

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

IN RE FOREIGN EXCHANGE BENCHMARK
RATES ANTITRUST LITIGATION

No. No. 1:13-cv-07789-LGS

**CLASS PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT
WITH DEUTSCHE BANK AG**

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EXPLANATION OF DEFINED TERMS AND CITATION FORMS

The following defined terms are used in this Memorandum.

Parties

- “Class Plaintiffs” are Direct Class Plaintiffs and Exchange-Only Class Plaintiffs.
- “Direct 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; Systrax Corporation; Tiberius OC Fund, Ltd.; United Food and Commercial Workers Union and Participating Food Industry Employers Tri-State Pension Fund; and Value Recovery Fund L.L.C.
- “Exchange-Only Class Plaintiffs” are 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, and Kimberly Sterk.
- “Bank of America” is Bank of America Corporation, Bank of America, N.A., and Merrill Lynch, Pierce, Fenner & Smith Incorporated.
- “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.
- “BTMU” is The Bank of Tokyo-Mitsubishi UFJ, Ltd.
- “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 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.
- “Previous Settlement Agreements” are the Settlement Agreements with Bank of America, Barclays, BNP Paribas, BTMU, Citigroup, Goldman Sachs, HSBC, JPMorgan, Morgan Stanley, RBC, RBS, Soc Gen, Standard Chartered, and UBS.
- “Previous Settling Defendants” are Bank of America, Barclays, BNP Paribas, BTMU, Citigroup, Goldman Sachs, HSBC, JPMorgan, Morgan Stanley, RBC, RBS, Soc Gen, Standard Chartered, and UBS.
- “Settling Defendants” are Deutsche Bank, Deutsche Bank Securities Inc., and Previous Settling Defendants.
- “Settling Parties” are Class Plaintiffs and Deutsche Bank.
- “Non-Settling Defendant” is Credit Suisse.
- “Defendants” are Settling Defendants and Non-Settling Defendant.

Accompanying [Proposed] Order and Settlement Agreement

- “Deutsche Bank Preliminary Approval Order” is the [Proposed] Order Preliminarily Approving Settlement Agreement with Deutsche Bank AG, Certifying the Settlement Classes, and Appointing Class Counsel and Class Representatives for the Settlement Classes.
- “Deutsche Bank Stip.” is the Stipulation and Agreement of Settlement with Deutsche Bank AG.
- “Previous Settling Defendants Preliminary Approval Orders” are the Orders Preliminarily Approving Settlements, Conditionally Certifying the Settlement Classes, and Appointing Class Counsel and Class Representatives for the Settlement Classes, ECF No. 536 and 866.
- “Second Superseding Notice Order” is the [Proposed] Second Superseding Order Approving the Form and Manner of Notice of Settlements and Preliminarily Approving the Plan of Distribution

Other Terms

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

INTRODUCTION

After extensive, hard-fought, arm's-length negotiations conducted with the assistance and skill of renowned mediator Kenneth Feinberg, Class Plaintiffs and Defendant Deutsche Bank AG ("Deutsche Bank") have entered into a proposed Settlement Agreement (the "Settlement"). The proposed Settlement Agreement provides a payment of \$190,000,000 and an agreement to provide Class Plaintiffs with valuable cooperation and confirmatory discovery, including transaction data, documents, attorney proffers, and witnesses for interviews, depositions, and trial testimony. The proposed Settlement Agreement with Deutsche Bank AG is attached to the accompanying Declaration of Christopher M. Burke and Michael D. Hausfeld as Exhibit 1 ("Lead Counsel Decl.").

The Deutsche Bank Settlement, when combined with the Previous Settlement Agreements, brings the recovery on behalf of the Settlement Classes to \$2,310,275,000. Even after Class Plaintiffs have secured this amount, however, Class Members still retain rights to recover under the doctrine of joint and several liability against Non-Settling Defendant with respect to all of their transactions (subject to a setoff), including those with Deutsche Bank and Previous Settling Defendants.

For the reasons set forth below and those set forth in Class Plaintiffs' submissions in support of preliminary approval of the Previous Settlement Agreements with Previous Settling Defendants (ECF No. 480, 821), Class Plaintiffs believe the Settlement with Deutsche Bank, standing alone or in conjunction with the other settlements, falls within the range of fairness, adequacy, and reasonableness. Therefore, Class Plaintiffs respectfully request that the Court enter the Deutsche Bank Preliminary Approval Order (attached as Exhibit 1 to the accompanying

Motion) and enter the Second Superseding Notice Order (attached as Exhibit 2 to the accompanying Motion).

UPDATE TO SUMMARY OF THE ACTION

Since Class Plaintiffs filed their last motion for Preliminary Approval, the Court has issued a stay on certain deposition discovery and settlement cooperation with respect to seven Settling Defendants – Barclays, BNP Paribas, Citigroup, HSBC, JPMorgan, RBS, and UBS. ECF No. 863. Also on September 8, 2017, the Court granted preliminary approval to the Settlements with BTMU, Morgan Stanley, RBC, Soc Gen, and Standard Chartered. ECF No. 866. Related to that preliminary approval, the Court issued a Superseding Order Approving the Form and Manner of Notice of Settlements and Preliminarily Approving the Plan of Distribution, approving the form and manner of notice with respect to the Previous Settlement Agreements and granting preliminary approval to the proposed plan of distribution. ECF No. 864.

SUMMARY OF THE DEUTSCHE BANK SETTLEMENT

The Deutsche Bank Settlement provides for a total of \$190,000,000 in monetary relief to the Classes. Deutsche Bank Stip. ¶ 2(vv). Other than that monetary component, the key terms of the Settlement Agreement are substantially identical to those approved in the Previous Settling Defendants' Preliminary Approval Orders. The Class definitions and the Released Claims definition are exactly identical to those previously proposed. Deutsche Bank Stip. ¶¶ 2(II); 3(a)(i)-(ii). The bulk of the remaining terms are substantively equivalent to the terms contained in the Previous Settlement Agreements, which have all been preliminarily approved. Like the Previous Settlement Agreements, the Deutsche Bank Settlement Agreement contains substantial cooperation including, as reasonably necessary and subject to Court orders and applicable law, attorney proffers, producing transaction data, producing documents, providing information and

witnesses to authenticate documents; and providing witnesses for interviews, depositions, and trial testimony relating to the existence, scope, and implementation of the conspiracy. *See* Deutsche Bank Stip. ¶ 14(b)(ii)-(x).

The only distinctions are revisions to the terms of cooperation that reflect that Deutsche Bank, unlike the majority of Previous Settling Defendants, had already been subject to substantial document and data discovery. Deutsche Bank Stip. 14(b)(iii)-(iv). These minor distinctions are inconsequential to the class action settlement process. Thus, if approved, all of the pending settlements may efficiently proceed through the settlement approval process, class notice, the claims process, distribution, and other settlement procedures together.

SUMMARY OF SETTLEMENT NEGOTIATIONS

Under the guidance and with the assistance of mediator Kenneth R. Feinberg, Settling Parties engaged in a series of mediations spanning more than two years. Lead Counsel Decl. ¶¶ 33-36; Declaration of Kenneth R. Feinberg ¶¶ 10, 28-31 (“Feinberg Decl.”). The settlement was the product of hard-fought, arm’s-length negotiations by counsel highly experienced in complex litigation and antitrust law. Lead Counsel Decl. ¶ 37; Feinberg Decl. ¶ 19, 33, 37. As a result of these mediations and negotiations, the Deutsche Bank Stipulation was executed September 19, 2017.

ARGUMENT

I. THE DEUTSCHE BANK SETTLEMENT MEETS THE STANDARD FOR PRELIMINARY APPROVAL.

A. Like the Previous Settlement Agreements, the Deutsche Bank Settlement Was Reached After Arm’s-Length Negotiations Through a Mediator.

Preliminary approval is warranted where, as here, a settlement “is the result of serious, informed, and non-collusive negotiations, where there are no grounds to doubt its fairness and no

other obvious deficiencies . . . , and where the settlement appears to fall within the range of possible approval.” *Menkes v. Stolt-Nielsen S.A.*, 270 F.R.D. 80, 101 (D. Conn. 2010) (ellipsis in original).

A settlement achieved through “arm’s length negotiations conducted by experienced counsel knowledgeable in complex class litigation” is entitled to 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). As discussed in the Lead Counsel Declaration and the Feinberg Declaration, the Settlement Agreement was reached only after extensive arm’s-length negotiations between experienced and able counsel. *See* Lead Counsel Decl. ¶¶ 33-37; Feinberg Decl. ¶¶ 19, 33, 37. The involvement of Mr. Feinberg, a renowned mediator, underscores the conclusion that the Settlement Agreement is entitled to a presumption of fairness. *See Clark v. Ecolab Inc.*, No. 04-cv4488, 2010 WL 1948198, at *5 (S.D.N.Y. May 11, 2010).

B. Like the Previous Settlement Agreements, the Deutsche Bank Settlement Falls Within the Range of Fairness, Reasonableness, and Adequacy.

At this stage, the Court must make a “preliminary evaluation of the fairness of the settlement, prior to notice.” *In re Nasdaq Mkt.-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997).

Plaintiffs refer the Court to their previous arguments with respect to the complexity, expense, and likely duration of the litigation; the reaction of the classes to the settlements; the risks of maintaining the class action through trial; and the ability of defendants to withstand a greater judgment; which all have equal force with respect to Deutsche Bank. *See* ECF No. 480 at 10-11, 13-16, ECF No. 821 at 8-9, 11-12. Those arguments are incorporated herein and, like with the Previous Settlement Agreements, these factors weigh in support of preliminary approval.

Three factors relate more specifically to Deutsche Bank: the stage of the proceedings, the risks of establishing liability and damages, and the reasonableness of the Settlement Agreement in light of the best possible recovery and attendant risks of litigation. These are addressed in turn.

1. The Stage of Proceedings.

With respect to Deutsche Bank, the case has progressed to a later stage than it had with respect to all Previous Settling Defendants. Before Plaintiffs and Deutsche Bank reached agreement on the terms of settlement, Deutsche Bank was subject to substantial document and data discovery and a 30(b)(6) deposition. Thus, while Class Plaintiffs were more than adequately informed as to the strengths and weaknesses of their claims in the case as a whole, this information was even more developed with respect to Deutsche Bank than Previous Settling Defendants. *See In re AOL Time Warner, Inc.*, No. 02 CIV. 5575 (SWK), 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006) (noting that in considering approval of a settlement, the Court considers “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.”). This factor accordingly weighs in favor of approval.

2. The Risks of Establishing Liability and Damages Complexity.

As discussed in the prior submissions in support of preliminary approval, the complexity of the FX market creates inherent risk in establishing liability and damages. *See* ECF No. 480 at 13-15, ECF No. 821 at 10-11. Those arguments are incorporated here as well. With respect to Deutsche Bank, there are additional risks when considering the likelihood of establishing liability that should be considered.

Unlike numerous Previous Settling Defendants, Deutsche Bank is not facing a current investigation from the Department of Justice for FX-related misconduct. No Deutsche Bank traders are facing indictments, nor has the DOJ sought to prevent discovery from current or former

Deutsche Bank employees. *See* ECF Nos. 844, 852. To date, the only fines Deutsche Bank has received in North America and Europe are premised upon allegations by the Board of Governors of the Federal Reserve (“Federal Reserve”) that, unlike the Federal Reserve’s other fines, did not involve allegations of “possible agreements with traders of other institutions to coordinate FX trading.”¹ Even at that, the total North American and European fines amount to \$136,950,000 – roughly 30% the size of the other smallest fines levied against any other Defendant bank for FX misconduct.² While Class Plaintiffs believe the evidence available to them would permit them to establish liability as to Deutsche Bank, it is less cumulative and voluminous than that available with respect to many other Previous Settling Defendants. As a result, there would remain a risk that a jury may not find that the evidence imputes liability as to all aspects of the alleged conspiracy with respect to Deutsche Bank.

3. The Reasonableness of the Settlement Agreement in Light of the Best Possible Recovery and the Attendant Risks of Litigation.

The Settlement Agreement provides for a payment of \$190,000,000, which represents the Fifth largest settlement in the case; it was reached despite the presence of fewer indicia of liability than have been seen with respect to certain of the Previous Settling Defendants. Accordingly, the

¹ *Contrast* Deutsche Bank AG, Order to Cease and Desist and Order of Assessment of a Civil Monetary Penalty Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as Amended, Docket No. 17-008-B-FB at 3-4 (<https://www.federalreserve.gov/newsevents/pressreleases/files/enf20170420a1.pdf>) *with, e.g.*, UBS AG, Order to Cease and Desist and Order of Assessment of a Civil Monetary Penalty Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as Amended, Docket No. 15-005-B-FB at 4 (May 20, 2015) (<http://www.federalreserve.gov/newsevents/press/enforcement/enf20150520a6.pdf>).

² Bank of America was fined a combined \$455,000,000 by the Federal Reserve and Office of the Comptroller of the Currency (“OCC”).

Deutsche Bank Settlement is more than reasonable when weighed against the best possible recovery and in light of the risks associated with continuing litigation against Deutsche Bank.

In recommending that the Court preliminarily approve the Settlement, Class Lead Counsel have taken into account a range of outcomes and have considered both the strengths and weaknesses associated with continuing litigation against Deutsche Bank. Class Lead Counsel believe the Settlement Agreement confers significant benefits on the Class Plaintiffs while eliminating risks to the Classes attendant to continued litigation against a well-financed and well-represented party like Deutsche Bank.

When considering the range of outcomes, the recovery that would be secured under the Settlement places the Deutsche Bank Settlement well within the range of reasonableness. Although Deutsche Bank does not face criminal liability for its conduct, it is paying the fifth largest amount of any single Settling Defendant in the action.³ Three of the four Defendants who have paid a greater amount have entered into plea agreements with the Department of Justice, all four of the greater-paying Defendants have settled with the CFTC and FCA, neither of whom has fined Deutsche Bank. Thus, the payment is well within the range of reasonableness.

More significantly, the Deutsche Bank Settlement brings the aggregate amount of settlement funds to \$2,310,275,000, which represents a 23% to 29% recovery measured against Class Plaintiffs' estimated range of aggregate damages of \$8 to \$10 billion before trebling. Factoring in the abridged litigation class period and corresponding decrease in damages, the Deutsche Bank Settlement, when added to the amounts recovered under the Previous Settlement

³ See Lead Counsel Decl. ¶ 15 (citing Declaration of Christopher M. Burke and Michael D. Hausfeld in Support of Preliminary Approval in Support of Class Plaintiffs' Motion for Preliminary Approval of Settlement Agreements with Bank of America, Barclays, BNP Paribas, Citigroup, Goldman Sachs, HSBC, JPMorgan, RBS, and UBS, ECF No. 481, ¶ 34).

Agreements, would represent an estimated recovery of approximately to 33% to 43% of aggregate damages before trebling. And importantly, the Settlements do not prejudice the Settlement Classes' ability to recover treble damages with respect to the entire conspiracy from Non-Settling Defendant.

While the monetary relief, by itself, would place the Deutsche Bank Settlement within the range of reasonableness, there is additional consideration provided in the form of cooperation. Like with the Previous Settlement Agreements, this cooperation will improve the Classes' abilities to recover against Non-Settling Defendant, particularly in light of the existing discovery stay with respect to depositions and interviews of current and former employees of other key Settling Defendants. The cooperation includes: attorney proffers describing known facts relevant to conduct relating to Released Claims, production of transactional data, production of documents not already produced in discovery, witness interviews, declarations and affidavits, depositions, and trial testimony. These cooperation obligations are substantially equivalent to those reached in the preliminarily-approved settlements and, like those cooperation obligations, will continue until the later of the date of final judgment against all Defendants in the case or seven years after preliminary approval.

In light of the substantial size of the monetary recovery, the relative immediacy of financial return to the Classes, and the significant risks associated with proceeding further in any litigation, the Settlement with Deutsche Bank falls within the range of reasonableness and should be preliminarily approved. *See In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 473, 478 (S.D.N.Y. 1998) (granting final approval to settlements totaling \$1.03 billion that concluded litigation where plaintiffs' estimated damages were between \$2.48 and \$3.1 billion before trebling).

II. THE PROPOSED SETTLEMENT CLASSES SHOULD BE CERTIFIED.

As explained in Class Plaintiffs' prior submissions in support of the preliminarily-approved settlements (ECF No. 480 at 20-35, ECF No. 821 at 15-16), the proposed Classes should be certified because they meet the requirements of Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure:

1. **Numerosity** – The Classes consist of hundreds of thousands of traders and involves widely traded instruments; therefore, numerosity is readily satisfied. *See Wallace v. IntraLinks*, 302 F.R.D. 310, 315 (S.D.N.Y. 2014) (“[C]ommon sense assumptions . . . suffice to demonstrate numerosity”).
2. **Commonality** – Numerous common issues of fact and law exist that affect all or a substantial number of Class Members on the issue of liability, impact, and damages. *See Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011); *see also Cordes & Co. Fin. Servs., Inc. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 105 (2d Cir. 2007) (“[A]llegations of the existence of . . . conspiracy are susceptible to common proof”).
3. **Typicality** – Class Plaintiffs' claims are typical of Class Members because Class Plaintiffs allege the same unlawful course of conduct that harmed all Class Members. *See In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1175(JG)(VVP), 2014 WL 7882100, at *31 (E.D.N.Y. Oct. 15, 2014) (“Because the representative plaintiffs will seek to prove that they were harmed by the same overall course of conduct and in the same way as the remainder of the class, their claims are by all appearances typical of the class.”).
4. **Adequacy** – Class Plaintiffs will fairly and adequately protect the interests of the Classes because their interests do not conflict with absent Class members, and they are represented by Class Lead Counsel who are experienced in class and antitrust litigation and have diligently represented the interests of the Class Plaintiffs in this litigation and will continue to do so. *See In re Currency Conversion Fee Antitrust Litig.*, 264 F.R.D. 100, 111-12 (S.D.N.Y. 2010).
5. **Predominance** – The questions of law or fact that are capable of common proof are more substantial than the issues subject only to individualized proof. *Roach v. T.L. Cannon Corp.*, 778 F.3d 401, 405 (2d Cir. 2015); *Amchem Prods. v. Windsor*, 521 U.S. 591, 625 (1997) (Predominance is a “test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws.”).
6. **Superiority** – A class action is a superior method of adjudicating claims in cases like this one, as numerous courts have held. *See, e.g., In re Currency Conversion Fee Antitrust Litig.*, 224 F.R.D. 555, 566 (S.D.N.Y. 2004); *In re Nat'l Gas*

Commodities Litig., 231 F.R.D. 171, 185 (S.D.N.Y. 2005); *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 279, 284 (S.D.N.Y. 1999).

The Classes proposed for the Deutsche Bank Settlement are defined to be identical to those previously proposed to the Court. Accordingly, the requirements of Rule 23(a) and 23(b)(3) are satisfied, and certification of the Settlement Classes for purposes of settlement is appropriate.

III. THE COURT SHOULD ENTER THE SECOND SUPERSEDING ORDER APPROVING FORM AND MANNER OF NOTICE.

Notice of a proposed settlement is adequate and satisfies Rule 23 and due process if it “fairly apprise[s] 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, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 114-15 (2d Cir. 2005); *see In re PaineWebber Ltd. P’ships Litig.*, 171 F.R.D. 104, 124 (S.D.N.Y. 1997) (“[The Notice’s] level of detail apprises the class members of the salient terms of the settlement and affords them a reasonable opportunity to present any objections.”), *aff’d sub nom. In re PaineWebber Inc. Ltd. Partnerships Litig.*, 117 F.3d 721 (2d Cir. 1997).

The Court has previously ordered the dissemination of a form of notice substantially similar to the proposed form here; the proposed revisions to the form of notice merely add the Deutsche Bank Settlement into the existing approved form of notice and make corrections to the prior forms of notice.⁴ These revisions are:

⁴ Attached to the accompanying Lead Counsel Declaration as Exhibits 2 through 4, and 7 are redlines comparing the proposed Mail Notice, Claim Form, Summary Notice, and Plan of Distribution to the versions the Court approved on September 8, 2017 (ECF No. 864). Attached to the accompanying Lead Counsel Declaration as Exhibits 5 and 6, respectively, are redlines comparing the accompanying Proposed Preliminary Approval Order and Proposed Second Superseding Notice Order to the orders the Court entered on September 8, 2017, preliminarily approving settlements with BTMU, Morgan Stanley, RBC, Soc Gen, and Standard Chartered (ECF No. 866) and approving the form and manner of notice and preliminarily approving the Plan of Distribution (ECF NO. 864).

Revisions to Mail Notice

1. Inserts dates consistent with Court's Superseding Order Approving the Form and Manner of Notice of Settlements and Preliminarily Approving the Plan of Distribution dated September 8, 2017, ECF No. 864.
2. Updates list of Settling Defendants and Non-Settling Defendants and updates the Settlement Amount and other figures based on the Settlement Amount.
3. Updates list of translated languages to reflect that notice will be made available in Italian on the Settlement Website.

Revisions to Summary Notice

1. Inserts dates consistent with Court's Superseding Order Approving the Form and Manner of Notice of Settlements and Preliminarily Approving the Plan of Distribution dated September 8, 2017, ECF No. 864.
2. Updates list of Settling Defendants and Non-Settling Defendants and updates the Settlement Amount and other figures based on the Settlement Amount.

Revisions to Claim Form

1. Inserts dates consistent with Court's Superseding Order Approving the Form and Manner of Notice of Settlements and Preliminarily Approving the Plan of Distribution dated September 8, 2017, ECF No. 864.
2. Updates list of Settling Defendants and Non-Settling Defendants.
3. Revises use of defined terms for Chicago Mercantile Exchange and Intercontinental Exchange Inc.
4. Clarifies the scope of covered transactions in Class Member certification to reflect that transactions with parties other than named Defendants are encompassed within the Settlement.

The manner of notice would be unchanged. Because the Deutsche Bank Settlement is essentially identical in terms to the Previous Settlement Agreements with the sole exception of the monetary amounts implicated by each individual settlement, this combined notice would most efficiently apprise putative class members of the Settlements and permit them to reasonably consider their options with respect to them. Accordingly, Class Plaintiffs respectfully submit that the proposed form and manner of notice be approved.

No later than seven days of entry of orders preliminarily approving the Settlement Agreement and approving the form and manner of notice, Class Plaintiffs are prepared to begin mailing. While the initial mail notice date will be slightly delayed, Class Plaintiffs believe the schedule has adequate time already built into it so that all subsequent deadlines set forth in the Court’s Superseding Order Approving Notice, ECF No. 864, including the Fairness Hearing, may be maintained. Accordingly, Class Plaintiffs respectfully propose the schedule set forth below for Settlement-related events.

Event	Proposed Timing
Mail Notice Begins: date by which mailing of Mail Notice and Claim Form to potential members of Settlement Classes shall begin	No later than 7 days of Court approval of the Revised Notice
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	1 business day after Court approval of the Revised Notice
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

Event	Proposed Timing
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 at 4:00 pm

IV. THE COURT SHOULD PRELIMINARILY APPROVE THE PLAN OF DISTRIBUTION AS FAIR AND REASONABLE.

On September 8, 2017, the Court gave preliminarily approval to the Plan of Distribution and ordered Class Plaintiffs to file a final table of the Plan’s “Relative Damage Factors” by October 1. See ECF No. 864.

Class Plaintiffs have updated the Plan of Distribution to include the Relative Damage Factors, a listing of the currency pair groupings, and the formulas for calculating Eligible Participation Amount. These edits mere provide additional detail about the Plan of Distribution but do not substantively change it. The other edits are conforming edits and typographical corrections. A redline for the Court’s review is attached to the accompanying Lead Counsel Declaration as Exhibit 7.

Class Plaintiffs 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.

CONCLUSION

On the basis of the foregoing, Class Plaintiffs respectfully request that the Court grant Class Plaintiffs’ Motion for Preliminary Approval of Settlement Agreement with Deutsche Bank AG,

and enter the Deutsche Bank Preliminary Approval Order and the Second Superseding Notice Order.

DATED: September 29, 2017

HAUSFELD LLP

/s/ Michael D. Hausfeld

MICHAEL D. HAUSFELD
REENA A. GAMBHIR
TIMOTHY S. KEARNS
NATHANIEL C. GIDDINGS
SARAH R. LAFRENIERE
1700 K Street, NW, Suite 650
Washington, DC 20006
Telephone: 202-540-7200
Facsimile: 202-540-7201
mhausfeld@hausfeld.com
rgambhir@hausfeld.com
tkearns@hausfeld.com
ngiddings@hausfeld.com
slafreniere@hausfeld.com

-and-

HAUSFELD LLP
MICHAEL P. LEHMANN
BONNY E. SWEENEY
CHRISTOPHER L. LEBSOCK
600 Montgomery Street, Suite 3200
San Francisco, CA 94111
Telephone: 415-633-1908
Facsimile: 415-358-4980
mlehmman@hausfeld.com
bsweeney@hausfeld.com
clebsock@hausfeld.com

SCOTT+SCOTT, ATTORNEYS AT LAW, LLP

/s/ Christopher M. Burke

CHRISTOPHER M. BURKE (CB-3648)
WALTER W. NOSS (WN-0529)
KRISTEN M. ANDERSON (*pro hac vice*)
STEPHANIE A. HACKETT (*pro hac vice*)
JENNIFER J. SCOTT (*pro hac vice*)
707 Broadway, Suite 1000
San Diego, CA 92101
Telephone: 619-233-4565
Facsimile: 619-233-0508
cburke@scott-scott.com
wnoss@scott-scott.com
kanderson@scott-scott.com
shackett@scott.scott.com

-and-

SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
DAVID R. SCOTT (DS-8053)
JOSEPH P. GUGLIELMO (JG-2447)
DONALD A. BROGGI (DB-9661)
PETER A. BARILE III (PB-3354)
SYLVIA SOKOL (SS-0317)
THOMAS K. BOARDMAN (TB-0530)
The Helmsley Building
230 Park Avenue, 17th Floor
New York, NY 10169
Telephone: 212-223-6444
Facsimile: 212-223-6334
david.scott@scott-scott.com
jguglielmo@scott-scott.com
ssokol@scott-scott.com
tboardman@scott-scott.com

Interim Co-Lead Counsel

OBERMAYER REBMANN
MAXWELL & HIPPEL LLP
WILLIAM J. LEONARD (*pro hac
vice*)
RIGEL FARR (*pro hac vice*)
One Penn Center, 19th Floor
1617 John F. Kennedy Boulevard
Philadelphia, PA 19103-1895
Telephone: 215-665-3000
Facsimile: 215-665-3165
william.leonard@obermayer.com
rigel.farr@obermayer.com

-and-

BONI & ZACK LLC
MICHAEL J. BONI (*pro hac vice*)
JOSHUA D. SNYDER (*pro hac vice*)
15 St. Asaphs Rd.
Bala Cynwyd, PA 19004
Telephone: 610-822-0200
Facsimile: 610-822-0206
mboni@bonizack.com
jsnyder@bonizack.com

*Counsel for Plaintiff the City of
Philadelphia, Board of Pensions and
Retirement*

WOLF POPPER LLP
MARIAN R. ROSNER
PATRICIA I. AVERY
FEI-LU QIAN
845 Third Avenue, 12th Floor
New York, New York 10022
Telephone: 212-759-4600
Facsimile: 212-486-2093
mrosner@wolfpopper.com
pavery@wolfpopper.com
fqian@wolfpopper.com

KOREIN TILLERY, LLC
STEPHEN M. TILLERY (*pro hac vice*)
ROBERT L. KING (*pro hac vice*)
AARON M. ZIGLER (*pro hac vice*)
STEVEN M. BEREZNEY (*pro hac vice*)
One U.S. Bank Plaza
505 N. 7th Street, Suite 3600
Saint Louis, MO 63101-1612
Telephone: 314-241-4844
Facsimile: 314-241-3525
stillery@koreintillery.com
rking@koreintillery.com
azigler@koreintillery.com
sberezney@koreintillery.com

-and-

KOREIN TILLERY, LLC
GEORGE A. ZELCS (*pro hac vice*)
205 N Michigan Ave, Suite 1950
Chicago, IL 60601-5927
Telephone: 312-641-9750
Facsimile: 312-641-9751
gzelcs@koreintillery.com

*Counsel for Plaintiffs Haverhill Retirement System
and Oklahoma Firefighters Pension and Retirement
System, Robert Miller, Mark Miller, and Peter
Rives*

ROBBINS GELLER RUDMAN & DOWD LLP
PATRICK J. COUGHLIN
DAVID W. MITCHELL
BRIAN O. O'MARA
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619-231-1058
patc@rgrdlaw.com
davidm@rgrdlaw.com
bomara@rgrdlaw.com

Counsel for Plaintiff Employees' Retirement System of Puerto Rico Electric Power Authority

LABATON SUCHAROW LLP
GREGORY S. ASCIOLLA
JAY L. HIMES
ROBIN A. VAN DER MEULEN
MATTHEW J. PEREZ
140 Broadway
New York, NY 10005
Telephone: 212-907-0700
Facsimile: 212-818-0477
gasciolla@labaton.com
jhimes@labaton.com
rvandermeulen@labaton.com
mperez@labaton.com

Counsel for Plaintiff State-Boston Retirement System, Marc G. Federighi, and Michael J. Smith

GRANT & EISENHOFER, P.A.
ROBERT G. EISLER
123 Justison Street
Wilmington, DE 19801
Telephone: 302-622-7030
Facsimile: 302-622-7100
reisler@gelaw.com

Counsel for Plaintiff Syena Global Emerging Markets Fund, LP

ENTWISTLE & CAPPUCCI LLP
ANDREW J. ENTWISTLE
VINCENT R. CAPPUCCI
ROBERT N. CAPPUCCI
280 Park Avenue, 26th Floor West
New York, NY 10017
Telephone: 212-894-7200
Facsimile: 212-894-7272
aentwistle@entwistle-law.com
vcappucci@entwistle-law.com
rcappucci@entwistle-law.com

Counsel for Plaintiff Employees' Retirement System of the Government of the Virgin Islands

BERMAN DeVALERIO
JOSEPH J. TABACCO, JR. (JJT-1994)
TODD A. SEAVER (*pro hac vice*)
SARAH KHORASANEE MCGRATH (*pro hac vice*)
JESSICA MOY (*pro hac vice*)
One California Street, Suite 900
San Francisco, CA 94111
Telephone: 415-433-3200
Facsimile: 415-433-6382
jtabacco@bermandevalerio.com
tseaver@bermandevalerio.com
smcgrath@bermandevalerio.com
jmoy@bermandevalerio.com

Counsel for Plaintiff Fresno County Employees' Retirement Association

CRIDEN & LOVE, P.A.
MICHAEL E. CRIDEN
LINDSEY C. GROSSMAN
7301 SW 57th Court, Suite 515
South Miami, FL 33143
Telephone: 305-357-9000
Facsimile: 305-357-9050
mcriden@cridenlove.com
lgrossman@cridenlove.com

Counsel for Plaintiffs J. Paul Antonello, Marc G. Federighi and Michael J. Smith

LOWEY DANNENBERG, P.C.
VINCENT BRIGANTI
GEOFFREY M. HORN
PETER D. ST. PHILLIP
RAYMOND P. GIRNYS
One North Broadway
White Plains, NY 10601
Telephone: 914-997-0500
Facsimile: 914-997-0035
vbriganti@lowey.com

Counsel for Plaintiffs Tiberius OC Fund, Ltd. and Value Recovery Fund L.L.C.

ghorn@lowey.com
pstphillip@lowey.com
rgirnys@lowey.com

-and-

RADICE LAW FIRM, P.C.
JOHN RADICE
KENNETH PICKLE
34 Sunset Blvd.
Long Beach, NJ 08008
Telephone: 646-245-8502
Facsimile: 609-385-0745
jradice@radicelawfirm.com
kpickle@radicelawfirm.com

LOWEY DANNENBERG, P.C.
GERALD LAWRENCE, ESQ.
Four Tower Bridge
200 Barr Harbor Drive, Suite 400
West Conshohocken, PA 19428
Telephone: 610-941-2760
Facsimile: 610-862-9777
glawrence@lowey.com

Counsel for Plaintiffs Doug Harvey, Izee Trading Company, and Richard Preschern d/b/a Preschern Trading

-and-

CERA LLP
SOLOMON B. CERA
C. ANDREW DIRKSEN
595 Market Street, Suite 2300
San Francisco, CA 94105
Telephone: 415-777-2230
Facsimile: 415-777-5189
scera@cerallp.com
cdirkksen@cerallp.com

SHEPHERD FINKELMAN
MILLER & SHAH, LLP
ERIC. L. YOUNG
NATALIE FINKELMAN BENNETT
35 East State Street
Media, PA 19063
Telephone: 610-891-9880
Facsimile: 866-300-7367
eyoung@sfmslaw.com
nfinkelman@sfmslaw.com

-and-

Counsel for Plaintiff Aureus Currency Fund L.P.

SHEPHERD FINKELMAN
MILLER & SHAH, LLP
JAMES E. MILLER
65 Main Street
Chester, CT 06412
Telephone: 860-526-1100
Facsimile: 860-526-1120
jmiller@sfmslaw.com

FREED KANNER LONDON &
MILLEN LLC
MICHAEL J. FREED
STEVEN A. KANNER
2201 Waukegan Road, Suite 130
Bannockburn, Illinois 60015
Telephone: 224-632-4500
Facsimile: 224-632-4521
mfreed@fkmlmlaw.com
skanner@fkmlmlaw.com

-and-

Counsel for Plaintiffs Thomas Gramatis and John Kerstein

RADICE LAW FIRM, P.C.
JOHN RADICE
KENNETH PICKLE
34 Sunset Blvd.
Long Beach, NJ 08008

NUSSBAUM LAW GROUP, P.C.
LINDA P NUSSBAUM
1211 Avenue of the Americas
New York, NY, 10036
Telephone: 917-438-9102
lnussbaum@nussbaumpc.com

*Counsel for Plaintiffs Jeffrey Sterk,
Kimberly Sterk, and Michael
Melissinos*

THE MOGIN LAW FIRM, P.C.
DANIEL J. MOGIN
JODIE M. WILLIAMS
707 Broadway, Suite 1000
San Diego, CA 92101
Telephone: 619-687-6611
Facsimile: 619-687-6610
dmogin@moginlaw.com
jwilliams@moginlaw.com

-and-

STEYER, LOWENTHAL,
BOODROOKAS
ALVAREZ & SMITH LLP
ALLAN STEYER
JAYNE PEETERS
One California Street, Third Floor
San Francisco, CA 94111
Telephone: 415-421-3400
Facsimile: 415-421-2234
asteyer@steyerlaw.com
jpeeters@steyerlaw.com

*Counsel for Plaintiffs Haverhill
Retirement System and Oklahoma
Firefighters Pension and Retirement
System*

Telephone: 646-245-8502
Facsimile: 609-385-0745
jradice@radicelawfirm.com
kpickle@radicelawfirm.com
-and-

MANDEL BHANDARI LLP
RISHI BHANDARI
EVAN MANDEL
80 Pine Street, 33rd Floor
New York, NY 10005
Telephone: 212-269-5600
Facsimile: 646-964-6667
rb@mandelbhandari.com
em@mandelbhandari.com

*Counsel for Plaintiff United Food and Commercial
Workers Union and Participating Food Industry
Employers Tri-State Pension Fund*

FINE, KAPLAN AND BLACK, R.P.C.
ROBERTA D. LIEBENBERG
ADAM PESSIN
One South Broad St., Suite 2300
Philadelphia, PA 19107
Telephone: 215-567-6565
Facsimile: 215-568-5872
rliebenberg@finekaplan.com
apessin@finekaplan.com

-and-

MOTLEY RICE LLC
WILLIAM H. NARWOLD
DONALD A. MIGLIORI
MICHAEL M. BUCHMAN
JOHN A. IOANNOU
600 Third Avenue, Suite 2101
New York, NY 10016
Telephone: 212-577-0040
Facsimile: 212-577-0054
bnarwold@motleyrice.com
dmigliori@motleyrice.com
mbuchman@motleyrice.com
jioannou@motleyrice.com

-and-

MILLER LAW LLC
MARVIN A. MILLER
MATTHEW VAN TINE
115 S. LaSalle St., Suite 2101
Chicago, IL 60603
Telephone: 312-322-3400
Facsimile: 312-676-2676
mmiller@millerlawllc.com
mvantine@millerlawllc.com

Of Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 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, and I hereby certify that I caused the foregoing document or paper to be mailed via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 29, 2017.

/s/ Michael D. Hausfeld

MICHAEL D. HAUSFELD

HAUSFELD LLP

1700 K Street, Suite 650

Washington, DC 20006

Telephone: 202-540-7200

Facsimile: 202-540-7201

Email: mhausfeld@hausfeld.com