

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between and among the following undersigned parties:

Plaintiff the Federal Deposit Insurance Corporation as Receiver for the 20 Closed Banks listed in Exhibit A to this Agreement (“FDIC-R”), Defendant MUFG Bank, Ltd. (f/k/a The Bank of Tokyo-Mitsubishi UFJ, Ltd.) (“MUFG Bank”), and Defendant Société Générale (“SocGen”) (collectively, “Defendants”) (each a “Party” and collectively, the “Parties”).

This Settlement Agreement shall be effective as of the date last executed by any Party (“Effective Date”).

RECITALS

WHEREAS:

Exhibit A identifies the Closed Banks as depository institutions that were lawfully organized and existing under the laws of the states listed in Exhibit A. Exhibit A further identifies the relevant Chartering Authority that closed each Bank pursuant to 12 U.S.C. § 1821(c), and the date of each closing. The Federal Deposit Insurance Corporation was appointed Receiver for each Closed Bank on their respective dates of closing. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of each Closed Bank, including those with respect to its assets;

Among the assets to which the FDIC-R succeeded were all of the Closed Banks’ claims, demands, and causes of action;

On March 14, 2014, the FDIC-R filed a complaint for money damages against, among others, Defendants. Those claims for damages are now pending in the United States District Court for the Southern District of New York: *Federal Deposit Insurance Corporation As Receiver For Amcore Bank, et al. v. Bank of America Corporation, et al.*, No. 1:14-cv-1757-NRB; *In re LIBOR-Based Financial Instructions Antitrust Litigation*, No. 1:11-md-2262-NRB (the “Action”);

The FDIC-R has alleged, among other things, that Defendants violated state and federal law by conspiring to manipulate U.S. Dollar LIBOR;

The FDIC-R has not assigned any of the Closed Banks' claims, demands, or causes of action that have or could have been asserted against Defendants in the Action;

Defendants have not filed an Answer to the FDIC-R's complaint;

Defendants have denied and continue to deny any liability and maintain that they have meritorious defenses to liability and damages in the Action;

In light of the unique allegations of the complaint, the Parties acknowledge contribution protections afforded settling parties under applicable law; and

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further litigation;

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned Parties agree, each with the other, as follows:

SECTION I: PAYMENT TO THE FDIC-R

A. As an essential covenant and condition to this Agreement, on or before thirty (30) calendar days following the Effective Date, Defendants shall pay the FDIC-R the sum of \$13.5 million ("the Settlement Payment"). MUFG Bank and SocGen shall each be responsible for paying one half of the Settlement Payment. The Settlement Payment shall constitute a debt due and owing the FDIC-R, an instrumentality, agency and/or other entity of the United States, on the Effective Date. The debt shall be discharged by payment in full to the FDIC-R.

B. Defendants shall deliver the Settlement Payment to the FDIC-R by electronic funds transfer pursuant to written instructions including a tax identification number to be provided by the FDIC-R, contemporaneous with signing the Agreement.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by Section I, subsection A above, then each Defendant shall be in default of its payment obligation ("Default") and interest shall accrue at the rate of five percent (5%) per annum or the rate calculated in accordance with 26 U.S.C. § 6621(a)(2), whichever rate is higher ("Default Interest Rate") on the unpaid total (i.e., unpaid amount of Settlement Payment together with all

accrued interest) until paid in full, and the FDIC-R, in its sole discretion, shall have the right to:

1. Waive the Default and extend the period of time for the Settlement Payment in writing, including interest at the Default Interest Rate accruing from the date determined by subsection A above; or

2. Enforce this Agreement, including without limitation, by the FDIC-R's motion to summarily enforce the agreed-upon settlement by the Court entering judgment against Defendants for breach of the settlement agreement in the amount of the unpaid total (i.e. unpaid amount of Settlement Payment together with all accrued interest) together with the costs of collection and all of the FDIC-R's reasonable attorney's fees and costs incurred in enforcing the terms of this Agreement. In such event, Defendants waive and covenant not to plead, argue, or otherwise assert any defense, claim or counterclaim of any kind whatsoever except the defense of payment of the Settlement Payment, in part or in full, to an action or motion to enforce this Agreement and agrees to exclusive jurisdiction and venue in United States District Court in the Southern District of New York for any such motion; or

3. Terminate the Agreement by declaring it null and void, move to vacate any dismissal order, to which Defendants agree to consent, and re-institute the action on the FDIC-R's claims. Defendants further agree to waive and covenants to not plead, argue, or otherwise assert any defense, claim or counterclaim of any kind whatsoever that did not exist or was otherwise unavailable as of the Effective Date, except the defense of payment of the Settlement Payment, in part or in full.

4. Seek any other relief available to it in law or equity.

Any decision by the FDIC-R to extend the time, and any extension of time, under Section I.C.1 for delivery of the Settlement Payment or any decision by the FDIC-R to accept a portion of the Settlement Payment, and any acceptance of a portion of the Settlement Payment, shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.C.1 through I.C.4 at any time prior to receipt of Settlement Payment (including all accrued interest) in full; provided, however, that in the event the FDIC-R terminates this Agreement by declaring it null and void, the

FDIC-R will return to Defendants any and all amounts paid to the FDIC-R under this Settlement Agreement.

SECTION II: NOTICE OF DISMISSAL

Within five (5) days after the FDIC-R's receipt of the Settlement Payment, the FDIC-R shall file a notice of voluntary dismissal with prejudice of the Action as against Defendants.

SECTION III: RELEASES

A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section III.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Defendants and their respective past or present parents, subsidiaries, and affiliates, and their respective current and former officers, directors, employees, agents, representatives, and assigns from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, that (1) arise from or relate in any way to any conduct alleged or that could have been alleged in, or (2) arise from the factual predicate of, the Action ("Released Claims").

B. Defendants' Reciprocal Release.

Effective simultaneously with the release granted in Section III.A. above, Defendants, on behalf of themselves and their successors and assigns, hereby releases and discharges the FDIC-R and its respective past or present parents, subsidiaries, and its employees, officers, directors, representatives, attorneys, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to Defendants, that (1) arise from or relate in any way to any conduct alleged or that could have been alleged in, or (2) arise from the factual predicate of, the Action.

C. Release of Unknown Claims.

Each of the FDIC-R and Defendants acknowledge that it has been advised by its attorneys concerning, and is familiar with, California Civil Code Section 1542 and, to the extent applicable, expressly waive any and all provisions, rights, and benefits conferred by California Civil Code

Section 1542 or any law of any other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to the provisions of the California Civil Code Section 1542, including that provision itself, which reads as follows:

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

The Parties acknowledge that inclusion of the provisions of this Section III, subsection C in this Agreement was a material and separately bargained-for element of this Agreement. The Parties further acknowledge that the releases granted herein are specific releases limited to those claims released in III.A-C, not general releases.

D. Exceptions from Releases by the FDIC-R.

1. Notwithstanding any other provision of this Agreement, the FDIC-R, in any capacity, does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:

a. Against Defendants or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to the FDIC-R, the Closed Banks, other financial institutions, or any other person or entity, including without limitation any such claims acquired by the FDIC-R as successor in interest to the Closed Banks;

b. By the FDIC in any capacity other than as Receiver for the Closed Banks; and

c. Against any person or entity not expressly released by the FDIC-R in this Agreement.

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the

jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person or entity.

3. Notwithstanding any other provision of this Agreement, this Agreement shall not be construed or interpreted as waiving, or intending to waive, any claims that could be brought by the United States or any department, agency, or instrumentality thereof (other than the FDIC-R), including, but not limited to, through the United States Department of Justice or any United States Attorney's Office.

SECTION IV: REPRESENTATIONS AND ACKNOWLEDGEMENTS

A. Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties hereto or are authorized to sign this Agreement on behalf of the respective Party, and that they have the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective trustees, administrators, representatives, successors and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that Party by its counsel.

SECTION V: REASONABLE COOPERATION

A. The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing, or causing their agents and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to conclude the Action and to otherwise perform the terms of this Agreement.

B. As part of the consideration for the dismissal of the Action against Defendants and the release of the claims, Defendants shall provide only the cooperation as set in the attached Cooperation Agreement, Exhibit B. For the avoidance of doubt, nothing in this agreement waives

the FDIC-R's right to take additional discovery in the Action against any other party or non-party.

SECTION VI: OTHER MATTERS

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims and defenses, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

B. Counterparts and Digital Signatures. This Agreement may be executed digitally by DocuSign or similar services which use public key cryptography or by hand, in any number of counterparts, and delivered electronically or physically, each original or electronic copy thereof will be deemed an original, and all of which when taken together constitute one and the same Agreement.

C. Choice of Law/Jurisdiction. This Agreement shall be interpreted, construed, and enforced according to applicable federal law, or in its absence, the laws of the State of New York (without giving effect to conflict of laws principles to the extent such principles may call for the application of the substantive law of another jurisdiction). For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute. All Parties hereto submit to the exclusive personal jurisdiction and venue of the United States District Court for the Southern District of New York for purposes of implementing and enforcing the settlement embodied in this Agreement.

D. Notices. Any notices required hereunder shall be sent by nationally recognized overnight delivery service (e.g., FedEx or UPS), and by email, to the following:

If to the FDIC-R: James R. Martin, Zelle LLP, 1875 Pennsylvania Avenue, Suite 375, Washington, DC 20006, 202-499-4100, jmartin@zellelaw.com.

If to MUFG Bank: Christopher Viapiano, Sullivan & Cromwell LLP, 1700 New York Avenue, N.W., Suite 700, Washington D.C., 20006, 202-956-7500, viapianoc@sullcrom.com.

If to SocGen: Henninger S. Bullock, Mayer Brown, LLP, 1221 Avenue of the Americas, New York, NY 10020, 212-506-2500, hbullock@mayerbrown.com.

E. Entire Agreement and Amendments. This Agreement, including Exhibits A-B, constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s), or other representative(s).

F. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR 20 CLOSED BANKS

Date: May 6, 2024

By: **Aaron M. Forester**
Digitally signed by
Aaron M. Forester
Date: 2024.05.06
10:31:52 -04'00'

Aaron M. Forester
COUNSEL FDIC-R
3501 N. Fairfax Drive
Arlington, VA 22226
Tel: 703-516-5056
aforester@fdic.gov

Date: May 7, 2024

MUFG BANK, LTD

By: **b6**

Christopher M. Viapiano
SULLIVAN & CROMWELL LLP
1700 New York Avenue, N.W., Suite 700
Washington, D.C. 20006
Tel: 202-956-7500
viapianoc@sullcrom.com

Date: MAY 9, 2024

SOCIÉTÉ GÉNÉRALE

By: **b6**

Hennington & Partners
MAYER BROWN LLP
1221 Avenue of the Americas
New York, NY 10020
Tel: 212-506-2500
hbullock@mayerbrown.com

EXHIBIT A

- (1) Amcore Bank, N.A.
- (2) AmTrust Bank
- (3) California National Bank
- (4) Colonial Bank
- (5) Corus Bank, N.A.
- (6) Guaranty Bank
- (7) Imperial Capital Bank
- (8) IndyMac Bank, F.S.B.
- (9) Integra Bank, N.A.
- (10) Lydian Private Bank
- (11) Pacific National Bank
- (12) Park National Bank
- (13) R-G Premier Bank of Puerto Rico
- (14) San Diego National Bank
- (15) Silverton Bank, N.A.
- (16) Superior Bank
- (17) United Commercial Bank
- (18) United Western Bank
- (19) Washington Mutual Bank
- (20) Westernbank Puerto Rico

EXHIBIT B

All cooperation shall be coordinated in such a manner so that all unnecessary duplication and expense is avoided. Defendants' cooperation obligations shall apply only to the FDIC-R who acts with, by or through the FDIC-R's counsel, pursuant to this Agreement, including but not limited to the FDIC-R's good faith effort to utilize documents and data already produced by Defendants to reduce the burdens of cooperation when practicable. Defendants' cooperation obligations shall in all events be limited to facts and events involving U.S. Dollar LIBOR and shall not extend to other financial benchmarks. Defendants reserve all of their rights to vigorously defend themselves against any claims asserted by other plaintiffs involving U.S. Dollar LIBOR, or any other, allegations.

Nothing in this Agreement shall impose on Defendants an obligation to produce or provide any materials or information protected from disclosure by the work-product doctrine, the attorney-client privilege, the common interest privilege, the joint defense privilege, the bank regulatory or examination privilege, obligations under applicable data privacy or bank secrecy laws or regulations, and/or any other applicable privilege or protection, including without first complying with channeling or blocking statutes such as through a request for judicial assistance under the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, with respect to any documents, interviews, declarations and/or affidavits, depositions, testimony, material, and/or information requested under this Agreement.

A. Any documents, declarations, affidavits, deposition testimony, and information provided to the FDIC-R pursuant to this provision shall be covered by the protective order in effect in the Action.

B. None of the cooperation provisions are intended to, nor do they, waive any applicable privilege or protection.

C. The information provided by Defendants' Counsel may be utilized by the FDIC-R or its counsel to assist in the prosecution of the Action against any non-settling defendant and not for any other purpose whatsoever.

D. Subject to the foregoing, Defendants will provide the FDIC-R the following cooperation. Nothing herein is intended to prevent the use in pre-trial, trial, or appellate proceedings in this Action of information and/or documents produced in discovery or through the cooperation provisions set forth below:

Documents: Within ten (10) business days of the Effective Date, Defendants shall produce to the FDIC-R, to the extent not already produced, all documents produced by it to other parties in any other action in the United States District Court for the Southern District of New York, MDL No. 11-2262 (“U.S. Dollar MDL”). For any documents produced by Defendants to other parties in any other action in the above-captioned U.S. Dollar LIBOR MDL after the Effective Date, Defendants shall produce such documents to the FDIC-R, to the extent not already produced, within ten (10) business days of their production. For purposes of clarity, the term “document” is defined to be synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” in Federal Rule of Civil Procedure 34(a)(1)(A).

Depositions: Defendants shall permit the FDIC-R’s counsel to attend depositions of its witnesses, if any, in depositions properly noticed and taken in other actions pending in the U.S. Dollar LIBOR MDL. The FDIC-R is not permitted to notice or subpoena Defendants, including their current or former employees, or make any other request from Defendants, for any fact or company witness deposition in the U.S. Dollar LIBOR MDL.

Authentication of Documents: Defendants will use their reasonable best efforts to assist the FDIC-R in authenticating documents that Defendants produced in the Action, including by stipulation, where the facts indicate that the documents and/or things at issue are authentic.

Testimony at Trial: Defendants shall comply in good faith with their obligations to make witnesses available to testify at trial pursuant to any valid trial subpoenas issued by the FDIC-R in accordance with the requirements of Rule 45 of the Federal Rules of Civil Procedure and any other applicable rules or orders.

Additional Information: Defendants shall respond to reasonable requests for

additional relevant information (not depositions or discovery requests) about FDIC-R's claims in the Action, taking into account the information it has or will produce in discovery, and whether providing the requested information will be burdensome.

Defendants' obligations to cooperate as set forth in this Exhibit B are continuing until and shall terminate upon the earlier of the date when final judgment has been rendered, with no remaining rights of appeal, in the Action against all Defendants, or, except for the provisions involving Authentication of Documents and Testimony at Trial, two years from the Effective Date.