UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE EUROPEAN GOVERNMENT BONDS ANTITRUST LITIGATION	Lead Case No. 19-cv-2601 Hon. Victor Marrero

MEMORANDUM OF LAW IN SUPPORT OF CO-LEAD COUNSEL'S MOTION FOR AN INTERIM AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

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Joshua P. Davis, *Toward an Empirical and Theoretical Assessment of Private Antitrust Enforcement*, 36 SEATTLE U. L. REV. 1269, 1293-95 (2013) 18

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Showdown With EU Over Bond Cartel, MLex Reports, BLOOMBERG (Oct. 25, 2019), https://www.bloombergquint.com/onweb/banks-in-eu-showdown-over-government-bond-cartel-mlex-reports 7

Co-Lead Counsel[1] for Plaintiffs Ohio Carpenters' Pension Fund ("Ohio Carpenters"), Electrical Workers Pension Fund Local 103 I.B.E.W. ("IBEW 103"), and San Bernardino County Employees' Retirement Association ("SBCERA") respectfully submit this memorandum of law in support of their Motion for an Interim Award of Attorneys' Fees and Reimbursement of Expenses (the "Motion").

I. INTRODUCTION

After more than four years litigating this complex antitrust class action, Co-Lead Counsel secured settlements with four Defendant families: (i) State Street Corporation and State Street Bank and Trust Company (together, "State Street"); (ii) JPMorgan Chase Bank, N.A., J.P. Morgan Securities PLC (f/k/a J.P. Morgan Securities Ltd.), J.P. Morgan Securities LLC (f/k/a J.P. Morgan Securities Inc.) (together, "JPMorgan"); (iii) UniCredit Bank AG ("UniCredit"); and (iv) Natixis S.A. ("Natixis") (collectively, "Settling Defendants").[2] Under the terms of these settlements, JPMorgan, UniCredit, and Natixis have paid a total of $40,000,000.00 ("Settlement Fund"), which is earning interest in the Escrow Account. In addition, Settling Defendants have provided significant and immediate cooperation, which allowed Plaintiffs to allege new, direct evidence of manipulative coordination and name four additional Defendant-bank families in amended complaints, including the operative Fifth Amended Complaint ("5AC") which included allegations

[1] Co-Lead Counsel are Scott+Scott Attorneys at Law LLP, DiCello Levitt LLP, Lowey Dannenberg, P.C., and Berman Tabacco. Labaton Sucharow LLP was originally appointed by the Court as co-lead counsel and later substituted for DiCello Levitt. ECF No. 235.

[2] Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in the (a) Stipulation and Agreement of Settlement with State Street Bank Corporation and State Street Bank and Trust Company (ECF No. 209); (b) Stipulation and Agreement of Settlement with JPMorgan Chase Bank, N.A., J.P. Morgan Securities plc (f/k/a J.P. Morgan Securities Ltd.), and J.P. Morgan Securities LLC (f/k/a J.P. Morgan Securities Inc.) (ECF No. 256-1); (c) Amended Stipulation and Agreement of Settlement with UniCredit Bank AG (ECF No. 375-2); and (d) Amended Stipulation and Agreement of Settlement with Natixis S.A. (ECF No. 375-1).

based on cooperation provided by settling Defendants. ECF No. 409.

From inception of the suit until the Natixis and UniCredit settlements were initially preliminarily approved on May 16, 2023,[3] Co-Lead Counsel have incurred $775,003.70 in out-of-pocket costs and invested 15,048.80 hours of attorney and other legal professional services valued at $12,247,303.50. *See* Joint Declaration of Kristen M. Anderson, Gregory S. Asciolla, Vincent Briganti, and Todd A. Seaver in Support of Motion for an Interim Award of Attorneys' Fees and Reimbursement of Expenses ("Joint Decl."), ¶¶93-95. This investment was made without any guarantee Co-Lead Counsel would receive any compensation for the time or expenses they incurred in the prosecution of this litigation. Co-Lead Counsel willingly assumed these and other litigation risks, including that the Court could dismiss certain Defendants at the pleading stage due to failure to properly allege personal jurisdiction, antitrust standing, and particular Defendants' connections to the antitrust conspiracy, as occurred here. *Id.,* ¶¶90-91.

Despite these risks, Co-Lead Counsel at all times utilized their resources efficiently and effectively to obtain the best results for the Class. The four settlements before the Court reflect those efforts, enabling the Class to receive certain relief, while simultaneously giving Co-Lead Counsel the tools to aid the litigation against non-settling Defendants and increase the likelihood of additional recoveries for the Class. Had Co-Lead Counsel not secured the State Street

[3] Co-Lead Counsel have limited the reporting of their time and expenses for this Motion from case inception through May 16, 2023, the date the UniCredit and Natixis settlements were initially preliminarily approved. After preliminary approval of the UniCredit and Natixis settlements on May 16, 2023, Coöperatieve Rabobank U.A. and Rabo Securities USA, Inc. (together, "Rabobank"), and Deutsche Bank AG and Deutsche Bank Securities Inc. (together, "Deutsche Bank")—defendants in the related action *Ohio Carpenters' Pension Fund v. Deutsche Bank AG*, No. 22-cv-10462 (S.D.N.Y.)—objected to their being included within the definition of named "Defendants" in the proposed settlements. The UniCredit and Natixis settlements were ultimately amended and the amended settlements received preliminary approval from the Court on July 12, 2023. *See* ECF Nos. 381, 382. Co-Lead Counsel have since dedicated, and will continue to dedicate, significant time and resources to the litigation until it is resolved.

settlement, which provided valuable cooperation, Plaintiffs would be without chatroom transcripts that link Defendants UBS Europe SE, J.P. Morgan Securities PLC, Nomura International PLC, NatWest Markets plc, Jefferies International Limited, Citi Global Markets Limited, and their respective affiliates to the conspiracy, as alleged in the Fourth Amended Complaint. Had Co-Lead Counsel not secured the JPMorgan, UniCredit, and Natixis settlements, Plaintiffs would also be without additional chatroom transcripts and European Government Bond transaction data—which supported allegations in the 5AC bringing Defendants Bank of America, N.A., Merrill Lynch International, NatWest Markets plc, NatWest Markets Securities Inc., UBS AG, UBS Europe SE, and UBS Securities LLC back into the case—and a $40 million Settlement Fund for the benefit of the Settlement Class.

These four settlements reflect the skill, expertise, and hard work of Co-Lead Counsel, and the benefit to Class Members is substantial and concrete, compared to the significant litigation risks present here. As such, Co-Lead Counsel asks the Court to award interim attorneys' fees of 30% of the Settlement Fund (*i.e.*, $12,000,000) and reimbursement of litigation expenses of $775,003.70 from the Settlement Fund, plus interest on the awards at the same rate as earned by the Settlement Fund.[4] The efforts of Co-Lead Counsel and the results secured to date support an interim fee award and reimbursement of expenses. As explained below, based on Co-Lead Counsel's investment of time and resources, the complexity of the litigation, the risks Co-Lead Counsel assumed, and the quality of the representation, the fee percentage is objectively fair and

[4] The Court-approved notice informed all Class Members to the settlements that Co-Lead Counsel would seek an award of attorneys' fees in an amount not to exceed 30% of the Settlement Fund and $775,003.70 in litigation expenses and that the Court would ultimately determine the award. Class Members were also informed that this Motion will be posted on the case website, https://www.europeangovernmentbondssettlement.com/. Finally, Class Members were notified of their right to object to any aspect of the settlements, including the fee request.

reasonable. The fee request is within the range of reasonableness when compared to awards granted in similarly complex antitrust litigation in this District and is also supported by public policy. The lodestar cross-check further confirms that the fee request is reasonable. Finally, Co-Lead Counsel's litigation costs and expenses, as described herein and in the declarations from each of the Co-Lead Counsel firms,[5] were reasonably incurred to advance this litigation and should be reimbursed as well.

For these reasons and as explained in further detail below, Co-Lead Counsel respectfully request that the Motion be granted.

II. THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE

In common fund cases, attorneys that secure a recovery for the class are "entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Grice v. Pepsi Beverages Co.*, 363 F. Supp. 3d 401, 406 (S.D.N.Y. 2019); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 163 (S.D.N.Y. 2011). This principle applies to class action settlements, including interim settlements. *See In re Vitamin C Antitrust Litig.*, No. 06-MD-1738 (BMC)(JO), 2012 WL 5289514, at *9 (E.D.N.Y. Oct. 23, 2012) ("Where a class action settlement creates a common fund the plaintiffs' attorneys are entitled to a reasonable fee—set by the court—to be taken from the fund. Fees can be awarded based on an interim settlement fund.").

Courts "may award attorneys' fees in common fund cases under either the 'lodestar' method or the 'percentage of the fund' method," although "[t]he trend in this Circuit is toward the

[5] In addition to the Joint Declaration describing the efforts of Co-Lead Counsel in prosecuting the litigation to date, each firm that has worked on the case has submitted a declaration that reflects its respective expenses and lodestar calculations based on current billing rates for contingent matters. *See* Exhibits A through E to the Joint Decl., filed herewith.

percentage method." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005).[6] The percentage method is preferred as it "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Grice*, 363 F. Supp. 3d at 406 (quoting *Wal-Mart Stores*, 396 F.3d at 121); MANUAL FOR COMPLEX LITIGATION (FOURTH) §14.121 (2004) ("Indeed, one purpose of the percentage method is to encourage early settlements by not penalizing efficient counsel, thus ensuring that competent counsel continue to be willing to undertake risky, complex, and novel litigation."). This principle and preference hold equally true for interim fee awards drawn from partial settlements with one or more defendants in a multi-defendant action. *See In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *9 (noting that "[f]ees can be awarded based on an interim settlement" and recounting the Second Circuit's "trend" of utilize[ing] the percentage method" with the lodestar/multiplier method as a cross-check).

Courts evaluating whether a fee is "reasonable" must consider: "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000); *see also Fikes Wholesale, Inc. v. HSBC Bank USA, N.A.*, 62 F.4th 704, 723 (2d Cir. 2023) (citing the *Goldberger* factors).

[6] Most federal courts of appeals have also endorsed the percentage-of-recovery method as an appropriate method for determining an award of attorneys' fees in common fund cases. *See, e.g., Heien v. Archstone*, 837 F.3d 97, 100 (1st Cir. 2016); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 49 (2nd Cir. 2000); *In re GMC*, 55 F.3d 768, 821-22 (3rd Cir. 1995); *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 644 (5th Cir. 2012); *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 515-16 (6th Cir. 1993); *Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047-50 (9th Cir. 2002); *Gottlieb v. Barry*, 43 F.3d 474, 487 (10th Cir. 1994); *Camden I. Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1268-70 (D.C. Cir. 1993).

Co-Lead Counsel seek a fee of 30% of the $40,000,000 Settlement Fund and reimbursement of litigation expenses totaling $775,003.70. The application of the *Goldberger* factors confirms reasonableness of this request. Even under the lodestar cross-check, the requested fee represents a 0.98 multiplier, further demonstrating the reasonableness of the award. Notably, granting this interim fee award will enable Co-Lead Counsel to reinvest resources into their efforts to vigorously litigate this case against the remaining Defendants through discovery, class certification, summary judgment, and trial and, with respect to the settlements, to supervise all aspects of settlement and claims administration, including the final distribution of settlement proceeds to qualified Class Members.

A. Application of the *Goldberger* Factors Support Awarding 30% of the Settlement Fund as Attorneys' Fees.

1. Co-Lead Counsel Invested Substantial Time, Labor, and Resources into Prosecuting this Action.

Co-Lead Counsel devoted over 15,000 hours of attorney and other legal professional time to prosecute this Action since the inception of the case until initial preliminary approval of the UniCredit and Natixis settlements on May 16, 2023. *See* Joint Decl. ¶¶88, 93. Below is a summary of the work performed and the resources devoted to prosecuting this Action.

On March 4 and March 22, 2019, Plaintiffs IBEW 103 and Ohio Carpenters filed their initial complaints, triggered by an announcement by the European Commission that it issued a Statement of Objections to eight banks. *Id.,* ¶7. On June 11, 2019, Plaintiffs filed the Consolidated Amended Class Action Complaint, which named UniCredit Bank AG and UniCredit Capital Markets LLC as defendants for the first time based on public reports that the bank had received a

Statement of Objections from the European Commission.[7] *Id.,* ¶9. Following several rounds of pre-motion letters to dismiss the complaint and amendment of the complaint thereafter, Plaintiffs filed the Third Amended Complaint ("TAC") on December 3, 2019. *Id.,* ¶13. The TAC added Natixis as a defendant for the first time based on public reports that the bank had received a Statement of Objections from the European Commission. *Id.*[8]

On July 23, 2020, the Court issued its Decision and Order granting in part and denying in part Defendants' Rule 12(b)(2) and 12(b)(6) motion to dismiss the TAC ("July 23 Decision and Order"). *Id.,* ¶15. The Court sustained Plaintiffs Ohio Carpenters' and IBEW 103's claim under §1 of the Sherman Act, 15 U.S.C. §1, finding that Plaintiffs had plausibly alleged a conspiracy to fix European Government Bond prices against Natixis, Nomura International plc, and Nomura Securities International Inc. (together, "Nomura"). *Id.* The Court, however, dismissed Defendants Bank of America Merrill Lynch International Designated Activity Company ("BAML") and NatWest Markets plc on personal jurisdiction grounds. *Id.* In addition, the Court dismissed Plaintiffs' claims against BAML, UniCredit, and UniCredit Capital Markets LLC on antitrust standing grounds and dismissed BAML, Bank of America, N.A., Merrill Lynch International, NatWest Markets plc (f/k/a Royal Bank of Scotland plc), NatWest Markets Securities Inc. (f/k/a RBS Securities Inc.), UBS AG, UBS Europe SE, and UBS Securities LLC (f/k/a UBS Warburg LLC) for failure to connect these Defendants to the antitrust conspiracy alleged in the TAC. *Id.*

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[7] *See* Gianluca Semeraro & Silvia Aloisi, *Italy's UniCredit says it is among banks accused of running bond cartel*, REUTERS (Apr. 11, 2019), https://www.reuters.com/article/us-eu-antitrust-banks-unicredit/italys-unicredit-says-it-is-among-banksaccused-of-running-bond-cartel-idUSKCN1RN0UW.

[8] Aoife White, *Banks in Showdown With EU Over Bond Cartel, MLex Reports*, BLOOMBERG (Oct. 25, 2019), https://www.bloombergquint.com/onweb/banks-in-eu-showdown-over-government-bond-cartel-mlex-reports.

Natixis and Nomura filed a motion for reconsideration of the July 23 Decision and Order, which Plaintiffs opposed. *Id.,* ¶16.

On October 9, 2020, Plaintiffs and State Street executed a term sheet, which required State Street to provide significant and immediate cooperation upon its execution. *Id.*, ¶18. Pursuant to the Court's direction in the July 23 Decision and Order, Plaintiffs sought leave to amend the TAC to replead against dismissed Defendants, and the parties agreed on a schedule for amendment, permitting Plaintiffs to file their Fourth Amended Complaint ("FAC") 60 days after the Court's decision on Natixis and Nomura's motion for reconsideration. *Id.,* ¶17. The Court denied Natixis and Nomura's motion for reconsideration on December 11, 2020. *Id.,* ¶19. Accordingly, on February 9, 2021, Plaintiffs filed the FAC, which included the named defendants in the TAC, as well as naming an additional 12 Defendants. *Id.,* ¶20. Among other things, the FAC incorporated cooperation materials provided by State Street and added SBCERA as a Plaintiff. *Id.*

On April 16, 2021, Defendants served Plaintiffs with three pre-motion letters informing Plaintiffs of their intent to move to dismiss the FAC under Rule 12(b)(2) and 12(b)(6). *Id.,* ¶22. On May 17, 2021, Plaintiffs served Defendants with letters responding to Defendants' pre-motion letters. *Id.*

On May 20, 2021, the European Commission announced the issuance of a decision against Bank of America, Natixis, Nomura, NatWest, UBS, UniCredit, and WestLB for their participation in a cartel in the primary and secondary market for European Government Bonds and imposed fines totaling over €371 million ($454.4 million). *Id.,* ¶23. The European Commission imposed a €69.4 million ($85 million) fine on UniCredit based on its participation in the European Government Bond cartel. *Id.* Natixis avoided a fine because the European Commission found its activity in the cartel fell outside of the limitation period for imposition of fines. *Id.* On May 26,

2021, Plaintiffs filed a pre-motion letter requesting a conference for the purpose of filing a request for judicial notice of the May 20, 2021, press release issued by the European Commission regarding its European Government Bonds decision. *Id.,* ¶24. On June 4, 2021, Defendants responded to Plaintiffs' judicial notice letter and notified the Court of the parties' failure to resolve their dispute over the appropriateness of the filing of a motion to dismiss. *Id.*

On June 15, 2021, Plaintiffs moved for preliminary approval of the State Street settlement, which the Court granted on June 16, 2021, and further ordered that notice of the State Street settlement be deferred for 180 days following entry of the order. *Id.,* ¶25. On December 9, 2021, Plaintiffs filed a letter requesting that the Court defer notice for an additional 90 days, which the Court granted on December 10, 2021, staying the notice deadline of the State Street settlement until March 14, 2022. *Id*. On March 7, 2022, the Court entered an order deferring notice of the State Street Stipulation until September 12, 2022. *Id*.

On November 1, 2021, Plaintiffs filed a pre-motion letter requesting a conference for the purpose of filing a request for judicial notice of the European Commission's Provisional Non-Confidential Decision ("Decision") and Summary of the Decision. *Id.,* ¶28. The 248-page Decision included chatroom communications which the European Commission found "occurred regularly, sometimes daily, in particular when EGB came up for auction. Communications could be lengthy, lasting all day or spanning multiple days." *Id*. On November 9, 2021, Defendants replied to Plaintiffs' judicial notice letter. *Id.,* ¶29. On March 2, 2022, the Court denied Plaintiffs' requests for a conference and stated that it would construe Plaintiffs' letter motions as requests for judicial notice of the European Commission's May 20, 2021, press release, Decision, and Summary of the Decision to be addressed in connection with the pending motions to dismiss the FAC. *Id*.

On March 14, 2022, the Court issued its Decision and Order granting in part and denying in part Defendants' Rule 12(b)(2) and 12(b)(6) motion to dismiss the FAC ("March 14 Decision and Order"). *Id.,* ¶30. The Court sustained Plaintiffs' claim under §1 of the Sherman Act, 15 U.S.C. §1, against Natixis, Nomura International plc, Nomura Securities International Inc.,[9] UniCredit, Citigroup Global Markets Limited and Citigroup Global Markets Inc. (together "Citigroup"), and Jefferies International Limited and Jefferies LLC (together "Jefferies"). *Id.* The Court, however, dismissed Defendant NatWest Markets plc on personal jurisdiction grounds. *Id.* In addition, the Court dismissed Plaintiffs' claims against UniCredit Capital Markets LLC on antitrust standing grounds, dismissed Plaintiffs' claims against JPMorgan as untimely, and dismissed Bank of America, N.A., Merrill Lynch International, NatWest Markets plc, NatWest Markets Securities Inc., RBC Europe Limited, Royal Bank of Canada, RBC Capital Markets, UniCredit Capital Markets LLC, UBS AG, UBS Europe SE, and UBS Securities LLC for failure to connect these Defendants to the antitrust conspiracy alleged in the FAC. *Id.*

On March 28, 2022, UniCredit and Natixis filed separate motions for reconsideration of the March 14 Decision and Order, while Citigroup and Jefferies filed a joint motion for reconsideration of the order, all of which Plaintiffs opposed. *Id.*, ¶31. On June 16, 2022, the Court denied the motions for reconsideration of the March 14 Decision and Order in their entirety. *Id.,* ¶32.

On April 29, 2022, Plaintiffs moved for preliminary approval of the JPMorgan settlement. *Id.,* ¶25. The Court preliminarily approved the JPMorgan settlement on May 2, 2022, ordering that notice of the JPMorgan settlement be deferred until September 12, 2022. *Id.* On September 12, 2022, Co-Lead Counsel, counsel for State Street, and counsel for JPMorgan requested, and the

[9] Plaintiffs subsequently voluntarily dismissed Nomura Securities International Inc.

Court subsequently granted, a 60-day extension of the deadline for notice until November 11, 2022. *Id.* On November 11, 2022, Plaintiffs moved for preliminary approval of the notice program and plan of distribution. *Id.* On November 17, 2022, the Court preliminarily approved the proposed notice program and plan of distribution. *Id.* Accordingly, notice of the State Street and JPMorgan settlements commenced on February 1, 2023. *Id.* However, due to issues with disseminating notice to certain non-settling Defendants' counterparties, the Court vacated all deadlines for the State Street and JPMorgan settlements on March 21, 2023. *Id.*

On July 19, 2022, the Court entered the Civil Case Management Plan and Scheduling Order (the "Plan"), which ordered Plaintiffs to file any amended pleadings no later than October 17, 2022. *Id.,* ¶33. This deadline was subsequently extended to November 7, 2022. *Id.* On November 7, 2022, Plaintiffs filed a motion for leave to amend the Fourth Amended Complaint and attached a [Proposed] Fifth Amended Complaint. *Id.,* ¶39. On December 19, 2022, certain Defendants filed their opposition to Plaintiffs' motion to amend. *Id.* Plaintiffs filed their reply brief on January 13, 2023. *Id.* On September 25, 2023, the Court issued its Decision and Order granting Plaintiffs' motion for leave to amend the Fourth Amended Consolidated Class Action Complaint. *Id.,* ¶40. On October 16, 2023, Plaintiffs filed the 5AC. *Id.,* ¶41.

In October 2022, Plaintiffs and UniCredit first began discussing the possibility of settlement. *Id.,* ¶58. On October 13, 2022, UniCredit produced transaction data requested by Plaintiffs to aid in settlement discussions. *Id.* On October 25, 2022, Plaintiffs and UniCredit, through their respective counsel, engaged in settlement negotiations. *Id.,* ¶59. Counsel for each side expressed their views of merits of the Action and UniCredit's involvement in the alleged conspiracy, however, Plaintiffs and UniCredit were unable to reach an agreement at that time, and negotiations ceased. *Id.* On February 24, 2023, Plaintiffs and UniCredit resumed settlement

negotiations. *Id.,* ¶60. After extensive arm's-length negotiations between experienced counsel, Plaintiffs and UniCredit reached an agreement in principle on the material monetary terms of a settlement, agreeing that UniCredit would pay $13 million into the Settlement Fund. *Id.,* ¶62. In the following week, Plaintiffs and UniCredit engaged in further negotiations and reached an agreement regarding the cooperation to be provided by UniCredit. *Id.* Following weeks of negotiations about the material terms of the settlement agreement, Plaintiffs and UniCredit executed the UniCredit Stipulation on May 5, 2023. *Id.,* ¶63.

Also in October 2022, Plaintiffs and Natixis first began discussing the possibility of settlement. *Id.,* ¶70. On October 24, 2022, Natixis produced transaction data requested by Plaintiffs to aid in settlement discussions. *Id.,* ¶71. Beginning on October 27, 2022, Plaintiffs and Natixis, through their respective counsel, engaged in settlement negotiations, but Plaintiffs and Natixis were unable to reach an agreement at that time. *Id.* Beginning on March 9, 2023, Plaintiffs and Natixis resumed settlement negotiations. *Id.,* ¶72. During the negotiations, each side presented their view of the Action, including the likelihood of success at the motion to dismiss, class certification, and summary judgment stages, and Plaintiffs described Natixis's role in the conspiracy alleged in the FAC and proposed Fifth Amended Complaint. *Id.* Counsel for Plaintiffs and Natixis held extensive arm's-length follow-up negotiations on March 21 and 22, 2023, and reached a tentative understanding on the material monetary terms of a settlement, agreeing that Natixis would pay $14 million into the Settlement Fund, and the scope of cooperation to be provided by Natixis. *Id.,* ¶¶72-73. Following weeks of negotiations about the material terms of the settlement agreement, Plaintiffs and Natixis executed the Natixis Stipulation on May 9, 2023. *Id.,* ¶74. On May 16, 2023, the Court granted preliminary approval of the UniCredit Stipulation and Natixis Stipulation. *Id.,* ¶75 (citing ECF No. 353).

Coöperatieve Rabobank U.A. and Rabo Securities USA, Inc. (together, "Rabobank"), and Deutsche Bank AG and Deutsche Bank Securities Inc. (together, "Deutsche Bank")—defendants in the related action *Ohio Carpenters' Pension Fund v. Deutsche Bank AG*, No. 22-cv-10462 (S.D.N.Y.)—thereafter challenged the settlements as extinguishing their rights to contribution against UniCredit and Natixis and imposing improper discovery burdens. *Id.*, ¶75. After the issue was briefed, on June 27, 2023, the Court ordered Plaintiffs to amend the proposed settlements to remove Rabobank and Deutsche Bank from the definition of Defendants. *Id.*, ¶76 (citing ECF Nos. 358, 361, and 370). On July 11, 2023, Plaintiffs and UniCredit executed an Amended UniCredit Stipulation and Plaintiffs and Natixis executed an Amended Natixis Stipulation. *Id.*, ¶77. On July 12, 2023, the Court granted preliminary approval of the Amended UniCredit Stipulation and Amended Natixis Stipulation. *Id.*, ¶¶ 69, 80 (citing ECF Nos. 381, 382).

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The amount of time and effort invested in prosecuting this Action demonstrates that the first *Goldberger* factor supports the reasonableness of Co-Lead Counsel's fee request.

2. The Magnitude and Complexity of the Action Favors the Fee Request.

The second *Goldberger* factor, the magnitude and complexity of the Action, supports Co-Lead Counsel's fee request.

"[C]lass actions have a well deserved reputation as being most complex," *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998) (internal citation omitted) ("*NASDAQ*"), with antitrust cases standing out as some of the most "complex, protracted, and bitterly fought." *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 669 (S.D.N.Y. 2015). In cases that require more expertise, a larger percentage of the fund should be awarded to the lawyers who can competently bring and prosecute the case. *See In re Citigroup Inc. Bond Litig.*, 988 F. Supp. 2d 371, 379 (S.D.N.Y. 2013) ("The upshot is that the magnitude and complexity of the

litigation also weigh in favor of a significant award.”). This case is no different.

Here, Plaintiffs’ claims of collusion in the European Government Bond market, involving thousands of bond issuances and implicating more than a dozen Defendants, are the very definition of a complex and risky case. While the EC’s investigation certainly was helpful to Plaintiffs’ case, that investigation does not suffice to allow Plaintiffs to prove the more expansive allegations in this Action, which were largely made possible by the cooperation Co-Lead Counsel secured through these settlements. Far from piggybacking off of government investigations, Co-Lead Counsel developed evidence on their own by securing critical cooperation provisions in these proposed settlements. *Compare Maley v. Global Tech. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (recognizing that plaintiffs’ counsel did not “piggy back” on prior governmental actions), *with Goldberger*, 209 F.3d at 54 (noting that “the government’s prior efforts against [defendants] dramatically increased [plaintiffs’ chances of success”). Indeed, this Action was filed on March 4, 2019, and the European Commission’s Decision was not released to the public until October 15, 2021. In addition, Co-Lead Counsel retained consultants and industry experts and spent considerable time communicating with them about the facts surrounding the operation of the European Government Bond market and working with them on analyses. Co-Lead Counsel developed robust and multi-faceted statistical analyses to support Plaintiffs’ claims.

If agreements had not been reached with the Settling Defendants, Plaintiffs faced significant risks in continuing to litigate their claims against the Settling Defendants. Already, Plaintiffs’ claims have been fiercely challenged in multiple motions to dismiss and for reconsideration. Discovery would likely be a substantial task, with difficult negotiations concerning the scope of production and the availability of information due to various factual and legal issues, including foreign data privacy laws. Complex issues of law and fact are likely be

raised at class certification, and the losing party would likely seek interlocutory review under Rule 23(f). Plaintiffs expect Settling Defendants would have brought motions for summary judgment, which the Court could have found meritorious in part or in whole. And even if Plaintiffs overcame these risks and took the case against Settlement Defendants to trial, a jury could have found that Plaintiffs failed to meet their burden to prove Settling Defendants participated in the conspiracy or caused any damages. If the Class prevailed against the Settling Defendants at trial, any verdict could have been vacated or reversed on appeal. *See also* Section II.3, *infra* (discussing additional litigation risks). In sum, "[t]here can be no doubt that this class action would be enormously expensive to continue, extraordinarily complex to try, and ultimately uncertain of result." *NASDAQ*, 187 F.R.D. at 477.

3. The Fee Request is Warranted Based on the Level of Risk Undertaken by Co-Lead Counsel in this Action.

The third *Goldberger* factor, the level of risk, also supports Co-Lead Counsel's fee request.

Second Circuit courts have described assessing the "risk of the litigation" as "perhaps the foremost factor to be considered in determining" a reasonable fee award. *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 129 (S.D.N.Y. 2009) (internal citation omitted); *see also In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 440 (E.D.N.Y. 2014). The risk of undertaking litigation is "measured as of when the case is filed." *Goldberger*, 209 F.3d at 55.

Co-Lead Counsel took this case on a fully contingent basis and invested significant time, money, and resources to advance the Action. *See City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132 (CM)(GWG), 2014 WL 1883494, at *14 (S.D.N.Y. May 9, 2014) ("The Second Circuit has recognized that the risk associated with a case undertaken on a contingent basis is an important factor in determining an appropriate fee award."). This risk was more significant because this

Action involved litigating against large global financial institutions represented by highly regarded law firms that possessed the financial resources to litigate this case for many years through any trial and appeal process. *See Meredith Corp.*, 87 F. Supp. 3d at 670 (noting "substantial risk" where counsel bore the "risk of defeat"); *see also In re WorldCom, Inc. Secs. Litig.*, 388 F. Supp. 2d 319, 357-58 (S.D.N.Y. 2005) (finding that counsel "obtained remarkable settlements for the Class while facing formidable opposing counsel from some of the best defense firms in the country").

As discussed in detail in the Memoranda of Law in Support of Preliminary Approval of the Settlements, *see* ECF Nos. 208 and 255, and summarized here, Co-Lead Counsel faced significant *ex ante* litigation risks in proving liability, class-wide impact, and damages. Defendants' arguments raised in their pre-motion letters to dismiss the TAC (ECF No. 110) and FAC (ECF No. 206), and certain Defendants' arguments in their motion for reconsideration (ECF No. 120, 239, 241, 243), illustrate the complexity of the Action. For example, Defendants have argued that Plaintiffs' economic analysis of bid-ask spreads failed to show that each Defendant conspired for six years across 13 bond-issuing countries. Moreover, Defendants argued that Plaintiffs' economic analysis of European Government Bond auctions was the result of ordinary market forces, not manipulation. *See id*. Defendants also argued that the Court should interpret the chatroom transcripts as consistent with ordinary market conduct rather than as evidence of collusion, as Plaintiffs contend. *See id*. Defendants, including JPMorgan, further argued that the EC Decision was inconsistent with a finding of conspiracy. *See* ECF Nos. 206-1, 206-2, 206-3.

While Plaintiffs have largely succeeded in sustaining their claims under Section 1 of the Sherman Act, at the time of the Settlements, several Defendants had been dismissed for lack of personal jurisdiction, antitrust standing, and connection to the antitrust conspiracy. *See* July 23 Decision and Order; March 14 Decision and Order. Further, numerous significant obstacles

remain. At class certification, Plaintiffs will have to prove, in part through expert testimony, that Defendants' conspiratorial conduct caused class-wide impact and that individual class members' damages could be computed on a common, formulaic basis. While Co-Lead Counsel believe that there is sufficient evidence to support a finding of class-wide impact and damages, Defendants have vast combined resources and are represented by top counsel from many of the nation's most prominent law firms. They will coordinate a substantial attack on Plaintiffs' experts.

4. Co-Lead Counsel Provided High-Quality Representation of Class Representatives and the Settlement Class.

The fourth *Goldberger* factor, the quality of representation, supports Co-Lead Counsel's fee request.

The Settlement Class includes numerous institutional investors with the sophistication and resources to object to the settlements. While the objection period is ongoing for the settlements, to date there has been one objection to the State Street settlement[10] and zero objections to the JPMorgan settlement and the UniCredit and Natixis amended settlements. The lack of objections to date is one indication of the quality of the work performed by Co-Lead Counsel on behalf of the Settlement Class.

"[T]he quality of representation is [also] best measured by results," *Goldberger*, 209 F.3d at 55, which are evaluated in light of "the recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *In re Merrill Lynch Tyco Rsch. Sec. Litig.*, 249 F.R.D. 124, 141 (S.D.N.Y. 2008). These four settlements have provided Plaintiffs with critically important and timely cooperation materials to expand and strengthen their allegations at an early stage of the litigation prior to formal discovery and created a $40 million Settlement Fund. The Settlements provide the

[10] As explained in Plaintiffs' motion for final approval of the settlements, which is being filed concurrently with this Motion, the objector is not a member of the Class and thus, lacks standing to object to the State Street settlement.

Class certainty in terms of recovering some portion of their losses, and still allow Plaintiffs to litigate claims against the non-settling Defendants. The skill and quality of Co-Lead Counsel's representation in this Action further supports their 30% attorneys' fee request.

5. The 30% Fee Request is Reasonable in Relation to the Settlements.

The fifth *Goldberger* factor, the fee request in relation to the settlement fund, weighs in favor of Co-Lead Counsel's fee request.

Comparable cases serve as guideposts against which a court may determine whether a fee request is reasonable. *Grice*, 363 F. Supp. 3d at 407 ("Courts often look to empirical evidence of attorney's fees awarded in similar cases as a starting point for the baseline reasonable fee inquiry"). For settlements involving the most complex claims, including antitrust, "it is very common to see . . . 30% contingency fees in cases with funds between $10 million and $50 million." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d at 445.

Relevant here is a study of all 1,646 consolidated antitrust class actions filings across all federal district courts in the United States from 2009 through 2021.[11] The study shows that the median award for attorney's fees was about 30% for recoveries up to $249 million. *Id*. at 27. Other studies have also shown 30% as the median attorney fee award for antitrust class actions. *See* Theodore Eisenberg et. al., Attorneys' Fees in Class Actions: 2009-2013, 92 N.Y.U. L. Rev. 937, 952, tlb.4 (2017); *see also* Joshua P. Davis, *Toward an Empirical and Theoretical Assessment of Private Antitrust Enforcement*, 36 SEATTLE U. L. REV. 1269, 1293-95 (2013) ("[I]n the twenty newer cases counsel tended to recover approximately 30% to 33.3% in cases with recoveries below $100 million").

[11] *See* Davis, Josh Paul and Kohles, Rose, 2021 Antitrust Annual Report: Class Action Filings in Federal Court (May 23, 2022), Univ. of San Francisco Law Research Paper, available at SSRN: https://ssrn.com/abstract=4117930.

Courts regularly make interim fee awards over the life of a multi-defendant antitrust class action at percentages equivalent to and higher than the 30% requested by Co-Lead Counsel here. *See, e.g.*, *In re Urethane Antitrust Litig. (Urethane III)*, No. 04-md-1616 (D. Kan. July 29, 2016), ECF 3276 (awarding 33.33% of the $835 million settlement fund as attorneys' fees); *In re Capacitors Antitrust Litig.*, No. 14-cv-03264-JC, 2020 WL 6544472, at *2 (N.D. Cal. Nov. 7, 2020) (awarding 30% of the $232 million settlement fund as attorneys' fees); *In re Domestic Drywall Antitrust Litig.*, No. 13-md-2437 (E.D. Pa. July 17, 2018), ECF 767, 768 (awarding 33.33% of the $190 million settlement fund as attorneys' fees); *In re Broiler Chicken Antitrust Litig.*, No. 16 C 8637, 2021 WL 5709250, at *5 (N.D. Ill. Dec. 1, 2021) (awarding 33.33% of the $169.6 million settlement fund as attorneys' fees); *In re Steel Antitrust Litig. (Steel I)*, No. 08-cv-5214 (N.D. Ill. Oct. 22, 2014), ECF 539 (awarding 33% of the $164 million settlement fund as attorneys' fees); *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-2420 (N.D. Cal.), ECF 2322 (awarding 33% of the $139.3 million settlement fund as attorneys' fees); *In re CRT Antitrust Litig. (CRT I)*, No. C-07-5944 JST, 2016 WL 183285, at *2 (N.D. Cal. Jan. 14, 2016); (awarding 33% of the $127.5 million settlement fund as attorneys' fees); *In re Auto. Parts Antitrust Litig.*, No. 12-md-02311, 2018 WL 7108072, at *4 (E.D. Mich. 2018) (awarding 30% of the $115 million settlement fund as attorneys' fees); and *In re Municipal Derivatives Antitrust Litig. (Muni Derivatives IV)*, No. 08-cv-2516 (S.D.N.Y. July 8, 2016), ECF 2029 (awarding 33.33% of the $101 million settlement fund as attorneys' fees).

Courts in the Second Circuit also routinely award contingency fees of 30% or more where the settlement is $50 million or less. *See, e.g.*, *Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 504 F.3d 229, 249 (2d Cir. 2007) (affirming attorneys' fees award of 30% of $42.5 million settlement fund); *In re London Silver Fixing, Ltd. Antitrust*

Litig., Nos. 14-MD-02573, 14-MC-02573 (S.D.N.Y. Jun. 15, 2021), ECF No. 534 (awarding 30% of the gross $38 million settlement fund as attorneys' fees); *In re: Commodity Exch., Inc., Gold Futures and Options Trading Litig.*, No. 1:14-mc-02548 (S.D.N.Y. Aug. 8, 2022), ECF No. 109 (awarding attorneys' fees of 33.33% of the gross $50 million settlement fund as attorneys' fees); *In re DDAVP Direct Purchaser Antitrust Litig.*, No. 05 Civ. 2237, 2011 WL 12627961, at *5 (S.D.N.Y. Nov. 28, 2011) (awarding 33.33% in fees on a $20 million gross settlement, plus interest); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 146 (S.D.N.Y. 2010) (awarding 33.33% of the $35 million gross settlement fund as attorneys' fees); *Maley*, 186 F. Supp. 2d at 371 (awarding 33.33% of the $11.5 million settlement). In sum, Co-Lead Counsel's request falls in line with the observed attorneys' fees in this District and others, further confirming its reasonableness.

6. Public Policy Supports Approval of the Fee Request.

The sixth and final *Goldberger* factor, public policy considerations, favors Co-Lead Counsel's fee request.

Public policy encourages enforcement of the antitrust laws through private civil suits to deter infringing conduct in the future. *See Pillsbury Co. v. Conboy*, 459 U.S. 248, 262-63 (1983) ("This Court has emphasized the importance of the private action as a means of furthering the policy goals of certain federal regulatory statutes, including the federal antitrust laws."). Awarding a reasonable percentage of the common fund "provid[es] lawyers with sufficient incentive to bring common fund cases that serve the public interest." *Goldberger*, 209 F.3d at 51. If attorneys' fees are routinely set too low, particularly in instances where counsel effectively and efficiently litigate a matter, they will be deterred from bringing meritorious cases in the future. *See In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 352 (S.D.N.Y. 2014).

Here, Co-Lead Counsel's work advanced the interest of the antitrust laws and protected investors who might otherwise be without recourse. *See In re Credit Default Swaps Antitrust Litig.*,

No. 13-md-2476 (DLC), 2016 WL 2731524, at *18 (S.D.N.Y. Apr. 26, 2016) ("*CDS Litig.*") ("Our antitrust laws address issues that go to the heart of our economy. Our economic health, and indeed our stability as a nation, depend upon adherence to the rule of law and our citizenrys' trust in the fairness and transparency of our marketplace."). These investors include many public institutions that guarantee the wellbeing of hardworking civil servants and employee pension funds protecting the pensions of industrious union members. Awarding a reasonable fee will encourage other counsel to further investigate and bring to light any misconduct in financial markets, which will promote more scrupulous industry practices, increased supervision to prevent misconduct, and ultimately lead to a fairer and more efficient market for all participants.

B. The Lodestar Cross-Check Confirms the Reasonableness of the Fee Request

When using the percentage method, courts may also require "documentation of hours as a 'cross check' on the reasonableness of the requested percentage," *Goldberger*, 209 F.3d at 50 (internal citation omitted), "to ensure that an otherwise reasonable percentage fee would not lead to a windfall." *Colgate-Palmolive*, 36 F. Supp. 3d at 353.

Lodestar is calculated by "multipl[ying] the reasonable hours billed by a reasonable hourly rate." *Colgate-Palmolive*, 36 F. Supp. 3d at 347. Courts use "prevailing market rates" and current rates, rather than historical rates, to calculate the lodestar figure to account for the delay in payment. *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) (citing *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989)). When used as a cross-check, "the hours documented by counsel need not be exhaustively scrutinized by the district court." *Goldberger*, 209 F.3d at 50.

Co-Lead Counsel have spent 15,048.80 hours litigating the Action from inception through May 16, 2023, producing a total lodestar amount of $12,247,303.50. The hourly billing rates for attorneys working on this case ranged from $365 to $1,595. *See* Exhibits A-E to the Joint Decl. Billing rates in the same range have been previously approved as reflective of market rates in New

York for work of comparable size and complexity. *See, e.g.*, *CDS Litig*, 2016 WL 2731524, at *17 (granting fee award using partner rates of $834 to $1,125 and associate rates of $411 to $714, *see* ECF No. 482); *In re Foreign Exchange*, No. 13 Civ. 7789, 2018 WL 5839691 (S.D.N.Y. Nov. 8, 2018) (granting fee award using partner rates up to $1,375 and associate rates of $350 to $700, *see* ECF No. 939).

The number of hours spent on this Action from inception through May 16, 2023, are reasonable, particularly in light of the level of independent investigation conducted by Co-Lead Counsel to understand the market, prepare numerous complaints, oppose four motions to dismiss and two motions for reconsideration, and negotiate four settlements that included the early production of cooperation material.

Awarding a 30% fee would result in a multiplier of 0.98 (which is sometimes referred to as a "negative multiplier" or "deflator"). Such a multiplier is well within accepted ranges and is warranted here. *See, e.g., Fikes Wholesale*, 62 F.4th at 727 (upholding fee award where the lodestar multiplier was 2.45); *In re LIBOR-Based Fin. Antitrust Litig.*, No. 11 MD 2262 (NRB), 2018 WL 3863445, at *4 (S.D.N.Y. Aug. 14, 2018) (noting "mean multiplier in this Circuit is approximately 1.55, with multipliers in antitrust and securities cases recently averaging 1.77 and 1.43, respectively"); *see also Maley*, 186 F. Supp. 2d at 369 (approving lodestar multiplier of 4.65 and noting that figure is "well within the range awarded by courts in this Circuit and courts throughout the country").

III. THE REQUEST FOR PAYMENT OF LITIGATION EXPENSES IS REASONABLE AND SHOULD BE GRANTED

Under the common fund doctrine, class counsel customarily are entitled to reimbursement of reasonable expenses incurred in the litigation. Fed. R. Civ. P. 23(h); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 392 (1970) (recognizing the right to reimbursement of expenses where a

common fund has been produced or preserved for the benefit of a class); *Meredith Corp*., 87 F. Supp. 3d at 671 (the attorneys whose work leads to the creation of "a common settlement fund for a class are entitled to the reimbursement of [reasonable] expenses that they advance to a class"); *In re Arakis Energy Corp. Sec. Litig.*, No. 95 CV 3431 (ARR), 2001 WL 1590512, at *17 n.12 (E.D.N.Y. Oct. 31, 2001) ("Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course."). Such costs are "compensable if they are of the type normally billed by attorneys to paying clients." *Guevoura Fund Ltd. v. Sillerman*, No. 1:15-cv-07192-CM, 2019 WL 6889901, at *22 (S.D.N.Y. Dec. 18, 2019). When "a class plaintiff successfully recovers a common fund for the benefit of a class, the costs of litigation should be spread among the fund's beneficiaries." *Maley*, 186 F. Supp. 2d at 369.

As detailed in the individual declarations filed concurrently herewith, Co-Lead Counsel incurred litigation expenses from inception through May 16, 2023 totaling $775,003.70. *See* Joint Decl. ¶95 and Exhibits A-E. These expenses were required (1) to carefully analyze issues of fact and law in the pleadings, (2) to defeat Defendants' motions to dismiss, and (3) to effectively manage a complex antitrust case against enormous (and enormously wealthy) business entities. Approximately 81% or $631,307.76 of these costs were spent on work performed by Plaintiffs' consultants. The work performed by Plaintiffs' consultants in this case helped to identify Plaintiffs' claims and to assess the magnitude of their damages; the related expenses were unquestionably "critically important" to the prosecution of this Action and constitute the type of reimbursements that "[c]ourts routinely award." *Colgate-Palmolive*, 36 F. Supp. 3d at 353. The remaining charges, comprising approximately 19% of Co-Lead Counsel's reimbursement request, consist of online research, data storage, filing and service fees, copying, mailing, telephone charges and travel and meal costs. These are all the type of out-of-pocket expenses that are routinely

reimbursed from common funds. *Yang v. Focus Media Holding Ltd.*, No. 11 Civ. 9051 (CM)(GWG), 2014 WL 4401280, at *19 (S.D.N.Y. Sept. 4, 2014) (finding computer research, photocopying, postage, meals, and court filing fees "necessary for Lead counsel to successfully prosecute this case").

IV. CONCLUSION

For the reasons set forth above, Co-Lead Counsel respectfully request that this Court award interim attorneys' fees in the amount of $12,000,000.00 or 30% of the Settlement Fund, plus interest on the awards at the same rate as earned by the Settlement Fund, and litigation expenses in the amount of $775,003.70, and for such other relief as the Court deems just and proper.

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