

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 Releasors 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.

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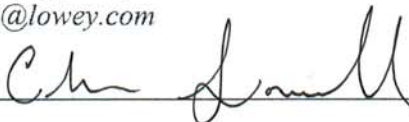
IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Agreement as of the date set forth below.

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
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