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Plaintiffs Alaska Department of Revenue, Treasury Division, Alaska Permanent Fund Corporation, and Iron Workers Pension Plan of Western Pennsylvania (collectively “Plaintiffs”), respectfully submit this Memorandum in Support of their Motion for entry of the Proposed Order Providing for Notice to the Settlement Classes and Preliminarily Approving the Plan of Allocation under Federal Rule of Civil Procedure 23(c) and (e) (the “Proposed Order”).

PRELIMINARY STATEMENT

Plaintiffs and the Settling Defendants have reached proposed Settlements in this action that would resolve all claims against Settling Defendants in exchange for cash payments of \$95,500,000 for the benefit of the Settlement Classes.¹ The Court previously entered orders preliminarily approving each of the three proposed Settlements, certifying the Settlement Classes, and appointing Co-Lead Counsel and class representatives. *See* ECF Nos. 428, 431, 580.

Determinations related to notice to members of the Settlement Classes and the distribution of settlement funds were deferred pending the production and analysis of Settling Defendants’ transactional data. Plaintiffs have met and conferred with Settling Defendants, and pursuant to the Settlement Agreements, Settling Defendants have agreed to supply the names and addresses of potential members of the Settlement Classes who can be identified based on reasonably available records within Settling Defendants’ possession. This name and address information will cover counterparties to Settling Defendants’ U.S. dollar-denominated (“USD”) SSA Bonds Transactions during the vast majority of the core conspiracy period (*i.e.*, 2009 through 2015) alleged in the

¹ “Settling Defendants” means Bank of America Corporation, Bank of America, N.A., Merrill Lynch International, Bank of America Merrill Lynch International Limited, Merrill Lynch, Pierce, Fenner & Smith Incorporated (collectively “Bank of America”), Deutsche Bank AG, Deutsche Bank Securities Inc. (collectively “Deutsche Bank”), HSBC Securities (USA) Inc. and HSBC Bank plc (collectively “HSBC”). All capitalized terms not defined herein have the same meaning as in the Stipulations and Agreements of Settlements (“Settlement Agreements”), which the Court has preliminarily approved. Citations are omitted and emphasis added unless noted.

complaint. This data, combined with the additional measures set forth in Plaintiffs' Notice plan, provides the information needed to direct the best notice practicable under the circumstances to members of the Settlement Classes. Plaintiffs now respectfully request the Court enter the Proposed Order, approving the proposed forms and manner of notice and preliminarily approving Plaintiffs' proposed Plan of Allocation.

Plaintiffs also respectfully request that the Court appoint Angeion Group ("Angeion") as the Claims Administrator in connection with the Settlements. Given Co-Lead Counsel's extensive knowledge and experience in working with various claims administrators, Co-Lead Counsel has determined that the selection of Angeion is in the best interest of the Settlement Classes. Angeion has extensive experience administering claims processes in complex class-action cases such as this one. The details of the proposed Notice plan are summarized below and set forth in detail in the accompanying Declaration of Steven Weisbrot on behalf of Angeion Group, LLC ("Weisbrot Decl."), a class action notice specialist employed by Angeion.

As detailed below, Plaintiffs' proposal is to combine Notice of all three Settlements into one Notice and mailing, which will be more efficient and result in savings to the Settlement Classes. Plaintiffs have developed an effective Notice plan that includes direct notice by mail to members of the Settlement Classes reasonably identifiable from Settling Defendants' transactional data, supplemented by publication of summary notice in prominent and widely distributed national and global news outlets. They also plan to provide online notice via a dedicated settlement website. The proposed notices explain clearly and concisely the terms of the proposed Settlements, options for members of the Settlement Classes, and deadlines for exercising them. The Notices also explain the terms of the proposed Settlements, and provide further resources, including contact information for

the Claims Administrator and Co-Lead Counsel, should potential members of the Settlement Classes have any questions.

Plaintiffs' proposed Plan of Allocation has been drafted by experienced and informed counsel to efficiently and equitably distribute the settlement funds to qualified members of the Settlement Classes. Plaintiffs seek preliminary approval of the proposed Plan of Allocation, which requires only that the Plan of Allocation be sufficiently reasonable to be sent to members of the Settlement Classes for their consideration prior to the Fairness Hearing to be set by the Court. Entry of the Proposed Order will permit Plaintiffs to begin the process of providing notice of the Settlements and their terms to persons who are believed to be potential members of the Settlement Classes.

The Proposed Order approves the form and content of the proposed Notice, Claim Form, and Summary Notice (defined below), which are attached as Exhibits A-1, A-2, and A-3 respectively, to the Proposed Order; and finds that the procedures for distribution of the Notice and proof of claim and release form ("Claim Form") and publication of the Notice constitute the best notice practicable under the circumstances and comply with the requirements of due process and Federal Rule of Civil Procedure 23. The Proposed Order also sets a schedule and procedures for mailing and publishing Notice; requesting exclusion from the Settlements; objecting to the Settlements, the proposed Plan of Allocation, and/or Co-Lead Counsel's application for attorneys' fees and expenses; submitting papers in support of final approval of the Settlements and Co-Lead Counsel's application for attorneys' fees and expenses; and the Fairness Hearing. Finally, the Proposed Order preliminary approves the proposed Plan of Allocation, attached as Exhibit A-5 to the Proposed Order.

ARGUMENT

I. THE PROPOSED MANNER AND FORMS OF NOTICE SHOULD BE APPROVED

Federal Rule of Civil Procedure 23(e)(1) provides “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the [proposed settlement].” Fed. R. Civ. P. 23(e)(1)(B). Where a settlement class has been certified under Rule 23(b)(3), as is here, “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). Notice must clearly state: (1) the nature of the action; (2) the class definition; (3) the claims, issues, or defenses; (4) that a class member may enter an appearance through an attorney if the member so desires; (5) that the court will exclude any member from the class who so requests; (6) the time and manner for requesting exclusion; and (7) the binding effect of a class judgment. *Id.*

There are no “rigid rules” that apply when determining the adequacy of notice for a class action settlement. Ultimately, the test for proposed notice to class members is reasonableness. *See In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 702 (S.D.N.Y. 2019). Rule 23 “accords considerable discretion to a district court in fashioning notice to a class.” *In re Agent Orange Prods. Liab. Litig.*, 818 F.2d 145, 168 (2d Cir. 1987); *see also Manual for Complex Litigation* §21.311 (4th ed.) (“Determination of whether a given notification is reasonable under the circumstances of the case is discretionary.”). Accordingly, “[n]otice need not be perfect, but need be only the best notice practicable under the circumstances, and each and every class member need not receive actual notice, so long as class counsel acted reasonably in choosing the means likely to inform potential class members.” *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, No. 02 Civ. 3176(JFK), 2007 WL 313474, at *8 (S.D.N.Y. Feb. 1, 2007).

The proposed Notice provides straightforward but detailed information about the case and the Settlements, and gives members of the Settlement Classes a full and fair opportunity to consider the proposed Settlements and consider a course of action. Notice will advise potential members of the Settlement Classes of: (i) the pendency of the class action; (ii) the essential terms of the Settlements; and (iii) information regarding Co-Lead Counsel's application for attorneys' fees and expenses. Notice will also provide specifics on the date, time, and place of the Fairness Hearing, and will set forth the procedures for objecting to the Settlements, the proposed Plan of Allocation, and/or Co-Lead Counsel's application for attorneys' fees and expenses, and the procedure for requesting exclusion from the Settlements. Plaintiffs respectfully submit that the proposed Notice and related procedures constitute the best notice that is practicable under the circumstances and should be approved.

A. The Proposed Manner of Notice Should Be Approved

Plaintiffs here propose a robust Notice plan that would direct the best notice practicable. Plaintiffs' proposed Notice plan seeks to reach the greatest number of members of the Settlement Classes possible through a wide distribution in a variety of channels, including individual notice to members of the Settlement Classes by mail, supplemented by publication notice in national and international publications, and the establishment of a dedicated settlement website.

Mail Notice to Potential Members of the Settlement Classes. Plaintiffs propose to provide individual notice of the Settlement Agreements to potential members of the Settlement Classes "who can be identified through reasonable effort[s]" using Settling Defendants' transactional data. Fed. R. Civ. P. 23(c)(2)(B). Plaintiffs anticipate that the vast majority of members of the Settlement Classes who are able to be "identified through reasonable effort" will be those individuals identified by Settling Defendants' transactional data. Individual notice to those members of the Settlement

Classes would be disseminated by the Claims Administrator or in the case of foreign members of the Settlement Classes, as described below, by the Settling Defendants, or an agent of Settling Defendants. The proposed Notice plan consists of a long-form, or mail Notice, summary notice via publication (“Summary Notice”), and notice via dedicated settlement website.

Identification of Potential Members of the Settlement Classes. Pursuant to the terms of the Settlement Agreements, each Settling Defendant has provided or agreed to provide Co-Lead Counsel and the Claims Administrator with the “names and addresses of members of the Settlement Class who were counterparties with or transacted in SSA Bonds” with the Settling Defendants during the relevant time period(s), and to the extent that such information is reasonably available to Settling Defendants. *See* ECF Nos. 291-1, at ¶8.6 (Bank of America); 291-2, at ¶8.6 (Deutsche Bank); 554-1, at ¶8.6 (HSBC). Plaintiffs have met and conferred with Settling Defendants to ensure they obtain this information, and Settling Defendants have complied or are currently working to comply with their obligations under the Settlement Agreements to ensure “the best notice that is practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B). Specifically:

- ***Bank of America*** has produced name and address information for counterparties who traded USD SSA Bonds from November 2010 through December 2015 with Merrill Lynch, Pierce, Fenner & Smith Incorporated, the U.S.-based Bank of America entity engaged in SSA Bonds trading during the relevant time periods. Bank of America also conducted non-U.S. trading of SSA Bonds through London-based Merrill Lynch International (“MLI”). For MLI counterparties who traded USD SSA Bonds from January 2009 through December 2015, Bank of America has agreed to distribute Notice and Claim Forms using the services of Rust Consulting Inc., in order to properly address any foreign privacy law issues.
- ***Deutsche Bank*** has produced the names of counterparties who traded USD SSA Bonds from July 2009 through April 2014, and is currently working to produce name and address information for counterparties for a broader timeframe on a rolling basis. Deutsche Bank has informed Plaintiffs that it expects to produce name and address information for counterparties who traded USD SSA Bonds from 2009 through 2015 within the next two weeks.

- **HSBC** has informed Plaintiffs that it is working to locate and produce the counterparty name and address information required for notice, but is not currently able to access and produce this information due to the mandated stay-at-home orders to which HSBC's employees have been subject during the COVID-19 pandemic.

The name and address information Plaintiffs have received from Bank of America, combined with the information Deutsche Bank and HSBC will produce, is sufficient to identify the potential members of the Settlement Classes. Each Settling Defendant has produced or confirmed that it will produce all counterparty name and address information in its "possession, custody or control, that is reasonably available to [them] and would not constitute a substantial burden or expense," covering the vast majority of the core conspiracy period alleged in the Complaint. ECF Nos. 291-1, at ¶8.6 (Bank of America); 291-2, at ¶8.6 (Deutsche Bank); 554-1, at ¶8.6 (HSBC). With respect to Deutsche Bank and HSBC, as discussed below, Plaintiffs propose to inform the Court when those Settling Defendants have completed their productions of the necessary name and address information, so that the actual Notice may be disseminated to members of the Settlement Classes at that time, in accordance with the proposed schedule outlined below.

Mail Notice Procedures. The majority of the mailing of the mail Notice will be conducted by the Claims Administrator, who will distribute the long-form Notice and Claim Form via United States Postal Service First Class mail, postage prepaid. It will be directed to potential members of the Settlement Classes whose names and addresses have been identified through reasonable effort through records maintained by Settling Defendants. *See supra*, §I.A.; Weisbrot Decl. ¶¶10, 13.

For certain members of the Settlement Classes, and as contemplated in the Settlement Agreements, if necessary, Settling Defendants will effectuate Notice through an alternative method to ensure compliance with certain countries' bank secrecy laws, data privacy laws, and/or similar confidentiality protections, which may prohibit certain members of the Settlement Classes or entities

being identified to the Claims Administrator or Co-Lead Counsel. *See* Weisbrot Decl. ¶13 n.1. For this population of the Settlement Classes, the Settling Defendant(s) will engage Rust Consulting, Inc., a firm with significant experience in providing notice in class actions, or another such firm, to distribute the Notice and Claim Form where foreign privacy laws are at issue. Once a Claim Form is submitted, the claims process for all claimants will proceed along the same track, whether the claimant was mailed the Notice by the Claims Administrator, Settling Defendants, or an agent of Settling Defendants, and as such, the Claims Administrator will retain responsibility for claims intake, administration, and fulfillment regardless of the location of the claimant.

In addition, the Claims Administrator will contact third party brokerage firms that may have traded SSA Bonds on behalf of members of the Settlement Classes, and request that these brokers assist in disseminating Notice to such customers. *See* Weisbrot Decl. ¶¶10, 13. Firms that maintain trading records for client accounts, and generate and distribute trading records to clients, are typically a reliable source from which to ascertain the names and addresses of additional potential settlement class members in an administratively feasible manner.

Publication Notice in Widely-Circulated Media. In addition to the mail Notice, the Claims Administrator will publish the Summary Notice in widely-circulated newspapers and on widely viewed financial websites of relevance to potential members of the Settlement Classes. Specifically, the Claims Administrator shall cause the Summary Notice, substantially in the form attached as Exhibit A-3 hereto, to be published once in the national edition of *The Wall Street Journal* and via *The Wall Street Journal* display network, once in print and digital e-editions of *Financial Times*, *The Economist*, *Bloomberg Businessweek*, and *The New York Times*, and once in the publications *The Bond Buyer* and *EuroMoney*. *See* Weisbrot Decl. ¶¶23-24. Additionally, banner notices will be placed on relevant financial focused websites; a press release will be sent over *PR Newswire*, and

sponsored internet search listings will be used to direct traffic to the settlement website (discussed below). Weisbrot Decl. ¶¶10, 21-22, 26. Plaintiffs believe Summary Notice in these publications and through a dedicated website provide a valuable supplement to the already thorough individual mail Notice plan. In the Proposed Order, Co-Lead Counsel request permission to expand the publication plan without further Court order, if prudent and following consultation with the Claims Administrator and Settling Defendants.

Settlement Website and Phone Contact Information. Plaintiffs will also engage the Claims Administrator to establish a website dedicated to the Settlements at www.SSABondsAntitrustSettlement.com. Weisbrot Decl. ¶27. This will enable any potential member of the Settlement Classes to easily access information about the proposed Settlements, including the notice and claims process, and to file claims. All documents related to the notice and claims process, including copies of the mail and summary Notices, along with the Settlement Agreements and key case materials such as Plaintiffs' complaint, will also be posted on the Settlement website. *See* Weisbrot Decl. ¶27. The Claims Administrator will also establish a toll-free telephone number to answer the questions of potential members of the Settlement Classes. *See* Weisbrot Decl. ¶28.

Courts routinely approve multi-faceted notice programs like the one proposed by Plaintiffs here, that combine individualized mail notice and publication notice as components of the plan.²

² *See, e.g., In re Patriot Nat'l, Inc. Sec. Litig.*, No. 1:17-cv-01866-ER, 2019 WL 5882171, at *1-*2 (S.D.N.Y. Nov. 6, 2019) (approving notice plan consisting of mail or e-mail notice to 13,530 potential settlement class members coupled with summary notice via publication in *Investor's Business Daily* and *PR Newswire*); *GSE Bonds*, 414 F. Supp. 3d at 702 (approving notice plan consisting of mail and publication notice); *In re Credit Default Swaps Antitrust Litig.*, No. 13md2476 (DLC), 2016 WL 2731524, at *5 (S.D.N.Y. Apr. 26, 2016) ("Class Counsel mailed notice packets to each of 13,923 identified Class members. . . . The Summary Notice was also published on January 11 in several important business publications . . . [and] the 'Claims Administrator' launched a website for the Settlement which posted the Settlement agreements,

Plaintiffs therefore respectfully submit the proposed Notice plan summarized above, and further detailed in the Weisbrot Declaration, satisfies the requirements of Rule 23(e) and 23(c)(2)(B) and should thus be approved by the Court.

B. The Proposed Forms of Notice Should Be Approved

“There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice must ‘fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings’” in a manner understandable “by the average class member.” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 114 (2d Cir. 2005); *Guevoura Fund Ltd. v. Sillerman*, No. 1:15-cv-07192-CM, 2019 WL 6889901, at *12 (S.D.N.Y. Dec. 18, 2019) (“[N]otice is adequate if the average settlement class member understands the terms of the proposed settlement and the options they have.”).³ Ultimately, the notice must “enable class members to make an informed decision about their participation.” *Manual for Complex Litigation* §21.311 (4th ed.).

“Settlement notices under Fed. R. Civ. P. 23 do not need to delve into excessive details about the specifics of the settlement and the legal claims of the parties;” rather, settlement notices “should

notices, court documents, and other information relevant to the Settlement.”); *In re Vitamin C Antitrust Litig.*, No. 06-MD-1738 (BMC)(JO), 2012 WL 5289514, at *2 (E.D.N.Y. Oct. 23, 2012) (“Pursuant to this plan, a copy of the settlement notice was mailed to every potential member of the . . . Class whose address was provided by defendants. The notice that was ultimately mailed to 147 members of this class also contained a claim form. Additionally, the class notice was published in eight print publications, as well as on Facebook and on the approximately 800 websites that comprise the 24/7 Network. Finally, the settlement notice, along with other lawsuit and settlement-related information, was made available on a website operated by the settlement administrator.”).

³ See also *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 58 (E.D.N.Y. 2019) (““Courts in [the Second] Circuit have explained that a Rule 23 Notice will satisfy due process when it “describe[s] the terms of the settlement generally”” ‘inform[s] the class about the allocation of attorneys’ fees, and provide[s] specific information regarding the date, time, and place of the final approval hearing.’”).

be concise and simple.” *Guevoura*, 2019 WL 6889901, at *12. The mail Notice and Claim Form, attached to the accompanying Proposed Order as Exhibits A-1 and A-2, provide members of the Settlement Classes with further clear, yet comprehensive, information about the proposed Settlements.

Here, the mail Notice describes, among other things: (i) the nature of the lawsuit; (ii) the claims involved and the parties’ positions; (iii) what it means for the Settlements to have been reached; (iv) a summary of the terms of the Settlements, including the monetary relief, scope of the releases, and confirmatory discovery obligations; (v) the definition of the Settlement Classes; (vi) a description of the Plan of Allocation and where on the Settlement website to find more detailed information about Settlement Fund allocation; (vii) the procedures and deadlines for submitting a Claim Form in order to receive a payment from the Settlement Fund; (viii) the deadlines and procedures for exclusion from the Settlement Classes, objecting to the Settlements, and attending the Fairness Hearing; (ix) that members of the Settlement Classes may, but need not, appear through their own counsel at the Fairness Hearing; (x) the binding effect of participating in the Settlements; (xi) the identity of Co-Lead Counsel; and (xii) Co-Lead Counsel’s intention to move for an award of fees, expenses, and incentive awards.

Similarly, the Summary Notice, attached to the accompanying Proposed Order as Exhibit A-3, communicates to potential members of the Settlement Classes, in clear and concise language, the information required to reach an informed decision. This includes, Defendants’ alleged misconduct; the scope of the Settlement Classes; the amount of the Settlements; the rights of the members of the Settlement Classes to opt out or object to the Settlements; and the date and location of the Fairness Hearing to be set by the Court. The Summary Notice also directs members of the Settlement Classes to the designated Settlement website referenced above, where the long-form mail Notice and other

Settlement-related documents are available, and provides contact information for the Claims Administrator and Co-Lead Counsel.

The language in the mail Notice, Summary Notice, and Claim Form is designed to be readily understood by members of the Settlement Classes, which primarily consist of sophisticated investors, including pension funds and investment firms. *See In re Stock Exchs. Options Trading Antitrust Litig.*, No. 99 Civ. 0962(RCC), 2006 WL 3498590, at *7 (S.D.N.Y. Dec. 4, 2006) (“The Court finds that the Notice in this case was reasonable because it clearly apprised Class Members of their rights and options under the settlement and that, while detailed, was comprehensible to the average Class Member. Indeed, Counsel informs the Court that many Class Members are sophisticated institutional investors who regularly traded in options contracts during the period and who would readily understand the Notice.”).

Plaintiffs submit that the proposed mail Notice, Summary Notice, and Claim Form meet the requirements of Rule 23(e) and 23(c)(2)(B) and, thus, should be approved by the Court.

II. THE PLAN OF ALLOCATION SHOULD BE PRELIMINARILY APPROVED

“[W]hile the plan of allocation ‘must be fair and adequate,’ it ‘need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.’” *GSE Bonds*, 414 F. Supp. 3d at 694; *Guevoura*, 2019 WL 6889901, at *11. (“[C]ourts give great weight to the opinion of experienced and informed counsel when assessing a proposed plan of allocation as part of a settlement agreement.”).⁴

⁴ *See also Yang v. Focus Media Holding Ltd.*, No. 11 Civ. 9051(CM)(GWG), 2014 WL 4401280, at *9 (S.D.N.Y. Sept. 4, 2014) (in evaluating a proposed plan of distribution, courts accord substantial weight to the opinions of experienced counsel); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005) (“An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.”); *In re PaineWebber Ltd. P’ships Litig.*, 171 F.R.D. 104, 133 (S.D.N.Y. 1997) (“[W]hen real and

“A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding.” *GSE Bonds*, 414 F. Supp. 3d at 694. A principal goal of the plan of allocation must be “the equitable and timely distribution of a settlement fund without burdening the process in a way that will unduly waste the fund.” *Id.* at 695; *see also PaineWebber*, 171 F.R.D. at 135 (“Efficiency, ease of administration and conservation of public and private resources are highly relevant to the reasonableness of a settlement, particularly where, as here, the issues are complex, the outcome of the litigation unclear, and the class large.”). Similar to the requirements for notice, whether a plan of allocation is fair and reasonable is “squarely within the discretion of the district court.” *Id.* at 132.

“[A] plan of allocation need not be perfect.” *GSE Bonds*, 414 F. Supp. 3d at 694. At this, the *preliminary* approval stage, the Court must only be satisfied that the proposed plan is sufficiently reasonable to be “within the range of possible approval,” such that it should be sent to members of the Settlement Classes, for their review and comment, prior to the Fairness Hearing. *See, e.g., Laydon v. Bank of Tokyo-Mitsubishi UFJ, Ltd.*, No. 12-cv-3419(GBD), 2016 WL 4401148, at *2 (S.D.N.Y. June 22, 2016) (preliminary plan was “within the range of reasonableness”); *Danieli v. Int’l Bus. Machines Corp.*, No. 08-cv-3688(SHS), 2009 WL 6583144, at *5 (S.D.N.Y. Nov. 16, 2009) (preliminary plan was “within the range of possible approval such that notice to the Class is appropriate”).

Plaintiffs’ proposed Plan of Allocation was crafted based on the knowledge and experience of Co-Lead Counsel. The proposed Plan of Allocation is summarized below and set out in further detail in the accompanying Declaration of Dr. Rosa Abrantes-Metz in Support of Proposed Plan of

cognizable differences exist between the likelihood of ultimate success for different plaintiffs, it is appropriate to weigh distribution of the settlement in favor of plaintiffs whose claims comprise the set that was more likely to succeed”), *aff’d* 117 F.3d 721 (2d Cir. 1997).

Allocation (the “Abrantes-Metz Decl.”). The mail Notice advises members of the Settlement Classes to visit the settlement website for updates about the Plan of Allocation.

Each Settlement Class encompasses any SSA Bond Transaction with any Defendant (and is not limited to transactions with just Settling Defendants), and the proposed Plan of Allocation distributes the entire Net Settlement Fund from all three Settlements among Authorized Claimants. Thus, for efficiency in administration and distribution, Plaintiffs’ proposed Plan of Allocation adopts a global settlement class period of January 1, 2005 through March 6, 2019. This class period encompasses the Bank of America and Deutsche Bank Settlements’ class period (January 1, 2005 to March 1, 2018) and the HSBC Settlement class period (January 1, 2009 to March 6, 2019). Transactions for each member of the Settlement Classes are thus all treated equally under the proposed Plan of Allocation irrespective of which Settlement Class (Bank of America, Deutsche Bank, or HSBC) the member belongs.⁵

The proposed Plan of Allocation will allocate the Net Settlement Fund equitably among Authorized Claimants based on three factors: (1) the currency denomination of the Authorized Claimant’s SSA Bond transactions; (2) the timing of the Authorized Claimant’s transaction in relation to the core conspiracy period identified in the complaint; and (3) the notional amount of the Authorized Claimant’s transactions relative to the total notional amount of transactions in the relevant pool. Abrantes-Metz Decl. ¶¶5-9.

First, the proposed Plan of Allocation will divide the Net Settlement Fund into two pools – Pool A and Pool B – according to the currency in which the SSA Bonds traded by claimants were

⁵ Likewise, the mail Notice provides for a single opt-out procedure that applies to all three Settlements. Plaintiffs have selected this procedure for efficiency in the administration of the Settlements, and to ensure that a member of multiple Settlement Classes may not opt out of one Settlement while still receiving distributions from the Net Settlement Fund, which comprises all three Settlements.

denominated. *Id.* ¶6. Pool A will be allocated to claims for trades of USD SSA Bonds, whereas Pool B will be allocated to claims for trades of SSA Bonds denominated in a currency *other than* U.S. dollars. *Id.* The proposed Plan of Allocation will allocate to Pool A all of the Net Settlement Fund other than that assigned to Pool B. Pool B will be allocated \$5 million of the Net Settlement Fund. *Id.* The larger allocation of the Net Settlement Fund to Pool A reflects the fact that the core conspiracy alleged in the Complaint was focused on SSA Bonds denominated in U.S. dollars, *see* ECF No. 506 ¶¶1-2, and that if the case were litigated at trial, Plaintiffs’ recovery would be focused on U.S. dollar-denominated bonds. *See In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-Civ-8557(CM), 2014 WL 7323417, at *10 (S.D.N.Y. Dec. 19, 2014) (“A reasonable plan may consider the relative strength and values of different categories of claims.”).⁶

Second, under the Plan of Allocation, each eligible transaction executed prior to 2009 or after 2015 will be subject to a discount multiplier of 20%. Abrantes-Metz Decl. ¶7. Specifically, for transactions executed between (a) January 1, 2005 and December 31, 2008 or (b) January 1, 2016 and March 6, 2019, the notional amount of each SSA Bond Transaction will be multiplied by a multiplier of 0.20. *Id.* The discount multiplier accounts for the likelihood that, were it to proceed to trial, this case, and thus recoveries, would focus on the core conspiracy years of 2009 through 2015 alleged in the complaint. *See* ECF No. 506 ¶¶512-551 (economic analyses demonstrating impact of conspiracy during core years of 2009 to 2015). The discount multiplier thus accounts for the relative strength of each claim against others for the purpose of equitably and efficiently distributing the

⁶ *See also In re Enron Corp. Sec., Derivative & “ERISA” Litig.*, No. MDL-1446, 2008 WL 4178151, at *5 (S.D. Tex. Sept. 8, 2008) (approving plan of allocation where the “methodology used by Lead Counsel took into consideration the unique facts and circumstances of this litigation, interclass distinctions based on the relative strength and weaknesses of the different claims, the timing of purchases and sales, the magnitude of the loss, and the different kinds of recovery available under the different statutes, in producing a fair, adequate and reasonable plan for distribution of the funds”).

Settlement proceeds in a manner consistent with damage calculations that would be used at trial. *See Hi-Crush Partners*, 2014 WL 7323417, at *10 (“Because they tend to mirror the complaint’s allegations, ‘plans [of allocation] that allocate money depending on the timing of purchases and sales of the securities at issue are common.’”).

Third, distributions from each pool will be calculated on a pro-rata basis. Abrantes-Metz Decl. ¶8. This means that distributions will be made proportionally to each member of the Settlement Classes based on its shares of the total notional transaction amounts for each pool, without respect to the specific type (*e.g.*, issuer or maturity date) of the SSA Bonds traded. *Id.* Thus, the proposed Plan of Allocation treats all bonds within each pool the same. *Id.* This is a fair and reasonable way to allocate the Net Settlement Fund among claimants, as there is no indication that the alleged conspiracy impacted any one type of SSA Bond differently than any other. *Id.* ¶4.

Finally, for each pool, where it is reasonably determined that the cost of administering a claim would exceed the value of the claim under the Plan of Allocation, Co-Lead Counsel will direct the Claims Administrator to preserve the value of the Settlement Fund and make an alternative minimum payment to the Authorized Claimant to satisfy such claims. Abrantes-Metz Decl. ¶9. The alternative minimum payment will be a set amount for all such Authorized Claimants in each pool, and will be based on the participation rate of the class in the Settlements. *Id.* Courts routinely approve plans that provide for flat *de minimis* allocations. *See, e.g., In re Gilat Satellite Networks, Ltd.*, No. CV-02-1510, 2007 WL 1191048, at *9-*10 (E.D.N.Y. Apr. 19, 2007) (*de minimis* threshold would “save the settlement fund from being depleted by the administrative costs associated with claims unlikely to exceed those costs”); *In re Glob. Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 463 (S.D.N.Y. 2004) (approving a *de minimis* threshold because “[c]lass counsel are entitled to

use their discretion . . . to avoid excessive expense to the class as a whole”).⁷ Further details regarding the Plan of Allocation will be posted on the Settlement website.⁸

Plaintiffs respectfully submit that the proposed Plan of Allocation has a reasonable, rational basis, is well “within the range of possible approval,” and thus should be preliminary approved by the Court.

III. APPROVAL OF PLAINTIFFS’ NOTICE PLAN AND PLAN OF ALLOCATION IS APPROPRIATE AT THIS TIME

Plaintiffs’ proposed Notice plan, uses, among other things, name and address information for counterparties to Settling Defendants’ USD SSA Bond Transactions during the relevant period. As noted above, Settling Defendant Bank of America has already produced this name and address information. However, Settling Defendants Deutsche Bank and HSBC have not yet produced their name and address information, due in part to logistical difficulties arising from the COVID-19 pandemic. Given that it is unclear when these logistical difficulties will be resolved, Plaintiffs believe it is in the interest of the Settlement Classes to seek Court approval of the Notice plan now,

⁷ Determinations as to the *de minimis* threshold will be made after the claim deadline. *See* Manual for Complex Litigation §21.312 (4th ed.) (“Often . . . the details of allocation and distribution are not established until after the settlement is approved.”).

⁸ Plans of allocation are commonly described in a summary fashion in the notice, subject to additional information being made available to settlement class members before, during, or even after the notice process. *See, e.g., Sonterra Capital Master Fund Ltd. et al v. UBS AG, et al.*, 1:15-cv-05844 (S.D.N.Y.) (ECF Nos. 221, 223, 261, 263-5, 264) (granting preliminary approval where plan of distribution was described in summary form with “artificiality tables” to be published on settlement website 30 days before opt out deadline); *see also Agent Orange*, 818 F.2d at 170 (“The prime function of the district court in holding a hearing on the fairness of the settlement is to determine that the amount paid is commensurate with the value of the case. This can be done before a distribution scheme has been adopted so long as the distribution scheme does not affect the obligations of the defendants under the settlement agreement. The formulation of the plan in a case such as this is a difficult, time-consuming process.”); *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 480 (S.D.N.Y. 1998) (noting that “it is appropriate, and often prudent, in massive class actions” to defer consideration of the plan of distribution).

both to ensure that Settling Defendants Deutsche Bank and HSBC continue their good-faith efforts to produce their name and address information, and so that when that information is produced, Plaintiffs can immediately begin sending notice of the Settlement Agreements to members of the Settlement Classes.

Accordingly, Plaintiffs request that the Court enter the Proposed Order approving notice to the Settlement Classes and preliminary approving the Plan of Allocation at this time. As set forth in the Proposed Order, Plaintiffs propose to begin sending notice to members of the Settlement Classes fifteen days after Plaintiffs provide the Court with notice that all Settling Defendants have provided the name and address information referenced in this memorandum of law. Plaintiffs also propose that each Settling Defendant who has not yet provided such data, along with Plaintiffs, submit a joint status letter to the Court every fourteen days detailing their continued efforts to produce such data and a renewed estimate as to when the process will be complete.

IV. PROPOSED SCHEDULE OF SETTLEMENT EVENTS

Finally, Plaintiffs respectfully propose the following schedule for remaining events and submissions related to the Settlements. As shown below, Plaintiffs propose that the deadlines listed in the schedule begin 15 days after Plaintiffs provide the Court with notice that all Settling Defendants have produced the counterparty name and address information referenced herein.

EVENT	PROPOSED DATE
Commencement of mail Notice to potential members of the Settlement Classes, and launch of Settlement website	15 days after Plaintiffs notify Court of receipt of all data required for notice (the "Notice Date")
Publish Summary Notice	10 Days after Notice Date
File papers in support of final approval and Fee and Expense Application	60 Days after Notice Date
Last day to mail Request for Exclusion	95 Days after Notice Date (the

Last day to object to Settlements	“Objection Deadline”)
File reply papers in support of final approval and Fee and Expense Application	14 Days after Objection Deadline
Fairness Hearing	21 Days after Reply Briefs filed (or on another date convenient to the Court)
Deadline to submit Claim Forms	14 days after Fairness Hearing

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court enter the Proposed Order approving notice to the Settlement Classes and preliminarily approving the Plan of Allocation.

DATED: May 22, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on May 22, 2020, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ DAVID W. MITCHELL

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Manual Notice List

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