

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

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

Plaintiff,

- against -

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

Defendants.

Docket No. 12-cv-3419  
(GBD) (HBP)

**STIPULATION AND  
AGREEMENT OF  
SETTLEMENT**

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

Defendants.

Docket No. 15-cv-5844  
(GBD) (HBP)

**TABLE OF CONTENTS**

1.	TERMS USED IN THIS AGREEMENT .....	3
2.	SETTLEMENT CLASS .....	12
3.	SETTLEMENT PAYMENT .....	12
4.	COOPERATION .....	13
5.	PAYMENT OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES, AND APPLICATION FOR INCENTIVE AWARD .....	18
6.	APPLICATION FOR APPROVAL OF FEES, EXPENSES, AND COSTS OF SETTLEMENT FUND ADMINISTRATION .....	20
7.	NO LIABILITY FOR FEES AND EXPENSES OF INTERIM LEAD COUNSEL.....	21
8.	DISTRIBUTION OF AND/OR DISBURSEMENTS FROM SETTLEMENT FUND ...	21
9.	DISBURSEMENTS PRIOR TO EFFECTIVE DATE.....	22
10.	DISTRIBUTION OF BALANCES REMAINING IN NET SETTLEMENT FUND TO AUTHORIZED CLAIMANTS .....	23
11.	ADMINISTRATION/MAINTENANCE OF SETTLEMENT FUND.....	23
12.	RELEASE AND COVENANT NOT TO SUE .....	24
13.	MOTION FOR PRELIMINARY APPROVAL .....	26
14.	CLASS NOTICE .....	26
15.	PUBLICATION.....	28
16.	MOTION FOR FINAL APPROVAL AND ENTRY OF FINAL JUDGMENT .....	28
17.	BEST EFFORTS TO EFFECTUATE THIS SETTLEMENT.....	30
18.	EFFECTIVE DATE.....	30
19.	OCCURRENCE OF EFFECTIVE DATE.....	31
20.	FAILURE OF EFFECTIVE DATE TO OCCUR.....	31
21.	TERMINATION.....	31
22.	EFFECT OF TERMINATION .....	33
23.	SUPPLEMENTAL AGREEMENT.....	34
24.	CONFIDENTIALITY PROTECTION.....	35
25.	BINDING EFFECT .....	35
26.	INTEGRATED AGREEMENT.....	35
27.	NO CONFLICT INTENDED .....	36
28.	NO PARTY IS THE DRAFTER .....	36
29.	CHOICE OF LAW .....	36

30.	EXECUTION IN COUNTERPARTS .....	36
31.	SUBMISSION TO AND RETENTION OF JURISDICTION.....	37
32.	RESERVATION OF RIGHTS .....	37
33.	NOTICES.....	37
34.	AUTHORITY .....	38
35.	DISPUTES OR CONTROVERSIES.....	38

## STIPULATION AND AGREEMENT OF SETTLEMENT

THIS STIPULATION AND AGREEMENT OF SETTLEMENT (the “**Settlement Agreement**”) is made and entered into on January 23, 2018. This Settlement Agreement is entered into on behalf of Representative Plaintiffs Jeffrey Laydon, Sonterra Capital Master Fund, Ltd., Hayman Capital Master Fund, L.P., Japan Macro Opportunities Master Fund, L.P., and the California State Teachers’ Retirement System and the Settlement Class (as defined in Section 1(G) herein), by and through Representative Plaintiffs’ Interim Lead Counsel (as defined in Section 1(X) herein), and on behalf of The Bank of Tokyo-Mitsubishi UFJ, Ltd. (“BTMU”) and Mitsubishi UFJ Trust and Banking Corporation (“MUTB”), by and through their undersigned counsel of record in these Actions (as defined in Section 1(A) herein).

WHEREAS, Representative Plaintiffs have filed civil class actions, *e.g.*, *Laydon v. Mizuho Bank, Ltd., et al.*, Case No. 12-cv-3419 (GBD) (HBP) (S.D.N.Y) and *Sonterra Capital Master Fund, Ltd., et al. v. UBS AG, et al.*, Case No. 15-cv-05844 (GBD) (HBP) (S.D.N.Y.), and have alleged, among other things, that Defendants (as defined in Section 1(L) herein), including BTMU and MUTB, from January 1, 2006 through June 30, 2011, acted unlawfully by, *inter alia*, manipulating, aiding and abetting the manipulation of, and conspiring, colluding or engaging in racketeering activities to manipulate Yen-LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives (as defined in Sections 1(SS), 1(Q), and 1(P) respectively herein), in violation of the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.*, the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.*, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, and federal and state common law;

WHEREAS, Representative Plaintiffs further contend that they and the Settlement Class suffered monetary damages as a result of BTMU and MUTB’s and other Defendants’ conduct;

WHEREAS, BTMU and MUTB deny the material allegations in Representative Plaintiffs' pleadings, expressly incorporate their responsive pleadings, as applicable, and maintain that they have good and meritorious defenses to the claims of liability and damages made by Representative Plaintiffs;

WHEREAS, arm's-length settlement negotiations have taken place between Representative Plaintiffs, Interim Lead Counsel, BTMU and MUTB, and this Settlement Agreement has been reached, subject to the final approval of the Court;

WHEREAS, BTMU and MUTB agree to cooperate with Representative Plaintiffs and Interim Lead Counsel as set forth below in this Settlement Agreement;

WHEREAS, Interim Lead Counsel conducted an investigation of the facts and the law regarding the Actions (as defined in Section 1(A) herein), considered the Settlement set forth herein to be fair, reasonable, adequate and in the best interests of Representative Plaintiffs and the Settlement Class, and determined that it is in the best interests of the Settlement Class to enter into this Settlement Agreement in order to avoid the uncertainties of complex litigation and to assure a benefit to the Settlement Class;

WHEREAS, BTMU and MUTB, despite believing that they are not liable for the claims asserted against them in the Actions and that they have good and meritorious defenses thereto, have nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and distraction of burdensome and protracted litigation, thereby putting this controversy to rest and avoiding the risks inherent in complex litigation;

WHEREAS, Sonterra Capital Master Fund, Ltd. agrees that it will not use this Settlement as evidence that it has the authority and/or capacity to bring this or any other action for manipulation of Libor, Tibor, Sibor, Euribor, BBSW or any other similar benchmark, or any

other action against BTMU or MUTB for alleged unlawful conduct of any kind;

WHEREAS, by entering into the Settlement, BTMU and MUTB do not concede that Sonterra Capital Master Fund, Ltd. had or has the authority and/or capacity to bring and maintain any action other than the Actions;

WHEREAS, the Parties agree to work together in good faith in having the Court retain and exercise jurisdiction for the purpose of considering both preliminary and final approval of the Settlement in the *Sonterra* action, and BTMU and MUTB consent to Representative Plaintiffs filing a motion to amend the March 10, 2017 Judgment in the *Sonterra* action pursuant to Fed. R. Civ. P. 60 and, if necessary, a motion for an Indicative Ruling under Fed. R. Civ. P. 62.1 that will request the Court retain and exercise jurisdiction over BTMU and MUTB to consider approval in the *Sonterra* action of the Settlement with Representative Plaintiffs;

WHEREAS, the Parties agree that they have an interest in the Settlement that supplies the requisite case or controversy for purposes of Article III of the U.S. Constitution; and

NOW, THEREFORE, Representative Plaintiffs, on behalf of themselves and the Settlement Class by and through Interim Lead Counsel, and BTMU and MUTB, by and through the undersigned counsel, agree that the Actions and Released Claims (as defined in Section 1(II) herein) be settled, compromised, and dismissed on the merits and with prejudice as to BTMU and MUTB and without costs as to Representative Plaintiffs, the Settlement Class, or BTMU and MUTB, subject to the approval of the Court, on the following terms and conditions:

**1. Terms Used In This Agreement**

The words and terms used in this Stipulation and Settlement Agreement, which are expressly defined below, shall have the meaning ascribed to them.

(A) “**Actions**” means *Laydon v. Mizuho Bank, Ltd. et al.*, Case No. 12-cv-

3419 (GBD) (HBP) (S.D.N.Y.) and *Sonterra Capital Master Fund, Ltd., et al. v. UBS AG, et al.*, Case No. 15-cv-05844 (GBD) (HBP) (S.D.N.Y.), collectively.

(B) **“Agreement”** or **“Settlement Agreement”** means this Stipulation and Agreement of Settlement, together with any exhibits attached hereto, which are incorporated herein by reference.

(C) **“Any”** means one or more.

(D) **“Authorized Claimant”** means any Class Member who, in accordance with the terms of this Agreement, is entitled to a distribution from the Net Settlement Fund pursuant to any Distribution Plan or order of the Court.

(E) **“BTMU”** means The Bank of Tokyo-Mitsubishi UFJ, Ltd.

(F) **“Business Days”** means Monday through Friday, inclusive, of each week that is not a holiday in the United States, New York, or Japan.

(G) **“Class”** or **“Settlement Class”** means all Persons who purchased, sold, held, traded, or otherwise had any interest in Euroyen-Based Derivatives during the Class Period, provided that, if Representative Plaintiffs expand the Class in any subsequent amended complaint, class motion, or settlement, the defined Class in this Agreement shall be expanded so as to be coterminous with such expansion. Excluded from the Settlement Class are the Defendants (as defined in Section 1(L) herein) and any parent, subsidiary, affiliate or agent of any Defendant or any co-conspirator whether or not named as a Defendant, and the United States Government.

(H) **“Class Member”** means a Person who is a member of the Class.

(I) **“Class Period”** means the period of January 1, 2006 through June 30, 2011.



(J) **“Class Notice”** means the form of notice of the proposed Settlement to be distributed to the Settlement Class as provided in this Agreement and the Preliminary Approval Order.

(K) **“Court”** means the United States District Court for the Southern District of New York.

(L) **“Defendants”** means the defendants currently named in the Actions and any parties that may be added to the Actions as defendants through amended or supplemental pleadings.

(M) **“Distribution Plan”** means the plan of allocation of the Net Settlement Fund, which was previously approved by the Court in connection with the Representative Plaintiffs’ settlement of the Actions with R.P. Martin Holdings Limited, Martin Brokers (UK) Ltd., Citibank, N.A., Citigroup Inc., Citibank Japan Ltd., Citigroup Global Markets Japan Inc., HSBC Holdings plc, HSBC Bank plc, Deutsche Bank AG, DB Group Services (UK) Ltd., JPMorgan Chase & Co., JPMorgan Chase Bank, National Association, and J.P. Morgan Securities PLC or any revised plan of allocation which Representative Plaintiffs shall provide to BTMU and MUTB at least five Business Days before it is submitted to the Court, whereby the Net Settlement Fund shall in the future be distributed to Authorized Claimants.

(N) **“Effective Date”** means the date when this Settlement Agreement becomes final as set forth in Section 18 of this Settlement Agreement.

(O) **“Escrow Agent”** means any Person designated by Interim Lead Counsel with the consent of BTMU and MUTB, who Interim Lead Counsel anticipates will be Citibank, N.A., and approved by the Court to act as escrow agent for the Settlement

Fund.

(P) **“Euroyen-Based Derivatives”** means (i) a Euroyen TIBOR futures contract on the Chicago Mercantile Exchange (“CME”); (ii) a Euroyen TIBOR futures contract on the Tokyo Financial Exchange, Inc. (“TFX”), Singapore Exchange (“SGX”), or London International Financial Futures and Options Exchange (“LIFFE”) entered into by a U.S. Person, or by a Person from or through a location within the U.S.; (iii) a Japanese Yen currency futures contract on the CME; (iv) a Yen-LIBOR- and/or Euroyen TIBOR-based interest rate swap entered into by a U.S. Person, or by a Person from or through a location within the U.S.; (v) an option on a Yen-LIBOR- and/or a Euroyen TIBOR-based interest rate swap (“swaption”) entered into by a U.S. Person, or by a Person from or through a location within the U.S.; (vi) a Japanese Yen currency forward agreement entered into by a U.S. Person, or by a Person from or through a location within the U.S.; and/or (vii) a Yen-LIBOR- and/or Euroyen TIBOR-based forward rate agreement entered into by a U.S. Person, or by a Person from or through a location within the U.S.

(Q) **“Euroyen TIBOR”** means the Euroyen Tokyo Interbank Offered Rate.

(R) **“Execution Date”** means the date on which this Agreement is executed by the last Party to do so.

(S) **“Fairness Hearing”** means a hearing scheduled by the Court following the issuance of the Preliminary Approval Order to consider the fairness, adequacy and reasonableness of the proposed Settlement and Settlement Agreement.

(T) **“Final”** means, with respect to any court order, including, without limitation, the Final Judgment, that such order represents a final and binding

determination of all issues within its scope and is not subject to further review on appeal or otherwise. An order becomes “Final” when: (i) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (ii) an appeal has been filed and either (a) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (b) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. Any appeal or other proceeding pertaining solely to any order adopting or approving the Distribution Plan, and/or any order issued in respect of an application for attorneys’ fees and expenses pursuant to Sections 5 and 6 below, shall not in any way delay or prevent the Final Judgment from becoming Final.

(U) **“Final Approval Order”** means an order from the Court, the form of which shall be mutually agreed upon by the Parties and submitted to the Court, approving of the Settlement following (i) preliminary approval of the Settlement Agreement, (ii) the issuance of the Class Notice pursuant to the Preliminary Approval Order, and (iii) the Fairness Hearing.

(V) **“Final Judgment”** means the order of judgment and dismissal of the Actions with prejudice as to BTMU and MUTB, the form of which shall be mutually agreed upon by the Parties and submitted to the Court for approval thereof.

(W) **“Incentive Award”** means any award by the Court to Representative Plaintiffs as described in Section 5.

(X) **“Interim Lead Counsel”** means Lowey Dannenberg, P.C., acting pursuant to the authority conferred by the Order Appointing Interim Lead Class Counsel (Dkt. No. 99), and subsequent stipulations and orders.

(Y) **“Investment Vehicles”** means any investment company, separately managed account or pooled investment fund managed or advised by BTMU, MUTB, or an affiliate, including, but not limited to: (i) mutual fund families, exchange-traded funds, fund of funds and hedge funds; and (ii) employee benefit plans as to which BTMU, MUTB or their affiliates acts as investment advisor or otherwise may be a fiduciary.

(Z) **“LIBOR”** means the London Interbank Offered Rate.

(AA) **“MUTB”** means Mitsubishi UFJ Trust and Banking Corporation.

(BB) **“Net Settlement Fund”** means the Settlement Fund less Court-approved disbursements, including: (i) notice, claims administration and escrow costs; (ii) any attorneys’ fees and/or expenses awarded by the Court; (iii) any Incentive Award(s) awarded by the Court; and (iv) all other expenses, costs, taxes and other charges approved by the Court.

(CC) **“Other Settlement”** means any stipulation and settlement agreement Representative Plaintiffs reach with any other Defendant involving these Actions that will be submitted to the Court for notice and approval purposes at the same time as this Settlement Agreement.

(DD) **“Parties”** means BTMU and MUTB and Representative Plaintiffs collectively, and **“Party”** applies to each individually.

(EE) **“Person”** means a natural person, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint-stock company, estate, legal representative, trust, unincorporated association, proprietorship, municipality, state, state agency, entity that is a creature of any state, any government, governmental or quasi-governmental body or

political subdivision, authority, office, bureau, agency or instrumentality of the government, any business or legal entity, or any other entity or organization; and any spouses, heirs, predecessors, successors, representatives or assigns of any of the foregoing.

(FF) **“Plaintiffs’ Counsel”** means Interim Lead Counsel and other counsel for the Representative Plaintiffs.

(GG) **“Preliminary Approval Order”** means an order by the Court, the form of which shall be mutually agreed upon by the Parties and submitted to the Court, issued in response to the Motion for Preliminary Approval in Section 13 providing for, *inter alia*, preliminary approval of the Settlement, including certification of the Settlement Class for purposes of the Settlement only, and for a stay of all proceedings in the Actions against BTMU and MUTB until the Court renders a final decision on approval of the Settlement.

(HH) **“Proof of Claim and Release”** means the form to be sent to Class Members, upon further order(s) of the Court, by which any Class Member may make a claim against the Net Settlement Fund.

(II) **“Released Claims”** means those claims described in Section 12 of this Settlement Agreement.

(JJ) **“Released Parties”** means BTMU and MUTB, their predecessors, successors and assigns, their direct and indirect parents, subsidiaries and affiliates, and joint ventures and their respective current and former officers, directors, employees, managers, members, partners, agents (in their capacity as agents of BTMU or MUTB), shareholders (in their capacity as shareholders of BTMU or MUTB), attorneys, insurers, or legal representatives, and the predecessors, successors, heirs, executors,

administrators, and assigns of each of the foregoing. As used in this provision, “affiliates” means entities controlling, controlled by, or under common control with a Released Party. For the avoidance of doubt, “Released Parties” shall not include any named Defendants other than BTMU or MUTB.

(KK) “**Releasing Parties**” means each and every Settling Class Member on their own behalf and on behalf of their respective predecessors, successors and assigns, direct and indirect parents, subsidiaries and affiliates, and on behalf of their current and former officers, directors, employees, agents, principals, members, trustees, participants, representatives, fiduciaries, beneficiaries, or legal representatives in their capacity as such, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing in their capacity as such. Notwithstanding that the U.S. Government is excluded from the Settlement Class, with respect to any Settling Class Member that is a government entity, Releasing Parties include any Settling Class Member as to which the government entity has the legal right to release such claims. As used in this provision, “affiliates” means entities controlling, controlled by, or under common control with a Releasing Party. For the avoidance of doubt, the “Releasing Parties” include all Persons entitled to bring claims on behalf of Settling Class Members, relating to their transactions in Euroyen-Based Derivatives or any similar financial instruments priced, benchmarked, or settled to Yen-LIBOR or Euroyen TIBOR held by Representative Plaintiffs or Settling Class Members (to the extent such similar financial instruments were entered into by a U.S. Person, or by a Person from or through a location within the U.S.).

(LL) “**Representative Plaintiffs**” means Jeffrey Laydon, Sonterra Capital

Master Fund, Ltd., Hayman Capital Master Fund, L.P., Japan Macro Opportunities Master Fund, L.P., and the California State Teachers' Retirement System and any other Person named as a named plaintiff in the Actions who was not subsequently withdrawn as a named plaintiff, and any named plaintiff who may be added to the action through amended or supplemental pleadings. This Settlement Agreement is entered into with each and every Representative Plaintiff. In the event that one or more Representative Plaintiff(s) fails to secure court approval to act as a Representative Plaintiff, the validity of this Settlement Agreement as to the remaining Representative Plaintiffs, the Settlement Class, and Interim Lead Counsel shall be unaffected.

(MM) **"Settlement"** means the settlement of the Released Claims set forth herein.

(NN) **"Settlement Administrator"** means any Person that the Court approves to perform the tasks necessary to provide notice of the Settlement to the Class and to otherwise administer the Settlement Fund, as described further herein.

(OO) **"Settlement Amount"** means thirty million U.S. dollars (\$30,000,000.00).

(PP) **"Settlement Fund"** means the Settlement Amount plus any interest that may accrue.

(QQ) **"Settling Class Members"** means Representative Plaintiffs and other members of the Settlement Class who do not timely and validly exclude themselves from the Settlement pursuant to Fed. R. Civ. P. 23(c) and in accordance with the procedure to be established by the Court.

(RR) **"U.S. Person"** means a citizen, resident, or domiciliary of the United

States or its territories; a corporation, including a limited liability company, either incorporated or headquartered in the United States or its territories; a partnership created or resident in the United States or its territories; any other Person or entity created and/or formed under the laws of the United States, including any state or territory thereof; or any other Person or entity residing or domiciled in the United States or its territories.

(SS) “**Yen-LIBOR**” means the London Interbank Offered Rate for the Japanese Yen.

## **2. Settlement Class**

Representative Plaintiffs will file an application seeking the certification of the Settlement Class as described herein pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. Notwithstanding the sentence in Section 1(G) above that “[e]xcluded from the Settlement Class are the Defendants (as defined in Section 1(L) herein) and any parent, subsidiary, affiliate or agent of any Defendant or any co-conspirator whether or not named as a defendant, and the United States Government,” and solely for purposes of this Settlement and this Settlement Class, the Parties agree that Investment Vehicles shall not be excluded from the Settlement Class solely on the basis of being deemed to be Defendants or affiliates or subsidiaries of Defendants. However, to the extent that any Defendant or any entity that might be deemed to be an affiliate or subsidiary thereof (i) managed or advised, and (ii) BTMU or MUTB either directly or indirectly held a beneficial interest in said Investment Vehicle during the Class Period, that beneficial interest held by BTMU or MUTB in the Investment Vehicle is excluded from the Settlement Class.

## **3. Settlement Payment**

BTMU and MUTB shall pay by wire transfer to the Escrow Agent the Settlement



Amount within ten (10) Business Days after the Court preliminarily approves the Settlement. No later than two (2) Business Days after the Court preliminarily approves the Settlement, Interim Lead Counsel shall provide BTMU and MUTB with wire transfer information for the interest-bearing Escrow Account to be established for purposes of the Settlement and controlled by Interim Lead Counsel. Assuming such wire transfer information is timely provided, BTMU and MUTB shall jointly and severally be obligated to instruct its bank to wire 100% of the Settlement Amount to the Escrow Account within ten (10) Business Days after the Court preliminarily approves the Settlement. All interest earned by any portion of the Settlement Amount paid into the Settlement Fund shall be added to and become part of the Settlement Fund. Upon occurrence of the Effective Date, no funds may be returned to BTMU or MUTB through a reversion or other means. The Escrow Agent shall only act in accordance with instructions mutually agreed upon by the Parties in writing, except as otherwise provided in this Agreement. Other than the payment of the Settlement Amount as set forth in this Section 3, BTMU and MUTB shall have no responsibility for any interest, costs, or other monetary payment, including any attorneys' fees and expenses, taxes, or costs of notice or claims administration, except that BTMU and MUTB shall be responsible for notice as required by 28 U.S.C. § 1715, as set forth in Section 14(B).

#### **4. Cooperation**

(A) BTMU and MUTB shall provide reasonable cooperation in the Actions, including discovery cooperation, requested by Interim Lead Counsel, to benefit the Settlement Class, as provided herein. All cooperation shall be coordinated in such a manner so that all unnecessary duplication and expense is avoided. Interim Lead Counsel shall tailor its requests for the production of data with a view towards minimizing unnecessary burdens and costs to BTMU and MUTB in connection with collecting, reviewing and producing materials that have not already

been collected in the course of the Actions, related settlements, reports and/or investigations by regulatory agencies.

(B) Notwithstanding any other provision in this Agreement, BTMU and MUTB shall have no obligation to produce any data or provide any information that is privileged under the attorney-client privilege, work-product doctrine, joint-defense privilege, common-interest doctrine, bank examination privilege, and/or other applicable privilege or immunity from disclosure. None of the cooperation provisions set forth herein are intended to, nor do they waive any such privileges or immunities. BTMU and MUTB agree that their counsel will meet with Interim Lead Counsel as is reasonably necessary to discuss any applicable privilege. Any disputes regarding privilege that cannot be resolved amongst the parties shall be reserved for resolution pursuant to the alternative dispute resolution procedures set forth in Section 35 of this Settlement Agreement. At a reasonable time to be negotiated in good faith, BTMU and MUTB agree to provide Representative Plaintiffs, through Interim Lead Counsel, with (a) privilege logs for any relevant data reasonably requested by Representative Plaintiffs as cooperation discovery in accordance with this Settlement Agreement that BTMU and MUTB withhold on the basis of any privilege, doctrine, immunity or regulatory objection, if and to the extent such privilege logs are reasonably necessary to establish the basis for BTMU and MUTB's withholding of the data and (b) any existing privilege logs for documents that BTMU and MUTB withheld from U.S. governmental authorities (including the United States Department of Justice and United States Commodity Futures Trading Commission) (but not from any other non-U.S. governmental authority, as applicable) as part of its investigation into BTMU and MUTB's alleged manipulation of Yen-LIBOR and Euroyen TIBOR and Euroyen-Based Derivatives, to the extent such privilege logs relate to data reasonably requested by Representative Plaintiffs as

cooperation materials herein if and to the extent such privilege logs are reasonably necessary. BTMU and MUTB's production of existing privilege logs, if any, will be made in such a way so as not to identify the regulatory agency or agencies to which BTMU and MUTB provided the logged data or information. The Parties agree that their counsel shall meet and confer with each other regarding any dispute as to the privileges and protections described in this Paragraph. To the extent the parties cannot resolve any such disputes, they shall be reserved for resolution pursuant to the alternative dispute resolution procedures set forth in Section 35 of this Settlement Agreement. If any data protected by the attorney-client privilege, work-product doctrine, the common interest doctrine, the joint defense privilege, the bank examination privilege, and/or any other applicable privilege or protection is accidentally or inadvertently produced, Representative Plaintiffs shall, upon notice from BTMU and MUTB, promptly cease reviewing the data and shall return the data and all copies of it to BTMU and MUTB's counsel within five (5) Business Days. Representative Plaintiffs and their counsel shall also delete or destroy the portions of any other data, documents or work product which refer to or summarize the data within five (5) Business Days. The data shall not be used or referred to in any way by Representative Plaintiffs or their counsel, and its production shall in no way be construed to have waived any privilege, protection or restriction attached to such data or information.

(C) Notwithstanding any other provision in this Agreement, BTMU and MUTB shall have no obligation to produce any data or provide any information that is restricted from disclosure under any applicable domestic or foreign data privacy, bank secrecy, state secrets, or other law or duty of confidentiality. In the event that BTMU or MUTB withholds data or information to be provided in this Section 4, the Parties agree to meet and confer regarding whether and how such data or information might be made available to Representative Plaintiffs

or the Settlement Administrator.

(D) Notwithstanding any other provision of this Agreement, in the event that BTMU and MUTB believe that Interim Lead Counsel has requested cooperation of a kind or to an extent that is not reasonable or not within the scope of BTMU and MUTB's obligations as set forth herein, BTMU and MUTB's counsel and Interim Lead Counsel agree to meet and confer with each other regarding such disagreement and to seek resolution pursuant to the alternative dispute resolution procedures set forth in Section 35 of this Settlement Agreement if necessary.

(E) Interim Lead Counsel agree to use any and all of the documents, data, and information obtained from BTMU and MUTB, either pursuant to Section 4 or previously produced by BTMU and MUTB to Representative Plaintiffs, only for the purpose of the Actions, and agree to be bound by the terms of the Settlement Agreement and Protective Order entered in the Actions, *see Laydon*, ECF No. 349 (August 8, 2014 Protective Order). For the avoidance of doubt, Interim Lead Counsel expressly agrees that the documents, data and/or information provided by BTMU and MUTB, including without limitation oral presentations, may be used directly or indirectly by Interim Lead Counsel solely in connection with the prosecution of the Actions against the non-settling Defendants, but not for the institution or prosecution of any other action or proceeding against any Released Party or for any other purpose whatsoever, including, but not limited to, actions or proceedings in jurisdictions outside the United States. The foregoing restriction shall not apply to any information or documents that is or becomes publicly available, or loses its status as Confidential or Highly Confidential Material under the terms of the August 8, 2014 Protective Order.

(F) **Data Production.** Subject to the restrictions set forth above, BTMU and MUTB will provide cooperation to Representative Plaintiffs by producing to Interim Lead Counsel the

data listed below, to the extent reasonably available. The time period of the data subject to production shall be January 1, 2006 – June 30, 2011.

(G) To the extent not included within the documents and data that have already been produced to Representative Plaintiffs in the Actions, BTMU and MUTB shall produce to Interim Lead Counsel (the “Cooperation Materials”):

(i) **Borrowing and Lending Transaction Data:** Reasonably available data pertaining to BTMU’s and MUTB’s transactions conducted by their Tokyo branches in unsecured and secured borrowing and lending transactions in the interbank market, including Yen-denominated loan (placing), deposit (taking), and certificates of deposit having maturities of 1-year or less.

(ii) **Other Transaction Data:** Reasonably available data pertaining to BTMU’s and MUTB’s transactions conducted by BTMU’s Tokyo, London, and New York branches and MUTB’s Tokyo branch (which constitute the vast majority of such transactions) in Euroyen-Based Derivatives.

(iii) The parties agree to negotiate in good faith the exact scope, nature and timing of the materials and information to be provided under Section 4(G)(i) and (ii), and further agree that any materials and information provided must relate to Yen-LIBOR, Euroyen TIBOR, and Euroyen-Based Derivatives or any similar financial instruments priced, benchmarked, or settled to Yen-LIBOR or Euroyen TIBOR and be relevant to the claims and/or defenses in the Actions.

(H) **Other Information.** BTMU and MUTB will cooperate to provide reasonably available information necessary for Representative Plaintiffs to authenticate or otherwise make usable at trial the aforementioned data, documents previously produced to the Representative

Plaintiffs, or other data as Representative Plaintiffs may request. BTMU and MUTB also will provide Representative Plaintiffs with a description of the data fields included in any borrowing, lending or trade data produced by BTMU and MUTB to the extent reasonably available and requested by Representative Plaintiffs.

**(I) Continuation, Scope, and Termination of BTMU and MUTB's Obligation.**

BTMU and MUTB's obligations to cooperate are continuing until and shall terminate upon the earlier of: (i) the date when final judgment has been rendered with no remaining rights of appeal, in the Actions against all Defendants; or (ii) two (2) years after the Court enters the Preliminary Approval Order.

**5. Payment of Attorneys' Fees and Reimbursement of Expenses, and Application for Incentive Award**

(A) Subject to Court approval, Representative Plaintiffs and Interim Lead Counsel shall be reimbursed and paid solely out of the Settlement Fund for all fees and expenses including, but not limited to, attorneys' fees, and past, current or future litigation expenses, and any incentive award approved by the Court. BTMU and MUTB shall have no responsibility for any costs, fees, or expenses incurred for or by Representative Plaintiffs' or Class Members' respective attorneys, experts, advisors, agents, or representatives. Nothing in this provision shall expedite the date(s) for BTMU and MUTB's payment as set forth in Section 3.

(B) Interim Lead Counsel, on behalf of all Plaintiffs' Counsel, may apply to the Court for an award from the Settlement Fund of attorneys' fees, plus interest. Interim Lead Counsel also may apply to the Court for reimbursement from the Settlement Fund of Plaintiffs' Counsel's litigation expenses, plus interest. BTMU and MUTB shall take no position with respect to Interim Lead Counsel's motion for attorneys' fees and expenses. Representative Plaintiffs may

make an application to the Court for an award in connection with their representation of the Settlement Class in this litigation, which amount constitutes the Incentive Award.

(C) The Released Parties shall have no responsibility for, and no liability with respect to, the attorneys' fees, litigation expenses, or Incentive Award that the Court may award in the Actions.

(D) The procedures for, and the allowance or disallowance by the Court of, any application for approval of fees, expenses and costs or an Incentive Award (collectively, "Fee and Expense Application") are not part of the Settlement set forth in this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Agreement. Any order or proceeding relating to a Fee and Expense Application, or the reversal or modification thereof, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the Final Judgment and the Settlement of the Actions as set forth herein. No order of the Court or modification or reversal on appeal of any order of the Court concerning any Fee and Expense Application or the Distribution Plan shall constitute grounds for termination of this Agreement.

(E) Prior to the Fairness Hearing, Interim Lead Counsel and Representative Plaintiffs shall file any motions seeking awards from the Settlement Fund for payment of attorneys' fees and reimbursement of costs and expenses, and for the payment of an Incentive Award as follows:

(i) Plaintiffs' Counsel shall seek attorneys' fees of no more than twenty-three percent (23%) of the Settlement Fund;

(ii) Interim Lead Counsel shall seek reimbursement for their costs and expenses incurred as of the date the Motion for Final Approval and Entry of Final Judgment is filed pursuant to Section 16; and

(iii) Representative Plaintiffs may make an application to the Court for an award in connection with their representation of the Settlement Class in this litigation, which amount constitutes the Incentive Award.

(F) Upon the Court's approval of an award of attorneys' fees, costs and expenses, such approved amount from Subsections (E)(i) and (E)(ii), above, shall be paid from the Escrow Account within ten (10) Business Days after their approval by the Court. If an event occurs that will cause the Settlement Agreement not to become final pursuant to Section 18 or if Representative Plaintiffs or BTMU and MUTB terminates the Settlement Agreement pursuant to Sections 21 through 23, then within ten (10) Business Days after receiving written notice of such an event from counsel for BTMU and MUTB or from a court of appropriate jurisdiction, Interim Lead Counsel shall refund to the Settlement Fund any attorneys' fees, costs and expenses (not including any non-refundable expenses as described in Section 9(B)) that were withdrawn plus interest thereon at the same rate at which interest is accruing for the Settlement Fund.

**6. Application for Approval of Fees, Expenses, and Costs of Settlement Fund Administration**

Interim Lead Counsel may apply to the Court, at the time of any application for distribution to Authorized Claimants, for an award from the Settlement Fund of attorneys' fees for services performed and reimbursement of expenses incurred in connection with the administration of the Settlement after the date of the Fairness Hearing. Interim Lead Counsel reserves the right to make additional applications to the Court for payment from the Settlement Fund for attorneys' fees for services performed and reimbursement of expenses incurred. Any such applications are subject to Court approval.



**7. No Liability for Fees and Expenses of Interim Lead Counsel**

The Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment(s) to Interim Lead Counsel for attorneys' fees, costs and expenses and/or to any other Person who may assert some claim thereto, or any fee and expense award the Court may make in the Actions.

**8. Distribution of and/or Disbursements from Settlement Fund**

The Settlement Administrator, subject to such supervision and direction by the Court and/or Interim Lead Counsel as may be necessary, shall administer the Proof of Claim and Release forms submitted by the Settling Class Members and shall oversee the distribution of the Settlement Fund pursuant to the Distribution Plan. Upon the Effective Date (or earlier if provided in Section 5 herein), the Settlement Fund shall be applied in the order and as follows:

- (i) to pay costs and expenses associated with the distribution of the Class Notice and administration of the Settlement as provided in this Section and Section 6, including all costs and expenses reasonably and actually incurred in assisting Class Members with the filing and processing of claims against the Net Settlement Fund at any time after BTMU and MUTB makes payments described in Section 3;
- (ii) to pay Escrow Agent costs;
- (iii) to pay taxes assessed on the Settlement Fund, and tax preparation fees in connection with such taxes;
- (iv) to pay any attorneys' fees, costs and expenses approved by the Court upon submission of a Fee and Expense Application, as provided in Section 5;

(v) to pay the amount of any Incentive Award for Representative Plaintiffs, as provided in Section 5; and

(vi) to pay the Net Settlement Fund to Authorized Claimants as allowed by the Agreement, any Distribution Plan, or order of the Court.

**9. Disbursements Prior to Effective Date**

(A) Except as provided in Subsection (B) herein or by Court order, no distribution to any Class Member or disbursement of fees, costs and expenses of any kind may be made from the Settlement Fund until the Effective Date. As of the Effective Date, all fees, costs and expenses and Incentive Awards as approved by the Court may be paid out of the Settlement Fund.

(B) Upon written notice to the Escrow Agent by Interim Lead Counsel with a copy to BTMU and MUTB, the following may be disbursed prior to the Effective Date: (i) reasonable costs of Class Notice and administration may be paid from the Settlement Fund as they become due (up to a maximum of \$500,000); (ii) reasonable costs of the Escrow Agent may be paid from the Settlement Fund as they become due; (iii) taxes and tax expenses may be paid from the Settlement Fund as they become due; and (iv) Plaintiffs' Counsel's attorneys' fees and costs and expenses as approved by the Court (in accordance with Section 5(F)). In the event the Settlement is terminated or does not become final for any reason, BTMU and MUTB shall be entitled to return of all such funds, plus all interest accrued thereon, except for up to \$500,000 for reasonable costs of Class Notice and administration that have been actually disbursed prior to the date the Settlement was terminated or otherwise does not become final for any reason, on the terms specified in Section 22.

(C) Interim Lead Counsel will attempt in good faith to minimize the costs of the Escrow Agent, Class Notice and administration.

**10. Distribution of Balances Remaining in Net Settlement Fund to Authorized Claimants**

The Net Settlement Fund shall be distributed to Authorized Claimants and, except as provided in Section 9(B), there shall be no reversion to BTMU and MUTB. The distribution to Authorized Claimants shall be in accordance with the Distribution Plan that has been or hereafter is to be approved by the Court upon such notice to the Class as may be required. Any such Distribution Plan is not a part of this Agreement. No funds from the Net Settlement Fund shall be distributed to Authorized Claimants until the later of (i) the Effective Date or (ii) the date by which the Distribution Plan has received final approval and the time for any further appeals with respect to the Distribution Plan has expired. Should there be any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise), Interim Lead Counsel shall submit an additional distribution plan to the Court for its approval.

**11. Administration/Maintenance of Settlement Fund**

(A) The Settlement Fund shall be maintained by Interim Lead Counsel under supervision of the Court and shall be distributed solely at such times, in such manner, and to such Persons as shall be directed by subsequent orders of the Court (except as provided for in this Agreement) consistent with the terms of this Settlement Agreement. The Parties intend that the Settlement Fund be treated as a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B. Interim Lead Counsel shall ensure that the Settlement Fund at all times complies with Treasury Regulation § 1.468B in order to maintain its treatment as a qualified settlement fund. To this end, Interim Lead Counsel shall ensure that the Settlement Fund is approved by the Court as a qualified settlement fund and that any Escrow Agent, Settlement

Administrator or other administrator of the Settlement Fund complies with all requirements of Treasury Regulation § 1.468B-2. Any failure to ensure that the Settlement Fund complies with Treasury Regulation § 1.468B-2, and the consequences thereof, shall be the sole responsibility of Interim Lead Counsel.

## **12. Release and Covenant Not To Sue**

(A) The Releasing Parties finally and forever release and discharge from and covenant not to sue the Released Parties for any and all manner of claims, including unknown claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys' fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, which Settling Class Members or any of them ever had, now has, or hereafter can, shall or may have, representatively, derivatively or in any other capacity, against the Released Parties arising from or relating in any way to conduct alleged in the Actions, or which could have been alleged in the Actions against the Released Parties concerning any Euroyen-Based Derivatives or any similar financial instruments priced, benchmarked, or settled to Yen-LIBOR or Euroyen TIBOR purchased, sold, held, traded, and/or transacted by the Representative Plaintiffs, Class Members, and/or Settling Class Members (to the extent such similar financial instruments were entered into by a U.S. Person, or by a Person from or through a location within the U.S.), or in which any of the foregoing otherwise had any interest, including, but not limited to, any alleged manipulation of Euroyen TIBOR and/or Yen-LIBOR

under the Commodity Exchange Act, 7 U.S.C. § 1 et seq., or any other statute, regulation, or common law, or any purported conspiracy, collusion, racketeering activity, or other improper conduct relating to Euroyen TIBOR and/or Yen-LIBOR (including, but not limited to, all claims under Section 1 of the Sherman Antitrust Act 15 U.S.C. § 1 et seq., the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, and any other federal or state statute, regulation, or common law). The following claims shall not be released by this Settlement: (i) any claims against former BTMU and MUTB employees arising solely from those former employees' conduct that occurred while not employed by BTMU and MUTB; (ii) any claims against the named Defendants in these Actions other than BTMU and MUTB; (iii) any claims against inter-dealer brokers or their employees or agents when and solely to the extent they were engaged as employees or agents of the other Defendants or of inter-dealer brokers; or (iv) any claims against any Defendant who may be subsequently added in these Actions. For the avoidance of doubt, Released Claims does not include claims arising under foreign law based solely on transactions executed entirely outside the United States by Settling Class Members domiciled outside the United States.

(B) Although the foregoing release is not a general release, such release constitutes a waiver of Section 1542 of the California Civil Code (to the extent it applies to the Actions), which provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

This release also constitutes a waiver of any and all provisions, rights, and benefits of any federal, state or foreign law, rule, regulation, or principle of law or equity that is similar,

comparable, equivalent to, or which has the effect of, Section 1542 of the California Civil Code. The Settling Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention to release fully, finally, and forever all of the Released Claims, and in furtherance of such intention, the release shall be irrevocable and remain in effect notwithstanding the discovery or existence of any such additional or different facts. In entering and making this Agreement, the Parties assume the risk of any mistake of fact or law and the release shall be irrevocable and remain in effect notwithstanding any mistake of fact or law.

### **13. Motion for Preliminary Approval**

As soon as practicable after the Execution Date, at a time to be mutually agreed by BTMU and MUTB and Interim Lead Counsel, Interim Lead Counsel shall submit this Settlement Agreement to the Court and shall file a motion for entry of the Preliminary Approval Order.

### **14. Class Notice**

(A) In the event that the Court preliminarily approves the Settlement, Interim Lead Counsel shall, in accordance with Rule 23 of the Federal Rules of Civil Procedure, provide Class Members, whose identities can be determined after reasonable efforts, with notice of the date of the Fairness Hearing. The Class Notice may be sent solely for this Settlement or combined with notice of Other Settlements. The Class Notice shall also explain the general terms of the Settlement Agreement, the general terms of the proposed Distribution Plan, the general terms of the Fee and Expense Application, and a description of Class Members' rights to object to the Settlement, request exclusion from the Class and appear at the Fairness Hearing. The text of the Class Notice shall be agreed upon by the Parties before its submission to the Court for approval

thereof. BTMU and MUTB agree to provide Interim Lead Counsel with reasonably available contact information for counterparties to Euroyen-Based Derivatives they transacted with during the Class Period, to the extent not prevented from doing so by any court order or any law, regulation, policy, or other rule of any regulatory agency or governmental body restricting disclosure of such information. Representative Plaintiffs agree that BTMU and MUTB may, at their sole discretion, (i) have their third-party agent provide the Class Notice to any counterparties to Euroyen-Based Derivatives BTMU and MUTB transacted with during the Class Period or (ii) provide counterparty information only to the Settlement Administrator for purposes of distributing the Class Notice, to the extent that BTMU and MUTB reasonably conclude in good faith that such steps are required or advisable based on such counterparty information being subject to any applicable domestic or foreign data privacy, bank secrecy, or other law, rule, or regulation. If BTMU and MUTB do provide Class Notice pursuant to this Section, BTMU and MUTB shall complete such notice no later than the date set by the Court to complete mailed notice pursuant to the Preliminary Approval Order and provide Interim Lead Counsel with the amount of Class Notices sent by BTMU and MUTB pursuant to this Section. All reasonable fees, costs, and expenses of BTMU and MUTB's third-party agent in providing the Class Notice to any counterparties to Euroyen-Based Derivatives BTMU and MUTB transacted with during the Class Period will be paid from the Settlement Fund. Such reasonable fees, costs, and expenses of BTMU and MUTB's third party agent shall not exceed \$100,000.00.

(B) In the event that the Court preliminarily approves the Settlement, BTMU and MUTB shall bear the costs and responsibility for timely serving notice of the Settlement as required by the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715. BTMU and MUTB shall also cause a copy of such CAFA notice and proof of service of such notice to be provided

to Interim Lead Counsel.

**15. Publication**

Interim Lead Counsel shall cause to be published a summary in accord with the Class Notice submitted to the Court by the Parties and approved by the Court. BTMU and MUTB shall have no responsibility for providing publication or distribution of the Settlement or any notice of the Settlement to Class Members or for paying for the cost of providing notice of the Settlement to Class Members except as provided for in Section 9(B). The Parties shall mutually agree on any content relating to BTMU and MUTB that will be used by Interim Lead Counsel and/or the Settlement Administrator in any Settlement-related press release or other media publication, including on websites.

**16. Motion for Final Approval and Entry of Final Judgment**

(A) After Class Notice is issued, and prior to the Fairness Hearing, the Parties hereto shall jointly move for entry of a Final Approval Order and Final Judgment:

(i) finally certifying solely for settlement purposes the Settlement Class as defined in Section 1(G) herein;

(ii) finding that the Class Notice constituted the best notice practicable under the circumstances and complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process;

(iii) finally approving this Settlement Agreement and its terms as being a fair, reasonable and adequate settlement of the Settlement Class' claims under Rule 23 of the Federal Rules of Civil Procedure;

(iv) directing that, as to the Released Parties, the Actions be



dismissed with prejudice and without costs as against the Settling Class Members;

(v) discharging and releasing the Released Claims as to the Released Parties;

(vi) barring claims by any Person against the Released Parties for contribution, indemnification, or similar claims (however denominated) for all or a portion of any amounts paid or awarded in the Actions by way of settlement, judgment, or otherwise;

(vii) determining pursuant to Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing that the judgment of dismissal shall be final and appealable;

(viii) reserving the Court's continuing and exclusive jurisdiction over the Settlement and this Agreement, including the administration and consummation of this Agreement; and

(ix) containing such other and further provisions consistent with the terms of this Agreement to which BTMU and MUTB and Representative Plaintiffs expressly consent in writing.

(B) Prior to the Fairness Hearing, as provided in Section 5, Interim Lead Counsel will timely request by separate motion that the Court approve its Fee and Expense Application. The Fee and Expense Application and the Distribution Plan (as defined in Section 1(M)) are matters separate and apart from the Settlement between the Parties. If the Fee and Expense Application or the Distribution Plan are not approved, in whole or in part, it will have no effect on the finality of the Final Approval Order approving the Settlement and the Final Judgment dismissing the

Actions with prejudice as to BTMU and MUTB.

**17. Best Efforts to Effectuate This Settlement**

The Parties agree to cooperate with one another to the extent reasonably necessary to effectuate and implement the terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the terms and conditions of this Agreement.

**18. Effective Date**

Unless terminated earlier as provided in this Settlement Agreement, this Settlement Agreement shall become effective and final as of the date upon which all of the following conditions have been satisfied:

(A) The Settlement Agreement has been fully executed by BTMU and MUTB and Representative Plaintiffs through their counsel;

(B) The Court has certified a Settlement Class, and entered the Preliminary Approval Order, substantially in the form to be agreed to by the Parties, approving this Settlement Agreement, and approving the program and form for the Class Notice;

(C) Class Notice has been issued as ordered by the Court;

(D) The Court has entered the Final Approval Order finally approving the Settlement Agreement in all respects as required by Rule 23(e) of the Federal Rules of Civil Procedure; however, this required approval does not include the approval of the Fee and Expense Application and the Distribution Plan;

(E) The Court has entered its Final Judgment of dismissal with prejudice as to the Released Parties with respect to Representative Plaintiffs and Settling Class Members; and

(F) Upon the occurrence of the later of the following: (i) the resolution of any and all appeals regarding the Settlement (subject to Section 21 below) or (ii) the time to appeal or seek

permission to appeal the Settlement has expired.

**19. Occurrence of Effective Date**

Upon the occurrence of all of the events in Section 18, any and all remaining interest or right of BTMU and MUTB in or to the Settlement Fund, if any, shall be absolutely and forever extinguished, and the Net Settlement Fund shall be transferred from the Escrow Agent to the Settlement Administrator at the written direction of Interim Lead Counsel.

**20. Failure of Effective Date to Occur**

If any of the conditions specified in Section 18 are not satisfied, then this Agreement shall be terminated, subject to and in accordance with Section 21, unless the Parties mutually agree in writing to continue with it for a specified period of time.

**21. Termination**

(A) BTMU and MUTB shall have the right, but not the obligation, in their sole discretion, to terminate this Settlement Agreement by providing written notice to Interim Lead Counsel within twenty-five (25) Business Days of BTMU and MUTB's learning of any of the following events:

(i) the Court enters an order declining to enter the Preliminary Approval Order pursuant to Representative Plaintiffs' motion under Section 13 or the Final Approval Order pursuant to the Parties' joint motion under Section 16 in any material respect;

(ii) the Court enters an order refusing to approve the Settlement Agreement or any material part of it;

(iii) the Court enters an order declining to enter the Final Judgment and order of dismissal in any material respect;

(iv) the Court enters an alternative judgment;

(v) the Final Judgment and order of dismissal is modified or reversed by a court of appeal or any higher court in any material respect;

or

(vi) an alternative judgment is modified or reversed by a court of appeal or any higher court in any material respect.

(B) Interim Lead Counsel, acting on behalf of the Representative Plaintiffs, shall have the right, but not the obligation, in their sole discretion, to terminate this Settlement Agreement by providing written notice to BTMU and MUTB's counsel within twenty-five (25) Business Days of any of the following events, provided that the occurrence of the event substantially deprives Plaintiffs of the benefit of the Settlement:

(i) the Court enters an order declining to enter Representative Plaintiffs' Motion for Preliminary Approval pursuant to Section 13 or the Motion for Final Approval pursuant to Section 16 in any material respect;

(ii) the Court enters an order refusing to approve the Settlement Agreement or any material part of it;

(iii) the Court enters an order declining to enter the Final Judgment and order of dismissal in any material respect;

(iv) the Court enters an alternative judgment;

(v) the Final Judgment and order of dismissal is modified or reversed by a court of appeal or any higher court in any material respect;

(vi) an alternative judgment is modified or reversed by a court of appeal or any higher court in any material respect; or

(vii) BTMU and MUTB, for any reason, fail to comply with Section 3 and fail to cure such non-compliance as contemplated by Section 21(C) below.

(C) In the event that BTMU and MUTB, for any reason, fail to comply with Section 3, then on ten (10) Business Days written notice to BTMU and MUTB's counsel, during which ten-day period BTMU and MUTB shall have the opportunity to cure the default without penalty, Representative Plaintiffs, by and through Interim Lead Counsel, may terminate this Settlement Agreement or elect to enforce it as provided by the Federal Rules of Civil Procedure.

## **22. Effect of Termination**

Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Agreement should terminate or be cancelled, or otherwise fail to become effective for any reason, including, without limitation, in the event that the Settlement as described herein is not finally approved by the Court or the Final Judgment is reversed or vacated following any appeal, then:

(A) Within ten (10) Business Days after written notification of such event is sent by counsel for BTMU and MUTB or Interim Lead Counsel to all Parties and the Escrow Agent, the Settlement Amount, and all interest earned in the Settlement Fund will be refunded, reimbursed, and repaid by the Escrow Agent to BTMU and MUTB, except as provided in Section 9(B).

(B) The Escrow Agent or its designee shall apply for any tax refund owed to the Settlement Fund and pay the proceeds to BTMU and MUTB, after deduction of any fees or expenses reasonably incurred in connection with such application(s) for refund;

(C) The Parties shall be restored to their respective positions in the Actions as of the Execution Date, with all of their respective legal claims and defenses preserved as they existed

on that date; and

(D) Upon termination of this Settlement Agreement, then:

(i) this Agreement shall be null and void and of no further effect, and none of BTMU and MUTB, the Representative Plaintiffs, or members of the Settlement Class shall be bound by any of its terms;

(ii) any and all releases shall be of no further force and effect;

(iii) the Parties shall be restored to their respective positions in the Actions as of the Execution Date, with all of their respective legal claims and defenses preserved as they existed on that date; and

(iv) any judgment or order entered by the Court in accordance with the terms of this Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

(E) Unless the Settlement is terminated, BTMU and MUTB shall take no position with respect to any motion for class certification that Representative Plaintiffs anticipate filing and/or file in connection with their claims against other Defendants in the Actions. Nothing in this Settlement Agreement shall preclude BTMU and MUTB from opposing motions for class certification or from taking positions in actions other than the Actions.

### **23. Supplemental Agreement**

In addition to the provisions contained in Section 21(A) herein, BTMU and MUTB shall have the right, but not the obligation, in its sole discretion, to terminate this Settlement Agreement pursuant to the terms and conditions of a Supplemental Agreement to be filed with the Court under seal at the same time as the motion for entry of the Preliminary Approval Order.

## **24. Confidentiality Protection**

Representative Plaintiffs, Interim Lead Counsel, and BTMU and MUTB agree to keep private and confidential the terms of this Settlement Agreement, except for disclosure at the Court's direction or disclosure *in camera* to the Court, until this document is filed with the Court, provided, however, that nothing in this Section shall prevent BTMU and MUTB, upon notice to Interim Lead Counsel, from making any disclosures it deems necessary to comply with any relevant laws, subpoena or other form of judicial process. Nothing in this provision shall preclude BTMU and MUTB from disclosing, without notice to Interim Lead Counsel, the fact, amount, or terms of the Settlement as a result of a good faith determination that such disclosure is required or advisable pursuant to bank regulatory requirements, SEC requirements, or other legal or regulatory requirements, or from disclosing the fact, amount, or terms of the Settlement to its regulators, insurers, or external auditors.

## **25. Binding Effect**

(A) This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of BTMU and MUTB, the Released Parties, the Representative Plaintiffs, and Settling Class Members.

(B) The waiver by any Party of any breach of this Settlement Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

## **26. Integrated Agreement**

This Settlement Agreement, including any exhibits hereto and agreements referenced herein, contains the entire, complete, and integrated statement of each and every term and provision agreed to by and among the Parties and is not subject to any condition not provided for

or referenced herein. This Settlement Agreement supersedes all prior or contemporaneous discussions, agreements, and understandings among the Parties to this Settlement Agreement with respect hereto, including the Term Sheet executed on December 4, 2017. This Settlement Agreement may not be modified in any respect except by a writing that is executed by all the Parties hereto.

**27. No Conflict Intended**

The headings used in this Settlement Agreement are for the convenience of the reader only and shall not have any substantive effect on the meaning and/or interpretation of this Settlement Agreement.

**28. No Party is the Drafter**

None of the Parties shall be considered to be the drafter of this Settlement Agreement or any provision herein for the purpose of any statute, case law, or rule of interpretation or construction that might cause any provision to be construed against the drafter.

**29. Choice of Law**

All terms within the Settlement Agreement and its exhibits hereto shall be governed by and interpreted according to the substantive laws of the State of New York, without regard to its choice of law or conflict of laws principles, including N.Y. General Obligations Law § 15-108.

**30. Execution in Counterparts**

This Settlement Agreement may be executed in one or more counterparts. Facsimile and scanned/PDF signatures shall be considered valid signatures. All executed counterparts shall be deemed to be one and the same instrument. There shall be no agreement until the fully signed counterparts have been exchanged and delivered on behalf of all Parties.



**31. Submission to and Retention of Jurisdiction**

The Parties, Released Parties, and the Settlement Class irrevocably submit, to the fullest extent permitted by law, to the exclusive jurisdiction of the United States District Court for the Southern District of New York for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement, or the exhibits hereto. For the purpose of such suit, action, or proceeding, to the fullest extent permitted by law, the Parties, Released Parties and the Settlement Class irrevocably waive and agree not to assert, by way of motion, as a defense, or otherwise, any claim or objection that they are not subject to the jurisdiction of such Court, or that such Court is, in any way, an improper venue or an inconvenient forum or that the Court lacked power to approve this Settlement Agreement or enter any of the orders contemplated hereby.

**32. Reservation of Rights**

This Settlement Agreement does not settle or compromise any claims by Representative Plaintiffs or any Class Member asserted against any Defendant or any potential defendant other than BTMU and MUTB and the Released Parties. The rights of any Class Member against any other Person other than BTMU and MUTB and the Released Parties are specifically reserved by Representative Plaintiffs and the Class Members.

**33. Notices**

All notices and other communications under this Settlement Agreement shall be sent to the Parties to this Settlement Agreement at their address set forth on the signature page herein, viz, if to Representative Plaintiffs, then to: Vincent Briganti, Lowey Dannenberg, P.C., 44 South Broadway, Suite 1100, White Plains, New York 10601 and if to BTMU and MUTB, then to Daryl A. Libow and Christopher M. Viapiano, Sullivan & Cromwell LLP, 1700 New York

Avenue, N.W., Suite 700, Washington, D.C. 20006, or such other address as each party may designate for itself, in writing, in accordance with this Settlement Agreement.

**34. Authority**

In executing this Settlement Agreement, Interim Lead Counsel represent and warrant that they have been fully authorized to execute this Settlement Agreement on behalf of the Representative Plaintiffs and the Settlement Class (subject to final approval by the Court after notice to all Class Members), and that all actions necessary for the execution of this Settlement Agreement have been taken. BTMU and MUTB represent and warrant that the undersigned is fully empowered to execute the Settlement Agreement on behalf of BTMU and MUTB, and that all actions necessary for the execution of this Settlement Agreement have been taken.

**35. Disputes or Controversies**

Any dispute or controversy arising out of or relating to the cooperation set forth in Section 4 herein, including any claims under any statute, law, or regulation, shall be resolved exclusively by mediation, or, if mediation fails to resolve the dispute, by arbitration, in each case administered by a neutral agreed upon by all parties at JAMS, Inc., formerly known as Judicial Arbitration and Mediation Services (“JAMS”), in accordance with its procedures and Comprehensive Arbitration Rules & Procedures then in effect (“Rules”) and in accordance with the Expedited Procedures in those Rules (or such other alternative dispute resolution organization as all parties shall agree), except as modified herein. The arbitration shall be conducted on a strictly confidential basis, and the Parties shall not disclose the existence or nature of any claim; any documents, correspondence, briefing, exhibits, or information exchanged or presented in connection with any claim; or any rulings, decisions, or results of any claim or argument (collectively, “Arbitration Materials”) to any third party, with the sole

exception of the Parties' respective legal counsel (who shall also be bound by these confidentiality terms) or under seal in any judicial proceeding commenced in connection with this Section 35 or to the extent that such disclosure is required or advisable pursuant to bank regulatory requirements, SEC requirements, or other legal or regulatory requirements. The arbitral decision shall be final and binding upon the Parties hereto. Any arbitral award may be entered as a judgment or order in any court of competent jurisdiction. Except as the Rules may provide, the Parties shall share JAMS's administrative fees and the mediator's or arbitrator's fees and expenses. Each Party shall be responsible for such Party's attorneys' fees and costs, except as otherwise provided by any applicable statute or other law. Either Party may commence litigation in any state or federal court of competent jurisdiction located in New York County, New York to obtain injunctive relief in aid of arbitration, to compel arbitration, or to confirm or vacate an arbitrator's award. The Parties agree to take all steps necessary to protect the confidentiality of the Arbitration Materials in connection with any such proceeding, agree to use their best efforts to file all confidential information (and documents containing confidential information) under seal, and agree to the entry of an appropriate protective order encompassing the confidentiality terms of any settlement agreement. The seat of arbitration shall be New York, New York.

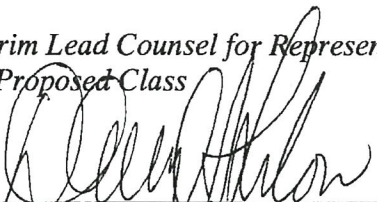
Dated: January 24, 2018

By: 

Vincent Briganti  
LOWEY DANNENBERG, P.C.  
44 South Broadway  
White Plains, New York 10601  
Telephone: (914) 997-0500  
vbriganti@lowey.com

*Interim Lead Counsel for Representative Plaintiffs and  
the Proposed Class*

Dated: January 23, 2018

By: 

Daryl A. Libow  
Christopher M. Viapiano  
SULLIVAN & CROMWELL LLP  
1700 New York Avenue, N.W., Suite 700  
Washington, D.C. 20006  
Telephone: (202) 956-7500  
libowd@sullcrom.com  
viapianoc@sullcrom.com

*Counsel for BTMU and MUTB*