UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE LONDON SILVER FIXING, LTD. ANTITRUST LITIGATION	14-MD-02573-VEC 14-MC-02573-VEC
This Document Relates to: ALL ACTIONS	The Honorable Valerie E. Caproni

DECLARATION OF VINCENT BRIGANTI

I, Vincent Briganti, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a shareholder with the law firm Lowey Dannenberg Cohen & Hart, P.C. ("Lowey"). I submit this Declaration in connection with the Motion for Preliminary Approval of the Settlement reached with Defendants Deutsche Bank AG, Deutsche Bank Americas Holding Corporation, DB U.S. Financial Markets Holding Corporation, Deutsche Bank Securities, Inc., Deutsche Bank Trust Corporation, Deutsche Bank Trust Company Americas, and Deutsche Bank AG New York Branch (collectively, "Deutsche Bank").

2. A true and correct copy of the Settlement Agreement dated September 6, 2016 (the "Deutsche Bank Settlement"), among Plaintiffs[1] and Deutsche Bank is attached as Exhibit 1.

3. **Experience**. At the time this Settlement[2] was being negotiated, my firm and I were experienced in prosecuting claims under the Commodity Exchange Act ("CEA"), 7 U.S.C. §§ 1 *et seq.*, and the Sherman Antitrust Act, 15 U.S.C. §§ 1 *et seq.*

4. I have twenty years of experience in successfully developing and leading the prosecution of commodity manipulation, antitrust, and federal securities litigation matters. This experience includes cases in which my firm and I have successfully prosecuted, as court-appointed lead or co-lead counsel or individual plaintiff's counsel, what were at the time the first-, second-, third-, and fourth-largest class action recoveries under the CEA: *In re Sumitomo Copper Litigation*, Master File No. 96 Civ. 4854 (S.D.N.Y.) (Pollack, J.) ($149 million settlement); *Hershey v. Pacific Investment Management Corp.*, Case No. 05-C-4681 (RAG) (N.D. Ill.) ($118.75 million settlement); *In re Natural Gas Commodity Litigation*, Master File No. 03 Civ. 6186 (S.D.N.Y.) (Marrero, J.) ($101 million settlement); and *In re Amaranth*

[1] Plaintiffs are Norman Bailey, Robert Ceru, Christopher DePaoli, John Hayes, Laurence Hughes, KPFF Investment, Inc. f/k/a KP Investment, Inc., Kevin Maher, Eric Nalven, J. Scott Nicholson, and Don Tran.

[2] Unless otherwise indicated, capitalized terms herein have the same meaning as in the Settlement Agreement.

Natural Gas Commodities Litigation, Master File No. 07 Civ. 6377 (S.D.N.Y) (Scheindlin, J.) ($77.1 million settlement).

5. Currently, my firm and I are prosecuting, as court-appointed class counsel, cases alleging anticompetitive conduct and manipulation of the world's most important financial benchmarks, including the London Interbank Offered Rate ("LIBOR") for Yen-LIBOR and Euroyen-TIBOR (*Laydon v. Mizuho Bank, Ltd., et al.*, No. 12-cv-3419 (GBD) (HBP) (S.D.N.Y.)); the Swiss Franc (*Sonterra Capital Master Fund Ltd., et al. v. Credit Suisse Group AG, et al.*, No. 15-cv-871 (SHS) (S.D.N.Y.)), the Euro Interbank Offered Rate ("Euribor") (*Sullivan, et al. v. Barclays plc, et al.*, No. 13-cv-2811 (PKC) (S.D.N.Y.)), and the WM/Reuters FX benchmark (*In re Foreign Exchange Benchmark Rate Antitrust Litig.*, No. 13-cv-7789 (LGS) (S.D.N.Y.)). In the *Euribor* litigation, Judge Castel preliminarily approved a $94 million settlement with Barclays plc and related Barclays entities on December 15, 2015. As part of the December 15 Order, Judge Castel appointed my firm and me as Co-Lead Counsel to the Settlement Class. *See* Order Preliminarily Approving Class Action Settlement and Conditionally Certifying a Settlement Class, *Sullivan, et al. v. Barclays plc, et al.*, No. 13-cv-2811 (PKC), ECF No. 234. On June 22, 2016, in the Yen-Libor/Euroyen-TIBOR litigation, Judge Daniels preliminarily approved settlements with several defendants, totaling $58,000,000, plus substantial cooperation. Judge Daniels appointed Lowey as Class Counsel pursuant to FED. R. CIV. P. 23(g). *See* Superseding Order Preliminarily Approving Proposed Settlements with Citibank, N.A., Citigroup Inc., Citibank Japan Ltd., and Citigroup Global Markets Japan Inc., HSBC Holdings Plc, HSBC Bank Plc, R.P. Martin Holdings Limited and Martin Brokers (UK) Ltd., Scheduling Hearing for Final Approval Thereof, and Approving the Proposed Form and Program of Notice to the Class, *Laydon v. Mizuho Bank, Ltd., et al.*, No. 12-cv-03419-GBD-

HBP, ECF No. 659.

6. Lowey's Firm Resume is attached hereto as Exhibit 2.

7. **Well-Informed**. Before reaching the Deutsche Bank Settlement, Class Counsel was well-informed regarding the strengths and weaknesses of Plaintiffs' claims. My firm and I extensively reviewed and analyzed the following documents and information: (i) publicly-available information relating to the conduct alleged in Plaintiffs' complaints; (ii) expert and industry research regarding the Silver Fix, physical Silver and Silver financial instruments impacted by the Silver Fix; and (iii) prior decisions of courts deciding similar issues. In addition, my firm and I: (a) conducted an extensive investigation into the facts and legal issues in this action; (b) engaged in extensive negotiations with Deutsche Bank; and (c) took many other steps to research and analyze the strengths and weaknesses of the claims, including ongoing consultations with a leading commodity manipulation consulting expert.

8. **Procedural History**. The procedural history of this Action is set forth below:

9. On July 25, 2014, Plaintiff J. Scott Nicholson filed his initial Complaint. *Nicholson v. The Bank of Nova Scotia, et al.*, No. 14-cv-5682 (DC) (S.D.N.Y.), ECF No. 1. Subsequently a number of actions were filed in this court and in the Eastern District of New York, prompting the matter to go before the United States Judicial Panel on Multidistrict Litigation. On October 14, 2014, the MDL Panel issued an Order transferring the Action to the Southern District of New York and the Honorable Judge Valerie E. Caproni. *In re: London Silver Fixing, Ltd., Antitrust Litigation*, No. 14-md-2573, ECF No. 1.[3]

10. On November 14, 2014, Lowey and Grant & Eisenhofer P.A. ("Grant & Eisenhofer") (collectively, "Class Counsel") submitted their motion for appointment as Interim

[3] Hereinafter, all ECF citations are to the docket in *In re: London Silver Fixing, Ltd., Antitrust Litigation*, No. 14-md-2573 (S.D.N.Y.).

Co-Lead Counsel. ECF No. 14. On November 25, 2014, Lowey and Grant & Eisenhofer were appointed Interim Co-Lead Counsel. ECF No. 17.

11. Plaintiffs filed their First Consolidated Amended Class Action Complaint on January 26, 2015. ECF No. 34. On March 27, 2015, Defendants filed their motions to dismiss. ECF Nos. 56 and 59.

12. On April 17, 2015, Plaintiffs filed their Second Consolidated Amended Class Action Complaint. ECF No. 63. Three days later, the Court ruled that Defendants' March 27, 2015 Motions to Dismiss were moot. ECF No. 64. On May 29, 2015, Defendants filed their motions to dismiss the Second Consolidated Amended Class Action Complaint. ECF Nos. 73 and 75. Plaintiffs filed their opposition to the motions to dismiss on July 13, 2015. ECF Nos. 83, 87. Defendants filed their reply memoranda of law in support of their motions to dismiss on August 10, 2015. ECF Nos. 96, 97. On October 3, 2016, the Court sustained Plaintiffs' antitrust claims, as well as claims for violations of the CEA. ECF No. 151.

13. **Arm's-Length**. Negotiations leading to the Deutsche Bank Settlement were entirely non-collusive and strictly arm's-length. During the course of negotiations, Plaintiffs had the benefit of developing information from various sources, including government settlements and orders, other public accounts of manipulation involving the Silver Fix and other investigations, counsel's investigation into Plaintiffs' claims, industry and expert analysis, and information shared by Deutsche Bank during the settlement negotiations. I was involved in all aspects of the settlement negotiations on behalf of Plaintiffs.

14. **Deutsche Bank Settlement Negotiations**. The negotiations with Deutsche Bank over the material terms of the Settlement took place over several months starting in December 2015 and continuing until the Deutsche Bank Settlement Agreement was executed on September

6, 2016.

15. Following initial phone calls with Deutsche Bank's counsel in December 2015, Lowey and Grant & Eisenhofer engaged in lengthy negotiations with Deutsche Bank's counsel over the material terms of the settlement, including the amount of the settlement consideration, the scope of the cooperation to be provided by the Deutsche Bank Defendants, the scope of the releases, and the circumstances under which the parties would have the right to terminate the settlement.

16. During the course of the negotiations, Class Counsel presented what we perceived to be the strengths and weaknesses of the claims and defenses, as well as Deutsche Bank's litigation exposure.

17. In February 2016, we reached an agreement with Deutsche Bank on the amount of the settlement, subject to the negotiation of other material terms of the deal. For example, given that this is the first settlement in the case, it was our view that the cooperation provisions of the deal were extremely important to our ability to maximize the overall recovery for the class against the Non-Settling Defendants. The negotiations as to the scope of the cooperation provisions continued for several months.

18. On April 13, 2016, counsel for Deutsche Bank and Class Counsel signed a Binding Settlement Term Sheet ("Term Sheet"). The Term Sheet set forth the terms on which the parties agreed, subject to the negotiation of a full Settlement Agreement, to settle Plaintiffs' claims against Deutsche Bank. At the time the Term Sheet was executed, Class Counsel was well-informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the claims and defenses asserted.

19. By letter dated April 13, 2016, the Parties reported to the Court via ECF that the

Term Sheet had been executed, and advised the Court that the Term Sheet would be superseded by a formal settlement agreement. ECF No. 116.

20. The parties negotiated the Deutsche Bank Settlement Agreement over the course of the next several months. The negotiations over the terms of the Deutsche Bank Settlement Agreement included various material terms over which the parties had substantial disagreement, requiring significant give and take on both sides. To that end, drafts of the Deutsche Bank Settlement Agreement went back and forth between the parties, and numerous contested issues were raised, negotiated and resolved, including without limitation, continuing negotiations over the scope of Deutsche Bank's cooperation (*see* ¶ 4(A)-(G)), the scope of the releases (*see* ¶ 12 (A)-(C)), and the circumstances under which the parties could terminate the Settlement (*see* ¶ 21).

21. Thus, the Deutsche Bank Settlement Agreement, which was executed (along with the Supplemental Agreement) on September 6, 2016, was the culmination of arm's-length settlement negotiations that had extended over many months.

22. The Deutsche Bank Settlement was not the product of collusion. Before any financial numbers were discussed in the settlement negotiations and before any demand or counter-offer was ever made, we were well informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the claims against Deutsche Bank.

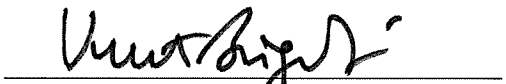
23. The Deutsche Bank Settlement involves a structure and terms that are common in class action settlements in this District. The consideration that Deutsche Bank has agreed to pay is within the range of that which may be found to be fair, reasonable, and adequate at final approval.

24. We have reason to believe that there are at least hundreds of geographically dispersed persons and entities that fall within the Settlement Class definition. This belief is based on data from the COMEX and from Interim Co-Lead Counsel's investigation, as well as data received from Deutsche Bank as part of the settlement cooperation provided to date. The Settlement Class includes traders of COMEX Silver Futures contracts, anyone who traded in physical silver based on the Silver Fix, and traders in various silver derivatives.

25. Lowey and Grant & Eisenhofer have diligently represented the interests of the Class in this litigation, including investigating and bringing the action, litigating the case from inception against all Defendants, and negotiating with Deutsche Bank. The firms performed all of the necessary work to prosecute this litigation since inception, and will continue to zealously represent the Class to prosecute the Class's claims against the Non-Settling Defendants.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 17, 2016
White Plains, New York



Vincent Briganti

EXHIBIT 1

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE LONDON SILVER FIXING, LTD. ANTITRUST LITIGATION	14-MD-02573-VEC 14-MC-02573-VEC
This Document Relates to: ALL ACTIONS	The Honorable Valerie E. Caproni

SETTLEMENT AGREEMENT

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THIS STIPULATION AND AGREEMENT OF SETTLEMENT (the **"Settlement Agreement"**) is made and entered into on September 6, 2016. This Settlement Agreement is entered into on behalf of Representative Plaintiffs Norman Bailey, Robert Ceru, Christopher DePaoli, John Hayes, Laurence Hughes, KPFF Investment, Inc. f/k/a KP Investment, Inc., Kevin Maher, Eric Nalven, J. Scott Nicholson, and Don Tran (collectively, the "Representative Plaintiffs") for themselves and on behalf of the Settlement Class (as defined in Section 1(E) herein), by and through Representative Plaintiffs' Interim Co-Lead Counsel (as defined in Section 1(W) herein), and on behalf of Defendants Deutsche Bank AG; Deutsche Bank Americas Holding Corporation, DB U.S. Financial Markets Holding Corporation, Deutsche Bank Securities, Inc.; Deutsche Bank Trust Corporation, Deutsche Bank Trust Company Americas; Deutsche Bank AG New York Branch (collectively, "Deutsche Bank"), by and through their undersigned counsel of record in this Action.

WHEREAS, Representative Plaintiffs have filed civil class actions, consolidated as *In re London Silver Fixing, Ltd. Antitrust Litigation*, 14-MD-02573-VEC; 14-MC-02573-VEC (S.D.N.Y.), and have alleged, among other things, that Defendants (as defined in Section 1(L) herein), including Deutsche Bank, from January 1, 1999 through the present, acted unlawfully by, *inter alia*, manipulating, aiding and abetting the manipulation, and conspiring to manipulate silver prices and the prices of silver financial instruments, in violation of the Commodity Exchange Act, 7 U.S.C. § 1 *et seq*., the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq*., and federal and state common law.

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

WHEREAS, Deutsche Bank has denied and continues to deny each and all of the claims and allegations of wrongdoing made by Representative Plaintiffs in the Action and all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action;

WHEREAS, arm's-length settlement negotiations have taken place between Representative Plaintiffs, Interim Co-Lead Counsel and Deutsche Bank, and this Settlement Agreement has been reached, subject to the Final Approval of the Court;

WHEREAS, Deutsche Bank agrees to cooperate with Representative Plaintiffs and Interim Co-Lead Counsel as set forth below in this Agreement;

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

WHEREAS, all parties hereto have entered this settlement to avoid the costs and uncertainties of continued litigation, and no party hereto makes any admission as to the merits of the litigation or the strength of the opposing parties' positions;

WHEREAS, Deutsche Bank, despite believing that it is not liable for the claims asserted against it in the Action and that it has good and meritorious defenses thereto, has nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and distraction of burdensome and protracted litigation, thereby putting this controversy to rest and avoiding the risks inherent in complex litigation;

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

1. **Terms Used In This Agreement**

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

(A) **"Action"** means *In re London Silver Fixing, Ltd. Antitrust Litigation* 14-MD 02573-VEC; 14-MC-02573-VEC (S.D.N.Y.).

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

(C) **"Any"** means one or more.

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

(E) **"Class"** or **"Settlement Class"** means:

> All persons or entities that transacted in U.S.-Related Transactions in or on any over-the-counter market ("OTC") or exchange in physical silver or in a derivative instrument in which silver is the underlying reference asset (collectively, "Silver Instruments"), at any time from January 1, 1999 through the date of this Settlement Agreement.
>
> "U.S.-Related Transaction" means any transaction in a Silver Instrument (a) by any person or entity domiciled in the U.S. or its territories, or (b) by

> any person or entity domiciled outside the U.S. or its territories but conducted, in whole or in part, in the U.S. or its territories.

Excluded from the Settlement Class are Defendants, and their officers, directors, management, employees, subsidiaries, or affiliates. Also excluded is the Judge presiding over this action, his or her law clerks, spouse, and any person within the third degree of relationship living in the Judge's household and the spouse of such a person. Also excluded are the DB Released Parties (as defined in Section 1(J) herein); and any Class Member who files a timely and valid request for exclusion.

(F) **"Class Member"** or **"Settlement Class Member"** means a Person who is a member of the Class.

(G) **"Class Period"** means the period of January 1, 1999 through the date this Agreement is fully executed.

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

(I) **"Court"** means the United States District Court for the Southern District of New York.

(J) **"DB Released Parties"** means Deutsche Bank, as well as their former and current parents, subsidiaries, affiliates, attorneys, and their former and current officers, directors, employees, and agents thereof. Claims against the Non-Settling Defendants are not released herein.

(K) "**DB Releasing Parties**" means Deutsche Bank, as well as their former and current parents, subsidiaries, affiliates, attorneys, and their former and current officers, directors, employees, and agents thereof.

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

(M) **"Deutsche Bank"** means Defendants Deutsche Bank AG; Deutsche Bank Americas Holding Corporation, DB U.S. Financial Markets Holding Corporation, Deutsche Bank Securities, Inc.; Deutsche Bank Trust Corporation, Deutsche Bank Trust Company Americas; Deutsche Bank AG New York Branch, and their subsidiaries and affiliates.

(N) **"Distribution Plan"** means any plan or formula of allocation of the Net Settlement Fund, to be approved by the Court, upon notice to the Class as may be required, whereby the Net Settlement Fund shall in the future be distributed to Authorized Claimants.

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

(P) **"Escrow Agent"** means any person jointly designated by Interim Co-Lead Counsel and Deutsche Bank and approved by the Court to act as escrow agent for the Settlement Fund.

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

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

(S) **"Final"** means, with respect to any court order, including, without limitation, the Final Judgment, that such order represents a final and binding determination of all issues within its scope and it not subject to further review on appeal or otherwise. An order becomes "Final"

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

(T) **"Final Approval"** or **"Final Approval Order"** means a Final order from the Court approving of the Settlement following (i) certification of the Settlement Class, (ii) preliminary approval of the Settlement Agreement, (iii) the issuance of the Class Notice pursuant to the Preliminary Approval Order, and (iv) the Fairness Hearing.

(U) **"Final Judgment"** means the Final order of judgment and dismissal of the Action with prejudice as to Deutsche Bank, the form of which shall be mutually agreed upon by the Parties and submitted to the Court for approval thereof.

(V) **"Incentive Awards"** means any awards by the Court to Representative Plaintiffs as described in Section 5.

(W) **"Interim Co-Lead Counsel"** means Lowey Dannenberg Cohen & Hart, P.C., and Grant & Eisenhofer P.A., acting pursuant to the authority conferred by Order No. 3 (Dkt. No. 17), and any subsequent stipulations and orders.

(X) **"Net Settlement Fund"** means the Settlement Fund less Court-approved disbursements, including: (i) notice, claims administration and escrow costs; (ii) any attorneys' fees and/or expenses awarded by the Court; (iii) any Incentive Awards awarded by the Court;

and (iv) all other expenses, costs, taxes and other charges approved by the Court.

(Y) **"Non-Settling Defendants"** means any and all Defendants in this Action, excluding Deutsche Bank.

(Z) **"Parties"** means Deutsche Bank and Representative Plaintiffs collectively, and "**Party"** applies to each individually.

(AA) **"Person"** means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint-stock company, estate, legal representative, trust, unincorporated association, proprietorship, municipality, state, state agency, entity that is a creature of any state, any government, governmental or quasi-governmental body or political subdivision, authority, office, bureau, agency or instrumentality of the government, any business or legal entity, or any other entity or organization; and any spouses, heirs, predecessors, successors, representatives or assignees of any of the foregoing.

(BB) "**Plaintiff Released Parties**" means Representative Plaintiffs and Settling Class Members on behalf of themselves and (as applicable) their heirs, executors, administrators, agents, attorneys, members, trustees, participants, and beneficiaries, and their respective predecessors, successors, representatives, principals, and assigns.

(CC) "**Plaintiff Releasing Parties**" means Representative Plaintiffs and Settling Class Members on behalf of themselves and (as applicable) their heirs, executors, administrators, agents, attorneys, members, trustees, participants, and beneficiaries, and their respective predecessors, successors, representatives, principals, and assigns.

(DD) **"Plaintiffs' Counsel"** means Interim Lead Counsel and other counsel for the Representative Plaintiffs.

(EE) **"Preliminary Approval Order"** means an order by the Court issued in response to the Motion for Preliminary Approval in Section 13 providing for, *inter alia*, preliminary approval of the Settlement, including certification of the Settlement Class for purposes of the Settlement only, and for a stay of all proceedings in the Action against Deutsche Bank until the Settlement receives Final Approval.

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

(GG) **"Regulatory Agencies"** means any local, state, provincial, regional, or national regulatory, governmental or quasi-governmental agency or body that was authorized, is authorized or will be authorized to enforce laws and regulations concerning the conduct at issue in this Action, including, but not limited to, the United States Department of Justice, United States Commodity Futures Trading Commission, United Kingdom Financial Conduct Authority (formerly, United Kingdom Financial Services Authority), and their predecessors or successors.

(HH) **"Released Claims"** means those claims described in Section 12 of this Settlement Agreement.

(II) **"Representative Plaintiffs"** means Plaintiffs Norman Bailey, Robert Ceru, Christopher DePaoli, John Hayes, Laurence Hughes, KPFF Investment, Inc. f/k/a KP Investment, Inc., Kevin Maher, Eric Nalven, J. Scott Nicholson, and Don Tran, and any other Person named as a named plaintiff in the Action who was not subsequently withdrawn as a named plaintiff, and any named plaintiff who may be added to the Action through amended or supplemental pleadings. This Settlement Agreement is entered with each and every Representative Plaintiff. In the event that one or more Representative Plaintiff(s) fails to secure

court approval to act as a Representative Plaintiff, the validity of this Settlement Agreement as to the remaining Representative Plaintiffs, the Settlement Class, and Interim Co-Lead Counsel shall be unaffected.

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

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

(LL) **"Settlement Amount"** means thirty-eight million dollars ($38,000,000).

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

(NN) **"Settling Class Members"** means Representative Plaintiffs and other members of the Settlement Class who do not timely exclude themselves from the Settlement pursuant to Fed. R. Civ. P. 23(c).

2. **Settlement Class**

Representative Plaintiffs will file an application seeking the certification of the Settlement Class as described herein pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure.

Deutsche Bank will not oppose certification of a Settlement Class, but reserves the right to contest certification of a Litigation Class, to defend all claims in the Action, and to assert any claims, rights and defenses in the Action if the Settlement Class is not certified or if this Settlement Agreement does not receive Final Approval. For the avoidance of doubt, the Parties' agreement as to certification of the Settlement Class is only for purposes of effectuating this Settlement as to Deutsche Bank, and for no other purpose. Deutsche Bank retains all of its

objections, arguments, and defenses with respect to any other request for class certification, and reserves all rights to contest class certification if the Settlement Class is not certified or if this Settlement Agreement does not receive Final Approval, if the Court's approval is reversed or vacated on appeal, if this Agreement is terminated as provided herein, or if the Settlement set forth in this Agreement otherwise fails to proceed for any other reason.

3. **Settlement Payment**

(A) Deutsche Bank shall pay or cause to be paid the Settlement Amount into a mutually acceptable escrow account within fifteen (15) days of executing this Agreement. The terms of such account shall be negotiated by the Parties in good faith. All interest earned by any portion of the Settlement Amount paid into the Settlement Fund shall be added to and become part of the Settlement Fund. The settlement is non-recapture, *i.e.*, it is not a "claims-made" settlement and, if this Settlement Agreement receives Final Approval, Deutsche Bank shall not be entitled to return of any of the consideration paid under any circumstances. Except in the event of termination pursuant to Section 21(A), Deutsche Bank shall not have a reversionary interest in the Settlement Fund.

(B) The Escrow Agent shall only act in accordance with instructions mutually agreed upon by the Parties in writing, except as otherwise provided in this Agreement or by Order of the Court.

(C) Deutsche Bank has denied any liability, fault, or wrongdoing of any kind in connection with the allegations in the Action, and as such neither the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations, term sheets, or proceedings connected with it, shall be construed as an admission or concession by Deutsche Bank of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind. Other than

payment of the Settlement Amount in accordance with the provisions of Section 3(A) above, neither Deutsche Bank nor any of the DB Released Parties shall have any liability, responsibility, or obligation to pay or reimburse any other amounts to any Person, including but not limited to Representative Plaintiffs, Interim Co-Lead Counsel, any member of the Settlement Class, or any Plaintiff Releasing Parties in connection with, relating to, or arising out of the Action, the Plaintiff Released Claims, or this Settlement Agreement. Deutsche Bank shall have no liability, obligation or responsibility whatsoever for making a payment into the Settlement Fund for any other Non-Settling Defendant. Deutsche Bank shall have no liability, obligation, or responsibility with respect to the investment, allocation, use, disbursement, administration, or oversight of the Settlement Fund.

4. **Cooperation**

(A) Deutsche Bank will use its reasonable best efforts to provide cooperation to Representative Plaintiffs unless and until the Settlement Agreement is denied Final Approval, the Settlement Class is not certified, the Settlement Agreement is terminated under Section 21, or this Action is finally resolved, whichever comes first.

(i) Deutsche Bank agrees to provide an attorney proffer as to Deutsche Bank's conduct as it relates to the conduct alleged in the Action.

(ii) Deutsche Bank agrees to provide interviews with knowledgeable current employees regarding Deutsche Bank's role, if any, in the conduct alleged in the Action to the extent it is practicable, permitted by relevant authorities and not unduly burdensome on Deutsche Bank. Such interviews shall begin as soon as is practicable.

(iii) Deutsche Bank agrees to use its best efforts to arrange interviews with

former employees to the extent such employees are within Deutsche Bank's control, such interviews are permitted by relevant authorities, and Deutsche Bank has been paying for such employee's counsel. Such interviews shall begin as soon as is practicable.

(iv) Deutsche Bank agrees to produce all materials, information, and documents that Deutsche Bank has previously produced to government regulators or government investigators relating to the conduct alleged in the Action within thirty (30) days of execution of this Agreement, and to make any subsequent production of such materials, information, and documents by Deutsche Bank to government regulators or government investigators relating to the conduct alleged in the Action available within thirty (30) days of any such future production to government regulators or government investigators.

(v) Deutsche Bank shall provide declarations or certifications to establish in discovery, and if necessary at trial that, if believed to be true and accurate, that the documents, electronically-stored information, or data previously produced by Deutsche Bank is genuine, authentic, and a record of a regularly conducted activity pursuant to Fed, R. Evid. 803(6), which Co-Lead Counsel identify as necessary for summary judgment and/or trial.

(vi) Deutsche Bank shall provide transactional and other data to the extent such data is in Deutsche Bank's possession, custody, or control to (a) assist in the administration of the notice and claims process as described in Section 8(B) and (b) assist Interim Co-Lead Counsel in the formulation of

a plan of distribution to be presented to the Court.

(vii) Subject to its objections, if any, Deutsche Bank shall produce further documents, materials and information which Plaintiffs may reasonably request that are relevant to the claims or defenses in this Action. Such further requests for cooperation shall be coordinated in such a manner so that all unnecessary duplication and expense is avoided. Notwithstanding any other provision of this Agreement, in the event that Deutsche Bank objects to such requests or otherwise believes that Interim Co-Lead Counsel has unreasonably requested cooperation, Deutsche Bank's counsel and Interim Co-Lead Counsel agree to meet and confer regarding such disagreement and seek resolution from the Court if necessary. If Court resolution is sought, the disputed aspect of the requested cooperation shall be held in abeyance until such resolution by the Court, and such abeyance shall not constitute a breach of this Agreement.

(vii) During the course of the Action, Interim Co-Lead Counsel may serve requests for the production of documents and notices of deposition on Deutsche Bank, without the need to serve a subpoena. The service of such requests shall be governed by the Federal Rules of Civil Procedure applicable to discovery of parties. Deutsche Bank's objections to such requests and notices, if any, shall be governed by the Federal Rules of Civil Procedure and case law applicable to non-parties, including Fed. R. Civ. P. 45. To the extent that there are disputes concerning such requests or any other requests made by Interim Co-Lead Counsel, Deutsche Bank

agrees to meet and confer in good faith regarding those requests. Deutsche Bank and Interim Co-Lead Counsel agree to work in good faith to resolve any issues relating to mechanics or format of production of electronic data.

(B) At a reasonable time to be negotiated in good faith, Deutsche Bank agrees to provide Representative Plaintiffs with (a) privilege logs for any relevant documents reasonably requested by Representative Plaintiffs as cooperation materials in accordance with this Settlement Agreement that Deutsche Bank withholds on the basis of any privilege, doctrine, immunity or regulatory objection, and (b) any existing privilege logs for documents that Deutsche Bank withheld from the U.S. government or any regulator as part of its investigation into Deutsche Bank's precious metals business. The Parties agree to meet and confer regarding any dispute as to documents contained in Deutsche Bank's privilege logs. To the extent the Parties cannot resolve any such disputes, they shall be reserved for resolution by the Court. Deutsche Bank's production of non-privileged but confidential, proprietary or commercially sensitive information shall be subject to either a mutually acceptable protective order (if cooperation materials are provided when no discovery stay is in place in the Action) or a confidentiality agreement (if cooperation materials are provided when a discovery stay is in place in the Action).

(C) The Parties agree to coordinate cooperation discovery in a manner designed to avoid unnecessary duplication and expense.

(D) Deutsche Bank shall have no obligation to produce materials or information that are protected by the attorney-client privilege, the work product doctrine, the bank regulatory, supervisory or examination privilege, secrecy and privacy laws or obligations, or any other

applicable privilege or immunity from discovery, or to the extent Deutsche Bank is prevented from providing such materials by any court order or any law, regulation, policy, other rule or significant objection of any regulatory agency or governmental body restricting disclosure of such documents. Deutsche Bank makes no representations regarding the existence, content, legibility, usefulness, evidentiary value, or relevance of any cooperation materials or information.

(E) Deutsche Bank agrees to begin providing cooperation materials within thirty (30) days after execution and consummation of a protective order or confidentiality agreement, as the case may be, as referred to in Section 4(B).

(F) Notwithstanding any other provision of this Agreement, in the event that Deutsche Bank believes Interim Co-Lead Counsel has unreasonably requested cooperation, or Interim Co-Lead Counsel believes Deutsche Bank has unreasonably withheld cooperation, Deutsche Bank and Interim Co-Lead Counsel agree to meet and confer regarding such disagreement and seek resolution from the Court if necessary. If Court resolution is sought, the disputed aspect of cooperation shall be held in abeyance until such resolution by the Court, and such abeyance shall not constitute a breach of this Settlement Agreement.

(G) Interim Co-Lead Counsel and Representative Plaintiffs agree to use cooperation materials and information provided by Deutsche Bank solely to evaluate and prosecute claims in this Action against the Non-Settling Defendants. Interim Co-Lead Counsel and Representative Plaintiffs shall return or certify the destruction of all cooperation materials and information if the Settlement Agreement does not receive Final Approval, if the Settlement Class is not certified, if this Action is finally resolved in its entirety, or if this Settlement Agreement is terminated pursuant to Section 21 herein.

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

(A) Subject to Court approval, Representative Plaintiffs and Interim Co-Lead Counsel shall be reimbursed and paid solely out of the Settlement Fund for all fees and expenses, including, but not limited to, attorneys' fees, and past, current or future litigation expenses, and any Incentive Awards to the extent an award of such fees and expenses is approved by the Court. Neither Deutsche Bank nor the DB Released Parties shall have any liability responsibility for any such costs, fees, or expenses incurred for or by Representative Plaintiffs' or Class Members' respective attorneys, experts, advisors, agents, or representatives, including any attorneys' fees and expenses or costs of class notice and claims administration, which shall be paid only from the Settlement Fund and as approved by the Court.

(B) Interim Co-Lead Counsel, on behalf of all Plaintiffs' Counsel, may apply to the Court for an award from the Settlement Fund of attorneys' fees, plus interest. Interim Co-Lead Counsel also may apply to the Court for reimbursement from the Settlement Fund of Plaintiffs' Counsels' litigation expenses, plus interest. Representative Plaintiffs may make an application to the Court for an award in connection with their representation of the Settlement Class in this litigation, which amount constitutes the Incentive Awards.

(C) The DB Released Parties shall assert no objection to the payment of any attorneys' fees and expenses awarded to Interim Co-Lead Counsel for Representative Plaintiffs from the Settlement Amount should such payment be approved by the Court.

(D) The Procedures for, and the allowance or disallowance by the Court of, any application for approval of fees, expenses and costs or an Incentive Awards (collectively, "Fee and Expense Application") are not part of the Settlement set forth in this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness,

reasonableness, and adequacy of the Settlement set forth in this Agreement. Any order or proceeding relating to a Fee and Expense Application, or the reversal or modification thereof, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the Judgment and the Settlement of the Action as set forth herein. No order of the Court or modification or reversal on appeal of any order of the court concerning any Fee and Expense Application or the Distribution Plan shall constitute grounds for termination of this Agreement.

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

(i) Interim Co-Lead Counsel shall seek attorneys' fees based on a percentage of the Settlement Fund;

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

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

(F) Upon the Court's approval of an award of attorneys' fees, costs and expenses, Interim Co-Lead Counsel may immediately withdraw from the Settlement Fund any approved amounts under Subsections (E)(i) and (E)(ii) above. If an event occurs that causes the Settlement Agreement not to become Final pursuant to Section 18, or if Representative Plaintiffs or Deutsche Bank terminates the Settlement Agreement pursuant to Section 21, then within ten (10)

business days after receiving written notice of such an event from counsel for Deutsche Bank or from a court of appropriate jurisdiction, Interim Co-Lead Counsel shall refund to the Settlement Fund any attorneys' fees, costs and expenses (not including any non-refundable expenses as described in Section 9(B)) that were withdrawn, plus interest thereon at the same rate at which interest is accruing for the Settlement Fund.

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

(A) Interim Co-Lead Counsel may apply, at the time of any application for distribution to Authorized Claimants, for an award from the Settlement Fund of attorneys' fees for services performed and reimbursement of expenses incurred in connection with the administration of the Settlement after the date of the Fairness Hearing. Interim Co-Lead Counsel reserves the right to make additional applications for payment from the Settlement Fund for attorneys' fees for services performed and reimbursement of expenses incurred. Neither Deutsche Bank nor the DB Released Parties shall have any responsibility or liability for any such fees, expenses or costs, which shall be paid only from the Settlement Fund and as approved by the Court.

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

(A) Neither Deutsche Bank nor the DB Released Parties shall have any responsibility or liability whatsoever with respect to any payment(s) to Interim Co-Lead Counsel for attorneys' fees, costs and expenses and/or to any other Person who may assert some claim thereto, or any fee and expense award the Court may make in the Action.

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

(A) The Settlement Administrator, subject to such supervision and direction by the Court and/or Interim Co-Lead Counsel as may be necessary, shall administer the Proof of Claim

and Release forms submitted by the Settling Class Members and shall oversee the distribution of the Settlement Fund pursuant to the Distribution Plan. The settlement claims process, including class notice, will be administered by an independent claims administrator selected by co-lead counsel and approved by the Court. Neither Deutsche Bank nor the DB Released Parties shall have any role in, or responsibility or liability to any person for, the solicitation, review, or evaluation of proofs of claim by Representative Plaintiffs, Interim Co-Lead Counsel, or their designated representatives or agents, or for administrating, settling, or disbursing claim distributions from the Settlement Fund.

(B) Upon the Effective Date (or earlier if provided in Section 5 herein), the Settlement Fund shall be applied as follows:

(i) to pay costs and expenses associated with the distribution of the Class Notice and Administration of the Settlement as provided in this Section and Section 6, including all costs and expenses reasonably and actually incurred in assisting Class Members with the filing and processing of claims against the Net Settlement Fund at any time after Deutsche Bank makes payments described in Section 3;

(ii) to pay Escrow Agent costs;

(iii) to pay taxes assessed on the Settlement Fund, and tax preparation fees in connection with such Taxes;

(iv) to pay any attorneys' fees, costs and expenses approved by the Court upon submission of a Fee and Expense Application, as provided herein;

(v) to pay the amount of any Incentive Awards for

Representative Plaintiffs, as provided in Section 5; and

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

9. **Disbursements Prior to Effective Date**

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

(B) Upon written notice to the Escrow Agent by Interim Co-Lead Counsel with a copy to Deutsche Bank, the following may be disbursed prior to the Effective Date: (i) reasonable costs of Class Notice and Administration may be paid from the Settlement Fund as they become due (up to a maximum of $600,000); (ii) reasonable costs of the Escrow Agent may be paid from the Settlement Fund as they become due; (iii) taxes and tax expenses may be paid from the Settlement Fund as they become due; and (iv) Plaintiffs' Counsel's attorneys' fees and costs and expenses as approved by the Court. In the event the Settlement Agreement does not receive Final Approval or is terminated pursuant to Section 21, Deutsche Bank shall be entitled to the return of all such funds (including any accrued interest thereon), except for the reasonable costs of Class Notice and Administration, costs of the escrow agent or any tax payments or tax expenses that have been actually incurred and/or disbursed prior to the date the Settlement was denied Final Approval or was terminated and provided that such costs shall not exceed $600,000.

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

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

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

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

The Settlement Fund shall be maintained by Interim Co-Lead Counsel under supervision of the Court and shall be distributed solely at such times, in such manner and to such Persons as shall be directed by subsequent orders of the Court (except as provided for in this Agreement) consistent with the terms of this Settlement Agreement. The Parties intend that the Settlement Fund be treated as a "qualified settlement fund" within the meaning of Treasury Regulation § 1.468B. Interim Co-Lead Counsel shall ensure that the Settlement Fund at all times complies with Treasury Regulation § 1.468B in order to maintain its treatment as a qualified settlement fund. To this end, Interim Co-Lead Counsel shall ensure that the Settlement Fund is approved by the Court as a qualified settlement fund and that any Escrow Agent, Settlement Administrator or other administrator of the Settlement Fund complies with all requirements of Treasury Regulation § 1.468B-2. Any failure to ensure that the Settlement Fund complies with Treasury

Regulation § 1.468B-2, and the consequences thereof, shall be the sole responsibility of Interim Co-Lead Counsel. Neither Deutsche Bank nor the DB Released Parties shall have any role in, or responsibility or liability to any person for the administration or maintenance of the Settlement Fund.

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

(A) The Plaintiff Releasing Parties finally and forever release and discharge from, and covenant not to sue or assist any third party in commencing or maintaining any suit or action against, the DB Released Parties for any and all manner of claims, including Unknown Claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys' fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, which any Class Plaintiffs or Class Members ever had, now has, or hereafter can, shall or may have, representatively, derivatively or in any other capacity, against the DB Released Parties arising from or relating in any way to conduct alleged in the Action or that could have been alleged in the Action against the DB Released Parties, regardless of the source of law or other authority relied upon, concerning U.S.-Related Transactions in any Silver Instrument at any time from January 1, 1999 through the date of the Settlement Agreement (the "Plaintiff Released Claims"). The definition of "Plaintiff Released Claims" is intended to have the broadest possible application, but, for the avoidance of doubt, Plaintiff Released Claims does not include claims that arise exclusively under foreign law and that relate to transactions in

Silver Instruments for which irrevocable liability was incurred, or title was passed, entirely outside the United States.

(B) The DB Releasing Parties finally and forever release and discharge from and covenant not to sue the Plaintiff Released Parties for any and all manner of claims, including Unknown Claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys' fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, which any DB Releasing Parties ever had, now has, or hereafter can, shall or may have, representatively, derivatively or in any other capacity, against the Plaintiff Released Parties arising from or relating in any way to the prosecution of the Action (the "DB Released Claims").

(C) "Unknown Claims" is understood to mean any claims against the released party which releasing party does not know or suspect to exist in his, her, or its favor as of the effective date of this Agreement, which if known might have affected his, her, or its decision(s) with respect to the settlement. With respect to any and all of such claims, the Parties stipulate and agree that by operation of the Final Judgment, upon the Effective Date, the Releasing Parties shall have expressly waived, and each Plaintiff Releasing Party and DB Releasing Party shall be deemed to have waived, and by operation of the Final Judgment shall have expressly waived, the provisions, rights and benefits of Cal. Civ. Code §1542, which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER

FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

and any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code §1542. The Parties may hereafter discover facts other than or different from those which they now know or believe to be true with respect to the subject matter of the release. Nevertheless, the Plaintiff Releasing Parties shall expressly, fully, finally, and forever settle and release, and each Settlement Class member upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled and released, any and all Plaintiff Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. The DB Releasing Parties shall expressly, fully, finally, and forever settle and release, and by operation of the Final Judgment shall have, fully, finally, and forever settled and released, any and all DB Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. The Parties acknowledge that the inclusion of "Unknown Claims" in the definition of the Plaintiff and DB Released Claims was separately bargained for and was a key element of this Settlement Agreement.

13. **Motion for Preliminary Approval**

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

14. **Class Notice**

In the event that the Court grants the Preliminary Approval Order, Interim Co-Lead

Counsel shall, in accordance with Rule 23 of the Federal Rules of Civil Procedure, provide Class Members, whose identities can be determined after reasonable efforts, with notice of the date of the Fairness Hearing. The Class Notice may be sent solely for this Settlement or combined with notice of other settlements or of any litigation class. The Class Notice shall also explain the general terms of the Settlement Agreement, the general terms of the proposed Distribution Plan, the general terms of the Fee and Expense Application, and a description of Class Members' rights to object to the Settlement, request exclusion from the Class and appear at the Fairness Hearing. Interim Co-Lead Counsel shall prepare and submit the Class Notice to the Court for approval. The text of the Class Notice shall be agreed upon by the Parties before its submission to the Court for approval thereof.

15. **Publication**

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

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

(A) After Class Notice is issued, and prior to the Fairness Hearing, Interim Co-Lead Counsel shall file a motion for entry of a Final Approval Order and Final Judgment:

(i) finally certifying solely for settlement purposes the

Settlement Class as defined in Section 1(E) herein;

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

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

(iv) directing that, as to the DB Released Parties, the Action be dismissed with prejudice and without costs as against the Settling Class Members;

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

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

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

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

(B) Prior to the Fairness Hearing, as provided in Section 5, Interim Co-Lead Counsel

will timely request by separate motion that the Court approve its Fee and Expense Application. The Fee and Expense Application and the Distribution Plan (as defined in Section 1(N)) are matters separate and apart from the Settlement between the Parties. If the Fee and Expense Application or the Distribution Plan are not approved, in whole or in part, it will have no effect on the finality of the judgment.

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

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

18. **Effective Date**

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

(A) The Settlement Agreement has been fully executed by Deutsche Bank, Representative Plaintiffs and their respective counsel;

(B) The Court has certified the Settlement Class, issued the Preliminary Approval Order, and approved the form of the Class Notice;

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

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

(E) The Court has entered its Final Judgment of dismissal with prejudice as to the DB

Released Parties with respect to Representative Plaintiffs and Settling Class Members; and

(F) The time to appeal or seek permission to appeal the certification of the Settlement Class and/or Final Approval Order and or Final Judgment has expired or, if appealed, either (i) the Settlement Agreement and the Final Judgment of dismissal have been affirmed in their entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review, or (ii) such appeal has been withdrawn or dismissed with prejudice.

19. **Occurrence of Effective Date**

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

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

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

21. **Termination**

(A) Deutsche Bank shall have the right, but not the obligation, in its sole discretion, to terminate this Settlement Agreement by providing written notice to Interim Co-Lead Counsel within fifteen (15) business days of any of the following events:

(i) the Court denies, in whole or in part, Representative Plaintiffs' Motion for Preliminary Approval pursuant to Section 13 or the Motion for Final Approval pursuant to Section 16;

(ii) Settlement Class certification, Final Approval and/or Final Judgment is withdrawn, rescinded, modified by the Court, reversed, vacated, or modified on appeal;

(iii) the Court declines to enter Final Approval and/or Final Judgment in any material respect; or

(iv) the terms of the confidential Supplemental Agreement attached hereto as Exhibit A trigger a right to terminate this Settlement Agreement.

(B) Interim Co-Lead Counsel, acting on behalf of the Representative Plaintiffs, shall have the right, but not the obligation, in their sole discretion, to terminate this Settlement Agreement by providing written notice to Deutsche Bank's counsel within fifteen (15) business days of any of the following events, provided that the occurrence of such event substantially deprives Plaintiffs of the benefit of the Settlement:

(i) the Court denies, in whole or in part, Representative Plaintiffs' Motion for Preliminary Approval pursuant to Section 13 or the Motion for Final Approval pursuant to Section 16;

(ii) Settlement Class certification, Final Approval and/or Final Judgment is withdrawn, rescinded, or modified by the Court or Final Judgment is reversed, vacated, or modified on appeal;

(iii) the Court declines to enter Final Approval and/or Final Judgment in any material respect; and

(iv) Deutsche Bank, for any reason, fails to comply with Section 3 and fails to cure such non-compliance as contemplated by Section 21(C)

below.

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

22. **Effect of Termination**

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

(A) Within fifteen (15) business days after written notification of such event is sent by counsel for Deutsche Bank or Interim Co-Lead Counsel to all Parties and the Escrow Agent, the Settlement Amount (including any attorneys' fees, costs, or other expenses previously withdrawn from the Settlement Fund by Interim Co-Lead Counsel pursuant to Section 5(F)), and all interest earned in the Settlement Fund or withdrawn amounts under Section 5(F) will be refunded, reimbursed, and repaid by the Escrow Agent to Deutsche Bank, except as provided in Section 9(B).

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

(C) The Parties shall be restored to their respective positions in the Action as of the

Execution Date, with all of their respective legal claims and defenses preserved as they existed on that date; and

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

(i) this Agreement shall be null and void and of no further effect, and neither Deutsche Bank, the Representative Plaintiffs, or members of the Settlement Class shall be bound by any of its terms;

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

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

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

23. **Confidentiality Protection**

Representative Plaintiffs, Interim Co-Lead Counsel, and Deutsche Bank agree to keep private and confidential the terms of this Settlement Agreement, except for disclosure at the Court's direction or disclosure *in camera* to the Court, until this document is filed with the Court in connection with Representative Plaintiffs' Motion for Preliminary Approval Order and/or Final Approval Order, provided, however, that nothing in this Section shall prevent Deutsche Bank, upon notice to Interim Co-Lead Counsel, from making any disclosures it deems necessary to comply with any relevant laws, subpoena or other form of judicial process.

24. **Binding Effect**

(A) This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Deutsche Bank, the DB Released Parties, and the Plaintiff Released Parties.

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

25. **Integrated Agreement**

This Settlement Agreement, including any exhibits hereto and agreements referenced herein, contains the entire, complete, and integrated statement of each and every term and provision agreed to by and among the Parties and is not subject to any condition not provided for or referenced herein. This Settlement Agreement supersedes all prior or contemporaneous discussions, agreements, and understandings among the Parties to this Settlement Agreement with respect hereto. This Settlement Agreement may not be modified in any respect except by a writing that is executed by all the Parties hereto.

26. **Headings**

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

27. **Neither Party is the Drafter**

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

28. **Choice of Law**

All terms within the Settlement Agreement and its exhibits hereto shall be governed by and interpreted according to the substantive laws of the State of New York, without regard to its choice of law or conflict of laws principles.

29. **Execution in Counterparts**

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

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

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

31. **Reservation of Rights**

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

32. **Notices**

All notices and other communications under this Settlement Agreement shall be sent to the Parties to this Settlement Agreement at their address set forth on the signature page herein, *viz*, if to Representative Plaintiffs, then to: Vincent Briganti, Lowey Dannenberg Cohen & Hart, P.C., One North Broadway, White Plains, NY 10601 and Robert Eisler, Grant & Eisenhofer, 123 Justison Street, Wilmington, DE 19801 and if to Deutsche Bank, then to Robert Khuzami, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022, or such other address as each party may designate for itself, in writing, in accordance with this Settlement Agreement.

33. **Authority**

In executing this Settlement Agreement, Interim Co-Lead Counsel represent and warrant that they have been fully authorized to execute this Settlement Agreement on behalf of the Representative Plaintiffs and the Settlement Class (subject to Final Approval by the Court after notice to all Class members), and that all actions necessary for the execution of this Settlement Agreement have been taken. Deutsche Bank represents and warrants that the undersigned is fully empowered to execute the Settlement Agreement on behalf of Deutsche Bank, and that all actions necessary for the execution of this Settlement Agreement have been taken.

Dated: September 6, 2016

By: _____
Vincent Briganti
LOWEY DANNENBERG COHEN & HART, P.C.
One North Broadway
White Plains, New York 10601
Telephone: (914) 997-0500

By: _____
Robert Eisler
GRANT & EISENHOFER P.A.
123 Justison Street
Wilmington, DE 19801
Tel: (302) 622-7000
Fax: (302) 622-7100
reisler@gelaw.com

Interim Co-Lead Counsel for Representative Plaintiffs and the Proposed Class

Dated: September __, 2016

By: _____
Robert Khuzami
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
Tel: (212) 446-4800
Fax: (212) 446-4900
robert.khuzami@kirkland.com

Counsel for Deutsche Bank

Dated: September 6, 2016

By: _____
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Dated: September __, 2016

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Counsel for Deutsche Bank

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RESUME

Since the 1960s, Lowey Dannenberg Cohen & Hart, P.C. ("Lowey Dannenberg") has represented sophisticated clients in complex litigation involving federal securities, commodities and antitrust violations, healthcare cost recovery actions, and shareholder and board actions.

Lowey Dannenberg has recovered hundreds of millions of dollars for these clients, which include Fortune 100 companies such as Aetna, Inc., Anthem, Inc., CIGNA, Humana, and Verizon, Inc.; some of the nation's largest pension funds, *e.g.*, the California State Teachers' Retirement System, the New York State Common Retirement Fund, and the New York City Pension Funds; and sophisticated institutional investors, including Federated Investors, Inc., who has more than $355 billion in assets under management.

For its more than ten years of service to Fortune 100 health insurers in opt-out litigation involving state and federal fraud claims, Aetna and Humana publicly lauded Lowey Dannenberg their "Go To" outside counsel in a 2013 and 2014 survey published in Corporate Counsel Magazine.

LOWEY DANNENBERG'S COMMODITY PRACTICE

LANDMARK COMMODITY CLASS ACTION RECOVERIES

Lowey Dannenberg successfully prosecuted, as court appointed lead or co-lead counsel or individual plaintiff's counsel, the most important and complex commodity manipulation actions since the enactment of the Commodity Exchange Act ("CEA").

Sumitomo

In *In re Sumitomo Copper Litigation* ("*Sumitomo*"), Master File No. 96 CV 4854 (S.D.N.Y.) (Pollack, J.), Lowey Dannenberg was appointed as one of three executive committee members. Stipulation and Pretrial Order No. 1, dated October 28, 1996, at ¶ 13. Plaintiffs' counsel's efforts in *Sumitomo* resulted in a settlement on behalf of the certified class of more than $149 million, which at the time was, **the largest** class action recovery in the history of the CEA. *In re Sumitomo Copper Litig.*, 182 F.R.D. 85, 95 (S.D.N.Y. 1998). One of the most able and experienced United States District Court judges in the history of the federal judiciary, the Honorable Milton Pollack, took note of counsel's efforts in *Sumitomo* in various respects, including the following:

> The unprecedented effort of Counsel exhibited in this case led to their successful settlement efforts and its vast results. Settlement posed a saga in and of itself and required enormous time, skill and persistence. Much of that phase of the case came within the direct knowledge and appreciation of the Court itself. Suffice it to say, the Plaintiffs' counsel did not have an easy path and their services in this regard are best measured in the enormous recoveries that were achieved under trying circumstances in the face of natural, virtually overwhelming, resistance.

In re Sumitomo Copper Litig., 74 F. Supp. 2d 393, 396 (S.D.N.Y. 1999). What Judge Pollack found to be "the skill and persistence" of counsel in *Sumitomo* will be brought to bear to represent the Class here as well.

In re Natural Gas

Lowey Dannenberg served as co-lead counsel in *In re Natural Gas Commodity Litigation*, Case No. 03 CV 6186 (VM) (S.D.N.Y.) ("*In re Natural Gas*"), which involved manipulation by more than 20 large energy companies of the price of natural gas futures

contracts traded on the NYMEX. Plaintiffs alleged that defendants, including El Paso, Duke, Reliant, and AEP Energy Services, Inc., manipulated the prices of NYMEX natural gas futures contracts by making false reports of the price and volume of their trades to publishers of natural gas price indices across the United States, including Platts. Lowey Dannenberg won significant victories throughout the litigation including:

- defeating defendants' motions to dismiss (*In re Natural Gas*, 337 F. Supp. 2d 498 (S.D.N.Y. 2004));
- prevailing on a motion to enforce subpoenas issued to two publishers of natural gas price indices for the production of trade report data (*In re Natural Gas*, 235 F.R.D. 199 (S.D.N.Y. 2005)); and
- successfully certifying a class of NYMEX natural gas futures traders who were harmed by defendants' manipulation of the price of natural gas futures contracts traded on the NYMEX from January 1, 2000 to December 31, 2002. *In re Natural Gas*, 231 F.R.D. 171, 179 (S.D.N.Y. 2005) (granting class certification), *petition for review denied*, *Cornerstone Propane Partners, LP, et al. v. Reliant Energy Services, Inc., et al.*, Docket No. 05-5732 (2d Cir. August 1, 2006).

The total settlement obtained in this complex litigation—$101 million—was at the time, the **third largest** recovery in the history of the CEA.

Amaranth

Lowey Dannenberg serves as co-lead counsel in *In re Amaranth Natural Gas Commodities Litigation*, Master File No. 07 Civ. 6377 (S.D.N.Y) (SAS) ("*Amaranth*").

Amaranth is a certified CEA class action alleging manipulation of NYMEX natural gas futures contract prices in 2006 by Amaranth LLC, one of the country's largest hedge funds, prior to its widely-publicized multi-billion dollar collapse in September 2006. Significant victories Lowey Dannenberg has achieved in the *Amaranth* litigation include:

- On April 27, 2009, plaintiffs' claims for primary violations and aiding-and-abetting violations of the CEA against Amaranth LLC and other Amaranth defendants were sustained. *Amaranth*, 612 F. Supp. 2d 376 (S.D.N.Y. 2009).

- On April 30, 2010, the Court granted plaintiffs' motion for pre-judgment attachment pursuant to Rule 64 of the Federal Rules of Civil Procedure and Section 6201 of the New York Civil Practice Law and Rules against Amaranth LLC, a Cayman Islands company and the "Master Fund" in the Amaranth master-feeder-fund hedge fund family. *Amaranth*, 711 F. Supp. 2d 301 (S.D.N.Y. 2010).

- On September 27, 2010, the Court granted plaintiffs' motion for class certification. *Amaranth*, 269 F.R.D. 366 (S.D.N.Y. 2010). In appointing Lowey Dannenberg as co-lead counsel for plaintiffs and the Class, the Court specifically noted "the impressive resume" of Lowey Dannenberg and that "plaintiffs' counsel has vigorously represented the interests of the class throughout this litigation." On December 30, 2010, the Second Circuit Court of Appeals denied Amaranth's petition for appellate review of the class certification decision.

- On April 11, 2012, the Court entered a final order and judgment approving the $77.1 million dollar settlement reached in the action. The $77.1 million dollar settlement is **more than ten times greater** than the $7.5 million joint settlement achieved by the Federal Energy

Regulatory Commission ("FERC") and the Commodity Futures Trading Commission ("CFTC") against Amaranth Advisors LLC and at that time, represented the **fourth largest** class action recovery in the 85-plus year history of the CEA.

Pacific Inv. Mgmt. Co. ("PIMCO")

Lowey Dannenberg served as counsel to certified class representative Richard Hershey in a class action alleging manipulation by PIMCO of the multi-billion dollar market of U.S. 10-Year Treasury Note futures contracts traded on the Chicago Board of Trade ("CBOT"). *Hershey v. Pacific Inv. Management Co. LLC*, 571 F.3d 672 (7th Cir. 2009). The case settled in 2011 for $118,750,000, the **second largest** recovery in the history of the CEA at that time.

CURRENT PROSECUTION OF COMMODITY CLASS ACTIONS

Lowey Dannenberg continues to prosecute, as court appointed lead or co-lead counsel or individual plaintiff's counsel, the most important and complex commodity manipulation actions since the enactment of the CEA.

Sullivan, et al. v. Barclays plc, et al.

Lowey Dannenberg is leading the prosecution against numerous global financial institutions responsible for the setting of the Euro Interbank Offered Rate ("Euribor"), a global reference rate used to benchmark, price and settle over $200 trillion of financial products. Several defendants in this litigation, which alleges violations of the CEA, Sherman Act, and RICO, have already paid billions in fines to regulators for manipulating Euribor, and defendant Barclays Bank plc has been granted conditional leniency from the U.S. Department of Justice ("DOJ") pursuant to the Antitrust Criminal Penalty Enhancement and Reform Act ("ACPERA")

for alleged anticompetitive conduct relating to Euribor. On December 15, 2015, Judge Castel preliminarily approved a $94 million settlement with Barclays plc and related Barclays' entities and appointed Lowey Dannenberg as Co-Class Counsel to the Settlement Class. *See* Order Preliminarily Approving Class Action Settlement and Conditionally Certifying a Settlement Class, *Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC) (S.D.N.Y. Dec. 15, 2015), ECF No. 234.

Laydon v. Mizuho Bank, Ltd., et al.; Sonterra Capital Master Fund Ltd., et al. v. UBS AG, et al.

Lowey Dannenberg serves as court-appointed sole lead counsel in *Laydon v. Mizuho Bank, Ltd. et al*. 12-cv-03419 (S.D.N.Y.) (Daniels, J.) ("*Euroyen*"), a proposed class action against some of the world's largest financial institutions arising from their intentional and systematic manipulation of the London Interbank Offered Rate ("LIBOR") for the Japanese Yen and Euroyen TIBOR (the Tokyo Interbank Offered Rate). The case alleges violations of the CEA, the Sherman Act, RICO, and common law. Several defendants named in the Euroyen rate-rigging lawsuit have already pled guilty to criminal charges of price fixing and paid billions in fines to regulators, and defendant UBS AG has been granted conditional leniency from the DOJ pursuant to ACPERA for alleged anticompetitive conduct relating to the Euroyen market.

Recently, Magistrate Judge Pitman credited Lowey Dannenberg's argument that discovery should proceed under the Federal Rules of Civil Procedure and rejected defendants' motion to conduct discovery under the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters. *See Laydon v. Mizuho Bank, Ltd.,* No. 12-cv-3419, 2016 WL 1718387 (S.D.N.Y. Apr. 29, 2016).

Judge Daniels has also preliminarily approved a $35,000,000 settlement with HSBC Holdings plc and HSBC Bank plc, a $23,000,000 settlement with Citigroup, Inc. and several Citi entities, and a cooperation settlement with R.P. Martin. *See* Superseding Order Preliminarily Approving Proposed Settlements, *Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (S.D.N.Y. Jun. 22, 2016), ECF No. 659; Superseding Order Preliminarily Approving Proposed Settlements, *Sonterra Capital Master Fund Ltd., et al. v. UBS AG, et al.*, No. 15-cv-5844 (S.D.N.Y. Jun. 22, 2016), ECF No. 264. The case is currently pending in the Southern District.

Sonterra Capital Master Fund Ltd. v. Credit Suisse Group AG, et al.

Lowey Dannenberg is court-appointed sole lead counsel against the numerous global financial institutions responsible for the setting of the Swiss Franc LIBOR. The case alleges that the institutions manipulated Swiss Franc LIBOR and Swiss Franc LIBOR-based derivatives prices, in violation of the CEA, Sherman Act, and RICO. The case is currently pending before Judge Sidney H. Stein. *Sonterra Capital Master Fund Ltd. v Credit Suisse Group AG et al.*, Case No. 15-cv-871 (S.D.N.Y.).

Sonterra Capital Master Fund Ltd. v. Barclays Bank plc, et al.

Lowey Dannenberg is leading the prosecution against the numerous global financial institutions responsible for the setting of Pound Sterling LIBOR, alleging the manipulation of Sterling LIBOR and the prices of Sterling LIBOR-based derivatives, in violation of the CEA, Sherman Act, and RICO. The case is currently pending before Judge Vernon S. Broderick. *Sonterra Capital Master Fund Ltd. v Barclays Bank plc et al.*, Case No. 15-cv-3538 (VSB) (S.D.N.Y.).

In re London Silver Fixing Ltd., Antitrust Litig.

Lowey Dannenberg is serving as co-lead counsel on behalf of a class of silver investors, including Commodity Exchange Inc. ("COMEX") silver futures contracts traders, against the banks that allegedly colluded to fix the London Silver Fix, a global benchmark that impacts the value of more than $30 billion in silver and silver financial instruments. The case alleges violations of the CEA and antitrust laws. In appointing Lowey Dannenberg, the Court praised Lowey Dannenberg's experience, approach to developing the complaint, attention to details, and the expert resources that the firm brought to bear on behalf of the class. *See In re London Silver Fixing Ltd., Antitrust Litig.*, Case No. 14-md-2573 (VEC), ECF No. 17 (November 25, 2014) (S.D.N.Y.) (Caproni, J.). On October 3, 2016, the Court sustained plaintiffs' claims for price fixing and conspiracy in restraint of trade under Section 1 of the Sherman Act and claims for primary violations and aiding-and-abetting violations of the CEA. *See In re London Silver Fixing Ltd., Antitrust Litig.*, No. 14-md-2573, 2016 WL 5794777 (S.D.N.Y. Oct. 3, 2016). The case is currently pending in the Southern District.

Kraft Wheat Manipulation

Lowey Dannenberg is court-appointed co-lead counsel for a class of wheat futures and options traders pursuing claims against Kraft Foods Group, Inc. and Mondelēz Global LLC alleging Kraft manipulated the prices of Chicago Board of Trade wheat futures and options contracts. In a recent decision, Judge Edmond E. Chang denied defendants' motion to dismiss in large part, sustaining plaintiffs' claims under the CEA, the Sherman Act, and unjust enrichment. *See Ploss v. Kraft Foods Group, Inc.*, No. 15 C 2937, 2016 WL 3476678 (N.D. Ill. June 27,

2016). The case is currently pending in the Northern District of Illinois. *See Ploss v. Kraft Foods Group, Inc. et al*., No. 15-cv-2937 (N.D. Ill.).

Optiver

Lowey Dannenberg serves as co-lead counsel in a proposed class action alleging Optiver US, LLC and other Optiver defendants manipulated NYMEX light sweet crude oil, heating oil, and gasoline futures contracts prices in violation of the CEA and antitrust laws. *In re Optiver Commodities Litigation*, Case No. 08 CV 6842 (S.D.N.Y.) (LAP), Pretrial Order No. 1, dated February 11, 2009. The Honorable Loretta A. Preska of the Southern District of New York granted final approval of a $16.75 million settlement in June 2015.

In re Rough Rice Futures Litigation

Lowey Dannenberg serves as co-lead counsel in a putative class action involving the alleged manipulation of rough rice futures and options traded on the CBOT, in violation of the CEA. *In re Rough Rice Futures Litigation*, Case No. 11-cv-618 (JAN) (N.D. Ill.). Plaintiffs allege that, between at least October 1, 2007 and July 31, 2008, defendants repeatedly exceeded CBOT rough rice position limits for the purpose of manipulating CBOT rough rice futures and option contract prices. The Honorable John W. Darrah of the Northern District of Illinois granted final approval of the settlement in August 2015.

White v. Moore Capital Management, L.P.

Lowey Dannenberg is counsel to a class representative in an action alleging manipulation of NYMEX palladium and platinum futures prices in 2007 and 2008. *White v. Moore Capital*

Management, L.P., Case No. 10 CV 3634 (S.D.N.Y.) (Pauley, J.). Judge Pauley granted final approval of a settlement in the amount of $70 million in 2015.

In re Crude Oil Commodity Futures Litigation

Lowey Dannenberg is counsel to a proposed class representative and large crude oil trader in a proposed class action involving the alleged manipulation of NYMEX crude oil futures and options contracts. *In re Crude Oil Commodity Futures Litigation*, Case No. 11-cv-03600 (S.D.N.Y.) (Forrest, J.). The Court granted final approval to a $16.5 million settlement in January 2016.

LOWEY DANNENBERG'S OTHER PRACTICE AREAS

ANTITRUST AND PRESCRIPTION OVERCHARGE LITIGATION

Lowey Dannenberg is the nation's premier litigation firm for health insurers to recover overcharges for prescription drug and other medical products and services. Our skills in this area are recognized by the largest payers for pharmaceuticals in the United States, including Aetna, CIGNA, Humana, and Anthem, Inc. (formerly WellPoint), who consistently retain Lowey Dannenberg, either on an individual or a class basis, to assert claims against pharmaceutical manufacturers for conduct, including monopoly and restraint of trade, resulting in overpriced medication.

In 1998, Lowey Dannenberg filed the first-ever generic delay class action antitrust cases for endpayers (a term reflecting consumers and health insurers). Those cases were centralized by the JPML under the caption *In re Cardizem CD Antitrust Litigation*, MDL No. 1278 (E.D. Mich.).

Lowey Dannenberg serves as the lead class counsel for indirect purchaser endpayers in the following generic delay antitrust class action lawsuits:

- *In re Cardizem CD Antitrust Litigation*, MDL No. 1278 (E.D. Mich.). Class certification, 200 F.R.D. 326 (E.D. Mich. 2001), Affirmance of partial summary judgment for plaintiffs, 332 F.3d 896 (6th Cir. 2003), $80 million class settlement.

- *In re Terazosin Hydrochloride Antitrust Litigation*, MDL No. 1317 (S.D. Fla.). Certification of 17-state litigation class, 220 F.R.D. 672 (S.D. Fla. 2004), Approval of 17-state settlement (after submission of final pretrial order, jury interrogatories and *motions in limine*) for $28.7 million, 2005 WL 2451958 (S.D. Fla. July 8, 2005).

- *In re Wellbutrin XL Antitrust Litigation*, Civ. No. 08-2433. Partial settlement for $11.75 million (unreported). The case is currently on appeal against the non-settling defendant.

Lowey Dannenberg has prosecuted and won three landmark decisions in favor of third party payer health insurers in prescription drug cases:

- *In re Avandia Marketing Sales Practices and Products Liability Litigation*, 685 F.3d 353 (3d Cir. 2012), *cert. denied, sub nom. GlaxoSmithKline v. Humana Med. Plans, Inc*., 81 U.S.L.W. 3579 (Apr. 15, 2013) (establishing Medicare Advantage Organization's reimbursement recovery rights under the Medicare Secondary Payer Act).

- *Desiano v. Warner-Lambert*, 326 F.3d 339 (2d Cir. 2003) (establishing the direct (non-subrogation) rights of commercial health insurers to recover overcharges from drug companies for drugs prescribed to their insureds). The case was subsequently settled for a confidential amount for 35 health insurers.

- *In re Neurontin Mktg. & Sales Practices Litigation*, 712 F.3d 51 (1st Cir. 2013) (holding drug manufacturers accountable to health insurers for RICO claims attributable to marketing fraud).

Lowey Dannenberg has defended and won dismissals for health insurers in the following class actions: *Meek-Horton v. Trover Solutions*, 910 F. Supp. 2d 690 (S.D.N.Y. 2013); *Potts v.*

Rawlings Co., LLC, 897 F. Supp. 2d 185 (S.D.N.Y. 2012); *Kesselman v. The Rawlings Company, LLC*, 668 F. Supp. 2d 604 (S.D.N.Y. 2009); *Elliot Plaza Pharmacy v. Aetna U.S. Healthcare*, No. 06-cv-623, 2009 WL 702837 (N.D. Okla. Mar. 16, 2009); *Main Drug, Inc. v. Aetna U.S. Healthcare*, 475 F.3d 1228 (11th Cir. 2007), *aff'g*, *Main Drug, Inc. v. Aetna U.S. Healthcare*, 455 F. Supp. 2d 1323 (M.D. Ala. 2006) and 455 F. Supp. 2d 1317 (M.D. Ala. 2005); and *Medfusion Rx, LLC v. Humana Health Plan, Inc.*, Case No. CV-08-PWG-0451-S (N.D. Ala.) (2008). We are also currently defending the class action lawsuits *Roche, et al. v. Aetna, Inc., et al*., Civ. 13-1377 (JHR) (D.N.J.) and *Wurtz v. Rawlings Co., LLC*, 933 F. Supp. 2d 480 (E.D.N.Y. 2013).

In 2013, America's Health Insurance Plans, a national association representing the health insurance industry, hired Lowey Dannenberg to represent it before the United States Supreme Court as *amicus curiae* in *FTC v. Actavis, Inc*., 133 S. Ct. 2223 (2013), concerning how "pay-for-delay" agreements between brand name drug companies and generic companies should be evaluated under federal antitrust law. We also successfully secured the first reported precedent reinvigorating class certification under New York's Donnelly (Antitrust) Act in federal court in the wake of the Supreme Court's *Shady Grove Orthopedic Assocs. v. Allstate Ins. Co*., 130 S. Ct. 1431 (2010) decision. *See In re Wellbutrin XL Antitrust Litig*., 756 F. Supp. 2d 670, 677-80 (E.D. Pa. 2010).

Lowey Dannenberg is also currently prosecuting on behalf of its clients the following cases:

- *Cariten Insurance Company, et al. v. AstraZeneca AB, et al.*, No. 002106 (Pa. Court of Common Pleas); *Time Insurance Company, et al. v. AstraZeneca AB, et al.*, No. 001903 (Pa. Court of Common Pleas). Lowey Dannenberg represents 116 individual third party payer health insurers who have opted out of the certified litigation class in *Nexium* and filed separate actions in Pennsylvania state court. *In re Nexium (Esomeprazole) Antitrust Litig.*, 12–md–02409–WGY (D. Mass.). After being removed, two separate federal courts granted our motions for remand. *Time Ins. Co. v. AstraZeneca AB*, 52 F. Supp. 3d 705 (E.D. Pa. 2014); *Cariten Insurance Company, et al. v. AstraZeneca AB*, 1:14-cv-13873-*WGY*, ECF No. 52 (D. Mass. Nov. 20, 2014).

- *Humana Inc. v. Boehringer Ingelheim Pharma GmbH & Co. KG, et al.*, No. 3:14-cv-00572 (D. Conn.) (SRU). Lowey Dannenberg represents Humana Inc. in a generic delay antitrust case against defendant Boehringer Ingelheim Pharmaceuticals, Inc., the Aggrenox brand manufacturer, and generic manufacturer Barr Pharmaceuticals Inc. (later acquired by Teva Pharmaceuticals), before Judge Underhill in the District of Connecticut. Class actions on behalf of direct and indirect purchaser plaintiffs are pending in the same multidistrict litigation. *In re Aggrenox Antitrust Litigation*, MDL No. 2516 (D. Conn.) (SRU). The litigation asserts claims under state antitrust law, claiming a $100 million co-promotion agreement was a disguised pay-for-delay, and as a result, Humana has overpaid and continues to overpay for Aggrenox. On March 23, 2015 and August 9, 2016, the Court sustained several of Humana's state law antitrust claims. *In re Aggrenox Antitrust Litig.*, 94 F. Supp. 3d 224 (D. Conn. Mar. 23, 2015); *see also In re Aggrenox Antitrust Litig.*, No. 14-md-2516, 2016 WL 4204478 (D. Conn. Aug. 8, 2016).

- *Government Employees Health Association v. Endo Pharmaceuticals, Inc., et al.*, No. 3:14-cv-02180-WHO (N.D. Cal.). Lowey Dannenberg represents Government Employees Health Association ("GEHA") in a generic delay antitrust case pending before Judge Orrick in the Northern District of California, concerning Lidoderm, the brand name for a prescription pain patch for the treatment of after-shingles pain, sold by Endo Pharmaceuticals, Inc., Teikoku Pharma USA, and Teikoku Seiyaku Co., Ltd. Class actions on behalf of direct and indirect purchaser plaintiffs are pending in the same multidistrict litigation. *In re Lidoderm Antitrust Litigation*, MDL No. 2521 (N.D. Cal.). On May 5, 2015, Judge Orrick granted in part and denied in part defendants' motion to dismiss GEHA's second amended complaint, sustaining GEHA's claims under the laws of 32 states. *In re Lidoderm Antitrust Litig.*, 103 F. Supp. 3d 1155 (N.D. Cal. May 5, 2015).

SECURITIES LITIGATION

Our clients' cases have involved financial fraud, auction rate securities, options backdating, Ponzi schemes, challenges to unfair mergers and tender offers, statutory appraisal proceedings, proxy contests and election irregularities, failed corporate governance, stockholder agreement disputes, and customer/brokerage firm arbitration proceedings.

Our investor litigation practice group has recovered billions of dollars in the aggregate. But the value of our accomplishments is measured by more than dollars. We have also achieved landmark, long term corporate governance changes at public companies, including reversing results of elections and returning corporate control to the companies' rightful owners, its stockholders.

Lowey Dannenberg's public pension fund clients include the New York City Pension Funds, the New York State Common Retirement Fund, the Maryland Employees' Retirement System, the Ohio Public Employees' Retirement Plan, and the Commonwealth of Pennsylvania State Employees' Retirement System. Representative institutional investor clients include Federated Investors, Inc., Glickenhaus & Co., Millennium Partners LLP, Karpus Investment Management LLP, Amegy Bank, Monster Worldwide Inc., Zebra Technologies, Inc., and Delcath Systems, Inc.

Notable Recoveries

Notable achievements for our securities clients include the following:

- *In re Beacon Associates Litigation*, Civ. Act. No. 09-CV-0777 (S.D.N.Y.); *In re J.P. Jeanneret Associates, Inc., et al.*, 09-cv-3907 (S.D.N.Y.). Lowey Dannenberg represented several unions, which served as Lead Plaintiffs, in litigation arising from

Bernie Madoff's Ponzi scheme. On March 15, 2013, the Honorable Colleen McMahon of the United States District Court for the Southern District of New York granted final approval of the $219.9 million settlement of Madoff feeder-fund litigation encompassing the *In re Beacon* and *In re Jeanneret* class actions. Lowey Dannenberg as Liaison Counsel was instrumental in achieving this outstanding result. The settlement covered several additional lawsuits in federal and New York state court against the settling defendants, including suits brought by the United States Secretary of Labor and the New York Attorney General. Plaintiffs in these cases asserted claims under the federal securities laws, ERISA, and state laws arising out of hundreds of millions of investment losses sustained by unions and other investors in Bernard Madoff feeder funds. The extraordinary recovery represents approximately 70% of investors' losses. This settlement, combined with money the victims are expected to recover from a separate liquidation of Madoff assets, is expected to restore the bulk of the pension funds for the local unions and other class members. In granting final approval, Judge McMahon praised both the result and the lawyering in these coordinated actions, noting that "[i]n the history of the world there has never been such a response to a notice of a class action settlement that I am aware of, certainly, not in my experience," and that "[t]he settlement process really was quite extraordinary." In her written opinion, Judge McMahon stated that "[t]he quality of representation is not questioned here, especially for those attorneys (principally from Lowey Dannenberg) who worked so hard to achieve this creative and, in my experience, unprecedented global settlement." *In re Beacon Associates Litig.*, 09 CIV. 777 CM, 2013 WL 2450960, at *14 (S.D.N.Y. May 9, 2013).

- *In re Juniper Networks, Inc. Sec. Litig.*, No. C-06-04327 JW (N.D. Cal). In 2010, as lead counsel for the Lead Plaintiff, the New York City Pension Funds, we achieved a settlement in the amount of $169.5 million, one of the largest settlements in an options backdating case, after more than three years of hard-fought litigation.

- *In re ACS Shareholder Litigation*, Consolidated C.A. No. 4940-VCP (Del. Ch.). We successfully challenged a multi-billion-dollar merger between Xerox Corp. and Affiliated Computer Systems ("ACS") which favored Affiliated's CEO at the expense of our client, Federated Investors, and other ACS shareholders. In following expedited proceedings, we achieved a $69 million settlement as well as structural protections in the shareholder vote on the merger. The settlement was approved in 2010.

- *In re Bayer AG Securities Litigation*, 03 Civ. 1546 (WHP) (S.D.N.Y.). We represented the New York State Common Retirement Fund as Lead Plaintiff in a securities fraud class action arising from Bayer's marketing and recall of its Baycol drug. Lowey Dannenberg was appointed as lead counsel for the New York State Common Retirement Fund at the inception of merits discovery, following the dismissal of the New York State Common Retirement Fund's former counsel. The class action was settled for $18.5 million in 2008.

- *In re WorldCom Securities Litigation*, Master File No. 02 Civ. 3288 (DLC) (S.D.N.Y.). Lowey Dannenberg's innovative strategy and aggressive prosecution produced an extraordinary recovery in the fall of 2005 for the New York City Pension Funds in the *WorldCom Securities Litigation*, substantially superior to that of any other WorldCom investor in either class or opt-out litigation. Following our advice to opt out of a class action in order to litigate their claims separately, the New York City Pension Funds recovered almost $79 million, including 100% of their damages resulting from investments in WorldCom bonds.

- *Federated American Leaders Fund, Inc.*, No. 08-cv-01337-PB (D.N.H.). In 2008, Lowey Dannenberg successfully litigated an opt-out case on behalf of our client Federated Investors, Inc., arising out of the *Tyco Securities Litigation*. The client asserted claims unavailable to the class (including a claim for violation of § 18 of the Securities Exchange Act of 1934 and a claim for violations of the New Jersey RICO statute). Pursuit of an opt-out strategy resulted in a recovery of substantially more than the client would have received had it merely remained passive and participated in the class action settlement.

- *In re Philip Services Corp., Securities Litigation*, No. 98 Civ. 835 (AKH) (S.D.N.Y.). On March 19, 2007, the United States District Court for the Southern District of New York approved a $79,750,000 settlement of a class action, in which Lowey Dannenberg acted as Co-Lead Counsel, on behalf of United States investors of Philip Services Corp., a bankrupt Canadian resource recovery company. $50,500,000 of the settlement was paid by the Canadian accounting firm of Deloitte & Touche, LLP, which Lowey Dannenberg believes is the largest recovery from a Canadian auditing firm in a securities class action, and among the largest obtained from any accounting firm. Earlier in the litigation, the United States Court of Appeals for the Second Circuit issued a landmark decision protecting the rights of United States citizens to sue foreign companies who fraudulently sell their securities in the United States. *DiRienzo v. Philip Services Corp.*, 294 F.3d (2d Cir. 2002).

- *In re New York Stock Exchange/Archipelago Merger Litigation*, No. 601646/05 (N.Y. Sup. Ct.). Lowey Dannenberg acted as co-lead counsel for a class of seatholders seeking to enjoin the merger between the New York Stock Exchange ("NYSE") and Archipelago Holdings, Inc. As a result of the action, the merger terms were revised, providing the seatholders with more than $250 million in additional consideration. In addition, the NYSE agreed to retain an independent financial adviser to report to the court as to the fairness of the deal to the NYSE seatholders. Plaintiffs also provided the court with their expert's analysis of the new independent financial adviser's report. Both reports were provided to the seatholders prior to the merger vote. The court noted that "these competing presentations provide a fair and balanced view of the proposed merger and present the NYSE Seatholders with an opportunity to exercise their own business judgment with eyes wide open. The presentation of such differing viewpoints ensures transparency and complete disclosure." *In re New York Stock Exchange/Archipelago Merger Litigation*, No. 601646/05, 2005 WL 4279476, at *14 (N.Y. Sup. Ct. Dec. 5, 2005).

- *Delcath Systems, Inc. v. Ladd, et al.,* No. 06 Civ. 6420 (S.D.N.Y.). On September 25, 2006, Lowey Dannenberg helped Laddcap Value Partners win an emergency appeal, reversing a federal district court's order disqualifying the votes Laddcap had solicited to replace the board of directors of Delcath Systems, Inc. Prior to our involvement in the case, on September 20, 2006, Laddcap, which was Delcath's largest stockholder, had been enjoined by the district court from submitting stockholder consents it had solicited on the grounds of unproven claimed violations of federal securities law. After losing an injunction proceeding in the district court on September 20, 2006, and with the election scheduled to close on September 25, 2006, Laddcap hired Lowey Dannenberg to prosecute an emergency appeal, which was won on September 25, 2006, the last day of the election period. *Delcath Systems, Inc. v. Ladd*, 466 F.3d 257 (2d Cir. 2006). Shortly thereafter, the case was settled with Laddcap gaining seats on the board, reimbursement of expenses, and other benefits.

- *Salomon Brothers Municipal Partners Fund, Inc. v. Thornton*, No. 05-cv-10763 (S.D.N.Y.). Lowey Dannenberg represented Karpus Investment Management in its successful proxy contest and subsequent litigation to prevent the transfer of management by Citigroup to Legg Mason of the Salomon Brothers Municipal Partners Fund. We defeated the Fund's preliminary injunction action which sought to compel Karpus to vote shares it had solicited by proxy but withheld from voting in order to defeat a quorum and prevent approval of the transfer. *Salomon Brothers Mun. Partners Fund, Inc. v. Thornton*, 410 F. Supp. 2d 330 (S.D.N.Y. 2006).

- *In re DaimlerChrysler AG Sec. Litigation*, Master Docket No. 00-993-JJF (D. Del.). Lowey Dannenberg represented Glickenhaus & Co., a major registered investment advisor and, at the time, the second largest stockholder of Chrysler, in an individual securities lawsuit against DaimlerChrysler AG. Successful implementation of the firm's opt-out strategy led to a recovery for its clients far in excess of that received by other class members. *See Tracinda Corp. v. DaimlerChrysler AG*, 197 F. Supp. 2d 42 (D. Del. 2002); *In re DaimlerChrysler AG Sec. Litig.*, 269 F. Supp. 2d 508 (D. Del. 2003).

- *Doft & Co. v. Travelocity.com, Inc.*, No. Civ. A. 19734 (Del. Ch.). Following a three-day bench trial in a statutory appraisal proceeding, the Delaware Chancery Court awarded our clients, an institutional investor and investment advisor, $30.43 per share plus compounded prejudgment interest, for a transaction in which the public shareholders who did not seek appraisal were cashed out at $28 per share. *Doft & Co. v. Travelocity.com, Inc.*, No. Civ. A. 19734, 2004 WL 1152338 (Del. Ch. May 20, 2004), *modified*, 2004 WL 1366994 (Del. Ch. June 10, 2004).

- *MMI Investments, LP v. NDCHealth Corp., et al.*, 05 Civ. 4566 (S.D.N.Y.). Lowey Dannenberg filed an individual action on behalf of hedge fund, MMI Investments, asserting claims for violations of the federal securities laws and the common law, including claims not available to the class, most notably a claim for violation of § 18 of the Securities Exchange Act of 1934 and a claim for common law fraud. After aggressively litigating the client's claims, the Firm obtained a substantial settlement, notwithstanding the fact that the class claims were dismissed.

- *Omnicare, Inc. v. NCS Healthcare, Inc.* Lowey Dannenberg, as Co-Lead Counsel on behalf of an institutional investor, obtained an injunction from the Delaware Supreme Court, enjoining a proposed merger between NCS Healthcare, Inc. and Genesis Health Ventures, Inc., which accepted our argument that the NCS board had breached its fiduciary obligations by agreeing to irrevocable merger lock-up provisions. As a result of the injunction, the NCS shareholders were able to obtain the benefit of a competing takeover proposal by Omnicare, Inc. of 300% more than that offered in the enjoined transaction, providing NCS's shareholders with an additional $99 million. *Omnicare, Inc. v. NCS Healthcare, Inc.*, 818 A.2d 914 (Del. 2003).

- *meVC Draper Fisher Jurvetson Fund 1, Inc. v. Millennium Partners.* Lowey Dannenberg successfully represented an affiliate of Millennium Partners, a major private investment fund, in litigation in the Delaware Chancery Court that resulted in the voiding of two elections of directors of meVC Draper Fisher Jurvetson Fund 1, Inc., a NYSE-listed closed end mutual fund, on grounds of breach of fiduciary duty, and in a subsequent proxy contest litigation in the United States District Court for the

Southern District of New York, that resulted in the replacement of the entire board of directors with Millennium's slate. *meVC Draper Fisher Jurvetson Fund 1, Inc. v. Millennium Partners*, 260 F. Supp. 2d 616 (S.D.N.Y. 2003); *Millenco L.P. v. meVC Draper Fisher Jurvetson Fund 1, Inc.*, 824 A.2d 11 (Del. Ch. 2002).

- *In re CINAR Securities Litigation*, Master File No. 00 CV 1086 (E.D.N.Y. Dec. 2, 2002). In a case in which Lowey Dannenberg acted as Lead Counsel, we obtained a $27.25 million settlement on behalf of our client the Federated Kaufmann Fund and a class of purchasers of securities of CINAR Corporation. The court found that "the quality of [Lowey Dannenberg's] representation has been excellent."

- *In re Reliance Securities Litigation*, MDL No. 1304 (D. Del. 2002).In proceedings in which Lowey Dannenberg acted as co-counsel to a Bankruptcy Court-appointed estate representative, the firm obtained recoveries in a fraudulent conveyance action totaling $106 million.

OTHER LITIGATION

- *United States, et al. v. Trinity HomeCare, LLC, et al.,* No. 09-cv-3919 (S.D.N.Y.). In 2015, Lowey Dannenberg, working with the State of New York, acting through the New York State Office of the Attorney General, Medicaid Fraud Control Unit, concluded a Whistleblower representation for a Relator alleging Medicaid fraud. The defendants agreed to pay $22.4 million to settle the allegations, which is one of New York State's largest single-state recoveries.

- *Nicosia v. Amazon.com*, No. 14-4513 (E.D.N.Y.). On August 25, 2016, the United States Court of Appeals for the Second Circuit credited Lowey Dannenberg's argument regarding the enforceability of an "arbitration clause," holding that the so-called "arbitration clause" on Amazon.com's order page may not have been "reasonably conspicuous" enough to provide its customers with sufficient notice about the existence or terms of the arbitration clause. *Nicosia v. Amazon.com*, No. 15-423-cv, 2016 WL 4473225 (2d Cir. Aug. 25, 2016). The Second Circuit reversed the lower court, in part, and remanded the case for further proceedings. The case remains pending in the Eastern District of New York.

LOWEY DANNENBERG'S RECOGNIZED EXPERTISE

The attorneys of Lowey Dannenberg have been repeatedly recognized by the courts as expert practitioners in the field of complex litigation.

For example, on March 15, 2013, the Honorable Colleen McMahon of the United States District Court for the Southern District of New York granted final approval of the $219 million settlement of Madoff feeder-fund litigation encompassing the *In re Beacon* and *In re Jeanneret* class actions. In a subsequent written decision, with glowing praise, Judge McMahon stated:

- "The quality of representation is not questioned here, especially for those attorneys (principally from Lowey Dannenberg) who worked so hard to achieve this creative and, in my experience, unprecedented global settlement."

- "I thank everyone for the amazing work that you did in resolving these matters. **Your clients - all of them - have been well served**."

- "Not a single voice has been raised in opposition to this remarkable settlement, or to the Plan of Allocation that was negotiated by and between the Private Plaintiffs, the NYAG and the DOL."

- "All formal negotiations were conducted with the assistance of two independent mediators - one to mediate disputes between defendants and the investors and another to mediate claims involving the Bankruptcy Estate. Class Representatives and other plaintiffs were present, in person or by telephone, during the negotiations. The US Department of Labor and the New York State Attorney General participated in the settlement negotiations. **Rarely has there been a more transparent settlement negotiation. It could serve as a prototype for the resolution of securities-related class actions, especially those that are adjunctive to bankruptcies**."

- "**The proof of the pudding is that an astonishing 98.72% of the Rule 23(b)(3) Class Members who were eligible to file a proof of claim did so (464 out of 470), and only one Class Member opted out [that Class Member was not entitled to recover anything under the Plan of Allocation]. I have never seen this level of response to a class action Notice of Settlement, and I do not expect to see anything like it again.**"

- "**I am not aware of any other Madoff-related case in which counsel have found a way to resolve all private and regulatory claims simultaneously and with the concurrence of the SIPC/Bankruptcy Trustee**. Indeed, I am advised by Private Plaintiffs' Counsel that the Madoff Trustee is challenging settlements reached by the NYAG in other

feeder fund cases [Merkin, Fairfield Greenwich] which **makes the achievement here all the more impressive.**"

In *Juniper Networks, Inc. Securities Litigation*, the Court, in approving the settlement, acknowledged that "[t]he successful prosecution of the complex claims in this case required the participation of highly skilled and specialized attorneys." *In re Juniper Networks, Inc.*, C06-04327, Order dated August 31, 2010 (N.D. Cal.). In the *WorldCom Securities Litigation*, the Court repeatedly praised the contributions and efforts of the firm. On November 10, 2004, the Court found that "the Lowey Firm . . . has worked tirelessly to promote harmony and efficiency in this sprawling litigation. . . . [Lowey Dannenberg] has done a superb job in its role as Liaison Counsel, conducting itself with professionalism and efficiency . . . ." *In re WorldCom, Inc. Securities Litigation*, No. 02 Civ. 3288, 2004 WL 2549682, at *3 (S.D.N.Y. Nov. 10, 2004).

In the *In re Bayer AG Securities Litigation*, 03 Civ. 1546, 2008 WL 5336691, at *5 (S.D.N.Y. Dec. 15, 2008) order approving a settlement of $18.5 million for the class of plaintiffs, Judge William H. Pauley III noted that the attorneys from Lowey Dannenberg are "nationally recognized complex class action litigators, particularly in the fields of securities and shareholder representation," that "provided high-quality representation."

In the *In re Luminent Mortgage Capital, Inc., Securities Litigation*, No. C07-4073 (N.D. Cal.) hearing for final approval of settlement and award of attorneys' fees, Judge Phyllis J. Hamilton noted that "[t]he $8 million settlement . . . is excellent, in light of the circumstance." Judge Hamilton went on to say that "most importantly, the reaction of the class has been exceptional with only two opt-outs and no objections at all received." *See* Tr. of Hearing on

Plaintiff's Motion for Final Approval of Settlement/Plan of Allocation and for an Award of Attorneys' Fees and Reimbursement of Expenses, *In re Luminent Mortgage Capital, Inc., Securities Litigation*, No. C07-4073-PJH (N.D. Cal. Apr. 29, 2009), ECF No. 183.