

# **EXHIBIT 3**

EXECUTION VERSION

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

RICHARD DENNIS, SONTERRA CAPITAL MASTER FUND, LTD., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT ASIAN EVENT DRIVEN FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., AND ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM, on behalf of themselves and all others similarly situated,

Plaintiffs,

*-against-*

JPMORGAN CHASE & CO., JPMORGAN CHASE BANK, N.A., JPMORGAN CHASE BANK, N.A. AUSTRALIA BRANCH, BNP PARIBAS, S.A., BNP PARIBAS, AUSTRALIA BRANCH, THE ROYAL BANK OF SCOTLAND GROUP PLC, THE ROYAL BANK OF SCOTLAND PLC, RBS N.V., RBS GROUP (AUSTRALIA) PTY LIMITED, UBS AG, UBS AG, AUSTRALIA BRANCH, AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD., COMMONWEALTH BANK OF AUSTRALIA, NATIONAL AUSTRALIA BANK LIMITED, WESTPAC BANKING CORPORATION, DEUTSCHE BANK AG, DEUTSCHE BANK AG, AUSTRALIA BRANCH, HSBC HOLDINGS PLC, HSBC BANK AUSTRALIA LIMITED, LLOYDS BANKING GROUP PLC, LLOYDS BANK PLC, LLOYDS TSB BANK PLC, AUSTRALIA, MACQUARIE GROUP LTD., MACQUARIE BANK LTD., ROYAL BANK OF CANADA, RBC CAPITAL MARKETS LLC, ROYAL BANK OF CANADA, AUSTRALIA BRANCH, MORGAN STANLEY, MORGAN STANLEY AUSTRALIA LIMITED, CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, ICAP PLC, ICAP AUSTRALIA PTY LTD., TULLETT PREBON PLC, TULLETT PREBON (AUSTRALIA) PTY LTD., AND JOHN DOES NOS. 1-50.

Defendants.

Docket No. 16-cv-06496 (LAK)

**STIPULATION AND  
AGREEMENT OF SETTLEMENT  
AS TO DEFENDANT NATIONAL  
AUSTRALIA BANK LIMITED**

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**STIPULATION AND AGREEMENT OF SETTLEMENT  
AS TO DEFENDANT NATIONAL AUSTRALIA BANK LIMITED**

THIS STIPULATION AND AGREEMENT OF SETTLEMENT (the “Settlement Agreement”) is made and entered into on December 10, 2021. This Settlement Agreement is entered into by and on behalf of Richard Dennis, Orange County Employees Retirement System (“OCERS”), Fund Liquidation Holdings, LLC and any subsequently named plaintiff(s) (collectively, the “Representative Plaintiffs”), and the Settlement Class, by and through Plaintiffs’ Counsel, and on behalf of Defendant National Australia Bank Limited (“NAB”), by and through NAB’s Counsel.

WHEREAS, Representative Plaintiffs have filed a civil class action captioned *Richard Dennis, et al. v. JPMorgan Chase & Co., et al.*, No. 16-cv-06496 (LAK) (S.D.N.Y.), currently pending in the United States District Court for the Southern District of New York, and have alleged, among other things, that Defendants, including NAB, from January 1, 2003, through at least August 16, 2016, acted in a manner that violated U.S. federal and state law by allegedly, *inter alia*, manipulating, aiding and abetting the manipulation of, and conspiring, colluding or engaging in racketeering activities to manipulate, the Bank Bill Swap Rate (“BBSW”) and the prices of BBSW-Based Derivatives, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.*, the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.*, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, and the common law;

WHEREAS, Representative Plaintiffs further contend that they and the Settlement Class suffered monetary damages as a result of NAB’s conduct;

WHEREAS, NAB denies each and all of the claims and allegations of wrongdoing in Representative Plaintiffs’ pleadings, has not conceded or admitted any liability whatsoever, expressly incorporates its responsive pleadings, as applicable, and maintains that it has good and

meritorious defenses to all of the claims of liability and damages made by Representative Plaintiffs;

WHEREAS, arm's-length settlement negotiations have taken place between Representative Plaintiffs, Plaintiffs' Counsel, NAB and NAB's Counsel and it is the intent of the Parties to fully and finally resolve the Action as it relates to NAB and any other Released Parties and any claims that arise out of, are based upon or relate in any way to the purchase, other acquisition or sale of BBSW-Based Derivatives by the Settlement Class during the Settlement Class Period as they relate to, or are asserted against, NAB or any other Released Parties;

WHEREAS, on June 17, 2021, the Parties entered into a Binding Term Sheet for Settlement (the "Term Sheet") recording their agreement in principle to settle this Action as against NAB, including by executing this Settlement Agreement;

WHEREAS, this Settlement Agreement (together with the exhibits hereto and the Supplemental Agreement described in Section 23 herein) is the product of arm's-length negotiations between Representative Plaintiffs and NAB and reflects the final and binding agreement between the Parties subject to final approval of the Court;

WHEREAS, Plaintiffs' Counsel, having conducted an investigation of the facts and the law regarding the Action, consider the Settlement set forth herein to be fair, reasonable, adequate and in the best interests of Representative Plaintiffs and the Settlement Class, and having determined that it is in the best interests of the Settlement Class to enter into this Settlement Agreement in order to avoid the uncertainties of complex litigation and to assure a benefit to the Settlement Class;

WHEREAS, NAB, while continuing to deny that it is liable for any of the claims asserted against it in the Action and maintaining that it has good and meritorious defenses thereto, has

nevertheless agreed to enter into this Agreement solely to avoid the continuing cost and burden, further expense, inconvenience, business interruption and distraction of burdensome and protracted litigation, thereby putting this controversy to rest and avoiding the risks inherent in complex litigation and to obtain complete dismissal of the Action as to NAB and a release of claims as set forth herein;

WHEREAS, Representative Plaintiffs, for themselves individually and on behalf of each Settling Class Member, and NAB agree that neither this Settlement Agreement nor any statement made in negotiation thereof shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any fault, liability or wrongdoing whatsoever by NAB, the truth of any of the claims or allegations or any infirmity in the defenses that NAB has, or could have, asserted in the Action;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, Representative Plaintiffs, on behalf of themselves and the Settlement Class by and through Plaintiffs' Counsel, and NAB, by and through NAB's Counsel, agree that the Action and Released Claims be settled, compromised, and dismissed on the merits and with prejudice as to NAB and without costs as to Representative Plaintiffs, the Settlement Class, or NAB, subject to the approval of the Court, on the following terms and conditions:

**1. Terms Used In This Agreement**

The words and terms used in this Settlement Agreement, which are expressly defined below, shall have the meaning ascribed to them below for purposes of this Settlement Agreement.

(A) “**Action**” means the action captioned *Richard Dennis, et al. v. JPMorgan Chase & Co., et al.*, No. 16-cv-06496 (LAK) (S.D.N.Y.) currently pending in the United States

District Court for the Southern District of New York and any actions that may be consolidated thereunder in the future.

(B) “**Agreement**” or “**Settlement Agreement**” means this Stipulation and Agreement of Settlement, together with any exhibits attached hereto, which are incorporated herein by reference.

(C) “**Any**” means one or more.

(D) “**Authorized Claimant**” means any Settlement Class Member who, in accordance with the terms of this Agreement, is entitled to a distribution from the Net Settlement Fund pursuant to any Distribution Plan or order of the Court.

(E) “**BBSW**” means the Bank Bill Swap Rate.

(F) “**BBSW-Based Deposits or Loans**” means BBSW-based deposits or loans, including floating rate notes, deposit-taking facilities, and commercial loans that are priced or call for payments due, in whole or in part, based on BBSW, including Australian dollar deposits and loans.

(G) “**BBSW-Based Derivatives**” means any financial derivative instrument that is based or priced in whole or in part in any way on BBSW or in any way includes BBSW as a component of price (whether priced, benchmarked and/or settled by BBSW), entered into by a U.S. Person, or by a person from or through a location within the U.S., including, but not limited to: (i) Australian dollar foreign exchange (“FX”) derivatives, including Australian dollar FX forwards (also known as “outright forwards” or “outrights”), Australian dollar FX swaps (also known as “currency swaps”), Australian dollar currency options, Australian dollar futures contracts (such as the Chicago Mercantile Exchange (“CME”) Australian dollar futures contract) and options on such futures contracts; (ii)

BBSW-based interest rate derivatives, including interest rate swaps, swaptions, forward rate agreements (“FRAs”), exchange-traded deliverable swap futures and options on those futures, 90-day bank accepted bill (“BAB”) futures and options on those futures, and other over-the-counter (“OTC”) contracts or publicly traded vehicles that reference BBSW; (iii) Australian dollar cross-currency swaps; and (iv) any other financial derivative instrument or transaction based in whole or in part on BBSW, or that in any way incorporates BBSW as a component of price, or is alleged by Representative Plaintiffs in this Action to be based in whole or in part on BBSW, or to in any way incorporate BBSW as a component of price. For the avoidance of doubt, BBSW-Based Derivatives do not include: (i) any BBSW-Based Deposits or Loans; or (ii) any Prime Bank Bills or Prime Bank eligible securities. The Parties agree that this definition is for settlement purposes only. NAB’s rights to contest the relationship, if any, between or among pricing of the products and examples included within this definition, BBSW, and other factors or forces shall be fully preserved. Nothing in this Settlement Agreement may be cited or construed as an admission of or as support for an assertion that a product was or is priced by reference to BBSW in whole or part.

(H) “**Business Days**” means any days from Monday through Friday, inclusive, that are not federal holidays in the United States. For the avoidance of doubt, Business Days shall be defined with reference to the Eastern Time (ET).

(I) “**Class Notice**” means the form of notice of the proposed Settlement to be distributed to the Settlement Class as provided in this Agreement.

(J) “**Conditional Certification Order**” means an order by the Court, the form of which shall be mutually agreed upon by the Parties and submitted to the Court substantially in the form attached hereto as Exhibit A, issued in response to the Motion for Conditional

Certification, conditionally certifying the Settlement Class for purposes only of the Settlement, in accordance with Section 14 herein, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure and staying all proceedings in the Action as against NAB until the Final Approval Order and the Final Judgment (including the order of dismissal of the Action fully, finally and with prejudice as to NAB and any John Doe Defendants named or subsequently named in this Action (solely in their capacity as current or former employees of NAB or the other Released Parties)) have become Final and unappealable or the Court otherwise enters a final decision regarding approval of the Settlement and dismissal of all claims in the Action fully, finally and with prejudice as to NAB and any John Doe Defendants named or subsequently named in this Action (solely in their capacity as current or former employees of NAB or the other Released Parties).

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

(L) “**Defendants**” means any defendants currently or formerly named in the Action and any parties that may be added to the Action as defendants through amended or supplemental pleadings.

(M) “**Distribution Plan**” means the plan of allocation of the Net Settlement Fund developed by Representative Plaintiffs and Plaintiffs’ Counsel and submitted to the Court for approval, whereby the Net Settlement Fund shall in the future be distributed to Authorized Claimants.

(N) “**Effective Date**” means the date when this Settlement Agreement becomes effective and Final as set forth in Section 19 of this Settlement Agreement.

(O) “**Escrow Agent**” means any Person designated by Plaintiffs’ Counsel with the consent of NAB and approved by the Court to act as escrow agent for the Settlement Fund, which Plaintiffs’ Counsel anticipates will be Citibank N.A.

(P) “**Execution Date**” means the date on which this Agreement is executed by the last Party required to do so.

(Q) “**Fairness Hearing**” means a hearing scheduled by the Court following the issuance of the Conditional Certification Order, to consider the fairness, adequacy and reasonableness of the proposed Settlement and Settlement Agreement.

(R) “**Final**” means, with respect to any court order, including, without limitation, the Final Approval Order and Final Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. An order becomes “Final” when: (i) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (ii) an appeal has been filed and either (a) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (b) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. However, any appeal or other proceeding pertaining solely to any order adopting or approving the Distribution Plan, and/or any order issued in respect of any Fee and Expense Application (as defined in Section 6(D) herein) pursuant to Sections 6 and 7 below, shall not in any way delay or prevent the Final Judgment and Final Approval Order from becoming Final.

(S) “**Final Approval Order**” means an order from the Court, the form of which shall be mutually agreed upon by the Parties and submitted to the Court substantially in the form

attached hereto as Exhibit B, approving of the Settlement following: (i) submission of the Motion for Conditional Certification and issuance of the Conditional Certification Order, (ii) the issuance of the Class Notice pursuant to the Conditional Certification Order or any other related order, and (iii) the Fairness Hearing.

(T) “**Final Judgment**” means the order of judgment and dismissal of the Action fully, finally and with prejudice as to NAB and any John Doe Defendants named or subsequently named in this Action (solely in their capacity as current or former employees of NAB or the other Released Parties), the form of which shall be mutually agreed upon by the Parties and submitted to the Court substantially in the form attached hereto as Exhibit C.

(U) “**Incentive Award**” means any award by the Court to Representative Plaintiffs as described in Section 6(B).

(V) “**Investment Vehicles**” means any investment company, separately managed account or pooled investment fund, including, but not limited to: (i) mutual fund families, exchange-traded funds, fund of funds and hedge funds; and (ii) employee benefit plans.

(W) “**Motion for Conditional Certification**” means an application seeking conditional certification of the Settlement Class for purposes only of the Settlement in accordance with Section 14 herein, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure and a stay of all proceedings in the Action as against NAB until the Final Approval Order and the Final Judgment (including the order of dismissal of the Action fully, finally and with prejudice as to NAB and any John Doe Defendants named or subsequently named in this Action (solely in their capacity as current or former employees of NAB or the other Released Parties)) have become Final and unappealable or the Court otherwise enters a Final decision regarding approval of the Settlement and dismissal of all

claims in the Action fully, finally and with prejudice as to NAB and any John Doe Defendants named or subsequently named in this Action (solely in their capacity as current or former employees of NAB or the other Released Parties).

(X) “**NAB’s Counsel**” means NAB’s undersigned counsel of record in this Action.

(Y) “**Net Settlement Fund**” means the Settlement Fund less Court-approved disbursements, including: (i) notice, claims administration and escrow costs; (ii) any attorneys’ fees and/or expenses awarded by the Court; (iii) any Incentive Award(s) awarded by the Court; and (iv) all other expenses, costs, taxes and other charges approved by the Court.

(Z) “**Opt-Outs**” means the Settlement Class Members that timely exercise their rights to be excluded from the Settlement Class.

(AA) “**Opt-Out Information**” refers to the information to be sought from and provided by Opt-Outs as part of their election to opt out of the Settlement Class, as specified in Section 14(B) (subject to Court approval).

(BB) “**Other Settlement**” means any settlement Representative Plaintiffs reach with any other Defendant involving the Action. For the avoidance of doubt, Other Settlement does not include the settlements previously entered into between the Representative Plaintiffs and (i) JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. on or about November 20, 2018, as amended on or about March 1, 2021, (ii) Westpac Banking Corporation on or about March 1, 2021, (iii) Morgan Stanley and Morgan Stanley Australia Limited on or about October 1, 2021, (iv) Commonwealth Bank of Australia on or about December 10, 2021; and (v) Australia and New Zealand Banking Group Ltd. on or about December 10, 2021.

(CC) “**Panel Banks**” means the banks on the Australian Financial Markets Association (the “AFMA”) “BBSW Panel” during the Settlement Class Period. Panel Banks include Australia and New Zealand Banking Group Limited, BNP Paribas S.A., Commonwealth Bank of Australia, Deutsche Bank AG, HSBC Bank Australia Limited, JPMorgan Chase Bank N.A., Lloyds TSB Bank plc, Macquarie Bank Limited, National Australia Bank Limited, Royal Bank of Canada, RBS Group (Australia) Pty Limited, UBS AG, Westpac, and Citibank NA.

(DD) “**Parties**” means NAB and Representative Plaintiffs collectively, and “**Party**” applies to each individually.

(EE) “**Person**” means a natural person, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint-stock company, estate, legal representative, trust, unincorporated association, proprietorship, municipality, state, state agency, entity that is a creature of any state, any government, governmental or quasi-governmental body or political subdivision, authority, office, bureau, agency or instrumentality of the government, any business or legal entity, or any other entity or organization; and any spouses, heirs, predecessors, successors, representatives or assigns of any of the foregoing.

(FF) “**Plaintiffs’ Counsel**” means Lowey Dannenberg, P.C. and Lovell Stewart Halebian Jacobson LLP. “**Additional Plaintiffs’ Counsel**” means Berman Tabacco.

(GG) “**Prime Banks**” means the banks designated by AFMA as prime banks during the Settlement Class Period.

(HH) “**Prime Bank Bills**” means negotiable certificates of deposit (“NCDs”) and BABs issued and accepted by Prime Banks.

(II) “**Proof of Claim and Release**” means the form to be provided to Settlement Class Members, upon further order(s) of the Court, by which any Settlement Class Member may make a claim against the Net Settlement Fund.

(JJ) “**Released Claims**” means those claims described in Section 13(A)-(E) of this Settlement Agreement.

(KK) “**Released Parties**” means NAB, its predecessors, successors and assigns, its past, present, and future direct and indirect parents, subsidiaries (including, without limitation, former defendant Bank of New Zealand (“BNZ”)), divisions, related entities, associates and affiliates, and each of NAB’s and each of the foregoing’s respective current, former and future officers, directors, advisors, representatives, employees, principals, managers, members, partners, participants, agents (in their capacity as agents of NAB), shareholders (in their capacity as shareholders of NAB), representatives, fiduciaries, beneficiaries, consultants, attorneys, accountants, auditors, insurers, or legal representatives, and the predecessors, successors, heirs, executors, administrators, trustees and assigns of each of the foregoing and any John Doe Defendants named or subsequently named in this Action (to the extent they are current or former employees of any of the foregoing but solely in that capacity). As used in this provision, “affiliates” means entities controlling, controlled by, or under common control with a Released Party. For the avoidance of doubt, “Released Parties” shall not include any named Defendants other than NAB and BNZ.

(LL) “**Releasing Parties**” means each and every Representative Plaintiff, Sonterra Capital Master Fund, Ltd., FrontPoint Financial Services Fund, L.P., FrontPoint Asian Event Driven Fund, L.P., and FrontPoint Financial Horizons Fund, L.P., and each and every Settling Class Member on their own behalf and on behalf of their respective

predecessors, successors and assigns, direct and indirect parents, subsidiaries, divisions, related entities, associates and affiliates, and on behalf of their current and former officers, directors, advisors, representatives, employees, agents, principals, managers, members, trustees, participants, representatives, fiduciaries, beneficiaries, consultants, attorneys, accountants, auditors, insurers or legal representatives in their capacity as such, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing in their capacity as such, whether or not they object to the Settlement or make a claim for payment from the Settlement Fund. Notwithstanding that the U.S. Government is excluded from the Settlement Class, with respect to any Settling Class Member that is a government entity, Releasing Parties include any and every Settling Class Member as to which the government entity has the legal right to release such claims. As used in this provision, “affiliates” means entities controlling, controlled by, or under common control with a Releasing Party. For the avoidance of doubt, the “Releasing Parties” include all Persons (including both natural persons and entities) entitled to bring or release claims on behalf of Settling Class Members relating to the Released Claims, including, but not limited to, the Settling Class Members’ transactions, interests or positions in, or ownership of, BBSW-Based Derivatives, BBSW-Based Deposits or Loans, or any similar financial instruments priced, benchmarked, or settled to BBSW held by Representative Plaintiffs Sonterra Capital Master Fund, Ltd., FrontPoint Financial Services Fund, L.P., FrontPoint Asian Event Driven Fund, L.P., and FrontPoint Financial Horizons Fund, L.P., or Settling Class Members (to the extent such similar financial instruments were entered into by a U.S. Person, or by a Person from or through a location within the U.S.).

(MM) “**Representative Plaintiffs**” means Richard Dennis, OCERS, Fund Liquidation Holdings, LLC and any subsequently named plaintiff(s) that may be added to this Action through amended or supplemental pleadings. This Settlement Agreement is entered into with each and every Representative Plaintiff. In the event that one or more Representative Plaintiff(s) fails to secure Court approval to act as a Representative Plaintiff, the validity of the Settlement Agreement as to the remaining Representative Plaintiffs, the Settlement Class, and Plaintiffs’ Counsel shall be unaffected, provided that at least one Representative Plaintiff remains and that the Court’s ability to certify the Settlement Class is not impaired.

(NN) “**Settlement**” means the settlement of the Released Claims set forth herein.

(OO) “**Settlement Administrator**” means any Person that the Court approves to perform the tasks necessary to provide Class Notice to the Settlement Class and to otherwise administer the Settlement Fund, as described further herein. Representative Plaintiffs intend to propose A.B. Data, Ltd. as the Settlement Administrator.

(PP) “**Settlement Amount**” means twenty-seven million U.S. dollars (U.S. \$27,000,000.00).

(QQ) “**Settlement Class**” means all Persons (including both natural persons and entities) who purchased, acquired, sold, held, traded, or otherwise had any interest in, BBSW-Based Derivatives during the Settlement Class Period, provided that, if Representative Plaintiffs expand the putative or certified class in this Action in or through any subsequent amended complaint, class motion, or Other Settlement, the defined Settlement Class in this Settlement Agreement shall be expanded so as to be coterminous with such expansion. Excluded from the Settlement Class are the Defendants and any parent, subsidiary, affiliate

or agent of any Defendant or any co-conspirator whether or not named as a Defendant, and the United States Government.

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

(SS) “**Settlement Class Period**” means the period of January 1, 2003 through August 16, 2016 (inclusive).

(TT) “**Settlement Fund**” means the Settlement Amount plus any interest that may accrue thereon once paid in accordance with this Agreement.

(UU) “**Settling Class Members**” means Representative Plaintiffs and other members of the Settlement Class who do not timely and validly exclude themselves from the Settlement pursuant to Federal Rule of Civil Procedure 23(c) and in accordance with the procedure and timetable to be established by the Court.

(VV) “**Protective Order**” means the Protective Order entered by the Court (ECF Nos. 365, 371).

(WW) “**U.S. Person**” means a citizen, resident, or domiciliary of the United States or its territories; a corporation, including a limited liability company, either incorporated or headquartered in the United States or its territories; a partnership created or resident in the United States or its territories; any other Person or entity created and/or formed under the laws of the United States, including any state or territory thereof; any other Person or entity residing or domiciled in the United States or its territories; or any other Person or entity that entered into or traded the relevant financial derivative instrument pursuant to an agreement that contains provisions selecting as governing law the laws of, and designating

as a forum for disputes the courts of, the United States or any state thereof, including but not limited to the State of New York.

## **2. No Admissions**

No Party admits any factual or legal assertion that has been advanced in the Action, and the Settlement Agreement (whether or not consummated), including the exhibits hereto and the Supplemental Agreement, as well as the negotiations leading to the execution of this Agreement and any proceedings in connection with this Settlement Agreement or approval of the Settlement, shall not constitute or be deemed an admission, presumption or concession by any Party with respect to any factual or legal assertion, or allegation, or claim, that has been advanced in the Action, or the validity of any defenses that could be or have been asserted by NAB; provided, however, that if this Settlement Agreement is approved by the Court, the Parties and their respective counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement.

NAB is entering into this Settlement Agreement in order to avoid the continuing cost and burden of, and business interruption associated with, the Action. In entering into this Settlement Agreement, NAB does not admit any of the allegations or claims asserted by Representative Plaintiffs in the Action (or any prior named plaintiff), and NAB will continue to deny that it has violated, in any way and to any degree, *inter alia*, the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.*, the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.*, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, and any claim available under U.S. common law and will maintain that it has meritorious defenses to all of the claims alleged in the Action, including, but not limited to, jurisdictional defenses.

### 3. Settlement Class

As soon as reasonably practicable after the Execution Date, Representative Plaintiffs will file a Motion for Conditional Certification. Notwithstanding the sentence in Section 1(QQ) above that “[e]xcluded from the Settlement Class are the Defendants and any parent, subsidiary, affiliate or agent of any Defendant or any co-conspirator whether or not named as a Defendant, and the United States Government,” and solely for purposes of this Settlement and this Settlement Class, the Parties agree that Investment Vehicles are not excluded from the Settlement Class solely on the basis of being deemed to be Defendants or affiliates, subsidiaries, parents or agents of Defendants or controlled by Defendants or affiliates, subsidiaries, parents or agents of Defendants. However, to the extent that any Defendant or any entity that might be deemed to be an affiliate, subsidiary, parent or agent thereof (i) managed or advised, and (ii) directly or indirectly held a beneficial interest in, said Investment Vehicle during the Settlement Class Period, that beneficial interest in the Investment Vehicle is excluded from the Settlement Class.

The Parties’ agreement as to certification of the Settlement Class is solely for the purposes of effectuating the Settlement and for no other purpose. NAB retains all of its objections, arguments, and defenses with respect to class certification, and reserves all rights to contest class certification, if the Settlement does not receive the Court’s Final approval, if the Court’s approval is reversed or vacated on appeal, if the Settlement is terminated pursuant to Section 22 herein, or if the Settlement otherwise fails to become effective. The Parties acknowledge that there has been no stipulation to any classes or certification of any classes for any purpose other than effectuating the Settlement, and that if the Settlement does not receive the Court’s Final approval, if the Court’s approval of the Settlement is reversed or vacated on appeal, if this Settlement Agreement is terminated pursuant to Section 22 herein, or if the Settlement otherwise fails to become effective, this agreement as to certification of the Settlement Class becomes null and void *ab initio*, and this

Settlement Agreement, and/or any other settlement-related statement, documentation or communications may not be cited in any way relating to certification of the Settlement Class, or in support of an argument for certifying any class for any purpose related to this Action or any other proceeding. The Parties further recognize and acknowledge that the Court previously issued (i) an Order Granting Conditional Class Certification for Purposes of Class Action Settlement with JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A., dated November 27, 2018 (ECF No. 229); (ii) an Order Granting Conditional Class Certification for Purposes of Class Action Settlement with Westpac Banking Corporation; and (iii) Superseding Order Granting Conditional Class Certification for Purposes of Class Action Settlement with JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. (the “Prior Conditional Certification Orders”), and that the Conditional Certification Order contemplated by this Settlement Agreement may either be issued as a new stand-alone order, or may amend or supersede the Prior Conditional Certification Orders and any other conditional certification order(s) concerning settlements with Morgan Stanley and Morgan Stanley Australia Limited, Australia and New Zealand Banking Group Limited (“ANZ”) and Commonwealth Bank of Australia (“CBA”). Notwithstanding the foregoing, the Parties recognize and agree that entry of the Conditional Certification Order referenced and specified herein is necessary to and a material term of this Settlement, and that the Parties shall cooperate in good faith to facilitate its issuance as specified herein.

#### **4. Settlement Payment**

In Settlement of the Action, NAB shall pay the Settlement Amount as set forth in this Section. Within fifteen (15) Business Days following issuance of the Conditional Certification Order, NAB shall deposit or cause the deposit of the Settlement Amount by wire transfer into an escrow account designated by the Escrow Agent. Before any wire transfer takes place, and no less

than ten (10) Business Days before payment is due, Plaintiffs' Counsel shall provide NAB's Counsel with information necessary to complete the wire transfer.

The Settlement Amount includes the payment of all attorneys' fees, costs of administration, Representative Plaintiffs' out-of-pocket expenses, and Plaintiffs' compensatory awards. Other than the payment of the Settlement Amount as set forth in this Section, NAB shall have no responsibility or liability for any interest, costs, or any other monetary payment of any kind or amount, including, but not limited to, any attorneys' fees and expenses, taxes, or costs of notice or claims administration.

#### **5. NAB's Cooperation**

(A) NAB has agreed to provide Representative Plaintiffs with certain cooperation materials, solely in conjunction with, and for purposes of, this Settlement, and solely for use in connection with the prosecution of the Action against the non-settling Defendants or for providing notice of the Settlement to the Settlement Class, as enumerated below ("Cooperation Materials"). NAB shall provide reasonable cooperation in the Action, including discovery cooperation requested by Plaintiffs' Counsel to benefit the Settlement Class, as provided herein. All cooperation shall be coordinated in such a manner so that unnecessary duplication, burden and expense is avoided and will be subject to agreement as to appropriate parameters pursuant to good faith meet and confers among the Parties. Plaintiffs' Counsel shall tailor its requests for the production of documents with a view toward minimizing unnecessary burdens and costs to NAB in connection with collecting, reviewing and producing any materials, including materials that were produced in connection with the Australian Securities Investments Commission's ("ASIC") BBSW-related investigation (the "ASIC Investigation").

(B) Notwithstanding any other provision of this Settlement Agreement, in the event that NAB believes that Plaintiffs' Counsel has requested cooperation of a kind or to an extent that is

not reasonable or not within the scope of NAB's obligations as set forth herein, NAB's counsel and Plaintiffs' Counsel agree to meet and confer with each other regarding such disagreement and, if necessary, to seek resolution pursuant to the alternative dispute resolution procedures set forth in Section 42 below.

(C) **Privileges and Privacy.** Notwithstanding any other provision in this Settlement Agreement, NAB shall have no obligation to produce any document, or part thereof, or provide any information that is privileged under the attorney-client privilege, the work product doctrine, the common interest or joint defense privilege, the "without prejudice" privilege, legal professional privilege (including, without limitation, Australian legal professional privilege), bank examination privilege, any applicable foreign legal privilege or protection (under statute or common law), or any other applicable immunity, privilege or protection, any protective order or confidentiality agreement, any United States or foreign bank disclosure or bank secrecy laws (including, without limitation, Confidential Supervisory Information as defined by 12 C.F.R. § 261.20, Suspicious Activity Reports, the secrecy and disclosure limitations set forth in Section 11CH of the Australian Banking Act 1959 (Cth), Section 123 of the Australian Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth), sensitive or protected information under Section 56 of the Australian Prudential Regulation Authority Act 1998 (Cth) and the Singaporean Banking Act of 1970), United States or foreign data privacy laws (including, without limitation, the Australian Privacy Act 1988 (Cth) and the European Union's General Data Protection Regulation 2016/679), and/or confidentiality obligations, orders or implied undertakings in any other actions ("Protected Information"). Protected Information includes, without limitation, NAB's *Harman* undertaking, if any, in any proceedings in Australia. None of the cooperation provisions set forth herein are intended to, nor do they, waive any such privileges, immunities, obligations, or

requirements. Notwithstanding and without prejudice to the foregoing, if any privilege, privacy, confidentiality, or other basis for withholding Cooperation Materials can be avoided without undue burden to NAB through a reasonable workaround, such as by removing or anonymizing identifying information in a cost-effective manner that will not involve the imposition of additional significant or undue costs on NAB or through entry of an order by the Court directing NAB to produce the Cooperation Materials to Representative Plaintiffs, NAB shall cooperate in good faith with Representative Plaintiffs to implement such a workaround. If, in connection with the Action, NAB claims that they have inadvertently produced Protected Information, such disclosure, in itself, shall not constitute or be deemed a waiver or forfeiture of any claim of privilege or protection with respect to the Protected Information or its subject matter. If Settling Defendants make a claim of inadvertent disclosure, the Plaintiffs shall promptly cease reviewing the document and shall, within ten (10) business days, return or destroy all copies of the inadvertently disclosed Protected Information, and provide a written certification of counsel that all such information has been returned or destroyed. The inadvertently disclosed Protected Information shall not be used or referred to in any way by Representative Plaintiffs or Plaintiffs' Counsel, and its production shall in no way be construed to have waived any privilege, protection or restriction attached to such document or information or its subject matter.

(D) Plaintiffs' Counsel and Representative Plaintiffs agree to use any and all of the documents, materials and information obtained from NAB only for the purpose of the Action and not for any other purpose whatsoever, and Plaintiffs' Counsel and Representative Plaintiffs agree to be bound by the terms of the Protective Order with respect to any documents, materials and information obtained from NAB. For the avoidance of doubt, Plaintiffs' Counsel and Representative Plaintiffs expressly agree that the documents, materials, and/or information

provided by NAB, including, without limitation, oral presentations, may be used directly or indirectly by Plaintiffs' Counsel solely in connection with the prosecution of the Action against the non-settling Defendants, but not used directly or indirectly by any Person for the institution or prosecution of any other action or proceeding against any Released Party or for any other purpose whatsoever, including, but not limited to, actions or proceedings in jurisdictions outside the United States. Any production, including inadvertent production, of material that is irrelevant to prosecution of the Action or that is subject to any protection or privilege, including a claim of protection under the attorney-client privilege, attorney work product doctrine, United States or foreign bank disclosure or foreign bank secrecy laws or regulations (including, but not limited to, Confidential Supervisory Information or Suspicious Activity Report privileges), United States or foreign data privacy laws, or any other applicable United States or foreign statute, law, regulation, privilege, court order, restriction, or immunity from disclosure, shall be governed by the Protective Order. Any dispute between the Parties regarding a document's relevance to the prosecution of the Action shall be resolved through confidential mediation pursuant to Section 42 below.

(E) The Conditional Certification Order (or a separate order submitted to the Court) shall include a provision that requires NAB to produce documents consistent with its obligations in this Section 5.

(F) **Document and Data Productions.** Subject to the restrictions set forth above, NAB will provide cooperation to Representative Plaintiffs by making reasonable efforts to search for and produce to Plaintiffs' Counsel the following categories of documents and data, to the extent that any such documents and data exist and are reasonably available, and to the extent that NAB considers it is free to produce them to Representative Plaintiffs without a court order in Australia, third-party consent, and/or data privacy issues. Without limiting the generality of the foregoing,

documents, data or other information that can only be retrieved from backup tapes or other similar sources that would be burdensome and expensive to utilize are not “reasonably available.” NAB agrees to produce documents and data in an equivalent format to that in which they were produced to ASIC in connection with ASIC’s BBSW-related investigation, including any metadata included in such production or in a format generally consistent with the ESI protocol entered in the Action (ECF No. 370). NAB’s agreement to search for and/or produce material and information responsive to the below requests does not constitute a representation that such material or information exists or is reasonably available.

- (i) Relevant, non-privileged, reasonably available email and chat communications concerning BBSW for the time period January 1, 2009 through December 31, 2012 that were previously produced in connection with the ASIC Investigation, and/or the action captioned *Australian Securities and Investments Commission v. National Australia Bank Limited*, No. VID604/2016 (“*ASIC v. NAB*”), subject to reasonable parameters as to the number of custodians and the use of relevant search terms to be agreed upon in good faith by NAB and Plaintiffs’ Counsel. NAB further agrees to provide information sufficient to identify NAB personnel involved in the conduct described in the Statement of Agreed Facts related to NAB’s resolution of the ASIC Investigation;
- (ii) Relevant, non-privileged, reasonably available audio files reflecting relevant communications for the time period January 1, 2009 through December 31, 2012 that were previously produced in connection with the ASIC Investigation from one hour before, during, and one hour after, the BBSW fixing window from traders on NAB’s Short Term Interest Rate Risk desk (“STIRR”), subject

to reasonable parameters as to scope, number of custodians, and trading dates to be agreed upon in good faith by NAB and Plaintiffs' Counsel;

- (iii) Reasonably available data and details (including, without limitation, dates and times, if available) pertaining to NAB's transactions in Prime Bank Bills from January 1, 2008 through December 31, 2012, subject to reasonable data parameters to be agreed upon in good faith by NAB and Plaintiffs' Counsel. In making this production, NAB will prioritize the production of relevant data and details that were previously produced in connection with the ASIC Investigation.
- (iv) Reasonably available data regarding NAB's transactions in BBSW-Based Derivatives from January 1, 2008 through December 31, 2012, to the extent previously produced in connection with the ASIC Investigation, subject to reasonable data parameters to be agreed upon in good faith by NAB and Plaintiffs' Counsel.
- (v) Reasonably available data and risk reports reflecting the BBSW exposure of NAB's STIRR desk from January 1, 2008 through December 31, 2012, to the extent previously produced in connection with the ASIC investigation;

(G) For purposes of Class Notice, reasonably-available last-known address information for counterparties to BBSW-Based Derivatives transacted with NAB during the Settlement Class Period, to the extent NAB is not prevented from doing so by any court order or any law, regulation, policy, or other rule of any regulatory agency or governmental body restricting disclosure of such information. Any production by NAB pursuant to this paragraph shall occur sufficiently prior to the deadline to send Class Notice to permit the sending of the Class Notice in a timely manner. If

necessary, as a result of data protection, privacy, or bank secrecy law requirements or any other law, rule, or regulation, Representative Plaintiffs agree that NAB may, at its sole discretion, opt instead to provide, or have a third-party agent provide, the Class Notice to any counterparties to BBSW-Based Derivatives NAB transacted with during the Settlement Class Period who cannot be included in the general class-wide notice process. If NAB exercises its discretion to provide Class Notice pursuant to this subsection, NAB shall complete such notice no later than the date set by the Court for the completion of Class Notice.

(H) To the extent reasonably necessary in the prosecution of this Action against non-settling defendants, and subject to Section 5(B) above, and subject to Section 42 of this Settlement Agreement, Representative Plaintiffs shall have the right to request as Cooperation Materials such further documents and information as Plaintiffs' Counsel may reasonably request from the period from June 1, 2008 through September 27, 2013 and that are relevant to the claims or defenses in the Action and are reasonably available and accessible to, and within the possession, custody and control of, NAB and not unduly burdensome to locate and produce. NAB retains the right to refuse to respond in full or in part to any such request to the extent that the response would be unduly burdensome to NAB, the expected probative value of the material is disproportionate to the burden and expense of providing the requested material, or the requested material reasonably can be obtained from other sources, including from non-settling Defendants. In the event Plaintiffs' Counsel believes NAB has unreasonably withheld cooperation, NAB and Plaintiffs' Counsel agree to meet and confer regarding such disagreement and seek resolution if necessary pursuant to the alternative dispute resolution procedures set forth in Section 42 below. If such alternative dispute resolution is sought, the disputed aspect of cooperation shall be held in abeyance until such

resolution by the procedures set forth in Section 42, and such abeyance shall not constitute a breach of the Settlement Agreement.

(I) **Other Information.** NAB will cooperate to provide reasonably available information necessary for Representative Plaintiffs to authenticate or otherwise make usable at trial the aforementioned documents or other documents as Representative Plaintiffs may request or have received from NAB.

(J) **Witnesses.** No earlier than 60 days prior to the completion of fact discovery under the then-operative scheduling or case management order, and only if reasonably necessary in the prosecution of the action against non-settling Defendants, Representative Plaintiffs shall have the right to request that NAB designate witness(es) to serve as NAB's corporate representative pursuant to the framework of Rule 30(b)(6) of the Federal Rules of Civil Procedure in connection with proceedings against the non-settling Defendants in the Action without issuance of a subpoena, provided that NAB is given reasonable advance notice of the proposed time and place of any such proceedings. NAB will work in good faith with Representative Plaintiffs to designate such witness(es) to the extent reasonably necessary and only to the extent that the information sought by Representative Plaintiffs cannot be otherwise obtained, such as through written statements. The Parties understand and agree that any deposition under this subsection shall occur before the fact discovery deadline or the deadline for the completion of depositions of foreign witnesses. With respect to any production of documents arising from NAB's obligations under this Settlement Agreement or the Action, NAB will cooperate in providing declarations sufficient to authenticate documents Representative Plaintiffs may seek to introduce as evidence at proceedings in this Action, to the extent reasonably necessary.

(K) **Timing of Production.** Except as otherwise provided herein or as agreed by the parties, NAB will begin a rolling production of documents and data pursuant to this Section 5 as soon as practicable after the entry of the Conditional Certification Order (or a separate order by the Court requiring NAB to produce documents consistent with its obligations under this Section 5). NAB agrees to continue its production of documents and data pursuant to this Section 5 on a rolling basis and without unreasonable delay.

(L) **Continuation, Scope, and Termination of NAB's Obligation.** NAB's obligations to cooperate are continuing until and shall terminate upon the earlier of: (i) a final judgment has been entered in the Action against all Defendants with no remaining rights of appeal, or (ii) four (4) years after the Court enters the Conditional Certification Order.

(M) **Disputes.** Any disputes regarding the cooperation specified in this Section 5 that cannot be resolved amongst the Parties shall be resolved by prompt confidential mediation pursuant to Section 42 below.

**6. Payment of Attorneys' Fees and Reimbursement of Expenses, and Application for Incentive Award**

(A) Subject to Court approval, Representative Plaintiffs, Plaintiffs' Counsel, and Additional Plaintiffs' Counsel shall be reimbursed and paid solely out of the Settlement Fund for all fees and expenses including, but not limited to, attorneys' fees, and past, current or future litigation expenses, and any Incentive Award approved by the Court. NAB shall have no responsibility for any costs, fees, or expenses incurred for or by Representative Plaintiffs' or Settlement Class Members' respective attorneys, experts, advisors, agents, or representatives. Nothing in this provision shall expedite the date(s) for NAB's payment as set forth in Section 4.

(B) Plaintiffs' Counsel, on behalf of themselves and Additional Plaintiffs' Counsel, may apply to the Court for an award from the Settlement Fund of attorneys' fees, plus interest.

Plaintiffs' Counsel also may apply to the Court for reimbursement from the Settlement Fund of litigation expenses, plus interest. NAB shall have no responsibility to take a position with respect to Plaintiffs' Counsel's motion for attorneys' fees and expenses. Representative Plaintiffs may make an application to the Court for an award in connection with their representation of the Settlement Class in this litigation, which amount constitutes the Incentive Award.

(C) The Released Parties shall have no responsibility for, and no liability with respect to, the attorneys' fees, litigation expenses, or Incentive Award that the Court may award in the Action.

(D) The procedures for, and the allowance or disallowance by the Court of, any application for approval of fees, expenses and costs or an Incentive Award (collectively, "Fee and Expense Application") are not part of the Settlement set forth in this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Agreement. Any order or proceeding relating to a Fee and Expense Application, or the reversal or modification thereof, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the Final Judgment and the Settlement of the Action as set forth herein. No order of the Court or modification or reversal on appeal of any order of the Court concerning any Fee and Expense Application or the Distribution Plan shall constitute grounds for termination of this Agreement.

(E) Prior to the Fairness Hearing, Plaintiffs' Counsel and Representative Plaintiffs shall file any motions seeking awards from the Settlement Fund for payment of attorneys' fees and reimbursement of costs and expenses, and for the payment of an Incentive Award as follows:

- (i) Plaintiffs' Counsel shall seek attorneys' fees of no more than one-third of the Settlement Fund;

- (ii) Plaintiffs' Counsel shall seek reimbursement for their costs and expenses incurred as of the date the Motion for Final Approval and Entry of Final Judgment is filed pursuant to Section 17; and
- (iii) Representative Plaintiffs may make an application to the Court for an award in connection with their representation of the Settlement Class in this litigation, which amount constitutes the Incentive Award.

(F) Upon the Court's approval of an award of attorneys' fees, costs and expenses and Incentive Award, such approved amount from Subsections (E)(i)-(iii), above, shall be paid from the Settlement Fund within ten (10) Business Days after their approval by the Court. If an event occurs that will cause the Settlement Agreement not to become Final pursuant to Section 19 or if Representative Plaintiffs or NAB terminates the Settlement Agreement pursuant to Sections 22 through 24, then within ten (10) Business Days after receiving written notice of such an event from NAB's Counsel or from a court of appropriate jurisdiction, Plaintiffs' Counsel and Additional Plaintiffs' Counsel shall refund to the Settlement Fund any attorneys' fees, costs and expenses and Incentive Award (not including any non-refundable expenses as described in Section 10) that were withdrawn plus interest thereon at the same rate at which interest is accruing for the Settlement Fund. In the event the Settlement is terminated, any Plaintiffs' Counsel and Additional Plaintiffs' Counsel that have drawn upon the Settlement Fund for the payment of attorneys' fees or expenses shall be jointly and severally liable for the return to NAB of any sums paid as attorneys' fees, costs and expenses and Incentive Award.

**7. Application for Approval of Fees, Expenses, and Costs of Settlement Fund Administration**

Plaintiffs' Counsel may apply to the Court, at the time of any application for distribution to Authorized Claimants, for an award from the Settlement Fund of attorneys' fees for services

performed and reimbursement of expenses incurred in connection with the administration of the Settlement Fund after the date of the Fairness Hearing. Plaintiffs' Counsel reserves the right to make additional applications to the Court for payment from the Settlement Fund for attorneys' fees for services performed and reimbursement of expenses incurred. Any such applications are subject to Court approval. NAB takes no position with respect to Plaintiffs' Counsel's request for an award of attorneys' fees and reimbursement of expenses.

**8. No Liability for Fees and Expenses of Plaintiffs' Counsel**

Other than NAB's obligation to fund the Settlement Amount as provided for in Section 4 above, the Released Parties shall have no liability or responsibility whatsoever for any of Representative Plaintiffs' or any Settlement Class Members' attorneys' fees or costs (including out-of-pocket costs). NAB shall have no liability or responsibility whatsoever for any fees or costs associated with the pursuit of this litigation by Representative Plaintiffs and/or the Settlement Class, including but not limited to any fees or costs relating to the notifications relating to the Settlement or the administration of the Settlement Fund created to distribute the Settlement Amount. Any attorneys' fees and expenses awarded to Plaintiffs' Counsel by the Court shall be paid to Plaintiffs' Counsel from the fund created in whole or in part by NAB's payment of the Settlement Amount following the Court's approval of an award, as set forth in Section 6(F), notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Plaintiffs' Counsel's several obligation to make appropriate refunds or repayments to the Settlement Fund plus the interest earned thereon if, and when, as a result of any appeal and/or further proceedings on

remand, or successful collateral attack, the fee or expense award is lowered or the Settlement is disapproved by a Final order.

**9. Distribution of and/or Disbursements from Settlement Fund**

The Settlement Administrator, subject to such supervision and direction by the Court and/or Plaintiffs' Counsel as may be necessary, shall administer the Proof of Claim and Release forms submitted by the Settling Class Members and shall oversee the distribution of the Settlement Fund pursuant to the Distribution Plan. Upon the Effective Date (or earlier if provided in Section 6 herein), the Settlement Fund shall be applied in the order and as follows:

- (i) to pay costs and expenses associated with the distribution of the Class Notice and administration of the Settlement Fund as provided in this Section and Section 10, including all costs and expenses reasonably and actually incurred in assisting Settling Class Members with the filing and processing of claims against the Net Settlement Fund at any time after NAB makes the payment described in Section 4;
- (ii) to pay Escrow Agent costs;
- (iii) to pay taxes assessed on the Settlement Fund, and tax preparation fees in connection with such taxes;
- (iv) to pay any attorneys' fees, costs and expenses approved by the Court upon submission of a Fee and Expense Application, as provided in Section 6;
- (v) to pay the amount of any Incentive Award for Representative Plaintiffs, as provided in Section 6; and
- (vi) to pay the Net Settlement Fund to Authorized Claimants as allowed by the Agreement, any Distribution Plan, or order of the Court.

**10. Disbursements Prior to Effective Date**

(A) Except as provided in Subsection (B) herein or by Court order, no distribution to any Settling Class Member or disbursement of fees, costs and expenses of any kind may be made from the Settlement Fund until the Effective Date. As of the Effective Date, all fees, costs and expenses and Incentive Awards as approved by the Court may be paid out of the Settlement Fund.

(B) Upon written notice to the Escrow Agent by Plaintiffs' Counsel with a copy to NAB, the following may be disbursed prior to the Effective Date: (i) reasonable costs of Class Notice and administration of the Settlement Fund may be paid from the Settlement Fund as they become due (up to a maximum of U.S. \$500,000); (ii) reasonable costs of the Escrow Agent may be paid from the Settlement Fund as they become due; (iii) taxes and tax expenses may be paid from the Settlement Fund as they become due; and (iv) Plaintiffs' Counsel's attorneys' fees and costs and expenses as approved by the Court (in accordance with Section 6).

(C) In the event the Settlement is terminated or does not attain Final approval for any reason, the Settlement Amount, and all interest earned on the Settlement Fund related in any way to the Settlement Amount will be refunded, reimbursed, and repaid to NAB, less any taxes due and less any costs of administration and notice reasonably incurred and paid or payable by the Escrow Agent, within ten (10) Business Days thereafter. Notice and administration costs up to a maximum of U.S. \$500,000 reasonably incurred and paid or payable will not be refundable to NAB in the event the Settlement is not approved. The Escrow Agent or its designee shall apply for any tax refund owed to the Settlement Fund and pay the proceeds to NAB, after deduction of any fees or expenses reasonably incurred in connection with such application(s) for refund.

(D) Plaintiffs' Counsel will attempt in good faith to minimize the costs of the Escrow Agent, Class Notice and administration of the Settlement Fund.

**11. Distribution of Balances Remaining in Net Settlement Fund to Authorized Claimants**

The Net Settlement Fund shall be distributed to Authorized Claimants and, except as provided in Section 10(C), there shall be no reversion to NAB. The distribution to Authorized Claimants shall be in accordance with the Distribution Plan that is to be approved by the Court upon such notice to the Settlement Class as may be required. Plaintiffs' Counsel will develop the Distribution Plan that will be submitted to the Court. NAB shall take no position with respect to the Distribution Plan or any revisions to the Distribution Plan. The Distribution Plan is not a part of this Agreement. No funds from the Net Settlement Fund shall be distributed to Authorized Claimants until the later of (i) the Effective Date; or (ii) the date by which the Distribution Plan has received Final Court approval. Should there be any balance remaining in the Net Settlement Fund after an initial distribution to Authorized Claimants (whether by reason of tax refunds, uncashed checks, or otherwise), Plaintiffs' Counsel shall submit an additional distribution plan to the Court for its approval.

The Conditional Certification Order shall provide that all funds held by the Escrow Agent shall be deemed and considered to be *in custodia legis*, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Settlement Agreement, returned to NAB pursuant to the Settlement Agreement and/or pursuant to other order(s) of the Court.

**12. Administration/Maintenance of Settlement Fund**

The Settlement Fund shall be maintained by the Escrow Agent under supervision of the Court and shall be distributed solely at such times, in such manner, and to such Persons as shall be directed by subsequent orders of the Court (except as provided for in this Agreement) consistent with the terms of this Settlement Agreement.

The Parties intend that the Settlement Fund be treated as a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1. The Escrow Agent shall ensure that the Settlement Fund at all times complies with Treasury Regulation § 1.468B-1 in order to maintain its treatment as a qualified settlement fund. To this end, the Parties shall ensure that the Settlement Fund is approved by the Court as a qualified settlement fund. Any Escrow Agent, Settlement Administrator or other administrator of the Settlement Fund must comply with all requirements of Treasury Regulation § 1.468B-2. Any failure to ensure that the Settlement Fund complies with Treasury Regulation § 1.468B-2, and the consequences thereof, shall be the sole responsibility of the Escrow Agent, and NAB and NAB’s Counsel shall have no responsibility or liability for any act, omission, or determination of the Escrow Agent or the payment or withholding of any taxes, expenses, or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

The Settlement Fund shall be invested exclusively in accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund and bank accounts that are either: (a) fully insured by the Federal Deposit Insurance Corporation (“FDIC”); or (b) secured by instruments backed by the full faith and credit of the United States Government. The proceeds of these accounts shall be reinvested in similar instruments at their then-current market rates as they mature. All risks related to the investment of the Settlement Fund in accordance with the investment guidelines set forth in this paragraph shall be borne by the Settlement Fund. Neither NAB nor the Released Parties shall have any role in or responsibility for the management or investment of all or any part of the Settlement Fund.

Any Settling Class Member who does not submit a valid Proof of Claim and Release form will not be entitled to receive any of the proceeds from the Net Settlement Fund, but will otherwise be bound by all of the terms of this Settlement Agreement and the Settlement, including the terms of the Final Approval Order and the Final Judgment (including the order of dismissal of the Action fully, finally and with prejudice as to NAB and any John Doe Defendants named or subsequently named in this Action (solely in their capacity as current or former employees of NAB or the other Released Parties)) to be entered in the Action and the releases provided for herein, and will be barred from bringing any action or proceeding against the Released Parties concerning the Released Claims.

Neither NAB nor the Released Parties shall have any role or interest in, or responsibility or liability to any Person for, the administration or allocation of any part of the Settlement Fund, including the solicitation, review, or evaluation of Proofs of Claim and Release by Representative Plaintiffs, Plaintiffs' Counsel, or their designated representatives or agents, or any other part of the claims administration process. Neither the Parties nor their counsel shall have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of the Escrow Agent or any other Person, or any of their respective designees or agents, in connection with the administration of the Settlement Fund or otherwise; (ii) any Distribution Plan; (iii) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of, the Settlement Fund; or (v) the payment or withholding of any taxes and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

All proceedings with respect to the administration, processing, and determination of claims and Proofs of Claim and Release by Settling Class Members and the determination of all

controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

**13. Release and Covenant Not To Sue**

(A) Upon the Effective Date, the Action shall be dismissed fully, finally and in its entirety against NAB and any John Doe Defendants to the extent they are current or former NAB employees (solely in that capacity) with prejudice.

(B) The Releasing Parties fully, finally and forever release and forever discharge and covenant not to sue the Released Parties for any and all manner of claims, including unknown claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, set-offs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class, derivative, or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys' fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, which Settling Class Members or any of them ever had, now has, or hereafter can, shall or may have, representatively, derivatively or in any other capacity, against the Released Parties arising from or relating in any way to the claims, allegations or conduct alleged in the Action, or which could have been alleged in the Action against the Released Parties, concerning any:

- (i) BBSW-Based Derivatives;
- (ii) BBSW-Based Deposits or Loans (to the extent such financial instruments were entered into by a U.S. Person, or by a Person from or through a location within the U.S.);

- (iii) Prime Bank Bills or Prime Bank eligible securities purchased, sold, held, traded, and/or transacted by the Representative Plaintiffs, members of the Settlement Class, and/or Settling Class Members (to the extent such financial instruments were entered into by a U.S. Person, or by a Person from or through a location within the U.S.); or
- (iv) any similar financial instruments priced, benchmarked, or settled to BBSW purchased, sold, held, traded, and/or transacted by the Representative Plaintiffs, members of the Settlement Class, and/or Settling Class Members (to the extent such financial instruments were entered into by a U.S. Person, or by a Person from or through a location within the U.S.), including additional financial instruments or claims subsequently alleged in the Action, or in which any of the foregoing otherwise had any interest;

including, but not limited to, any alleged manipulation of BBSW under any statute, regulation, or common law, or any purported conspiracy, collusion, racketeering activity, or other improper conduct relating to BBSW (including, but not limited to, all claims under Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.*, the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.*, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, and any other federal or state statute, regulation, or the common law).

(C) The following claims shall not be released by this Settlement: (i) any claims against former NAB employees arising solely from those former employees' conduct or alleged conduct that occurred while not employed by NAB (ii) any claims against the named Defendants in this Action other than NAB and BNZ and other than any John Doe Defendants to the extent they are current or former employees of NAB (solely in their capacity as employees of NAB) or other

Released Parties; or (iii) any claims against any Defendant not affiliated with NAB who may be subsequently added in this Action.

(D) Although the foregoing release is not a general release, the foregoing release constitutes a waiver by the Parties and each Settling Class Member of any and all rights and provisions under Section 1542 of the California Civil Code (to the extent it applies to the Action), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

This release also constitutes a waiver of any and all provisions, rights, and benefits of any federal, state or foreign law, rule, regulation, or principle of law or equity that is similar, comparable, equivalent to, or which has the effect of, Section 1542 of the California Civil Code. Releasing Parties and Settling Class Members shall be deemed to acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of the Settlement Agreement, but that it is their intention to release fully, finally, and forever all of the Released Claims, and in furtherance of such intention, the release shall be irrevocable and remain in effect notwithstanding the discovery or existence of any such additional or different facts. In entering and making this Settlement Agreement, the Parties assume the risk of any mistake of fact or law and the release shall be irrevocable and remain in effect notwithstanding any mistake of fact or law.

(E) Upon the Effective Date, each of the Releasing Parties shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties and agrees

and covenants not to sue any of the Released Parties on the basis of any Released Claims or to assist any third party in prosecuting any Released Claims against any Released Party.

(F) Upon the Effective Date, NAB will release Representative Plaintiffs, the Settlement Class, and their respective attorneys, from all claims and causes of action of every nature and description, whether known or unknown, whether arising under federal, state, common or foreign law (including Federal Rule of Civil Procedure 11), that arise out of or relate in any way to the institution, prosecution, or settlement of the Action as against NAB, except for claims relating to the enforcement of the Settlement.

#### **14. Motion for Conditional Certification**

(A) As soon as reasonably practicable after the Execution Date, Plaintiffs' Counsel shall submit this Settlement Agreement to the Court and shall file the Motion for Conditional Certification. NAB shall be provided with drafts of the proposed filings and Representative Plaintiffs shall inform NAB of the date upon which they intend to file the Motion for Conditional Certification at least five (5) Business Days in advance of filing. Representative Plaintiffs shall not move for conditional certification of the Settlement Class with respect to the Settlement absent NAB's consent, which shall not be unreasonably withheld.

(B) The Motion for Conditional Certification or a subsequent motion shall request that the Court enter the Conditional Certification Order, which specifies that the following information be sought from and provided by Opt-Outs as part of their election to opt out of the Settlement (collectively, the "Opt-Out Information"):

- i. the number and extent of the transactions in BBSW-Based Derivatives which the Opt-Out purchased, acquired, sold, held, traded, or otherwise had any interest in during the Settlement Class Period;

- ii. the notional value or amount of each of the aforementioned transactions;  
and
- iii. the effective and maturity dates and/or trade and value dates for each of the  
aforementioned transactions.

**15. Class Notice**

(A) Plaintiffs' Counsel shall be responsible for selecting a Settlement Administrator to be approved by the Court, and NAB shall not object to Plaintiffs' Counsel's selection. Subject to approval by the Court, in accordance with Federal Rule of Civil Procedure 23(e), the Settlement Administrator shall provide Class Notice to the Settlement Class Members whose identities can be determined after reasonable efforts, with reasonable notice of the date of the Fairness Hearing.

(B) The Class Notice may be sent solely for this Settlement or combined with notice of Other Settlements, including Other Settlements that may be reached after entry of the Conditional Certification Order. The Class Notice shall explain the general terms of the Settlement Agreement (excluding, for the avoidance of any doubt, any particular terms of the Supplemental Agreement), the general terms of the Fee and Expense Application, that the Distribution Plan will be posted on the Settlement website after it is presented to the Court, and a description of Settlement Class Members' rights to object to the Settlement, request exclusion from the Settlement Class and appear at the Fairness Hearing. The text of the Class Notice shall be agreed upon by the Parties before its submission to the Court for approval thereof. The cost of providing the Class Notice to Settlement Class Members in the manner set forth above shall be paid out of the Settlement Fund, and the Settlement Administrator shall administer dissemination of the Class Notice. To the extent the Motion for Conditional Certification does not seek approval for the timing, plan, and forms of Class Notice to the Settlement Class and the date for the Fairness Hearing, then after the Court enters the Conditional Certification Order, Plaintiffs' Counsel and NAB shall meet and confer as

to the timing, to be mutually agreed by NAB and Plaintiffs' Counsel, as to when Plaintiffs' Counsel shall move for an order approving the timing, plan, and forms of Class Notice to the Settlement Class and the date for the Fairness Hearing.

(C) Any Person seeking exclusion from the Settlement Class must file a timely written request for exclusion ("Request for Exclusion") in accordance with the procedures set forth in the Class Notice, as approved by the Court. Any Person who files such a request shall be excluded from the Settlement Class, shall have no rights with respect to this Agreement, shall receive no payment from the sums provided for in this Agreement and shall be deemed to have excluded itself from the Action as against NAB and any other Released Parties, including but not limited to any and all future prosecution of the Action against NAB or any other Released Parties. Unless the Court orders otherwise, a Request for Exclusion must:

- (i) be in writing, signed by the Person or his, her, or its authorized representative;
- (ii) state the name, address, and phone number of that Person;
- (iii) include a signed statement that "I/we hereby request that I/we be excluded from the proposed Settlement Class in *Dennis, et al. v. JPMorgan Chase & Co., et al.*, No. 16-cv-06496 (LAK) (S.D.N.Y.) for the Settlement with NAB"; and
- (iv) contain, provide or annex the Opt-Out Information.

To be valid, the request must be mailed to the address provided in the Class Notice and postmarked not less than sixty (60) days prior to the Fairness Hearing, or any other date set by the Court, in accordance with the procedures and deadlines set forth in the Class Notice, as approved by the Court. Unless otherwise accepted by the Court, a Request for Exclusion that does not include all of the foregoing information, including the Opt-Out Information, that does not contain the proper signature, that is sent to an address other than the one designated in the Class Notice, or that is not

sent within the time specified, shall be invalid, and the Person(s) filing such an invalid request shall be a Settling Class Member and shall be bound by the Settlement set forth in this Agreement, if approved.

(D) Any Person who has not requested exclusion from the Settlement Class and who objects to the Settlement set forth in this Agreement may appear in person or through counsel, at that Person's own expense, at the Fairness Hearing to present any evidence or argument that the Court deems proper and relevant, subject to further order by the Court. However, no such Person shall be heard, and no papers, briefs, pleadings, or other documents submitted by any such Person shall be received and considered by the Court, unless such Person properly submits a written objection that includes: (i) a notice of intention to appear; (ii) proof of membership in the Settlement Class; and (iii) the specific grounds for the objection and any reasons why such Person desires to appear and be heard, as well as all documents or writings that such Person desires the Court to consider. Such a written objection must be both filed with the Court and mailed to Plaintiffs' Counsel and NAB's Counsel not less than sixty (60) days prior to the Fairness Hearing, or any other date set by the Court, in accordance with the procedures and deadlines set forth in the Class Notice. Any Person who fails to timely object in the manner prescribed herein shall be deemed to have waived his or her objections and will forever be barred from making any such objections in the Action, unless otherwise excused for good cause shown, as determined by the Court. Plaintiffs' Counsel and NAB's Counsel shall file any papers in response to any such objection or otherwise in further support of the Settlement within seven (7) days of the Fairness Hearing.

(E) As provided for in Section 5, following the entry of the Conditional Certification Order (or a separate order by the Court requiring NAB to produce documents consistent with its

obligations under Section 5), NAB agrees to provide Plaintiffs' Counsel with reasonably available contact information for counterparties to BBSW-Based Derivatives they transacted with during the Settlement Class Period, to the extent not prevented from doing so by any court order or any law, regulation, policy, or other rule of any regulatory agency or governmental body restricting disclosure of such information. If necessary, as a result of data protection, privacy, or bank secrecy law requirements or any other law, rule, or regulation, Representative Plaintiffs agree that NAB may, at its sole discretion, opt to provide, or have a third-party agent provide, the Class Notice to any counterparties to BBSW-Based Derivatives NAB transacted with during the Settlement Class Period who cannot be included in the general class-wide notice process. Alternatively, NAB may, at its sole discretion, directly provide counterparty information only to the Settlement Administrator for purposes of distributing the Class Notice, to the extent that NAB reasonably concludes in good faith that such steps are required or advisable based on such counterparty information being subject to any applicable domestic or foreign data protection, privacy, or bank secrecy law requirements, or any other law, rule, or regulation. If NAB exercises its discretion to provide counterparty information to the Settlement Administrator pursuant to this Section, NAB shall do so such that Class Notice may be completed no later than the date set by the Court. All reasonable fees, costs, and expenses of NAB or NAB's third-party agent(s) in mailing the Class Notice to any counterparties to BBSW-Based Derivatives during the Settlement Class Period will be paid from the Settlement Fund. Such reasonable fees, costs, and expenses of NAB or NAB's third-party agent(s) shall not exceed \$100,000.00.

(F) In the event that the Settlement is not approved, Representative Plaintiffs will not be required to return to NAB any sums reasonably incurred and paid or payable from the Settlement Fund for the reasonable costs of Class Notice, up to a maximum of U.S. \$500,000.

**16. Publication**

Plaintiffs' Counsel will direct and the Settlement Administrator shall cause to be published a summary in accord with the Class Notice submitted to the Court by the Parties and approved by the Court. NAB shall have no responsibility for providing publication or distribution of the Settlement or any notice of the Settlement to Settlement Class Members or for paying for the cost of providing notice of the Settlement to Settlement Class Members except as provided for in Section 10(C). The Parties shall mutually agree on any content relating to NAB that will be used by Plaintiffs' Counsel and/or the Settlement Administrator in any Settlement-related press release or other media publication, including on websites.

**17. Motion for Final Approval and Entry of Final Judgment**

(A) After Class Notice is issued, and prior to the Fairness Hearing, Plaintiffs' Counsel shall move for entry of a Final Approval Order and Final Judgment:

- (i) finally certifying solely for settlement purposes the Settlement Class;
- (ii) finding that the Class Notice constituted the best notice practicable under the circumstances and complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process;
- (iii) finally approving this Settlement Agreement and its terms as being a fair, reasonable and adequate settlement of the Settlement Class's claims under Rule 23 of the Federal Rules of Civil Procedure;
- (iv) directing that, as to the Released Parties, the Action be dismissed with prejudice and without costs as against the Settling Class Members;
- (v) discharging and releasing the Released Claims as to the Released Parties;

(vi) barring claims by any Person against the Released Parties for contribution, indemnification, or similar claims (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise;

(vii) determining pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal shall be final and appealable;

(viii) reserving the Court's continuing and exclusive jurisdiction over the Settlement and this Agreement, including the administration and consummation of this Agreement; and

(ix) containing such other and further provisions consistent with the terms of this Agreement to which NAB and Representative Plaintiffs expressly consent in writing.

(B) Before the Fairness Hearing, as provided in Section 6, Plaintiffs' Counsel will timely request by separate motion that the Court approve its Fee and Expense Application. The Fee and Expense Application and the Distribution Plan are matters separate and apart from the Settlement between the Parties. If the Fee and Expense Application or the Distribution Plan are not approved, in whole or in part, it will have no effect on the finality of the Final Approval Order approving the Settlement and the Final Judgment dismissing the Action with prejudice as to NAB.

#### **18. Best Efforts to Effectuate This Settlement**

The Parties agree to cooperate with one another in good faith to the extent reasonably necessary to effectuate and implement the terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the terms and conditions of this Agreement.

**19. Effective Date**

Unless terminated earlier as provided in this Settlement Agreement, this Settlement Agreement shall become effective and final as of the first Business Day upon which all of the following conditions have been satisfied:

(A) The Settlement Agreement has been fully executed by NAB and Representative Plaintiffs through their counsel;

(B) The Court has certified a Settlement Class, and entered the Conditional Certification Order in substantially the form agreed to in Exhibit A, and approved the program and form for the Class Notice;

(C) Class Notice has been issued as ordered by the Court;

(D) The Court has entered the Final Approval Order finally approving the Settlement Agreement in all respects as required by Rule 23(e) of the Federal Rules of Civil Procedure; however, this required approval does not include the approval of the Fee and Expense Application and the Distribution Plan;

(E) The Court has entered its Final Judgment of dismissal with prejudice as to the Released Parties with respect to Representative Plaintiffs and Settling Class Members; and

(F) Upon the occurrence of the later of the following: (i) the resolution of any and all appeals regarding the Settlement (subject to Section 22 below) or (ii) the time to appeal or seek permission to appeal from the approval of the Settlement has expired.

**20. Occurrence of Effective Date**

Upon occurrence of the Effective Date pursuant to Section 19 above, any and all remaining interest or right of NAB in or to the Settlement Fund, if any, shall be absolutely and forever extinguished, and the Net Settlement Fund may be transferred from the Escrow Agent to the Settlement Administrator at the written direction of Plaintiffs' Counsel.

**21. Failure of Effective Date to Occur**

If any of the conditions specified in Section 19 are not satisfied, then this Agreement may be terminated, subject to and in accordance with Section 22, unless the Parties mutually agree in writing to continue with it for a specified period of time.

**22. Termination**

(A) NAB shall have the right, but not the obligation, in its sole discretion, to terminate this Settlement Agreement by providing written notice to Plaintiffs' Counsel within twenty-five (25) Business Days of any of the following events:

(i) the Court enters an order declining to enter the Conditional Certification Order or the Final Approval Order in any material respect;

(ii) the Court enters an order refusing to approve the Settlement Agreement or any material part of it;

(iii) the Court enters an order declining to enter the Final Judgment or a separate order dismissing the Action fully, finally and with prejudice as to NAB in any material respect;

(iv) the Court enters an alternative judgment that differs materially from the Final Judgment;

(v) the Final Judgment or a separate order dismissing the Action fully, finally and with prejudice as to NAB is modified or reversed by a court of appeal or any higher court in any material respect; or

(vi) an alternative judgment is modified or reversed by a court of appeal or any higher court in any material respect.

(B) Plaintiffs' Counsel, acting on behalf of the Representative Plaintiffs, shall also have the right, but not the obligation, in their sole discretion, to terminate this Settlement Agreement by

providing written notice to NAB's Counsel within twenty-five (25) Business Days of any of the following events:

(i) the Court enters an order declining to grant Representative Plaintiffs' Motion for Conditional Certification pursuant to Section 14 or the Motion for Final Approval pursuant to Section 17 in any material respect;

(ii) the Court enters an order refusing to approve the Settlement Agreement or any material part of it;

(iii) the Court enters an order declining to enter the Final Judgment or a separate order dismissing the Action fully, finally and with prejudice as to NAB in any material respect;

(iv) the Court enters an alternative judgment that differs materially from the Final Judgment;

(v) the Final Judgment or a separate order dismissing the Action fully, finally and with prejudice as to NAB is modified or reversed by a court of appeal or any higher court in any material respect;

(vi) an alternative judgment is modified or reversed by a court of appeal or any higher court in any material respect; or

(vii) NAB fails to comply with its payment obligations under Section 4 and fails to cure any default pursuant to Subsection (C).

(C) In the event that NAB, for any reason, fails to comply with Section 4, then on ten (10) Business Days' written notice to NAB's Counsel, during which ten Business Day period NAB shall have the opportunity to cure the default without penalty, Representative Plaintiffs, by and

through Plaintiffs' Counsel, may terminate this Settlement Agreement or elect to enforce it as provided by the Federal Rules of Civil Procedure and applicable law.

(D) The Parties shall not be able to terminate the Settlement if any court disapproves of or modifies the Distribution Plan or any Fee and Expense Application. The Parties shall not be able to terminate the Settlement if the Court declines to approve Representative Plaintiffs' Motion for Conditional Certification because the motion did not include a plan for providing Class Notice to the Settlement Class or a proposed Distribution Plan. Plaintiffs' Counsel will have the right to file another Motion for Conditional Certification or other appropriate motion that incorporates a plan for providing Class Notice and/or a proposed Plan of Distribution.

(E) Should either Party exercise its right to terminate the Settlement, then the Settlement Agreement and Term Sheet shall be void *ab initio*, and the Parties shall be returned to the posture of this Action as of the date immediately prior to the execution of the Term Sheet, without waiving any defenses as against the asserted claims. Within ten (10) Business Days after written notification of such event is sent by NAB's Counsel or Plaintiffs' Counsel to all Parties and the Escrow Agent, the Settlement Amount, and all interest earned on the Settlement Fund will be refunded, reimbursed, and repaid to NAB, less any taxes due and costs of administration and notice reasonably incurred and paid or payable by the Escrow Agent, in accordance with Section 10(C) herein. Also, in accordance with Section 10(C) herein, the Escrow Agent or its designee shall apply for any tax refund owed to the Settlement Fund and pay the proceeds to NAB, after deduction of any fees or expenses reasonably incurred in connection with such application(s) for refund.

### **23. Supplemental Agreement & NAB's Optional Termination Right**

(A) NAB and Representative Plaintiffs will be provided access to any Opt-Out Information as it becomes available and, in all events, shall be provided access to all Opt-Out

Information that has been submitted by Opt-Outs within two (2) Business Days after the deadline to request exclusion from the Settlement Class.

(B) In the event an Opt-Out does not provide the requested Opt-Out Information (or in the event the Court does not require and approve the provision of the above identified information from Opt-Outs in connection with the procedure for requesting exclusion from the Settlement Class), NAB shall have the right, but not the obligation, to request leave of the Court to seek discovery from any Opt-Out for the Opt-Out Information, and such request shall not be objected to by Representative Plaintiffs. Representative Plaintiffs shall consent to a reasonable adjournment of the Fairness Hearing to allow time for that process to be completed.

(C) NAB shall have the unilateral right, but not the obligation, in its sole discretion, to terminate this Agreement pursuant and subject to the terms of the Supplemental Agreement as to NAB (the “Supplemental Agreement”) to be executed by the Parties contemporaneously with the execution of this Agreement (the “Optional Termination Right”). The Supplemental Agreement shall not be submitted to the Court and its terms shall not be disclosed in any other manner (other than the statements herein and in the Class Notice, to the extent necessary, or as otherwise provided in the Supplemental Agreement) unless and until the Court otherwise directs or in the event a dispute arises between Representative Plaintiffs and NAB concerning the Supplemental Agreement’s interpretation or application, in which case the Parties shall submit the Supplemental Agreement to the Court *in camera* and request that the Court afford it confidential treatment.

#### **24. Effect of Termination**

Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Agreement should terminate or be cancelled, or otherwise fail to become effective for any reason, including, without limitation, in the event that the Settlement as described herein is not

finally approved by the Court or the Final Judgment is reversed or vacated following any appeal, then:

(A) Within ten (10) Business Days after written notification of such event is sent by counsel for NAB or Plaintiffs' Counsel to all Parties and the Escrow Agent, the Settlement Amount, and all interest earned in the Settlement Fund will be refunded, reimbursed, and repaid by the Escrow Agent to NAB, except as provided in Section 10(C).

(B) The Escrow Agent or its designee shall apply for any tax refund owed to the Settlement Fund and pay the proceeds to NAB, after deduction of any fees or expenses reasonably incurred in connection with such application(s) for refund;

(C) The Parties shall be returned, to the maximum extent possible, to their respective positions in the Action as of immediately prior to the execution of the Term Sheet, with all of their respective legal claims and defenses preserved as they existed at that time; and

(D) Upon termination of this Settlement Agreement, then:

(i) this Agreement shall be null and void and of no further effect, and none of NAB, the Representative Plaintiffs, or members of the Settlement Class shall be bound by any of its terms;

(ii) any and all releases shall be of no further force and effect;

(iii) the Parties shall be restored to their respective positions in the Action immediately prior to the execution of the Term Sheet, with all of their respective legal claims and defenses preserved as they existed on that date; and

(iv) any judgment or order entered by the Court in accordance with the terms of this Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

(E) Unless the Settlement is terminated, NAB shall take no position with respect to any motion for class certification that Representative Plaintiffs anticipate filing and/or file in connection with their claims against other Defendants in the Action. Nothing in this Settlement Agreement shall preclude NAB from opposing motions for class certification or from taking positions in actions other than the Action.

## **25. Impact of Any Other Settlement**

(A) If any Other Settlement is reached prior to the Fairness Hearing, the “Settlement Class” definition as well as the terms contained within the “Release and Covenant Not to Sue” and “Termination” provisions (excluding the Optional Termination Right granting NAB a unilateral discretionary termination right, as set forth in the Supplemental Agreement referenced in Section 23 herein) in the Settlement Agreement and any accompanying supplemental agreement(s) shall be no less favorable to NAB than the corresponding terms or provisions applicable to any Other Settlement.

(B) Notwithstanding Section 42 below, if NAB believes one or more terms or provisions referenced in Subsection (A) is less favorable than a corresponding term or provision in any Other Settlement reached prior to the Fairness Hearing, NAB will provide written notice of such belief to Plaintiffs’ Counsel as prescribed in this Settlement Agreement within ten (10) Business Days of the filing of such Other Settlement with the Court. Following receipt of the written notice, NAB and Plaintiffs’ Counsel will confer as to whether the relevant term or provision in this Settlement Agreement is less favorable as compared to the Other Settlement reached before the Fairness Hearing. If there is agreement between NAB and Plaintiffs’ Counsel that the provision at issue is less favorable, NAB and Plaintiffs’ Counsel will execute an amendment to the Settlement Agreement, adopting and incorporating the provision as drafted in the Other Settlement into the Settlement Agreement, and will submit the amendment to the Court for its approval. If

NAB and Plaintiffs' Counsel are unable to reach an agreement on the relevant provision, NAB or Plaintiffs' Counsel may move the Court to resolve the dispute. To the extent feasible, but without prejudice to NAB's rights hereunder, the Parties shall endeavor to execute and submit for Court approval any amendments under this provision at least ten (10) Business Days prior to the Fairness Hearing. Under no circumstances shall NAB have less than ten (10) Business Days from the time any Other Settlement is filed to provide notice under this Section. Should it be necessary in order to ensure that NAB's rights under this Section 25 are preserved, the Parties will agree to seek a deferment of the Fairness Hearing.

## **26. Confidentiality Protection**

Representative Plaintiffs, Plaintiffs' Counsel, and NAB agree to keep private and confidential the terms of this Settlement Agreement and the Supplemental Agreement which shall not be disclosed to any third party (excluding any Party's counsel, advisors, auditors or insurers in the U.S. and Australia), except for disclosure at the Court's direction or disclosure *in camera* to the Court, until this document is filed with the Court, provided, however, that nothing in this Section shall prevent NAB from making any disclosures it deems necessary to comply with any relevant laws, including U.S. or Australian law, subpoena or other form of judicial process, and NAB may notify co-defendants that it is ceasing participation in joint litigation efforts with respect to the Action. Nothing in this provision shall preclude NAB from disclosing, without notice to Plaintiffs' Counsel, the fact, amount, or terms of the Settlement or the Supplemental Agreement as a result of a good faith determination that such disclosure is required or advisable pursuant to bank regulatory requirements, SEC requirements, or other legal or regulatory requirements, or from disclosing the fact, amount, or terms of the Settlement or the Supplemental Agreement to its counsel, advisors, auditors, regulators, insurers, or external auditors.

**27. Non-Disparagement**

In no event shall Representative Plaintiffs or Plaintiffs' Counsel on the one hand, or NAB and NAB's Counsel on the other hand, make any public statement that disparages the business or reputation of the other (including without limitation their officers, directors, management and employees).

**28. Binding Effect**

(A) The Parties intend this Settlement Agreement to be binding upon, and inure to the benefit of, the successors and assigns of NAB, the Released Parties, the Representative Plaintiffs, and Settling Class Members to the fullest extent allowable under law. The Parties enter into this Settlement Agreement with full knowledge that adverse or favorable court decisions and/or other events, including those pertaining to any of the Representative Plaintiffs' capacity to serve as litigants or class representatives, may take place in the future that might affect the positions of either or both parties, including prior to Final approval of the Settlement. The Parties intend to be bound by this Settlement Agreement notwithstanding the possibility or occurrence of any such future events or changes in position.

(B) The waiver by any Party of any breach of this Settlement Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

**29. Amendment**

This Settlement Agreement, the Supplemental Agreement described in Section 23 herein and any other agreements referenced herein, may be modified or amended only by a writing executed by Plaintiffs' Counsel, on behalf of Representative Plaintiffs and the Settlement Class, and NAB's Counsel on behalf of NAB.

**30. Integrated Agreement**

This Settlement Agreement, including any exhibits hereto, the Supplemental Agreement described in Section 23 herein and any other agreements referenced herein, contains the entire, complete, and integrated statement of each and every term and provision agreed to by and among the Parties and is not subject to any condition not provided for or referenced herein. This Settlement Agreement, including any exhibits hereto, the Supplemental Agreement described in Section 23 herein and any other agreements referenced herein, supersede all prior or contemporaneous discussions, agreements, and understandings among the Parties to this Settlement Agreement with respect hereto, including the Term Sheet.

**31. Conduct of Counsel and Parties**

All Parties agree that all other Parties and their counsel have complied with Federal Rule of Civil Procedure 11 throughout the course of the Action and shall not make any applications for sanctions.

**32. CAFA Notices**

Within ten (10) Business Days of submission of this Settlement Agreement to the Court, NAB shall at its expense serve notices of the Settlement on State and Federal authorities as required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA Notices”). NAB will simultaneously serve copies of the CAFA Notices on Plaintiffs’ Counsel.

**33. Headings**

The headings set forth in this Settlement Agreement have been inserted for the convenience of reference only. Such headings shall not be considered a part of this Settlement Agreement, and neither shall they limit, modify, or affect in any way the meaning or interpretation of this Settlement Agreement.

**34. No Party is the Drafter**

None of the Parties shall be considered to be the drafter of this Settlement Agreement, any provision herein, or the Supplemental Agreement, for the purpose of any statute, case law, or rule of interpretation or construction that might cause any provision to be construed against the drafter.

**35. Choice of Law**

All terms within the Settlement Agreement, including any exhibits hereto and the Supplemental Agreement described in Section 23 herein, shall be governed by and interpreted according to the substantive laws of the State of New York, without regard to its choice of law or conflict of laws principles, including N.Y. General Obligations Law § 15-108. Notwithstanding any other provision in this Settlement, NAB shall not be required to perform any act that in its reasonable opinion would result in the contravention of any obligation of NAB under Australian law provided, however, that the foregoing shall not apply to the payment provisions in Section 4 above or the overall level of cooperation to be provided by NAB as set forth in Section 5 above. To any extent that NAB comes to believe that it cannot perform any act that is required by this Settlement, NAB shall notify Plaintiffs' Counsel of same, the Parties shall meet and confer regarding the issues and, if there is a disagreement, such disagreement shall be resolved pursuant to Section 42 herein.

**36. Execution in Counterparts**

This Settlement Agreement and the Supplemental Agreement may be executed in one or more counterparts. Facsimile and scanned/PDF signatures shall be considered valid signatures. All executed counterparts shall be deemed to be one and the same instrument. There shall be no agreement until the fully signed counterparts have been exchanged and delivered on behalf of all Parties.

**37. Submission to and Retention of Jurisdiction**

The Parties, Released Parties, and the Settlement Class irrevocably submit, to the fullest extent permitted by law, to the exclusive jurisdiction of the United States District Court for the Southern District of New York for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement, any exhibits hereto or the Supplemental Agreement described in Section 23 herein, except for any matters within this Settlement Agreement that are subject to the dispute resolution procedures outlined in Section 42 below. For the purpose of such suit, action, or proceeding, to the fullest extent permitted by law, the Parties, Released Parties and the Settlement Class irrevocably waive and agree not to assert, by way of motion, as a defense, or otherwise, any claim or objection that they are not subject to the jurisdiction of such Court, or that such Court is, in any way, an improper venue or an inconvenient forum or that the Court lacked power to approve this Settlement Agreement or enter any of the orders contemplated hereby. The Parties', Released Parties', and the Settlement Class's agreement as to submission to and retention of jurisdiction is solely for the purposes of effectuating the Settlement and for no other purpose. NAB and the Released Parties retain all of their objections, arguments, and defenses with respect to jurisdiction (including personal jurisdiction), and reserve all rights to contest jurisdiction, if the Settlement does not receive the Court's Final approval, if the Court's approval is reversed or vacated on appeal, if the Settlement is terminated, or if the Settlement otherwise fails to become effective. NAB and the Released Parties do not concede that the United States District Court for the Southern District of New York may properly exercise personal jurisdiction over them for any purpose other than the enforcement of the Settlement as expressly provided for in this Settlement Agreement, and maintain that no such personal jurisdiction would exist absent the consent provided for in this Section 37.

**38. Contribution and Indemnification Bar**

The Settlement is expressly intended to absolve the Released Parties against any claims for contribution, indemnification, or similar claims from other Defendants arising out of or related in any way to the Released Claims, in the manner and to the fullest extent permitted under the law of New York or any other jurisdiction that might be construed or deemed to apply for claims of contribution, indemnification, or similar claims against any Released Party. Notwithstanding the foregoing, should any court determine that any Defendant is or was legally entitled to any kind of contribution or indemnification from any Released Parties arising out of or related to the Released Claims, the Releasing Parties agree that any money judgment subsequently obtained by the Releasing Parties against any Defendant shall be reduced to an amount such that, upon paying the entire amount, the Defendant would have no claim for contribution, indemnification, or similar claims against the Released Parties.

**39. Reservation of Rights**

This Settlement Agreement does not settle or compromise any claims by Representative Plaintiffs or any Settlement Class Member asserted against any Defendant or any potential defendant other than NAB and the Released Parties. The rights of any Settlement Class Member against any other Person other than NAB and the Released Parties are specifically reserved by Representative Plaintiffs and the Settlement Class Members.

**40. Notices**

All notices and other communications under this Settlement Agreement shall be sent to the Parties to this Settlement Agreement at their address set forth on the signature page herein, *viz*, if to Representative Plaintiffs, then to: Vincent Briganti & Geoffrey M. Horn, Lowey Dannenberg, P.C., 44 South Broadway, Suite 1100, White Plains, New York 10601, and Christopher Lovell, Lovell, Stewart, Halebian, Jacobson LLP, 500 Fifth Avenue, Suite 2440, New York, New York

10110; and if to NAB, then to Matthew Porpora and Jonathan Carter, Sullivan & Cromwell LLP, 125 Broad Street, New York, New York 10004 or such other address as each party may designate for itself, in writing, in accordance with this Settlement Agreement.

**41. Authority**

In executing this Settlement Agreement, Plaintiffs' Counsel represent and warrant that they have been fully authorized to execute this Settlement Agreement on behalf of the Representative Plaintiffs and the Settlement Class (subject to final approval by the Court after notice to all Settlement Class Members), and that all actions necessary for the execution of this Settlement Agreement have been taken. NAB's Counsel represents and warrants that they have been fully authorized to execute this Settlement Agreement on behalf of NAB, and that all actions necessary for the execution of this Settlement Agreement have been taken.

**42. Disputes or Controversies**

(A) Except as otherwise provided herein, any dispute or controversy arising out of or relating to the Settlement Agreement or Supplemental Agreement shall be decided first by discussion among counsel for the Parties and, failing that, by confidential mediation. The mediation shall be conducted by JAMS, Inc., formerly known as Judicial Arbitration and Mediation Services ("JAMS"), and the mediator shall be selected and agreed upon by the Parties. If the Parties are unable to agree on the mediator within thirty (30) calendar days from the date on which the mediation is commenced, JAMS shall appoint the mediator. The seat of mediation shall be New York, New York. If mediation fails to resolve the dispute, it shall be decided by arbitration, in each case administered by a sole neutral arbitrator agreed upon by all Parties at JAMS, in accordance with its procedures and Comprehensive Arbitration Rules & Procedures then in effect ("Rules") and in accordance with the Expedited Procedures in those Rules (or such other alternative dispute resolution organization as all parties shall agree), except as modified herein. If

the Parties are unable to agree on the sole arbitrator within thirty (30) calendar days from the date on which the arbitration is commenced, JAMS (or any dispute resolution organization agreed upon by the Parties) shall appoint the sole arbitrator. The seat of arbitration shall be New York, New York. Any appeal therefrom shall be heard by the United States District Court for the Southern District of New York.

(B) The arbitration shall be conducted on a strictly confidential basis, and the Parties shall not disclose the existence or nature of any claim; any documents, correspondence, briefing, exhibits, or information exchanged or presented in connection with any claim; or any rulings, decisions, or results in the context of arbitration (collectively, “Arbitration Materials”) to any third party, except as permitted in section 10 of the Protective Order (and such persons shall also be bound by these confidentiality terms), under seal in any judicial proceeding commenced in connection with this Section 42, or to the extent that such disclosure is required or advisable pursuant to bank regulatory requirements, SEC requirements, or other legal or regulatory requirements.

(C) Subject to any timely appeals under this Section 42, the arbitral decision shall be final and binding upon the parties hereto. Any arbitral award may be entered as a judgment or order in any court of competent jurisdiction. Except as the Rules may provide, the Parties shall share JAMS’s administrative fees and the mediator’s or arbitrator’s fees and expenses. Each Party shall be responsible for such Party’s attorneys’ fees and costs except as otherwise provided by any applicable statute or other law. Either Party may commence litigation in any state or federal court of competent jurisdiction located in New York County, New York to obtain injunctive relief in aid of arbitration, to compel arbitration, or to confirm or vacate an arbitrator’s award. The Parties agree to take all steps necessary to protect the confidentiality of the Arbitration Materials in

connection with any such proceeding, agree to use their best efforts to file all confidential information (and documents containing confidential information) under seal, and agree to the entry of an appropriate protective order encompassing the confidentiality terms of any settlement agreement.

**43. Stay**

The Parties stipulate and agree that all proceedings and deadlines in the Action (including with respect to discovery, except with respect to NAB's cooperation obligations as provided in Section 5 above) between Representative Plaintiffs and NAB shall be stayed pending the Court's entry of the Conditional Certification Order. The stay will automatically be dissolved if (a) the Court does not enter the Conditional Certification Order, the Final Approval Order, or the Final Judgment, or (b) the Court enters the Final Approval Order and the Final Judgment and appellate review is sought and, on such review, the Final Approval Order or the Final Judgment is finally vacated, modified, or reversed, unless all Parties, in their sole discretion, within thirty (30) calendar days from the date of the mailing of such ruling to such Parties, provide written notice to all other Parties hereto of their intent to proceed with the Settlement under the terms of the Conditional Certification Order, the Final Approval Order, or the Final Judgment, as modified by the Court or on appeal. If the stay is dissolved, the Parties agree to work together in order to seek modification of the case schedule herein so that the Parties are returned to their respective litigation positions prior to the Settlement.

*[remainder of page intentionally left blank]*

Dated: December 10, 2021

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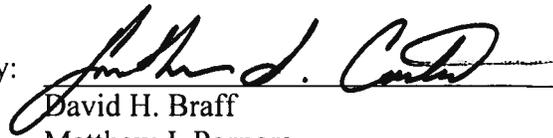
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EXECUTION VERSION

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

RICHARD DENNIS, SONTERRA CAPITAL MASTER FUND, LTD., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT ASIAN EVENT DRIVEN FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., AND ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM on behalf of themselves and all others similarly situated,

Docket No. 16-cv-06496 (LAK)

Plaintiffs,

*-against-*

JPMORGAN CHASE & CO., JPMORGAN CHASE BANK, N.A., JPMORGAN CHASE BANK, N.A. AUSTRALIA BRANCH, BNP PARIBAS, S.A., BNP PARIBAS, AUSTRALIA BRANCH, THE ROYAL BANK OF SCOTLAND GROUP PLC, THE ROYAL BANK OF SCOTLAND PLC, RBS N.V., RBS GROUP (AUSTRALIA) PTY LIMITED, UBS AG, UBS AG, AUSTRALIA BRANCH, AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD., COMMONWEALTH BANK OF AUSTRALIA, NATIONAL AUSTRALIA BANK LIMITED, WESTPAC BANKING CORPORATION, DEUTSCHE BANK AG, DEUTSCHE BANK AG, AUSTRALIA BRANCH, HSBC HOLDINGS PLC, HSBC BANK AUSTRALIA LIMITED, LLOYDS BANKING GROUP PLC, LLOYDS BANK PLC, LLOYDS TSB BANK PLC, AUSTRALIA, MACQUARIE GROUP LTD., MACQUARIE BANK LTD., ROYAL BANK OF CANADA, RBC CAPITAL MARKETS LLC, ROYAL BANK OF CANADA, AUSTRALIA BRANCH, MORGAN STANLEY, MORGAN STANLEY AUSTRALIA LIMITED, CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, ICAP PLC, ICAP AUSTRALIA PTY LTD., TULLETT PREBON PLC, TULLETT PREBON (AUSTRALIA) PTY LTD., AND JOHN DOES NOS. 1-50.

Defendants.

**EXHIBIT A**

**[PROPOSED] ORDER GRANTING CONDITIONAL CLASS CERTIFICATION FOR  
PURPOSES OF CLASS ACTION SETTLEMENT WITH  
NATIONAL AUSTRALIA BANK LIMITED**

This action comes before the Court on Plaintiffs'<sup>1</sup> Consolidated Motion for Conditional Class Certification ("Motion") and on the Stipulation and Agreement of Settlement as to Defendant National Australia Bank Limited ("NAB") dated December 10, 2021 ("Settlement Agreement") entered into by Representative Plaintiffs and NAB in the above-entitled action ("Action"). The Court has reviewed the Motion, Settlement Agreement, and attached exhibits, which set forth the terms and conditions for a proposed settlement of and for dismissal of the Action with prejudice as against NAB upon the terms and conditions set forth therein; and the Court having read and considered the Stipulation and the attached exhibits finds that the Motion should be granted.

All defined terms used in this Order shall have the same meanings as set forth in the Settlement Agreement, except as otherwise defined herein. Representative Plaintiffs and NAB are referred to collectively as the "Settling Parties."

**NOW, THEREFORE, IT IS HEREBY ORDERED** that:

1. For purposes of settlement only, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), the Court hereby certifies a Settlement Class consisting of: all Persons (including both natural persons and entities) who purchased, acquired, sold, held, traded, or otherwise had any interest in, BBSW-Based Derivatives during the period January 1, 2003 through August 16, 2016, inclusive (the "Settlement Class Period"), provided that, if Representative Plaintiffs expand the putative or certified class in this Action in or through any subsequent amended complaint, class motion, or Other Settlement, the defined Settlement Class in this Order and the Settlement Agreement shall be expanded so as to be coterminous with such expansion. Excluded from the Settlement Class are the Defendants and any parent, subsidiary, affiliate or agent of any Defendant or any co-conspirator whether or not named as a Defendant, and the United States Government. Investment Vehicles are not to be excluded from the

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<sup>1</sup> For purposes of this motion "Plaintiffs" means Richard Dennis and Orange County Employees Retirement System.

Settlement Class solely on the basis of being deemed to be Defendants or affiliates, subsidiaries, parents or agents of Defendants or controlled by Defendants or affiliates, subsidiaries, parents or agents of Defendants. However, to the extent that any Defendant or any entity that might be deemed to be an affiliate, subsidiary, parent or agent thereof (i) managed or advised, and (ii) directly or indirectly held a beneficial interest in, said Investment Vehicle during the Settlement Class Period, that beneficial interest in the Investment Vehicle is excluded from the Settlement Class.

2. Solely for the purposes of effectuating the Settlement, the Court conditionally finds and concludes that the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3) have been satisfied as follows:

- (a) the members of the Settlement Class are so numerous that joinder of all class members is impracticable;
- (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions;
- (c) the claims of the Plaintiffs are typical of the claims of the Settlement Class;
- (d) Plaintiffs and Class Counsel will fairly and adequately represent and protect the interests of all of the Settlement Class Members; and
- (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

3. If for any reason the Effective Date of the Settlement, as defined in Section 1(N) and Section 19 of the Settlement Agreement, does not occur, the Settlement Agreement, including any amendment(s) thereof, and this Order conditionally certifying the Settlement Class solely for purposes of the Settlement shall, without the need for further action by the Court or the Settling Parties, be null and void, of no further force or effect, and without prejudice to any party, and may not be introduced as evidence or referred to in any actions or proceedings by any person or entity. Each party shall be

restored to his, her or its respective position as it existed as of June 17, 2021. In such circumstances, each of the Settling Parties shall retain its currently existing rights to seek or to object to the certification of this litigation as a class action under Fed. R. Civ. P. 23, or any state or federal rule, statute, law, or provision, and to contest and appeal any grant or denial of certification in this litigation or in any other litigation on any other grounds.

4. The Court appoints Lowey Dannenberg, P.C. and Lovell Stewart Halebian Jacobson LLP as Class Counsel to such Settlement Class for purposes of the Settlement, having determined that the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are fully satisfied by this appointment.

5. The Court appoints Citibank N.A as Escrow Agent for purposes of the Settlement Fund defined in the Settlement Agreement. The Court preliminarily approves the establishment of the Settlement Fund as qualified settlement funds pursuant to Section 468B of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

6. Plaintiffs Richard Dennis and Orange County Employees Retirement System (“OCERS”) will serve as representatives of such Settlement Class for purposes of the Settlement.

7. The timing, plan, and forms of the Class Notice to the Settlement Class and the date of the Fairness Hearing before this Court to consider any member(s) of the Settlement Class’s objections to final approval of the Settlement and to consider the fairness, adequacy and reasonableness of the proposed Settlement and Settlement Agreement shall all be determined by separate order of this Court.

8. At a later date, Class Counsel shall submit for the Court’s approval a proposed plan of distribution of the Settlement Funds.

9. This civil action was commenced after February 18, 2005. The Court directs NAB to notify the appropriate Federal and State officials under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA”). Counsel for NAB shall, at or before the Fairness Hearing, file with the Court a notice regarding its compliance with CAFA.

10. All proceedings in the Action as to NAB, other than proceedings as may be necessary to implement the proposed Settlement or to effectuate the terms of the Settlement Agreement, are hereby stayed and suspended until further order of this Court. Pending determination of whether the Settlement should be approved, Representative Plaintiffs, Class Counsel and Settlement Class Members are barred and enjoined from commencing or prosecuting any Released Claims against any of the Released Persons.

11. Neither this Order, the Settlement Agreement, the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or Settlement, whether or not the Settlement shall become final, is or shall be deemed or construed to be an admission, adjudication, or evidence of (i) any violation of any statute or law or of the validity of any claims, alleged wrongdoing, or liability of NAB or any Released Party; (ii) the truth of any of the claims, defenses or allegations alleged in the Action; (iii) the incurrence of any damage, loss, or injury by Representative Plaintiffs or any Person; (iv) the existence or amount of any artificiality of any benchmark or other interest rate; (v) any fault or omission of NAB or any Released Party in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; or (vi) the propriety of certification of a class other than solely for purposes of the Settlement. Further, neither this Order, the Settlement Agreement (including its exhibits), nor the Settlement contained therein, whether or not the Settlement shall become final, nor any negotiations, documents and discussions associated with them, nor the Final Approval

Order and Final Judgment, may be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding of any nature, whether by the Settlement Class or any Person, except if warranted by existing law in connection with a dispute under the Settlement Agreement or an action in which the Settlement Agreement is asserted as a defense (in which case this paragraph does not apply). All rights of NAB and Representative Plaintiffs are reserved and retained if the Settlement does not become final in accordance with the terms of the Settlement Agreement.

12. Neither this Order, the Settlement Agreement, the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the Settlement is or may be used as an admission or evidence that the claims of Representative Plaintiffs lacked merit in any proceeding against anyone in any court, administrative agency, or other tribunal.

13. Except as otherwise provided herein, in the event that the Settlement Agreement is terminated, vacated, not approved, or the Effective Date fails to occur for any reason, then the Parties shall be deemed to have reverted to their respective status in the Action as of June 17, 2021, and the Settlement Amount, and all interest earned in the Settlement Fund on that Settlement Amount, shall be refunded, reimbursed, and repaid to NAB to the extent provided in the Settlement Agreement.

14. All funds held by the Escrow Agent shall be deemed and considered to be *in custodial legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Settlement Agreement, returned to the Person(s) paying the same pursuant to the Settlement Agreement and/or further order(s) of the Court.

15. If the Settlement is terminated pursuant to Sections 22 or 23 of the Settlement Agreement or if the Settlement is ultimately not approved or does not become final for any reason, the Court will modify any existing scheduling order to ensure that the Parties will have sufficient time to prepare for the resumption of litigation.

16. The Court's conditional certification of the Settlement Class and appointment of Plaintiffs as class representatives, as provided herein is without prejudice to, or waiver of, the rights of any Defendant to contest any other request by Representative Plaintiffs to certify a class. The Court's findings in this Conditional Certification Order shall have no effect on the Court's ruling on any motion to certify any class in this litigation, or appoint class representatives, and no party may cite or refer to the Court's approval of the Settlement Class as binding or persuasive authority with respect to any motion to certify such class or appoint class representatives.

17. The Court hereby orders NAB to produce documents to the Representative Plaintiffs consistent with and solely to the extent of its cooperation obligations provided in Section 5 of the Settlement Agreement.

**ENTERED** this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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Hon. Lewis A. Kaplan  
United States District Judge

EXECUTION VERSION

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

RICHARD DENNIS, SONTERRA CAPITAL MASTER FUND, LTD., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT ASIAN EVENT DRIVEN FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., AND ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM on behalf of themselves and all others similarly situated,

Docket No. 16-cv-06496 (LAK)

Plaintiffs,

*-against-*

JPMORGAN CHASE & CO., JPMORGAN CHASE BANK, N.A., JPMORGAN CHASE BANK, N.A. AUSTRALIA BRANCH, BNP PARIBAS, S.A., BNP PARIBAS, AUSTRALIA BRANCH, THE ROYAL BANK OF SCOTLAND GROUP PLC, THE ROYAL BANK OF SCOTLAND PLC, RBS N.V., RBS GROUP (AUSTRALIA) PTY LIMITED, UBS AG, UBS AG, AUSTRALIA BRANCH, AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD., COMMONWEALTH BANK OF AUSTRALIA, NATIONAL AUSTRALIA BANK LIMITED, WESTPAC BANKING CORPORATION, DEUTSCHE BANK AG, DEUTSCHE BANK AG, AUSTRALIA BRANCH, HSBC HOLDINGS PLC, HSBC BANK AUSTRALIA LIMITED, LLOYDS BANKING GROUP PLC, LLOYDS BANK PLC, LLOYDS TSB BANK PLC, AUSTRALIA, MACQUARIE GROUP LTD., MACQUARIE BANK LTD., ROYAL BANK OF CANADA, RBC CAPITAL MARKETS LLC, ROYAL BANK OF CANADA, AUSTRALIA BRANCH, MORGAN STANLEY, MORGAN STANLEY AUSTRALIA LIMITED, CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, ICAP PLC, ICAP AUSTRALIA PTY LTD., TULLETT PREBON PLC, TULLETT PREBON (AUSTRALIA) PTY LTD., AND JOHN DOES NOS. 1-50.

Defendants.

**EXHIBIT B**

**[PROPOSED]  
FINAL APPROVAL ORDER OF  
CLASS ACTION SETTLEMENT  
WITH NATIONAL AUSTRALIA  
BANK LIMITED**

This matter came for a duly-noticed hearing on \_\_\_\_\_ 202\_\_ (the “Fairness Hearing”), upon the Representative Plaintiffs’<sup>1</sup> Motion for Final Approval of Class Action Settlement with National Australia Bank Limited (“NAB”) in the action captioned *Richard Dennis, et al. v. JPMorgan Chase & Co., et al.*, No. 16-cv-06496 (LAK) (S.D.N.Y.) (the “Action”), which was consented to by NAB (together with Representative Plaintiffs, the “Parties”). Due and adequate notice of the Stipulation and Agreement of Settlement, dated December 10, 2021 (the “Settlement Agreement”) having been given to the Settlement Class Members, the Fairness Hearing having been held and the Court having considered all papers filed and proceedings had in the Action, and otherwise being fully informed in the premises and good cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. This Final Approval Order hereby incorporates by reference the definitions in the Settlement Agreement and all terms used herein, except as otherwise expressly defined herein, shall have the same meanings as set forth in the Settlement Agreement.

2. For purposes only of the settlement of the Released Claims<sup>2</sup> set forth in the Settlement Agreement (the “Settlement”), the Court hereby finally certifies the Settlement Class:

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<sup>1</sup> “Representative Plaintiffs” are Richard Dennis, Orange County Employees Retirement System (“OCERS”), Fund Liquidation Holdings, LLC and any subsequently named plaintiff(s) that may be added to this Action through amended or supplemental pleadings.

<sup>2</sup> “Released Claims” means any and all manner of claims, including unknown claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, set-offs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class, derivative, or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys’ fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, which Settling Class Members or any of them ever had, now has, or hereafter can, shall or may have, representatively, derivatively or in any other capacity, against the Released Parties arising from or relating in any way to the claims, allegations or conduct alleged in the Action, or which could have been alleged in the Action against the Released Parties, concerning any:

(i) BBSW-Based Derivatives;

All Persons (including both natural persons and entities) who purchased, acquired, sold, held, traded, or otherwise had any interest in BBSW-Based Derivatives during the period January 1, 2003 through August 16, 2016, inclusive. Excluded from the Settlement Class are the Defendants and any parent, subsidiary, affiliate or agent of any Defendant or any co-conspirator whether or not named as a Defendant, and the United States Government.

3. Based on the record, the Court reconfirms that the applicable provisions of Rule 23 of the Federal Rules of Civil Procedure have been satisfied for purposes only of the Settlement.

4. In so holding, the Court finds that, solely for purposes of settlement, the Settlement Class meets all of the applicable requirements of FED. R. CIV. P. 23(a) and (b)(3). The Court hereby finds, in the specific context of this Settlement, that: (i) the Settlement Class is so numerous that joinder of all Settlement Class Members is impracticable, FED. R. CIV. P. 23(a)(1); (ii) common questions of law and fact exist with regard to NAB's alleged manipulation

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- (ii) BBSW-Based Deposits or Loans (to the extent such financial instruments were entered into by a U.S. Person, or by a Person from or through a location within the U.S.);
  - (iii) Prime Bank Bills or Prime Bank eligible securities purchased, sold, held, traded, and/or transacted by the Representative Plaintiffs, members of the Settlement Class, and/or Settling Class Members (to the extent such financial instruments were entered into by a U.S. Person, or by a Person from or through a location within the U.S.); or
  - (iv) any similar financial instruments priced, benchmarked, or settled to BBSW purchased, sold, held, traded, and/or transacted by the Representative Plaintiffs, Sonterra Capital Master Fund, Ltd., FrontPoint Financial Services Fund, L.P., FrontPoint Asian Event Driven Fund, L.P., and FrontPoint Financial Horizons Fund, L.P., members of the Settlement Class, and/or Settling Class Members (to the extent such financial instruments were entered into by a U.S. Person, or by a Person from or through a location within the U.S.), including additional financial instruments or claims subsequently alleged in the Action, or in which any of the foregoing otherwise had any interest;

including, but not limited to, any alleged manipulation of BBSW under any statute, regulation, or common law, or any purported conspiracy, collusion, racketeering activity, or other improper conduct relating to BBSW (including, but not limited to, all claims under Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.*, the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.*, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, and any other federal or state statute, regulation, or the common law). The following claims shall not be released by this Settlement: (i) any claims against former NAB employees arising solely from those former employees' conduct or alleged conduct that occurred while not employed by NAB; (ii) any claims against the named Defendants in this Action other than NAB and BNZ and other than any John Doe Defendants to the extent they are current or former employees of NAB (solely in their capacity as employees of NAB) or other Released Parties; or (iii) any claims against any Defendant not affiliated with NAB who may be subsequently added in this Action. *See* Settlement Agreement § 13.

of BBSW and the prices of BBSW-Based Derivatives, FED. R. CIV. P. 23(a)(2); (iii) the Representative Plaintiffs' claims in this litigation are typical of those of the Settlement Class Members, FED. R. CIV. P. 23(a)(3); and (iv) the Representative Plaintiffs' interests do not conflict with, and are co-extensive with, those of absent Settlement Class Members; and (v) Lowey Dannenberg, P.C. and Lovell Stewart Halebian Jacobson LLP ("Class Counsel") have adequately represented the interests of the Settlement Class, FED. R. CIV. P. 23(a)(4). The Court also finds that common issues of fact and law predominate over any questions affecting only individual members and that a class action is superior to other available methods for fairly and efficiently adjudicating this controversy. FED. R. CIV. P. 23(b)(3).

5. Representative Plaintiffs are hereby approved to serve as representatives of such Settlement Class for purposes of the Settlement.

6. Lowey Dannenberg, P.C. and Lovell Stewart Halebian Jacobson LLP are appointed Class Counsel to the Settlement Class for the purposes of the Settlement.

7. In the Action only and solely for purposes of the Settlement, this Court: (i) has personal jurisdiction over Representative Plaintiffs and NAB, and all Settlement Class Members, and (ii) subject matter jurisdiction over the Action to consider the Settlement Agreement and all exhibits attached thereto.

8. The Court finds that the mailed notice, publication notice, website, and Class Notice plan implemented pursuant to the Settlement Agreement and approved by the Court in the Order dated \_\_\_\_\_, 202\_\_: (a) constituted the best practicable notice; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, of their right to exclude themselves from or object to the proposed Settlement, of their right to appear at the Fairness Hearing, of the Distribution Plan,

and of Class Counsel's application for an award of attorneys' fees, Incentive Award(s), and for reimbursement of expenses associated with the Action; (c) provided a full and fair opportunity to all Settlement Class Members to be heard with respect to the foregoing matters; and (d) met all applicable requirements of Federal Rule of Civil Procedure 23, Due Process, and any other applicable rules or law. Based upon NAB's submission to the Court dated \_\_\_\_\_, 202\_\_, the Court further finds that NAB has complied with the obligations imposed on it under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

9. The Court finds that \_\_\_ Settlement Class Members have validly requested to be excluded from the Settlement Class as it relates to the Settlement. Those excluded members of the Settlement Class are identified at ECF No. \_\_\_ and in Exhibit 1 hereto. The excluded members of the Settlement Class as to the Settlement with NAB identified in Exhibit 1 hereto shall have no rights with respect to the Settlement Agreement, shall receive no payment from the sums provided for in the Settlement Agreement and shall be deemed to have excluded themselves from the Action as against NAB, including but not limited to any and all future prosecution of the Action against NAB.

10. The Court finds that \_\_\_ objections to the proposed Settlement have been submitted. Notwithstanding the [lack of] objections, the Court has independently reviewed and considered all relevant factors and has conducted an independent examination into the propriety of the proposed Settlement. [The Court finds all objections are without merit and they are hereby overruled.]

11. It is hereby determined that all Settling Class Members are bound by the Settlement Agreement and this Final Approval Order regardless of whether such Settling Class Members execute and deliver a Proof of Claim and Release.

12. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finally approves the Settlement, as set forth in the Settlement Agreement, and finds that the Settlement is, in all respects, fair, reasonable and adequate, and in the best interests of the Settlement Class, including the Representative Plaintiffs. In reaching this conclusion, the Court considered the factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). This Court further finds that the Settlement set forth in the Settlement Agreement is the result of arm's-length negotiations between experienced counsel representing the interests of the Parties, and that Class Counsel and the Representative Plaintiffs adequately represented the Settlement Class for the purpose of entering into and implementing the Settlement Agreement. The Court finds that the relief provided by the Settlement is adequate and Settlement Class Members are treated equitably. Accordingly, the Settlement embodied in the Settlement Agreement is hereby approved in all respects. The Parties are hereby directed to carry out the Settlement Agreement in accordance with all of its terms and provisions, including the termination provisions.

13. Notwithstanding the entry of this Final Approval Order, if the Settlement Agreement is validly terminated by Representative Plaintiffs or NAB, is disapproved in whole or in part by the Court, any appellate court, or any other court of review, or does not become Final in accordance with its terms, then the provisions of this Final Approval Order shall be null and void with respect to the Settlement; Representative Plaintiffs' and Settling Class Members' claims shall be reinstated; NAB's defenses shall be reinstated; the certification of the Settlement Class and final approval of the proposed Settlement, and all actions associated with it, including but not limited to any requests for exclusion from the Settlement previously submitted and

deemed to be valid, shall be vacated and be of no force and effect; the Settlement Agreement, including its exhibits, and any and all negotiations, documents, and discussions associated with it and the releases set forth in the Settlement Agreement, shall be without prejudice to the rights of any Party, and of no force or effect; and the Parties shall be returned to their respective positions before June 17, 2021. Notwithstanding the language in this section, any provision(s) in the Settlement Agreement that the Parties have agreed shall survive their termination shall continue to have the same force and effect intended by the Parties.

14. The Settlement Fund defined in the Settlement Agreement has been established as a trust and as a fiduciary account (the “Settlement Fiduciary Account”). The Court approves the establishment of the Settlement Fiduciary Account under the Settlement Agreement as qualified settlement funds pursuant to Section 468B of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

15. Without affecting the finality of the Final Approval Order for purposes of appeal, the Court reserves exclusive jurisdiction over the implementation and enforcement of the Settlement Agreement and the Settlement contemplated thereby and over the enforcement of this Final Approval Order. The Court also retains exclusive jurisdiction to resolve any disputes that arise out of or relate to the Settlement Agreement, the Settlement, or the Settlement Fund (except for such disputes and controversies as are subject to Section 42 of the Settlement Agreement, which disputes and controversies shall be governed by the respective terms of such section), to consider or approve administration costs and fees, including but not limited to fees and expenses incurred to administer the Settlement after the entry of the Final Approval Order, and to consider or approve the amounts of distributions to Settlement Class Members. In addition, without affecting the finality of this Final Approval Order, the Representative Plaintiffs, NAB, and the

Settlement Class hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York for any suit, action, proceeding, or dispute arising out of or relating to this Final Approval Order or the Settlement Agreement. Except as otherwise provided in the Settlement Agreement, any disputes involving the Representative Plaintiffs, NAB, or Settling Class Members concerning the implementation of the Settlement Agreement shall be submitted to the Court.

16. Each Settling Class Member must execute a release and covenant not to sue, in conformity with the Settlement Agreement, as incorporated into the Proof of Claim and Release form, in order to receive the Settling Class Member's share, if any, of the Net Settlement Fund defined in the Settlement Agreement. The Court hereby confirms the appointment of A.B. Data, Ltd. as Settlement Administrator and directs that the Settlement Administrator shall ensure that each Proof of Claim and Release form provided to Settling Class Members contains a copy of such release and covenant not to sue. However, Settling Class Members' claims shall be released pursuant to Section 13 of the Settlement Agreement regardless of whether the Settling Class Member executes a release and covenant not to sue.

17. The Court declares that the Settlement Agreement and the Final Approval Order shall be binding on, and shall have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings against the Released Parties involving the Released Claims that are maintained by or on behalf of any Releasing Party regardless of whether the Releasing Party previously initiated or subsequently initiates individual litigation or other proceedings involving the Released Claims, and even if such Releasing Party never received actual notice of the Action or the proposed Settlement.

18. The Court hereby approves the release and covenant not to sue set forth in Section 13 of the Settlement and directs dismissal of the Action as against NAB and any Released Parties (but not any other Defendant) fully, finally and with prejudice, pursuant to the terms of the Settlement and the Final Judgment to be entered concurrently herewith.

19. The Court permanently bars and enjoins the Releasing Parties and all Settling Class Members from: (a) filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction against NAB or any Released Parties based on the Released Claims; (b) filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any Settlement Class Members (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), against NAB or any Released Parties based on the Released Claims; (c) organizing members of the Settlement Class into a separate group, class, or subclass for purposes of pursuing as a purported class action any lawsuit or administrative, regulatory, arbitration, or other proceeding (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) against NAB or any Released Parties based on the Released Claims; or (d) assisting any third party in the prosecution of any Released Claims against NAB or any Released Parties.

20. The Court permanently bars and enjoins claims by any Person against NAB or any Released Parties for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment or otherwise. To the extent permitted by law, the Court permanently bars and enjoins claims against NAB and any Released Parties for contribution or indemnification (however denominated) for all or a portion of any amounts paid or awarded in the Action by way

of settlement, judgment, or otherwise by (a) any of the other Defendants currently named in the Action; (b) any other Person formerly named as a party in the Action; or (c) any other Person subsequently added or joined as a party in the Action. Should any court determine that any Defendant is or was legally entitled to any kind of set-off, apportionment, contribution, or indemnification from NAB or any Released Parties arising out of or related to Released Claims, any money judgment subsequently obtained by the Releasing Parties against any Defendant shall be reduced to an amount such that, upon paying the entire amount, the Defendant would have no claim for set-off, apportionment, contribution, indemnification, or similar claims against NAB or any Released Parties.

21. The Court permanently bars and enjoins claims by NAB or any Released Parties against any other Defendants for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment or otherwise. To the extent permitted by law, the Court permanently bars and enjoins claims by NAB and any Released Parties for contribution or indemnification (however denominated) from other Defendants for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise against any of the other Defendants currently named in the Action and absolves the other Defendants against any claims for contribution, indemnification, or similar claims from the Released Parties arising out of or related in any way to the Released Claims, in the manner and to the fullest extent permitted under the law of New York or any other jurisdiction that might be construed or deemed to apply for claims of contribution, indemnification, or similar claims against any of the other Defendants. For the avoidance of doubt, this paragraph shall not bar any claims, including claims for contribution or indemnification (however denominated) by NAB and/or any Released Parties against any third parties other than other Defendants in this Action.

22. Neither the Settlement Agreement (nor its respective exhibits), whether or not it shall become Final, nor any negotiations, documents exchanged among counsel for the Representative Plaintiffs and NAB in connection with settlement discussions, and discussions associated with them, nor the Final Approval Order and Final Judgment are or shall be deemed or construed to be an admission, adjudication, or evidence of: (a) any violation of any statute or law or of the validity of any claims, alleged wrongdoing, or liability of NAB or any Released Party; (b) the truth of any of the claims or allegations alleged in the Action; (c) the incurrence of any damage, loss, or injury by any Person; (d) the existence or amount of any artificiality of any interest benchmark or other interest rate; (e) any fault or omission of NAB in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; or (f) the propriety of certification of a class other than solely for purposes of the Settlement. Further, neither the Settlement Agreement (nor its exhibits), whether or not it shall become Final, nor any negotiations, documents exchanged among counsel for the Representative Plaintiffs and NAB in connection with settlement discussions, and discussions associated with them, nor the Final Approval Order and Final Judgment, may be discoverable, offered or received in evidence, or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding of any nature, by any Person, except if warranted by existing law in connection with a dispute under the Settlement Agreement or an action (including this Action) in which the Settlement Agreement is asserted as a defense. Notwithstanding anything to the contrary herein, the foregoing provisions do not apply to discovery or cooperation materials provided by NAB to the Representative Plaintiffs or by the Representative Plaintiffs to NAB in connection with the Settlement or the Action. The Parties, without the need for approval from the Court, may adopt such amendments, modifications, and expansions of the Settlement Agreement and all exhibits

thereto as (i) shall be consistent in all material respects with the Final Approval Order; and (ii) do not limit the rights of Settling Class Members.

23. The Court finds that, during the course of the Action, the Parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure as to each other.

24. Any data or other information provided by Settlement Class Members in connection with the submission of claims shall be held in strict confidence, available only to the Settlement Administrator, Class Counsel, and experts or consultants acting on behalf of the Settlement Class. In no event shall a Settlement Class Member's data or personal information be made publicly available, except as provided for herein or upon Court Order for good cause shown.

25. The Distribution Plan and the Proof of Claim and Release Form are each approved as fair, reasonable, and adequate.

26. The word "days," as used herein, means calendar days. In the event that any date or deadline set forth herein falls on a weekend or federal or state legal holiday, such date or deadline shall be deemed moved to the first business day thereafter.

27. The Court's certification of the Settlement Class and appointment of the Representative Plaintiffs as class representatives, as provided herein, is without prejudice to, or waiver of, the rights of any Defendant to contest any other request by the Representative Plaintiffs to certify a class. The Court's findings in this Final Approval Order shall have no effect on the Court's ruling on any motion to certify any class or to appoint class representatives in this litigation or any challenge to the Representative Plaintiffs' capacity to litigate or to

represent a putative class, and no party may cite or refer to the Court's approval of the Settlement Class as binding or persuasive authority with respect to any such motion or challenge.

28. Class Counsel's request for attorneys' fees and reimbursement of expenses (and Incentive Awards for the Representative Plaintiffs) shall be the subject of a separate order by the Court.

**IT IS SO ORDERED.**

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 202\_\_.

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Hon. Lewis A. Kaplan  
United States District Judge

EXECUTION VERSION

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

RICHARD DENNIS, SONTERRA CAPITAL MASTER FUND, LTD., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT ASIAN EVENT DRIVEN FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., AND ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM on behalf of themselves and all others similarly situated,

Docket No. 16-cv-06496 (LAK)

Plaintiffs,

*-against-*

JPMORGAN CHASE & CO., JPMORGAN CHASE BANK, N.A., JPMORGAN CHASE BANK, N.A. AUSTRALIA BRANCH, BNP PARIBAS, S.A., BNP PARIBAS, AUSTRALIA BRANCH, THE ROYAL BANK OF SCOTLAND GROUP PLC, THE ROYAL BANK OF SCOTLAND PLC, RBS N.V., RBS GROUP (AUSTRALIA) PTY LIMITED, UBS AG, UBS AG, AUSTRALIA BRANCH, AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD., COMMONWEALTH BANK OF AUSTRALIA, NATIONAL AUSTRALIA BANK LIMITED, WESTPAC BANKING CORPORATION, DEUTSCHE BANK AG, DEUTSCHE BANK AG, AUSTRALIA BRANCH, HSBC HOLDINGS PLC, HSBC BANK AUSTRALIA LIMITED, LLOYDS BANKING GROUP PLC, LLOYDS BANK PLC, LLOYDS TSB BANK PLC, AUSTRALIA, MACQUARIE GROUP LTD., MACQUARIE BANK LTD., ROYAL BANK OF CANADA, RBC CAPITAL MARKETS LLC, ROYAL BANK OF CANADA, AUSTRALIA BRANCH, MORGAN STANLEY, MORGAN STANLEY AUSTRALIA LIMITED, CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, ICAP PLC, ICAP AUSTRALIA PTY LTD., TULLETT PREBON PLC, TULLETT PREBON (AUSTRALIA) PTY LTD., AND JOHN DOES NOS. 1-50.

Defendants.

**EXHIBIT C**

**[PROPOSED]  
FINAL JUDGMENT AND ORDER  
OF DISMISSAL WITH  
PREJUDICE OF NATIONAL  
AUSTRALIA BANK LIMITED**

This matter came for a duly-noticed hearing on \_\_\_\_ 202\_\_ (the “Fairness Hearing”), upon Representative Plaintiffs’<sup>1</sup> Motion for Final Approval of Class Action Settlement with National Australia Bank Limited (“NAB”) in the action captioned *Richard Dennis, et al. v. JPMorgan Chase & Co., et al.*, No. 16-cv-06496 (LAK) (S.D.N.Y.) (the “Action”), which was consented to by NAB (together with Representative Plaintiffs, the “Parties”). The Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

1. This Final Judgment hereby incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated December 10, 2021 between Representative Plaintiffs and NAB, ECF No. \_\_\_\_ (the “Settlement Agreement”), and all terms used herein, except as otherwise expressly defined herein, shall have the same meanings as set forth in the Settlement Agreement.
2. Upon the Effective Date of the Settlement, the Action, including each claim in the Action, is hereby dismissed with prejudice on the merits as to NAB (but not any other Defendant) without fees or costs except as provided by the terms of the Settlement.
3. Upon the Effective Date, the Action shall be dismissed fully, finally and in its entirety against NAB and any John Doe Defendants to the extent they are current or former NAB employees (solely in that capacity) with prejudice.

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<sup>1</sup> The “Representative Plaintiffs” are Richard Dennis, Orange County Employees Retirement System (“OCERS”), Fund Liquidation Holdings, LLC and any subsequently named plaintiff(s.) that may be added to this Action through amended or supplemental pleadings. Unless otherwise noted, ECF citations are to the docket in *Richard Dennis, et al. v. JPMorgan Chase & Co., et al.*, No. 16-cv-06496 (LAK) (S.D.N.Y.).

4. The Releasing Parties<sup>2</sup> fully, finally and forever released, relinquished and discharged from and covenanted not to sue the Released Parties<sup>3</sup> for any and all manner of claims, including unknown claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, set-offs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class, derivative, or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys' fees, and

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<sup>2</sup> "Releasing Parties" means each and every Representative Plaintiff, Sonterra Capital Master Fund, Ltd., FrontPoint Financial Services Fund, L.P., FrontPoint Asian Event Driven Fund, L.P., and FrontPoint Financial Horizons Fund, L.P., and each and every Settling Class Member on their own behalf and on behalf of their respective predecessors, successors and assigns, direct and indirect parents, subsidiaries, divisions, related entities, associates and affiliates, and on behalf of their current and former officers, directors, advisors, representatives, employees, agents, principals, managers, members, trustees, participants, representatives, fiduciaries, beneficiaries, consultants, attorneys, accountants, auditors, insurers or legal representatives in their capacity as such, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing in their capacity as such, whether or not they object to the Settlement or make a claim for payment from the settlement fund. Notwithstanding that the U.S. Government is excluded from the Settlement Class, with respect to any Settling Class Member that is a government entity, Releasing Parties include any and every Settling Class Member as to which the government entity has the legal right to release such claims. As used in this provision, "affiliates" means entities controlling, controlled by, or under common control with a Releasing Party. For the avoidance of doubt, the "Releasing Parties" include all Persons (including both natural persons and entities) entitled to bring or release claims on behalf of Settling Class Members relating to the Released Claims, including, but not limited to, the Settling Class Members' transactions, interests or positions in, or ownership of, BBSW-Based Derivatives, BBSW-Based Deposits or Loans, or any similar financial instruments priced, benchmarked, or settled to BBSW held by Representative Plaintiffs, Sonterra Capital Master Fund, Ltd., FrontPoint Financial Services Fund, L.P., FrontPoint Asian Event Driven Fund, L.P., and FrontPoint Financial Horizons Fund, L.P., or Settling Class Members (to the extent such similar financial instruments were entered into by a U.S. Person, or by a Person from or through a location within the U.S.). *See* Settlement Agreement § 1(LL).

<sup>3</sup> "Released Parties" means NAB, its predecessors, successors and assigns, its past, present, and future direct and indirect parents, subsidiaries (including, without limitation, former defendant Bank of New Zealand ("BNZ")), divisions, related entities, associates and affiliates, and each of NAB's and each of the foregoing's respective current, former and future officers, directors, advisors, representatives, employees, principals, managers, members, partners, participants, agents (in their capacity as agents of NAB), shareholders (in their capacity as shareholders of NAB), representatives, fiduciaries, beneficiaries, consultants, attorneys, accountants, auditors, insurers, or legal representatives, and the predecessors, successors, heirs, executors, administrators, trustees and assigns of each of the foregoing and any John Doe Defendants named or subsequently named in this Action (to the extent they are current or former employees of any of the foregoing but solely in that capacity). As used in this provision, "affiliates" means entities controlling, controlled by, or under common control with a Released Party. For the avoidance of doubt, for purposes of this Settlement, "Released Parties" shall not include any named Defendants other than NAB and BNZ. *See* Settlement Agreement § 1(KK).

damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, which Settling Class Members or any of them ever had, now has, or hereafter can, shall or may have, representatively, derivatively or in any other capacity, against the Released Parties arising from or relating in any way to the claims, allegations or conduct alleged in the Action, or which could have been alleged in the Action against the Released Parties, concerning any:

- a. BBSW-Based Derivatives;
- b. BBSW-Based Deposits or Loans (to the extent such financial instruments were entered into by a U.S. Person, or by a Person from or through a location within the U.S.);
- c. Prime Bank Bills or Prime Bank eligible securities purchased, sold, held, traded, and/or transacted by the Representative Plaintiffs, members of the Settlement Class, and/or Settling Class Members (to the extent such financial instruments were entered into by a U.S. Person, or by a Person from or through a location within the U.S.); or
- d. any similar financial instruments priced, benchmarked, or settled to BBSW purchased, sold, held, traded, and/or transacted by the Representative Plaintiffs, members of the Settlement Class, and/or Settling Class Members (to the extent such financial instruments were entered into by a U.S. Person, or by a Person from or through a location within the U.S.), including additional financial instruments or claims subsequently alleged in the Action, or in which any of the foregoing otherwise had any interest;

including, but not limited to, any alleged manipulation of BBSW under any statute, regulation, or common law, or any purported conspiracy, collusion, racketeering activity, or other improper

conduct relating to BBSW (including, but not limited to, all claims under Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.*, the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.*, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, and any other federal or state statute, regulation, or the common law).

5. The following claims shall not be released by the Settlement: (i) any claims against former NAB employees arising solely from those former employees' conduct or alleged conduct that occurred while not employed by NAB; (ii) any claims against the named Defendants in this Action other than NAB and BNZ and other than any John Doe Defendants to the extent they are current or former employees of NAB (solely in their capacity as employees of NAB) or other Released Parties; or (iii) any claims against any Defendant not affiliated with NAB who may be subsequently added in this Action.

6. Although the foregoing release is not a general release, the foregoing release constitutes a waiver by the Parties and each Settling Class Member of any and all rights and provisions under Section 1542 of the California Civil Code (to the extent it applies to the Action), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

This release also constitutes a waiver of any and all provisions, rights, and benefits of any federal, state or foreign law, rule, regulation, or principle of law or equity that is similar, comparable, equivalent to, or which has the effect of, Section 1542 of the California Civil Code. Releasing Parties and Settling Class Members shall be deemed to acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which

they know or believe to be true with respect to the subject matter of the Settlement Agreement, but that it is their intention to release fully, finally, and forever all of the Released Claims, and in furtherance of such intention, the release shall be irrevocable and remain in effect notwithstanding the discovery or existence of any such additional or different facts. In entering and making this Settlement Agreement, the Parties assume the risk of any mistake of fact or law and the release shall be irrevocable and remain in effect notwithstanding any mistake of fact or law.

7. Upon the Effective Date, each of the Releasing Parties shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties and agrees and covenants not to sue any of the Released Parties on the basis of any Released Claims or to assist any third party in prosecuting any Released Claims against any Released Party.

8. The Court, finding no just reason for delay, directs pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that the judgment of dismissal as to NAB shall be final and entered forthwith.

**IT IS SO ORDERED.**

Signed this \_\_\_ day of \_\_\_\_\_, 202\_\_.

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Hon. Lewis A. Kaplan  
United States District Judge