

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

*Carver, et al.,*

Plaintiffs,

v.

*Bank of New York Mellon, et al.,*

Defendants.

No. 15-CV-10180 (JPO)(JLC)

**NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT;**  
**(II) FINAL APPROVAL HEARING; AND (III) MOTION FOR ATTORNEYS' FEES**  
**AND REIMBURSEMENT OF LITIGATION EXPENSES**

TO: Fiduciaries or other authorized representatives of all ERISA Entities that at any time during the period January 1, 1997 through December 20, 2018, held, directly or indirectly, American Depositary Receipts for which The Bank of New York Mellon acted as the depository and provided foreign currency exchange transactional services ("BNYM ADRs"). **A list of BNYM ADRs is available for download on the Settlement Website, [www.BNYMADRERISASettlement.com](http://www.BNYMADRERISASettlement.com).**

An "ERISA Entity" means an ERISA plan and any trust, pooled account, collective investment vehicle, or group insurance arrangement that files a Form 5500 annual return/report as a Direct Filing Entity ("DFE") in accordance with the DFE Filing Requirements, such as a group trust, master trust investment account (MTIA), common/collective trust (CCT), pooled separate account (PSA), 103-12 investment entity (102-12 IE), group insurance arrangement (GSA), or collective investment vehicle that held plan assets as defined by the U.S. Department of Labor "Instructions for Form 5500, Annual Return/Report of Employee Benefit Plan."

**PLEASE READ THIS NOTICE CAREFULLY.**  
**A FEDERAL COURT AUTHORIZED THIS NOTICE.**  
**THIS IS NOT A SOLICITATION FROM A LAWYER.**

This notice ("Notice") is being directed to you pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Southern District of New York ("Court"). The purpose of this Notice is to advise you of the pendency of the above-captioned class action ("Action") and the proposed settlement ("Settlement") of the Action for \$12,500,000 in cash (the "Settlement Fund") on the terms and subject to the conditions contained in the Stipulation and Agreement of Settlement filed in the Action and dated December 14, 2018 ("Stipulation").<sup>1</sup> The Honorable J. Paul Oetken is presiding over the Action. Judge Oetken has provisionally certified the proposed Settlement Class for purposes of settlement only, has directed that this Notice be made available on the Settlement Website to potential Settlement Entities, and has scheduled a final settlement hearing for May 23, 2019 at 3:00 p.m. ("Final Approval Hearing"). The Final Approval Hearing will be held in Courtroom 706 of the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007.

<sup>1</sup> The Stipulation can be viewed at [www.BNYMADRERISASettlement.com](http://www.BNYMADRERISASettlement.com). Any capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation.

The Settlement resolves claims by Hedy Anselman, David Baumann, Carl Carver, Dante A. Dano, Jr., Edward C. Day, Landol D. Fletcher, Timothy R. Garrett, Dana Kellen, Deborah Jean Kenny, Lisa Parker, Edwin Scheibel, and Daryl Watkins (“Named Plaintiffs”), in their respective capacities as participants, beneficiaries, and/or trustees of certain employee benefit plans, that have been asserted on behalf of the Settlement Class against The Bank of New York Mellon and BNY Mellon, National Association (“BNYM” or “Defendants”). Named Plaintiffs allege that, during the Settlement Class Period, BNYM breached alleged fiduciary duties and engaged in prohibited transactions under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.* (“ERISA”), in connection with its conversion of foreign currency received in its capacity as a depository for BNYM ADRs. Defendants deny the allegations, including that they owe any duties under ERISA to the Settlement Class, breached any such duties, or caused any harm to ERISA Entities. A more detailed description of the claims asserted by Named Plaintiffs in the Action, as well as the history of the Action, is set forth in Section 2 below.

As more fully described in paragraphs 8 to 9 below, the Settlement provides for \$12.5 million (“Settlement Amount”) to be paid by or on behalf of Defendants for the benefit of Settlement Entities, which amount has been deposited into an interest-bearing escrow account. The Net Settlement Fund (*i.e.*, the Settlement Amount plus any interest earned thereon less (i) any Taxes and Tax Expenses; (ii) Notice and Administration Costs; and (iii) any attorneys’ fees and Litigation Expenses (including Service Awards) awarded by the Court) will be distributed to eligible Settlement Entities (*i.e.*, Authorized Recipients) according to a Court-approved plan of allocation. The proposed Plan of Allocation is set forth in Exhibit 1 hereto.

**PLEASE NOTE:** The Claims Administrator has identified from structured data produced in this Action or from documents produced concerning the Named Plaintiffs’ plans (“Available Data”) that certain ERISA Entities held at least one BNYM ADR that issued a dividend during the Settlement Class Period (“Identified Class Entities”). Identified Class Entities *do not* need to take any action to be eligible to receive a payment from the Settlement. Any such Identified Class Entity will receive a Validation Letter as described below. ERISA Entities that were not identified as holders of at least one BNYM ADR that issued a dividend during the Settlement Class Period through the Available Data (“Potential Class Entities”) must complete and submit a Claim Form via the Settlement Website, [www.BNYMADRERISASettlement.com](http://www.BNYMADRERISASettlement.com), in order to be eligible to receive a payment from the Settlement. Potential Class Entities will not receive a Validation Letter, but will receive a Postcard Notice, as described below.

Any questions regarding this Notice, the Action, the Settlement, or an ERISA Entity’s eligibility to participate should be directed to Lead Plaintiffs’ Counsel: Heather M. McElroy, Esq. and Barry Landy, Esq., Ciresi Conlin LLP, 225 South Sixth Street, Suite 4600, Minneapolis, MN 55402, (612) 361-8200, [www.ciresiconlin.com](http://www.ciresiconlin.com) or J. Brian McTigue, Esq. and Regina M. Markey, Esq., McTigue Law LLP, 4530 Wisconsin Avenue, NW, Suite 300, Washington, DC 20016, [adrfxsettlement@mctiguelaw.com](mailto:adrfxsettlement@mctiguelaw.com). Further information may be obtained by contacting the Claims Administrator, Analytics Consulting, LLC at 1-855-773-0250 or visiting [www.BNYMADRERISASettlement.com](http://www.BNYMADRERISASettlement.com). Please DO NOT contact the Court, the Clerk’s Office, BNYM, or its counsel.

**PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights ERISA Entities may have, including the possible receipt of cash from the Settlement. If the ERISA Entity you represent (“Your Entity”) is a Settlement Entity, its legal rights, and the rights of its participants, beneficiaries, trustee, and fiduciaries, may be affected whether or not Your Entity acts.**

**A SUMMARY OF YOUR ENTITY’S LEGAL RIGHTS AND OPTIONS  
IN THIS SETTLEMENT**

<p>FILL OUT A CLAIM FORM ONLINE BY <b>APRIL 29, 2019.</b></p>	<p>If Your Entity is a Potential Class Entity (as defined above), this is the <b>ONLY</b> way for Your Entity to be eligible to receive a payment from the Settlement. Visit the Settlement Website, <a href="http://www.BNYMADRERISASettlement.com">www.BNYMADRERISASettlement.com</a>, to complete and submit a Claim Form.</p> <p>If Your Entity is an Identified Class Entity (as defined above), it does not need to take any further action (<i>i.e.</i>, submit a Claim Form) in order to be eligible to receive a payment from the Settlement. The Available Data has been consulted to pre-populate Your Entity’s BNYM ADR holdings information into a Claim Form on Your Entity’s behalf. The information from the Available Data has been provided to Your Entity in a Validation Letter. If you would like to supplement or correct the information identified in the Validation Letter sent to Your Entity and appearing in the pre-populated Claim Form, you must go to the Settlement Website to update Your Entity’s information in accordance with the instructions for submitting an amended Claim Form.</p>
<p>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION RECEIVED NO LATER THAN <b>APRIL 18, 2019.</b></p>	<p>If you object to the proposed Settlement, the proposed Plan of Allocation, and/or Lead Plaintiffs’ Counsel’s request for attorneys’ fees and reimbursement of Litigation Expenses (including Service Awards), you may write to the Court and explain why you object. You can only object to the Settlement, the Plan of Allocation, or the fee and expense request and payment of Service Awards if you are a Settlement Class Member and Your Entity is a Settlement Entity. <i>See</i> paragraph 14 below for requirements for objecting.</p>
<p>FILE NOTICE OF INTENTION TO APPEAR RECEIVED NO LATER THAN <b>APRIL 18, 2019</b>, AND GO TO FINAL APPROVAL HEARING ON <b>MAY 23, 2019.</b></p>	<p>Filing a written objection and notice of intention to appear by April 18, 2019, allows you to speak in Court, at the discretion of the Court, about the fairness of the proposed Settlement, the proposed Plan of Allocation, and/or Lead Plaintiffs’ Counsel’s request for attorneys’ fees and reimbursement of Litigation Expenses (including Service Awards). If you submit a written objection, you may attend the hearing and, at the discretion of the Court, speak to the Court about your objection.</p>

DO NOTHING.	<p>Your Entity will remain a Settlement Entity, which means that it will give up its right, and the rights of its participants, beneficiaries, trustees, and fiduciaries, to sue the Defendants and Released Parties with respect to the Released Claims described in the Stipulation, and Your Entity and its participants, beneficiaries, trustees, and fiduciaries will be bound by any judgments or orders entered by the Court in the Action.</p> <p><b>Please Note: If Your Entity is a Potential Class Entity and does nothing, it will <u>not</u> be eligible to receive a payment from the Settlement. If Your Entity is an Identified Class Entity and does nothing, its eligibility to receive a payment from the Settlement will be determined by the data in the Validation Letter and in the pre-populated Claim Form.</b></p>
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## BASIC INFORMATION

### 1. Why was I directed to this Notice?

You were directed to this Notice because either (1) Available Data indicate that Your Entity received at least one cash distribution from a BNYM ADR during the Settlement Class Period with respect to which BNYM performed foreign exchange transactional services, and/or (2) the United States Department of Labor's current database of Form 5500s identifies Your Entity as an ERISA Entity. **Being directed to this Notice does not mean Your Entity is a Settlement Entity or that Your Entity will be entitled to receive a payment from the Settlement.** The Court has directed that Notice be provided because, as a *potential* member of the Settlement Class and representative of a Settlement Entity, you and Your Entity have a right to know about the proposed Settlement before the Court decides whether to approve it. If the Court gives final approval to the Settlement, and after objections and appeals, if any, are resolved, the Settlement Amount, net of costs, fees, expenses, and Service Awards, if any, described herein, will be allocated among Authorized Recipients according to a Court-approved plan of allocation, and the Released Parties will be released from all Released Claims, as described in the Stipulation.

This Notice explains the Action, the Settlement, your and Your Entity's legal rights, what benefits are available, who is eligible for them, and how to get them. The Notice also provides information about the Final Approval Hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement and to consider Lead Plaintiffs' Counsel's motion for an award of attorneys' fees and Litigation Expenses (including Service Awards to Named Plaintiffs) from the Settlement Amount.

The Final Approval Hearing will be on May 23, 2019 at 3:00 p.m., before the Honorable J. Paul Oetken in the United States District Court for the Southern District of New York, Courtroom 706 of the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007, to determine:

- Whether the Settlement should be finally approved as fair, reasonable, and adequate;
- Whether the proposed Plan of Allocation should be approved as fair and reasonable;
- Whether the Complaint should be dismissed with prejudice pursuant to the Settlement;
- Whether the Notice and the means of dissemination thereof pursuant to the Settlement (i) were appropriate and reasonable and constituted due, adequate, and sufficient notice to all persons and entities entitled to receive such notice; and (ii) met all applicable requirements of the Federal Rules of Civil Procedure, and other applicable law; and
- Whether Lead Plaintiffs' Counsel's application for attorneys' fees and reimbursement of Litigation Expenses, including Service Awards to Named Plaintiffs, should be approved.

The issuance of this Notice is not an expression of the Court's opinion on the merits of any claim in this Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement, payment to Authorized Recipients will be made after all related appeals, if any, are favorably resolved. It is always uncertain whether such appeals can be favorably resolved, and resolving them can take time, perhaps more than a year. Please be patient.

## 2. What is this lawsuit about? What has happened so far?

On December 31, 2015, Carl Carver, Edward C. Day, Landol D. Fletcher, Deborah Jean Kenny, and Lisa Parker filed a Class Action Complaint captioned *Carver, et al. v. the Bank of New York Mellon, et al.*, No. 15-cv-10180 in the Action, alleging that BNYM breached its fiduciary duties and engaged in prohibited transactions under ERISA in conducting foreign exchange transactional services in connection with BNYM ADRs. Specifically, these plaintiffs alleged that BNYM breached its duties of prudence and loyalty under 29 U.S.C. §§ 1104 and 1109 of ERISA; engaged in self-interested prohibited transactions in violation of 29 U.S.C. §§ 1106(b) of ERISA; and caused the plans to engage in party-in-interest prohibited transactions in violation of 29 U.S.C. § 1106(a) of ERISA when BNYM, as the depository for the BNYM ADRs, systematically deducted allegedly impermissible fees from dividends and/or cash distributions issued by foreign companies and owed to ERISA Entity ADR holders in the form of a “spread,” or mark-up, above the price available to BNYM at the time of the transaction. Plaintiffs alleged that, as a result of this practice of adding a spread to each transaction, BNYM improperly retained millions of dollars from cash distributions that should have gone to ERISA Entity ADR holders. Defendants deny these allegations.

On January 12, 2016, Robert E. Hartline filed a separate action against BNYM, captioned *Hartline v. The Bank of New York Mellon, et al.*, Case No. 1:16-cv-00228-JPO, filed in the Southern District of New York and designated as related to the Action. On April 12, 2016, the Court consolidated the *Hartline* action with the Action and designated McTigue Law LLP and Ciresi Conlin LLP as Interim Co-Lead Counsel for the putative class in the Action.

On May 3, 2016, Hedy Anselman, David Baumann, Carl Carver, Edward C. Day, Landol D. Fletcher, Timothy R. Garrett, Robert E. Hartline, Deborah Jean Kenny, Lisa Parker, and Daryl Watkins (collectively, the “Carver Plaintiffs”) filed a Consolidated Amended Class Action Complaint against Defendants in the Action based on the same conduct described above. On June 2, 2016, Defendants moved to dismiss the Consolidated Amended Class Action Complaint under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure and to strike the jury demand, which the Carver Plaintiffs opposed. On March 31, 2017, the Court denied Defendants’ motion to dismiss and granted Defendants’ motion to strike the jury demand. BNYM answered the Consolidated Amended Class Action Complaint on April 21, 2017. On June 8, 2017, the Carver Plaintiffs filed a First Amended Consolidated Class Action Complaint adding Dante A. Dano, Jr. as a Named Plaintiff. Defendants answered the First Amended Consolidated Class Action Complaint on June 22, 2017.

Thereafter, the Parties commenced discovery, which included Defendants producing nearly 2.7 million pages of documents and over 136,000 Excel documents, Named Plaintiffs producing over 218,000 pages of documents, and the Parties taking 20 fact and four expert depositions and exchanging several rounds of expert reports.

On November 29, 2017, in accordance with Rule 25(a) of the Federal Rules of Civil Procedure, Lead Plaintiffs’ Counsel filed a suggestion of death for Robert E. Hartline and requested that Mr. Hartline be withdrawn as a plaintiff in the Action. On December 29, 2017, Edwin G. Scheibel filed a separate action against Defendants captioned *Schiebel v. The Bank of New York Mellon, et al.*, No. 1-17-cv-10231, and designated it as related to the Action. On January 11, 2018, the Court accepted the *Schiebel* action as related to the Action. On April 16, 2018, the Court consolidated the *Schiebel* action with the Action and ordered that Interim Co-Lead Counsel would remain in that role in the consolidated Action.

On February 12, 2018, before fact and expert discovery were concluded, Defendants moved for partial summary judgment on the application of the statute of limitations, seeking an order from the court granting summary judgment in favor of Defendants on the issue of fraudulent concealment and dismissing Named Plaintiffs' claims to the extent they are time-barred. Named Plaintiffs opposed the motion on March 7, 2018. Defendants filed a reply in support of their motion for summary judgment on March 19, 2018.

On May 15, 2018, Named Plaintiffs moved the Court for certification of the putative class pursuant to Rule 23(b)(1), or in the alternative pursuant to Rules 23(b)(2) and (b)(3), of the Federal Rules of Civil Procedure. Defendants opposed the motion on June 5, 2018. Named Plaintiffs filed a reply memorandum in further support of their motion for class certification on July 3, 2018. On August 24, 2018, Defendants filed a motion to preclude the proposed testimony of Named Plaintiffs' expert David F. DeRosa. Named Plaintiffs opposed the motion on September 14, 2018.

While discovery and motion practice were proceeding, the Parties began discussing the possibility of resolving the Action. On March 22 and 23, 2018, the Parties participated in a two-day mediation session with a former federal judge, the Honorable Layn R. Phillips, and David Murphy of PhillipsADR. The Parties engaged in a second mediation session with David Murphy of PhillipsADR on September 17, 2018. Following these separate mediation sessions and adversarial, arm's-length negotiations spanning the course of several months, the Parties reached an agreement-in-principle to settle the Action and thereafter negotiated a term sheet (the "Term Sheet") setting forth the material terms of their agreement. The Term Sheet was executed on September 26, 2018, and the Parties informed the Court of their agreement on September 27, 2018.

Over the following weeks, the Parties negotiated and documented the specific terms of the Settlement, which are embodied in the Stipulation executed on December 14, 2018. The Stipulation can be viewed at [www.BNYMADRERISASettlement.com](http://www.BNYMADRERISASettlement.com).

On December 20, 2018, the Court entered the Preliminary Approval Order, authorizing that this Notice be sent to potential Settlement Entities and scheduling the Final Approval Hearing to consider whether to grant final approval of the Settlement, among other things.

### **3. Why is this a class action?**

In a class action, one or more individuals or entities, referred to as "plaintiffs," sue on behalf of individuals or entities who have similar claims. For example, here, Hedy Anselman, David Baumann, Carl Carver, Edward C. Day, Dante A. Dano, Jr., Landol D. Fletcher, Timothy R. Garrett, Edwin G. Schiebel, Deborah Jean Kenny, Lisa Parker, and Daryl Watkins are the named plaintiffs in this lawsuit, and each is suing on behalf of an ERISA Entity or ERISA Entities in which he or she participates, in which he or she is a beneficiary, or for which he or she acts as a trustee. All of the other participants, beneficiaries, trustees, and fiduciaries of ERISA Entities on whose behalf Named Plaintiffs in this Action are suing are members of a "class" of similarly situated persons referred to in this Notice as the Settlement Class. Because Named Plaintiffs believe that the wrongful conduct alleged in this case affected all participants, beneficiaries, trustees, and fiduciaries of ERISA Entities holding BNYM ADRs in the same way, Named Plaintiffs filed this case as a putative class action. The Settlement Class has been provisionally certified by the Court for purposes of effectuating the Settlement.

#### 4. Why is there a Settlement?

The Court has not reached any decisions on the ultimate merits of Named Plaintiffs' claims against Defendants. Instead, the Parties have agreed to a Settlement to resolve the claims asserted in the Action. By agreeing to a Settlement, the Parties avoid the costs and risks of further protracted litigation, including the costs and expenses involved in summary judgment briefing, a trial, post-trial briefing, and potential appeals. As in any case, if this case were to be tried, Named Plaintiffs and Defendants would face an uncertain outcome, in which the Settlement Class might be awarded greater compensation than is provided by the Settlement, or might be awarded less, or might achieve no recovery at all. Lead Plaintiffs' Counsel has conducted an extensive review of the evidence in the case and the potential risks and benefits of continued litigation. Named Plaintiffs and Lead Plaintiffs' Counsel agree that the Settlement is in the best interest of all members of the Settlement Class.

As stated above, the Settlement is the product of adversarial, arm's-length negotiations between Lead Plaintiffs' Counsel and Defendants' Counsel, both of which are very experienced with respect to complex litigation of this type. Lead Plaintiffs' Counsel believes the proposed Settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class.

#### 5. How do I know if I am part of the Settlement Class?

The Court has provisionally certified the following Settlement Class:

**All participants, beneficiaries, trustees, and fiduciaries of ERISA Entities that during the period from January 1, 1997 through December 20, 2018, held, directly or indirectly, American Depositary Receipts ("ADRs") for which Defendants (or their affiliates or predecessors in interest) acted as the depository and for which Defendants (or their affiliates or predecessors in interest), in their capacity as the depository, provided foreign currency exchange transactional services.**

The Settlement Class brings claims on behalf of the ERISA Entities of which the Settlement Class members are participants, beneficiaries, trustees, or fiduciaries. Those ERISA Entities represented by members of the Settlement Class are referred to in this Notice as "Settlement Entities."

**PLEASE NOTE: BEING PROVIDED THIS NOTICE DOES NOT MEAN THAT YOU ARE A SETTLEMENT CLASS MEMBER OR THAT YOUR ENTITY WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF YOUR ENTITY IS A POTENTIAL CLASS ENTITY (AS DEFINED ABOVE) AND WISHES TO BE ELIGIBLE TO RECEIVE A PAYMENT FROM THE SETTLEMENT OR IF YOUR ENTITY IS AN IDENTIFIED CLASS ENTITY (AS DEFINED ABOVE) AND SEEKS TO UPDATE ITS PRE-POPULATED CLAIM FORM, IT IS REQUIRED TO SUBMIT THE CLAIM FORM AVAILABLE ON THE SETTLEMENT WEBSITE AND THE REQUIRED SUPPORTING DOCUMENTATION NO LATER THAN APRIL 29, 2019.**

**PLEASE NOTE:** Your ERISA Entity may also have received notice concerning a proposed settlement in another action entitled *Normand, et al. v. Bank of New York Mellon, et al.*, No. 16-cv-00212 (JPO)(JLC) (S.D.N.Y.) (the "*Contract Settlement*"). Detailed information regarding the *Contract Settlement* can be found on the website [www.BNYMADREXSettlement.com](http://www.BNYMADREXSettlement.com). **The *Contract Settlement* is separate from the settlement described in this Notice. In addition to**



**submitting a claim in connection with this Settlement. Your Entity can and should consider also submitting a claim in connection with the *Contract Settlement*.**

**6. I'm still not sure if I am included in the Settlement Class.**

If you are still not sure whether Your Entity is a Settlement Entity, you can ask for guidance at no cost. To do so, please call 1-855-773-0250. Do not contact the Court or Defendants. They will not be able to answer your questions.

**7. Can I exclude myself from the Settlement Class?**

In some types of cases, class members have the opportunity to exclude themselves from a settlement. This is sometimes referred to as “opting out” of a settlement. In this case, however, Settlement Class Members do **not** have the right to exclude themselves from the Settlement. The Settlement Class was preliminarily certified under Fed. R. Civ. P. 23(b)(1) as a mandatory or “non-opt-out” class action. Therefore, Settlement Class Members will be bound by any judgments or orders that are entered in the case, and, if the Settlement is approved, Settlement Class Members will be deemed to have released the claims identified in the Stipulation (the “Released Claims”). The Released Claims are claims which were or could have been brought in the case on behalf of the Settlement Class, including unknown claims that arise from the facts and allegations in the Complaint. The Released Claims are described in greater detail in the Stipulation.

Although Settlement Class Members cannot opt out of the Settlement, they can object to the Settlement and ask the Court not to approve the Settlement (see Section 14 below).

**THE SETTLEMENT BENEFITS – WHAT YOUR ENTITY MAY GET**

**8. What does the Settlement provide?**

The Settlement provides for \$12.5 million (\$12,500,000) in cash to be paid by or on behalf of Defendants to settle the Action. The \$12,500,000, plus interest that accrues on this amount, will be distributed to the Settlement Entities after costs, expenses, and fees are deducted as described below. In the Action, Named Plaintiffs’ expert estimated that the Class’s alleged damages were approximately \$47 million, without interest. **This is only an estimate.** Defendants do not concede the accuracy of Named Plaintiffs’ damages expert’s calculation, or that there are any damages at all. A Settlement Entity’s actual recovery will depend upon the net amount in the Settlement Fund (after the deduction of certain amounts as described herein and in the Stipulation, including Notice and Administration Costs, Court-approved attorneys’ fees and Litigation Expenses, including Service Awards to Named Plaintiffs, and Taxes and Tax Expenses), which will be allocated and paid to Authorized Recipients according to the plan of allocation approved by the Court.

The Settlement will provide for cash payments to Identified Class Entities and to those Potential Class Entities that timely submit a valid Claim Form and adequate supporting documentation through the Settlement Website and are determined to be Authorized Recipients.

If the Settlement is approved, the Court will enter a judgment (“Order and Final Judgment”). The Order and Final Judgment will dismiss with prejudice the claims alleged in the Action against Defendants, and pursuant to the Order and Final Judgment, without further action by anyone, upon the Effective Date of the Settlement, Named Plaintiffs and each member of the Settlement Class,

on behalf of themselves and each Settlement Entity of which they are a participant, beneficiary, trustee, or fiduciary, and each of their respective predecessors, successors, beneficiaries, and assigns, direct and indirect parents, subsidiaries and affiliates, their current and former sponsors, administrators, officers, directors, named fiduciaries, trustees, investment managers, investment advisors, employees, agents, and legal representatives, and the predecessors, successors, heirs, executors, administrators, beneficiaries, and assigns of each of the foregoing shall finally and irrevocably release the Released Parties (as defined below) for the Released Claims (as defined below), and shall forever be barred and enjoined from prosecuting any or all of the Released Claims against any of the Released Parties.

“Released Claims” means all claims and causes of action of every nature and description, whether known or unknown (i.e., “Unknown Claims” as defined below), asserted or unasserted, whether arising under federal, state, common, or foreign law, whether in connection with the applicable deposit agreements or otherwise, whether class, derivative, or individual in nature, that (a) were or could have been asserted in the Action, or in any other forum, that arise out of, are based upon, or related in any way to the allegations set forth in any complaint or other pleading filed in the Action or (b) arise from, are based upon, or relate in any way to the conversion of foreign currency in connection with any and all ADRs for which BNYM acted as the depository at any time during the Settlement Class Period, *provided, however*, that the Released Claims shall not include any claim for breach of contract asserted by or on behalf of a Settlement Entity in the Contract Action that is within the scope of the claims to be released in the Contract Settlement. This release incorporates a waiver by Releasers of any limitation on the scope of the release that would otherwise exist under California Civil Law § 1542. “Released Claims” do not include claims arising out of, based upon, relating to, concerning, or in connection with the interpretation or enforcement of the terms of the Settlement.

“Released Parties” means (a) BNYM, its predecessors, successors, and assigns, its direct and indirect parents, subsidiaries, and affiliates, and its respective current and former officers, directors, employees, managers, members, partners, agents (in their capacity as agents of BNYM), attorneys, and legal representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing; (b) any custodians or subcustodians appointed by BNYM in its capacity as depository with respect to any of the ADRs subject to this Settlement, solely in their capacity as such, and only with respect to the period that BNYM served as depository, transfer agent, registrar, or dividend disbursing agent in connection with such ADRs; and (c) the issuers of any of the foreign securities deposited with BNYM in relation to the ADRs subject to this Settlement, solely in their capacity as such, solely in relation to any conduct alleged in the Complaint,<sup>2</sup> and only with respect to the period that BNYM served as depository, transfer agent, registrar, or dividend disbursing agent in connection with such ADRs.

“Unknown Claims” means any and all claims that any Named Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Claims, which if known to him, her, or it might have affected his, her, or its decision with respect to Settlement, including but not limited to, his, her, or its decision to object or not to object to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date, each of the Named Plaintiffs shall expressly waive, and each of the other Settlement Class Members shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived any and all provisions, rights, or benefits conferred

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<sup>2</sup> A copy of the Complaint is available on the Settlement Website, [www.BNYMADRERISASettlement.com](http://www.BNYMADRERISASettlement.com).

by any law of any state or territory of the United States or any other jurisdiction, or principle of common law that is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

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

The Parties acknowledge, and each of the Settlement Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

**The complete terms of the Settlement are set forth in the Stipulation which may be viewed on the website [www.BNYMADRERISASettlement.com](http://www.BNYMADRERISASettlement.com).**

### **9. How much will my payment be?**

At this time, it is not possible to make a precise determination as to the amount of any payment that any individual ERISA Entity that is deemed to be an Authorized Recipient may receive from the Settlement.

Exhibit 1 to this Notice sets forth the Plan of Allocation for allocating the Net Settlement Fund among Authorized Recipients, as proposed by Named Plaintiffs and Lead Plaintiffs' Counsel. At the Final Approval Hearing, Lead Plaintiffs' Counsel will request that the Court approve the Plan of Allocation. The Court may modify the Plan of Allocation, or approve a different plan of allocation, without further notice to the Settlement Class.

The Plan of Allocation describes the manner in which the Net Settlement Fund will be distributed to Authorized Recipients. In general, the Net Settlement Fund will be allocated to (i) Identified Class Entities and (ii) Potential Class Entities that submit valid Claim Forms and adequate supporting documentation. The amount paid to each Authorized Recipient will depend on the amount of gross dividends each Authorized Recipient received with respect to a BNYM ADR relative to the Claims of other Authorized Recipients. Because the Net Settlement Fund is less than the total losses alleged to have been suffered in the Action, an Authorized Recipient's proportionate recovery may be less than their alleged loss.

The tax treatment of any distribution from the Net Settlement Fund is the responsibility of each recipient. Your Entity should consult its tax advisor to determine the tax consequences, if any, of any distribution to it.

## **HOW TO GET A DISTRIBUTION**

### **10. How can I get my distribution?**

- (a) If Your Entity received **Postcard Notice** of this Settlement, not a Validation Letter, Your Entity is a Potential Class Entity. If you believe Your Entity held BNYM ADRs that may be covered by this Settlement and wishes to be eligible to receive a payment from the proceeds of the Settlement, Your Entity must complete and submit a Claim Form with adequate supporting documentation no later than **April 29, 2019**. Your Entity must complete and submit the Claim Form through the Settlement Website, [www.BNYMADRERISASettlement.com](http://www.BNYMADRERISASettlement.com). Your Entity may call 1-855-773-0250 or send an e-mail to [info@BNYMADRERISASettlement.com](mailto:info@BNYMADRERISASettlement.com) to

request assistance in completing the online Claim Form. Please retain all of Your Entity's records of its holdings in BNYM ADRs, as they may be needed to document Your Entity's claim. **If Your Entity is a Potential Class Entity and does not submit a valid Claim Form and adequate supporting documentation, it will not be eligible to share in the Net Settlement Fund.**

- (b) If Your Entity received a **Validation Letter** in the mail, Your Entity is an Identified Class Entity and **does not** have to take any further action in order to participate in the Settlement and be eligible to receive a payment from the proceeds of the Settlement. Your Entity's Claim and payment amount will be calculated pursuant to the Available Data, as described in its Validation Letter, which has been used to pre-populate the online Claim Form on Your Entity's behalf. Identified Class Entities should review for accuracy and completeness the pre-populated Claim Form available on the Settlement Website. For many Identified Class Entities, the list of BNYM ADRs in the Validation Letter and pre-populated Claim Form may not represent every BNYM ADR held by the Entity during the Class period. **If the information set forth in Your Entity's Validation Letter and/or in the pre-populated Claim Form on the Settlement Website is incorrect or incomplete, Your Entity must submit a supplemental Claim Form and supporting documentation correcting the data no later than April 29, 2019. If Your Entity does not take any action, the Claims Administrator will use the information pre-populated in the Claim Form to calculate Your Entity's Claim.**
- (c) If you represent an ERISA Entity and believe Your Entity held BNYM ADRs that may be covered by this Settlement, but received neither a Postcard Notice nor a Validation Letter, you may visit the Settlement Website and complete a Claim Form following the instructions therein.

**\*\*\*\*If Your Entity chooses to submit a Claim Form, it is consenting to the disclosure of and waiving any protections provided by applicable bank secrecy law, data privacy law, or any similar confidentiality protections with respect to transaction data relating to its holdings of BNYM ADRs and receipt of associated cash distributions from January 1, 1997 through December 20, 2018, for use in the claims administration process.\*\*\*\***

**PLEASE NOTE:** As mentioned above, Your ERISA Entity may also have received notice concerning a proposed settlement in another action entitled *Normand, et al. v. Bank of New York Mellon, et al.*, No. 16-cv-00212 (JPO)(JLC) (S.D.N.Y.) (the "*Contract Settlement*"). Detailed information regarding the *Contract Settlement* can be found on the website [www.BNYMADRFXSettlement.com](http://www.BNYMADRFXSettlement.com). **The *Contract Settlement* is separate from the settlement described in this Notice. In addition to submitting a claim in connection with this Settlement, Your Entity can and should consider also submitting a claim in connection with the *Contract Settlement*.**

## 11. When will I get my distribution?

Payment is conditioned on several matters, including the Court's approval of the Settlement and that approval becoming Final and no longer subject to any appeals. If the Court approves the Settlement and a plan of allocation, then payments to Authorized Recipients will be made after any appeals are resolved and after the completion of all Claims processing. Please be patient, as this process can take some time to complete.

## **THE LAWYERS REPRESENTING YOU**

### **12. Do I have a lawyer in this case?**

Ciresi Conlin LLP and McTigue Law LLP are Lead Plaintiffs' Counsel for Named Plaintiffs and the Settlement Class in the Action. Your Entity will not be charged directly by Lead Plaintiffs' Counsel or any other firms representing Named Plaintiffs in this case. If Your Entity wants to be represented by its own lawyer, it may hire one at its own expense.

### **13. How will the lawyers be paid?**

Lead Plaintiffs' Counsel, on behalf of Named Plaintiffs' counsel, will petition the Court for an award of attorneys' fees not to exceed 33 1/3% of the Settlement Fund and for reimbursement of their Litigation Expenses not to exceed \$1.8 million incurred in connection with the prosecution and resolution of this Action. Lead Plaintiffs' Counsel will also request Service Awards of up to \$10,000 for each Named Plaintiff, to compensate them for their efforts and participation in the Action. Lead Plaintiffs' Counsel's application for attorneys' fees and Litigation Expenses (including Service Awards) will be filed by April 23, 2019, and the Court will consider the application at the Final Approval Hearing. A copy of Lead Plaintiffs' Counsel's application for fees and expenses will be available for review at [www.BNYMADRERISASettlement.com](http://www.BNYMADRERISASettlement.com). Any award of attorneys' fees and reimbursement of Litigation Expenses, including Service Awards to Named Plaintiffs, will be paid from the Settlement Fund prior to allocation and payment to Authorized Recipients. ***Settlement Entities and Settlement Class Members are not responsible for paying any such attorneys' fees or litigation expenses.***

To date, neither Lead Plaintiffs' Counsel nor any other firms representing Named Plaintiffs have received any payment for their services in prosecuting this Action on behalf of the Class, nor have any counsel been reimbursed for their out-of-pocket expenses incurred in connection with this Action. The attorneys' fees requested by Lead Plaintiffs' Counsel will compensate counsel for their efforts in achieving the Settlement for the benefit of the Settlement Class and for their risk in undertaking this representation on a contingency basis. The Court will determine the actual amount of the award.

By following the procedures described in Section 14 below, Your Entity can tell the Court that it does not agree with the attorneys' fees and expenses Lead Plaintiffs' Counsel intend to seek and ask the Court to deny their motion or limit the award.

## **OBJECTING TO THE SETTLEMENT**

### **14. How do I tell the Court if I don't like the Settlement?**

Any Settlement Class Member may appear at the Final Approval Hearing and explain why he, she, or it thinks the Settlement of the Action as embodied in the Stipulation should not be approved as fair, reasonable, and adequate and why a judgment should not be entered thereon; why the attorneys' fees and expenses of Lead Plaintiffs' Counsel should not be awarded, in whole or in part; or why Named Plaintiffs should not be awarded any Service Awards, in whole or in part. However, no Settlement Class Member shall be heard or entitled to contest these matters unless such Settlement Class Member has filed a written objection with the Court.

To object, a Settlement Class Member must send a letter or other written statement saying that it objects to the Settlement, the Plan of Allocation, and/or to Lead Plaintiffs' Counsel's request for attorneys' fees and Litigation Expenses (including Service Awards), in *Carver et al. v. Bank of New York Mellon, et al.*, No. 15-CV-10180 (JPO)(JLC). Be sure to include your name, address, telephone number, signature, and a full explanation for all reasons why you object to the Settlement. You must also include documents sufficient to prove that you are a Settlement Class Member and that Your Entity is a Settlement Entity, including any of the BNYM ADRs it held during the Settlement Class Period, the dates on which it held them, and the gross dividends it received as a result of such holdings between January 1, 1997 and December 20, 2018. If Your Entity is an Identified Class Entity, submitting a copy of the pre-populated Claim Form is sufficient proof that Your Entity is a Settlement Entity.

Your written objections and any supporting papers must be filed with the Court, and served by mail upon the counsel listed below, on or before **April 18, 2019**.

CLERK'S OFFICE	LEAD PLAINTIFFS' COUNSEL	DEFENDANTS' COUNSEL
United States District Court Southern District of New York Clerk of the Court Daniel Patrick Moynihan United States Courthouse 500 Pearl Street New York, NY 10007	Heather McElroy, Esq. <b>Ciresi Conlin LLP</b> 225 S. 6th St., Suite 4600 Minneapolis, MN 55402  J. Brian McTigue, Esq. <b>McTigue Law LLP</b> 4530 Wisconsin Ave. NW, Suite 300 Washington, DC 20016	Elizabeth M. Sacksteder, Esq. <b>Paul, Weiss, Rifkind, Wharton &amp; Garrison LLP</b> 1285 Avenue of the Americas New York, NY 10019

You may file a written objection without having to appear at the Final Approval Hearing. You may not, however, appear at the Final Approval Hearing to present your objection unless you first file and serve a written objection in accordance with the procedures described above, unless the Court orders otherwise.

If you wish to be heard orally at the Final Approval hearing, and if you file and serve a timely written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on Lead Plaintiffs' Counsel and Defendants' Counsel at the addresses above so that it is ***received on or before April 18, 2019***. Persons who intend to object and desire to present evidence at the Final Approval Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

You are not required to hire an attorney to represent you in making written objections to any aspect of the Settlement or in appearing at the Final Approval Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Lead Plaintiffs' Counsel and Defendants' Counsel at the addresses set forth above so that the notice is ***received on or before April 18, 2019***.

**Unless otherwise ordered by the Court, any Settlement Class Member who does not object in the manner described herein will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the proposed Plan of Allocation, and/or Lead Plaintiffs' Counsel's request for attorneys' fees, Litigation Expenses, and Service Awards.**

## **THE COURT'S FINAL APPROVAL HEARING**

### **15. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing at 3:00 p.m. on May 23, 2019 before the Honorable J. Paul Oetken in Courtroom 706 of the United States District Court for the Southern District of New York, Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007. At this hearing, the Court will consider whether the Settlement (including the Plan of Allocation) is fair, reasonable, and adequate and whether it should be finally approved by the Court; whether judgment should be entered dismissing the Action with prejudice; the amount of attorneys' fees and Litigation Expenses to be awarded to Lead Plaintiffs' Counsel; and whether Named Plaintiffs will receive Service Awards. If there are objections, the Court will consider them. We do not know how long the Court will take to make its decisions.

### **16. Do I have to go to the hearing?**

No. Lead Plaintiffs' Counsel will answer any questions that the Court may have about the Settlement at the Final Approval Hearing. Settlement Class Members are, however, welcome to attend at their own expense. If you send an objection, you do not have to send a representative to Court to discuss it. As long as you filed your written objection on time, that objection will be before the Court when the Court considers whether to approve the Settlement. You may also have your own lawyer attend the Final Approval Hearing at your expense, but such attendance is not mandatory.

**The Final Approval Hearing may be rescheduled by the Court without further notice to the Settlement Class. If you wish to attend the Final Approval Hearing, you should confirm the date and time with Lead Plaintiffs' Counsel.**

### **17. May I speak at the hearing?**

If Your Entity is a Settlement Entity, you are a Settlement Class Member, and you have filed a timely objection, and if you wish to speak, present evidence, or present testimony at the Final Approval Hearing, you must state in your written objection(s) your intention to do so, and must identify any witnesses you intend to call or evidence you intend to present.

## **IF YOU DO NOTHING**

### **18. What happens if I do nothing at all?**

If Your Entity is a Settlement Entity and does nothing and the Settlement is approved, it, and its participants, beneficiaries, trustees, and fiduciaries, will be bound by the terms of the Settlement, and Your Entity, and its participants, beneficiaries, trustees, and fiduciaries, will be deemed to have released all Released Claims against all of the Released Parties.

If Your Entity is an **Identified Class Entity** and does nothing, it will receive a *pro rata* payment from the Settlement as described in the Plan of Allocation, attached hereto as Exhibit 1. The Claims Administrator will calculate Your Entity's Claim using the Available Data .

If Your Entity is a **Potential Class Entity** and does nothing, it will not be eligible to receive a payment from the Settlement. If Your Entity is a Potential Class Entity, it must submit a valid Claim Form and supporting documentation to be eligible to receive a payment from the Settlement.

### **GETTING MORE INFORMATION**

#### **19. How do I get more information?**

This Notice is only a summary of the Action and proposed Settlement. For more detailed information about the matters involved in the Action, you are referred to the pleadings and other papers on file, which may be inspected during regular office hours at the Office of the Clerk, United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007. Additionally, copies of the Stipulation, this Notice, the Claim Form, the proposed Order and Final Judgment, and any related orders entered by the Court will be posted on the Settlement Website maintained by the Claims Administrator, [www.BNYMADRERISASettlement.com](http://www.BNYMADRERISASettlement.com).

All inquiries concerning this Notice and the Claim Form, including the process for submitting Claims electronically, or requests for other information should be directed to:

*BNYM ADR FX ERISA Settlement*  
c/o Analytics Consulting LLC  
P.O. Box 2003  
Chanhassen, MN 55317-2003

Toll-free: 1-855-773-0250 Email: [info@BNYMADRERISASettlement.com](mailto:info@BNYMADRERISASettlement.com)

*Court-Approved Claims Administrator*

and/or

Heather McElroy, Esq.  
Barry Landy, Esq.  
CIRESI CONLIN LLP  
225 South Sixth Street, Suite 4600  
Minneapolis, MN 55402  
(612) 361-8200  
[www.ciresiconlin.com](http://www.ciresiconlin.com)

J. Brian McTigue, Esq.  
Regina M. Markey, Esq.  
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4530 Wisconsin Avenue, NW, Suite 300  
Washington, DC 20016  
(202) 364-6900  
[adrfxsettlement@mctiguelaw.com](mailto:adrfxsettlement@mctiguelaw.com)

*Lead Counsel for the Class*



**DO NOT CALL OR WRITE THE COURT, DEFENDANTS, OR THEIR COUNSEL FOR INFORMATION REGARDING THIS NOTICE.**

DATED: February 5, 2019

By Order of the Court  
United States District Court  
Southern District of New York

## EXHIBIT 1

### PLAN OF ALLOCATION OF NET SETTLEMENT FUND

The following Plan of Allocation (“Plan of Allocation” or “Plan”) is the plan for allocating the Net Settlement Fund to Authorized Recipients proposed by Named Plaintiffs and Lead Plaintiffs’ Counsel in the Action. In accordance with the Settlement, the Net Settlement Fund will be allocated to (i) Identified Class Entities and (ii) Potential Class Entities that submit valid Claim Forms through the Settlement Website, [www.BNYMADRERISASettlement.com](http://www.BNYMADRERISASettlement.com). The Court may approve the Plan, or modify it, without additional notice to the Settlement Class. Any Order modifying the Plan will be posted on the Settlement Website.

The objective of the Plan is to equitably distribute the Net Settlement Fund among as many Settlement Entities as possible. The Net Settlement Fund will be distributed pursuant to the Plan based on calculating, either through (i) structured data produced in discovery in the Action, (ii) documents related to the Named Plaintiffs’ plans produced in discovery in the Action, or (iii) data submitted on Claim Forms by Settlement Entities through the Settlement Website, the amount of gross dividends that each Settlement Entity received from the BNYM ADRs it held during the Settlement Class Period. Each Authorized Recipient shall be paid the percentage of the Net Settlement Fund that each Authorized Recipient’s gross dividend amount bears to the sum of gross dividend amounts of all Authorized Recipients – *i.e.*, the Authorized Recipient’s *pro rata* share of the Net Settlement Fund (the “Distribution Amount”). If an Authorized Recipient’s Distribution Amount is less than \$10.00, it will be considered *de minimus* and will not be included in the calculation, and no distribution will be made to such Authorized Recipient.

The Plan is intended to be generally consistent with an assessment of, among other things, the allocation of damages that Named Plaintiffs and Lead Plaintiffs’ Counsel believe could have been recovered for the claims asserted in the Action, and reflect Named Plaintiffs’ allegations that over the course of the Settlement Class Period, BNYM systematically deducted impermissible fees, in the form of a “spread,” for conducting foreign exchange transactional services in respect of cash distributions on BNYM ADRs held by ERISA Entities in breach of fiduciary duties BNYM allegedly owed to such ERISA Entities under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001 *et seq.* (“ERISA”) and in violation of ERISA’s prohibited transaction rules.

#### **A. Identification and Submission of Claim Form Data**

The Net Settlement Fund will be allocated to (i) Identified Class Entities and (ii) Potential Class Entities that submit valid Claim Forms through the Settlement Website, [www.BNYMADRERISASettlement.com](http://www.BNYMADRERISASettlement.com).

Identified Class Entities are ERISA Entities that the Claims Administrator has identified from Available Data produced in discovery in the Action as having held at least one BNYM ADR that issued a dividend during the Settlement Class Period. A Validation Letter was sent to each Identified Class Entity identifying its known BNYM ADR holdings and providing the Identified Class Entity with a Claim Number and Password. The data in the Validation Letter has been used to pre-populate a Claim Form on the Identified Entity’s behalf. Accordingly, Identified Class Entities *do not* need to take any action to be eligible to receive a payment from the Settlement. The Identified Class Entity’s Claim and payment amount will be calculated pursuant to the data entered

into the pre-populated Claim Form. Each Identified Class Entity is encouraged, however, to log-on to the Settlement Website and review for accuracy and completeness the pre-populated Claim Form and, if need be, to correct or supplement it by following the instructions on the Settlement Website for submitting an amended Claim Form. The Identified Class Entity must submit an amended or supplemental Claim Form and supporting documentation no later than April 29, 2019. Otherwise, the Claims Administrator will use the information pre-populated in the Claim Form to calculate the Identified Class Entity's Claim.

Potential Class Entities have not been identified through Available Data as holders of at least one BNYM ADR that issued a dividend during the Settlement Class Period. To be eligible to receive a payment from the Settlement, Potential Class Entities must complete and submit a Claim Form through the Settlement Website with adequate supporting documentation no later than April 29, 2019. Potential Class Entities were sent a Postcard Notice containing a Claim Number and Password that may be used to log-on to the Settlement Website and submit a Claim Form. If a Potential Class Entity does not submit a valid Claim Form and adequate supporting documentation, it will not be eligible to share in the Net Settlement Fund.

When submitting a Claim Form (or, for an Identified Class Entity, supplementing or amending a Claim Form), the Settlement Entity must provide: (i) the name(s) of the BNYM ADR(s) the Settlement Entity held during the Settlement Class Period; (ii) the CUSIPs of the BNYM ADR(s) the Settlement Entity held during the Settlement Class Period; (iii) the Dividend Record Date(s) on which the Settlement Entity held the BNYM ADR; and (iv) the number of shares of each BNYM ADR held on each Dividend Record Date. (Note that for Identified Class Entities, these fields will be pre-populated per the Available Data). For the Claim Form to be valid, the Settlement Entity must upload supporting documentation to the Settlement Website to establish that the information on the Claim Form is as averred and provide a signature of an authorized representative under penalty of perjury certifying that the information on the Claim Form is true and correct. Proposed changes to the Claim Form and/or supporting documentation must be provided to the Claims Administrator by April 29, 2019 for the information to be considered. Claim Forms that do not meet the submission requirements may be rejected. Lead Plaintiffs' Counsel retains the right to advise the Claims Administrator to waive technical defects in any Claim Forms and supporting documentation submitted (or to accept late Claims) in the interests of achieving substantial justice.

Log-in information, including a Claim Number and Password, that can be used to access the Claim Form and to upload information to the Settlement Website is provided in the Postcard Notice and the Validation Letter. Note that if a Settlement Entity invested in a BNYM ADR through a Direct Filing Entity or "DFE," as defined by the U.S. Department of Labor "Instructions for Form 5500, Annual Return/Report of Employee Benefit Plan," the DFE should complete the Claim Form with respect to that BNYM ADR.

## **B. Calculation of Recognized Claims**

The Claims Administrator, in consultation with Lead Plaintiffs' Counsel, will determine valid claims based on the data provided in the Claim Forms and supporting documentation. This information, together with dividend data produced by BNYM, will be used to calculate the amount of gross dividends and/or cash distributions received by each Settlement Entity from BNYM ADRs. The gross dividend amount calculated for each Settlement Entity represents that Entity's *pro rata* share of the Net Settlement Fund.

### **C. Distribution to Authorized Recipients**

Prior to the Effective Date, the Settlement Fund shall remain in an interest-bearing escrow account, except as otherwise provided in the Stipulation. After the Court enters the Order and Final Judgment and the Settlement becomes Final, the Claims Administrator shall distribute the Net Settlement Fund to Authorized Recipients as promptly as possible pursuant to the Distribution Order. The Distribution Order shall not authorize payments to Authorized Recipients prior to the Effective Date.

### **D. Additional Provisions**

As noted above, the Net Settlement Fund will be distributed to Authorized Recipients on a *pro rata* basis based on the relative size of their gross dividends. Specifically, a “Distribution Amount” will be calculated for each Authorized Recipient, which shall be the Authorized Recipient’s gross amount of dividends divided by the total gross amount of dividends, multiplied by the total amount in the Net Settlement Fund. If an Authorized Recipient’s Distribution Amount is less than \$10.00, it will not be included in the calculation and no distribution will be made to such Authorized Recipient.

To the extent any monies remain in the fund nine (9) months after initial distribution, if Lead Plaintiffs’ Counsel, in consultation with the Claims Administrator, determines that it is cost-effective to do so, the Claims Administrator shall conduct a re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including estimated fees and expenses for such re-distribution, to Authorized Recipients who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution. Additional re-distributions to Authorized Recipients who have cashed their prior checks and who would receive at least \$10.00 on such additional re-distributions may occur thereafter if Lead Plaintiffs’ Counsel, in consultation with the Claims Administrator, determines that additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, Lead Plaintiffs’ Counsel shall seek an order from the Court: (1) approving the recommendation that any further re-distribution is not cost-effective or efficient; and (2) ordering the contribution of the Net Settlement Fund to a non-profit, nonsectarian charitable or educational organization promoting retirement security selected by Named Plaintiffs and approved by the Court and unaffiliated with any Lead Plaintiffs’ Counsel and any Named Plaintiff.

Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, shall be conclusive against all Authorized Recipients. No Person shall have any claim against Named Plaintiffs, Lead Plaintiffs’ Counsel, Named Plaintiffs’ damages expert, Defendants, Defendants’ Counsel, or any of the other Released Parties, or the Claims Administrator or other agent designated by Lead Plaintiffs’ Counsel arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or further Orders of the Court. Named Plaintiffs, Defendants, and their respective counsel, and all other Released Parties, shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund; the plan of allocation; the determination, administration, calculation, or payment of any Claim or nonperformance of the Claims Administrator; the payment or withholding of Taxes and Tax Expenses; or any losses incurred in connection therewith.