

EXHIBIT 2

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I. INTRODUCTION

Subject to approval by the United States District Court for the District of Massachusetts (the “Court”), this Settlement Agreement (“Settlement Agreement,” “Settlement” or “Agreement”) sets forth the terms by which plaintiffs Richard Turnley III, Baron H.C. Finlayson, Coleen Alecia Hinds, Mark-Anthony Brown, Timothy Johnson II, Khairi Dwayne Rahman, Rahmel Hobbs and Terry M. Gravely (“Named Plaintiffs”), on behalf of themselves and members of the Class defined herein, on the one hand, and Defendants Banc of America Investment Services, Inc. and Bank of America, N.A. (“Defendants” or the “Bank”), on the other, have agreed to settle and resolve all claims that have been raised or that could have been raised in the Second Amended Complaint filed by the Named Plaintiffs on September 17, 2008. This Settlement applies to all African-American Financial Advisors and Premier Client Managers employed within the Premier Banking & Investments division of the Bank during the period from and including April 1, 2003 through March 24, 2009.

II. NATURE AND RESOLUTION OF THE CASE

A. Plaintiffs Richard Turnley III, Baron H.C. Finlayson, Coleen Alecia Hinds, Mark-Anthony Brown, and Timothy Johnson II filed a Complaint with the Court on May 18, 2007, on behalf of themselves and on behalf of a putative nationwide class of African-American Financial Advisors and Premier Client Managers, asserting claims against the Bank under 42 U.S.C. § 1981, as amended (“§ 1981”), and Massachusetts General Law Chapter 151B (“M.G.L. c.151B”), a Massachusetts statute prohibiting discrimination on the basis of race.

B. On August 20, 2007, Defendants filed an Answer to and a motion to transfer the § 1981 claim, and a motion to dismiss the M.G.L. c.151B claim. Plaintiffs opposed Defendants’ motions and, on November 13, 2007, sought leave to amend the complaint to add a claim on behalf of Khairi Dwayne Rahman and to add a claim under Title VII of the Civil Rights Act of

1964, as amended, 42 U.S.C. § 2000(e), *et seq.*, (“Title VII”). The Court granted plaintiffs’ motion and denied Defendants’ motions as moot. The Amended Complaint was filed on November 29, 2007.

C. On December 21, 2007, Defendants filed a new Answer to the § 1981 claim, and motions to transfer the § 1981 claim, to dismiss the M.G.L. c.151B claim, and to dismiss or transfer the Title VII claim. Plaintiffs opposed the motions on January 11, 2008, and on April 7, 2008, sought leave to amend the complaint to add a claim on behalf of Rahmel Hobbs. On July 28, 2008, plaintiffs sought leave to amend the complaint to add a claim on behalf of Terry M. Gravely.

D. By Order dated September 17, 2008, the court granted plaintiffs’ motion to amend the complaint and denied Defendants’ motions to dismiss or transfer. Plaintiffs filed the Second Amended Complaint on September 17, 2008.

E. The Complaint, the Amended Complaint, and the Second Amended Complaint alleged that the Bank discriminates against African-American Financial Advisors and Premier Client Managers with respect to compensation, hiring, promotion, termination, training, access to financial accounts and business and distribution of employee account assignments. For example, the complaints alleged that the Bank discriminates by partnering African-American Financial Advisors with African-American Premier Client Managers and then steering these minority partnerships to low net-worth sales territories comprised largely of minority client pools.

F. Defendants deny the allegations in the Complaint, the Amended Complaint and the Second Amended Complaint, and in connection therewith deny any liability under Title VII, §1981, M.G.L. c.151B, and/or any other federal, state or local laws, and specifically deny that the Bank unlawfully discriminated against Named Plaintiffs or other Class Members on the basis

of race or color, and/or that Named Plaintiffs or other Class Members are otherwise entitled to the relief requested or any other relief.

G. This Settlement was reached only after extensive discussions conducted under the supervision of an experienced mediator, Hunter Hughes, Esq. Counsel for the parties are experienced class action lawyers who retained Mr. Hughes for his expertise in mediating many complex class actions, including those involving race discrimination in employment. Mr. Hughes conducted a two-day in-person mediation session between the parties in New York. At all times during this process, counsel bargained vigorously and at arm's length on behalf of their respective clients.

H. The parties to this Agreement have conducted a thorough examination and investigation of the facts and law relating to the subject matters set forth in the Second Amended Complaint and the claims set forth therein. Prior to mediation, significant discovery had already taken place. Specifically, Defendants produced substantial statistical data (including compensation, employment, performance, and demographic information) regarding Financial Advisors and Premier Client Managers for the Class Period, and Class Counsel engaged a statistician to review and analyze that data. Defendants also produced two million pages of documents and over two million records of readily available employment-related data, and plaintiffs deposed numerous Bank managers and employees. Plaintiffs responded to and produced documents in response to Defendants' interrogatories and document requests. This information informed counsel regarding the strengths and weaknesses of their respective positions and provided them a full opportunity to assess the litigation risks presented in this case.

I. Class Counsel and Defendants' Counsel (as defined herein) recognize the costs and risks of prosecuting this litigation through class certification, summary judgment, trial, and

appeal. Class Counsel believes that it is in the interest of all members of the Settlement Class to resolve finally and completely the claims of the Class Members against Defendants. Class Counsel believes that the terms of the Settlement Agreement are in the best interests of the Class and are fair, reasonable, and adequate. Defendants wish to bring the litigation to a conclusion on the terms set forth in this Settlement Agreement.

J. Without any admission or concession by Defendants of any liability or wrongdoing with respect to the allegations in the Complaint, the Amended Complaint or the Second Amended Complaint, all released claims shall be finally and fully compromised, settled, and released subject to the terms and conditions of this Settlement Agreement, which were the subject of negotiation and agreement by the parties.

K. Plaintiffs believe that the claims asserted in this Action have merit and that the evidence developed to date supports those claims. However, Plaintiffs recognize and acknowledge the expenses and length of continued proceedings necessary to prosecute the Action against Defendants through trial and appeals. Plaintiffs have also taken into account the uncertain outcome and the risk of any litigation, especially in complex class actions such as this Action, as well as the difficulties and delays inherent in such Action. Plaintiffs are also mindful of the inherent difficulties of proof under and possible defenses to the discrimination law violations asserted in the Action. Plaintiffs and their counsel believe that the Settlement set forth in this Settlement Agreement confers substantial benefits upon Class Members and is in the best interest of the Settlement Class.

III. GENERAL TERMS OF THE SETTLEMENT AGREEMENT

A. **Definitions.** In addition to terms identified and defined elsewhere in this Settlement Agreement, and as used in this Settlement Agreement, the terms below shall have the following meanings:

1. “Action” means the lawsuit styled *Turnley et al. v. Banc of America Investment Services, Inc. et al.*, Civ. No. 07-10949-NG, pending in the United States District Court, District of Massachusetts.

2. “Amended Complaint” means the First Amended Complaint filed in this Action on November 29, 2007.

3. “Claim Form” means the forms attached hereto as parts of **Exhibit A** and **Exhibit B**, which will be mailed to Named Plaintiffs and other Class Members along with the Notice. The Claim Form must be submitted by Class Members to the Claims Administrator as part of the claims process in order to be eligible to participate in the distribution of the Settlement Fund.

4. “Claims Administrator” means Rust Consulting, which has been designated by Defendants to administer the Settlement pursuant to Section VIII below and any orders of the Court. Defendants shall not designate a party to serve as Claims Administrator without the consent of Class Counsel, which consent shall not be unreasonably withheld.

5. “Claimant” means a Class Member who did not timely opt out of the monetary relief portion of the Settlement and who timely submits a properly executed Claim Form and (as appropriate) Class Member Release or Named Plaintiff Release.

6. “Class Counsel” means the law firm of Bernstein, Litowitz, Berger & Grossmann LLP.

7. “Class Member” means any person who meets the criteria set forth in the definition of “Settlement Class” below.

8. “Class Member Release” means the Release and Indemnification Agreement, in the form agreed to by counsel for the parties and attached hereto as part of **Exhibit A**.

9. “Class Period” means the period from April 1, 2003 through March 24, 2009.

10. “Complaint” means the Complaint filed in this Action on May 18, 2007 unless otherwise indicated.

11. “Court” means the United States District Court, District of Massachusetts.

12. “Defendants’ Counsel” means the law firms of Covington & Burling LLP and Bingham McCutchen LLP.

13. “Depository Bank” means the financial institution selected by Class Counsel to serve as escrow agent, to receive, hold, invest, and disburse the Settlement Fund in accordance with the terms of this Settlement Agreement and any order of the Court.

14. “Distribution Date” means the date on which all of the following have occurred: (1) the Court has signed and entered an order finally approving the Settlement; (2) the Court has dismissed the Action with prejudice; and (3) the time for appeal, including appeals as to only the attorneys’ fee or expense award, or only the Plan of Allocation, or only both, has either run without an appeal being filed or any appeal (including any requests for rehearing *en banc*, petitions for certiorari or appellate review, or proceedings on remand) has been finally resolved.

15. “Diversity Monitor” means the individual appointed to carry out the duties specified in Section VII.C. of this Agreement.

16. "Effective Date" means the date on which all of the following have occurred: (1) the Court has signed and entered an order finally approving the Settlement; (2) the Court has dismissed the Action with prejudice; and (3) the time for appeal has either run without an appeal being filed or any appeal (including any requests for rehearing *en banc*, petitions for certiorari or appellate review, or proceedings on remand) has been finally resolved. As explained below, an appeal addressing only the attorneys' fee or expense award, or only the Plan of Allocation, or only both, does not affect the Effective Date. In the event that an appeal is filed that Defendants in good faith believe addresses more than only the attorneys' fee or expense award, or only the Plan of Allocation, or only both, Defendants shall notify Class Counsel within fifteen (15) days after the appeal is filed that the Effective Date has not occurred. Any dispute between Class Counsel and the Bank regarding whether or not the Effective Date has occurred shall be resolved through the dispute resolution process set forth in Section IX.B of this Settlement Agreement.

17. "Final Approval" means the date on which the Court grants final approval of the Settlement and dismisses the Action with prejudice.

18. "Financial Advisor" means a person employed by Banc of America Investment Services, Inc. as a Financial Advisor (*i.e.*, a person with one of the following job codes: SI013, SI025, SI052, SI063, SI067). Notwithstanding the foregoing, and for the avoidance of doubt, the term "Financial Advisor" does not include brokers and/or financial advisors employed by Merrill Lynch who became employees of the Bank by operation of the merger between Bank of America, N.A. and Merrill Lynch.

19. “Named Plaintiff Release” means the General Release and Indemnification Agreement, in the form agreed to by counsel for the parties and attached hereto as part of **Exhibit B**.

20. “Notice” means the Notice of Pendency of Class Action, Proposed Settlement, and Settlement Hearing, which is to be mailed directly to Class Members, in substantially the form attached hereto as **Exhibit C**.

21. “Notice of Award” means the letter sent to each eligible Claimant specifying the amount of that Claimant’s award and enclosing the Claimant’s award check.

22. “PB&I” means the Premier Banking and Investments division of the Bank.

23. “Plaintiffs” means Richard Turnley III, Baron H.C. Finlayson, Coleen Alecia Hinds, Mark-Anthony Brown, Timothy Johnson II, Khairi Dwayne Rahman, Rahmel Hobbs, Terry M. Gravely and the Settlement Class.

24. “Premier Client Manager” means a person employed by Bank of America, N.A., as a Premier Client Manager (*i.e.*, a person with one of the following job codes: BP002, BP003, BP014, BP016, BP017, BP018, BP019, BP020, BP021, BP024, BP025, BP026, BP027, BP028, BP029, BP030, BP042, BP050, BP055, BP076).

25. “Preliminary Approval” means the date on which the Court grants preliminary approval of the Settlement and enters a Preliminary Approval Order in substantially the form attached hereto as **Exhibit D**.

26. “Programmatic Relief” means the programmatic relief set forth in Section VII of this Agreement.

27. “Second Amended Complaint” means the Second Amended Complaint filed in this Action on September 17, 2008.

28. "Settlement Class" or "Class" means the class that the parties jointly seek to have certified, solely for the purposes of this Settlement, which is defined as all African-Americans employed as Financial Advisors or Premier Client Managers in PB&I at any time between April 1, 2003 and March 24, 2009.

29. "Settlement Fund" or "Fund" means the settlement monies transferred by Defendants to the Depository Bank, pursuant to this Settlement Agreement, including all interest earned thereon, to be held, invested, administered, and disbursed pursuant to this Settlement Agreement.

30. "Settlement Hearing" means the hearing at which the Court will consider final approval of this Settlement Agreement and related matters.

B. Duration of the Settlement. The Programmatic Relief embodied in this Settlement Agreement and the agreements incorporated in it shall remain binding on the parties and their agents and successors for a two-year period following the Effective Date.

C. Cooperation. The parties agree that they will cooperate to effectuate and implement all terms and conditions of this Settlement Agreement, and exercise good faith efforts to accomplish the terms and conditions of this Settlement Agreement, except that Defendants will take no position with respect to Class Counsel's application for an award of attorneys fees and expenses (the attorneys' fee portion of the request shall not exceed one-third of the total Settlement Fund net of Court-approved expenses). The parties agree to accept non-material and procedural changes to this Settlement Agreement if so required by the Court in connection with Final Approval of the Settlement, but are not obligated to accept any changes in the monetary amount of relief or the substantive Programmatic Relief provided for herein, or any other substantive change.

D. Persons Covered by this Settlement Agreement.

1. **Definition of "Settlement Class," "Class" or "Class Members."**

Solely for purposes of Settlement and judicial approval of this Settlement Agreement, the parties stipulate to the certification of the following Settlement Class:

All African-Americans who were employed as Financial Advisors or Premier Client Managers in the Premier Banking & Investments division of Bank of America at any time between April 1, 2003 and March 24, 2009.

2. **Certification.** The Class will be certified pursuant to Fed. R. Civ.

P. 23(b)(2) and 23(b)(3). Pursuant to Fed. R. Civ. P. 23(b)(2), Class Members may not exclude themselves, or opt-out, of the injunctive relief provisions of the Settlement.

3. **Class Size.** Defendants represent and warrant that there are 515 or fewer members of the Settlement Class.

IV. COURT APPROVAL/NOTICE AND FAIRNESS HEARING

A. Jurisdiction and Venue.

1. The parties agree, for purposes of Settlement and judicial approval of this Settlement only, that the Court has jurisdiction over the parties and the subject matter of this Action and that venue is proper. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Settlement Agreement.

B. Preliminary Approval.

1. The parties have agreed upon a form for written Notice of this Settlement to Class Members, subject to Court approval. The form Notice is attached hereto as **Exhibit C**.

Within fourteen (14) days after the execution of this Settlement Agreement, the parties shall submit a joint motion to the Court for entry of an order preliminarily approving the settlement ("Preliminary Approval Order"), in substantially the form attached hereto as **Exhibit D**.

C. Notice and Settlement Hearing.

1. Defendants shall provide to the Claims Administrator, within ten (10) days after Preliminary Approval of this Settlement Agreement, the name, employee number, Social Security number, and last known address of each Class Member. The Claims Administrator shall utilize Class Members' Social Security and employee numbers only for the purpose of locating and identifying Class Members and shall otherwise keep those Social Security and employee numbers confidential. Up to and after the Notice Date (as defined below), the Claims Administrator shall use commercially reasonable efforts to locate and send the Notice and Claim Form to Class Members, and may engage third-party vendors in order to locate Class Members, at Defendants' expense. The Claims Administrator will maintain a log of its activities undertaken pursuant to this section, reviewable by Class Counsel upon request.

2. Within twenty (20) days after Preliminary Approval of the Settlement Agreement, the Claims Administrator will mail by first-class mail postage prepaid the Notice, Claim Form and, as applicable, either the Named Plaintiff Release or the Class Member Release, to each Class Member in substantially the forms agreed upon by the parties and attached hereto as **Exhibits A-C** (the "Notice Date"). The parties intend to provide actual notice to each Class Member, to the extent practicable.

3. Class Member objections to this Settlement must be submitted in writing, and must include a detailed description of the basis of the objection. Objections must be filed

with the Court, with copies served on Class Counsel and Defendants' Counsel, within forty-five (45) days after the Notice Date. No one may appear at the Settlement Hearing for the purpose of objecting to the Settlement without first having filed and served his or her objection(s) in writing within forty-five (45) days after the Notice Date.

4. Any Class Member who wishes to opt out of the Settlement Class must mail to the Claims Administrator a written, signed statement that she or he is opting out. The Claims Administrator shall promptly provide Class Counsel and Defendants' Counsel with copies of such statements, as they are received. In connection with seeking final approval of the Settlement, Class Counsel shall file with the Court a list of all Class Members who have timely requested to opt out. The Settlement Class, insofar as it seeks monetary relief, will not include those individuals who file and serve a timely opt-out statement, and individuals who opt out are not entitled to any monetary award under this Settlement Agreement. In the event of any valid opt-outs, Defendants do not release or waive, and shall expressly retain, all defenses otherwise available to Defendants with respect to those opt outs, and the individual opting out does not release or waive, and shall expressly retain, all claims or defenses otherwise available to that individual. With respect to each such individual, the statute of limitations for them to assert any claims for individual relief will resume running on the postmark date when he or she mails his or her signed, written statement that he or she is opting out of the Settlement Class. To be effective, this opt-out statement must be received by the Claims Administrator on or before forty-five (45) days after the Notice Date and follow the procedures specified in the Notice for opting out. Class Members who file opt-outs may rescind their opt-outs in accordance with the procedures specified in the Notice.

5. Upon Preliminary Approval, a briefing schedule and Settlement Hearing Date will be set at the Court's convenience. The time periods referenced in this Section IV.C. are guidelines; actual dates will be inserted in the Preliminary Approval Order by the Court.

D. Final Approval

1. Upon Preliminary Approval, a Settlement Hearing date will be set at the Court's convenience, but in no event earlier than one hundred (100) days after the date on which the parties submit a joint motion to the Court for entry of an order preliminarily approving the settlement. *See* 28 U.S.C. § 1715.

2. The parties' joint Motion for Final Approval and for Certification of the Settlement Class will be due no earlier than twenty-one (21) days following the close of the objection and opt-out period, and the Settlement Hearing will be held no earlier than thirty (30) days following the close of the objection and opt-out period. Class Counsel's motion for attorneys' fees and expenses shall be due on the same date as the parties' joint Motion for Final Approval. The time periods referenced in this Section IV.D.2 are guidelines; actual dates will be inserted in the Preliminary Approval Order by the Court.

3. In connection with the parties' Motion for Final Approval, the parties shall submit to the Court a proposed order (the "Final Approval Order") in substantially the form attached hereto as **Exhibit E**.

E. Termination Of The Settlement

1. In the event that this Settlement Agreement does not become final and binding, no party shall be deemed to have waived any claims, objections, rights or defenses, or legal arguments or positions, including, but not limited to, claims or objections to class certification, jurisdiction, venue and/or claims and defenses on the merits. Neither this

Settlement Agreement nor the Court's Preliminary or Final Approval hereof shall be admissible in any court regarding the propriety of class certification or regarding any other issue or subject (except for the purpose of enforcing this Settlement Agreement). Each party reserves the right to prosecute or defend this Action in the event that the Settlement Agreement does not become final and binding.

2. If the number of Class Members who have duly requested exclusion from the Settlement Class in the manner provided in the Court's Preliminary Approval Order equals or exceeds the numbers set forth in the supplemental agreement filed with the Court under seal concurrently with this Settlement Agreement ("Supplemental Agreement"), Defendants shall have the right, for twenty (20) days after the deadline for Class Members to opt out, either to withdraw from and fully terminate this Settlement Agreement by providing written notice to Class Counsel and the Court, or to take the Opt-Out Credit described in the Supplemental Agreement. Failure to provide written notice to withdraw within the aforesaid twenty (20) day period constitutes a waiver and termination of Defendants' right to withdraw pursuant to this paragraph.

3. If Defendants exercise their option to withdraw from the Settlement or if this Settlement Agreement is not approved by the Court or for any other reason is terminated or fails to become effective in accordance with its terms (or, if following approval by this Court, such approval is reversed or substantively modified), the parties shall be restored to their respective positions that existed in this Action as of March 31, 2009; the terms and provisions of this Settlement Agreement shall have no force or effect and shall not be used in this Action or in any proceeding for any purpose; the Settlement Fund shall be returned to Defendants, including the interest earned by the Settlement Fund through the date of termination, less taxes or other

fees and expenses reasonably incurred; any Judgment entered by the Court in accordance with the terms of this Settlement Agreement shall be treated as vacated, *nunc pro tunc*; and the litigation of the Action will resume as if there had been no Settlement Agreement, with no stipulated Class. The parties retain all rights, claims, and defenses as to class certification and otherwise as to any of the allegations asserted in this Action. This Settlement Agreement will not be considered an admission of liability by Defendants. Defendants will remain liable for any costs and taxes incurred in connection with the administration of the Settlement through the date of the termination of the Settlement.

V. RELEASE/BAR OF CLAIMS

A. **Class Member Release.** All Class Members, other than the Named Plaintiffs, as a condition of receiving a monetary payment in conjunction with this Settlement Agreement, will be required to execute and timely deliver to the Claims Administrator a Class Member Release in the form agreed to by counsel for the parties and attached hereto as part of **Exhibit A**. The Class Members, excluding the Named Plaintiffs, will release all claims, known and unknown, existing through the date of Preliminary Approval, under any federal, state or local legal theory, for race and/or color discrimination, including any claims sounding in tort or contract, based in whole or in part on allegations that were or could have been included in the Second Amended Complaint. Upon entry of the Final Approval Order, every Class Member (other than Named Plaintiffs) who has not timely opted out of the Class shall be deemed to have executed the release attached hereto as part of **Exhibit A** by operation of the Final Approval Order, regardless of whether he or she executes a Class Member Release or receives any share of the Settlement Fund.

B. **Named Plaintiff Release.** The Named Plaintiffs, as a condition of receiving a monetary payment (including any Service Award) in conjunction with this Settlement Agreement, will be required to execute and timely deliver to the Claims Administrator a Named

Plaintiff Release in the form agreed to by counsel for the parties and attached hereto as part of **Exhibit B**. The Named Plaintiff Release is not a limited release of claims of race or color discrimination but instead releases all claims of any nature against Defendants under federal, state and local laws for any period up through the date of Preliminary Approval, as well as any and all rights or claims that Named Plaintiff may have to reinstatement, employment or re-employment with the Bank. Upon entry of the Final Approval Order, Named Plaintiffs shall be deemed to have executed the release attached hereto as part of **Exhibit B** by operation of the Final Approval Order, regardless of whether he or she executes a Named Plaintiff Release, or receives any share of the Settlement Fund.

C. The terms of the releases, attached hereto as parts of **Exhibits A and B** (collectively, the "Releases"), are a material part of this Settlement Agreement and are hereby incorporated as if fully set forth in the Settlement Agreement; if these Releases, attached hereto as **Exhibits A and B**, are not finally approved by the Court, or the Settlement Agreement cannot become effective for any reason and the Settlement set forth in this Settlement Agreement shall terminate as provided in Sections IV.E of this Settlement Agreement, then the Named Plaintiff Releases and Class Member Releases shall terminate *nunc pro tunc* and be of no force and effect.

D. In the event that any Class Member does not execute and timely deliver a Claim Form and/or a Class Member Release (*see Exhibit A*), or any Named Plaintiff does not execute and timely deliver a Claim Form and/or the Named Plaintiff Release (*see Exhibit B*), he or she shall be ineligible for, and forever barred from receiving, monetary relief under this Settlement Agreement, even if said Class Member or Named Plaintiff has not opted out.

E. Upon the Effective Date, Defendants shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the

Named Plaintiffs, and their respective attorneys, from any and all actions, causes of action, suits, liabilities, claims, and demands whatsoever, whether known or unknown, arising out of the Named Plaintiff's employment at the Bank up through March 24, 2009, **except that** Defendants do not release Named Plaintiffs from (1) any claims against any Named Plaintiff by Defendants relating to promissory notes issued by any Named Plaintiff, or (2) any claims against any Named Plaintiffs in his or her capacity as a customer or client of any financial product or service offered or provided by Defendants or any of Defendants' subsidiaries or affiliates ("Defendants' Release").

F. Upon the Effective Date, Defendants and their counsel, Named Plaintiffs, Class Members, Class Counsel, and anyone claiming through or on behalf of any of them, agree to release all claims and covenant not to commence or institute any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, against Defendants and their counsel, Named Plaintiffs, Class Counsel, or other Class Members arising out of, or relating to the institution, prosecution, assertion, settlement or resolution of the Action or the released claims. Notwithstanding the foregoing, and for the avoidance of doubt, Defendants do not release Class Members from any claims against Class Members by Defendants relating to promissory notes issued by Class Members.

VI. NO ADMISSION, NO DETERMINATION

A. This Settlement Agreement does not, and is not intended to constitute, nor shall it be deemed to constitute, an admission by any party as to the merits, validity or accuracy of any of the allegations, claims or defenses of any party in this case. The Class Members continue to assert the merits and validity of their claims under Title VII, 42 U.S.C. § 1981 and M.G.L. c.151B. By entering into this Agreement, Defendants do not admit or concede, expressly or impliedly, but deny that they have in any way violated any federal, state or local law, statute,

ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Neither the Court nor any other court has made any findings or expressed any opinion concerning the merits, validity or accuracy of any of the allegations, claims or defenses in this case.

B. Nothing in this Settlement Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the mediation or negotiations leading to this Settlement Agreement, is intended by the parties to, nor shall they constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other proceeding of whatsoever kind or nature as evidence of discrimination, retaliation or racial harassment or as evidence of a violation of any federal, state or local law prohibiting race discrimination, the common law of any jurisdiction, or any other federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in a proceeding to enforce or implement any provision of this Settlement Agreement or to implement any orders or judgments of the Court entered into in connection herewith.

VII. PROGRAMMATIC RELIEF

A. **Communications.** Defendants shall make available a Non-Discrimination and Anti-Harassment Policy (the "Policy") to all PB&I employees on the Bank's intranet site. In addition, a senior executive with the Bank's Global Wealth & Investment Management division shall issue a separate statement in support of the Policy and its underlying tenets.

The Policy shall include, at a minimum: (1) a prohibition against discrimination on the basis of race or color in hiring, compensation and other terms and conditions of employment, (2) a prohibition against retaliation for reporting race or color discrimination, (3)

examples of potentially discriminatory behavior to be avoided, and (4) notification of how an employee may make a complaint internally.

B. **Training.** Both the Policy itself and the behaviors it seeks to promote and prevent shall be the subject of a mandatory training (the "Training") that all Financial Advisors and Premier Client Managers (if any), as well as their immediate managers and the supervisors of their immediate managers, will be required to complete at regular intervals.

C. **Diversity Monitor.**

1. Within thirty (30) days after the Effective Date, Defendants shall assign to an (existing or new) employee of the Bank the responsibilities of internal Diversity Monitor hereunder. The Diversity Monitor shall have responsibility for oversight of issues relating to diversity and inclusion within PB&I. This shall include the following:

a. The Diversity Monitor will implement and/or monitor the implementation of the Policy and the Training;

b. The Diversity Monitor will review the process for investigation and resolution of complaints relating to race discrimination by Human Resources; and

c. The Diversity Monitor will consult with the Industrial Psychologist upon the Industrial Psychologist's appointment as required below.

D. **Industrial Psychologist.**

1. Within twelve (12) months after the Effective Date, Defendants shall appoint an external Industrial Psychologist, who will be compensated by Defendants. Defendants shall select an Industrial Psychologist who is reasonably acceptable to Class Counsel. The Industrial Psychologist will work with the Diversity Monitor to review the Policy and the Training implemented pursuant to this Agreement. The Industrial Psychologist will also

review, from the standpoint of diversity and inclusion, the following Bank policies and procedures:

a. Defendants' policies for the reporting, investigation and resolution of complaints by Financial Advisors or Premier Client Managers regarding race discrimination;

b. Defendants' policies (if any) regarding the assignment of client accounts (including the accounts of departing Financial Advisors or Premier Client Managers) and/or leads (including call-ins and walk-ins) to Financial Advisors and Premier Client Managers;

c. Defendants' policies (if any) regarding the partnering of Financial Advisors with Premier Client Managers and/or other Financial Advisors; and

d. Defendants' policies (if any) regarding the assignment of Financial Advisors or Premier Client Managers to banking centers and/or geographic territories.

2. After completing his or her review of the policies and procedures set forth above, the Industrial Psychologist shall present preliminary recommendations to the Bank concerning potential improvements to those policies and procedures. The Bank and the Industrial Psychologist will thereafter engage in a dialogue regarding the feasibility and appropriateness of the Industrial Psychologist's recommendations. At the conclusion of that process, the Industrial Psychologist shall issue final recommendations ("Recommendations") to the Bank. A copy of the Recommendations will also be provided to Class Counsel., who shall treat them as confidential pursuant to Section X below. Within forty-five (45) days after receipt of the Recommendations, the Bank shall determine, in good faith and after careful consideration, whether and how to implement the Recommendations. Both the preliminary and final recommendations of the Industrial Psychologist shall be made solely for the purposes of this

Settlement and shall not be admissible for any other purpose in any litigation against Defendants. Within ten (10) business days after Defendants reach the decisions in this paragraph, Defendants shall provide a confidential statement for Class Counsel identifying which Recommendations the Bank will implement and which it will not.

3. If it becomes necessary to replace the Industrial Psychologist, Defendants shall select the replacement. Defendants shall not select someone to serve as the Industrial Psychologist without the consent of Class Counsel, which consent shall not be unreasonably withheld.

VIII. MONETARY RELIEF

A. **Settlement Fund.** No later than fourteen (14) days after Preliminary Approval, Defendants shall pay by wire transfer to the Depository Bank the sum of \$7,200,000 (“Settlement Sum”). The Settlement Sum will be placed, as directed by Class Counsel, in an interest-bearing escrow account, intended by the parties to be a “Qualified Settlement Fund” as described in Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, et seq. This payment is made in order to satisfy (1) the claims of Class Members and the Named Plaintiffs, including any Service Awards awarded by the Court to Named Plaintiffs, (2) any costs or attorneys’ fees awarded by the Court, and (3) for other purposes identified in this Section. The monies so transferred, together with interest subsequently earned thereon, shall constitute the Settlement Fund. The Settlement Sum transferred into the Settlement Fund by Defendants shall, with the additional Employer Payroll Tax Payment and Claims Administration Payment described below, as well as all costs for the Programmatic Relief, constitute the maximum total Settlement cash outlay by Defendants in connection with: (1) the resolution of this matter; (2) this Settlement Agreement (and attachments); and (3) the dismissal of this Action.

B. The Settlement Fund, plus interest (and less any Opt-Out Credit), shall be applied as follows: (a) to pay attorneys' fees and expenses, with interest thereon, to the extent allowed by the Court; (b) to pay Named Plaintiffs' Service Awards, to the extent allowed by the Court; (c) to pay the taxes and expenses described herein; and (d) to distribute the balance of the Settlement Fund, plus interest (the "Net Settlement Fund"), to Claimants as allowed by this Settlement Agreement, the Plan of Allocation, or the Court.

1. Claims Administration Payment. The Settlement Sum payment to the Settlement Fund does not include costs incurred in connection with the administration of the Settlement – including, but not limited to, those related to notice, claims processing, legal advice obtained by the Claims Administrator relating to the establishment of the Qualified Settlement Fund, tax treatment and tax reporting of awards to Claimants, and preparation of the Fund's tax returns – which will be paid separately by Defendants to the Claims Administrator (the "Claims Administration Payment"). If the Effective Date does not occur, or if the Settlement Agreement is terminated pursuant to its terms, neither Named Plaintiffs nor Class Counsel shall have any obligation to repay any expenses paid, incurred or owing, including but not limited to, expenses paid, incurred or owing to the Claims Administrator (*e.g.*, for providing notice to Class Members or for the preparation of tax returns).

2. Employer Payroll Tax Payment. The Settlement Sum payment to the Settlement Fund does not include Defendants' share of taxes or contributions (*i.e.*, FICA, FUTA, SUTA and Medicare), which will be paid separately by Defendants to the Claims Administrator as specified in Section VIII.H.2. (the "Employer Payroll Tax Payment"). Defendants shall, upon notice from the Claims Administrator as required in Section VIII.H.2. below, remit any required

Employer Payroll Tax Payment to the Claims Administrator, who will ensure that the Employer Payroll Tax Payment is properly and timely paid.

3. Opt-Out Credit If Defendants shall become entitled to any Opt-Out Credit as described in Section IV.E.2, the Claims Administrator shall return the amount required by the credit to Defendants as soon as practicable. Defendants' total monetary obligation under the Settlement shall be reduced by the amount of any Opt-Out Credit provided to Defendants.

C. Prior Claims By Or Agreements With Class Members. Class Members who previously released claims against the Bank shall nevertheless be eligible to receive a monetary award under this Settlement. Notwithstanding the foregoing, Defendants do not intend to, and do not, otherwise waive any releases given by Class Members to the Bank.

D. Claims Filing Procedures. Each Class Members shall submit a Claim Form and, as appropriate, either a properly executed Named Plaintiff Release or Class Member Release (*see Exhibits A and B*), to the Claims Administrator in accordance with the procedures set forth therein. In order to be eligible for an award from the Settlement Fund, Class Members must timely submit a Claim Form and either a properly executed Named Plaintiff Release or Class Member Release (as appropriate), which must be postmarked by the date specified therein.

This is not a claims-made settlement. Accordingly, once all conditions of the Settlement Agreement are satisfied, no portion of the Settlement Fund (except for any Opt-Out Credit) will be returned to Defendants or their insurers.

No person or entity shall have any claim against Named Plaintiffs, the Depository Bank, Named Plaintiffs' counsel, Defendants, Defendants' Counsel or the Claims Administrator based on distributions made substantially in accordance with the Settlement Agreement and the

Settlement contained herein, a Court-approved Plan of Allocation, or further order(s) of the Court.

E. **Plan of Allocation.** The Notice shall include a detailed description of the formula according to which the Net Settlement Fund will be allocated among eligible Claimants (the “Plan of Allocation”). The Plan of Allocation is not part of the Settlement Agreement, and Defendants shall have no responsibility thereof or liability with respect thereto. Any proposed Plan of Allocation shall be considered by the Court separately from the Court’s consideration of the fairness, reasonableness and adequacy of the Settlement set forth in the Settlement Agreement, and any order or proceeding relating only to the Plan of Allocation shall not operate to terminate or cancel the Settlement Agreement or affect the finality of the Court’s Final Approval Order.

1. **Claims Administrator Authority to Determine Award Eligibility.**

a. Within ten (10) days after Preliminary Approval of this Settlement Agreement, Defendants shall provide the identification of all Class Members, along with their employee numbers and compensation data, to Class Counsel.

b. Within fifty (50) days after Preliminary Approval of this Settlement Agreement, Class Counsel shall provide the Claims Administrator with the “Allocated Amount” for each Class Member (which shall be based on the compensation data that Defendants will have provided to Plaintiffs, and which Plaintiffs’ statistician will have analyzed, as explained in the Plan of Allocation). With respect to each Class Member who timely submits a completed Claim Form and (as appropriate) either a Named Plaintiff Release or a Class Member Releases, the Claims Administrator, acting on behalf of the Settlement Class and subject to such supervision and direction as necessary by Class Counsel and the Court, shall

administer and calculate the monetary award to be paid to each Claimant from the Settlement Fund in accordance with the Plan of Allocation.

c. Within forty-five (45) days after the Distribution Date (but in no event earlier than the Distribution Date), the Claims Administrator shall send to each eligible Claimant by certified mail, return receipt requested, a Notice of Award.

d. The Net Settlement Fund shall be distributed to the Claimants substantially in accordance with the Plan of Allocation to be proposed solely by Class Counsel and described in the Notice and approved by the Court. Defendants will not have any involvement in the Plan of Allocation and shall not object to the Plan of Allocation proposed by Class Counsel.

e. If a balance of more than \$50,000 is remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Class Counsel shall, in its discretion, instruct the Claims Administrator to (1) donate the balance of the Net Settlement Fund to non-sectarian, not-for-profit, 501(c)(3) organization(s) designated by Class Counsel, or (2) reallocate such balance among Claimants who deposited the checks sent in the initial distribution in an equitable and economic fashion. In the event that Class Counsel instructs the Claims Administrator to reallocate such balance pursuant to clause (2) above, all expenses associated with such reallocation (including but not limited to tax expenses, tax reporting and withholding expenses, postage, printing, or banking expenses, or administrative expenses) shall come out of the Net Settlement Fund; notwithstanding Section VIII.B.1. or any other provision of this Agreement, in no event shall Defendants be obligated to pay any portion of these expenses, which are hereby expressly excluded from the Claims Administration Payment.

f. If a balance of \$50,000 or less is remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Class Counsel shall instruct the Claims Administrator to donate the balance of the Net Settlement Fund to non-sectarian, not-for-profit, 501(c)(3) organization(s) designated by Class Counsel.

g. The Claims Administrator shall maintain a list of the amounts disbursed to eligible Claimants for a period of five (5) years. Class Counsel shall have access to information regarding individual allocation amounts upon its request to the Claims Administrator. The Bank shall have access to information regarding individual allocation amounts only upon (1) the filing of a lawsuit against the Bank by a Claimant, or (2) written notice to Class Counsel showing good cause (e.g., threatened litigation by the Claimant). Any dispute as to whether good cause exists shall be resolved through the dispute resolution process set forth in Section IX.B of this Settlement Agreement.

2. Confidentiality Regarding Amount of Monetary Award. All Claimants receiving monetary awards will be asked to keep the amount of their award confidential.

F. Service Awards To Named Plaintiffs. Class Counsel, on behalf of the Named Plaintiffs, may submit an application for distribution as a "Service Award" to each Named Plaintiff for serving as a named plaintiff in this case (the "Service Award Application(s)"). The Service Award Application(s) shall request a total amount for all Service Awards of all Named Plaintiffs not to exceed \$200,000 (two-hundred thousand dollars). Defendants shall take no position with respect to the Service Award Application(s). In the event the Court does not grant Service Award(s) to Named Plaintiffs, or the Service Awards total less than \$200,000 (two-hundred thousand dollars), the remaining amount will not revert to Defendants but will instead remain as part of the Settlement Fund.

Any Service Award(s) ordered by the Court shall be paid by the Claims Administrator from the Settlement Fund immediately after the later of (1) the Distribution Date, and (2) seven days after the Named Plaintiff has timely executed (and not revoked) a Named Plaintiff Release.

G. **Non-Admissibility of Fact of Award (or Non-Award)**. Except to the extent that it would constitute a set off in an action for damages claimed for any period covered by this settlement, neither the fact nor amount of an award, nor the fact of any non-award, shall be admissible in any other proceeding for any purpose other than to enforce a release given in accordance with this Settlement, nor shall it be deemed to be a finding as to the merits or defenses of any claim.

H. **Tax Treatment**.

1. **Qualified Tax Status and Responsibilities**. Class Counsel shall act in a manner necessary to qualify the Settlement Fund as a "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, et seq., and to maintain that qualification. The Settlement Fund shall be administered by the Claims Administrator under the Court's supervision. The parties shall cooperate to ensure such treatment and shall not take a position in any filing or before any tax authority inconsistent with such treatment.

2. **Federal, State and Local Taxes**. The parties recognize that the awards to eligible Claimants will be subject to applicable tax withholding and reporting, which will be handled as follows: The Claims Administrator shall serve as trustee of the Settlement Fund and shall act as a fiduciary with respect to the handling, management, and distribution of the Settlement Fund, including the handling of tax-related issues, reporting requirements and

payments. The Claims Administrator shall allocate 60% of each Claimant's award, including Service Awards, to their claim for compensatory damages and the remaining 40% to their claim for back pay.

The Claims Administrator shall inform Defendants in writing of the employer's share of all taxes or contributions (*i.e.*, FICA, FUTA, SUTA, and Medicare) required to be paid by Defendants. Defendants shall, within thirty (30) business days of such notice, remit all such payments to the Claims Administrator for payment to appropriate taxing authorities ("Employer Payroll Tax Payment").

The Claims Administrator shall be responsible for the timely reporting and remitting of the Employer Payroll Tax Payment to the appropriate taxing authorities. Subject to the Claims Administrator's obligation to comply with applicable laws, the parties anticipate that any amounts designated as interest shall not be subject to withholding and shall be reported, if required, to the IRS on Form 1099-INT. The parties further anticipate that any amounts designated as compensatory damages or Service Awards shall not be subject to withholding and shall be reported to the IRS on Form 1099-MISC.

Except with respect to the Employer Payroll Tax Payment, the Claims Administrator shall be responsible to satisfy from the Settlement Fund (1) any and all federal, state and local employment and withholding taxes, including, without limitation, federal and state income tax withholding, FICA, FUTA, SUTA, Medicare and any state employment taxes, and (2) any and all taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed on Defendants with respect to income earned for any period during which the Settlement Fund does not qualify as a "Qualified Settlement Fund" for federal and state income

tax purposes. The Claims Administrator shall satisfy any and all taxes, penalties and other obligations with respect to the payments or distributions from the Settlement Fund not otherwise addressed herein from the Settlement Fund.

The Claims Administrator shall be responsible for procuring Form W-9s from each Named Plaintiff and/or Claimant prior to making any monetary distributions to such Named Plaintiff and/or Claimant. The Form W-9 shall be included with the Claim Form.

The Claims Administrator shall be responsible for all federal, state, local, and other reporting requirements (including any applicable reporting with respect to attorneys' fees and other costs subject to reporting). The parties hereto agree to cooperate with the Claims Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions set forth in this paragraph.

I. **Defendants Have No Further Obligation, Liability or Responsibility.** Other than Defendant's responsibility for the employer's share of payroll taxes as discussed in Section VIII.H.2. above, and to supply all necessary information for purposes of calculating amounts due with respect to Claimants, Defendants shall have no withholding, reporting or any other tax reporting or payment responsibilities with regard to the Settlement Fund or its distribution to Class Members. Moreover, Defendants shall have no liability, obligation, or responsibility for the administration of the Settlement Fund, the determination of any formulas for disbursement, or the disbursement of any monies from the Settlement Fund except for (1) their obligation to pay the Settlement Sum specified in Section VIII.A; (2) their obligation related to the Employer Payroll Tax Payment as set forth in Section VIII.H.2.; (3) their obligation related to the Claims Administration Payment as set forth in Section VIII.A.1; and (4) their agreement to cooperate in providing information which is necessary for Settlement administration set forth herein. As

specified in Section VII hereto, Defendants are solely responsible for all costs and expenses related to the Programmatic Relief, including but not limited to the costs associated with settlement compliance, such as costs for the retention of the Industrial Psychologist, compensation for the Diversity Monitor, and all costs associated with training and development of programs as part of the Programmatic Relief.

IX. ENFORCEMENT

A. **No Third Parties.** Enforcement of this Settlement Agreement shall be prosecuted by Class Counsel or counsel for Defendants only, not third parties. The parties shall meet and confer prior to commencement of any enforcement proceedings.

B. **Dispute Resolution.** Named Plaintiffs, Class Counsel, and Defendants will work diligently and in good faith to resolve all disputes that may arise during the term of this Settlement Agreement concerning the rights, obligations and duties of the parties to this Settlement Agreement. In the event they cannot agree, the parties will attempt to resolve the dispute with the facilitation of Hunter Hughes, Esq., (or, if he is unavailable, a mutually selected mediator) before seeking resolution of the dispute in any judicial forum, including the Court. The parties agree that in the event the parties cannot resolve the dispute through the assistance of a mediator as previously stated, the Court will be asked to resolve the dispute. In all events, the Court maintains jurisdiction to resolve any disputes between the parties related to this Action or the Settlement Agreement.

X. CONFIDENTIALITY

A. **Public Statements.** The parties and their counsel agree not to issue any press release. The parties and their counsel further agree that they shall jointly develop a list of “talking points” regarding the Settlement, and that they shall not make any public comments regarding the Settlement that are inconsistent with or materially deviate from the contents of the

talking points. Nothing herein shall prevent any party or counsel from producing to any person or entity a copy of any document that was publicly filed in this case.

B. **Documents and Information.** The parties acknowledge that the Joint Stipulation and Protective Order endorsed by the Court on February 11, 2008, governs the confidentiality and destruction (or return) of documents as stated in that Joint Stipulation and Protective Order.

XI. ATTORNEYS' FEES AND EXPENSES.

Class Counsel may submit an application (the "Fee and Expense Application") for distributions to it from the Settlement Fund for: (a) an award of reasonable attorneys' fees from the Settlement Fund (which shall not exceed one-third of the Settlement Fund net of Court-approved expenses); and (b) payment of expenses incurred in the Action, including but not limited to the fees and expenses of any experts or consultants, incurred in connection with prosecuting or settling the Action, plus any interest earned by the Settlement Fund on such attorneys' fees and expenses at the same rate and for the same periods as earned by the Settlement Fund (until paid). Class Counsel reserves the right to make additional applications for fees and expenses incurred. Defendants shall take no position with respect to Class Counsel's Fee and Expense Application.

The attorneys' fees and expenses, as awarded by the Court, shall be paid to Class Counsel from the Settlement Fund, as ordered, immediately after the later of (1) the Court executes an order awarding such fees and expenses, and (2) the Court enters the Final Approval Order and dismisses the Action with prejudice. Class Counsel shall thereafter allocate the attorneys' fees in a manner in which it in good faith believes reflects the contributions of other counsel for any Named Plaintiff to the prosecution and settlement of the Action. In the event that the Final Approval Order is reversed or modified, or this Settlement Agreement is cancelled or terminated for any other reason, then Class Counsel shall, within five (5) business days from

receiving notice from the Bank's Counsel or from a court of appropriate jurisdiction, refund to Defendants the entire amount awarded by the Court and disbursed to Class Counsel for attorneys' fees and expenses (including any amounts that Class Counsel may have distributed to any other counsel for Named Plaintiffs), plus interest (at the rate specified in the preceding paragraph) thereon. In the event that the order making the Fee and Expense Award is reversed or modified, then Class Counsel shall, within five (5) business days from receiving notice from a court of appropriate jurisdiction, refund to the Settlement Fund the amount required by the court's order.

The procedure for and the allowance or disallowance by the Court of any applications for attorneys' fees and expenses, including the fees of experts and consultants, to be paid out of the Settlement Fund, are not part of the settlement set forth in the Settlement Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement set forth in the Settlement Agreement, and any order or proceeding relating only to any request for attorneys' fees or expenses, or any appeal from any order relating only thereto or reversal or modification thereof, shall not operate to terminate or cancel the Settlement Agreement, or affect or delay the finality of the Judgment approving the Settlement Agreement and the settlement of the Action set forth herein.

Defendants and Defendants' Counsel shall have no responsibility for or liability whatsoever with respect to any payment to Class Counsel or any other counsel for any Named Plaintiff from the Settlement Fund that may occur. Except for the payment by Defendants of the Settlement Sum, Defendants shall have no responsibility for the payment of attorneys' fees and expenses to any counsel for any Named Plaintiff.

XII. GOVERNING LAW

The parties agree that federal law shall govern the validity, construction and enforcement of this Settlement Agreement, and that the Court in this Action maintains jurisdiction over all Defendants and Class Members to resolve any disputes regarding the validity, construction and enforcement of this Settlement Agreement. To the extent that it is determined that the validity, construction or enforcement of this Settlement Agreement, the Named Plaintiff Release, the Class Member Release, or Defendants' release executed pursuant to its terms is governed by state law, the law of the Commonwealth of Massachusetts shall apply.

XIII. OTHER CONDITIONS OF SETTLEMENT

9.1. **Representations.** Each Defendant warrants as to itself that, as to the payments made by or on behalf of it to carry out any of the provisions of this Settlement Agreement, at the time such payment is made or caused to be made, it was not insolvent nor did the payment required to be made by or on behalf of it render such Defendant insolvent within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This warranty is made by each such Defendant and not by such Defendant's Counsel. If a case is commenced in respect of any Defendant contributing to the Settlement Fund under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver, conservator, or other fiduciary is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of that Defendant to be a preference, voidable transfer, fraudulent transfer or similar transaction, and any portion thereof is required to be returned, and such amount is not promptly deposited to the Settlement Fund by others, then, at the election of Class Counsel, the parties shall jointly move the Court to vacate and set aside the releases given and the Judgment entered pursuant to this Settlement Agreement, which releases and the Judgment shall be null and void, and the parties so affected shall be restored to their respective positions in the Action

as of March 31, 2009, and any other cash amounts in the Settlement Fund shall be returned as provided herein.

A. **Exhibits.** The Exhibits to this Settlement Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

B. **Notices to Counsel.** All notices to counsel required or desired to be given under this Settlement Agreement shall be in writing and by overnight mail or e-mail to counsel for the respective parties at their respective addresses set forth below (or to such other address as any such party or counsel may designate in a notice):

To Defendants:

Jeffrey G. Huvelle
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004

To Class Counsel and/or Named Plaintiffs:

Niki L. Mendoza
Bernstein Litowitz Berger & Grossmann LLP
12481 High Bluff Drive, Suite 300
San Diego, CA 92130

- and -

Frances S. Cohen
Bingham McCutchen LLP
One Federal Street
Boston, MA 02110-1726

C. **Failure to Insist on Strict Compliance.** The failure of any party to insist in any one or more instances on strict compliance with the terms and conditions hereof shall not be construed to be a waiver of remedies available with respect to any prior or subsequent breach.

D. **Settlement Agreement Binding.** This Settlement Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, dependents, executors, administrators, trustees, legal representatives, personal representatives, agents, successors and assigns; provided, however, that this Settlement Agreement shall not inure to the benefit of any third party.

E. **Modifications to this Agreement.** No modifications to this Agreement may be made without the written agreement of Class Counsel and Defendants' Counsel. After the parties hereto submit a motion for Preliminary Approval of the Settlement to the Court, no material modifications to this Agreement may be made without Court approval.

F. **No Drafting Presumption.** All parties hereto have participated, through their respective counsel, in the drafting of this Settlement Agreement and, therefore, this Settlement Agreement shall not be construed more strictly against one party than another.

G. **Dispute As To Meaning of Agreement Terms.** In the event of any dispute or disagreement with respect to the meaning, effect or interpretation of this Settlement Agreement or any Exhibit hereto, or in the event of a claimed breach of the Settlement Agreement, the parties agree that they will attempt to resolve such dispute in accordance with the dispute resolution provisions of Section IX.B. of this Settlement Agreement.

H. **Interpretation of Terms.** Whenever possible, each provision and term of this Settlement Agreement shall be interpreted in such a manner as to be valid and enforceable.

I. **Entire Agreement.** This Settlement Agreement, including the Exhibits hereto, together with the Supplemental Agreement, contain the entire agreement among the parties relating to the Settlement. It specifically supersedes any settlement terms or settlement agreements that were previously agreed upon orally or in writing by any of the parties hereto. This Settlement Agreement does not impose any obligations on the parties beyond the terms and conditions stated herein. Accordingly, this Settlement Agreement shall not prevent or preclude the Bank from revising its employment practices and policies or taking other personnel actions during the term of this Settlement Agreement so long as they are consistent with this Settlement Agreement.

J. **Paragraph and Section Headings.** Paragraph and section headings are for convenience of reference only and are not intended to create substantive rights or obligations.

K. **Counterparts.** This Settlement Agreement may be executed in counterparts. Each signed counterpart together with the others shall constitute the full Settlement Agreement.

L. **Agreement Binding.** As of the date on which counsel for the parties execute this Settlement Agreement, this Settlement Agreement will be binding in all respects, unless the Court fails to approve this Settlement Agreement and the Settlement Agreement is thus vacated.

[Remainder of this page intentionally left blank.]

DATED: June 30, 2009

By: 

**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**

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—and—

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Attorneys for Plaintiffs and the Class

DATED: Jun 30, 2009

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