

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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.

Case No. 15-cv-5844
(GBD)(SLC)

**MEMORANDUM OF LAW IN SUPPORT OF
REPRESENTATIVE PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT WITH SOCIÉTÉ GÉNÉRALE**

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INTRODUCTION

Representative Plaintiffs¹ move under Rule 23(e) of the Federal Rules of Civil Procedure for preliminary approval of a **\$35,000,000** settlement with Defendant Société Générale (“SocGen”).² If the proposed settlement with SocGen (the “Settlement”) is finally approved, it would bring the Settlement Class’s total recovery to **\$364,500,000**.

This Court previously approved similar settlements in this Action between Representative Plaintiffs and 17 sets of Defendants³ (collectively, the “Prior Settlements”) providing the Settlement Class with cash consideration totaling **\$329,500,000** and valuable cooperation that has assisted with the continued prosecution of this Action.⁴ See ECF Nos. 298, 389, 423, 683, 684-85 (orders granting final approval of Prior Settlements); *Laydon*, ECF Nos. 1013-14.⁵

As discussed below, the Settlement fully satisfies the requirements for preliminary approval. Accordingly, Representative Plaintiffs respectfully move the Court to enter the order filed herewith (“Preliminary Approval Order”) that:

¹ “Representative Plaintiffs” mean the California State Teachers’ Retirement System (“CalSTRS”), 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 Exhibit 1 to Declaration of Vincent Briganti, dated February 16, 2024 (“Briganti Decl.”) is the Stipulation and Agreement of Settlement between Representative Plaintiffs and SocGen dated February 16, 2024 (“Settlement Agreement”). Unless otherwise defined, capitalized terms in this memorandum of law have the same meaning as in the Settlement Agreement. Unless noted, ECF citations are to the docket in this Action and internal citations and quotation marks are omitted.

³ 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. (“Deutsche Bank”); 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 (“Norinchukin”); Sumitomo Mitsui Banking Corporation (“SMBC”); Barclays Bank PLC, Barclays Capital Inc., and Barclays PLC (“Barclays”); Nex International Limited (f/k/a ICAP plc) and ICAP Europe Limited (“ICAP”); and TP ICAP plc (f/k/a Tullett Prebon plc and n/k/a TP ICAP Finance plc) (“Tullett Prebon”).

⁴ The “Action” means *Fund Liquidation Holdings LLC, et al. v. UBS AG, et al.*, Case No. 15-cv-5844 (GBD).

⁵ “*Laydon*” means *Laydon v. Mizuho Bank, Ltd. et al.*, Case No. 12-cv-3419 (GBD) (S.D.N.Y.).

- (a) preliminarily approves Representative Plaintiffs’ proposed Settlement with SocGen, subject to later, final approval;
- (b) conditionally certifies a Settlement Class with respect to the claims against SocGen, subject to later, final approval;
- (c) appoints Lowey Dannenberg, P.C. (“Lowey Dannenberg”) as Class Counsel for the Settlement Class;
- (d) appoints Citibank, N.A. (“Citibank”) as Escrow Agent for the Settlement;
- (e) appoints A.B. Data, Ltd. (“A.B. Data”) as the Settlement Administrator for the Settlement;
- (f) approves the proposed forms of Class Notice to the Settlement Class (Briganti Decl., Exs. 3-5) and the proposed Notice plan (*id.* Ex. 2);
- (g) sets a schedule to consider the final approval of the Settlement, including the date, time, and place for a hearing to consider the fairness, reasonableness, and adequacy of the Settlement (the “Fairness Hearing”); and
- (h) stays all proceedings in this Action related to SocGen except those relating to approval of the Settlement.

ARGUMENT⁶

I. THE SETTLEMENT IS LIKELY TO BE APPROVED UNDER RULE 23(e)(2)

A. The Preliminary Approval Standard

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

⁶ The procedural history of this Action and the related *Laydon* case, as well as information about the settlement negotiations with SocGen are set forth in the Briganti Decl.

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 Settlement here is entitled to an initial presumption of fairness and adequacy as it is the result of arm’s length negotiations by experienced counsel. Further, the Settlement provides a significant benefit for the Settlement Class in the face of substantial costs and risks associated with continued litigation.

B. The Settlement Is 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))⁷ requires that the “interests . . . served by the Settlement [are] compatible with” those of settlement class members. *Wal-Mart*

⁷ 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) (“*GSE Bonds*”).

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) (“*Currency Conversion III*”); *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 Second Amended Class Action Complaint, ECF No. 489 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 ‘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, 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 Settlement. Briganti Decl. ¶ 22. CalSTRS’ role in this process as a named plaintiff in this Action and a member of the putative class ensures that the Class Members’ interests are adequately represented.

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 this Action and the related *Laydon* case from their inception and negotiated this Settlement. Lead Counsel’s extensive class action experience, including with complex antitrust and commodity price manipulation claims, is strong evidence that the Settlement is procedurally fair. *See* Briganti Decl., Ex. 6 (firm resume); *see also In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 122 (S.D.N.Y. 2009) (“*Currency Conversion II*”) (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 this fair, reasonable and adequate settlement.

⁸ Additional Plaintiffs’ Counsel includes Berman Tabacco and Lovell Stewart Halebian Jacobson LLP.

Lowey Dannenberg and additional Plaintiffs' Counsel were well informed about the strengths and weaknesses of the claims against SocGen in advance of negotiating the Settlement. Before and during negotiations with SocGen, 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. ¶ 21. Lead Counsel and additional Plaintiffs' Counsel's investigation of the facts underlying the claims and their preparation in every facet of prosecuting this litigation reinforce the adequacy of counsel and the adequacy of their representation. *See* Briganti Decl., ¶¶ 4, 35.

2. The Settlement Is the Product of Arm's Length Negotiations

Procedural fairness is presumed where a settlement is “the product of arm's length negotiations between experienced and able counsel on all sides.” *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-md-1775 (JG)(VVP), 2009 WL 3077396, at *7 (E.D.N.Y. Sept. 25, 2009); *see also* FED. R. CIV. P. 23(e)(2)(B) (courts must consider whether settlement “was negotiated at arm's length”). That presumption applies here, as the Settlement was negotiated by knowledgeable counsel for Representative Plaintiffs and SocGen, each with a deep understanding of the case's risks and the Settlement's benefits. Lead Counsel have decades of experience litigating antitrust and commodity price manipulation cases (among other complex class action cases). Briganti Decl. ¶¶ 3, 25. SocGen, for its part, is represented by skilled counsel from a top international law firm with extensive experience in litigating antitrust class actions. *Id.* ¶ 21.

Settlement negotiations between Representative Plaintiffs and SocGen initially began in the Fall of 2017. *Id.* ¶ 23. These initial discussions did not lead to a settlement. In May 2023, the Parties again raised the possibility of reaching a settlement. *Id.* ¶ 24. Settlement negotiations resumed, with the Parties sharing their updated views on the case. *Id.* Over the next several

months, the Parties continued their discussion in an effort to reach a resolution. *Id.* As the negotiations progressed, the Parties agreed to mediate their dispute with the Hon. Layn R. Phillips (Ret.) of Phillips ADR. *Id.* The Parties submitted confidential mediation statements and Judge Phillips held an in-person mediation session on November 29, 2023. *Id.* After a full day of negotiations, Judge Phillips presented the Parties with a mediator’s proposal, which the Parties accepted. *Id.* The Parties entered into a binding settlement term sheet on January 11, 2024. After several more weeks of discussions, the negotiations culminated with the execution of the Settlement Agreement on February 16, 2024. *Id.*

Lead Counsel believe Representative Plaintiffs’ claims have substantial merit but acknowledge the expense and uncertainty of continued litigation against SocGen, which maintains that it has meritorious defenses to the claims of liability and damages made by Representative Plaintiffs and the Class. In recommending that the Court approve this Settlement, Lead Counsel have accounted for the uncertain outcome and the risks of further litigation and believe the Settlement confers 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), *aff’d* 117 F.3d 721 (2d Cir. 1997) (“*PaineWebber*”) (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 claims (among others), its knowledge of the strengths and weaknesses of Representative Plaintiffs’ claims asserted in this Action, its assessment of the Settlement Class’s likely recovery following trial and appeal, and its experience negotiating with SocGen, the Settlement here is entitled to a presumption of procedural fairness.

C. The Settlement Is Substantively Fair

If approved, this Settlement totaling \$35,000,000 will be combined with the Prior Settlements to provide the Settlement Class with a recovery to date of \$364,500,000. Representative Plaintiffs successfully negotiated with SocGen to provide that the Settlement Amount will not revert to SocGen if the Settlement is finally approved, regardless of how many Class Members submit Proofs of Claim and Release. *See* Agreement § 10. Because claim rates typically fall below 100%, the non-reversion term will substantially enhance Authorized Claimants' recovery.

The Settlement is a significant achievement because, after almost twelve years of litigation, this litigation remains as 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 due to Defendants' alleged manipulation. The Settlement will also secure SocGen's cooperation to aid in the prosecution of claims against the remaining non-settling Defendants should an appellate court remand any part of this Action following appeal. *See* Settlement Agreement § 4; Briganti Decl. ¶ 28.

In exchange for these benefits, Settlement Class Members will release SocGen from all U.S.-based claims relating to the manipulation of Yen-LIBOR, Euroyen TIBOR, and Euroyen-Based Derivatives. Briganti Decl. ¶ 28. Representative Plaintiffs will also voluntarily dismiss their claims against SocGen 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 additionally 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. As with the Prior Settlements, Rule 23(e)(2)(C)-(D) and *Grinnell* support preliminary approval of the Settlement.¹⁰

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

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

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).

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 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 the 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 this Action are complex and expensive to litigate. *See GSE Bonds*, 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); *Currency Conversion II* 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 a non-settling Defendant requires to produce their documents, and that the Parties require to review Defendant 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. ¶ 35.

SocGen conducted its own discovery and used the information it developed to refute the viability of Representative Plaintiffs' claims. Had discovery continued, SocGen likely would have used the evidence collected through its discovery efforts to posit alternative interpretations or explanations of the facts used by Representative Plaintiffs to prosecute their case. Competing theories about the relevance of certain evidence may create ambiguities for the factfinder and make it difficult to establish liability.

Litigation costs in this Action have been amplified due to the involvement of experts, and such costs will continue to rise if the Action continues. Expert discovery has been necessary given the complex subject matter in this litigation. Experts were retained to provide complex econometric and industry analyses, which added to the cost and duration of the case and likely would have triggered a "battle of the experts" in this Action.¹¹ 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 this litigation and its focus on a market that would likely be unfamiliar to the average juror, this case presents 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 (PGG)(DCF), 2019 WL 4565067, at *1

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"); *Balestra v. ATBCOIN LLC*, No. 17-cv-10001 (VSB), 2022 WL 950953, at *3 (S.D.N.Y. Mar. 29, 2022) (granting preliminary approval of class action settlement and finding the settlement amount within the range of approval considering the risks, including a costly and confusing "battle of the experts"). "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).

(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 trial, or on appeal.” *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 476 (S.D.N.Y. 1998) (“*NASDAQ IIP*”). 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 Settlement. 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). *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 II*, 263 F.R.D. at 123 (“the complexity of Plaintiff’s claims *ipso facto* creates uncertainty”). While

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.

Representative 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 Settlement adds \$35,000,000 to the recovery already achieved in this litigation and is greater than the maximum potential damages for which SocGen would have argued it was liable had the case proceeded to trial. This Settlement represents an excellent recovery for the Class and a reasonable hedge against the risks of pursuing the claims against SocGen and an appeal against any other non-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 Settlement provides “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). It exchanges extensive prosecution costs and a lengthy litigation timeline as to SocGen with a real recovery and valuable information that Representative Plaintiffs and the Settlement Class may use to pursue claims against the non-settling Defendants. Accordingly, the Settlement is 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. ¶ 28.

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. *See, e.g.*, ECF No. 423 ¶ 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. 221, 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. 222-5 (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 this Settlement.

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

Plaintiffs' Counsel will seek no more than 20% or \$7,000,000 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. 411 (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 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 \$350,000. 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 Agreement sets forth all such terms or specifically identifies all other agreements that relate to the Settlement (namely, the Supplemental Agreement). *See* Briganti Decl., Ex. 1, § 23. The Supplemental Agreement provides SocGen 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 Settlement.¹³

5. The Settlement Treats the Settlement Class Equitably and Does Not Provide Any Preferences

The Settlement 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 Fund among Authorized Claimants, a method this Court has already approved as fair, reasonable, and adequate. *See, e.g.*, ECF Nos. 423 ¶ 20, 683 ¶ 21, 684 ¶ 21, 685 ¶ 21; *Laydon*, ECF Nos. 1013 ¶ 20, 1014 ¶ 20; *see also Payment Card*, 330 F.R.D. at 47 (finding that “pro rata distribution scheme is sufficiently equitable”). The Settlement does 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 SocGen with respect to claims based on the same factual predicate of this Action. The proposed Class Notice provides information on how to opt out of the Settlement; absent opting out, each Class Member will be bound by the release.

¹³ *See, e.g., In re Signet Jewelers Ltd. Sec. Litig.*, No. 16-cv-06728 (CM)(SDA), 2020 WL 4196468, at *13 (S.D.N.Y. July 21, 2020) (holding that a supplemental agreement setting forth termination rights based on exclusion requests is standard and does not negatively impact the fairness of the settlement); *Erica P. John Fund, Inc. v. Halliburton Co.*, No. 02-cv-1152, 2018 WL 1942227, at *5 (N.D. Tex. Apr. 25, 2018) (noting that Rule 23(e) requirement is satisfied where the stipulation describes a supplemental agreement related to termination rights based on requests for exclusion); *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.”).

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

a. The reaction of the Settlement Class to the Settlement.

Consideration of this *Grinnell* factor is premature prior to the Class receiving notice of the Settlement. *See 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 Settlement. Briganti Decl. ¶ 22. Class Members overwhelmingly supported the earlier settlements approved by the Court, as reflected by the low number of opt-outs and lack of objections compared to the thousands of claims that were filed. *See* ECF Nos. 298 ¶¶ 6-7, 389 ¶¶ 6-7, 423 ¶¶ 6-7, 683 ¶¶ 6-7, 684 ¶¶ 6-7, 685 ¶¶ 6-7; *Laydon*, ECF Nos. 1013 ¶¶ 6-7, 1014 ¶¶ 6-7. As this Settlement 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 Settlement can opt out.

b. The stage of the proceedings.

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.” *In re AOL Time Warner*, 2006 WL 903236, at *10.

Over the last twelve 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. ¶¶ 4, 21. 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. *Id.* The substantial information and discovery involved in this litigation allowed Lead Counsel to be well informed about the strengths and weaknesses of the claims and the advantages of the Settlement, and to recommend the Settlement 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 Defendant to withstand greater judgment.

SocGen can withstand a judgment greater than the Settlement Amount, but this factor alone does not affect the 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 SocGen.

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

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 as Tr. for Harry Ploss Tr. DTD 8/16/1993 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.”).

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*, 2014 WL 7882100, at *35. 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 SocGen 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 Settlement.

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) (“*Currency Conversion I*”).

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).

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 I*, 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 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 Settlement.

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 Settlement. *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. 609-4 through 609-7 (describing the notice program), ECF Nos. 683-85 (approving notice program); *see also* Briganti Decl., Ex. 2 (Declaration of Elaine Pang) (“Pang 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*

& Tr. 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. 3) and the Proof of Claim and Release form (*id.*, Ex. 5) 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. 4). The Notice carefully details the nature of the Action and the Settlement Class, provides an ample “Background of the Litigation,” which describes the claims, issues, and/or defenses presented in the Action, 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 Settlement 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 this Settlement.

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*. Pang Decl. ¶ 8. 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. Pang Decl. ¶¶ 8-10. The Settlement Administrator will disseminate a news release announcing the Settlement via *PR Newswire’s* US1 Newswire 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 Settlement. 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 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 this Action.

IV. THE COURT SHOULD APPOINT CITIBANK AS ESCROW AGENT

Lead Counsel have designated Citibank to serve as Escrow Agent, to which SocGen has consented. Citibank has served as escrow agent in this Action 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 ninety (90) 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.

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.).

CONCLUSION

For the foregoing reasons, Representative Plaintiffs respectfully request that the Court grant Representative Plaintiffs' Motion for Preliminary Approval of Settlement Agreement with SocGen and enter the accompanying Preliminary Approval Order.

Dated: February 16, 2024
White Plains, New York

Respectfully submitted,

LOWEY DANNENBERG, P.C.

/s/ Vincent Briganti

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Additional Plaintiffs' Counsel

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	30 days after entry of the Preliminary Approval Order (“PAO”)
Substantial completion of initial distribution of mailed notices	45 days after entry of the PAO
Postmark Deadline for requesting exclusion	30 days prior to the Fairness Hearing
Filing Deadline for submitting objections	30 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	90 days after PAO
Postmark Deadline for submitting Claim Forms	45 days after the Fairness Hearing