UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: BANK OF NOVA SCOTIA SPOOFING LITIGATION	Civil Action No. 3:20-11059 (MAS) (LHG)

BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

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I. PRELIMINARY STATEMENT

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Class Plaintiffs[1] move for preliminary approval of a $6,600,000 Settlement with Defendants.[2] This class action alleges that from at least January 1, 2008 through at least July 31, 2016 (the "Class Period"), Defendants violated the Commodity Exchange Act, 7 U.S.C. §§1, *et seq*. (the "CEA") and common law by intentionally manipulating the prices of Precious Metals Futures contracts and Options on those contracts traded on the Commodity Exchange Inc. ("COMEX") and the New York Mercantile Exchange ("NYMEX"). *See generally* Consolidated Complaint (ECF No. 31) ("Cpt.").[3] Class Plaintiffs allege that Defendants' manipulation occurred through "spoofing," a technique whereby traders place orders with the intent to cancel those orders prior to execution in order to send false and illegitimate signals of supply and demand to the market.[4]

The Parties have reached an agreement to settle this Action in exchange for $6,600,000 cash payment (the "Settlement Amount") to be made for the benefit of the Settlement Class and in exchange for the release of all claims against Defendants. The Parties reached this Settlement only after arm's length, zealous, and good-faith negotiations and with the assistance of a neutral, third-party JAMS mediator, Jed D. Melnick. Moreover, the proposed Settlement is separate from and in addition to the relief potentially available to the Settlement Class under a victim's compensation

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[1] Capitalized terms not defined herein have the same meaning as in the Stipulation and Agreement of Settlement (the "Agreement" or "Settlement Agreement") attached to the Declaration of James E. Cecchi ("Cecchi Decl."), filed contemporaneously herewith, as Exhibit 1.

[2] "Defendants" collectively refers to the Bank of Nova Scotia, Scotia Capital (USA) Inc., Scotia Holdings (US), Inc., The Bank of Nova Scotia Trust Company of New York, and Corey Flaum.

[3] All ECF citations are to *In re Bank of Nova Scotia Spoofing Litig.*, No. 3:20-11059 (MAS) (LHG) (D.N.J.), unless otherwise noted.

[4] This brief assumes the Court's familiarity with the factual allegations and procedural history of this Action; however, a detailed description of both is set forth within the Cecchi Decl.

fund offered by the U.S. Department of Justice ("DOJ") Deferred Prosecution Agreement ("DPA") with the Bank of Nova Scotia. As a result, the amount of compensation potentially[5] available to the Settlement Class has effectively doubled from $6,622,190 to approximately $13.2 million. Class Plaintiffs and Lead Counsel respectfully contend that the proposed Settlement is an excellent result for the Settlement Class.

Class Plaintiffs respectfully contend that all of the predicates to preliminary approval of the Settlement are met herein. The Court should certify the Settlement Class, which consists of:

> All persons and entities that purchased or sold any COMEX Gold Futures contract, COMEX Silver Futures contract, NYMEX Platinum Futures contract, or NYMEX Palladium Futures contract (together "Precious Metals Futures"), or any option on those futures contracts ("Options on Precious Metals Futures"), during the period of at least January 1, 2008 through at least July 31, 2016 (the "Class Period").

Agreement, §1(F). As discussed in further detail below, the proposed Class readily meets the requirements for certification under Rule 23(a) and (b)(3). The Class is sufficiently numerous – containing many thousands of individuals; the common questions of law and fact predominate because the Class's claims arise from a singular course of conduct (Defendants' spoofing in the markets described); the Class Plaintiffs' claims are both typical of the Class and adequate because they arise from the same course of conduct, while Lead Counsel are experienced in this and comparable litigation; and a class action is the superior mechanism for prosecuting these claims because individual actions by a class this large would be burdensome on the courts and prohibitively expensive for the individual plaintiffs. Accordingly, the Court will have no trouble certifying the proposed Class.

The proposed Settlement also warrants preliminary approval. It was negotiated at arm's length by well-informed and experienced counsel, with the aid of a mediator. The relief to the

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[5] The DOJ maintains full discretion to administer the Victim's Compensation Fund as it sees fit. ECF No. 31-1.

Class is adequate, the proposed distribution plan is equitable, and accordingly, Plaintiffs respectfully request that the Court preliminarily approve the Settlement herein and grant the other relief requested.

II. LEGAL ARGUMENT

Rule 23(e) of the Federal Rules of Civil Procedure requires Court approval for any class-wide resolution of claims. *See* Fed. R. Civ. P. 23(e). It is well established in the Third Circuit that the settlement of class action litigation is favored and encouraged. *See*, *e.g.*, *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2010) ("Settlement agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts."); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged."). Judicial review of a proposed class action settlement is a two-step process. Pursuant to Rule 23(e)(1)(B), the parties must "show[] that the [C]ourt will likely be able to: (i) approve the [settlement] proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal."[6] Fed. R. Civ. P. 23(e)(1)(B)(i)-(ii).

A. The Court Should Certify the Class for Purposes of the Proposed Settlement

The propriety of certifying a class solely for purposes of settlement is well established in the Third Circuit. *See*, *e.g.*, *In re NFL Players Concussion Injury Litig.*, 775 F.3d 570, 583 (3d Cir. 2014) ("***[P]reliminary*** analysis of a proposed class is . . . a tool for settlement used by the parties to fairly and efficiently resolve litigation.") (emphasis in original); *In re Pet Food Prods. Liab. Litig.*, No. 07-2867 (NLH), 2008 WL 4937632, at *3 (D.N.J. Nov. 18, 2008) ("Class actions

[6] Consistent with past decisions by this Court and others, Class Plaintiffs proceed first with the class certification analysis before addressing the preliminary approval of the Settlement. *See*, *e.g.*, *Smith v. Merck & Co., Inc.*, No. 13-2970 (MAS) (LHG), 2019 WL 3281609, at *2-*5 (D.N.J. July 19, 2019) (Shipp, J.).

certified for the purposes of settlement are well recognized under Rule 23."), *aff'd & vacated on other grounds*, 629 F.3d 333 (3d Cir. 2010). Moreover, certification of a settlement class ""has been recognized throughout the country as the best, most practical way to effectuate settlements involving large numbers of claims by relatively small claimants.""[7] *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 188 (S.D.N.Y. 2012). Nevertheless, a settlement class, like other certified classes must satisfy all requirements of Rules 23(a) and (b), though the manageability concerns of Rule 23(b)(3) are not at issue for a settlement class. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 593 (1997) ("Whether trial would present intractable management problems is not a consideration when settlement-only certification is requested . . . ."). As demonstrated below, the proposed Settlement Class satisfies these requirements.

1. The Proposed Settlement Class Satisfies Rule 23(a)

Rule 23(a) of the Federal Rules of Civil Procedure sets forth the prerequisites for a class and requires that:

> (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a)(1)-(4); *see also Russell v. Educ. Comm'm for Foreign Med. Graduates*, 15 F.4th 259, 265-66 (3d Cir. 2021), *cert. denied*, __ U.S. __, 142 S. Ct. 2706 (2022). As relevant here, Rule 23(b)(3) requires that "the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

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[7] All citations and footnotes are omitted and emphasis is added unless otherwise noted.

a. Numerosity

Rule 23(a) requires that a class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). In the Third Circuit, this prong is generally satisfied where "'the named plaintiff demonstrates the potential number of plaintiffs exceeds 40.'" *In re Modafinil Antitrust Litig.*, 837 F.3d 238, 249-50 (3d Cir. 2016) (quoting *Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001)).

Here, there are thousands of geographically diverse individuals within the Settlement Class definition. *See* Cecchi Decl., ¶35. Accordingly, and because joinder of all of these persons would be impracticable, the Court will have no trouble finding the Settlement Class is sufficiently numerous. *See*, *e.g.*, *Modafinil*, 837 F.3d at 250 (recognizing that "[l]eading treatises have collected cases and recognized the general rule that . . . '[a] class of 41 or more is usually sufficiently numerous'") (second alteration in original).

b. Commonality

Rule 23(a) requires that there be "questions of law or fact common to the class." Fed R. Civ. P. 23(a)(2). This commonality requirement is satisfied "'if the Named Plaintiffs share at least one question of law fact or law with the grievances of the prospective class.'" *Warfarin*, 391 F.3d at 528; *see also Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011) ("We quite agree that for purposes of Rule 23(a)(2) '"even a single [common] question"' will do."); *Rodriguez v. Nat'l City Bank*, 726 F.3d 372, 380-81 (3d Cir. 2013) (citing *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 306 (3d Cir. 2011)) ("That burden is not onerous. It does, however, require an affirmative showing that the class members share a common question of law or fact.").

Here, Class Plaintiffs allege that Defendants' spoofing served to inject false signals of supply and demand into the market for Precious Metals Futures contracts and Options on Precious Metals Futures contracts, thereby manipulating the market prices. As alleged, this course of

conduct by Defendants is a question of fact common to all Class Members which underlies all of their claims herein. *See also*, *e.g.*, *In re Remicade Antitrust Litig.*, No. 17-cv-04326, 2022 WL 3042766, at *5 ("Commonality is met in this case because each Class Member's claim depends on whether Defendants unlawfully engaged in anticompetitive behavior."); *see also Roofer's Pension Fund v. Papa*, 333 F.R.D. 66, 75 (D.N.J. 2019) (finding commonality requirement met where "[t]he class claims are predicated upon the same underlying misrepresentations and omissions by Defendants, presenting common issues of both fact and law arising thereunder"). This case involves further legal and factual questions arising from this same course of conduct, including but not limited to: (1) whether Defendants' conduct violated the CEA; (2) whether Defendants' conduct violated the common law; and (3) the appropriate measure of Class Damages.

Based on the foregoing, the commonality requirement of Rule 23(a) has been met. *See*, *e.g.*, *Smith*, 2019 WL 3281609, at *3 ("In resolving the merits of Plaintiffs' claims, therefore, the focus is on Defendants' salary grade structure and the resulting harm it caused, and not factual differences among individual class members. The Court, accordingly, finds that the proposed class satisfies the commonality and predominance requirements of Rules 23(a)(2) and 23(b)(3), respectively.").

c. Typicality and Adequacy

As this Court has previously observed, "[t]he adequacy and typicality analyses under Rules 23(a)(3) and 23(a)(4), often merge and may, therefore, be discussed together." *Smith*, 2019 WL 3281609, at *3; *see also Beck v. Maximus, Inc.*, 457 F.3d 291, 296 (3d Cir. 2006) (quoting *Amchem*, 521 U.S. at 626 n.20) ("The Supreme Court has noted the typicality and adequacy inquiries often 'tend[] to merge' because both look to potential conflicts and to 'whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.'"). The typicality predicate set forth in Rule

23(a)(3) requires that "'each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability.'" *Se. Pa. Transp. Auth. V. Orrstown Fin. Servs., Inc.*, No. 1;12-cv-00993, 2012 WL 3597179, at *3 (M.D. Pa. Aug. 20, 2012). "'[E]ven relatively pronounced factual differences will generally not preclude a finding of typicality where there is a strong similarity of legal theories' or where the claim arises from the same practice or course of conduct." *In re Prudential Ins. Co. Am. Prac. Litig. Agent Actions*, 148 F.3d 283, 311 (3d Cir. 1998) ("*Prudential II*") (quoting *Baby Neal for & by Kanter v. Casey*, 43 F.3d 48, 58 (3d Cir. 1994)); *see also Russell*, 15 F.4th at 271 n.4 (quoting *In re NFL Players Concussion Injury Litig.*, 821 F.3d 410, 428 (3d Cir. 2016)) ("We have 'set a low threshold for typicality.'").

With regards to adequacy, Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4).

> The adequacy inquiry "serves to uncover conflicts of interest between named parties and the class they seek to represent" [and] "[i]t assures that the named plaintiffs' claims are not antagonistic to the class and that the attorneys for the class representatives are experienced and qualified to prosecute the claims on behalf of the entire class."

Beck, 457 F.3d at 296 (quoting *Amchem*, 521 U.S. at 625; *Baby Neal*, 43 F.3d at 55). This predicate to class certification mandates two steps of inquiry "'designed to ensure that absentees' interests are fully pursued.'" *In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 602 (3d Cir. 2009) (quoting *Georgine v. Amchem Prods., Inc.*, 83 F.3d 610, 630 (3d Cir. 1996), *aff'd*, *Amchem*, 521 U.S. 591). The first step of inquiry "'tests the qualifications of the counsel to represent the class'" while the second "seeks 'to uncover conflicts of interest between named parties and the class they seek to represent.'" *Schering*, 589 F.3d at 602. "When examining settlement classes, [the Third Circuit] 'ha[s] emphasized the special need to assure that class counsel: (1) possessed adequate

experience; (2) vigorously prosecuted the action; and (3) acted at arm's length from the defendant.'" *NFL Players*, 821 F.3d at 429 (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 801 (3d Cir. 1995)). "The burden to prove that the representation is not adequate resets with the party challenging the class' representation." *Buzzarro v. Ocean County*, No. 07-5665 (FLW), 2009 WL 1617887, at *14 (D.N.J. June 9, 2009). With regards to the second step of the inquiry, "[t]he 'linchpin of the adequacy requirement is the alignment of interests and incentives between the representative plaintiffs and the rest of the class.'" *See NFL Players*, 821 F.3d at 431 (quoting *Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 183 (3d Cir. 2012)).

Here, Lead Counsel have extensive experience in commodities cases, complex litigation, and class action proceedings throughout the United States. Cecchi Decl., Ex. 3. More generally, Plaintiffs' Counsel comprise firms with further and comparably extensive experience in complex class actions; their support and assistance in prosecuting the claims herein further demonstrates the adequacy of counsel in this case. Cecchi Decl., ¶31. As discussed in more depth below, the Settlement was reached after arm's length negotiations with the assistance of a neutral, third-party mediator from JAMS, and following vigorous prosecution by Counsel. Lead Counsel is therefore more than adequate for purposes of certification herein.

With regards to the second portion of the adequacy inquiry and the typicality analysis, the claims of all Class Plaintiffs and Class Members arise from Defendants' alleged manipulation of the markets and prices for Precious Metals Futures contracts as well as options thereon. The manipulation is alleged to have affected Class Plaintiffs, the Settlement Class, and indeed the entire market by altering the pricing of Precious Metals Futures contracts and options on those contracts. Accordingly, the interests of Class Members and Class Plaintiffs are entirely aligned because they

arise from the same practice or course of conduct by Defendants, and rely upon identical legal theories, and Class Plaintiffs should not be subject to any unique defenses. *See NFL Players*, 821 F.3d at 432 (affirming the district court's conclusion that "the incentives of class members were aligned because they 'allegedly were injured by the same scheme'"). Class Plaintiffs therefore respectfully contend the Court is likely to (and should) find the typicality and adequacy requirements are met herein. *See*, *e.g.*, *Remicade*, 2022 WL 3042766, at *6 (citing *In re Wellbutrin XL Antitrust Litig.*, 282 F.R.D. 126, 138 (E.D. Pa. 2011)) ("Here, because the Named Plaintiffs' and Class Members' claims arise out of the same conduct and are based on the same legal theories . . . the Court concludes the typicality factor is satisfied."); *In re Amaranth Nat. Gas Commodities Litig.*, 269 F.R.D. 366, 379 (S.D.N.Y. 2010) (typicality requirement met where plaintiffs and the class "transacted in the same contracts, in the same centralized marketplace, [and] were allegedly negatively impacted by the same common course of manipulative conduct from which the same group of defendants is alleged to be legally responsible for the damages").

2. The Proposed Class Satisfies Rule 23(b)(3)

Rule 23(b)(3) authorizes class certification if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). The proposed Settlement Class meets this standard.

a. Common Legal and Factual Questions Predominate Over Any Individual Issues

In order to satisfy Rule 23(b)(3)'s requirement that common questions of law and fact predominate, "'[t]he predominance test asks whether a class suit for the unitary adjudication of common issues is economical and efficient in the context of all the issues in the suit.'" *Sullivan*, 667 F.3d 273, 297 (3d Cir. 2010) (quoting 2 William Rubenstein, Alba Conte & Herbert Newberg,

NEWBERG ON CLASS ACTIONS §4:25 (4th ed. 2010)). The touchstone of predominance is whether the proposed class is "sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. The rule, however, "does ***not*** require a plaintiff seeking class certification to prove that each 'elemen[t] of [her] claim [is] susceptible to classwide proof.'" *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 469 (2013) (emphasis and alterations in original). Rather, predominance is determined by whether "'the efficiencies gained by class resolution of the common issues are outweighed by individual issues.'" *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 231 (D.N.J. 2005); *In re Mercedes-Benz Antitrust Litig.*, 213 F.R.D. 180, 186 (D.N.J. 2003) (predominance requires that "common issues be both numerically and qualitatively substantial in relation to the issues peculiar to individual class members"). "[T]he focus of the predominance inquiry is on whether the defendant's conduct was common as to all of the class members, and whether all of the class members were harmed by the defendant's conduct." *Sullivan*, 667 F.3d at 298. "Third Circuit 'precedent provides that the focus of the predominance inquiry is on whether the defendant's conduct was common as to all of the class members, and whether all of the class members were harmed by the defendant's conduct.'" *Remicade*, 2022 WL 3042766, at *7 (quoting *Sullivan*, 667 F.3d at 298). "The Third Circuit has counseled that courts should be 'more inclined to find the predominance test met in the settlement context.'" *Remicade*, 2022 WL 3042766, at *7 (quoting *NFL Players*, 821 F.3d at 434; *Sullivan*, 667 F.3d at 304 n.29).

Here, the predominance requirement under Rule 23(b) is satisfied for many of the same reasons that the commonality requirement of Rule 23(a) is satisfied. Defendants' alleged conduct was directed at the market of futures traders as a whole, not at individuals, and all Class Members were harmed as a result of Defendants' alleged conduct. The focus of any proofs is on Defendants'

alleged conduct and how that conduct illegally manipulated the market to their advantage and to Class Members' disadvantage.

b. Superiority

The last remaining criterion for certification is that the Court must be likely to find, pursuant to Rule 23(b)(3), that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3); *see also Prudential II*, 148 F.3d at 316.

> The matters pertinent to these findings include: (A) the class members' interest in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3)(A)-(D). Courts also consider whether "'a class action would achieve economies of time, effort, and expense, and promote . . . uniformity of decisions as to persons similarly situated.'" *Amchem*, 521 U.S. at 615 (alteration in original).

Similar to this Court's observations in *Smith*, here "[t]he Settlement Class contains approximately [thousands of] members, 'and, absent certification, they would have to conduct individual trials, which would likely prove too costly for individuals[,]' [and] . . . would burden the Court." *Smith*, 2019 WL 3281609, at *4 (quoting *Alfaro v. First Advantage LNS Screening Sols., Inc.*, No. 17-5813 (MAS) (TJB), 2017 WL 3567974, at *4 (D.N.J. Aug. 16, 2017)). Accordingly, based on, *inter alia*, judicial economy and economic barriers to individual enforcement, a class action is superior to other available options for fair and efficient adjudication of the Settlement Class's Claims. *See*, *e.g.*, *Alfaro*, 2017 WL 3567974, at *4; *Varacallo*, 226 F.R.D. at 233 (class satisfied the superiority requirement where it was "unlikely that individual Class Members would have the resources to pursue successful litigation on their own").

B. The Court Should Approve the Settlement Proposal Under Rule 23(e)(2)

Having established that the Court will likely be able to certify the Settlement Class proposed herein, Class Plaintiffs turn to the merits of the proposed settlement. "Review of a proposed class action settlement is a two-step process: (1) preliminary approval, and (2) a subsequent fairness hearing." *Atis v. Freedom Mortg. Corp.*, No. 15-03424 (RBK/JS), 2018 WL 5801544, at *2 (D.N.J. Nov. 6, 2018).

> At the first stage, the parties submit the proposed settlement to the court, which makes a preliminary fairness evaluation. If the proposed settlement is preliminarily acceptable, the Court then directs that notice be provided to all class members who would be bound by the proposed settlement in order to afford them an opportunity to be heard on, object to, and opt out of the settlement.

Id. (citing *Shapiro v. All. MMA, Inc.*, No. 17-2583 (RBK/AMD), 2018 WL 3158812, at *2 (D.N.J. June 28, 2018)); Fed. R. Civ. P. 23(c)(2), (e)(1), (e)(5).

"'Preliminary approval is not binding, and it is granted unless a proposed settlement is obviously deficient.'" *Smith*, 2019 WL 3281609, at *4; *accord Remicade*, 2022 WL 3042766, at *10.

> Instead, [this preliminary evaluation] solely establishes an initial presumption of fairness . . . . "if the [C]ourt finds that: (1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected."

Lupian v. Joseph Cory Holdings, No. 16-cv-5172, 2019 WL 3283044, at *5 (D.N.J. July 22, 2022) (quoting *In re Cendant Corp. Litig.*, 264 F.3d 201, 232 n.18 (3d Cir. 2001)).

These factors closely mirror those determining whether a Court may ultimately approve the settlement proposal under Rule 23(e)(2), which permit a Court to approve a class action settlement

> only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length;

> (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).[8] These 23(e)(2) factors are also in line with those previously considered under *Girsh*[9] and *Prudential II*; they are intentionally concise. *See Prudential II*, 148 F.3d at 323-24; *Girsh*, 521 F.2d at 157. This brevity serves to "direct[] the parties to present the settlement to the court in terms of a shorter list of core concerns, by focusing on the primary procedural considerations and substantive qualities that should always matter to the decision on whether to approve the proposal." Fed. R. Civ. P. 23(e)(2) advisory committee's notes to 2018 amendments.

As described below, the Settlement readily satisfies the standards for preliminary approval and is entitled to a presumption of fairness. Moreover, the Court should preliminarily approve the

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[8] Courts analyze the adequacy of representation by Lead Counsel and Representatives under Rule 23(e)(2) using the same considerations which govern the class certification analysis under Rule 23(a)(4). *See*, *e.g.*, *Cohen v. Brown Univ.*, 16 F.4th 935, 945 (1st Cir. 2021) (analyzing the adequacy of representation under Rule 23(e)(2)(A) using the same criteria to analyze adequacy under Rule 23(a)(4), *cert. denied*, __ U.S. __, 142 S. Ct. 2667 (2022)); *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 701 (S.D.N.Y. 2019) (same); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 30 n.25 (E.D.N.Y. 2019) ("This adequate representation factor is nearly identical to the Rule 23(a)(4) prerequisite of adequate representation in the class certification context. As a result, the Court looks to Rule 23(a)(4) case law to guide its assessment of this factor."). Accordingly, for the reasons set forth above in the portion of the class certification analysis pertaining to Rule 23(a)(4), Plaintiffs respectfully contend that the adequacy requirement of Rule 23(e)(2) is readily met here.

[9] The factors considered under *Girsh v. Jepson* include: "'(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.'" *Girsh*, 521 F.2d 153, 157 (3d Cir. 1975) (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974)).

settlement under Rule 23(e). Given the overlap in the factors under both of these analyses, Plaintiffs combine several of the inquiries for the sake of brevity.

1. The Settlement Is the Product of Good Faith, Arm's Length Negotiations Conduct by Well-Informed and Experienced Counsel

At every stage of the negotiations, the Parties evaluated the strengths and weaknesses of their claims and defenses, including but not limited to issues pertaining to the statute of limitations, the effect of other class action settlements, liability, and damages. The Settlement was reached only after motion practice under Rule 12 was fully briefed. Cecchi Decl., ¶21. Before the parties negotiated the Settlement in earnest, they exchanged confidential mediation briefs, and accordingly both sides understood the strengths and weaknesses of their claims, including the opposing arguments made during the meditation session at JAMS. *Id.*, ¶¶23-24. Both Lead Counsel and Defendants also had the benefit of the prior governmental investigations and actions concerning the spoofing at the heart of this case. *See*, *e.g.*, Cpt., ¶3. "Thus, the parties[] were armed with enough information to assess the strengths and weaknesses of their case and strike a deal relative to the risks of prolonged litigation." *Atis*, 2018 WL 5801544, at *2.

The Parties participated in a full day of mediation on May 26, 2022, with the aid of Jed D. Melnick – an experienced, neutral third-party mediator with JAMS – and they continued to negotiate with the mediator's assistance for more than two months. After these extensive good faith efforts, the Parties reached an agreement in principle on July 28, 2022, subject to agreement on reasonable terms. "Participation of an independent mediator in settlement negotiations 'virtually [e]nsures that the negotiations were conducted at arm's length and without collusion between the parties.'" *Bredbenner v. Liberty Travel, Inc.*, No. 09-905 (MF), 2011 WL 1344745, at *10 (D.N.J. Apr. 8, 2011) (quoting *Bert v. AK Steel Corp.*, No. 1:02-CV-467, 2008 WL 4693747 (S.D. Ohio Oct. 23, 2008)); *accord Oliver v. BMW of N. Am., LLC*, No. 17-12979 (CCC), 2021

WL 870662, at *9 (D.N.J. Mar. 8, 2021); *Alves v. Main*, No. 01-7789 (DMC), 2012 WL 6043272, at *22 (D.N.J. Dec. 4, 2012), *aff'd*, 559 F. App'x 151 (3d Cir. 2014).

Moreover, as discussed above, Lead Counsel are experienced and bring a wealth of complex litigation, class action, and commodities experience for the benefit of Class Plaintiffs and the Settlement Class. Cecchi Decl., ¶31, Ex. 3. Lead Counsel believe that the Settlement is in the best interests of the Class, and their judgment warrants considerable weight. *See Varacallo*, 226 F.R.D. at 240 (citing *In re Prudential Ins. Co. of Am. Sales Pracs. Litig.*, 962 F. Supp. 450, 543 (D.N.J. 1997) ("*Prudential I*") ("the Court credits the judgment of Plaintiff's Counsel, all of whom are active, respected, and accomplished in this type of litigation")) ("Class Counsel's approval of the Settlement also weighs in favor of [its] fairness."); *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 474 (S.D.N.Y. 1998) (Courts have consistently given "'great weight' . . . to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation."). The Settlement is also fully supported by the Class Plaintiffs. Cecchi Decl., ¶30.

The fact that the Settlement is the product of arm's-length negotiations between experienced and well-informed counsel, with the assistance of a neutral mediator, demonstrates that the process by which the Settlement was reached was fair and not the product of collusion. *See Glaberson v. Comcast Corp.*, No. 03-6604, 2014 WL 7008539, at *4 (E.D. Pa. Dec. 12, 2014) (a settlement is presumed to be fair "when the negotiations were at arm's length, there was sufficient discovery, and the proponents of the settlement are experienced in similar litigation"); *see also*, *e.g.*, *Smith*, 2019 WL 3281609, at *5. Thus, Plaintiffs respectfully contend that the process culminating in the present Settlement gives rise to a presumption of its fairness and strongly supports preliminary approval by the Court.

2. The Relief Provided to Class Is Fair, Reasonable, and Adequate

The third factor to be considered under Rule 23(e)(2) is whether:

> the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).

Fed. R. Civ. P. 23(e)(2)(i)-(iv). As discussed above, Defendants have agreed to pay $6.6 million to resolve the claims against them on a class-wide basis. This recovery is separate from and in addition to and nearly matches the $6,622,190 victim compensation fund ("VC Fund") established by the DPA. The result is that the recompense potentially available to the Settlement Class has nearly doubled to just over $13.2 million and – for the first time – exceeds the $11,828,912 in disgorged profits obtained by the DPA. Cecchi Decl., ¶15. This is a significant enhancement to Class Members and provides recovery for those who may not be eligible to receive money from the VC Fund – for which the DOJ has sole discretion to administer as it sees fit. *Id.*, ¶16. The considerations under Rule 23(e)(2) further support the adequacy of the relief to the Class.

a. The Costs, Risks, and Delay of Trial and Appeal

The Settlement's adequacy and reasonableness is further supported by the significant risks attendant to further litigation. Defendants' motions to dismiss the entirety of this matter as untimely under the statute of limitations were converted to motions for summary judgment, for which the Court authorized limited discovery. Cecchi Decl., ¶22. Although both sides believe they have meritorious arguments against and in favor of Defendants' motions (respectively), neither side can ignore the risks of proceeding to summary judgment on that issue. Class Plaintiffs' claims could be deemed untimely in whole or in part; Defendants' procedural defenses could be overcome; and they would be left to litigate the matter substantively within limits imposed by their admissions in the DPA. While Class Plaintiffs maintain they would have prevailed in the face of Defendants' current motion, this would be far from the last obstacle to recovery. Defendants would likely have raised challenges to class certification, summary judgment, motions *in limine*,

and would zealously advocate their positions during trial and appeals thereafter. At best, the result would be substantial with lengthy delays to any recovery for the Class. This factor therefore weighs in favor of approval.

b. The Effectiveness of Any Proposed Method of Distributing Relief to the Class, Including the Method of Processing Class-Member Claims

"'Approval of a plan of allocation of a settlement fund in a class action is governed by the same standards of review applicable to approval of the settlement as a whole: the distribution plan must be fair, reasonable, and adequate.'" *Kanefsky v. Honeywell Int'l Inc.*, No. 18-cv-15536 (WJM), 2022 WL 1320827, at *6 (D.N.J. May 3, 2022) (quoting *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 126 (D.N.J. 2002)) (citing *In re Cendant Corp. Sec. Litig.*, 109 F. Supp. 2d 235, 264 (D.N.J. 2000), *aff'd*, 264 F.3d 201). "'In general, a plan of allocation that reimburses class members based on the type and extent of their injuries is reasonable.'" *Kanefsky*, 2022 WL 1320827, at *6 (quoting *In re Ikon Off. Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000)). As discussed below, the proposed Distribution Plan was developed by experienced and competent Lead Counsel in consultation with an economic expert and provides for each member of the Settlement Class (following their submission of materials supporting their claim) to be compensated based on their *pro rata* share of the Net Settlement Fund. Cecchi Decl., ¶41.

In order to participate in the Settlement, Class Members will need to submit a Proof of Claim and Release form (a "Claim Form"). This Claim Form requires the claimant to provide certain limited background information and data about their transactions involving Precious Metals Futures contracts and Options on same within the Class Period, including the contract traded, the date of the trade, volume, trade price, option type, strike price, and premium (as applicable). Cecchi Decl., Ex. 2. These requirements are typical of claim forms in comparable cases. *See*, *e.g.*, *In re JPMorgan Precious Metals Spoofing Litig.*, No. 1:18-cv-10356, 2021 WL 5998410, at *2

(S.D.N.Y. Dec. 20, 2021) (approving similar claim form); Proof of Claim & Release, *In re Rough Rice Commodity Litig.*, No. 1:11-cv-00618 (N.D. Ill. Mar. 4, 2015), ECF No. 164-6 (claim form requiring submission of, *inter alia*, trade date, contract traded, number of contracts, and transaction price for claims process involving futures contracts). Class Members who submit a proper proof of claim would then become "Authorized Claimants."

The proposed Distribution Plan would allocate the Net Settlement Fund *pro rata* to Authorized Claimants based on the estimated impact of Defendants' alleged spoofing on market transactions. If all other factors are constant, Authorized Claimants with a higher trading volume can expect a proportionately larger allocate share. In addition to trading volume, the Distribution Plan also features a "Futures Contract Specification Multiplier" to account for the frequency and impact of Defendants' alleged spoofing on the impacted markets. For those claimants whose expected distribution based on their *pro rata* fraction is less than the costs of administering their Claim, the Settlement Administrator will (in consultation with Lead Counsel) implement a reasonable minimum payment. This will serve to ensure that the administrative costs of issuing small payments do not impose a substantial burden on the Net Settlement Fund.

The proposed plan is structured to be efficient to administer and simple for Settlement Class Members, so as to encourage their participation. *See* 4 William B. Rubenstein, NEWBERG AND RUBENSTEIN ON CLASS ACTIONS §13:53 (6th ed. 2022) ("the goal of any distribution method is to get as much of the available damages remedy to class members as possible and in as simple and expedient a manner as possible"). "Th[is] [proposed] allocation plan is fair, reasonable, and adequate." *Kanefsky*, 2022 WL 1320827, at *6 (approving a similar plan); *see also*, *e.g.*, *JPMorgan*, 2021 WL 5998410, at *2 (approving a similar plan); Order of Settlement, ¶15, *Boutchard, et al. v. Gandhi, et al.*, No. 18-cv-07041 (N.D. Ill. July 30, 2021), ECF No. 153

(approving a similar plan in a case involving the alleged spoofing of E-Mini Index Futures and Options on E-Mini Index Futures). Accordingly, the proposed Distribution Plan is effective and weighs in favor of the adequacy of the relief provided by the Settlement.

c. The Terms of Any Proposed Award of Attorney's Fees, Including Timing of Payment

At a later date and during the final approval process, Lead Counsel will file a motion for an award of attorneys' fees. Lead Counsel will limit their attorneys' fee request to no more than a third of the Settlement Amount, *i.e.*, $2.2 million, which may be paid on final approval of the Settlement. The anticipated fee request is in line with fee awards in other cases of similar complexity and size. *See*, *e.g.*, *Castro v. Sanofi Pasteur Inc.*, No. 11-7178 (JMV) (MAH), 2017 WL 4776626, at *9 (D.N.J. Oct. 23, 2017) ("The one-third fee is within the range of fees typically awarded within the Third Circuit through the percentage-of-recovery method; the Circuit has observed that fee awards generally ranged from 19% to 45% of the settlement fund. Thus, the requested fee in this matter [of one-third of the settlement fund] is within the normal range."); *Marchbanks Truck Serv., Inc. v. Comdata Network, Inc.*, No. 07-1078-JKG, 2014 WL 12738907, at *2 (E.D. Pa. July 14, 2014) ("fee awards of one-third of the settlement amount are commonly awarded in this Circuit"); *In re Fasteners Antitrust Litig.*, No. 08-md-1912, 2014 WL 296954, at *7 (E.D. Pa. Jan. 27, 2014) ("Counsel's request for one third of the settlement fund is consistent with other direct purchaser antitrust actions."); *La. Mun. Police Emps. Ret. Sys. v. Sealed Air Corp.*, No. 03-CV-4372 (DMC), 2009 WL 4730185, at *8 (D.N.J. Dec. 4, 2009) (noting that "'[c]ourts within the Third Circuit often award fees of 25% to 33⅓% of the recovery'"); *Ikon*, 194 F.R.D. at 194 ("Percentages awarded have varied considerably, but most fees appear to fall in the range of nineteen to forty-five percent.").

In its motion for attorneys' fees, Lead Counsel will also seek payment of costs and expenses accrued during litigation, as well as Service Awards totaling no more than $2,500 for each named plaintiff. Cecchi Decl., ¶40; *see* Fed. R. Civ. P. 23(h) ("In a certified class action, the court may award . . . nontaxable costs that are authorized by law or by the parties' agreement."); *In re CertainTeed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 226 (E.D. Pa. 2014) ("'[C]ounsel in common fund cases [are] entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the case.'"); *see also*, *e.g.*, *Li v. Aeterna Zentaris Inc.*, No. 3:14-cv-07081-PGS-TJB, 2021 WL 2220565, at *2 (D.N.J. June 1, 2021); *Wood v. AmeriHealth Caritas Servs., LLC*, No. 17-3697, 2020 WL 1694549, at *10 (E.D. Pa. Apr. 7, 2020); *Martin v. Altisource Residential Corp.*, No. 1:15-CV-00024, 2020 WL 9763240, at *2 (D.V.I. Feb. 14, 2020); *De Vito v. Liquid Holdings Grp., Inc.*, No. 15-6969 (KM) (JBC), 2020 WL 9763133, at *2 (D.N.J. Jan. 10, 2020). Lead Counsel's Fee and Expense Application seeking approval of the awards requested will be separately filed, and that application as well as all supporting papers will be posted on a Settlement Website promptly thereafter for Class Members to review in advance of the objection deadline. Class Plaintiffs respectfully contend that this factor too weighs in favor of the adequacy of relief under the Settlement.

d. There Are No Side Agreements that Impact the Adequacy of the Relief for the Settlement Class

Pursuant to Rule 23(e)(3), "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal." Fed R. Civ. P. 23(e)(3). The Settlement Agreement sets forth all responsive terms and other agreements which relate to the Settlement (*i.e.*, the Supplemental Agreement). *See* Agreement, §19(D). Under the Supplemental Agreement, Defendants have a qualified right to terminate the Settlement Agreement if certain predicate conditions are met prior to final approval. *Id.*. Agreements of this type are standard in complex

class action settlements and do not impact the fairness of the Settlement. *See*, *e.g.*, *In re Carrier IQ, Inc., Consumer Privacy Litig.*, No. 12-md-02330, 2016 WL 4474366, at *5, *7 (N.D. Cal. Aug. 25, 2016) (Court "not troubled" by similar agreement because "those kind of opt-out deals are not uncommon as they are designed to ensure that an objector cannot try to hijack a settlement in his or her own self-interest.").

3. The Proposal Treats Class Members Equitably Relative to Each Other

The Settlement also "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). As discussed above in regards to the fairness of the Distribution Plan, proposal provides for a *pro rata* Distribution of the Net Settlement Fund. Allocating the Net Settlement Fund to Class Members in proportion to the injuries suffered is equitable and should readily satisfy this factor. *See Becker v. Bank of N.Y. Mellon Tr. Co., N.A.*, No. 11-6460, 2018 WL 6727820, at *7 (E.D. Pa. Dec. 21, 2018) ("Allocating settlement proceeds to class members based on their proportional shares of the [transactions] satisfies this factor.").

Accordingly, based on the foregoing, Plaintiffs respectfully contend that the Court should preliminarily approve the proposed Settlement.

C. Court Should Approve Proposed Class Notice Plan and AB Data, Ltd. as Settlement Administrator

Plaintiffs respectfully request that the Court approve the form of the proposed Notice and Summary Notice, attached as Exhibits C and D to the Agreement, as well as the proposed plan for providing notice of the Settlement to Class Members as described in the Preliminary Approval Order.

The proposed Notice, using clear, concise, and plan language, will "provided all of the required information concerning the class members' right and obligations under the settlement." *Prudential II*, 148 F.3d at 328. The Notice will advise recipients of, among other things, the nature

of the Action, the definition of the Class, the essential terms of the Settlement (including the claims that will be released), information regarding Plaintiffs' motion for attorneys' fees and reimbursement expenses and the binding effect of the judgment. The Notice also will provide specifics on the date, time and place of the Fairness Hearing and set forth the procedures, as well as deadlines, for: (i) requesting exclusion from the Class; (ii) entering an appearance; (iii) objecting to the Settlement, the Plan of Distribution and/or the motion for attorneys' fees and reimbursement of expenses; and (iv) submitting a Claim Form. The Summary Notice will provide a summary of the foregoing information and will advise potential Class Members how to obtain the more-detailed Notice.

The proposed Class Notice plan (Cecchi Decl., Ex. 5) and related forms of notice (attached as Exhibits C and D to the Agreement) are "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). The direct-mailing notice component of the notice program will involve sending the mailed notice (Cecchi Decl., Ex. 5) and the Proof of Claim and Release form (Cecchi Decl., Ex. 2) via First-Class Mail, postage prepaid to potential Class Members. (Cecchi Decl., Ex. 5). The Supreme Court has consistently found that mailed notice satisfies the requirements of due process. *See*, *e.g.*, *Mullane*, 339 U.S. at 319. The Settlement Administrator also will publish the publication notice in various periodicals, in industry publications, and through a digital campaign on websites. *See* (Cecchi Decl., Ex. 5). Any Class Members that do not receive the Class Notice via direct mail likely will receive the Class Notice through the foregoing publications.

The Settlement Website, www.bankofnovascotiaspoofingsettlement.com, will serve as an information source regarding the Settlement. Class Members can review and obtain: (i) a blank

Proof of Claim and Release form for the Settlement; (ii) the mailed and publication notices; (iii) the proposed Distribution Plan; (iv) the Settlement Agreement with Defendants; and (v) key pleadings and Court orders. The Settlement Administrator will also operate a toll-free telephone number to answer Class Members' questions and facilitate claims filing. This type of notice program is frequently used in class action cases. The proposed notice plan meets the requirements of Rule 23, comports with due process, and will fairly apprise potential Class Members of the existence of the Settlement and their options in connection therewith. Accordingly, Class Plaintiffs respectfully submit that the proposed notice plan is adequate and should be approved by the Court.

Lead Counsel recommends that A.B. Data, Ltd. ("A.B. Data") be appointed as Settlement Administrator. A.B. Data developed the Class Notice plan in coordination with Lead Counsel and has experience in administering class action settlements involving securities in over-the-counter and exchange markets, including complex cases like this one involving futures and options. *See*, *e.g.*, *JPMorgan*, 2021 WL 5998410, at *2 (approving similar claim form); *In re Silver Fixing Antitrust Litig.*, Nos. 14-md-02573 (VEC), 14-mc-02573 (VEC) (S.D.N.Y.); *Boutchard v. Gandhi*, No. 18-cv-7041 (N.D. Ill.); *In re Libor-Based Fin. Instruments Antitrust Litig.*, No. 11-md-2262 (NRB) (S.D.N.Y.); *In re Crude Oil Commodity Futures Litig.*, No. 11-cv-3600 (PGG) (S.D.N.Y.).

D. Huntington National Bank Should Be Approved as Escrow Agent

The Settlement Agreement requires an "Escrow Agent" to execute certain duties and to generally comply with certain specified obligations. *See* Agreement, §8. For instance, the escrow agent is entitled, subject to approval from Lead Counsel, to disburse funds from the Settlement Fund to pay costs incurred in preparing and providing the Notices and other administrative expenses. *Id.* Other duties include, but are not limited to, making timely tax and related filings, making elections per applicable Treasury Regulations, and the preparation and delivery of documents for signature. *Id.*, §10.

Class Plaintiffs propose The Huntington National Bank as escrow agent ("HNB"). HNB is qualified to serve as escrow agent. HNB, established in 1866, is among the top 1% of banks in the United States based on size. HNB's National Settlement Team has handled more than 900 settlements for law firms, claims administrators, and regulatory agencies. Lead counsel have utilized the services of HNB as escrow agent in many class action settlements previously to great success.

E. Proposed Schedule of Events

Class Plaintiffs respectfully propose the following schedule for issuance of Class Notice, objection and opt-out opportunities for Settlement Class Members, and Class Plaintiffs' motions for final approval, attorneys' fees, expense reimbursements, and Service Awards.

PROPOSED SCHEDULE OF SETTLEMENT EVENTS	
Event	**Timing**
Deadline to begin mailing of Class Notice to Class Members and post the Notice and Claim Form on the Settlement Website (the "Notice Date") (Preliminary Approval Order ("PAO")) (PAO, ¶12)	45 days after the Court's entry of the Preliminary Approval Order
Complete initial distribution of mailed notices	60 days after the Notice Date
Deadline for Class Plaintiffs to file papers in support of final approval and application for fees and expenses (PAO, ¶34)	60 days prior to the Fairness Hearing
Deadline for requesting exclusion and submitting objections (PAO, ¶¶18, 22)	45 days prior to the Fairness Hearing
Deadline for filing reply papers (PAO, ¶21)	5 days prior to the Fairness Hearing
Fairness Hearing	On a date to be set by the Court, but no earlier than 150 days of the date of the Order Date

Deadline for submitting Claim Forms (PAO, ¶28)	30 days after the Fairness Hearing

Should the Court grant the preliminary approval requested herein, it need only determine the date of the Fairness Hearing – the remaining dates will flow from the date of the Preliminary Approval Order and from the date of the Fairness Hearing.

III. CONCLUSION

For the foregoing reasons, Class Plaintiffs respectfully request that the Court: grant Class Plaintiffs' motion for preliminary approval of the proposed settlement; approve the manner and form of the Notices; approve the appointment of Huntington National Bank as Escrow Agent; appointment of AB Data, Ltd. as Settlement Administrator; adopt the proposed briefing schedule set forth above for (1) final settlement approval and proposed plan of distribution and (2) Lead Counsel's application for attorneys' fees, expenses, and Class Representative service awards; and schedule a fairness hearing for final approval of the proposed settlement.

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