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October 16, 2017

VIA ECF AND HAND DELIVERY

The Honorable Naomi Reice Buchwald
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007-1319

Re: In re LIBOR-Based Financial Instruments Antitrust Litig., Case No. 11-
md-2262

Dear Judge Buchwald:

We write on behalf of Barclays Bank plc (“Barclays”) and the Over-the-Counter Plaintiffs (“OTC Plaintiffs”) to bring to the Court’s attention two issues concerning the Barclays settlement (the “OTC-Barclays Settlement”), which are addressed in the attached revised proposed order granting final approval of the Barclays settlement.

First, it has recently come to the parties’ attention that there is an issue with the notice concerning whether certain transactions qualify for inclusion in the OTC-Barclays Settlement. At page 16, the notice explains that transactions with certain financial institutions that are not named as defendants in the OTC action—*i.e.*, the entities that are counterparties to the alleged OTC LIBOR-based transactions at issue in the *Green Pond* and *Courtyard* class actions (“Non-Defendant OTC Financial Institutions”)—do not qualify for inclusion in the OTC-Barclays Settlement and, accordingly, claims related to such transactions are not released by the OTC-Barclays Settlement. ECF No. 2275-2 at 16 n.1. The notice lists two subsidiaries of USD LIBOR panel banks as Non-Defendant OTC Financial Institutions: Citizens Financial Group, Inc. (“Citizens”) is a subsidiary of The Royal Bank of Scotland Group PLC (“RBS”), and Unionbancal Corporation (“Unionbancal”) is a subsidiary of Bank of Tokyo-Mitsubishi UFJ, Ltd. (“BTMU”). These two entities were identified as entities not affiliated with USD

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LIBOR panel banks in the carved-out *Green Pond* and *Courtyard* class actions. But, because they are subsidiaries of panel banks, transactions with them are appropriately part of the OTC action. Under the settlement agreement between the OTC Plaintiffs and Barclays, putative class members may seek recovery from the settlement fund for qualifying transactions with all USD LIBOR panel banks and their subsidiaries and affiliates, including these two panel bank subsidiaries, and will give releases for those claims.

The parties propose the following steps to resolve the issue:

- This letter, the revised proposed final approval order, and a clarification to the notice will be posted immediately on the OTC-Barclays Settlement website. Further, the claims administrator will notify all parties who file claims that they may submit claims regarding transactions with Citizens and Unionbancal by January 2, 2018. Given the December 21, 2017 claims deadline, these steps will fully apprise class members of the issue prior to the time when claim forms are due.
- OTC Plaintiffs will propose including additional clarifying language in the upcoming notice that will be sent later this month to putative OTC class members by mail and publication in connection with the OTC Plaintiffs' settlement with Citibank (the "OTC-Citibank Settlement").¹ Any putative class members who do not file a claim in the OTC-Barclays Settlement related to their transactions with Citizens or Unionbancal will be eligible for a catch-up payment for those transactions from the settlement fund established in connection with the OTC-Citibank settlement.
- The parties propose that any putative class member whose only claims in the OTC action relate to transactions with Citizens and/or Unionbancal be permitted to opt out of both the OTC-Barclays Settlement and OTC-Citibank Settlement by January 2, 2018, the exclusion deadline for the OTC-Citibank Settlement. *See* ECF No. 316 at 3.

Class Counsel as well as the Claims Administrator will remain available to answer any questions from any putative class members on this issue.

Second, the non-settling defendants in the OTC action proposed limited changes to the proposed Final Approval Order clarifying the impact of the settlement on the non-settling defendants, and the settling parties agreed to accept those changes. The parties thus submit a revised proposed order to the Court

¹ OTC Plaintiffs will seek the Court's approval of this update to the Citibank settlement notice by October 23, 2017.

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(1) containing the minor revisions to which the non-settling defendants and settling parties have agreed, (2) addressing the issue concerning Citizens and Unionbanca, (3) addressing certain other typographical and definitional issues; and (4) addressing the two objections received (as described in OTC Plaintiffs' concurrently filed reply brief in support of final approval). A redlined version of the proposed order—showing all changes to the version that the OTC Plaintiffs originally submitted to the Court—is also attached to this letter.

The parties thank the Court for its continued consideration of this matter.

Respectfully submitted,

/s/ William Christopher Carmody

William Christopher Carmody

Counsel for OTC Plaintiffs

/s/ Michael Hausfeld

Michael Hausfeld

Counsel for OTC Plaintiffs

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE LIBOR-BASED FINANCIAL INSTRUMENTS ANTITRUST LITIGATION	MDL No. 2262
THIS DOCUMENT RELATES TO:	Master File No. 1:11-md-2262-NRB ECF Case
The OTC Action	Honorable Naomi R. Buchwald

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF SETTLEMENT WITH
BARCLAYS BANK PLC**

WHEREAS, an action is pending before this Court styled *Mayor and City Council of Baltimore v. Credit Suisse Group AG, et al.*, No. 1:11-md-2262-NRB (the “OTC Action”);

WHEREAS, OTC Plaintiffs have moved, pursuant to Federal Rule of Civil Procedure 23(e), for an order (a) granting final approval to the settlement with Barclays Bank PLC (the “Settlement” or “OTC Settlement”); (b) certifying the settlement Class; (c) granting final approval to the Plan of Distribution; (d) appointing Hausfeld LLP and Susman Godfrey LLP as Co-Lead Counsel for the Settlement Class; (e) granting final approval to the Class Notice; and (f) appointing Mr. Kenneth Feinberg as the Settlement Administrator and Huntington Bank as the Escrow Agent.

WHEREAS, the Court has considered the Settlement and other documents submitted in connection with OTC Plaintiffs’ Motion for Final Approval of Settlement with Barclays Bank PLC, and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Court has subject matter jurisdiction over this action and personal jurisdiction over OTC Plaintiffs, Barclays Bank PLC, and all members of the OTC Class.

2. All terms in initial capitalization used in this Order shall have the same meanings as set forth in the Settlement, unless otherwise defined herein.

I. FINAL APPROVAL OF SETTLEMENT

3. Upon review of the record, including the Orders preliminarily approving the Settlement and the submissions in support of the Settlement and preliminary certification, the Court finds that the Settlement resulted from arm’s-length negotiations between highly experienced counsel and fall within the range of possible approval.

4. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court hereby grants final approval of the Settlement on the basis that it is fair, reasonable, and adequate as to,

and in the best interests of, all OTC Class Members, within the meaning of, and in compliance with all applicable requirements of, Federal Rule of Civil Procedure 23; the Court directs the Settlement's consummation according to its terms. In reaching this conclusion, the Court has considered the factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). Moreover, the Court concludes as follow:

- a. The Settlement was negotiated by counsel with significant experience litigating antitrust class actions and is the result of vigorous arm's length negotiations undertaken in good faith and with the assistance of a professional mediator experienced in complex cases;
- b. This action is likely to involve contested and serious questions of law and fact, such that the value of an immediate monetary recovery, in conjunction with the value of the prospective relief set forth in the Settlement, outweigh the uncertain possibility of future relief after protracted and expensive litigation; and
- c. Interim Co-Lead Counsel's judgment that the settlement is fair and reasonable, and the OTC Class Members' reaction to the Settlement, is entitled to great weight.

II. FINAL APPROVAL OF THE PLAN OF DISTRIBUTION

5. Upon review of the record, the Court finds that the pro rata Plan of Distribution has a reasonable, rational basis and is fair and adequate. Therefore, the Plan of Distribution is hereby finally approved.

III. CERTIFICATION OF THE SETTLEMENT CLASS

6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of effectuating the settlement set forth in the Settlement, the following Class:

All persons or entities (other than Defendants and their employees, affiliates, parents, and subsidiaries) that purchased in the United States, directly from a Defendant (or a Defendant's subsidiaries or affiliates), a U.S. Dollar LIBOR-Based Instrument and that owned the U.S. Dollar LIBOR-Based Instrument any time during the period August 2007 through May 2010 (the "Class Period").¹

7. The Court finds that the requirements of Rule 23 are satisfied solely for the purpose of effectuating the Settlement as follows:

- a. Pursuant to Rule 23(a)(1), the Court determines that the members of the Class are so numerous that their joinder before the Court would be impracticable;
- b. Pursuant to Rule 23(a)(2), the Court determines that OTC Plaintiffs have alleged one or more questions of fact or law common to the Class;
- c. Pursuant to Rule 23(a)(3), the Court determines that OTC Plaintiffs' claims are typical of the claims of the Class;
- d. Pursuant to Rule 23(a)(4), the Court determines that OTC Plaintiffs will fairly and adequately protect the interests of the Class;

¹ Specifically excluded from the Class are Defendants; Released Parties; co-conspirators; the officers, directors, or employees of any Defendant, Released Party, or co-conspirator; any entity in which any Defendant, Released Party, or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant, Released Party, or co-conspirator and any person acting on their behalf. Also excluded from the Class are any judicial officers presiding over this action and the members of his/her immediate families and judicial staff, and any juror assigned to the OTC Action.

- e. Pursuant to Rule 23(b)(3), the Court determines that common questions of law and fact predominate over questions affecting only individual members; and
- f. Pursuant to Rule 23(b)(3), the Court determines that a class resolution is superior to other available methods for the fair and efficient adjudication of this action.

8. If the Effective Date does not occur with respect to the Settlement because of the failure of a condition that affects the Settlement, this certification of the Class shall be deemed null and void as to the parties subject to the Settlement without the need for further action by the Court or Barclays. In such circumstances, Barclays shall retain its rights to seek or to object to certification of this litigation as a class action under Rule 23 of the Federal Rules of Civil Procedure, or under any other state or federal rule, statute, law, or provision thereof, and to contest and appeal any grant or denial of certification in this litigation or in any other litigation on any grounds.

9. The Court's certification of the Class as provided herein is without prejudice to, or waiver of the rights of, any defendant to contest certification of any other class proposed in these consolidated actions (i.e., the above-captioned multi-district litigation). The Court's findings in this Order shall have no effect on the Court's ruling on any motion to certify any class in these actions, and no party may cite or refer to the Court's approval of the Class as persuasive or binding authority with respect to any motion to certify any such class.

IV. CLASS COUNSEL

10. Pursuant to Rule 23(g) of the Federal Rules of Civil Procedure, and solely for settlement purposes, the following firms are designated as settlement class counsel ("Class Counsel") for the Class:

HAUSFELD LLP
1700 K Street, NW, Suite 650
Washington, DC 20006
Tel: 202-540-7200

SUSMAN GODFREY L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel: 212-336-8334

V. FINAL APPROVAL OF CLASS NOTICE

11. Upon review of the record, the Court finds that the Class Notice constituted due, adequate, and sufficient notice of the settlement and was the best practicable under the circumstances and satisfied the requirements of Federal Rules of Civil Procedure 23(c)(2)(B) and 23(e)(1), due process, and any other applicable law. Therefore, the Class Notice is finally approved.

VI. APPOINTMENT OF SETTLEMENT ADMINISTRATOR AND ESCROW AGENT

12. Upon review of the record, the Court finds that Mr. Kenneth Feinberg and Huntington National Bank are qualified to serve as Settlement Administrator and Escrow Agent, respectively. Therefore, Mr. Kenneth Feinberg is appointed as Settlement Administrator and Huntington National Bank is appointed as Escrow Agent.

VII. OTHER PROVISIONS

13. The Court approves and directs the implementation of all the terms of the Settlement.

14. If this Final Judgment and Order is set aside, materially modified, or overturned by this Court or on appeal, and is not fully reinstated on further appeal, this Final Judgment and Order certifying the Class shall be vacated *nunc pro tunc*.

15. Except as to any individual claim of those Persons who have validly and timely requested exclusion from the Class (“Opt-Outs”), all Released Parties and Releasing Parties are bound by this Final Judgment and Order and by the Settlement Agreement.

16. Except as to the Opt-Outs, the Court dismisses the OTC Action, as well as all of the Released Claims, against any of the Released Parties by the Releasing Parties, with prejudice. The Parties are to bear their own costs, except as otherwise provided in the Settlement, provided that such dismissal shall not affect, in any way, the right of the Releasing Parties to pursue claims, if any, outside the scope of the Released Claims.

17. Any Opt-Outs have timely and validly requested exclusion from the Class and are hereby excluded from the Class, not bound by this Final Judgment and Order, and may not make any claim or receive any benefit from the Settlement, whether monetary or otherwise.

18. Upon the Effective Date, the Releasing Parties: (a) shall be deemed to have hereby fully and irrevocably waived, released, relinquished, and discharged all Released Claims against the Released Parties, regardless of whether such Releasing Party executes and delivers a proof of claim; (b) shall be forever enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; and (c) agree and covenant not to sue any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Party related in any way to any Released Claims.

Notwithstanding the foregoing, persons or entities that only purchased bonds issued by entities other than a Defendant (or a Defendant's subsidiary or affiliate) are not members of the OTC Class. Further, claims that are alleged in the Bondholder Plaintiff Action (Case No. 12 CV 1025 (NRB)) concerning U.S. Dollar LIBOR-Based Debt Securities² are not released by the

² "U.S. Dollar LIBOR-Based Debt Securities" means any U.S. Dollar-denominated debt security (a) that was assigned a unique identification number by the CUSIP system; (b) on which interest was payable at any time during August 1, 2007 through May 31, 2010; and (c) where that interest was payable at a rate based on U.S. Dollar LIBOR. U.S. LIBOR-Based Debt Securities include, but are not limited to, any such bonds, corporate bonds, municipal bonds, government bonds, asset backed securities, residential mortgage backed securities, commercial mortgage backed securities, collateralized debt

OTC Settlement. Thus, any claim based on a U.S. Dollar LIBOR-Based Debt Security may be asserted only against the Barclays' settlement of the Bondholder Plaintiff Action ("Bondholder Settlement") (and not the OTC Settlement), and will only be released pursuant to the Bondholder Settlement. Likewise, any claim based on a debt security tied to U.S. Dollar LIBOR that was issued by a Defendant (or a Defendant's subsidiary or affiliate) as obligor and was purchased directly from a Defendant (or a Defendant's subsidiary or affiliate) may be asserted only against the OTC Settlement (and not the Bondholder Settlement), and will only be released pursuant to the OTC Settlement. Any OTC Class Member who is also a member of the class alleged in the Bondholder Plaintiff Action will be entitled to assert claims to share in the settlement funds established in both actions in accordance with the limitations set forth in this paragraph. Similarly, any member of the class in the Bondholder Plaintiff Action who is also a member of the OTC Class will be entitled to assert claims to share in both settlement funds in accordance with the limitations set forth in this paragraph.

19. In addition, claims concerning U.S. Dollar LIBOR-Based Instruments purchased from one or more Non-Defendant OTC Financial Institutions³ which are alleged in *33-35 Green Pond Road Assocs. LLC v. Bank of America Corp., et al.* (Case No. 12 CV 5822 (NRB)) and

obligations and collateralized loan obligations. Excluded from the definition of U.S. Dollar LIBOR-Based Debt Securities are any such securities that were issued by any Defendant or its subsidiaries or affiliates as obligor. "CUSIP" stands for Committee on Uniform Securities Identification Procedures.

³ The "Non-Defendant OTC Financial Institutions" are Wells Fargo & Company; Goldman Sachs Group, Inc.; Morgan Stanley; Metlife, Inc.; U.S. Bancorp; The PNC Financial Services Group, Inc.; The Bank of New York Mellon Corporation; Capital One Financial Corporation; Ally Financial Inc.; Suntrust Banks, Inc.; BB&T Corporation; TD Bank US Holding Company; State Street Corporation; American Express Company; Regions Financial Corporation; Fifth Third Bancorp; Keycorp Cleveland; Northern Trust Corporation; Bancwest Corporation; M&T Bank Corporation; Harris Financial Corp.; BBVA USA Bancshares, Inc., as well as any of their subsidiaries or affiliates.

Courtyard at Amwell II, LLC, et al. v. Bank of America Corp., et al. (Case No. 12 CV 6693 (NRB)) class actions (collectively the “Non-Defendant OTC Action”) are not released by the OTC Settlement. Accordingly, any OTC Class Member who is also a member of the class alleged in the Non-Defendant OTC Action will be entitled to assert claims to share in any settlement funds established in both actions. Similarly, any member of the class in the Non-Defendant OTC Action who is also a member of the OTC Class will be entitled to assert claims to share in any settlement funds established in both actions. Thus, a person or entity who purchased U.S. Dollar LIBOR-Based Instruments from Non-Defendant OTC Financial Institutions and also purchased U.S. Dollar LIBOR-Based Instruments directly from a Defendant (or subsidiary or affiliate of a Defendant) will be legally entitled to assert a claim to share in any settlement by Barclays of the Non-Defendant OTC Action based on purchases of U.S. Dollar LIBOR-Based Instruments from Non-Defendant OTC Financial Institutions, and will also be legally entitled to assert a claim to share in the OTC Settlement based on U.S. Dollar LIBOR-Based Instruments purchased directly from a Defendant (or subsidiary or affiliate of a Defendant), but will not be legally entitled to assert a claim to share in the OTC Settlement based on purchases of U.S. Dollar LIBOR-Based Instruments from Non-Defendant OTC Financial Institutions.

20. This Final Judgment and Order shall not affect, in any way, the right of the OTC Plaintiffs or OTC Class Members to pursue claims, if any, outside the scope of the Released Claims.

21. The Settlement, acts performed in furtherance of the Settlement and/or documents executed in furtherance of the Settlement may not be deemed or used as evidence of an admission or other statement supporting: (a) the validity of any claim made by OTC Plaintiffs,

OTC Class Members, or Class Counsel (including the appropriateness of class certification); (b) any wrongdoing or liability of the Released Parties; or (c) any fault or omission of the Released Parties in any court, administrative agency, or other proceeding.

22. The Settlement shall not be offered or be admissible in evidence against Released Parties in any action or proceeding, except in an action or proceeding that is in furtherance of the Settlement's terms or brought to enforce its terms. Notwithstanding the foregoing, the Settlement may be filed in an action to enforce or interpret the terms of the Settlement and any other documents executed in connection with the performance of the agreements embodied therein. The Released Parties may file the Settlement and/or this Final Judgment and Order in any action that may be brought against them in order to support a defense or counterclaim based on the principles of res judicata, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

23. Any order entered regarding the motion for attorneys' fees and expenses in this action shall in no way disturb or affect this Final Judgment and Order and shall be considered separate from this Final Judgment and Order.

24. If this Final Judgment and Order is set aside, materially modified, or overturned by this Court or on appeal, and is not fully reinstated on further appeal, this Final Judgment and Order shall be deemed vacated and shall have no force or effect whatsoever.

25. Without affecting the finality of this Final Judgment and Order in any way, this Court hereby retains exclusive continuing jurisdiction over: (a) implementation of this Settlement and any award or distribution of monies under the claims-made Settlement; (b) hearing and determining applications for attorneys' fees, costs, expenses, and service awards

to the OTC Plaintiffs; and (c) all parties hereto for the purpose of construing, enforcing, and administering the Settlement.

26. To the extent permitted by law, the Court bars claims against the Released Parties for contribution or indemnification (however denominated) for all or a portion of any amounts paid or awarded in the OTC Action by way of any settlement, judgment or otherwise by any of the following:

- a. Any of the other Defendants currently named in the OTC Action;
- b. Any other Person formerly named as a party in the OTC Action; or
- c. Any other Person subsequently added or joined as a party in the OTC Action.

27. To the extent permitted by law, the Court bars claims by the Released Parties for contribution or indemnification (however denominated) for all or a portion of any amounts paid or awarded in the OTC Action by way of any settlement, judgment or otherwise against any of the following:

- a. Any of the other Defendants currently named in the OTC Action;
- b. Any other Person formerly named as a party in the OTC Action; or
- c. Any other Person subsequently added or joined as a party in the OTC Action.

28. There is no just reason for delay in the entry of this Final Judgment and Order, and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

DATED: _____, 2017

HON. NAOMI REICE BUCHWALD
UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

~~IN RE LIBOR-BASED FINANCIAL
INSTRUMENTS ANTITRUST LITIGATION~~

IN RE LIBOR-BASED FINANCIAL
INSTRUMENTS ANTITRUST LITIGATION

~~THIS DOCUMENT RELATES TO:~~

THIS DOCUMENT RELATES TO:

The OTC Action

MDL No. 2262

Master File No. 1:11-md-2262-
NRB
_ECF Case

Honorable Naomi R. Buchwald

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF SETTLEMENT WITH
BARCLAYS BANK PLC**

|

WHEREAS, an action is pending before this Court styled *Mayor and City Council of Baltimore v. Credit Suisse Group AG, et al.*, No. 1:11-md-2262-NRB (the “OTC Action”);

WHEREAS, OTC Plaintiffs have moved, pursuant to Federal Rule of Civil Procedure 23(e), for an order (a) granting final approval to the ~~Settlement~~settlement with Barclays Bank PLC; (the “Settlement” or “OTC Settlement”); (b) certifying the settlement ~~class~~Class; (c) granting final approval to the Plan of Distribution; (d) appointing Hausfeld LLP and Susman Godfrey LLP as Co-Lead Counsel for the Settlement Class; (e) granting final approval to the ~~class notice~~Class Notice; and (f) ~~appointing~~ Mr. Kenneth Feinberg as the Settlement Administrator and Huntington Bank as the Escrow Agent.

WHEREAS, the Court has considered the Settlement and other documents submitted in connection with OTC Plaintiffs’ Motion for Final Approval of Settlement with Barclays Bank PLC, and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Court has subject matter jurisdiction over this action and personal jurisdiction over ~~all the parties in this action~~OTC Plaintiffs, Barclays Bank PLC, and all members of the OTC Class.

2. All terms in initial capitalization used in this Order shall have the same meanings as set forth in the Settlement, unless otherwise defined herein.

I. FINAL APPROVAL OF SETTLEMENT

3. Upon review of the record, including the Orders preliminarily approving the Settlement and the submissions in support of the Settlement and preliminary certification, the Court finds that the Settlement resulted from arm’s-length negotiations between highly experienced counsel and fall within the range of possible approval.

4. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court hereby grants final approval of the Settlement on the basis that it is fair, reasonable, and adequate as to, and in the best interests of, all OTC Class Members, within the meaning of, and in compliance with all applicable requirements of, Federal Rule of Civil Procedure 23; the Court directs the Settlement's consummation according to its terms. In reaching this conclusion, the Court has considered the factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). Moreover, the Court concludes as follow:

- a. The Settlement was negotiated by counsel with significant experience litigating antitrust class actions and is the result of vigorous arm's length negotiations undertaken in good faith and with the assistance of a professional mediator experienced in complex cases;
- ~~a. ————— No objections to the proposed Settlement have been filed;~~
- b. This action is likely to involve contested and serious questions of law and fact, such that the value of an immediate monetary recovery, in conjunction with the value of the prospective relief set forth in the Settlement, outweigh the uncertain possibility of future relief after protracted and expensive litigation; and
- c. Interim Co-Lead Counsel's judgment that the settlement is fair and reasonable, and the OTC Class Members' reaction to the Settlement, is entitled to great weight.

II. FINAL APPROVAL OF THE PLAN OF DISTRIBUTION

5. Upon review of the record, the Court finds that the pro rata Plan of Distribution has a reasonable, rational basis and is fair and adequate. Therefore, the Plan of Distribution is hereby finally approved.

III. CERTIFICATION OF THE SETTLEMENT CLASS

6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of effectuating the settlement set forth in the Settlement, the following Class:

All persons or entities (other than Defendants and their employees, affiliates, parents, and subsidiaries) that purchased in the United States, directly from a Defendant (or a Defendant's subsidiaries or affiliates), a U.S. Dollar LIBOR-Based Instrument and that owned the U.S. Dollar LIBOR-Based Instrument any time during the period August 2007 through May 2010 (the "Class Period").¹

7. The Court finds that the requirements of Rule 23 are satisfied solely for the purpose of effectuating the Settlement as follows:

- a. Pursuant to Rule 23(a)(1), the Court determines that the members of the Class are so numerous that their joinder before the Court would be impracticable;
- b. Pursuant to Rule 23(a)(2), the Court determines that OTC Plaintiffs have alleged one or more questions of fact or law common to the Class;

¹ Specifically excluded from the Class are Defendants; Released Parties; co-conspirators; the officers, directors, or employees of any Defendant, Released Party, or co-conspirator; any entity in which any Defendant, Released Party, or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant, Released Party, or co-conspirator and any person acting on their behalf. Also excluded from the Class are any judicial officers presiding over this action and the members of his/her immediate families and judicial staff, and any juror assigned to the OTC Action.²² [Settlement ¶ 3\(b\).](#)

- c. Pursuant to Rule 23(a)(3), the Court determines that OTC Plaintiffs' claims are typical of the claims of the Class;
- d. Pursuant to Rule 23(a)(4), the Court determines that OTC Plaintiffs will fairly and adequately protect the interests of the Class;
- e. Pursuant to Rule 23(b)(3), the Court determines that common questions of law and fact predominate over questions affecting only individual members; and
- f. Pursuant to Rule 23(b)(3), the Court determines that a class resolution is superior to other available methods for the fair and efficient adjudication of this action.

8. If the Effective Date does not occur with respect to the Settlement because of the failure of a condition that affects the Settlement, this certification of the Class shall be deemed null and void as to the Partiesparties subject to ~~such~~ the Settlement without the need for further action by the Court or Barclays. In such circumstances, Barclays shall retain its rights to seek or to object to certification of this litigation as a class action under Rule 23 of the Federal Rules of Civil Procedure, or under any other state or federal rule, statute, law, or provision thereof, and to contest and appeal any grant or denial of certification in this litigation or in any other litigation on any ~~other~~ grounds.

9. The Court's certification of the Class as provided herein is without prejudice to, or waiver of the rights of, any defendant, ~~other than Barclays~~, to contest certification of any other class proposed in these consolidated actions: (i.e., the above-captioned multi-district litigation). The Court's findings in this Order shall have no effect on the Court's ruling on any motion to

certify any class in these actions, and no party may cite or refer to the Court's approval of the Class as persuasive or binding authority with respect to any motion to certify any such class.

IV. CLASS COUNSEL

10. Pursuant to Rule 23(g) of the Federal Rules of Civil Procedure, and solely for settlement purposes, the following firms are designated as settlement class counsel ("Class Counsel") for the Class:

HAUSFELD LLP
1700 K Street, NW, Suite 650
Washington, DC 20006
Tel: 202-540-7200

SUSMAN GODFREY L.L.P.
~~560 Lexington~~ 1301 Avenue, ~~15th of the~~
Americas, 32nd Floor
New York, NY ~~10022~~ 10019
Tel: 212-336-8334

V. FINAL APPROVAL OF CLASS NOTICE

11. Upon review of the record, the Court finds that the Class Notice ~~of the Settlement~~ constituted due, adequate, and sufficient notice of the settlement and was the best practicable under the circumstances and satisfied the requirements of Federal Rules of Civil Procedure 23(c)(2)(B) and 23(e)(1), due process, and any other applicable law. ~~Therefore, the class notice~~ Class Notice is finally approved.

VI. APPOINTMENT OF SETTLEMENT ADMINISTRATOR AND ESCROW AGENT

12. Upon review of the record, the Court finds that Mr. Kenneth Feinberg and Huntington National Bank are qualified to serve as Settlement Administrator and Escrow Agent, respectively. Therefore, Mr. Kenneth Feinberg is appointed as Settlement Administrator and Huntington National Bank is appointed as Escrow Agent.

VII. OTHER PROVISIONS

13. The Court approves and directs the implementation of all the terms of the Settlement.

14. If this Final Judgment and Order is set aside, materially modified, or overturned by this Court or on appeal, and is not fully reinstated on further appeal, this Final Judgment and Order certifying the Class shall be vacated *nunc pro tunc*.

15. Except as to any individual claim of those Persons who have validly and timely requested exclusion from the Class (“Opt-Outs”), all Released Parties and Releasing Parties are bound by this Final Judgment and Order and by the Settlement Agreement.

16. Except as to the Opt-Outs, the Court dismisses the OTC Action, as well as all of the Released Claims, against any of the ~~Releasees~~Released Parties by the ~~Class Representatives and/or Class Members~~Releasing Parties, with prejudice. The Parties are to bear their own costs, except as otherwise provided in the Settlement, provided that such dismissal shall not affect, in any way, the right of ~~Class Plaintiffs or Class Members~~the Releasing Parties to pursue claims, if any, outside the scope of the Released Claims.

17. Any Opt-Outs have timely and validly requested exclusion from the Class and are hereby excluded from the Class, not bound by this Final Judgment and Order, and may not make any claim or receive any benefit from the Settlement, whether monetary or otherwise.

18. Upon the Effective Date, the ~~Releasers~~²Releasing Parties: (a) shall be deemed to have hereby fully and irrevocably waived, released, relinquished, and discharged all

²~~Individually and collectively, Class Plaintiffs and each OTC Class Member, on behalf of themselves and any of their respective past or present officers, directors, stockholders, agents, employees, legal representatives, partners, associates, trustees, parents, subsidiaries, divisions, affiliates, heirs, executors, administrators, purchasers, predecessors, successors, and assigns, whether or not they object to the settlement set forth in this Agreement and whether or not they make a claim for payment from the Net Settlement Fund.~~

~~Release~~Released Claims³ against the Released Parties,⁴ regardless of whether such Releasing Party ~~executives~~executes and delivers a proof of claim; ~~Shall(b) shall~~ be forever enjoined from prosecuting in any forum any ~~Release~~Released Claim against any of the Released Parties; and ~~Agrees(c) agree~~ and ~~covenants~~covenant not to sue any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Party related in any way to any Released Claims.

Notwithstanding the foregoing, persons or entities that only purchased bonds issued by entities other than ~~U.S. Dollar LIBOR Panel Banks~~a Defendant (or a Defendant's subsidiary or

³~~Any and all manner of claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys' fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, arising from or relating in any way to any conduct alleged or that could have been alleged in and arising from the factual predicate of the OTC Action; provided, however, that Released Claims do not include (1) claims that are the subject of the Settlement Agreement, dated October 7, 2014, between Barelays and the Exchange-Based Plaintiffs, specifically claims arising from or relating in any way to any conduct alleged in the Exchange-Based Plaintiffs' Action or that could have been alleged in the Exchange-Based Plaintiffs' Action concerning Eurodollar future contracts or options; (2) claims arising under foreign law related to transactions outside the United States; or (3) claims to enforce any of the terms of this Agreement. For the avoidance of doubt, Released Claims does not include claims relating to or arising out of the purchase of non-U.S. Dollar LIBOR-Based Instruments or any other claims that do not arise out of the factual predicate of the OTC Action, such as a claim to complete the settlement or otherwise enforce the terms of a U.S. Dollar LIBOR-Based Instrument.~~

⁴~~Barelays and each of its past or present direct and indirect parents (including holding companies), subsidiaries, affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, successors, and each of their respective officers, directors, employees, agents, attorneys, legal or other representatives, trustees, heirs, executors, administrators, advisors, and assigns. Released Parties does not include: (i) any of the other Defendants; or (ii) any other Person formerly named as a party in the OTC Action.~~

affiliate) are not members of ~~this Settlement~~ the OTC Class. Further, claims ~~which~~that are alleged in the Bondholder Plaintiff Action (Case No. 12 CYCV 1025 (NRB)) concerning U.S. Dollar LIBOR-Based Debt Securities⁵ are not released by the OTC Settlement. Thus, any claim based on a U.S. Dollar LIBOR-Based Debt Security may be asserted only against the Barclays' settlement of the Bondholder Plaintiff Action ("Bondholder Settlement") (and not the OTC Settlement), and will only be released pursuant to the Bondholder Settlement. Likewise, any claim based on a debt security tied to U.S. Dollar LIBOR that was issued by a Defendant (or a Defendant's subsidiary or affiliate) as obligor and was purchased directly from a Defendant (or a Defendant's subsidiary or affiliate) may be asserted only against the OTC Settlement (and not the Bondholder Settlement), and will only be released pursuant to the OTC Settlement. Any OTC Class Member who is also a member of the class alleged in the Bondholder Plaintiff Action will be entitled to assert claims to share in the settlement funds established in both actions in accordance with the limitations set forth ~~above~~ in this paragraph. Similarly, any member of the class in the Bondholder Plaintiff Action who is also a member of the OTC Class will be entitled to assert claims to share in both settlement funds in accordance with the limitations set forth ~~above~~ in this paragraph.

⁵ "U.S. Dollar LIBOR-Based Debt Securities" means any U.S. Dollar-denominated debt security (a) that was assigned a unique identification number by the CUSIP system; (b) on which interest was payable at any time during August 1, 2007 through May 31, 2010; and (c) where that interest was payable at a rate based on U.S. Dollar LIBOR. U.S. LIBOR-Based Debt Securities include, but are not limited to, any such bonds, corporate bonds, municipal bonds, government bonds, asset backed securities, residential mortgage backed securities, commercial mortgage backed securities, collateralized debt obligations and collateralized loan obligations. Excluded from the definition of U.S. Dollar LIBOR-Based Debt Securities are any such securities that were issued by any Defendant or its subsidiaries or affiliates as obligor. "CUSIP" stands for Committee on Uniform Securities Identification Procedures.

19. In addition, claims concerning U.S. Dollar LIBOR-Based Instruments purchased from one or more Non-Defendant OTC Financial ~~Institutions~~¹~~-Institutions~~⁶ which are alleged in *33-35 Green Pond Road Assocs. LLC v. Bank of America Corp., et al.* (Case No. 12 CV 5822 (NRB)) and *Courtyard at Amwell II, LLC, et al. v. Bank of America Corp., et al.* (Case No. 12 CV 6693 (NRB)) class actions (collectively the “Non-Defendant OTC Action”) are not released by the OTC Settlement. Accordingly, any OTC Class Member who is also a member of the class alleged in the Non-Defendant OTC Action will be entitled to assert claims to share in any settlement funds established in both actions. Similarly, any member of the class in the Non-Defendant OTC Action who is also a member of the OTC Class will be entitled to assert claims to share in any settlement funds established in both actions. Thus, a person or entity who purchased U.S. Dollar LIBOR-Based Instruments from Non-Defendant OTC Financial Institutions and also purchased U.S. Dollar LIBOR-Based Instruments directly from a Defendant (or subsidiary or affiliate of a Defendant) will be legally entitled to assert a claim to share in any ~~settlement by Barclays of the~~ Non-Defendant OTC ~~Settlement with Barclays~~^{Action} based on purchases of U.S. Dollar LIBOR-Based Instruments from Non-Defendant OTC Financial Institutions, and will also be legally entitled to assert a claim to share in the OTC Settlement based on U.S. Dollar LIBOR-Based Instruments purchased directly from a Defendant (or subsidiary or affiliate of a Defendant), but will not be legally entitled to assert a claim to share in

⁶ [The “Non-Defendant OTC Financial Institutions” are Wells Fargo & Company; Goldman Sachs Group, Inc.; Morgan Stanley; Metlife, Inc.; U.S. Bancorp; The PNC Financial Services Group, Inc.; The Bank of New York Mellon Corporation; Capital One Financial Corporation; Ally Financial Inc.; Suntrust Banks, Inc.; BB&T Corporation; TD Bank US Holding Company; State Street Corporation; American Express Company; Regions Financial Corporation; Fifth Third Bancorp; Keycorp Cleveland; Northern Trust Corporation; Bancwest Corporation; M&T Bank Corporation; Harris Financial Corp.; BBVA USA Bancshares, Inc., as well as any of their subsidiaries or affiliates.](#)

the OTC Settlement based on purchases of U.S. Dollar LIBOR-Based Instruments from Non-Defendant OTC Financial Institutions.

20. This Final Judgment and Order shall not affect, in any way, the right of Class Representatives the OTC Plaintiffs or OTC Class Members to pursue claims, if any, outside the scope of the Released Claims.

21. The Settlement, acts performed in furtherance of the Settlement and/or documents executed in furtherance of the Settlement may not be deemed or used as evidence of an admission or other statement supporting: (a) the validity of any claim made by OTC Plaintiffs, OTC Class Members, or Class Counsel (including the appropriateness of class certification); (b) any wrongdoing or liability of the Releasees Released Parties; or (c) any fault or omission of the Releasees Released Parties in any court, administrative agency, or other proceeding.

22. The Settlement shall not be offered or be admissible in evidence against Releasees Released Parties in any action or proceeding, except in an action or proceeding that is in furtherance of the Settlement's terms or brought to enforce its terms. Notwithstanding the foregoing, the Settlement may be filed in an action to enforce or interpret the terms of the Settlement and any other documents executed in connection with the performance of the agreements embodied therein. The Releasees Released Parties may file the Settlement and/or this Final Judgment and Order in any action that may be brought against them in order to support a defense or counterclaim based on the principles of res judicata, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

23. Any order entered regarding the motion for attorneys' fees and expenses in this action shall in no way disturb or affect this Final Judgment and Order and shall be considered separate from this Final Judgment and Order.

24. If this Final Judgment and Order is set aside, materially modified, or overturned by this Court or on appeal, and is not fully reinstated on further appeal, this Final Judgment and Order shall be deemed vacated and shall have no force or effect whatsoever.

25. Without affecting the finality of this Final Judgment and Order in any way, this Court hereby retains exclusive continuing jurisdiction over: (a) implementation of this Settlement and any award or distribution of monies under the claims-made Settlement; (b) hearing and determining applications for attorneys' fees, costs, expenses, and [Service Awards](#) to the OTC Plaintiffs; and (c) all [Parties](#) hereto for the purpose of construing, enforcing, and administering the Settlement.

26. To the extent permitted by law, the Court bars claims against the [Released](#) Parties for contribution or indemnification (however denominated) for all or a portion of any amounts paid or awarded in the OTC Action by way of any settlement, judgment or otherwise by any of the following:

- a. Any of the other Defendants currently named in the OTC Action;
- b. Any other Person formerly named as a party in the OTC Action; or
- c. Any other Person subsequently added or joined as a party in the OTC Action.

27. To the extent permitted by law, the Court bars claims by the Released Parties for contribution or indemnification (however denominated) for all or a portion of any amounts paid

or awarded in the OTC Action by way of any settlement, judgment or otherwise against any of the following:

- a. Any of the other Defendants currently named in the OTC Action;
- b. Any other Person formerly named as a party in the OTC Action; or
- c. Any other Person subsequently added or joined as a party in the OTC Action.

27:28. There is no just reason for delay in the entry of this Final Judgment and Order, and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

DATED: _____, 2017 _____

HON. NAOMI REICE BUCHWALD

~~UNITED STATES DISTRICT COURT JUDGE~~

DATED: _____, 2017 _____

HON. NAOMI REICE BUCHWALD
UNITED STATES DISTRICT COURT JUDGE