UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

COMMODITY EXCHANGE, INC., GOLD FUTURES AND OPTIONS TRADING LITIGATION

This Document Relates To All Actions

Case No. 14-MD-2548 (VEC)
14-MC-2548 (VEC)

Hon. Valerie E. Caproni

JOINT DECLARATION OF DANIEL L. BROCKETT AND MERRILL G. DAVIDOFF IN SUPPORT OF (1) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF TWO SETTLEMENTS, FINAL APPROVAL OF THE PLAN OF ALLOCATION, AND FOR CERTIFICATION OF THE SETTLEMENT CLASS; AND (2) CO-LEAD COUNSEL'S MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES

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Pursuant to 28 U.S.C. § 1746, we, Daniel L. Brockett and Merrill G. Davidoff, declare as follows:

1. We are, respectively, partners of the law firms of Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel") and Berger Montague, P.C. ("Berger Montague"). Our firms are interim co-lead counsel ("Co-Lead Counsel") for the class in the above captioned action (the "Action"). By orders dated December 9, 2016, and February 12, 2021, the Court granted preliminary approval to the Stipulations and Agreements of Settlement with Deutsche Bank and HSBC, and appointed us settlement class counsel for the Settlement Class. ECF Nos. 187, 515. We have been actively involved in prosecuting and resolving this Action since late 2013, are familiar with its proceedings, and have personal knowledge of the matters set forth herein.

2. The Settlements[1] provide for $102 million in cash payments (the "Settlement Fund"), and, if approved, would resolve the Action with the Settling Defendants. The Settlements provide an immediate cash benefit to the Settlement Classes while avoiding the substantial risk, expense, and delay of taking this Action to trial against the Settling Defendants, including the risk that the Settlement Classes would recover less than the amount of the Settlement Fund at trial, or nothing at all, after additional years of litigation. The Settlements also provide for each Settling Defendant's cooperation in the continuing prosecution of Plaintiffs' claims against the remaining Defendants.

3. The Settlements are products of hard-fought, arm's-length negotiations among experienced counsel. Based on our extensive pre-suit investigation, a thorough analysis of the

[1] The foregoing Stipulations and Agreements of Settlement are collectively referred to as the "Settlements," and the defendants referenced therein are collectively referred to as the "Settling Defendants." Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in the Settlements.

record, and familiarity with the challenges the Action faces after litigating it for over ***seven years***, we believe the Settlements are an outstanding result for the Settlement Classes in light of the substantial litigation risks.

4. For these reasons and those set forth below, we believe the Settlements should be approved. We therefore respectfully submit this declaration in support of Plaintiffs' motion for final approval of the Settlements, and for Co-Lead Counsel's motion for an award of attorneys' fees and expenses.

I. CO-LEAD COUNSEL'S PROSECUTION OF THE ACTION

5. As explained further below, over the past several years Co-Lead counsel have carried out a myriad of tasks for the benefit of the class, including, among other things:

- investigating the facts and legal theories that formed the basis for Plaintiffs' allegations, including reviewing publicly available information and news articles, and extensively consulting with economic and industry non-testifying expert consultants to identify economic and statistical evidence of collusion in the market;
- preparing an extensive "tutorial" for the Court to assist it in understanding the case and the issues presented in Defendants' motions to dismiss;
- responding to hundreds of pages regarding the potential dismissal of Plaintiffs' claims, both by way of numerous complaint amendments and by way of opposition briefs and oral argument;
- negotiating and briefing numerous case management and scheduling adjustments, accounting for such myriad situations as government-requested stays and pandemic-related challenges;

- engaging in extensive negotiations concerning the scope of discovery, search terms and custodians;
- engaging in discovery-related motion practice on issues such as implications of the laws of France, the United Kingdom, and Singapore on discovery from the Defendants;
- engaging in detailed data-discovery efforts both of Defendants and third parties, to obtain information likely necessary for, among other things, class certification—work that required constant coordination with our non-testifying expert consultants to help ensure we were receiving the data needed for the case;
- working extensively with our non-testifying consultants to respond to Defendants' ongoing quest to engage in discovery into their work;
- obtaining and reviewing documents produced in this case, which amounted to over 2.7 million documents produced by Defendants and over 15,000 documents produced by Plaintiffs, in addition to documents and data produced by numerous third-parties;
- preparing for deposition discovery—though the first deposition occurred shortly after the HSBC Settlement was signed, preparations began long before including in the identifying of witnesses, negotiating protocols, and integrating results of the document review; and
- working extensively with our non-testifying expert consultants in preparing for certification and/or summary judgment.

6. As expounded upon below, the case itself is very complex and thus required significant investments in time and resources. For instance, Plaintiffs seek to establish a

conspiracy spread across multiple years and impacting multiple types of investments. To help prove that case, Co-Lead Counsel have had to gather many millions of records from a myriad of parties, all the while dealing with assertions of confidentiality, bank secrecy laws, and privacy considerations. And at every turn, Co-Lead Counsel were facing numerous, well-funded counsel, all of whom on issues great and small zealously fought for their respective clients.

A. Co-Lead Counsel Lead the Case Through An Almost Five-Year Pleading Stage

1. Co-Lead Counsel conduct extensive pre-filing investigations and file a best-in-class initial pleading

7. Quinn Emanuel began our investigation into the possibility of gold benchmark manipulation in early November 2013, before any government investigations or the possibility of gold price manipulation were reported in the press. We immediately began investigating potential antitrust violations and retained a private investigation firm and an economist to assist in our inquiry. We purchased a sizeable amount of gold tick data, which Dr. Abrantes-Metz analyzed. As explained further in Section I.C below, in early 2014, we also hired Andrew Caminschi to analyze gold data. Berger Montague had also been investigating potential claims in the gold market, including by way of their existing clients which included gold traders. Dr. Abrantes-Metz and Mr. Caminschi were subsequently jointly retained by Quinn Emanuel and Berger Montague. Our investigation continued, including but without limitation by way of retention and consultation with other non-testifying expert consultants.

8. In February 2014, *Bloomberg* published a portion of Dr. Abrantes-Metz's work. A number of class actions were subsequently filed.

9. Based on their extensive pre-filing investigation, Co-Lead Counsel filed their first complaint in this Action in March 2014. Case No. 14-cv-2213, ECF No. 2. As we had direct access, by way of our pre-existing engagement with the non-testifying consultants, our

Complaint went beyond those filed by other firms, who merely could parrot the subset of findings that had been published by *Bloomberg*.

10. In August 2014, the Judicial Panel on Multidistrict Litigation ordered the coordination of all related actions. *See* ECF No. 3.

2. Co-Lead Counsel continue their investigations and file the Consolidated Class Action Complaints

11. In December 2014, Co-Lead Counsel filed the Consolidated Amended Class Action Complaint. ECF No. 27. At 108 pages plus 86 pages of supporting appendices, it was over ***double*** the size of the initial pleading, adding allegations based on months' worth of additional analyses and investigations, including extensive additional statistical studies. These included additional studies on suspicious downward price spikes around the PM Fixing, as well as additional appendices that included a preliminary list of days where Defendants' conduct resulted in artificial downward movement of the PM Fixing, a preliminary list of days where Plaintiffs' sales coincided with potential Defendant manipulation of the PM Fixing, and records of price changes.

12. In February 2015, Defendants filed motions to dismiss the Consolidated Amended Class Action Complaint. In addition to 65 pages in briefs, Defendants lodged almost 400 pages of materials in purported support of the motions. ECF Nos. 36, 37 40.

13. Later that month, Co-Lead Counsel informed the Court that Plaintiffs were exercising their right to amend the pleading pursuant to Federal Rule of Civil Procedure 15(a)(1)B). ECF No. 41.

14. In March 2015, Co-Lead Counsel filed the Second Consolidated Class Action Complaint. ECF No. 44. This version of the complaint stood at 150 pages long, plus 89 pages of supporting appendices. The amended complaint included additional studies on suspicious

downward price spikes around the PM Fixing, how these trends were incongruous compared to the AM Fixing and other gold price trends, and the extent to which the Defendant Banks' gold-related investments and positions suggested their motive to conspire.

3. Co-Lead Counsel oppose Defendants' motions to dismiss

15. Between April 2015 and July 2015, the parties briefed Defendants' three motions to dismiss the Second Consolidated Class Action Complaint. Between briefs and supporting declarations, as well as later-filed supplemental submissions, over 900 pages of materials were filed by the parties. ECF Nos. 72, 74, 76, 77 (motion papers); 82, 83, 84 (opposition papers); 88, 91, 92 (reply papers); 135, 136, 149, 150, 156, 157 (letters regarding supplemental authority and arguments).

16. In April 2016, the Court issued a list of specific topics to be covered in the upcoming hearing on Defendants' motions to dismiss. *See* ECF No. 128. Preparation for the hearing included, of course, Co-Lead Counsel reviewing the record; conducting additional legal research; discussing the parties' positions and the Court's questions with our retained non-testifying consultants; and preparing the requested one-hour, forty-five minute presentation.

17. Based on ongoing legal research by Co-Lead Counsel and discussions with the non-testifying consultants, as discussed above, following oral argument the parties submitted additional arguments and supplemental authority throughout mid-2016. *See* ECF Nos. 135, 136, 149, 150, 156, 157.

4. Co-Lead Counsel invest additional time and consultant resources in a gold "tutorial"

18. In June 2015—around the time Co-Lead Counsel were working on opposing Defendants' motions to dismiss the Second Consolidated Class Action Complaint—the Court

issued an order requiring the parties to confer and make a proposal for a "tutorial" to the Court. ECF No. 81.

19. Over the course of the next several weeks, Co-Lead Counsel had to coordinate not just with Defendants here, but also with counsel for plaintiffs and defendants in the *Silver* action. In July 2015, the parties submitted the outlines of a proposed process for moving the tutorial forward. ECF No. 86.

20. Though the Court requested a neutral presentation, the parties could not reach agreement as to what that even meant, or how to frame certain issues in a "neutral" way. After further negotiations failed to reach an agreement on what topics were even properly part of the tutorial process—rather than being advocacy on the motions to dismiss—motion practice ensued over what the tutorial would even be about. ECF Nos. 95-97, 99.

21. Co-Lead Counsel also had to invest further into the tutorial effort to actually put the presentations together. This included preparing multiple attorneys to present the tutorial, an effort that required coordination with numerous non-testifying consultants. But it also meant continuing to police the other side, to ensure the tutorial remained as neutral as possible. And it meant continuing to coordinate with the *Silver* parties. All parties went through multiple rounds of edits and conferrals on their respective presentations and materials to be presented to the Court.

22. In late 2015, the parties gave the requested "tutorial" to the Court. It lasted a full day, and involved the submission of a PowerPoint deck consisting of over 100 slides designed to help the Court understand the basics of the market, gold trading, the Fixing process, and other background issues regarding the case.

5. Co-Lead Counsel further investigate to revive the dismissed early-year claims by way of a Third Consolidated Amended Class Action Complaint

23. In October 2016, the Court granted in part and denied in part Defendants' motions to dismiss the Second Consolidated Class Action Complaint. ECF No. 158. The Court further stated that any attempt to further amend the complaint "may be futile" but nevertheless gave Plaintiffs 14 days "to show good cause why leave to file a Third Amended Complaint should be granted." *Id.* at 72.

24. Due to the volume of material and additional consultant work envisioned to address the perceived shortcomings in the complaint, the Court granted Co-Lead Counsel's request for an extension of time to file a new amended pleading. ECF No. 160.

25. As the Court had previously dismissed as implausible conspiracy claims arising prior to 2006, for instance, Co-Lead Counsel yet again worked with our non-testifying expert consultants to develop additional analyses focusing on buttressing claims tied to earlier years. *See id.* at 6-7 (arguing why amendment was not futile as to early-period claims).

26. For instance, Co-Lead Counsel added additional studies showing that the conspiracy was ongoing in 2004 and 2005, comprising of both supplemental analyses showing that studies that originally focused on other years also applied to 2004 and 2005, as well as additional analyses confirming independently that the conspiracy extended to 2004 and 2005. We also added additional studies and evidence showing that UBS was involved in the conspiracy to manipulate gold prices.

27. Co-Lead Counsel worked with Deutsche Bank with respect to the Court's order to show cause as to why the TAC and related materials should be filed under seal, eventually resulting in the public filing of all related materials. *See* ECF No. 178.

28. Certain Defendants refused to accept the amended pleading on an "attorneys' eyes only" basis, leading to motion practice and a Court conference even over the issue of serving papers regarding an amended pleading. ECF Nos. 162, 163, 165. In December 2016, Co-Lead Counsel filed an 11-page brief in support of their motion for leave to file the Third Consolidated Amended Class Action Complaint (eventually filed at ECF No. 266, the "TAC"). ECF No. 183.

29. Defendants also opposed the request for leave to amend the complaint, meaning there was still-more pleading-stage motion practice, including an 18-page reply brief prepared by Co-Lead Counsel. ECF No. 192. The Court allowed such amendments, ECF No. 258, and no Defendant would later seek to have the early-year claims dismiss. In other words, Co-Lead Counsel's additional work re-expanded the scope of claims at issue in the case.

30. In August 2017—almost ***four years*** after Co-Lead Counsel's investigations began—Defendants filed their first Answers. ECF Nos. 286-90.

31. The TAC had also sought to revive claims against UBS. ECF No. 183 at 8-9. The Court allowed the amendments, ECF No. 258, but UBS later moved to dismiss the claims leading to still-more motion practice. Motion practice *about the motion practice* ensued, regarding whether UBS should be provided first with discovery into the allegations in the TAC. ECF Nos. 271-73, 280. UBS's renewed motion to dismiss required further briefing by the parties, which stretched into December 2017, with supplemental authority arguments occurring in 2018. ECF Nos. 298-99, 301, 302, 304, 308. Co-Lead Counsel's opposition brief was 34 pages long, and our supplemental letter-submissions totaled six single-spaced pages. The pleading stage in this case finally ended in August 2018—almost ***five years*** after Co-Lead Counsel's investigations began—when the Court granted UBS's motion to dismiss. ECF No. 318.

B. Co-Lead Counsel's Discovery Efforts

1. Co-Lead Counsel's early attempts at discovery, and the Department of Justice's extended stay

32. In early 2014 as multiple complaints were being filed, the Court had initially stayed all proceedings pending resolution of a decision by the Judicial Panel on Multidistrict Litigation. Case No. 14-cv-2213, ECF No. 10.

33. As part of its order following the Panel's decision, this Court extended the discovery stay in August 2014. ECF. No. 3.

34. In October 2014, in a five-page letter-brief, Co-Lead Counsel sought to have the stay partially lifted so that Plaintiffs could obtain documents Defendants had previously produced to regulators elsewhere, seek materials from third-parties, and conduct limited Rule 30(b)(6) depositions regarding document storage and retention issues so that future discovery could be more efficiently planned; Defendants opposed. ECF Nos. 17-18.

35. In October 2014, the Court denied our request to lift the stay on discovery, but noted that Defendants would be "expected to comply expeditiously with their discovery obligations following the Court's decision" on motions to dismiss. ECF No. 22.

36. As discussed above, in October 2016 the Court granted in part and denied in part Defendants' motions to dismiss the Second Consolidated Class Action Complaint. ECF No. 158. Co-Lead Counsel here and in the *Silver* action reached out to Defendants in November to discuss a proposed schedule for discovery. It was three weeks later before Defendants responded with a proposal that Co-Lead Counsel argued unfairly and prematurely sought to limit discovery in nonsensical ways. *See* ECF No. 170. Co-Lead Counsel submitted a five-page letter-brief along with a five-page draft scheduling order, requesting that discovery should begin.

37. After a status conference regarding the case schedule, in November 2016 the Court required Defendants to produce certain materials (such as those gathered for regulators) and required the parties to confer further and propose a larger case schedule. ECF No. 188.

38. In December 2016, the Court spoke to the Department of Justice on an *ex parte* basis. ECF No. 189.

39. In December 2016, Société Générale indicated it could only comply with the Court's prior discovery order if the parties went through the Hague Convention. *See* ECF No. 193.

40. Also in December 2016, Defendants raised a dispute regarding the scope of their initial disclosure obligations, resulting in another conference with the Court and a new discovery order. ECF No. 198.

41. Around this same time, Co-Lead Counsel also were negotiating with Defendants and the *Silver* parties regarding the entry of a protective order. Negotiations similarly dragged on, requiring a request for an extension of time. *See* ECF No. 195. In January 2017, negotiations concluded and the parties submitted substantially similar proposals here and in the *Silver* action. ECF No. 207.

42. In January 2017, Barclays raised another dispute regarding Defendants' obligations to produce previously produced documents, requiring another conference and a third order on this same topic. *See* ECF Nos. 209-10.

43. In January 2017, Co-Lead Counsel worked with the Department of Justice regarding the under-seal nature of filings related to the Department's request for a partial stay of discovery. *See* ECF Nos. 214-19, 226. Co-Lead Counsel opposed the request for a stay in a 12-page brief, arguing that the stringent restrictions on access to the materials already ensured that

no investigation would be compromised in any way. *See* ECF No. 226-2. Many other letters were filed in early 2017 regarding the handling of the Department's stay request, and its request for under-seal treatment of disputes about the stay request.

44. In April 2017, in light of the pending request to amend the Complaint, the Court adjourned the requirement to propose revised case management plans. ECF No. 246.

45. In June 2017, after the motion to amend the complaint was granted, Co-Lead Counsel filed a two-page letter-brief requesting the scheduling of a new case management conference after Defendants refused to engage on a new schedule for discovery. ECF No. 270. Around the same time, the Court denied a request by the Department of Justice for an *ex parte* hearing to extend a discovery stay, because the Court was extending the discovery stay *sine die* pending resolution of the then-pending motions to dismiss the TAC. ECF No. 285.

46. In August 2017, Co-Lead Counsel filed a two-page letter-brief seeking leave to serve a third-party document preservation subpoena on the CME Group, Inc. ECF No. 291. The Court allowed the subpoena to be served, "provided that CME is not required to respond . . . until the stay of discovery in this action is lifted." ECF No. 294.

47. In the Court's July 2018 order on UBS's motion to dismiss the TAC, the parties were ordered to confer to make a single submission regarding a discovery schedule in this case. ECF No. 318. After conferrals, a status conference was scheduled for September 2018. ECF 320. After further conferrals with all Defendants regarding the case schedule, a six-page joint proposal was made that, among other things, proposed fact discovery would conclude by December 2019 pending resolution of the Department of Justice stay request. ECF No. 327. Production of transaction data was to begin no later than January 2019.

48. In October 2018, the Department of Justice informed the Court it was no longer requesting a stay of discovery. ECF No. 333.

2. Examples of the extensive negotiations over the scope of discovery

49. Co-Lead Counsel engaged in significant discovery efforts throughout this case, efforts that required extensive discovery negotiations with both Defendants and third-parties. Since October 2018, the parties have exchanged at least 400 formal written communications with each other, while also engaging in countless conversations and less-formal communications.

50. For example, following the lifting of the stay of discovery in October 2018, Co-Lead Counsel's negotiations initially focused on the availability of discovery material from each Defendant, including the availability of audio files of trader conversations and audio files of the Fixing Calls. Co-Lead Counsel engaged in seven formal meet and confers with Defendants concerning their ability to produce audio files including about the model and make of the legacy systems on which Defendants' audio files were stored, methodologies of retrieval, and methodologies for identifying relevant files on the same. The parties' extensive negotiations and intense focus on options for retrieving information from each Defendants' system resulted in HSBC offering, after a month of conferring, to produce select Fixing call audio files on behalf of all Defendants. However, individual meet and confers relating to each Defendants' ability to produce, agreement to produce, and production of additional targeted audio files continued for years after.

51. By way of another example, around the fall of 2018, Co-Lead Counsel also engaged in at least four formal meet and confers and exchanged at least 35 letters with Defendants to develop and agree on the discovery schedule, an ESI protocol, and the appropriate case management plan—issues that rolled into discussions on key topics like requests to limit discovery to specific time windows.

52. Co-Lead Counsel also formally met and conferred with Defendants at least twelve times and exchanged at least 46 written communications to identify and reach agreement on the choice of custodians whose records would form the basis of Defendants' subsequent document productions. Relatedly, Co-Lead Counsel formally met and conferred with Defendants at least four times and exchanged 37 letters relating to the search terms that the parties agreed to use to identify relevant discovery documents. These communications were followed by at least another 13 letters exchanged relating to the availability of and burden of accessing discovery materials.

53. With respect to the parties' Requests for Production, the parties exchanged approximately 14 letters and engaged in at least two formal meet and confers relating to Co-Lead Counsel's and Defendants' individual requests, mandatory disclosures, and the parties' responses and objections to the same. Once discovery was underway, the parties exchanged over 150 letters and engaged in several meet and confers related to the parties' document productions, document review, and related discovery issues.

54. To prepare for depositions and during the course of the same, the parties exchanged at least 31 letters and engaged in multiple meet and confers to develop the Deposition Protocol entered by the Court, ECF No. 386, and to address issues relating to Hague requests, the subject and conduct of depositions, and deposition disputes. Following the coronavirus pandemic, the parties also exchanged numerous communications and met and conferred to develop a set of remote deposition guidelines to govern the conduct of remote depositions necessary in this case. *See* ECF No. 447.

55. At the same time, while meeting and conferring and exchanging communications including preliminary witness lists with Defendants to ascertain which potential deponents they

intended to represent for deposition—an issue which itself was highly contentious—Co-Lead Counsel served a variety of third-party subpoenas.

56. Co-Lead Counsel served 17 third-party subpoenas seeking deposition. Thirteen of these depositions were foreign in nature, requiring Co-Lead Counsel to seek permission from this Court and then file an application for deposition through the Hague. Additionally, through negotiations we secured agreement from an additional five third parties to sit for deposition by consent, without the need to resort to service of a subpoena.

57. Co-Lead Counsel also served dozens of third-party document subpoenas during the course of this litigation, each one of which required substantive follow-up with the entity subpoenaed in order to negotiate an agreed scope and production of documents. Co-Lead Counsel served approximately 39 third-party document subpoenas to banks, broker-dealers, and bullion dealers. Co-Lead Counsel received data productions from eight banks, including Citi Bank, Credit Suisse, Goldman Sachs, JP Morgan, and Merrill Lynch Commodities. Additionally, Co-Lead Counsel received data from nine brokers served with subpoenas seeking Plaintiffs' identifying information. Co-Lead Counsel also received productions from six bullion dealers. After seeking and securing consent from the Court, Co-Lead Counsel also served document subpoenas through the Hague for the London Bullion Market Association ("LBMA") and London Precious Metals Clearing Limited ("LPMCL").

58. In order to gather a fulsome dataset comparable across banks reflecting Defendants' transactions, Co-Lead Counsel served document subpoenas on several exchanges for their gold trading data. These exchanges included the Chicago Mercantile Exchange ("CME"), the Intercontinental Exchange ("ICE"), and The Options Clearing Corporation.

59. As this Court is aware, to fulfill the request from CME and properly identify Defendants' trades on the exchange, CME required that Plaintiffs provide specific identifying-information from each Defendant. To that end and to interpret Defendants' data, the parties engaged in years-long negotiations to gather the relevant identifying-information, ensure the adequacy of Defendants' trade data production, and understand the fields and meaning of the data produced. In the course of these communications, Co-Lead Counsel exchanged at least 104 written communications on data issues alone—including relating to Defendants' transaction data production, data retention, data-adjacent documents, and foreign data privacy issues—and engaged in at least a dozen formal meet and confers on this issue with the parties and with CME.

60. At the conclusion of such negotiations, and after extensive communications with CME, between September 24, 2020, and April 15, 2021, Co-Lead Counsel received four substantial productions from CME encompassing executed cleared trade data for the time period January 2004 through March 2016 (excluding March 2007 through December 2007), User Guides, and an aggregated list of Large Trader Positions.

3. Example discovery motion practice

61. As discussed above, in September 2018 the parties jointly proposed a discovery schedule that not only set a target for the end of fact discovery, but also interim deadlines for negotiations to conclude and documents to be produced. ECF No. 327. Around this time, the Court requested regular jointly filed "status reports," which—though likely intended to be non-adversarial—often involved extensive and prolonged negotiations as to their scope, tone, and content. Sometimes, the negotiations dragged on past midnight, and the letter was filed the next day. Occasionally the parties negotiated for days. The Court eventually struck the provision of its order allowing the parties to agree to file "late." ECF No. 428. Overall, approximately 26

"status" letters totaling 115 pages have been filed, many of which set the stage for percolating discovery disputes.

62. In November 2018, the parties had to twice request an alteration to the interim deadlines proposed in September, because the parties' conferrals—including even in-person conferrals—had been unsuccessful in resolving issues regarding document search methodologies. ECF Nos. 341, 343.

63. In December 2018, after further conferrals failed to resolve the issue, Co-Lead Counsel submitted a joint letter-brief on six different issues regarding the scope of discovery that remained in contention. ECF No. 345.

64. Also in December 2018, Co-Lead Counsel had to work with Société Générale to go through the Hague Convention. *See* ECF No. 346.

65. In January 2019, Co-Lead Counsel prepared for and argued at a hearing regarding the open discovery issues. *See* ECF No. 348. The Court issued an order requiring further conferrals, and if necessary further briefing, on certain issues. ECF No. 353. A dispute even arose over how to interpret the Court's page limits therein, which itself required Co-Lead Counsel to prepare a letter-brief. ECF No. 356.

66. In January 2019, certain foreign banks moved for a protective order based on their interpretations of certain foreign privacy and bank secrecy laws, filing a multi-page brief attaching multiple declarations purporting to explain foreign laws. *See, e.g.*, ECF Nos. 362, 367. Co-Lead Counsel opposed the request for a protective order in a 10-page letter-brief, which itself also attached multiple exhibits regarding foreign laws. ECF No. 366.

67. Around this time, Co-Lead Counsel also filed a nine-page motion to compel regarding the general scope of document discovery, while informing the Court further

negotiations had resolved certain other issues (the discovery time period and audio file issues). ECF No. 363. The Court later granted Plaintiffs' motion in part. ECF No. 377.

68. In February 2019, again despite extensive attempts to confer, Co-Lead Counsel jointly requested to the Court another adjustment to the discovery schedule, this time to allow for still-more negotiations with Defendants regarding the deposition protocol. ECF No. 375. The 15-page deposition protocol in fact was not finalized until April 2019. ECF No. 385-1.

69. In March 2019, the Court requested a joint letter from the parties regarding whether Defendants' document production would likely include Singapore documents that might be implicated by foreign secrecy laws. ECF No. 381. The parties submitted the letter after extensive discussions. ECF No. 382.

70. In April 2019, after extensive negotiations and numerous meet and confers, the parties submitted a stipulated deposition protocol, which the Court approved. ECF No. 386.

71. In April 2019, Co-Lead Counsel prepared an 11-page brief in support of a request for assistance under the Hague Convention in connection with the London Bullion Market Association, ECF No. 387, and a nine-page brief in connection with the London Precious Metals Clearing Limited, ECF. No. 388.

72. In April 2019, in response to Defendants' January 2019 motion for a protective order regarding the application of foreign privacy laws, the Court called for a hearing to discuss "potential solutions." ECF No. 390. Defendants requested the hearing be adjourned so that still-more negotiations could be conducted. ECF No. 391. Oral argument was held on Defendants' motion for protective order, which the Court later denied in part. ECF No. 400.

73. In May 2018, the parties reported that more time was needed for another set of negotiations, regarding an entirely new discovery schedule. ECF No. 399. Later that month, the

parties submitted a new proposed schedule, but in a three-page joint letter-brief, disputed when depositions could begin. ECF No. 403. Fact discovery was to end in July 2020. Substantial completion of data productions was to now occur by September 2019 and document productions by December 2019. Although some data productions were completed by the proposed deadline, the parties encountered numerous delays in data and document productions due to disputes and negotiations over the scope of production. Privilege logs were not served until much later, and the dates for commencing depositions and completing fact discovery would again be delayed as a result of the coronavirus pandemic.

74. In October 2019, Defendants accused Co-Lead Counsel Berger Montague of improper actions with regard to a Canadian action, requiring the briefing, argument, and submission of certain materials. *See, e.g.*, ECF No. 418. The Court found there was "no indication that Plaintiffs' counsel engaged in any of the conduct that Defendants indicated would be of interest to them," denying their request for further relief. ECF No. 419.

75. In February 2020, after negotiations that were referred to in prior status letters, the parties proposed another change to the discovery schedule. ECF No. 427. In April 2020 and May 2020, again after Co-Lead Counsel negotiated with Defendants, due to the COVID-19 situation, the deadlines were moved additional times. ECF Nos. 435, 439, 442. In August 2020, another amended fact discovery schedule was adopted, again after further negotiations between Co-Lead Counsel and Defendants. ECF No. 445. Fact discovery was then set to be completed by May 2021.

76. In the latter part of 2020 and early 2021, Co-Lead Counsel on multiple occasions had to prepare and file papers requesting the Court's assistance with discovery to be taken through the Hague Convention. *E.g.*, ECF Nos. 449-50, 463-65, 470-72, 526.

4. The scale of document discovery in this case

77. In June 2018, after months of negotiations, the parties filed a stipulation establishing a protocol for the production of documents and electronically stored information ("ESI"), which was approved by the Court. ECF No. 314.

78. In September 2018, the parties served their first sets of requests for production. Defendants also served their first set of interrogatories on Plaintiffs.

79. In October 2018, Plaintiffs served their first set of interrogatories on Defendants.

80. In November 2018, the parties served their responses and objections to the interrogatories and requests for production.

81. In January 2019, Defendants began making their initial productions. Defendants eventually produced about 2.7 million documents by May 2020, amounting to approximately 15 million pages and over 8,000 audio files, many of which were Fixing calls.

82. In March 2019, Plaintiffs issued three third-party subpoenas for data and documents to Citibank, N.A., JP Morgan Chase Bank, Ally Invest Group Inc., and Interactive Brokers LLC.

83. In April 2019, Plaintiffs filed motions for issuance of letters rogatory as to the London Bullion Market Association (ECF No. 387) and the London Precious Metals Clearing Limited (ECF No. 388). The Court granted both requests. ECF Nos. 395 & 396.

84. As discussed above, Plaintiffs received 2.7 million documents from Defendants, totaling over 15 million pages. This is on top of the documents and data received from third parties.

85. Our firms, working with our non-testifying expert consultants and document service providers, of course deployed every available tool to help a review of such massive size proceed as efficiently as possible. For instance, "predictive coding" was used, whereby the

system was able to organize review batches to put the documents it thought most likely to be actually relevant on top. Other review projects were organized around specific tasks, such as zooming in around the Fixing time window, audio files, or through the use of "search terms." Even so, particularly in a case involving so much trader jargon and audio files—and even foreign languages—the sheer size and density of the produced materials required a large document review effort.

86. And to be clear, what we classify as "document review" is not just attorneys checking a box and moving on. "Document reviewers" were the foundation of many other derivative tasks, both in terms of feeding knowledge back into the review process (suggesting terms and future review strategies) and getting knowledge out to others (through "evidence memos," spreadsheet summaries, and other similar projects).

5. Co-Lead Counsel's work with named Plaintiffs on their own discovery obligations

87. In addition to the efforts to obtain, analyze, and synthesize documents produced by Defendants and third parties, Co-Lead Counsel undertook significant efforts to produce documents responsive to Defendants' document requests directed to the named Plaintiffs.

88. Co-Lead Counsel engaged a third-party vendor to assist in the collection of documents from named Plaintiffs. Co-Lead Counsel and a representative of the vendor engaged in a series of communications with each named Plaintiff to ascertain the accessible sources of relevant information, collect the relevant documents and data, review the collected materials for relevance and privilege, and produce relevant, non-privileged documents in accordance with the Court-ordered ESI Protocol. Co-Lead Counsel also undertook efforts to obtain responsive documents from the named Plaintiffs' third-party brokers and futures clearing merchants, which were also reviewed for relevance and produced in accordance with the ESI Protocol.

C. Co-Lead Counsel's Work With Our Non-Testifying Expert Consultants

1. Co-Lead Counsel worked with numerous non-testifying expert consultants to prepare the Complaints and respond to motions to dismiss

89. The initial and amended complaints included many statistical analyses constructed by the non-testifying expert consultants Co-Lead Counsel retained for the benefit of class members. The operative Third Amended Complaint includes 180 paragraphs regarding statistical analyses of such things as pricing and volume behavior around the PM Fix, comparisons to how volume and prices acted at other times of day or in other markets, the degree to which the PM Fix prices were outliers on trading days, comparisons of price behaviors during the PM Fix and AM Fix, specific days on which manipulation potentially occurred, refutations of alternative explanations for the abnormalities in the pricing data, analyses showing that Defendants were heavily invested in gold and had economic motives to manipulate the PM Fix based on their futures positions, and analyses showing that the conspiracy was ongoing in 2004 and 2005.

90. Defendants focused on the statistical analyses in their motions to dismiss, requiring Co-Lead Counsel to coordinate with the consultants as to how to respond to Defendants' critiques. For example, Defendants' opening motion to dismiss the Second Amended Complaint spent 20 pages describing and criticizing our non-testifying expert consultants' work, including by questioning the reliability of the data used, and offering alternative explanations for the statistical patterns alleged. Co-Lead Counsel's opposition brief spent 17 pages explaining how the statistical work corroborated the allegations of conspiracy, including by rebutting Defendants' alternative explanations for the patterns.

91. Demonstrating the pleading-stage focus on the non-testifying expert consultants' work, the Court's resulting order itself spent 20 pages discussing the statistical analyses. ECF No. 158.

2. Co-Lead Counsel worked with non-testifying expert consultants to respond to Defendants' attempts at discovery

92. In December 2016, at the court hearing, Co-Lead Counsel agreed to produce all materials and data underlying the operative Second Consolidated Amended Class Action Complaint ("SAC"). This was memorialized in the Court's Order No. 12, where Plaintiffs were to produce "all documents and data on which the Second Amended Complaint is based." ECF No. 188, at 1.

93. Pursuant to Order No. 12, Plaintiffs made two productions of documents and data underlying the SAC in February 2017. These productions comprised over 7,400 files and over 200 gigabytes.

94. In April 2017, Defendants wrote a letter claiming to have discovered errors in the data and coding Plaintiffs produced that were allegedly "fatal to Plaintiffs' claims," and insisted that Plaintiffs "withdraw both their operative pleading and their motion to file a proposed amended pleading." Co-Lead Counsel and our non-testifying expert consultants analyzed Defendants' claims, concluded that they were without merit, and rejected Defendants' demand.

95. In late April 2017, Defendants wrote to the Court regarding purported "errors" in the TAC. ECF No. 247. Co-Lead Counsel had to respond, in consultation with our non-testifying expert consultants, to correct the record—twice—in letter-briefs totaling nine pages. ECF No. 248 and 250.

96. In May 2017, Plaintiffs made a supplemental production of non-testifying expert consultant documents and data underlying the SAC.

97. In June 2017, notwithstanding Defendants' complaints about the studies, the Court granted Plaintiffs' motion to amend the complaint, including with respect to the earlier years. ECF No. 258. Shortly thereafter, Defendants continued their campaign of discovery into work by our non-testifying consultants.

98. In response to Defendants' demands, Co-Lead Counsel worked with our consultants to produce computer programs, data, charts, graphs, and other materials underlying the analyses referenced in the TAC. *See* ECF No. 365.

99. After discovery opened, in January 2019, Co-Lead Counsel prepared and produced a set of additional documents and data (totaling over 100 MB) underlying studies that were added by the TAC, but which had not previously appeared in the SAC. Defendants moved to compel the production of still-more consultant-related materials, insisting that besides the materials underlying the studies contained in the pleadings, Defendants were also entitled to materials that were considered by our non-testifying expert consultants but which were *not* used in the pleadings. ECF No. 361.

100. Co-Lead Counsel opposed the request in an eight-page letter-brief. ECF No. 365. The Court granted Defendants' motion to compel in part in February 2019. ECF No. 377.

101. In March 2019, Co-Lead Counsel filed a 20-page brief in support of a request for a stay of the consultant-discovery order pending disposition of a petition for writ of mandamus. ECF No. 380. Co-Lead Counsel later also filed a ten-page reply brief. ECF No. 389.

102. In March 2019, Co-Lead Counsel filed a 34-page petition for a writ of mandamus and a 322-page appendix with the Second Circuit. Case No. 19-651, ECF No. 1.

103. In March 2019, Defendants served a letter alleging "several deficiencies" in Plaintiffs' production of data, code, and statistical analyses underlying the TAC.

104. In April 2019, after consulting with our non-testifying expert consultants, Co-Lead Counsel wrote a letter rebutting Defendants' criticisms of the studies in the pleadings, and responding to Defendants' questions about the data, code, and statistical analyses underlying the TAC. Later that month, Defendants wrote a follow-up letter insisting that there "continue to be deficiencies in this production," and posing additional interrogatory-like questions.

105. In June 2019, after consulting with our non-testifying expert consultants, Co-Lead Counsel wrote a letter rebutting Defendants' criticisms of the studies in the pleadings, and responding to Defendants' questions about the data, code, and statistical analyses underlying the TAC.

106. In July 2019, Plaintiffs' mandamus petition to the Second Circuit was denied.

107. In September and October 2019, Plaintiffs made five productions of supplemental non-testifying expert consultant materials that were not used in the studies underlying the pleadings, totaling over 140 files and over 3.3 GB.

108. In December 2019, Defendants wrote another follow-up letter claiming that there were unanswered "deficiencies" with Plaintiffs' production of programs, data, and source code underlying the studies in the TAC, and posed additional lengthy questions for Plaintiffs and their non-testifying expert consultants.

109. In January 2020, after consulting with our non-testifying expert consultants, Co-Lead Counsel wrote a letter rebutting Defendants' criticisms of the studies in the pleadings, and responding to Defendants' questions about the data, code, and statistical analyses underlying the TAC.

110. In April 2020, Defendants responded with another follow-up letter claiming again that there were "fundamental flaws with key pillars of Plaintiffs' statistical representation," and

claimed that they showed Plaintiffs "cherry-picked the data presented in key graphs and analyses in the TAC, causing those analyses to be inaccurate and misleading."

111. In June 2020, after consulting with our non-testifying expert consultants, Co-Lead Counsel wrote a letter rebutting Defendants' criticisms of the studies in the pleadings, and responding to Defendants' questions about the data, code, and statistical analyses underlying the TAC.

112. In August 2020, Defendants wrote yet another follow-up letter claiming that there were deficiencies with Plaintiffs' production of consultant materials, and claimed that Plaintiffs produced data and code for only "four of approximately 36 analyses" described in the TAC.

113. In September 2020, after consulting with our non-testifying expert consultants, Co-Lead Counsel wrote a letter rebutting Defendants' criticisms of their productions, and asserted that they had produced all the data, code, and statistical analyses available.

114. In October 2020, Co-Lead Counsel had to prepare for, and attend, another discovery conference after Defendants insisted that besides all the consultant materials produced to date, they were entitled to communications between consultants and counsel. Defendants also claimed during the hearing that Plaintiffs' studies underlying the TAC were materially misleading. The Court ordered that Plaintiffs produce all memoranda sent to Plaintiffs' counsel, and ordered still-more conferrals regarding "underlying datasets, computer programs, code, or other materials Defendants [claim to be] missing." ECF No. 454.

115. In November 2020, Plaintiffs made an additional production of consultant memoranda and accompanying materials, totaling over 110 files and over 120 MB.

116. In November 2020, Defendants wrote a letter under seal to the Court arguing that several of Plaintiffs' studies underlying the TAC were misleading. Co-Lead Counsel were

forced to respond yet again to the consultant-discovery issue, eventually filing a 13-page letter-brief and two consultant declarations explaining that Defendants' attacks were off-base. Co-Lead counsel also assembled and provided to the Court a compendium of over 50 consultant memoranda. ECF No. 477.

117. The Court denied Plaintiffs' request to seal the aforementioned materials. ECF No. 480. Co-Lead Counsel prepared a five-page letter-brief requesting the materials stay sealed. ECF No. 492.

118. Later in November 2020, Defendants wrote another letter to Plaintiffs insisting again that there were deficiencies in Plaintiffs' studies underlying the TAC, and that Plaintiffs had "not yet produced all the underlying programs, data, and source code" sufficient for Defendants to fully "replicate the statistical analyses" to their satisfaction.

119. In early January 2021, after consulting with their non-testifying expert consultants, Plaintiffs wrote a letter rebutting Defendants' criticisms of their studies and productions.

3. Co-Lead Counsel work with non-testifying expert consultants to assist in data and other discovery on Defendants

120. There have been over 110 million data records produced in this case by Defendants. Many of these entries each contain over 100 fields. As litigation is ongoing, we must be circumspect in disclosing what tasks were performed prior to November 10, 2020, with respect to the data. But even just on its face, such a massive amount of data necessarily meant large amount of resources were needed to intake, understand, and use the data.

121. Complicating matters is, of course, the fact that the 110 million records were not all produced at once, by one party, in one format. To the contrary, each producing party only produced their own data from its own its own system—often, multiple systems—in whatever

format that system happened to produce. Each potentially relevant dataset had to be loaded and analyzed, and that became the subject of extensive conferrals between the relevant parties as to what the produced data was (and was not) and what other data was (or was not) available. Those conferrals often included detailed letters or email exchanges, as well as conferences. Certain answers just led to more questions, or other datasets, forcing the process to start over. Holes in terms of time periods, products, fields, and others were only uncovered through this highly iterative, resource-intensive process. This involved extensive work both by counsel, but also by our non-testifying expert consultants who were the ones equipped to actually load and understand the data.

122. Working with the data also led to discovery conferrals—again, working with our non-testifying expert consultants—regarding data *adjacent* documentation. For instance, we extracted, reviewed, analyzed, and sought to understand the numerous standardized reports developed by Defendants in their ordinary course of business *about* the data.

123. Even once the productions were understood, it was a massive project just to get *ready* to use so many records. Following standard practices, once the data was generally understood the "raw" files were combined into a common database format, where, for instance, fields that held identical information would appear together in a single format even if different sources used different naming or numbering conventions.

124. All of the above is with respect to the Defendants' data only. Extensive negotiations were also necessary, including prior to November 2020, to obtain data from CME. Though the actual production occurred after the HSBC Settlement, CME eventually produced an additional 491 million records, while ICE produced another 1.8 million.

II. THE DEUTSCHE BANK AND HSBC SETTLEMENTS

A. The $60 Million Deutsche Bank Settlement

125. After extended arm's-length negotiations, in April 2016, the relevant parties informed the Court that a term sheet had been signed by Deutsche Bank and Plaintiffs. ECF Nos. 130-31.

126. In August 2016, the parties formalized a longer-form agreement to settle the action for $60 million. ECF 174-1.

127. In December 2016, Co-Lead Counsel prepared and filed a motion to preliminary approve the Deutsche Bank settlement, including a 25-page brief. *See* ECF Nos. 172-74.

128. The Court would later grant preliminary approval. ECF No. 187.

129. At the time of the Deutsche Bank settlement, discovery had not yet begun. Yet, Co-Lead Counsel secured a commitment to produce, among other things, any materials given to government regulators or investigators within thirty days of the agreement's execution, as well as the bank's gold-related transaction data. Deutsche Bank eventually produced over 2.3 million pages of cooperation materials.

B. The $42 Million HSBC Settlement

130. After extended arm's-length negotiations, in October 2020, the relevant parties informed the Court that Plaintiffs and HSBC had reached an agreement in principle to settle the claims. ECF No. 452.

131. In November 2020, Plaintiffs and HSBC reached an agreement to settle the action for $42 million. *See* ECF No. 514-1.

132. In December 2020, Co-Lead Counsel prepared and filed a motion to approve the HSBC settlement, including a 25-page brief. *See, e.g.*, ECF No. 489.

133. In February 2021, the Court granted the motion to preliminarily approve the HSBC settlement. ECF No. 515.

134. At the time of the HSBC settlement, discovery was coming to a close, but Co-Lead Counsel still secured an agreement that required HSBC to, among other things, assist in establishing the authenticity of materials for trial, to complete its production of transaction data, and to confer in good faith regarding additional requests for cooperation.

C. Co-Lead Counsel's Efforts to Have the Settlements Approved

135. Co-Lead Counsel spent months working with the non-Settling Defendants regarding their readiness and willingness to assist in the providing of notice. This involved multiple group and individual conferrals. *See, e.g.*, ECF No. 489 at 15-16.

136. In December 2020, concurrently with the filing of the motion to preliminary approve the HSBC agreement, Co-Lead Counsel also filed a 16-page brief seeking preliminary approval of the plan to notify the class and the plan of allocation. ECF No. 489. The supporting papers also included proposed long and short-form notices and the plan of allocation. *See* ECF No 490. Co-Lead Counsel proposed therein a deadline for Defendants to finalize their preparations to assist in the giving of notice.

137. In January 2021, the Court held oral argument on the pending settlement-related motions, which Co-Lead Counsel had to prepare for and conduct.

138. Following the conference, Co-Lead Counsel prepared new versions of all the supporting materials pursuant to the Court's requests, and in line with additional negotiations with Defendants regarding their readiness to provide assistance with the notice program. Co-Lead Counsel prepared a three-page letter, approved by the relevant Defendants, summarizing the changes that were (or were not) being made. ECF No. 512.

139. In February 2021, the Court granted the motion to preliminary approve the proposed plans for notice and allocation of the settlement amounts. ECF No. 516.

III. CO-LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES

140. Notice of the Settlements was published and sent to potential claimants around March 2021. The Notices each advised potential members of the Settlement Class that Co-Lead Counsel would submit an application for an award of attorneys' fees in an amount not to exceed $28.2 million plus interest, and expenses in the amount of no more than $11 million plus interest; that Co-Lead Counsel would also be seeking interest on the foregoing amounts; and that Plaintiffs may request "Incentive Awards" (also known as "service awards"). Our fee and expense application is fully consistent with that Notice.

A. Co-Lead Counsel's Fee Request as Compared to Our Significant Time In This Action

141. Co-Lead Counsel seek a fee award of $28,200,000 of the Settlement Fund, plus interest, an amount calculated using the sliding-scale approach to percentages adopted in *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litigation*, 991 F. Supp. 2d 437, 445 (E.D.N.Y. 2014).

142. As detailed in our concurrently filed individual declarations, Co-Lead Counsel have invested almost 105,000 hours in this Action over the course of seven years, through November 10, 2020, the execution date of the HSBC Settlement.

143. Our individual declarations also identify the attorneys and support staff who worked on the Action, their hourly rates and number of hours billed, and the lodestar value of their time.

144. Using the conservatively adjusted rate structures and making other downward adjustments as set forth in our individual declarations, this amounts to an investment of

$39,722,235 in the time of Co-Lead Counsel's attorneys and professional support staff. If granted, the requested fee would award Co-Lead Counsel a multiplier of approximately .71 ($28,200,000/$39,722,235=.71).

145. As the lodestar method is intended to be merely used to ensure counsel is not getting a "windfall," we calculated the above figures using methodologies that were conservative in a number of respects.[2]

146. For instance, many lodestar calculations are run at market rates as of the time of the fee application, including without limitation to compensate counsel for receiving delayed payment. By contrast, here we are not only using historic rates, but have instilled "rate freezes" and made other conservative, downward adjustments to our then-prevailing rates, as discussed in our respective individual declarations.

147. In addition, the attorneys and staff from other firms have also performed work, at our direction, for the benefit of the Settlement Class. Co-Lead Counsel may provide payment to some other firms out of our $28,200,000 fee, if awarded. However, Co-Lead Counsel's above calculations rely *entirely* on our *own* work.

148. By way of another example, our attorneys and staff have also invested substantial time for the benefit of the Settlement Class since the HSBC Settlement was executed, such as: getting the HSBC Settlement, the notice plan, and the plan of allocation preliminary approved; overseeing the carrying out of the notice plan; responding to inquiries by potential class members since notice was circulated; and preparing to move for final approval of the Settlements. As the

[2] Co-Lead Counsel respectfully reserve the right—without limitation on reply, at the hearing, or in future applications—to use alternative methodologies, which we believe in many ways would give a more fulsome picture of our investments in this case and would put our request more in line with what is routinely presented and accepted in connection with similar applications.

calculations were cut off as of November 10, 2020, the above figures do *not* include this additional work for the benefit of the Settlement Class.

149. Co-Lead Counsel took this case on a fully contingent basis. To the extent our engagements with our clients provided for a limit on our contingency rate, those agreements provided for rates higher than the effective 27.4% being requested in this application—typically 33 1/3%.

B. Co-Lead Counsel's Request for Litigation Expenses

150. Co-Lead Counsel seek expenses in the amount of $8,242,755.81, plus interest.

151. The total request above includes $8,146,271.88 for expenses incurred by Co-Lead Counsel in connection with work performed from the inception of our investigation to November 10, 2020, when the HSBC Settlement was signed. This amount consists of consists of 1) $1,170,571.80 incurred by Berger Montague, *see* Davidoff Decl. Ex. B; 2) $4,836,105.16 incurred by way of a common litigation fund administered by Berger Montague, *see* Davidoff Decl. Ex. C; and 3) $2,139,594.92 incurred directly by Quinn Emanuel, *see* Brockett Decl. Ex. C.

152. The remainder of the total request is for expenses incurred by select other firms that have assisted Co-lead Counsel, such as in handling the direct relationship with their clients or in providing expertise with respect to data negotiations with the CME, who eventually produced over 491 million records. Most of these expenses are for outside professional services, while the remainder arise from such routine charges as photocopying, PACER fees, and electronic research. These other firms have represented that these expenses have been submitted at an "at cost" basis, and were incurred prior to the execution of the HSBC Settlement Agreement in November 2020.

153. The categorization of all expenses incurred by Co-Lead Counsel and explanations as to how they were arrived at, as well as other details, are provided in our respective concurrently filed individual declarations. In this Joint Declaration, we discuss first what makes up by far the largest portion of these expenses—approximately $7.2 million incurred in connection with non-testifying expert consultant and other professional service providers. In this Joint Declaration, we also discuss herein the choice to use a third-party document hosting service.

154. ***Consultant costs.*** At every stage of the case, this has been a "battle of the experts," and will likely continue to be. There are four non-testifying expert consultant groups that account for most all of the "outside professional services" amounts seen in our individual declarations.[3]

a. Compass Lexecon is a world-leading economic consulting firm, providing corporations, law firms and government clients with analyses of complex economic and finance issues. Since its founding in 1977, Compass Lexecon has been involved in many of the most significant litigation and regulatory proceedings across a variety of matters, including those involving alleged violations of antitrust law and those involving allegations of manipulation in financial markets. Economic experts and affiliates of Compass Lexecon are some of the most recognized and respected economic thinkers in the world, ranging from academics at the

[3] The remainder of the expert/consultant costs are primarily associated with: firms to help locate potential witnesses; potential testifying experts; foreign legal advisors retained to advise on foreign-privacy and bank secrecy issues; and industry experts to help understand trader jargon and similar issues.

most prestigious universities in the world, including two Nobel prize-winners, to the most influential industry practitioners. Moreover, its professional staff consists of more than 500 economists across 22 office locations worldwide, with over 175 highly skilled Ph.D. economists and econometricians and more than 165 additional professionals with advanced degrees. Compass is known as one of the leading (if not the leading) blue-chip consulting firm in the United States, and is often the firm of choice for Defendants in antitrust and market manipulation cases of this kind.

b. Dr. Abrantes-Metz is a principal at The Brattle Group, specializing in industrial organization, econometrics and asset pricing. *See, e.g.*, https://www.brattle.com/experts/rosa-mabrantes-metz. She previously served as an Adjunct Associate Professor at Leonard N. Stern School of Business at New York University where she taught industrial organization, econometrics, as well as monetary and financial economics. From 2002 to 2004, she was an economist at the Federal Trade Commission. She was also a Lecturer for advanced econometrics and macroeconomics at the Department of Economics at the University of Chicago, and a Lecturer for economics at from Universidade Católica Portuguesa in Lisbon, Portugal. A significant part of Dr. Abrantes-Metz's work focuses on matters involving alleged conspiracies, manipulations, and fraud, with a particular focus on the detection of such behavior and assessment of its market impact. She is widely recognized as a leading expert on benchmark

manipulation, having authored numerous articles on screening for price manipulation and detecting collusion.

c. At the time of his work on this case, Dr. Caminischi was a finance researcher at the University of Western Australia's Business School, and the founding Director of the Rosemarie Nathanson Financial Markets Trading Centre. Dr. Caminschi earned his PhD in Finance from the University of Western Australia, and has completed post-graduate coursework at Stanford University. His doctoral thesis received "Best PhD of the Year" award from the Accounting and Finance Association of Australia and New Zealand, and other conference prizes. Dr. Caminschi's past work on financial benchmark manipulation has been sought by U.S., E.U., and Australian regulators. He has advised on large scale financial market matters all over the world, assisting both national regulators and private litigators.

d. Fideres is an international economic consulting firm specialized in economic analysis of financial and competition litigation matters. Fideres has provided expert analyses and opinions to major U.S. and European law firms, governments, and other public-sector entities to help successfully litigate numerous high-profile investigations and private litigations, spanning across several industries and jurisdictions. In particular, Fideres's team of economists and financial experts have extensive experience in creating innovative and rigorous methods in relation to complex financial markets manipulation and collusion matters.

155. As discussed in Sections I.A and I.C.1 above, it took a large and sustained effort to get this case out of the pleading stage using only the publicly available information. Defendants' arguments were heavily focused on the statistical allegations, requiring constant input from the non-testifying expert consultants that helped us put those allegations together. The complaint was amended multiple times, both to respond to Defendants' dismissal arguments and to revive claims dismissed by the Court. Both a "tutorial" and oral argument were held, requiring input from the non-testifying expert consultants.

156. As discussed in Section I.C.2 above, fights over the accuracy, methodology, alternative analyses, and other aspects of our consultant's pleading-stage work turned into discovery battles almost immediately after the Court's first dismissal ruling. Under the guise of assessing the completeness of Plaintiffs' discovery responses, Defendants have repeatedly feigned ignorance over how the studies work, peppering Co-Lead Counsel (and thus, ultimately, our non-testifying expert consultants) with inquiries about the data, methodologies, and conclusions. Materials and data had to be gathered multiple times, as Defendants' demands continually expanded.

157. As discussed in Section I.C.3 above, the data needs of this case are massive. There are over 110 million data records, each associated with multiple (sometimes over 100) "fields" of information from Defendants alone. The data came in from multiple parties and systems. To even ensure Plaintiffs were receiving the needed data and could understand it, and then put the data in a format that could be used for analysis, was itself a massive task requiring substantial up-front investments. We must exercise caution given the ongoing litigation but this work included, among other tasks:

a. converting the raw data into a common format;

b. reviewing the data to ensure completeness as to time, products, and fields;

c. reconciling and matching data when the same transaction was included in productions coming out of different systems—such as information on Defendants' trades in Defendants' systems and in data produced by the CME;

d. analyzing and driving conferrals regarding whether Defendants' data was sufficiently distinguishing between their own trades versus those done on behalf of their customers;

e. scrubbing the data for outliers and errors, such as where prices were far outside the expected range;

f. analyzing ways to identify links to the Fix; and

g. analyzing publicly available data, and potential third-party subpoena targets, to fill data needs not left open by Defendants' productions.

158. Beyond the data, the non-testifying expert consultants have also assisted in discovery in other ways. For instance, by:

a. helping to pivot off of the data into requests for data and documents beyond the core transactional information, such as analysis of profit and loss statements, risk exposure reports, and other materials;

b. helping with gathering and understanding Plaintiffs' materials;

c. advising on the document review.

159. As discussed in Section II above, Co-Lead Counsel negotiated the settlements, and put together notice and allocation plans. This work also has required the use of our non-testifying expert consultants.

160. ***Third-party document hosting services.*** We anticipated in 2014 we would provide hosting services in-house. But, in the interest of full disclosure, we highlight that some of our expenses are for third-party document vendors. This is because our analyses of what would be in the best interest of the class shifted over the long course of this case. For instance, third-party vendors could offer services that our in-house systems could not offer at the time discovery was ramping up. These features, including the ability to automatically transcribe audio files as well as perform continuous learning to speed the document review, meant that we determined the overall case would operate more efficiently, on the facts specific to this case and at the time we had to make the decision for this case, through the use of third-party vendors.

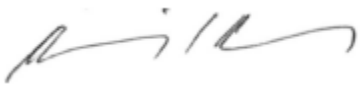
* * *

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed July 9, 2021
New York, New York

Daniel L. Brockett

Executed July 9, 2021
New York, New York



Merrill G. Davidoff