IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge John L. Kane

Master Docket No. 09-md-02063-JLK-KMT (MDL Docket No. 2063)

IN RE: OPPENHEIMER ROCHESTER FUNDS GROUP SECURITIES LITIGATION

This document relates to the following Actions:

In re AMT-Free Municipals Fund
09-cv-1243-JLK (*Prince*)
09-cv-1447-JLK (*Connel*)
09-cv-1510-JLK (*Amato*)
09-cv-1619-JLK (*Furman*)

In re AMT-Free New York Municipal Fund
09-cv-1621-JLK (*Isaac*)
09-cv-1781-JLK (*Kurz*)

In re Rochester National Municipal Fund
09-cv-550-JLK (*Bock*)
09-cv-706-JLK (*Stokar*)
09-cv-927-JLK (*Tackmann*)
09-cv-1042-JLK (*Krim*)
09-cv-1060-JLK (*Truman*)
09-cv-1482-JLK (*Laufer*)
09-cv-1908-JLK (*Lariviere*)

In re Rochester Fund Municipals
09-cv-703-JLK (*Begley*)
09-cv-1479-JLK (*Bernstein*)
09-cv-1481-JLK (*Mershon*)
09-cv-1622-JLK (*Stern*)
09-cv-1478-JLK (*Vladimir*)
09-cv-1480-JLK (*Weiner*)

In re New Jersey Municipal Fund
09-cv-1406-JLK (*Unanue*)
09-cv-1617-JLK (*Baladi*)
09-cv-1618-JLK (*Seybold*)
09-cv-1620-JLK (*Trooskin*)

In re Pennsylvania Municipal Fund
09-cv-1483-JLK (*Woods*)
09-cv-1368-JLK (*Egts*)
09-cv-1765-JLK (*Wunderly*)

DECLARATION OF LEAD COUNSEL IN SUPPORT OF MOTION FOR FINAL APPROVAL OF PROPOSED CLASS SETTLEMENTS, APPROVAL OF PLAN OF ALLOCATION, AND AWARD OF ATTORNEYS' FEES AND EXPENSES

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We, Sanford P. Dumain, Steven J. Toll, and Glen L. Abramson, hereby declare as follows pursuant to 28 U.S.C. § 1746:

I. INTRODUCTION

1. We are each partners/members at law firms that were appointed Lead Counsel in at least one of the above-captioned six coordinated class action lawsuits (the "Actions"). Sanford P. Dumain is a partner at the law firm of Milberg LLP, Lead Counsel in *In re Rochester National Municipal Fund* (the "National Action"), *In re AMT-Free New York Municipal Fund* (the "AMT-Free New York Action"), and *In re New Jersey Municipal Fund* (the "New Jersey Action"). Steven J. Toll is a partner at the law firm of Cohen Milstein Sellers & Toll PLLC, Lead Counsel in *In re Rochester Fund Municipals* (the "Rochester Action") and *In re AMT-Free Municipals Fund* (the "AMT-Free Action"). Glen L. Abramson is a shareholder (member) at the law firm of Berger & Montague, P.C., Lead Counsel in *In re Pennsylvania Municipal Fund* (the "Pennsylvania Action").[1] The Shuman Law Firm is Court-appointed sole Plaintiffs' Liaison Counsel.[2]

2. We submit this declaration in support of (1) Lead Plaintiffs' Motion for Final Approval of Proposed Class Settlements and Approval of Plan of Allocation and (2)

[1] The cases pending before this Court relate to the following six Oppenheimer municipal bond funds (the "Funds"): (1) the AMT-Free Municipals Fund, (2) the AMT-Free New York Municipal Fund, (3) the New Jersey Municipal Fund, (4) the Pennsylvania Municipal Fund, and (5) Rochester Fund Municipals (collectively, the "Capital Preservation Classes"), and (6) the Rochester National Municipal Fund (the "National Fund Class" and along with the Capital Preservation Classes, the "Classes").

[2] "Lead Plaintiffs' Counsel" as used herein refers to Milberg LLP, Cohen Milstein Sellers & Toll PLLC, Berger & Montague, P.C. and The Shuman Law Firm.

(2) Lead Plaintiffs' Motion for Award of Attorneys' Fees and Expenses (the "Motions").[3] This declaration is submitted on behalf of Lead Plaintiffs in the Actions.[4] As court-appointed Lead Counsel in the Actions, we directed the prosecution of the Actions and were actively involved in all phases of the Actions. If called upon, we would be competent to testify that the following facts are true to the best of our knowledge, information and belief.

3. Taken together, the six Stipulations resolve all claims asserted against the Defendants in the Actions (collectively the "Settlement" or "Stipulations").[5] Although separate Stipulations were submitted, the proposed Settlement is global. Defendants

[3] Leonard Klorfine, John Vazquez, Peter Unanue, Victor Sasson, Dharamvir Bhanot, Stuart Krosser, and Carole Krosser (collectively, "Lead Plaintiffs"), are each a proposed class representative for one of the six Funds for which final approval of the Settlement is sought. In addition, plaintiffs William E. Miles, Jr. and John P. Galganovicz also sought to be certified as representatives of the Pennsylvania Fund Class (together with the six Lead Plaintiffs, "Class Representatives").

[4] Unless otherwise noted, capitalized terms used herein have the meanings given to them in the six separately-filed Stipulations and Agreements of Settlement, dated March 4, 2014 (the "Stipulations").

[5] The Defendants in the Actions are OppenheimerFunds, Inc. ("OFI"), OppenheimerFunds Distributor, Inc., Oppenheimer AMT-Free Municipals Fund, Oppenheimer AMT-Free New York Municipal Fund, Oppenheimer New Jersey Municipal Fund, Oppenheimer Pennsylvania Municipal Fund, Oppenheimer Rochester National Municipal Fund, and Rochester Fund Municipals (collectively with OFI, "Oppenheimer"), John V. Murphy, Brian W. Wixted, Ronald H. Fielding, Daniel G. Loughran, Scott Cottier and Troy E. Willis (collectively with Oppenheimer, the "Oppenheimer Defendants"), Brian F. Wruble, John Cannon, Paul Y. Clinton, Thomas W. Courtney, David K. Downes, Matthew P. Fink, Robert G. Galli, Phillip A. Griffiths, Lacy B. Herrmann, Mary F. Miller, Joel W. Motley, Russell S. Reynolds, Jr., Joseph M. Wikler, Peter I. Wold, Clayton K. Yeutter, and Kenneth A. Randall (collectively, the "Trustee Defendants"), Massachusetts Mutual Life Insurance Company ("MassMutual"), and Oppenheimer Multi-State Municipal Trust (the Oppenheimer Defendants, the Trustee Defendants, MassMutual, and Oppenheimer Multi-State Municipal Trust are collectively referred to as "Defendants").

reserve the right to terminate this global Settlement if any of the six Actions do not obtain final approval. As demonstrated below, and in Lead Plaintiffs' Motions, the $89,500,000 cash (plus interest) settlement with Defendants and the proposed Plan of Allocation are fair, reasonable, and adequate, and should be approved in all respects.

4. Should this Court approve the Settlement, the Settlement proceeds will be divided among the Actions as follows:

Fund Name	**Settlement Allocation**
Oppenheimer AMT-Free Municipals Fund	$17,109,000
Oppenheimer AMT-Free New York Municipal Fund	$ 4,241,000
Oppenheimer Rochester National Municipal Fund	$26,850,000
Oppenheimer New Jersey Municipal Fund	$ 3,374,000
Oppenheimer Pennsylvania Municipal Fund	$ 4,341,000
Rochester Fund Municipals	$33,585,000
Total for All Six Funds	**$ 89,500,000**

5. We also respectfully submit that Lead Plaintiffs' Counsel's request for attorneys' fees in the amount of 30% of the Settlement Fund, or $26,850,000 (plus interest); expenses in the amount of $3,531,103.05 (plus interest); and $5,996.11 as reimbursement for certain of the Lead Plaintiffs, as Class Representatives, should be approved as fair and reasonable.

II. HISTORY OF THE CASE

A. The Initial Complaints and the Appointment of Lead Plaintiffs and Lead Plaintiffs' Counsel

6. The initial complaints in these Actions were filed beginning on February 25, 2009. Altogether, thirty-two putative class actions against Defendants involving seven "Rochester Funds" were filed. Those cases were consolidated into seven separate lawsuits representing each of the seven Rochester Funds at issue, which were coordinated for pre-

trial purposes. The proposed Settlement before the Court resolves six out of the seven consolidated cases. The seventh lawsuit involving the California Municipal Fund (Case Nos. 09-cv-01484-JLK-KMT, 09-cv-01485-JLK-KMT, 09-cv-01486-JLK-KMT, and 09-cv-01487-JLK-KMT) is not encompassed by the Settlement.

7. Pursuant to the Private Securities Litigation Reform Act ("PSLRA") (*see* 15 U.S.C. § 77z-1(a)(7)) and after significant briefing and oral argument, on November 18, 2009, the Court appointed Leonard Klorfine, John Vazquez, Peter Unanue, Victor Sasson, Dharamvir Bhanot, and Stuart and Carole Krosser as Lead Plaintiffs on behalf of the six Classes in the Actions. Dkt. No. 223. Milberg LLP was appointed Lead Counsel in the AMT-Free New York Action, the New Jersey Action, and the National Action. Cohen Milstein Sellers & Toll PLLC was appointed Lead Counsel in the AMT-Free Action and the Rochester Action. Berger & Montague, P.C. was appointed Lead Counsel in the Pennsylvania Action. The Shuman Law Firm was Court-appointed as sole Plaintiffs' Liaison Counsel for all the Actions. *Id.*

B. The Consolidated Amended Class Action Complaints

8. On January 15, 2010, Lead Plaintiffs filed six separate Consolidated Class Action Complaints (the "Amended Complaints") asserting claims under Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 (the "1933 Act") (15 U.S.C. §§ 77k, 77l and 77o) and Section 13(a) of the Investment Company Act. *See* Dkt. Nos. 244-250.

9. The Amended Complaints are brought against Defendants on behalf of all persons or entities who acquired shares of the six Funds traceable to the registration statements at issue. The six proposed Class Periods are as follows:

Fund Name	**Class Period**
Oppenheimer AMT-Free Municipals Fund	5/13/2006-10/21/2008
Oppenheimer AMT-Free New York Municipal Fund	5/21/2006-10/21/2008
Oppenheimer Rochester National Municipal Fund	3/13/2006-10/21/2008
Oppenheimer New Jersey Municipal Fund	4/24/2006-10/21/2008
Oppenheimer Pennsylvania Municipal Fund	9/27/2006-11/26/2008
Rochester Fund Municipals	2/26/2006-10/21/2008

10. Lead Plaintiffs allege that the Funds' Registration Statements and Prospectuses contained materially false and misleading statements and/or omitted material information necessary to make those statements not misleading. The Amended Complaints allege that Defendants violated the 1933 Act in connection with alleged misstatements in the Registration Statements and Prospectuses of the Funds. *Id.*

11. The Amended Complaints allege that Defendants misled investors about the overall level of risk that the six Funds would undertake. Thus, for example, while five of the six Funds were sold and marketed as having a "capital preservation" investment objective, Lead Plaintiffs allege that those Funds' actual investments were not consistent with the stated objective, and in fact, were managed in a manner that violated the capital preservation objective.[6] Lead Plaintiffs also allege that the Funds' Prospectuses were materially false and misleading because they: (1) overstated the liquidity of the Funds' holdings and/or understated the risks associated with liquidity[7]; (2) failed to disclose the

[6] Dkt. No. 248, AMT-Free Compl. ¶ 39; Dkt. No. 246, AMT-Free NY Compl. ¶ 35; Dkt. No. 245, NJ Compl. ¶ 70; Dkt. No. 249, Pa. Compl. ¶ 70; Dkt. No. 247, Rochester Compl. ¶ 71; Plaintiffs for the Rochester National Fund included an investment objective claim but did not have a capital preservation claim. Dkt. No. 244, Nat'l Compl. ¶¶ 22-23.

[7] AMT-Free Compl. ¶¶ 91-94; AMT-Free NY Compl. ¶¶ 83-86; Nat'l Compl. ¶¶ 81-84; NJ Compl. ¶¶ 84-87; Pa. Compl. ¶¶ 77-95; Rochester Compl. ¶¶ 86-90.

risks and volatility associated with complex derivative instruments known as "inverse floaters" that were heavily invested in by the Funds[8]; (3) failed to disclose that the Funds deviated from their stated leverage restrictions[9]; and (4) overstated the value of the Funds' assets, and therefore misrepresented the Funds' net asset values ("NAVs").[10]

12. After these concealed risks are alleged to have materialized, each Fund underperformed its respective peer group. The NAVs of the six Funds fell 30-50% during 2008, while similar municipal bond funds that did not employ Defendants' allegedly excessively risky strategies weathered the credit crisis with substantially smaller losses during the same time periods.[11]

C. The Motions to Dismiss the Amended Complaints and Related Briefing

13. On April 5, 2010, Defendants filed multiple motions to dismiss Lead Plaintiffs' Amended Complaints. *See* Dkt. Nos. 284-286. Lead Plaintiffs filed oppositions on June 4, 2010 (Dkt. Nos. 291-292), and Defendants filed their replies on July 5, 2010 (Dkt. Nos. 299-300).

14. Lead Plaintiffs in the six Funds filed consolidated briefs in opposition to

[8] AMT-Free Compl. ¶¶ 63-73; AMT-Free NY Compl. ¶¶ 63, 78; Nat'l Compl. ¶¶ 65, 76; NJ Compl. ¶¶ 64, 79; Pa. Compl. ¶¶ 129-30 & 132; Rochester Compl. ¶¶ 65, 81.

[9] AMT-Free Compl. ¶¶ 85-87, 95-100; AMT-Free NY Compl. ¶¶ 87-92; NJ Compl. ¶¶ 88-94; Pa. Compl. ¶¶ 114-34; Rochester Compl. ¶¶ 91-97.

[10] AMT-Free Compl. ¶ 83; AMT-Free NY Compl. ¶ 76; Nat'l Compl. ¶ 74; NJ Compl. ¶ 77; Pa. Compl. ¶¶ 107-12; Rochester Compl. ¶¶ 78-79. Plaintiffs for the Pennsylvania Action have also alleged that the Pennsylvania Fund invested approximately one-third of its assets in junk and unrated bonds during the class period despite a 25% ceiling on junk bonds. Pa. Compl. ¶¶ 61, 96-104.

[11] AMT-Free Compl. ¶ 87; AMT-Free NY Compl. ¶ 79; Nat'l Compl. ¶ 77; NJ Compl. ¶ 80; Pa. Compl. ¶¶ 11, 146-48; Rochester Compl. ¶ 82.

Defendants' motions to dismiss.[12] This took a great deal of cooperation and coordination among Lead Plaintiffs' Counsel. This was a difficult task, but was important to ensure that Lead Plaintiffs' positions were consistent and briefing and related research was not needlessly duplicative. By working as a cohesive unit, Lead Plaintiffs' Counsel enhanced judicial efficiency so that the Court could consider Defendants' attacks on the pleadings in all six Actions in a unified manner in a single opinion.

15. Defendants set forth a number of arguments in their attempt to obtain an outright dismissal of Lead Plaintiffs' claims, or to severely limit those claims. For example, Defendants argued that the Funds' investment objectives were merely aspirational and therefore not actionable; that the Funds did not fail to identify illiquid securities; and that the risks of inverse floaters were disclosed to investors. *See* Defs.' Joint Mot. to Dismiss (Dkt. No. 285 at 34-39). Defendants also maintained there were no misrepresentations or omissions of material fact in any of the Offering Documents and no cognizable damages. *Id.* at 33-46. Defendants asserted among other things that: (1) portions of the class periods in the respective Amended Complaints were time barred by the 1933 Act's statute of limitations (*id.* at 68-73); (2) Lead Plaintiffs would be unable to prove loss causation because any alleged misrepresentations about the riskiness of the Funds could not affect their share prices, which are based on the summation of the value of each Fund's assets and not on information disclosed by the Funds, and because there was evidence that the Fund's NAV decline resulted not from purported misstatements or

[12] In addition, Lead Plaintiffs in the California and Pennsylvania Actions filed a joint brief in opposition to the separate motion to dismiss that addressed to the junk, unrated and illiquid bond claims in both cases and the state law claims in the California Action.

omissions but from the 2008 worldwide credit crisis (*id.* at 24-25; 75-77); and (3) the Individual Defendants were not "sellers" subject to liability under the 1933 Act (*id.* at 80-82).

16. On October 24, 2011, the Court denied Defendants' motions to dismiss with respect to Lead Plaintiffs' claims for relief under Sections 11, 12(a)(2) and 15 of the 1933 Act, and granted Defendants' motion to dismiss with respect to Lead Plaintiffs' claims under Section 13(a) of the Investment Company Act. Dkt. No. 312 (the "Dismissal Order"). The Dismissal Order was subsequently withdrawn and amended on January 20, 2012. Dkt. No. 359. Later, on March 20, 2013, the Court denied Defendants' motion to dismiss the claims asserted in the Pennsylvania Action relating to the excess portion of the portfolio invested in junk and unrated bonds. Dkt. No. 428.

17. On November 14, 2011, Defendants filed three motions challenging the Dismissal Order: (1) Defendant Mass Mutual filed a motion for reconsideration of the Dismissal Order on the application of the relation-back doctrine as it applies to the statute of limitations; (2) Defendants filed a motion to correct application of a single case citation and to clarify the National Fund's investment objective and to reconsider the Dismissal Order based on these corrections and clarifications; and (3) Defendants filed a motion to certify for interlocutory appeal this Court's ruling on loss causation. Dkt. Nos. 313 and 315-316. On December 5, 2011, Lead Plaintiffs opposed those motions in unified and coordinated briefs (Dkt. Nos. 321-323), and on December 22, 2011, Defendants filed three reply briefs in support of their motions (Dkt. Nos. 324-326).

18. On January 17, 2012, this Court denied Defendants' motion to certify the

issue of loss causation for interlocutory appeal. Dkt. No. 332. On January 18, 2012, the Court denied Mass Mutual's motion to reconsider and, although the Court clarified certain aspects of its Dismissal Order, it also denied the request to change the substance of its opinion based on those clarifications. Dkt. No. 348.

19. As discussed more thoroughly below, Lead Plaintiffs survived Defendants' multiple attacks on the Amended Complaints at the pleading stage. However, they are keenly aware that proving their allegations at trial or on summary judgment, based on evidence revealed during discovery, was far from certain should the litigation continue absent the Settlement.

D. Discovery and Related Motion Practice Were Extensive, Coordinated and Efficient

20. Discovery in these Actions was extensive. Moreover, discovery was well-coordinated so that all Lead Plaintiffs spoke with a single voice. This allowed the Settling Parties to act in an efficient manner with respect to discovery and discovery disputes. From Lead Plaintiffs' perspective, acting in unison allowed them to take consistent positions and propound and serve consolidated discovery requests. Defendants similarly were able to propound and serve consolidated discovery. Consequently, when discovery disputes arose, they related to and impacted all the Actions. This Court, therefore, was not unnecessarily burdened with piecemeal disputes from each of the six cases separately. Lead Plaintiffs also created a coordinated document review team to review and analyze the millions of pages of documents produced by Defendants. This meant that Lead Plaintiffs reviewed Defendants' documents once as a team, rather than six times separately. This highly efficient coordination of discovery reduced the time and cost of litigating the

Actions.

21. To this end, the Settling Parties held an in-person, post-Dismissal Order meeting in New York City on December 14, 2011, in an attempt to arrive at a comprehensive, unified case schedule and to streamline discovery. At this meeting the Settling Parties arrived at a mutually agreeable case schedule, coordinated regarding the creation of a document repository system, and discussed other means to efficiently conduct discovery. The Settling Parties also agreed that discovery would be conducted systemically in a series of sequential phases: 1) core document discovery; 2) class certification discovery; 3) non-core document discovery; 4) merit depositions; and 5) expert discovery. Eventually Defendants produced approximately three million pages of documents in the litigation.

22. On January 20, 2012, this Court held a scheduling conference based on the [Proposed] Stipulated Scheduling and Discovery Order, submitted January 13, 2012. That 21-page document (excluding exhibits) set forth a single case management plan for all the Actions. In the Scheduling Order, the parties stipulated:

> The parties agree that electronic discovery will be necessary in this case and have agreed in principle to the use of computer-assisted review in order to identify responsive electronic source information ("ESI") rapidly and efficiently, [subject to final agreement on the form and methods of computer-assisted review to be employed]. The parties have also discussed and shared positions regarding the preservation, collection, review, and production of ESI, and have designated attorneys from each side to reach a forthcoming comprehensive agreement regarding the same. Counsel for Plaintiffs and Defendants have agreed respectively to have two repositories for documents produced (one repository for all Plaintiffs' counsel and one repository for all defense counsel) – the documents will be shared among counsel on each side of the litigation. This will require counsel on each side to produce responsive records only once, further limiting discovery associated expense.

Dkt. No. 358.

2. Core Document Discovery

23. The first phase of discovery related to Defendants' production of "core documents" in their possession and control. These documents primarily consisted of underlying daily price and transaction data and transactional documents reflecting the thousands of bonds held, bought or sold by the Funds during the Class Periods. Lead Plaintiffs' Counsel and their expert reviewed these documents. A majority of the documents produced in this phase of discovery were of a highly technical nature, and Lead Plaintiffs' Counsel retained consulting expert Gifford Fong Associates ("GFA") to perform a detailed quantitative and qualitative analysis of much of this electronic data.[13]

24. During this first phase of discovery, the Settling Parties were unable to resolve issues relating to Defendants' production of credit ratings assigned by independent rating agencies to certain of the bonds at issue. Lead Plaintiffs' Counsel and their consulting experts initially understood Defendants to have produced contemporaneous historical credit ratings for each and every one of the thousands of underlying bonds and inverse floaters, just as Defendants had produced other contemporaneous historical price data, such as trading prices and valuations, for the same bonds. It was only after Lead

[13] GFA has been providing consulting services and proprietary analytical tools to the legal and financial communities since 1974. H. Gifford Fong is Editor of the Journal of Investment Management, an advisor to the United States Securities and Exchange Commission ("SEC"), and an advisor to the Federal Reserve and United States Treasury. Prior to retaining GFA, Lead Plaintiffs had also consulted with additional experts in connection with the research for and drafting of their respective consolidated amended complaints.

Plaintiffs' Counsel made a presentation to Defendants and their counsel in December 2012 demonstrating that the portfolio ratings for the portfolios held by each of the Funds differed materially from the ratings mix in Defendants' SEC filings, that Defendants' counsel clarified that the daily ratings data provided to Lead Plaintiffs did not reflect the historical ratings, but the ratings at the time the data was collected for discovery production purposes. On March 22, 2013, Lead Plaintiffs filed a motion to compel on this issue. Dkt. 432. The dispute over credit ratings was eventually informally resolved a little over a month after Lead Plaintiffs filed their motion to compel.

25. Phase one of discovery was largely completed in March 2012, but disputes regarding Defendants' production remain and will be litigated absent a settlement.

3. Class Certification Discovery

26. The second phase of discovery related to class certification and included Class Representatives' depositions and the production of their documents. Defendants also served third-party subpoenas on most of Lead Plaintiffs' financial advisors and brokers. Most all disputes between the Settling Parties regarding the proper scope of class certification discovery were informally resolved through numerous meet and confer conference calls.

27. The Settling Parties were unable to resolve informally two class-related discovery issues. Defendants filed a motion to compel in order to obtain Lead Plaintiffs' documents relating to any investments in the types of securities underlying their claims (*e.g.*, inverse floaters, liquidity of municipal bonds, and valuation of municipal bonds), and Lead Plaintiffs' investment histories going back to January 1, 2000. Dkt. No. 367. The

Settling Parties agreed to expedite briefing on the motion so that class discovery and briefing would not be delayed. Lead Plaintiffs opposed the motion to compel (Dkt. No. 370) and Defendants submitted a reply brief (Dkt. No. 373). Oral argument was held on May 9, 2012. The motion was granted in part, and denied in part. The Court denied the motion to compel investment histories and documents related to the majority of Lead Plaintiffs' investment types, but granted the motion as it concerned documents related to derivative instruments.

28. Phase two of discovery was completed prior to September 2012.

4. Non-Core Discovery

29. Phase three of discovery consisted of the production of "non-core" documents by Defendants. These documents included reports, marketing materials, internal risk guidelines and compliance materials, Trustee Board meeting minutes, minutes of various pertinent committees, monthly risk assessments, risk management reports, daily performance reports, internal investment strategy notes and presentations, analyst papers, and internal e-mails relating to the foregoing. The production of these documents occurred after the resolution of several disputes following numerous meet and confer sessions and presentations regarding the computer-assisted document selection (sometimes known as "predictive coding") to be employed by Defendants' counsel and their consultants. Lead Plaintiffs' Counsel created a team consisting of themselves and certain additional plaintiffs' firms to review and code the large number of documents produced in phase three.

30. Phase three of discovery was continuing at the time the proposed

Settlement was reached.

5. Motion for Class Certification

31. Lead Plaintiffs' omnibus motion for class certification was filed on July 24, 2012. Dkt. No. 379. Defendants filed their opposition to class certification on September 14, 2012. Dkt. Nos. 384-387, 392 (Capital Preservation Classes), 395 (National Fund Class). On October 26, 2012, Lead Plaintiffs filed their reply brief in support of class certification. Dkt. No. 407. Over Lead Plaintiffs' objection, on November 28, 2012, Defendants filed a sur-reply in support of their opposition to class certification. Dkt. No. 415. Lead Plaintiffs filed a response to the sur-reply, which was subsequently opposed by Defendants (Dkt. Nos. 423-424). Briefing on class certification was comprehensive.

32. As noted above, Defendants deposed all the Lead Plaintiffs and many of Lead Plaintiffs' financial advisors and brokers.[14] Defendants also obtained Lead Plaintiffs' relevant documents and those of the third-party advisors and brokers. The Settling Parties held countless meet and confers relating to the scope of discovery and inquiry into Lead Plaintiffs' investment history, net worth, and other areas Lead Plaintiffs believed were extraneous.

33. In opposing Lead Plaintiffs' motion for class certification, Defendants contended that individual inquiries made certification of the putative classes improper. Among other things, Defendants argued that evidence specific to particular named plaintiffs demonstrated that class members knew or should have known of their claims

[14] Two additional named plaintiffs for the Oppenheimer Pennsylvania Municipal Fund, William E. Miles, Jr. and John Galganovich, were also deposed, as was Mr. Galganovich's broker.

more than one year before the actions were filed. Similarly, Defendants argued that putative class members' understanding of the Funds' risks could only be determined through individual inquiries into whether each putative class member: (i) read the Fund's public disclosures and marketing materials, as well as materials from third parties, including Morningstar; and (ii) discussed the risks of the Funds with other individuals, including their brokers. Dkt. No 392 at 31-37; 47-51. Lastly, Defendants argued that many of the Lead Plaintiffs' claims were not typical or that they were inadequate class representatives. *Id.* at 52-54; 66-72; Dkt. No. 395 at 18-21.[15]

34. Lead Plaintiffs' motion for class certification was pending at the time the Settlement was reached.

6. Motions for Partial Summary Judgment

35. Concurrently with their opposition to class certification, Defendants filed two motions seeking partial summary judgment. The first motion sought summary judgment as to certain Lead Plaintiffs' investment objective claims on the grounds that those Lead Plaintiffs testified that statements in the Prospectuses regarding, for example, liquidity or junk bonds were at odds with their understanding of capital preservation. Dkt. No. 390. Defendants' second motion for partial summary judgment argued that the testimony of certain Lead Plaintiffs indicated that they did not care about leverage ratios and that, as such, leverage ratios were immaterial as a matter of law. Dkt. No. 391. Both motions for partial summary judgment were based on testimony elicited from Lead

[15] Defendants did not challenge the typicality or adequacy of additional plaintiff, William E. Miles, Jr., to represent the Pennsylvania Fund Class.

Plaintiffs at their depositions. Lead Plaintiffs filed oppositions to the motions for partial summary judgment (Dkt Nos. 412, 413), and Defendants filed reply briefs (Dkt. Nos. 419-422).

36. The Court denied the Defendants' motion for partial summary judgment on the leverage ratio claims on March 22, 2013. Dkt. No. 429. The motion for partial summary judgment based on the capital preservation claims is still pending.

7. Lead Plaintiffs' Expert Analyses of Liability and Damages

37. Early in 2012 Lead Plaintiffs retained consulting expert GFA. Significant efficiencies (and cost savings to the Classes) were realized by Lead Plaintiffs' Counsel's decision to utilize GFA as an expert in all the Actions. Defendants produced critical and detailed financial information that enabled Lead Plaintiffs' Counsel and consulting experts to conduct thorough merits and damages analyses. Specifically, GFA performed an analysis of all six Funds' portfolios during the Class Periods, including a detailed review of the volatility, leverage, and excessive risk of the Funds compared to similarly-situated municipal bond funds.

38. In connection with Lead Plaintiffs' liquidity allegations, GFA identified several different methods by which to analyze the liquidity of the Funds' holdings. GFA conducted a thorough two-step analysis in an effort to demonstrate that the Funds exceeded their stated limits on illiquid securities. This required GFA to expend considerable time to locate securities that met various definitions of "illiquid," and designate each of those securities as such.

39. GFA also conducted an analysis of the Funds' inverse floaters and provided

Lead Plaintiffs with a summary of losses from inverse floaters that collapsed during and just after each of the Funds' respective Class Periods. This analysis included accounting for the performance of non-collapsed inverse floaters and the losses attributed to those non-collapsed inverse floaters.

40. Section 11 damages were computed by Candace Preston and Cynthia Jones of Financial Markets Analysis, LLC ("FMA")[16] separately for each class of shares issued by the Funds. Once again, great efficiencies and savings were realized by Lead Plaintiffs' Counsel's utilization of a single damages expert in all the Actions. Lead Plaintiffs' Counsel provided FMA with transaction data produced by Defendants. FMA separated this data by Fund and Fund class, as damage calculations were required for each of the nineteen securities at issue.[17] FMA started with the share balance held for each Fund class, by account holder, for the month-end prior to the beginning of each respective class period in order to implement the first-in, first-out ("FIFO") method of accounting for share retention from purchases made during the class period.

41. The extensive analyses conducted by these experts form additional bases for Lead Plaintiffs and Lead Plaintiffs' Counsel to conclude that the Settlement is appropriate.

[16] FMA is a valuation and economic consulting firm. Candace Preston is a founding principal with over thirty years of experience in the financial community.

[17] Section 11 damages were computed separately for each class of stock issued by the following Funds during their respective Class Periods: AMT-Free Municipal (Share Classes A, B, and C); AMT-Free New York Municipal (Share Classes A, B, and C); Rochester Fund Municipals (Share Classes A, B, C, and Y); New Jersey Municipal (Share Classes A, B, and C); Pennsylvania Municipal (Share Classes A, B, and C); and Rochester National Municipals (Share Classes A, B, and C).

E. Negotiating the Settlement

42. The Stipulations are the product of months of negotiations between Defendants and Lead Plaintiffs and a two-day mediation session. *See generally* Declaration of Layn R. Phillips, attached hereto as Exhibit 1.

43. On December 18, 2012, Lead Counsel and consultants from GFA, OFI representatives, and Defendants' Counsel voluntarily agreed to meet in New York City in order to discuss merits, damages and defenses. This meeting included the exchange of materials and presentations by each side. The meeting proved to be highly productive because it allowed the Settling Parties to focus on the outstanding issues in an in-person, privileged setting. The meeting required both sides to focus on their strengths and weaknesses and narrow the issues in dispute.

44. In the spring of 2013, the Settling Parties retained Judge Phillips for a formal mediation. In anticipation of the confidential mediation sessions held on May 6 and 7, 2013 in New York City, the Settling Parties exchanged separate opening and reply mediation statements. These mediation statements covered the strengths and weaknesses of the claims and were invaluable in presenting each side's views on liability and damages, thus setting the stage for a productive mediation. The mediation was attended by representatives of OFI. The mediation addressed the Settling Parties' respective views and arguments concerning the merits of the litigation, as well as the risks and weaknesses. Despite the Settling Parties' best efforts, no settlement was reached during the two-day mediation.

45. Subsequent to the mediation the Settling Parties continued to discuss settlement prospects. Those negotiations were overseen by Judge Phillips. After a number of months, the Settling Parties reached an agreement to globally settle the Actions for $89.5 million.

46. On August 26, 2013, the Settling Parties executed the Memorandum of Understanding ("MOU") that set forth the material terms of the proposed Settlement of the Actions. The final terms of the Stipulations and Notices were negotiated over a contentious several months, resulting in the six Stipulations of Settlement presented to the Court for final approval.

F. The Allocation Mediation Before Judge Phillips with Independent Counsel

47. The MOU provided for Defendants to pay a total sum of $89,500,000 to settle the Actions. As noted earlier, although separate Stipulations were submitted, the proposed Settlement is global. Defendants reserve the right to terminate this global Settlement if the settlement of any one of the six Actions does not obtain final court approval.

48. Because the Settlement amount to be paid by Defendants is global, Lead Plaintiffs' Counsel were required to allocate the total Settlement Amount among the six cases. Five of the Actions alleged that the respective Funds at issue had deviated from a stated investment objective that, in one form or another, claimed to be "consistent with preservation of capital." The sixth action, involving the Rochester National Fund, likewise alleged a deviation from that Fund's stated investment objective – however, that investment objective did not claim to be consistent with preservation of capital, and instead

claimed only to invest "in a diversified portfolio of high-yield municipal securities." Nat'l Compl. ¶ 2 (Dkt. No. 244). This, and other factors, led to a disparity in the relative merits between the Rochester National Fund case on the one hand and the five substantially similar Capital Preservation cases on the other hand.

49. Consequently, Lead Plaintiffs' Counsel believed it was prudent to engage wholly-independent counsel to advocate for the proper allocation of funds between the Capital Preservation cases on the one hand and the National Fund case on the other hand. In order to remove any potential for conflict (or even the appearance of a conflict), Lead Plaintiffs' Counsel retained the law firms of Klafter Olsen & Lesser LLP ("Klafter") to represent the interests of the National Fund Class, and Barrack Rodos & Bacine ("Barrack") to represent the interests of the Capital Preservation Classes in allocating the Settlement Amount between the Actions. Prior to their retention for this purpose, neither firm had any involvement in any of the Actions. Lead Plaintiffs' Counsel again called upon Judge Phillips to conduct a further mediation on the proper allocation. It was agreed that Judge Phillips would decide the proper allocation in a binding arbitration if the mediation was not successful.

50. Klafter and Barrack spent a number of weeks preparing for the allocation mediation. Each law firm submitted a mediation brief to Judge Phillips advocating their positions and making a suggested allocation of the Settlement Fund. Exhibit 1, Phillips Decl. ¶¶ 13-15.

51. On September 15, 2013, Judge Phillips, along with Klafter and Barrack, held a binding mediation. After considering all of the evidence and the arguments

submitted by allocation counsel, and attempting to mediate the issue, Judge Phillips determined that the combined $89.5 million settlement fund would be allocated as 30% (or $26,850,000) for the benefit of the National Fund Class, and 70% (or $62,650,000) for the benefit of the Capital Preservation Classes.

52. Once the allocation between the National Fund Class and the Capital Preservation Classes was complete, Lead Plaintiffs' Counsel was required to further allocate the $62,650,000 earmarked for the five Capital Preservation cases. The five Capital Preservation cases all arose from almost identical claims, make almost identical allegations, and involve mutual funds that each were managed by the same team of persons, made the same types of investments, and required substantially the same limitations on those investments. Moreover, discovery did not uncover evidence that one Capital Preservation case was materially stronger than any other Capital Preservation case. The only material difference between the Capital Preservation cases was the size of the respective Funds and the price history at the end of the respective Class Periods (when the NAVs rebounded from their low values in late 2008 and early 2009), and therefore the amount of recoverable damages. Thus, Lead Plaintiffs' Counsel allocated the $62,650,000 on a *pro rata* basis based on FMA's expert analysis of each of the Funds' respective recoverable damages as computed by FMA using identical procedures and methods.

G. The Settlement

53. Lead Plaintiffs' Counsel has estimated the Classes' most realistic recovery at trial in order to assess the value of the Actions. With the skilled assistance of FMA, and taking into consideration certain defense arguments that may have been credited by a jury

relating to liability, the statute of limitations, the absence of loss causation, and losses attributable to general market forces, Lead Plaintiffs' Counsel estimates that the proposed Settlement is approximately 4% of Defendants' most generous damages estimate, and is a reasonable result for the Classes compared to the litigation risks. *See In re Cendant Corp. Sec. Litig.*, 264 F.3d 201, 242 & n.22 (3d Cir. 2001) (noting that approved settlement recoveries in securities class actions typically range from 1.6% to 14% of claimed damages); *see also In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 246 F.R.D. 156, 167 (S.D.N.Y. 2007) (approving a settlement that was "between approximately 3% and 7% of estimated damages [and] within the range of reasonableness for recovery in the settlement of large securities class actions").

III. OVERVIEW OF THE SETTLEMENT AND PLAN OF ALLOCATION

54. The Settlement results in the creation of a common fund in the amount of $89.5 million for the benefit of the Classes.[18] In exchange for this payment by Defendants, the Classes agree to release all claims, alleged or that could be alleged, that arise out of the facts, disclosures, allegations, and losses set forth in the Amended Complaints or at issue in the Actions, as well as claims relating to the prosecution, defense and settlement of the Actions, as against all Released Defendant Parties, which includes Defendants and certain third parties, as more fully set forth in the Stipulations. Stipulations ¶¶ 1(w); (x).

[18] This is not a claims-made settlement; if all the conditions of the Stipulations are satisfied, none of the Settlement Fund will be returned to the Defendants. Stipulations ¶ 16.

55. The Settlement is expressly conditioned on the entry of several orders by this Court, including orders finally approving the Settlement and a bar order that applies to contribution and indemnification claims. *See* Stipulations ¶ 23 and 25(c), Exhibit B.

56. The terms of the Settlement are embodied in the six Stipulations and a supplemental letter agreement concerning the circumstance under which the level of requested exclusions from the Settlement (the "Opt-Out Threshold") could cause Defendants, if they so elect, to terminate the Settlement. Stipulations ¶ 23(d). As is commonly done, the letter agreement is not being filed in order to keep the Opt-Out Threshold confidential and avoid an intentional trigger by a large shareholder. Other than the Opt-Out Threshold, all substantive provisions of the letter agreement are recited in the Stipulations.

57. The Settlement is not conditioned on entry of an award of attorneys' fees and expenses.

58. The $89,500,000 in cash, less attorneys' fees and any expenses awarded by the Court, notice and administration expenses, and any tax expenses payable from the Settlement Fund (the "Net Settlement Fund"), will be distributed to Authorized Claimants from the Actions in accordance with the proposed Plan of Allocation and further order of the Court. Stipulations ¶¶ 13-14, 16. Lead Plaintiffs have proposed a plan to distribute the proceeds of the Settlement among the six Classes that was created with the assistance of FMA. The objective of the proposed Plan of Allocation is to equitably pay the Settlement proceeds to those Classes and Class Members who suffered economic losses as a result of the alleged false and misleading statements.

59. The Plan of Allocation considers, among other things, that the Recognized Claims are the same as the estimated damages that could have been recovered had Lead Plaintiffs succeeded on all of their claims under Section 11 of the 1933 Act, subject to certain limitations.[19]

60. The proposed plan sent to members of the Classes informs them that Section 11 "Recognized Losses" are calculated as follows, pursuant to the 1933 Act:

> **AMT-Free Fund:** for shares purchased or acquired between May 13, 2006 through and including October 21, 2008, and:
>
> (1) sold prior to the close of trading on May 13, 2009 (the date the first AMT-Free Fund class action was filed), a Class Member's Recognized Claim will be the Net Asset Value ("NAV") of the shares on the date of purchase minus the NAV on the date of sale.
>
> (2) sold between the opening of trading on May 14, 2009 and the close of trading on December 31, 2009, a Class Member's Recognized Claim will be smaller of either of the following: (a) the NAV of your shares on the date of purchase minus the NAV of your shares on the date of sale, or (b) the NAV of your shares on the date of purchase minus the NAV of your shares (A, B, or C) as of May 13, 2009, respectively: $5.58; $5.56 & $5.55.
>
> (3) retained as of the close of trading on December 31, 2009, a Class Member's Recognized Claim will be smaller of either of the following: (a) the NAV of your shares on the date of purchase minus the NAV of your shares (A, B, or C) as of May 13, 2009, respectively: $5.58; $5.56 & $5.55, or (b) the NAV of your shares on the date of purchase minus the NAV of your shares (A, B, or C) as of December 31, 2009, respectively: $6.36; $6.33 & $6.33.

[19] As set forth in the Court's Order Preliminarily Approving Settlement and Providing for Notice (the "Preliminary Approval Order"), entered March 12, 2014, class members for whom the claims administrator, Epiq Class Action & Claims Solution, Inc. ("Epiq"), has transaction data will not need to complete a Proof of Claim form to be eligible to participate. All other class members will, as is typical in securities class actions.

AMT-Free New York Fund: for shares purchased or acquired between May 21, 2006 through and including October 21, 2008, and:

(1) sold prior to the close of trading on May 20, 2009 (the date the first AMT-Free New York Fund class action was filed), a Class Member's Recognized Claim will be the Net Asset Value ("NAV") of the shares on the date of purchase minus the NAV on the date of sale.

(2) sold between the opening of trading on May 21, 2009 and the close of trading on December 31, 2009, a Class Member's Recognized Claim will be smaller of either of the following: (a) the NAV of your shares on the date of purchase minus the NAV of your shares on the date of sale, or (b) the NAV of your shares on the date of purchase minus the NAV of your shares (A, B, or C) as of May 20, 2009, respectively: $9.90; $9.91 & $9.91.

(3) retained as of the close of trading on December 31, 2009, a Class Member's Recognized Claim will be smaller of either of the following: (a) the NAV of your shares on the date of purchase minus the NAV of your shares (A, B, or C) as of May 20, 2009, respectively: $9.90; $9.91 & $9.91, or (b) the NAV of your shares on the date of purchase minus the NAV of your shares (A, B, or C) as of December 31, 2009, respectively: $11.20; $11.20 & $11.20.

National Fund: for shares purchased or acquired between March 13, 2006 through and including October 21, 2008, and:

(1) sold prior to the close of trading on March 13, 2009 (the date the first National Fund class action was filed), a Class Member's Recognized Claim will be the Net Asset Value ("NAV") of the shares on the date of purchase minus the NAV on the date of sale.

(2) sold between the opening of trading on March 14, 2009 and the close of trading on December 31, 2009, a Class Member's Recognized Claim will be smaller of either of the following: (a) the NAV of your shares on the date of purchase minus the NAV of your shares on the date of sale, or (b) the NAV of your shares on the date of purchase minus the NAV of your shares (A, B, or C) as of March 13, 2009, respectively: $5.32; $5.33 & $5.31.

(3) retained as of the close of trading on December 31, 2009, a Class Member's Recognized Claim will be smaller of either of the following: (a) the NAV of your shares on the date of purchase minus the NAV of your shares (A, B, or C) as of March 13, 2009, respectively: $5.32; $5.33 & $5.31, or (b) the NAV of your shares on the date of purchase minus the

NAV of your shares (A, B, or C) as of December 31, 2009, respectively: $7.08; $7.10 & $7.06.

New Jersey Fund: for shares purchased or acquired between April 24, 2006 through and including October 21, 2008, and:

(1) sold prior to the close of trading on April 24, 2009 (the date the first New Jersey Fund class action was filed), a Class Member's Recognized Claim will be the Net Asset Value ("NAV") of the shares on the date of purchase minus the NAV on the date of sale.

(2) sold between the opening of trading on April 25, 2009 and the close of trading on December 31, 2009, a Class Member's Recognized Claim will be smaller of either of the following: (a) the NAV of your shares on the date of purchase minus the NAV of your shares on the date of sale, or (b) the NAV of your shares on the date of purchase minus the NAV of your shares (A, B, or C) as of April 24, 2009, respectively: $7.85; $7.87 & $7.86.

(3) retained as of the close of trading on December 31, 2009, a Class Member's Recognized Claim will be smaller of either of the following: (a) the NAV of your shares on the date of purchase minus the NAV of your shares (A, B, or C) as of April 24, 2009, respectively: $7.85; $7.87 & $7.86, or (b) the NAV of your shares on the date of purchase minus the NAV of your shares (A, B, or C) as of December 31, 2009, respectively: $9.71; $9.73 & $9.72.

Pennsylvania Fund: for shares purchased or acquired between September 27, 2006 through and including November 26, 2008, and:

(1) sold prior to the close of trading on April 28, 2009 (the date the first Pennsylvania Fund class action was filed), a Class Member's Recognized Claim will be the Net Asset Value ("NAV") of the shares on the date of purchase minus the NAV on the date of sale.

(2) sold between the opening of trading on April 29, 2009 and the close of trading on December 31, 2009, a Class Member's Recognized Claim will be smaller of either of the following: (a) the NAV of your shares on the date of purchase minus the NAV of your shares on the date of sale, or (b) the NAV of your shares on the date of purchase minus the NAV of your shares (A, B, or C) as of April 28, 2009, respectively: $8.69; $8.69 & $8.68.

(3) retained as of the close of trading on December 31, 2009, a Class Member's Recognized Claim will be the smaller of either of the following: (a) the NAV of your shares on the

date of purchase minus the NAV of your shares (A, B, or C) as of April 28, 2009, respectively: $8.69; $8.69 & $8.68, or (b) the NAV of your shares on the date of purchase minus the NAV of your shares (A, B, or C) as of December 31, 2009, respectively: $10.51; $10.51 & $10.49.

Rochester Fund: for shares purchased or acquired between February 26, 2006 through and including October 21, 2008, and:

(1) sold prior to the close of trading on February 25, 2009 (the date the first Rochester Fund class action was filed), a Class Member's Recognized Claim will be the Net Asset Value ("NAV") of the shares on the date of purchase minus the NAV on the date of sale.

(2) sold between the opening of trading on February 26, 2009 and the close of trading on December 31, 2009, a Class Member's Recognized Claim will be the smaller of either of the following: (a) the NAV of your shares on the date of purchase minus the NAV of your shares on the date of sale, or (b) the NAV of your shares on the date of purchase minus the NAV of your shares (A, B, C or Y) as of February 25, 2009, respectively: $12.84; $12.83; $12.82 & $12.84.

(3) retained as of the close of trading on December 31, 2009, a Class Member's Recognized Claim will be the smaller of either of the following: (a) the NAV of your shares on the date of purchase minus the NAV of your shares (A, B, C or Y) as of February 25, 2009, respectively: $12.84; $12.83; $12.82 & $12.84, or (b) the NAV of your shares on the date of purchase minus the NAV of your shares (A, B, C or Y) December 31, 2009, respectively: $15.70; $15.68; $15.67 & $15.69.

61. A Class Member is eligible to receive a distribution from the Net Settlement Fund only if he or she has a net loss on shares purchased during the applicable Class Period after all profits from transactions in all classes of the specific Fund's shares during that Class Period are subtracted from all losses from all transactions.

62. This distribution methodology was adequately explained in the Notice sent to Class Members. It was prepared in consultation with Lead Plaintiffs' damages consultant, tracks the theory of damages asserted by Lead Plaintiffs in the Actions and is fair, reasonable and adequate to the Classes as a whole.

IV. THIS COURT SHOULD APPROVE THE SETTLEMENT

A. The Settlement Amount Is Consistent With Similar Cases

63. The all-cash Settlement of $89,500,000 provides a compelling benefit for Class Members, whether viewed globally or individually by Fund. The Settlement is fair, reasonable and adequate and, we believe, deserves this Court's final approval.

64. Class action settlements typically recover much less than this Settlement in total dollars and as a percentage of damages.

65. Research indicates that 75% of securities class actions settled during the 17-year period after passage of the PSLRA settled for less than $20.6 million. *See* Exhibit 2 hereto at 6 figure 5 (Laarni Bulan, Ellen Ryan and Laura Simmons, *Securities Class Action Settlements: 2013 Review and Analysis* (Cornerstone Research 2014) (the "Cornerstone Study")). Fifty percent of post-PSLRA cases have settled for between $3.6 million and $20.6 million. *Id.* at 6.

66. The median settlement for class actions asserting claims under Sections 11 or 12(a)(2) of the 1933 Act, but not Section 10(b) of the Securities Exchange Act of 1934, is only $3.4 million. *Id.* at 12 (Figure 11). We note, however, that the sample size is small for this group compared to both the total number of post-PSLRA settlements and claims under Section 10(b). *Id.* This nonetheless provides a barometer for the Settlement.

67. The median settlement as a *percentage* of estimated damages (described in the Cornerstone Study at 7-8) is 2.3%. For "credit crisis" cases settled in 2013, the median settlement was only 0.7% of estimated damages. *Id.* The proposed Settlement here is almost twice this general median and five times the credit crisis median.

68. As discussed above, Lead Plaintiffs' Counsel estimates that the proposed Settlement recovers approximately 4% of Defendants' most generous damages estimate if the Actions continued to litigation. This is higher than the average settlement. A study by National Economic Research Associates ("NERA"), an economic consulting firm that frequently provides expert analysis to defendants, states that for cases that settled in 2013, the median percentage of investor losses recovered in shareholder class action settlements was 2.1%. *See* Dr. Renzo Comolli and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2013 Full-Year Review* at 33 (NERA 2014), attached hereto as Exhibit 3. According to NERA, the median percentage of investor losses recovered in shareholder class action settlements between 2003 and 2013 ranged between 1.3% and 3.1% each year. *Id*.

B. The Trial Risks and Claim Vulnerabilities Highlight the Reasonableness of the Proposed Settlement and the Risks Confronting the Classes

69. In reaching and recommending the Settlement, Lead Plaintiffs' Counsel exercised our judgment based on extensive knowledge of the facts of the cases and the legal issues facing the Classes, as well as assessments about the strengths and weaknesses of the cases. Lead Plaintiffs' Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Actions through continued fact and expert discovery, summary judgment, trial and appeals. We have carefully considered the likelihood of success against Defendants, the likely amount of total damages that could be recovered against Defendants, as well as the uncertain outcome and risk of any litigation, especially in complex actions such as these, and the difficulties and delays inherent in such litigation. Below we summarize the risks that were of material concern to us.

70. A unanimous verdict of 6-12 jurors is difficult to obtain in any case, and especially so in a class action involving complex financial concepts.

71. Defendants vigorously disputed that Lead Plaintiffs could prove that the Funds were sold or marketed in a manner which misrepresented: (1) the Funds' investment strategies; (2) the true value of the Funds' assets and liabilities; (3) the level of exposure and risks of the Funds' investment in "inverse floaters"; and (4) the liquidity of the Funds' investments.

72. Defendants were prepared to argue that the Funds' disclosures and history made it clear that the Funds' NAVs would experience short-term swings under certain market conditions, and therefore investors should take a long-term perspective with regard to their investments. Moreover, Defendants would have argued that the losses experienced by the Funds as a result of the market tumult in 2008 were just such a short-term swing, but that the Funds performed very well in 2009 allowing investors to recoup their short-term losses. Defendants would point to the 2008 credit crisis as the true cause of the Classes' short-term losses.

73. Defendants maintained that National Fund was a high yield "junk bond" offering whose disclosures explained that investors were assuming a much greater risk in short-term price fluctuations, and given the long average maturities held, such price changes could be significant. Indeed, Lead Plaintiffs recognize that the National Fund disclosed that it should be considered "speculative."

74. Defendants argued that Lead Plaintiffs' claim that the five Capital Preservation Funds violated their stated investment objectives was not actionable because

the investment objectives were not statements of objective fact, but rather statements of mere aspirational goals. Defendants similarly argued that the Funds' disclosures and other reports were sufficient to alert investors to the overall risk these Funds undertook.

75. Defendants also attacked Lead Plaintiffs' allegations concerning valuation, liquidity, credit ratings, and inverse floaters. Defendants maintained that these claims were not supported by the evidence. According to Defendants, the Funds' valuation process was fully disclosed and not misleading. Additionally, the valuation of securities and determination of whether they are liquid or illiquid requires the exercise of subjective judgment. Defendants also argued, *inter alia*, that they had no duty to characterize or quantify the risks in "inverse floaters," and, because Defendants disclosed their investments in them, and risks associated with them, the Classes were aware of the investments and their attendant risks and must bear the risk for at least a portion of the losses attributable to those securities. *See* Defs.' Joint Mot. to Dismiss (Dkt. No 285 at 39-46, 68-73).

76. Defendants' loss causation defenses presented substantial concerns and were the subject of extensive debate and analysis. Defendants contend that, because mutual fund share prices are determined by summing up the value of the fund's assets and are not affected by information disclosed by the Fund to the market, there is no way that an alleged misrepresentation about the riskiness of the Funds could affect their share prices or cause losses. Defendants also argue that the Funds' NAV declines resulted not from any purported misstatements or omissions but from an unprecedented, worldwide credit crisis and resulting panic that was unforeseen by government officials, economists, and the

Fund's portfolio managers. A recent decision highlights the risk that Defendants' loss causation arguments could prevail. Plaintiffs in *In re State Street Bank & Trust Co. Fixed Income Funds Invs. Litig.*, 774 F. Supp. 2d 584 (S.D.N.Y. Mar. 31, 2011), asserted claims under Sections 11 and 12 of the 1933 Act that were not unlike Lead Plaintiffs' claims here. Although this Court refused to follow *State Street* at the motion to dismiss stage, it recognized that the "issue of loss causation is a seminal one in this litigation." *See* Amended Order Granting in Part and Denying in Part Defendants' Joint Mot. to Dismiss at 52 (Dkt. No. 359). *State Street* indicates the risk that the Court could eventually dismiss the Actions in whole or in part on loss causation grounds.

77. Lead Plaintiffs also faced a material risk that a jury could accept Defendants' statute of limitations arguments. Defendants have steadfastly argued that the Funds' risks were known and widely-disseminated to the market. If Defendants were to win on their statute of limitations arguments, Lead Plaintiffs' claims could be curtailed or extinguished entirely.

78. It is far from clear that a jury would find in favor of the Classes on these myriad issues, many of which would be reduced to a "battle of the experts."

79. Lead Plaintiffs have strong counters to the foregoing defense positions, and still believe in the strength of their cases notwithstanding the foregoing risks. Still, litigation is fraught with uncertainty and it is impossible to predict an end result. This Settlement – an all-cash payment now of $89.5 million – avoids this risk.

C. The Actions Were at an Advanced Stage at the Time of Settlement

80. As discussed above, the proposed Settlement was reached after an intensive period of litigation and discovery. Lead Plaintiffs' Counsel's and their consulting experts' detailed review and analyses of Defendants' documents, coupled with the December 18, 2012 informal meeting of the Settling Parties and the May 6 and 7, 2013 mediation, allowed Lead Plaintiffs and their counsel to make an extensive and well-informed liability and damages assessment before settling the Actions.

D. The Expense and Likely Duration of the Actions in the Absence of a Settlement Are Substantial

81. The proposed Settlement guarantees a substantial recovery for the Classes now while obviating the need for a lengthy, complex, and uncertain pre-trial procedure and trial, as discussed above. Due to the amount and extent of evidence necessary to prove claims of securities fraud, as well as the necessity of consulting with experts in the fields of accounting, economic loss, and relevant industry practices, actions of this nature typically require expending millions of dollars in legal fees and expenses. This is true even in cases where a relatively small amount of damages is potentially recoverable. Fees and costs thus would skyrocket as each side prepares to try its case.

82. Securities fraud class actions can easily run on for years, often approaching a decade in duration. These Actions were filed more than five years ago and were vigorously litigated. Lead Plaintiffs' Counsel would expect continued fact and expert discovery to be very time consuming. Additional summary judgment motions would be forthcoming. Then, if these Actions continued, the MDL would eventually be dissolved and these Actions would be returned to their separate jurisdictions. At this time, new

judges (who would each have to learn the law and facts of this case) might revisit some of this Court's prior rulings which could possibly lead to inconsistent findings.

E. The Settling Parties Bargained Zealously and in Good Faith

83. As discussed above and in the Phillips Declaration, the Settlement is the result of serious, informed, non-collusive (indeed, at times contentious) negotiations conducted in good faith over many months and was reached only after Lead Plaintiffs' Counsel diligently prosecuted the Classes' claims. As Judge Phillips attests, "[e]ach of the participating parties was represented throughout the mediation process by zealous and able counsel, who had a thorough understanding of the issues involved. The settlements were negotiated aggressively and at arm's-length. I strongly believe that the settlements were reached at the end of a thorough process and represent a very favorable resolution to highly uncertain litigation. The Court will determine the fairness, reasonableness, and adequacy of the settlements, but from a mediator's perspective, I unreservedly recommend them as the result of hard-fought negotiations and as an accurate reflection of the risks and potential rewards of the settled claims." Exhibit 1, Phillips Decl. ¶6.

84. It took an informal meeting, a two-day mediation session, and many months of negotiation after the mediation before the Settlement was reached. Even then, a subsequent mediation was required to allocate the Settlement proceeds between the National Class and the Capital Preservation Classes. It then took seven months to negotiate the Stipulations of Settlement, and a further arbitration to resolve two additional disputes both of which related to the scope of the release language contained in the Stipulations of Settlement. Judge Phillips resolved these matters.

85. This Settlement was reached only after intense litigation and was bargained for at arm's length and there is no hint of collusion.

V. THE REQUEST FOR ATTORNEYS' FEES AND EXPENSES IS REASONABLE AND SHOULD BE AWARDED

86. Lead Plaintiffs' Counsel is applying for fees in the amount of 30% of the $89,500,000 Settlement Fund, or $26,850,500, plus interest as it accrues. Lead Plaintiffs' Counsel also are seeking reimbursement of litigation expenses in the amount of $3,531,103.05, plus interest as it accrues.[20] This amount does not include the request by certain Lead Plaintiffs for reimbursement of expenses in the amount of $5,996.11. As the accompanying Motion asserts, the requested fees and expenses are well within the range of what courts in this Circuit routinely award.

87. The fee is also reasonable on the basis of the lodestar approach. Lead Plaintiffs' Counsel worked as efficiently as possible to keep the time invested by attorneys and professional staff to a moderate level. As explained above, because the Actions were litigated and settled collectively, all time dedicated and expenses paid by Lead Plaintiffs' Counsel should also be viewed collectively.[21] Lead Plaintiffs' Counsel have devoted 24,492.63 hours to prosecuting these Actions. This expenditure of hours, for a lodestar of

[20] This amount also includes the reimbursement of expenses incurred by other plaintiffs' law firms. *See* Exhibit 8. *See also* Dkt. No. 223 at 21-22 (Order Appointing Lead Plaintiffs and Lead Counsel by Fund and Appointing Lead Counsel Liaison). Exhibit 9 contains various tables relevant to fees and expenses, including a summary of Lead Plaintiffs' Counsel's lodestar and all plaintiffs' counsel's expenses.

[21] To the extent any time or expenses have been dedicated to a single case it is viewed as *de minimis* when compared to the total lodestar and expenses. Virtually all the time and expenses expended by Lead Plaintiffs' Counsel benefited all the Actions.

$12,557,437.40, is offered to assist the Court in determining whether the percentage fee to be applied in the Actions constitutes appropriate compensation to Lead Plaintiffs' Counsel. Applying the hourly rate/multiplier cross-check on fees means that Lead Plaintiffs' Counsel would receive a 2.1 multiplier on their hourly fees to compensate for the risks associated with the Actions. Lead Plaintiffs' Counsel have supplied declarations detailing individual attorneys' time and hourly rates. *See* Exhibits 4-7 hereto.

88. Factors to be considered when determining attorneys' fees in these Actions include, among other things: the amount involved and the results obtained, the time and labor involved, the novelty and difficulty of the claims, and awards in similar cases. Here, Lead Plaintiffs' Counsel obtained a very good result for the Classes, and did so in a highly efficient manner.

89. By taking these cases on contingency, Lead Plaintiffs' Counsel also assumed all risk of loss in these Actions, and could recover their expenses and payment of attorneys' fees only if they were able to wrest a recovery from Defendants. There was no government complaint or indictment brought to help advance the Classes' claims. Lead Plaintiffs' Counsel performed all the work that resulted in the proposed Settlement.

90. The legal and factual arguments in support of the award of attorneys' fees and the reimbursement of expenses are further detailed in the Motion submitted herewith. Taken together with this declaration, these submissions demonstrate that Lead Plaintiffs' Counsel worked efficiently to obtain a very good result in this complex litigation.

A. The Results Obtained

91. As set forth in greater detail above and in the accompanying Motion, Lead Plaintiffs' Counsel's efforts have produced a substantial benefit to the Classes. Lead Plaintiffs' Counsel have achieved a settlement valued at $89,500,000. This is a very good recovery for the Classes, given the substantial risks to achieving a recovery, as articulated above and in the Motion. *See* Lead Plaintiffs' Motion for Final Approval of Proposed Class Settlement and Approval of Plan of Allocation at 9-13.

B. The Novelty and Difficulty of the Legal and Factual Questions

92. These Actions, as securities class actions, are inherently complex with difficult legal and factual issues – from the legal hurdles posed by Defendants' defenses of truthful disclosures to the factual intricacies of the investments at issue (inverse floaters, leverage, and credit ratings). The Actions also raised novel legal issues that are evolving and posed significant challenges and risks. For example, the Settling Parties had very different views about whether Lead Plaintiffs would be able to prove loss causation based on the Funds' NAV decline. Defendants argued, and would have continued to argue, that the losses resulted not from purported misstatements or omissions but from the credit crisis.

C. The Risks Assumed By Lead Plaintiffs' Counsel

93. Lead Plaintiffs' Counsel accepted these Actions on a wholly contingent basis. Counsel knew from the outset that they might expend millions of dollars in attorneys' time and expenses in pursuing these Actions on behalf of the Classes, and receive no compensation if the claims ultimately proved unsuccessful. Lead Plaintiffs'

Counsel had no assurance of success. Lead Plaintiffs' Counsel have, to date, not been paid for their effort and time.

94. This declaration and the accompanying Motions describe the substantial risks faced by Lead Plaintiffs in these Actions. The same difficulties also constituted risks that Lead Plaintiffs' Counsel would never be paid for their efforts.

95. There are numerous cases wherein counsel, in contingent-fee cases such as this, after expenditures of thousands of hours, have received no compensation whatsoever. For example, in one case the Eleventh Circuit overturned an $81 million jury verdict for the plaintiff class and ordered the entire litigation dismissed. *See Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997). The *Koger* case is but one such example. Meaningful settlement of actions such as this are only possible because of the knowledge of defendants and their counsel that the leading members of the plaintiffs' bar are prepared and willing to go to trial on these terms.

96. Courts have repeatedly held that it is in the public interest to have experienced and able attorneys enforce the securities laws and regulations. The SEC, a vital but understaffed government agency, does not have the budget or manpower to ensure complete enforcement of the securities laws. If this important public policy is to be carried out, the courts must award fees that will adequately compensate lead counsel, taking into account the enormous risk undertaken with a clear view of the economics of the situation.

97. Another factor in favor of awarding Lead Plaintiffs' Counsel the fees they have requested is the contingent-fee attorney's loss of the use of the money used to prosecute litigation – money that could have been invested and earning the attorney a

profit. Attorneys representing hourly-rate clients are paid regularly during the course of litigation, as Defendants' counsel here probably were. That money is immediately available for investment and creates additional revenue for the attorneys. Such additional revenues are not available to contingent-fee attorneys, and were not available to Lead Plaintiffs' Counsel during the Actions' duration.

D. The Skill and Standing of All Counsel

98. Lead Plaintiffs' Counsel's expertise and experience is another important factor to be weighed in setting a fair fee. Lead Plaintiffs' Counsel are experienced and skilled practitioners in the field of securities litigation, and are responsible for significant settlements as well as legal decisions that enable litigation such as this to be successfully prosecuted, vindicating the interests of Class Members.

99. The quality of the work performed in attaining the Settlement should also be evaluated in light of the quality of the opposition. The Defendants were represented by the prominent firms Dechert LLP and Kramer Levin Naftalis & Frankel LLP, which spared no effort or expense to zealously defend their clients.

100. The quality of work performed by Lead Plaintiffs' Counsel is also reflected by the efficiency with which the Actions were conducted, the coordination among Lead Plaintiffs' Counsel, the demands on Lead Plaintiffs' Counsel that had to be fulfilled to litigate these cases in a competent fashion, and the favorable Settlement obtained despite substantial risks.

101. Lead Plaintiffs' Counsel have significant experience litigating and trying large, complex class actions such as these Actions. The resumes of Lead Plaintiffs'

Counsel are submitted herewith and contain summaries of each respective firm's qualifications. *See* Milberg LLP Firm Resume, attached hereto as Exhibit 4; Cohen Milstein Sellers & Toll PLLC Firm Resume, attached hereto as Exhibit 5; Berger & Montague, P.C. Firm Resume, attached hereto as Exhibit 6; The Shuman Law Firm Resume, attached hereto as Exhibit 7.

E. Lead Plaintiffs' Counsel Agreed to Handle the Actions on a Fully Contingent Basis and Dedicated Substantial Resources Precluding Other Employment

102. Lead Plaintiffs' Counsel accepted this case on a purely contingent fee basis, which means not only that we would not be paid for our time unless we recovered money for our clients, but also that Lead Plaintiffs' Counsel, and other counsel who contributed to the prosecution of the Actions, had to risk more than $3,531,103.05 for litigation expenses. Exhibits 4-9 hereto. This investment would have been uncompensated, which was not the case for Defendants' counsel, if the Actions had been dismissed as a result of Defendants' motions to dismiss or at the class certification, summary judgment or trial stage. As is true in virtually all contingent litigation, working on these Actions for thousands of hours also impacted our firms' ability to take on additional contingent matters.

103. The number of hours expended on these Actions by Lead Plaintiffs' Counsel (24,492.63 hours with a resulting lodestar of $12,557,437.40) attest to counsel's extensive efforts. As we describe in greater detail in each of our firm's declarations, our firms, among other things:

- investigated and analyzed the claims at issue, including a review of all relevant public information, and engaged in extensive research of the

applicable law with respect to the claims and defenses asserted by Defendants (*see supra* at ¶¶ 6-19);

- filed detailed and particularized Amended Complaints after conducting an extensive factual investigation (*see supra* at ¶¶ 8-12);
- successfully defended Defendants' multiple motions to dismiss and related post-motion to dismiss motions (*see supra* at ¶¶ 13-19);
- successfully defended Defendants' motions for partial summary judgment (*see supra* at ¶¶ 35-36);
- reviewed and analyzed millions of pages of documents produced by Defendants (*see supra* at ¶¶ 20-30);
- briefed and argued discovery motions (*see supra* at ¶ 27);
- retained, consulted and worked closely with GFA to perform a complete forensic analysis of the Funds' portfolios during the Class Periods, as well as analysis of key documents produced by Defendants (*see supra* at ¶¶ 37-39);
- retained and consulted with damages experts at FMA in order to analyze Fund transaction data and documents produced by Defendants to assess damages under Sections 11 and 12 of the 1933 Act (*see supra* at ¶ 40);
- engaged in extensive settlement negotiations with Defendants, including a two-day mediation before Judge Phillips (*see supra* at ¶¶ 42-46);

- worked with wholly independent counsel to resolve the allocation issues between the Actions, culminating in an allocation mediation session before Judge Phillips (*see supra* at ¶¶ 47-52); and
- documented the Settlement and oversaw an extensive notice and administration process (*see supra* at ¶¶ 54-62).

104. Assuming a $26,850,000 attorneys' fee, Lead Plaintiffs' Counsel's lodestar of $12,557,437.40, at Lead Plaintiffs' Counsel's regular current rates, would yield a "multiplier" of approximately 2.1.

F. The Request for Reimbursement of Expenses Is Reasonable

105. Lead Plaintiffs' Counsel respectfully seek reimbursement in the amount of $3,531,103.05, plus interest, for litigation expenses incurred in prosecuting the Actions ($581,257.64 of which is still due and owing, as reflected in Exhibit 9 hereto).

106. Contemporaneously with this declaration, all plaintiffs' counsel seeking reimbursement submitted declarations attesting to the accuracy of their expenses. These declarations, attached hereto as Exhibit 8, itemize the various categories of expenses incurred. Also included is an account of disbursements made from Lead Plaintiffs' Counsel's litigation funds in this case. *See* Exhibit 9.

G. Class Representatives Are Entitled to Reimbursement of Reasonable Lost Wages and Expenses

107. Class Representatives seek reimbursement of their reasonable expenses, pursuant to the PSLRA, 15 U.S.C. § 77z-1(a)(4), incurred in connection with their representation of their respective Class, in the total amount of $5,996.11. Lead Plaintiffs

Peter Unanue and John Vazquez have submitted declarations supporting their respective requests for reimbursement of their expenses. *See* Exhibits 10-11.

108. The Notice apprised the Classes that Lead Plaintiffs' Counsel might seek reimbursement of the Class Representatives' time and expenses in an amount not to exceed $5,000 each. The amount requested above is equal to or below this cap.

VI. SETTLEMENT NOTICE AND THE CLASSES' REACTION

109. By the Preliminary Approval Order entered March 12, 2014, the Court preliminarily approved the terms of the Settlement and directed that notice of the Settlement be mailed to each potential Class Member who could be identified through reasonable efforts by May 7, 2014 and that a Summary Notice of the proposed Settlement be published in *Investor's Business Daily* and transmitted over PRNewswire by May 21, 2014. As attested to by Epiq, the Claims Administrator (*see* Exhibit 12 hereto), 416,522 copies of the individual notice have been mailed as of May 7, 2014, and the Summary Notice was published on May 13, 2014.

110. All objections and requests for exclusion must be mailed and postmarked by July 21, 2014. As of June 10, 2014, zero objections and twelve requests for exclusion have been received. Lead Plaintiffs' Counsel will address any future objections in their reply papers in further support of the Settlement, which will be filed with the Court, if necessary, on July 24, 2014.

VII. CONCLUSION

111. In achieving the proposed Settlement, Lead Plaintiffs' Counsel carefully considered several factors. Based on all these factors, as well as the extensive experience

Lead Plaintiffs' Counsel have in the litigation of securities class actions, we believe that the proposed $89,500,000 Settlement, which will compensate Class Members immediately, is far more beneficial than waiting years for an uncertain outcome at trial and after likely appeals.

112. The Settlement and the proposed Plan of Allocation are fair, reasonable and adequate in light of the criteria generally considered.

113. Lead Plaintiffs' Counsel also respectfully request that this Court grant their application for a joint award of attorneys' fees in the amount of $26,850,000, plus interest at the rate earned by the Settlement Fund; expenses in the amount of $3,531,103.05, plus interest at the rate earned by the Settlement Amount; and Lead Plaintiffs' expenses in the amount of $5,996.11.

We declare, under penalty of perjury, that the foregoing is true and correct to the best of our knowledge.

Executed this 11th day of June 2014.

s/ Steven J. Toll
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Certificate of Service

I hereby certify that the foregoing was filed with this Court on June 11, 2014 through the CM/ECF system and will be sent electronically to all registered participants as identified on the Notice of Electronic Filing, and paper copies will be sent to those indicated as non-registered participants.

s/ Rusty E. Glenn
Rusty E. Glenn