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 OFFSHORE FUND LTD., HUNTER GLOBAL INVESTORS SRI FUND LTD., HG HOLDINGS LTD., HG HOLDINGS II LTD., FRANK DIVITTO, RICHARD DENNIS, and the CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM 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, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, TP ICAP PLC, TULLETT PREBON AMERICAS CORP., TULLETT PREBON (USA) INC., TULLETT PREBON FINANCIAL SERVICES LLC, TULLETT PREBON (EUROPE) LIMITED, COSMOREX AG, ICAP EUROPE LIMITED, ICAP SECURITIES USA LLC, NEX GROUP PLC, INTERCAPITAL CAPITAL MARKETS LLC, GOTTEX BROKERS SA, VELCOR SA AND JOHN DOE NOS. 1-50, Defendants.	Docket No. 15-cv-00871 (SHS)

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS WITH DEFENDANTS NATWEST MARKETS PLC (F/K/A THE ROYAL BANK OF SCOTLAND PLC), DEUTSCHE BANK AG AND DB GROUP SERVICES (UK) LTD., SCHEDULING HEARING FOR FINAL APPROVAL THEREOF AND OF CLASS ACTION SETTLEMENT WITH

JPMORGAN CHASE & CO., AND APPROVAL OF THE PROPOSED FORM AND PROGRAM OF NOTICE TO THE SETTLEMENT CLASS

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INTRODUCTION

Representative Plaintiffs[1] move under FED. R. CIV. P. 23 for preliminary approval of the: (i) $21,000,000 Settlement with NatWest Markets Plc (f/k/a The Royal Bank of Scotland plc) ("RBS"); and (ii) $13,000,000 Settlement with Deutsche Bank AG and DB Group Services (UK) Ltd. (together, "Deutsche Bank").[2] This Court previously preliminarily approved Plaintiffs' $22,000,000 Settlement with JPMorgan Chase & Co. ("JPMorgan," and collectively with Deutsche Bank, RBS, the "Settling Defendants"). *See* ECF Nos. 159. If finally approved, the three Settlements will recover a total of $56,000,000 for the Settlement Class.[3]

The RBS and Deutsche Bank Settlements satisfy the requirements for preliminary approval. First, the Settlements are procedurally fair, as Representative Plaintiffs and Interim Lead Counsel are adequate representatives for the Settlement Class, and the Settlements resulted from hard-fought arm's length negotiations with each Settling Defendant. The terms of the Settlements are similar to the JPMorgan Settlement and are substantively fair, providing considerable relief to eligible Class Members in exchange for the resolution of the Action. As it did with the JPMorgan Settlement, the Court may conditionally certify the Settlement Class under Rule 23(a) and (b)(3) for each Settlement, and Interim Lead Counsel have prepared a robust notice program that will fully apprise Class Members of their rights and options. The Court should grant this motion and

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[1] Representative Plaintiffs are California State Teachers' Retirement System, Frank Divitto, Richard Dennis, and Fund Liquidation Holdings LLC. Unless noted, ECF citations are to the docket in this Action and internal citations and quotation marks are omitted.

[2] Attached as Exhibits 1-2 to the Declaration of Vincent Briganti dated June 29, 2022 ("Briganti Decl.") are the Stipulation and Agreement of Settlement as to RBS dated June 2, 2021 (the "RBS Agreement"), and the Stipulation and Agreement of Settlement as to Deutsche Bank dated April 18, 2022 (the "Deutsche Bank Agreement," and collectively with the RBS Agreement, the "Settlement Agreements"). Unless otherwise defined, capitalized terms in this memorandum of law have the same meaning as in the Settlement Agreements.

[3] Plaintiffs have also reached an agreement in principle with Defendants Credit Suisse Group AG and Credit Suisse AG (together, "Credit Suisse"). As stated in Plaintiffs' June 15, 2022 letter (ECF No. 380), Plaintiffs and Credit Suisse require some additional time to complete their negotiations and finalize the stipulation and agreement of settlement. If permitted by the Court, Plaintiffs intend to file their motion for preliminary approval with Credit Suisse on or before July 13, 2022.

enter the orders filed herewith (the "Preliminary Approval Orders") that:

(a) preliminarily approve Representative Plaintiffs' proposed Settlement with RBS and Deutsche Bank, subject to later, final approval;

(b) conditionally certify a Settlement Class on the claims against RBS and Deutsche Bank, subject to later, final approval of such Settlement Class;

(c) preliminarily approve the proposed Distribution Plan (Briganti Decl. Ex. 7);

(d) appoint Representative Plaintiffs as representatives of the Settlement Class;

(e) appoint Lowey Dannenberg, P.C. ("Lowey") as Class Counsel;

(f) appoint Citibank, N.A. ("Citibank") as the Escrow Agent for the Settlements with RBS and Deutsche Bank;

(g) appoint Epiq Class Action and Claims Solutions, Inc. ("Epiq") as Settlement Administrator for the JPMorgan, RBS, and Deutsche Bank Settlements;

(h) approve the proposed forms of Class Notice to the Settlement Class (*id.*, Exs. 4-6) and the proposed Class Notice plan (*id.*, Ex. 3);

(i) set a schedule leading to the Court's evaluation of whether to finally approve the three Settlements, including the Fairness Hearing; and

(j) stay all proceedings in the Action related to each Settling Defendant except those relating to approval of the respective Settlement.

OVERVIEW OF THE LITIGATION[4]

Procedural History. This litigation was initiated on February 5, 2015 against Credit Suisse Group AG, JPMorgan, RBS, and UBS AG ("UBS") on behalf of traders of Swiss Franc LIBOR-Based Derivatives by Fund Liquidation Holdings, LLC ("FLH") in the name of Sonterra Capital Master Fund, Ltd. ("Sonterra"). On June 19, 2015, Plaintiffs filed their First Amended Complaint ("FAC"), adding Defendants Credit Suisse AG, Bluecrest Capital Management, LLP ("Bluecrest"), Deutsche Bank, and certain Plaintiffs.[5] ECF No. 36. On August 18, 2015, Credit

[4] The full procedural history of this Action is set forth in the Briganti Decl. ¶¶ 4-16.

[5] In the FAC, the following Plaintiffs were added: FrontPoint European Fund, L.P., FrontPoint Financial Services Fund, L.P., FrontPoint Healthcare Flagship Enhanced Fund, L.P., FrontPoint Healthcare Horizon Fund, L.P.,

Suisse, Deutsche Bank, JPMorgan, RBS, and UBS AG ("UBS") moved to dismiss for lack of personal jurisdiction, failure to state a claim, and lack of subject matter jurisdiction. ECF Nos. 63-64, 73. That same day, Bluecrest also filed a separate motion to dismiss. ECF Nos. 74-75.

While the motions were pending, Plaintiffs and JPMorgan reached a settlement and executed the JPMorgan Settlement on June 2, 2017. ECF No. 151-1. The Court granted preliminary approval of the JPMorgan Settlement on August 16, 2017. ECF No. 159.

On September 25, 2017, the Court dismissed the FAC without prejudice and granted Plaintiffs leave to amend. ECF No. 170. On December 8, 2017, Plaintiffs filed a Second Amended Complaint ("SAC"), adding certain Plaintiffs and Defendants[6] and amending the pleading in response to the Court's opinion. ECF No. 185. Defendants moved to dismiss again based on lack of Article III standing and personal jurisdiction. ECF Nos. 223-28. The Broker Defendants also filed a motion to dismiss for lack of personal jurisdiction and improper venue as to certain Broker Defendants, and for failure to state a claim and lack of subject matter jurisdiction as to all Broker Defendants. ECF Nos. 254-64. Plaintiffs opposed both sets of motions. ECF Nos. 268, 295-97. On September 16, 2019, the Court granted Defendants' motions to dismiss the SAC. ECF No. 358.

On October 16, 2019, Plaintiffs filed a Notice of Appeal. ECF No. 362. The Second Circuit later vacated the Court's September 16 opinion and remanded the case for further proceedings in light of its decision in *Fund Liquidation Holdings LLC v. Bank of Am. Corp.*, 991 F.3d 370 (2d Cir. 2021) (the "*SIBOR* Appeal") on a similar issue of subject matter jurisdiction. ECF No. 367.

FrontPoint Financial Horizons Fund, L.P, FrontPoint Utility and Energy Fund L.P. (collectively, "FrontPoint"), 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. (collectively "Hunter"), and Frank Divitto.

[6] The SAC added Plaintiffs Richard Dennis and California State Teachers' Retirement System ("CalSTRS"), and Defendants TP ICAP plc, Tullett Prebon Americas Corp., Tullett Prebon (USA) Inc., Tullett Prebon Financial Services LLC, Tullett Prebon (Europe) Limited, Cosmorex AG, ICAP Europe Limited, ICAP Securities USA LLC, NEX Group plc, and Intercapital Capital Markets LLC, Velcor SA, and Gottex Brokers SA (the "Broker Defendants").

Summary of Settlement Negotiations. Negotiations with RBS took place over several years, starting with a mediation in August 2018 and resuming again in April 2020 and continuing until June 2, 2021. Interim Lead Counsel engaged in lengthy negotiations with RBS over the material terms of the settlement, including the settlement amount, scope of the cooperation to be provided by RBS, the release, and the circumstances under which the Parties may terminate the settlement. During negotiations, RBS denied any liability and maintained that it had meritorious defenses to the claims brought against it, and each side presented their views on the strengths and weaknesses of the case, as well as RBS's litigation exposure. On February 1, 2021, RBS and Interim Lead Counsel signed a term sheet and executed the RBS Settlement Agreement on June 2, 2021.

The negotiations with Deutsche Bank occurred over several months starting in September 2021. Interim Lead Counsel engaged in similarly lengthy discussions with Deutsche Bank's counsel over the strengths and weaknesses of the claims and defenses, as well as Deutsche Bank's litigation exposure. Deutsche Bank denied any liability and maintained that it had potentially strong defenses to the claims brought against it. After significant discussions over the settlement consideration and the scope of cooperation, Deutsche Bank and Interim Lead Counsel signed a term sheet on December 16, 2021 and executed the Deutsche Bank Settlement on April 18, 2022.

SUMMARY OF KEY SETTLEMENT TERMS

The proposed Settlement Class under the RBS and Deutsche Bank Settlements is identical to the Class preliminarily approved for the JPMorgan Settlement:

> 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 period of January 1, 2001 through December 31, 2011 ("Class Period"). Excluded from the Settlement Class are the Defendants 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.

Compare Order Preliminarily Approving Settlement with JPMorgan and Conditionally Certifying

a Settlement Class, ECF No. 159 *with* Briganti Decl., Ex. 1 § 1(E); Ex. 2 § 1(F). In addition to the settlement payments, each Settling Defendant has provided or will shortly provide Cooperation Materials that will advance the litigation against non-settling Defendants UBS and the Broker Defendants, identify potential Class Members, and (if necessary) further validate the Distribution Plan proposed by Representative Plaintiffs. *Id.*, Ex. 1 § 5; Ex. 2 § 4. In exchange, the Settlements provide that the Releasing Parties will finally and forever release and discharge from and covenant not to sue the Released Parties for the Released Claims. *Id.*, Ex. 1 § 13(A), Ex. 2 § 12(A).

ARGUMENT

I. THE SETTLEMENTS ARE LIKELY TO BE APPROVED UNDER RULE 23(e)(2)

A. The Preliminary Approval Standard

"The compromise of complex litigation is encouraged by the courts and favored by public policy." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005); *see Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 474-75 (S.D.N.Y. 2013) (courts encourage early settlements because they provide immediate relief and allow the reallocation of limited judicial resources). Rule 23 requires that courts approve class action settlements, and this Court is empowered to approve the Settlements because it has subject matter jurisdiction over this Action. *See Fund Liquidation Holdings LLC v. Bank of Am. Corp. et al.*, 991 F.3d 370 (2d Cir. 2021).

"Preliminary approval is generally the first step in a two-step process before a class action settlement is [finally] approved." *In re Stock Exchanges Options Trading Antitrust Litig.*, No. 99 Civ. 0962, 2005 WL 1635158, at *4 (S.D.N.Y. July 8, 2005). The Court may preliminarily approve and direct notice of the proposed Settlements if it is likely that the Court, after a hearing, will find the Settlements satisfy FED. R. CIV. P. 23(e)(2) and the proposed Class may be certified. FED. R. CIV. P. 23(e)(1); *see In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019) ("*Payment Card*") (analyzing preliminary approval standard).

The court considers both the "negotiating process leading up to the settlement, *i.e.*, procedural fairness, as well as the settlement's substantive terms, *i.e.*, substantive fairness." *In re Platinum & Palladium Commodities Litig.*, No. 10-cv-3617, 2014 WL 3500655, at *11 (S.D.N.Y. July 15, 2014). The proposed Settlements meet this standard and should be preliminarily approved.

B. The Settlements are Procedurally Fair

Rule 23(e)(2) requires the Court to find that "the class representatives and class counsel have adequately represented the class [and] the proposal was negotiated at arm's length." FED. R. CIV. P. 23(e)(2)(A)-(B). 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).

1. The Class Has Been Adequately Represented

Adequate representation under Rule 23(e)(2)(A) (and 23(a)(4))[7] requires that the "interests . . . served by the Settlement [are] compatible with" those of settlement class members. *Wal-Mart Stores*, 396 F.3d at 110. This is met when the class representative's interests are not antagonistic to those of the class and their chosen counsel is qualified, experienced, and able to conduct the litigation. *See In re Currency Conversion Fee Antitrust Litig.*, 264 F.R.D. 100, 111-12 (S.D.N.Y. 2010); *Wal-Mart Stores*, 396 F.3d at 106-07 (adequate representation is established "by showing an alignment of interests between class members, not by proving vigorous pursuit of that claim.").

Representative Plaintiffs' interests are aligned with those of the Settlement Class as they transacted in numerous Swiss Franc LIBOR-Based Derivatives during the Class Period. *See, e.g.*,

[7] Courts analyze the adequacy of representation requirement of Rule 23(e)(2)(A) using the same considerations for representative adequacy under Rule 23(a)(4). *See Payment Card*, 330 F.R.D. at 30 n.25 ("This adequate representation factor [under Rule 23(e)(2)(A)] is nearly identical to the Rule 23(a)(4) prerequisite of adequate representation in the class certification context. As a result, the Court looks to Rule 23(a)(4) case law to guide its assessment of this factor."); *see also In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 701 (S.D.N.Y. 2019).

ECF No. 185 (Second Amended Complaint) at ¶¶ 23-43. Settling Defendants' alleged manipulation caused artificial market prices not just for Representative Plaintiffs' transactions, but for the entire market. *Id.* ¶¶ 462-528, 565-66. Moreover, there are no conflicting interests among Representative Plaintiffs and the Settlement Class. *See Wal-Mart Stores*, 396 F.3d at 110-11 (class representatives are adequate if their injuries encompass those of the class they seek to represent); *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1175 (JG) (VVP), 2014 WL 7882100, at *34 (E.D.N.Y. Oct. 15, 2014) ("Even if there was a conflict [relating to the assignment of recovery rights] (and there is not), it would under no conceivable circumstances be so 'fundamental'" to cause class representatives to be inadequate), *report and recommendation adopted*, 2015 WL 5093503 (E.D.N.Y. July 10, 2015).

Courts evaluating adequacy of representation also consider the adequacy of plaintiffs' counsel. *Payment Card*, 330 F.R.D. at 30 (considering whether "plaintiff's attorneys are qualified, experienced and able to conduct the litigation."); *accord* FED. R. CIV. P. 23(g). Lowey has led the prosecution of this Action from its inception and negotiated these Settlements. Lowey's extensive class action and antitrust experience is strong evidence that the Settlements are procedurally fair.[8] *See* Briganti Decl., Ex. 8 (firm resume); *see also In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 122 (S.D.N.Y. 2009) (noting the "extensive" experience of counsel in granting final approval of settlement); *Shapiro v. JPMorgan Chase & Co.*, No. 11 Civ. 8331 (CM) (MHD), 2014 WL 1224666, at *2 (S.D.N.Y. Mar. 24, 2014) (giving "great weight" to experienced class counsel's opinion that the settlement was fair). Interim Lead Counsel have extensive experience in litigating antitrust and Commodity Exchange Act ("CEA") claims on behalf of some of the

[8] Interim Lead Counsel also benefited from the expertise and participation of additional Plaintiffs' Counsel that represented individual plaintiffs. The combined expertise of additional Plaintiffs' Counsel was important in prosecuting the Action and achieving fair, reasonable and adequate settlements.

nation's largest pension funds and institutional investors. Briganti Decl. ¶ 57. This includes settlements of benchmark manipulation cases involving Euribor, Yen-LIBOR, and Euroyen TIBOR. *See, e.g., Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC) (S.D.N.Y.), ECF Nos. 424 (May 18, 2018), 498 (May 17, 2019) (approving $491.5 million in settlements related to Euro Interbank Offered Rate ("Euribor") manipulation); *Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (S.D.N.Y.), ECF Nos. 1013-14 (Dec. 19, 2019), 891 (Jul. 12, 2018), 838 (Dec. 7, 2017), 720 (Nov. 10, 2016) & *Sonterra Capital Master Fund Ltd. et al v. UBS AG et al*, No. 15-cv-5844 (S.D.N.Y.), ECF. Nos. 423 (Jul. 12, 2018), 389 (Dec. 7, 2017), 298 (Nov. 10, 2016) (approving $307 million in settlements related to Yen-LIBOR/Euroyen TIBOR manipulation).

Lowey has diligently prosecuted this Action by, *inter alia*: (i) conducting a thorough pre-filing investigation; (ii) drafting the initial and amended complaints; (iii) opposing motions to dismiss; (iv) successfully appealing the dismissal of the Action; (v) negotiating the proposed Settlements; and (vi) developing the proposed Distribution Plan. *See* Briganti Decl. ¶¶ 4-8, 13-15, 17-27, 43, 48-49, 52-54, 59-60. Lowey's extensive antitrust, CEA, and class action experience, combined with their extensive efforts here, provide direct evidence of its adequacy.

2. The Settlements are the Product of Arm's Length Negotiations

Procedural fairness is presumed where a settlement is "the product of arm's length negotiations between experienced and able counsel on all sides." *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-md-1775 (JG)(VVP), 2009 WL 3077396, at *7 (E.D.N.Y. Sept. 25, 2009); *see also* FED. R. CIV. P. 23(e)(2)(B) (courts must consider whether settlement "was negotiated at arm's length"). That presumption applies here, as the Settlements were negotiated by knowledgeable counsel for Representative Plaintiffs and Settling Defendants, each represented by top law firms with extensive experience litigating antitrust class actions. *See* Briganti Decl. ¶ 42.

Interim Lead Counsel serve as lead or co-lead counsel in at least seven class actions (including this one) bringing antitrust and/or CEA claims for the manipulation of global benchmark rates. *See Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (GBD) (S.D.N.Y), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 15-cv-5844 (GBD) (S.D.N.Y.) (Yen-LIBOR/ Euroyen TIBOR); *Sullivan v. Barclays plc,* No. 13-cv-2811 (PKC) (S.D.N.Y.) (Euribor); *Dennis et al. v. JPMorgan Chase & Co. et al.*, No. 16-cv-06496 (LAK) (S.D.N.Y.) (BBSW); *Fund Liquidation Holdings LLC, et al. v. Citibank, N.A., et al.*, No.: 16-cv-05263 (AKH) (S.D.N.Y.) (SIBOR and SOR); *Sonterra Capital Master Fund Ltd., et al. v. Barclays Bank PLC, et al.*, No. 15-cv-03538 (VSB) (S.D.N.Y.) (Sterling LIBOR). Briganti Decl. ¶ 41.

The knowledge developed from the settlements in these other actions gave Interim Lead Counsel two distinct advantages. Interim Lead Counsel gained substantial information about how best to conduct their investigation—where to find and how to analyze the best trading data and evidence, which experts to engage, and what methodologies to use to estimate damages. The other cases also provided settlement benchmarks against which Interim Lead Counsel could compare the proposed settlements in this Action. Interim Lead Counsel researched and considered a wide range of relevant legal issues and analyzed the facts known to date, including this Court's prior decisions and government settlements involving similar or related conduct involving other benchmarks. Briganti Decl. ¶ 49. In addition, Interim Lead Counsel continued to enhance their understanding of the alleged manipulation through ongoing consultations with experts. *Id*.

The settlement process fully supports preliminary approval. Briganti Decl. ¶¶ 42-59. Interim Lead Counsel spent months in arm's-length, non-collusive negotiations with counsel representing each Settling Defendant. *Id.* ¶¶ 17-27. Numerous communications occurred, during

which each party expressed their views on the merits, risks, and challenges of the Action, the respective Settling Defendant's potential liability, and the measure of damages. *Id.* ¶¶ 20, 25.

Interim Lead Counsel believe that Representative Plaintiffs' claims have substantial merit but acknowledge the expense and uncertainty of continued litigation. In concluding that the Settlements are in the best interests of the Settlement Class, Interim Lead Counsel weighed the uncertainty against the significant benefits conferred by the Settlements. Due to Interim Lead Counsel's extensive complex class action experience, knowledge of the strengths and weaknesses of the claims, and their assessment of the Settlement Class's likely recovery after trial and appeal, the Settlements are entitled to a presumption of procedural fairness. *See In re Michael Milken and Assocs. Sec. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993); *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1977) ("great weight" is given to advice of experienced counsel).

C. The Settlements are Substantively Fair

If finally approved, a total of $56,000,000 will be recovered for the Class. As with the JPMorgan Settlement, Representative Plaintiffs successfully negotiated with RBS and Deutsche Bank that the Settlement Amounts will revert, regardless of how many Class Members submit proofs of claim. *See* RBS Agreement § 3; Deutsche Bank Agreement § 3. Because claim rates typically fall below 100%, the non-reversion term will enhance Authorized Claimants' recovery.[9]

The Settlements provide the Settlement Class one of the few (if not the only) means of obtaining any recovery for the alleged manipulation of Swiss Franc LIBOR-Based Derivatives. Under the Settlement Agreements, the RBS and Deutsche Bank also provide cooperation that can be used to facilitate the issuance of notice, further validate the Distribution Plan (should Interim Lead Counsel consider it necessary), and continue litigation against any non-settling Defendant.

[9] *See Guerrero v. Wells Fargo Bank, N.A.*, No. C 12-04026 WHA, 2014 WL 1365462, at *2 (N.D. Cal. Apr. 7, 2014) (finding the lack of reversion of remaining portions of the net settlement an important benefit to the class).

In exchange, RBS and Deutsche Bank will receive a release from claims based on the alleged manipulation of Swiss Franc LIBOR-Based Derivatives, and the Action will be dismissed with respect to each of them with prejudice. Under both Rule 23(e)(2)(C)-(D) and the overlapping factors provided in *City of Detroit v. Grinnell Corp.,* 495 F.2d 448, 463 (2d Cir. 1974) ("*Grinnell*")[10] that courts consider when assessing the substantive fairness of a settlement, the RBS and Deutsche Bank Settlements easily fall within "the range of possible approval." *In re NASDAQ Mkt.-Makers Antitrust Litig*., 176 F.R.D. 99, 102 (S.D.N.Y. 1997) ("*NASDAQ II*").

1. The Substantial Relief Provided by the Settlements and the Complexity, Costs, Risks, and Delay of Trial and Appeal Favor the Settlements

To determine whether a settlement provides adequate relief to the class, the Court must evaluate "the costs, risks, and delay of trial and appeal," FED. R. CIV. P. 23(e)(2)(C)(i), "to forecast the likely range of possible classwide recoveries and the likelihood of success in obtaining such results." *Payment Card*, 330 F.R.D. at 36. Several *Grinnell* factors are implicated, "including: (i) the complexity, expense, and likely duration of the litigation; (ii) the risks of establishing liability; (iii) the risks of establishing damages; and (iv) the risks of maintaining the class through the trial." *Id.* Relatedly, to assess whether the recovery is within the range of reasonableness, courts weigh the relief against the strength of the plaintiff's case, including the likelihood of recovery at trial. *See Grinnell*, 495 F.2d at 463. This approach "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). As a result, "[d]ollar amounts are judged not in comparison with the possible recovery in the best of all possible worlds, but

[10] The *Grinnell* factors are: (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. *See Grinnell*, 495 F.2d at 463.

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).

Representative Plaintiffs faced significant litigation risks. The factual and legal issues in this Action are complex and expensive to litigate. *See In re GSE Bonds*, 414 F. Supp. 3d at 693 (recognizing the complexity of federal antitrust claims and finding that the "complex issues of fact and law related to the [transactions occurring] at different points in time" weighed in favor of preliminary approval); *In re Sumitomo Copper Litig*., 74 F. Supp. 2d 393, 395 (S.D.N.Y. 1999) ("The case involves claims of commodity price manipulation in violation of the CEA. Such claims have been notoriously difficult to prove . . . ."). This Action alleged manipulative and collusive conduct between and among at least nine institutions over an eleven-year time period. As is evident from the number of motions to dismiss, Defendants have challenged the sufficiency of Representative Plaintiffs' allegations, providing clear evidence of the complexity of this case.

Conducting discovery in this Action will require the collection and analysis of more than a decade's-worth of documents and data to understand the impact of Defendants' alleged manipulation and to develop a sophisticated damages model. Relevant transactional data and documents, including chat room transcripts involving industry jargon, will have to be deciphered and contextualized, and Representative Plaintiffs will need to prove the meaning and significance of instant messages, trading patterns, and other facts to their claims. Defendants will undertake discovery with the aim of refuting or weakening Representative Plaintiffs' evidence of collusion and market manipulation. *See In re GSE Bonds*, 414 F. Supp. 3d at 694 ("Given that [ ] defendants contend that they can present a strong case against plaintiffs after discovery, there is no guarantee that plaintiffs will be able to prove liability."). The proposed Settlements with RBS and Deutsche

Bank exchange the immense cost and time associated with discovery with negotiated cooperation, allowing Representative Plaintiffs to focus their resources against the non-settling Defendants.

Representative Plaintiffs (and non-settling Defendants) will likely engage experts to provide econometric and industry analysis, adding to the cost and duration of the case. *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 410 (S.D.N.Y. 2018) (experts "increase both the cost and duration of litigation"). Expert discovery will lead to *Daubert* motions, increasing the litigation costs and risks, and delaying any resolution. Certifying a litigation class may raise complex legal and factual issues given the financial products and markets involved. *See In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 327 F.R.D. 483, 494 (S.D.N.Y. 2018) (stating that "the certainty of maintaining a class action is by no means guaranteed" and noting that maintaining the action as a class requires proving the 16-bank conspiracy that was alleged); *Currency Conversion Fee*, 263 F.R.D. at 123 ("the complexity of Plaintiffs' claims *ipso facto* creates uncertainty"). While Plaintiffs are confident the Court will certify a litigation class should the Action continue, such motion will be vigorously opposed by non-settling Defendants. *See In re GSE Bonds*, 414 F. Supp. 3d at 694 (the risk of maintaining a class through trial "weighs in favor of settlement where it is likely that defendants would oppose class certification if the case were to be litigated"). The losing party would likely seek interlocutory review, extending the timeline of the litigation. *See In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 986 F. Supp. 2d 207, 222 n.13 (E.D.N.Y. 2013) ("twenty months elapsed between the order certifying the class and the Second Circuit's divided opinion affirming [the *Wal-Mart*] decision").

If Representative Plaintiffs overcome pre-trial motions, they still bear the risk of proving actual damages. *See, e.g.*, *Bolivar v. FIT Int'l Grp. Corp.*, No. 12-cv-781, 2019 WL 4565067, at *1 (S.D.N.Y. Sept. 20, 2019) ("it is Plaintiffs who bear the burden of establishing their claimed

damages to a reasonable certainty"). Even where the government has secured a criminal guilty plea, civil juries have found no damages. *See, e.g.*, Special Verdict on Indirect Purchases, *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 07 MD 1827 (N.D. Cal. Sept. 3, 2013), ECF No. 8562. Even if Representative Plaintiffs "prevail at trial, post-trial motions and the potential for appeal could prevent the class members from obtaining any recovery for several years if at all." *In re GSE Bonds*, 414 F. Supp. 3d at 693. These and other risks[11] weigh in favor of preliminary approval.

2. The *Grinnell* Factors Not Addressed Above Also Support Approval

a. The reaction of the Settlement Class to the Settlements

Consideration of this *Grinnell* factor is premature prior to issuing notice. *See In re GSE Bonds*, 414 F. Supp. 3d at 699 n.1. Nonetheless, Representative Plaintiffs, including CalSTRS—the largest educator-only pension fund in the world and the second largest pension fund in the United States—favor the Settlements. Representative Plaintiffs' approval is highly probative of the likely reaction by the Class. Any Class Member who does not favor the deal can opt out. Representative Plaintiffs will address the Class's reaction in their motion for final approval.

b. The stage of the proceedings

"[C]ourts encourage early settlement of class actions . . . because early settlement allows class members to recover without unnecessary delay and allows the judicial system to focus resources elsewhere." *Beckman,* 293 F.R.D. at 474-75. The relevant inquiry, therefore, 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." Formal discovery is not required, even at final approval. *See Plummer v. Chemical Bank*, 668 F.2d 654, 658 (2d Cir. 1982). As

[11] Interim Lead Counsel must be wary in describing in detail its risks in the event any Settlement is not approved. *See In re Prudential Secs. Inc. Ltd. P'ships Litig.*, No. M-21-67 (MP), 1995 WL 798907, at *15 (S.D.N.Y. Nov. 20, 1995) ("*Prudential*") (Pollack, J.) (where non-settling defendants are present, class counsel appropriately omitted detailed discussion of all risks to recovery, the reasons for such risks, and their relative seriousness).

described above (*see* Argument I.B.2) and in the Briganti Declaration, Interim Lead Counsel drew on a wealth of experience, independent investigation and research (including documents produced by JPMorgan), expert resources, and information gained during confidential settlement negotiations to assess the Settlements' fairness—far exceeding the standard of "whether the parties had adequate information about their claims." *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 458 (S.D.N.Y. 2004); Briganti Decl. ¶¶ 38-40, 43, 46-52. Interim Lead Counsel's well-informed views of the Settlements' merits weigh in favor of preliminary approval.

c. The Ability of Settling Defendants to withstand greater judgment

RBS and Deutsche Bank can withstand a greater judgment, but this *Grinnell* factor alone does not militate against approval. *See In re Global Crossing,* 225 F.R.D. at 460 ("[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").

d. Reasonableness of the Settlements in Light of the Best Possible Recovery and Attendant Litigation Risks

The reasonableness factor weighs the settlement relief against the case's strength, including the likelihood of recovery at trial. This factor "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,* 464 F.2d at 693. Under this factor, "[d]ollar amounts 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,"* 597 F. Supp. at 762.

The $34,000,000 aggregate settlement fund created by the RBS and Deutsche Bank Settlements, when combined with the $22,000,000 from the JPMorgan Settlement, is an excellent recovery for the Settlement Class. *PaineWebber*, 171 F.R.D. at 125 (stating "'great weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of

the underlying litigation"). Representative Plaintiffs' experts analyzed publicly available data from Reuters, Bank for International Settlements ("BIS") Triennial Surveys, and the Federal Reserve Bank of New York's U.S. based market surveys. After considering various factors, including transaction volumes and outstanding notional amounts in Swiss Franc LIBOR-Based Derivatives, the class period, and the potential impact of the alleged manipulation, the experts calculated a damages range of between $869 million and $963 million. Based on this, the Settlements recover between 5.8% and 6.4% of the estimated damages.

3. The Distribution Plan Satisfies Rule 23(e)(2)(c)(ii)

"To warrant approval, the plan of allocation must also meet the standards by which the settlement was scrutinized—namely, it must be fair and adequate." *Payment Card*, 330 F.R.D. at 40. "An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *Id.*

Lowey consulted with experts to develop the proposed Distribution Plan. *See* Briganti Decl., ¶ 60, Ex. 7. It is structured to be efficient to administer and simple for Class Members, encouraging participation. *See* William B. Rubenstein, 4 NEWBERG ON CLASS ACTIONS § 13:53 (5th ed. 2021) ("the goal of any distribution method is to get as much of the available damages remedy to class members as possible and in as simple and expedient a manner as possible"). This distribution method is similar to plans approved in other cases. *See, e.g.*, Distribution Plan, *Fund Liquidation Holdings LLC et al. v. Citibank, N.A. et al.*, No. 16-cv-5263 (S.D.N.Y. May 13, 2022), ECF No. 473-11; Orders Preliminarily Approving Class Action Settlements, *Fund Liquidation Holdings LLC et al. v. Citibank, N.A. et al.*, No. 16-cv-5263 (S.D.N.Y. June 9, 2022), ECF Nos. 509-15; Plan of Distribution, *Alaska Elec. Pension Fund, et. al., v. Bank of Am., N.A., et. al.*, No. 14-cv-7126 (S.D.N.Y. Mar. 30, 2018), ECF No. 602-1; Plan of Distribution, *Alaska Elec. Pension Fund, et. al., v. Bank of Am., N.A., et. al.*, No. 14-cv-7126 (S.D.N.Y. Sept. 28, 2018), ECF No.

681-1; Final Judgments and Orders of Dismissal at ¶ 16, *Alaska Elec. Pension Fund, et. al., v. Bank of Am., N.A., et. al.*, No. 14-cv-7126 (S.D.N.Y. June 1, 2018), ECF Nos. 648-57 (approving plan of distribution as fair, reasonable, and adequate); Distribution Plan, *In re London Silver Fixing, Ltd. Antitrust Litig.,* Nos. 14-md-2573, 14-mc-2573 (S.D.N.Y. June 25, 2020), ECF No. 451-5; Final Approval Order, *In re London Silver Fixing, Ltd. Antitrust Litig.,* Nos. 14-md-2573, 14-mc-2573 (S.D.N.Y. June 15, 2021), ECF No. 536 (approving plan of distribution). Accordingly, the Distribution Plan should be preliminarily approved.

To receive a portion of the Net Settlement Fund, Class Members will submit a Proof of Claim and Release form ("Claim Form"). The Claim Form is straight-forward, requiring a claimant to provide certain background information and data about their Swiss Franc LIBOR-Based Derivatives transactions, including the transaction type, trade date, applicable Swiss Franc LIBOR tenor, and notional (face) value of the transaction. *See* Briganti Decl., Ex. 6. This information is comparable to the information requested in other benchmark litigation cases.[12]

Substantively, the Distribution Plan allocates the Net Settlement Funds *pro rata* based on an estimate of the impact of Defendants' alleged manipulation on Swiss Franc LIBOR-Based Derivatives. *Id.* It calculates a score for each Swiss Franc LIBOR-Based Derivatives transaction (the "Transaction Notional Amount") that reflects the interest rate impact of the alleged manipulation. If all other factors are held constant, claimants with a higher trading volume can expect a proportionally higher Transaction Notional Amount. Transactions that include multiple interest payments based on the notional value of the transaction (*e.g.*, interest rate swaps) will have higher Transaction Notional Amounts than those that have the same notional value but are based

[12] *See* Proof of Claim and Release Form, *Fund Liquidation Holdings LLC et al. v. Citibank, N.A. et al.*, No. 16-cv-5263 (S.D.N.Y. May 27, 2022), ECF No. 499-4; Proof of Claim and Release Form, *Alaska Elec. Pension Fund, et. al., v. Bank of Am., N.A., et. al.*, No. 14-cv-7126, (S.D.N.Y. Sept. 29, 2017), ECF No. 512-3.

on fewer interest rate payments. An Authorized Claimant's Transaction Notional Amounts for all eligible Swiss Franc LIBOR-Based Derivatives transactions are added together (the "Transaction Claim Amount") and divided by the sum of all calculated Transaction Claim Amounts to determine the *pro rata* fraction used to calculate the payment amount from the Net Settlement Fund.

Authorized Claimants whose expected distribution based on their *pro rata* fraction is less than the costs of administering the Claim will instead receive a Minimum Payment Amount in an amount to be determined after the Claim Forms are reviewed, calibrated to ensure that a minimal portion of the Net Settlement Funds is reallocated towards the Minimum Payment Amounts. Any claims payments that go uncollected will be reallocated to Authorized Claimants who have cashed their payments. If any balance remaining in the Net Settlement Fund cannot be redistributed, Interim Lead Counsel will submit an additional allocation plan to the Court for its approval.

The Distribution Plan satisfies Rule 23(e)(2)(C)(ii). It is a fair and adequate allocation of the Net Settlement Funds that ensures that the Settlements do not favor or disfavor any Class Members, create any limitations, or exclude from payment any persons within the Class.

4. The Requested Attorneys' Fees and Other Awards are Limited to Ensure that the Settlement Class Receives Adequate Relief

Lead Counsel will limit their attorneys' fee request to no more than twenty-eight percent of the Settlement Amounts ($15.68 million), which may be paid upon final approval. Briganti Decl., Ex. 8, at 28; *see In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 216, 223 (2d Cir. 1987). This fee request is comparable to the fees awarded in other cases of similar size and complexity. *See, e.g.*, *In re Amaranth Nat. Gas Commodities Litig.*, No. 07-CV-6377 (SAS), 2012 WL 2149094, at *2 (S.D.N.Y. June 11, 2012) (approving fee of 30% of the $77.1 million settlement amount); *In re Bisys Sec. Litig.*, No. 04-CV-3840 (JSR), 2007 WL 2049726, at *2 (S.D.N.Y. July 16, 2007) (approving fee of 30% of a $65.87 million settlement fund); *see also* Theodore

Eisenberg, Geoffrey Miller & Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. REV. 937, 950 tbl. 2 (2017) (finding the mean and median percentage fees in S.D.N.Y. class cases from 2009 to 2013 were 27% and 31%, respectively). In addition to attorneys' fees, Interim Lead Counsel will seek payment for litigation costs and expenses not to exceed $750,000 and Incentive Awards not to exceed a total of $300,000. *See Meredith Corp. v. SESAC, LLC,* 87 F. Supp. 3d 650, 671 (S.D.N.Y. 2015) (reasonable expenses may be reimbursed from the settlement); *Dial Corp. v. News Corp.*, 317 F.R.D. 426, 439 (S.D.N.Y. 2016) (class representatives may be awarded an incentive award for their efforts). Interim Lead Counsel will separately file their Fee and Expense Application seeking approval of the requested awards.

5. There Are No Agreements That Impact the Adequacy of the Settlements

Rule 23(e)(3) requires that "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal." Here, the Settlement Agreements set forth all such terms or specifically identify all other agreements that relate to the Settlements (namely, the Supplemental Agreements). *See* Briganti Decl., ¶ 30; Ex. 1, § 24; Ex. 2, § 23. The Supplemental Agreements provides Settling Defendants a qualified right to terminate the Settlement Agreements under certain circumstances before final approval. *Id.* This type of agreement is standard in complex class action settlements and does not impact the fairness of the Settlement.[13]

6. The Settlements Treat the Settlement Class Equitably

The Settlements also "treat[] class members equitably relative to each other." FED. R. CIV. P. 23(e)(2)(D). The Distribution Plan provides for a *pro rata* distribution of the Net Settlement Funds. *See, e.g., Payment Card*, 330 F.R.D. at 47 (finding that "pro rata distribution scheme is

[13] These types of qualified rights to terminate 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., Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (S.D.N.Y. June. 22, 2016), ECF No. 659 ¶¶ 10-11; *accord* MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.631 (2004) (explaining that "[k]nowledge of the specific number of opt outs that will vitiate a settlement might encourage third parties to solicit class members to opt out.").

sufficiently equitable"). All Class Members would release Settling Defendants for claims based on the same factual predicate of this Action. The proposed Class Notice provides information on how to opt out of the Settlements; absent opting out, each Class Member will be bound by the releases. Because the Settlements' releases and the Distribution Plan do not include any improper intra-class preferences or prejudice, the Court should find that the Settlements satisfy this factor.

II. THE COURT SHOULD CONDITIONALLY CERTIFY THE PROPOSED CLASS

As the Court previously found, the proposed Settlement Class satisfies Rule 23(a), as well as Rule 23(b)(3). *See In re Am. Int'l Grp., Inc. Sec. Litig.*, 689 F.3d 229, 242 (2d Cir. 2012). Accordingly, the Court should again conditionally certify the Settlement Class.[14]

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). There are at least hundreds, if not thousands, of geographically dispersed persons and entities that fall within the Settlement Class definition. *See* Briganti Decl. ¶ 31. Thus, joinder would be impracticable.

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 only a single

[14] RBS and Deutsche Bank each consent to preliminary certification of the Settlement Class solely for the purpose of the Settlements and without prejudice to any position they may take with respect to class certification in any other action or in the event that the Settlements are terminated. RBS Settlement Agreement § 2; Deutsche Bank Settlement Agreement § 2.

question be common to the class. *See Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011).

This case involves numerous common questions of law and fact, including, among others: (i) whether Defendants and their co-conspirators engaged in a combination or conspiracy to manipulate Swiss Franc LIBOR and the prices of Swiss Franc LIBOR-Based Derivatives in violation of the Sherman Act, CEA, RICO and common law; (ii) what constitutes a false or manipulative submission by a Swiss Franc LIBOR contributor panel bank; which Defendants conspired to manipulate Swiss Franc LIBOR during which period(s); and (iv) what would the daily, non-manipulated Swiss Franc LIBOR rates have been in the "but-for" world? These common questions involve dozens of sub-questions of fact and law that are also common to all Class Members. Rule 23(a)(2) is 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). Typicality 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); *Bolanos v. Norwegian Cruise Lines Ltd*., 212 F.R.D. 144, 155 (S.D.N.Y. 2002) ("the typicality requirement is not highly demanding").

Representative Plaintiffs' and Class Members' claims arise from the same course of conduct arising from Defendants' alleged manipulation of Swiss Franc LIBOR and Swiss Franc LIBOR-Based Derivatives. Courts generally find typicality in cases alleging a theory of manipulative conduct that affects all class members in the same fashion. *See, e.g.*, *In re GSE Bonds*, 414 F. Supp. 3d at 700-01 ("typicality is met when plaintiffs allege an antitrust price-fixing conspiracy because Plaintiffs must prove a conspiracy, its effectuation, and damages therefrom--precisely what the absent class members must prove to recover.").

4. Adequacy

Rule 23(a)(4) requires that "representative parties will fairly and adequately protect the interests of the class." FED. R. CIV. P. 23(a)(4). As discussed above, there are no conflicts between Representative Plaintiffs and Class Members, and Interim Lead Counsel's experience qualifies them to serve as class counsel. Accordingly, Rule 23(a)(4) and Rule 23(g) are satisfied.

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

Rule 23(b)(3) certification is proper where the 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). Plaintiffs must 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). Both prongs are satisfied.

1. Predominance

"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.,* 2014 WL 7882100, at *35. To satisfy predominance, 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.

"Predominance is a test readily met in certain cases alleging . . . violations of the antitrust laws." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *see also* William B. Rubenstein, 6 NEWBERG ON CLASS ACTIONS §§ 18:28 & 18:29 (5th ed. 2021) (antitrust conspiracy allegations generally involve predominance of common questions). Additionally, the "predominance inquiry

will sometimes be easier to satisfy in the settlement context." *In re Am. Int'l Grp.,* 689 F.3d at 240. 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.

If RBS and Deutsche Bank had not settled, common questions would have predominated over individual ones. Representative Plaintiffs and Class Members would address the same questions regarding conspiracy allegations, manipulation of Swiss franc LIBOR and the prices of Swiss Franc LIBOR-Based Derivatives, and the damages caused by the alleged manipulation. *In re GSE Bonds*, 414 F. Supp. 3d at 701-02 ("whether a price-fixing conspiracy exists is the central question in this case, outweighing any questions that might be particular to individual plaintiff").

2. Superiority

Rule 23(b)(3) "superiority" requires showing that a class action is superior to other methods for "fairly and efficiently adjudicating the controversy." FED. R. CIV. P. 23(b)(3). The 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 numerous 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*, Class Members have neither the incentive nor the means to litigate these claims. The damages most Class Members suffered are likely to be small compared to the considerable expense and burden of individual litigation. No other Class Member "has displayed any interest in bringing an individual lawsuit" by seeking to join this Action or by commencing a separate action. *See Meredith,* 87 F. Supp. 3d at 661. A class action allows claimants to "pool claims which would be uneconomical to

litigate individually." *Currency Conversion*, 224 F.R.D. at 566. "Under such circumstances, a class action is efficient and serves the interest of justice." *Id. Finally*, the prosecution of separate actions by hundreds (or thousands) of individual Class Members would impose heavy burdens upon the Court and create a risk of inconsistent adjudications among the Settlement Class. Both prongs of Rule 23(b)(3) are satisfied for conditional certification purposes.

III. THE COURT SHOULD APPROVE THE PROPOSED CLASS NOTICE PLAN AND EPIQ AS SETTLEMENT ADMINISTRATOR

Due process and Rule 23 require that the Class receive adequate notice of the Settlements. *Wal-Mart Stores*, 396 F.3d at 114. To be adequate, counsel must "act[] reasonably in selecting means likely to inform persons affected." *Soberal-Perez v. Heckler*, 717 F.2d 36, 43 (2d Cir. 1983); *Weigner v. City of New York*, 852 F.2d 646, 649 (2d Cir. 1988).

The proposed Class Notice plan and forms of notice (*see* Briganti Decl. Exs. 3-5) are "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). The direct-mailing notice component will involve sending the Long-Form Notice (Briganti Decl. Ex. 4) and the Claim Form (*id*. Ex. 6) via First-Class Mail, postage prepaid to potential Class Members. *See id.* Ex. 3 (Declaration of Cameron R. Azari, Esq. ("Anzari Decl.")). The Supreme Court has consistently found that mailed notice satisfies the requirements of due process. *See, e.g.*, *Mullane*, 339 U.S. at 319. The Settlement Administrator also will publish notice in various periodicals and publications, and through a digital media campaign. *See* Briganti Decl. Ex. 5. Class Members that do not receive the Class Notice via direct mail likely will receive notice via the publications or word of mouth. The Settlement Website, www.swissfrancliborclassactionsettlement.com, will serve as an information source regarding the Settlements. On the Settlement Website, Class Members can review and obtain: (i)

a blank Proof of Claim and Release form for the Settlements; (ii) the Long-Form and Short-Form Notices; (iii) the proposed Distribution Plan; (iv) the settlement agreements with each Settling Defendant; and (v) key pleadings and Court orders. The Settlement Administrator will also operate a toll-free telephone number to answer Class Members' questions and facilitate claims filing.

Interim Lead Counsel recommends Epiq as Settlement Administrator. Epiq developed the Class Notice plan in coordination with Interim Lead Counsel and has experience in administering class action settlements. *See* Anzari Decl.

IV. THE COURT SHOULD APPOINT CITIBANK, N.A. AS ESCROW AGENT

Interim Lead Counsel, with Settling Defendants' consent, have designated Citibank, N.A. to serve as Escrow Agent for the Settlements. Citibank has served as escrow agent in numerous settlements,[15] and has agreed to provide its services at market rates.

V. PROPOSED SCHEDULE OF EVENTS

In Appendix A, Representative Plaintiffs propose a schedule for issuance of Class Notice, objection and opt-out opportunities for Settlement Class Members, and Representative Plaintiffs' motions for final approval, attorneys' fees, expense reimbursements, and Incentive Awards. If the Court agrees, Representative Plaintiffs request that the Court schedule the Fairness Hearing for one hundred fifty-six (156) calendar days after entry of the Preliminary Approval Order, or at the Court's earliest convenience thereafter. The remaining deadlines will be determined by reference to the date the Preliminary Approval Order is entered or the Fairness Hearing date.

CONCLUSION

For the foregoing reasons, Representative Plaintiffs respectfully request that the Court grant this motion and enter the accompanying Preliminary Approval Orders.

[15] *See, e.g.*, *Boutchard v. Gandhi et al.*, No. 18-cv-7041 (N.D. Ill.); *Fund Liquidation Holdings LLC et al. v. Citibank, N.A. et al.*, No. 16-cv-5263 (AKH) (S.D.N.Y.).

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White Plains, New York

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APPENDIX A

PROPOSED SCHEDULE OF SETTLEMENT EVENTS	
Event	**Timing**
Deadline to begin mailing of Class Notice to Class Members and post the Notice and Claim Form on the Settlement Website (Preliminary Approval Order ("PAO")	60 days after entry of the Preliminary Approval Order
Substantial completion of initial distribution of mailed notices	100 days after entry of the Preliminary Approval Order
Deadline for Representative Plaintiffs to file papers in support of final approval and application for fees and expenses	42 days prior to the Fairness Hearing
Deadline for requesting exclusion and submitting objections	28 days prior to the Fairness Hearing
Deadline for filing reply papers	7 days prior to the Fairness Hearing
Fairness Hearing	156 days after the Preliminary Approval Order
Deadline for submitting Claim Forms	30 days after the Fairness Hearing