UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE LIBOR-BASED FINANCIAL INSTRUMENTS ANTITRUST LITIGATION	Master File No. 11-md-2262 (NRB)
THIS DOCUMENT RELATES TO:	
METZLER INVESTMENT GmbH, et al., Plaintiffs, v. CREDIT SUISSE GROUP AG, et al., Defendants.	No. 11 Civ. 2613

MEMORANDUM OF LAW IN SUPPORT OF EXCHANGE-BASED PLAINTIFFS' COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

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Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure and Paragraph 10 of the Order preliminarily approving the Settlement[1] entered April 26, 2024 (ECF No. 4028), Court-appointed interim co-lead class counsel Kirby McInerney LLP and Lovell Stewart Halebian Jacobson LLP ("Settlement Class Counsel") for the Exchange-Based Plaintiffs hereby respectfully submit this Memorandum of Law, the accompanying Joint Declaration,[2] and the accompanying Declaration of Jack Ewashko in support of Settlement Class Counsel's motion for an order awarding attorneys' fees and reimbursement of litigation expenses in connection with the Settlement between Exchange-Based Plaintiffs and Settling Defendants.[3]

I. INTRODUCTION

This litigation has been hard-fought by Settlement Class Counsel for over thirteen (13) years. The Court is well aware of how Defendants have attempted to narrow the scope of Plaintiffs' Claims during the pendency of the litigation. The history of the litigation is summarized in the Joint Declaration filed contemporaneously herewith. If approved, the proposed Settlement of $3.45 million would completely resolve all claims against the remaining Settling Defendants and terminate the pending litigation in the Exchange-Based Action. Together with the Prior

[1] All capitalized terms in this memorandum have the same meaning as set forth in the Stipulation and Agreement of Settlement ("Stipulation"), dated April 8, 2024. *See* ECF No. 4011-1. All references to "ECF No." herein refer to documents in the docket of the MDL Action, No. 11 MD 2262 (NRB) (S.D.N.Y.). Unless otherwise noted, all emphasis is added and internal citations omitted.

[2] "Joint Decl." or "Joint Declaration" refers to the Joint Declaration of David E. Kovel and Christopher Lovell in Support of (A) Exchange-Based Plaintiffs' Motion for Final Approval of Class Action Settlement, and (B) Exchange-Based Plaintiffs' Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, filed contemporaneously herewith.

[3] "Settling Defendants" refers to: (i) Credit Suisse AG; (ii) Lloyds Bank plc and Bank of Scotland plc; (iii) NatWest Markets plc (f/k/a The Royal Bank of Scotland plc); (iv) Portigon AG (f/k/a WestLB) and Westdeutsche Immobilienbank AG (n/k/a Westdeutsche Immobilien Servicing AG); (v) Royal Bank of Canada and RBC Capital Markets, LLC; (vi) Coöperatieve Rabobank U.A. (f/k/a Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A.); (vii) The Norinchukin Bank; (viii) MUFG Bank, Ltd. (f/k/a The Bank of Tokyo-Mitsubishi UFJ, Ltd.); and (ix) UBS AG. Credit Suisse AG merged into UBS AG and ceased to exist.

Settlements,[4] this Settlement brings the total settlement amount in the Exchange-Based Action to $190,450,000. Joint Decl. ¶ 4. Collectively, the Exchange-Based Settlements continue to represent the largest recovery for a "futures-only" class asserting claims under the CEA. *Id.* If and to the extent the Settlement is finally approved, Settlement Class Counsel respectfully request that the Court award attorneys' fees and grant reimbursement of litigation expenses.

Attorneys' Fee Request. Settlement Class Counsel pursued this case on a wholly contingent basis without any guarantee of success or compensation. Settlement Class Counsel now respectfully request that the Court award attorneys' fees in the amount of thirty percent (30%) of the remainder of the Settlement Fund after deducting Court-approved expenses (along with time, calculated for the period between August 13, 2020 and July 26, 2024). The nature of this request is consistent with the Court's previously articulated view "that awarding fees as a percentage of net recovery is more consistent with notions of public policy in that doing so encourages class counsel's prudence and discretion in incurring expenses." *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 Civ. 5450 (NRB), 2018 WL 3863445, at *4 (S.D.N.Y. Aug. 14, 2018) (emphasis in original). Settlement Class Counsel respectfully submits that the percentage fee award is justified by, *inter alia*, the following considerations.

First, the requested fee would provide Settlement Class Counsel with a negative risk multiplier of 0.88. A negative multiplier is "a strong indication of the reasonableness of the proposed fee." *In re Bear Stearns Cos., Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 271 (S.D.N.Y. 2012). This crosscheck multiplier falls below the range considered reasonable by

[4] On September 17, 2020, this Court granted Final Approval of settlements with: (i) Barclays Bank plc; (ii) Citigroup Inc., Citibank, N.A., and Citigroup Global Markets Inc.; (iii) Deutsche Bank AG, Deutsche Bank Securities Inc., and DB Group Services (UK) Ltd.; (iv) HSBC Bank plc; (v) JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. and Bank of America Corporation and Bank of America, N.A.; and (vi) Société Générale (collectively, "Prior Settlements"). *See* ECF Nos. 3175-80.

courts in the Second Circuit. *See Sewelll v. Bovis Lend Lease, Inc.*, No. 09 Civ. 6548 (RLE), 2012 WL 1320124, at *13 (S.D.N.Y. Apr. 16, 2012) ("Courts commonly award lodestar multipliers between two and six.").

Additionally, there were very substantial risks prosecuting Exchange-Based Plaintiffs' claims that arose from the "esoteric"[5] commodity futures markets and involved "complex and difficult" issues of proof,[6] which characterize commodity futures manipulation claims. *Compare In re LIBOR-Based Fin. Investments Antitrust Litig.*, No. 11 MD 2262 (NRB), 2016 WL 7378980, at *22-23 (S.D.N.Y. Dec. 20, 2016) ("*LIBOR VI"*), *with In re LIBOR-Based Fin. Investments Antitrust Litig.*, 299 F. Supp. 3d 430, 489 (S.D.N.Y. 2018) ("*LIBOR VII*"). This Court previously found that the over-the-counter ("OTC") plaintiffs' claims were "undisputedly [] complex and fraught with risk."[7] Unlike the OTC plaintiffs, the Exchange-Based Plaintiffs did not have a contract with each Defendant specifying the amount of interest to be paid or received as arithmetically calculated from LIBOR. *Id.* Instead, Exchange-Based Plaintiffs made open market purchases and sales in the "volatile" commodity futures markets and confronted the "complex and difficult" task of establishing the fact and amounts of impact in such "esoteric" markets of Defendants' alleged manipulation of LIBOR upon the EDF prices at which Exchange-Based Plaintiffs transacted. *See*, *e.g.*, *id.* Thus, Exchange-Based Plaintiffs faced more substantial risks in establishing the fact and amount of price impact and injury than were present in the OTC plaintiffs' claims which were "undisputedly [] complex and fraught with risk." *See* n.6, *supra*.

[5] *Dunn v. CFTC*, 519 U.S. 465, 468-69 (1997) (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 356-67 (1982)).

[6] *See In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 395 (S.D.N.Y. 1999) (noting that CEA manipulation cases are "complex and difficult").

[7] *LIBOR*, 2018 WL 3863445, at *4 (awarding a fee of 18.5% in connection with settlements totaling $235 million, which constituted a 1.65 lodestar multiplier).

Given these and many other risks, Exchange-Based Class Counsel respectfully submit that 30% of the remainder of the Settlement Fund after counsel's litigation expenses are reimbursed, representing a 0.88 risk multiplier, is fair, reasonable, and equitable. This "negative" multiplier is well below multipliers regularly awarded in complex class litigation both within and outside of this District. *See Sumitomo*, 74 F. Supp. 2d at 395, 399 (fee of **27.5%** of the $134 million settlement amount on claims of copper futures manipulation, representing a **2.5 risk multiplier** after a delay in payment from inception of **3.5 years**); *In re Deutsche Telekom AG Sec. Litig.*, No. 00 Civ. 9475 (NRB), 2005 WL 7984326, at *4 (S.D.N.Y. June 14, 2005) (awarding attorneys' fees of **28%** of a $120 million settlement, representing a **3.96 risk multiplier** after **5 years** from inception); *see also* n.7, *supra*; *LIBOR*, 2018 WL 3863445, at *4 (noting "mean multiplier in this Circuit is approximately 1.55, with multipliers in antitrust and securities cases recently averaging 1.77 and 1.43, respectively" (citing 4 William B. Rubenstein, Newberg on Class Actions § 15:89 tbls. 3, 4 (5th ed.))); *id*. (noting study identifying "an average multiplier of 3.18 for settlements above $175.5 million").[8] *See* Section III.A.2, *infra*.

Litigation Expense Reimbursement. Settlement Class Counsel also respectfully seek reimbursement for $135,349.19 in litigation expenses incurred during the period between August 13, 2020 and July 26, 2024. Courts regularly approve reimbursement of such litigation expenses in class actions as a matter of course. *See*, *e.g.*, *LIBOR*, 2018 WL 3863445, at *1 (approving $14,855,689.55 in costs and expenses to OTC plaintiffs); *In re Credit Default Swaps Antitrust*

[8] *See*, *e.g.*, *Christine Asia Co., Ltd. v. Yun Ma*, No. 15 MD 2631 (CM), 2019 WL 5257534, at *17 (S.D.N.Y. Oct. 16, 2019), *appeal withdrawn sub nom. Tan Chao v. William*, No. 19 Civ. 3823, 2020 WL 763277 (2d Cir. Jan. 2, 2020) ("When determining whether a fee request is reasonable in relation to a settlement amount, the court compares the fee application to fees awarded in similar [] class-action settlements of comparable value"); *In re Neurontin Antitrust Litig.*, No. 02 Civ. 1830, slip op. (D.N.J. Aug. 6, 2014), ECF No. 114 (Joint Decl. Ex. E, Tab 4) (awarding 33⅓% representing a 1.99 multiplier of a $191 million settlement 12 years after inception); *In re Steel Antitrust Litig.*, No. 08 Civ. 5214, slip op. (N.D. Ill. Oct. 22, 2014), ECF No. 539 (Joint Decl. Ex. E, Tab 7) (awarding 33% representing a 1.97 multiplier on a $163 million settlement).

Litig., No. 13 MD 2476 (DLC), 2016 WL 2731524, at *18 (S.D.N.Y. Apr. 26, 2016) (approving $10 million in expenses). *See* Section III.B, *infra*.

II. RELEVANT BACKGROUND

Exchange-Based Plaintiffs respectfully refer the Court to the accompanying Joint Declaration concerning the history of the litigation, the claims asserted, and the settlement negotiations. *See generally* Joint Decl. ¶¶ 10-60. At the outset and continuing throughout this litigation, the risks of successfully pleading, proving, and otherwise prosecuting the claims in this Action were substantial. There was no government settlement or complaint prior to the commencement of this Action, nor until well after the filing of the motion to dismiss the consolidated amended complaint. *See generally id.* ¶¶ 10-16.

In investigating and drafting the complaints and preparing to defend the motions to dismiss, Settlement Class Counsel faced numerous pleading, proof, and personal jurisdiction risks. On the antitrust claims, the risks included whether the alleged conduct injured competition, constituted a conspiracy, impacted LIBOR, impacted EDF prices, and/or caused antitrust injury in a way that conferred on Exchange-Based Plaintiffs "efficient enforcer" standing to sue. On the CEA claims, the risks included, but were not limited to, whether Defendants (i) acted to suppress LIBOR, (ii) did so with scienter to manipulate EDF prices, (iii) did impact EDF prices, and (iv) did so knowing what one another was doing for purposes of aiding and abetting or other joint liability.

Throughout this litigation Settlement Class Counsel worked with economists and market experts, performed factual investigation and legal research, and otherwise performed professional services to try to overcome these risks. Settlement Class Counsel sought to plead that LIBOR was suppressed compared to the Federal Reserve Deposit Rate and other benchmarks. *E.g.*, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 935 F. Supp. 2d 666, 716 (S.D.N.Y. 2013)

("*LIBOR I*"). Additionally, Settlement Class Counsel successfully alleged facts and developed legal arguments to plead that Defendants' conduct, even if aimed predominantly or exclusively at LIBOR alone (and not EDF prices), was sufficient for a reasonable inference of the requisite scienter, *see*, *e.g.*, *id.* at 715; *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 962 F. Supp. 2d 606, 615-16 (S.D.N.Y. 2013) ("*LIBOR II*"); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 27 F. Supp. 3d 447, 466-71 (S.D.N.Y. 2014) ("*LIBOR III*"), and developed multiple fact allegations and legal theories to support aiding and abetting. *See LIBOR I*, 935 F. Supp. 2d at 722-23.

Defendants, represented by the highest caliber defense counsel, made no fewer than four motions to dismiss Exchange-Based Plaintiffs' claims on the foregoing and additional grounds including for lack of personal jurisdiction. In a series of four detailed opinions, this Court not only repeatedly rejected Defendants' multiple efforts to dismiss large portions of the CEA claims but also granted Exchange-Based Plaintiffs leave to amend to substantially enlarge the Class. Joint Decl. ¶¶ 13-16, 18, 21-22, 28-29; *see also In re Initial Pub. Offering Sec. Litig.*, 21 MC 92 (SAS), 2011 WL 2732563, at *2 (S.D.N.Y. July 8, 2011) (lead counsel incurred "significant risk that it would never be compensated for its time and effort" including "[b]riefing multiple rounds of motions to dismiss").

Through Settlement Class Counsel's efforts in investigating and pleading the Class's claims, reviewing extensive document productions, submitting a letter-motion for leave to move for class certification, compiling evidence relating to Settling Defendants, negotiating settlements, and multiple other tasks, Settlement Class Counsel were able to secure the additional Settlement Fund with Settling Defendants. Settlement Class Counsel faced substantial risks of proving the claims described above. By virtue of their extensive professional services, Counsel overcame those

risks sufficiently to create the Settlement for the class, which, if approved, and combined with prior settlements in this case, constitute the largest class action settlement of CEA manipulation claims in the history of the CEA.

III. ARGUMENT

A. Settlement Class Counsel Are Entitled to a Reasonable Fee from the Common Fund They Recovered for the Benefit of the Settlement Classes

Under the common fund doctrine, "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). If the Settlement receives final approval, eligible claimants will receive distributions from the $3,450,000 common fund generated by the efforts of Settlement Class Counsel. An award of attorneys' fees and the reimbursement of litigation expense would compensate Settlement Class Counsel for bringing and prosecuting the Action on a wholly continent basis without any remuneration from these Settling Defendants for well in excess of thirteen years.

1. The Requested Fee Is Fair and Reasonable Under the Preferred "Percentage Method"

Under the percentage method, the Court "sets some percentage of the recovery as a fee" for class counsel. *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). This Court has recognized in this proceeding that "[i]t remains the case that adoption of the percentage method continues to be the trend of district courts in the Second Circuit but . . . an analysis of counsel's lodestar as a cross check on the reasonableness of the requested percentage remains common." *LIBOR*, 2018 WL 3863445, at *3 (quoting *In re IMAX Sec. Litig.*, No. 06 Civ. 6128 (NRB), 2012 WL 3133476, at *5 (S.D.N.Y. Aug. 1, 2012)).

Courts in the Second Circuit have routinely awarded attorneys' fees in an amount equal to 30% or more of the common fund in cases where there was a comparably sized common fund. *See*

Velez v. Novartis Pharm. Corp., No. 04 Civ. 9194 (CM), 2010 WL 4877852, at *21 (S.D.N.Y. Nov. 30, 2010) (collecting cases awarding 30% or more); *In re Beacon Assoc. Litig.*, No. 09 Civ. 3907 (CM), 2013 WL 2450960, at *5 (S.D.N.Y. May 9, 2013) ("In this Circuit, courts routinely award attorneys' fees that run to 30% and even a little more of the amount of the common fund.").[9]

The requested fee in the amount of $994,395.24, or thirty percent (30%) of the remainder of the Settlement Fund minus Settlement Class Counsel's litigation expenses approved by the Court, is also in line with prior CEA manipulation class actions that have awarded fees constituting one-third of the common fund. *See*, *e.g.*, *In re Nat. Gas Commodity Litig.*, No. 03 Civ. 6186, slip op. (S.D.N.Y. May 24, 2006), ECF No. 445 (Joint Decl. Ex. E, Tab 3) (33⅓% fee award that resulted in a 1.44 lodestar multiplier); *In re Soybeans Futures Litig.*, No. 89 Civ. 7009, slip op. (N.D. Ill. Nov. 27, 1996), ECF No. 470 (Joint Decl. Ex. E, Tab 6) (33⅓% fee award that resulted in a 1.03 lodestar multiplier); *In re BP Propane Direct Purchaser Antitrust Litig.*, No. 06 Civ. 3541, slip op. (N.D. Ill. Feb. 10, 2010), ECF No. 209 (Joint Decl. Ex. E, Tab 1) (33% fee award that resulted in a 2.7 lodestar multiplier).

[9] *See*, *e.g.*, *City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132 (CM), 2014 WL 1883494, at *11-12 (S.D.N.Y. May 9, 2014), *aff'd sub nom. Arbuthnot v. Pierson*, 607 Fed. App'x 73 (2d Cir. 2015) (awarding 33% of $15 million settlement); *Fogarazzo v. Lehman Bros. Inc.*, No. 03 Civ. 5194 (SAS), 2011 WL 671745, at *4 (S.D.N.Y. Feb. 23, 2011) (awarding 33.3% of $6.75 million settlement); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 165 (S.D.N.Y. 2011) (awarding 33% of $13 million settlement); *Maley v. Del Glob. Tech. Corp.*, 186 F. Supp. 2d 358, 368 (S.D.N.Y. 2002) (awarding 33⅓% of $11.5 million settlement); *Khait v. Whirlpool Corp.*, No. 06 Civ. 6318 (ALC), 2010 WL 2025106, at *8 (E.D.N.Y. Jan. 20, 2010) (awarding 33% of $9.25 million settlement); *In re Facebook, Inc. IPO Sec. & Deriv. Litig.*, No. 12 Civ. 2389 (RWS), 2015 WL 6971424, at *9 (S.D.N.Y. Nov. 9, 2015), *aff'd sub nom. In re Facebook, Inc.*, 674 F. App'x 37 (2d Cir. 2016) (awarding 33% of $26.5 million settlement); *Citiline Holdings, Inc. v. iStar Fin., Inc.*, No. 08 Civ. 3612 (RJS), slip op. at 1 (S.D.N.Y. Apr. 5, 2013), ECF No. 127 (Joint Decl. Ex. E, Tab 2) (awarding 30% of $29 million settlement); *In re Sadia S.A. Sec. Litig.*, No. 08 Civ. 9528 (SAS), 2011 WL 6825235, at *3 (S.D.N.Y. Dec. 28, 2011) (awarding 30% of $27 million settlement); *In re BHP Billiton Ltd. Sec. Litig.*, No. 16 Civ. 1445 (NRB), 2019 WL 1577313, at *1 (S.D.N.Y. Apr. 10, 2019) (awarding 30% of a $50 million settlement before expenses with interest).

In addition, when calculated on a gross basis of the total common fund of $3.45 million, Plaintiffs' Counsel's fee request of $994,395.24 translates to 28.82%.[10] As such, the requested fee is materially less than the amount specified in the Notice given to members of the Settlement Class, which provided that "Settlement Class Counsel will ask the Court for attorneys' fees of up to one third of the $3,450,000 Settlement Fund, as well as reimbursement for litigation costs and expenses." Ewashko Decl. Ex. A, Long Form Notice at 8.

2. The Requested Fee Would Result In A Lodestar Multiplier of 0.88, Confirming the Reasonableness of the Requested Fee

Settlement Cass Counsel have spent over 1,354 hours litigating the action between August 13, 2020 and July 26, 2024, representing a total lodestar of $1,135,700.95 based on counsel's current hourly rates. Joint Decl. ¶¶ 81-82. The requested fee of 30% of the Settlement Fund (after deducting counsel's requested out-of-pocket expenses totaling $135,349.19) would result in a lodestar multiplier of approximately 0.88.

A Lodestar Multiplier of 0.88 is Reasonable. The requested 0.88 risk multiplier is well *below* what this Court recently recognized as the mean multiplier in this Circuit of approximately 1.55 for antitrust and securities actions. *See LIBOR*, 2018 WL 3863445, at *4 (awarding a fee that yielded a 1.6 multiplier and noting that such a multiplier "fits comfortably within the range of lodestar multipliers generally observed.").[11] Indeed, numerous courts have awarded attorneys' fees

[10] Specifically, if $135,349.19 in litigation expenses are reimbursed, then the requested fee is for 30% of $3,314,650.81, which is the remainder of $3.45 million minus $135,349.19. 30% of $3,314,650.81 is $994,395.24.

[11] *See also In re GSE Bonds Antitrust Litig.*, No. 19 Civ. 1704 (JSR), 2020 WL 3250593, at *5 (S.D.N.Y. June 16, 2020) ("Although on the high end, a 4.09 multiplier is within the range of what has considered reasonable by courts."); *CDS Litig.*, 2016 WL 2731524, at *17 (approving a lodestar multiplier of "just over 6" in a complex antitrust class action); *Sewell*, 2012 WL 1320124, at *13 ("Courts commonly award lodestar multipliers between two and six."); *Johnson v. Brennan*, No. 10 Civ. 4712 (CM), 2011 WL 4357376, at *13 (S.D.N.Y. Sept. 16, 2011) ("Courts routinely award counsel two to three times lodestar in class action settlements."); *In re Lloyd's Am. Tr. Fund Litig.*, No. 96 Civ. 1262 (RWS), 2002 WL 31663577, at *27 (S.D.N.Y. Nov. 26, 2002) ("Here, the resulting multiplier of 2.09 is at the lower end of the range of multipliers awarded by courts within the Second Circuit.").

in antitrust class actions of 30% or more and that yielded substantially higher lodestar multipliers between 1.66 and 4.88.[12] Thus, the requested 0.88 risk multiplier is reasonable. Indeed, a negative multiplier is "a strong indication of the reasonableness of the proposed fee." *See In re Bear Stearns*, 909 F. Supp. 2d at 271. *See also Guevoura Fund Ltd. v. Sillerman*, No. 15 Civ. 07192 (CM), 2019 WL 6889901, at *18 (S.D.N.Y. Dec. 18, 2019) ("Courts have repeatedly recognized that the reasonableness of the fee request under the percentage method is reinforced where, as here, the percentage fee would represent a negative multiplier of the lodestar.").

The Hours Expended By Counsel are Reasonable. Settlement Class Counsel and counsel for Plaintiffs have spent a total of over 1,354 hours litigating the Action since August 13, 2020 (excluding time relating to this motion). Joint Decl. ¶ 82.[13] Settlement Class Counsel's work in this case overcame many of the substantial risks associated with the claims here (*see* Section II, *supra*) and resulted in the largest historical "futures and options on futures only" settlement class for manipulation claims under the CEA. *See* Section I, *supra*.

[12] *See*, *e.g.*, *In re Relafen Antitrust Litig.*, No. 01-12239, slip op. at 7 (D. Mass. Apr. 9, 2004), ECF No. 297 (Joint Decl. Ex. E, Tab 5) (awarding a 33⅓% fee in connection with $175 million settlement, which constituted a 4.88 lodestar multiplier); *In re Linerboard Antitrust Litig.*, No. 98 Civ. 5055, 2004 WL 1221350, at *19 (E.D. Pa. June 2, 2004), *amended*, No. 98 Civ. 5055, 2004 WL 1240775 (E.D. Pa. June 4, 2004) (awarding a 30% fee in connection with settlements totaling $202.5 million, which constituted a 2.66 lodestar multiplier); *In re Neurontin*, ECF No. 114 (Joint Decl. Ex. E, Tab 4) (awarding a 33⅓ % fee in connection with settlements totaling $190.4 million, which constituted 1.99 lodestar multiplier); *In re Domestic Drywall Antitrust Litig.*, No. 13 MD 2437, 2018 WL 3439454, at *20 (E.D. Pa. July 17, 2018) (awarding a 33⅓% fee in connection with settlements totaling $190 million, which constituted a 1.66 lodestar multiplier); *In re Steel*, ECF No. 539 (Joint Decl. Ex. E, Tab 7) (awarding a 33% fee in connection with settlements totaling $163.9 million, which constituted a 1.97 risk multiplier); *In re Titanium Dioxide Antitrust Litig.*, No. 10 Civ. 318, 2013 WL 6577029, at *1 (D. Md. Dec. 13 2013) (awarding a 33⅓% fee in connection with settlements totaling $163.5 million, which constituted a 2.39 lodestar multiplier); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 748-52 (E.D. Pa. 2013) (awarding a 33⅓% fee in connection with settlements totaling $150 million, which constituted a 2.99 lodestar multiplier); *Kurzweil v. Philip Morris Cos.*, No. 94 Civ. 2373 (MBM), 1999 WL 1076105, at *3 (S.D.N.Y Nov. 30 1999) (awarding a 30% fee in connection with a $123.8 million settlement, which constituted a 2.46 lodestar multiplier).

[13] For purposes of this fee application, Settlement Class Counsel restricted time submitted to the period between August 13, 2020 and July 26, 2024, inclusive, and excluded time in connection with (i) securing approval of the Prior Settlements and (ii) work exclusively performed to facilitate the administration and distribution of the Prior Settlements. Joint Decl. ¶ 83.

Settlement Class Counsel's professional services in this case are summarized above and set forth in detail in the individual declarations submitted by each firm. *See* Joint Decl. Exs. B-C.

Counsel's Hourly Rates are Reasonable. The hourly rates for the professional services undertaken by Plaintiffs' counsel have been billed at the regular current hourly rates in cases involving complex class action litigation and/or have been accepted in other antitrust or complex class action litigations. Joint Decl. ¶ 84.[14] The hourly billing rates for attorneys working on this case ranged from $400 to $1250.[15] Billing rates in the same range have been previously approved by this Court and others in this District as reflective of market rates in New York for work of comparable size and complexity. *See* Joint Decl. Ex. D (table reflecting comparable billing rates). The hourly rates charged by Plaintiffs' Counsel are well within the range of reasonable fees for attorneys working on complex class action litigation in this District and are comparable to peer plaintiff and defense firms litigating matters of similar magnitude. *Id.*

In sum, Settlement Class Counsel's requested 30% fee award is reasonable as a percentage of the Settlement Fund and also satisfies the "lodestar cross-check" because such a fee would result in a lodestar multiplier of 0.88—well below the average multiplier in this Circuit generally. The requested fee is also supported by each of the *Goldberger* factors considered by courts in this Circuit.

3. Each *Goldberger* Factor Supports the Requested Fee Award

In the Second Circuit, courts evaluating whether a fee is "reasonable" must consider: "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3)

[14] Courts use "prevailing market rates" and current rates to calculate the lodestar figure to account for the delay in payment. *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) (citing *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 283-84 (1989)).

[15] *See* Plaintiffs' Counsel Declarations attached to the Joint Declaration as Exhibits B through C.

the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *Goldberger*, 209 F.3d at 50. Each *Goldberger* factor weighs in favor of the reasonableness of Settlement Class Counsel's fee request.

a) The Risk of Litigation

The risk of the litigation is perhaps "the most important *Goldberger* factor." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 440 (E.D.N.Y. 2014); *see also Goldberger*, 209 F.3d at 54 ("We have historically labeled the risk of success as perhaps the foremost factor to be considered in determining whether to award an enhancement"). Claims for manipulation in violation of the CEA have been recognized as "notoriously difficult to prove" and "more difficult and risky than securities fraud cases." *Sumitomo*, 74 F. Supp. 2d at 395, 397. The numerous and very substantial pleading, proof, and personal jurisdiction risks inherent in the settled claims have been set forth in Section II, *supra*, the Final Approval brief (*see* Section III.A.2), and the Joint Declaration (¶¶ 5-6, 9, 78). The multitude of risks faced by Plaintiffs in this hard-fought, long-running litigation strongly support the requested fee.

b) The Magnitude and Complexities of the Litigaiton

It is hard to overstate the complexity and magnitude of this litigation, which has been pending for more than thirteen (13) years. This Court previously recognized that the prosecution of price manipulation claims in violation of the CEA is notoriously "complex and difficult." *Compare Sumitomo*, 74 F. Supp. 2d at 395, *with Curran*, 456 U.S. at 356 (commodity futures markets are "esoteric"); *see also In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998) ("class actions have a well deserved reputation as being most complex"); *In re Vitamin C Antitrust Litig.*, No. 06 MD 1738, 2012 WL 5289514, at *4 (E.D.N.Y. Oct. 23, 2012)

(antitrust cases involving collusion and price manipulation is "complicated, lengthy, and bitterly fought.").

With regard to magnitude of the litigation, Exchange-Based Plaintiffs have alleged that the sixteen U.S. Dollar LIBOR Panel Banks, many of which are among the largest banks in the world, conspired to fix and manipulate USD LIBOR over a period of more than five years. *See generally* Fifth Amended Consolidated Class Action Complaint (ECF No. 3510). The operative complaint is more than 300 pages long. *Id.* The Court has issued numerous lengthy decisions on substantive issues. More than 18 million pages of documents have been produced to Plaintiffs' counsel by Defendants and non-parties. Joint Decl. ¶¶ 61, 64. The docket specific to the Exchange Based action has nearly 900 entries and the primary docket for this action has more than 4,000 entries. *See In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 MD 2262 (S.D.N.Y). Settlement Class Counsel respectfully submit that the complexity and magnitude of the Exchange-Based Action fully support the requested fee.

c) The Quality of Representation Supports the Requested Fee

"[T]he quality of representation is best measured by results," *Goldberger*, 209 F.3d at 55, which are evaluated in light of "the recovery obtained and the backgrounds of the lawyers involved." *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 141 (S.D.N.Y. 2008).

The Results. The Settlement in this Action has resulted in a Settlement Fund of $3.450 million for the benefit of the Settlement Class. Plaintiffs' Counsel respectfully submit that the additional classwide recovery provided by the Settlement provides strong evidence of the quality of their representation, especially since that amount is being paid even though at the time, the Exchange-Based Plaintiffs' claims had been substantially curtailed by the Court's prior rulings, and class certification was previously denied. Joint Decl. ¶¶ 28, 35, 38. Together with the Prior

Settlements, this Settlement brings the total settlement amount in the Exchange-Based Action to $190,450,000. Joint Decl. ¶ 4. Collectively, the Exchange-Based Settlements continue to represent the largest recovery for a "futures-only" class asserting claims under the CEA. *Id.*

The Representation. Settlement Class Counsel have extensive experience prosecuting commodity manipulation and antitrust cases. *See* Joint Decl. Exs. B and C at Ex. 3 for each. Kirby McInerney has represented the interests of investors for more than seventy-five (75) years and has significant experience representing investors in connection with claims relating to the manipulation of physical commodities, commodity futures, and related derivative products, and as a sole lead or co-lead counsel, has recovered millions in manipulation cases. *See* Joint Decl. Ex. B-3. Lovell Stewart similarly has forty (40) years' experience litigating commodity futures manipulation cases and, as sole lead or co-lead counsel, has obtained several of the largest settlements in the history of the CEA. *See* Joint Decl. Ex. C-3.

The quality of representation provided by opposing counsel is also a relevant consideration. *Maley*, 186 F. Supp. 2d at 373. The Settling Defendants are represented by several of the nation's biggest and most highly regarded defense firms. The fact that Settlement Class Counsel has prosecuted this Action for more than thirteen years against such formidable opponents to successfully produce these results, further supports the requested fee. *See Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 670 (S.D.N.Y. 2015) (noting that counsel's achievement in "obtaining valuable recompense . . . for its clients is particularly noteworthy given the caliber and vigor of its adversaries.").[16]

[16] *See also Anwar v. Fairfield Greenwich Ltd.*, No. 09 Civ. 0118 (VM), 2012 WL 1981505, at *2 (S.D.N.Y. June 1, 2012) (considering "the quality and vigor of opposing counsel"); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement."); *In re Marsh & McLennan Cos. Sec. Litig.*, No. 04 Civ. 8144 (CM), 2009 WL 5178546, at *19 (S.D.N.Y. Dec. 23 2009) (noting that the reasonableness of the requested fee

d) The Time and Labor Expended by Settlement Class Counsel Support the Requested Fee

As detailed in Section III.A.2 above and in the Joint Declaration, Settlement Class Counsel devoted over 1,354 hours to the prosecution of the claims during the period between August 13, 2020 and July 26, 2024. The lodestar value of this time totals $1,135,700.95. In sum, Plaintiffs' Counsel devoted substantial time and financial resources in prosecuting this case on behalf of the Exchange-Based Class.

e) The Requested Fee in Relation to the Settlements

As detailed above, the requested fee of 30% of the Settlement Fund (after deducting Court-approved expenses) is well within the range of fees approved within this Circuit in actions that involved similarly-sized common funds. *See* nn.8, 9, 12, *supra* (collecting cases that awarded fees totaling 30% or more of common funds). The requested 30% fee would result in a lodestar multiplier of 0.88. *See* Section III.A.2, *supra*. As detailed above, a lodestar multiplier of 0.88 is well below multipliers in actions that awarded fees equal to or greater than 30% of similarly-sized common funds. *Id.*; *see also* nn.8, 11, 12, *supra* (collecting cases that awarded fees totaling 30% or more of common funds and that yielded lodestar multipliers between 1.66 and 4.88).

In addition, following final approval, Plaintiffs' Counsel will continue to work closely with the Claims Administrator to ensure that the settlement is administered and that settlement proceeds are distributed to settlement class members. Plaintiffs' Counsel will seek no additional compensation for this work. Thus, the time and labor Plaintiffs' Counsel will continue to invest, in addition to the time already invested in this litigation, also support the requested fee. *In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 2015 WL 6971424, at *10 ("Considering that the

was supported by fact that defendants "were represented by first-rate attorneys who vigorously contested Lead Plaintiffs' claims and allegations").

work in this matter is not yet concluded for Plaintiffs' counsel who will necessarily need to oversee the claims process, respond to inquiries, and assist Class Members in submitting their Proof of Claims, the time and labor expended by counsel in this matter support a conclusion that a 33% fee award in this matter is reasonable."); *see also Pearlstein v. Blackberry Ltd.*, No. 13 Civ. 7060 (CM), 2022 WL 4554858, at *10 (S.D.N.Y. Sept. 29, 2022) ("[A]fter final approval there will be significant additional tasks relating to the Settlement, lowering the lodestar multiplier even further"); *Aponte v. Comprehensive Health Mgmt., Inc.*, No. 10 Civ. 4825 (JLC), 2013 WL 1364147, at *7 (S.D.N.Y. Apr. 2, 2013) ("The fact that Class Counsel's fee award will not only compensate them for time and effort already expended, but for time that they will be required to spend administering the settlement going forward").

f) Public Policy Supports Approval of the Fee Request

Private lawsuits asserting claims for manipulation further the overarching purpose of the CEA which is "to deter and prevent price manipulation." 7 U.S.C. § 5(b). Indeed, private lawsuits such as this one are regarded by Congress as "**critical** to protecting the public and fundamental to maintaining the credibility of the futures market." *Cange v. Stotler & Co., Inc.*, 826 F.2d 581, 584 (7th Cir. 1987) (emphasis added) (citing H.R. Rep. No. 565, 97th Cong., 2d Sess., pt. 1 at 56-57, *reprinted in* 1982 U.S.C.C.A.N. 3871, 3905-06); *see also Am. Soc'y of Mech. Eng'rs v. Hydrolevel Corp.*, 456 U.S. 556, 572 n.10 (1982) ("private suits are an important element of the Nation's antitrust enforcement effort"); *Pillsbury Co. v. Conboy*, 459 U.S. 248, 262-63 (1983) ("[t]his Court has emphasized the importance of the private action as a means of furthering the policy goals of certain federal regulatory statutes, including the federal antitrust laws.").

Awarding a reasonable percentage of the common fund "provid[es] lawyers with sufficient incentive to bring common fund cases that serve the public interest." *See Goldberger*, 209 F.3d at

51. Settlement Class Counsel respectfully submit that the requested fee award would further these important public policies and help promote the future integrity of the country's important financial markets. Without this private action the vast majority of investors in the Eurodollar futures markets would have no other source of potential recovery for the alleged manipulation of USD LIBOR and its impact on Eurodollar futures prices.

g) The Reaction of the Class to Date Supports the Requested Fee

Through July 30, 2024, the Settlement Administrator has disseminated the Postcard Notice to 12,581 potential members of the Settlement Class informing them, among other things, that the Settlement Class intended to apply to the Court for an award of attorneys' fees in an amount up to one-third of the Settlement Fund. *See* Ewashko Decl. Ex. A (Notice) at 8. The deadline for objections is August 15, 2024, but to date, no objections have been received. *Id*. at ¶ 19; Joint Decl. ¶ 76.[17]

B. Settlement Class Counsel's Costs and Expenses Are Reasonable and Were Necessary to the Result

"[C]ourts in the Second Circuit normally grant expense requests in common fund cases as a matter of course." *LIBOR*, 2018 WL 3863445, at *1. It is not uncommon that in complex antitrust cases such as this one, "substantial expenses [are] necessary," including costs related to initial investigations and research, testifying and consultant experts, discovery expenses, travel, postage and mailing, and copying costs. *Meredith Corp.*, 87 F. Supp. 3d at 671; *see also Guevoura Fund Ltd.*, 2019 WL 6889901, at *22. Such costs are "compensable if they are of the type normally billed by attorneys to paying clients." *Guevoura Fund Ltd.*, 2019 WL 6889901, at *22.

[17] Should any objections be received, Settlement Class Counsel will address them in their reply papers, due August 29, 2024.

Here, Settlement Class Counsel incurred litigation expenses relating to this Action totaling $135,349.19 for out-of-pocket expenses reasonably and necessarily incurred in connection with the prosecution of this case from August 13, 2020 to July 26, 2024. Joint Decl. ¶ 87. These expenses have been itemized by category for the Court's convenience. *Id.* ¶ 88; ¶ 8 in each of Plaintiffs' Counsel's attached declarations (Exs. B-C). Approximately 57.14% of the requested expenses are associated with document hosting and e-discovery consulting services and approximately 37.28% of the requested expenses are associated with payments to experts. *See id.*[18] Further, the requested expenses total approximately 3.92% of the total Settlement Fund, which is below the ratio previously approved by this Court in connection with previous LIBOR Settlements. *See LIBOR*, 2018 WL 3863445, at *1 (noting "given the complexities of this case and the necessity for extensive expert involvement" that "we are persuaded that 5.94% is not so high as to be unreasonable."). Indeed, "[t]he fact that Class Counsel [were] willing to [incur these expenses], where reimbursement was entirely contingent on the success of this litigation, is perhaps the best indicator that the expenditures were reasonable and necessary." *Fleisher v. Phoenix Life Ins. Co.*, No. 11 Civ. 8405 (CM), 2015 WL 10847814, at *23 (S.D.N.Y. Sept. 9, 2015). !

IV. CONCLUSION

For the reasons set forth above and in the Joint Declaration and Declaration of Jack Ewashko, Settlement Class Counsel respectfully request that this Court enter an Order reimbursing expenses in the amount of $135,349.19 and awarding Class attorneys' fees in the amount

[18] Additional categories of expenses include computerized legal research and document retrieval, local travel, and meals. *Id.* These are all the type of out-of-pocket expenses that are routinely reimbursed from common funds. *Yang v. Focus Media Holding Ltd.*, No. 11 Civ. 9051 (CM), 2014 WL 4401280, at *19 (S.D.N.Y. Sept. 4, 2014) (finding computer research, photocopying, postage, meals, and court filing fees "necessary for Lead counsel to successfully prosecute this case.").

$994,395.24 (or 30% of the remainder of $3.45 million minus the amount of litigation expenses reimbursed).

Dated: August 1, 2024
New York, New York

Respectfully submitted,

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