UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFFREY LAYDON, on behalf of himself and all others similarly situated,

Plaintiff,

- against -

THE BANK OF TOKYO-MITSUBISHI UFJ, LTD., THE SUMITOMO TRUST AND BANKING CO., LTD., THE NORINCHUKIN BANK, MITSUBISHI UFJ TRUST AND BANKING CORPORATION, SUMITOMO MITSUI BANKING CORPORATION, J.P. MORGAN CHASE & CO., J.P. MORGAN CHASE BANK, NATIONAL ASSOCIATION, J.P. MORGAN SECURITIES PLC, MIZUHO CORPORATE BANK, LTD., DEUTSCHE BANK AG, THE SHOKO CHUKIN BANK, LTD., SHINKIN CENTRAL BANK, UBS AG, UBS SECURITIES JAPAN CO. LTD., THE BANK OF YOKOHAMA, LTD., SOCIETE GENERALE SA, THE ROYAL BANK OF SCOTLAND GROUP PLC, THE ROYAL BANK OF SCOTLAND PLC, RBS SECURITIES JAPAN LIMITED, BARCLAYS BANK PLC, CITIBANK, NA, CITIGROUP, INC., CITIBANK, JAPAN LTD., CITIGROUP GLOBAL MARKETS JAPAN, INC., COOPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A., HSBC HOLDINGS PLC, HSBC BANK PLC, LLOYDS BANKING GROUP PLC, ICAP EUROPE LIMITED, R.P. MARTIN HOLDINGS LIMITED, MARTIN BROKERS (UK) LTD., TULLETT PREBON PLC, AND JOHN DOE NOS. 1-50,

Defendants.

Docket No. 12-cv-3419 (GBD)

FUND LIQUIDATION HOLDINGS LLC as assignee and successor-in-interest to Sonterra Capital Master Fund, Ltd., HAYMAN CAPITAL MASTER FUND, L.P., JAPAN MACRO OPPORTUNITIES MASTER FUND, L.P., and CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM, on behalf of themselves and all others similarly situated,

Plaintiffs,

- against -

UBS AG, UBS SECURITIES JAPAN CO. LTD., SOCIÉTÉ GÉNÉRALE S.A., NATWEST GROUP PLC, NATWEST MARKETS PLC, NATWEST MARKETS SECURITIES JAPAN LTD, NATWEST MARKETS SECURITIES, INC., BARCLAYS BANK PLC, BARCLAYS PLC, COÖPERATIEVE RABOBANK U.A., LLOYDS BANKING GROUP PLC, LLOYDS BANK PLC, NEX INTERNATIONAL LIMITED, ICAP EUROPE LIMITED, TP ICAP PLC, BANK OF AMERICA CORPORATION, BANK OF AMERICA, N.A., MERRILL LYNCH INTERNATIONAL, AND JOHN DOE NOS. 1-50,

Defendants.

Docket No. 15-cv-5844 (GBD)

MEMORANDUM OF LAW IN SUPPORT OF REPRESENTATIVE PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS WITH (1) BARCLAYS BANK PLC, BARCLAYS CAPITAL INC., AND BARCLAYS PLC, (2) NEX INTERNATIONAL LIMITED AND ICAP EUROPE LIMITED, AND (3) TP ICAP PLC

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INTRODUCTION

Representative Plaintiffs[1] move under Rule 23(e) of the Federal Rules of Civil Procedure for preliminary approval of (1) a **$17,750,000** Settlement with Defendants Barclays Bank PLC, Barclays Capital Inc., and Barclays PLC ("Barclays"); (2) a **$2,375,000** Settlement with Defendants Nex International Limited (f/k/a ICAP plc) and ICAP Europe Limited (collectively, "ICAP"); and (3) a **$2,375,000** Settlement with Defendant TP ICAP plc (f/k/a Tullett Prebon plc and n/k/a TP ICAP Finance plc) ("Tullett Prebon" collectively with Barclays and ICAP, the "Settling Defendants").[2] If the proposed settlements with Barclays, ICAP and Tullett Prebon (collectively, the "Settlements") are finally approved, it would bring the Settlement Class's total recovery in these Actions[3] to **$329,500,000.**

This Court previously approved similar settlements in these Actions between Plaintiffs and twelve Defendants[4] (collectively, the "Prior Settlements") providing the Settlement Class with cash consideration totaling **$307,000,000** and valuable cooperation that has assisted Plaintiffs with

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[1] "Representative Plaintiffs" includes Plaintiffs Jeffrey Laydon, the California State Teachers' Retirement System, Fund Liquidation Holdings, LLC, individually and as assignee and successor-in-interest to Sonterra Capital Master Fund, Ltd., Hayman Capital Master Fund, L.P., and Japan Macro Opportunities Fund, L.P.

[2] Attached as Exhibits 1-3 to Declaration of Vincent Briganti, dated July 22, 2022 ("Briganti Decl.") are the Stipulation and Agreement of Settlement between Representative Plaintiffs and Barclays dated July 22, 2022 ("Barclays Settlement Agreement"), the Stipulation and Agreement of Settlement between Representative Plaintiffs and ICAP, dated July 20, 2022 ("ICAP Settlement Agreement"), and the Stipulation and Agreement of Settlement between Representative Plaintiffs and Tullett Prebon dated July 20, 2022 ("Tullett Prebon Settlement Agreement," and with the Barclays Settlement Agreement and ICAP Settlement Agreement, the "Settlement Agreements"). Unless otherwise defined, capitalized terms in this memorandum of law have the same meaning as in the Settlement Agreements. Unless noted, ECF citations are to the docket in the *Laydon* Action and internal citations and quotation marks are omitted.

[3] The "Actions" means *Laydon v. Mizuho Bank, Ltd. et al.*, No. 12-cv-3419 (GBD) (S.D.N.Y.) ("*Laydon*") and *Sonterra Capital Master Fund Ltd., et al. v. UBS AG, et al*., No. 15-cv-5844 (GBD) ("*Sonterra*").

[4] R.P. Martin Holdings Limited and Martin Brokers (UK) Ltd. ("R.P. Martin"); Citibank, N.A., Citigroup Inc., Citibank Japan Ltd, and Citigroup Global Markets Japan Inc. ("Citi"); HSBC Holdings plc and HSBC Bank plc ("HSBC"); Deutsche Bank AG and DB Group Services (UK) Ltd; JPMorgan Chase & Co, JPMorgan Chase Bank, National Association, and J.P. Morgan Securities plc (JPMorgan"); The Bank of Tokyo-Mitsubishi UFJ, Ltd. and Mitsubishi UFJ Trust and Banking Corporation ("BTMU"); The Bank of Yokohama, Ltd ("BOY"), Shinkin Central Bank ("Shinkin"), Shoko Chukin Bank, Ltd ("Shoko Chukin"), Sumitomo Mitsui Trust Bank, Limited ("Sumitomo"), and Resona Bank, Ltd. ("Resona"); and Mizuho Bank, Ltd., Mizuho Corporate Bank, Ltd., and Mizuho Trust & Banking Co., Ltd. ("Mizuho"), The Norinchukin Bank ("Norichukin") and Sumitomo Mitsui Banking Corporation ("SMBC").

the continued prosecution of these Actions. *See* ECF Nos. 720, 838, 891, 1013, 1014 (orders granting final approval of Prior Settlements).

As discussed below, the Settlements fully satisfy the requirements for preliminary approval. *See* Argument. Accordingly, Representative Plaintiffs respectfully move the Court to enter the orders filed herewith ("Preliminary Approval Orders") that:

(a) preliminarily approve Representative Plaintiffs' proposed Settlements with Barclays, ICAP and Tullett Prebon, subject to later, final approval;

(b) conditionally certify a Settlement Class with respect to the claims against Barclays, ICAP, and Tullett Prebon, subject to later, final approval;

(c) appoint Lowey Dannenberg, P.C. ("Lowey Dannenberg") as Class Counsel for the Settlement Class;

(d) appoint Citibank, N.A. ("Citibank") as Escrow Agent for the Settlements;

(e) appoint A.B. Data, Ltd. ("A.B. Data") as the Settlement Administrator for the Settlements;

(f) approve the proposed forms of Class Notice to the Settlement Class (Briganti Decl., Exs. 5-7) and the proposed Notice plan (*id.* Ex. 4);

(g) set a schedule to consider the final approval of the Settlements, including the date, time, and place for a hearing to consider the fairness, reasonableness, and adequacy of the Settlements (the "Fairness Hearing); and

(h) stay all proceedings in these Actions related to Barcalys, ICAP, and Tullett Prebon except those relating to approval of the respective Settlement.

ARGUMENT[5]

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

A. The Preliminary Approval Standard

The Court may preliminarily approve and direct notice of the Settlements if it is likely that the Court, after a hearing, will find the Settlements satisfy Rule 23(e)(2) and the proposed

[5] The full procedural history of these Actions and information about the settlement negotiations with Barclays, ICAP, and Tullett Prebon are set forth in Briganti Decl. ¶¶ 5-39.

Settlement 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 the Rule 23(e)(2) standards at preliminary approval). "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, 117 (2d Cir. 2005) ("*Wal-Mart Stores"*); *see also 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).

In conducting a preliminary approval inquiry, a 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 Settlements here are entitled to an initial presumption of fairness and adequacy as they are the result of arm's length negotiations by experienced counsel. Further, the Settlements provide a significant benefit for the Settlement Class in the face of substantial costs and risks associated with continued litigation.

B. The Settlements Are Procedurally Fair

To assess procedural fairness, 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))[6] 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 representatives' 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.").

As this Court has recognized in connection with approving the Prior Settlements, Representative Plaintiffs' interests are aligned with those of the Settlement Class as they have transacted in Euroyen-Based Derivatives during the Class Period. Defendants' alleged manipulation caused artificial market prices not just for Representative Plaintiffs' transactions, but for the entire Euroyen-Based Derivatives market. *See* Third Amended Class Action Complaint, ECF No. 580 ("*Laydon* TAC"), at ¶¶ 1-3; *Sonterra*, Second Amended Class Action Complaint, ECF No. 489 ("*Sonterra* SAC") at ¶¶ 1-3. There are also no disabling conflicts of 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

[6] Courts analyze the adequacy of representation requirement of Rule 23(e)(2)(A) using the same considerations for representative adequacy under FED. R. CIV. P. 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."); *accord In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 701 (S.D.N.Y. 2019).

'fundamental'" to cause class representatives to be inadequate), *report and recommendation adopted*, 2015 WL 5093503 (E.D.N.Y. July 10, 2015). All Settlement Class Members, including Representative Plaintiffs, share interests in: (1) obtaining the largest possible monetary recovery from Defendants; (2) obtaining cooperation from the settling Defendants to facilitate the continued prosecution of non-settling Defendants; (3) developing a factual record sufficient to overcome any dispositive motions filed by non-settling Defendants; and (4) establishing non-settling Defendants' liability for the alleged manipulation of Yen-LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives.

As with the Prior Settlements, the California State Teachers' Retirement System ("CalSTRS") – the largest educator-only pension fund in the world and the second largest pension fund in the United States – was directly involved in negotiating the Settlements. Briganti Decl. ¶ 41. CalSTRS' role in this process as a named plaintiff in the *Sonterra* action and a member of the putative class in the Actions ensures that the Class Members' interests are adequately represented.[7]

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."); FED. R. CIV. P. 23(g). Lowey Dannenberg, as Lead Counsel, has led the prosecution of the Actions from their inception and negotiated these Settlements. Lead Counsel's extensive class action experience, including with complex antitrust and commodity price manipulation claims, is strong evidence that the Settlements are procedurally fair. *See* Briganti Decl., Ex. 8 (firm resume); *see also In re Currency Conversion Fee Antitrust*

[7] Judge Castel previously recognized the significance of CalSTRS' participation in the settlement process when granting final approval to a $309 million settlement in an action alleging the manipulation of the Euro Interbank Offered Rate ("Euribor") with some of the same Defendants as in these actions. *See* Transcript of Hearing at 8:25, *Sullivan v. Barclays PLC*, No. 13-cv-2811, (S.D.N.Y. May 18, 2018), ECF No. 434. ("I might add that this gives great comfort to a judge reviewing a proposed settlement, that there is someone separate from plaintiffs' counsel and the defendants who is also looking at the fairness of the process.").

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-cv-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). Lead Counsel also benefited from the expertise and participation of additional Plaintiffs' Counsel.[8] The combined expertise of Plaintiffs' Counsel was important in prosecuting the Action and achieving fair, reasonable and adequate settlements.

Lowey Dannenberg and additional Plaintiffs' Counsel were well informed about the strengths and weaknesses of the claims against Settling Defendants in advance of negotiating the Settlements. Before and during negotiations with Settling Defendants, Plaintiffs' Counsel reviewed and considered, among other things, documents and data produced during discovery, cooperation materials provided by the Prior Settlements, government settlements involving similar or related conduct involving other benchmarks; and decisions issued by this Court and others in benchmark rate litigation. Briganti Decl. ¶ 40. Lead Counsel and additional Plaintiffs' Counsel's investigation of the facts underlying the Actions and their preparation in every facet of prosecuting the Actions reinforce the adequacy of counsel and the adequacy of representation in these Actions. *See* Briganti Decl., ¶¶ 4, 40.

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

[8] Additional Plaintiffs' Counsel includes Berman Tabacco and Lovell Stewart Halebian Jacobson LLP.

arm's length"). That presumption applies here, as the Settlements were negotiated by knowledgeable counsel for Representative Plaintiffs and Settling Defendants, each with a deep understanding of the case's risks and the Settlements' benefits. Lead Counsel have decades of experience litigating antitrust and commodity price manipulation cases (among other complex class action cases). Briganti Decl. ¶ 46. Settling Defendants, for their part, are represented by skilled counsel from top international law firms with extensive experience in litigating antitrust and CEA class actions. *Id*. ¶ 40.

Settlement negotiations between Representative Plaintiffs and Barclays initially began in January 2015. *Id*. ¶ 42. These initial discussions included the exchange of views on factual and legal issues and was always adversarial. *Id*. ¶ 40. These initial discussions did not lead to a settlement. In May 2020 and then again in November 2021, the Parties again raised the possibility of reaching a settlement. *Id*. ¶ 43. Settlement negotiations resumed, with the Parties sharing their updated views on the case. *Id*. Representative Plaintiffs reached an agreement in principle with Barclays on March 4, 2022 and, after additional months of negotiations, executed the Barclays Settlement Agreement on July 22, 2022.

Negotiations between Representative Plaintiffs and ICAP started in January 2021. *Id*. ¶ 44. These discussions included the exchange of views on factual and legal issues and on the potential damages in the Actions. *Id*. After more than a year of negotiations, Representative Plaintiffs executed the ICAP Settlement Agreement on July 20, 2022. *Id*. ¶ 44.

Tullett Prebon and Representative Plaintiffs began their settlement discussion in approximately April 2022. *Id.* ¶ 45. Similar to the other negotiations, Representative Plaintiffs and Tullett Prebon shared their views on the facts, law and damages at risk in the Actions. *Id.* After several weeks of negotiations, Tullett Prebon and Representative Plaintiffs reached an

agreement in principle. *Id.* After several more weeks of negotiations, Tullett Prebon and Representative Plaintiffs executed the Tullett Prebon Settlement Agreement on July 20, 2022. *Id.*

Lead Counsel believe Representative Plaintiffs' claims have substantial merit but acknowledge the expense and uncertainty of continued litigation against Settling Defendants, which maintain that they have meritorious defenses to the claims of liability and damages made by Representative Plaintiffs. In recommending that the Court approve these Settlements, Lead Counsel have accounted for the uncertain outcome and the risks of further litigation and believe the Settlements confer significant benefits on Representative Plaintiffs and the Settlement Class now. Accordingly, there is "a strong initial presumption" that the compromise is fair and reasonable. *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1977) (observing that "great weight" is given to advice of experienced counsel).

Given Lead Counsel's considerable prior experience in complex class action litigation involving antitrust and CEA claims (among others), its knowledge of the strengths and weaknesses of Representative Plaintiffs' claims asserted in *Laydon* and *Sonterra*, its assessment of the Settlement Class's likely recovery following trial and appeal, and its experience negotiating with Settling Defendants, the Settlements here are entitled to a presumption of procedural fairness.

C. The Settlements Are Substantively Fair

If approved, these Settlements totaling $22,500,000 will be combined with the Prior Settlements in these Actions to provide the Settlement Class with a recovery to date of $329,500,000. Representative Plaintiffs successfully negotiated with Barclays, ICAP and Tullett Prebon to provide that none of the Settlement Amounts will revert to the Settling Defendants if the Settlements are finally approved, regardless of how many Class Members submit Proofs of Claim and Release forms. *See* Barclays Settlement Agreement § 10; ICAP Settlement Agreement § 10;

Tullett Prebon Settlement Agreement § 10. Because claim rates typically fall below 100%, the non-reversion term will substantially enhance Authorized Claimants' recovery.

These Settlements are a significant achievement because, after more than ten years of litigation, they continue to provide the Class one of the few (if not only) means of direct recovery for Settlement Class Members who allegedly suffered losses on their Yen-LIBOR, Euroyen TIBOR, and Euroyen-Based Derivatives Product transactions. The Settlements will also secure Settling Defendants' cooperation to aid in the prosecution of claims against the remaining non-settling Defendants. *See* Barclays Settlement Agreement § 4; ICAP Settlement Agreement § 4; Tullett Prebon Settlement Agreement § 4. Briganti Decl. ¶ 49.

In exchange for these benefits, the Settlement Class Members will release the Settling Defendants from all U.S.-based claims relating to the manipulation of Yen-LIBOR, Euroyen TIBOR, and Euroyen-Based Derivatives which Defendants allegedly manipulated. Briganti Decl. ¶ 49. Representative Plaintiffs will also voluntarily dismiss their claims against Barclays, ICAP and Tullett Prebon on the merits and with prejudice. These terms are substantively fair and 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*").

To assess substantive fairness, courts consider whether "the relief provided for the class is adequate," accounting for: "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." FED. R. CIV. P. 23(e)(2)(C). The court also considers whether a settlement "treats class members equitably relative to each other." FED. R. CIV. P. 23(e)(2)(D). Second Circuit courts also apply the factors

provided in *City of Detroit v. Grinnell Corp.,* 495 F.2d 448, 463 (2d Cir. 1974) ("*Grinnell*"),[9] which overlap with Rule 23(e)(2)(C)-(D). *See Payment Card*, 330 F.R.D. at 29. In this case, Rule 23(e)(2)(C)-(D) and *Grinnell* support preliminary approval of the Settlements.[10]

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 class wide recoveries and the likelihood of success in obtaining such results." *Payment Card*, 330 F.R.D. at 36. Satisfying this factor necessarily "implicates several *Grinnell* factors, 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 settlement relief against the strength of the plaintiffs' case, including the likelihood of a 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 [in class settlement agreements] are judged not in comparison with the possible recovery in the best of all possible worlds, but rather in light

[9] 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.

[10] For preliminary approval, the only appropriate considerations are *Grinnell* Factors 1, 4-6 and 8-9, which Plaintiffs have addressed below. *See In re Warner Chilcott Ltd. Secs. Litig.*, No. 06 Civ. 11515, 2008 WL 5110904, at *2 (S.D.N.Y. Nov. 20, 2008) ("Although a complete analysis of [the *Grinnell*] factors is required for final approval, at the preliminary approval stage, the [c]ourt need only find that the proposed settlement fits within the range of possible approval to proceed."); *see also* FED. R. CIV. P. 23(e)(2).

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).

The consideration that each Settlement provides falls well within the range of what the Court may consider reasonable at final approval. *NASDAQ II*, 176 F.R.D. at 102. The factual and legal issues in these Actions are complex and expensive to litigate. *See In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d at 693 (finding that the "complex issues of fact and law related to the sale of GSE bonds at different points in time" weighed in favor of preliminary approval); *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. at 123 ("The complexity of Plaintiff's claims *ipso facto* creates uncertainty.").

This case involves esoteric financial products and damages models, and significant discovery has been and will be necessary to develop a comprehensive understanding of the market and any alleged misconduct. Establishing liability would involve obtaining and proving the meaning and significance of evidence, including instant messages and emails, Yen-LIBOR, Euroyen TIBOR, and Euroyen-Based Derivatives transactions and trading patterns, profit and loss statements, deposition testimony, and other facts collected in discovery. As is always true in cases involving large document productions, the duration of the case will depend on the time that the non-settling Defendants require to produce their documents, and that the Parties require to review the Defendants' and non-party documents. This case has already resulted in the production of more than 1,100 gigabytes, yielding more than 2 million documents totaling millions of pages, 135,000 data files, and 112,000 audio files that Lead Counsel has reviewed and analyzed. Briganti Decl. ¶ 56.

Defendants have conducted and will conduct their own discovery, using the information they develop to provide alternative interpretation or explanations for the evidence supporting

Representative Plaintiffs' claims. Competing theories about the relevance of certain evidence may create ambiguities for the factfinder and make it difficult to establish liability.

Litigation costs in these Actions have been amplified due to the involvement of experts, and such costs will continue to rise if these cases continue. Expert discovery has been necessary given the complex subject matter in these Actions. Experts have been or will be retained to provide complex econometric and industry analyses, adding to the cost and duration of the case and triggering a "battle of the experts."[11] This expert discovery would likely have led to *Daubert* motion practice by both sides, further increasing the cost and risks of the litigation, and delaying any resolution. Given the complexities of these Actions and their focus on a market that would likely be unfamiliar to the average juror, these cases present a significant level of risk and uncertainty. *See Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 663 (S.D.N.Y. 2015).

Unlike the government, private antitrust plaintiffs must prove anticompetitive impact and damages to prevail. *Gottesman v. General Motors Corp*., 436 F.2d 1205, 1210 (2d Cir. 1971); *see also 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").[12] "Indeed, the history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at

[11] *See, e.g., In re Facebook, Inc., IPO Sec. & Derivative* Litig., 343 F. Supp. 3d 394, 410 (S.D.N.Y. 2018) (experts "tend[] to increase both the cost and duration of litigation"). "In this 'battle of experts,' it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors . . . ." *In re Warner Commc'ns Sec. Litig*., 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985).

[12] *Compare* Order Instituting Proceeding Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions, *In the Matter of: Total Gas & Power North America, Inc. and Therese Tran*, Docket No. 16-03 (CFTC Dec. 7, 2015) (fining respondent $3.6 million for manipulating natural gas prices), *with Harry v. Total Gas & Power N. Am., Inc.*, 889 F.3d 104, 114 (2d Cir. 2018) ("Plaintiffs have failed to provide facts sufficient to allege a plausible connection between their trading and [defendant's conduct]."); *see also Special Verdict on Indirect Purchases, In re TFT-LCD (Flat Panel) Antitrust Litig*., No. M 07-1827 SI (N.D. Cal. Sept. 3, 2013), ECF No. 8562.

trial, or on appeal." *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 476 (S.D.N.Y. 1998) ("*NASDAQ III*"). Representative Plaintiffs' impact and damages theories would have been sharply disputed prior to and at trial, likely involving competing expert opinions concerning what conduct (if any) could be considered actionable conduct to which compensable damages could be ascribed.

The risk of maintaining a class through trial is another important consideration in evaluating the Settlements. Though present in every class action, this risk is significant where defendants are likely to challenge class certification, including by petitioning for an interlocutory appeal under Rule 23(f). *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"). 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 Plaintiff's 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.

The Settlements add $22,500,000 to the recovery already achieved in these Actions and is greater than the maximum potential damages for which Settling Defendants would have argued they were liable had the case proceeded to trial. These Settlements represent an excellent recovery for the Class and a reasonable hedge against the risks of pursuing the claims against the Settling Defendants. *PaineWebber*, 171 F.R.D. at 125 ("'great weight' is accorded to the recommendations

of counsel, who are most closely acquainted with the facts of the underlying litigation"). The proposed Settlements provide "the immediacy and certainty of a recovery, against the continuing risks of litigation." *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 139 (S.D.N.Y. 2010). They exchange extensive prosecution costs and a lengthy litigation timeline as to these Settling Defendants with a real recovery and valuable information that Representative Plaintiffs and the Settlement Class may use to pursue claims against remaining Defendants. Accordingly, the Settlements are well within the range of that which may later be found to be fair, reasonable, and adequate at final approval. *NASDAQ II*, 176 F.R.D. at 102; Briganti Decl. ¶ 49.

2. The Distribution Plan Provides an Effective Method for Distributing Relief, Satisfying 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. In addition, "[a]n allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *Id*.

Here, this Court has previously found Representative Plaintiffs' Distribution Plan as fair and adequate in approving Prior Settlements in the *Laydon* and *Sonterra* actions. *See*, *e.g.*, ECF No. 891 ¶ 20; *see also Maley v. Del. Global Tech. Corp*., 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) ("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."). As previously described (ECF No. 590, at 9-10), Dr. Craig Pirrong created an "artificiality matrix" for Yen-LIBOR and Euroyen TIBOR, which is posted on the Settlement Website. The Net Settlement Fund will be distributed by multiplying the Net Settlement Fund by the Pro Rata Fraction. The denominator of the Pro Rata Fraction is the sum total of the Net Artificiality Paid by all Class Members who have positive Net Artificiality Paid (*i.e.*, they paid artificiality), and the numerator of the Pro Rata Fraction is each

Class Member's Net Artificiality Paid. For example, if the Class Member's Net Artificiality Paid constitutes 1% of the Net Artificiality Paid of all Class Members with positive Net Artificiality Paid, then that Class Member will receive 1% of the Net Settlement Fund. So, if the Net Settlement Fund is $15 million and a Class Member's Pro Rata Share is 1%, that Class Member will receive $150,000. This method will be used to determine the amount to be paid to each Class Member. *See* ECF No. 591-5 (Distribution Plan).

This methodology of allocating settlement proceeds based on the amounts of provable artificial impact has been approved as a fair, reasonable, and adequate method of allocating settlement funds not only by this Court but repeatedly by courts in other antitrust and CEA manipulation class action settlements as well. *See, e.g.*, *In re Platinum & Palladium Commodities Litig.*, 2014 WL 3500655, at *3 (allocations based on net artificiality on each trading day); *In re Amaranth Natural Gas Commodities Litig.*, No. 07-cv-6377, ECF No. 413 ¶ 6 (S.D.N.Y. May 23, 2012) (modifying final judgment to reflect plan of allocation). The Court should again approve the Distribution Plan for use in allocating proceeds from these Settlements.

3. The Requested Attorneys' Fees and Other Awards Are Limited to Ensure That the Settlement Class Receives Adequate Relief

Based on an agreed-upon fee scale with CalSTRS in its retention agreement, Plaintiffs' Counsel will seek no more than 20% or $4,500,000 in attorneys' fees, which may be paid upon final approval. This fee percentage is based on the retainer between Lowey Dannenberg, Berman Tabacco, and CalSTRS. After arm's length negotiations, Lowey Dannenberg, Berman Tabacco, and CalSTRS executed a retainer that contains a graduated contingent fee structure based on the total amounts recovered to date. *See* ECF No. 872 (Declaration of Brian J. Bartow) ¶¶ 5-7. The proposed attorneys' fee percentage is comparable to sliding fee schedules used to approve fee awards in other similarly complex class actions. *See, e.g.*, *In re Payment Card Interchange Fee &*

Merch. Disc. Antitrust Litig., 991 F. Supp. 2d 437, 445 (E.D.N.Y. 2014) (approving fee schedule proposing 20% fee for the marginal settlement recoveries between $100 million to $500 million and 15% fee for marginal recoveries between $500 million and $1 billion).

Plaintiffs' Counsel will also seek no more than $250,000 as reimbursement for their expenses incurred since the Prior Settlements, and an award to replenish the litigation fund created to reimburse their costs and expenses in the amount of up to $500,000. Representative Plaintiffs will also seek service awards totaling no more than $450,000. Lead Counsel will separately file their Fee and Expense Application seeking approval of the requested awards.

4. There Are No Unidentified Agreements That Impact the Adequacy of the Relief for the Settlement Class

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 sets forth all such terms or specifically identifies all other agreements that relate to the Settlements (namely, the Supplemental Agreements). *See* Briganti Decl., Ex. 1, § 23, Ex. 2, § 23, Ex. 3, § 23. Each Supplemental Agreement provides the respective Settling Defendants with a qualified right to terminate the Settlement Agreement 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 Settlements.[13]

5. The Settlements Treat the Settlement Class Equitably and Do Not Provide Any Preferences

The Settlements also "treats 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

[13] *See, e.g.*, *In re Carrier IQ, Inc., Consumer Privacy Litig.*, No. 12-md-2330, 2016 WL 4474366, at *5, 7 (N.D. Cal. Aug. 25, 2016) (observing that such "opt-out deals are not uncommon as they are designed to ensure that an objector cannot try to hijack a settlement in his or her own self-interest," and granting final approval of class action settlement); *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.").

Fund among Authorized Claimants, a method this Court has already approved as fair, reasonable, and adequate. *See, e.g.,* ECF Nos. 891 ¶ 20, 1013 ¶ 20, 1014 ¶ 20; *see also Payment Card*, 330 F.R.D. at 47 (finding that "pro rata distribution scheme is sufficiently equitable"). The Settlements do not favor or disfavor any of the Representative Plaintiffs or Settlement Class Members; nor does it discriminate against, create any limitations, or exclude from payments any persons or groups within the Settlement Class. *See NASDAQ II*, 176 F.R.D. at 102. All Settlement Class Members would release Settling Defendants with respect to claims based on the same factual predicate of these Actions. 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 release.

6. The *Grinnell* Factors Not Expressly Addressed Above Also Support Approval of the Settlements

a. <u>The reaction of the Settlement Class to the Settlements.</u>

Consideration of this *Grinnell* factor is premature prior to the Class receiving notice of the Settlements. *See In re GSE Bonds*, 414 F. Supp. 3d at 699 n.1. Representative Plaintiffs, including CalSTRS, the largest education-only retirement fund in the U.S., support the Settlements here. Briganti Decl. ¶ 41. Class Members overwhelmingly supported the earlier settlements approved by the Court, as reflected by the low number of opt-outs and lack of any objections compared to the thousands of claims that were filed. *See* ECF Nos. 720 ¶¶ 6-7, 838 ¶¶ 6-7, 891 ¶¶ 6-7, 1013 ¶¶ 6-7,1014 ¶¶ 6-7. As these Settlements and the earlier settlements share the same structure, a comparable reaction by the Class is likely. Moreover, any Class Member who does not favor the Settlements can opt out.

b. <u>The stage of the proceedings.</u>

The relevant inquiry for this factor 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." *In re AOL Time Warner, Inc*., No. 02-cv-5575 (SWK), 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006); *see also In re Global Crossing Sec. & ERISA Litig*., 225 F.R.D. 436, 458 (S.D.N.Y. 2004) ("[T]he question is whether the parties had adequate information about their claims."). This factor does not require extensive discovery, or indeed any discovery at all, "as long as '[counsel] have engaged in sufficient investigation . . . to enable the Court to 'intelligently make . . . an appraisal' of the settlement.'" *AOL Time Warner*, 2006 WL 903236, at *10.

Over the last ten years, Lead Counsel, on behalf of Representative Plaintiffs, have conducted extensive factual and legal research and consulted experts to assess the merits of their claims. Briganti Decl. ¶ 56. Lead Counsel have reviewed, among other things, publicly available information, including government pleas, non-prosecution agreements, and deferred prosecution agreements, cooperation materials provided by Prior Settlements, and discovery materials produced by Settling and Non-Settling Defendants. The substantial information and discovery involved in these Actions allowed Lead Counsel to be well informed about the strengths and weaknesses of the claims and the advantages of the Settlements, and to recommend the Settlements to Representative Plaintiffs. Accordingly, Plaintiffs' Counsel's well-informed views of the strength of claims and likely defenses weigh in favor of preliminary approval.

c. The ability of Settling Defendants to withstand greater judgment.

The Settling Defendants can withstand a judgment greater than their respective Settlement Amounts, but this factor alone does not affect each Settlement's reasonableness. *See In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. at 460 (a defendant's ability to "pay more than it offers in settlement does not, standing alone, indicate that the settlement is unreasonable or inadequate"); *In re Tronox Inc.*, No. 14-cv-5495 (KBF), 2014 WL 5825308, at *6 (S.D.N.Y. Nov. 10, 2014).

II. THE COURT SHOULD CONDITIONALLY CERTIFY THE PROPOSED CLASS

As the Court already found when preliminarily approving the Prior Settlements, the proposed Settlement Class meets the requirements. *See In re Am. Int'l Grp., Inc. Sec. Litig.*, 689 F.3d 229, 238-40 (2d Cir. 2012) (discussing analysis for certifying a settlement class). The Court should again conditionally certify the Settlement Class as to the claims against the Settling Defendants.

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). "Sufficient numerosity can be presumed at a level of forty members or more." *In re Initial Pub. Offering Sec. Litig*. (*"IPO"*), 260 F.R.D. 81, 90 (S.D.N.Y. 2009). Here, there are thousands of geographically dispersed persons and entities that fall within the Settlement Class definition. *See* Briganti Decl. ¶ 51. Joinder would be impracticable.

2. Commonality

Commonality only requires the presence of a single common question of law or fact capable of class-wide proof. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011); FED. R. CIV. P. 23(a)(2). This case presents scores of common questions of law and fact concerning, among other issues, personal and subject matter jurisdiction, the standards for an unlawful agreement, and multiple questions that Defendants raised in their motions to dismiss. For example:

1. What constitutes a false or manipulative submission by a Yen-LIBOR or Euroyen TIBOR contributor panel bank? This threshold question involves issues of fact that will be of overriding importance in this litigation.

2. Which Defendants engaged in manipulative and/or conspiratorial conduct in Yen-LIBOR and Euroyen TIBOR, and for what period(s) were they involved in the same?

3. What would the non-manipulated Yen-LIBOR and Euroyen TIBOR be in the "but-for" world for each day of the Class Period?

These common questions of law and fact are also common to all Class Members. Thus, the Settlements easily satisfies Rule 23(a)(2).

3. Typicality

Typicality under Rule 23(a)(3) requires that "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). 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.'"). Here, Representative Plaintiffs' and Class Members' claims arise from the same course of conduct involving Defendants alleged false reporting and manipulation of Yen-LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives. Representative Plaintiffs' claims are typical of the Class Members' claims for purposes of the Settlements. *See, e.g., Marisol A. v. Giuliani*, 126 F.3d 372, 376-77 (2d Cir. 1997).[14]

4. Adequacy

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." FED. R. CIV. P. 23(a)(4); *Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 222 F.3d 52, 61 (2d Cir. 2000). As discussed above, there are no conflicts between Representative Plaintiffs and Class Members, and Representative Plaintiffs' interest in proving liability and

[14] *See also In re Amaranth Nat. Gas Commodities Litig.*, 269 F.R.D. 366, 379 (S.D.N.Y. 2010) (finding typicality where plaintiffs and the class "transacted in the same contracts, in the same centralized marketplace, [and] were allegedly negatively impacted by the same common course of manipulative conduct for which the same group of defendants is alleged to be legally responsible for the damages"); *Ploss v. Kraft Foods Grp., Inc.*, 431 F. Supp. 3d 1003, 1011 (N.D. Ill. 2020) ("A plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and is based on the same legal theory.").

damages wholly aligns with the Settlement Class' interest. Further, as this Court has previously found, Lead Counsel are highly experienced in complex CEA and antitrust class actions and are adequate class counsel. Accordingly, the requirements of both Rule 23(a)(4) and Rule 23(g) are satisfied.

B. The Class May Be Certified Under 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). To satisfy Rule 23(b)(3), Representative 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).

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. Antitrust Litig.*, No. 06-md-1775 (JG)(VVP), 2014 WL 7882100, at *35 (E.D.N.Y. Oct. 15, 2014), *adopted,* 2015 WL 5093503 (E.D.N.Y. July 10, 2015). To satisfy the predominance requirement, a plaintiff must show "that the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole, . . . predominate over those issues that are subject only to individualized proof." *Brown*, 609 F.3d at 483 (ellipses in original).

Here, if the claims against Settling Defendants were not settled, common questions would have predominated over individual ones. All Representative Plaintiffs and Class Members must

answer the same questions regarding personal jurisdiction, subject matter jurisdiction, conspiracy, unlawful Yen-LIIBOR and Euroyen TIBOR manipulation, and the amount of such manipulation. *See Cordes & Co. Fin. Servs., Inc. v. A.G. Edwards & Sons, Inc*., 502 F.3d 91, 105 (2d Cir. 2007) ("allegations of the existence of a price-fixing conspiracy are susceptible to common proof"). Therefore, the Settlement Class satisfies Rule 23(b)(3) for purposes of the Settlements.

2. Superiority

Representative Plaintiffs must also show that a class action is superior to individual actions.[15] Here, a class action is the superior method for the fair and efficient adjudication of this Action. *First*, Settlement 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, many Class Members have neither the incentive nor the means to litigate these claims individually. No Class Member "has displayed any interest in bringing an individual lawsuit." *See Meredith Corp.*, 87 F. Supp. 3d at 661. The damages most Class Members suffered are likely small compared to the considerable expense and burden of individual litigation. This makes it uneconomic for an individual to protect his/her rights through an individual suit. A class action allows claimants to "pool claims which would be uneconomical to litigate individually," as "no individual may have recoverable damages in an amount that would induce him to commence litigation on his own behalf." *Currency Conversion*, 224 F.R.D. at 566.

Third, the prosecution of separate actions by hundreds (or thousands) of individual Settlement Class Members would impose heavy burdens upon the Court. It would create a risk of

[15] Superiority considers: "(A) the class members' interest in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the likely difficulties in managing a class action." FED. R. CIV. P. 23(b)(3).

inconsistent or varying adjudications of the questions of law and fact common to the Settlement Class. Thus, both prongs of Rule 23(b)(3) are satisfied for purposes of the Settlements.

III. THE COURT SHOULD APPROVE THE PROPOSED CLASS NOTICE PLAN AND A.B. DATA, LTD. 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, the method(s) used to issue notice must be reasonable. *See 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 Notice and notice program—consisting of mailed, e-mailed, published, and online notice—is similar to the programs previously approved and successfully used for the Prior Settlements. *See, e.g.*, ECF No. 959-2 through 959-5 (describing the notice program), ECF No. 1013 (approving notice program); *see also* Briganti Decl., Ex. 4 (Declaration of Linda V. Young) ("Young Decl.") (describing the notice program). The Supreme Court has consistently found that mailed notice satisfies the requirements of due process. *See, e.g.*, *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 319 (1950). The direct-mailing notice component of the notice program will involve sending the Mailed Notice (Briganti Decl., Ex. 5) and the Proof of Claim and Release form (*id.*, Ex. 7) via First-Class Mail, postage prepaid to potential Settlement Class Members. Class Members that previously submitted claims will be e-mailed copies of the Publication Notice (*id.*, Ex. 6). The Notice carefully details the nature of the Actions and the Settlement Class, provides an ample "Background of the Litigation," which describes the claims, issues, and/or defenses presented in the Actions, and advises that the Court's Final Judgment will be binding for all Class Members that remain in the Class. Class Members are also advised of their opportunity to share their views on the Settlements with the Court. Claimants from the Prior Settlements will

not have to file a new Proof of Claim and Release, if one was previously submitted, to participate in these Settlements.

By sending the Publication Notice to claimants in Prior Settlements and sending the Mailed Notice to others identified as having traded Yen-LIBOR, Euroyen TIBOR, and Euroyen-Based Derivatives, notice is reasonably calculated to reach all Settlement Class Members.

As a supplement, the Settlement Administrator also will publish the Publication Notice in *The Wall Street Journal*, *Investor's Business Daily*, *The Financial Times*, *Barron's*, *Stocks & Commodities*, *Hedge Fund Alert*, *Grant's Interest Rate Observer*, *EuroMoney Magazine*. Young Decl. ¶ 7. Banner ads will appear on targeted financial websites such as GlobalCapital.com, marketplace.com, cnbc.com, finance.yahoo.com, and hundreds of others, and newsfeed ads will be purchased on LinkedIn and microtargeted to individuals who may be Class Members. Young Decl. ¶¶ 8-9. The Settlement Administrator will disseminate a news release announcing the Settlements via *PR Newswire's* US1 Newsline distribution list, which reaches the news desks of approximately 10,000 newsrooms. Any Settlement Class Members that do not receive Class Notice directly will likely learn about the Class Notice in publications or word of mouth. The Settlement Website, www.EuroyenSettlement.com, will continue to serve as a source to obtain necessary information regarding the Settlements. The Settlement Administrator will continue operating a toll-free telephone number to answer questions and facilitate the filing of claims.

Lead Counsel recommends that A.B. Data, Ltd. ("A.B. Data") be appointed as Settlement Administrator. A.B. Data developed the Class Notice plan here and in the Prior Settlements with Lead Counsel and is administering the claims in these Actions.

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

Lead Counsel have designated Citibank, N.A. ("Citibank") to serve as Escrow Agent, to which Settling Defendants have consented. Citibank has served as escrow agent in these Actions and in other class action settlements.[16] Citibank has agreed to provide its services at market rates.

V. PROPOSED SCHEDULE OF EVENTS

In Appendix A, Representative Plaintiffs propose a schedule for the issuance of Class Notice, filing of objection and opt-out requests, the filing of Representative Plaintiffs' motions for final approval and Service Awards, and the filing of Plaintiffs' Counsel's motion for attorneys' fees and expense reimbursements. If the Court agrees, Representative Plaintiffs request that the Court schedule the Fairness Hearing for a date at least one hundred fifty (150) calendar days after entry of the Preliminary Approval Order, or at the Court's earliest convenience thereafter. If the Court grants preliminary approval as requested, the only date that the Court need schedule is the date for the Fairness Hearing. The remaining dates will be determined by the date the Preliminary Approval Order is entered and the Fairness Hearing date.

CONCLUSION

For the foregoing reasons, Representative Plaintiffs respectfully request that the Court grant Representative Plaintiffs' Motion for Preliminary Approval of Settlement Agreements with Barclays, ICAP and Tullett Prebon and enter the accompanying Preliminary Approval Orders.

[16] *See*, *e.g.*, *Boutchard v. Gandhi et al.*, No. 18-cv-7041 (N.D. Ill.); *In re JPMorgan Precious Metals Spoofing Litig.*, No. 18-cv-10356 (GHW) (S.D.N.Y.); *In re JPMorgan Treasury Futures Spoofing Litig.*, 20-cv-3515 (PAE) (S.D.N.Y.).

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Respectfully submitted,

LOWEY DANNENBERG, P.C.

/s/ Vincent Briganti

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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 (the "Notice Date")	30 days after entry of the Preliminary Approval Order ("PAO")
Substantial completion of initial distribution of mailed notices	90 days after the Notice Date
Postmark Deadline for requesting exclusion	35 days prior to the Fairness Hearing
Filing Deadline for submitting objections	35 days prior to the Fairness Hearing
Deadline for Representative Plaintiffs to file papers in support of final approval and application for attorneys' fees, payment of expenses, and Representative Plaintiffs Service Awards	5 days prior to the Fairness Hearing
Fairness Hearing	150 days after PAO
Postmark Deadline for submitting Claim Forms	45 days after the Fairness Hearing