UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SONTERRA CAPITAL MASTER FUND LTD., FRONTPOINT EUROPEAN FUND, L.P., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP ENHANCED FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP FUND, L.P., FRONTPOINT HEALTHCARE HORIZONS FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., FRONTPOINT UTILITY AND ENERGY FUND L.P., HUNTER GLOBAL INVESTORS FUND I, L.P., HUNTER GLOBAL INVESTORS FUND II, L.P., HUNTER GLOBAL INVESTORS OFFSHORE FUND LTD., HUNTER GLOBAL INVESTORS OFFSHORE FUND II LTD., HUNTER GLOBAL INVESTORS SRI FUND LTD., HG HOLDINGS LTD., HG HOLDINGS II LTD., and FRANK DIVITTO, on behalf of themselves and all others similarly situated, Plaintiffs, - against – CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, JPMORGAN CHASE & CO., THE ROYAL BANK OF SCOTLAND PLC, UBS AG, BLUECREST CAPITAL MANAGEMENT LLP, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, AND JOHN DOE NOS. 1-50, Defendants.	Docket No. 15-cv-00871 (SHS)

PLAINTIFFS' NOTICE OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT WITH JPMORGAN CHASE & CO.

PLEASE TAKE NOTICE that, upon the accompanying memorandum of law and the Declaration of Vincent Briganti and the exhibits attached thereto including the Settlement Agreement, Plaintiffs, by and through their undersigned counsel, will respectfully move this Court, before the Honorable Sidney H. Stein, United States District Judge, at the United States District Court, Southern District of New York, 500 Pearl Street, New York, New York on a date and time to be set by the Court, for an order granting Plaintiffs' motion for preliminary approval of the

Settlement Agreement between Plaintiffs and JPMorgan Chase & Co. and for the other relief set forth in the proposed order annexed hereto.

Dated: July 21, 2017
White Plains, New York

LOWEY DANNENBERG, P.C.

/s/ Vincent Briganti

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SONTERRA CAPITAL MASTER FUND LTD., FRONTPOINT EUROPEAN FUND, L.P., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP ENHANCED FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP FUND, L.P., FRONTPOINT HEALTHCARE HORIZONS FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., FRONTPOINT UTILITY AND ENERGY FUND L.P., HUNTER GLOBAL INVESTORS FUND I, L.P., HUNTER GLOBAL INVESTORS FUND II, L.P., HUNTER GLOBAL INVESTORS OFFSHORE FUND LTD., HUNTER GLOBAL INVESTORS OFFSHORE FUND II LTD., HUNTER GLOBAL INVESTORS SRI FUND LTD., HG HOLDINGS LTD., HG HOLDINGS II LTD., and FRANK DIVITTO, on behalf of themselves and all others similarly situated, Plaintiffs, - against – CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, JPMORGAN CHASE & CO., THE ROYAL BANK OF SCOTLAND PLC, UBS AG, BLUECREST CAPITAL MANAGEMENT LLP, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, AND JOHN DOE NOS. 1-50, Defendants.	Docket No. 15-cv-00871 (SHS)

[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT WITH JPMORGAN CHASE & CO. AND CONDITIONALLY CERTIFYING A SETTLEMENT CLASS

UPON the Stipulation and Agreement of Settlement between Plaintiffs and JPMorgan Chase & Co. ("JPMorgan") dated June 2, 2017 (the "Agreement");

UPON all submissions in connection with Plaintiffs' Motion for Preliminary Approval of Class Action Settlement with JPMorgan;

UPON the consent of JPMorgan to the relief requested in such motion; and

UPON all prior proceedings herein.

NOW, THEREFORE, pursuant to the Federal Rule of Civil Procedure 23, it is hereby ORDERED that:

1. Except for the terms defined herein, the capitalized terms used herein shall have the meanings set forth in the Agreement.

2. The Court finds that it has subject matter jurisdiction to preliminarily approve the Settlement, including all exhibits thereto, under 28 U.S.C. § 1331, and that it has personal jurisdiction over the Parties and all members of the Settlement Class for purposes of approving the Settlement.

3. The Court preliminarily approves the Settlement as set forth in the Agreement, as being within the range of what may be found to be fair, reasonable, and adequate to the Settlement Class for the claims against JPMorgan. This is subject to the right of any such member of the Settlement Class to challenge the fairness, reasonableness, or adequacy of the Agreement and to show cause, if any exists, why a final judgment dismissing the action against JPMorgan, and ordering the release of the Released Claims against the Released Parties, should not be entered after due and adequate notice to such Settlement Class. The procedure for such notice to the Settlement Class shall be established in a later order.

4. The Court finds that the Agreement was entered into at arm's length by experienced counsel and is sufficiently within the range of reasonableness, fairness, and adequacy, and that Notice of the Agreement should be given to members of the Settlement Class.

5. Solely for purposes of the Settlement, the Settlement Class is hereby preliminarily certified and maintained as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure, and the Court finds that the applicable provisions of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure have been satisfied. The Court conditionally certifies the following Settlement Class solely for purposes of the Settlement of the claims against JPMorgan:

> All Persons (including both natural persons and entities) who purchased, sold, held, traded, or otherwise had any interest in Swiss Franc LIBOR-Based Derivatives[1] during the period of January 1, 2001 through December 31, 2011 (the "Class Period"). Excluded from the Settlement Class are the Defendants (as defined in the Agreement) and any parent, subsidiary, affiliate or agent of any Defendant or any co-conspirator whether or not named as a Defendant, and the United States Government.

6. Notwithstanding the sentence above that "[e]xcluded from the Settlement Class are the Defendants (as defined in the Agreement) and any parent, subsidiary, affiliate or agent of any

[1] "Swiss Franc LIBOR-Based Derivatives" means: (i) a three-month Euro Swiss franc futures contract on the London International Financial Futures and Options Exchange ("LIFFE") entered into by a U.S. Person, or by a Person from or through a location within the U.S.; (ii) a Swiss franc currency futures contract on the Chicago Mercantile Exchange ("CME"); (iii) a Swiss franc LIBOR-based interest rate swap entered into by a U.S. Person, or by a Person from or through a location within the U.S.; (iv) an option on a Swiss franc LIBOR-based interest rate swap ("swaption") entered into by a U.S. Person, or by a Person from or through a location within the U.S.; (v) a Swiss franc currency forward agreement entered into by a U.S. Person, or by a Person from or through a location within the U.S.; and/or (vi) a Swiss franc LIBOR-based forward rate agreement entered into by a U.S. Person, or by a Person from or through a location within the U.S.

Defendant or any co-conspirator whether or not named as a Defendant, and the United States Government," and solely for purposes of this Settlement and this Settlement Class, Investment Vehicles[2] shall not be excluded from the Settlement Class solely on the basis of being deemed to be Defendants or affiliates or subsidiaries of Defendants. However, to the extent that any Defendant or any entity that might be deemed to be an affiliate or subsidiary thereof (i) managed or advised, and (ii) directly or indirectly held a beneficial interest in, said Investment Vehicle during the Class Period, that beneficial interest in the Investment Vehicle is excluded from the Settlement Class.

7. The Court appoints Lowey Dannenberg Cohen & Hart, P.C. as Class Counsel to such Settlement Class for purposes of the Settlement, having determined that the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are fully satisfied by this appointment.

8. The Court appoints Citibank, N.A. as Escrow Agent for purposes of the Settlement Fund.

9. The Court preliminarily approves the establishment of the Settlement Fund as a qualified settlement fund pursuant to Section 468B of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

10. Plaintiffs Sonterra Capital Master Fund Ltd., FrontPoint European Fund, L.P., FrontPoint Financial Services Fund, L.P., FrontPoint Healthcare Flagship Enhanced Fund, L.P., FrontPoint Healthcare Flagship Fund, L.P., FrontPoint Healthcare Horizons Fund, L.P., FrontPoint Financial Horizons Fund, L.P., FrontPoint Utility and Energy Fund, L.P., Hunter Global Investors Fund I, L.P., Hunter Global Investors Fund II, L.P., Hunter Global Investors Offshore Fund Ltd., Hunter Global Investors Offshore Fund II Ltd., Hunter Global Investors SRI Fund Ltd., HG Holdings Ltd., HG Holdings II Ltd., and Frank Divitto (collectively, "Plaintiffs") will serve as representatives of such Settlement Class for purposes of the Settlement.

11. The timing, plan, and forms of the Notice to the Settlement Class and the date of the Fairness Hearing before this Court to consider any member(s) of the Settlement Class's objections to final approval of the Settlement and to consider the fairness, adequacy and reasonableness of the proposed Settlement and Agreement shall all be determined by separate order of this Court.

12. Neither this Order, the Agreement, the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Agreement or Settlement, whether or not the Settlement shall become final, is or shall be deemed or construed to be an admission, adjudication, or evidence of (i) any violation of any statute or law or of the validity of any claims, alleged wrongdoing, or liability of JPMorgan or any Released Party; (ii) the incurrence of any damage, loss, or injury by Plaintiffs or any Person; (iii) the existence or amount of any artificiality; (iv) any fault or omission of JPMorgan in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; or (v) the propriety of certification of a class other

[2] "Investment Vehicles" means any investment company, separately managed account or pooled investment fund, including, but not limited to: (i) mutual fund families, exchange-traded funds, fund of funds and hedge funds; and (ii) employee benefit plans.

than solely for purposes of the Settlement. Further, neither this Order, the Agreement, nor the Settlement contained therein, whether or not the Settlement shall become final, nor any negotiations, documents and discussions associated with them, nor the Final Approval Order and Final Judgment, may be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding of any nature, whether by the Settlement Class or any Person, except if warranted by existing law in connection with a dispute under the Agreement or an action in which the Agreement is asserted as a defense. All rights of JPMorgan and Plaintiffs are reserved and retained if the Settlement does not become final in accordance with the terms of the Agreement.

13. Neither this Order, the Agreement, the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Agreement or the Settlement is or may be used as an admission or evidence that the claims of Plaintiffs lacked merit in any proceeding against anyone other than JPMorgan in any court, administrative agency, or other tribunal.

14. In the event that the Agreement is terminated in accordance with its provisions, the Settlement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in the Agreement, and without prejudice to the status quo ante rights of Plaintiffs, JPMorgan, and the members of the Settlement Class.

15. All proceedings in the action as to JPMorgan, other than proceedings as may be necessary to implement the proposed Agreement or to effectuate the terms of the Agreement, are hereby stayed and suspended until further order of this Court.

16. If the Settlement is terminated pursuant to Paragraph 21 of the Agreement or if the Settlement is ultimately not approved or does not become final for any reason, the Court will modify any existing scheduling order to ensure that the Parties will have sufficient time to prepare for the resumption of litigation.

17. All members of the Settlement Class and their legally authorized representatives, unless and until they have submitted a timely request for exclusion from the Settlement Class pursuant to the instructions included in the Class Notice to be approved by this Court (hereinafter, "Request for Exclusion"), are hereby preliminarily enjoined from (i) filing, commencing, prosecuting, intervening in, or participating as a plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on the Released Claims; (ii) filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any members of the Settlement Class (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on the Released Claims; and (iii) attempting to effect an opt-out of a group, class, or subclass of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding based on the Released Claims.

18. The Court's preliminary certification of the Settlement Class, and appointment of Plaintiffs as class representatives, as provided herein is without prejudice to, or waiver of, the rights

of any Defendant to contest any other request by Plaintiffs to certify a class. The Court's findings in this Preliminary Approval Order shall have no effect on the Court's ruling on any motion to certify any class in this litigation, or appoint class representatives, and no party may cite or refer to the Court's approval of the Settlement Class as binding or persuasive authority with respect to any motion to certify such class or appoint class representatives.

ENTERED this _____ day of _____, _____.

_____

Hon. Sidney H. Stein
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SONTERRA CAPITAL MASTER FUND LTD., FRONTPOINT EUROPEAN FUND, L.P., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP ENHANCED FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP FUND, L.P., FRONTPOINT HEALTHCARE HORIZONS FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., FRONTPOINT UTILITY AND ENERGY FUND L.P., HUNTER GLOBAL INVESTORS FUND I, L.P., HUNTER GLOBAL INVESTORS FUND II, L.P., HUNTER GLOBAL INVESTORS OFFSHORE FUND LTD., HUNTER GLOBAL INVESTORS OFFSHORE FUND II LTD., HUNTER GLOBAL INVESTORS SRI FUND LTD., HG HOLDINGS LTD., HG HOLDINGS II LTD., and FRANK DIVITTO, on behalf of themselves and all others similarly situated,

Plaintiffs,

- against -

CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, JPMORGAN CHASE & CO., THE ROYAL BANK OF SCOTLAND PLC, UBS AG, BLUECREST CAPITAL MANAGEMENT LLP, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, AND JOHN DOE NOS. 1-50,

Defendants.

Docket No. 15-cv-00871 (SHS)
ECF Case

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT WITH JPMORGAN CHASE & CO.

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INTRODUCTION

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure ("Federal Rules"), Plaintiffs[1] respectfully submit this memorandum of law and the accompanying Declaration of Vincent Briganti, Esq. ("Briganti Decl.") to demonstrate that this Court should grant Plaintiffs' motion for an order that: (a) preliminarily approves Plaintiffs' proposed Settlement[2] with Defendant JPMorgan Chase & Co. ("JPMorgan"), subject to later, final approval; (b) conditionally certifies a Settlement Class on the claims against JPMorgan, subject to later, final approval of such Settlement Class; (c) appoints Lowey Dannenberg, P.C. ("Lowey Dannenberg") as Class Counsel; and (d) appoints Citibank, N.A. ("Citibank") as the Escrow Agent under the Settlement Agreement. *See* Proposed Order annexed to the Notice of Motion.

The Settlement meets the two essential requirements for granting preliminary approval—it is procedurally and substantively fair. The Settlement is the product of serious, informed, arm's-length negotiations between experienced counsel. Further, the Settlement is substantively fair, reasonable, and adequate, providing for JPMorgan to pay $22 million into a Settlement Fund, which will then be distributed to qualifying Settling Class Members. Settlement Agreement ¶ 3. Of equal importance, JPMorgan agreed to provide specified cooperation to Plaintiffs to benefit the Settlement Class. *Id.* ¶ 4. Because the Settlement with JPMorgan meets all the requisites for preliminary approval, the Court should grant Plaintiffs' motion.

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[1] The "Plaintiffs" are Sonterra Capital Master Fund Ltd., FrontPoint European Fund, L.P., FrontPoint Financial Services Fund, L.P., FrontPoint Healthcare Flagship Enhanced Fund, L.P., FrontPoint Healthcare Flagship Fund, L.P., FrontPoint Healthcare Horizons Fund, L.P., FrontPoint Financial Horizons Fund, L.P., FrontPoint Utility and Energy Fund, L.P., Hunter Global Investors Fund I, L.P., Hunter Global Investors Fund II, L.P., Hunter Global Investors Offshore Fund Ltd., Hunter Global Investors Offshore Fund II Ltd., Hunter Global Investors SRI Fund Ltd., HG Holdings Ltd., HG Holdings II Ltd., and Frank Divitto. Unless otherwise noted, ECF citations are to the docket in *Sonterra Capital Master Fund Ltd., et al. v. Credit Suisse AG, et al.*, No. 15-cv-00871 (S.D.N.Y.) (SHS) and internal citations and quotation marks are omitted.

[2] Unless otherwise noted, capitalized terms used herein have the same meaning as in the Stipulation and Agreement of Settlement between Plaintiffs and JPMorgan, dated June 2, 2017 (the "Settlement Agreement"). *See* Briganti Decl., Ex. 1.

ARGUMENT

I. The Court should preliminarily approve the Settlement.

The procedural history of this Action is set forth in the Briganti Decl. ¶¶ 7-12.

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) ("The compromise of complex litigation is encouraged by the courts and favored by public policy"); *Bano v. Union Carbide Corp.*, 273 F.3d 120, 129-30 (2d Cir. 2001) (holding that there is an overriding public interest in settling and quieting litigation, particularly class actions).

Proposed settlements of a Rule 23(b)(3) class, like this one, require notice to class members, an opportunity for those class members to object, and final approval by the Court after a hearing at which class members may appear and be heard. *See* FED. R. CIV. P. 23(e) (settlements in class actions require "the court's approval"); *see generally* Herbert B. Newberg & Alba Conte, NEWBERG ON CLASS ACTIONS § 11.41, at 89 (4th ed. 2002). Preliminary approval is akin to "a determination that there is what might be termed 'probable cause' to submit the proposal to class members and hold a full-scale hearing as to its fairness." *In re Traffic Exec. Assn. E. R.R.s.*, 627 F.2d 631, 634 (2d Cir. 1980).

Preliminary approval of a settlement is not expressly mentioned in either the Federal Rules generally or Rule 23 in particular. Frequently, the judicially-created requirements for preliminary approval have been expressed as follows:

> Where the proposed settlement [1] appears to be the product of serious, informed, non–collusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to class representatives or segments of the class and [4] 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*") (emphasis and numbers in brackets supplied); *In re Platinum & Palladium Commodities Litig.*, No. 10-

cv-3617, 2014 U.S. Dist. LEXIS 96457, at *35-36 (S.D.N.Y. July 15, 2014) ("*Platinum*"). The Settlement with JPMorgan amply satisfies each of these four requirements. *See* Pts. I.B-F, *infra.*

In conducting the preliminary approval inquiry, a court primarily 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." *Platinum,* 2014 U.S. Dist. LEXIS 96457, at *35-36. The question is whether the terms are "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 (S.D.N.Y. June 22, 2016) (GBD), ECF No. 659 ("Euroyen Order") (preliminarily approving $35 million and $23 million settlements obtained by Lowey Dannenberg 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")); Order Preliminarily Approving Class Action Settlement and Conditionally Certifying a Settlement Class, *Sullivan, et al. v. Barclays plc, et al.*, No. 13-cv-2811 (PKC), (S.D.N.Y. Dec. 15, 2015), ECF No. 234 ("Euribor Order I") (preliminarily approving $94 million settlement obtained by Lowey Dannenberg in a proposed class action alleging the manipulation of the Euro Interbank Offered Rate "Euribor").[3]

B. The Settlement provides a considerable benefit to the Settlement Class.

The Settlement with JPMorgan, which is the initial, "ice breaker" settlement in this Action, provides the Settlement Class with substantial cooperation and monetary consideration of $22 million and serves as a potential catalyst for other Defendants to settle. *See In re Packaged Ice Antitrust Litig.*, No. 08-MD-01952, 2011 U.S. Dist. LEXIS 17255, at *50-51 (E.D. Mich. Feb. 22, 2011)

[3] *See also* Order Preliminarily Approving Class Action Settlement with HSBC Holdings plc and HSBC Bank plc and Conditionally Certifying a Settlement Class, *Sullivan, et al. v. Barclays plc, et al.*, No. 13-cv-2811 (PKC) (S.D.N.Y. Jan. 18, 2017), ECF No. 279 ("Euribor Order II") (preliminarily approving $45 million settlement obtained by Lowey Dannenberg).

("Also of significant value is the fact that the Settlement Agreement with [defendant] can serve as an 'ice-breaker' settlement and includes the promise of cooperation from [the defendant]"). This sum will also ensure funding to continue to pursue the litigation against the non-settling Defendants.

Another benefit of the Settlement is there is no right to reversion. That is, if the Settlement is finally approved, the settlement monies will **not** revert to JPMorgan for opt-outs or failures to submit a Proof of Claim and Release. Settlement Agreement ¶ 3.[4] Given the reality that claim rates often fall below 100%, the non-reversion term of the Settlement likely will enhance the benefits and the recovery that qualifying claimants will receive.

Beyond monetary consideration, the Settlement also obligates JPMorgan to provide specified 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) attorney proffers of fact regarding conduct known to JPMorgan; (ii) underlying documents and communications that JPMorgan previously provided to Governmental Agencies; (iii) reasonably available trade data pertaining to JPMorgan's transactions in Swiss franc-denominated inter-bank money market instruments for the years 2001 through 2011; (iv) reasonably available trade data pertaining to JPMorgan's transactions in Swiss Franc LIBOR-Based Derivatives for the years 2001 through 2011; (v) certain information contained in submissions to the Federal Reserve Bank of New York; and (vi) non-privileged declarations, affidavits, witness statements, or other sworn or unsworn statements of JPMorgan's employees. Settlement Agreement ¶ 4. JPMorgan will also provide Plaintiffs with reasonable access

[4] *Compare Boeing Co. v. Van Gemert*, 444 U.S. 472, 479-82 (1980) (in the litigated trial and judgment context, the share of the settlement due to class members who failed to claim reverted to defendants), *with Guerrero v. Wells Fargo Bank, N.A.*, No. C 12-04026, 2014 U.S. Dist. LEXIS 50015, at *6 (N.D. Cal. Apr. 7, 2014) (finding the lack of reversion to defendant of remaining portions of the net settlement an important benefit to the class). Under the Settlement with JPMorgan, the proceeds that would have been paid to those persons who fail to claim will be redistributed among, and enhance the recovery of, those Class Members who do claim.

to up to four current employees who Plaintiffs believe may have knowledge of the conduct alleged in the Action. *Id.*

In exchange for these benefits, the Releasing Parties will release JPMorgan from any and all claims relating to Swiss franc LIBOR or the Swiss Franc LIBOR-Based Derivatives that were allegedly distorted by JPMorgan's alleged manipulation of Swiss franc LIBOR. *Id.* ¶ 12. Plaintiffs' claims against JPMorgan will also be dismissed on the merits with prejudice. *Id.* ¶ 18.

C. The Settlement is procedurally fair because it was produced by well-informed, arm's-length negotiations by experienced counsel.

"To determine procedural fairness, courts examine the negotiating process leading to the settlement." *Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 618 (S.D.N.Y. 2012). Where a settlement "is the product of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation," the settlement enjoys a "presumption of fairness." *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74 (S.D.N.Y. 2000), *aff'd sub nom. D'Amato v. Deutsche Bank*, 236 F.3d 78 (2d Cir. 2001); *see also Shapiro v. JPMorgan Chase & Co.*, No. 11 Civ. 8331 (CM) (MHD), 2014 U.S. Dist. LEXIS 37872, at *6 (S.D.N.Y. Mar. 24, 2014) ("Co–Lead Counsel, who have extensive experience in prosecuting complex class actions, strongly believe the Settlement is in the best interests of the Class, an opinion which is entitled to 'great weight.'").

The process leading up to the Settlement fully supports preliminary approval. Briganti Decl. ¶¶ 14-20. The Settlement is the result of more than 7 months of arm's-length, non-collusive negotiations between experienced counsel. JPMorgan and Plaintiffs began to discuss the possibility of settling the Action in November 2016. *Id.* ¶ 14. In the months that followed, Interim Lead Counsel and counsel for JPMorgan had numerous in-person meetings and telephone calls, during which counsel for each side expressed their views of the Action and JPMorgan's conduct in relation to the alleged conspiracy. *Id.* ¶¶ 15-17. At all times, counsel for JPMorgan argued that JPMorgan is not liable for the claims asserted against it in the Action. Following 7 months of hard-fought

negotiations, Plaintiffs and JPMorgan reached an agreement. *Id.* ¶ 18. JPMorgan does not admit any wrongdoing or liability as part of its Settlement and maintains that it has good and meritorious defenses to the claims brought against it in the Action. *See* Settlement Agreement.

The Settlement Class also benefitted from informed advocates. Prior to negotiating with JPMorgan, Interim Lead Counsel had researched and considered a wide range of relevant legal issues and analyzed the facts known to date, including government settlements, such as plea, non-prosecution, and deferred prosecution agreements, and engaged in ongoing consultations with a leading commodity manipulation consulting expert. *Id.* ¶ 6.

Interim Lead Counsel has extensive experience in litigating Commodity Exchange Act ("CEA") and antitrust claims (among others) and has obtained landmark settlements on behalf of some of the nation's largest pension funds and institutional investors. *See* Briganti Decl. ¶¶ 3-4; *see also* Briganti Decl. Ex. 2. Interim Lead Counsel believes that the Settlement reached with JPMorgan is in the best interests of the Settlement Class. Considering Interim Lead Counsel's extensive prior experience in complex class action litigation, their knowledge of the strengths and weaknesses of Plaintiffs' claims, and their assessment of the Settlement Class's likely recovery following trial and appeal, the Settlement is entitled to a presumption of procedural fairness.

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

The Settlement plainly satisfies the next *NASDAQ II* preliminary approval factor, as it involves 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* Briganti Decl. ¶ 22. The closest issue to a departure is in ¶ 23 of the Settlement Agreement, which gives JPMorgan the right, but not the obligation, in its sole discretion, to exercise certain rights, including terminating the Settlement Agreement, pursuant to the terms and conditions of a confidential Supplemental Agreement. These types of qualified rights to terminate, however, are common in class action settlements and are generally included based on

the defendant's desire to quiet the litigation through a class-wide settlement, without leaving open any material exposure. *See, e.g.,* Euroyen Order ¶¶ 10-11.

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

The Settlement does not favor or disfavor any Plaintiffs or 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; Settlement Agreement, *passim*.

Making such distinctions is fully allowable and expected, if there is a rational basis for them, in plans of allocation. Plaintiffs need transactional records from JPMorgan before beginning the process to formulate the plan of allocation of the Settlement proceeds. JPMorgan has informed Interim Lead Counsel that it is in the process of isolating and collecting those records for production, as contemplated by ¶ 4 of the Settlement Agreement.

Preliminary approval is routinely granted to settlements before any plan of allocation exists. *See* Euribor Order I and Euribor Order II; *see also In re Wachovia Equity Secs. Litig.*, No. 08-6171 (RJS), 2012 U.S. Dist. LEXIS 97910, at *4 (S.D.N.Y. June 12, 2012) (approving plan of allocation after preliminary approval of proposed settlement and certification of settlement class); *In re Canadian Sup. Secs. Litig.*, No. 09-10087, 2011 U.S. Dist. LEXIS 132708, at *2 (S.D.N.Y. Nov. 16, 2011) (same); *In re Giant Interactive Grp. Inc. Secs. Litig.*, 279 F.R.D. 151, 156 (S.D.N.Y. 2011) (same).

Even final approval of a class action settlement is appropriate prior to the preparation of a plan of allocation, especially in a complex case in which only one or two defendants have settled and sufficient records for determination as to the distribution of the proceeds are not yet available. *In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 145, 170 (2d Cir. 1987); *see also In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 480 (S.D.N.Y. 1998) ("*NASDAQ III*"); *In re HealthSouth Corp. Sec. Litig.*, 334 Fed. App'x 248, 251, 253-55 (11th Cir. 2009); MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.313 at 296; *Newberg on Class Actions* § 12:35 at 342 (4th ed. 2002).

But here, Plaintiffs do fully anticipate sending the proposed plan of allocation with the Class Notice that will be given to members of the Settlement Class (along with notice of any other settlements that have been preliminarily approved by that time). Thus, the proposed plan of allocation will be available to Class Members before they have to decide to accept its benefits, opt-out, or object to final approval. Accordingly, after receiving JPMorgan's transaction records, Plaintiffs will seek to pursue the process for formulating a plan of allocation. Once it is created, Interim Lead Counsel will file the proposed plan of allocation, as well as a Class Notice program, the forms of notice, and proposed date for the Fairness Hearing, with the Court for preliminary approval thereof. The Court will also have the opportunity review Plaintiffs' proposed plan of allocation when considering whether to grant final approval of the Settlement.

In these circumstances, the Settlement wholly avoids any preferences or discriminations. Whether any such preferences or discriminations 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 Settlement consideration is well within the range of what possibly may be found, at final approval, to be fair and reasonable.

The sizeable consideration that the 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). In applying this factor, "[d]ollar amounts [in class action settlement agreements] are judged not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff'd,* 818 F.2d 145 (2d Cir. 1987).

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 Department of Justice had 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." *NASDAQ III*, 187 F.R.D. at 476; *see also In re Flonase Antitrust Litig.,* 951 F. Supp. 2d 739, 748 (E.D. Pa. 2013) ("Even if [p]laintiffs had succeeded in proving liability at trial, there is no guarantee they would have recovered damages.").

JPMorgan's monetary consideration alone, $22 million, is greater than the amount of maximum potential damages JPMorgan 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 U.S. Dist. LEXIS 22103, at *41 (S.D.N.Y. Nov. 20, 1995) ("*Prudential*") (Pollack, J.) (where many non-settling defendants are present, class counsel must be circumspect in stating facts that may aid the non-settling defendants). JPMorgan would have argued—and still maintains—that it was not liable for any damages on any claims in the Action.

Plaintiffs' impact and damages theories against JPMorgan would have been sharply disputed, including at trial. This inevitably would have involved 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 would have faced the

complexities, challenges, and risk of a far-greater task: establishing the other elements of liability. The facts and claims here are intricate. As recognized in similar contexts, "the complexity of [p]laintiff's claims *ipso facto* creates uncertainty." *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 123 (S.D.N.Y. 2009). Establishing liability in the Action will involve obtaining and proving the meaning and significance of instant messages, trading patterns, and other facts or evidence. Trader communications will likely raise ambiguities and inferences. This creates many risks in establishing liability in this case. Interim Lead Counsel must be wary in describing in detail its proof risks due to the presence of non-settling Defendants. *See Prudential*, 1995 U.S. Dist. LEXIS 22103, at *41. But the answers to the key questions of fact and law for all Class Members' claims will be hotly disputed and Interim Lead Counsel will zealously seek to overcome all of the foregoing risks.

In light of the many risks of continued prosecution, the Settlement beneficially diversifies the Settlement Class's position. The Settlement provides Class Members with an immediate recovery and the opportunity to obtain future recoveries through settlements or verdicts against the remaining seven Defendants. In assessing the reasonableness and adequacy of benefits obtained in the 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 total consideration that the Settlement with JPMorgan provides, including the cooperation that JPMorgan will provide to Plaintiffs, is fair, reasonable, and adequate in light of all the circumstances.

Therefore, the consideration offered to the Class Members in the Settlement 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; Briganti Decl. ¶ 23.

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

At final approval, the Court considers several factors in deciding whether a settlement is fair, reasonable, and adequate:

> (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*"); *see also Maywalt*, 67 F.3d at 1079-80 (holding that fundamental to a determination of whether a settlement is fair, reasonable, and adequate "is the need to compare the terms of the compromise with the likely rewards of litigation."). In the discussion above, Plaintiffs have already addressed *Grinnell* Factors 4-6 and 8-9. These *Grinnell* Factors are the only appropriate considerations for preliminary approval. *In re Take Two Interactive Secs. Litig.*, No. 06 Civ. 803 (RJS), 2010 U.S. Dist. LEXIS 143837, at *32 n.8 (S.D.N.Y. June 29, 2010) ("A court reviewing a settlement for final approval must address the nine factors laid out in" *Grinnell*). Plaintiffs nonetheless address 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 multiple 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 Defendants' documents as well as non-party documents. The litigation is likely to be expensive.

***Grinnell* Factor 2.** *Grinnell* Factor 2 (the reaction of the class to the settlement) is premature. Nonetheless, all of the named Plaintiffs favor the Settlement. Well-versed in the rigorous analysis of financial matters, Plaintiffs' approval is highly probative of the likely reaction by other Class Members upon similarly reviewing the Settlement with JPMorgan. Any Class Member who does not favor the deal can opt out. After the Settlement Class has been provided the Class Notice of the Settlement, Plaintiffs will address the Settlement Class's reaction in their motion for final approval.

***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, 2006 U.S. Dist. LEXIS 17588, at *36 (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 cases, 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. Briganti Decl. ¶ 6. Plaintiffs reviewed publicly-available information, including government pleas, non-prosecution agreements, and deferred prosecution agreements. The information gathered during this process greatly informed Plaintiffs of the advantages and disadvantages of entering into the Settlement with JPMorgan. Although Plaintiffs have not received discovery from the Defendants, discovery is not required even at final approval of a settlement. *See Plummer v. Chemical Bank*, 668 F.2d 654, 658 (2d Cir. 1982); *see also In re AOL Time Warner, Inc.,* 2006 U.S. Dist. LEXIS 17588, at *36 (the relevant inquiry is whether the plaintiffs have obtained a sufficient understanding of the case to gauge the strengths and weaknesses of their claims and the adequacy of the settlement).

***Grinnell* Factor 7.** JPMorgan has the ability to withstand a greater judgment than $22 million, but this *Grinnell* Factor alone does not bear on the appropriateness of the Settlement. *See In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 439, 460 (S.D.N.Y. 2004) ("[T]he fact that a defendant is able to pay more than it offers in settlement does not, standing alone, indicate that the settlement is unreasonable or inadequate"); *In re Tronox Inc.*, No. 14-cv-5495 (KBF), 2014 U.S. Dist. LEXIS 158767, at *21 (S.D.N.Y. Nov. 10, 2014) ("The law does not require a defendant to completely empty its pockets before a settlement may be approved—indeed, if it did, it is hard to imagine why a defendant would ever settle a case.").

2. Unlike in *Grinnell*, recovery on many of the claims being settled here is not foreclosed because of the availability of joint and several liability recovery from the remaining Defendants.

A more detailed *Grinnell* analysis is also inappropriate because *Grinnell* involved the payment by all four defendants of $10 million, whereas here, JPMorgan has settled, but seven Defendants remain in the litigation. *See Grinnell,* 495 F.2d at 452. Most of the claims here are premised on joint or otherwise conspiratorial conduct that creates joint and several liability. *See Strobl v. New York Mercantile Exch.*, 582 F. Supp. 770, 778 (S.D.N.Y. 1984) (holding defendants jointly and severally liable on a jury verdict for price fixing and manipulation in violation of the antitrust laws and commodities laws, as well as common law fraud), *aff'd* 768 F.2d 22 (2d Cir. 1985). The situation here is different from the "entire settlement for all purposes" circumstance under review in *Grinnell.*

II. The Court should certify the Settlement Class defined in the Settlement.

At this preliminary approval stage, the Settlement Class for the claims against JPMorgan satisfies the provisions of Rule 23(a) and Rule 23(b)(3). The Settlement Class excludes persons and entities outside the purview of United States law, but includes those Persons protected by U.S. law who transacted in financial instruments, the prices of which Defendants allegedly distorted or

sought to distort, by manipulating Swiss franc LIBOR, in order to profit their proprietary trading positions. Specifically, the Settlement Agreement provides for the following Settlement Class:

> All Persons (including both natural persons and entities) who purchased, sold, held, traded, or otherwise had any interest in Swiss Franc LIBOR-Based Derivatives[5] during the period of January 1, 2001 through December 31, 2011 (the "Class Period"). Excluded from the Settlement Class are the Defendants (as defined in the Settlement Agreement) and any parent, subsidiary, affiliate or agent of any Defendant or any co-conspirator whether or not named as a Defendant, and the United States Government.

Settlement Agreement ¶ 1(E). Thus, the Court should preliminarily certify the Settlement Class defined in the Settlement Agreement.[6]

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, only "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.* There are at least hundreds, if not thousands, of geographically dispersed persons and entities that fall within the Settlement Class definition. *See* Briganti Decl. ¶ 24. Thus, joinder of all of these individuals and entities would be impracticable.

[5] "Swiss Franc LIBOR-Based Derivatives" means: (i) a three-month Euro Swiss franc futures contract on the London International Financial Futures and Options Exchange ("LIFFE") entered into by a U.S. Person, or by a Person from or through a location within the U.S.; (ii) a Swiss franc currency futures contract on the Chicago Mercantile Exchange ("CME"); (iii) a Swiss franc LIBOR-based interest rate swap entered into by a U.S. Person, or by a Person from or through a location within the U.S.; (iv) an option on a Swiss franc LIBOR-based interest rate swap ("swaption") entered into by a U.S. Person, or by a Person from or through a location within the U.S.; (v) a Swiss franc currency forward agreement entered into by a U.S. Person, or by a Person from or through a location within the U.S.; and/or (vi) a Swiss franc LIBOR-based forward rate agreement entered into by a U.S. Person, or by a Person from or through a location within the U.S.

[6] JPMorgan consents to preliminary certification of the Settlement Class solely for the purpose of the Settlement and without prejudice to any position it may take with respect to class certification in any other action. Settlement Agreement ¶ 22(E).

2. Commonality

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." FED. R. CIV. P. 23(a)(2). This is a "'low hurdle' easily surmounted." *In re Prudential Sec. Inc. Ltd. Pshps. Litig.*, 163 F.R.D. 200, 206 n.8 (S.D.N.Y. 1995). Commonality requires the presence of only a single question common to the class. *See Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011).

This case presents scores of common questions of fact and law. Personal jurisdiction, subject matter jurisdiction, the standards for an unlawful agreement, and multiple questions raised by Defendants' motions to dismiss create a core of common questions of fact and law relating to Plaintiffs' claims and Defendants' affirmative defenses. All Class Members have the equal need to demonstrate facts relative to these questions and argue the same legal points to establish their claims.

Greatly adding to the common questions of law and fact are the same liability and impact questions that every Plaintiff and Class Member has to answer through the same body of common class-wide proof. For example:

1. What constitutes a false or manipulative submission by a Swiss franc LIBOR contributor panel bank? This threshold question involves issues of fact that will be of overriding importance in this litigation. As their traders allegedly talked and colluded about the optimal level of Swiss franc LIBOR to profit their proprietary positions held in Swiss Franc LIBOR-Based Derivatives, certain Defendants to the Action allegedly adjusted their Swiss franc LIBOR submissions in the direction of their financial self-interest. Nonetheless, we expect Defendants to the Action will contend that the communications are ambiguous, that the evidence is otherwise mixed, and/or they had non-manipulative reasons for their Swiss franc LIBOR submissions.

2. What constitutes a false or fixed bid-ask spread on over-the-counter ("OTC") Swiss Franc LIBOR-Based Derivatives by a market maker in the foreign exchange and interest rate derivatives markets?

3. What was the allegedly true, non-fixed bid-ask spread for OTC Swiss Franc LIBOR-Based Derivatives during each day of the Class Period?

4. Which of the Defendants were engaged in conspiratorial conduct in Swiss franc LIBOR and for what period(s) were they involved in the same?

5. What would the non-manipulated Swiss franc LIBOR be in the "but-for" world for each day of the Class Period?

These common questions involve dozens of common sub-questions of fact and law that are also common to all members of the Settlement Class. Rule 23(a)(2) is overwhelmingly satisfied for purposes of conditional certification.

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); *see also Bolanos v. Norwegian Cruise Lines Ltd.*, 212 F.R.D. 144, 155 (S.D.N.Y. 2002) ("Since the claims only need to share the same essential characteristics, and need not be identical, the typicality requirement is not highly demanding.").

The Plaintiffs' and Class Members' claims arise from the same course of conduct involving the alleged false reporting and manipulation of Swiss franc LIBOR, as well as their alleged fixing of the bid-ask spread on OTC Swiss Franc LIBOR-Based Derivatives, by some or all of the Defendants to the Action. 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) (finding the named plaintiffs' claims typical of the class's under Rule 23(a)(3) where "each named plaintiff challenges a different aspect of the child welfare system"; "[t]he claimed deficiencies implicate different statutory, constitutional and regulatory schemes"; and "no single plaintiff (named or otherwise) is affected by each and every legal violation alleged . . . and [] no single specific legal claim identified by the plaintiffs affects every member of the class"); *see also* Euroyen Order ¶ 4 (conditionally certifying settlement class of persons who purchased sold, held, traded, or otherwise had any interest in derivatives products priced, benchmarked and/or settled to Euroyen TIBOR and Yen-LIBOR);

Euribor Order I ¶ 4; Euribor Order II ¶ 4. Typicality is satisfied for purposes of conditional certification.

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 members of the Settlement Class.

"[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); *see also In re NASDAQ Market-Makers Antitrust Litig.,* 169 F.R.D. 493, 514-15 (S.D.N.Y. 1996) (*"NASDAQ I"*) (to warrant denial of class certification, "it must be shown that any asserted 'conflict' is so palpable as to outweigh the substantial interest of every class member in proceeding with the litigation."). No such fundamental conflict exists here for purposes of conditional certification.

First, all Settling Class Members share an overriding interest in obtaining the largest possible monetary recovery from JPMorgan (and, for that matter, all of the remaining non-settling Defendants). *See Global Crossing*, 225 F.R.D. at 453 (certifying a settlement class and finding that "[t]here is no conflict between the class representatives and the other class members. All share the common goal of maximizing recovery."); *see also In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 208 (5th Cir. 1981) (certifying settlement class and holding that "so long as all class members are united in asserting a common right, such as achieving the maximum possible recovery for the class, the class interests are not antagonistic for representation purposes.").

Second, all Settling Class Members share a common interest in obtaining JPMorgan's early cooperation to benefit the Settlement Class.

Third, all Settling Class Members share the same overriding interests 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 Swiss franc LIBOR and Swiss Franc LIBOR-Based Derivatives. Further, all Settling Class Members share the interest to successfully show that such manipulation of Swiss franc LIBOR was sufficient to cause injury and to quantify the impact of such manipulation on Swiss franc LIBOR and the prices of Swiss Franc LIBOR-Based Derivatives.

b. Interim Lead Counsel is adequate.

Plaintiffs and the Settlement Class are represented by experienced and skilled counsel. This Court has already appointed Lowey Dannenberg as Interim Class Counsel, having found counsel's experience sufficient and relevant. ECF No. 29. The same reasoning applies to find that this part of the adequacy prong is satisfied as well.

Lowey Dannenberg has vigorously represented the Settlement Class in this Action, having negotiated the Settlement. Lowey Dannenberg will obtain valuable information provided by JPMorgan. Settlement Agreement ¶ 4. 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. Briganti Decl., Ex. 2 (Lowey Dannenberg Firm Resume); *see also* Euroyen Order ¶ 5 (appointing Lowey Dannenberg as settlement class counsel in $58 million settlements with HSBC and Citibank); Euribor Order I ¶ 6 (appointing Lowey Dannenberg as settlement class counsel in $94 million settlement with Barclays); Euribor Order II ¶ 6 (appointing Lowey Dannenberg as settlement class counsel in $45 million

settlement with HSBC); Order Preliminarily Approving Class Action Settlement and Conditionally Certifying a Settlement Class, *In re London Silver Fixing, Ltd., Antitrust Litig.*, No. 14-MD-02573-VEC (S.D.N.Y. Nov. 23, 2016), ECF No. 166 (appointing Lowey Dannenberg as settlement class counsel in $38 million settlement with Deutsche Bank).

Therefore, upon certifying the Settlement Class, the Court should also appoint Lowey Dannenberg as Class Counsel. The Rule 23(a)(4) requirements that there be no fundamental conflict and that counsel is adequate are both satisfied for purposes of conditional certification.

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 is 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." *Brown*, 609 F.3d at 483 (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 U.S. Dist. LEXIS 180914, at *194 (E.D.N.Y. Oct. 15, 2014); *see also Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045-49 (2016) ("When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately").

"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). Predominance can be established in some antitrust cases because the elements of the claims lend themselves to common proof. *See, e.g.,* NEWBERG ON CLASS ACTIONS §§ 18:28 & 18:29 (4th ed. 2002) (noting that allegations of antitrust conspiracies generally establish predominance of common questions). Some antitrust claims are particularly well suited for class treatment because liability focuses on defendants' alleged unlawful actions, not the actions of individual plaintiffs. *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; *see also NASDAQ I*, 169 F.R.D. at 517 (stating that the predominance test 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 JPMorgan had not been settled, dozens of common questions would have predominated over individual questions in the prosecution of the claims against JPMorgan. The "predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *IPO*, 260 F.R.D. at 92. Here, all Plaintiffs and Class Members face and must answer the same common factual and legal questions to establish personal jurisdiction, subject matter jurisdiction, conspiracy, unlawful Swiss franc LIBOR manipulation, the amount of such Swiss franc LIBOR manipulation, unlawful fixing of the bid-ask spread on OTC Swiss Franc LIBOR-Based Derivatives, and many additional matters of proof. These common questions predominate over individual questions for purposes of conditional certification. *See Cordes & Co. Fin. Servs., Inc. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 105 (2d Cir. 2007) (in price-fixing case, "allegations of the existence of a price-fixing conspiracy are susceptible to common proof"); *see also In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 139 (2d Cir. 2001), *overruled on other grounds by, In re Initial Public Offering Sec. Litig.*, 471 F. 3d 24, 42 (2d Cir. 2006) ("Common issues may predominate when liability can be determined on a class-wide basis, even when there are some individualized damage issues."). The Settlement Class satisfies Rule 23(b)(3) as common issues predominate over individual issues for purposes of conditional certification.

2. Superiority

Rule 23(b)(3)'s "superiority" requirement obliges 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.

A class action is the superior method for the fair and efficient adjudication and settlement of this Action. *First*, 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, the majority of Class Members have neither the incentive nor the means to litigate these claims. The damages most of the individual Class Members suffered are likely to be small compared to the very 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. "Under such circumstances, a class action is efficient and serves the interest of justice." *Id.*

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

III. The Court should appoint Citibank as Escrow Agent.

The Settlement Agreement requires Interim Lead Counsel and JPMorgan to jointly designate an Escrow Agent to maintain the Settlement Fund. Interim Lead Counsel and JPMorgan have jointly designated Citibank to serve as Escrow Agent and Citibank has agreed to provide its services as Escrow Agent at market rates.

CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the Court enter the accompanying proposed order that, among other things: (1) grants preliminary approval of the proposed Settlement with JPMorgan; (2) conditionally certifies the Settlement Class on the claims against JPMorgan for purposes of sending Class Notice; (3) appoints Lowey Dannenberg as Class Counsel; and (4) appoints Citibank as Escrow Agent under the Settlement Agreement.

Dated: July 21, 2017
White Plains, New York

LOWEY DANNENBERG, P.C.

By: /s/ Vincent Briganti

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Additional Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SONTERRA CAPITAL MASTER FUND LTD., FRONTPOINT EUROPEAN FUND, L.P., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP ENHANCED FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP FUND, L.P., FRONTPOINT HEALTHCARE HORIZONS FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., FRONTPOINT UTILITY AND ENERGY FUND L.P., HUNTER GLOBAL INVESTORS FUND I, L.P., HUNTER GLOBAL INVESTORS FUND II, L.P., HUNTER GLOBAL INVESTORS OFFSHORE FUND LTD., HUNTER GLOBAL INVESTORS OFFSHORE FUND II LTD., HUNTER GLOBAL INVESTORS SRI FUND LTD., HG HOLDINGS LTD., HG HOLDINGS II LTD., and FRANK DIVITTO, on behalf of themselves and all others similarly situated,

Plaintiffs,

– against –

CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, JPMORGAN CHASE & CO., THE ROYAL BANK OF SCOTLAND PLC, UBS AG, BLUECREST CAPITAL MANAGEMENT LLP, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, AND JOHN DOE NOS. 1-50,

Defendants.

Docket No. 15-cv-00871 (SHS)
ECF Case

DECLARATION OF VINCENT BRIGANTI, ESQ.

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

1. I am a shareholder with the law firm Lowey Dannenberg, P.C. ("Lowey Dannenberg"). I submit this Declaration in connection with the pending Motion for Preliminary Approval of the Class Action Settlement with JPMorgan Chase & Co. and its subsidiaries and affiliates (collectively, "JPMorgan").

2. A true and correct copy of the Stipulation and Agreement of Settlement between the Plaintiffs[1] and JPMorgan, dated June 2, 2017, is attached as Exhibit 1.

3. **Experience.** At the time the proposed Settlement with JPMorgan was being negotiated, my firm and I were experienced in prosecuting claims under the Commodity Exchange Act ("CEA"), 7 U.S.C. §§ 1 *et seq.*, Sherman Antitrust Act, 15 U.S.C. §§ 1 *et seq.*, and Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 *et seq.*

4. I have nearly twenty years of experience in successfully developing and leading the prosecution of commodity manipulation, antitrust, and federal securities litigation matters. This experience includes cases in which my firm and I have successfully prosecuted, as court-appointed lead or co-lead counsel or individual plaintiff's counsel, what were at the time the first-, second-, third-, and fourth-largest class action recoveries under the Commodity Exchange Act: *In re Sumitomo Copper Litigation*, Master File No. 96 CV 4854 (S.D.N.Y.) (Pollack, J.) ($149 million settlement); *Hershey v. Pacific Investment Management Corp.*, Case No. 05-C-4681 (RAG) (N.D. Ill.) ($118.75 million settlement); *In re Natural Gas Commodity Litigation*, Master File No. 03 CV 6186 (S.D.N.Y.) (Marrero, J.) ($101 million settlement); and *In re Amaranth Natural Gas Commodities Litigation*, Master File No. 07

[1] The "Plaintiffs" are Sonterra Capital Master Fund Ltd., FrontPoint European Fund, L.P., FrontPoint Financial Services Fund, L.P., FrontPoint Healthcare Flagship Enhanced Fund, L.P., FrontPoint Healthcare Flagship Fund, L.P., FrontPoint Healthcare Horizons Fund, L.P., FrontPoint Financial Horizons Fund, L.P., FrontPoint Utility and Energy Fund, L.P., Hunter Global Investors Fund I, L.P., Hunter Global Investors Fund II, L.P., Hunter Global Investors Offshore Fund Ltd., Hunter Global Investors Offshore Fund II Ltd., Hunter Global Investors SRI Fund Ltd., HG Holdings Ltd., HG Holdings II Ltd., and Frank Divitto.

Civ. 6377 (S.D.N.Y) (Scheindlin, J.) ($77.1 million settlement). Currently, my firm and I are prosecuting, as court-appointed class counsel, cases alleging anticompetitive conduct and manipulation of the world's most important financial benchmarks, including the London Interbank Offered Rate ("LIBOR") for the Japanese Yen (*Laydon v. Mizuho Bank, Ltd., et al.*, No. 12-cv-3419 (S.D.N.Y.) (Daniels, J.) ($58 million settlements with HSBC and Citi)), Euro Interbank Offered Rate ("Euribor") (*Sullivan, et al. v. Barclays PLC, et al.*, No. 13-cv-2811 (S.D.N.Y.) (Castel, J.) ($139 million settlements with Barclays and HSBC)), and British Pound Sterling (*Sonterra Capital Master Fund, Ltd., et al. v. Barclays Bank PLC, et al.,* No 15-cv-3538 (S.D.N.Y.) (Broderick, J.)), and the London Silver Fixing (*In re: London Silver Fixing, Ltd., Antitrust Litigation*, No. 14-md-2573 (S.D.N.Y.) (Caproni, J.) ($38 million settlement with Deutsche Bank)).

5. Lowey Dannenberg's Firm Resume is attached hereto as Exhibit 2.

6. **Well-Informed.** Before reaching the Settlement,[2] Interim Lead Counsel was well-informed regarding the strengths and weaknesses of the Plaintiffs' claims. Lowey Dannenberg extensively reviewed and analyzed the following documents and information: (i) government settlements, including plea, non-prosecution, and deferred prosecution agreements; (ii) publicly-available information relating to the conduct alleged in Plaintiffs' complaints; and (iii) expert and industry research regarding Swiss franc LIBOR and Swiss Franc LIBOR-Based Derivatives in the futures and over-the-counter markets. In addition, Lowey Dannenberg: (a) conducted an extensive investigation into the facts and legal issues in the Action; (b) engaged in extensive settlement negotiations with JPMorgan; and (c) took many other steps to research and analyze the strengths and weaknesses of the claims, including ongoing consultations with a leading commodity manipulation consulting expert.

[2] Unless otherwise noted, capitalized terms used herein have the same meaning as in the Stipulation and Agreement of Settlement between Plaintiffs and JPMorgan, dated June 2, 2017.

7. **Procedural History.** On February 5, 2015, Sonterra Capital Master Fund Ltd. filed the Class Action Complaint, alleging claims under the Sherman Act, CEA, RICO Act, and common law against certain defendants, including JPMorgan. ECF No. 1.

8. On May 5, 2015, Lowey Dannenberg moved for appointment as Interim Lead Counsel in the Action. ECF Nos. 27, 28. On May 13, 2015, the Court granted Lowey Dannenberg's request, finding that the appointment of Lowey Dannenberg as Interim Lead Counsel satisfied all of the factors enumerated in FED. R. CIV. P. 23(g). ECF No. 29.

9. On June 19, 2015, Plaintiffs filed the Amended Class Action Complaint (the "FAC"). ECF No. 36.

10. Defendants moved to dismiss the FAC under FED. R. CIV. P. 12(b)(1), 12(b)(2), and 12(b)(6) on August 18, 2015, filing three memoranda of law and ten declarations in support of their motion. ECF Nos. 63-77.

11. On October 19, 2015, Plaintiffs filed three memoranda of law and a declaration in opposition to Defendants' motion to dismiss the FAC. ECF Nos. 86-89.

12. Defendants filed their reply memoranda of law on November 18, 2015. ECF Nos. 91, 94.

13. **Arm's-Length.** Negotiations leading up to the Settlement were entirely non-collusive and strictly arm's-length. During the course of negotiations, Plaintiffs had the benefit of developing information from various sources, including Defendants' government settlements and orders, other public accounts of manipulation involving Swiss franc LIBOR and the prices of Swiss Franc LIBOR-Based Derivatives, Interim Lead Counsel's investigation into Plaintiffs' claims, industry and expert analysis, and information shared by JPMorgan during the course of negotiating the Settlement. I was involved in all aspects of the settlement negotiations on behalf of Plaintiffs.

14. **JPMorgan Settlement Negotiations.** The negotiations with JPMorgan took place

over 7 months, starting approximately in November 2016 and continuing until the Settlement Agreement was executed on June 2, 2017.

15. After an initial phone call in November 2016, Interim Lead Counsel met with JPMorgan's counsel at the New York offices of Simpson Thacher & Bartlett LLP ("Simpson Thacher") on November 10, 2016. At the November 10 meeting, JPMorgan shared its views of the Action and its conduct. The November 10 meeting did not result in a settlement.

16. On December 2, 2016, Interim Lead Counsel had a follow-up meeting with JPMorgan's counsel at the New York offices of Simpson Thacher. At that meeting, Plaintiffs presented their view of the Action and JPMorgan's alleged role in the conspiracy alleged in the Action.

17. The parties had another meeting at the New York offices of Simpson Thacher on December 19, 2016. The December 19 meeting did not result in a settlement.

18. Following the series of in-person meetings, Interim Lead Counsel and JPMorgan's counsel had numerous phone calls over the following weeks. On January 23, 2017, Plaintiffs and JPMorgan reached an agreement in principle to settle the claims in the Action and immediately began drafting a Term Sheet.

19. On January 30, 2017, the Parties executed a binding Term Sheet. The Term Sheet set forth the terms on which the Parties agreed to settle Plaintiffs' claims against JPMorgan. At the time the Term Sheet was executed, Interim Lead Counsel was well-informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the Action.

20. The next day, the Parties reported to the Court and the non-settling Defendants that a Settlement had been reached. *See* Ltr. from Vincent Briganti to the Hon. Sidney H. Stein, dated Jan. 31, 2017. Following months of arm's-length negotiations, consisting of in-person meetings and presentations to JPMorgan, teleconferences, and exchanges of draft settlement terms, Interim Lead

Counsel, on behalf of Plaintiffs, and JPMorgan executed the Settlement Agreement on June 2, 2017.

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

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

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

24. Lowey Dannenberg has strong reason to believe that there are at least hundreds of geographically dispersed persons and entities that fall within the Settlement Class definition. This belief is based on data from the Bank of International Settlement which shows that trillions of dollars of Swiss franc-based interest rate swaps and forward rate agreements were traded within the United States from 2001 through 2011.

25. Lowey Dannenberg has diligently represented the interests of the Class in this litigation. The firm investigated and brought the Action. Lowey Dannenberg preserved the statute of limitations. Lowey Dannenberg negotiated the Settlement with JPMorgan. The firm performed all of the necessary work to prosecute this litigation for the past 29 months. Lowey Dannenberg will continue to zealously represent the Class to prosecute the Class's claims against the non-settling Defendants.

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

Executed on July 21, 2017
White Plains, New York

Vincent Briganti

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SONTERRA CAPITAL MASTER FUND LTD., FRONTPOINT EUROPEAN FUND, L.P., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP ENHANCED FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP FUND, L.P., FRONTPOINT HEALTHCARE HORIZONS FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., FRONTPOINT UTILITY AND ENERGY FUND L.P., HUNTER GLOBAL INVESTORS FUND I, L.P., HUNTER GLOBAL INVESTORS FUND II, L.P., HUNTER GLOBAL INVESTORS OFFSHORE FUND LTD., HUNTER GLOBAL INVESTORS OFFSHORE FUND II LTD., HUNTER GLOBAL INVESTORS SRI FUND LTD., HG HOLDINGS LTD., HG HOLDINGS II LTD., and FRANK DIVITTO, on behalf of themselves and all others similarly situated, Plaintiffs, - against - CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, JPMORGAN CHASE & CO., THE ROYAL BANK OF SCOTLAND PLC, UBS AG, BLUECREST CAPITAL MANAGEMENT LLP, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, AND JOHN DOE NOS. 1-50, Defendants.	Docket No. 15-cv-00871 (SHS) **STIPULATION AND AGREEMENT OF SETTLEMENT**

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STIPULATION AND AGREEMENT OF SETTLEMENT

THIS STIPULATION AND AGREEMENT OF SETTLEMENT (the **"Settlement Agreement"**) is made and entered into on June 2, 2017. This Settlement Agreement is entered into on behalf of Representative Plaintiffs Sonterra Capital Master Fund Ltd., FrontPoint European Fund, L.P., FrontPoint Financial Services Fund, L.P., FrontPoint Healthcare Flagship Enhanced Fund, L.P., FrontPoint Healthcare Flagship Fund, L.P., FrontPoint Healthcare Horizons Fund, L.P., Front Point Financial Horizons Fund., L.P., FrontPoint Utility and Energy Fund, L.P., Hunter Global Investors Fund I, L.P., Hunter Global Investors Fund II, L.P., Hunter Global Investors Offshore Fund Ltd., Hunter Global Investors Offshore Fund II Ltd., Hunter Global Investors SRI Fund Ltd., HG Holdings Ltd., HG Holdings II Ltd., and Frank Divitto, and the Settlement Class (as defined in Section 1(E) herein), by and through Representative Plaintiffs' Interim Lead Counsel (as defined in Section 1(U) herein), and on behalf of JPMorgan Chase & Co. ("JPMorgan"), by and through its undersigned counsel of record in this Action (as defined in Section 1(A) herein).

WHEREAS, Representative Plaintiffs have filed a civil class action, *Sonterra Capital Master Fund Ltd., et al. v. Credit Suisse Group AG, et al.*, Case No. 15-cv-871 (SHS) (S.D.N.Y.), and have alleged, among other things, that Defendants (as defined in Section 1(J) herein), including JPMorgan, from January 1, 2001 through December 31, 2011, acted unlawfully by, *inter alia*, manipulating, aiding and abetting the manipulation of, and conspiring, colluding or engaging in racketeering activities to manipulate Swiss franc LIBOR and the prices of Swiss Franc LIBOR-Based Derivatives (as defined in Sections 1(OO) and 1(PP) respectively herein), in violation of the Commodity Exchange Act, 7 U.S.C. § 1 *et seq*., 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 federal and state common law;

WHEREAS, Representative Plaintiffs further contend that they and the Settlement Class suffered monetary damages as a result of JPMorgan's and other Defendants' conduct;

WHEREAS, JPMorgan denies the material allegations in Representative Plaintiffs' pleadings and maintains that it has good and meritorious defenses to the claims of liability and damages made by Representative Plaintiffs;

WHEREAS, arms-length settlement negotiations have taken place between Representative Plaintiffs, Interim Lead Counsel and JPMorgan, and this Settlement Agreement has been reached, subject to the final approval of the Court;

WHEREAS, JPMorgan agrees to cooperate with Representative Plaintiffs and Interim Lead Counsel as set forth below in this Settlement Agreement;

WHEREAS, Interim Lead Counsel conducted an investigation of the facts and the law regarding the Action (as defined in Section 1(A) herein), considered the Settlement set forth herein to be fair, reasonable, adequate and in the best interests of Representative Plaintiffs and the Settlement Class, and determined that it is in the best interests of the Settlement Class to enter into this Settlement Agreement in order to avoid the uncertainties of complex litigation and to assure a benefit to the Settlement Class;

WHEREAS, JPMorgan, despite believing that it is not liable for the claims asserted against it in the Action and that it has good and meritorious defenses thereto, has nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and distraction of burdensome and protracted litigation, thereby putting this controversy to rest and avoiding the risks inherent in complex litigation; and

NOW, THEREFORE, Representative Plaintiffs, on behalf of themselves and the Settlement Class by and through Interim Lead Counsel, and JPMorgan, by and through the undersigned counsel,

agree that the Action and Released Claims (as defined in Section 1(FF) herein) be settled, compromised, and dismissed on the merits and with prejudice as to JPMorgan and without costs as to Representative Plaintiffs, the Settlement Class or JPMorgan, subject to the approval of the Court, on the following terms and conditions:

1. Terms Used In This Agreement

The words and terms used in this Stipulation and Settlement Agreement, which are expressly defined below, shall have the meaning ascribed to them.

(A) **"Action"** means *Sonterra Capital Master Fund Ltd., et al. v. Credit Suisse Group AG, et al.*, Case No. 15-cv-871 (SHS) (S.D.N.Y.).

(B) **"Agreement"** or **"Settlement Agreement"** means this Stipulation and Agreement of Settlement, together with any exhibits attached hereto, which are incorporated herein by reference.

(C) **"Any"** means one or more.

(D) **"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.

(E) **"Class"** or **"Settlement Class"** means all Persons (including both natural persons and entities) who purchased, sold, held, traded, or otherwise had any interest in Swiss Franc LIBOR-Based Derivatives during the Class Period, provided that, if Representative Plaintiffs expand the Class in any subsequent amended complaint, class motion, or settlement, the defined Class in this Agreement shall be expanded so as to be coterminous with such expansion. Excluded from the Settlement Class are the Defendants (as defined in Section 1(J) herein) and any parent, subsidiary, affiliate or agent of any

Defendant or any co-conspirator whether or not named as a Defendant, and the United States Government.

(F) **"Class Member"** means a Person who is a member of the Class.

(G) **"Class Period"** means the period of January 1, 2001 through December 31, 2011.

(H) **"Class Notice"** means the form of notice of the proposed Settlement to be distributed to the Settlement Class as provided in this Agreement and the Preliminary Approval Order.

(I) **"Court"** means the United States District Court for the Southern District of New York.

(J) **"Defendants"** means the defendants currently named in the Action and any parties that may be added to the Action as defendants through amended or supplemental pleadings.

(K) **"Distribution Plan"** means any plan or formula of allocation of the Net Settlement Fund, to be approved by the Court, upon notice to the Class as may be required, whereby the Net Settlement Fund shall in the future be distributed to Authorized Claimants.

(L) **"Effective Date"** means the date when this Settlement Agreement becomes final as set forth in Section 18 of this Settlement Agreement.

(M) **"Escrow Agent"** means any Person designated by Interim Lead Counsel with the consent of JPMorgan, who Interim Lead Counsel anticipates will be Citibank, N.A., and approved by the Court to act as escrow agent for the Settlement Fund.

(N) **"Execution Date"** means the date on which this Agreement is executed by the last Party to do so.

(O) **"Fairness Hearing"** means a hearing scheduled by the Court following the issuance of the Preliminary Approval Order to consider the fairness, adequacy and reasonableness of the proposed Settlement and Settlement Agreement.

(P) **"Final"** means, with respect to any court order, including, without limitation, the Final 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. 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 Sections 5 and 6 below, shall not in any way delay or prevent the Final Judgment from becoming Final.

(Q) **"Final Approval Order"** means an order from the Court, the form of which shall be mutually agreed upon by the Parties and submitted to the Court substantially in the form attached hereto as Exhibit B, approving of the Settlement following (i) preliminary approval of the Settlement Agreement, (ii) the issuance of the Class Notice pursuant to the Preliminary Approval Order, and (iii) the Fairness Hearing.

(R) **"Final Judgment"** means the order of judgment and dismissal of the Action with prejudice as to JPMorgan, the form of which shall be mutually agreed upon by the Parties and submitted to the Court substantially in the form attached hereto as Exhibit C for approval thereof.

(S) **"Governmental Agencies"** means any local, state, provincial, regional, or national regulatory, governmental or quasi-governmental agency or body that was authorized, is authorized or will be authorized to enforce laws and regulations concerning the conduct at issue in the Action, including, but not limited to, U.S. government authorities (including, without limitation, the United States Department of Justice, United States Commodity Futures Trading Commission, and New York State Department of Financial Services), and any non-U.S. governmental authority (including, without limitation, the United Kingdom Financial Conduct Authority (formerly, United Kingdom Financial Services Authority), European Commission, and Swiss Competition Commission), and their predecessors or successors.

(T) **"Incentive Award"** means any award by the Court to Representative Plaintiffs as described in Section 5.

(U) **"Interim Lead Counsel"** means Lowey Dannenberg Cohen & Hart, P.C., acting pursuant to the authority conferred by the Order Appointing Interim Lead Class Counsel (Dkt. No. 28), and subsequent stipulations and orders.

(V) **"Investment Vehicles"** means any investment company, separately managed account or pooled investment fund, including, but not limited to: (i) mutual fund families, exchange-traded funds, fund of funds and hedge funds; and (ii) employee benefit plans.

(W) **"JPMorgan"** means JPMorgan Chase & Co.

(X) **"LIBOR"** means the London Interbank Offered Rate.

(Y) **"Net Settlement Fund"** means the Settlement Fund less Court-approved disbursements, including: (i) notice, claims administration and escrow costs; (ii) any attorneys' fees and/or expenses awarded by the Court; (iii) any Incentive Award(s) awarded

by the Court; and (iv) all other expenses, costs, taxes and other charges approved by the Court.

(Z) **"Other Settlement"** means any stipulation and settlement agreement Representative 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 Settlement Agreement.

(AA) **"Parties"** means JPMorgan and Representative Plaintiffs collectively, and "**Party"** applies to each individually.

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

(CC) **"Plaintiffs' Counsel"** means Interim Lead Counsel and other counsel for the Representative Plaintiffs.

(DD) **"Preliminary Approval Order"** means an order by the Court, the form of which shall be mutually agreed upon by the Parties and submitted to the Court substantially in the form attached hereto as Exhibit A, issued in response to the Motion for Preliminary Approval in Section 13 providing for, *inter alia*, preliminary approval of the Settlement, including certification of the Settlement Class for purposes of the Settlement only, and for a

stay of all proceedings in the Action against JPMorgan until the Court renders a final decision on approval of the Settlement.

(EE) **"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.

(FF) **"Released Claims"** means those claims described in Section 12 of this Settlement Agreement.

(GG) **"Released Parties"** means JPMorgan, its predecessors, successors and assigns, its direct and indirect parents, subsidiaries and affiliates, and each of their respective current and former officers, directors, employees, managers, members, partners, agents (in their capacity as agents of JPMorgan), shareholders (in their capacity as shareholders of JPMorgan), attorneys, or legal representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing. As used in this provision, "affiliates" means entities controlling, controlled by, or under common control with a Released Party. For the avoidance of doubt, "Released Parties" shall not include any named Defendants other than JPMorgan.

(HH) "**Releasing Parties**" means each and every Settling Class Member on their own behalf and on behalf of their respective predecessors, successors and assigns, direct and indirect parents, subsidiaries and affiliates, and on behalf of their current and former officers, directors, employees, agents, principals, members, trustees, participants, representatives, fiduciaries, beneficiaries or legal representatives in their capacity as such, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing in their capacity as such. Notwithstanding that the U.S. Government is excluded

from the Settlement Class, with respect to any Settling Class Member that is a government entity, Releasing Parties include any Settling 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 Releasing Party. For the avoidance of doubt, the "Releasing Parties" include all Persons entitled to bring claims on behalf of Settling Class Members relating to their transactions in Swiss Franc LIBOR-Based Derivatives or any similar financial instruments priced, benchmarked, or settled to Swiss franc LIBOR held by Representative Plaintiffs or Settling Class Members (to the extent such similar financial instruments were entered into by a U.S. Person, or by a Person from or through a location within the U.S.).

(II) **"Representative Plaintiffs"** means Sonterra Capital Master Fund Ltd., FrontPoint European Fund, L.P., FrontPoint Financial Services Fund, L.P., FrontPoint Healthcare Flagship Enhanced Fund, L.P., FrontPoint Healthcare Flagship Fund, L.P., FrontPoint Healthcare Horizons Fund, L.P., FrontPoint Financial Horizons Fund, L.P., FrontPoint Utility and Energy Fund, L.P., Hunter Global Investors Fund I, L.P., Hunter Global Investors Fund II, L.P., Hunter Global Investors Offshore Fund Ltd., Hunter Global Investors Offshore Fund II Ltd., Hunter Global Investors SRI Fund Ltd., HG Holdings Ltd., HG Holdings II Ltd., and Frank Divitto and any other Person named as a named plaintiff in the Action who was not subsequently withdrawn as a named plaintiff, and any named plaintiff who may be added to the action through amended or supplemental pleadings. This Settlement Agreement is entered with each and every Representative Plaintiff. In the event that one or more Representative Plaintiff(s) fails to secure court approval to act as a Representative Plaintiff, the validity of this Settlement Agreement as to the remaining

Representative Plaintiffs, the Settlement Class, and Interim Lead Counsel shall be unaffected.

(JJ) **"Settlement"** means the settlement of the Released Claims set forth herein.

(KK) **"Settlement Administrator"** means any Person that the Court approves to perform the tasks necessary to provide notice of the Settlement to the Class and to otherwise administer the Settlement Fund, as described further herein.

(LL) **"Settlement Amount"** means twenty-two million dollars ($22,000,000.00).

(MM) **"Settlement Fund"** means the Settlement Amount plus any interest that may accrue.

(NN) **"Settling Class Members"** means Representative Plaintiffs and other members of the Settlement Class who do not timely and validly exclude themselves from the Settlement pursuant to Fed. R. Civ. P. 23(c) and in accordance with the procedure to be established by the Court.

(OO) **"Swiss franc LIBOR"** means the London Interbank Offered Rate for the Swiss franc.

(PP) **"Swiss Franc LIBOR-Based Derivatives"** means: (i) a three-month Euro Swiss franc futures contract on the London International Financial Futures and Options Exchange ("LIFFE") entered into by a U.S. Person, or by a Person from or through a location within the U.S.; (ii) a Swiss franc currency futures contract on the Chicago Mercantile Exchange ("CME"); (iii) a Swiss franc LIBOR-based interest rate swap entered into by a U.S. Person, or by a Person from or through a location within the U.S.; (iv) an option on a Swiss franc LIBOR-based interest rate swap ("swaption") entered into by a U.S. Person, or by a Person from or through a location within the U.S.; (v) a Swiss franc currency

forward agreement entered into by a U.S. Person, or by a Person from or through a location within the U.S.; and/or (vi) a Swiss franc LIBOR-based forward rate agreement entered into by a U.S. Person, or by a Person from or through a location within the U.S.

(QQ) **"U.S. Person"** means a citizen, resident, or domiciliary of the United States or its territories; a corporation, including a limited liability company, either incorporated or headquartered in the United States or its territories; a partnership created or resident in the United States or its territories; any other Person or entity created and/or formed under the laws of the United States, including any state or territory thereof; or any other Person or entity residing or domiciled in the United States or its territories.

2. Settlement Class

Representative Plaintiffs will file an application seeking the certification of the Settlement Class as described herein pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. Notwithstanding the sentence in Section 1(E) above that "[e]xcluded from the Settlement Class are the Defendants (as defined in Section 1(J) herein) and any parent, subsidiary, affiliate or agent of any Defendant or any co-conspirator whether or not named as a defendant, and the United States Government," and solely for purposes of this Settlement and this Settlement Class, the Parties agree that Investment Vehicles shall not be excluded from the Settlement Class solely on the basis of being deemed to be Defendants or affiliates or subsidiaries of Defendants. However, to the extent that any Defendant or any entity that might be deemed to be an affiliate or subsidiary thereof (i) managed or advised, and (ii) directly or indirectly held a beneficial interest in, said Investment Vehicle during the Class Period, that beneficial interest in the Investment Vehicle is excluded from the Settlement Class.

3. Settlement Payment

JPMorgan shall pay by wire transfer to the Escrow Agent $4,500,000.00 of the Settlement Amount within seven (7) business days after the Preliminary Approval Order is entered. JPMorgan shall pay by wire transfer to the Escrow Agent the balance of the Settlement Amount within seven (7) business days after (i) entry of the Final Approval Order; and (ii) receipt by JPMorgan's counsel from Interim Lead Counsel of full and complete wiring instructions necessary for such payment, and an executed Form W-9. 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. Upon occurrence of the Effective Date, no funds may be returned to JPMorgan through a reversion or other means. The Escrow Agent shall only act in accordance with instructions mutually agreed upon by the Parties in writing, except as otherwise provided in this Agreement. Other than the payment of the Settlement Amount as set forth in this Section 3, JPMorgan shall have no responsibility for any interest, costs, or other monetary payment, including any attorneys' fees and expenses, taxes, or costs of notice or claims administration, except that JPMorgan shall be responsible for notice as required by 28 U.S.C. § 1715, as set forth in Section 14(B).

4. Cooperation

(A) JPMorgan shall provide reasonable cooperation in the Action, including discovery cooperation, requested by Interim Lead Counsel, to benefit the Settlement Class, as provided herein. All cooperation shall be coordinated in such a manner so that all unnecessary duplication and expense is avoided. Interim Lead Counsel shall tailor its requests for the production of documents with a view toward minimizing unnecessary burdens and costs to JPMorgan in connection with collecting, reviewing, and producing materials that have not already been collected in the course of the Action, related settlements, reports, and/or investigations by Governmental Agencies.

(B) Notwithstanding any other provision in this Agreement, JPMorgan shall have no obligation to produce any document or provide any information that is privileged under the attorney-client privilege, work-product doctrine, joint-defense privilege, common-interest doctrine, bank examination privilege, and/or other applicable privilege or immunity from disclosure. None of the cooperation provisions set forth herein are intended to, nor do they waive any such privileges or immunities. JPMorgan agrees that its counsel will meet with Interim Lead Counsel as is reasonably necessary to discuss any applicable privilege. Any disputes regarding privilege that cannot be resolved amongst the parties shall be reserved for resolution pursuant to the alternative dispute resolution procedures set forth in Section 36 of this Settlement Agreement. At a reasonable time to be negotiated in good faith, JPMorgan agrees to provide Representative Plaintiffs, through Interim Lead Counsel, with (a) privilege logs for any relevant documents reasonably requested by Representative Plaintiffs as cooperation discovery in accordance with this Agreement that JPMorgan withholds on the basis of any privilege, doctrine, immunity or regulatory objection, if and to the extent such privilege logs are reasonably necessary to establish the basis for JPMorgan's withholding of the documents and (b) any existing privilege logs for documents that JPMorgan withheld from the U.S. government (but not from any other Governmental Agency, as applicable) as part of its investigation into JPMorgan's alleged manipulation of Swiss franc LIBOR and Swiss Franc LIBOR-Based Derivatives, to the extent such privilege logs relate to documents reasonably requested by Representative Plaintiffs as cooperation materials herein if and to the extent such privilege logs are reasonably necessary. JPMorgan's production of existing privilege logs, if any, will be made in such a way so as not to identify the Governmental Agency or Agencies to which JPMorgan provided the privileged log or other documents. 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. To

the extent the parties cannot resolve any such disputes, they shall be reserved for resolution pursuant to the alternative dispute resolution procedures set forth in Section 36 of this Settlement Agreement. If any document protected by the attorney-client privilege, work-product doctrine, the common interest doctrine, the joint defense privilege, the bank examination privilege, and/or any other applicable privilege or protection is accidentally or inadvertently produced, Representative Plaintiffs shall, upon notice from JPMorgan or its counsel, promptly cease reviewing the document and shall return the document and all copies of it to JPMorgan's counsel within five (5) business days. Representative Plaintiffs and their counsel shall also delete or destroy the portions of any other documents or work product which refer to or summarize the document. The document shall not be used or referred to in any way by Representative Plaintiffs or their counsel, and its production shall in no way be construed to have waived any privilege, protection or restriction attached to such document or information.

(C) Notwithstanding any other provision in this Agreement, JPMorgan shall have no obligation to produce any document or provide any information that is restricted from disclosure under any applicable domestic or foreign data privacy, bank secrecy, state secrets, or other law. In the event that Interim Lead Counsel reasonably request documents or information otherwise within the scope of the cooperation materials to be provided under this Agreement that JPMorgan reasonably believes in good faith to be restricted from disclosure under any applicable domestic or foreign data privacy, bank secrecy, or other law and the restriction can be avoided without undue burden to JPMorgan through a reasonable workaround, such as by removing or anonymizing identifying information, JPMorgan shall cooperate in good faith with Representative Plaintiffs to implement such a workaround.

(D) Notwithstanding any other provision of this Agreement, in the event that JPMorgan

believes that Interim Lead Counsel has requested cooperation of a kind or to an extent that is not reasonable or not within the scope of JPMorgan's obligations as set forth herein, JPMorgan's counsel and Interim Lead Counsel agree to meet and confer with each other regarding such disagreement and to seek resolution pursuant to the alternative dispute resolution procedures set forth in Section 36 of this Settlement Agreement if necessary.

(E) Interim Lead Counsel agrees to use any and all of the information and documents obtained from JPMorgan only for the purpose of the Action, and agree to be bound by the terms of the Settlement Agreement and Protective Order entered in the Action. If no protective order is in effect as of the date of the Agreement, the Parties agree that JPMorgan will have no obligation to produce any documents until either (a) the Court enters a mutually acceptable protective order; or (b) JPMorgan and Representative Plaintiffs enter into a separate confidentiality agreement. For the avoidance of doubt, Interim Lead Counsel expressly agrees that the documents, materials, and/or information provided by JPMorgan, including without limitation oral presentations, may be used directly or indirectly by Interim Lead Counsel solely in connection with the prosecution of the Action against the non-settling Defendants, but not for the institution or prosecution of any other action or proceeding against any Released Party or for any other purpose whatsoever, including, but not limited to, actions or proceedings in jurisdictions outside the United States. The foregoing restriction shall not apply to any information or documents that is or becomes publicly available.

(F) **Document Production.** Subject to the restrictions set forth above, JPMorgan will provide cooperation to Representative Plaintiffs by producing to Interim Lead Counsel the following categories of documents in an equivalent format to that in which they were produced to government regulators, including any metadata included in such production, or, with respect to any documents not previously produced to government regulators, in a format to be agreed, to the extent that such

documents are reasonably available and accessible to JPMorgan and have not already been produced to Representative Plaintiffs in the Action. Unless otherwise indicated, the time period of the documents subject to production shall be January 1, 2001 – December 31, 2011.

(i) All documents and data produced by JPMorgan to any Governmental Agency in connection with such Governmental Agency's investigation of conduct related to Swiss franc LIBOR.

(ii) To the extent not included within the documents and data produced pursuant to Section 4(F)(i), JPMorgan shall produce to Interim Lead Counsel:

a) Reasonably available trade data pertaining to JPMorgan's transactions in Swiss franc-denominated inter-bank money market instruments for the years 2001 through 2011;

b) Reasonably available trade data pertaining to JPMorgan's transactions in Swiss Franc LIBOR-Based Derivatives for the years 2001 through 2011;

(iii) Documents reflecting substantially the same information as that reflected in JPMorgan's submissions to the Federal Reserve Bank of New York, Bank of International Settlements, and OTC Derivatives Supervisors Group relating to their surveys on turnover in foreign exchange and interest rate derivatives markets for Swiss Franc LIBOR-Based Derivatives, to the extent such information exists and is reasonably accessible, and to the extent such disclosure is permitted by relevant authorities and under applicable banking or other laws and regulations, for the years 2000, 2004, 2007, 2010, and 2013.

(iv) Non-privileged declarations, affidavits, or other sworn or unsworn written statements of former and/or current JPMorgan directors, officers or employees

concerning the allegations set forth in the Action with respect to Swiss franc LIBOR and Swiss Franc LIBOR-Based Derivatives to the extent such documents exist, are reasonably accessible to JPMorgan, and may be disclosed under applicable confidentiality or regulatory restrictions; and

(G) Subject to Section 4(D) above, Representative Plaintiffs may request as cooperation materials such further documents and information as Interim Lead Counsel may reasonably request that are relevant to the claims or defenses in the Action and are reasonably accessible to JPMorgan and not unduly burdensome to produce. JPMorgan will consider such requests in good faith, but JPMorgan need not agree to any such requests. In the event that JPMorgan believes Representative Plaintiffs' counsel has unreasonably requested cooperation, or Representative Plaintiffs' counsel believes JPMorgan has unreasonably withheld cooperation, JPMorgan and Representative Plaintiffs' counsel agree to meet and confer regarding such disagreement and seek resolution if necessary pursuant to the alternative dispute resolution procedures set forth in Section 36 of the Settlement Agreement. If such alternative dispute resolution is sought, the disputed aspect of cooperation shall be held in abeyance until such resolution by the procedures set forth in Section 36 of the Settlement Agreement, and such abeyance shall not constitute a breach of the Settlement Agreement.

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

(I) **Witnesses.** JPMorgan shall cooperate to provide reasonable access to up to four (4) current employees who have knowledge of the conduct alleged in the Action. JPMorgan shall not be required to cause any employee who resides outside the United States to travel to the United States in connection with such access. Representative Plaintiffs will endeavor in good faith to seek access to the current employees referenced above only to the extent that the information sought by Representative Plaintiffs cannot be otherwise obtained by Representative Plaintiffs or provided by JPMorgan through other means, such as the production of documents. JPMorgan shall designate witness(es) to serve as JPMorgan's corporate representative pursuant to the framework of Rule 30(b)(6) of the Federal Rules of Civil Procedure in connection with any depositions, hearing or trial of the Defendants without issuance of a subpoena. JPMorgan will work in good faith with Representative Plaintiffs to designate such witness(es) to the extent reasonably necessary and only to the extent that the information sought by Representative Plaintiffs cannot be otherwise obtained, such as through written statements. JPMorgan shall also cooperate to provide reasonable access to current employees for purposes of laying a foundation for the admission of documents as evidence in the Action, to the extent reasonably necessary.

(J) JPMorgan agrees to begin rolling production of documents pursuant to Section 4(F)(i) within fourteen (14) days following the Execution Date. JPMorgan agrees to begin rolling production of reasonably available trade data pursuant to Section 4(F)(ii) within sixty (60) days after the parties reach agreement as to the parameters of such production. JPMorgan agrees to begin providing other elements of the cooperation contemplated by this Section 4 within forty-five (45) days of the Execution Date. Such other elements of cooperation will focus initially on issues pertinent to the Distribution Plan and will extend to other issues only after entry of the Preliminary Approval Order.

(K) **Continuation, Scope, and Termination of JPMorgan's Obligation.** JPMorgan's obligations to cooperate are continuing until and shall terminate upon the earlier of: (i) the date when final judgment has been rendered with no remaining rights of appeal, in the Action against all Defendants; or (ii) four (4) years after the Court enters the Preliminary Approval Order.

5. Payment of Attorneys' Fees and Reimbursement of Expenses, and Application for Incentive Award

(A) Subject to Court approval, Representative Plaintiffs and Interim Lead Counsel shall be reimbursed and paid solely out of the Settlement Fund for all fees and expenses including, but not limited to, attorneys' fees, and past, current or future litigation expenses, and any incentive award approved by the Court. JPMorgan shall have no responsibility for any costs, fees, or expenses incurred for or by Representative Plaintiffs' or Class Members' respective attorneys, experts, advisors, agents, or representatives. Nothing in this provision shall expedite the date(s) for JPMorgan's payments as set forth in Section 3.

(B) Interim Lead Counsel, on behalf of all Plaintiffs' Counsel, may apply to the Court for an award from the Settlement Fund of attorneys' fees, plus interest. Interim Lead Counsel also may apply to the Court for reimbursement from the Settlement Fund of Plaintiffs' Counsels' litigation expenses, plus interest. Representative Plaintiffs may make an application to the Court for an award in connection with their representation of the Settlement Class in this litigation, which amount constitutes the Incentive Award.

(C) The Released Parties shall have no responsibility for, and no liability with respect to, the attorneys' fees, litigation expenses, or Incentive Award that the Court may award in the Action.

(D) The procedures for, and the allowance or disallowance by the Court of, any application for approval of fees, expenses and costs or an Incentive Award (collectively, "Fee and Expense Application") are not part of the Settlement set forth in this Agreement, and 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 a Fee and Expense Application, or the reversal or modification thereof, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the Final 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 Application or the Distribution Plan shall constitute grounds for termination of this Agreement.

(E) Prior to the Fairness Hearing, Interim Lead Counsel and Representative Plaintiffs shall file any motions seeking awards from the Settlement Fund for payment of attorneys' fees and reimbursement of costs and expenses, and for the payment of an Incentive Award as follows:

(i) Plaintiffs' Counsel shall seek attorneys' fees of no more than one-third of the Settlement Fund;

(ii) Interim Lead Counsel shall seek reimbursement for their costs and expenses incurred as of the date the Motion for Final Approval and Entry of Final Judgment is filed pursuant to Section 16; and

(iii) Representative Plaintiffs may make an application to the Court for an award in connection with their representation of the Settlement Class in this litigation, which amount constitutes the Incentive Award.

(F) Upon the Court's approval of an award of attorneys' fees, costs and expenses, Interim Lead Counsel may withdraw from the Settlement Fund up to thirty percent (30%) of any such approved amount from Subsections (E)(i) and (E)(ii), above; provided that, any such withdrawal shall not take place earlier than entry of the Final Approval Order by the Court. The remainder may be withdrawn from the Settlement Fund only upon occurrence of the Effective Date. If an event

occurs that will cause the Settlement Agreement not to become Final (and the Effective Date not to occur) pursuant to Section 18 or if Representative Plaintiffs or JPMorgan terminates the Settlement Agreement pursuant to Sections 21 through 23, then within ten (10) business days after receiving written notice of such an event from counsel for JPMorgan or from a court of appropriate jurisdiction, Interim Lead Counsel shall refund to the Settlement Fund any attorneys' fees, costs and expenses (not including any non-refundable expenses as described in Section 9(B)) that were withdrawn plus interest thereon at the same rate at which interest is accruing for the Settlement Fund.

6. Application for Approval of Fees, Expenses, and Costs of Settlement Fund Administration

Interim Lead Counsel may apply to the Court, at the time of any application for distribution to Authorized Claimants, for an award from the Settlement Fund of attorneys' fees for services performed and reimbursement of expenses incurred in connection with the administration of the Settlement after the date of the Fairness Hearing. Interim Lead Counsel reserves the right to make additional applications to the Court for payment from the Settlement Fund for attorneys' fees for services performed and reimbursement of expenses incurred. Any such applications are subject to Court approval.

7. No Liability for Fees and Expenses of Interim Lead Counsel

The Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment(s) to Interim Lead Counsel for attorneys' fees, costs and expenses and/or to any other Person who may assert some claim thereto, or any fee and expense award the Court may make in the Action.

8. Distribution of and/or Disbursements from Settlement Fund

The Settlement Administrator, subject to such supervision and direction by the Court and/or Interim Lead Counsel as may be necessary, shall administer the Proof of Claim and Release forms submitted by the Settling Class Members and shall oversee the distribution of the Settlement Fund pursuant to the Distribution Plan. Upon the Effective Date (or earlier if provided in Section 5 herein), the Settlement Fund shall be applied in the order and as follows:

(i) to pay costs and expenses associated with the distribution of the Class Notice and administration of the Settlement as provided in this Section and Section 6, including all costs and expenses reasonably and actually incurred in assisting Class Members with the filing and processing of claims against the Net Settlement Fund at any time after JPMorgan makes payments described in Section 3;

(ii) to pay Escrow Agent costs;

(iii) to pay taxes assessed on the Settlement Fund, and tax preparation fees in connection with such taxes;

(iv) to pay any attorneys' fees, costs and expenses approved by the Court upon submission of a Fee and Expense Application, as provided in Section 5;

(v) to pay the amount of any Incentive Award for Representative Plaintiffs, as provided in Section 5; and

(vi) to pay the Net Settlement Fund to Authorized Claimants as allowed by the Agreement, any Distribution Plan, or order of the Court.

9. Disbursements Prior to Effective Date

(A) Except as provided in Subsection (B) herein or by Court order, no distribution to any Class Member or disbursement of fees, costs and expenses of any kind may be made from the Settlement Fund until the Effective Date. As of the Effective Date, all fees, costs and expenses and Incentive Awards as approved by the Court may be paid out of the Settlement Fund.

(B) Upon written notice to the Escrow Agent by Interim Lead Counsel with a copy to JPMorgan, the following may be disbursed prior to the Effective Date: (i) reasonable costs of Class Notice and administration may be paid from the Settlement Fund as they become due (up to a maximum of $500,000); (ii) reasonable costs of the Escrow Agent may be paid from the Settlement Fund as they become due; (iii) taxes and tax expenses may be paid from the Settlement Fund as they become due; and (iv) up to thirty percent (30%) of Plaintiffs' Counsel's attorneys' fees and costs and expenses as approved by the Court (in accordance with Section 5(F)). In the event the Settlement is terminated or does not become Final for any reason (including if the Effective Date does not occur pursuant to Section 18), JPMorgan shall be entitled to the return of all such funds, plus all interest accrued thereon, except for up to $500,000 for reasonable costs of Class Notice and administration that have been actually disbursed prior to the date the Settlement was terminated or otherwise does not become Final for any reason (including if the Effective Date does not occur pursuant to Section 18), on the terms specified in Section 22.

(C) Interim Lead Counsel will attempt in good faith to minimize the costs of the Escrow Agent, Class Notice and administration.

10. Distribution of Balances Remaining in Net Settlement Fund to Authorized Claimants

The Net Settlement Fund shall be distributed to Authorized Claimants and, except as provided in Section 9(B), there shall be no reversion to JPMorgan. The distribution to Authorized

Claimants shall be in accordance with the Distribution Plan to be approved by the Court upon such 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 later of (i) the Effective Date or (ii) the date by which the Distribution Plan has received final approval and the time for any further appeals with respect to the Distribution Plan has expired. Should there be any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise), Interim Lead Counsel shall submit an additional distribution plan to the Court for its approval.

11. Administration/Maintenance of Settlement Fund

The Settlement Fund shall be maintained by Interim Lead Counsel under supervision of the Court and shall be distributed solely at such times, in such manner and to such Persons as shall be directed by subsequent orders of the Court (except as provided for in this Agreement) consistent with the terms of this Settlement Agreement. The Parties intend that the Settlement Fund be treated as a "qualified settlement fund" within the meaning of Treasury Regulation § 1.468B. Interim Lead Counsel shall ensure that the Settlement Fund at all times complies with Treasury Regulation § 1.468B in order to maintain its treatment as a qualified settlement fund. To this end, Interim Lead Counsel shall ensure that the Settlement Fund is approved by the Court as a qualified settlement fund and that any Escrow Agent, Settlement Administrator or other administrator of the Settlement Fund complies with all requirements of Treasury Regulation § 1.468B-2. Any failure to ensure that the Settlement Fund complies with Treasury Regulation § 1.468B-2, and the consequences thereof, shall be the sole responsibility of Interim Lead Counsel.

12. Release and Covenant Not To Sue

(A) The Releasing Parties finally and forever release and discharge from and covenant not

to sue the Released Parties for any and all manner of claims, including unknown claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class, derivative, or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys' fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, which Settling Class Members or any of them ever had, now has, or hereafter can, shall or may have, representatively, derivatively or in any other capacity, against the Released Parties arising from or relating in any way to conduct alleged in the Action or which could have been alleged in the Action against the Released Parties concerning any Swiss Franc LIBOR-Based Derivatives or any other financial instruments priced, benchmarked, or settled to Swiss franc LIBOR purchased, sold, and/or held by the Representative Plaintiffs, Class Members, and/or Settling Class Members (to the extent such other financial instruments were entered into by a U.S. Person, or by a Person from or through a location within the U.S.), including, but not limited to, any alleged manipulation of Swiss franc LIBOR under the Commodity Exchange Act, 7 U.S.C. § 1 et seq., or any other statute, regulation, or common law, or any purported conspiracy, collusion, racketeering activity, or other improper conduct relating to Swiss franc LIBOR (including, but not limited to, all claims under Section 1 of the Sherman Antitrust Act 15 U.S.C. § 1 et seq., the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, and any other federal or state statute, regulation, or common law). The following claims shall not be released by this Settlement: (i) any claims against former JPMorgan employees arising solely from those former employees' conduct that occurred while not employed by JPMorgan; (ii) any claims against the named Defendants in this Action other than

JPMorgan; (iii) any claims against inter-dealer brokers or their employees or agents when and solely to the extent they were engaged as employees or agents of the other Defendants or of inter-dealer brokers; or (iv) any claims against any defendant who may be subsequently added in the Action, other than any affiliate or subsidiary of JPMorgan. For the avoidance of doubt, Released Claims does not include claims arising under foreign law based solely on transactions executed entirely outside the United States by Settling Class Members domiciled outside the United States.

(B) Although the foregoing release is not a general release, such release constitutes a waiver of Section 1542 of the California Civil Code (to the extent it applies to the Action), which provides as follows:

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

This release 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 Settling Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention to release fully, finally, and forever all of the Released Claims, and in furtherance of such intention, the release shall be irrevocable and remain in effect notwithstanding the discovery or existence of any such additional or different facts. In entering and making this Agreement, the Parties assume the risk of any mistake of fact or law and the release shall be irrevocable and remain in effect notwithstanding any mistake of fact or law.

13. Motion for Preliminary Approval

As soon as practicable after the Execution Date, at a time to be mutually agreed upon by JPMorgan and Interim Lead Counsel, Interim Lead Counsel shall submit this Settlement Agreement to the Court and shall file a motion for entry of the Preliminary Approval Order.

14. Class Notice

(A) In the event that the Court preliminarily approves the Settlement, Interim Lead Counsel shall, in accordance with Rule 23 of the Federal Rules of Civil Procedure, provide Class Members, whose identities can be determined after reasonable efforts, with notice of the date of the Fairness Hearing. The Class Notice may be sent solely for this Settlement or combined with notice of Other Settlements or of any litigation class. The Class Notice shall also explain the general terms of the Settlement Agreement, the general terms of the proposed Distribution Plan, the general terms of the Fee and Expense Application, and a description of Class Members' rights to object to the Settlement, request exclusion from the Class and appear at the Fairness Hearing. The text of the Class Notice shall be agreed upon by the Parties before its submission to the Court for approval thereof. JPMorgan agrees to provide Interim Lead Counsel with reasonably available contact information for counterparties to Swiss Franc LIBOR-Based Derivatives it transacted with during the Class Period, 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. Representative Plaintiffs agree that JPMorgan may, at its sole discretion, opt to provide, or have its third-party agent provide, the Class Notice to any counterparties to Swiss Franc LIBOR-Based Derivatives JPMorgan transacted with during the Class Period to the extent that JPMorgan reasonably concludes in good faith that such steps are required or advisable based on such counterparty information being subject to any applicable domestic or foreign data privacy, bank

secrecy, or other law, rule, or regulation. If JPMorgan does provide Class Notice pursuant to this Section, JPMorgan shall complete such notice no later than the date set by the Court to complete mailed notice pursuant to the Preliminary Approval Order and provide Interim Lead Counsel with the amount of Class Notices sent by JPMorgan pursuant to this Section.

(B) JPMorgan shall bear the costs and responsibility for timely serving notice of the Settlement as required by the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715. JPMorgan shall also cause a copy of such CAFA notice and proof of service of such notice to be provided to Interim Lead Counsel.

15. Publication

Interim Lead Counsel shall cause to be published a summary in accord with the Class Notice submitted to the Court by the Parties and approved by the Court. JPMorgan 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 the Settlement to Class Members except as provided for in Section 9(B). The Parties shall mutually agree on any content relating to JPMorgan that will be used by Interim Lead Counsel and/or the Settlement Administrator in any Settlement-related press release or other media publication, including on websites.

16. Motion for Final Approval and Entry of Final Judgment

(A) After Class Notice is issued, and prior to the Fairness Hearing, the Parties hereto shall jointly move for entry of a Final Approval Order and Final Judgment:

(i) finally certifying solely for settlement purposes the Settlement Class as defined in Section 1(E) herein;

(ii) finding that the Class 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;

(iii) finally approving this Settlement Agreement and its terms as being a fair, reasonable and adequate settlement of the Settlement Class' claims under Rule 23 of the Federal Rules of Civil Procedure;

(iv) directing that, as to the Released Parties, the Action be dismissed with prejudice and without costs as against the Settling Class Members;

(v) discharging and releasing the Released Claims as to the Released Parties;

(vi) barring claims by any Person against the Released Parties for contribution, indemnification, or similar claims (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise;

(vii) determining pursuant to Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing that the judgment of dismissal shall be final and appealable;

(viii) finding that the Court has jurisdiction to consider and approve the Settlement and this Agreement;

(ix) reserving the Court's continuing and exclusive jurisdiction over the Settlement and this Agreement, including the administration and consummation of this Agreement; and

(x) containing such other and further provisions consistent with the

terms of this Agreement to which the JPMorgan and Representative Plaintiffs expressly consent in writing.

(B) Prior to the Fairness Hearing, as provided in Section 5, Interim Lead Counsel will timely request by separate motion that the Court approve its Fee and Expense Application. The Fee and Expense Application and the Distribution Plan (as defined in Section 1(K)) are matters separate and apart from the Settlement between the 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 JPMorgan.

17. Best Efforts to Effectuate This Settlement

The 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.

18. Effective Date

Unless terminated earlier as provided in this Settlement Agreement, this Settlement Agreement shall become effective and final as of the date upon which all of the following conditions have been satisfied:

(A) The Settlement Agreement has been fully executed by JPMorgan and Representative Plaintiffs through their counsel;

(B) The Court has certified a Settlement Class, and entered the Preliminary Approval Order, substantially in the form agreed to by the Parties and attached hereto as Exhibit A, approving this Settlement Agreement, and approving the program and form for the Class Notice;

(C) Class Notice has been issued as ordered by the Court;

(D) The Court has entered the Final Approval Order substantially in the form agreed to by the Parties and attached hereto as Exhibit B finally approving the Settlement Agreement in all respects as required by Rule 23(e) of the Federal Rules of Civil Procedure; however, this required approval does not include the approval of the Fee and Expense Application and the Distribution Plan;

(E) The Court has entered its Final Judgment of dismissal with prejudice as to the Released Parties with respect to Representative Plaintiffs and Settling Class Members substantially in the form agreed to by the Parties and attached hereto as Exhibit C; and

(F) Upon the occurrence of the later of the following: (i) the resolution of any and all appeals regarding the Settlement (subject to Section 21 below) or (ii) the time to appeal or seek permission to appeal the Settlement has expired.

19. Occurrence of Effective Date

Upon the occurrence of all of the events in Section 18, any and all remaining interest or right of JPMorgan 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 Settlement Administrator at the written direction of Interim Lead Counsel.

20. Failure of Effective Date to Occur

If any of the conditions specified in Section 18 are not satisfied, then this Agreement shall be terminated, subject to and in accordance with Section 21, unless the Parties mutually agree in writing to continue with it for a specified period of time.

21. Termination

(A) JPMorgan shall have the right, but not the obligation, in its sole discretion, to terminate this Settlement Agreement by providing written notice to Interim Lead Counsel within

fifteen (15) business days of JPMorgan's learning of any of the following events:

(i) the Court enters an order declining to enter the Preliminary Approval Order pursuant to Representative Plaintiffs' motion under Section 13 or the Final Approval Order pursuant to the Parties' joint motion under Section 16 in any material respect;

(ii) the Court enters an order refusing to approve the Settlement Agreement or any material part of it;

(iii) the Court enters an order declining to enter the Final Judgment and order of dismissal in any material respect;

(iv) the Court enters an alternative judgment;

(v) the Final Judgment and order of dismissal is modified or reversed by a court of appeal or any higher court in any material respect; or

(vi) an alternative judgment is modified or reversed by a court of appeal or any higher court in any material respect.

(B) Interim Lead Counsel, acting on behalf of the Representative Plaintiffs, shall have the right, but not the obligation, in their sole discretion, to terminate this Settlement Agreement by providing written notice to JPMorgan's counsel within fifteen (15) business days of any of the following events, provided that the occurrence of the event substantially deprives Plaintiffs of the benefit of the Settlement:

(i) the Court enters an order declining to enter Representative Plaintiffs' Motion for Preliminary Approval pursuant to Section 13 or the Motion for Final Approval pursuant to Section 16 in any material respect;

(ii) the Court enters an order refusing to approve the Settlement

Agreement or any material part of it;

(iii) the Court enters an order declining to enter the Final Judgment and order of dismissal in any material respect;

(iv) the Court enters an alternative judgment;

(v) the Final Judgment and order of dismissal is modified or reversed by a court of appeal or any higher court in any material respect;

(vi) an alternative judgment is modified or reversed by a court of appeal or any higher court in any material respect; or

(vii) JPMorgan, for any reason, fails to comply with Section 3 and fails to cure such non-compliance as contemplated by Section 21(C) below.

(C) In the event that JPMorgan, for any reason, fails to comply with Section 3, then on ten (10) business days written notice to JPMorgan's counsel, during which ten-day period JPMorgan shall have the opportunity to cure the default without penalty, Representative Plaintiffs, by and through Interim Lead Counsel, may terminate this Settlement Agreement or elect to enforce it as provided by the Federal Rules of Civil Procedure.

22. 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 the Settlement as described herein is not finally approved by the Court or the Final Judgment is reversed or vacated following any appeal, then:

(A) Within ten (10) business days after written notification of such event is sent by counsel for JPMorgan or Interim Lead Counsel to all Parties and the Escrow Agent, the Settlement

Amount, and all interest earned in the Settlement Fund will be refunded, reimbursed, and repaid by the Escrow Agent to JPMorgan, except as provided in Section 9(B).

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

(C) The 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; and

(D) Upon termination of this Settlement Agreement, then:

(i) this Agreement shall be null and void and of no further effect, and none of JPMorgan, the Representative Plaintiffs, or members of the Settlement Class shall be bound by any of its terms;

(ii) any and all releases shall be of no further force and effect;

(iii) the 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; and

(iv) any judgment or order entered by the Court in accordance with the terms of this Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

(E) Unless the Settlement is terminated, JPMorgan shall take no position with respect to any motion for class certification that Representative Plaintiffs anticipate filing and/or file in connection with their claims against other Defendants in the Action. Nothing in this Settlement Agreement shall preclude JPMorgan from opposing motions for class certification or from taking

positions in actions other than the Action.

23. Supplemental Agreement

In addition to the provisions contained in Section 21(A) herein, JPMorgan shall have the rights specified in a Supplemental Agreement executed between Representative Plaintiffs and JPMorgan, including the right, but not the obligation, in its sole discretion, to terminate this Settlement Agreement.

24. Impact of Any Other Settlement

(A) If any Other Settlement (as defined in Section 1(Z)) is reached prior to the Fairness Hearing, the "Settlement Class," definition in Section 1(E), as well as the terms contained within the "Cooperation," "Release and Covenant Not to Sue," and "Termination" provisions herein (as described in Sections 4, 12, and 21 respectively) shall be no less favorable to JPMorgan than the corresponding term or provision applicable to any Other Settlement.

(B) If JPMorgan believes one or more terms or provisions referenced in subsection (A) is less favorable than a corresponding term or provision in any Other Settlement, JPMorgan will provide written notice of such belief to Interim Lead Counsel as prescribed in this Settlement Agreement within ten (10) business days of the filing of such Other Settlement with the Court. Following receipt of the written notice, JPMorgan 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 JPMorgan and Interim Lead Counsel that the provision at issue is less favorable, JPMorgan and Interim Lead Counsel will execute an amendment to the Settlement Agreement, adopting and incorporating the provision as drafted in the Other Settlement into the Settlement Agreement, and will submit the amendment to the Court for its approval. If JPMorgan and Interim Lead Counsel are unable to reach an

agreement on the relevant provision, JPMorgan or Interim Lead Counsel may move the Court to resolve the dispute.

25. Confidentiality Protection

Representative Plaintiffs, Interim Lead Counsel, and JPMorgan agree to keep private and confidential the terms of this Settlement Agreement, except for disclosure at the Court's direction or disclosure *in camera* to the Court, until this document is filed with the Court, provided, however, that nothing in this Section shall prevent JPMorgan, upon notice to Interim Lead Counsel, from making any disclosures it deems necessary to comply with any relevant laws, subpoena or other form of judicial process. Nothing in this provision shall preclude JPMorgan from disclosing, without notice to Interim Lead Counsel, the fact, amount, or terms of the Settlement as a result of a good faith determination that such disclosure is required or advisable pursuant to bank regulatory requirements, SEC requirements, or other legal or regulatory requirements, or from disclosing the fact, amount, or terms of the Settlement to its external auditors.

26. Binding Effect

(A) This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of JPMorgan, the Released Parties, the Representative Plaintiffs, and Settling Class Members.

(B) The waiver by any Party of any breach of this Settlement Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

27. Integrated Agreement

This Settlement Agreement, including any exhibits hereto and agreements referenced herein, contains the entire, complete, and integrated statement of each and every term and provision agreed to by and among the Parties and is not subject to any condition not provided for or referenced herein.

This Settlement Agreement supersedes all prior or contemporaneous discussions, agreements, and understandings among the Parties to this Settlement Agreement with respect hereto, including the Term Sheet executed on January 30, 2017. This Settlement Agreement may not be modified in any respect except by a writing that is executed by all the Parties hereto.

28. No Conflict Intended

The headings used in this Settlement Agreement are for the convenience of the reader only and shall not have any substantive effect on the meaning and/or interpretation of this Settlement Agreement.

29. No Party is the Drafter

None of the Parties shall be considered to be the drafter of this Settlement Agreement or any provision herein for the purpose of any statute, case law, or rule of interpretation or construction that might cause any provision to be construed against the drafter.

30. Choice of Law

All terms within the Settlement Agreement and its exhibits hereto shall be governed by and interpreted according to the substantive laws of the State of New York, without regard to its choice of law or conflict of laws principles, including N.Y. General Obligations Law § 15-108.

31. Execution in Counterparts

This Settlement Agreement may be executed in one or more counterparts. Facsimile and scanned/PDF signatures shall be considered valid signatures. All executed counterparts shall be deemed to be one and the same instrument. There shall be no agreement until the fully signed counterparts have been exchanged and delivered on behalf of all Parties.

32. Submission to and Retention of Jurisdiction

The Parties, Released Parties, and the Settlement Class irrevocably submit, to the fullest extent permitted by law, to the exclusive jurisdiction of the United States District Court for the Southern District of New York for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement, or the exhibits hereto. For the purpose of such suit, action, or proceeding, to the fullest extent permitted by law, the Parties, Released Parties and the Settlement Class irrevocably waive and agree not to assert, by way of motion, as a defense, or otherwise, any claim or objection that they are not subject to the jurisdiction of such Court, or that such Court is, in any way, an improper venue or an inconvenient forum or that the Court lacked power to approve this Settlement Agreement or enter any of the orders contemplated hereby.

33. Reservation of Rights

This Settlement Agreement does not settle or compromise any claims by Representative Plaintiffs or any Class Member asserted against any Defendant or any potential defendant other than JPMorgan and the Released Parties. The rights of any Class Member against any other Person other than JPMorgan and the Released Parties are specifically reserved by Representative Plaintiffs and the Class Members.

34. Notices

All notices and other communications under this Settlement Agreement shall be sent to the Parties to this Settlement Agreement at their address set forth on the signature page herein, *viz*, if to Representative Plaintiffs, then to: Vincent Briganti, Lowey Dannenberg Cohen & Hart, P.C., 44 South Broadway, Suite 1100, White Plains, New York 10601 and if to JPMorgan, then to Paul C. Gluckow, Simpson Thacher & Bartlett LLP, 425 Lexington Avenue New York, New York 10017, with a copy to Nancy E. Schwarzkopf, JPMorgan Chase, 4 New York Plaza, Mail Code NY1-E076,

New York, New York 10004-2413 or such other address as each party may designate for itself, in writing, in accordance with this Settlement Agreement.

35. Authority

In executing this Settlement Agreement, Interim Lead Counsel represent and warrant that they have been fully authorized to execute this Settlement Agreement on behalf of the Representative Plaintiffs and the Settlement Class (subject to final approval by the Court after notice to all Class Members), and that all actions necessary for the execution of this Settlement Agreement have been taken. JPMorgan represents and warrants that the undersigned is fully empowered to execute the Settlement Agreement on behalf of JPMorgan, and that all actions necessary for the execution of this Settlement Agreement have been taken.

36. Disputes or Controversies

Any dispute or controversy arising out of or relating to the cooperation set forth in Section 4 herein, including any claims under any statute, law, or regulation, shall be resolved exclusively by mediation, or, if mediation fails to resolve the dispute, by arbitration, in each case administered by a neutral agreed upon by all parties at JAMS, Inc., formerly known as Judicial Arbitration and Mediation Services ("JAMS"), in accordance with its procedures and Comprehensive Arbitration Rules & Procedures then in effect ("Rules") and in accordance with the Expedited Procedures in those Rules (or such other alternative dispute resolution organization as all parties shall agree), except as modified herein. The arbitration shall be conducted on a strictly confidential basis, and the Parties shall not disclose the existence or nature of any claim; any documents, correspondence, briefing, exhibits, or information exchanged or presented in connection with any claim; or any rulings, decisions, or results of any claim or argument (collectively, "Arbitration Materials") to any third party, with the sole exception of the Parties' respective legal counsel (who shall also be bound

by these confidentiality terms) or under seal in any judicial proceeding commenced in connection with this Section 36 or to the extent that such disclosure is required or advisable pursuant to bank regulatory requirements, SEC requirements, or other legal or regulatory requirements. The arbitral decision shall be final and binding upon the Parties hereto. Any arbitral award may be entered as a judgment or order in any court of competent jurisdiction. Except as the Rules may provide, the Parties shall share JAMS's administrative fees and the arbitrator's fees and expenses. Each Party shall be responsible for such Party's attorneys' fees and costs, except as otherwise provided by any applicable statute or other law. Either Party may commence litigation in any state or federal court of competent jurisdiction located in New York County, New York to obtain injunctive relief in aid of arbitration, to compel arbitration, or to confirm or vacate an arbitrator's award. The Parties agree to take all steps necessary to protect the confidentiality of the Arbitration Materials in connection with any such proceeding, agree to use their best efforts to file all confidential information (and documents containing confidential information) under seal, and agree to the entry of an appropriate protective order encompassing the confidentiality terms of any settlement agreement. The seat of arbitration shall be New York, New York.

[*remainder of page intentionally left blank*]

Dated: June 2, 2017

By: _____

Vincent Briganti
LOWEY DANNENBERG COHEN & HART, P.C.
44 South Broadway, Suite 1100
White Plains, New York 10601
Telephone: (914) 997-0500

Interim Lead Counsel for Representative Plaintiffs and the Proposed Class

Dated: June 2, 2017

By: _____

Paul C. Gluckow
SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, New York 10017
Telephone: (212) 455-2502
pgluckow@stblaw.com

Counsel for JPMorgan Chase & Co.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SONTERRA CAPITAL MASTER FUND LTD., FRONTPOINT EUROPEAN FUND, L.P., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP ENHANCED FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP FUND, L.P., FRONTPOINT HEALTHCARE HORIZONS FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., FRONTPOINT UTILITY AND ENERGY FUND L.P., HUNTER GLOBAL INVESTORS FUND I, L.P., HUNTER GLOBAL INVESTORS FUND II, L.P., HUNTER GLOBAL INVESTORS OFFSHORE FUND LTD., HUNTER GLOBAL INVESTORS OFFSHORE FUND II LTD., HUNTER GLOBAL INVESTORS SRI FUND LTD., HG HOLDINGS LTD., HG HOLDINGS II LTD., and FRANK DIVITTO, on behalf of themselves and all others similarly situated, Plaintiffs, - against – CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, JPMORGAN CHASE & CO., THE ROYAL BANK OF SCOTLAND PLC, UBS AG, BLUECREST CAPITAL MANAGEMENT LLP, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, AND JOHN DOE NOS. 1-50, Defendants.	Docket No. 15-cv-00871 (SHS) **EXHIBIT A TO STIPULATION AND AGREEMENT OF SETTLEMENT**

[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT WITH JPMORGAN CHASE & CO. AND CONDITIONALLY CERTIFYING A SETTLEMENT CLASS

UPON the Stipulation and Agreement of Settlement between Plaintiffs and JPMorgan Chase & Co. ("JPMorgan") dated June 2, 2017 (the "Agreement");

UPON all submissions in connection with Plaintiffs' Motion for Preliminary Approval of Class Action Settlement with JPMorgan;

UPON the consent of JPMorgan to the relief requested in such motion; and

UPON all prior proceedings herein.

NOW, THEREFORE, pursuant to the Federal Rule of Civil Procedure 23, it is hereby ORDERED that:

1. Except for the terms defined herein, the capitalized terms used herein shall have the meanings set forth in the Agreement.

2. The Court finds that it has subject matter jurisdiction to preliminarily approve the Settlement, including all exhibits thereto, under 28 U.S.C. § 1331, and that it has personal jurisdiction over the Parties and all members of the Settlement Class for purposes of approving the Settlement.

3. The Court preliminarily approves the Settlement as set forth in the Agreement, as being within the range of what may be found to be fair, reasonable, and adequate to the Settlement Class for the claims against JPMorgan. This is subject to the right of any such member of the Settlement Class to challenge the fairness, reasonableness, or adequacy of the Agreement and to show cause, if any exists, why a final judgment dismissing the action against JPMorgan, and ordering the release of the Released Claims against the Released Parties, should not be entered after due and adequate notice to such Settlement Class. The procedure for such notice to the Settlement Class shall be established in a later order.

4. The Court finds that the Agreement was entered into at arm's length by experienced counsel and is sufficiently within the range of reasonableness, fairness, and adequacy, and that Notice of the Agreement should be given to members of the Settlement Class.

5. Solely for purposes of the Settlement, the Settlement Class is hereby preliminarily certified and maintained as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure, and the Court finds that the applicable provisions of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure have been satisfied. The Court conditionally certifies the following Settlement Class solely for purposes of the Settlement of the claims against JPMorgan:

> All Persons (including both natural persons and entities) who purchased, sold, held, traded, or otherwise had any interest in Swiss Franc LIBOR-Based Derivatives[1] during the period of January 1, 2001 through December 31, 2011 (the "Class Period"). Excluded from the Settlement Class are the Defendants (as defined in the Agreement) and any parent, subsidiary, affiliate or agent of any Defendant or any co-conspirator whether or not named as a Defendant, and the United States Government.

6. Notwithstanding the sentence above that "[e]xcluded from the Settlement Class are the Defendants (as defined in the Agreement) and any parent, subsidiary, affiliate or agent of any

[1] "Swiss Franc LIBOR-Based Derivatives" means: (i) a three-month Euro Swiss franc futures contract on the London International Financial Futures and Options Exchange ("LIFFE") entered into by a U.S. Person, or by a Person from or through a location within the U.S.; (ii) a Swiss franc currency futures contract on the Chicago Mercantile Exchange ("CME"); (iii) a Swiss franc LIBOR-based interest rate swap entered into by a U.S. Person, or by a Person from or through a location within the U.S.; (iv) an option on a Swiss franc LIBOR-based interest rate swap ("swaption") entered into by a U.S. Person, or by a Person from or through a location within the U.S.; (v) a Swiss franc currency forward agreement entered into by a U.S. Person, or by a Person from or through a location within the U.S.; and/or (vi) a Swiss franc LIBOR-based forward rate agreement entered into by a U.S. Person, or by a Person from or through a location within the U.S.

Defendant or any co-conspirator whether or not named as a Defendant, and the United States Government," and solely for purposes of this Settlement and this Settlement Class, Investment Vehicles[2] shall not be excluded from the Settlement Class solely on the basis of being deemed to be Defendants or affiliates or subsidiaries of Defendants. However, to the extent that any Defendant or any entity that might be deemed to be an affiliate or subsidiary thereof (i) managed or advised, and (ii) directly or indirectly held a beneficial interest in, said Investment Vehicle during the Class Period, that beneficial interest in the Investment Vehicle is excluded from the Settlement Class.

7. The Court appoints Lowey Dannenberg Cohen & Hart, P.C. as Class Counsel to such Settlement Class for purposes of the Settlement, having determined that the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are fully satisfied by this appointment.

8. The Court appoints Citibank, N.A. as Escrow Agent for purposes of the Settlement Fund.

9. The Court preliminarily approves the establishment of the Settlement Fund as a qualified settlement fund pursuant to Section 468B of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

10. Plaintiffs Sonterra Capital Master Fund Ltd., FrontPoint European Fund, L.P., FrontPoint Financial Services Fund, L.P., FrontPoint Healthcare Flagship Enhanced Fund, L.P., FrontPoint Healthcare Flagship Fund, L.P., FrontPoint Healthcare Horizons Fund, L.P., FrontPoint Financial Horizons Fund, L.P., FrontPoint Utility and Energy Fund, L.P., Hunter Global Investors Fund I, L.P., Hunter Global Investors Fund II, L.P., Hunter Global Investors Offshore Fund Ltd., Hunter Global Investors Offshore Fund II Ltd., Hunter Global Investors SRI Fund Ltd., HG Holdings Ltd., HG Holdings II Ltd., and Frank Divitto (collectively, "Plaintiffs") will serve as representatives of such Settlement Class for purposes of the Settlement.

11. The timing, plan, and forms of the Notice to the Settlement Class and the date of the Fairness Hearing before this Court to consider any member(s) of the Settlement Class's objections to final approval of the Settlement and to consider the fairness, adequacy and reasonableness of the proposed Settlement and Agreement shall all be determined by separate order of this Court.

12. Neither this Order, the Agreement, the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Agreement or Settlement, whether or not the Settlement shall become final, is or shall be deemed or construed to be an admission, adjudication, or evidence of (i) any violation of any statute or law or of the validity of any claims, alleged wrongdoing, or liability of JPMorgan or any Released Party; (ii) the incurrence of any damage, loss, or injury by Plaintiffs or any Person; (iii) the existence or amount of any artificiality; (iv) any fault or omission of JPMorgan in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; or (v) the propriety of certification of a class other

[2] "Investment Vehicles" means any investment company, separately managed account or pooled investment fund, including, but not limited to: (i) mutual fund families, exchange-traded funds, fund of funds and hedge funds; and (ii) employee benefit plans.

than solely for purposes of the Settlement. Further, neither this Order, the Agreement, nor the Settlement contained therein, whether or not the Settlement shall become final, nor any negotiations, documents and discussions associated with them, nor the Final Approval Order and Final Judgment, may be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding of any nature, whether by the Settlement Class or any Person, except if warranted by existing law in connection with a dispute under the Agreement or an action in which the Agreement is asserted as a defense. All rights of JPMorgan and Plaintiffs are reserved and retained if the Settlement does not become final in accordance with the terms of the Agreement.

13. Neither this Order, the Agreement, the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Agreement or the Settlement is or may be used as an admission or evidence that the claims of Plaintiffs lacked merit in any proceeding against anyone other than JPMorgan in any court, administrative agency, or other tribunal.

14. In the event that the Agreement is terminated in accordance with its provisions, the Settlement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in the Agreement, and without prejudice to the status quo ante rights of Plaintiffs, JPMorgan, and the members of the Settlement Class.

15. All proceedings in the action as to JPMorgan, other than proceedings as may be necessary to implement the proposed Agreement or to effectuate the terms of the Agreement, are hereby stayed and suspended until further order of this Court.

16. If the Settlement is terminated pursuant to Paragraph 21 of the Agreement or if the Settlement is ultimately not approved or does not become final for any reason, the Court will modify any existing scheduling order to ensure that the Parties will have sufficient time to prepare for the resumption of litigation.

17. All members of the Settlement Class and their legally authorized representatives, unless and until they have submitted a timely request for exclusion from the Settlement Class pursuant to the instructions included in the Class Notice to be approved by this Court (hereinafter, "Request for Exclusion"), are hereby preliminarily enjoined from (i) filing, commencing, prosecuting, intervening in, or participating as a plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on the Released Claims; (ii) filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any members of the Settlement Class (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on the Released Claims; and (iii) attempting to effect an opt-out of a group, class, or subclass of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding based on the Released Claims.

18. The Court's preliminary certification of the Settlement Class, and appointment of Plaintiffs as class representatives, as provided herein is without prejudice to, or waiver of, the rights

of any Defendant to contest any other request by Plaintiffs to certify a class. The Court's findings in this Preliminary Approval Order shall have no effect on the Court's ruling on any motion to certify any class in this litigation, or appoint class representatives, and no party may cite or refer to the Court's approval of the Settlement Class as binding or persuasive authority with respect to any motion to certify such class or appoint class representatives.

ENTERED this _____ day of _____, _____.

_____

Hon. Sidney H. Stein
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SONTERRA CAPITAL MASTER FUND LTD., FRONTPOINT EUROPEAN FUND, L.P., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP ENHANCED FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP FUND, L.P., FRONTPOINT HEALTHCARE HORIZONS FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., FRONTPOINT UTILITY AND ENERGY FUND L.P., HUNTER GLOBAL INVESTORS FUND I, L.P., HUNTER GLOBAL INVESTORS FUND II, L.P., HUNTER GLOBAL INVESTORS OFFSHORE FUND LTD., HUNTER GLOBAL INVESTORS OFFSHORE FUND II LTD., HUNTER GLOBAL INVESTORS SRI FUND LTD., HG HOLDINGS LTD., HG HOLDINGS II LTD., and FRANK DIVITTO, on behalf of themselves and all others similarly situated, Plaintiffs, - against – CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, JPMORGAN CHASE & CO., THE ROYAL BANK OF SCOTLAND PLC, UBS AG, BLUECREST CAPITAL MANAGEMENT LLP, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, AND JOHN DOE NOS. 1-50, Defendants.	Docket No. 15-cv-00871 (SHS) **EXHIBIT B TO STIPULATION AND AGREEMENT OF SETTLEMENT**

[PROPOSED] FINAL APPROVAL ORDER OF SETTLEMENT WITH JPMORGAN CHASE & CO.

This matter came for a duly-noticed hearing on _____, 201__ (the "Fairness Hearing"), upon the Plaintiffs'[1] Motion for Final Approval of Settlement with JPMorgan Chase & Co. ("JPMorgan") in the action captioned *Sonterra Capital Master Fund Ltd. et al. v. Credit Suisse Group AG*

[1] The "Plaintiffs" are Sonterra Capital Master Fund Ltd., FrontPoint European Fund, L.P., FrontPoint Financial Services Fund, L.P., FrontPoint Healthcare Flagship Enhanced Fund, L.P., FrontPoint Healthcare Flagship Fund, L.P., FrontPoint Healthcare Horizons Fund, L.P., FrontPoint Financial Horizons Fund, L.P., FrontPoint Utility and Energy Fund, L.P., Hunter Global Investors Fund I, L.P., Hunter Global Investors Fund II, L.P., Hunter Global Investors Offshore Fund Ltd., Hunter Global Investors Offshore Fund II Ltd., Hunter Global Investors SRI Fund Ltd., HG Holdings Ltd., HG Holdings II Ltd., and Frank Divitto.

et al., Case No. 15-cv-871 (SHS) (S.D.N.Y.) (the "Action"), which was joined and consented to by JPMorgan. Due and adequate notice of the Stipulation and Agreement of Settlement with JPMorgan entered into on June 2, 2017 (the "Settlement Agreement") having been given to the members of the Settlement Class, the Fairness Hearing having been held, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. This Final Approval Order hereby incorporates by reference the definitions in the Settlement Agreement and all terms used herein shall have the same meanings as set forth in the Settlement Agreement.

2. For purposes only of the Settlement, the Court hereby finally certifies the Settlement Class, as defined in the Court's _____, 201_ Order Preliminarily Approving Proposed Class Action Settlement with JPMorgan Chase & Co., and Conditionally Certifying a Settlement Class. ECF No. __. Based on the record, the Court reconfirms that the applicable provisions of Rule 23 of the Federal Rules of Civil Procedure have been satisfied for purposes only of the Settlement.

3. In so holding, the Court finds that the Settlement Class meets all of the applicable requirements of FED. R. CIV. P. 23(a) and (b)(3). The Court hereby finds, in the specific context of the Settlement, that: (i) the Settlement Class is so numerous that joinder of all members of the Settlement Class is impracticable, FED. R. CIV. P. 23(a)(1); (ii) common questions of law and fact exist with regard to JPMorgan's alleged manipulation of Swiss Franc LIBOR and the prices of Swiss Franc LIBOR-Based Derivatives, FED. R. CIV. P. 23(a)(2); (iii) Plaintiffs' claims in this litigation are typical of those of the members of the Settlement Class, FED. R. CIV. P. 23(a)(3); and (iv) the Plaintiffs' interests do not conflict with, and are co-extensive with, those of absent members of the Settlement Class and Class Counsel has adequately represented the interests of the Settlement Class,

FED. R. CIV. P. 23(a)(4). The Court also finds that common issues of fact and law predominate over any questions affecting only individual members and that a class action is superior to other available methods for fairly and efficiently adjudicating this controversy. FED. R. CIV. P. 23(b)(3).

4. This Court has personal jurisdiction over the Plaintiffs, JPMorgan, and all members of the Settlement Class and subject matter jurisdiction over the Action to approve the Settlement Agreement and all exhibits attached thereto under 28 U.S.C. § 1331.

5. The Court finds that the mailed notice, publication notice, website, and Class Notice plan implemented pursuant to the Settlement Agreement and approved by the Court in the Order dated _____, 201__: (a) constituted the best practicable notice; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Action, of their right to exclude themselves from or object to the proposed Settlement, of their right to appear at the Fairness Hearing, of the Plan of Allocation, and of Class Counsel's application for the Attorneys' Fees Award and any Incentive Award, and for reimbursement of expenses associated with the Action; (c) provided a full and fair opportunity to all members of the Settlement Class to be heard with respect to the foregoing matters; and (d) met all applicable requirements of Federal Rule of Civil Procedure 23, Due Process, and any other applicable rules or law. Based upon JPMorgan's submission to the Court dated _____, the Court further finds that JPMorgan has complied with the obligations imposed on them under the Class Action Fairness Act of 2005, Pub. L. I 09-2, Feb. 18, 2005, 119 Stat. 4.

6. The Court finds that __ members of the Settlement Class have validly requested to be excluded from the Settlement Class.

7. The Court finds that no objections to the proposed Settlement have been submitted. Notwithstanding the lack of objections, the Court has independently reviewed and considered all

relevant factors and has conducted an independent examination into the propriety of the proposed Settlement.

8. It is hereby determined that all members of the Settlement Class are bound by the Settlement Agreement and this Final Approval Order, and all of their claims against JPMorgan, as provided under the Settlement Agreement, are hereby dismissed with prejudice and released.

9. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finally approves the Settlement, as set forth in the Settlement Agreement, and finds that the Settlement is, in all respects, fair, reasonable and adequate, and in the best interests of the Settlement Class, including the Plaintiffs. This Court further finds that the Settlement set forth in the Settlement Agreement is the result of arm's-length negotiations between experienced counsel representing the interests of the Parties, and that Class Counsel and the Plaintiffs adequately represented the Settlement Class for the purpose of entering into and implementing the Settlement Agreement. Accordingly, the Settlement embodied in the Settlement Agreement is hereby approved in all respects. The Parties are hereby directed to carry out the Settlement Agreement in accordance with all of its terms and provisions, including the termination provisions.

10. Notwithstanding the entry of this Final Approval Order, in the event that the Settlement does not become effective in accordance with the terms of the Settlement Agreement, then the provisions of this Final Approval Order dismissing Plaintiffs' claims shall be null and void; the Plaintiffs' claims shall be reinstated; JPMorgan's defenses shall be reinstated; the certification of the Settlement Class and final approval of the proposed Settlement, and all actions associated with it, including but not limited to any requests for exclusion from the Settlement previously submitted and deemed to be valid, shall be vacated and be of no force and effect; the Settlement Agreement, including its exhibits, and any and all negotiations, documents, and discussions associated with it and the releases set forth herein, shall be without prejudice to the rights of any Party, and of no force or

effect; and the Parties shall be returned to their respective positions before the Settlement Agreement was signed. Notwithstanding the language in this Section, any provision in the Settlement Agreement that the Parties have agreed shall survive its termination shall continue to have the same force and effect intended by the Parties.

11. The Settlement Fund has been established as a trust and shall be established as a fiduciary account (the "Settlement Fiduciary Account"). The Court further approves the establishment of the Settlement Fiduciary Account under the Settlement Agreement as a qualified settlement fund pursuant to Section 468B of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

12. Without affecting the finality of the Final Approval Order for purposes of appeal, the Court reserves exclusive jurisdiction over the implementation and enforcement of the Settlement Agreement and the Settlement contemplated thereby and over the enforcement of this Final Approval Order. The Court also retains exclusive jurisdiction to resolve any disputes that may arise with respect to the Settlement Agreement, the Settlement, or the Settlement Fund, to consider or approve administration costs and fees, including but not limited to fees and expenses incurred to administer the Settlement after the entry of the Final Approval Order, and to consider or approve the amounts of distributions to Settling Class Members. In addition, without affecting the finality of this Final Approval Order, Plaintiffs, JPMorgan, and the Settlement Class hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York for any suit, action, proceeding or dispute arising out of or relating to this Final Approval Order or the Settlement Agreement. Any disputes involving Plaintiffs, JPMorgan, or members of the Settlement Class concerning the implementation of the Settlement Agreement shall be submitted to the Court except as to those matters identified in the Settlement Agreement that are to be resolved by mediation or arbitration.

13. Each member of the Settlement Class must execute a release and covenant not to sue in conformity with the Settlement Agreement, as incorporated into the Proof of Claim and Release form, in order to receive the Settling Class Member's share, if any, of the Net Settlement Fund. The Court hereby confirms the appointment of [TBD] as Settlement Administrator, and directs that the Settlement Administrator shall ensure that each Proof of Claim and Release form provided to members of the Settlement Class contains a copy of such release and covenant not to sue. However, each member of the Settlement Class's claims shall be released pursuant Section 12 of the Settlement Agreement, regardless of whether the member of the Settlement Class executes a release and covenant not to sue pursuant to this paragraph 13.

14. The Court hereby approves the Releasing Parties' releases of claims as set forth in this Final Approval Order as of the Effective Date.[2]

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[2] Under Section 12 of the Settlement Agreement:

(A) The Releasing Parties finally and forever release and discharge from and covenant not to sue the Released Parties for any and all manner of claims, including unknown claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class, derivative, or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys' fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, which Settling Class Members or any of them ever had, now has, or hereafter can, shall or may have, representatively, derivatively or in any other capacity, against the Released Parties arising from or relating in any way to conduct alleged in the Action or which could have been alleged in the Action against the Released Parties concerning any Swiss Franc LIBOR-Based Derivatives or any other financial instruments priced, benchmarked, or settled to Swiss franc LIBOR purchased, sold, and/or held by the Representative Plaintiffs, Class Members, and/or Settling Class Members (to the extent such other financial instruments were entered into by a U.S. Person, or by a Person from or through a location within the U.S.), including, but not limited to, any alleged manipulation of Swiss franc LIBOR under the Commodity Exchange Act, 7 U.S.C. § 1 et seq., or any other statute, regulation, or common law, or any purported conspiracy, collusion, racketeering activity, or other improper conduct relating to Swiss franc LIBOR (including, but not limited to, all claims under Section 1 of the Sherman Antitrust Act 15 U.S.C. § 1 et seq., the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, and any other federal or state statute, regulation, or common law). The following claims shall not be released by this Settlement: (i) any claims against former JPMorgan employees arising solely from those former employees' conduct that occurred while not employed by JPMorgan; (ii) any claims against the named Defendants in this Action other than JPMorgan; (iii) any claims against inter-dealer brokers or their employees or agents when and solely to the extent they were engaged as employees or agents of the other Defendants or of inter-dealer brokers; or (iv) any claims against any defendant who may be subsequently added in the Action, other than any affiliate or subsidiary of JPMorgan. For the avoidance of doubt, Released Claims does not include claims arising under foreign law based solely on transactions executed entirely outside the United States by Settling Class Members domiciled outside the United States.

(B) Although the foregoing release is not a general release, such release constitutes a waiver of Section 1542 of the California Civil Code (to the extent it applies to the Action), which provides as follows:

15. The Court declares that the Settlement Agreement and the Final Approval Order shall be binding on, and shall have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings against JPMorgan encompassed by the Released Claims that are maintained by or on behalf of the Plaintiffs or any other members of the Settlement Class, and shall also be binding on their respective predecessors, successors and assigns, direct and indirect parents, subsidiaries and affiliates, and on behalf of their current and former officers, directors, employees, agents, principals, members, trustees, participants, representatives, fiduciaries, beneficiaries or legal representatives in their capacity as such, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing in their capacity as such, regardless of whether the member of the Settlement Class previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Released Claims, and even if such member of the Settlement Class never received actual notice of the Action or this Settlement.

16. The Court permanently bars and enjoins the Plaintiffs and all members of the Settlement Class from: (a) filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction against JPMorgan or any Released Parties based on the Released

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> 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.

This release 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 Settling Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention to release fully, finally, and forever all of the Released Claims, and in furtherance of such intention, the release shall be irrevocable and remain in effect notwithstanding the discovery or existence of any such additional or different facts. In entering the Settlement and making this Agreement, the Parties assume the risk of any mistake of fact or law and the release shall be irrevocable and remain in effect notwithstanding any mistake of fact or law.

Claims; (b) filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any members of the Settlement Class (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), against JPMorgan or any Released Parties based on the Released Claims; or (c) organizing members of the Settlement Class into a separate group, class, or subclass for purposes of pursuing as a purported class action any lawsuit or administrative, regulatory, arbitration, or other proceeding (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) against JPMorgan or any Released Parties based on the Released Claims.

17. The Court permanently bars and enjoins claims by any Person against JPMorgan or any Released Parties (as defined in the Settlement Agreement) 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. Should any court determine that any Defendant is/was legally entitled to any kind of set-off, apportionment, contribution or indemnification from JPMorgan arising out of or related to Released Claims, any money judgment subsequently obtained by the Releasing Parties against any Defendant shall be reduced to an amount such that, upon paying the entire amount, the Defendant would have no claim for set-off, apportionment, contribution, indemnification or similar claims against JPMorgan.

18. Neither the Settlement Agreement (nor its exhibits), whether or not it shall become final, nor any negotiations, documents exchanged among counsel for Plaintiffs and JPMorgan in connection with settlement discussions, and discussions associated with them, nor the Final Approval Order is or shall be deemed or construed to be an admission, adjudication or evidence of: (a) any violation of any statute or law or of any liability or wrongdoing by JPMorgan or any Released Party; (b) the truth of any of the claims or allegations alleged in the Action; (c) the incurrence of any

damage, loss or injury by any Person; (d) the existence or amount of any artificiality; or (e) the propriety of certification of a class other than solely for purposes of the Settlement. Further, neither the Settlement Agreement (nor its exhibits), whether or not they shall become final, nor any negotiations, documents exchanged among counsel for Plaintiffs and JPMorgan in connection with settlement discussions, and discussions associated with them, nor the Final Approval Order, may be discoverable, offered or received in evidence, or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding of any nature, by any Person, except if warranted by existing law in connection with a dispute under the Settlement Agreement or an action (including this Action) in which the Settlement Agreement is asserted as a defense. Notwithstanding anything to the contrary herein, the foregoing provisions do not apply to discovery or cooperation materials provided by JPMorgan to Plaintiffs or by Plaintiffs to JPMorgan in connection with the Settlement or the Action. The Parties, without the need for approval from the Court, may adopt such amendments, modifications, and expansions of the Settlement Agreement and all exhibits thereto as (i) shall be consistent in all material respects with the Final Approval Order; and (ii) do not limit the rights of members of the Settlement Class.

19. The Court finds that, during the course of the Action, the Parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure. Any data or other information provided by members of the Settlement Class in connection with the submission of claims shall be held in strict confidence, available only to the Settlement Administrator, Class Counsel, experts or consultants acting on behalf of the Settlement Class. In no event shall a member of the Settlement Class's data or personal information be made publicly available, except as provided for herein or upon Court Order for good cause shown.

20. The Proof of Claim and Release form, Plan of Allocation, and Supplemental Agreement are each approved as fair, reasonable, and adequate.

21. The word "days," as used herein, means calendar days. In the event that any date or deadline set forth herein falls on a weekend or federal or state legal holiday, such date or deadline shall be deemed moved to the first business day thereafter.

22. The Court's certification of the Settlement Class, and appointment of Plaintiffs as Class Representatives, as provided herein is without prejudice to, or waiver of, the rights of any Defendant to contest any other request by Plaintiffs to certify a class. The Court's findings in this Final Approval Order shall have no effect on the Court's ruling on any motion to certify any class or to appoint Class Representatives in this litigation, and no party may cite or refer to the Court's approval of the Settlement Class as binding or persuasive authority with respect to any motion to certify such class or appoint Class Representatives.

IT IS SO ORDERED.

Signed this ___ day of _____, 201__.

_____

Honorable Sidney H. Stein
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SONTERRA CAPITAL MASTER FUND LTD., FRONTPOINT EUROPEAN FUND, L.P., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP ENHANCED FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP FUND, L.P., FRONTPOINT HEALTHCARE HORIZONS FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., FRONTPOINT UTILITY AND ENERGY FUND L.P., HUNTER GLOBAL INVESTORS FUND I, L.P., HUNTER GLOBAL INVESTORS FUND II, L.P., HUNTER GLOBAL INVESTORS OFFSHORE FUND LTD., HUNTER GLOBAL INVESTORS OFFSHORE FUND II LTD., HUNTER GLOBAL INVESTORS SRI FUND LTD., HG HOLDINGS LTD., HG HOLDINGS II LTD., and FRANK DIVITTO, on behalf of themselves and all others similarly situated, Plaintiffs, - against – CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, JPMORGAN CHASE & CO., THE ROYAL BANK OF SCOTLAND PLC, UBS AG, BLUECREST CAPITAL MANAGEMENT LLP, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, AND JOHN DOE NOS. 1-50, Defendants.	Docket No. 15-cv-00871 (SHS) **EXHIBIT C TO STIPULATION AND AGREEMENT OF SETTLEMENT**

[PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE OF JPMORGAN CHASE & CO.

This matter came for a duly-noticed hearing on _____, 201__ (the "Fairness Hearing"), upon the Plaintiffs'[1] Motion for Final Approval of Settlement with JPMorgan Chase & Co. ("JPMorgan") in the action captioned *Sonterra Capital Master Fund Ltd. et al. v. Credit Suisse Group AG*

[1] The "Plaintiffs" are Sonterra Capital Master Fund Ltd., FrontPoint European Fund, L.P., FrontPoint Financial Services Fund, L.P., FrontPoint Healthcare Flagship Enhanced Fund, L.P., FrontPoint Healthcare Flagship Fund, L.P., FrontPoint Healthcare Horizons Fund, L.P., FrontPoint Financial Horizons Fund, L.P., FrontPoint Utility and Energy Fund, L.P., Hunter Global Investors Fund I, L.P., Hunter Global Investors Fund II, L.P., Hunter Global Investors Offshore Fund Ltd., Hunter Global Investors Offshore Fund II Ltd., Hunter Global Investors SRI Fund Ltd., HG Holdings Ltd., HG Holdings II Ltd., and Frank Divitto.

et al., Case No. 15-cv-871 (SHS) (S.D.N.Y.) (the "Action"), which was joined and consented to by JPMorgan. Due and adequate notice of the Stipulation and Agreement of Settlement with JPMorgan entered into on June 2, 2017 (the "Settlement Agreement") having been given to the members of the Settlement Class, the Fairness Hearing having been held, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. This Final Judgment hereby incorporates by reference the definitions in the Settlement Agreement and all terms used herein shall have the same meanings as set forth in the Settlement Agreement.

2. The Action, including each claim in the Action, is hereby dismissed with prejudice on the merits as to JPMorgan and without fees or costs.

3. Upon the Settlement becoming final in accordance with its terms, all of the following claims shall be released. Specifically:

> (A) The Releasing Parties finally and forever release and discharge from and covenant not to sue the Released Parties for any and all manner of claims, including unknown claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class, derivative, or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys' fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, which Settling Class Members or any of them ever had, now has, or hereafter can, shall or may have, representatively, derivatively or in any other capacity, against the Released Parties arising from or relating in any way to conduct alleged in the Action or which could have been alleged in the Action against the Released Parties concerning any Swiss Franc LIBOR-Based Derivatives or any other financial instruments priced, benchmarked, or settled to Swiss franc LIBOR purchased, sold, and/or held by the Representative Plaintiffs, Class Members, and/or Settling Class Members (to the extent such other financial instruments were entered into by a U.S. Person, or by a Person from or through a location within the U.S.), including, but not limited to, any alleged manipulation of Swiss franc LIBOR under the Commodity Exchange Act, 7 U.S.C. § 1 et seq., or any other statute, regulation, or

common law, or any purported conspiracy, collusion, racketeering activity, or other improper conduct relating to Swiss franc LIBOR (including, but not limited to, all claims under Section 1 of the Sherman Antitrust Act 15 U.S.C. § 1 et seq., the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, and any other federal or state statute, regulation, or common law). The following claims shall not be released by this Settlement: (i) any claims against former JPMorgan employees arising solely from those former employees' conduct that occurred while not employed by JPMorgan; (ii) any claims against the named Defendants in this Action other than JPMorgan; (iii) any claims against inter-dealer brokers or their employees or agents when and solely to the extent they were engaged as employees or agents of the other Defendants or of inter-dealer brokers; or (iv) any claims against any defendant who may be subsequently added in the Action, other than any affiliate or subsidiary of JPMorgan. For the avoidance of doubt, Released Claims does not include claims arising under foreign law based solely on transactions executed entirely outside the United States by Settling Class Members domiciled outside the United States.

(B) Although the foregoing release is not a general release, such release constitutes a waiver of Section 1542 of the California Civil Code (to the extent it applies to the Action), which provides as follows:

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

This release 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 Settling Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention to release fully, finally, and forever all of the Released Claims, and in furtherance of such intention, the release shall be irrevocable and remain in effect notwithstanding the discovery or existence of any such additional or different facts. In entering the Settlement and making this Agreement, the Parties assume the risk of any mistake of fact or law and the release shall be irrevocable and remain in effect notwithstanding any mistake of fact or law.

4. The Court, finding no just reason for delay, directs pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that the judgment of dismissal as to JPMorgan shall be final and entered forthwith.

IT IS SO ORDERED.

Signed this ___ day of _____, 201__.

_____

Honorable Sidney H. Stein
United States District Judge

EXHIBIT 2

RESUME

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

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

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

LOWEY DANNENBERG'S COMMODITY PRACTICE

LANDMARK CLASS ACTION SETTLEMENTS

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

Sumitomo

In *In re Sumitomo Copper Litigation* ("*Sumitomo*"), Master File No. 96 CV 4854 (S.D.N.Y.) (Pollack, J.), Lowey Dannenberg was appointed as one of three executive committee members. Stipulation and Pretrial Order No. 1, dated October 28, 1996, at ¶ 13. Plaintiffs' counsel's efforts in

Sumitomo resulted in a settlement on behalf of the certified class of more than $149 million, which at the time was, **the largest** class action recovery in the history of the CEA. *In re Sumitomo Copper Litig.*, 182 F.R.D. 85, 95 (S.D.N.Y. 1998). One of the most able and experienced United States District Court judges in the history of the federal judiciary, the Honorable Milton Pollack, took note of counsel's efforts in *Sumitomo* in various respects, including the following:

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

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

In re Natural Gas

Lowey Dannenberg served as co-lead counsel in *In re Natural Gas Commodity Litigation*, Case No. 03 CV 6186 (VM) (S.D.N.Y.) ("*In re Natural Gas*"), which involved manipulation by more than 20 large energy companies of the price of natural gas futures contracts traded on the NYMEX. Plaintiffs alleged that defendants, including El Paso, Duke, Reliant, and AEP Energy Services, Inc., manipulated the prices of NYMEX natural gas futures contracts by making false reports of the price and volume of their trades to publishers of natural gas price indices across the United States, including Platts. Lowey Dannenberg won significant victories throughout the litigation including:

- defeating defendants' motions to dismiss (*In re Natural Gas*, 337 F. Supp. 2d 498 (S.D.N.Y. 2004));

- prevailing on a motion to enforce subpoenas issued to two publishers of natural gas price indices for the production of trade report data (*In re Natural Gas*, 235 F.R.D. 199 (S.D.N.Y. 2005)); and

- successfully certifying a class of NYMEX natural gas futures traders who were harmed by defendants' manipulation of the price of natural gas futures contracts traded on the NYMEX from January 1, 2000 to December 31, 2002. *In re Natural Gas*, 231 F.R.D. 171, 179 (S.D.N.Y. 2005) (granting class certification), *petition for review denied*, *Cornerstone Propane Partners, LP, et al. v. Reliant Energy Services, Inc., et al.*, Docket No. 05-5732 (2d Cir. August 1, 2006).

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

Amaranth

Lowey Dannenberg serves as co-lead counsel in *In re Amaranth Natural Gas Commodities Litigation*, Master File No. 07 Civ. 6377 (S.D.N.Y) (SAS) ("*Amaranth*"). *Amaranth* is a certified CEA class action alleging manipulation of NYMEX natural gas futures contract prices in 2006 by Amaranth LLC, one of the country's largest hedge funds, prior to its widely-publicized multi-billion dollar collapse in September 2006. Significant victories Lowey Dannenberg has achieved in the *Amaranth* litigation include:

- On April 27, 2009, plaintiffs' claims for primary violations and aiding-and-abetting violations of the CEA against Amaranth LLC and other Amaranth defendants were sustained. *Amaranth*, 612 F. Supp. 2d 376 (S.D.N.Y. 2009).

- On April 30, 2010, the Court granted plaintiffs' motion for pre-judgment attachment pursuant to Rule 64 of the Federal Rules of Civil Procedure and Section 6201 of the New York Civil

Practice Law and Rules against Amaranth LLC, a Cayman Islands company and the "Master Fund" in the Amaranth master-feeder-fund hedge fund family. *Amaranth*, 711 F. Supp. 2d 301 (S.D.N.Y. 2010).

- On September 27, 2010, the Court granted plaintiffs' motion for class certification. *Amaranth*, 269 F.R.D. 366 (S.D.N.Y. 2010). In appointing Lowey Dannenberg as co-lead counsel for plaintiffs and the Class, the Court specifically noted "the impressive resume" of Lowey Dannenberg and that "plaintiffs' counsel has vigorously represented the interests of the class throughout this litigation." On December 30, 2010, the Second Circuit Court of Appeals denied Amaranth's petition for appellate review of the class certification decision.

- On April 11, 2012, the Court entered a final order and judgment approving the $77.1 million settlement reached in the action. The $77.1 million settlement is **more than ten times greater** than the $7.5 million joint settlement achieved by the Federal Energy Regulatory Commission ("FERC") and the Commodity Futures Trading Commission ("CFTC") against Amaranth Advisors LLC and at that time, represented the **fourth largest** class action recovery in the 85-plus year history of the CEA.

Pacific Inv. Mgmt. Co. ("PIMCO")

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

CURRENT PROSECUTION OF COMMODITY CLASS ACTIONS

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

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

Lowey Dannenberg is leading the prosecution against the global financial institutions responsible for the setting of the Euro Interbank Offered Rate ("Euribor"), a global reference rate used to benchmark, price and settle over $200 trillion of financial products. Settling defendant Barclays Bank plc has been granted conditional leniency from the U.S. Department of Justice ("DOJ") pursuant to the Antitrust Criminal Penalty Enhancement and Reform Act ("ACPERA") for alleged anticompetitive conduct relating to Euribor. On December 15, 2015, Judge Castel preliminarily approved a $94 million settlement with Barclays plc and related Barclays' entities and appointed Lowey Dannenberg as Co-Class Counsel to the Settlement Class. *See* Order Preliminarily Approving Class Action Settlement and Conditionally Certifying a Settlement Class, *Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC) (S.D.N.Y. Dec. 15, 2015), ECF No. 234. On January 18, 2017, Judge Castel preliminarily approved a $45 million settlement with Defendants HSBC Holdings plc and HSBC Bank plc. *See* Order Preliminarily Approving Class Action Settlement with HSBC Holdings plc and HSBC Bank plc and Conditionally Certifying a Settlement Class, *Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC) (S.D.N.Y. Jan. 18, 2017), ECF No. 279.

On February 21, 2017, Judge Castel sustained two plaintiffs' claims for restraint of trade in violation of the Sherman Act, breach of the implied covenant of good faith and fair dealing, and unjust enrichment against Citigroup, Inc., Citibank, N.A., J.P. Morgan Chase & Co., and JPMorgan

Chase Bank, N.A. *Sullivan v. Barclays PLC,* No. 13-cv-2811 (PKC), 2017 WL 685570 (S.D.N.Y. Feb. 21, 2017). The case is currently pending in the Southern District.

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

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

A second action, *Sonterra Capital Master Fund, Ltd., et al. v. UBS AG, AG*, No. 17-944 (2d Cir.), on behalf of over-the-counter investors in Euroyen-based derivatives is currently on appeal before the United States Court of Appeals, Second Circuit.

Judge Daniels has granted final approval to a $35,000,000 settlement with HSBC Holdings plc and HSBC Bank plc, a $23,000,000 settlement with Citigroup, Inc. and several Citi entities, and a cooperation settlement with R.P. Martin. *See* Final Approval Order of Settlements with R.P. Martin Holdings Limited, Martin Brokers (UK) Ltd., Citibank, N.A., Citigroup Inc., Citibank Japan Ltd., Citigroup Global Markets Japan Inc., HSBC Holdings plc and HSBC Bank plc, *Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (S.D.N.Y. Nov. 10, 2016), ECF No. 720; Final Approval Order of

Settlements with R.P. Martin Holdings Limited, Martin Brokers (UK) Ltd., Citibank, N.A., Citigroup Inc., Citibank Japan Ltd., Citigroup Global Markets Japan Inc., HSBC Holdings plc and HSBC Bank plc, *Sonterra Capital Master Fund Ltd., et al. v. UBS AG, et al.,* No. 15-cv-5844 (S.D.N.Y. Nov. 10, 2016), ECF No. 298.

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

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

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

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

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

Lowey Dannenberg is leading the prosecution against numerous global financial institutions responsible for setting the Bank Bill Swap Reference Rate ("BBSW"), pending before Judge Lewis A. Kaplan. *Dennis, et al. v. JPMorgan Chase & Co., et al.,* No. 16-cv-6496 (LAK) (S.D.N.Y.). Lowey

Dannenberg also is litigating a separate action alleging the manipulation of the Singapore Interbank Offered Rate ("SIBOR"), Singapore Offer Rate ("SOR"), and the prices of financial derivatives that incorporate SIBOR and/or SOR as a component of price. The case is currently pending before Judge Alvin K. Hellerstein. *FrontPoint Asian Event Driven Fund, Ltd., et al. v. Citibank, N.A., et al.*, No. 16-cv-5263 (AKH) (S.D.N.Y.).

In re London Silver Fixing Ltd., Antitrust Litig.

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

Kraft Wheat Manipulation

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

Optiver

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

In re Rough Rice Futures Litigation

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

Honorable John W. Darrah of the Northern District of Illinois granted final approval of the settlement in August 2015.

White v. Moore Capital Management, L.P.

Lowey Dannenberg is counsel to a class representative in an action alleging manipulation of NYMEX palladium and platinum futures prices in 2007 and 2008. *White v. Moore Capital Management, L.P.*, Case No. 10 CV 3634 (S.D.N.Y.) (Pauley, J.). Judge Pauley granted final approval of a settlement in the amount of $70 million in 2015.

In re Crude Oil Commodity Futures Litigation

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

LOWEY DANNENBERG'S OTHER PRACTICE AREAS

ANTITRUST AND PRESCRIPTION OVERCHARGE LITIGATION

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

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

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

- *In re Cardizem CD Antitrust Litigation*, MDL No. 1278 (E.D. Mich.). Class certification, 200 F.R.D. 326 (E.D. Mich. 2001), Affirmance of partial summary judgment for plaintiffs, 332 F.3d 896 (6th Cir. 2003), $80 million class settlement.

- *In re Terazosin Hydrochloride Antitrust Litigation*, MDL No. 1317 (S.D. Fla.). Certification of 17-state litigation class, 220 F.R.D. 672 (S.D. Fla. 2004), Approval of 17-state settlement (after submission of final pretrial order, jury interrogatories and *motions in limine*) for $28.7 million, 2005 WL 2451958 (S.D. Fla. July 8, 2005).

- *In re Wellbutrin XL Antitrust Litigation*, Civ. No. 08-2433. Partial settlement for $11.75 million (unreported). The case is currently on appeal against the non-settling defendant.

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

- *In re Avandia Marketing Sales Practices and Products Liability Litigation*, 685 F.3d 353 (3d Cir. 2012), *cert. denied, sub nom. GlaxoSmithKline v. Humana Med. Plans, Inc.*, 81 U.S.L.W. 3579 (Apr. 15, 2013) (establishing Medicare Advantage Organization's reimbursement recovery rights under the Medicare Secondary Payer Act).

- *Desiano v. Warner-Lambert*, 326 F.3d 339 (2d Cir. 2003) (establishing the direct (non-subrogation) rights of commercial health insurers to recover overcharges from drug companies for drugs prescribed to their insureds). The case was subsequently settled for a confidential amount for 35 health insurers.

- *In re Neurontin Mktg. & Sales Practices Litigation*, 712 F.3d 51 (1st Cir. 2013) (holding drug manufacturers accountable to health insurers for RICO claims attributable to marketing fraud).

Lowey Dannenberg has defended and won dismissals for health insurers in the following class actions: *Roche v. Aetna, Inc.*, 165 F. Supp. 3d 180 (D.N.J. 2016), *aff'd*, 2017 WL 942649 (3d Cir.

Mar. 9, 2017); *Wurtz v. Rawlings Co., LLC*, No. 12-cv-1182 (JMA), 2016 WL 7174674 (E.D.N.Y. Nov. 17, 2016); *Mattson v. Aetna Life Ins. Co.*, 124 F. Supp. 3d 381 (D.N.J. 2015); *Meek-Horton v. Trover Solutions*, 910 F. Supp. 2d 690 (S.D.N.Y. 2013); *Potts v. Rawlings Co.,* LLC, 897 F. Supp. 2d 185 (S.D.N.Y. 2012); *Kesselman v. The Rawlings Company, LLC*, 668 F. Supp. 2d 604 (S.D.N.Y. 2009); *Elliot Plaza Pharmacy v. Aetna U.S. Healthcare*, No. 06-cv-623, 2009 WL 702837 (N.D. Okla. Mar. 16, 2009); *Main Drug, Inc. v. Aetna U.S. Healthcare*, 475 F.3d 1228 (11th Cir. 2007), *aff'g*, *Main Drug, Inc. v. Aetna U.S. Healthcare*, 455 F. Supp. 2d 1323 (M.D. Ala. 2006) and 455 F. Supp. 2d 1317 (M.D. Ala. 2005); and *Medfusion Rx, LLC v. Humana Health Plan, Inc.,* Case No. CV-08-PWG-0451-S (N.D. Ala.) (2008). We are also currently defending the class action lawsuit in *Minerley v. Aetna, Inc., et al.*, Civ. 13-1377 (NLH) (D.N.J.).

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

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

- *Cariten Insurance Company, et al. v. AstraZeneca AB, et al.*, No. 002106 (Pa. Court of Common Pleas); *Time Insurance Company, et al. v. AstraZeneca AB, et al.*, No. 001903 (Pa. Court of Common Pleas). Lowey Dannenberg represents several individual third party payer health insurers who have opted out of the certified litigation class in *Nexium* and filed separate actions in Pennsylvania state court. *In re Nexium (Esomeprazole) Antitrust Litig.*, 12–md–02409–WGY (D. Mass.). After being removed, two separate federal courts granted our

motions for remand. *Time Ins. Co. v. AstraZeneca AB*, 52 F. Supp. 3d 705 (E.D. Pa. 2014); *Cariten Insurance Company, et al. v. AstraZeneca AB*, 1:14-cv-13873-*WGY,* ECF No. 52 (D. Mass. Nov. 20, 2014).

- *Humana Inc. v. Boehringer Ingelheim Pharma GmbH & Co. KG, et al.*, No. 3:14-cv-00572 (D. Conn.) (SRU). Lowey Dannenberg represents Humana Inc. in a generic delay antitrust case against defendant Boehringer Ingelheim Pharmaceuticals, Inc., the Aggrenox brand manufacturer, and generic manufacturer Barr Pharmaceuticals Inc. (later acquired by Teva Pharmaceuticals), before Judge Underhill in the District of Connecticut. Class actions on behalf of direct and indirect purchaser plaintiffs are pending in the same multidistrict litigation. *In re Aggrenox Antitrust Litigation*, MDL No. 2516 (D. Conn.) (SRU). The litigation asserts claims under state antitrust law, claiming a $100 million co-promotion agreement was a disguised pay-for-delay, and as a result, Humana has overpaid and continues to overpay for Aggrenox. On March 23, 2015 and August 9, 2016, the Court sustained several of Humana's state law antitrust claims. *In re Aggrenox Antitrust Litig.*, 94 F. Supp. 3d 224 (D. Conn. Mar. 23, 2015); *see also In re Aggrenox Antitrust Litig.*, No. 14-md-2516, 2016 WL 4204478 (D. Conn. Aug. 8, 2016).

- *Government Employees Health Association v. Endo Pharmaceuticals, Inc., et al.*, No. 3:14-cv-02180-WHO (N.D. Cal.). Lowey Dannenberg represents Government Employees Health Association ("GEHA") in a generic delay antitrust case pending before Judge Orrick in the Northern District of California, concerning Lidoderm, the brand name for a prescription pain patch for the treatment of after-shingles pain, sold by Endo Pharmaceuticals, Inc., Teikoku Pharma USA, and Teikoku Seiyaku Co., Ltd. Class actions on behalf of direct and indirect purchaser plaintiffs are pending in the same multidistrict litigation. *In re Lidoderm Antitrust Litigation*, MDL No. 2521 (N.D. Cal.). On May 5, 2015, Judge Orrick granted in part and denied in part defendants' motion to dismiss GEHA's second amended complaint, sustaining GEHA's claims under the laws of 32 states. *In re Lidoderm Antitrust Litig.*, 103 F. Supp. 3d 1155 (N.D. Cal. May 5, 2015).

SECURITIES LITIGATION

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

Our investor litigation practice group has recovered billions of dollars in the aggregate. But the value of our accomplishments is measured by more than dollars. We have also achieved

landmark, long term corporate governance changes at public companies, including reversing results of elections and returning corporate control to the companies' rightful owners, its stockholders.

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

NOTABLE RECOVERIES

Notable achievements for our securities clients include the following:

- *In re Beacon Associates Litigation*, Civ. Act. No. 09-CV-0777 (S.D.N.Y.); *In re J.P. Jeanneret Associates, Inc., et al.*, 09-cv-3907 (S.D.N.Y.). Lowey Dannenberg represented several unions, which served as Lead Plaintiffs, in litigation arising from Bernie Madoff's Ponzi scheme. On March 15, 2013, the Honorable Colleen McMahon of the United States District Court for the Southern District of New York granted final approval of the $219.9 million settlement of Madoff feeder-fund litigation encompassing the *In re Beacon* and *In re Jeanneret* class actions. Lowey Dannenberg as Liaison Counsel was instrumental in achieving this outstanding result. The settlement covered several additional lawsuits in federal and New York state court against the settling defendants, including suits brought by the United States Secretary of Labor and the New York Attorney General. Plaintiffs in these cases asserted claims under the federal securities laws, ERISA, and state laws arising out of hundreds of millions of investment losses sustained by unions and other investors in Bernard Madoff feeder funds. The extraordinary recovery represents approximately 70% of investors' losses. This settlement, combined with money the victims are expected to recover from a separate liquidation of Madoff assets, is expected to restore the bulk of the pension funds for the local unions and other class members. In granting final approval, Judge McMahon praised both the result and the lawyering in these coordinated actions, noting that "[i]n the history of the world there has never been such a response to a notice of a class action settlement that I am aware of, certainly, not in my experience," and that "[t]he settlement process really was quite extraordinary." In her written opinion, Judge McMahon stated that "[t]he quality of representation is not questioned here, especially for those attorneys (principally from Lowey Dannenberg) who worked so hard to achieve this creative and, in my experience, unprecedented global settlement." *In re Beacon Associates Litig.*, 09 CIV. 777 CM, 2013 WL 2450960, at *14

(S.D.N.Y. May 9, 2013).

- *In re Juniper Networks, Inc. Sec. Litig.*, No. C-06-04327 JW (N.D. Cal). In 2010, as lead counsel for the Lead Plaintiff, the New York City Pension Funds, we achieved a settlement in the amount of $169.5 million, one of the largest settlements in an options backdating case, after more than three years of hard-fought litigation.

- *In re ACS Shareholder Litigation*, Consolidated C.A. No. 4940-VCP (Del. Ch.). We successfully challenged a multi-billion-dollar merger between Xerox Corp. and Affiliated Computer Systems ("ACS") which favored Affiliated's CEO at the expense of our client, Federated Investors, and other ACS shareholders. In following expedited proceedings, we achieved a $69 million settlement as well as structural protections in the shareholder vote on the merger. The settlement was approved in 2010.

- *In re Bayer AG Securities Litigation*, 03 Civ. 1546 (WHP) (S.D.N.Y.). We represented the New York State Common Retirement Fund as Lead Plaintiff in a securities fraud class action arising from Bayer's marketing and recall of its Baycol drug. Lowey Dannenberg was appointed as lead counsel for the New York State Common Retirement Fund at the inception of merits discovery, following the dismissal of the New York State Common Retirement Fund's former counsel. The class action was settled for $18.5 million in 2008.

- *In re WorldCom Securities Litigation*, Master File No. 02 Civ. 3288 (DLC) (S.D.N.Y.). Lowey Dannenberg's innovative strategy and aggressive prosecution produced an extraordinary recovery in the fall of 2005 for the New York City Pension Funds in the *WorldCom Securities Litigation*, substantially superior to that of any other WorldCom investor in either class or opt-out litigation. Following our advice to opt out of a class action in order to litigate their claims separately, the New York City Pension Funds recovered almost $79 million, including 100% of their damages resulting from investments in WorldCom bonds.

- *Federated American Leaders Fund, Inc.*, No. 08-cv-01337-PB (D.N.H.). In 2008, Lowey Dannenberg successfully litigated an opt-out case on behalf of our client Federated Investors, Inc., arising out of the *Tyco Securities Litigation*. The client asserted claims unavailable to the class (including a claim for violation of § 18 of the Securities Exchange Act of 1934 and a claim for violations of the New Jersey RICO statute). Pursuit of an opt-out strategy resulted in a recovery of substantially more than the client would have received had it merely remained passive and participated in the class action settlement.

- *In re Philip Services Corp., Securities Litigation*, No. 98 Civ. 835 (AKH) (S.D.N.Y.). On March 19, 2007, the United States District Court for the Southern District of New York approved a $79,750,000 settlement of a class action, in which Lowey Dannenberg acted as Co-Lead Counsel, on behalf of United States investors of Philip Services Corp., a bankrupt Canadian resource recovery company. $50,500,000 of the settlement was paid by the Canadian accounting firm of Deloitte & Touche, LLP, which Lowey Dannenberg believes is the largest recovery from a Canadian auditing firm in a securities class action, and among the largest obtained from any accounting firm. Earlier in the litigation, the United States Court of Appeals for the Second Circuit issued a landmark decision protecting the rights of United States citizens to sue foreign companies who fraudulently sell their securities in the United States. *DiRienzo v. Philip Services Corp.*, 294 F.3d (2d Cir. 2002).

- *In re New York Stock Exchange/Archipelago Merger Litigation*, No. 601646/05 (N.Y. Sup. Ct.). Lowey Dannenberg acted as co-lead counsel for a class of seatholders seeking to enjoin the merger between the New York Stock Exchange ("NYSE") and Archipelago Holdings, Inc. As a result of the action, the merger terms were revised, providing the seatholders with more than $250 million in additional consideration. In addition, the NYSE agreed to retain an independent financial adviser to report to the court as to the fairness of the deal to the NYSE seatholders. Plaintiffs also provided the court with their expert's analysis of the new independent financial adviser's report. Both reports were provided to the seatholders prior to the merger vote. The court noted that "these competing presentations provide a fair and balanced view of the proposed merger and present the NYSE Seatholders with an opportunity to exercise their own business judgment with eyes wide open. The presentation of such differing viewpoints ensures transparency and complete disclosure." *In re New York Stock Exchange/Archipelago Merger Litigation*, No. 601646/05, 2005 WL 4279476, at *14 (N.Y. Sup. Ct. Dec. 5, 2005).

- *Delcath Systems, Inc. v. Ladd, et al.,* No. 06 Civ. 6420 (S.D.N.Y.). On September 25, 2006, Lowey Dannenberg helped Laddcap Value Partners win an emergency appeal, reversing a federal district court's order disqualifying the votes Laddcap had solicited to replace the board of directors of Delcath Systems, Inc. Prior to our involvement in the case, on September 20, 2006, Laddcap, which was Delcath's largest stockholder, had been enjoined by the district court from submitting stockholder consents it had solicited on the grounds of unproven claimed violations of federal securities law. After losing an injunction proceeding in the district court on September 20, 2006, and with the election scheduled to close on September 25, 2006, Laddcap hired Lowey Dannenberg to prosecute an emergency appeal, which was won on September 25, 2006, the last day of the election period. *Delcath Systems, Inc. v. Ladd*, 466 F.3d 257 (2d Cir. 2006). Shortly thereafter, the case was settled with Laddcap gaining seats on the board, reimbursement of expenses, and other benefits.

- *Salomon Brothers Municipal Partners Fund, Inc. v. Thornton*, No. 05-cv-10763 (S.D.N.Y.). Lowey Dannenberg represented Karpus Investment Management in its successful proxy contest and subsequent litigation to prevent the transfer of management by Citigroup to Legg Mason of the Salomon Brothers Municipal Partners Fund. We defeated the Fund's preliminary injunction action which sought to compel Karpus to vote shares it had solicited by proxy but withheld from voting in order to defeat a quorum and prevent approval of the transfer. *Salomon Brothers Mun. Partners Fund, Inc. v. Thornton*, 410 F. Supp. 2d 330 (S.D.N.Y. 2006).

- *In re DaimlerChrysler AG Sec. Litigation*, Master Docket No. 00-993-JJF (D. Del.). Lowey Dannenberg represented Glickenhaus & Co., a major registered investment advisor and, at the time, the second largest stockholder of Chrysler, in an individual securities lawsuit against DaimlerChrysler AG. Successful implementation of the firm's opt-out strategy led to a recovery for its clients far in excess of that received by other class members. *See Tracinda Corp. v. DaimlerChrysler AG*, 197 F. Supp. 2d 42 (D. Del. 2002); *In re DaimlerChrysler AG Sec. Litig.*, 269 F. Supp. 2d 508 (D. Del. 2003).

- *Doft & Co. v. Travelocity.com, Inc.*, No. Civ. A. 19734 (Del. Ch.). Following a three-day bench trial in a statutory appraisal proceeding, the Delaware Chancery Court awarded our clients, an institutional investor and investment advisor, $30.43 per share plus compounded prejudgment interest, for a transaction in which the public shareholders who did not seek appraisal were cashed out at $28 per share. *Doft & Co. v. Travelocity.com, Inc.*, No. Civ. A. 19734, 2004 WL 1152338 (Del. Ch. May 20, 2004), *modified*, 2004 WL 1366994 (Del. Ch. June 10, 2004).

- *MMI Investments, LP v. NDCHealth Corp., et al.*, 05 Civ. 4566 (S.D.N.Y.). Lowey Dannenberg filed an individual action on behalf of hedge fund, MMI Investments, asserting claims for violations of the federal securities laws and the common law, including claims not available to the class, most notably a claim for violation of § 18 of the Securities Exchange Act of 1934 and a claim for common law fraud. After aggressively litigating the client's claims, the Firm obtained a substantial settlement, notwithstanding the fact that the class claims were dismissed.

- *Omnicare, Inc. v. NCS Healthcare, Inc.* Lowey Dannenberg, as Co-Lead Counsel on behalf of an institutional investor, obtained an injunction from the Delaware Supreme Court, enjoining a proposed merger between NCS Healthcare, Inc. and Genesis Health Ventures, Inc., which accepted our argument that the NCS board had breached its fiduciary obligations by agreeing to irrevocable merger lock-up provisions. As a result of the injunction, the NCS shareholders were able to obtain the benefit of a competing takeover proposal by Omnicare, Inc. of 300% more than that offered in the enjoined transaction, providing NCS's shareholders with an additional $99 million. *Omnicare, Inc. v. NCS Healthcare, Inc.*, 818 A.2d 914 (Del. 2003).

- *meVC Draper Fisher Jurvetson Fund 1, Inc. v. Millennium Partners.* Lowey Dannenberg successfully represented an affiliate of Millennium Partners, a major private investment fund, in litigation in the Delaware Chancery Court that resulted in the voiding of two elections of directors of meVC Draper Fisher Jurvetson Fund 1, Inc., a NYSE-listed closed end mutual fund, on grounds of breach of fiduciary duty, and in a subsequent proxy contest litigation in the United States District Court for the Southern District of New York, that resulted in the replacement of the entire board of directors with Millennium's slate. *meVC Draper Fisher Jurvetson Fund 1, Inc. v. Millennium Partners*, 260 F. Supp. 2d 616 (S.D.N.Y. 2003); *Millenco L.P. v. meVC Draper Fisher Jurvetson Fund 1, Inc.*, 824 A.2d 11 (Del. Ch. 2002).

- *In re CINAR Securities Litigation*, Master File No. 00 CV 1086 (E.D.N.Y. Dec. 2, 2002). In a case in which Lowey Dannenberg acted as Lead Counsel, we obtained a $27.25 million settlement on behalf of our client the Federated Kaufmann Fund and a class of purchasers of securities of CINAR Corporation. The court found that "the quality of [Lowey Dannenberg's] representation has been excellent."

- *In re Reliance Securities Litigation*, MDL No. 1304 (D. Del. 2002).In proceedings in which Lowey Dannenberg acted as co-counsel to a Bankruptcy Court-appointed estate representative, the firm obtained recoveries in a fraudulent conveyance action totaling $106 million.

OTHER LITIGATION

- *United States, et al. v. Trinity HomeCare, LLC, et al.,* No. 09-cv-3919 (S.D.N.Y.). In 2015, Lowey Dannenberg, working with the State of New York, acting through the New York State Office of the Attorney General, Medicaid Fraud Control Unit, concluded a Whistleblower representation for a Relator alleging Medicaid fraud. The defendants agreed to pay $22.4 million to settle the allegations, which is one of New York State's largest single-state recoveries.

- *Nicosia v. Amazon.com*, No. 14-4513 (E.D.N.Y.). On August 25, 2016, the United States Court of Appeals for the Second Circuit credited Lowey Dannenberg's argument regarding the enforceability of an "arbitration clause," holding that the so-called "arbitration clause" on Amazon.com's order page may not have been "reasonably conspicuous" enough to provide its customers with sufficient notice about the existence or terms of the arbitration clause. *Nicosia v. Amazon.com*, No. 15-423-cv, 2016 WL 4473225 (2d Cir. Aug. 25, 2016). The Second Circuit reversed the lower court, in part, and remanded the case for further proceedings. The case remains pending in the Eastern District of New York.

LOWEY DANNENBERG'S RECOGNIZED EXPERTISE

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

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

- "The quality of representation is not questioned here, especially for those attorneys (principally from Lowey Dannenberg) who worked so hard to achieve this creative and, in my experience, unprecedented global settlement."

- "I thank everyone for the amazing work that you did in resolving these matters. **Your clients - all of them - have been well served**."

- "Not a single voice has been raised in opposition to this remarkable settlement, or to the Plan of Allocation that was negotiated by and between the Private Plaintiffs, the NYAG and the DOL."

- "All formal negotiations were conducted with the assistance of two independent mediators - one to mediate disputes between defendants and the investors and another to mediate claims involving the Bankruptcy Estate. Class Representatives and other plaintiffs were present, in person or by telephone, during the negotiations. The US Department of Labor and the New York State Attorney General participated in the settlement negotiations. **Rarely has there been a more transparent settlement negotiation. It could serve as a prototype for the resolution of securities-related class actions, especially those that are adjunctive to bankruptcies**."

- "**The proof of the pudding is that an astonishing 98.72% of the Rule 23(b)(3) Class Members who were eligible to file a proof of claim did so (464 out of 470), and only one Class Member opted out [that Class Member was not entitled to recover anything under the Plan of Allocation]. I have never seen this level of response to a class action Notice of Settlement, and I do not expect to see anything like it again.**"

- "**I am not aware of any other Madoff-related case in which counsel have found a way to resolve all private and regulatory claims simultaneously and with the concurrence of the SIPC/Bankruptcy Trustee**. Indeed, I am advised by Private Plaintiffs' Counsel that the Madoff Trustee is challenging settlements reached by the NYAG in other feeder fund cases [Merkin, Fairfield Greenwich] which **makes the achievement here all the more impressive.**"

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

In the *In re Bayer AG Securities Litigation*, 03 Civ. 1546, 2008 WL 5336691, at *5 (S.D.N.Y. Dec. 15, 2008) order approving a settlement of $18.5 million for the class of plaintiffs, Judge William H. Pauley III noted that the attorneys from Lowey Dannenberg are "nationally recognized complex

class action litigators, particularly in the fields of securities and shareholder representation," that "provided high-quality representation."

In the *In re Luminent Mortgage Capital, Inc., Securities Litigation*, No. C07-4073 (N.D. Cal.) hearing for final approval of settlement and award of attorneys' fees, Judge Phyllis J. Hamilton noted that "[t]he $8 million settlement . . . is excellent, in light of the circumstance." Judge Hamilton went on to say that "most importantly, the reaction of the class has been exceptional with only two opt-outs and no objections at all received." *See* Tr. of Hearing on Plaintiff's Motion for Final Approval of Settlement/Plan of Allocation and for an Award of Attorneys' Fees and Reimbursement of Expenses, *In re Luminent Mortgage Capital, Inc., Securities Litigation*, No. C07-4073-PJH (N.D. Cal. Apr. 29, 2009), ECF No. 183.