UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANK OF NEW YORK MELLON CORP. FOREX TRANSACTIONS LITIGATION	No. 12-MD-2335 (LAK)
THIS DOCUMENT RELATES TO:	
Southeastern Pennsylvania Transportation Authority v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3066 (LAK)
International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3067 (LAK)
Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3470 (LAK)
Carver, et al. v. The Bank of New York Mellon, et al.	No. 12-CV-9248 (LAK)
Fletcher v. The Bank of New York Mellon, et al.	No. 14-CV-5496 (LAK)

DECLARATION OF JOHN C. COFFEE, JR. IN SUPPORT OF MOTION FOR FINAL APPROVAL OF SETTLEMENT AND AN AWARD OF ATTORNEYS' FEES AND SERVICE AWARDS, AND REIMBURSEMENT OF LITIGATION EXPENSES

JOHN C. COFFEE, JR., declares as follows:

I. Introduction

1. This declaration focuses on two central questions: (1) Does this settlement satisfy the fairness standard specified in Fed. R. Civ. Pro. 23?; and (2) What award of attorneys' fees is appropriate on the facts of this case and under the prevailing law of the Second Circuit? My background, experience and qualifications relevant to these questions are set forth in Exhibit A hereto. At the outset, however, I should note that I have long been a critic of sprawling class

actions and have many times expressed the view (including most recently in my new book, ENTREPRENEURIAL LITIGATION: ITS RISE, FALL And FUTURE, which Harvard University Press published this June) that plaintiff's attorneys sometimes opportunistically pursue their own self-interests to the detriment of those of the class. Thus, I agree with and applaud this Court's recurrent statement that it should serve as a fiduciary to the class at the settlement and fee award stage, because no other participant (including an expert witness) is without potentially conflicting interests. See In Re: IndyMac Mortgage-Backed Secs. Litig., 2015 U.S. Dist. LEXIS 37052 at *3 (S.D.N.Y. March 24, 2015)[1]. Unquestionably, it should and must.

2. One other preliminary comment is relevant: This case presents the mirror-image of the pattern in the typical large recovery class actions. Such cases are often characterized by large classes with small recoveries per claimant—small both in terms of real dollars and as a percentage of each class member's individual losses. Not so here. Instead, this case reveals the reverse pattern, with both a relatively small class (approximately 1,200 distinct custodial customers of the Bank of New York Mellon ("BNYM" or the "Bank")) and estimated individual recoveries that are quite large relative to individual losses. Indeed, in the aggregate, these settlements amount to approximately 35% of the estimated maximum recoverable losses used by the parties in negotiating the settlement.[2] The size of the individual recoveries for Class[3]

[1] Of course, this theme was also stressed in Goldberger v. Integrated Res., Inc., 209 F. 3d 43 (2d Cir. 2000) (in awarding fees, the court acts as a "fiduciary who must serve as a guardian of the rights of absent class members").

[2] I use, as the basis for this estimate, the total recovery offered by the global resolution of the FX cases against BNYM, which includes $335 million attributed directly to the Customer Class and ERISA cases, $155 million for the NYAG action, and an additional $14 million paid by BNYM for the specific benefit of ERISA plans (to resolve potential claims by the United States Department of Labor ("DOL")). All of these funds—$504 million total—are being administered

members are particularly distinctive, with the highest being more than $25 million, 94 of them (or more than 7%) amounting to $1 million or more, and the mean recovery being $400,000.

3. This case also reverses another common pattern in large class actions. Often, class actions are filed in the wake of a pre-existing governmental action (most typically by the Securities and Exchange Commission ("SEC") or the Antitrust Division of the United States Department of Justice ("DOJ")) with the private enforcers essentially free-riding on the governmental action. This case turns that pattern on its head. The origins of this litigation can be traced back to a whistleblower action that was unsealed in California in October 2009 against State Street Bank (a principal competitor to BNYM in the custodial business). The whistleblower (or "relator") in that action was represented by attorneys presently associated with Lieff, Cabraser, Heimann & Bernstein, LLP ("Lieff Cabraser") and another plaintiffs' firm involved in this litigation, the Thornton Law Firm ("TLF"). The State Street action was followed by whistleblower actions filed under seal in a number of states by another relator (this time, a BNYM insider) against BNYM—with TLF and (in several instances) Lieff Cabraser serving as counsel for the whistleblower in the BNYM cases as well.

4. This declaration will principally focus on the role and efforts of two law firms: Lieff Cabraser and Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz"). Together they served as interim co-Lead Class Counsel in the Customer Class Cases[4] and also served on the

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jointly by the Settlement Claims Administrator hired by Class Counsel, and Class Counsel devised the plan of allocation being used to distribute these funds to class members.

[3] "Class" has the same definition herein as the term "Settlement Class" as defined in the Court's Order (1) Provisionally Certifying the Settlement Class; (2) Appointing Lead Plaintiffs as Settlement Class Representatives, and Appointing Lead Settlement Counsel as Class Counsel; (3) Approving the Proposed Form and Manner of Notice; and (4) Scheduling a Final Approval Hearing, dated April 22, 2015 (the "Notice Order").

[4] The "Customer Class Cases" include the "SEPTA Action" (Southeastern Pennsylvania Transportation Authority v. The Bank of New York Mellon Corporation, et al., No. 12-CV-3066

three-firm Executive Committee for Plaintiffs in the MDL.[5] Although other counsel also participated on behalf of Plaintiffs, Lieff Cabraser and Kessler Topaz pulled the laboring oars in the Customer Class Cases, together accounting for the vast majority of the time expended on these actions and principally financing them.[6]

5. As just noted, no public enforcement action brought by any federal agency preceded the Customer Class Actions. Following the unsealing of the first of several of the BNYM whistleblower actions in January 2011, Southeastern Pennsylvania Transportation Authority ("SEPTA"), through its counsel Kessler Topaz, brought the first Customer Class Action in March 2011. Shortly thereafter, the International Union of Operating Engineers,

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(LAK)), the "Ohio Action" (Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corporation, et al., No. 12-CV-3470 (LAK)), and the "IUOE Local 39 Action" (International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund v. The Bank of New York Mellon Corporation, et al., No. 12-CV-3067 (LAK)).

[5] The third firm on the Executive Committee was Bernstein Litowitz Berger & Grossman LLP, which led the securities class action against BNYM that was also consolidated with this MDL, Louisiana Municipal Police Employees' Retirement System v. The Bank of New York Mellon Corp., et al., No. 11-cv-9175-LAK (S.D.N.Y., filed Dec. 14, 2011) (the "Securities Action").

[6] In the Notice Order, the Court appointed the three firms previously identified for purposes of the Settlement as "Lead Settlement Counsel" (Lieff Cabraser, Kessler Topaz and McTigue Law LLP ("McTigue Law")) as "Class Counsel." I am informed, however, that McTigue Law and the other two law firms for plaintiffs in the cases brought solely for the benefit of ERISA plans (Carver v. The Bank of New York Mellon, No. 1:12-cv-09248-LAK (S.D.N.Y.) and Fletcher v. The Bank of New York Mellon, No. 1:14-cv-05496-LAK (S.D.N.Y.) (together, the "ERISA cases")) have agreed to share in no more than 7.25%, total, of any fees awarded to Plaintiffs' counsel (collectively) in this action. Given (1) the relatively modest percentage fee cap to which McTigue Law and the other ERISA counsel (Keller Rohrback LLP and Beins Axelrod, P.C.) have already agreed, and (2) the high percentage of the overall litigation effort, on behalf of all BNYM customers (including ERISA plans), attributable to plaintiffs' counsel in the Customer Class Cases (and particularly Lieff Cabraser and Kessler Topaz), I do not feel it necessary to discuss the role or contributions of other counsel. For ease of discussion and reference in this Declaration, references to "Lead Class Counsel" are to Lieff Cabraser and Kessler Topaz, and references to "Class Counsel" are all counsel for plaintiffs in the Customer Class Cases, which, unlike the narrower ERISA cases, (1) were litigated well past motions to dismiss, (2) were brought on behalf of all BNYM custodial customers (including but not limited to ERISA plans), and (3) involved numerous depositions of Plaintiffs and their representatives. When I wish to refer to counsel for all Plaintiffs (in both the Customer Class Cases and ERISA cases), I will use the term, "Plaintiffs' counsel."

Stationary Engineers Local 39 Pension Trust Fund ("IUOE Local 39") (an ERISA plan), through its counsel (including Lieff Cabraser), commenced a similar class action in July 2011. Following these filings, public enforcement actions were brought by the New York Attorney General ("NYAG") and the DOJ (and later coordinated with these class actions in the MDL proceeding), but these public actions were significantly aided, informed and nurtured from the outset (both financially and logistically) by Lead Class Counsel (as I describe in more detail later).

6. The bottom line is that this is the unique case where public enforcement substantially benefitted from, and depended on, prior private enforcement. The result achieved here represents the culmination of a long effort by Class Counsel to uncover and prove a covert and systematic pattern of misconduct by custodial banks in the FX market directed at their clients, which effort dates back to 2007 (when, I am informed, private counsel's investigation began into the first whistleblower's allegations concerning custodial FX services). That conduct remained well hidden for many years. That it was successfully challenged is attributable to the persistence of Plaintiffs' counsel, who accepted high risk and faced unrelenting resistance from Defendants over a much longer period than most class actions are litigated.

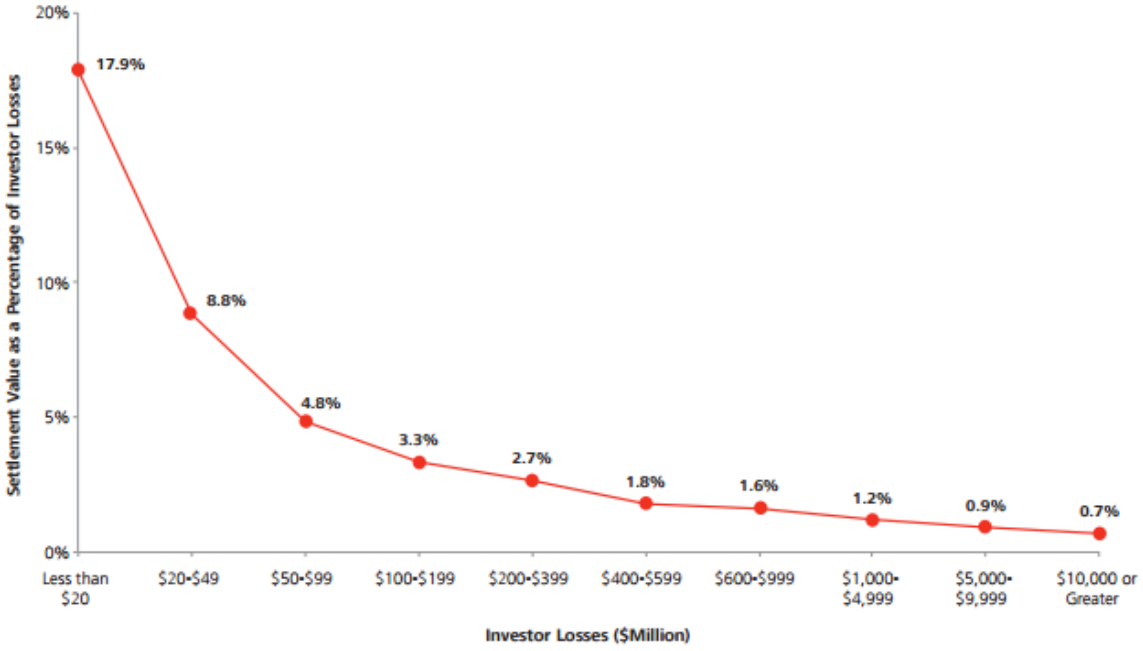
II. The Proposed Settlement Merits Approval As Fair, Reasonable and Adequate, In Particular Because It, Together With The NYAG Settlement, Returns to Class Members An "Off-The-Charts" and Nearly Unprecedented 35% of the Class's Estimated Losses.

7. The proposed settlement is not simply "fair, reasonable and adequate" for purposes of Rule 23(e)(2); rather, by any metric, it is extraordinary. The best relative measure of a counsel's success is the percentage of the maximum recoverable damages that the settlement achieved. It has long been true that, as the level of damages increases, the percentage that the settlement will bear to those damages will normally decline, in part because of solvency

constraints on the defendant. Put simply, settlement value as a percentage of investor losses tends to decline as investor losses increase.

8. This pattern is clearly shown in the diagram set forth below from a survey of securities class actions by NERA, a well-known economic consulting firm:[7]

Settlement Value as a Percentage of Investor Losses, by Level of Investor Losses (January 1996 to December 2014)



Note: Excludes settlements for $0 to the class.

As this study shows, when investor losses are between $1 billion and $5 billion (as they are here), the median settlement is 1.2% of investor losses. Similar data has been published by Cornerstone Research, another well-recognized economic consulting firm, which found that the median settlement as a percentage of "estimated damages" was between 1% and 1.1% in those cases where the estimated damages were between $1 billion and $5 billion (as here).[8] These two

[7] See Dr. Renzo Comolli and Syetlana Starykh, "Recent Trends in Securities Class Action Litigation: 2014 Full Year Review" (NERA 2015 at p. 32, Figure 27).

[8] See Ellen M. Ryan and Laura E. Simmons, Securities Class Action Settlements: 2011 Review and Analysis at p. 7. This percentage was based on settlements between 1996 and 2010. If only 2011 settlements are used, the percentage falls to 0.4%.

studies reach very similar conclusions and thus indicate that the 35% recovery in this litigation is over 25 times better than the comparable median recovery in securities litigation. Even this estimate understates because this is not a securities class action (where settlements of $500 million or more do regularly happen). A similar recovery ($500 million) is far rarer in a commercial or consumer fraud case, where historically class members might primarily receive coupons or non-pecuniary relief. Finally, not only is the aggregate recovery large, but the individual recoveries are even more impressive. Here, approximately one hundred class members will receive over $1 million each, and one class member is scheduled to receive over $25 million. Recoveries of this magnitude are exceedingly rare and contrast sharply with the token recoveries in many commercial and fraud class actions.

9. In evaluating the adequacy of a settlement, courts usually look only at the actual settlement in comparison to the maximum possible recovery. This is because the worst possible outcome is normally zero. But here the downside went lower, as a severely negative outcome was possible. Class members were subject to counterclaims filed by Defendants, initially against both SEPTA and IUOE Local 39, but absent class members were threatened with similar counterclaims if the class were certified. Under these counterclaims, class members were potentially liable for all BNYM's litigation expenses. Although I have no basis for determining BNYM's total litigation expenses, it is clear (as later discussed) that Defendants' counsel staffed their case with more attorneys (and more highly paid attorneys) than did Lead Class Counsel. Also, Defendants adopted an extremely aggressive litigation strategy, sought to depose every plaintiff (and most of their officers and trustees), and clearly were willing to run up litigation expenses, seemingly in an effort to intimidate. Therefore, it is highly likely that Defendants' total expenses, for which these counterclaims sought reimbursement, would have exceeded Class

Counsel's own lodestar. In this light, the possible outcomes facing the Class ranged from an upside of 100% recovery (or nearly $1.44 billion) to a downside of negative $100 million (or more). This range and that steep downside makes the 35% recovery appear even more attractive and underlines the extraordinary risk in this case. This risk impacted not only the class members, but also Class Counsel. Realistically, if Defendants had obtained any recovery from the Class (or individual members thereof), Class Counsel would have suffered great (and possibly irreparable) reputational damage and likely would have had to defend malpractice actions as well. Thus, the risk level for both the Class and Class Counsel was far higher than in the typical case.

10. Beyond being substantively fair (and indeed extraordinarily so), the proposed settlement is also procedurally fair. I appreciate that both procedural and substantive aspects of the settlement must be considered by the reviewing court. See Charron v. Wiener, 731 F. 3d 241, 247 (2d Cir. 2013). Here, not only did experienced and skilled litigators settle after four years of intense litigation, but an experienced and nationally respected mediator—retired federal judge Layn Phillips—supervised the final negotiations. Further, this settlement was preceded by an exceptional level of discovery (including 110 depositions pertinent to the Customer Class Cases, and 11 expert reports). Given that level of discovery, both sides were well-informed as to the strengths and weaknesses of their cases. Class members both received an exceptional recovery (in terms of the percentage of their losses recovered) and avoided the risk (remote but legitimately frightening) of counterclaims that were staggering in their magnitude. In such a context, settlement made even more sense than usual.

III. Counsel's Fee Request is Reasonable, Fair, and Easily Justified on the Unique Facts of This Case

11. In a series of cases, this Court has indicated its preferred methodology for dealing with fee awards (as it is certainly entitled to do). Clearly, this Court prefers the lodestar method (whereas probably a majority of its colleagues use the percentage of the recovery method with typically a lodestar crosscheck). This Court has also reduced counsel's lodestar when it believed duplicative or excessive time was expended, and it has also cut the lodestar "multiplier" (to the extent it exceeds 1) by 60% in at least one case.[9] On repeated occasions, this Court has expressed the view that class actions, or at least securities class actions, "always settle"[10] and thus reflect little real risk for the plaintiffs' attorneys who litigate them. Of course, this Court has been there, done that, and seen more securities cases in particular than any law professor or most of the bar. Thus, it is with a caution bordering on trepidation that I offer the following observations:

a. The world has changed. Indeed, the latest empirical findings demonstrate clearly that, even in the case of securities class actions, the majority of such actions are today dismissed within three to four years (and much of the balance remains open and unresolved); to be sure, this is a sharp change from past practice;

b. This action is at the other end of the spectrum from securities class actions and presented far greater risk. The theories of liability, damages and class certification issues in this litigation were wholly different from those in securities cases. This action entered uncharted legal territory to explore the opaque (but enormous) FX market and thus took on major defendants who were determined to resist any challenge to their FX practices. In fact, only two

[9] See In Re: IndyMac Mortgage-Backed Securities Litigation, 2015 U.S. Dist. LEXIS 37052 (S.D.N.Y March 24, 2015) at * 8 and * 22.
[10] See In Re: Weatherford Int'l Sec. Litig., 2015 U.S. Dist. LEXIS 3370 (S.D.N.Y. Jan. 5, 2015) at *1 to * 2; In Re: IndyMac, 2015 U.S. Dist. LEXIS 37052 at * 7.

other cases have been brought to my knowledge against custodial banks relating to their automated or "standing instructions" FX practices, which were also litigated by Lieff Cabraser and Kessler Topaz (each with other co-counsel). As later discussed, one of these cases was dismissed on a motion to dismiss in 2013, well before this case reached the settlement stage, and the other is still pending in the District of Massachusetts;

c. The substantial time expended in this case was justified for many reasons, but particularly by the fact that Plaintiffs were compelled to fight a "war of attrition" by Defendants who believed (at least until the mediation began) that such a costly "scorched earth" strategy was in their interest;

d. The appropriate lodestar multiplier in this case should reflect not only the risk in this case (which was high), but also the multi-year delay in the receipt of compensation. The lodestar multiplier is intended to place a successful plaintiff's attorney in the same position as the defense attorney. Even when the risk of non-recovery is low (as it may have historically been in securities cases), the lodestar method cannot achieve its goal of parity, unless the multiplier adjusts the plaintiff's attorney's compensation to reflect the time value of money. A dollar delayed is a dollar partially denied, and plaintiff's counsel must pay their staffs and cover their overhead out of their own pockets during a long interim period. Defense counsel can and do exploit this factor, by running up the costs or delaying the litigation. A low multiplier that fails to adjust for both these factors—risk and delay in payment—exposes the plaintiff's attorney to loss and can turn a highly successful case into an economically unrewarding one. Indeed, if a low multiplier is predictable, it incentivizes defense counsel to slow the action's progress, expecting that this will force the plaintiff's attorney to accept a modest settlement.

I discuss all of these points in more detail below.

12. The Factor of Risk. The view that securities class actions "always" settled and thus posed little risk for the plaintiffs' attorneys involved may have been roughly accurate prior to the passage of the Private Securities Litigation Reform Act of 1995 (and even for some time after that), but the world has changed dramatically since then. One way to see this change is to examine Cornerstone Research's data on the fate of securities class actions by year. Its latest report shows a significant change beginning around 2008. Overall, for filings from 1996 to 2013, it finds that 49 percent have settled, 41 percent have been dismissed and 9 percent are ongoing (even this statistic shows that not all cases settle).[11] But averages are deceiving. Once we break out securities class actions into the year in which they were filed and compute their success rate on that basis, a recent and dramatic decline in their rate of success becomes evident:[12]

Year of Filing	Dismissed	Settled	Continuing
2007	42%	54%	4%
2008	51%	46%	3%
2009	51%	36%	13%
2010	59%	29%	11%
2011	58%	25%	16%
2012	40%	11%	49%
2013	11%	1%	88%
2014	8%	0%	92%

[11] See Cornerstone Research, Securities Class Action Filings, 2014 Year in Review (2015) at p. 12.
[12] Id. at p. 12, Figure 10.

As the above table shows, 2007 was the last year in which less than 50% of securities class actions were dismissed. From 2008 to 2011, the majority were dismissed. Of course, the bulk of securities class actions in more recent years (2012 to date) are still continuing, but very few have settled. Because securities class actions tend to be resolved within three years on average, the dismissal rates for 2010 and 2011—which are 59% and 58%, respectively—probably come closest to reflecting the ultimate outcomes (and even these rates will predictably grow higher as the remaining unresolved cases either settle or are dismissed). This suggests that the overall dismissal rate on securities class actions today may exceed 60% once the remaining pending actions are resolved.

13. In a just released midyear supplement to its earlier research, Cornerstone Research summarized and updated its foregoing findings, as follows:

> "The percentage of cases dismissed within three years of their filing dates has increased, growing from 28 percent of cases filed in 2000 to 57 percent of cases filed in 2011—the last annual period for which three full years of resolution outcome data are available."[13]

What is causing this change? Clearly, it is no longer the PSLRA, which has been in effect for 20 years. Cornerstone Research hypothesizes that the influx of new types of cases (including credit crisis cases) may explain some of this increase in dismissal rates, as newer types of cases face a higher dismissal rate.[14] I offer no theories on this score, but suggest that the riskiness of class action litigation is increasing across the board.

14. The Risk in This Case. The foregoing data about securities class actions furnishes only a baseline. The instant class action challenging improper conversion practices in FX

[13] See Cornerstone Research, "Securities Class Action Filings: 2015 Midyear Assessment" at p. 13. They also note that the percentage of filings dismissed within one year of filing has risen from 4 percent to 29 percent over this same period (i.e., 2000 to 2011), but find that the one year dismissal rate has proven less stable and appears to have fallen in 2012 and 2013.
[14] See Cornerstone Research, supra note 8, at 13-14.

trading faced much higher risk. First, because no security is involved, Rule 10b-5 becomes inapplicable, along with its immense body of case law, which gives both sides the ability to chart their course knowing "what the law is." This case involved uncharted legal territory. Second, the "fraud on the market" doctrine drops out of the picture, thus effectively precluding a fraud-based cause of action because reliance is always an element of the cause of action for fraud and reliance would be an "individual" issue under Fed R. Civ. Pro. 23(b)(3) (thereby likely precluding a finding of predominance). Third, even apart from the individual reliance issue, class certification becomes substantially more difficult. Although securities class actions are generally easily certified, attempts to certify either a "breach of fiduciary duty" class action or a "contract" class action faced significant difficulties.

15. Although a breach of fiduciary duty class action could possibly be certified for trial purposes, it faced the problem that there is no unified federal body of law on fiduciary duties, and variations in the law among the states were possible, once again making it difficult to satisfy the predominance standard of Rule 23(b)(3) (I recognize that subclasses could have been used, but if there were more than a few subclasses, the "manageability" standard of Rule 23(b)(3) might have become insurmountable). Finally, although a "contract-based" class action would have been easier to certify (and probably would not have raised significant choice of law problems), there were factual issues in this case about just what documents constituted the contract between class members and BNYM. If different class members received different documents from BNYM, this variation might be used by Defendants to assert that there was not a single contract and that individual issues predominated over common ones.

16. The clearest evidence for my contention that this case faced high risk lies in the early dismissal, just two days after Class Counsel filed the Master Customer Class Complaint in

this action, of another case involving similar facts to challenge these practices. In La. Mun. Police Emples. Ret. Sys. v. JPMorgan Chase & Co., 2013 U.S. Dist. LEXIS 93692 (S.D.N.Y. July 3, 2013), plaintiffs alleged fiduciary breach and contract causes of action against JPMorgan Chase & Co., the third largest custodian bank in a very concentrated industry, with regard to FX practices that were substantially similar to those alleged in this case. United States District Judge Denise Cote dismissed these causes of action, finding that they did not even satisfy the plausibility standard of Ashcroft v. Iqbal, 556 U.S. 662 (2009). Id. at *15-16.

17. For Class Counsel, the impact of JPMorgan Chase's dismissal must have been chilling. There are only five major custodian banks in the U.S. (BNYM, State Street, JP Morgan, Citibank, and Northern Trust Corporation), and in such a concentrated market their behavior probably does not differ significantly. Thus, dismissal of an action, in the Southern District, alleging contract, fiduciary breach, and consumer protection theories that paralleled those in this case against a major rival of BNYM implied that their own case was in serious peril. I realize that there are factual differences between the two cases, and that BNYM's disclosures concerning its "standing instructions" may have been distinctive. Nonetheless, this action went forward in the face of a devastating defeat in a parallel case. Against this loss, there were no counterbalancing victories. At least to my knowledge (after inquiry), no other class action attacking custodial FX practices, such as the ones alleged here, had ever succeeded.[15] This is a

[15] The only other custodial FX class case of which I am aware, Arkansas Teacher Retirement System v. State Street Corporation, et al., No. 11-cv-10230 MLW (D. Mass.), survived a motion to dismiss in 2012, but then was ordered into mediation by the presiding judge, where it has remained throughout the pendency of this MDL. That case involved far fewer causes of action than those alleged here, and also benefitted from a powerful unifying theory of liability that was not generally available to class members in this case (namely, violation of the Massachusetts consumer protection statute, which has been held by some courts to be available to out-of-state plaintiffs suing an in-state defendant, and which provides for double or treble damages and

level of risk in the face of which few other plaintiff's firms have been willing to persist (which may explain why other banks in this concentrated market were not sued).

18. Plaintiffs' Counsel's Lodestar. The total lodestar for all Plaintiffs' counsel in this case comes to more than 113,000 hours, which is more than double the claimed lodestar in the IndyMac litigation, which was 55,372 hours. This Court found that number in IndyMac to be excessive and slashed it by 25%, while also reducing the multiplier from 1.83 to 1.33. 2015 U.S. Dist. LEXIS 37052 at *8 and *22. Thus, it is important to recognize how different this case is from IndyMac. This action was tightly and tautly organized, and from the time that the Court ordered the creation of the Plaintiffs' Executive Committee, two firms handled the bulk of this litigation—Lieff Cabraser and Kessler Topaz, who together account for more than 81,000, or nearly three-quarters, of the hours devoted by all Plaintiffs' counsel. A smaller, more cohesive team implies less duplication and overstaffing.[16] Objective benchmarks corroborate this point. In IndyMac, some 15 depositions were taken (Id. at *21), whereas here 110 depositions were taken (with Class Counsel appearing at 106 of these). 106 to 15 is a ratio of over 7:1. If we multiply the lodestar hours that this Court approved in IndyMac (i.e., approximately 31,529—which is 55,372 reduced by 25%) times 7, one obtains 220,703 hours—or almost twice the 113,000 hours actually expended in this case. Although there is no iron law that proves total time increases proportionally with the number of depositions taken, there is a natural relationship (particularly when, as here, the depositions were lengthy, involved many exhibits, and were hard fought). This comparison suggests that this case was efficiently organized and litigated and that

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prejudgment interest at a rate of up to 12%). Lieff Cabraser is one of several counsel for the proposed class in the State Street litigation.

[16] In the IndyMac litigation, some eight plaintiff's law firms were active.

Plaintiffs' counsel's lodestar is consistent with the time this Court accepted in IndyMac (and actually much below that level).

19. Other evidence also confirms that Plaintiffs' counsel in this case had to work longer and harder. This Court suggested in its IndyMac opinion that much of the discovery in that case involved discovery of "duplicates produced by similarly situated defendants…relatively few of which contained much if anything that mattered to the case." (Id. at *21). Here, a similar conclusion would not be justified because Defendants fought relentlessly to show that the relationships between BNYM and the class members were distinctive and individualized (and thus that the class was not certifiable).

20. Quantitatively, I am advised that BNYM produced more than 1.8 million documents in the MDL litigation, which totaled more than 20 million pages, all of which were reviewed and coded by Class Counsel. Plaintiffs in the MDL litigation were required to produce more than 550,000 documents, which totaled more than 6 million pages, all of which had to be reviewed by Class Counsel for responsiveness and privilege prior to production. Finally, third parties produced more than 287,000 documents, which totaled more than 3.3 million pages that had to be reviewed by Class Counsel. That is a total of 29.3 million pages—all of which had to be reviewed by Class Counsel.

21. Still, the primary reason for Plaintiffs' counsel's seemingly high lodestar in this case was that they were forced by Defendants and Defendants' counsel into a "war of attrition." As a result, they were not in control of their hours, but had to match defense counsel's efforts (or concede important advantages to Defendants). Their fiduciary duties to their clients required them to match Defendants in an intense and exhaustive round of depositions in 2014 (until this Court wisely limited Defendants' attempts to depose virtually everyone). The objective evidence

showing such an intent to run up the hours on the part of the Defendants is clear and abundant. For example, Defendants compelled Class Counsel to defend 32 depositions of Plaintiffs or their agents in the SEPTA, Local 39 Fund, and Ohio Actions[17]. These included an amazing 18 depositions of the Ohio funds' officers and trustees, plus 5 depositions of the SEPTA witnesses, and 9 depositions of IUOE Local 39-affiliated witnesses. Of course, deposing the lead plaintiff is standard in most class actions. But to conduct 32 depositions of Plaintiffs officers and representatives (and still more of their agents) may be a record. BNYM also took an additional 25 depositions of third parties (i.e., absent class-members, investment managers and consultants). BNYM regularly scheduled these depositions in remote sites, such as Anchorage, Alaska; Santa Fe, New Mexico; Edinburgh, Scotland; and two in London, England. These far-flung depositions were also scheduled within a very compressed time period. For example, twenty-three out of the 25 depositions of third parties taken by BNYM took place within a four month time span from 9/23/14 to 1/21/15, which, I am advised, also coincided with the key BNYM witness discovery and expert disclosures. Nor were these depositions simple perfunctory affairs. Both sides introduced numerous exhibits. In the 18 depositions Defendants took of the Ohio pension fund witnesses, Defendants marked some 298 exhibits, and these depositions averaged 6.2 hours in length each. In the SEPTA depositions, 141 exhibits were marked by Defendants, and 113 were similarly marked by Defendants in IUOE Local 39-affiliated depositions. These came to 552 exhibits and 12,000 pages—just in an effort to challenge Plaintiffs in the Customer Class Cases.

22. Revealingly, of the 110 depositions taken of parties and non-parties in the Customer Class Cases, more than half (57) were taken at the direction of BNYM. This is an

[17] Plaintiffs in the Ohio Action include Ohio Police & Fire Pension Fund ("OP&F") and the School Employees Retirement System of Ohio ("SERS") (together, the "Ohio funds").

unusual ratio, which suggests an intent to run up the hours and burden the adversary. Add to that the compressed time period and the overlap between these depositions of third parties and the key BNYM witness depositions, and the inference grows stronger that defense counsel believed that they could use a logistical full court press to force a cheap settlement.[18] My point here is not that it was unfair, improper or unethical for defense counsel to litigate this case in this hyperagressive fashion, but rather that this strategy compelled Class Counsel to expend a great deal of time on collateral, and even peripheral, matters, which, if left to their own preferences, they would not have done. For example, I am advised that the preparation for, and the conduct of, the 18 Ohio depositions consumed not less than 750 hours (which does not include the extensive time that was necessary to prepare and review the Ohio document productions for responsiveness to Defendants document requests and for privilege). In this light, the total lodestar for all Plaintiffs' counsel of 113,000 hours was not padded, but it may have been inflated by Defendants' strategic insistence on litigating every detail. Had Class Counsel not fully prepared for and attended these depositions, the class members' interests could have been seriously jeopardized. Plaintiffs' counsel should not be penalized with a lodestar reduction because their adversary compelled them to take a forced march through the Serbonian Bog. It was Plaintiffs' counsel's duty to follow where the adversary led.[19]

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[18] Obviously, BNYM did not succeed in this attempt. In particular, BNYM did not succeed in outgunning Plaintiffs. For example, while BNYM marked 907 new exhibits at the depositions taken in these class actions, Plaintiffs' counsel, along with the DOJ and the NYAG, marked 1,372.

[19] Lead Class Counsel ultimately did succeed in convincing this Court to shorten this forced march by denying Defendants' counsel the ability to schedule all the depositions it wanted. On October 9, 2014, in response to Lead Class Counsel's motion, the Court enjoined Defendants from taking 11 proposed third-party depositions, and limited the scope of another 8. Lead Class Counsel had argued that the extent and burdensomeness of the absent class member discovery sought by BNYM outweighed its relevance. In opposing the motion, however, BNYM relied almost entirely on the purported relevance of this discovery to the DOJ's FIRREA action (rather

23. Equally clear evidence of Defendants' aggressive, "take-no-prisoners" style of litigation lies in the counterclaims they filed against SEPTA and IUOE Local 39, seeking indemnification pursuant to their custodial contracts with BNYM. Not only did they claim that SEPTA and IUOE Local 39 were required to indemnify them for their costs incurred in defending the Customer Class Actions, but they further asserted that each plaintiff should also indemnify them for their costs in defending the DOJ's FIRREA action as well.[20] In addition, Defendants filed "conditional" counterclaims against absent class members in the event that the Consumer Class Actions were certified (which this Court dismissed without prejudice as premature). Although I do not suggest that there was any professional impropriety here, the assertion that an action brought by the DOJ in the exercise of its prosecutorial discretion could trigger a claim for indemnity against the alleged victims of that misconduct strikes me as both far-fetched and symptomatic. From my perspective, it appears that any claim or defense that Defendants could conceivably assert, they did assert. Finally, the attempt to assert "conditional" counterclaims against absent class members was not simply premature, but seemed intended to intimidate. Even aggressive counsel usually stop well short of advancing such overbroad theories. Hyper-aggressive as these claims may have been, they did (at least as to SEPTA and

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than the Customer Class Cases), and the fact that the DOJ had subpoenaed many (if not all) of these entities itself. The DOJ, notably, remained silent. The Court ruled that since customer reliance was not an element of FIRREA, the broad third party discovery sought by BNYM was not relevant, and granted Lead Class Counsel's motion in its entirety. In bringing and prevailing on this motion, Lead Class Counsel delivered an important victory to the DOJ, enhancing the strength of its claim.

[20] See "Counterclaims and Third-Party Claims of the Bank of New York Mellon and Bank of New York Mellon Trust Company National Association," dated 9/15/2013 (Document 155) at Paragraphs 64-65 and "Counterclaims of the Bank of New York Mellon and Bank of New York Mellon Trust Company National Association," dated 9/15/2013 (Document 111) at Paragraphs 58-59.

IUOE Local 39) survive Plaintiffs' motions to dismiss them and thus added considerably to the risk in this case for both Plaintiffs and Lead Class Counsel.

24. Comparative Staffing. The intent to conduct a war of attrition comes into clearest focus when we compare the level of staffing of this case by the two sides. This case presents a sharp contrast between a defense firm that used a majority of its partners, almost without regard to the significance of the particular task, and Plaintiffs' side, where the staffing was lean and a maximum effort was made to control costs by using fixed-time (but highly trained) legal personnel as document reviewers and analysts. No more than four partners at Kessler Topaz and eight partners at Lieff Cabraser billed time on this case; the two firms have 27 and 38 partners, respectively. That amounts to twelve partners out of a total of 65 partners at the two firms (or 18.5%). But that total is somewhat misleading, as two partners at Lieff Cabraser (Daniel Chiplock and Daniel Seltz) and two partners at Kessler Topaz (Sharan Nirmul and Joseph Meltzer) billed more than 75% of the partner time at their respective firms. In short, four partners of Lead Class Counsel appear to have pulled the laboring oars (with advice and consultation, of course, from others at their firms).

25. The picture is considerably different on Defendants' side. At least twelve partners at Kellogg Huber Hansen & Figel, LLP ("Kellogg") out of a total of 32 partners made appearances in this case; that comes to 37.5%—or more than twice the level as that at Lead Class Counsel. At the least, it is unusual that over a third of the partners in a mid-sized firm are active in one case. In addition, based on email distribution lists, it appears that 21 different attorneys at Kellogg were actively involved in this litigation. The disproportion between the two sides is actually even greater, as no more than a total of 8 associates at Kessler Topaz and Lieff Cabraser, combined, worked on this case. Instead, to minimize costs, both firms principally used staff or

contract attorneys who were not associates at the firm for the extremely time-intensive tasks of reviewing, analyzing and digesting the great volume of highly sophisticated documents that were produced. These attorneys also prepared "Witness Kits" for most of the 110 depositions taken in the litigation to prepare the partners taking the depositions (which "Witness Kits", in the case of important witnesses, could consist of 60 or more pages, and usually exceeded 10 or 15 pages, of factual or document analysis tied to key allegations in the case, with "hyperlinks" to hundreds of documents contained in the online document repository).

26. The use of specialized document review attorneys (the majority of them working full-time) allowed both firms to economize on their costs. But this does not mean that inexperienced attorneys were used—far to the contrary. Set forth on Exhibit B hereto is a list of the attorneys used in this regard just by Lead Class Counsel. As that Exhibit shows, the average years out of law school for all of these attorneys was 12.6, and each had been employed by their firm for 2-3 years on average.

27. Unfortunately, it is sometimes assumed that such contract or staff attorneys are of lower quality and are not engaged in the "true" practice of law. Perhaps, that is sometimes the case. See, e.g., Lola v. Skadden, Arps, Slate, Meagher & Flom, LLP, 2015 U.S. App. LEXIS 12755 (2d Cir. July 23, 2015) (holding that document review performed by contract attorneys did not amount to the "practice of law" where work was "devoid of legal judgment" and consisted of sorting documents into pre-defined categories). But it is not the case here, where the facts are strikingly different. If the "exercise of legal judgment" is the standard for when an individual is performing as an attorney, it is clear that legal judgment had to be (and was) exercised on a daily basis by these experienced attorneys, acting as document reviewers and analysts. The detailed Witness Kits prepared by these attorneys were relied upon by the attorneys taking the depositions

(who were under severe time pressure) and alerted them as to what was sensitive in each witness's testimony and the documents that related to it. Having reviewed the resumes of several of the document review attorneys in this case, I also find that they are graduates of excellent law schools (including Harvard Law School) and Ivy League colleges. For various personal reasons, they prefer to work on a fixed-hour basis, and to be (typically) assigned to work principally on one case at a time. The result is an efficient and lower-cost form of organization, in which these experienced attorneys directly interface with the two partners at each firm who were responsible for handling most depositions. This organizational structure enabled these attorneys to become highly sophisticated in their knowledge of the facts of the case and the relevance of the documents produced by all parties. This was essential if Plaintiffs' counsel were to keep up (as they clearly did here) with Defendants' "forced march" through a large number of Plaintiff and third-party depositions.

28. Much of the necessary work involved in prosecuting the Customer Class Cases involved the review, analysis, and application of millions of pages of documents, from both Defendants and third parties. This was neither make-work, nor routine. Rather, it was important work that had to be performed under tight time constraints. It was entrusted primarily to attorneys experienced in document analysis in complex cases, who had proven themselves to Lead Class Counsel in other cases. These attorneys communicated daily with those responsible for briefing, depositions, and related deposition preparation, and this interaction made it possible to mine mountains of raw data, sifting the wheat from the chaff and identifying the critical facts within the tight deadlines set by this Court.

29. Higher-priced (but often inexperienced) junior associates were little used by Class Counsel. The bottom line is that Class Counsel have not run up the hours on make-work

or "confirmatory" discovery. Rather, they were litigating actively a case that could have continued for years (and with much uncertainty as to the outcome) when the mediation process produced a settlement. In sum, on Plaintiffs' side, this case was litigated leanly and without overstaffing.

30. Class Counsel's Contribution to the NYAG Settlement. In considering the size of the lodestar submitted by Plaintiffs' counsel overall, it is important to recognize that Lead Class Counsel not only litigated their own case, but they were a proximate cause of both the NYAG's and DOL's settlements as well. The NYAG and DOL settlement add $155 million and $14 million, respectively, to the total recovery to be received by class members, but the necessary work that brought it about was performed in large part by Lead Class Counsel. Of necessity, the NYAG engaged in what I would term "vicarious litigation." For example, I am advised that the NYAG did not engage in independent, systematic document review, but rather relied on Lead Class Counsel and the experts that the Lead Class Counsel had retained and whose testimony Lead Class Counsel developed.[21] Revealingly, of the 53 depositions taken of the 52 BNYM witnesses, Class Counsel led almost half (or 24) of these depositions and asked questions at 33. In contrast, I am advised that the NYAG led one deposition, asked questions at an additional seven, and appeared at only 22 (out of 53). The NYAG also did not attend any of the plaintiff-

[21] One qualification is necessary here. The NYAG did conduct its own initial investigation and interviewed 14 BNYM employees in 2009 and 2010 based on a limited production of documents from Defendants largely confined to the post-2009 timeframe. The transcripts of these interviews were shared with the DOJ and Customer Class Plaintiffs in 2014 in connection with preparing for depositions. Eight of the employees interviewed by the NYAG were deposed in the coordinated discovery by either the DOJ or Class Counsel. Notably, the class period in the class actions before the Court runs from January, 1999 to January, 2012—a much longer period than at issue in the NYAG action and also encompasses the conduct of the pre-merger Pittsburgh-based Mellon Bank, which was not the subject of the NYAG action. I have no information and express no views about the document review conducted by NYAG in its initial investigation of the 2009 to 2010 period.

side depositions in the Customer Class Cases, while in contrast the DOJ attended 19 of the 32 plaintiff-side depositions. In the case of third party depositions, Class Counsel appeared at 24 of the 25 depositions scheduled by BNYM, while the NYAG appeared at 8. Overall, as noted earlier, Class Counsel appeared at 106 of the 110 depositions of parties and non-parties, while the NYAG appeared at 30 and led 1. The DOL did not file a case (and thus did not appear at any depositions).

31. My goal here is not to criticize the NYAG or DOL, whose appearances and activities may have been limited by budgetary or logistical constraints on their offices or other office priorities. In fairness, whatever the reason for their approach, it worked—but largely because of the efforts of Lead Class Counsel who filled in for them, reviewing and coding the documents, preparing for and handling the bulk of the depositions, developing the damage theories, hiring the experts, and shouldering most of the total costs, as later discussed. Lead Class Counsel were the little red hen that did the work. Basically one attorney handled the bulk of the NYAG's appearances throughout the time its case was coordinated with this litigation. Although diligent and hard-working, this attorney (or even an attorney of extraordinary talent) could not have achieved the exemplary results that the NYAG did achieve here—but for Lead Class Counsel quietly pulling the laboring oars.

32. Lead Class Counsel were also responsible for enhancing the NYAG settlement in other respects. The original NYAG investigation covered a narrower time period (focusing on 2009 onwards), while Lead Class Counsel were able through their efforts to expand the discovery and class periods from 1999 to 2012 (and thus increase both their leverage and that of the NYAG). I recognize, of course, that Class Counsel is not entitled to be paid any fee award out of the NYAG's or DOL's settlements by the terms of the Settlement Agreement. But the

hours they worked, in effect serving as a proxy for the understaffed NYAG team and for a DOL team that did not litigate at all, should not be ignored or cut back on the theory that their hours were excessive. Clearly, this time benefitted the Class.

33. Both the NYAG and the DOJ also benefitted from Lead Class Counsel's funding of the various actions. Lead Class Counsel assumed by agreement (a) 48% of the costs for the document repository and court reporting service for all BNYM depositions (the Securities Plaintiffs[22] assumed an additional 19% of these costs), (b) 50% of the costs for the work of Dr. David DeRosa, the principal expert for all the parties on "best execution" (with the Securities Plaintiffs assuming an additional 23%) and 100% of the cost of the damages expert, G. William Brown, whose opinions form the basis for the Plan of Allocation, and (c) 50% of the costs of the mediation (with the Securities Plaintiffs assuming another 23% of these costs). Lead Class Counsel accordingly paid approximately $660,000 in document repository and court reporting costs, $1.1 million in expert costs, and $60,000 in mediation costs. The NYAG bore less than 5% of all joint costs, while the DOJ paid between 10% and 15% of the joint litigation expenses.[23] Lead Class Counsel thus shouldered the principal litigation burden.

34. Finally, the central role of Class Counsel in initiating this combined litigation by public and private enforcers seems conceded by Defendants' attempt to seek indemnification against SEPTA and IUOE Local 39 for not just the private actions but the governmental ones as well, and to assert "conditional" counterclaims against absent class members. Defendants seem to have recognized (but over-reacted to) the leadership role played by Class Counsel by attributing the costs of defending the DOJ's FIRREA action to the actions of private litigants

[22] "Securities Plaintiffs" refers to Plaintiffs in the Securities Action.
[23] Counsel for Securities Plaintiffs and plaintiffs in the ERISA action contributed most of the balance.

and, in particular, their counsel. This may have been intended to intimidate SEPTA, IUOE Local 39, and absent class members, but it is at the least a backhanded compliment that recognizes the causal role played by Lead Class Counsel and their colleagues in organizing, funding, and coordinating these integrated actions.

IV. Application of the Goldberger Factors Shows That the Requested Fee Award Is Reasonable.

35. The various factors discussed to this point are best summarized by viewing them through the prism of the six factors explicitly set forth in Goldberger v. Integrated Resources, 209 F. 3d 43 (2d Cir. 2000). These are:

(a) The Time and Labor Expended By Counsel. There is no question that Plaintiffs' counsel worked long and hard and under intense time pressure. Their collective lodestar in excess of 113,000 hours shows that. But the point that I have been stressing in this declaration is that they also worked both efficiently and economically. The lion's share of the work in this class action was performed by Lead Class Counsel, with just two partners at each firm contributing more than 75% of the partners' time at those two firms. With that lean a staff, duplication was far less likely. A compressed time schedule also precluded either firm from running up the hours needlessly. Given the pace set by their adversaries, Plaintiffs' counsel had had to struggle just to keep their heads above water. Indeed, had this Court not limited Defendants' efforts to take endless discovery and had the mediation not produced an early resolution, Class Counsel's lodestar might have reasonably included tens of thousands more hours.

36. In contrast to other cases, squadrons of associates were not used in this case; rather, an efficient organizational structure was developed to integrate document reviewers and analysts with partners. Also, the two firms were able to accept a higher level of risk than either

might have been able to accept on their own; in effect, the pairing of the two firms achieved a more efficient level of diversification.

37. Most importantly, the efforts and time of Class Counsel not only were responsible for the $335 million class recovery, but also facilitated the $155 million NYAG recovery. It is simply not plausible that a single attorney could have successfully litigated this action. Class Counsel performed the behind-the-scenes work (i.e., document coding and review, attendance at depositions, hiring experts, and funding most costs) that made the NYAG's efforts fruitful. Although the DOJ did pull its own oar in this litigation (and very ably), it also benefitted from Class Counsel's efforts and funding. I am not aware of any other case in which private plaintiffs' attorneys have provided decisive assistance on this scale to public enforcement attorneys in a class action.

(b) Magnitude and Complexity of the Litigation. This class action was unprecedented. No prior class action had successfully taken on the opaque custodial FX trading market. As earlier discussed, the one other attempt in this District (La. Mun. Employ. Ret. Sys. v. JPMorgan Chase) failed at the motion to dismiss stage. Class Counsel could neither rely on any prior governmental investigation or proceeding nor even on any generally applicable federal statute. Instead, Class Counsel had to fashion theories of liability based on state statutory law and common law. Few precedents existed that were directly relevant.

38. The class period was also uniquely long, stretching from 1999 to 2012. Three different institutions—Bank of New York, Mellon Bank, and Bank of New York Mellon (the merged entity)—were involved, and each employed somewhat different procedures and documentation.

39. Equally important, if not more so, the understanding of how the opaque FX markets worked had to be developed and reduced to a comprehensible format that could be explained to the fact finder. This required Lead Class Counsel to address such issues as: How did market participants see the role of BNYM and other FX traders? Did they expect BNYM to behave like a fiduciary? Or, was it simply a dealer acting as an arm's length principal? BNYM contended that its sophisticated clients had to have realized that it was charging more for its specialized services under its "standing instructions" program. These questions framed a complex factual issue: what did these largely institutional clients know and expect? As a result, BNYM's efforts to contest the industry understanding of its role and the nature of its services allowed BNYM to depose an extensive range of managers, investment consultants, and the users of its services. The upshot was the 110 depositions in the Customer Class Cases alone, which drove up both the costs and Plaintiffs' counsel's lodestar. In few, if any, cases have defendants been able to take the number of depositions (32) of Plaintiffs and their agents that BNYM took in this case.

40. Finally, this was litigation with a large number of other plaintiffs and participants, both public and private, and this gave rise to unique coordination issues. These were successfully handled, but they required constant attention and diplomacy. I am advised that Lead Class Counsel spoke and corresponded weekly, if not daily (typically multiple times), with the DOJ (and to a lesser extent the NYAG) throughout all of 2014 and early 2015 while fact and expert discovery were in their busiest phases. Further, although the DOL did not commence litigation, it had to be lengthily consulted at the mediation phase, and the ultimate settlement had to be structured to satisfy its criteria.

(c) Risk of the Litigation. Hundreds of securities class actions have successfully settled, but no prior private class action involving custodial FX trading has to my knowledge ever been either certified or settled. In fact, La. Mun. Police, Employ. Ret. Sys. v. JPMorgan Chase & Co., 2013 U.S. Dist. LEXIS 93692 (S.D.N.Y. July 2, 2013), a roughly analogous and contemporaneous case, was dismissed for failure to state a cause of action under Fed. R. Civ. P. 12(b)(6).

41. Class Counsel faced high risk at at least four distinct levels. First, no federal cause of action was available, and the state statutory causes of action that were available could not be easily stretched to apply to all class members. Although Class Counsel hoped to prove a breach of fiduciary duty claim, that theory also faced a variety of choice of law issues and much factual complexity. Ultimately, Class Counsel seems to have relied more on a breach of contract theory. But this approach also faced serious issues to the extent that there were significant variations in the terms of BNYM's contract with class members, as no single document fully embodied or expressed that contract. Thus, finding a common legal theory that all class members could assert posed major problems and much risk.

42. Second, class certification represented probably the major challenge to Class Counsel. As just noted, a fiduciary breach theory would have been likely subject to choice of law issues and might have required subclasssing. A contract theory involved factual issues that Defendants and their counsel could be expected to contest vigorously and cite as proof that the predominance requirement could not be satisfied. Because these issues have been earlier analyzed, I will not dwell on them further here.

43. Third, Class Counsel faced major economic risk. By the time this case entered the mediation stage, Class Counsel had already expended significant time, and no trial was even

remotely in sight. Class Counsel understood that their adversaries were pursuing a "war of attrition" strategy, and they appreciated that this could have ultimately resulted in a total lodestar of over 200,000 hours. Even if they were successful at trial or able to reach a settlement, Class Counsel faced the further risk that this Court might disallow some of their lodestar time. In effect, up until the mediation process elicited a change of heart from Defendants, Class Counsel faced the uninviting prospect of a forced march across the Sahara to get to trial and then the possibility that, if successful, they might not be fully compensated for much of their time. In this light, it is revealing and symptomatic that some of the other major custodian banks have not been sued (for example, no action to my knowledge has been brought against the Northern Trust Corporation, which is believed to be the fourth largest U.S. custodian bank). Even with this settlement, FX litigation remains legally and economically uninviting. Many plaintiff's firms will be unwilling to take it on, and the established plaintiff's bar will likely persist in my judgment in preferring easier securities class actions. Novel cases have a much higher mortality rate.

44. Finally, Lead Class Counsel faced the threat of Defendants' counterclaims, which this Court had declined to dismiss. As earlier discussed, the potential liability posed by these counterclaims likely exceeded Class Counsel's own lodestar, and if liability had been imposed on any of the Class's members, malpractice actions were possible and reputational damage was certain.

(d) Quality of the Representation. Put simply, the proof is in the pudding. As Goldberger said: "[T]he quality of representation is best measured by results." Goldberger v. Integrated Res., 209 F. 3d 43, 55 (3d Cir. 2000). Here, we have at a minimum an unprecedented $335 million fund that Class Counsel created without assistance from any prior governmental

enforcement proceedings, and we have additional settlements that they at least proximately caused, resulting in a total of $504 million available for the class members. Because the class is relatively small and because this is not a "claims made" settlement, all this money will be paid out to the class, and not diverted to "cy pres" recoveries. In all candor, consumer class actions often produce modest recoveries and only to those who make claims and provide detailed documentation. As a result, the claiming rate tends to be low. This case, with an ultimate recovery of 35% of the Class's estimated losses and with recoveries going to all class members, is a dramatic exception to this pattern.

45. These results look just as impressive if we compare them to what might have been recovered at trial. Goldberger mandates that such a comparison be made. 209 F. 3d at 55. The $335 million settlement amounts to nearly 24% of the damages calculated by Class Counsel's expert, and when one adds on the NYAG's $155 million recovery and the DOL's $14 million recovery, this percentage rises to roughly 35% of the estimated recoverable damages. Going to trial would have involved years more of delay before trial and possibly years of delay afterwards for appeals. And appeals might have reduced any jury verdict that was obtained. Once again, the time value of money erodes the recovery (if there were at the end of the day any recovery).

46. The quality of Class Counsel's representation in this case can also be judged by the quality of their adversaries. This Court does not need to be told that there is no better litigation law firm in the nation than Paul, Weiss, Rifkind, Wharton & Garrison LLP, which represented BNYM in the IUOE Local 39 Action before it was transferred to this MDL, continued a visible presence in the NYAG action throughout the time this MDL was pending, and became visible again in the Class Cases once settlement discussions commenced in early 2015. Similarly, Kellogg is widely known as the home of an extraordinary percentage of

Supreme Court law clerks. Creative, original, and tenacious, these firms threw themselves at this case with fervor, but employed very different styles.

47. A final distinctive fact about this case is that class members will not receive the typical small recovery in most "small claimant" class actions. Instead, as stated above, nearly 100 will receive sizeable estimated individual recoveries of over $1 million, with more than 260 class members receiving estimated amounts in excess of $100,000. A uniquely sophisticated group, they have indicated that they are delighted with the outcome and the representation.[24] I know of no comparable example that involves anything like the individual recoveries in this case.

48. Still another useful benchmark by which to measure Class Counsel's relative success is the typical recovery in securities class actions. NERA, a well-known consulting firm, computes these recoveries annually, and usually the plaintiff class in a securities class action settles for around 2% of their estimated losses. The latest NERA study in 2014 found the median ratio in such cases to be 1.9%.[25] Thus, even without regard to the NYAG settlement, Class Counsel have produced a recovery more than a dozen times better than the typical securities class recovery. And it faced much higher than typical risk in so doing.

(e) Requested Fee in Relation to the Settlement. Plaintiffs' counsel are collectively requesting a fee that is equal to 25% of the Class action recovery or 16.6% of the total recovery to class members. In lodestar terminology, this reflects an average lodestar multiplier of 1.6.

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[24] See, e.g., the Declarations of Mary Beth Foley, Esq., Joseph M. Marotta, Esq., and Gino Benedetti, Esq. submitted on behalf of OP&F, SERS, and SEPTA (respectively), and the Affidavit of Jerry Lee Kalmar, submitted on behalf of IUOE Local 39, in support of final approval of the Settlement and Plaintiffs' counsels' requests for fees, service awards and reimbursement of expenses.

[25] See Recent Trends in Securities Class Action Litigation: 2014 Full-Year Review (available at http://www.nera.com/content/dam/nera/publications/2015/PUB_2014_Trends_01) at 33.

Under the circumstances of this case, including the exemplary recovery and the heightened risk faced by Class Counsel, a lodestar multiple of 2 or even higher would be justified, but is not here requested. Stated either way (i.e., 25% or a 1.6 average multiplier), the requested fee is well within the mainstream of the fee awards that have been granted in recent securities class actions. This Court has rejected similar fee requests as excessive.[26] However, those cases in which this Court has rejected similar fees were typically securities class actions, and, as earlier noted, the difference between the two contexts are vast, as further discussed below.

49. First, however, we should start with the basics. Plaintiffs' counsel have run up more than 113,000 hours of uncompensated time. The four partners at Lead Class Counsel who principally litigated this case (Messrs. Chiplock, Seltz, Nirmul and Meltzer) propose to charge their time at their customary hourly rates of $650, $580, $725 and $825, respectively. These partners billed roughly 75% of the partner time for Lead Class Counsel in this case.[27] The time of associates will also be billed at their customary rates, ranging from of $325 to $525 per hour. Overall, the blended hourly rate for Class Counsel's partners is $681, and the blended hourly rate for all Class Counsel attorneys is $455. These rates are not materially different than the hourly rates that this Court has approved in other cases.[28] Of course, Plaintiffs' counsel have expended this time on an uncompensated and contingent basis. In addition, Plaintiffs' counsel has incurred litigation expenses of nearly $2.9 million, for which it has also received no payment.

50. The contingent nature of the payment in a class action clearly justifies a multiplier. In the IndyMac case, this Court rejected a multiplier of 1.83 and reduced it

[26] See cases cited supra at FN 10.
[27] While other more senior partners at Class Counsel billed at rates up to $985 per hour, they worked fewer than 2% of the total hours in the case, and in a largely supervisory capacity.
[28] See In Re: IndyMac, 2015 U.S. Dist. LEXIS 37052 at *20 (approving hourly rates between $210 and $420 for associates and between $410 and $835 for partners).

effectively to 1.33.[29] If 1.33 was the appropriate risk multiplier in IndyMac, I would respectfully suggest that the multiplier in this case should not be less than the requested average 1.6 multiplier, and could still justifiably be more. The difference in risk is actually far greater than this differential. This is true for all the reasons that have been earlier explained, including (1) the unprecedented nature of this action, which forced Class Counsel to explore uncharted legal territory; (2) the difficulties associated with class certification; (3) the more than zealous litigation style of the adversary and its counsel; and (4) the problems in developing exactly what class members expected from BNYM.

51. This Court has indicated its preference for the lodestar formula (as it is entitled to do). Still, I would be remiss if I did not at least point out that from the alternative perspective of the "percentage of the recovery" method, the requested fee award is also reasonable. According to a recent study by Professor Brian Fitzpatrick that looked at all class action settlements in 2006-2007, the mean fee award was 25.4% and the median fee award was 25%. See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Awards, 7 J. Empirical L. Stud. 811, 838 (2010). Similarly, in an earlier, larger-scale study, Professors Eisenberg and Miller found the mean and median awards to be 24% and 25% on a nationwide basis. See Theodore Eisenberg & Geoffrey P. Miller, Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008, 7 J. Empirical L. Stud. 248, 260 (2010). In all candor, the percentage does decline with the amount of the settlement. In the case of settlements between $250 million and $500 million, Professor Fitzpatrick found the mean and median percentages to be 17.8% and 19.5%, respectively, with a standard deviation of 7.9%. Fitzpatrick, supra, at 839. Although the requested 25% fee in this case is above those numbers, Professor Eisenberg and Miller

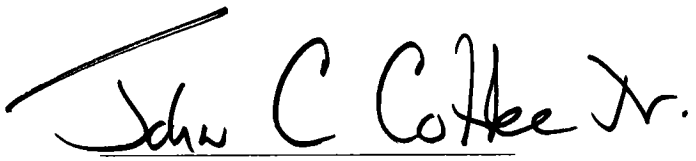
[29] See In Re: IndyMac, 2015 U.S. Dist. LEXIS 37052 at *22.

recommend that "[F]ee awards falling within one standard deviation above or below the mean should be viewed as generally reasonable and approved by the court unless reasons are shown to question the fee." See Theodore Eisenberg and Geoffrey P. Miller, Attorney Fees in Class Action Settlements: An Empirical Study, 1 J. Empirical L. Stud. 27, 74 (2004). Here, the requested fee of 25% is within one standard deviation of the mean (17.8%) in the Fitzpatrick study. In my own view, this is an appropriate case for a lodestar cross check, and an average lodestar multiplier of 1.6 would equalize the total lodestar with the requested fee award. Such a lodestar multiplier is inherently reasonable for all the reasons earlier discussed. Further, as discussed above, the requested fee amounts to just 16.6% of the total $504 million in proceeds being distributed to class members, which would be just below the mean percentage fee awarded in settlements of up to $500 million as found in the Fitzpatrick study.

(f) Public Policy Considerations. Usually, this factor boils down to asserting the public policy goal of "providing lawyers with sufficient incentives to bring common fund cases that serve the public interest." Goldberger v. Integrated Res., 209 F. 3d at 51. But here I must point out that other possible defendants in the highly concentrated custodial banking services industry have not been sued (for example, Northern Trust was not sued). I understand that such actions were considered but not brought. In my judgment, this suggests that custodial FX actions are not attractive, despite the fact that it is likely that the competitive financial institutions in this market behaved similarly. Predictably, most plaintiff's counsel will prefer to bring securities class actions, which they can settle at least much of the time, rather than take on the unique problems of suing custodial banks.

I declare under the penalties of perjury that the foregoing analysis and opinions are true and correct to the best of my knowledge and belief.

Executed this 14th day of August, 2015 in New York, New York.



John C. Coffee, Jr.

EXHIBIT A

Exhibit A:

PROFESSOR COFFEE'S BACKGROUND AND QUALIFICATIONS

1. I am the Adolf A. Berle Professor of Law at Columbia University Law School and the Director of its Center on Corporate Governance. I have taught at Columbia Law School since 1980, and am a member of the Bars of the State of New York and the District of Columbia. I am also a Fellow of the American Academy of Arts and Sciences, a Life Fellow of the American Bar Foundation, and a member of, and former Reporter for, the American Law Institute. I have also been a Visiting Professor of Law at Harvard Law School, Stanford Law School, the University of Virginia Law School, and the University of Michigan Law School. I began my academic career teaching at Georgetown University Law School from 1976 to 1980. Prior to that, I practiced corporate law with the firm of Cravath, Swaine & Moore in New York City from 1970 to 1976. I am a 1969 graduate of Yale Law School.

2. As a law professor, one of my principal academic interests has been class action litigation (with a special focus on the management of the large class action and the incentive structure that the law creates to reward the successful plaintiff's attorney). I also have expertise in corporate and securities law. See Coffee, Lowenstein, Rose-Ackerman, KNIGHTS, RAIDERS AND TARGETS: The Impact of the Hostile Takeover (Oxford University Press 1988). In particular, I am also the co-author of the oldest casebook on securities regulation. See J. Coffee and H. Sale, CASES AND MATERIALS ON SECURITIES REGULATION (Foundation Press 13th ed 2015). I have also co-authored a corporate casebook that focuses extensively on takeovers, tender offers, and proxy fights. See J Choper, J. Coffee, and R. Gilson, CASES AND MATERIALS ON CORPORATIONS (Aspen Press 8th ed. 2013).

3. I have on a number of occasions (more than twenty) testified before Congressional committees with regard to the federal securities laws and class actions, have appeared as a witness before the Advisory Committee on the Civil Rules of the United States Judicial Conference, and regularly appear as a panelist at symposia and institutes on the topics of securities law and class actions. For the past eighteen years, I have been the opening lecturer at the annual ABA National Institute on Class Actions, and my annual survey of class action developments for this Institute has been repeatedly published by the Bureau of National Affairs ("BNA"). During 1995, I served as an adviser to the White House's Office of General Counsel with regard to the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), which chiefly seeks to regulate securities class actions. More recently, I advised the staff of the Senate Banking Committee with respect to the drafting of both the Sarbanes-Oxley Act in 2002 and the Dodd-Frank Act in 2010.

4. My most recent book, ENTREPRENEURIAL LITIGATION: Its Rise, Fall and Future (Harvard University Press 2015) attempts to provide an objective (and often skeptical) history and assessment of large scale plaintiff's litigation in the United States. I have also authored the following articles on class actions (and I cite them below, in part to indicate that I am not contradicting prior positions or inventing a novel argument that I would not endorse apart from the facts of this case): John C. Coffee Jr., Litigation Governance: Taking Accountability Seriously, 110 Colum. L. Rev. 288 (2010); John C. Coffee Jr., Reforming the Securities Class Action: An Essay on Deterrence and Its Implementation, 106 Colum. L. Rev. 1534 (2006); John C. Coffee Jr., Rescuing the Private Attorney General: Why the Model of the Lawyer as Bounty Hunter Is Not Working, 42 Md. L. Rev. 215 (1983); John C. Coffee Jr., The Unfaithful Champion: The Plaintiff as Monitor in Shareholder Litigation, 48 Law & Contemp. Probs. 5

(Summer 1985); John C. Coffee Jr., Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions, 86 Colum. L. Rev. 669 (1986); John C. Coffee Jr., The Regulation of Entrepreneurial Litigation: Balancing Fairness and Efficiency in the Large Class Action, 54 U. Chi. L. Rev. 877 (1987), John C. Coffee Jr., and Donald E. Schwartz, The Survival of the Derivative Suit: An Evaluation and a Proposed Legislative Reform, 81 Colum. L. Rev. 261 (1981); John C. Coffee Jr., Rethinking the Class Action: A Policy Primer on Reform, 62 Ind. L. Rev. 625 (1987); John C. Coffee Jr., Class Wars: The Dilemma of the Mass Tort Class Action, 95 Colum. L. Rev. 1343 (1995), John C. Coffee Jr., The Future of the Private Securities Litigation Reform Act: or Why the Fat Lady Has Not Yet Sung, 51 Bus. Law. 975 (1996); John C. Coffee Jr., Class Action Accountability: Reconciling Exit, Voice, and Loyalty in Representative Litigation, 100 Colum. L. Rev. 370 (2000). Some of these articles have been cited and relied upon by other federal courts, including the U.S. Supreme Court, in well-known decisions dealing with class actions and attorney fee awards. See, e.g., Ortiz v. Fibreboard Corp., 119 S. Ct. 2295, 2317 n.28 (1999); Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 621 (1997).

5. As briefly noted earlier, my work in the area of class actions and representative litigation also includes service (for over a dozen years) as a Reporter for the American Law Institute in connection with its effort to codify the common law rules of corporate law and fiduciary duties in a Restatement-like volume. See A.L.I., PRINCIPLES OF CORPORATE GOVERNANCE: Analysis and Recommendations (1992). I served as the Reporter for Litigation Remedies, and this project specifically recommended standards for plaintiff's attorney fee awards in direct and derivative shareholder actions. In connection with serving as Reporter for the American Law Institute, I have studied fee award procedures, met with many of the

leading attorneys in the class and derivative action field, and have participated in numerous seminars, panels, and informal conferences with judges who have faced similar issues to those involved in this case.

6. I have also served as an expert witness in a number of the largest class actions, including Amchem Prods., Inc. v. Windsor, 521 U.S. 591 (1997); In re Enron Corp. Securities, Derivative & "ERISA" Litig., 586 F. Supp. 2d 732 (S.D. Tex. 2008); In re Visa Check/MasterMoney Antitrust Litig., 297 F. Supp. 2d 503 (E.D.N.Y. 2003); In re AOL Time Warner Inc. Sec. & "ERISA" Litig., No. 02 Civ. 5575, 2006 U.S. Dist. LEXIS 78101 (S.D.N.Y. Sept. 28, 2006); In re Royal Ahold Sec. & "ERISA" Litig., 461 F. Supp. 2d 383 (D. Md. 2006); In re NASDAQ Market-Makers Antitrust Litigation, 187 F.R.D. 465 (S.D.N.Y. 1998); In re Sumitomo Copper Litig., 74 F.Supp. 2d 393 (S.D.N.Y. 1999); In re Cendant Corp. Sec. Litig., 182 F.R.D. 144 (D.N.J. 1998); In re Cendant Corp. Sec. Litig., 109 F.Supp. 2d 235 (D.N.J. 2000), aff'd 264 F.3d 201 (3d Cir. 2001); In re Lucent Tech. Inc. Sec. Litig., 327 F. Supp. 2d 426 (D.N.J. 2004); In re Waste Management, Inc. Sec. Litig., No. 97C7709 (N.D. Ill. 1999); In re Lease Oil Antitrust Litig. (No. II), 186 F.R.D. 403 (S.D. Tex. 1999); Shaw v. Toshiba America Info. Sys., 91 F.Supp. 2d 942 (E.D. Tex. 2000); and In re Diet Drugs Products Liability Litigation, MDL Docket No. 1203 (E.D. Pa. 2000).

7. I attach hereto my updated curriculum vitae.

John Collins Coffee, Jr.
320 Wyoming Avenue
Maplewood, New Jersey 07040

POSITION: Adolf A. Berle Professor of Law, Columbia University Law School
Director, Center on Corporate Governance, Columbia University Law School

EDUCATION: Amherst College 1966 B.A. (*magna cum laude*) Bond Fifteen (highest fifteen ranking seniors); Phi Beta Kappa

LAW SCHOOLS: Yale Law School 1969, LL.B; New York University Law School, 1976 LL.M (in Taxation).

OCCUPATIONAL HISTORY: Columbia Law School 1980 - present; Berle Chair since 1986

Harvard Law School 2001 -- Joseph H. Flom Visiting Professor of Law, Fall 2001

Stanford Law School - Visiting Professor, Spring 1987

Virginia Law School - Visiting Professor, Fall 1979

Michigan Law School - Visiting Professor, Summer 1979

Georgetown University Law School - Professor and Associate Professor, 1976-1980

Cravath, Swaine and Moore - Associate, 1970-1976

Reginald Heber Smith Fellowship, 1969-1970

SPECIALI-ZATIONS: My academic and teaching specialties include corporate and securities law, corporate governance, class actions and complex litigation, criminal law, and white collar crime.

OTHER ACTIVITIES and HONORS:

1. Fellow, American Academy of Arts and Sciences

2. Order of the Coif Visiting Lecturer for 2005 (each year Order of the Coif selects one visiting lecturer to speak at a series of law schools)

3. Reporter (for Litigation Remedies), American Law Institute, PRINCIPLES OF CORPORATE GOVERNANCE AND STRUCTURE (1980-1993: Final Draft 1993)

4. Donald Cressey Award for Lifetime Achievement (awarded by the ACFE in 2011)

5. Member, Strategic Advisory Board, Public Company Accounting Oversight Board (PCAOB) (2007-)

6. Fellow, European Corporate Governance Institute

7. Clarendon Lectures (Oxford University 2006)

8. Anton Phillips Chair, University of Tilburg (2005-2006)

9. Reporter, American Bar Association,
MINIMUM STANDARDS FOR CRIMINAL JUSTICE (2nd ed. 1980)

10. Member, Advisory Committee on Capital Formation and Regulatory Processes, Securities and Exchange Commission (1995-1996)

11. Member, Legal Advisory Committee to the Board of Directors, New York Stock Exchange (1992-1995) (currently, emeritus member)

12. Member, Legal Advisory Board, National Association of Securities Dealers (NASD) (1996-2000)

13. Member, Economic Advisory Board, Nasdaq (2001-2004)

14. Member, Market Practices Committee, NASD Regulation, Inc. (1997-2000)

15. Member, Subcouncil on Capital Allocation, United States Competitiveness Policy Council (created by Omnibus Trade and Competitiveness Act of 1988) (1993-1995)

16. Member, Standing Committee on Law and Justice, Commission on Behavioral and Social Sciences and Education, National Research Council (elected to 1990-1994 term)

17. Member, National Academy of Sciences Panel on Research on Sentencing (1979-1982)

18. General Counsel, American Economic Association (1992-1998)

19. Life Fellow, American Bar Foundation

20. Member, American Law Institute

21. Chairperson, Section on Business Associations, Association of American Law Schools (AALS) (1981-1982)

22. Chairperson, Audit and Investment Policy Committee, AALS (1992-1994) and former member, Nominating Committee, AALS (1990-1991)

23. Chairperson, Committee on Sections, AALS (1984-1985)

24. Board of Editors, M&A and Corporate Governance Law Reporter

25. Board of Contributing Editors, American Lawyer Newspaper Group

26. Columnist on Corporate and Securities Law, New York Law Journal

27. Businesswatch Columnist, National Law Journal

28. Member, Special Committee on Mergers, Acquisitions and Corporate Control, Contests (1996-), and former member, Committee on Corporate Laws (1994-1995), Committee on Securities Regulation (1991-1994) and Committee on Corporate Laws (1983-1985), Association of the Bar of the City of New York

29. Member, Executive Committee, Securities Regulation Institute (1992-2002) (currently, member, Board of Advisors).

30. Chairperson, Appointments Committee, Columbia Law School (1987-1990)

31. Chair, ALI-ABA National Institute on Corporate Governance (1995-2005)

32. Frequent Panelist at PLI, ABA,, ALI-ABA, SEC and other Seminars and Institutes and have testified before Congress on approximately eight occasions.

33. In 1998, in 2001, and again in 2006, Professor Coffee was listed by the National Law Journal as one of its "100 Most Influential Lawyers" in the United States.

BOOKS, AND CASEBOOKS

1. Coffee, ENTREPRENEURIAL LITIGATION: Its Rise, Fall and Future (Harvard University Press, 2015)

2. Coffee, GATEKEEPERS: The Professions and Corporate Governance (Oxford University Press 2006)

3. Choper, Coffee and Gilson, CASES AND MATERIALS ON CORPORATIONS, (Little Brown & Co.) (8th ed. 2013)

4. Coffee and Sale, CASES AND MATERIALS ON SECURITIES REGULATION (12th ed. 2012) (formerly, Jennings, Marsh, Coffee and Seligman)(13th ed. to appear in 2015)

5. Reporter, ABA MINIMUM STANDARDS FOR CRIMINAL JUSTICE (2d ed. 1980) (Chapter 18)

6. Klein, Coffee and Partnoy, BUSINESS ORGANIZATION AND FINANCE (11th ed. 2010)

7 Coffee, Lowenstein and Rose-Ackerman, KNIGHTS RAIDERS AND TARGETS: The Impact of The Hostile Takeover (Oxford University Press, 1988)

8 Ferran, Maloney, Hall and Coffee THE REGULATORY AFTERMATH OF THE GLOBAL FINANCIAL CRISIS (2012 Cambridge University Press)

LAW REVIEW
ARTICLES: (in reverse chronological order)

1. Coffee, Extraterritorial Financial Regulation: Why E.T. Cannot Come Home, 99 Cornell L. Rev. 1259 (2014).

2. Coffee, Mapping the Future of Insider Trading Law: Of Boundaries, Gaps and Strategies, 2013 Columbia Business Law Review 281 (2013).

3. Coffee, The Political Economy of Dodd-Frank: Why Financial Reform Tends to Be Frustrated and Systemic Risk Perpetuated, 97 Cornell L. Rev. 1019 (2012).

4. Coffee, Systemic Risk After Dodd-Frank: Contingent Capital And the Need for Regulatory Strategies, 111 Colum. L. Rev. 795 (2011).

5. Coffee, Ratings Reform: The Good, The Bad, and The Ugly, 1 Harv. Bus. L. Rev. 231 (2011).

6. Coffee, Litigation Governance: Taking Accountability Seriously, 110 Colum. L. Rev. 288 (2010).

7. Coffee and Sale, Redesigning the SEC: Does the Treasury Have A Better Idea?, 95 Va. L. Rev. 707 (2009).

8. Coffee, Law and the Market: The Impact of Enforcement, 156 U. Penn. L. Rev. 299 (2007).

9. Coffee, Reforming the Securities Class Action: An Essay on Deterrence and Its Implementation, 106 Colum. L. Rev. 1534 (2006).

10. Coffee, Can Lawyers Wear Blinders?: Gatekeepers and Third Party Opinions, 84 Texas L. Rev. 59 (2005).

11. Coffee, A Theory of Corporate Scandals: Why the U.S. and Europe are Different, 21 Oxford Review of Economic Policy 198 (2005).

12. Coffee, Causation by Presumption? Why the Supreme Court Should Reject Phantom Losses and Reverse Broudo, 60 Bus. Law. 533 (2005).

13. Coffee, Gatekeeper Failure and Reform: The Challenge of Fashioning Relevant Reforms, 84 B.U. L. Rev. 301 (2004).

14. Coffee, What Caused Enron?: A Capsule Social and Economic History of the 1990s, 89 Cornell L. Rev. 269 (2004).

15. Coffee, The Attorney As Gatekeeper: An Agenda for the SEC, 103 Colum. L. Rev. 1293 (2003).

16. Coffee, Racing Towards the Top?: The Impact of Cross-Listings and Stock Market Competition on International Corporate Governance, 102 Colum L. Rev. 1757 (2002).

17. Coffee, Understanding Enron: "It's About the Gatekeepers, Stupid", 57 Bus. Law. 1403 (2002).

18. Coffee, Law and Regulatory Competition: Can They Co-Exist? 80 Texas L. Rev. 1657 (2002).

19. Coffee, The Rise of Dispersed Ownership: The Roles of Law and the State in the Separation of Ownership and Control, 111 Yale L. J. 1 (2001).

20. Coffee, Do Norms Matter? A Cross-Country Evaluation, 149 U. Pa. L. Rev. 2151 (2001).

21. Coffee, Class Action Accountability: Reconciling Exit, Voice and Loyalty in Representative Litigation, 100 Colum. L. Rev.370 (2000).

22. Coffee, Privatization and Corporate Governance: The Lessons from Securities Market Failure, 25 J. Corp. L. 1 (1999).

23. Coffee, The Future as History: The Prospects for Global Convergence in Corporate Governance and its Implications, 93 Nw. U. L. Rev. 641 (1999).

24. Coffee, Modern Mail Fraud: The Restoration of the Public/Private Distinction, 35 Amer. Crim. L. Rev. 427 (1998).

25. Coffee, Brave New World?: The Impact(s) of the Internet on Modern Securities Regulation, 52 Bus. Law. 1195 (1997).

26. Coffee, The Bylaw, Battlefield: Can Institutions Change the Outcome of Corporate Control Contests, 51 U. Miami L. Rev. 605 (1997).

27. Coffee, Transfers of Corporate Control and the Triggering Thesis: Can Delaware Law Encourage Efficient Transactions While Chilling Inefficient Ones?, 21 Del. J. Corp. L. 359 (1996).

28. Coffee, The Future of the Private Securities Litigation Reform Act of 1995: or Why the Fat Lady Has Not Yet Sung, 51 Bus. Law. 975 (1996).

29. Coffee, Class Wars: The Dilemma of the Mass Tort Class Action, 95 Colum. L. Rev. 1343 (1995).

30. Coffee, Competition versus Consolidation: The Significance of Organizational Structure in Financial and Securities Regulation, 50 Bus. Law. 447 (1995).

31. Black and Coffee, Hail Britannia?: Institutional Investor Behavior Under Limited Regulation, 92 Mich. L. Rev. 1997 (1994) (with Bernard Black).

32. Coffee, The SEC and the Institutional Investor: A Half-Time Report, 15 Cardozo Law Review 837 (1994).

33. Coffee, New Myths and Old Realities: The American Law Institute Faces the Derivative Action, 48 Bus. Law. 1407 (1993).

34. Coffee, Paradigms Lost: The Blurring of the Criminal and Civil Law Models--And What Can Be Done About It, 101 Yale L.J. 1875 (1992).

35. Coffee, Liquidity Versus Control: The Institutional Investor as Corporate Monitor, 91 Colum. L. Rev. 1277 (1991).

36. Coffee and Klein, Bondholder Coercion: The Problem of Constrained Choice in Debt Tender Offers and Recapitalizations, 58 U. Chi. L. Rev. 1207 (1991).

37. Coffee, Does "Unlawful" Mean "Criminal"? Reflections on the Disappearing Tort/Crime Distinction in American Law, 71 B.U.L. Rev. 193 (1991).

38. Coffee, Unstable Coalitions: Corporate Governance as a Multi-Player Game, 78 Geo. L.J. 1495 (1990).

39. Coffee, The Mandatory/Enabling Balance in Corporate Law: An Essay on the Judicial Role, 89 Columbia. L. Rev. 1618 (1989).

40. Coffee, Hush!: The Criminal Law Status of Confidential Business Information After McNally and Carpenter and the Enduring Problem of Overcriminalization, 26 Amer. Crim. L. Rev. 121 (1989).

41. Coffee, The Uncertain Case for Takeover Reform: An Essay on Stockholders Stakeholders and Bust-ups, 1988 Wisc. L. Rev. 435.

42. Coffee, The Regulation of Entrepreneurial Litigation: Balancing Fairness and Efficiency in the Large Class Action, 54 U. Chi. L. Rev. 877 (1987).

43. Coffee, Rethinking the Class Action: A Policy Primer on Reform, 62 Ind. L. Rev. 625 (1987).

44. Coffee, Shareholders Versus Managers: The Strain in the Corporate Web, 85 Michigan L. Rev. 1 (1986).

45. Coffee, Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions, 86 Colum. L. Rev. 669 (1986).

46. Coffee, The Future of Corporate Federalism, 8 Cardozo L. Rev. 759 (1987).

47. Coffee, The Unfaithful Champion: The Plaintiff as Monitor in Shareholder Litigation, 48 Law and Contemporary Problems 5 (1985).

48. Coffee, Partial Justice: Balancing Fairness and Efficiency in Partial Bids, 3 Companies and Securities Law Review 216 (Australian Law Review).

49. Coffee, Litigation and Corporate Governance: An Essay on Steering Between Scylla and Charybdis, 52 Geo. Wash. L. Rev. 789 (1985).

50. Coffee, Market Failure and the Economic Case for a Mandatory Disclosure System, 70 Va. L. Rev. 717 (1984).

51. Coffee, Regulating the Market for Corporate Control: A Critical Assessment of the Tender Offer's Role in Corporate Governance, 84 Colum. L. Rev. 1145 (1984).

52. Coffee, Rescuing the Private Attorney General: Why the Model of the Lawyer As Bounty Hunter is Not Working, 42 Maryland Law Review 215 (1983).

53. Coffee, The Metastasis of Mail Fraud: The Continuing Story of the Evolution of a White Collar Crime, 21 Am. Crim. L. Rev. 1 (1983).

54. Coffee and Schwartz, The Survival of the Derivative Suit: An Evaluation and a Proposal Legislative Reform, 81 Colum. L. Rev. 261 (1981).

55. Coffee, "No Soul To Damn; No Body Kick," An Unscandalized Inquiry into the Problem of Corporate Punishment, 79 Mich. L. Rev. 386 (1981).

56. Coffee, "Twisting Slowly In the Wind": A Search for Constitutional Limits on Coercion of the Criminal Defendant, 1980 Supreme Court Review 211 (1981).

57. Coffee, From Tort to Crime: Some Reflections on the Criminalization of Fiduciary Breaches and the Problematic Line Between Law and Ethics, 19 Am. Crim. L. Rev. 117 (1981).

58. Coffee, Beyond the Shut-Eyed Sentry: Toward a Theoretical View of Corporate Misconduct and an Effective Legal Response, 62 Va. L. Rev. 1099 (1977).

59. Coffee, The Repressed Issues in Sentencing: Accountability, Predictability and Equality in the Era of the Sentencing Commission, 66 Geo. L.J. 975 (1978).

60. Coffee, The Future of Sentencing Reform, 73 Mich. L. Rev. 1361 (1975).

61. Coffee, Making the Punishment Fit the Corporation: The Problems of Finding an Optimal Corporate Criminal Sanction, 1 N. Ill. L. Rev. 1 (1980).

62. Coffee, Privacy versus Parens Patriae, 57 Cornell L. Review 571 (1972).

ENDOWED LECTURES

Professor Coffee served as the Order of the Coif Visiting Lecturer in 2005 and has delivered annual endowed lectures at numerous American and foreign law schools. He has also served as a Distinguished Visiting Scholar at the University of Toronto Law School and Osgoode Hall Law School and in a similar capacity at the University of British Columbia, and has taught as a visiting professor at the University of Tokyo and the University of Sydney. He has also lectured at Oxford, Cambridge, the University of Amsterdam and a variety of other law schools in the United States, Europe and Asia.

EXHIBIT B

LCHB Document Reviewer/Analysts	Years Out of Law School	Years with LCHB	Departure Date
Kelly A. Gralewski	18	6.5	
Joshua J. Bloomfield	15	2.4	7/2/2015
Tanya Ashur	15	1.8	
James G. Gilyard	13	1.8	7/1/2015
Leah A. Nutting	13	2.8	
Christopher B. Jordan	11	2.9	
Marissa H. Lackey	11	1.8	
Scott M. Miloro	9	3.7	
Virginia Weiss	8	1.4	7/2/2015
Andrew C. McClelland	7	1.5	3/27/2015
Jason S. Kim	6	3.4	
Jonathan C. Zaul	6	2.9	
Jessica Chia	5	0.3	10/24/2014
James A. Leggett	3	1.9	
Average	**10.0**	**2.5**	

KTMC Document Reviewer/Analysts	Years Out of Law School	Years with KTMC	Departure Date
Bethany Byrne (O'Neil)	8.0	3.5	3/28/2014
Quiana Chapman Smith	8.0	4.0	
Sara Closic	3.0	1.7	
Megan Martino	9.0	1.7	
Katrice Taylor Mathurin	11.0	5.3	8/28/2014
John McCullough	17	3.5	
Elaine Oldenettel	4.0	2.8	
Melissa Starks	9.0	1.7	
Michael Steinbrecher	11.0	1.7	
Brian Thomer	10.0	4.8	
Stacey Waxman	22.0	2.8	
Kurt Weiler	24.0	6.2	
Avi Cohen	5.0	0.3	1/14/2014
Reid Coppock	32.0	1.8	
Dominique Grenier	14.0	1.7	
Joseph Kuchler	14.0	2.8	
Richard Louisell	15.0	0.3	1/15/2014
Joshua McNamara	9.0	0.3	1/15/2014
John Quinn	18.0	1.7	6/12/2015
Nicholas Savopolous	39.0	2.8	
Deborah Weiss	27.0	0.3	1/15/2014
Average	**14.7**	**2.5**	