

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

LOUISIANA FIREFIGHTERS' RETIREMENT SYSTEM, THE BOARD OF TRUSTEES OF THE PUBLIC SCHOOL TEACHERS' PENSION AND RETIREMENT FUND OF CHICAGO, THE BOARD OF TRUSTEES OF THE CITY OF PONTIAC POLICE & FIRE RETIREMENT SYSTEM, and THE BOARD OF TRUSTEES OF THE CITY OF PONTIAC GENERAL EMPLOYEES RETIREMENT SYSTEM, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

NORTHERN TRUST INVESTMENTS, N.A., and THE NORTHERN TRUST COMPANY,

Defendants.

Civil Action No. 09-7203

ECF Case

Hon. Jorge L. Alonso

Hon. Susan E. Cox

**STIPULATION AND AGREEMENT OF PARTIAL  
SETTLEMENT OF CLASS ACTION**

Subject to approval of the Court, this Stipulation and Agreement of Partial Settlement of Class Action (the "Stipulation") dated as of February 17, 2015, is entered into between (a) plaintiffs Louisiana Firefighters' Retirement System ("Louisiana Firefighters"), The Board of Trustees of the Public School Teachers' Pension and Retirement Fund of Chicago (the "Chicago Teachers Board"), and The Board of Trustees of the City of Pontiac Police & Fire Retirement System (the "Pontiac Police and Fire Board") (all collectively, the "Settling Plaintiffs") and The Board of Trustees of the City of Pontiac General Employees Retirement System (the "Pontiac General Board"),<sup>1</sup> each of the foregoing on behalf of themselves and the Settlement Class, and

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<sup>1</sup> For the sake of clarity, although the Pontiac General Board has no Indirect Lending claims, and it is not hereby releasing any Direct Lending claims, the Pontiac General Board signs this

(b) defendants Northern Trust Investments, N.A. (currently, Northern Trust Investments, Inc., both to be referred to as “NTI”) and The Northern Trust Company (“NTC”) (NTI and NTC collectively to be referred to as “Northern Trust” or “Defendants”), by and through their respective undersigned signatories, and embodies the terms and conditions of the partial settlement of the above-captioned action (the “Action”).<sup>2</sup> Subject to approval of the Court and the terms and conditions expressly provided for herein, this Settlement is intended to fully, finally, and forever settle and release (a) all Settlement Class Released Claims by the Settling Plaintiffs and the Settlement Class, as against all Defendants’ Releasees and (b) all Defendants’ Released Claims by the Defendants as against all Settling Plaintiffs’ Releasees.

WHEREAS:

A. On November 17, 2009, plaintiff Louisiana Firefighters filed a putative class action complaint in this Court alleging that Defendants, among other things, imprudently invested collateral received to secure the loan of securities in connection with Northern Trust’s securities lending program. That complaint asserted claims of breach of fiduciary duty, breach of contract, and breach of a duty of good faith and fair dealing against Defendants. On January 29, 2010, the Public School Teachers’ Pension and Retirement Fund of Chicago (“Chicago Teachers”) and the City of Atlanta Firefighters’ Pension Plan filed a putative class action complaint, in a separate action (No. 10-cv-00619, N.D. Ill.), against NTI and NTC. That

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Stipulation solely in its capacity as an alleged class representative and is forever releasing any ability it and Pontiac General may have had to be a class representative for Indirect Lending claims.

<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in ¶ 1 of this Stipulation.

complaint alleged that Defendants, among other things, imprudently invested collateral received to secure the loan of securities in connection with Northern Trust's securities lending program, and it asserted claims for breach of fiduciary duty, breach of contract, and breach of a duty of good faith and fair dealing; on October 22, 2010, that case was dismissed without prejudice to the claims in the instant case. On March 17, 2010, the Pontiac Police and Fire Board filed a putative class action, in a separate action (No. 10-cv-11083, E.D. Mich.), against NTI and NTC. On April 23, 2010, the Pontiac Police and Fire Board filed a Corrected Class Action Complaint, and on June 25, 2010, it filed a First Amended Class Action Complaint. Those complaints alleged that Defendants, among other things, imprudently invested collateral received to secure the loan of securities in connection with Northern Trust's securities lending program, and they asserted claims for breach of duty of care based on ERISA § 404 (29 U.S.C. § 1104), breach of duty of care and duty of loyalty based on Mich. Comp. Laws § 38.1133, negligence, breach of contract, and breach of a duty of good faith and fair dealing; on December 9, 2010, that case was dismissed without prejudice. Collectively, all of the complaints referenced in this paragraph shall be referred to as the "Initial Complaints."

B. On July 16, 2010, plaintiffs Louisiana Firefighters, Chicago Teachers, the Pontiac Police and Fire Board, and the Pontiac General Board (jointly "Plaintiffs") filed an Amended Class Action Complaint ("Amended Complaint") which alleged that Defendants, among other things, improperly invested collateral received to secure the loan of securities from the Commingled Lending Funds and/or collateral received to secure the loan of securities from the portfolio of a client that participated directly in Northern Trust's securities lending program, and that Defendants had charged and collected impermissibly high securities lending fees from the Commingled Lending Funds. The Amended Complaint also asserted claims for

breach of fiduciary duty, breach of contract, and breach of a duty of good faith and fair dealing against Defendants.

C. On September 3, 2010, Defendants moved to dismiss the Amended Complaint. On May 6, 2011, the Court issued a Memorandum Opinion and Order that granted in part and denied in part Defendants' motion to dismiss.

D. On June 30, 2011, Defendants filed an answer to the Amended Complaint and on July 14, 2011, Defendants filed an amended answer and affirmative defenses to the Amended Complaint; a counterclaim; and a third-party complaint. Defendants denied the claims asserted in the Amended Complaint; asserted multiple affirmative defenses; brought a third-party complaint asserting claims for contribution and indemnification against the Board of Trustees of Louisiana Firefighters, the Chicago Teachers Board, the Pontiac Police and Fire Board, and the Pontiac General Board in their individual capacities (collectively, the "Third-Party Defendants") alleging that the Third-Party Defendants owed fiduciary duties to their respective plans and that they were fully informed about and accepted the risks associated with those investments; and brought a counterclaim for breach of contract against Chicago Teachers.

E. On September 26, 2011, the Third-Party Defendants moved to dismiss the third-party complaint, Chicago Teachers moved to dismiss the counterclaim, and Plaintiffs moved to strike certain of the affirmative defenses. On February 23, 2012, the Court issued a Memorandum Opinion and Order that granted the Third-Party Defendants' motion to dismiss the third-party complaint, granted Chicago Teachers' motion to dismiss the counterclaim, and struck all affirmative defenses asserted in Defendants' answer.

F. On March 29, 2012, plaintiffs Louisiana Firefighters, the Chicago Teachers Board, the Pontiac Police and Fire Board, and the Pontiac General Board filed the Second Amended Class Action Complaint (the “Second Amended Complaint”) alleging that Defendants, among other things, improperly invested collateral received to secure the loan of securities from the Commingled Lending Funds and/or collateral received to secure the loan of securities from the portfolio of a client that participated directly in Northern Trust’s securities lending program, and that Defendants had charged and collected impermissibly high securities lending fees from the Commingled Lending Funds in breach of fiduciary duty, contract, and a duty of good faith and fair dealing.

G. On June 5, 2012, Defendants answered the Second Amended Complaint, denying the material allegations therein and denying any liability or wrongdoing. Defendants asserted multiple affirmative defenses, including that the Plaintiffs who invested in the Commingled Lending Funds knew that those funds engaged in securities lending and how collateral from such securities lending was invested; accepted, acquiesced in, and ratified the risks of securities lending; understood and accepted the funds’ securities lending fees; and did not suffer damages because the funds met their stated investment objectives and Defendants’ support actions (including voluntary cash payments and securities lending fee reductions) offset any losses.

H. In their answer to the Second Amended Complaint, Defendants asserted a counterclaim against the Chicago Teachers Board. On July 3, 2012, the Chicago Teachers Board moved to dismiss the counterclaim. The motion was fully briefed and, on November 6, 2012, the Court granted the Chicago Teachers Board’s motion to dismiss the counterclaim.

Plaintiffs did not move to strike Defendants' other allegations and affirmative defenses, which remain pending.

I. On July 24, 2012, Plaintiffs moved the Court for an order confirming that the May 6, 2011 Memorandum Opinion and Order that granted in part and denied in part Defendants' motion to dismiss the Amended Complaint did not dismiss Plaintiffs' breach of fiduciary duty claim that was based upon the securities lending fees charged by Defendants. On September 12, 2012, the Court issued an order clarifying that the breach of fiduciary duty claim regarding the lending fees had been dismissed and denying Plaintiffs' motion.

J. Discovery in the Action commenced in May 2011 with the required Rule 26 discovery conference. Beginning in July 2011, the parties served voluminous document production requests on each other. Discovery has been extensive. Over the course of the following thirty months, the parties engaged in numerous discovery conferences, hearings, and motions. In response to discovery requests, Defendants have produced, and Plaintiffs have reviewed, over 224,000 pages of documents, which include documents and written discovery responses re-produced in this Action from the Diebold Action, *BP Corp. North America Inc. Savings Plan Inv. Oversight Comm. v. Northern Trust Invs.*, 08-cv-06029 (N.D. Ill.), and *FedEx Corp. v. The Northern Trust Co.*, 08-cv-02827 (W.D. Tenn.). This discovery also included deposition transcripts of fact witnesses, expert reports, and deposition transcripts of expert witnesses.

K. The parties first began discussing a potential partial resolution of this Action in late 2012. On May 9, 2013, a private mediation was conducted by Judge Morton Denlow (Ret.), a retired United States Magistrate Judge for the United States District Court, Northern District of Illinois. At the mediation, the parties made presentations to each other and to Judge

Denlow regarding the strengths and weaknesses of their respective positions. While the parties were unable to reach a resolution at the mediation, they continued to discuss resolving a portion of the Action during informal communications thereafter. In early January 2014, the parties agreed in principle to partially resolve the Action, *i.e.*, any and all claims asserted with respect to Indirect Lending, contingent on certain terms and conditions, which are set forth herein.

L. This Stipulation (together with the exhibits hereto) has been duly executed by the undersigned attorney signatories on behalf of their respective clients and by the undersigned Northern Trust personnel on behalf of their respective firms, and reflects the final and binding agreement between the Settling Parties.

M. Based upon their investigation, prosecution, and mediation of the Action, the Settling Plaintiffs and Settling Plaintiffs' Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable, and adequate to the Settling Plaintiffs and the other members of the Settlement Class, and in their best interests. Based upon the Settling Plaintiffs' direct oversight of the prosecution of this matter along with the input of Settling Plaintiffs' Counsel, each of the Settling Plaintiffs has agreed to settle and release the Settlement Class Released Claims on the terms and conditions of this Stipulation, after considering (a) the substantial benefits that the Settling Plaintiffs and the other members of the Settlement Class will receive under the proposed Settlement, (b) the attendant risks of continued litigation of the claims and allegations asserted on behalf of the Settlement Class in this Action, and (c) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

N. This Stipulation constitutes a compromise of certain claims that are in dispute between the Settling Parties. However, each of the Defendants denies any wrongdoing, and this Stipulation is not, and shall in no event be construed or deemed to be, evidence, or an admission or concession on the part of any of the Defendants' Releasees, with respect to any claim or allegation of any fault, liability, wrongdoing, injury, loss, or damages whatsoever, or with respect to any infirmity in the defenses that the Defendants have, or could have, asserted with respect to the Indirect Lending activities that are the subject of this Action. Defendants expressly deny that Settling Plaintiffs have asserted any valid claims as to any of Defendants' Releasees with respect to the Indirect Lending activities that are the subject of this Action, and expressly deny any and all allegations of fault, liability, wrongdoing, injury, loss, or damages whatsoever with respect to those Indirect Lending activities. Defendants are entering into this Stipulation solely to eliminate the burden, expense and distraction of further litigation with respect to the Indirect Lending activities that are the subject of this Action. Similarly, this Stipulation is not, and shall in no event be construed or deemed to be evidence, an admission, or concession on the part of any Settling Plaintiffs' Releasees of any infirmity in any of the claims asserted in the Action with respect to Indirect Lending by Settlement Class Members, or an admission or concession that any of the Defendants' affirmative defenses to liability or counterclaims had any merit. Each of the Settling Parties recognizes and acknowledges that with respect to the asserted claims relating to Indirect Lending, this partial settlement of the Action has been undertaken voluntarily and with the advice of counsel, and that the terms of the Settlement are fair, adequate, and reasonable.

NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among the Settling Plaintiffs (individually and on behalf of the Settlement Class) and Defendants, by and



through their respective undersigned signatories and subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the benefits flowing to the Settling Parties, the Settling Plaintiffs' Releasees, and the Defendants' Releasees from the Settlement, all Settlement Class Released Claims and all Defendants' Released Claims shall be fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, discharged, and dismissed with prejudice in accordance with and subject to the terms and conditions set forth herein.

### **DEFINITIONS**

1. As used in this Stipulation, and any exhibits attached hereto and made a part hereof, the following capitalized terms shall have the following meanings:

(a) "Action" or "Firefighters Action" means the action styled *Louisiana Firefighters' Retirement System, et al. v. Northern Trust Investments, N.A., et al.*, Civil Action No. 09-7203, pending in the Court.

(b) "Authorized Payee" means a Settlement Class Member which is approved by the Court pursuant to the Class Distribution Order or other order of the Court to receive a payment from the Net Settlement Fund.

(c) "Banking Notice" means the notice to be sent to Identified Settlement Class Members, substantially in the form attached hereto as Exhibit 1 to Exhibit A, by mail or e-mail by Defendants no later than ten (10) business days after entry of the Settlement Hearing Scheduling Order in this Action or in the Diebold Action, whichever is later. The date that such notice is sent shall be referred to as the "Banking Notice Date."

(d) “Challenge” or “Challenges” means an Investment Challenge or a Status Challenge.

(e) “Chicago Teachers” means the Public School Teachers’ Pension and Retirement Fund of Chicago.

(f) “Chicago Teachers Board” means The Board of Trustees of the Public School Teachers’ Pension and Retirement Fund of Chicago.

(g) “Class Distribution Order” means an order entered by the Court authorizing and directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized Payees.

(h) “Co-Lead Counsel” means, by agreement of Settling Plaintiffs’ Counsel, the law firms of Bernstein Litowitz Berger & Grossmann LLP, Keller Rohrback L.L.P., and Schneider Wallace Cottrell Konecky Wotkyns LLP. Defendants shall have no liability associated with any disputes or issues whatsoever between and among Co-Lead Counsel and Settling Plaintiffs’ Counsel, including identification of and roles as Co-Lead Counsel or solely as Settling Plaintiffs’ Counsel.

(i) “Commingled Lending Funds” means the collective funds for which NTI serves as trustee and (i) for which NTC ever served as securities lending agent, and that participated, on one or more of the Relevant Dates, in Northern Trust’s securities lending program by lending out some portion of each of their investment portfolios, or (ii) which held units of the collective funds described in (i) above; including, without limitation, the NTGI, NTGI-QM, and NT funds. The universe of Commingled Lending Funds covered by this Settlement is listed in the Appendix to this Stipulation.

(j) “CORE USA” means the Core U.S.A. Collateral Section for the time period before and up until the close of the market on November 8, 2008. For the period subsequent to the close of the market on November 8, 2008, solely for purposes of this defined term, CORE USA means the NTCC and NTGI-QM Collateral Section, also referred to colloquially as the Funds Collateral Pool (“FCP”). For the sake of clarity, for the period subsequent to the close of the market on November 8, 2008, solely for the purposes of this defined term, the term “Core USA” shall *not* refer to the Core U.S.A. Collateral Section, in which section the Commingled Lending Funds had no interest after that date and time.

(k) “Court” means the United States District Court for the Northern District of Illinois.

(l) “Cover Letter” means the letter accompanying the Settlement Notice to be mailed by the Settlement Administrator to each Identified Settlement Class Member setting forth such class member’s Investment Data on the Relevant Dates, substantially in the form attached as Exhibit 2 to Exhibit A.

(m) “Defendants” or “Northern Trust” means Northern Trust Investments, N.A. (now known as and including Northern Trust Investments, Inc., both to be referred to as “NTI”) and The Northern Trust Company (“NTC”).

(n) “Defendants’ Counsel” means the law firms of Winston & Strawn LLP and Mayer Brown LLP.

(o) “Defendants’ Released Claims” means, to the fullest extent allowed by law, any and all claims, damages, losses, suits, proceedings, debts, demands, duties, liabilities, rights, remedies, or causes of action of every nature and description

whatsoever, whether known claims or Unknown Claims; whether based on federal, state, local, or foreign law; whether based on statutory law, common law, administrative law, rule, regulation, or other source of law; whether fixed or contingent; whether foreseen or unforeseen; whether matured or unmatured; whether accrued or unaccrued; whether liquidated or unliquidated; whether at law or in equity; whether class or individual in nature; and whether direct, indirect, or derivative in nature, (i) against each and every of the Settling Plaintiffs' Releasees that arise from the institution, prosecution and settlement of the Indirect Lending claims asserted in this Action against Defendants by Settlement Class Members; and (ii) against each and every present, former and future member of the Board of any Settling Plaintiff for indemnification and/or contribution that arise from claims asserted in this Action against Defendants arising out of or relating to Indirect Lending by Settlement Class Members. Defendants' Released Claims do not include, release, bar, waive, impair, prejudice, enjoin, or otherwise impact: (i) claims relating to the enforcement of the Settlement; (ii) claims against any entity that submits a Request for Exclusion from the Settlement Class that is accepted by the Court; (iii) Direct Lending claims; (iv) claims against Settlement Class Members that do not fall within the definition of Defendants' Released Claims; and (v) Defendants' Reserved Claims.

(p) "Defendants' Releasees" means (i) Northern Trust Corporation, NTI, and NTC, and each of their respective present, former, and future affiliates, subsidiaries, and parents; (ii) for each of the foregoing entities, any entities in which each or they have a controlling interest, their respective present, former, and future employees, officers, boards, directors, trustees, accountants, auditors, insurers, reinsurers, agents, fiduciaries, and attorneys, in their capacities as such; and (iii) for each of the foregoing persons and

entities in (i) and (ii), their respective predecessors, successors, estates, heirs, executors, trusts, trustees, administrators, family members, agents, representatives, and assigns, in their capacities as such.

(q) “Diebold Action” means the action styled *Diebold v. Northern Trust Investments, N.A.*, Civil Action No. 09-1934, pending in the Court.

(r) “Diebold Settlement” means the proposed settlement of the Diebold Action.

(s) “Direct Lending” means any investor’s participation in Northern Trust’s securities lending program pursuant to an agreement to lend that investor’s own securities, under which that investor’s collateral from securities lending was invested in any Northern Trust collateral reinvestment vehicle. Investment in a Commingled Lending Fund is not and does not constitute “Direct Lending.”

(t) “Effective Date” with respect to the Settlement means the first date by which all of the events and conditions specified in ¶ 38 of this Stipulation have been met, have been waived, or have occurred, as set forth in that paragraph.

(u) “ERISA” means the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.*, and regulations, rulings and other guidance issued thereunder, as they may be amended from time to time.

(v) “Escrow Account” means an account maintained by the Escrow Agent at Valley National Bank to hold the Settlement Fund, which account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds therein shall be distributed or returned pursuant to the terms of this Stipulation and/or order of Court, and in which the Settlement Amount shall be deposited

and held in escrow in an interest-bearing account, to the extent possible, as further described in this Stipulation.

(w) “Escrow Agent” means Valley National Bank that the Settling Plaintiffs, in the exercise of their reasonable judgment and diligence, selected.

(x) “Escrow Agreement” means the agreement between Co-Lead Counsel and the Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow Account, all in accordance with this Stipulation.

(y) “Final,” with respect to the Judgment, or with respect to the judgment to be entered in the Diebold Action (the “Diebold Judgment”), means the later of the following circumstances: (i) if there is an appeal from the judgment, the later of the date of (a) final dismissal of such appeal or appellate challenge, or the final dismissal of any proceeding on certiorari or otherwise to review the judgment, or (b) the date on which the judgment is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance of the judgment following review pursuant to that grant; or (ii) the expiration of the time for the filing or noticing of any appeal from or appellate challenge to the judgment. However, any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to (i) attorneys’ fees, costs or expenses, or (ii) the plan of allocation of settlement proceeds (as submitted or subsequently modified) in the respective actions shall not in any way delay or preclude the Judgment or the Diebold Judgment, as applicable, from becoming Final.

(z) “Final Approval Hearing” or “Settlement Hearing” means the hearing set by the Court under Rule 23(e)(2) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

(aa) “Fund Distribution Amount” means a Settlement Class Member’s calculated distribution amount for each Commingled Lending Fund in which it was invested under the terms of the Plan of Allocation or such other plan of allocation as may be approved by the Court.

(bb) “Identified Settlement Class Members” means all entities identified by Defendants that (i) are not governed by ERISA; (ii) participated in Indirect Lending during the Settlement Class Period; and (iii) are alleged to have been damaged as a result of the collateral investments from their participation in Indirect Lending at issue in the Action. Excluded from the definition of Identified Settlement Class Members are: (i) entities that previously released or were caused to release Northern Trust from liability for alleged injury, damage, or loss arising from Indirect Lending during 2007-2009; and (ii) Defendants and their successors, their respective officers and directors (former, current and future), members of the Immediate Families of the respective officers and directors (former, current and future), and the legal representatives, heirs, successors or assigns of any such excluded person, and any entity in which any Defendant has or had a controlling interest.

(cc) “Immediate Family” means children, stepchildren, parents, stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law. As used in this paragraph, “spouse” shall mean a husband, a wife, or a partner in a state-recognized domestic relationship or civil union.

(dd) “Indirect Lending” means participation in or exposure to Northern Trust’s securities lending program through the purchase and/or holding of “units” or interests in Commingled Lending Funds.

(ee) “Investment Amount(s)” means the amount(s) determined by Defendants from their client records (with no obligation to seek information additional to same) and provided to the Settlement Administrator, as set forth in ¶ 18 below, as to each Identified Settlement Class Member’s investment(s) in Commingled Lending Funds on the Relevant Dates, as well as such amounts to be determined by Defendants and provided to the Settlement Administrator for any other entity which, pursuant to a Status Challenge, is determined to be a Settlement Class Member.

(ff) “Investment Challenge” means a Settlement Class Member’s challenge to the accuracy of the Investment Amount(s) and/or the Commingled Lending Fund(s) in which it invested as set forth in the Cover Letter.

(gg) “Investment Data” means, for each Identified Settlement Class Member or entity which, pursuant to a Status Challenge, is determined to be a Settlement Class Member, the identity of the foregoing as a Northern Trust client that bought or held units in the Commingled Lending Funds and its contact information; the Investment Amount(s) as well as the Commingled Lending Fund(s) in which each of the foregoing was invested on the Relevant Dates as determined by Defendants from their client records (with no obligation to seek information additional to same); and such additional information that may be relevant to resolving questions, if any, as to the proper monetary distribution to which each of the foregoing may be entitled pursuant to the Settlement.



(hh) “Judgment” means an order of judgment, substantially in the form attached hereto as Exhibit B, to be entered by the Court approving the Settlement.

(ii) “Litigation Expenses” means the reasonable costs and expenses incurred by Settling Plaintiffs’ Counsel in connection with commencing and prosecuting the Action (which may include the reasonable costs and expenses of the Settling Plaintiffs directly related to their representation of the Settlement Class), for which Co-Lead Counsel intend to apply to the Court for reimbursement from the Settlement Fund.

(jj) “Louisiana Firefighters” means the Louisiana Firefighters’ Retirement System.

(kk) “Net Settlement Fund” means the Settlement Fund less any: (i) Taxes; (ii) Notice and Administration Costs; (iii) Litigation Expenses awarded by the Court; and (iv) attorneys’ fees awarded by the Court.

(ll) “Non-Settled Claims” means (i) any claims for alleged injury, loss, or damages from investments with or through Northern Trust other than investments or interests in Commingled Lending Funds by Settlement Class Members; and (ii) any claims of any entity which submits a Request for Exclusion that is accepted by the Court. Accordingly, any claims (including, without limitation, counterclaims, third-party claims, and claims for contribution and indemnification), defenses, and affirmative defenses of Defendants’ Releasees intended or directed to reducing, limiting, or eliminating their liability or an award of any kind (including damages) against, or recovering amounts from, them as to (i) and (ii) in the preceding sentence are not being released or settled under this Stipulation (“Defendants’ Reserved Claims”). For clarity, (a) in the case of a Settlement Class Member that engaged in, and sustained injury, loss, or damages from,

both Direct Lending and Indirect Lending, such a Settlement Class Member would not be settling its Direct Lending claims hereunder, and thus those Direct Lending claims are Non-Settled Claims and Defendants' Reserved Claims as to that Settlement Class Member's non-settled Direct Lending claims are also not settled hereby; and (b) to the extent that Commingled Funds engaged in Direct Lending, such lending by the funds does not fall within and is not affected by the definition of Non-Settled Claims.

(mm) "Notice and Administration Costs" means the costs, fees, and expenses that are incurred by the Settlement Administrator in connection with (i) providing notices to the Settlement Class and (ii) administering the Settlement, as well as the costs, fees and expenses incurred in connection with the Escrow Account. Notice and Administration Costs do not include the costs of transmitting the Banking Notice to be sent to Identified Settlement Class Members by Defendants, nor any costs associated with collection of the data set forth in ¶ 18, which costs shall be borne by Defendants.

(nn) "Plan of Allocation" means the proposed plan of allocation of the Net Settlement Fund appended to the Settlement Notice.

(oo) "Pontiac Police and Fire" means the City of Pontiac Police & Fire Retirement System.

(pp) "Pontiac Police and Fire Board" means The Board of Trustees of the City of Pontiac Police and Fire Retirement System.

(qq) "Pontiac General" means the City of Pontiac General Employees Retirement System.

(rr) "Pontiac General Board" means The Board of Trustees of the City of Pontiac General Employees Retirement System.

(ss) “Preliminary Approval Order” means the order, substantially in the form attached hereto as Exhibit A, to be entered by the Court preliminarily approving the Settlement and directing that the Banking Notice and thereafter the Settlement Notice and Cover Letter be provided to the Identified Settlement Class Members and that the Summary Notice be published.

(tt) “Releasee(s)” means each and every of the Defendants’ Releasees and each and every of the Settling Plaintiffs’ Releasees.

(uu) “Releases” means the releases set forth in ¶¶ 4-5 of this Stipulation.

(vv) “Relevant Dates” means, as to CORE USA, the following two dates: September 19, 2008 and April 19, 2010; and, as to STEP, the following three dates: January 5, 2007, September 19, 2008 and August 31, 2010.

(ww) “Request for Exclusion” means any request for exclusion from the Settlement Class, as further described in the Settlement Notice, Summary Notice, and Preliminary Approval Order. A Request for Exclusion shall apply to the Settlement Class Member making the request. For the sake of clarity, should a Settlement Class Member have investments in Commingled Lending Funds through multiple Northern Trust accounts, a Request for Exclusion shall apply to all of those accounts. The Court shall make its final determinations as to the acceptance and rejection of Requests for Exclusion prior to entry of the Judgment.

(xx) “Second Amended Complaint” means the Second Amended Class Action Complaint filed by Plaintiffs in the Action on March 29, 2012.

(yy) “Settlement” means this Stipulation (and all attachments hereto) and the settlement contained herein.

(zz) “Settlement Administrator” means the firm retained by Co-Lead Counsel on behalf of the Settlement Class, subject to approval of the Court, to administer the Settlement.

(aaa) “Settlement Amount” means the total amount of Twenty-Four Million Dollars (\$24,000,000) in cash.

(bbb) “Settlement Class” means, solely for purposes of the Settlement, all entities that are not governed by ERISA and that participated in Indirect Lending during the Settlement Class Period and are alleged to have been damaged as a result of their participation in Indirect Lending at issue in the Action. Excluded from the Settlement Class are: (i) entities that previously released or were caused to release Northern Trust from liability for alleged injury, damage, or loss arising from Indirect Lending during 2007-2009; (ii) Defendants and their successors, their respective officers and directors (former, current and future), members of the Immediate Families of the respective officers and directors (former, current and future), and the legal representatives, heirs, successors or assigns of any such excluded person, and any entity in which any Defendant has or had a controlling interest; and (iii) entities that exclude themselves by submitting a Request for Exclusion that is accepted by the Court.

(ccc) “Settlement Class Member” means each legal entity that is a member of the Settlement Class.

(ddd) “Settlement Class Period” means the period beginning January 1, 2007 through and including October 31, 2010.

(eee) “Settlement Class Released Claims” means, to the fullest extent allowed by law, any and all claims, damages, losses, suits, proceedings, debts, demands, duties,

liabilities, rights, remedies, or causes of action of every nature and description whatsoever, whether known claims or Unknown Claims; whether based on federal, state, local, or foreign law; whether based on statutory law, common law, administrative law, rule, regulation, or other source of law; whether fixed or contingent; whether foreseen or unforeseen; whether matured or unmatured; whether accrued or unaccrued; whether liquidated or unliquidated; whether at law or in equity; whether class or individual in nature; and whether direct, indirect, or derivative in nature, against each and every Defendants' Releasee, that arise out of or are based upon Settlement Class Members' Indirect Lending from the beginning of the Settlement Class Period through and including January 13, 2014 that (i) have been asserted in the Action or the Initial Complaints; or (ii) that could have been asserted in any forum that arise out of, relate to, or are based upon the claims and allegations in the Action that relate to Settlement Class Members' Indirect Lending from the beginning of the Settlement Class Period through and including January 13, 2014, including but not limited to the acts, omissions, misrepresentations, facts, events, matters, transactions, or occurrences alleged that relate to Settlement Class Members' Indirect Lending from the beginning of the Settlement Class Period through and including January 13, 2014, through Northern Trust's indirect securities lending program, including the investment of securities lending collateral; the holding of such investments; principal, interest, income, and revenue losses from Indirect Lending; fees, costs, and other charges associated with Indirect Lending; any and all declarations of trust or trust instruments concerning or governing the Commingled Lending Funds to the extent they relate to Indirect Lending; any and all agreements governing Settlement Class Members' Indirect Lending but only to the extent they relate

to Indirect Lending, including collective fund custody agreements, direction letters, and investment management agreements; and any and all unlawful or improper conduct of the Commingled Lending Funds' participation in Indirect Lending. Settlement Class Released Claims do not include, release, bar, waive, impair, prejudice, enjoin, or otherwise impact claims relating to the enforcement of the Settlement, any Non-Settled Claim, or any claims against Defendants' Releasees that do not fall within the definition of Settlement Class Released Claims, nor is the right (if any) of any Settling Plaintiffs, Settlement Class Members and all other persons and entities who or which are releasing the Settlement Class Released Claims to participate in the distribution of any funds recovered from any Defendant or any other Defendants' Releasee by any federal governmental or federal regulatory agency, including as a result of any judgment obtained in litigation brought by any federal governmental or federal regulatory agency, in any way compromised, limited or impaired by the release of the Settlement Class Released Claims.

(fff) "Settlement Fund" means the Settlement Amount plus any and all interest earned thereon.

(ggg) "Settlement Hearing Scheduling Order" means the order to be entered by the Court after the Preliminary Approval Orders in this Action and the Diebold Action have been entered setting the date and time for the Settlement Hearing.

(hhh) "Settlement Notice" means the Notice of (i) Preliminary Certification of Settlement Class, and Proposed Partial Settlement of Class Action; (ii) Settlement Hearing; and (iii) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit 3 to Exhibit A,

which is to be mailed by the Settlement Administrator to Identified Settlement Class Members.

(iii) “Settling Parties” means (i) Defendants and (ii) the Settling Plaintiffs and the Pontiac General Board, on behalf of themselves and the Settlement Class.

(jjj) “Settling Plaintiffs” means Louisiana Firefighters, the Chicago Teachers Board, the Pontiac Police and Fire Board, and each of their respective plans, systems, funds, and boards.

(kkk) “Settling Plaintiffs’ Counsel” means Co-Lead Counsel and the law firms of Sullivan, Ward, Asher & Patton, P.C., Berger & Montague, P.C., Peiffer Rosca Wolf Abdullah Carr & Kane, APLC, Bailey & Glasser LLP, and Reasonover & Associates, LLC.

(III) “Settling Plaintiffs’ Releasees” means (i) the Settling Plaintiffs (in their representative capacities with respect to the Boards of each Settling Plaintiff), and any and all other members of the Settlement Class, and each of their respective present, former, and future affiliates, subsidiaries, and parents, (ii) for each of the foregoing persons and entities, any entities in which each or they have a controlling interest, their respective present, former, and future employees, officers, boards, directors, trustees, accountants, auditors, insurers, reinsurers, agents, fiduciaries and attorneys, in their capacities as such; and (iii) for each of the foregoing persons and entities in (i) and (ii), their respective predecessors, successors, estates, heirs, executors, trusts, trustees, administrators, family members, agents, representatives and assigns, in their capacities as such.

(mmm) “Status Challenge” means a challenge brought by an entity which is not an Identified Settlement Class Member asserting that it is a Settlement Class Member, or by an entity challenging its identification as a Settlement Class Member in this Action as opposed to a member of the settlement class in the Diebold Action.

(nnn) “STEP” means the NTGI Collective Short Term Extendable Portfolio.

(ooo) “Summary Notice” means the Summary Notice of (i) Preliminary Certification of Settlement Class, and Proposed Partial Settlement of Class Action, (ii) Settlement Hearing, and (iii) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit 4 to Exhibit A, to be published as set forth in the Preliminary Approval Order.

(ppp) “Taxes” means: (i) all federal, state and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Settlement Fund or that are otherwise applicable to the Settlement Fund; and (ii) the reasonable expenses and costs incurred by Settling Plaintiffs’ Counsel in determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, reasonable expenses of tax attorneys and accountants); and (iii) all taxes imposed on payments by the Settlement Fund, including withholding taxes.

(qqq) “Unknown Claims” means any Settlement Class Released Claims or Defendants’ Released Claims which any releasing party, person, or entity does not know or suspect to exist in his, her, or its favor at the time this Stipulation is executed, approved, or becomes effective, *even if*, had any such claims been known by any of the foregoing, it might have affected his, her, or its decision(s) with respect to the Settlement and releases of such herein, or might have affected his, her, or its decision to enter into or



not to object to this Settlement or not to file a Request for Exclusion. The Settling Parties acknowledge that they may hereafter discover facts or legal theories or authorities in addition to or different from those that they now know or believe to be true. Notwithstanding the foregoing, with respect to any and all Settlement Class Released Claims and Defendants' Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date of the Settlement, the Settling Plaintiffs and Defendants shall expressly waive, and each of the other Settlement Class Members and all of the other releasing parties, persons, or entities shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, to the fullest extent permitted by law, any and all provisions, rights, and benefits conferred by California Civil Code §1542—and any federal law; law of any locality, state, or territory of the United States; or principle of common law or foreign law; or any other law, which is similar, comparable, or equivalent to California Civil Code §1542—which provides:

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

The Settling Plaintiffs and Defendants acknowledge, and each of the other Settlement Class Members and other releasing parties shall be deemed by operation of law to have acknowledged, that the foregoing waiver and release of Unknown Claims was separately bargained for and is a material element of the Settlement.

#### **COURT APPROVAL OF SETTLEMENT**

2. Within seven (7) business days of execution of this Stipulation or execution of the stipulation of settlement in the Diebold Action, whichever is later, the Settling Plaintiffs will move for entry of a Preliminary Approval Order, substantially in the form attached hereto as

Exhibit A, preliminarily approving the Settlement; certifying only for settlement purposes the Settlement Class set forth in the Preliminary Approval Order, to which Defendants do not object; directing that the Banking Notice, Settlement Notice, and Cover Letter be provided to Identified Settlement Class Members and that the Summary Notice be published as set forth therein; and providing for a Final Approval Hearing.

3. The Settling Parties shall cooperate and take reasonable steps necessary to obtain preliminary and final approval of the Settlement and entry of the Preliminary Approval Order and the Judgment; *provided, however*, that nothing in this paragraph shall (a) obligate Defendants to incur any expenses or make any payments in excess of the Settlement Amount (except as provided in ¶¶ 18-19 and 34-35); or (b) waive or abridge any party's right to terminate the Stipulation pursuant to the terms hereof.

#### **RELEASE OF CLAIMS**

4. Upon the Effective Date, and pursuant to the Judgment, Settling Plaintiffs and the Settlement Class Members, on their own behalf; and on behalf of all persons or entities on whose behalf each of the foregoing has standing to assert, individually or collectively, in full or in part, any Settlement Class Released Claims; and on behalf of each of all of the foregoing's respective past, present, or future fiduciaries, beneficiaries, members, participants, officers, directors, boards of trustees and trustees, boards and board members, insurers, reinsurers, heirs, executors, administrators, predecessors, successors, agents, and assigns, in their capacities as such; and on behalf of any other person or entity with standing to assert, in full or in part, any Settlement Class Released Claim on behalf of any Settling Plaintiff or Settlement Class Member, in their capacities as such, shall be deemed by operation of law (a) to have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, discharged and dismissed with

prejudice any and all Settlement Class Released Claims as against each and all of the Defendants' Releasees; and (b) to be forever enjoined from asserting or prosecuting any Settlement Class Released Claims as against each and all of the Defendants' Releasees. This Release shall not apply to any Non-Settled Claim.

5. Upon the Effective Date, and pursuant to the Judgment, Defendants, on their own behalf; and on behalf of all persons or entities on whose behalf any of the Defendants has standing to assert, individually or collectively, in full or in part, any Defendants' Released Claims; and on behalf of each of all of the foregoing's respective past, present, or future fiduciaries, beneficiaries, members, participants, affiliates, officers, directors, boards of trustees and trustees, boards and board members, insurers, reinsurers, heirs, executors, administrators, predecessors, successors, agents, and assigns, in their capacities as such; and on behalf of any other person or entity with standing to assert, in full or in part, any Defendants' Released Claim on behalf of any Defendant, in their capacities as such, shall be deemed by operation of law (a) to have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, discharged and dismissed with prejudice any and all Defendants' Released Claims as against each and all of the Settling Plaintiffs and the other Settling Plaintiffs' Releasees; and (b) to be forever enjoined from asserting or prosecuting any Defendants' Released Claims as against each and all of the Settling Plaintiffs and the other Settling Plaintiffs' Releasees. This Release shall not apply to any entity that submits a Request for Exclusion that is accepted by the Court or to such entity's releasees (as defined in ¶ 1(III) above), or to any Defendants' Reserved Claim.

6. Settling Plaintiffs covenant not to sue any of Defendants' Releasees on the basis of any Settlement Class Released Claims, and agree that they shall not assist or cooperate in any manner with the initiation or prosecution of any other action asserting any Settlement Class

Released Claim; provided however, that nothing in this paragraph shall prevent any Settling Plaintiff from responding to any valid subpoena, governmental inquiry, or any other legal process.

7. Defendants covenant not to sue any of Settling Plaintiffs' Releasees on the basis of any Defendants' Released Claims, and agree that they shall not assist or cooperate in any manner with the initiation or prosecution of any other action asserting any Defendants' Released Claim; provided however, that nothing in this paragraph shall prevent any Defendant from responding to any valid subpoena, governmental inquiry, or any other legal process

8. The Releases were separately bargained for and are essential elements of the Settlement embodied in this Stipulation. Notwithstanding ¶¶ 4-7 above, nothing in the Judgment shall bar any action by any of the Settling Parties to enforce or effectuate the terms of this Stipulation or the Judgment.

#### **THE SETTLEMENT CONSIDERATION**

9. In consideration of the settlement of the Settlement Class Released Claims against Defendants' Releasees, Defendants shall pay or cause to be paid the Settlement Amount into the Escrow Account on or before ten (10) business days after the later of: (i) the Court's entry of the Preliminary Approval Order; and (ii) the provision by the Settling Plaintiffs to Northern Trust through its counsel Winston & Strawn LLP of the information necessary to effectuate a transfer of funds, including wiring instructions to include the bank name and ABA routing number, account name and number, and a signed W-9 reflecting a valid taxpayer identification number for the qualified settlement fund in which the Escrow Account has been established.

10. The Settlement Amount is an all-in settlement number, meaning that it includes all attorneys' fees, Litigation Expenses, Notice and Administration Costs, Taxes, and fees and

costs of any kind incurred by Settling Plaintiffs and the Settlement Administrator in connection with the resolution of this matter, if any. For the sake of clarity, (a) all costs associated with the sending of the Banking Notice; (b) any costs incurred in connection with assembling and providing the information set forth in ¶ 18 below; and (c) any costs incurred by Defendants in connection with Challenges, as discussed in ¶¶ 34-35 below, shall be borne by Defendants.

11. The Settlement is not a claims-made settlement. Upon the occurrence of the Effective Date, no Defendants' Releasee, or any other person or entity who or which paid any portion of the Settlement Amount, shall have any right to the return of the Settlement Fund or any portion thereof for any reason whatsoever.

**USE OF SETTLEMENT FUND**

12. The Settlement Fund shall be used to pay: (a) any and all Taxes; (b) any and all Notice and Administration Costs; (c) any and all Litigation Expenses awarded by the Court; and (d) any and all attorneys' fees awarded by the Court, and Defendants' Releasees shall not be liable, under any circumstances, for any of the foregoing. The balance remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Authorized Payees as provided in ¶ 27 below.

13. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. Prior to the Effective Date, unless otherwise agreed to in writing between Northern Trust and Settling Plaintiffs, the Escrow Agent shall invest any funds in the Escrow Account exclusively in United States Treasury Bills having

maturities of ninety (90) days or less (or a registered mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances up to the amount that is insured by the FDIC may be deposited in any account that is fully insured by the FDIC. After the Effective Date, Northern Trust shall have no involvement with the investment of any funds in the Escrow Account and Co-Lead Counsel may direct the investment of all or part of such funds in United States Treasury Bills having maturities of more than ninety (90) days. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. All risks related to the investment of the Settlement Fund shall be borne by the Settlement Fund. Under no circumstances shall Defendants' Releasees be responsible for any losses or liability in connection with such Escrow Account, nor shall any such losses affect, impair, or invalidate this Settlement or its implementation.

14. The Settling Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Co-Lead Counsel, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Such returns shall be consistent with this paragraph and in all events shall reflect that all Taxes on the income earned on the Settlement Fund shall be paid out of the Settlement Fund as provided below. Co-Lead Counsel shall also be solely responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The Defendants'

Releasees shall not have any liability or responsibility for any such Taxes. Upon written request, Defendants will provide to Co-Lead Counsel the statement described in Treasury Regulation § 1.468B-3(e). Co-Lead Counsel, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a “relation back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

15. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the Escrow Agent pursuant to the disbursement instructions to be set forth in the Escrow Agreement, and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Defendants’ Releasees shall have no responsibility or liability with respect to the payment of Taxes, as described herein. Northern Trust shall notify Co-Lead Counsel if it receives notice of any claim for Taxes relating to the Settlement Fund. The Settlement Fund shall indemnify and hold Defendants’ Releasees harmless for any Taxes and related expenses of any kind whatsoever (including, without limitation, taxes payable by reason of any such notification).

16. Following entry of the Preliminary Approval Order, and prior to the Effective Date, without further approval from the Defendants or further order of the Court, all Notice and Administration Costs actually and reasonably incurred may be paid from the Settlement Fund, provided that the amount that may be paid for Notice and Administration Costs prior to the

Effective Date without further approval from Northern Trust or further order of the Court pursuant to this paragraph may not exceed \$100,000. In the event that the Settlement is terminated pursuant to the terms of this Stipulation (including the Supplemental Agreement as described in ¶ 41 below), all Notice and Administration Costs reasonably and actually paid or incurred, shall not be returned or repaid to Defendants, any of the other Defendants' Releasees, or any other person or entity who or which paid any portion of the Settlement Amount.

17. Except as expressly provided herein, Defendants' Releasees shall have no responsibility for, interest or involvement in, or liability whatsoever for the selection, actions, and supervision of the Escrow Agent and Settlement Administrator; the maintenance, investment, distribution or disbursement of the Settlement Fund; the establishment, maintenance, or activities of the Escrow Account; the terms or application of the Plan of Allocation or of any other plan of allocation; the preparation and content of the Class Distribution Order; the calculation, payment, or withholding of Taxes; or the administration of the Settlement. Without limiting the foregoing, the Settlement Fund shall be the sole source of Taxes, Notice and Administration Costs, attorneys' fees, and Litigation Expenses, or the costs of any kind incurred by Settling Plaintiffs and the Settlement Administrator in connection with the resolution of this matter, and there shall be no recourse against Defendants' Releasees for any such expenses; provided that Defendants shall be required to participate in the resolution of Challenges as discussed in ¶¶ 34-35 below.

**IDENTIFICATION OF SETTLEMENT CLASS MEMBERS AND  
THEIR INVESTMENT INFORMATION AND  
NOTICE TO SETTLEMENT CLASS MEMBERS**

18. Defendants shall, at no cost to the Settlement Fund, the Settling Plaintiffs, Settling Plaintiffs' Counsel, or the Settlement Administrator and with no obligation to seek information beyond that which is in their client records or of which they have then-current



knowledge, develop (a) the list of Identified Settlement Class Members, which shall, to the extent possible, include the most current mailing address and contact person(s) for each class member as well as the e-mail address for each contact person; and (b) a list setting forth each of the Commingled Lending Funds in which each such Identified Settlement Class Member was invested on each of the Relevant Dates, the number of units held in each of the funds on each of the Relevant Dates, and the dollar value of each such unit on each of the Relevant Dates. In compiling the lists referenced in the preceding sentence, Defendants agree to take all reasonable steps necessary to provide complete and accurate information. In accordance with the provisions of the Preliminary Approval Order to be entered by the Court, the Settlement Administrator and Settling Plaintiffs' Counsel may review the lists developed by Defendants for this Action as well as the analogous lists developed by Defendants for the Diebold Action, which shall also be provided to Settling Plaintiffs' Counsel herein, solely for the purposes set forth in Paragraph 8(c) of the Preliminary Approval Order to be entered by the Court (including to confirm, to the extent possible, that the entities identified by Defendants as members of the respective classes are, in fact, members of those classes).

19. In accordance with the provisions of the Preliminary Approval Order to be entered by the Court, Defendants shall at Defendants' expense provide the Banking Notice to each Identified Settlement Class Member via either U.S. mail or e-mail using the contact information described herein. The Banking Notice shall enclose a copy of the Preliminary Approval Order and state, among other things, that: (a) the investor has been identified by Northern Trust as being a member of the Settlement Class in a proposed settlement for \$24,000,000 in cash of certain claims alleged in the Action and may be eligible to participate in the distribution of the Net Settlement Fund without further action on the investor's part if the

Settlement is approved by the Court; (b) in order for the investor to be eligible to receive a distribution from the Net Settlement Fund, the Settlement Administrator must be provided with the investor's name, address, and telephone number, identity as a Northern Trust client, and its Investment Data; (c) the information will be provided to the Settlement Administrator (and may be provided to Settling Plaintiffs' Counsel in this Action and to Settling Plaintiffs' Counsel in the Diebold Action) pursuant to the Preliminary Approval Order solely for the purpose of providing notice of the Settlement to each Identified Settlement Class Member, calculating each Identified Settlement Class Member's *pro rata* share of the Net Settlement Fund, responding to Settlement Class Members' inquiries, dealing with Challenges (including submission of disputed Challenges to the Court), and as otherwise deemed necessary for the purpose of the administration of the Settlement, and such information shall otherwise remain confidential unless further disclosure consistent with applicable law is allowed; and (d) the information will be provided to the Settlement Administrator by Defendants fifteen (15) business days after the Banking Notice Date. The Banking Notice shall also inform the Identified Settlement Class Members that a full notice describing the Action, the proposed Settlement, Plan of Allocation for the proceeds of the Net Settlement Fund, and their rights with respect thereto will be mailed to them by the Settlement Administrator on or about fifteen (15) business days after the Settlement Administrator receives the information identifying them as Identified Settlement Class Members and including the information set forth in ¶ 18 above. The Settlement Notice will then also become available for review on the website maintained by the Settlement Administrator.

20. Co-Lead Counsel shall cause the Settlement Administrator to transmit the Settlement Notice and Cover Letter to all Identified Settlement Class Members at the locations set forth in the lists referred to in ¶ 18 above in the manner and within the time set forth in the

Preliminary Approval Order. In the event any Identified Settlement Class Member's mailing is returned, the Settlement Administrator shall use reasonable secondary efforts to obtain an updated address for such Identified Settlement Class Members.

21. Co-Lead Counsel will cause to be published the Summary Notice pursuant to the terms of the Preliminary Approval Order or in whatever other form or manner might be ordered by the Court.

**ATTORNEYS' FEES AND LITIGATION EXPENSES**

22. After the entry of the Preliminary Approval Order but prior to the date of the Final Approval Hearing, Co-Lead Counsel will apply to the Court for a collective award of attorneys' fees to Settling Plaintiffs' Counsel to be paid from (and out of) the Settlement Fund. Co-Lead Counsel also will apply to the Court for reimbursement of Litigation Expenses. Co-Lead Counsel's application for an award of attorneys' fees and/or Litigation Expenses or any award of same is not the subject of any agreement between Defendants and Settling Plaintiffs other than what is expressly set forth in this Stipulation.

23. Any attorneys' fees and Litigation Expenses that are awarded by the Court shall be paid from the Escrow Account to Co-Lead Counsel immediately upon award (but in no event before the entry of Judgment by the Court), notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Co-Lead Counsel's obligation to repay the award into the Escrow Account in whole if the Effective Date does not occur or the Settlement is terminated for any reason, or in part to the extent the award is reduced, plus accrued interest at the same net rate as is earned by the Settlement Fund. Co-Lead Counsel shall make the required refund or repayment in full no later than fourteen (14) days after receiving from Defendants' Counsel or from a court

notice of the termination of the Settlement or the failure of the Effective Date to occur or notice of any reduction of the award of attorneys' fees and/or Litigation Expenses.

24. An award of attorneys' fees and/or Litigation Expenses is not a necessary term of this Stipulation and is not a condition of the Settlement embodied herein. No decision by the Court or any court on any application for an award of attorneys' fees or Litigation Expenses shall affect the validity or finality of the Settlement. Neither Settling Plaintiffs nor Settling Plaintiffs' Counsel may cancel or terminate the Stipulation or the Settlement based on this Court's or any court's ruling with respect to attorneys' fees and/or Litigation Expenses.

25. Co-Lead Counsel shall allocate any attorneys' fees awarded amongst Settling Plaintiffs' Counsel. Should any dispute arise as to the allocation of attorneys' fees, such dispute shall not affect the validity or finality of the Settlement. Defendants' Releasees shall have no responsibility for or liability whatsoever with respect to any allocation or award of attorneys' fees or Litigation Expenses to or among counsel for the Settlement Class. Any attorneys' fees and Litigation Expenses that are awarded to Settling Plaintiffs' Counsel shall be payable solely from the Escrow Account and in no event shall Defendants' Releasees have any liability for any award of attorneys' fees or Litigation Expenses.

**SETTLEMENT ADMINISTRATOR**

26. As part of the Preliminary Approval Order, the Settling Plaintiffs shall seek appointment of a Settlement Administrator. The Settlement Administrator shall discharge its duties subject to the jurisdiction of the Court and under the supervision of Co-Lead Counsel and shall be responsible for implementing the Settlement according to the terms of the Plan of Allocation or such other plan of allocation as may be approved by the Court. Defendants' Releasees shall have no liability whatsoever for the administration of the Settlement or

disbursement of the Net Settlement Fund. Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms, provided that Defendants' Releasees and Defendants' Counsel shall have no obligation to incur any expenses or make any payments other than those that may be incurred in connection with the assembly and provision of information as set forth in ¶ 18 above; the provision of the Banking Notice as set forth in ¶ 19; and the resolution of Challenges as set forth in ¶¶ 34-35 below.

27. The Net Settlement Fund shall be distributed to Authorized Payees according to the Plan of Allocation appended to the Settlement Notice attached hereto as Exhibit 3 to Exhibit A, or such other plan of allocation as the Court approves. Each Authorized Payee shall receive its *pro rata* share of the Net Settlement Fund based upon such payee's Fund Distribution Amount for each Commingled Lending Fund in which it was invested on each Relevant Date as compared to the total Fund Distribution Amounts of all other Authorized Payees invested in the respective funds on the respective dates. Defendants' Releasees shall have no responsibility or liability whatsoever for calculations performed by the Settlement Administrator under the Plan of Allocation (or such other plan of allocation as may be approved by the Court) or the calculation of the *pro rata* share of the Net Settlement Fund to be sent to Authorized Payees, and Defendants shall take no position with respect to the Plan of Allocation.

28. The allocation of the Net Settlement Fund among Authorized Payees is a matter separate and apart from, and is not a necessary term of, the Settlement or of this Stipulation, and it is not a condition of the Settlement or this Stipulation that any particular plan of allocation be approved by the Court. There will be no distribution to Settlement Class Members until the Court has approved a plan of allocation and such approval is no longer subject to appeal or review. Any decision by the Court concerning the Plan of Allocation shall not affect the validity

or finality of the Settlement. Settling Plaintiffs and Settling Plaintiffs' Counsel may not cancel or terminate the Settlement (or the Stipulation) based on this Court's or any appellate court's ruling with respect to the Plan of Allocation or any plan of allocation in this Action.

29. Other than Northern Trust's obligation to provide the information specified in ¶ 18 herein, no Defendant, or any other of Defendants' Releasees, shall have any involvement with or liability, obligation, or responsibility whatsoever for the preparation, substance, or content of or for the application and implementation of the Court-approved plan of allocation.

30. Each Settlement Class Member shall be deemed to have submitted to the jurisdiction of the Court with respect to the Settlement, including but not limited to the submission of Challenges and the releases and injunction provided for herein and in the Judgment.

31. Co-Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for a Class Distribution Order: (a) ruling on the Settlement Administrator's administrative determinations concerning the acceptance and rejection of any Investment Challenges that may be made; (b) approving payment of Notice and Administration Costs associated with the administration of the Settlement from the Escrow Account; and (c) if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Payees from the Escrow Account. No payments shall be made to Authorized Payees from the Escrow Account before the Class Distribution Order is entered. In no event shall Defendants be liable for any sums in excess of the Settlement Amount, including any sums payable to any Settlement Class Member as a result of any Challenge or successful appeal after the entry of the Class Distribution Order. The Class Distribution Order shall not authorize any payments to Authorized Payees prior to the Effective Date.

32. Payment pursuant to the Class Distribution Order shall be final and conclusive against any and all Settlement Class Members.

33. No person or entity shall have any claim against Settling Plaintiffs' Releasees, Settling Plaintiffs' Counsel, Defendants' Releasees, or Defendants' Counsel, based on the administration of the Settlement, nor shall any person or entity have any claim against any of the foregoing or the Settlement Administrator or any other agent designated by Co-Lead Counsel based on distributions made in accordance with this Stipulation, the Settlement, the Plan of Allocation (or such other plan of allocation as may be approved by the Court), the Class Distribution Order, the resolution of any Challenges, or any other order of the Court.

### **CHALLENGES**

A. **Investment Challenge**

34. Any Identified Settlement Class Member shall have the right to dispute the amount(s) set forth in the Cover Letter as that investor's Investment Amount(s) and/or the identification of the Commingled Lending Fund(s) in which that investor invested. An Investment Challenge shall be made and processed as follows:

(a) The class member shall notify the Settlement Administrator in writing postmarked no later than thirty (30) calendar days after the date of the Settlement Notice that it challenges the Investment Data. The notification shall set forth the specific items that are being challenged and shall include a detailed statement of the basis for the challenge as well as documentation in support of the challenge.

(b) The Settlement Administrator shall forward the challenge and any supporting documentation to Co-Lead Counsel.

(c) Within five (5) business days of receipt of a request (if any) from the Settlement Administrator or Co-Lead Counsel for additional information and/or documentation supporting the Investment Amount(s) and/or the fund(s) subject to an Investment Challenge, Defendants shall provide such information and/or documents from their own client records (with no obligation to seek information additional to same) supporting such Investment Amount(s) and/or fund(s), if any, to the Settlement Administrator and Co-Lead Counsel. The Settlement Administrator and/or Co-Lead Counsel will attempt to resolve Investment Challenges and Defendants shall cooperate with them in this effort.

(d) The Settlement Administrator shall notify the challenging class member, in a timely fashion and in writing, whether (or to what extent) that class member's Investment Challenge has been accepted. The notice to be provided to a challenging class member whose challenge is rejected in whole or in part shall state that the class member has the right to a review of any such determination by the Court if the class member so desires and complies with the requirements of subparagraph (e) herein.

(e) If an Identified Settlement Class Member whose Investment Challenge has been rejected in whole or in part desires to contest that determination, that class member must, within twenty (20) calendar days after the date of the notice informing it of the determination, serve upon the Settlement Administrator a notice and statement of reasons indicating the grounds for contesting the determination along with any supporting documentation, and requesting a review thereof by the Court. The Settlement Administrator shall promptly forward any such requests for Court review and all supporting documentation to Co-Lead Counsel and Defendants' Counsel. If a dispute



concerning an Investment Challenge cannot otherwise be resolved by the Identified Settlement Class Member, the Settlement Administrator and Co-Lead Counsel, then Co-Lead Counsel shall submit such dispute to the Court for resolution. Defendants shall, if requested, provide Co-Lead Counsel with a written statement corroborating and supporting the Investment Data provided by Northern Trust relating to the entity making the Investment Challenge, to the extent contained in Defendants' client records, for potential submission to the Court by Co-Lead Counsel in support of the complete or partial rejection of the disputed Investment Amount(s) and/or fund(s). Any costs or fees incurred by Defendants in connection with their work relating to responding to or resolving Investment Challenges shall be borne exclusively by Defendants. Defendants' Releasees shall not be permitted to contest or object to any determination made as to any Challenge.

(f) If an Investment Challenge results in a change to the Investment Amount(s) or funds, the Fund Distribution Amount(s) will be calculated or recalculated using the revised Investment Data.

(g) The resolution of any and all Investment Challenges shall not affect the total Settlement Amount.

**B. Status Challenge**

35. Any entity shall have the right to attempt to establish its membership in the Settlement Class or to challenge its identification as a Settlement Class Member in this Action as opposed to a member of the Settlement Class in the Diebold Action. Such Status Challenge shall be made and processed as follows:

(a) The entity shall notify the Settlement Administrator in writing postmarked no later than thirty (30) calendar days after the date of publication of the Summary Notice that it believes that it is, or is not a member of the Settlement Class. The notification shall set forth a detailed statement of the basis for the challenge and shall include documentation in support of the challenge.

(b) The Settlement Administrator shall forward the challenge and any supporting documentation to Co-Lead Counsel.

(c) Within five (5) business days of receipt of a request (if any) from the Settlement Administrator or Co-Lead Counsel for information and/or documentation reflecting whether the challenging entity may or may not be a member of the Settlement Class, Defendants shall provide information and/or documents from their own client records (with no obligation to seek information additional to same) relevant to that issue, if any, to the Settlement Administrator and Co-Lead Counsel. The Settlement Administrator and/or Co-Lead Counsel will attempt to resolve Status Challenges and Defendants shall cooperate with them in this effort.

(d) The Settlement Administrator shall notify the challenging entity, in a timely fashion and in writing, whether the entity's Status Challenge has been accepted.

(e) The notice to be provided to a challenging entity whose challenge is rejected shall state that the entity has the right to a review of the determination by the Court if it so desires and complies with the requirements of subparagraph (f) below.

(f) If an entity whose Status Challenge has been rejected desires to contest that determination, it must, within twenty (20) calendar days after the date of the notice informing it of the determination, serve upon the Settlement Administrator a notice and

statement of reasons indicating the grounds for contesting the determination along with any supporting documentation, and requesting a review thereof by the Court. The Settlement Administrator shall promptly forward any such requests for Court review and all supporting documentation to Co-Lead Counsel and Defendants' Counsel. If a dispute concerning a Status Challenge cannot otherwise be resolved by the entity, the Settlement Administrator and Co-Lead Counsel, Co-Lead Counsel shall submit such dispute to the Court for resolution. Defendants shall, if requested, provide Co-Lead Counsel with a written statement corroborating and supporting the Investment Data or other relevant information, if any, provided by Northern Trust relating to the entity making the Status Challenge, to the extent contained in Defendants' client records for potential submission to the Court by Co-Lead Counsel in support of the rejection of the Status Challenge. Any costs or fees incurred by Defendants in connection with their work relating to responding to or resolving Status Challenges shall be borne exclusively by Defendants. Defendants' Releasees shall not be permitted to contest or object to any determination made as to any Status Challenge.

(g) If a Status Challenge results in a finding that the challenger is a Settlement Class Member or is a member of the Diebold Class, Defendants shall, within ten (10) business days of receipt of notice of that determination, provide the relevant Settlement Administrator with the Investment Data (if any) for that entity. The relevant Settlement Administrator will send a Cover Letter to that entity, and that entity will have the right to make an Investment Challenge in accordance with the terms and provisions applicable to the Identified Settlement Class Members in the relevant class.

(h) The resolution of any and all Status Challenges shall not affect the total Settlement Amount.

36. All proceedings with respect to the Settlement administration, processing of Challenges, and determinations made with respect thereto, including any challenges or controversies relating thereto, as well as any disputed questions of law and fact with respect thereto, shall be subject to the jurisdiction of the Court. All Settlement Class Members and Settling Parties to this Settlement expressly waive trial by jury (to the extent any such right may exist) and any right of appeal or review with respect to such determinations.

**WAIVER, TERMINATION AND EFFECTIVE DATE**

37. Settling Plaintiffs (provided they unanimously agree) or Defendants (provided they unanimously agree) shall each have the right to terminate the Settlement and this Stipulation, by providing written notice of their election to do so to the other Settling Parties to this Stipulation within ten (10) business days of any one of the following events: (a) the Court's entry of an order expressly declining to enter the proposed preliminary approval order in this Action or in the Diebold Action in any material respect; (b) the Court's refusal to approve the proposed settlement in this Action or in the Diebold Action or any material part of the respective settlements; (c) the Court's entry of an order expressly declining to enter the proposed judgment in this Action or in the Diebold Action in any material respect as to either settlement; or (d) the date upon which the judgment in this Action or in the Diebold Action is modified or reversed in any material respect and such modification or reversal becomes Final (as that term is defined in the respective stipulations of settlement); at which point the provisions of ¶ 40 shall apply. However, any decision, ruling or order, whether in this Court or any other court, with respect to an application for attorneys' fees or Litigation Expenses or with respect to any particular plan of allocation shall not be considered material to either of the settlements, shall not affect the finality

of any judgment, and shall not be grounds for termination of either settlement.

38. The Effective Date of the Settlement shall be the first business day on which all of the following events shall have occurred or been waived in writing:

(a) the Court has entered the Preliminary Approval Order, substantially and in all material respects in the form set forth in Exhibit A attached hereto;

(b) the Settlement Amount has been deposited in the Escrow Account in accordance with the provisions of ¶ 9 above;

(c) Defendants have not exercised their right to terminate the Settlement pursuant to the provisions of this Stipulation (including the Supplemental Agreement);

(d) Settling Plaintiffs have not exercised their right to terminate the Settlement pursuant to the provisions of this Stipulation (including the Supplemental Agreement);

(e) the Court has approved the Settlement as described herein, following notice to the Settlement Class and the Final Approval Hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, and entered the Judgment substantially and in all material respects in the form set forth in Exhibit B attached hereto, and the Judgment has become Final; and

(f) a final judgment has been entered in the Diebold Action approving the Diebold Settlement and such judgment has become Final, as that term is defined in the stipulation and agreement of settlement in that action.

39. Upon the occurrence, or waiver in writing, of all of the events referenced in ¶ 38 above, any and all remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the Releases herein shall be effective.

40. If Defendants or the Settling Plaintiffs exercise their respective right to terminate

the Settlement as provided in this Stipulation, then:

(a) The Settlement and this Stipulation shall be canceled and terminated except for the surviving provisions as provided in this Stipulation;

(b) Settling Plaintiffs and Defendants shall be restored to their respective positions in the Action as of January 13, 2014;

(c) The terms and provisions of this Stipulation and any exhibits attached hereto, with the exception of ¶¶ 16, 23, 42, 63, and this ¶ 40, shall have no further force and effect with respect to the Settling Parties and shall not be used in the Action or in any other proceeding by anyone for any purpose, and any Judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*;

(d) Within five (5) business days after written notification of any such termination is sent by Defendants' Counsel and Co-Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued interest thereon and any funds received by Settling Plaintiffs' Counsel pursuant to ¶ 23 above), less any allowable expenses and costs which have either been disbursed or incurred and chargeable as Notice and Administration Costs and less any Taxes paid or due or owing, shall be refunded by the Escrow Agent to Defendants (or such other persons or entities as Defendants may direct). At the request of Defendants' Counsel, Co-Lead Counsel or their designee shall apply for any tax refund owed on amounts in the Escrow Account and pay the proceeds, after any deduction of any fees or expenses incurred in connection with such application(s), for refund to Defendants. Should there be any tax refund with respect to prior payments of

taxes for the Settlement Fund, such amount will, within ten (10) business days of receipt, be returned to Defendants; and

(e) Co-Lead Counsel shall return any attorneys' fees and Litigation Expenses, as set forth in ¶ 23 above.

41. In addition to the grounds set forth in ¶ 37 above, Defendants and Settling Plaintiffs shall each, respectively, have the option to terminate the Settlement in the event that the conditions for termination set forth in Defendants' confidential supplemental agreement with Settling Plaintiffs (the "Supplemental Agreement") are met. The Supplemental Agreement, which is being executed concurrently herewith, shall not be filed with the Court and its terms shall not be disclosed in any other manner (other than the statements herein and in the Settlement Notice, to the extent necessary, or as otherwise provided in the Supplemental Agreement) unless and until the Court otherwise directs. If submission of the Supplemental Agreement is required for resolution of a dispute or is otherwise ordered by the Court, the disputing parties will undertake to have the Supplemental Agreement submitted to the Court *in camera* or under seal.

**INADMISSIBILITY OF SETTLEMENT AND SUPPORTING DOCUMENTS**

42. Neither this Stipulation (whether or not consummated), including the exhibits hereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court); nor the Settlement (whether or not approved by the Court); nor the Supplemental Agreement; nor anything written or said in relation thereto (including the materials submitted in support of the Settlement or the Plan of Allocation, the negotiations that led to the agreement in principle reached in early January 2014, the negotiation of the Stipulation and its exhibits, any papers submitted in support of approval of the Settlement, any proceedings taken pursuant to or in connection with the Stipulation and/or approval of the Settlement, any

arguments proffered in connection therewith, and all court orders and judgments); nor any negotiations, discussions, drafts, exchange of information or documents, or proceedings in connection with the Settlement; nor any act performed or document signed in connection with the Settlement:

(a) shall be offered against any of the Defendants' Releasees as evidence of, or construed as, or deemed or found to be evidence of any presumption, concession, or admission by any of the Defendants' Releasees with respect to the truth or validity of any fact alleged by the Settling Plaintiffs; any allegation of the pleadings (including the Second Amended Complaint); any claim that was, could have been, or may be asserted by any party; the deficiency of any defense or affirmative defense that has been, could have been, or may be asserted in this Action or in any litigation; of any liability, negligence, breach of fiduciary or other duty, breach of contract, bad faith, fault, or other wrongdoing of any kind of any of the Defendants' Releasees; or of the nature, calculability, or amount of damages that would have been recoverable in this Action or any litigation, or in any way referred to for any other reason as against any of the Defendants' Releasees, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(b) shall be offered against any of the Settling Plaintiffs' Releasees, as evidence of, or construed as, or deemed or found to be evidence of any presumption, concession or admission by any of the Settling Plaintiffs' Releasees that any of the claims asserted or to be asserted in the Action are without merit, that any of the Defendants' Releasees have or had meritorious defenses (including affirmative defenses), or that



damages recoverable by the Settlement Class under the Second Amended Complaint with respect to their claims relating to Indirect Lending would not have exceeded the Settlement Amount, or with respect to any liability, negligence, breach of fiduciary duty, fault or wrongdoing of any kind, or of the nature, calculability, or amount of damages that would have been recoverable in this Action or any litigation; or in any way referred to for any other reason as against any of the Settling Plaintiffs' Releasees, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(c) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given hereunder represents the amount that could be or would have been recovered by the Settlement Class after trial with respect to their claims relating to Indirect Lending; or

(d) shall be cited, used, referred to, offered, or submitted in, or otherwise have any probative value in connection with, the ongoing prosecution or defense of the Action with respect to the allegations and claims relating to Direct Lending;

provided, however, that if this Stipulation is approved by the Court, the Settling Parties and the Releasees and their respective counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement.

#### **MISCELLANEOUS PROVISIONS**

43. All of the exhibits and the Appendix attached hereto are hereby incorporated into this Stipulation by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any exhibit attached hereto, the terms of the Stipulation shall prevail.

44. Notwithstanding any other provision of this Stipulation, it is Defendants' intention either to fully and finally settle both the Indirect Lending claims in the Action and the entire Diebold Action, or not to settle at all. Accordingly, the terms of this Stipulation and the settlement terms of the Diebold Action shall be construed to accomplish this purpose and shall not be construed to subvert this purpose. In no event, however, shall Defendants be held to settle only the Indirect Lending claims in this Action alone or only the Diebold Action alone, and, notwithstanding any other provision of this Stipulation, Defendants always retain the right to terminate this Settlement in this Action and/or the settlement in the Diebold Action to prevent any such occurrence.

45. 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 Defendants 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 into the Settlement Fund by others, then, at the election of the Settling Plaintiffs, the Settling Plaintiffs and Defendants shall jointly move the Court to vacate and set aside the Releases given and the Judgment entered pursuant to this Stipulation, which Releases and Judgment shall be null and void, and the Settling Parties shall be restored to their respective positions in the litigation as provided in ¶ 40(b) above and any cash amounts in the Settlement Fund (less any Taxes paid, due or owing with respect to the Settlement Fund and less any Notice and Administration Costs actually incurred, paid or payable) shall be returned as provided in ¶ 40(d) above.

46. The Settling Parties intend this Stipulation and the Settlement to be a final and complete resolution of the Settlement Class Released Claims and the Defendants' Released Claims. Accordingly, with respect to Indirect Lending claims, Settling Plaintiffs and their

counsel and Defendants and their counsel agree not to assert in any forum (i) that the claims asserted on behalf of the Settlement Class in the Action with respect to Indirect Lending were brought by Settling Plaintiffs or their counsel or defended by the Defendants or their counsel in bad faith or without a reasonable basis, or that the claims asserted in the Action by Defendants were brought by Defendants or their counsel or defended by the Settling Plaintiffs or their counsel in bad faith or without a reasonable basis; or (ii) that there was any violation of Rule 11 of the Federal Rules of Civil Procedure (or any like rule or statute) relating to the institution, prosecution, defense, or settlement of the claims, allegations, and arguments brought and made in this Action. The Settling Plaintiffs and Defendants agree that they negotiated the amount paid and the other terms of the Settlement at arm's-length and in good faith, and that they reached the Settlement voluntarily after extensive negotiations and consultation with experienced legal counsel fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

47. While the Settling Parties retain their right to deny that the claims or defenses asserted in the Action were or were not meritorious, Settling Plaintiffs and their counsel and Defendants and their counsel shall not make (whether or not for attribution) any accusations of wrongful or actionable conduct by either side concerning the manner of the prosecution, defense, and resolution of the claims brought on behalf of the Settlement Class in the Action with respect to Indirect Lending; nor will they deny that the claims were commenced, prosecuted and defended in good faith, nor otherwise suggest that the Settlement constitutes an admission concerning the merits of any such claim or defense.

48. The terms of the Settlement, as reflected in this Stipulation, including the exhibits and the Supplemental Agreement, may not be modified or amended, nor may any of its

provisions be waived, except by a writing signed on behalf of both the Settling Plaintiffs and Defendants (or their successors-in-interest) or, in the case of waiver, by the person or entity making the waiver. Any condition in this Stipulation may be waived by the party entitled to enforce the condition, but only in a writing signed by that party or its counsel. Without further order of the Court, the parties may agree, and will cooperate in agreeing, to reasonable extensions of time to carry out any of the provisions of this Stipulation.

49. The headings herein are used for the purpose of convenience only and are not meant to have legal effect or to change the meaning of the provisions herein.

50. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and Litigation Expenses and for enforcing the terms of this Stipulation, including the Plan of Allocation (or such other plan of allocation as may be approved by the Court) and the distribution of the Net Settlement Fund to Settlement Class Members.

51. The waiver by any one Settling Party of any breach of this Stipulation by any other Settling Party shall not be deemed a waiver of the breach by any other Settling Party, or a waiver of any other prior or subsequent breach of this Stipulation by that Party or any other Settling Party.

52. This Stipulation and its exhibits and the Supplemental Agreement constitute the entire agreement among the Settling Parties concerning the Settlement and all Settling Parties acknowledge that no other agreements, representations, warranties, or inducements have been made or have been relied upon by any Settling Party hereto concerning the Settlement other than those contained and memorialized in such documents.

53. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via e-mail. All executed counterparts, and each of them, shall be deemed to be one and the same instrument provided that counsel for the signatories of this Stipulation shall exchange among themselves original signed counterparts.

54. This Stipulation shall be binding upon and inure to the benefit of the successors and assigns of the Settling Parties, including any and all Releasees and any corporation, partnership, or other entity into or with which any Settling Party hereto may merge, consolidate, or reorganize.

55. The construction, interpretation, operation, effect, and validity of this Stipulation and its exhibits, the Supplemental Agreement, and all documents necessary to effectuate them shall be governed by the internal laws of the State of Illinois without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

56. Any action arising under or to enforce this Stipulation or any portion thereof, shall be commenced and maintained only in the Court.

57. This Stipulation or any part of this Stipulation shall not be construed more strictly against one Settling Party than another merely by virtue of the fact that the Stipulation or any part of it may have been prepared by counsel for one of the Settling Parties, it being recognized that the Stipulation was the result of arm's-length negotiations between the Settling Parties, all of whom were advised by counsel in connection with the execution of the Stipulation, and all Settling Parties have contributed substantially and materially to the preparation of this Stipulation.

58. The Settling Plaintiffs and Defendants each represent and warrant that they hold

the claims being released in the Settlement and that they have full authority to release such claims.

59. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

60. Settling Plaintiffs' Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Court approval of the Preliminary Approval Order and the Settlement, as embodied in this Stipulation, and to use best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement. Nothing in this paragraph shall (a) obligate Defendants to make any payments to Settlement Class Members or the Settlement Fund in excess of the Settlement Amount; or (b) waive or abridge any party's right to terminate the Settlement pursuant to the terms hereof.

61. If any Settling Party is required to give notice to another Settling Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or facsimile or e-mail transmission. Notice shall be provided as follows:

If to Settling Plaintiffs or Co-Lead  
Counsel:

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Facsimile: (312) 794-7801  
Email: avi@blbglaw.com

Keller Rohrback L.L.P.  
Attn: Lynn L. Sarko, Esq.  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101  
Telephone: (206) 623-1900  
Facsimile: (206) 623-3384  
Email: lsarko@kellerrohrback.com

Schneider Wallace Cottrell Konecky  
Wotkyns LLP  
Attn: Todd Schneider, Esq.  
180 Montgomery Street, Suite 2000  
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Telephone: (415) 421-7100  
Facsimile: (415) 421-7105  
Email: tschneider@schneiderwallace.com

If to Defendants:

Winston & Strawn LLP  
Attn: Caryn L. Jacobs, Esq.  
35 W. Wacker Drive  
Chicago, Illinois 60601  
Telephone: (312) 558-5600  
Facsimile: (312) 558-5700  
Email: CJacobs@winston.com

62. Except as otherwise provided herein, each Settling Party shall bear its own attorneys' fees and costs.

63. Whether or not the Stipulation is approved by the Court and whether or not the Settlement is consummated or the Effective Date occurs, the Settling Parties and their counsel shall use their best efforts to keep all non-public negotiations, discussions, acts performed, agreements, drafts, documents signed, communications and documents exchanged, and proceedings in connection with the Stipulation confidential, and all of the foregoing is and shall continue to be protected under Fed. R. Evidence 408; shall be deemed subject to the protections set forth in ¶ 64 herein; and shall not be deemed to constitute a waiver of any privilege or immunity, including, without limitation, attorney-client privilege or work product protection.

64. The settlement of the Indirect Lending claims in no way limits or impairs the

agreements made and orders entered during the course of this Action relating to the confidentiality of information and all such agreements and orders shall continue in effect after the Effective Date pursuant to their terms, including, without limitation, the Protective Order signed by the Court on October 13, 2011, docket number 123, in the Action.

65. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Settlement Class Members is being given or will be given by the Settling Parties or their counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation. Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

**IN WITNESS WHEREOF**, the Settling Parties have caused this Stipulation to be executed, by their duly authorized representatives and/or attorneys, as of February 17, 2015.



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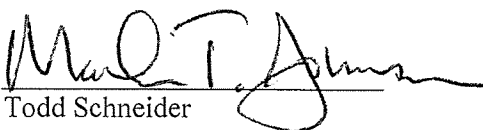
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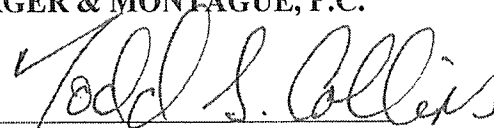
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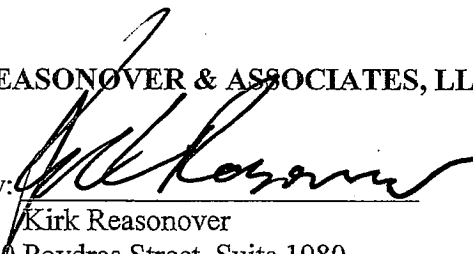
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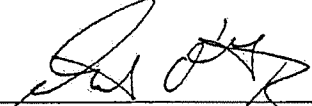
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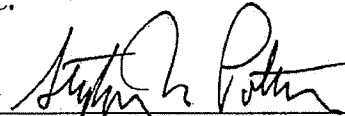
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## APPENDIX

**Commingled Lending Funds**

<b>Fund Acct No.</b>	<b>Commingled Lending Fund Name</b>
17-13070	NTGI-QM Collective Weekly Quant Enhanced EAFE Fund
17-13071	NTGI-QM Collective Weekly Quant Enhanced EASEA Fund (a/k/a NTGI-QM Collective Weekly Enhanced EAFE ex-Japan Fund)
17-13073	NTGI-QM Collective Daily EAFE Index Fund
17-13074	NTGI-QM Collective Daily United Kingdom Index Fund
17-13075	NTGI-QM Collective Daily Continental Europe Index Fund
17-13076	NTGI-QM Collective Daily Japan Index Fund
17-13077	NTGI-QM Collective Daily Southwest Pacific Index Fund
17-22519	NTGI-QM Collective Daily World Government Bond Index Fund (a/k/a NTGI-QM Collective World Government Bond Index ("WGBI") Fund)
17-23220	NTGI-QM Collective Daily All Country World ex-US Equity Index Fund
17-23221	NTGI-QM Collective Daily Emerging Markets Equity Index Fund
17-39168	NTGI-QM Collective Daily Developed International Small Cap (DISC) Equity Index Fund
17-61364	NTGI-QM Collective Daily Global Real Estate Index Fund
17-83694	NTGI-QM Collective Daily EAFE Index Fund – TD
17-83720	NTGI-QM Collective Daily Global Real Estate Index Fund – TD
17-95334	NTGI-QM Collective Daily All Country World ex-US Equity Index Fund - Lending - DC - Tier J
17-95336	NTGI-QM Collective Daily Emerging Markets Equity Index Fund - Lending - DC - Tier J
20-00000	NTGI Collective Weekly SmallCap Growth Equity Fund
20-00564	NTGI-QM Collective Daily S&P 500 Equity Index Fund

- 20-00568 NTGI-QM Collective Daily Russell 3000 Equity Index Fund
- 20-00569 NTGI-QM Collective Daily Russell 1000 Equity Index Fund
- 20-00570 NTGI-QM Collective Daily Russell 1000 Growth Equity Index Fund
- 20-00571 NTGI-QM Collective Daily Russell 1000 Value Equity Index Fund
- 20-00572 NTGI-QM Collective Daily Russell 2000 Equity Index Fund (including NTGI-QM Collective Daily Russell 2000 Equity Index Fund - Class C Lending)
- 20-00573 NTGI-QM Collective Daily Russell 2000 Growth Equity Index Fund
- 20-00574 NTGI-QM Collective Daily Russell 2000 Value Equity Index Fund
- 20-00575 NTGI-QM Collective Daily Russell SmallCap Completeness Fund
- 20-00576 NTGI-QM Collective Daily Quant Index Plus S&P 500 Equity Fund
- 20-00591 NTGI-QM Collective Daily Aggregate Bond Index Fund (including NTGI-QM Collective Daily Aggregate Bond Index Fund - Lending - DC - Tiers K, M, N, Q)
- 20-00593 NTGI-QM Collective Daily Government / Credit Bond Index Fund
- 20-00595 NTGI-QM Collective Daily Treasury Inflation-Protected Securities ("TIPS") Fund
- 20-00596 NTGI-QM Collective Daily Short Term Government Index Fund
- 20-01003 NTGI-QM Collective Daily Russell 2000 Index Fund - Lending - DC - Tier J
- 20-01012 NTGI-QM Collective Daily Aggregate Bond Special Purpose Index Fund
- 20-01013 NTGI-QM Collective Daily S&P 500 Special Purpose Equity Index Fund
- 20-01014 NTGI-QM Collective Daily S&P 500 / Citigroup Growth Equity Special Purpose Index Fund (a/k/a NTGI- QM Collective Daily S&P 500 BARRA Growth Special Purpose)
- 20-01016 NTGI-QM Collective Daily S&P MidCap 400 Equity Special Purpose Index Fund
- 20-01027 NTGI-QM Collective Daily Quant Enhanced Russell 1000 Fund
- 20-01036 NTGI-QM Collective Daily TIPS Fund – TD
- 20-01037 NTGI-QM Collective Daily Short Term Government Fund – TD

- 20-01038 NTGI-QM Collective Daily S&P500 Equity Index Fund – TD
- 20-01040 NTGI-QM Collective Daily Russell SmallCap Completeness Fund – TD
- 20-01041 NTGI-QM Collective Daily Aggregate Bond Index Fund – TD
- 20-01062 NTGI-QM Collective Daily S&P500 Equity Index Fund - Lending - DC -Tier K
- 20-04635 NTGI Collective Stable Asset Fund
- 20-42580 NTGI-QM Collective Daily Quant Active SmallCap Value Equity Fund (a/k/a NTGI Collective Weekly Quant Active SmallCap Value Equity Fund)
- 20-42582 NTGI Collective Weekly MidCap Growth Equity Fund
- 20-42631 NT Collective S&P 500 Growth Index Fund (a/k/a NTGI-QM Collective Daily S&P 500 / Citigroup Growth Equity Index Fund)
- 20-45176 NT Collective S&P 400 Index Fund (a/k/a NTGI-QM Collective Daily S&P MidCap 400 Equity Index Fund)
- 20-73536 NT Collective S&P 500 Value Index Fund (a/k/a NTGI-QM Collective Daily S&P 500 / Citigroup Value Equity Index Fund)
- 26-10823 NTGI-QM Labor Select Collective Daily Russell 3000 Equity Index Fund
- 26-18663 NTGI-QM Collective Daily U.S. MarketCap Equity Special Purpose Index Fund
- 26-46508 NTGI-QM Collective Daily Structured SmallCap Equity Fund
- 26-46509 NTGI-QM Collective Daily Extended Equity Market Index Fund (a/k/a NTGI-QM Collective Daily SmallCap Equity Index Fund)
- 26-46516 NTGI-QM Collective Daily Enhanced Fixed Income Fund
- 26-46519 NTGI-QM Collective Daily Mortgage Backed Securities Index Fund (a/k/a NTGI-QM Collective Mortgage-Backed Securities Fund)
- 26-46529 NTGI Collective Monthly LargeCap Growth Equity Fund (a/k/a NTGI-QM Collective Monthly Large Cap Growth Equity Fund)
- 26-46533 NTGI-QM Collective Daily 1-10 Year Intermediate Credit Bond Index Fund
- 26-46535 NTGI-QM Collective Daily Long Term Credit Bond Index Fund (a/k/a NTGI-QM Collective Daily Long-Term Credit Bond Index Fund)

- 26-46540 NTGI-QM Collective Daily 1-10 Year Intermediate Government Bond Index Fund
- 26-46541 NTGI-QM Collective Daily Long-Term Government Bond Index Fund
- 26-46543 NTGI-QM Collective Daily Intermediate Government / Credit Bond Index Fund
- 26-46549 NTGI-QM Collective Daily U.S. MarketCap Equity Index Fund
- 26-69573 NTGI-QM Collective Daily Long Term Government / Credit Bond Index Fund
- 26-70251 NTGI-QM Collective Daily Quant Enhanced S&P 400 Equity Fund
- 26-80724 NTGI-QM Collective Weekly Quant Index Plus Russell 1000 Labor Select Fund

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