due process does not require actual notice to every class member, as long as class counsel "acted reasonably in selecting means likely to inform persons affected.").

Rule 23(c)(2) requires only that Rule 23(b)(3) class members be given "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." FED. R. CIV. P. 23(c)(2)(B). Notice must clearly state: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3). *Id.* Courts are afforded "considerable discretion" in fashioning class notice. *In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d at 168. Plaintiffs' proposed Notice program—consisting of mailed, published, and online notice—easily satisfies this standard. Further, the proposed Notice program is substantially similar to the notice program that was approved to notify the settlement class of the settlements relating to Yen-LIBOR and Euroyen TIBOR manipulation claims, which

resulted in mailed notice to over 125,000 potential settlement class members. *See* Aff. of Eric J. Miller, *Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (S.D.N.Y. Sept. 27, 2016), ECF No. 684, at 4-5.

A. Plaintiffs' proposed Notice program.

1. Direct-Mailing Notice

The Settlement Administrator will send the Mailed Notice (June 2017 Briganti Decl. Ex. 3) and the Proof of Claim and Release form (June 2017 Briganti Decl. Ex. 5) via First-Class Mail, postage prepaid to the Settlement Class Members. As Plaintiffs detailed in their prior memorandum of law in support of preliminary approval of the HSBC Settlement (ECF No. 275, at 1, 5, 7, 15), under the terms of the HSBC Settlement, Plaintiffs have the right to conduct confirmatory discovery regarding HSBC's representation that its affiliate's alleged manipulation of Euribor was limited to one instance, the March 2007 IMM date (March 19, 2007). ECF No. 276-1 ¶ 28. Therefore, Plaintiffs propose commencing the Mailed Notice on November 29, 2017, upon the completion of the confirmatory discovery period under the HSBC Settlement.

Exchange Traded Market. To distribute the long-form notice to futures traders, Plaintiffs propose to send individual, mailed notice to all large traders of Chicago Mercantile Exchange ("CME") Euro currency futures contracts whose names Plaintiffs will subpoena from the CME.

Second, everyone who transacted in CME Euro currency futures contracts had to do so through a CME clearing broker. Plaintiffs propose that mailed notice be given to all CME clearing brokers whose names Plaintiffs will obtain pursuant to a subpoena to the CME, with the direction that the CME clearing brokers forward the notice to their customers who bought, sold, or held CME Euro currency futures contracts during the class period (or provide the names and addresses of such customers to the Settlement Administrator). This should result in mailed notice to all Settlement Class Members, and provide overlapping notice to the Settlement Class Members who had the largest positions in CME Euro currency futures contracts.

Third, U.S. market participants that transacted in NYSE LIFFE Euribor futures and options contracts did so through a NYSE LIFFE clearing broker. Thus, Plaintiffs propose that mailed notice be given to all NYSE LIFFE clearing brokers whose names Plaintiffs will obtain pursuant to a subpoena to the NYSE LIFFE, with the direction that the NYSE LIFFE clearing brokers forward the notice to their U.S.-based customers who bought, sold, or held NYSE LIFFE Euribor futures and options during the class period (or provide the names and addresses of such U.S. market participants to the Settlement Administrator). This should result in mailed notice to all Settlement Class Members that traded the relevant futures contracts.

Over-The-Counter Market. To distribute the mailed notice to over-the-counter ("OTC") Euribor Products traders, Plaintiffs plan to capitalize on the relatively concentrated nature of the OTC derivatives market by mailing notice to (1) a list of large OTC investors; and (2) the largest Euribor Products dealers in the United States.

OTC Euribor Products are typically traded only by "institutional investors," *e.g.*, investment firms, insurers, commodity pools, and large employee-benefit plans.[7] According to the Federal Reserve Bank of New York, more than 90% of U.S.-based trades in OTC interest rate derivatives, including Euribor Products, is conducted by a small group of financial institutions and derivatives dealers.[8] For example, the Federal Reserve Bank of New York identified roughly 300 unique participants in the OTC interest rate derivatives market between June 1, 2010 and August 31, 2010.[9] Applying these results to the rest of the class period, there are likely hundreds (if not thousands) of

[7] *See, e.g.*, J. Christopher Giancarlo, *Pro-Reform Reconsideration of the CFTC Swaps Trading Rules: Return to Dodd-Frank*, U.S. COMMODITY FUTURES TRADING COMMISSION (Jan. 29, 2015) at 10 (the swaps market is closed to retail traders).

[8] *See, e.g.*, *The Foreign Exchange and Interest Rate Derivatives Markets: Turnover in the United States*, FEDERAL RESERVE BANK OF NEW YORK (April 2010) at 6 (91% of counterparties in foreign exchange and interest rate derivatives transactions in 2010 were one of approximately 30 reporting dealers or other financial institutions).

[9] Michael Fleming, John Jackson, Ada Li, Asani Sarkar, and Patricia Zobel, *An Analysis of OTC Interest Rate Derivatives Transactions: Implications for Public Reporting*, FEDERAL RESERVE BANK OF NEW YORK (March 2012) at 3.

OTC Euribor Products traders in the United States, significantly less than the number of investors who transacted in exchange-traded Euribor Products during the same period.

To help identify these traders and notify the Class, Barclays, HSBC, and Deutsche Bank have agreed to provide the Claims Administrator with counterparty contact information to the extent permitted by law or regulation for their transactions in OTC Euribor Products during the class period. Further, Plaintiffs will serve limited document requests on the JPMorgan and Citigroup Defendants relating to the names and addresses of the counterparties with which each transacted in Euribor Products during the class period. Plaintiffs will also subpoena the U.S. subsidiaries of the Defendants that were dismissed on personal jurisdiction grounds to seek the names and addresses of their counterparties in OTC Euribor Products during the class period.

Transactions in the OTC Euribor Products market also are handled by a relatively small group of interest rate derivatives dealers. For example, trading data produced to the Federal Reserve Bank of New York shows that between June 1, 2010 and August 31, 2010 the top fourteen ("G14") interest rate derivatives dealers were on one side of roughly 80% of all OTC interest rate derivatives transactions.[10] This is consistent with the Federal Reserve Bank of New York's triennial survey of turnover in the U.S. foreign exchange and interest rate derivatives markets, which shows that during the class period the ten largest dealers in the United States accounted for between 90% and 95% of all trades in OTC interest swaps, forward rate agreements, and options.

Therefore, the Settlement Administrator proposes mailing the following notice to OTC market participants:

- **Direct Mailing.** Notice will be sent directly to a list of U.S.-based derivatives market participants, including: (1) members of the International Swaps and Derivatives Association ("ISDA"), a global trade association for OTC derivatives responsible for

[10] *See An Analysis of OTC Interest Rate Derivatives Transactions*, at 2 n.3 (identifying "major derivatives dealers" or "G14 dealers" as Bank of America-Merrill Lynch, Barclays Capital, BNP Paribas, Citibank, Credit Suisse, Deutsche Bank AG, Goldman Sachs & Co., HSBC Group, J.P. Morgan, Morgan Stanley, The Royal Bank of Scotland Group, Société Générale, UBS AG, and Wachovia Bank N.A.).

maintaining the standardized ISDA Master Agreement used in OTC Euribor Products transactions; (2) Barclays', HSBC's, and Deutsche Bank's (and any other Defendants' and dismissed Defendants') OTC Euribor Products counterparties; (3) senior executives at hedge funds, investment banks, and real estate companies – the commercial end-users of OTC Euribor Products; (4) financial executives, including pension fund managers and derivatives traders, responsible for managing Euro exposure; (5) individual traders and brokers who have transacted in the Euro market during the class period; and (6) a commercially available list of banks, brokers, and other investors. This list is several times larger than the anticipated number OTC Euribor Products market participants and should effectively reach a large percentage of the Class.

- **Dealer Notification.** Notice will also be sent to approximately the thirty largest foreign exchange and interest rate derivatives dealers in the U.S. with instructions to either (a) forward the Notice on to their customers; or (b) provide a customer list that the Settlement Administrator can notify directly. The list of dealers notified will come from the Federal Reserve Bank of New York's triennial survey of turnover in the U.S. foreign exchange and interest rate derivatives markets.[11] Because these dealers collectively account for at least 90% to 95% of OTC market turnover, this method will reach almost all Class Members who transacted in OTC Euribor Products.

By mailing individual notice to these various persons and entities, notice is reasonably calculated to reach all Settlement Class Members that traded OTC Euribor Products.

2. Settlement Website and Toll-Free Telephone Number

A Settlement Website, www.EuriborSettlement.com, will be created for Class Members to obtain necessary information regarding the settlements with Barclays, HSBC, and Deutsche Bank. By visiting the Settlement Website, Settlement Class Members can review and obtain: (i) a blank Proof of Claim and Release form; (ii) the full and summary notices; (iii) the proposed plan of allocation; (iv) the settlement agreements between Plaintiffs and Barclays, HSBC, and Deutsche Bank; and (v) key pleadings and Court orders, such as the Complaints and the preliminary approval motions. The Settlement Administrator will also set up a toll-free telephone number to answer Settlement Class Members' questions and facilitate the filing of claims.

[11] *The Foreign Exchange and Interest Rate Derivatives Markets: Turnover in the United States*, FEDERAL RESERVE BANK OF NEW YORK, April 2007, at Annex II (listing more than 30 dealers, including the G14 dealers).

3. Publication

The Settlement Administrator also will publish the Publication Notice (June 2017 Briganti Decl. Ex. 4) in The Wall Street Journal, Investor's Business Daily, The Financial Times, Modern Trader, Stocks & Commodities, Global Capital, Hedge Fund Alert, Grant's Interest Rate Observer, and on the following websites: (i) futuresmag.com; (ii) FINAlternatives.com; (iii) traders.com; (iv) HFAlert.com; (v) FOW.com; and (vi) GlobalCapital.com. In addition, the Settlement Administrator will publish the summary notice in e-newsletters from Futures & Options World, Stocks & Commodities, FuturesMag.com, and FINAlternatives, as well as in email "blasts" to subscribers of Stocks & Commodities, Modern Trader, and FINAlternatives. *See, e.g.*, *In re Sony Corp. Sxrd Rear Projection TV Mktg.*, No. 09-MD-2102, 2010 WL 1993817, at *5 (S.D.N.Y. May 19, 2010) (approving notice by direct mail and email to class members). The Settlement Administrator will disseminate a news release via Newswire's US1 Finance Newsline distribution list to announce the Notice, which will be distributed to over 4,600 financial newsrooms, both print and broadcast, and approximately 550 websites. Any Settlement Class Members that do not receive Notice via direct mail will likely receive Notice through the foregoing publications or word of mouth.

B. Plaintiffs' Notice program comports with Rule 23(c)(2)(B) and due process.

Plaintiffs' proposed Notice satisfies Rule 23(c)(2)(B). It carefully details the nature of the Action and the Class of U.S. investors that are included in the Settlements, provides an ample "Background of the Litigation," which describes the claims, issues, and/or defenses presented in the Action, and that the Court's Final Judgment will be binding for all Class Members that remain in the Settlement Class.

The proposed Notice also comports with due process. The notice is written in clear and concise language, which "may be understood by the average class member." *See Wal-Mart*, 396 F.3d at 114. Class Members are provided with a full and fair opportunity to consider the proposed

Settlements and to respond and/or appear in Court. The Supreme Court has consistently found that mailed notice satisfies the requirements of due process. *See, e.g.*, *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 319 (1950).[12] Because Plaintiffs' proposed Notice program is the best under the circumstances, the Court should approve proposed forms and methods of Notice.

CONCLUSION

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

Dated: June 12, 2017
White Plains, New York

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[12] Plaintiffs propose essentially the same program of notice that has been repeatedly approved in prior commodities manipulation class action settlements. *See, e.g.*, *Laydon v. Mizuho Bank, Ltd. et al.*, No. 12-cv-3419 (GBD) (S.D.N.Y. June 22, 2016), ECF No. 659; *In re Platinum and Palladium Commodities Litig.*, No. 10 Civ. 3617 (WHP), ECF No. 213 at ¶¶ 7-11 (S.D.N.Y. Jul. 15, 2014), *In re Amaranth Natural Gas Commodities Litig.*, No. 07 Civ. 6377 (SAS), ECF No. 376 at ¶¶ 7-10 (S.D.N.Y. Jan. 3, 2012); *In re Dairy Farmers of America Inc. Cheese Antitrust Litig.*, No. 09 Civ. 3690, ECF No. 495 at ¶¶ 7-10 (N.D. Ill. Mar. 17, 2014); *Hershey v. Pacific Inv. Mgmt. Co. LLC*, No. 05 Civ. 04681 (RAG), ECF No. 562 at ¶¶ 2-4 (N.D. Ill. Jan. 26, 2011); *In re Optiver Commodities Litig.*, No. 08-cv-6842 (LAP), ECF No. 67 at ¶¶ 14-18.

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