UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE MEXICAN GOVERNMENT BONDS ANTITRUST LITIGATION	Master Docket No. 18-cv-02830
THIS DOCUMENT RELATES TO: ALL ACTIONS	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS WITH BARCLAYS PLC, BARCLAYS BANK PLC, BARCLAYS CAPITAL INC., BARCLAYS CAPITAL SECURITIES LIMITED, BARCLAYS BANK MÉXICO, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO BARCLAYS MÉXICO, AND GRUPO FINANCIERO BARCLAYS MÉXICO, S.A. DE C.V. AND WITH JPMORGAN CHASE & CO., J.P. MORGAN BROKER-DEALER HOLDINGS INC., J.P. MORGAN SECURITIES LLC, JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, BANCO J.P. MORGAN, S.A. INSTITUCIÓN DE BANCA MÚLTIPLE, J.P. MORGAN GRUPO FINANCIERO, AND J.P. MORGAN SECURITIES PLC

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INTRODUCTION

Plaintiffs Oklahoma Firefighters Pension & Retirement System, Electrical Workers Pension Fund Local 103, I.B.E.W., Manhattan and Bronx Surface Transit Operating Authority Pension Plan, Metropolitan Transportation Authority Defined Benefit Pension Plan Master Trust, Boston Retirement System, Southeastern Pennsylvania Transportation Authority Pension Plan, United Food and Commercial Workers Union and Participating Food Industry Employers Tri-State Pension Fund, and Government Employees' Retirement System of the Virgin Islands ("Plaintiffs") move under Rule 23 of the Federal Rules of Civil Procedure for final approval of (1) the $5,700,000 Settlement with Barclays PLC, Barclays Bank PLC, Barclays Capital Inc., Barclays Capital Securities Limited, Barclays Bank México, S.A., Institución de Banca Múltiple, Grupo Financiero Barclays México, and Grupo Financiero Barclays México, S.A. de C.V. (collectively, "Barclays"); and (2) the $15,000,000 Settlement with JPMorgan Chase & Co., J.P. Morgan Broker-Dealer Holdings Inc., J.P. Morgan Securities LLC, JPMorgan Chase Bank, National Association, Banco J.P. Morgan, S.A. Institución de Banca Múltiple, J.P. Morgan Grupo Financiero, and J.P. Morgan Securities plc (collectively, "JPMorgan" and, with Barclays, the "Settling Defendants"). In addition to providing monetary compensation to eligible Class Members impacted by Defendants' alleged manipulation of Mexican Government Bonds, the Settlements yielded significant cooperation materials that directly assisted Plaintiffs to prepare a robust Second Amended Consolidated Class Action Complaint ("SAC"). If finally approved, these Settlements will resolve all claims against the Settling Defendants, and may prove to be "ice breaker" settlements that serve as catalysts for resolutions with other Defendants in this Action.[1]

[1] Unless otherwise defined herein, all capitalized terms have the same meaning as set out in the Stipulation and Agreement of Settlement with Barclays ("Barclays Settlement Agreement") (ECF No. 211-1) and the Stipulation and Agreement of Settlement with JPMorgan ("JPMorgan Settlement Agreement") (ECF No. 211-2). The foregoing are collectively referred to as the "Settlement Agreements." Unless otherwise noted, internal citations and quotation marks are omitted, and emphasis is added.

In granting preliminary approval of both Settlements, the Court found that it would likely be able to approve the Settlements under Rule 23(e)(2). The reaction of the Class to the Settlements since Class Notice was issued only further supports the bases for finally approving the Settlements. Since the notice period began on April 21, 2021, Class Notice has been mailed directly to more than 32,000 potential Class Members. There have been more than 7,800 visits to the Settlement website. While there are still a few weeks until the objection and opt-out deadlines, to date, there are no objections and only one Class Member has requested exclusion from the Settlements. This is a positive indication from the Class that the Settlements reflect an excellent resolution. For the reasons detailed below and previously in Plaintiffs' memorandum in support of their motion for preliminary approval (ECF No. 210) ("Prelim. Approval Mem."),[2] Plaintiffs respectfully request that the Court finally approve the Settlements and the Distribution Plan, certify the Settlement Class, and enter the proposed Final Approval Orders and Final Judgments dismissing with prejudice the claims against Barclays and JPMorgan.

PROCEDURAL HISTORY AND SETTLEMENT TERMS

Procedural History

On March 30, 2018, Plaintiffs' Lead Counsel, Lowey Dannenberg, P.C., ("Lowey" or "Lead Counsel") and Berman Tabacco filed the first class action complaint in this case on behalf of Oklahoma Firefighters Pension & Retirement System ("OFPRS") and Electrical Workers Pension Fund Local 103, I.B.E.W. ("Local 103") alleging that the Defendants manipulated the prices of Mexican Government Bonds for their financial benefit. ECF No. 1. In May 2018, five additional class action complaints relating to the same facts and circumstances were filed. Briganti Decl. ¶ 16. On June 18, 2018, the Court granted an order

[2] Plaintiffs incorporate by reference the arguments made in their memorandum in support of their motion for preliminary approval, which similarly support this motion for final approval.

consolidating the related class action complaints and appointing Lowey as interim class counsel. ECF No. 49.

On July 18, 2018, Plaintiffs OFPRS, Local 103, Manhattan and Bronx Surface Transit Operating Authority Pension Plan, Metropolitan Transportation Authority Defined Benefit Pension Plan Master Trust, Boston Retirement System, Southeastern Pennsylvania Transportation Authority Pension Plan, United Food and Commercial Workers Union and Participating Food Industry Employers Tri-State Pension Fund, and Government Employees' Retirement System of the Virgin Islands filed a Consolidated Amended Class Action Complaint ("CAC"), detailing the Mexican Government Bonds auction process, participants, and the alleged conspiracy employed by Defendants to artificially fix the prices of Mexican Government Bonds. Briganti Decl. ¶ 18. On September 17, 2018, Defendants filed a joint motion to dismiss the CAC for failure to state a claim, lack of personal jurisdiction and improper venue. *Id.* ¶ 19. Plaintiffs filed an opposition to the motion to dismiss on November 16, 2018. *Id.* ¶ 20. Defendants filed their reply in support of the motion to dismiss on December 20, 2018. *Id.* ¶ 21. On September 30, 2019, the Court issued an Order granting the Defendants motion to dismiss for failure to state a claim, but allowed Plaintiffs to seek leave to file a second amended complaint. *Id.* ¶ 23.

Following extensive arm's-length negotiations, Plaintiffs entered into a binding settlement term sheet with Barclays on October 9, 2019, and Barclays provided its initial set of cooperation materials on October 10, 2019. *Id.* ¶¶ 36-37. Plaintiffs and JPMorgan executed a binding settlement term sheet on October 16, 2019 after months of arm's length negotiations. *Id.* ¶¶ 40-43. That same day, JPMorgan also provided an initial set of cooperation materials. *Id*. ¶ 40.

On October 21, 2019, Plaintiffs filed a letter motion requesting permission to file a motion for leave to amend the complaint. *Id.* ¶ 24. On October 23, 2019, Defendants advised

the Court that they did not object to Plaintiffs' request. On October 25, 2019, the Court granted Plaintiffs leave to file a motion to amend the complaint. *Id*.

Defendants later advised that they would not oppose Plaintiffs' motion to amend, and Plaintiffs filed their SAC on December 9, 2019. *Id.* ¶ 25. On February 21, 2020, Defendants filed a motion to dismiss the SAC. *Id.* ¶ 27.

While the motion to dismiss the SAC was pending, Plaintiffs executed the Settlement Agreements with Barclays and JPMorgan, dated March 27, 2020. *Id.* ¶¶ 38, 44. Plaintiffs filed a motion for preliminary approval of the Settlements on June 1, 2020. *Id.* ¶ 48.

On November 30, 2020, the Court granted Defendants' motion to dismiss the SAC for lack of personal jurisdiction, without addressing the merits of the amended pleading. *Id.* ¶ 30.

On December 16, 2020, the Court preliminarily approved the Settlements with Barclays and JPMorgan. *Id.* ¶ 49.

On May 20, 2021, Plaintiffs filed a motion under Federal Rule of Civil Procedure 54(b) for reconsideration of the Court's personal jurisdiction ruling in *In re Mexican Gov't Bonds Antitrust Litig.,* No. 18-CV-2830 (JPO), 2020 WL 7046837 (S.D.N.Y. Nov. 30, 2020), holding that Defendants Bank of America México, S.A., Institución de Banca Múltiple ("Bank of America Mexico"); BBVA Bancomer S.A., Institución de Banca Múltiple, Grupo Financiero BBVA Bancomer ("BBVA-Bancomer"); Banco Nacional de México, S.A., Institución de Banca Múltiple, Grupo Financiero Banamex ("Citibanamex"); Deutsche Bank México, S.A., Institución de Banca Múltiple ("Deutsche Bank Mexico"); HSBC México, S.A., Institución de Banca Múltiple, Grupo Financiero HSBC ("HSBC Mexico"); and Banco Santander (México), S.A., Institución de Banca Múltiple, Grupo Financiero Santander México ("Santander Mexico") were not subject to personal jurisdiction. *Id.* ¶ 31. On June 10, 2021, Defendants filed an opposition to Plaintiffs' Motion for Reconsideration. *Id.* On June 24, 2021, Plaintiffs

filed a reply in support of the motion for reconsideration. *Id.* Plaintiffs' motion for reconsideration is currently pending. *Id*.

Settlement Terms and Proposed Distribution Plan

The Barclays Settlement Agreement provides a $5,700,000 Settlement Fund and the JPMorgan Settlement Agreement establishes a $15,000,000 Settlement Fund, each to be distributed to Class Members, less deductions made for the payments of taxes, settlement administration expenses, attorneys' fees, litigation costs and expenses, incentive awards, and any other charges authorized by the Court (the "Net Settlement Funds"). *See* Barclays Settlement Agreement, ECF No. 211-1 §§ 1(AA), 8; JPMorgan Settlement Agreement, ECF No. 211-2 §§ 1(AA), 8. Should the Settlements be finally approved and not otherwise terminated, there is no reversion of any portion of the Settlement Amounts for opt-outs or failures to submit proofs of claim. Barclays Settlement Agreement, ECF No. 211-1 §§ 3, 10; JPMorgan Settlement Agreement, ECF No. 211-2 §§ 3, 10. As previously described, under the Settlements, Barclays and JPMorgan have provided and will continue to provide cooperation, including the production of documents. Barclays Settlement Agreement, ECF No. 211-1 § 4; JPMorgan Settlement Agreement, ECF No. 211-2 § 4. In exchange, the Releasing Parties "shall release and be deemed to release and forever discharge and shall be forever enjoined from prosecuting the Released Claims against the Released Parties." Barclays Settlement Agreement, ECF No. 211-1 § 12; JPMorgan Settlement Agreement, ECF No. 211-2 § 12.

Under the Distribution Plan, the Net Settlement Fund will be allocated on a *pro rata* basis according to a duration-adjusted weighting of each Authorized Claimant's notional (or principal) trading volumes of Mexican Government Bonds. ECF No. 211-7 ¶¶ 7-10. The Distribution Plan allocates the Net Settlement Funds based on "Risk Number," which is a widely accepted measure of the sensitivity of a bond's price to changes in yield (bond prices move inversely with yields). ECF No. 211-7 ¶ 7. Mexican Government Bond Transactions will

be placed into one of 31 categories based on the remaining years to maturity when purchased or sold, and each category has its own "Risk Number" and an assigned Multiplier based on the Risk Number. *Id.* To determine the duration-adjusted weighting of each Authorized Claimant's trading volume, the Settlement Administrator will multiply each Authorized Claimant's notional volume for each category by the relevant Multiplier and sum up the results. *Id.* ¶ 9.

ARGUMENT

I. THE SETTLEMENTS ARE FAIR, REASONABLE, AND ADEQUATE

"The compromise of complex litigation is encouraged by the courts and favored by public policy." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005). In service of "the strong judicial policy in favor of settlements, particularly in the class action context," *id.*, a court may approve a class action settlement upon a showing that the settlement is "fair, reasonable, and adequate." FED. R. CIV. P. 23(e)(2). A settlement is fair, reasonable and adequate and should be approved if the settlement is shown to be both procedurally and substantively fair. *See In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, 330 F.R.D. 11, 28 (E.D.N.Y. 2019) ("*Payment Card*") (analyzing the amended Rule 23(e)(2) standards to be applied at both preliminary and final approval).

The amended Rule 23 sets out a number of factors to guide the Court's analysis, with the factors in Rule 23(e)(2)(A) and (B) focusing on the procedural fairness of a settlement and those in Rule 23(e)(2)(C) and (D) focusing on substantive fairness. FED. R. CIV. P. 23 advisory committee's note to 2018 amendment (stating Rule 23 now focuses on the "core concerns of procedure and substance" to be considered when deciding whether to finally approve a settlement). The courts in this Circuit also consider the factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), to assess the fairness of a class settlement. Applying the *Grinnell* factors and Rule 23 to the Settlements here demonstrates final approval of the Settlements is warranted.

A. The Settlements typify procedural fairness in light of the exemplary representation provided by Plaintiffs and Lead Counsel and the non-collusive nature of settlement negotiations with Barclays and JPMorgan

To approve a class action settlement, Rule 23 requires the Court to find in part that, "the class representatives and class counsel have adequately represented the class [and] the proposal was negotiated at arm's length[.]" FED. R. CIV. P. 23(e)(2)(A)-(B). Courts presume settlements are procedurally fair when they are "the product of arm's length negotiations between experienced and able counsel on all sides." *In re Air Cargo Shipping Servs. Antitrust Litig.,* No. 06-md-1775 (JG), 2009 WL 3077396, at *7 (E.D.N.Y. Sept. 25, 2009).

1. Rule 23(e)(2)(A) – Plaintiffs Have Adequately Represented the Class

Plaintiffs' identical and related interests to the Class provide clear evidence of their adequacy to represent the Class. Adequacy of representation is assessed independently of the fairness of the settlement itself, and looks to "whether the interests that were served by the Settlement were compatible with" those of all settlement class members. *Wal-Mart*, 396 F.3d at 110; *see also In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 827 F.3d 223, 232 (2d Cir. 2016) (the focus for adequacy is whether the interests of the proposed settlement class are "sufficiently cohesive to warrant adjudication."). Plaintiffs here suffered the same alleged injury as other Class Members, monetary losses resulting from Mexican Government Bond Transactions impacted by Defendants' alleged collusion. The Class, including Plaintiffs, allegedly paid artificial prices for Mexican Government Bond Transactions, and therefore all Class Members have "an interest in vigorously pursuing the claims of the class." *Denney v. Deutsche Bank AG*, 443 F.3d 253, 268 (2d Cir. 2006).

2. Rule 23(e)(2)(A) – Lead Counsel Have Adequately Represented the Class

Courts evaluating adequacy of representation also consider the adequacy of plaintiffs' counsel. *Payment Card*, 330 F.R.D. at 30 (considering whether "plaintiff's attorneys are

qualified, experienced and able to conduct the litigation"). In appointing Lead Counsel as interim class counsel, the Court has already made an initial determination of counsel's adequacy. *See* 2018 Advisory Note (interim appointment entails an evaluation of counsel's adequacy to represent the class). Lead Counsel's extensive class action, antitrust, and complex litigation experience provides strong evidence that the Settlement is procedurally fair. *See In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 122 (S.D.N.Y. 2009), *aff'd, Priceline.com, Inc. v. Silberman*, 405 F. App'x 532 (2d Cir. 2010) (noting the "extensive" experience of counsel in granting final approval of settlement); *see also Shapiro v. JPMorgan Chase & Co*., No. 11 Civ. 8331 (CM) (MHD), 2014 WL 1224666, at *2 (S.D.N.Y. Mar. 24, 2014) (giving "great weight" to experienced class counsel's opinion that the settlement was fair).

In addition to their wealth of experience, Lead Counsel investigated and developed the first filed complaint that sought to prosecute claims for the Class' benefit. Briganti Decl. ¶ 15. As well as being well-versed in the relevant facts and law as applied to this Action, Lead Counsel had the benefit of additional expertise provided by Plaintiffs' Counsel, whose collective experience in complex class actions is substantial. Lead Counsel and Plaintiffs' Counsel understood the potential strengths and risks of Plaintiffs' claims and developed a comprehensive strategy to obtain a favorable outcome for the Class. *See City of Providence v. Aeropostale, Inc*., No. 11 Civ. 7132(CM)(GWG), 2014 WL 1883494, at *7 (S.D.N.Y. May 9, 2014) (crediting the adequacy of counsel that "developed a comprehensive understanding of the key legal and factual issues in the litigation and, at the time the Settlement was reached, had a clear view of the strengths and weaknesses of their case and of the range of possible outcomes at trial").

3. Rule 23(e)(2)(B) – The Proposed Settlements Were Negotiated at Arm's Length

The Rule 23(e) procedural fairness inquiry is consistent with Second Circuit precedent that "a strong initial presumption of fairness attaches to [a] proposed settlement," when the "integrity of the arm's length negotiation process is preserved . . . ." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997), *aff'd*, 117 F.3d 721 (2d Cir. 1997); *see In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74 (S.D.N.Y. 2000), *aff'd sub nom.*, *D'Amato v. Deutsche Bank*, 236 F.3d 78 (2d Cir. 2001) (where a settlement is the "product of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation," the settlement enjoys a "presumption of fairness").

To assess the integrity of the process, the key question is whether "plaintiffs' counsel is sufficiently well informed" to adequately advise and recommend the settlement to the class representative and settlement class. *See In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 699 (S.D.N.Y. 2019). In this case, Lead Counsel's expertise and knowledge of the Action supports a finding that both settlement processes were fair. As noted in Plaintiffs' memorandum in support of preliminary approval of the Settlements, prior to engaging in settlement discussions with Settling Defendants, Lead Counsel had the benefit of their investigations into the Mexican Government Bond market; they also benefited from the extensive arguments Defendants presented in their motion to dismiss Plaintiffs' CAC and the Court's analysis in granting Defendants' motion. Prelim. Approval Mem. at 5; *see also* Briganti Decl. ¶¶ 39, 45.

In addition to the knowledge acquired through their investigation and prosecution of the Action, Lead Counsel had the benefit of the Parties' meaningful and productive discussions of their views on the case and the key settlement terms, including the amount of consideration to be paid and the type of cooperation that would be provided to assist in the further prosecution of the Action. Briganti Decl. ¶¶ 32-36; 40-42. Lead Counsel's substantive discussions with

Barclays and JPMorgan included three proffers from JPMorgan and two proffers from Barclays that further enhanced Lead Counsel in understanding the factual and legal strengths and challenges of the Action. *Id.* ¶ 42. These proffers further informed Lead Counsel's analysis of the cooperation material Settling Defendants produced.

At all times, Lead Counsel was fully informed about the facts, risks and challenges of the Action and had a sufficient basis on which to recommend Plaintiffs enter into the Settlements. Lead Counsel's conclusion that the Settlements are fair and reasonable weighs in favor of finding the Settlements are procedurally fair and should be approved. *See In re NASDAQ Market-Makers Antitrust Litig. ("NASDAQ III")*, 187 F.R.D. 465, 474 (S.D.N.Y. 1998) (courts give "'great weight' . . . to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation").

B. The Proposed Settlements are Substantively Fair

To assess the Settlement's substantive fairness, the Court considers whether, "the relief provided for the class is adequate," accounting for the following factors: "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." FED. R. CIV. P. 23(e)(2)(C). The Court is also required to confirm that the Settlement "treats class members equitably relative to each other." FED. R. CIV. P. 23(e)(2)(D).

Courts in this Circuit have long considered the nine *Grinnell* factors in deciding whether a settlement is substantively fair, reasonable, and adequate:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible

> recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Grinnell, 495 F.2d at 463. The amended Rule 23(e)(2) factors are intended to be complementary to the *Grinnell* factors. *See GSE Bonds*, 414 F. Supp. 3d at 692 ("The Advisory Committee Notes to the 2018 amendments indicate that the four new Rule 23 factors were intended to supplement rather than displace these '*Grinnell'* factors."); *accord Payment Card*, 330 F.R.D. at 29 ("Indeed, there is significant overlap between the *Grinnell* factors and the Rule 23(e)(2)(C-D) factors . . . ."). Here, the factors set forth in Rule 23(e) and *Grinnell* weigh heavily in favor of final approval.

1. The costs, risks, and delay of trial and appeal favor the Settlement

To determine whether a settlement provides adequate relief to the class, the Court must evaluate "the costs, risks, and delay of trial and appeal," FED. R. CIV. P. 23(e)(2)(C)(i), "to forecast the likely range of possible classwide recoveries and the likelihood of success in obtaining such results." *Payment Card*, 330 F.R.D. at 36. This factor "implicates several *Grinnell* factors, including: (i) the complexity, expense and likely duration of the litigation; (ii) the risks of establishing liability; (iii) the risks of establishing damages; and (iv) the risks of maintaining the class through the trial." *Id.*; *see also GSE Bonds*, 414 F. Supp. 3d at 693. In evaluating this factor, the Court's role is to "balance the benefits afforded the Class, including immediacy and certainty of recovery, against the continuing risks of litigation." *GSE Bonds,* 414 F. Supp. 3d at 694; *see also JPMorgan*, 2014 WL 1224666, at *10 (at final approval, the Court's role is not to "decide the merits of the case or resolve unsettled legal questions or to foresee with absolute certainty the outcome of the case").

The factual and legal issues in this Action are complex and expensive to litigate. Antitrust cases require a significant expenditure of time and resources, and this case is no exception. *See Wal-Mart*, 396 F.3d at 118; *GSE Bonds*, 414 F. Supp. 3d at 693 ("Numerous federal courts have recognized that federal antitrust cases are complicated, lengthy, and bitterly

fought as well as costly. . . ."); *In re Vitamin C Antitrust Litig.*, No. 06-MD-1738 (BMC)(JO), 2012 WL 5289514, at *4 (E.D.N.Y. Oct. 23, 2012) ("Federal antitrust cases are complicated, lengthy, and bitterly fought… as well as costly.").

This Action requires a deep understanding of the Mexican Government Bond market, which Plaintiffs have developed through their investigation that included extensive expert analyses of Mexican Government Bond prices and auction results, interviews with industry insiders, and examinations of relevant reports and public disclosures. *See* Briganti Decl. ¶¶ 10-14, 25. The intricate nature of the financial products and market involved, the lengthy time period over which the alleged misconduct occurred, and the number of defendants involved in the alleged anticompetitive conduct made this Action a highly complex and risky case for Plaintiffs to pursue. *See Currency Conversion Fee*, 263 F.R.D. at 123 ("the complexity of Plaintiffs' claims *ipso facto* creates uncertainty").

While Plaintiffs have developed comprehensive complaints, supplemented by cooperation information from Settling Defendants and information learned during Lead Counsel's investigation, the Court's orders granting Defendants' motions to dismiss the CAC and SAC confirm the risks and challenges of prosecuting the Action. Even if the Action proceed past the pleading stage, the litigation risks only increase as Plaintiffs still must prevail in certifying a class and proving liability and damages. *See, e.g.*, *GSE Bonds*, 414 F. Supp. 3d at 694 (noting that "there is no guarantee that plaintiffs will be able to prove liability" after the parties have the opportunity to further develop the case through discovery). Discovery would be lengthy and costly. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007) ("[P]roceeding to antitrust discovery can be expensive."). Given the expert analysis required and the number of parties involved, continued litigation would be prolonged and expensive. *See In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 410 (S.D.N.Y. 2018), *aff'd*,

822 F. App'x 40 (2d Cir. 2020) (experts "tend[] to increase both the cost and duration of litigation").

If Plaintiffs and Settling Defendants had not reached the Settlements, Plaintiffs would face significant risks concerning the sufficiency of evidence to establish their antitrust claim and a contested motion for class certification. *See In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 327 F.R.D. 483, 494 (S.D.N.Y. 2018) ("[A]s to liability, establishing the existence and extent of a conspiracy will necessarily be a complex task, and many of the hurdles that plaintiffs have overcome at the pleading stage will raise substantially more difficult issues at the proof stage."); *NASDAQ III*, 187 F.R.D. at 474 (discussing the difficulties of proving antitrust liability where plaintiffs had to prove, among other things, a complex conspiracy involving a larger number defendants, a common motive, actions against defendants' financial interest and/or evidence of coercion); *In re AOL Time Warner, Inc. Sec. and "ERISA" Litig.*, No. 02-cv-5575 (SWK), 2006 WL 903236, at *12 (S.D.N.Y. Apr. 6, 2006) ("[T]he process of class certification would have subjected Plaintiffs to considerably more risk than the unopposed certification that was ordered for the sole purpose of the Settlement."). The class certification motion would be vigorously contested by the Settling Defendants and would consume additional time and expense. Even if a litigation class were certified, that certification could be challenged on appeal, or at another stage in the litigation. *In re Visa Check/Mastermoney Antitrust Litig.*, 192 F.R.D. 68, 89 (E.D.N.Y. 2000) *aff'd*, 280 F.3d 124 (2d Cir. 2001) ("If factual or legal underpinnings of the plaintiffs' successful class certification motion are undermined once they are tested . . . , a modification of the order, or perhaps decertification, might then be appropriate."); *see also Frank v. Eastman Kodak Co.,* 228 F.R.D. 174, 186 (W.D.N.Y. 2005) ("While plaintiffs might indeed prevail [on a motion for class certification], the risk that the case might be not certified is not illusory and weighs in favor of the Class Settlement."). Plaintiffs would continue to bear the risk of maintaining the class through trial.

At trial, Plaintiffs would face the challenge of proving class damages to a jury. There is no doubt that at trial the parties would engage in a "battle of the experts" regarding proof of damages. *NASDAQ III*, 187 F.R.D. at 476. "In this battle of experts, it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors . . . ." *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986).

At trial, both sides would have offered expert testimony on damages in addition to liability. There is a substantial risk that a jury might accept one or more of Defendants' damages arguments and award far less than the funds secured by the Settlements, or even nothing at all. "[T]he history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal." *Wal-Mart*, 396 F.3d at 118; *see also In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 283 (S.D.N.Y. 1999). These factors weigh in favor of approval of the Settlements.

"[T]he primary purpose of settlement is to avoid the uncertainty of a trial on the merits." *Matheson v. T-Bone Rest. LLC*, No. 09-4214 (DAB), 2011 WL 6268216, at *5 (S.D.N.Y. Dec. 13, 2011). Although Plaintiffs and Lead Counsel firmly believe that the asserted claims are meritorious and would ultimately prevail at trial, there are risks that come with continuing this Action, and the existence of those risks supports approving the Settlements.

2. The remaining *Grinnell* factors also support final approval of the Settlements

The *Grinnell* factors not expressly included in Rule 23(e)(2)(c)(i) are also instructive to the Court in assessing whether the relief provided to the class is adequate. These factors include: "(2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; . . . (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible

recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation." *Grinnell*, 495 F.2d at 463.

a. The reaction of the Settlement Class to the Settlements

While Class Member continue to have an opportunity to file a claim, object or opt out of the Settlements, the Settlement Class' reaction so far indicates that they favor approval of the Settlements. *Wal-Mart*, 396 F.3d at 118 ("'If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.'"). To date, no objections have been filed, and only one request for exclusion has been received, while more than 32,000 Notice Packets have been sent to Class Members. Declaration of Steven Straub dated Sept. 9, 2021 ("Straub Decl."), ¶¶ 14, 27; Declaration of Jason Rabe dated Sept 8, 2021 ("Rabe Decl."), ¶ 7. The Claims Administrator will submit an updated report following the September 23, 2021 objection and opt-out deadline.

b. The stage of the proceedings and the amount of discovery completed

The Court's primary task in examining these factors is to assess whether the settling parties "have engaged in sufficient investigation of the facts" to understand the strengths and weaknesses of their case, and whether the settlement is adequate given those risks. *AOL Time Warner,* 2006 WL 903236, at *10.

That inquiry is satisfied here. As described in the papers submitted with the motion and in Plaintiffs' preliminary approval motion, Lead Counsel conducted extensive factual and legal research and consulted with experts to assess the validity of Plaintiffs' claims. *See, e.g.*, Prelim. Approval Mem. at 12; ECF No. 211 ¶ 26 (Declaration of Vincent Briganti, Esq. dated June 1, 2020). Additionally, as a key term of the Settlements, Plaintiffs received cooperation that strengthened Plaintiffs' case in relation to the risks of continued litigation. As a result, Plaintiffs had more than sufficient information by which to assess the Settlements and to find them fair, reasonable and adequate given the strengths and challenges of the Action.

c. The ability of Settling Defendants to withstand greater judgment

There is little reason to doubt that the Settling Defendants could withstand a greater judgment than the amount paid in settlement, but "'fairness does not require that the [defendant] empty its coffers before this Court will approve a settlement.'" *LIBOR*, 327 F.R.D. at 494. The Settling Defendants' ability to pay more than was offered in settlement does not indicate that the Settlements are unreasonable or inadequate. *See id.* at 495 (stating that "this factor is intended to 'strongly favor settlement' when 'there is a risk that an insolvent defendant could not withstand a greater judgment' but that 'the ability of defendants to pay more, on its own, does not render the settlement unfair'").

d. The Settlements are reasonable in light of the risks and potential range of recovery

Courts often examine together the range of reasonableness of the settlement fund in light of the best possible recovery and the attendant risks of litigation. *Payment Card*, 330 F.R.D. at 47-48. In considering these factors, "'the settlement amount's ratio to the maximum potential recovery need not be the sole, or even the dominant, consideration when assessing the settlement's fairness.'" *LIBOR*, 327 F.R.D. at 495 (approving settlements even where the plaintiffs did not provide a damages estimate). The analysis of these factors requires consideration of "the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Wal-Mart*, 396 F.3d at 119. As the Second Circuit has explained, "[t]he fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *Grinnell*, 495 F.2d at 455 n.3.

As discussed in Plaintiffs' preliminary approval motion, the Settlements will provide $20,700,000 less any authorized fees, costs and expenses. Prelim. Approval Mem. at 13-14. Plaintiffs' experts have estimated single (i.e., non-trebled) class wide damages of $760,000,000, assuming Plaintiffs succeed on all triable issues. *Id.* at 14. The Barclays

Settlement represents 33.5% of its proportionate share of the single damages estimate, and JPMorgan's Settlement represents 23.7% of its proportionate share of the single damages. *Id.*; *see, e.g.*, *Payment Card*, 330 F.R.D. at 49 (approving settlement in which the settlement amount represented "may be only several months of interchange fees").

Pursuant to the Settlements, Settling Defendants have provided cooperation to aid in the pursuit of the claims against the non-settling Defendants. ECF Nos. 211-1 § 4; ECF Nos. 211-2 § 4. Some of the cooperation was incorporated into allegations of Plaintiffs' SAC. Settling Defendants have a continuing obligation to provide additional documents and information, and will also provide, among other things, reasonably available information necessary to authenticate or otherwise make usable at trial the cooperation materials that they produced ECF Nos. 211-1 § 4(F),(H); ECF Nos. 211-2 § 4(F),(H).

In exchange, the Releasing Parties will release the Released Parties from claims that arise out of or relate in any way to the acts, facts, statements, or omissions that were or could have been alleged or asserted in this Action. ECF Nos. 211-1 § 12; 211-2 § 12. The claims asserted against Settling Defendants in the Action will be dismissed with prejudice on the merits, and any other related claims will be barred by the Settlements' release.

The Settlements' consideration and cooperation are well within the range of that which may be found to be fair, reasonable, and adequate.

3. The Distribution Plan provides an effective and equitable method for distributing relief satisfying Rule 23(e)(2)(C)(ii) and 23(e)(2)(D)

A plan of allocation is fair and reasonable as long as it has a "reasonable, rational basis." *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-3400 (CM) (PED), 2010 WL 4537550, at *21 (S.D.N.Y. Nov. 8, 2010); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 497 (S.D.N.Y. 2009). Generally, a plan of allocation that reimburses class members based on the relative strength and value of their claims is reasonable. *See In re IMAX Sec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y 2012). A plan of allocation, however, need not be tailored to fit each

and every class member with "mathematical precision." *PaineWebber*, 171 F.R.D. at 133. In determining whether a plan of allocation is fair and reasonable, courts give great weight to the opinion of experienced counsel. *See In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 163 (S.D.N.Y. 2011) ("in determining whether a plan of allocation is fair, courts look primarily to the opinion of counsel"); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 145 (S.D.N.Y. 2010) (same).

As detailed in Plaintiffs' preliminary approval motion, Lead Counsel consulted with economic consultants to develop the proposed Distribution Plan. Prelim. Approval Mem. at 15. Net Settlement Funds will be allocated on a pro rata basis according to a duration-adjusted weighting of each Authorized Claimant's notional (or principal) trading volumes of Mexican Government Bonds, and through categorization of transactions into 31 categories based on the remaining years to maturity when purchased or sold. *Id.*[3]

This method for distributing the Settlements has been finally approved for use in an analogous case concerning the manipulation of bonds issued by U.S. government-sponsored enterprises. *See GSE Bonds*, 414 F. Supp. 3d at 694-95 (preliminarily approving distribution plan); *In re GSE Bonds Antitrust Litig.*, No. 19-cv-1704 (JSR), 2020 WL 3250593, at *1 (S.D.N.Y. June 16, 2020) (re-adopting its analysis to finally approve settlements and distribution plan). The Distribution Plan should be similarly approved here.

4. The Proposed Attorneys' Fee Award confirms that the Class will receive substantial relief from the Settlements

The attorneys' fees and expenses that will be sought in connection with the Settlements are reasonable and ensure the Settlement Class is provided with substantial relief in the form of the Net Settlement Funds. As disclosed in the Class Notice, and pursuant to the retainer agreement with OFPRS and Local 103, Lead Counsel seek 30% of the Settlement Funds ($6.21

[3] The Settlement Administrator will implement a reasonable minimum payment threshold to ensure that administrative costs of issuing small payments do not deplete the Fund.

million), to be paid, if approved by the Court, upon final approval of the Settlements. *See* Straub Decl., Ex. A at 7; Declaration of Todd A. Seaver on Behalf of Berman Tabacco in Support of Plaintiffs' Lead Counsel's Motion for Award of Attorneys' Fees and Payment of Expenses ("Seaver Decl.") ¶ 5. As more fully described in the accompanying Plaintiffs' Lead Counsel's Motion for Award of Attorneys' Fees and Payment of Expenses, the percentage of attorneys' fees requested is reasonable given the range of settlement awards made in similar cases in this District and the amount of work contributed by Plaintiffs' Counsel towards the prosecution of the Action. In addition to the request for attorneys' fees, Lead Counsel seek an award of $328,126.23 (or just 1.59% of the Settlement Fund) for unreimbursed litigation costs and expenses incurred through May 31, 2020. *See Meredith Corp. v. SESAC LLC*, 87 F. Supp. 3d 650, 671 (S.D.N.Y. 2015) (reasonably incurred expenses may be reimbursed from the settlement fund). The expenses are of the type reasonably incurred in class action litigation.

5. The Settlements identify all relevant agreements that impact the adequacy of the relief

The Settlements fully describe the relief to which Class Members are entitled and all agreements that may impact the Settlement. This includes disclosing the existence of a Supplemental Agreement that grants Settling Defendants a qualified right to terminate the Settlement. *See* ECF Nos. 211-1 § 23; 211-2 § 23. This type of agreement, often referred to as a "blow" provision, is common in class action settlements. *See, e.g.*, *GSE Bonds,* 414 F. Supp. 3d at 696 (finding, after review that a similar blow provision "has no bearing on the [settlement] approval analysis"); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 948 (9th Cir. 2015); *Erica P. John Fund, Inc. v. Halliburton Co.*, No. 02-cv-1152, 2018 WL 1942227, at *5 (N.D. Tex. Apr. 25, 2018).

II. THE PROPOSED SETTLEMENT CLASS SHOULD BE FINALLY CERTIFIED

Federal Rule of Civil Procedure 23(a) provides that a movant must meet four requirements to be entitled to class certification: numerosity, commonality, typicality, and adequacy of representation. In addition, Federal Rule of Civil Procedure 23(b)(3) provides that the movant must show both (i) that common questions predominate over any questions affecting only individual members, and (ii) that class resolution is superior to other available methods for the fair and efficient adjudication of the controversy.

When the Court preliminarily approved the Settlements, it found that the applicable provisions of Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure have been satisfied and the Court would likely be able to approve the Settlements and certify the Settlement Class. *See* ECF Nos. 223 ¶ 3, 224 ¶ 3. For the same reasons previously argued, the Court should grant final certification of the Class for purposes of the Settlements. Prelim. Approval Mem. at 18-23. Bolstering Plaintiffs' earlier arguments in support of certification of the Settlement Class is the fact that over 32,000 Notices and Claim Forms were mailed to potential Class Members. Straub Decl. ¶ 14, 27; Rabe Decl. ¶ 7. The size of the potential Class satisfies the numerosity requirement under Rule 23(a). *See In re Initial Pub. Offering Sec. Litig.*, 260 F.R.D. 81, 90 (S.D.N.Y. 2009) ("Sufficient numerosity can be presumed at a level of forty members or more."). Further, the size of the Class also supports the superiority of pursuing the claims through a class action. *See In re Currency Conversion Fee Antitrust Litig.*, 224 F.R.D. 555, 566 (S.D.N.Y. 2004) (class action is "the superior method for the fair and efficient adjudication of the controversy" where the class is numerous). In light of the Court's earlier findings, and the size of the Settlement Class, Plaintiffs respectfully request that this Court finally certify the Settlement Class.

III. THE CLASS NOTICE PLAN INFORMED THE CLASS OF THE SETTLEMENTS AND SATISFIED DUE PROCESS

Rule 23(e)(1) provides that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the [settlement]." FED. R. CIV. P. 23(e)(1)(B). The standard for the adequacy of notice to the class is reasonableness. FED. R. CIV. P. 23(c)(2)(B) (for actions certified under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort."). "There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice must 'fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.'" *Wal-Mart*, 396 F.3d at 114. The Settlement Class Members have received adequate notice and have been given sufficient opportunity to weigh in on or exclude themselves from the Settlements.

The Class Notice plan has been implemented. *See generally* Straub Decl. By September 9, 2021, A.B. Data will have produced more than 30,492 copies of the mailed notice and proof of claim and release that were mailed to potential Class Members based on counterparty information provided by Barclays, JPMorgan, and third parties. Straub Decl. ¶ 8. The publication notice was printed in at least nine publications, and banner advertisements on at least seven websites directed potential Class Members to the Settlement website www.MGBAntitrustSettlement.com. Straub Decl. ¶¶ 16-19.

The Class Notice plan, as well as the mailed notice and publication notice, satisfy due process. The mailed notice and publication notice are written in clear and concise language, and reasonably conveyed the necessary information to the average class member. *See Wal-Mart*, 396 F.3d at 114. Class Members have been advised on the nature of the action, including the relevant claims, issues and defenses. Straub Decl. Ex. A. Class Members have been

afforded a full and fair opportunity to consider the proposed Settlements, exclude themselves from the Settlements, and respond and/or appear in Court. Further, the Class Notice fully advised Class Members of the binding effect of the judgment on them. *Id.*, Ex. A.

The Court should find that the Class Notice plan as implemented was reasonable and satisfied due process.

CONCLUSION

For foregoing reasons, Plaintiffs respectfully request that Plaintiffs' Motion for Final Approval of Class Action Settlements with Barclays and JPMorgan be granted.

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White Plains, New York

Respectfully submitted,

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