

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

IN RE JPMORGAN TREASURY FUTURES
SPOOFING LITIGATION

Case No. 1:20 Civ. 03515

Hon. Paul A. Engelmayer

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**JOINT DECLARATION OF VINCENT BRIGANTI AND KAREN M. LERNER IN
SUPPORT OF (A) CLASS PLAINTIFFS' MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT WITH JPMORGAN CHASE & CO., J.P. MORGAN
CLEARING CORP., J.P. MORGAN SECURITIES LLC, AND J.P. MORGAN
FUTURES, INC.; AND (B) CLASS COUNSEL'S MOTION FOR AN AWARD
OF ATTORNEYS' FEES AND PAYMENT OF EXPENSES**

Pursuant to 28 U.S.C. § 1746, we, Vincent Briganti and Karen M. Lerner, hereby declare as follows:

1. We are members of the bar of this Court and, respectively, are Chairman and a Shareholder with the law firm of Lowey Dannenberg, P.C. (“Lowey”) and partner with the law firm of Kirby McInerney LLP (“Kirby”) (collectively, “Class Counsel”), Court-appointed Lead Counsel in the above-referenced Action. *See* ECF No. 74.¹ On December 9, 2021, the Court appointed Lowey and Kirby as Class Counsel to the Settlement Class for purposes of the Settlement. *See* ECF No. 74 at ¶ 4.

2. Lowey and Kirby have been actively involved in prosecuting and resolving this Action, are familiar with its proceedings, and have personal knowledge of the matters set forth herein.

3. Unless otherwise defined herein, all capitalized terms have the same meaning as defined in the Stipulation and Agreement of Settlement with JPMorgan Chase & Co., J.P. Morgan Clearing Corp. J.P. Morgan Securities LLC, and J.P. Morgan Futures, Inc. (collectively, “JPMorgan”)² dated September 8, 2021 (“Settlement Agreement”). *See* ECF No. 69-1.

4. We submit this Joint Declaration in connection with (i) Class Plaintiffs’ Motion for Final Approval of Class Action Settlement with JPMorgan, and (ii) Class Counsel’s Motion for an Award of Attorneys’ Fees and Payment of Litigation Expenses (“Fee and Expense Application”).

¹ Unless otherwise noted, all docket citations are to the docket in this Action, case no. 1:20 Civ. 3515 (PAE) (S.D.N.Y.).

² J.P. Morgan Clearing Corp. is now known as J.P. Morgan Securities LLC. J.P. Morgan Futures, Inc. is now known as J.P. Morgan Securities LLC.

I. Introduction

5. The Settlement provides for a \$15,700,000 cash payment (the “Settlement Fund”) to the Settlement Class and, if approved, would resolve this Action. In addition to providing relief to the Settlement Class now, the Settlement avoids the substantial risk, expense, and delay of taking this Action to trial, including the risk that the Settlement Class would recover less than the amount of the Settlement Fund at trial, or nothing at all, after additional years of litigation.

6. Negotiations leading to the Settlement were entirely non-collusive and strictly arm’s length among experienced counsel. Class Plaintiffs and Class Counsel were well-informed of the strengths and weaknesses of Class Plaintiffs’ claims asserted in this Action at the time they reached the Settlement. Class Counsel had the benefit of information from its factual and economic investigation and analyses, regulatory investigations, and settlements involving JPMorgan.

7. As set forth below, we respectfully submit that the Settlement constitutes an excellent result for the Settlement Class given the substantial litigation risks, and that the Settlement should be approved.

8. We also respectfully submit that the Distribution Plan should be approved. The Distribution Plan was developed by Class Counsel in consultation with their experts. It was designed to fairly and reasonably allocate the Net Settlement Fund among Authorized Claimants based on the estimated impact of JPMorgan’s alleged misconduct on market transactions, while at the same time serving as a cost-efficient and equitable way to distribute the Net Settlement Fund. The Distribution Plan’s approach to allocation is consistent with many other distribution plans that have been approved by courts in this District and elsewhere.

9. As to the Fee and Expense Application, the Class Notice informed the Settlement Class that Class Counsel, on behalf of all Plaintiffs’ Counsel, would apply for an award of

attorneys' fees of no more than one-third of the Settlement Fund, plus payment of litigation expenses and costs not to exceed \$500,000, and interest on such attorneys' fees and litigation expenses and costs. The Class Notice also advised the Settlement Class that Class Plaintiffs may seek an Incentive Award from the Settlement Fund of up to \$5,000 per Class Plaintiff or \$45,000 in the aggregate.

10. Consistent with the Class Notice, Class Counsel, on behalf of all Plaintiffs' Counsel, move for an attorneys' fee award of one-third of the total Settlement Fund less any Court-awarded litigation expenses and costs and Incentive Awards (or \$5,117,163.68), plus payment of \$303,508.96 in litigation expenses and costs, and interest on such attorneys' fees and litigation expenses and costs. The Fee and Expense Application seeks attorneys' fees and payment of litigation costs and expenses in connection with the prosecution of this Action. Unless otherwise stated, this Joint Declaration focuses on the time period of March 11, 2020 (case inception) through February 28, 2022. Class Counsel believe the requested attorneys' fee award is reasonable based on Class Counsel's efforts, the risk they undertook, and the results they achieved. The requested payment for litigation expenses and costs should also be approved because these expenses and costs were reasonably and necessarily incurred in the prosecution of this Action. In addition, Class Counsel believe that Class Plaintiffs' request for incentive awards totaling \$45,000 is reasonable under the circumstances and should be approved by the Court.

11. This Joint Declaration is organized as follows: (a) Section II provides an overview of Class Counsel's efforts to investigate JPMorgan's alleged manipulation of the U.S. Treasury Futures market and the development of Class Plaintiffs' complaints; (b) Section III sets forth the details concerning the negotiation process that led to the Settlement; and (c) Section IV sets forth

Class Counsel's total hours invested in prosecuting this Action along with the related lodestar, and the litigation expenses and costs incurred in furtherance of this Action.

II. Case Development and Initial Pleadings

12. In its 2019 Annual Report released on or about February 25, 2020, JPMorgan disclosed that it was under investigation for unspecified trading practices in, among others, the U.S. Treasuries markets. The disclosure did not identify the trading practices or the time period of the regulator's investigation.

13. Class Counsel, along with Supporting Counsel ("Plaintiffs' Counsel")³ began investigating whether JPMorgan had manipulated the U.S. Treasury Futures markets. For example, Plaintiffs' Counsel analyzed significant amounts of publicly available futures market data, undertook further factual research concerning potential misconduct in the U.S. Treasury Futures markets, compared the facts surrounding the JPMorgan disclosure concerning the U.S. Treasury market to ongoing regulatory probes in the precious metals market, and consulted their extensive legal and factual research developed in prior, successful commodity spoofing cases.

14. Plaintiffs' Counsel analyzed their clients' transaction records to confirm that their clients had entered into U.S. Treasury Futures during the relevant period.

15. As a result, on May 1, 2020, Plaintiffs Charles Herbert Proctor, III and Synova Asset Management, LLC, represented by Class Counsel, filed the initial complaint against JPMorgan in the U.S. District Court for the Northern District of Illinois alleging that Defendants violated the Commodity Exchange Act, 7 U.S.C. §§ 1 *et. seq.* ("CEA"), and the common law by intentionally manipulating the prices of U.S. Treasury Futures contracts ("U.S. Treasury Futures")

³ "Plaintiffs' Counsel" means Class Counsel, together with Scott+Scott Attorneys at Law LLP ("Scott+Scott"), Cafferty Clobes Meriwether & Sprengel LLP ("Cafferty"), and Freed Kanner London & Millen LLC ("Freed Kanner"). Scott+Scott, Cafferty and Freed Kanner are collectively referred herein as "Supporting Counsel."

and options on those contracts (“Options on U.S. Treasury Futures”) traded on United States-based exchanges, including but not limited to the Chicago Mercantile Exchange (“CME”) and its subsidiary the Chicago Board of Trade (“CBOT”) from April 1, 2008 through January 31, 2016 (the “Class Period”).⁴

16. Plaintiffs alleged that JPMorgan intentionally manipulated the prices of U.S. Treasury Futures and Options on U.S. Treasury Futures by “spoofing,” which is the intentional placing of orders with the intent to cancel them prior to execution to send false and illegitimate supply and demand signals to an otherwise efficient market. Plaintiffs alleged that JPMorgan caused U.S. Treasury Futures and Options on U.S. Treasury Futures prices to be artificial throughout the Class Period to financially benefit their trading positions, at the expense of other investors, including Plaintiffs and the proposed Class.

17. Subsequently, related actions were filed in the Northern District of Illinois and Southern District of New York. On October 9, 2020, all actions were ultimately transferred to this District and consolidated into this Action. *See* ECF No. 37.

18. On September 29, 2020, JPMorgan entered into a Deferred Prosecution Agreement (“DPA”) with the United States Department of Justice Criminal Division, Fraud Section (“DOJ”), and the United States Attorneys’ Office for the District of Connecticut (“USAOC”) to resolve criminal charges related to a scheme to defraud market participants in thousands of episodes of

⁴ *See Charles Herbert Proctor, III, et al., v. JPMorgan Chase & Co., et al.*, No. 20 Civ. 05360 (S.D.N.Y. May 1, 2020) (transferred from Northern District of Illinois), ECF No. 1; *see also Charles Herbert Proctor, III, et al., v. JPMorgan Chase & Co., et al.*, No. 20 Civ. 02666 (N.D. Ill. May 1, 2020), ECF No. 1.

unlawful trading in the U.S. Treasury Futures market between at least April 2008 and January 2016.⁵

19. Under the DPA, JPMorgan paid a total criminal monetary amount of \$920,203,609 in connection with the manipulation of, among other things, the U.S. Treasury Futures market. Included in this total amount was \$436,431,811 in criminal monetary penalties, \$172,034,790 in criminal disgorgement amount, and \$311,737,008 to be distributed at the DOJ and USAOC's sole discretion to compensate victims of JPMorgan's manipulation of U.S. Treasury Futures and Options on U.S. Treasury Futures, as well as other misconduct covered by the DPA. Of this victim compensation amount ("VCA"), the DOJ and USAOC specifically attribute \$33,584,906 as representing the minimum losses suffered by victims of JPMorgan's manipulation of U.S. Treasury Futures and Options on U.S. Treasury Futures.

20. JPMorgan admitted and acknowledged responsibility for the acts charged in the Information and as set forth in the Statement of Facts accompanying the Deferred Prosecution Agreement.

21. On September 29, 2020, the Commodity Futures Trading Commission ("CFTC") issued an order ("CFTC Order") filing and settling charges against JPMorgan for manipulative and deceptive conduct and spoofing that spanned at least from 2008 through 2016 and involved hundreds of thousands of spoof orders in U.S. Treasury Futures and precious metals futures

⁵ Deferred Prosecution Agreement, *U.S. v. JPMorgan Chase & Co.*, No. 3:20 Cr. 00175-RNC (D. Conn. Sep. 29, 2020), ECF No. 2; *see also* Information, *U.S. v. JPMorgan Chase & Co.*, No. 3:20 Cr. 00175-RNC (D. Conn. Sep. 29, 2020), ECF No. 1.

contracts on the Commodity Exchange, Inc., the New York Mercantile Exchange, and the Chicago Board of Trade.⁶

22. On October 9, 2020, this Court appointed Lowey and Kirby as interim co-lead counsel and granted the firms both the responsibility and authority to “negotiate with defense counsel with respect to settlement and other matters.” *See* ECF No. 37 at p. 14.

23. The Parties agreed to mediate shortly thereafter (*see* Section III, *infra*) and on December 2, 2020, the Court extended all case deadlines. *See* ECF No. 52.

24. Class Counsel continued to investigate the market for U.S. Treasury Futures and Options on U.S. Treasury Futures and work with their consulting experts to prepare a consolidated class action complaint. Class Counsel thoroughly vetted Class Plaintiffs’ transaction data to confirm that various Class Plaintiffs transacted in U.S. Treasury Futures on the very same days JPMorgan manipulated U.S. Treasury Futures, as identified in the DOJ and CFTC filings.

25. On April 2, 2021, Plaintiffs Budo Trading LLC, Thomas Gramatis, Kohl Trading LLC, M & N Trading, L.L.C., Port 22, LLC, Charles Herbert Proctor, III, Robert Charles Class A, L.P., Rock Capital Markets, LLC, and Synova Asset Management, LLC filed a consolidated class action complaint. *See* ECF No. 57. Class Plaintiffs are sophisticated investors with significant financial expertise and decades of collective experience trading U.S. Treasury Futures and Options on U.S. Treasury Futures.

26. Class Plaintiffs’ allegations and claims in this Action are based on a thorough investigation conducted by Class Counsel of, *inter alia*: (1) the U.S. Treasury Futures and U.S.

⁶ Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions, *In the Matter of JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., and J.P. Morgan Securities LLC*, Commodity Futures Trading Commission, No. 20-69 (Sept. 29, 2020), *available at*: <https://www.cftc.gov/media/4826/enfjpmorganchaseorder092920/> download.

Treasury Securities markets generally; (2) publicly available press releases, news articles, and other media reports related to regulatory and law enforcement investigations into manipulation of U.S. Treasury Futures; (3) publicly available documents concerning JPMorgan's business practices, formal regulatory investigations and enforcement proceedings, including by the DOJ and CFTC; (4) JPMorgan's SEC filings and other public reports; and (5) analyses and reports performed by consulting experts and interviews with market participants about the foregoing.

III. Settlement Negotiations

27. From October 2020 through September 2021, Class Counsel engaged in extensive settlement negotiations with JPMorgan over the material terms of the Settlement. During these negotiations, the Parties exchanged views on the risks of this Action, the likely damages, and potential terms for a Settlement and resolution of this Action. Class Counsel dedicated significant time to developing its settlement strategy and preparing talking points and presentations in support of the strategy.

28. Beginning in earnest in October 2020, Class Plaintiffs and JPMorgan discussed the possibility of settlement on behalf of the Class. These negotiations included numerous telephonic conferences, emails, and other communications.

29. On October 26, 2020, the Parties asked the Court to extend all pending deadlines while they established a framework for settlement negotiations and selected a mediator, which relief the Court granted. *See* ECF Nos. 41, 43. The Parties later agreed to the selection of Jed D. Melnick, Esq. (JAMS), a well-respected and experienced mediator with a track record of successfully helping parties to resolve significant and high-profile disputes, including securities and complex class actions.

30. Prior to the mediation, Class Plaintiffs negotiated the exchange by JPMorgan of over 300 gigabytes of U.S. Treasury Futures or Options on U.S. Treasury Futures trade data for

JPMorgan transactions, including data for the full duration of the Class Period (the “Mediation Information”). The Mediation Information provided Class Plaintiffs with the ability to assess the scope of JPMorgan’s alleged manipulation and its impact on market participants.

31. Working closely with consulting experts, Class Counsel developed a damage model that identified instances of JPMorgan’s alleged manipulation throughout the Class Period. Class Counsel’s consulting experts then calculated the number and impact of the alleged manipulative events on the U.S. Treasury Futures and Options on U.S. Treasury Futures markets. Based on the analysis of Class Counsel’s consulting experts, the alleged manipulation impacted thousands of market participants. Class Counsel, together with their consulting experts, continuously refined and updated the damage model throughout the course of settlement negotiations. Class Counsel, in consultation with their experts, were also able to preliminarily estimate class wide damages of between \$50 to \$60 million, assuming Class Plaintiffs succeed on all triable issues. This analysis was critical to supporting Class Counsel’s contention that the damages to Class Members exceeded the losses recovered by VCA, supporting Class Plaintiffs’ argument for further compensation to the Settlement Class.

32. Based on the final iteration of this damage analysis, Class Counsel estimate that the losses recovered by the VCA represents between 56% and 67% of the damages incurred on U.S. Treasury Futures and Options on U.S. Treasury Futures caused by JPMorgan.⁷

33. On February 9, 2021, the Parties exchanged detailed mediation statements. On February 16, 2021, the Parties participated in a full day Zoom mediation session with Mr. Melnick that included robust presentations of the Parties’ respective litigation risks—including the existence of the government settlements—and presentations of each Party’s damages analysis,

⁷ This work was also incorporated into the proposed Distribution Plan, via the Futures Contract Specification Multiplier.

followed by questions and critiques from the opposing Party. The mediation session did not result in a settlement.

34. Following the mediation session, Mr. Melnick continued facilitating discussions between the Parties over the course of the next month. On March 10, 2021, Mr. Melnick presented the Parties with a mediator's proposal for a \$15,700,000 settlement that also included further exchange of Mediation Information. Each Party accepted the proposal.

35. Based on Class Counsel's consulting experts' damage analysis, the Settlement represents between roughly 26.2% to 31.4% of recoverable class wide damages in this Action, without considering any potential restitution award available from the DOJ. Collectively, the Settlement and the portion of the VCA attributable to U.S. Treasury Futures and Options on U.S. Treasury Futures constitute approximately 82% to 98% of estimated class wide damages caused by JPMorgan in the market for U.S. Treasury Futures and Options on U.S. Treasury Futures. In addition to providing recovery, the Settlement avoids the risk of continued litigation, particularly in light of the substantial risks outlined above.

36. After weeks of additional negotiations, on May 25, 2021, Class Plaintiffs and JPMorgan executed a binding settlement term sheet. At the time the term sheet was executed, Class Counsel was well-informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the asserted claims and defenses. As part of the negotiations and as memorialized in the term sheet, JPMorgan agreed to provide further Mediation Information that included non-privileged chats from various custodians that (a) JPMorgan previously provided to regulators; (b) hit upon relevant search terms used in connection with regulatory productions; (c) hit upon additional search terms relevant to futures contracts and options on futures contracts; and (d) underwent human review on or before June 24, 2021. This

production of further Mediation Information included 167,225 documents consisting of 5,841,744 pages and at least 100,000 e-mails and Bloomberg chats throughout the relevant time period. Class Counsel used the emails and chats, along with Class Plaintiffs' earlier analysis of JPMorgan's trade data, to confirm that the proposed settlement amount was reasonably supported.

37. On May 26, 2021, Class Plaintiffs and JPMorgan reported to the Court that they had reached an agreement in principle to resolve this Action and requested that the Court stay the case for ninety (90) days to provide the Parties with an opportunity to finalize and file formal settlement documents, which the Court granted. *See* ECF Nos. 60, 62. On August 19, 2021, the Court granted Class Plaintiffs' request to extend the stay an additional thirty (30) days. *See* ECF No. 65.

38. Class Counsel and JPMorgan spent several months preparing and revising the Settlement Agreement and finalizing agreement on key provisions. On September 8, 2021, the Parties executed the Settlement Agreement. When the Settlement was executed, Class Counsel and Class Plaintiffs had access to sufficient information to allow them to conclude that the proposed Settlement was fair, reasonable, and adequate.

39. Negotiations leading to the Settlement were entirely non-collusive and strictly arm's length. And, as discussed above, prior to reaching the Settlement, Class Plaintiffs and Class Counsel were well-informed of the strengths and weaknesses of Class Plaintiffs' claims. Class Counsel had the benefit of information from their investigations and analyses, regulatory investigations, and settlements involving JPMorgan.

40. At all times while negotiating and executing the proposed Settlement with JPMorgan, Class Plaintiffs were represented by Class Counsel, who have significant experience prosecuting federal class action claims arising under the CEA. *See* ECF Nos. 69-7 and 69-8; *see*

also ECF No. 37 (noting that Class Counsel have extensive experience in commodities cases and futures manipulation, including “secur[ing] the two largest recoveries ever in CEA cases”). Defendants were represented by Sullivan & Cromwell LLP, a leading international law firm that has significant experience defending high-profile clients in federal class actions, including class actions arising under the CEA.

41. The consideration that JPMorgan has agreed to pay is within a range that may be found to be fair, reasonable, and adequate at final approval. The Settlement may also serve to enhance the recovery for Class Members to the extent they are also eligible to receive proceeds from the VCA administered by the DOJ.

42. The Settlement involves a structure and terms that are common in class action settlements, including a confidential Supplemental Agreement that provides JPMorgan with a qualified right to terminate the Settlement in the event that the volume of U.S. Treasury Futures or Options on U.S. Treasury Futures transacted by Class Members, who timely exercise their right to request exclusion from the Settlement Class, exceeds a certain percentage. *See* ECF No. 69-1 § 19(D).

43. On September 22, 2021, Class Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement, Class Plaintiffs’ memorandum of law in support, and a joint declaration with eight (8) accompanying exhibits. *See* ECF Nos. 67-70.

44. On December 9, 2021, the Court preliminarily approved the Settlement as set forth in the Settlement Agreement, as being within the range of what may be found to be fair, reasonable, and adequate to the Settlement Class. *See* ECF No. 74.

45. JPMorgan has agreed to pay \$15,700,000 to Class Plaintiffs and the Settlement Class. The Court preliminarily certified the following Settlement Class:

All Persons and entities wherever located that transacted in U.S. Treasury Futures or Options on U.S. Treasury Futures on United States-based exchanges, including but not limited to the Chicago Mercantile Exchange, including its subsidiary the Chicago Board of Trade, from April 1, 2008 through January 31, 2016 (the “Class Period”). Excluded from the Settlement Class are (i) any judicial officer presiding over this Action, and the members of his or her immediate family and judicial staff; (ii) the United States Government; and (iii) the Defendants and any past or present parent, subsidiary, affiliate or division of any Defendant; provided, that any Investment Vehicle shall not be excluded from the Settlement Class, but under no circumstances may JPMorgan (or any of its past or present parents, subsidiaries, affiliates, or divisions) receive a distribution for its own account from the Settlement Fund through an Investment Vehicle. Also excluded from the Settlement Class is any Person or entity who or which properly excludes himself, herself, or itself by filing a valid and timely request for exclusion in accordance with FED R. CIV. P. 23(c) and in accordance with the procedure to be established by the Court.

See ECF No. 74 at ¶ 3.

46. The Court also approved the Class Notice plan, preliminarily approved the Distribution Plan for the Settlement, and scheduled the hearing for final approval of the Settlement. *See* ECF Nos. 74 and 76.

47. Pursuant to the Preliminary Approval Order, *see* ECF No. 74, Class Counsel and the Court-approved Settlement Administrator, A.B. Data, Ltd (“A.B. Data”) implemented a robust notice program whereby notice was given to potential Settlement Class Members by mail and publication.

48. The Court-approved Class Notice disclosed, among other things, the following information to Settlement Class Members: (i) the \$15,700,000 Settlement Fund; (ii) the Distribution Plan; (iii) that Class Counsel would apply, on behalf of all Plaintiffs’ Counsel, for an award of attorneys’ fees of no more than one-third of the Settlement Fund, plus payment of litigation expenses and costs, and interest on such attorneys’ fees and litigation expenses and costs; (iv) that requests for exclusion from the Settlement must be mailed to the Settlement Administrator and received no later than April 18, 2022; (v) that objections to the Settlement, Distribution Plan,

or the Fee and Expense Application must be received and filed no later than April 18, 2022; and (vi) that the deadline for submitting Proofs of Claim and Release is June 30, 2022.

49. As detailed in the concurrently filed Declaration of Jack Ewashko of A.B. Data, Ltd., pursuant to the Court-approved notice program, A.B. Data mailed a total of 27,964 copies of the Notice of Pendency of Class Action (the “Postcard Notice”), via first-class mail, to Settlement Class Members. Additionally, A.B. Data posted the Class Notice, Postcard Notice, and Claim Form, along with other relevant documents, on the website developed for this Settlement, www.treasuryfuturesclassactionsettlement.com, and has caused the Publication Notice to be published in the print editions of *The Wall Street Journal* and *Investor’s Business Daily* on January 10, 2022.

50. Class Notice has been issued, and to date, there have been no requests for exclusion and there are no objections. The deadline for Settlement Class Members to file objections and requests for exclusion from the Settlement is April 18, 2022.

IV. Class Counsel’s Application for an Award of Attorneys’ Fees and Payment of Litigation Expenses

51. The Class Notice advised the Settlement Class that Class Counsel would apply for an award of attorneys’ fees in an amount not to exceed one-third of the Settlement Fund, plus payment of litigation expenses and costs, and interest on such attorneys’ fees and litigation expenses and costs. The Class Notice also advised the Settlement Class that Class Plaintiffs may seek an Incentive Award from the Settlement Fund of up to \$5,000 per Class Plaintiff or \$45,000 in the aggregate. The Fee and Expense Application we are now submitting is fully consistent with the Class Notice.

52. As Class Counsel’s firm résumés demonstrate, Class Counsel are skilled and accomplished litigators in commodities litigation with successful track records in some of the

largest class actions throughout the country. *See* ECF Nos. 69-7 and 69-8.

53. As they prosecuted this Action, Class Counsel allocated work assignments amongst themselves in a manner that facilitated efficiency and avoided unnecessary duplication of effort. Class Counsel utilized pre-designated Supporting Counsel, Scott+Scott, Cafferty, and Freed Kanner as necessary to contribute information they developed during their initial investigations for the benefit of the Class, to coordinate with Class Plaintiffs when needed, and to conduct research and prepare memoranda used to develop arguments, briefs, and strategy for this Action. *See* ECF No. 37 at 14 (designating “Cafferty, Scott+Scott, and Freed Kanner to serve as pre-designated support”).

54. Work assignments were allocated to appropriate personnel based on skill, experience, and availability. Class Counsel coordinated work regularly and monitored the work performed by its attorneys, paralegals, and professionals, as well as the attorneys from Scott+Scott, Cafferty, and Freed Kanner who were used to provide additional support with particular tasks.

55. Class Counsel seeks a fee award of \$5,117,163.58, which is one-third of the Settlement Fund less litigation expenses and Incentive Awards, if such awards are granted in full, plus interest. As detailed in the concurrently filed individual declarations, Plaintiffs’ Counsel invested over 4,780 hours in this Action, with Class Counsel contributing 3,223.20 of those hours.

56. Class Counsel bore the risk of litigating and funding this Action entirely on a contingent basis. There are numerous contingency-fee cases in which counsel have contributed thousands of hours of service to the class’s claims and advanced substantial sums of money, only to receive no compensation for their work.

57. Notwithstanding, Class Counsel fully devoted substantial attorney time and resources to the prosecution of the Action. Early on, recognizing the complexities of the claim,

Class Counsel also involved expert resources, which further increased the financial risk they undertook. Expert costs totaled \$252,698.76, or approximately 83.3% of total expenses. The expenditure of these and other litigation costs were reasonably necessary to effectively litigate the Action and are further evidence of Class Counsel's commitment. Summaries of the expenses by category are located in the separate firm declarations in support of the Fee and Expense Application.

58. Scott+Scott devoted appropriate staff time and resources towards this Action for the benefits of the Settlement Class. Accompanying the Fee and Expense Application is the Declaration of Daryl F. Scott, dated March 29, 2022, on behalf of Scott+Scott. As described in the declaration, Scott+Scott assisted Class Counsel by contributing information resulting from their initial investigations into the alleged misconduct, assisting in preparing the Consolidated Amended Complaint, and assisting in the preparation for the mediation. Scott+Scott also advanced reasonable expenses in this Action.

59. Cafferty devoted appropriate staff time and resources towards this Action for the benefits of the Settlement Class. Accompanying the Fee and Expense Application is the Declaration of Jennifer W. Sprengel, dated March 15, 2022, on behalf of Cafferty. As described in the declaration, Cafferty assisted Class Counsel by contributing information resulting from their initial investigations into the alleged misconduct, assisting in preparing the Consolidated Amended Complaint, and assisting in the preparation for the mediation. Cafferty also advanced reasonable expenses in this Action.

60. Freed Kanner devoted appropriate staff time and resources towards this Action for the benefits of the Settlement Class. Accompanying the Fee and Expense Application is the Declaration of Douglas A. Millen, dated March 28, 2022, on behalf of Freed Kanner. As described

in the declaration, Freed Kanner assisted Class Counsel by contributing information resulting from their initial investigations into the alleged misconduct, assisting in preparing the Consolidated Amended Complaint, and assisting in the preparation for the mediation. Freed Kanner also reviewed client trading activity records and assisted in assessing, documenting, and establishing Class Plaintiffs' claims. Freed Kanner also advanced reasonable expenses in this Action.

61. These declarations also identify the attorneys and support staff that worked on this Action, their hourly rates and number of hours billed, and the lodestar value of their time. Each firm also reviewed its time and expenses for accuracy, necessity, and reasonableness. Class Counsel also reviewed Supporting Counsel's time as part of their supervision of the case. As a result of this review, where applicable, Class Counsel made reductions in time and expenses in the exercise of billing judgment and consistent with the Court-approved Billing and Expense Protocol. *See* ECF No. 31-3. Class Counsel also excluded any time and lodestar relating to the motion to appoint interim lead counsel, and any time in relation to the Fee and Expense Application.

62. The following chart summarizes the aggregate hours and lodestar of Plaintiffs' Counsel, as set forth in more detail in the separate firm declarations.

Firm Name	Hours	Lodestar
Lowey Dannenberg, P.C.	1,151.80	\$1,001,360.50
Kirby McInerney LLP	2,071.40	\$1,313,852.00
Scott+Scott Attorneys at Law LLP	715.00	\$498,371.00
Cafferty Clobes Meriwether & Sprengel LLP	381.70	\$208,865.00
Freed Kanner London & Millen LLC	460.80	\$386,060.50
Total:	4,780.70	\$3,408,509.00

63. If granted, the requested attorneys' fees would award Class Counsel a multiplier of approximately 1.5 on their lodestar (*i.e.*, \$5,117,163.68 / \$3,408,509.00).

64. Class Counsel seeks expenses in the amount of \$303,508.96, plus interest. The categories of expenses, the amount incurred by each firm, and how each firm believes the expenses were reasonable are set forth in the respective concurrently filed individual declarations.

65. The expenses of each firm, combined, were as follows.

Firm Disbursements	
Expense Category	Amount
Experts/consultants	\$252,698.76
Mediation	\$7,614.00
Computer Research	\$9,343.45
Photocopies - in House	\$272.50
Court Costs	\$3,041.00
Document Production/Discovery	\$29,569.87
Postage	\$25.72
Federal Express	\$39.25
Hearing Transcripts	\$345.42
Telephone/telecopier	\$186.69
Service of Process	\$372.30
Total:	\$303,508.96

V. Conclusion

66. For the reasons set forth above and in the accompanying memoranda of law, we respectfully submit that: (i) the terms of the Settlement are fair, reasonable, and adequate in all respects and should be approved; (ii) the Distribution Plan is fair and reasonable and should be approved; and (iii) the Fee and Expense Application is reasonable, supported by the facts and law, and should be granted.

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

Executed on April 1, 2022
White Plains, New York

Executed on April 1, 2022
New York, New York

/s/ Vincent Briganti

Vincent Briganti

Karen M. Lerner

Karen M. Lerner