

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE FOREIGN EXCHANGE
BENCHMARK RATES ANTITRUST
LITIGATION

No. 1:13-cv-07789-LGS

**MEMORANDUM OF LAW IN SUPPORT OF CLASS PLAINTIFFS' MOTION FOR
APPROVAL OF THE FORM AND MANNER OF NOTICE OF SETTLEMENTS AND
PRELIMINARILY APPROVING THE PLAN OF DISTRIBUTION**

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EXPLANATION OF DEFINED TERMS AND CITATION FORMS

The following defined terms are used in this Memorandum:

Parties

- “Class Plaintiffs” are Aureus Currency Fund, L.P., The City of Philadelphia, Board of Pensions and Retirement, Employees’ Retirement System of the Government of the Virgin Islands, Employees’ Retirement System of Puerto Rico Electric Power Authority, Fresno County Employees’ Retirement Association, Haverhill Retirement System, Oklahoma Firefighters Pension and Retirement System, State-Boston Retirement System, Syena Global Emerging Markets Fund, LP, Tiberius OC Fund, Ltd., Value Recovery Fund L.L.C., and United Food and Commercial Workers Union and Participating Food Industry Employers Tri-State Pension Fund, J. Paul Antonello, Marc G. Federighi, Thomas Gramatis, Doug Harvey, Izee Trading Company, John Kerstein, Michael Melissinos, Mark Miller, Robert Miller, Richard Preschern d/b/a Preschern Trading, Peter Rives, Michael J. Smith, Jeffrey Sterk, Kimberly Sterk, and Systrax Corporation.
- “Parties” or “Settling Parties” are Class Plaintiffs and Settling Defendants.
- “Defendants” are Settling Defendants and Non-Settling Defendants.
- “Settling Defendants” are Bank of America, BTMU, Barclays, BNP Paribas, Citigroup, Goldman Sachs, HSBC, JPMorgan, Morgan Stanley, RBC, RBS, Soc Gen, Standard Chartered, and UBS.
- “Non-Settling Defendants” are Credit Suisse and Deutsche Bank.
- “Bank of America” is Bank of America Corporation, Bank of America, N.A., and Merrill Lynch, Pierce, Fenner & Smith Incorporated.
- “BTMU” is The Bank of Tokyo-Mitsubishi UFJ, Ltd.
- “Barclays” is Barclays Bank PLC and Barclays Capital Inc.
- “BNP Paribas” is BNP Paribas Group, BNP Paribas North America Inc., BNP Paribas Securities Corp., and BNP Prime Brokerage, Inc.
- “Citigroup” is Citigroup Inc., Citibank, N.A., Citicorp, and Citigroup Global Markets Inc.
- “Credit Suisse” is Credit Suisse AG, Credit Suisse Group AG, and Credit Suisse Securities (USA) LLC.
- “Deutsche Bank” is Deutsche Bank Securities Inc. and Deutsche Bank AG.
- “Goldman Sachs” is The Goldman Sachs Group, Inc. and Goldman, Sachs & Co.

- “HSBC” is HSBC Holdings PLC, HSBC Bank PLC, HSBC North America Holdings Inc., HSBC Bank USA, N.A., and HSBC Securities (USA) Inc.
- “JPMorgan” is JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A.
- “Morgan Stanley” is Morgan Stanley, Morgan Stanley & Co. LLC, and Morgan Stanley & Co. International PLC.
- “RBC” is RBC Capital Markets LLC.
- “RBS” is The Royal Bank of Scotland Group PLC, The Royal Bank of Scotland PLC, and RBS Securities Inc.
- “Soc Gen” is Société Générale.
- “Standard Chartered” is Standard Chartered Bank.
- “UBS” is UBS AG, UBS Group AG, and UBS Securities LLC.

Settlement Agreements

- “Bank of America Stip.” is the Stipulation and Agreement of Settlement with Bank of America Corporation, Bank of America, N.A., and Merrill Lynch, Pierce, Fenner & Smith Incorporated.
- “BTMU Stip.” is the Stipulation and Agreement of Settlement with The Bank of Tokyo-Mitsubishi UFJ, Ltd.
- “Barclays Stip.” is the Stipulation and Agreement of Settlement with Barclays Bank PLC and Barclays Capital Inc.
- “BNP Paribas Stip.” is the Stipulation and Agreement of Settlement with BNP Paribas Group, BNP Paribas North America Inc., BNP Paribas Securities Corp., and BNP Prime Brokerage, Inc.
- “Citigroup Stip.” is the Stipulation and Agreement of Settlement with Citigroup Inc., Citibank, N.A., Citicorp, and Citigroup Global Markets Inc.
- “Goldman Sachs Stip.” is the Stipulation and Agreement of Settlement with The Goldman Sachs Group, Inc. and Goldman, Sachs & Co.
- “HSBC Stip.” is the Stipulation and Agreement of Settlement with HSBC Holdings PLC, HSBC Bank PLC, HSBC North America Holdings Inc., HSBC Bank USA, N.A., and HSBC Securities (USA) Inc.
- “JPMorgan Stip.” is the Stipulation and Amended Agreement of Settlement with JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A.

- “Morgan Stanley Stip.” is the Stipulation and Agreement of Settlement with Morgan Stanley, Morgan Stanley & Co. LLC, and Morgan Stanley & Co. International PLC.
- “RBC Stip.” is the Stipulation and Agreement of Settlement with RBC Capital Markets LLC.
- “RBS Stip.” is the Stipulation and Agreement of Settlement with The Royal Bank of Scotland Group PLC, The Royal Bank of Scotland PLC, and RBS Securities Inc.
- “Soc Gen Stip.” is the Stipulation and Agreement of Settlement with Société Générale S.A.
- “Standard Chartered Stip.” is the Stipulation and Agreement of Settlement with Standard Chartered Bank.
- “UBS Amended Stip.” is the Stipulation and Amended Agreement of Settlement with UBS AG, UBS Group AG, and UBS Securities LLC.
- “Settlement Agreements” or “Settlements” are the Bank of America Stip., BTMU Stip., Barclays Stip., BNP Paribas Stip., Citigroup Stip., Goldman Sachs Stip., HSBC Stip., JPMorgan Stip., Morgan Stanley Stip., RBC Stip., RBS Stip., Soc Gen Stip., Standard Chartered Stip., and UBS Amended Stip.

Declarations

- “Burke Declaration” is the accompany Declaration of Christopher M. Burke in Support of Class Plaintiffs’ Motion for Approval of the Form and Manner of Notice of Settlements and Preliminarily Approving the Plan of Distribution.

Other Defined Terms

Unless otherwise defined herein, all other capitalized terms have the same meaning as set forth in the Settlement Agreements.

Class Plaintiffs respectfully submit this Memorandum of Law in Support of their Motion, pursuant to Rule 23(c)(2), (e) of the Federal Rules of Civil Procedure, for entry of the [Proposed] Superseding Order Approving the Form and Manner of Notice of Settlements and Preliminarily Approving the Plan of Distribution (the “Notice Order”), which is attached to the accompanying Notice of Motion as Exhibit A.

I. PRELIMINARY STATEMENT

The Settling Parties have reached 14 proposed Settlements that would resolve all claims against Settling Defendants in this Action in exchange for non-reversionary cash payments of \$2,120,275,000 (the “Settlement Amount”) and other non-monetary consideration. On December 15, 2015, the Court preliminarily approved nine Settlements with Bank of America, Barclays, BNP Paribas, Citi, HSBC, Goldman Sachs, JPMorgan, RBS, and UBS. ECF No. 536. Concurrently with this Motion, Class Plaintiffs move for preliminary approval of five new Settlements with BTMU, Morgan Stanley, RBC, Soc Gen, and Standard Chartered (collectively, the “New Settling Defendants”).

On December 20, 2016, the Court approved the form and manner of notice of the original nine Settlements and preliminarily approved the Plan of Distribution. ECF No. 700. At the request of Class Plaintiffs, the Court adjourned the commencement of the notice program with respect to the original nine Settlements on the grounds that Class Plaintiffs had reached agreements in principle to settle, were having ongoing settlement discussions, and because of the need to receive certain data for notice, which some Defendants were in the final stages of producing. ECF No. 719. Class Plaintiffs continued settlement discussions, received additional notice data, and provided the Court with monthly status updates. On June 1, 2017, Class Plaintiffs proposed a timeline for providing notice of the original nine Settlements that had already been preliminarily approved, as well as additional Settlements for which Class Plaintiffs

would move for preliminary approval on July 28, 2017. ECF No. 783. At a subsequent hearing, the Court encouraged Class Plaintiffs to commence notice earlier than they had proposed in their June 1, 2017 timeline. Hrg. Trans. at 5:6-12 (June 5, 2017). Class Plaintiffs are therefore prepared to commence notice on October 1, 2017.

Class Plaintiffs now move the Court for entry of the Notice Order. The Notice Order will govern the form and manner of giving notice of all 14 Settlements to the Settlement Classes and preliminarily approve a revised Plan of Distribution. The proposed manner of giving notice has not been revised since the Court entered the December 20, 2016 Notice Order; it remains a program of individualized hard-copy notice supplemented by publication notice. The proposed forms of notice have been revised, including to reflect the five new Settlements, the Settlement Amount, and revisions to the Plan of Distribution. The revisions to the forms of notice are detailed in §III, below. The revisions to the Plan of Distribution are based on ongoing data analysis, ongoing discovery and document review, dismissal of claims based on certain types of transactions, and feedback received from members of the Settlement Classes. These revisions are detailed in §IV, below.

Entry of the Notice Order will permit Class Plaintiffs to begin the process of providing notice of the 14 Settlements and their terms to potential members of the Settlement Classes. After notice is provided and Class Members are permitted to submit Claim Forms, object to the Settlements, or opt out of the Settlements, the next step will be a final approval hearing (the “Fairness Hearing”). At the Fairness Hearing, the Settling Parties and Settlement Class Members may present arguments and evidence for and against the terms of the Settlements. The Court can then make a final determination as to whether the proposed Settlements are fair, reasonable, and adequate. To facilitate this process, the Notice Order, among other things:

- (i) approves the form and content of the proposed Mail Notice, Claim Form, and Summary Notice, attached as Exhibits 1-3 to the Notice Order;
- (ii) finds that the procedures for distribution of the Mail Notice and Claim Form and publication of the Summary Notice constitute the best notice practicable under the circumstances and comply with the requirements of due process and Fed. R. Civ. P. 23;
- (iii) sets a schedule and procedures for: mailing the Mail Notice and publishing the Summary Notice; requesting exclusion from the Settlements; objecting to the Settlements, the Plan of Distribution, and/or Class Counsel's application for attorneys' fees and expenses; submitting papers in support of final approval of the Settlements and the application for attorneys' fees and expenses; and the Fairness Hearing; and
- (iv) preliminarily approves the Plan of Distribution, attached as Exhibit 4 to the Notice Order.

II. THE MANNER OF GIVING NOTICE TO THE SETTLEMENT CLASSES IS THE BEST NOTICE PRACTICABLE UNDER THE CIRCUMSTANCES AND SHOULD BE APPROVED

Rule 23 provides that, prior to granting final approval of a proposed class action settlement, “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). Where, as here, the notice is to be provided to a settlement class certified under Rule 23(b)(3), the court is required to “direct to class members the best notice that is practicable under the circumstance[s].” Fed. R. Civ. P. 23(c)(2)(B). “The standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness.” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 113 (2d Cir. 2005). Rule 23 “accords considerable discretion to a district court in fashioning notice to a class.” *In re “Agent Orange” Prod. Liab. Litig., MDL No. 381*, 818 F.2d 145, 168 (2d Cir. 1987).

Class Plaintiffs propose to notify potential members of the Settlement Classes by direct mail and by publication notice in national and international publications of particular relevance to Class Members. The Mail Notice and Claim Form will be distributed to potential members of the Settlement Classes who can be identified with reasonable effort through records maintained

by Settling Defendants and Non-Settling Defendants and through records that Class Plaintiffs subpoenaed from the Chicago Mercantile Exchange (“CME”) and Intercontinental Exchange, Inc. (“ICE”). In addition to the direct mail, the Summary Notice will be published in FX trade publications and websites, in national and international financial newspapers, on the websites of national and international financial news outlets, and in a global press release. A Settlement Website (www.FXANTITRUSTSETTLEMENT.COM) dedicated to providing potential members of the Settlement Classes with detailed information about the case and the Settlements will also be maintained. The Claims Administrator will also establish a telephone helpline and monitor an email address to which members of the Settlement Classes may write.¹

Such multi-faceted notice programs combining individual mail notice and publication notice have been approved by federal courts in numerous complex class actions. *See, e.g., Wal-Mart Stores*, 396 F.3d at 105 (affirming preliminary and final approval of settlement with a “notice plan that required mailing the settlement notice to class members and publishing a condensed version of the settlement notice in numerous widely-distributed publications”).²

¹ Incorporated by reference is §II.B of the Memorandum of Law in Support of Motion for Approval of the Form and Manner of Notice of Settlements and Preliminarily Approving the Plan of Distribution (ECF No. 654), which includes detailed descriptions of the Mail Notice plan for potential class members who traded over the counter and on exchanges and the Publication Notice plan.

² *See also In re Credit Default Swaps Antitrust Litig.*, No. 13-md-2476, 2016 WL 2731524, at *5 (S.D.N.Y. Apr. 26, 2016) (“Class Counsel mailed notice packets to each of 13,923 identified Class members. . . . The Summary Notice was also published on January 11 in several important business publications. . . . The Garden City Group (the ‘Claims Administrator’) launched a website for the Settlement which posted the Settlement agreements, notices, court documents, and other information relevant to the Settlement.”); *In re Vitamin C Antitrust Litig.*, No. 06-MD-1738, 2012 WL 5289514, at *2 (E.D.N.Y. Oct. 23, 2012) (“Pursuant to this plan, a copy of the settlement notice was mailed to every potential member of the Direct Purchaser Damages Class whose address was provided by defendants. The notice that was ultimately mailed to 147 members of this class also contained a claim form. Additionally, the class notice was published in eight print publications, as well as on Facebook and on the approximately 800 websites that comprise the 24/7 Network. Finally, the settlement notice, along with other lawsuit and settlement-related information, was made available on a website operated by the settlement administrator.”).

Accordingly, Class Plaintiffs respectfully request that the Court approve the proposed manner of effectuating notice.

III. THE FORMS OF NOTICE MEET RULE 23'S REQUIREMENTS AND SHOULD BE APPROVED

Rule 23 provides the requisite contents to be included in a notice to class members of a proposed settlement:

For any class certified under Rule 23(b)(3), . . . notice must clearly and concisely state in plain, easily understood language:

- (i) the nature of the action;
- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an attorney if the member so desires;
- (v) that the court will exclude from the class any member who requests exclusion;
- (vi) the time and manner for requesting exclusion; and
- (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed R. Civ. P. 23(c)(2)(B). “There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice must ‘fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.’” *Wal-Mart Stores*, 396 F.3d at 114.³ In short, the notice must afford settlement class members the ability to “make an informed decision about their participation” in the class action. MANUAL FOR COMPLEX LITIGATION (FOURTH) §21.311, at 289 (2004).

Class Plaintiffs have prepared a Notice of Class Action Settlements (the “Mail Notice”) and Proof of Claim and Release (the “Claim Form”) (attached as Exhibits 1 and 2 to the Notice Order) to be mailed to each potential member of the Settlement Classes that can be identified

³ Unless otherwise noted, all citations are omitted and emphasis is added.

through reasonable efforts and a Summary Notice of Class Action Settlements for publication (the “Summary Notice”) (attached as Exhibit 3 to the Notice Order).

The Court approved the basic content of the Mail Notice, Claim Form, and Summary Notice in the December 20, 2016 Notice Order. ECF No. 700, ¶3. Class Plaintiffs provide a summary of key revisions to the Mail Notice, Claim Form, and Summary Notice below. Redlines showing the revisions are attached as Exhibits 1-3 of the accompanying Burke Declaration.

Revisions to Mail Notice

1. Updates list of Settling Defendants and Non-Settling Defendants and updates the Settlement Amount and other figures based on the Settlement Amount.
2. Revises the bank secrecy and data privacy consent/waiver and the consent/waiver with respect to exchange data.
3. Inserts a new Question 9 about the geographic scope of the Settlement Classes.
4. Updates descriptions of the process for submitting claims to conform to the revisions to the Plan of Distribution.
5. Amends the description of how to opt out of the settlement to require opt outs to include the claimant ID(s) on their Claim Form(s), if received.

Revisions to Claim Form

1. Updates list of Settling Defendants and Non-Settling Defendants and updates the Settlement Amount.
2. Adds a header instructing brokers and managers to forward the Claim Form if the claim belongs to one of their customers.
3. Adds country of domicile to the information to be filled out by the Claimant.
4. Revises the bank secrecy and data privacy consent/waiver and the consent/waiver with respect to exchange data.

Revisions to Summary Notice

1. Updates list of Settling Defendants and Non-Settling Defendants and updates the Settlement Amount.

2. Adds contact information for Class Counsel.

Class Plaintiffs respectfully submit that the proposed forms of notice should be approved.

IV. THE PLAN OF DISTRIBUTION IS FAIR AND REASONABLE AND SHOULD BE APPROVED

“A principal goal of a plan of distribution must be the equitable and timely distribution of a settlement fund without burdening the process in a way that will unduly waste the fund.” *Credit Default Swaps*, 2016 WL 2731524, at *9. A plan for distributing settlement proceeds, like the settlement itself, should be approved if it is fair and reasonable. *Id.* A plan of distribution is fair and reasonable as long as it has a “rational basis.” *Id.* Whether a distribution plan is fair and reasonable is “squarely within the discretion of the district court.” *In re PaineWebber Ltd. P’ships Litig.*, 171 F.R.D. 104, 132 (S.D.N.Y. 1997). Courts also give weight to the opinion of experienced counsel about whether a plan of distribution is fair and reasonable. *See Yang v. Focus Media Holding Ltd.*, No. 11-cv-9051, 2014 WL 4401280, at *9 (S.D.N.Y. Sept. 4, 2014); *see also In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 163 (S.D.N.Y. 2011); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 145 (S.D.N.Y. 2010).

Class Counsel submit that the Plan of Distribution readily meets the fair and reasonable standard. Class Counsel developed the Plan of Distribution in consultation with FX industry experts, economists, and nationally recognized experts in settlement administration. The Settlement Administrator (Kenneth Feinberg) is a leading specialist in mediation and alternative dispute resolution and has served as the fund administrator for many of the nation’s most widely known disputes and tragic disasters. The Plan of Distribution also includes the input of Allocation Counsel, who Class Counsel designated to separately advocate for the interests of the

Direct Settlement Class and the Exchange-Only Settlement Class, to achieve an equitable allocation of the Net Settlement Fund.⁴

The Plan of Distribution, as revised, is attached as Exhibit 4 to the accompanying Notice of Motion, and a redline against the Plan of Distribution that was preliminarily approved on December 20, 2017 is attached to the Burke Declaration as Exhibit 4. The key provisions of the Plan of Distribution and key revisions since December 20, 2016 are discussed below.

A. Summary of the Plan of Distribution

To participate in the distribution of the Net Settlement Fund, Class Members must each submit a Claim Form, which will present two claiming options:

- **“Option 1” or “Estimated Claim Option.”** Class Members can elect to have the Claims Administrator calculate their claim based on data produced by Settling Defendants.
- **“Option 2” or “Documented Claim Option.”** Class Members can elect to submit their own records (or records obtained by them from other sources) documenting their transaction volume, and the Claims Administrator will calculate their claim from those records.

Plan of Distribution, §VII.⁵

Under both options, the Claims Administrator will calculate the claim using the same formulas, which will allocate the Net Settlement Fund using a model that estimates the damages

⁴ Incorporated by reference is §III.A of the Memorandum of Law in Support of Motion for Approval of the Form and Manner of Notice of Settlements and Preliminarily Approving the Plan of Distribution (ECF No. 654), which contains a detailed discussion of Allocation Counsel’s recommendations that are incorporated into the Plan of Distribution.

⁵ Under either option, Class Members wishing to claim on FX Exchange-Traded Instruments will be required to submit their own records of transactions in those instruments (or records obtained by them from other sources). Settling Defendants are not counterparties to Class Members’ FX Exchange-Traded Instruments. Accordingly, Settling Defendants are not a source for such transaction records. Rather, the clearinghouse of the exchange (*i.e.*, the CME or ICE Futures) stands in between each trade and assumes the counterparty risk for the trade.

of Claimants relative to one another based on Claimants' trading volumes, types of trades, and trade characteristics. The calculations proceed in two steps.

First, the Claims Administrator will calculate each Claimant's "Settlement Transaction Volume," *i.e.*, adjusted gross volume. Due to expected data limitations, the Claims Administrator will be aided by certain assumptions in calculating Settlement Transaction Volume, including for FX swaps, anonymous trades executed on electronic communication networks ("ECNs"), and trade location for non-U.S. domiciled Claimants who submit Option 2 claims. Plan of Distribution, §VIII.

Second, the Plan of Distribution applies a relative damages model, which makes two adjustments to Settlement Transaction Volume based on currency pair traded and trade size. These adjustments are called "Relative Damage Factors." The application of the Relative Damage Factors produces an "Eligible Participation Amount," *i.e.*, settlement-eligible volume. Plan of Distribution, §IX. These two calculation steps are described in more detail in §§IV.B. and C. of this Memo. Calculations are being performed on data sets received (or to be received) in July 2017 (or shortly after), and the final table of Relative Damage Factors will be filed by October 1, 2017, the date when notice is scheduled to commence.

Based on the recommendations of Allocation Counsel, the revised Plan of Distribution applies a discount to certain types of trades, reflecting the comparative strengths of distinct categories of trades. Plan of Distribution, §§V, VI. This merits-based weighting is due, in large part, to the impact of the Court's September 20, 2016 Opinion and Order, which granted a motion to dismiss claims based on transactions occurring before December 1, 2007 and FX Exchange-Traded Instruments of U.S.-domiciled class members traded on exchanges outside of the United States. *See* ECF No. 661.

All valid claims will be compensated under one of three payment categories. All Claimants will receive, at minimum, a “*De Minimis* Payment” of \$15. An “Automatic Payment” of \$150 will compensate Claimants whose estimated compensation is \$150 or less (but more than \$15). Claimants whose Eligible Participation Amounts are greater than \$150 will receive a “*Pro Rata* Share Payment,” which will be based on the Claimant’s percentage of all Claimants’ Eligible Participation Amounts. Plan of Distribution, §§VII.A, B., XI.

After receipt of a Claim Form, the Claims Administrator will send the Claimant a “Confirmation of Claim Receipt,” which will acknowledge receipt of the claim and will inform the Claimant of the next steps. On April 1, 2018, the Claims Administrator will begin disseminating “Claim Assessment Notifications,” which will provide Claimants with their Eligible Participation Amounts and the basis for the Claims Administrator’s calculations. The Claim Assessment Notification will also provide information on how Claimants can switch from an Option 1 Claim (Estimated Claim Option) to an Option 2 Claim (Documented Claim Option) and vice-versa, should they elect to do so. Plan of Distribution, §VII.C.

If the Court grants final approval to the Settlements, after the Effective Date occurs, and all claims are fully processed, Class Plaintiffs will move for a distribution order authorizing distribution of the Net Settlement Fund to Authorized Claimants. The motion for distribution may include the Settlement Administrator’s recommendation on a holdback amount and may anticipate two (and possibly more) distributions. Plan of Distribution, §IV.C.

B. Calculation of Settlement Transaction Volumes (Adjusted Gross Volume)

1. Conversion Ratios Used to Calculate Settlement Transaction Volumes

Claimants will have traded many types of FX Instruments and FX Exchange-Traded Instruments during the Settlement Class Period. These include FX spot transactions, FX

forwards, FX swaps, FX options traded over the counter (“OTC”), FX futures, and options on FX futures. The pricing of these instruments is based on the underlying spot rate.

From a Claimant’s gross transaction volume in each of these trade types, the Claims Administrator will calculate a “Settlement Transaction Volume,” which is the Claimant’s gross volume adjusted by “Conversion Ratios” that convert all FX Instruments and FX Exchange-Traded Instruments into a spot-equivalent volume based on the sensitivity of the trade type to the underlying spot rate. Plan of Distribution, §VIII.A.

Trade Type	Conversion Ratio
FX spot transaction (an agreement to exchange sums of currency at an agreed-on exchange rate on a value date that generally is within two bank business days’ time).	1.0
FX forward (an agreement to exchange sums of currency at an agreed-on exchange rate on a value date that will usually be in more than two bank business days’ time).	1.0
FX swap (an agreement to buy and sell one currency against another currency with defined rates of exchange and on two defined dates).	1.0 for the FX forward risk component of the FX swap
OTC FX option (an agreement that gives the buyer the option the right, but not the obligation, to buy or sell a defined amount of one currency in exchange for another currency at a specified rate, during a specified time).	0.20
FX future (standardized contracts trading on an exchange and calling for delivery of a specified quantity of a specified currency at a defined rate on a specified date).	1.0
Options on FX futures (standardized contracts trading on an exchange, and upon exercise, calling for the establishment of an FX futures position).	0.20

2. Claims Administration Assumptions Used to Calculate Settlement Transaction Volumes

Due to expected data limitations, the Claims Administrator will apply the assumptions described in this section when calculating Settlement Transaction Volume.

a. Assumptions for FX Swaps (Applies to Option 1 and Option 2)

The following two assumptions may apply to FX swap volumes under Option 1 and Option 2, depending on the quality of the FX swap data. First, in the FX swap trade records of both Settling Defendants and Claimants, FX swaps may be represented by two standalone constituent trades (*e.g.*, one FX spot trade and one FX forward trade) rather than as a single combined FX swap trade. Therefore, the Claims Administrator will implement a process that will flag FX spot and FX forward trades that appear as standalone trades but are actually part of a single combined FX swap trade. The process will review trade records within time slices to identify trades with different value dates that fit the criteria of two sides of an FX swap to identify FX swaps. Plan of Distribution, §VIII.A.

Second, in the trade FX swap records of both Settling Defendants and Claimants, it may not show what portion of the FX swap is mismatched but may only show double-counted gross FX swap volume. Double-counted in this context means that both legs of the swap are counted into a gross FX swap volume total. Where FX swap records do not record the mismatched FX swap volume, a “Swap Mismatch Ratio” will be applied to gross FX swap volumes. The Swap Mismatch Ratio is the average portion of gross FX swap volume that is mismatched and was calculated using FX swap data produced by Settling Defendants. The Swap Mismatch Ratio is 0.001. The Swap Mismatch Ratio will be multiplied by the gross FX swap volume.

b. Assumptions for Anonymous Trades Executed on ECNs (Applies Only to Option 2)

Because certain ECNs do not always reveal the identities of the counterparties on a trade to each other, Claimants who trade on such venues are unlikely to be consistently identifiable in Settling Defendants’ data. The Claim Form and Mail Notice therefore recommend that Claimants who trade on such venues elect Option 2 (Documented Claim Option).

However, it is also unlikely that Claimants who elect Option 2 (Documented Claim Option) will be able to determine from their own records whether their counterparty was a Defendant (eligible) or a non-Defendant (ineligible). Accordingly, Option 2 will allow a portion of Claimants' anonymous ECN trading to be represented within their Settlement Transaction Volume through the application of an "Anonymous ECN Ratio." Under Option 2, Claimants who executed FX Instruments on anonymous ECNs will be advised to submit records of all their anonymous ECN trades to which the Anonymous ECN Ratio will be applied. The Anonymous ECN Ratio is 0.156, which represents the probability of dealing with a Defendant on an anonymous ECN.

c. Trade Location for Non-U.S. Domiciled Claimants (Applies Only to Option 2)

The records of non-U.S. domiciled Claimants submitting Option 2 claims are unlikely to show whether their transactions occurred in the United States (eligible) or outside of the United States (ineligible).⁶ Therefore, in the absence of trade location information, non-U.S. domiciled Claimants' will be advised to submit data on all of their eligible trading during the Settlement Class Period, and the Claims Administrator will apply a "Location Factor" that represents the probability that the trades of a non-U.S. domiciled Claimant were transacted in the United

⁶ Under Option 1, trade location will be determined using Settling Defendant data, which includes information on where the transaction occurred.

States.⁷ Location Factors will be calculated on a Defendant-by-Defendant basis using the data produced by each Defendant.⁸ Plan of Distribution, §VIII.C.2.

3. Discounts on Trades During Certain Periods and on Certain Exchanges

The Plan of Distribution has been revised to account for discounts on certain trades “to reflect the comparative strengths and values of distinct categories of . . . claim[s].” *In re American Bank Note Holographics, Inc., Sec. Litig.*, 127 F. Supp. 2d 418, 429-30 (S.D.N.Y. 2001). The following trades will be discounted:

- Trades occurring between January 1, 2003 and November 30, 2007;
- Trades occurring between January 1, 2014 and December 15, 2015; and
- Trades of U.S.-domiciled Claimants made on exchanges outside of the United States.

Plan of Distribution, §§V, VI.

This merits-based weighting results, in large part, from the Court’s September 20, 2016 Opinion and Order granting in part a motion to dismiss and altering the liability of Defendants with respect to certain claims. *See* ECF No. 661. The Court dismissed claims arising from transactions executed before December 1, 2007 based on a failure to plead an antitrust conspiracy that pre-dates December 2007. ECF No. 661 at 33-34. The Court also dismissed antitrust and Commodity Exchange Act claims arising out of U.S.-domiciled class members’ FX

⁷ Under the terms of the Settlements, eligible non-U.S. domiciled Claimants will reserve their right to recover for and do not release claims arising from transactions that are executed solely outside the United States and arising under foreign laws belonging to any Releasing Party or Person that is domiciled outside the United States. Plan of Distribution, §VIII.C.2.

⁸ With respect to non-U.S. domiciled Claimants’ trades on anonymous ECNs, the weighted average of the Location Factors described above will be calculated. The non-U.S. domiciled Claimant’s trading volumes after application of the Anonymous ECN Ratio will then be multiplied by the weighted average Location Factor. Plan of Distribution, §VIII.C.2.

Exchange-Traded Instruments traded on exchanges outside of the United States. ECF No. 661 at 27-30, 52-54.

When cognizable differences exist between the “likelihood of ultimate success” for different claims, “it is appropriate to weigh distribution of the settlement . . . in favor of . . . claims [that] comprise the set that was more likely to succeed.” *PaineWebber*, 171 F.R.D. at 133 (quoting *In re “Agent Orange” Products Liability Litig.*, 611 F. Supp. 1396, 1411 (E.D.N.Y. 1985); see also *In re Worldcom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 343 (S.D.N.Y. 2005) (stating that “[s]ettlement proceeds may be allocated according to the strengths and weaknesses of the various claims possessed by Class Members. . . . Fairness does not require that Class Members be compensated for losses stemming from purchases at prices that it would be extraordinarily difficult to argue were inflated by the malfeasance alleged in the complaint.”) (citing *In re Holocaust Victim Assets Litig.*, 413 F.3d 183, 186 (2d Cir. 2001)) (affirming settlement that released purchases made prior to the settlement class period, but did not compensate those claims for the releases).

a. Trades Occurring Between January 1, 2003 and November 30, 2007 and Between January 1, 2014 and December 15, 2015

The Plan of Distribution will apply discounts for trades in FX Instruments and FX Exchange-Traded Instruments occurring between January 1, 2003 and November 30, 2007 (inclusive) and between January 1, 2014 and December 15, 2015 (inclusive). The discounts will be:

Time Period	Discount
January 1, 2003-November 30, 2007	40%
January 1, 2014-December 15, 2015	90%

These discounts are made based on Allocation Counsel’s assessment of the relative legal strength of the claims in the discounted periods compared to the non-discounted period of December 1, 2007 through December 31, 2013 (inclusive), including consideration of:

- The Court’s September 20, 2016 Opinion and Order, which dismissed claims based on trades occurring between January 1, 2003 and November 30, 2007 (ECF No. 661);
- The strength of the evidentiary record currently available for the discounted periods versus non-discounted period; and
- Investigation indicating that the alleged collusive behavior dissipated in the period following public disclosure of misconduct, government investigations, and inter-bank chat prohibitions; and
- Consideration of the likely practical ability of Settlement Class Members to make claims for transactions placed between January 1, 2003 and November 30, 2007.

b. U.S.-Domiciled Claimants’ FX Exchange-Traded Instruments Traded on Exchanges Outside the United States

The Plan of Distribution will apply a discount on U.S.-domiciled Claimants’ FX Exchange-Traded Instruments traded on exchanges outside the United States. The discount will be:

Discount on U.S.-domiciled Class Members’ FX Exchange-Traded Instruments traded on exchanges outside the United States	75%
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This discount is made based on the recommendation of Allocation Counsel who assessed the relative legal strength of the claims on the discounted trades versus the non-discounted FX Exchange-Traded Instruments that are eligible under the Settlements, including consideration of:

- The Court’s September 20, 2016 Opinion and Order, which dismissed claims based on transactions by U.S.-domiciled class members placed on exchanges located outside the United States (ECF No. 661).
- The number of exchanges located outside the United States and information about the currency pairs that may trade on such exchanges; and
- The volume of FX Exchange-Traded Instruments that U.S.-domiciled class members may trade on exchanges located outside the United States.

C. Calculation of Eligible Participation Amounts (Settlement-Eligible Volume)

Because not every unit of a Claimant's Settlement Transaction Volume was equally damaged, the Plan of Distribution accounts for two trading characteristics – currency pair and trade size – that affect relative damage to Claimants. These adjustments are called “Relative Damage Factors.” Plan of Distribution, §IX. The Relative Damage Factors have a “rational basis” in the record because they are correlated with damages. *Credit Default Swaps*, 2016 WL 2731524, at *9.

The first Relative Damage Factor is currency pair traded. This factor recognizes the effect of the liquidity of a currency pair on damage, with less liquid currency pairs being of greater weight in the allocation formula than more liquid currency pairs. Plan of Distribution, §IX.A. The second Relative Damage Factor is trade size. This factor recognizes that larger transactions were susceptible to greater damage and, therefore, assigns a greater weighting in the allocation formula to such trades. Plan of Distribution, §IX.B.

Calculations are being performed on data sets received (or to be received) in July 2017 (or shortly after), and the final table of Relative Damage Factors will be filed by October 1, 2017, the date when notice is scheduled to commence.

D. Payment Resolution Categories

All valid claims will be compensated under one of three payment resolution categories. First, all Class Members who submit valid Claim Forms will receive, at minimum, a “*De Minimis* Payment,” of \$15. Plan of Distribution, §§VII.A., B. The *De Minimis* Payment allows all Class Members to meaningfully participate in the settlement. *See, e.g., In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 497-98 (S.D.N.Y. 2009) (approving \$10 minimum payment).

Second, an “Automatic Payment” of \$150 will apply to claimants whose estimated compensation is \$150 or less (but more than \$15). Plan of Distribution, §§VII.A., B. The *De Minimis* Payment and Automatic Payment are intended to preserve the Settlement Fund from excessive and unnecessary administrative expenses in the overall interests of the Settlement Classes. *See, e.g., In re Gilat Satellite Networks, Ltd.*, No. 02-cv-1510, 2007 WL 1191048, at *9-*10 (E.D.N.Y. Apr. 19, 2007) (in approving a *de minimis* threshold, stating that the purpose of such threshold was to “save the settlement fund from being depleted by the administrative costs associated with claims unlikely to exceed those costs”); *In re Glob. Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 463 (S.D.N.Y. 2004) (in approving a *de minimis* threshold, stating that “[c]lass counsel are entitled to use their discretion . . . to avoid excessive expense to the class as a whole”).

Third, Claimants whose estimated compensation is over \$150 will be compensated with a “Pro Rata Share Payment.” Plan of Distribution, §§VII.A.B. The *Pro Rata* Share Payment will be based on the Claimant’s percentage of all Claimants’ Eligible Participation Amounts. Plan of Distribution, §XI.

E. Notification Procedures

Following receipt of a Claim Form, the Claims Administrator will send the Claimant a “Confirmation of Claim Receipt,” which will acknowledge receipt of the claim and will inform the Claimant that the Claims Administrator will return to the Claimant with further information about their claim, beginning on April 1, 2018. Plan of Distribution, §VII.C.

On April 1, 2018, the Claims Administrator will begin disseminating “Claim Assessment Notifications” to Claimants. The Claim Assessment Notification will advise Claimants of their Eligible Participation Amounts and the basis for the Claims Administrator’s calculations. The Claim Assessment Notification will also provide Claimants with information and instructions

about switching from an Option 1 Claim (Estimated Claim Option) to an Option 2 Claim (Documented Claim Option) or vice-versa. Claimants that elect to switch to the other type of claim will have 30 days to do so. Plan of Distribution, §VII.C.

F. Distribution Motion

If the Court grants final approval to the Settlements, after the Effective Date occurs, and all claims are fully processed, Class Plaintiffs will move for a distribution order authorizing distribution of the Net Settlement Fund to Authorized Claimants. Class Counsel and the Settlement Administrator anticipate that there will be a holdback of the Net Settlement Funds and at least two (and possibly more) distributions to ensure that, under any scenario, Class Members are treated equitably in the distribution and that clawbacks of previously-distributed funds would not be required. Plan of Distribution, §IV.B. The amount of any holdback would be disclosed and explained in papers filed in support of Class Plaintiffs' motion for a distribution order.

Class Counsel respectfully submit that the Plan of Distribution should be preliminarily approved because it fairly and reasonably apportions the Net Settlement Fund without burdening the fund with unnecessary administrative costs and delays.

V. PROPOSED SCHEDULE OF SETTLEMENT EVENTS

Class Plaintiffs respectfully propose the schedule set forth below for Settlement-related events.

Event	Proposed Timing (dates assume Fairness Hearing on May 23, 2018)
Mail Notice Begins: provided data and names/addresses are produced by July 31, 2017, date by which mailing of Mail Notice and Claim Form to potential members of Settlement Classes shall begin	October 1, 2017

Event	Proposed Timing (dates assume Fairness Hearing on May 23, 2018)
Publication of Summary Notice: date by which publication of Summary Notice shall begin	As soon as practicable after Notice Date
Settlement Website: date by which Mail Notice and Summary Notice shall be published on Settlement Website	On or before Notice Date
Final Approval and Fee Briefs: deadline for filing of papers in support of final approval of Settlement Agreements and Class Counsel's application for attorneys' fees and expenses	January 12, 2018
Objection Deadline: deadline for Settlement Class Members to object to Settlement Agreements	February 7, 2018
Opt-Out Deadline: deadline for submitting Requests for Exclusion	February 7, 2018
Claims Filing Deadline: deadline for submitting Claim Forms	March 22, 2018
Reply Briefs on Final Approval and Fees: deadline for filing reply papers in support of final approval of Settlement Agreements and Class Counsel's application for attorneys' fees and expenses	April 23, 2018
Fairness Hearing	May 23, 2018

VI. CONCLUSION

For the foregoing reasons, Class Plaintiffs respectfully request that the Court enter the [Proposed] Superseding Order Approving the Form and Manner of Notice of Settlements and Preliminarily Approving the Plan of Distribution (attached to the Notice of Motion as Exhibit A).

DATED: July 28, 2017

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2017, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

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