

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

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In re:)	CIVIL ACTION NO.	
)	MASTER FILE	
BANK OF NEW YORK MELLON CORP.)	12 MD 2335 (LAK)	
FOREX TRANSACTIONS LITIGATION)		
)		
This Document Relates to: 11-CV-09175)		
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STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement, dated as of June 23, 2015 (the “Stipulation”) is entered into between (a) the State of Oregon, by and through the Oregon State Treasurer on behalf of the Common School Fund and, together with the Oregon Public Employee Retirement Board on behalf of the Oregon Public Employee Retirement Fund (“Lead Plaintiff” or “Oregon”), on behalf of itself and the Settlement Class (defined below); and (b) defendants The Bank of New York Mellon Corporation (“BNYM”), Robert P. Kelly, Bruce W. Van Saun, Thomas P. Gibbons, Jorge Rodriguez, Michael K. Hughey, and John A. Park (collectively, the “Individual Defendants,” and, together with BNYM, the “Defendants”), by and through their respective undersigned counsel, and embodies the terms and conditions of the settlement of the above-captioned action (the “Action”).¹ Subject to the approval of the Court and the terms and conditions expressly provided herein, this Stipulation is intended to fully, finally and forever compromise, settle, release, resolve, and dismiss with prejudice the Action and all claims asserted and all Released

¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in ¶ 1 herein.

Plaintiffs' Claims (as defined in ¶ 1(qq) below) that could have been asserted therein against Defendants.

WHEREAS:

A. On December 14, 2011, a class action complaint was filed in the United States District Court for the Southern District of New York (the "Court"), styled *Louisiana Municipal Police Employees' Retirement System vs. The Bank of New York Mellon Corporation et al*, 11 Civ. 9175 (LAK) (the "Securities Action").

B. By Order dated March 29, 2012, the Court appointed Oregon as Lead Plaintiff for the consolidated action and approved Lead Plaintiff's selection of Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel for the class ("Lead Counsel").

C. By Order dated April 27, 2012, the Court consolidated the Securities Action for pretrial purposes with certain other actions concerning BNYM's foreign exchange practices (the "Consolidation Order"). The consolidated litigation is captioned: *In re: Bank of New York Mellon Corp. Forex Transactions Litigation*, 12 MD 2335 (LAK) (the "MDL Litigation").

D. On May 11, 2012, Lead Plaintiff filed and served its Consolidated Class Action Complaint (the "Complaint") asserting claims under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, against Defendants BNYM and the Individual Defendants and under Section 20(a) of the Exchange Act against the Individual Defendants. Among other things, the Complaint alleged that Defendants made materially false and misleading statements and omissions concerning BNYM's standing instruction foreign-exchange (FX) business and revenues derived therefrom which caused the price of BNYM publicly-traded stock to be artificially inflated during the class period.

E. The Complaint also asserted claims under Sections 11, 12(a)(2) and/or 15 of the Securities Act of 1933 against BNYM, certain of the Individual Defendants, the Former Director

Defendants and the Former Underwriter Defendants arising from secondary offerings of BNYM common stock on May 11, 2009 and June 3, 2010. On March 23, 2015, the Court entered a Stipulation and Order dismissing those claims with prejudice.

F. On June 22, 2012, Defendants served motions to dismiss the Complaint. On July 30, 2012, Lead Plaintiff served its papers in opposition and, on August 17, 2012, Defendants served their reply papers. On June 10, 2013, the Court denied Defendants' motions without prejudice to renewal on motion for summary judgment to the extent that the arguments made in these motions were not foreclosed by the Court's rulings in certain related actions.

G. On September 15, 2013, Defendants filed and served their answers to the Complaint.

H. On September 12, 2013, the Court entered a Scheduling Order that governed pretrial proceedings in the MDL Litigation and in *United States of America v. Bank of New York Mellon, et al.*, No. 11-CV-6969 (LAK) and provided for coordinated discovery in those actions. The Scheduling Order was amended on July 11, 2014 and further modified by the Court on January 21 and February 20, 2015.

I. In accordance with the Court's Scheduling Order, as amended and modified, fact discovery in the Securities Action was completed on March 27, 2015. During the course of this discovery, more than 20 million pages of documents were produced. Plaintiffs' Counsel reviewed and analyzed these documents for use in conjunction with the dozens of fact depositions which Plaintiffs' Counsel took or defended or in which they otherwise participated.

J. On March 27, 2015, Lead Plaintiff filed its motion for class certification. Defendants filed their opposition on April 27, 2015. The Parties completed class-related expert discovery, which included Lead Plaintiff's damages expert preparing a detailed expert report on market efficiency and other matters at issue in the Action.

K. On January 19 and 20, 2015, Lead Counsel, Defendants' Counsel, the U.S. Attorney's Office and counsel for other plaintiffs in the MDL Litigation participated in a two-day mediation session before the Hon. Layn R. Phillips, former United States District Court Judge for the Western District of Oklahoma. In advance of the mediation, the parties exchanged detailed mediation statements and exhibits. The mediation ended without a settlement agreement being reached in the Securities Action. Lead Counsel and Defendants' Counsel participated in an additional mediation session dedicated to the Securities Action before Judge Phillips on March 4, 2015, in advance of which the Defendants provided a supplemental mediation statement. This mediation also ended without a settlement agreement being reached in the Securities Action. Following these mediation sessions, Lead Counsel and Defendants' Counsel continued to engage in informal settlement discussions directly as well as through Judge Phillips. Judge Phillips ultimately made a mediator's proposal.

L. On May 12, 2015, Lead Counsel and Defendants' Counsel participated in a settlement conference before the Hon. Lewis A. Kaplan. Shortly thereafter, the Parties accepted Judge Phillips' mediator's proposal and reached an agreement in principle to settle the Action that was memorialized in a term sheet (the "Term Sheet") executed on May 21, 2015. The Term Sheet sets forth, among other things, the Parties' agreement to settle and release all claims asserted against Defendants in the Action in return for a cash payment by or on behalf of Defendants of \$180 million for the benefit of the Settlement Class, subject to certain terms and conditions and the execution of a customary "long form" stipulation and agreement of settlement and related papers.

M. This Stipulation (together with the exhibits hereto) has been duly executed by the undersigned signatories on behalf of their respective clients, and reflects the final and binding agreement between the Parties.

N. Based upon their investigation, prosecution and mediation of the case, Lead Plaintiff and Lead Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Lead Plaintiff and the other members of the Settlement Class, and in their best interests. Based on Lead Plaintiff's direct oversight of the prosecution of this matter and with the advice of its counsel, Lead Plaintiff has agreed to settle and release the claims raised in the Action pursuant to the terms and provisions of this Stipulation, after considering (a) the substantial financial benefit that Lead Plaintiff and the other members of the Settlement Class will receive under the proposed Settlement; (b) the significant risks of continued litigation and trial; and (c) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

O. This Stipulation constitutes a compromise of matters that are in dispute between the Parties. Defendants are entering into this Stipulation solely to eliminate the uncertainty, burden and expense of further protracted litigation. Each of the Defendants denies any wrongdoing, and this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Defendants, or any other of the Defendants' Releasees (defined below), with respect to any claim or allegation of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Defendants have, or could have, asserted. The Defendants expressly deny that Lead Plaintiff has asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing or damages whatsoever. Similarly, this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Lead Plaintiff of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of the Defendants' defenses to liability had any merit. Each of the Parties recognizes and acknowledges, however, that the Action has been initiated, filed and prosecuted by Lead Plaintiff in good faith and defended by Defendants in good

faith, that the Action is being voluntarily settled with the advice of counsel, and that the terms of the Settlement are fair, adequate and reasonable.

NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among Lead Plaintiff (on behalf of itself and the other members of the Settlement Class) and Defendants, by and through their respective undersigned attorneys and subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the benefits flowing to the Parties from the Settlement, all Released Plaintiffs' Claims as against the Defendants' Releasees and all Released Defendants' Claims as against the Plaintiffs' Releasees shall be settled and released, upon and subject to the terms and conditions set forth below.

DEFINITIONS

1. As used in this Stipulation and any exhibits attached hereto and made a part hereof, the following capitalized terms shall have the following meanings:

(a) "Action" means the Securities Action which has been consolidated for pretrial purposes with other actions in the litigation styled *In re: Bank of New York Mellon Corp. Forex Transactions Litigation*, Master File No.12 MD 2335 (LAK).

(b) "Alternate Judgment" means a form of final judgment that may be entered by the Court herein but in a form other than the form of Judgment provided for in this Stipulation.

(c) "Authorized Claimant" means a Settlement Class Member who submits a Proof of Claim Form to the Claims Administrator that is approved by the Court for payment from the Net Settlement Fund.

(d) "BNYM" means The Bank of New York Mellon Corporation.

(e) "Claim" means a Proof of Claim Form submitted to the Claims Administrator.

(f) “Claim Form” or “Proof of Claim Form” means the form, substantially in the form attached hereto as Exhibit 2 to Exhibit A, that a Claimant or Settlement Class Member must complete and submit should that Claimant or Settlement Class Member seek to share in a distribution of the Net Settlement Fund.

(g) “Claimant” means a Person who submits a Claim Form to the Claims Administrator seeking to be eligible to share in the proceeds of the Settlement Fund.

(h) “Claims Administrator” means the firm retained by Lead Plaintiff and Lead Counsel, subject to approval of the Court, to provide all notices approved by the Court to potential Settlement Class Members and to administer the Settlement.

(i) “Class Distribution Order” means an order entered by the Court authorizing and directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized Claimants.

(j) “Complaint” means the Consolidated Class Action Complaint filed by Lead Plaintiff in the Action on May 11, 2012.

(k) “Court” means the United States District Court for the Southern District of New York.

(l) “Defendants” means BNYM and the Individual Defendants.

(m) “Defendants’ Counsel” means the law firm of Kellogg Huber Hansen Todd Evans & Figel PLLC (also referred to as “Representative Defendants’ Counsel”) as to all Defendants other than Defendant Jorge Rodriguez, and the law firm of Petrillo Klein & Boxer LLP as to Defendant Jorge Rodriguez.

(n) “Defendants’ Releasees” means Defendants, the Former Underwriter Defendants, and the current and former parents, subsidiaries and divisions of BNYM or the Former Underwriter Defendants, and entities in which any Defendant or Former Underwriter Defendant

holds a majority interest, and the predecessors and successors of each of them, and the current and former officers, directors (including the Former Director Defendants), and employees of each of them in their capacities as such, and the providers of primary and excess directors and officers liability insurance to the Defendants,² including such providers' respective parents, subsidiaries and reinsurers and their directors, officers, and employees in their capacities as such.

(o) "Effective Date" with respect to the Settlement means the first date by which all of the events and conditions specified in ¶ 33 of this Stipulation have been met and have occurred or have been waived.

(p) "Escrow Account" means an account maintained at Valley National Bank wherein the Settlement Amount shall be deposited and held in escrow under the control of Lead Counsel.

(q) "Escrow Agent" means Valley National Bank.

(r) "Escrow Agreement" means the agreement between Lead Counsel and the Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow Account.

(s) "Excluded Claims" means (i) any claims asserted in all derivative actions that have been filed, including but not limited to: *In re Bank of New York Mellon Corp. State Derivative Litig.*, No. 112133/2011 (N.Y. Sup. Ct.) and *Simon v. Hassell, et al.*, No. 100640/2012 (N.Y. Sup. Ct.); (ii) any books and records demands made, including but not limited to: *Kops v. The Bank of New York Mellon Corporation*, C.A. No. 8064 (Del. Ch. Ct.) (Nos. BL-93, BL-94);

² The providers of such insurance are XL Specialty Insurance Company, U.S. Specialty Insurance Company, ACE American Insurance Company, Illinois National Insurance Company, Hartford Accident and Indemnity Company, Endurance Specialty Insurance Ltd., and Allied World Assurance Company Ltd.

Kops v. Bank of New York Mellon Corp, C.A. No. 10146-VCG (Del. Ch. Ct.) (No. BL-54); and *Zucker v. Bank of New York Mellon Corp*, C.A. No. 10102-VCG (Del. Ch. Ct.) (No. BL-67); (iii) any claims relating to the enforcement of the Settlement; and (iv) any claims of any Person who submits a request for exclusion that is accepted by the Court.

(t) “Final,” with respect to the Judgment or, if applicable, the Alternate Judgment, or any other court order means: (i) if no appeal is filed, the expiration date of the time provided for filing or noticing of any appeal under the Federal Rules of Appellate Procedure *j.e.*, thirty (30) days after entry of the judgment or order; or (ii) if there is an appeal from the judgment or order, (a) the date of final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise, or (b) the date the judgment or order is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance following review pursuant to that grant. However, any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to (i) attorneys’ fees, costs or expenses, or (ii) the plan of allocation of Settlement proceeds (as submitted or subsequently modified), shall not in any way delay or preclude a judgment from becoming Final.

(u) “Former Director Defendants” means Ruth E. Bruch, Nicholas M. Donofrio, Steven G. Elliott, Gerald L. Hassell, Edmund F. Kelly, Richard J. Kogan, Michael J. Kowalski, John A. Luke, Jr., Robert Mehrabian, Mark A. Nordenberg, Catherine A. Rein, William C. Richardson, Samuel C. Scott III, John P. Surma, and Wesley W. von Schack.

(v) “Former Underwriter Defendants” means Barclays Capital Inc., BNY Mellon Capital Markets, LLC, Citigroup Global Markets Inc., Goldman, Sachs & Co., Merrill

Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. Inc., and UBS Securities LLC.

(w) “Immediate Family” means children, stepchildren, parents, stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law. As used in this paragraph, “spouse” shall mean a husband, a wife, or a partner in a state-recognized domestic relationship or civil union.

(x) “Individual Defendants” means defendants Robert P. Kelly, Bruce W. Van Saun, Thomas P. Gibbons, Jorge Rodriguez, Michael K. Hughey and John A. Park.

(y) “Investment Vehicle” means any investment company or pooled investment fund, including, but not limited to, mutual fund families, exchange-traded funds, fund of funds and hedge funds, in which BNYM or any of the Former Underwriter Defendants, have, has or may have a direct or indirect interest, or as to which any of their respective affiliates may act as an investment advisor but of which BNYM or any Former Underwriter Defendant or any of their respective affiliates is not a majority owner or does not hold a majority beneficial interest. This definition of Investment Vehicle does not bring into the Settlement Class BNYM or any of the Former Underwriter Defendants or any other Person who is excluded from the Settlement Class by definition.

(z) “Judgment” means the final judgment, substantially in the form attached hereto as Exhibit B, to be entered by the Court approving the Settlement.

(aa) “Lead Counsel” means the law firm of Bernstein Litowitz Berger & Grossmann LLP.

(bb) “Lead Plaintiff” means the State of Oregon by and through the Oregon State Treasurer on behalf of the Common School Fund and, together with the Oregon Public Employee Retirement Board, on behalf of the Oregon Public Employee Retirement Fund.

(cc) “Litigation Expenses” means costs and expenses incurred in connection with commencing, prosecuting and settling the Action (which may include the costs and expenses of Lead Plaintiff directly related to its representation of the Settlement Class), for which Lead Counsel intends to apply to the Court for reimbursement from the Settlement Fund.

(dd) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; and (iv) any attorneys’ fees awarded by the Court.

(ee) “Notice” means the Notice of (I) Pendency of Class Action, Certification of Settlement Class, and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit 1 to Exhibit A, which is to be mailed to Settlement Class Members.

(ff) “Notice and Administration Costs” means the costs, fees and expenses that are incurred by the Claims Administrator and/or Lead Counsel in connection with (i) providing notices to the Settlement Class; and (ii) administering the Settlement, including but not limited to the Claims process, as well as the costs, fees and expenses incurred in connection with the Escrow Account.

(gg) “Notice Order” means the order, substantially in the form attached hereto as Exhibit A, to be entered by the Court directing that notice of the Settlement be provided to the Settlement Class.

(hh) “Officer” means any officer as that term is defined in Securities and Exchange Act Rule 16a-1(f).

(ii) “Parties” means Defendants and Lead Plaintiff, on behalf of itself and the other members of the Settlement Class.

(jj) “Person” means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability corporation, association, affiliate, joint stock company, government and any political subdivision thereof, legal representative, trust, trustee, unincorporated association, or any business or legal entity.

(kk) “Plaintiffs’ Counsel” means Lead Counsel and all other legal counsel who, at the direction and under the supervision of Lead Counsel, performed services on behalf of the Settlement Class in the Action.

(ll) “Plaintiffs’ Releasees” means Lead Plaintiff, all other plaintiffs in the Action, their respective attorneys, and all other Settlement Class Members, and their respective current and former officers, directors, agents, parents, affiliates, subsidiaries, successors, predecessors, assigns, employees, and attorneys, in their capacities as such.

(mm) “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund set forth in the Notice.

(nn) “PSLRA” means the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, *et seq.*, as amended.

(oo) “Released Claims” means all Released Defendants’ Claims and all Released Plaintiffs’ Claims.

(pp) “Released Defendants’ Claims” means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common or foreign law, that arise out of or relate to the institution, prosecution, or settlement of the claims asserted in the Action against the Defendants. Released Defendants’ Claims do not include any claims relating to the enforcement of the Settlement or any claims against any Person who submits a request for exclusion from the Settlement Class that is accepted by the Court.

(qq) “Released Plaintiffs’ Claims” means any and all claims, rights, causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, and liabilities of every nature and description, whether known or Unknown Claims, whether arising under any federal law, state, foreign or statutory law, common law or administrative law, or any other law, rule or regulation, whether fixed or contingent, accrued or not accrued, matured or unmatured, liquidated or unliquidated, at law or in equity, whether class or individual in nature, that Lead Plaintiff or any other member of the Settlement Class (a) asserted in the Complaint, or (b) could have asserted in the Action or in any other action or in any forum that arise out of, are based upon, or relate to the allegations, transactions, facts, matters, occurrences, disclosures, statements, representations or omissions or failures to act involved, set forth, or referred to in the Complaint and that relate to the purchase of BNYM common stock during the Settlement Class Period. Released Plaintiffs’ Claims do not include any Excluded Claims.

(rr) “Releasee(s)” means each and any of the Defendants’ Releasees and each and any of the Plaintiffs’ Releasees.

(ss) “Releases” means the releases set forth in ¶¶ 5-6 of this Stipulation.

(tt) “Settlement” means the settlement between Lead Plaintiff and Defendants on the terms and conditions set forth in this Stipulation.

(uu) “Settlement Amount” means \$180,000,000 in cash.

(vv) “Settlement Class” means all persons and entities who or which purchased BNYM common stock during the period beginning on February 28, 2008 through and including October 4, 2011 (the “Settlement Class Period”) and were damaged thereby. Excluded from the Settlement Class are (i) Defendants; (ii) BNYM’s subsidiaries and affiliates in which BNYM has a majority ownership interest; (iii) any person who is, or was at any time during the Settlement

Class Period, an Officer or director of BNYM; (iv) the members of the Immediate Family of each of the Individual Defendants or of any other person who is, or was at any time during the Settlement Class Period, an Officer or director of BNYM; (v) the Former Underwriter Defendants and their respective Officers and directors at any time during the Settlement Class Period or currently; (vi) the members of the Immediate Families of each person who is, or was at any time during the Settlement Class Period, an Officer or director of any of the Former Underwriter Defendants; and (vii) any entity in which any of the foregoing, at any time during the Settlement Class Period, held or as of May 21, 2015 held a majority interest; provided, however, that any Investment Vehicle (as defined herein) shall not be deemed an excluded person by definition. Also excluded from the Settlement Class are any persons and entities who or which exclude themselves by submitting a request for exclusion that is accepted by the Court.

(ww) “Settlement Class Member” means each Person who is a member of the Settlement Class.

(xx) “Settlement Class Period” means the period beginning on February 28, 2008 through and including October 4, 2011.

(yy) “Settlement Fund” means the Settlement Amount plus any and all interest earned thereon.

(zz) “Settlement Hearing” means the hearing set by the Court under Rule 23(e)(2) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

(aaa) “Summary Notice” means the Summary Notice of (I) Pendency of Class Action, Certification of Settlement Class, and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit 3 to Exhibit A, to be published as set forth in the Notice Order.

(bbb) “Taxes” means (i) all federal, state and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Settlement Fund; (ii) the expenses and costs incurred by Lead Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants); and (iii) all taxes imposed on payments by the Settlement Fund, including withholding taxes.

(ccc) “Unknown Claims” means any Released Claims which Lead Plaintiff or any other Settlement Class Member, each of the Defendants or any of the other Releasees, does not know or suspect to exist in his, her or its favor at the time of the release of each or any of the other Releasees, which, if known by him, her or it, might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiff and each of the Defendants shall expressly waive, and each of the other Settlement Class Members and each of the other Releasees shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Lead Plaintiff and each of the Defendants acknowledge, and each of the other Settlement Class Members and each of the other Releasees shall be deemed by operation of law to have

acknowledged, that the foregoing waiver was separately bargained for and is a key element of the Settlement.

CLASS CERTIFICATION

2. Solely for purposes of the Settlement and for no other purpose, Defendants stipulate and agree to: (a) certification of the Action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Settlement Class; (b) certification of Lead Plaintiff as Class Representative for the Settlement Class; and (c) appointment of Lead Counsel as Class Counsel for the Settlement Class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

MOTION FOR NOTICE ORDER

3. Within ten (10) business days of execution of this Stipulation, Lead Plaintiff will move for certification of the Settlement Class for settlement purposes only and the scheduling of a hearing for consideration of final approval of the Settlement, which motion shall be unopposed by Defendants. Concurrently with that motion, Lead Plaintiff shall apply to the Court for, and Defendants shall agree to, entry of the Notice Order, substantially in the form attached hereto as Exhibit A.

RELEASE OF CLAIMS

4. The obligations incurred pursuant to this Stipulation are in consideration of the full and final disposition of the Action as against Defendants and the Releases provided for herein.

5. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without further action by anyone, upon the Effective Date of the Settlement, Lead Plaintiff and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed

to have, and by operation of law and of the judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Plaintiffs' Claim against the Defendants and the other Defendants' Releasees, and shall forever be enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees. This Release shall not apply to any Excluded Claim.

6. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without further action by anyone, upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Defendants' Claim against Lead Plaintiff and the other Plaintiffs' Releasees, and shall forever be enjoined from prosecuting any or all of the Released Defendants' Claims against any of the Plaintiffs' Releasees. This Release shall not apply to any claims relating to enforcement of the Settlement or to any Person who submits a request for exclusion from the Settlement Class that is accepted by the Court.

7. Notwithstanding ¶¶ 5-6 above, nothing in the Judgment, or the Alternate Judgment, if applicable, shall bar any action by any of the Parties to enforce or effectuate the terms of this Stipulation or the Judgment, or Alternate Judgment, if applicable.

THE SETTLEMENT CONSIDERATION

8. In consideration of the settlement of the Released Plaintiffs' Claims against Defendants and the other Defendants' Releasees, Defendants shall pay or cause to be paid the Settlement Amount into the Escrow Account on the later of, and no later than (a) twenty (20) business days after the date of entry by the Court of the Notice Order; or (b) fifteen (15) business days after Lead Counsel has provided to Defendants' Counsel wire transfer and check payment

instructions for the Settlement Amount, contact information and a physical address for the Escrow Agent, and an executed W-9 from the Escrow Agent. In the event that the Settlement Amount is not timely paid, regardless of the reasons therefor, Lead Plaintiff's sole remedy shall be to terminate the Settlement.

USE OF SETTLEMENT FUND

9. The Settlement Fund shall be used to pay: (a) any Taxes, (b) any Notice and Administration Costs, (c) any Litigation Expenses awarded by the Court; and (d) any attorneys' fees awarded by the Court. The balance remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Authorized Claimants as provided in ¶¶ 18-29 below.

10. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow Account exclusively in United States Treasury Bills (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances up to the amount that is insured by the FDIC may be deposited in any account that is fully insured by the FDIC. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States.

11. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Lead Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3),

shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Lead Counsel shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The Defendants' Releasees shall not have any liability or responsibility for any such Taxes. Upon written request, Defendants will provide to Lead Counsel the statement described in Treasury Regulation § 1.468B-3(e). Lead Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a "relation back election," as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

12. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the Escrow Agent pursuant to the disbursement instructions to be set forth in the Escrow Agreement, and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Defendants' Releasees shall have no responsibility or liability for the acts or omissions of Lead Counsel or its agents with respect to the payment of Taxes, as described herein.

13. The Settlement is not a claims-made settlement. Upon the occurrence of the Effective Date, no Defendant, Defendants' Releasee, or any other Person who paid any portion of the Settlement Amount shall have any right to the return of the Settlement Fund or any portion thereof for any reason whatsoever, including without limitation, the number of Claim Forms

submitted, the collective amount of Recognized Claims of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund.

14. Notwithstanding the fact that the Effective Date of the Settlement has not yet occurred, Lead Counsel may pay from the Settlement Fund, without further approval from Defendants or further order of the Court, all Notice and Administration Costs actually incurred. Such costs and expenses shall include, without limitation, the actual costs of printing and mailing the Notice, publishing the Summary Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice, administering the Settlement (including processing the submitted Claims), and the fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and Administration Costs paid or incurred, including any related fees, shall not be returned or repaid to Defendants, any of the other Defendants' Releasees, or any other Person who paid any portion of the Settlement Amount.

ATTORNEYS' FEES AND LITIGATION EXPENSES

15. Lead Counsel will apply to the Court for a collective award of attorneys' fees to Plaintiffs' Counsel to be paid from (and out of) the Settlement Fund. Lead Counsel also will apply to the Court for reimbursement of Litigation Expenses, which may include a request for reimbursement of Lead Plaintiff's costs and expenses directly related to its representation of the Settlement Class, to be paid from (and out of) the Settlement Fund. Lead Counsel's application for an award of attorneys' fees and/or Litigation Expenses is not the subject of any agreement between Defendants and Lead Plaintiff other than what is set forth in this Stipulation.

16. Any attorneys' fees and Litigation Expenses that are awarded by the Court shall be paid to Lead Counsel immediately upon award, or at such later date as required by the Court, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Lead Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any motion for reconsideration or appeal or further proceedings on remand, or successful collateral attack, or as a result of any other order or proceedings, the award of attorneys' fees and/or Litigation Expenses is reduced or reversed and such order reducing or reversing the award has become Final. Lead Counsel shall make the appropriate refund or repayment in full no later than thirty (30) days after (a) receiving from Defendants' Counsel notice of the termination of the Settlement; or (b) any order reducing or reversing the award of attorneys' fees and/or Litigation Expenses has become Final. The procedure for and the allowance or disallowance by the Court of any attorneys' fees and/or Litigation Expenses are not necessary terms of this Stipulation and are not conditions of the Settlement embodied herein, and are separate from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement as set forth in this Stipulation. Neither Lead Plaintiff nor Lead Counsel may cancel or terminate the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees and/or Litigation Expenses.

17. Unless otherwise ordered by the Court, and subject to the following provisions, Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which it, in good faith, believes reflects the contributions of such counsel to the institution, prosecution and settlement of the Action. Defendants' Releasees shall have no responsibility for or liability whatsoever with respect to the allocation or award of attorneys' fees or Litigation

Expenses. The attorneys' fees and Litigation Expenses that are awarded to Plaintiffs' Counsel shall be payable solely from the Escrow Account.

NOTICE AND SETTLEMENT ADMINISTRATION

18. As part of the Notice Order, Lead Plaintiff shall seek appointment of a Claims Administrator. The Claims Administrator shall administer the Settlement, including but not limited to the process of receiving, reviewing and approving or denying Claims, under Lead Counsel's supervision and subject to the jurisdiction of the Court. Other than Defendants' obligation to provide BNYM's securities holders records as provided in ¶ 19 below, none of the Defendants, nor any other Defendants' Releasees, shall have any involvement in or any responsibility, authority or liability whatsoever for the selection of the Claims Administrator, the Plan of Allocation, the administration of the Settlement, the claims process, or disbursement of the Net Settlement Fund, and shall have no liability whatsoever to any Person, including, but not limited to, Lead Plaintiff, any other Settlement Class Members or Lead Counsel in connection with the foregoing. Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms.

19. In accordance with the terms of the Notice Order to be entered by the Court, Lead Counsel shall cause the Claims Administrator to mail the Notice and Proof of Claim Form to those members of the Settlement Class as may be identified through reasonable effort. Lead Counsel shall also cause the Claims Administrator to have the Summary Notice published in accordance with the terms of the Notice Order to be entered by the Court. For the purposes of identifying and providing notice to the Settlement Class, within ten (10) business days of the date of entry of the Notice Order, Defendants shall provide or cause to be provided to the Claims Administrator (at no cost to the Settlement Fund, Lead Counsel or the Claims Administrator) BNYM's security lists

(consisting of names and addresses) of the holders of BNYM common stock during the Settlement Class Period, in electronic form.

20. The Claims Administrator shall receive Claims and determine first, whether the Claim is a valid Claim, in whole or part, and second, each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim compared to the total Recognized Claims of all Authorized Claimants (as set forth in the Plan of Allocation set forth in the Notice attached hereto as Exhibit 1 to Exhibit A, or in such other plan of allocation as the Court approves).

21. The Plan of Allocation proposed in the Notice is not a necessary term of the Settlement or of this Stipulation and it is not a condition of the Settlement or of this Stipulation that any particular plan of allocation be approved by the Court. Lead Plaintiff and Lead Counsel may not cancel or terminate the Settlement (or this Stipulation) based on this Court's or any appellate court's ruling with respect to the Plan of Allocation or any other plan of allocation in this Action. Defendants and the other Defendants' Releasees shall not object in any way to the Plan of Allocation or any other plan of allocation in this Action. No Defendant, nor any other Defendants' Releasee, nor the counsel of any Defendant or any other Defendants' Releasee shall have any involvement with or liability, obligation or responsibility whatsoever for the Court-approved plan of allocation or its effectuation.

22. Any Settlement Class Member who does not submit a valid Claim Form will not be entitled to receive any distribution from the Net Settlement Fund but will otherwise be bound by all of the terms of this Stipulation and Settlement, including the terms of the Judgment or, the Alternate Judgment, if applicable, to be entered in the Action and the releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action, claim, or other

proceeding of any kind against the Defendants' Releasees with respect to the Released Plaintiffs' Claims in the event that the Effective Date occurs with respect to the Settlement.

23. Lead Counsel shall be responsible for supervising the administration of the Settlement and the disbursement of the Net Settlement Fund subject to Court approval. No Defendant, nor any other Defendants' Releasees, shall have any right to review, contest or object to any Claim Form, or any decision of the Claims Administrator or Lead Counsel with respect to accepting or rejecting any Claim for payment by a Settlement Class Member. Lead Counsel shall have the right, but not the obligation, to waive what it deems to be formal or technical defects in any Claim Forms submitted in the interests of achieving substantial justice.

24. For purposes of determining the extent, if any, to which a Settlement Class Member shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

(a) Each Settlement Class Member shall be required to submit a Claim Form, substantially in the form attached hereto as Exhibit 2 to Exhibit A, supported by such documents as are designated therein, including proof of the Claimant's loss, or such other documents or proof as the Claims Administrator or Lead Counsel, in their discretion, may deem acceptable;

(b) All Claim Forms must be submitted by the date set by the Court in the Notice Order and specified in the Notice. Any Settlement Class Member who fails to submit a Claim Form by such date shall be forever barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Stipulation (unless by Order of the Court such Settlement Class Member's Claim Form is accepted), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternate Judgment, if applicable, and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind against any Defendants' Releasees with respect to any Released Plaintiffs' Claim. Provided that it is mailed by the claim-

submission deadline, a Claim Form shall be deemed to be submitted when postmarked, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the Claim Form shall be deemed to have been submitted on the date when actually received by the Claims Administrator;

(c) Each Claim Form shall be submitted to and reviewed by the Claims Administrator who shall determine in accordance with this Stipulation and the plan of allocation the extent, if any, to which each Claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below as necessary;

(d) Claim Forms that do not meet the submission requirements may be rejected. Prior to rejecting a Claim in whole or in part, the Claims Administrator shall communicate with the Claimant in writing, to give the Claimant the chance to remedy any curable deficiencies in the Claim Form submitted. The Claims Administrator shall notify, in a timely fashion and in writing, all Claimants whose Claim the Claims Administrator proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the Claimant whose Claim is to be rejected has the right to a review by the Court if the Claimant so desires and complies with the requirements of subparagraph (e) below; and

(e) If any Claimant whose Claim has been rejected in whole or in part desires to contest such rejection, the Claimant must, within twenty (20) days after the date of mailing of the notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a Claim cannot be otherwise resolved, Lead Counsel shall thereafter present the request for review to the Court.

25. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's Claim, and the Claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that Claimant's status as a Settlement Class Member and the validity and amount of the Claimant's Claim. No discovery shall be allowed on the merits of this Action or of the Settlement in connection with the processing of Claim Forms.

26. Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for a Class Distribution Order: (a) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims submitted; (b) approving payment of any administration fees and expenses associated with the administration of the Settlement from the Escrow Account, and (c) if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants from the Escrow Account.

27. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Settlement Class Members. All Settlement Class Members whose Claims are not approved by the Court for payment shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternate Judgment, if applicable, to be entered in this Action and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action against any and all Defendants' Releasees with respect to any and all of the Released Plaintiffs' Claims.

28. No Person shall have any claim against Lead Plaintiff, Lead Counsel, the Claims Administrator or any other agent designated by Lead Counsel, arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or any order of the Court. Lead Plaintiff and the Defendants, and their respective counsel, and Lead

Plaintiff's damages expert and all other Releasees shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund, the plan of allocation, or the determination, administration, calculation, or payment of any claim or nonperformance of the Claims Administrator, the payment or withholding of taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

29. All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court. All Settlement Class Members and Parties to this Settlement expressly waive trial by jury (to the extent any such right may exist) and any right of appeal or review with respect to such determinations.

TERMS OF THE JUDGMENT

30. If the Settlement contemplated by this Stipulation is approved by the Court, Lead Counsel and Defendants' Counsel shall request that the Court enter a Judgment, substantially in the form attached hereto as Exhibit B.

31. The Judgment shall contain a Bar Order, substantially in the form set forth in Exhibit B, that provides that, upon the Effective Date of the Settlement (as defined herein) (a) permanently bars and enjoins, to the fullest extent permitted by law, any Person from commencing, prosecuting, or asserting any and all claims for contribution or indemnity (or any other claim when the alleged injury to that Person is that Person's actual or threatened liability to the Settlement Class or a Settlement Class member in the Action) based upon, relating to, arising out of, or in connection with the Released Plaintiffs' Claims (as defined herein), against each and every one of the Defendants, whether arising under state, federal, common, or foreign law, as claims, cross-

claims, counterclaims, or third-party claims, in this Action or a separate action, in any court, arbitration proceeding, administrative proceeding, or other forum; and, (b) permanently bars and enjoins, to the fullest extent permitted by law, Defendants from commencing, prosecuting, or asserting any and all claims for contribution or indemnity (or any other claim when the alleged injury to the Defendant is that Defendant's actual or threatened liability to the Settlement Class or a Settlement Class member in the Action) based upon, relating to, or arising out of the Released Plaintiffs' Claims, against any Person, other than a Person whose liability to the Settlement Class has been extinguished pursuant to the Stipulation, whether arising under state, federal, common, or foreign law, as claims, cross-claims, counterclaims, or third-party claims, in this Action or a separate action, in any court, arbitration proceeding, administrative proceeding, or other forum. The Bar Order shall not include, and nothing in the Bar Order or the Stipulation shall release or alter, the contractual rights or defenses, if any, between BNYM and other insureds, on the one hand, and XL Specialty Insurance Company, U.S. Specialty Insurance Company, ACE American Insurance Company, Illinois National Insurance Company, Hartford Accident and Indemnity Company, Endurance Specialty Insurance Ltd., and Allied World Assurance Company Ltd., on the other hand, under any applicable agreements or at law, including, without limitation, any right of indemnification or reimbursement in connection with (a) the payment of the Settlement Amount or (b) incurrence of defense costs. Notwithstanding the Bar Order, nothing shall bar any action by any of the plaintiffs in the Action or Defendants to enforce or effectuate the terms of the Settlement, the Stipulation, or any court orders approving the Stipulation.

32. The Judgment shall also contain a judgment reduction provision substantially in the form set forth in Exhibit B, providing that: any final verdict or judgment that may be obtained by or on behalf of the Settlement Class or any Settlement Class Member against any Person subject to the Bar Order based upon, relating to, arising out of, or in connection with any Released

Plaintiffs' Claim shall be reduced by the greater of (a) an amount that corresponds to the percentage of responsibility of any Defendant in this Action for common damages or (b) the amount paid by or on behalf of Defendants to the Settlement Class or any Settlement Class Member for common damages.

**CONDITIONS OF SETTLEMENT AND EFFECT OF
DISAPPROVAL, CANCELLATION OR TERMINATION**

33. The Effective Date of the Settlement shall be deemed to occur on the first date by which all of the following events and conditions have been met and have occurred or have been waived:

(a) the Court has entered the Notice Order, substantially in the form set forth in Exhibit A attached hereto, as required by ¶ 3 above;

(b) the Settlement Amount has been deposited into the Escrow Account in accordance with the provisions of ¶ 8 above;

(c) BNYM has not exercised its option to terminate the Settlement pursuant to the provisions of this Stipulation (including the Supplemental Agreement described in ¶ 37 below);

(d) Lead Plaintiff has not exercised its option to terminate the Settlement pursuant to the provisions of this Stipulation; and

(e) the Court has approved the Settlement as described herein, following notice to the Settlement Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, and entered the Judgment and the Judgment has become Final, or the Court has entered an Alternate Judgment and none of the Parties seek to terminate the Settlement and the Alternate Judgment has become Final.

34. Upon the occurrence of the Effective Date, any and all remaining interest or right of the Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the Releases herein shall be effective.

35. If (i) BNYM exercises its right to terminate the Settlement as provided in this Stipulation; (ii) Lead Plaintiff exercises its right to terminate this Settlement as provided in this Stipulation; (iii) the Court disapproves the Settlement; or (iv) the Effective Date as to the Settlement otherwise fails to occur, then:

(a) The Settlement and the relevant portions of this Stipulation shall be canceled and terminated.

(b) Lead Plaintiff and Defendants shall revert to their respective positions in the Action as of May 21, 2015.

(c) The terms and provisions of this Stipulation, including Defendants' stipulation pursuant to ¶ 2 hereof certifying a class for settlement purposes and the order pursuant to ¶ 3 hereof certifying a class for settlement purposes, with the exception of this ¶ 35 and ¶¶ 14, 16, 39, and 59, shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and any Judgment, or Alternate Judgment, if applicable, or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*.

(d) Within five (5) business days after joint written notification of termination is sent by Defendants' Counsel and Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued interest thereon and any funds received by Lead Counsel consistent with ¶ 16 above), less any expenses and any costs which have either been disbursed or incurred and chargeable to Notice and Administration Costs and less any Taxes paid or due or owing shall be refunded by the Escrow Agent to BNYM (or such other persons or entities as BNYM may direct).

In the event that the funds received by Lead Counsel consistent with ¶ 16 above have not been refunded to the Settlement Fund within the five (5) business days specified in this paragraph, those funds shall be refunded by the Escrow Agent to BNYM (or such other persons or entities as BNYM may direct) immediately upon their deposit into the Escrow Account consistent with ¶ 16 above.

36. It is further stipulated and agreed that Lead Plaintiff and BNYM shall each have the right to terminate the Settlement and this Stipulation, by providing written notice of their election to do so (“Termination Notice”) to the other Parties to this Stipulation within fourteen (14) days of: (a) the Court’s final refusal to enter the Notice Order in any material respect; (b) the Court’s final refusal to enter the Judgment in any material respect as to the Settlement; (c) the date upon which the Judgment is modified or reversed in any material respect by the United States Court of Appeals for the Second Circuit or the United States Supreme Court; or (d) the date upon which an Alternate Judgment is modified or reversed in any material respect by the United States Court of Appeals for the Second Circuit or the United States Supreme Court, and the provisions of ¶ 35 above shall apply. However, any decision or proceeding, whether in this Court or any appellate court, with respect to an application for attorneys’ fees or reimbursement of Litigation Expenses or with respect to any plan of allocation shall not be considered material to the Settlement, shall not affect the finality of any Judgment or Alternate Judgment, if applicable, and shall not be grounds for termination of the Settlement.

37. In addition to the grounds set forth in ¶ 36 above, BNYM shall have the unilateral right to terminate the Settlement in the event that Settlement Class Members timely and validly requesting exclusion from the Settlement Class meet the conditions set forth in Defendants’ confidential supplemental agreement with Lead Plaintiff (the “Supplemental Agreement”), in accordance with the terms of that agreement. The Supplemental Agreement, which is being executed concurrently herewith, shall not be filed with the Court and its terms shall not be

disclosed in any other manner (other than the statements herein and in the Notice, to the extent necessary, or as otherwise provided in the Supplemental Agreement) unless and until the Court otherwise directs or a dispute arises between Lead Plaintiff and BNYM concerning its interpretation or application. If submission of the Supplemental Agreement is required for resolution of a dispute or is otherwise ordered by the Court, Lead Plaintiff and Defendants will undertake to have the Supplemental Agreement submitted to the Court *in camera*.

38. Persons who otherwise would be members of the Settlement Class but desire to be excluded from the class shall be required to provide a written statement that the person wishes to be excluded from the Settlement Class for receipt by the Claims Administrator on or before twenty-one (21) calendar days prior to the Settlement Hearing. Unless otherwise ordered by the Court, any Settlement Class Member who does not submit a timely and valid request for exclusion as provided by this Stipulation and its exhibits (including the required information concerning the date, quantity and price of each transaction in BNYM common stock) shall be bound by this Stipulation.

NO ADMISSION OF WRONGDOING

39. Neither the Term Sheet, this Stipulation (whether or not consummated), including the exhibits hereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the Term Sheet and this Stipulation, nor any proceedings taken pursuant to or in connection with the Term Sheet, this Stipulation and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendants' Releasees with respect to the truth of any fact alleged

by Lead Plaintiff or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Defendants' Releasees or in any way referred to for any other reason as against any of the Defendants' Releasees, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(b) shall be offered against any of the Plaintiffs' Releasees, as evidence of, or construed as, or deemed to be evidence of any presumption, concession or admission by any of the Plaintiffs' Releasees that any of their claims are without merit, that any of the Defendants' Releasees had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiffs' Releasees, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; or

(c) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial;

provided, however, that if this Stipulation is approved by the Court, the Parties and the Releasees and their respective counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement.

MISCELLANEOUS PROVISIONS

40. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any exhibit attached hereto, the terms of the Stipulation shall prevail.

41. BNYM warrants that, as to the payments made or to be made by or on behalf of it and the other Defendants, at the time of entering into this Stipulation and at the time of such payment, BNYM, or to its knowledge any persons or entities contributing to the payment of the Settlement Amount, were not insolvent, nor will the payment required to be made by or on behalf of it and the other Defendants render it insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This representation is made by BNYM and not by its counsel.

42. In the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of Defendants to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited into the Settlement Fund by others, then, at the election of Lead Plaintiff, Lead Plaintiff and Defendants shall jointly move the Court to vacate and set aside the Releases given and the Judgment or Alternate Judgment, if applicable, entered in favor of Defendants and the other Releasees pursuant to this Stipulation, in which event the releases and Judgment, or Alternate Judgment, if applicable, shall be null and void, and the Parties shall be restored to their respective positions in the litigation as provided in ¶ 35 above and any cash amounts in the Settlement Fund (less any Taxes paid, due or owing with respect to the Settlement Fund and less any Notice and Administration Costs actually incurred, paid or payable) shall be returned as provided in ¶ 35.

43. The Parties intend this Stipulation and the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Lead Plaintiff and any other Settlement Class Members against the Defendants' Releasees with respect to the Released Plaintiffs' Claims. Accordingly, Lead Plaintiff and its counsel and Defendants and their counsel agree not to assert in any forum that this Action was brought by Lead Plaintiff or defended by Defendants in bad faith or without a reasonable basis. No Party shall assert any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the institution, prosecution, defense, or settlement of this Action. The Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm's-length and in good faith by the Parties, including through a mediation process supervised and conducted by Judge Phillips, and reflect the Settlement that was reached voluntarily after extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

44. Lead Plaintiff and its counsel and Defendants and their counsel agree not to assert in any statement made to any media representative (whether or not for attribution) that the Action was commenced or prosecuted by Lead Plaintiff or defended by Defendants in bad faith or without a reasonable basis, nor will they deny that the Action was commenced and prosecuted and defended in good faith and is being settled voluntarily after consultation with competent legal counsel. In all events, Lead Plaintiff and its counsel and Defendants and their counsel shall not make any accusations of wrongful or actionable conduct by either Party concerning the prosecution, defense, and resolution of the Action, and shall not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.

45. The terms of the Settlement, as reflected in this Stipulation, may not be modified or amended, nor may any of its provisions be waived except by a writing signed on behalf of both Lead Plaintiff and Defendants (or their successors-in-interest).

46. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

47. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and Litigation Expenses to Plaintiffs' Counsel and enforcing the terms of this Stipulation, including the Plan of Allocation (or such other plan of allocation as may be approved by the Court) and the distribution of the Net Settlement Fund to Settlement Class Members. The Parties agree that any action arising under or to enforce this Stipulation shall be litigated solely in the Court.

48. The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

49. This Stipulation and its exhibits and the Supplemental Agreement constitute the entire agreement among Lead Plaintiff and Defendants concerning the Settlement and this Stipulation and its exhibits. All Parties acknowledge that no other agreements, representations, warranties, or inducements have been made by any Party hereto concerning this Stipulation, its exhibits or the Supplemental Agreement other than those contained and memorialized in such documents.

50. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

51. This Stipulation shall be binding upon and inure to the benefit of the successors and assigns of the Parties, including any and all Releasees and any corporation, partnership, or other entity into or with which any Party hereto may merge, consolidate or reorganize.

52. The construction, interpretation, operation, effect and validity of this Stipulation, the Supplemental Agreement and all documents necessary to effectuate it shall be governed by the internal laws of the State of New York without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

53. This Settlement is not subject to confirmatory discovery.

54. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's-length negotiations between the Parties and all Parties have contributed substantially and materially to the preparation of this Stipulation.

55. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

56. Lead Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Court approval of the Notice Order and the Settlement, as embodied in this Stipulation, and to use best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

57. If any Party is required to give notice to another Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or facsimile or email transmission, with confirmation of receipt. Notice shall be provided as follows:

If to Lead Plaintiff or Lead Counsel: Bernstein Litowitz Berger & Grossmann LLP
Attn: John C. Browne, Esq.
1285 Avenue of the Americas
New York, New York 10019
Telephone: (212) 554-1400
Facsimile: (212) 554-1444
Email: JohnB@blbglaw.com

If to Defendants: Kellogg Huber Hansen Todd Evans
& Figel PLLC
Attn: Reid M. Figel, Esq.
1615 M Street NW #400
Washington, DC 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999
Email: rfigel@khhte.com

and

Petrillo Klein & Boxer LLP
Attn: Guy Petrillo, Esq.
655 Third Avenue, 22nd Floor
New York, New York 10017
Telephone: (212) 370-0330
Facsimile: (212) 370-0391
Email: gpetrillo@gkblp.com

58. Except as otherwise provided herein, each Party shall bear its own costs.

59. Whether or not the Stipulation is approved by the Court and whether or not the Stipulation is consummated, or the Effective Date occurs, the Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed and proceedings in connection with the Stipulation confidential.

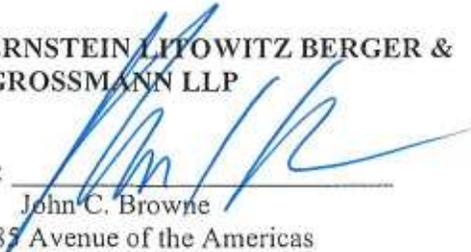
60. All agreements made and orders entered during the course of this Action relating to the confidentiality of information shall survive this Settlement, and, unless the Court directs otherwise, Plaintiffs shall take no steps to disclose or make public any of the documents covered by the Court's order dated April 30, 2015, and all such documents shall be treated as if they were

still covered by the confidentiality agreements made, confidentiality orders entered, and confidentiality designations made in the Action.

61. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Settlement Class Members is being given or will be given by the Parties or their counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation. Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed, by their duly authorized attorneys, as of June 23, 2015.

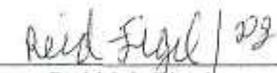
**BERNSTEIN LITOWITZ BERGER &
GROSSMANN LLP**

By: 
John C. Browne

1285 Avenue of the Americas
New York, New York 10019
Telephone: (212) 554-1400
Facsimile: (212) 554-1444

*Lead Counsel for Lead Plaintiff
and the Class*

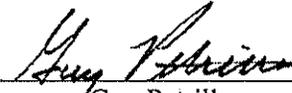
**KELLOGG HUBER HANSEN TODD
EVANS & FIGEL PLLC**

By: 
Reid M. Figel

1615 M Street NW #400
Washington, DC 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

*Counsel for Defendants The Bank of New
York Mellon Corporation, Robert P. Kelley,
Bruce W. Van Saun, Thomas P. Gibbons,
Michael K. Hughey, and John A. Park*

PETRILLO KLEIN & BOXER LLP

By: 

Guy Petrillo

655 Third Avenue, 22nd Floor
New York, New York 10017
Telephone: (212) 370-0330
Facsimile: (212) 370-0391

Counsel for Defendant Jorge Rodriguez

902394