

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ARTHUR BEKKER, *individually, on behalf of a
class of all other persons similarly situated, and on
behalf of the Neuberger Berman 401(k) plan,*

No. 16-cv-06123-LTS-BCM

Plaintiff,

v.

NEUBERGER BERMAN GROUP 401(K) PLAN
INVESTMENT COMMITTEE,

Defendant.
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**PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff respectfully files this Motion under Rule 23 of the Federal Rules of Civil Procedure for preliminary approval of a Class Settlement, certification of a Settlement Class, and appointment of Class Counsel, as well as approval of Class Notice and Scheduling of Final Approval Hearing.

1. This action was originally filed in this Court on August 2, 2016. Plaintiff alleges Defendant failed to make decisions concerning the Plan with the care, skill, prudence, and diligence under the circumstances then prevailing that prudent fiduciaries acting in a like capacity and familiar with such matters would have used. These claims center around the inclusion of the VEF in the Plan, which has since been removed from the Plan.

2. On June 10, 2020, after an in-person mediation and months of arm's-length negotiation, the Parties entered into a Settlement Agreement and request that the Court preliminarily approve the Settlement Agreement that is attached hereto as Exhibit A.

3. The Settlement Class is defined as:

All Participants in the Neuberger Berman Group 401(k) Plan from June 15, 2010 through December 16, 2019, who had any portion of their Plan accounts, at any time during the Class Period, invested in the Neuberger Berman Value Equity Fund. Excluded from the class are: (i) Defendant Neuberger Berman Group 401(k) Plan Investment Committee and those of its current and past members who served from June 15, 2010 through August 2, 2016; (ii) non-party Marvin Schwartz; and (iii) beneficiaries, immediate family members, estates, and executors of (i) and (ii).

4. The Settlement is fundamentally fair, adequate, and reasonable in light of the circumstances of this case and preliminary approval of the Settlement is in the best interests of the Settlement Class Members. While the details of the Settlement are contained within Exhibit A, the settlement fundamentally includes Defendant creating a \$17 million settlement fund in exchange for releases of the Class Representative's and Class Members' claims.

5. The approval of a proposed class action settlement occurs in a two-step process. The first step requires the Court, in the exercise of its discretion, to preliminarily determine whether the proposed Settlement falls within the range of possible approval. *In re Initial Pub. Offering Sec. Litig.*, 226 F.R.D. 186, 191 (S.D.N.Y. 2005).

6. Rule 23, as amended in 2018, provides direction to federal courts considering whether to grant preliminary approval of a class action settlement. Fed. R. Civ. P. 23(e), Committee Notes. “[I]n weighing a grant of preliminary approval, district courts must determine whether ‘giving notice is justified by the parties’ showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 28 (E.D.N.Y. 2019) (citing Fed. R. Civ. P. 23(e)(1)(B)(i–ii)). Therefore, although the factors cited in Rule 23(e)(2) “apply to final approval, the Court looks to them to determine whether it will likely grant final approval based on the information currently before the Court.” *Id.* (citing Fed. R. Civ. P. 23(e)(2)). Those factors are:

- (A) the class representatives and counsel have adequately represented the class;
- (B) the proposal was negotiated at arm's length;
- (C) the relief provided for the class is adequate, taking into account:
- (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2); *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, 330 F.R.D. at 29.

7. The Settlement reached between the Parties here more than satisfies this standard given the significant nature of the case and the result reached by the Plaintiff. Preliminary approval will not foreclose interested persons from objecting to the Settlement and thereby presenting dissenting viewpoints to the Court.

8. Plaintiff also submits to the Court a Memorandum in Support of this Motion, as well as Declarations of the Class Counsel. Defendants are not submitting a Memorandum addressing the Motion.

WHEREFORE, Plaintiff requests the following:

- That the Court enters an Order granting its preliminary approval of the Settlement Agreement in the form attached to the Settlement Agreement, preliminarily certify a Settlement Class, and appoint Plaintiff's Counsel as Class Counsel;

- That the Court order any interested party to file any objections to the Settlement within the time limit set by the Court, with supporting documentation, and order such objections, if any, be served on counsel as set forth in the proposed Preliminary Approval Order and Class Notice;
- That the Court schedule a Final Approval Hearing for the purpose of receiving evidence, argument, and any objections relating to the Parties' Settlement Agreement; and
- That following the Final Approval Hearing, the Court enter an Order granting final approval of the Parties' Settlement and dismissing all claims asserted in the Action with prejudice.

Dated: June 10, 2020

Respectfully submitted,

/s/ Gregory Y. Porter

Gregory Y. Porter (*pro hac vice*)

Kevin W. Barrett (NY Bar # 2196343)

Ryan T. Jenny (*pro hac vice*)

Mark G. Boyko (NY Bar # 4306122)

BAILEY & GLASSER LLP

1055 Thomas Jefferson Street, NW, Suite 540

Washington, DC 20007

Telephone: (202) 463-2101

Facsimile: (202) 463-2103

gporter@baileyglasser.com

kbarrett@baileyglasser.com

rjenny@baileyglasser.com

mboyko@baileyglasser.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2020 a copy of the foregoing was filed with the Court. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Gregory Y. Porter
Gregory Y. Porter, *pro hac vice*

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ARTHUR BEKKER, *individually, on behalf of a
class of all other persons similarly situated, and on
behalf of the Neuberger Berman 401(k) plan,*

No. 16-cv-06123-LTS-BCM

Plaintiff,

v.

NEUBERGER BERMAN GROUP 401(K) PLAN
INVESTMENT COMMITTEE,

Defendant.

-----X

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement and Release (“Agreement”) is entered into by Plaintiff (as defined below), on his own behalf and on behalf of the Settlement Class (as defined below) and the Plan (as defined below) on the one hand, and Defendant (as defined below) on the other, in consideration of the promises, covenants and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate.

1. RECITALS

1.1. On August 2, 2016, Plaintiff, individually, and on behalf of a class of all other persons similarly situated, and on behalf of the Neuberger Berman Group 401(k) Plan, filed his original complaint (the “Complaint”) against Neuberger Berman Group LLC, Neuberger Berman LLC, Neuberger Berman Trust Company N.A, Marvin Schwartz and the Neuberger Berman Group 401(k) Plan Investment Committee (the “Committee”), in the United States District Court for the Southern District of New York titled *Arthur Bekker v. Neuberger Berman Group LLC et al.*, No. 16-cv-06123-LTS-BCM (the “Action”).

1.2. On October 3, 2016, defendants moved to dismiss the Complaint for failure to state a claim and also moved for summary judgment on the basis that Plaintiff's claims were time-barred under ERISA's three-year statute of limitations set forth in ERISA § 413(2), 29 U.S.C. § 1113(2).

1.3. On November 8, 2016, in addition to opposing defendants' motion to dismiss, Plaintiff cross-moved under Federal Rule of Civil Procedure 56(d) for an order denying defendants' summary judgment motion or, in the alternative, deferring consideration of the motion until after Plaintiff had an opportunity to engage in discovery.

1.4. On September 27, 2018, the Court granted defendants' motion to dismiss with respect to all claims other than Plaintiff's prohibited transaction claim against the Committee and, with respect to that claim, granted Plaintiff's Rule 56(d) motion for discovery on the statute of limitations issue. All other defendants were dismissed from the Action.

1.5. On October 17, 2018, Plaintiff moved for leave to file a First Amended Complaint (the "First Amended Complaint"), naming only the Committee as a defendant and asserting two claims for relief: first that the Committee breached its fiduciary duties, in violation of ERISA § 404, by maintaining the Neuberger Berman Value Equity Fund ("VEF") as an investment option in the Plan, and second, by charging allegedly excessive fees for the VEF in violation of ERISA's prohibited transaction rules set forth in ERISA § 406.

1.6. On May 9, 2019, the Court granted Plaintiff leave to file the First Amended Complaint. The Court also ordered that the parties engage in discovery narrowly targeted to the issue of when Plaintiff had actual knowledge of the alleged ERISA violations that formed the basis of his claims, with such discovery to be followed by a renewed motion for summary judgment on statute of limitations grounds. The parties subsequently reached an agreement

on the scope of discovery relating to the statute of limitations issue, which was approved by the Court on May 21, 2019.

1.7. Plaintiff subsequently filed his First Amended Complaint on May 24, 2019.

As a result, the operative complaint became the First Amended Complaint.

1.8. On July 8, 2019, Defendant filed its Answer to the First Amended Complaint, denying all allegations of wrongdoing and liability and asserting a number of affirmative and other defenses.

1.9. On September 13, 2019, after a period of targeted discovery, Defendant filed its Motion for Summary Judgment seeking dismissal of Plaintiff's claims based on ERISA's three-year statute of limitations period.

1.10. On December 16, 2019, the VEF was removed as a Plan investment option. For participants who did not elect to transfer their balances in the VEF to another investment option, their balances were mapped to an age-based target date fund.

1.11. During the course of the Action, the Parties engaged in settlement discussions, including through private mediation with Mediator Judge Morton Denlow (the "Mediator"). The Parties ultimately reached an agreement to settle, with the Mediator's assistance and notified the Court of the same on March 23, 2020. The terms of the Parties' settlement are memorialized in this Agreement.

1.12. Plaintiff, as putative class representative, and Class Counsel, consider it desirable and in the Plan's and Settlement Class Members' best interests that the claims in the Action be settled upon the terms set forth below. Plaintiff and Class Counsel have concluded that such terms are fair, reasonable, and adequate and that this Settlement will result in valuable benefits to the Plan and the Settlement Class.

1.13. Defendant continues to deny all allegations of wrongdoing and denies all

liability for the allegations and claims made in the Action. Defendant maintains that it is without fault or liability and is settling the Action solely to avoid litigation costs.

1.14. Therefore, the Parties, in consideration of the promises, covenants, and agreements herein described, acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows:

2. DEFINITIONS

2.1. “Administration Costs” shall mean (i) the costs and expenses associated with the production and dissemination of the Notice; (ii) all reasonable costs incurred by the Settlement Administrator in administering and effectuating this Settlement, which costs and expenses are necessitated by performance and implementation of this Agreement and any Court orders relating thereto; and (iii) all reasonable fees charged by the Settlement Administrator.

2.2. “Attorneys’ Fees and Expenses” shall mean any and all attorneys’ fees, costs and expenses of Class Counsel for their past, present, and future work, efforts, and expenditures in connection with this Action and resulting Settlement.

2.3. “Case Contribution Award” shall have the meaning ascribed to it in Section 8.1.

2.4. “Class Counsel” shall mean Bailey & Glasser LLP.

2.5. “Class Period” shall be defined as June 15, 2010 through December 16, 2019.

2.6. “Court” shall mean the United States District Court for the Southern District of New York.

2.7. “Company” shall mean Neuberger Berman Group LLC.

2.8. “Current Participant” shall mean any Settlement Class Member with a balance in the Plan on the Distribution Date.

2.9. “Defendant” shall mean the Neuberger Berman Group 401(k) Plan Investment Committee.

2.10. “Defendant’s Counsel” shall mean Proskauer Rose LLP.

2.11. “Distributable Settlement Amount” shall be the amount described in Section 4.2(a).

2.12. “Distribution Date” shall be the date on which the Settlement Administrator shall determine eligibility for and disbursement amounts for Settlement Class Members, which shall occur as soon as administratively feasible after the Effective Date.

2.13. “Effective Date” shall mean: (a) the date upon which the applicable period to appeal the Final Approval Order and Judgment has expired, if no appeal is taken during such period; or (b) if, during the aforesaid appeals period, an appeal is taken from such judgment, the date upon which all appeals, including petitions for review, rehearing, or certiorari, and any proceedings resulting therefrom, have been finally disposed of, or the date of the expiration of the time to initiate such petitions or proceedings.

2.14. “Escrow Account” shall mean an account at an established Financial Institution (as defined in Section 2.20) agreed upon by the Parties that is established for the deposit of any amounts relating to the Settlement.

2.15. “Escrow Agent” shall mean the entity approved by the Parties to act as escrow agent for any portion of the Settlement Amount deposited in or accruing in the Escrow Account pursuant to this Agreement.

2.16. “Fee and Expense Application” shall mean the petition to be filed by Class Counsel seeking approval of an award of Attorneys’ Fees and Expenses.

2.17. “Fidelity” shall mean Fidelity Management Trust Company, the Plan’s current record-keeper.

2.18. “Final Approval Hearing” shall mean the hearing to be held before the Court pursuant to Federal Rule of Civil Procedure 23(e) to determine whether the Agreement should receive final approval by the Court. The Parties will request that the Final Approval Hearing be scheduled for a date no earlier than one hundred ten (110) days after the entry of the Preliminary Approval Order.

2.19. “Final Approval Order and Judgment” or “Final Approval Order” shall mean a final order entered by the Court after the Final Approval Hearing, substantially the same in all material respects to that attached hereto as **Exhibit A**, granting its approval of the Settlement. The Parties may agree to additions or modifications to the form of the Final Approval Order and Judgment as they agree are appropriate before it is submitted to the Court for final approval of the Settlement.

2.20. “Financial Institution” shall mean the institution at which the Escrow Account is established.

2.21. “Former Participant” shall mean any Settlement Class Member who maintained a positive balance in the Plan on or after June 15, 2010, but who is not carrying a balance in the Plan on the Distribution Date.

2.22. “Independent Fiduciary” shall mean Fiduciary Counselors, Inc.

2.23. “Independent Fiduciary Fees and Costs” shall mean the reasonable fees and expenses of the Independent Fiduciary.

2.24. “Notice” shall mean the notice, identical in all material respects to that attached hereto as **Exhibit B** (or as amended by the Court on agreement of the Parties), to be provided directly to Settlement Class Members pursuant to Section 3.6.

2.25. “Participant” shall mean any person who is or was a participant in the Plan at any time during the Class Period, including any beneficiary of a deceased person who was a

participant in the Plan at any time during the Class Period, and any person who is entitled to a benefit under the Plan as a result of a Qualified Domestic Relations Order.

2.26. “Party” or “Parties” shall mean Plaintiff, the Settlement Class, and Defendant.

2.27. “Plaintiff” shall mean plaintiff Arthur Bekker.

2.28. “Plan” shall mean the Neuberger Berman Group 401(k) Plan.

2.29. “Plan of Allocation” shall mean the plan or formula of allocation of the Distributable Settlement Amount as approved by the Court, which plan or formula shall govern the distribution of the Distributable Settlement Amount, in the form attached hereto as **Exhibit C**.

2.30. “Preliminary Approval Order” shall mean an order entered by the Court preliminarily approving the Settlement, pursuant to Section 3.1 below, that is substantially the same in all material respects to that attached hereto as **Exhibit D**.

2.31. “Released Claims” shall be any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys’ fees and costs, whether under local, state or federal law, whether by statute, contract, common law or equity, whether brought in an individual, representative or any other capacity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, against the Released Parties through the date the Court enters the Final Approval Order and Judgment (including, without limitation, any Unknown Claims) arising out of or in any way related to: (a) the conduct alleged in the Complaint or the First Amended Complaint and any subsequent pleading or legal memorandum filed in the Action; (b) the selection, retention, and monitoring of the VEF as a Plan investment option; (c) the performance, fees, and any other characteristic of the VEF; and the approval by the Independent Fiduciary of the Settlement. With respect to the

Released Claims, it is the intention of the Parties and all other Settlement Class Members and the Plan expressly to waive to the fullest extent of the law: (i) the provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides that “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”; and (ii) the provisions, rights, and benefits of any similar statute or common law of any other jurisdiction that may be, or may be asserted to be, applicable.

2.32. “Released Parties” shall mean (1) Defendant and, as applicable, each of its predecessors, successors, past, present and future members, fiduciaries, affiliates, agents, and representatives and each of their descendants, dependents, beneficiaries, marital community, heirs, executors, and administrators; (2) the Company and each of its past, present and future parents, subsidiaries, affiliates, divisions, businesses, employee benefit plans, and related entities; (3) the Plan and each of its past, present and future trustees, fiduciaries (except the Independent Fiduciary), parties in interest, committees and committee members, employees, service providers, investment consultants, managers, administrators, actuaries, agents, representatives; (4) the VEF; and (5) each of the past, present, and future officers, directors, partners, shareholders, trustees, fiduciaries, employees, managers, insurers, attorneys, experts, agents and representatives of the entities and individuals in (1) through (4).

2.33. “Settlement” shall mean the compromise and Settlement embodied in this Agreement.

2.34. “Settlement Administrator” shall mean KCC, LLC.

2.35. “Settlement Amount” shall mean seventeen million dollars (\$17,000,000).

2.36. “Settlement Class” shall mean all Participants in the Neuberger Berman

Group 401(k) Plan during the Class Period who had any portion of their Plan accounts, at any time during the Class Period, invested in the VEF. Excluded from the Settlement Class are: (i) Defendant Neuberger Berman Group 401(k) Plan Investment Committee and those of its current and past members who served from June 15, 2010 through August 2, 2016; (ii) non-party Marvin Schwartz, and (iii) the beneficiaries, immediate family members, estates, and executors of (i) and (ii).

2.37. “Settlement Class Member” shall mean a member of the Settlement Class.

2.38. “Settlement Fund” shall have the meaning ascribed to it in Section 4.1(b).

2.39. “Taxes” shall have the meaning ascribed to it in Section 4.1(i).

2.40. “Tax-Related Costs” shall have the meaning ascribed to it in Section 4.1(i).

2.41. “Unknown Claims” shall mean any Released Claim that Plaintiff, the Plan, and/or any Settlement Class Member(s) do not know or suspect to exist in their favor at the time of the release of the Released Parties, including claims which, if known by them, might have affected their settlement with and release of the Released Parties, or might have affected their decision not to object to this Settlement. Class Counsel, Plaintiff, Settlement Class Members, or the Plan may hereafter discover facts in addition to or different from those that they know or believe to be true with respect to the Released Claims. Such facts, if known by them, might have affected the decision to settle with the Released Parties, or the decision to release, relinquish, waive, and discharge the Released Claims, or the decision of a Settlement Class Member not to object to the Settlement. Notwithstanding the foregoing, Plaintiff, Settlement Class Members, and the Plan shall expressly, upon the entry of the Final Approval Order, be deemed to have, and, by operation of the Final Approval Order, shall have fully, finally, and forever settled, released, relinquished, waived, and discharged any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-

contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiff, Class Members, and the Plan acknowledge and shall be deemed by operation of the Final Approval Order to have acknowledged that the foregoing waiver was bargained for separately and is a key element of the Settlement embodied in this Settlement Agreement of which this release is a part.

2.42. “VEF” shall mean the Neuberger Berman Value Equity Fund, both when it was a separate account strategy and following its conversion into a collective investment trust.

3. SETTLEMENT APPROVAL/NOTICE

3.1. ***Motion for Preliminary Approval and Certification of Settlement Class.*** By no later than June 10, 2020, or such other date as agreed by the Parties and approved by the Court after execution of this Agreement, Plaintiff shall move the Court for (i) preliminary approval of the Settlement, including entry of an order substantially similar in all material respects to the form of the Preliminary Approval Order attached as Exhibit D, and (ii) for purposes of this Settlement only, conditional certification of the Settlement Class. Class Counsel shall share a draft of the Motion for Preliminary Approval with Defendant’s Counsel no later than five (5) business days before the date for filing. Defendant will not object to Plaintiff’s motion for preliminary approval and class certification, provided both are consistent with the terms of this Agreement.

3.2. ***Basis for Certification of Settlement Class.*** Plaintiff will seek certification of the Settlement Class under Federal Rule of Civil Procedure 23(b)(1) or 23(b)(2) as a non-opt-

out class.

3.3. ***Certification for Settlement Purposes Only.*** Plaintiff's motion for class certification shall be only for the limited purpose of effectuating this Agreement. Defendant shall not take any position with respect to Plaintiff's request for certification of the Settlement Class, provided that it is consistent with this Agreement, but reserves all rights to object to the propriety of class certification in the Action in all other contexts and for all other purposes.

3.4. ***Rights of Exclusion.*** Settlement Class Members shall not be permitted to exclude themselves from the Settlement Class.

3.5. ***Right to Object.*** Settlement Class Members shall be permitted to object to the Settlement. Requirements for filing an objection shall be as set forth in the Preliminary Approval Order.

3.6. ***Class Notice.*** Within forty-five (45) calendar days of the entry of the Preliminary Approval Order or as may be modified by the Court, the Settlement Administrator shall send the Notice by electronic mail to the Settlement Class Members who have elected to receive their quarterly statements electronically, or by first-class mail to the address on file at Fidelity for Settlement Class Members who do not receive their quarterly statements electronically. For those receiving the Notice via mail, the mailing address will be updated by the Settlement Administrator through the National Change of Address database before mailing (with all returned mail skip-traced and promptly re-mailed).

3.7. ***Class Action Fairness Act Notice.*** Defendant shall comply with the notice requirements of 28 U.S.C. § 1715 by sending a notice, in a form substantially similar to that attached as Exhibit E, to the appropriate state and federal officials no later than ten (10) calendar days after the filing of the Motion for Preliminary Approval.

3.8. ***Settlement Authorized by Independent Fiduciary.***

(a) The Independent Fiduciary will review the Settlement and provide any necessary authorizations, including the authorization required by Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632 (Dec. 31, 2003), as amended by 75 Fed. Reg. 33830 (June 15, 2010). All fees charged by the Independent Fiduciary for its service, together with all costs reasonably borne by the Independent Fiduciary that are chargeable under the agreement with the Independent Fiduciary, shall be paid out of the Settlement Fund.

(b) The Parties agree that they shall comply with reasonable requests for information made by the Independent Fiduciary.

(c) At least thirty (30) calendar days prior to the Final Approval Hearing, the Independent Fiduciary shall have approved and authorized in writing the Settlement, and given a release in its capacity as fiduciary of the Plan for and on behalf of the Plan, on the terms set forth in Section 6, in accordance with Prohibited Transaction Class Exemption 2003-39. If the Independent Fiduciary disapproves or otherwise does not authorize the Settlement or refuses to execute the release on behalf of the Plan, then Defendant, at its sole election, shall be entitled to terminate the Agreement pursuant to Section 9.3 below.

3.9 ***Motion for Final Approval.*** Plaintiff shall move the Court for final approval of the Settlement no later than the deadline set by the Court in the Preliminary Approval Order, or as may be extended by the Court on application of the Parties. On or after the date set by the Court for the Final Approval Hearing pursuant to Federal Rule of Civil Procedure 23(e)(2), the Court shall determine, among other things, (a) whether to enter the Final Order and Judgment finally approving the Settlement; and (b) what, if any, Case Contribution Award and/or

Attorneys' Fees and Expenses should be awarded to Plaintiff and Class Counsel, respectively, pursuant to Sections 8.1 and 8.2 of this Agreement.

4. PAYMENTS TO THE SETTLEMENT CLASS

4.1. *The Settlement Amount.*

- (a) In consideration of all the promises and agreements set forth in this Agreement, Defendant will cause the Settlement Amount to be paid. No other Released Party shall have any obligation to contribute financially to this Settlement.
- (b) Defendant shall cause the Settlement Amount to be deposited into the Escrow Account within thirty (30) calendar days after entry of the Preliminary Approval Order. The Settlement Amount together with any interest and investment earnings thereon, shall constitute the "Settlement Fund."
- (c) The Settlement Amount shall be used solely for the purposes set forth in Section 4.1(j) below.
- (d) Subject to Court approval and oversight, the Escrow Account will be controlled by the Settlement Administrator. Neither Defendant nor Plaintiff shall have any liability whatsoever for the acts or omissions of the Settlement Administrator appointed by the Court. The Settlement Administrator shall not disburse the Settlement Fund or any portion thereof except as provided for in this Agreement, by an Order of the Court, or with prior written agreement of Class Counsel and Defendant's Counsel.
- (e) The Settlement Administrator is authorized to execute transactions on behalf of the Settlement Class Members that are consistent with the terms of this Agreement and with Orders of the Court.
- (f) All funds held in the Escrow Account shall be deemed to be in the custody of

the Court and shall remain subject to the jurisdiction of the Court until the funds are distributed in accordance with this Agreement.

- (g) The Settlement Administrator shall, to the extent practicable, invest the Settlement Amount in discrete and identifiable instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then current market rates. The Settlement Administrator and Settlement Class Members shall bear all risks related to investment of the Settlement Amount.
- (h) The Escrow Account is intended to be a “Qualified Settlement Fund” within the meaning of Treasury Regulation § 1.468B-1. The Settlement Administrator, as administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing tax returns for the Escrow Account and paying from the Escrow Account any Taxes owed with respect to the Escrow Account. Defendant agrees to provide the Settlement Administrator with the statement described in Treasury Regulation §1.468B-3(e). Neither Defendant, Defendant’s Counsel, the Released Parties, Plaintiff, or Class Counsel shall have any liability or responsibility of any sort for filing any tax returns or paying any taxes with respect to the Escrow Account.
- (i) All (i) taxes on the income of the Escrow Account (“Taxes”) and (ii) expenses and costs incurred in connection with the taxation of the Escrow Account (including, without limitation, expenses of tax attorneys and accountants) (“Tax-Related Costs”) shall be timely paid by the Settlement Administrator out of the Escrow Account.

- (j) The Settlement Fund will be used to pay the following amounts associated with the Settlement:
- i. Compensation to Settlement Class Members determined in accordance with Section 4.2;
 - ii. Any Case Contribution Award approved by the Court;
 - iii. All Attorneys' Fees and Expenses approved by the Court;
 - iv. Independent Fiduciary Fees and Costs;
 - v. Administration Costs; and
 - vi. Taxes and Tax-Related Costs.

4.2 Distribution to Settlement Class Members.

- (a) After payment of Class Counsel's Attorneys' Fees and Expenses approved by the Court, Administration Costs (including an estimated provision for the costs of the distribution to Settlement Class Members and other post-distribution related Administration Costs, as proposed by the Settlement Administrator and approved by Class Counsel and Defendant's Counsel as reasonable), Independent Fiduciary Fees and Costs, Case Contribution Award approved by the Court, and Taxes and Tax-Related Costs, the money remaining in the Settlement Fund, including any interest thereon (the "Distributable Settlement Amount") will be distributed to Settlement Class Members.
- (b) The Distributable Settlement Amount will be distributed to Settlement Class Members as described in the Plan of Allocation attached hereto as **Exhibit C** or such other allocation plan as may be ordered by the Court. It is understood and agreed by the Parties that the proposed Plan of Allocation is not part of this

Agreement and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceeding relating to the Plan of Allocation shall not operate to terminate or cancel this Agreement or affect the finality of the Court's Final Approval Order and Judgment approving the Settlement or any other Orders entered pursuant to the Agreement. Notwithstanding the foregoing, or anything else in this Agreement, any revisions to the Plan of Allocation that would increase the Settlement Amount or require any Released Party to incur additional expenses or costs or to provide data not already readily available on its computer systems shall be deemed a material alteration of this Agreement and entitle Defendant, at its sole election, to terminate the Agreement.

4.3 Responsibility for Taxes on Distribution. Each Settlement Class Member who receives a payment under this Agreement shall be fully and ultimately responsible for payment of any and all federal, state or local taxes resulting from or attributable to the payment received by such person. Each Settlement Class Member shall hold Defendants, Defendants' Counsel, the Released Parties, Class Counsel, and the Settlement Administrator harmless from any tax liability, including penalties and interest, related in any way to payments or credits under the Agreement, and shall hold Defendant, Defendant's Counsel, the Released Parties, Class Counsel, and the Settlement Administrator harmless from the costs (including, for example, attorneys' fees and disbursements) of any proceedings (including, for example, investigation and suit), related to such tax liability. Plaintiff acknowledges that the Released Parties have no responsibility for any taxes due on funds deposited in or distributed from the Settlement Fund or that Plaintiff or Class Counsel receive from the Settlement Amount.

4.4 Administration Costs. The Administration Costs shall be paid from the Settlement Fund. The Settlement Administrator will reserve from the Settlement Fund its estimated costs of completing settlement administration activities, including the costs of distributing the Distributable Settlement Amount to Settlement Class Members as described in Section 4.2. Beginning thirty (30) days after the entry of the Preliminary Approval Order, and on every thirty (30) days thereafter, the Settlement Administrator shall provide the Parties with a detailed accounting of any Administration Costs expended to date and an invoice for the amount of such Administration Costs. Any disputes as to whether amounts billed by the Settlement Administrator are reasonable and necessary under this Agreement shall be resolved by the Court.

4.5 Entire Monetary Obligation. Notwithstanding anything else in this Agreement, in no event shall Defendant or any Released Party be required to pay any amounts other than the Settlement Amount.

5 SETTLEMENT ADMINISTRATION

5.1 Within fourteen (14) calendar days of the entry of the Preliminary Approval Order, Defendant shall use reasonable efforts to cause the Settlement Administrator to receive the Participant data sufficient to effectuate class Notice, implement the Plan of Allocation, and distribute the Settlement Fund.

5.2 The Settlement Administrator shall administer the Settlement subject to the supervision of Class Counsel and the Court as circumstances may require.

5.3 Defendant, Defendant's Counsel and the Released Parties shall have no responsibility for, interest in, or liability whatsoever, with respect to:

- (a) any act, omission or determination of the Settlement Administrator, Class Counsel, or designees or agents of Class Counsel or the Settlement

Administrator;

- (b) any act, omission or determination of Class Counsel or their designees or agents in connection with the administration of the Settlement;
- (c) the management, investment, or distribution of the Settlement Amount or the Distributable Settlement Amount; or
- (d) the determination, administration, calculation, or payment of any claims asserted against the Settlement Amount or the Distributable Settlement Amount.

5.4 The Settlement Administrator shall provide to Class Counsel and Defendant's Counsel, no less frequently than monthly, a full accounting of all expenditures made in connection with the Settlement, including Administration Costs, and any distributions from the Settlement Amount.

5.5 The Settlement Administrator shall provide such information as may reasonably be requested by Plaintiff or Defendant or their respective counsel relating to administration of this Agreement.

6 RELEASES, COVENANTS AND JUDICIAL FINDINGS

6.1 *Release of Defendant and Released Parties.* Upon and through the date of the Court's entry of the Final Approval Order and Judgment, Plaintiff and each Settlement Class Member (on behalf of themselves and their past, present and future heirs, beneficiaries, executors, administrators, estates, partners, officers, directors, agents, attorneys, predecessors, successors, and assigns), for themselves and on behalf of the Plan, absolutely and unconditionally release and forever discharge all Released Claims. Upon and through the date of the Court's entry of the Final Approval Order and Judgment, the Plan (subject to Independent Fiduciary approval as required by Section 3.8) absolutely and unconditionally

releases and forever discharges all Released Claims.

6.2 ***Independent Fiduciary.*** The Independent Fiduciary is not a Released Party and claims brought solely against the Independent Fiduciary are not released.

6.3 ***Covenant Not to Sue.*** Upon and through the date of the Court's entry of the Final Approval Order and Judgment, Plaintiff and each Settlement Class Member (on behalf of themselves and their past, present and future heirs, beneficiaries, executors, administrators, estates, partners, officers, directors, agents, attorneys, predecessors, successors, and assigns), for themselves and on behalf of the Plan, and the Plan (subject to Independent Fiduciary approval as required by 3.8), expressly agree that they, acting individually or together, or in combination with others, shall not sue or seek to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a Department of Labor proceeding, an arbitration or a proceeding before any state insurance or other department or commission), any cause of action, demand, or claim on the basis of, connected with, or arising out of any of the Released Claims and that the foregoing covenants and agreements shall be a complete defense to any such Released Claims against any of the respective Released Parties. Nothing herein shall preclude any action to enforce the terms of this Settlement Agreement.

6.4 ***Releases of Plaintiff, the Plan, the Settlement Class, and Class Counsel.*** Upon and through the date of the Court's entry of the Final Approval Order and Judgment, Defendant shall be deemed to have, and by operation of the Final Approval Order and Judgment, shall have, fully, finally, and forever released, relinquished, and discharged, and shall forever be enjoined from prosecution of Plaintiff, the Plan, the Settlement Class and Class Counsel from any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys' fees and costs, whether under local, state or federal law,

whether by statute, contract, common law or equity, whether brought in an individual, representative or any other capacity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, relating to the pursuit of the Action.

6.5 ***Use of Settlement Administrator Information.*** Class Counsel, Defendants' Counsel and Defendant shall have equal access to information held by the Settlement Administrator, but only to the extent that such information is necessary to administer this Settlement; however, such information shall be kept in strict confidence, shall not be disclosed to any other person or entity or used for any purpose other than to administer and implement the Settlement, and shall be destroyed no later than two (2) years after the Settlement Administration is complete.

6.6 ***Use of Company and Plan Information.*** Class Counsel and their agents shall use any information provided by Defendant and/or Fidelity pursuant to the express provisions of this Agreement solely for the purpose of providing the Notice and administering this Settlement and for no other purpose. Such information shall be kept in strict confidence and shall not be disclosed to any other person or entity and shall be destroyed no later than two (2) years after the Settlement Administration is complete.

6.7 ***Confidential Information Provided During the Action.*** Class Counsel and Plaintiff acknowledge that the information they received from Defendant in discovery during the Action which was marked "Confidential – Subject to Protective Order" was intended to be kept confidential and be subject to a draft Stipulation of Confidentiality being negotiated by the Parties. Class Counsel and Plaintiff agree that such information shall not be disclosed or shared with any third party or person and shall be destroyed within thirty (30) calendar days of the Effective Date.

7 REPRESENTATIONS AND WARRANTIES

7.1 *Settling Parties' Representations and Warranties.* The Parties, and each of them, represent and warrant as follows, and each settling Party acknowledges that each other Party is relying on these representations and warranties in entering into this Settlement Agreement:

- (a) The Settlement avoids the risk to Plaintiff of no recovery at all through further litigation of the Action.
- (b) Plaintiff has diligently investigated the claims in this Action; that Plaintiff is voluntarily entering into this Agreement as a result of arm's-length negotiations among the Parties' counsel; that in executing this Agreement he is relying solely upon his own judgment, belief and knowledge, and the advice and recommendations of his own independently-selected counsel, concerning the nature, extent and duration of his rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof, and that, except as provided in this Agreement, Plaintiff has not been influenced to any extent whatsoever in executing this Agreement by any representations, statements, or omissions pertaining to any of the foregoing matters by the other Party or by any person representing any settling Party.
- (c) Each Party assumes the risk of mistake as to facts or law.
- (d) The Parties recognize that additional evidence could come to light, but that they nevertheless desire to avoid the expense and uncertainty of litigation by entering into the Settlement.
- (e) The Parties have carefully read the contents of this Agreement and this Agreement is signed freely by each person executing the Agreement on behalf of

each of the Parties. The Parties, and each of them, further represent and warrant to each other that he, she, or it has made such investigation of the facts pertaining to this Settlement, this Agreement, and all of the matters pertaining thereto, as he, she or it deems necessary.

7.2 ***Signatories' Representations and Warranties.*** Each person executing this Agreement on behalf of any other person does hereby personally represent and warrant that he or she has the authority to execute this Agreement on behalf of, and fully bind, each principal whom such individual represents or purports to represent and that no right or claim compromised pursuant to this Agreement has been assigned or hypothecated to any third party. Further, each person executing this Agreement on behalf of any other person does hereby personally represent and warrant that he or she indemnifies the Defendant referenced in Plaintiff's Complaint and First Amended Complaint against all representations and warranties herein.

8 MONETARY PAYMENTS

8.1 *Case Contribution Award*

(a) Class Counsel intends to seek a Case Contribution Award for Plaintiff not to exceed the amount of twenty thousand dollars (\$20,000.00), which shall be subject to Court approval (the "Case Contribution Award"). Any Case Contribution Award approved by the Court shall be caused to be paid within thirty (30) days of the Effective Date. The Case Contribution Award shall be paid by the Settlement Administrator solely out of the Settlement Fund and shall be deducted (to the extent approved by the Court) from the Settlement Amount on or after the Effective Date and prior to the distribution to the Settlement Class Members. Plaintiff shall also be entitled to further distribution under this

Settlement pursuant to Section 4.2 as a Settlement Class Member.

(b) Notwithstanding any other provision of this Agreement to the contrary, the procedure for and the allowance or disallowance (in whole or in part) by the Court of any application for the Case Contribution Award shall be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and any Order or proceedings relating to the Case Contribution Award, or any appeal of any Order relating thereto, shall not operate to terminate or cancel this Agreement or be deemed material thereto.

(c) Defendant shall have no obligations whatsoever with respect to any Case Contribution Award to Plaintiff, which shall be payable solely out of the Settlement Fund.

8.2 *Attorneys' Fees and Expenses*

(a) No later than sixty (60) days before the Final Approval Hearing, Class Counsel will submit a Fee and Expense Application, seeking an award of Attorneys' Fees not exceeding one-third of the Settlement Fund (\$5,666,666), plus reimbursement of Expenses not to exceed \$60,000.

(b) Any amount awarded by the Court in response to such Fee and Expense Application shall be paid by the Settlement Administrator solely out of the Settlement Fund and shall be deducted (to the extent approved by the Court) from the Settlement Fund and paid to Class Counsel within forty-five (45) days of the Effective Date.

(c) Notwithstanding any other provision of this Agreement to the contrary, the procedure for and the allowance or disallowance (in whole or in part) by the Court of the Fee and Expense Application to be paid out of the Settlement Fund shall be considered by

the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and any Order or proceedings relating to the award of Attorneys' Fees, or any appeal of any Order relating thereto, shall not operate to terminate or cancel this Agreement or be deemed material thereto.

(d) Defendant shall have no obligations whatsoever with respect to any attorneys' fees or expenses incurred by Class Counsel, which shall be payable solely out of the Settlement Fund.

9 CONTINGENCIES, EFFECT OF DISAPPROVAL OR TERMINATION OF SETTLEMENT

9.1 This Agreement and the Settlement shall terminate and be cancelled if, within ten (10) business days after any of the following events, one of the Parties provides written notification of an election to terminate the Settlement:

- (a) The Court declines to provide preliminary approval of this Agreement, or declines to enter or materially modifies the contents of the Preliminary Approval Order attached hereto as **Exhibit D** without the consent of the Parties, or the Preliminary Approval Order is vacated, reversed or modified in any material respect on any appeal or other review or in a collateral proceeding occurring prior to the Effective Date;
- (b) The Court declines to provide final approval of this Agreement, or declines to enter or materially modifies the contents of the Final Approval Order and Judgment attached hereto as **Exhibit A** without the consent of the Parties;

- (c) The Court's Final Approval Order and Judgment is vacated, reversed or modified in any material respect on any appeal or other review or in a collateral proceeding occurring prior to the Effective Date;
- (d) The Settlement Class is not certified pursuant to Fed.R.Civ.P. 23(b)(1) as a non-opt out class or in a form that is otherwise agreed to by the Parties;
- (e) The Effective Date does not occur for some other reason.

9.2 For purposes of this Agreement, no order of the Court, or modification or reversal on appeal of any order of the Court, solely concerning the administration of the Settlement or the persons performing such administrative functions, or the amount or award of any Attorneys' Fees and Expenses or Case Contribution Award shall constitute grounds for cancellation or termination of the Agreement.

9.3 This Agreement and the Settlement shall terminate, at the sole election of Defendant, if (1) the Independent Fiduciary does not approve the Settlement, or disapproves the Settlement for any reason whatsoever or Defendant reasonably concludes that the Independent Fiduciary's approval does not include the determinations required by PTE 2003-39; and (2) the Parties do not mutually agree to modify the terms of the Settlement to facilitate an approval by the Independent Fiduciary or the Independent Fiduciary's determinations required by PTE 2003-39, or to address Defendant's concerns that the Independent Fiduciary's approval does not satisfy PTE 2003-39.

9.4 This Agreement and the Settlement shall terminate and be cancelled if (a) any federal or state authorities object to or request material modifications to the Agreement to

which the Parties do not agree; and (b) within ten (10) business days after the deadline set in the Preliminary Approval Order for such objections or requests, or within ten (10) business days of receiving any such objection or request, if later, Plaintiff or Defendant provides written notice of their election to terminate the Settlement.

9.5 If for any reason this Agreement is terminated or fails to become effective, then:

- (a) The Parties shall be deemed to have reverted to their respective status in the Action as of March 23, 2020, and shall then resume proceedings in the Court, and, except as otherwise expressly provided in this Agreement, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered.
- (b) Nothing in this Agreement shall be admissible as evidence for any purpose against Defendant in any pending or future litigation involving any individual or entity.
- (c) Class Counsel and Defendant's Counsel shall within ten (10) calendar days after the date of termination of the Agreement jointly notify the Financial Institution in writing to return to Defendant, or its designee, the full amount contained in the Settlement Fund, with all interest and income earned thereon, after deduction of any amounts earlier disbursed and/or incurred by the Settlement Fund as of the termination, and direct the Financial Institution to effect such return within fourteen (14) calendar days after such notification. Prior to the return of amounts contemplated by this Section 9.5(c), the Financial Institution shall fully and

finally fulfill and set aside for any and all tax obligations of the Settlement Fund as set forth in Section 4.1(i) and no Released Party shall have any past, present, or future liability whatsoever for any such tax obligations.

- (d) This Section and its provisions, and Sections 4.3, 5.3, 6.6, 6.7, 6.8 and 10.1 of this Agreement, shall survive any termination of this Settlement.

10 NO ADMISSION OF WRONGDOING

10.1 The Parties understand and agree that this Agreement embodies a compromise settlement of disputed claims, and that nothing in this Agreement, including the furnishing of consideration for this Agreement, shall be deemed to constitute any finding or admission of any wrongdoing or liability by any Released Party, or give rise to any inference of wrongdoing or liability in the Action or any other proceeding, whether or not the Agreement is consummated. This Agreement and the consideration provided hereunder are made in compromise of disputed claims and are not admissions of any liability of any kind, whether legal or factual. The Defendant specifically denies any such liability or wrongdoing and Defendant states that it is entering into the Agreement solely to eliminate the burden and expense of further litigation. Further, Plaintiff, while believing that all Claims brought in the Action against Defendant have merit, has concluded that the terms of this Agreement are fair, reasonable, and adequate to the Plan, himself and the Settlement Class Members given, among other things, the inherent risks, difficulties and delays in complex ERISA litigation such as the Action and the vigorous defenses asserted by Defendant. Defendant believes the claims brought in this Action against it have no merit and has not seen any evidence that any member of the Committee acted

negligently or disloyally to the Plan or in any way that was not in the best interests of the Plan. Neither the fact nor the terms of this Agreement shall be offered, used, or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this Agreement.

11 MISCELLANEOUS

11.1 ***Cooperation.*** The Parties agree to cooperate fully with each other in seeking Court approval of the Preliminary Approval Order and the Final Approval Order, and to do all things as may reasonably be required to effectuate preliminary and final approval and the implementation of this Agreement according to its terms.

11.2 ***No Disparaging Statements.*** Defendants, Defendants' Counsel, Plaintiff, and Class Counsel shall make no public statements describing this Settlement that disparage any Party or Released Parties or accuse one another of wrongdoing. Nothing in this Agreement shall be construed to prevent Plaintiff and Class Counsel from freely and frankly communicating with the Settlement Class Members.

11.3 ***Waiver.*** The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

11.4 ***Entire Agreement.*** This Agreement and the exhibits attached hereto constitute the entire agreement among the Parties and supersede any prior agreements, written or oral, between the Parties, and no representations, warranties, or inducements have been made to any

Party concerning the Settlement other than those contained in this Agreement and the exhibits thereto. No Party is relying on anything not expressly set forth in this Agreement and the exhibits thereto.

11.5 ***Modification or Amendment.*** Before entry of the Preliminary Approval Order and approval of the Independent Fiduciary, this Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Parties. Following approval by the Independent Fiduciary, the Agreement may be modified or amended only if such modification or amendment is set forth in a written agreement signed by or on behalf of all Parties and only if the Independent Fiduciary approves such modification or amendment in writing. Following entry of the Preliminary Approval Order, this Agreement may be modified or amended only by written agreement signed on behalf of all Parties, and only if the modification or amendment is approved by the Independent Fiduciary in writing and approved by the Court.

11.6 ***Construction of Agreement.*** This Agreement shall be construed to effectuate the intent of the Parties to resolve all disputes encompassed by the Agreement. All Parties have participated in the drafting of this Agreement, and any ambiguity shall not be resolved by virtue of a presumption in favor of any Party. The Agreement was reached at arm's-length by the Parties represented by counsel. None of the Parties shall be considered to be the drafter of this Agreement or any provision hereof for the purposes of any statute, case law, or rule of interpretation or construction.

11.7 ***Principles of Interpretation.*** The following principles of interpretation apply to

this Agreement:

- (a) The headings of this Agreement are for reference only and do not affect in any way the meaning or interpretation of this Agreement.
- (b) Definitions apply to the singular and plural forms of each term defined.
- (c) Definitions apply to the masculine, feminine, and neutral genders of each term defined.
- (d) References to a person are also to the person's permitted successors and assignees.
- (e) Whenever the words "include," "includes," or "including" are used in this Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

11.8 ***Executed in Counterparts.*** This Agreement may be executed in counterparts, all of which shall be considered the same as if a single document had been executed, and shall become effective when such counterparts have been signed by each of the Parties and delivered to each other Party. Counterpart copies of signature pages, whether delivered in original, by electronic mail in pdf format and/or by facsimile, taken together shall all be treated as originals and binding signatures.

11.9 ***Notices.*** Unless otherwise provided herein, any notice, request, instruction, application for Court approval, or application for Court Order sought in connection with the Agreement, shall be in writing and delivered personally or sent by certified mail or overnight delivery service, postage prepaid, with copies by facsimile or e-mail to the attention of Class

Counsel or Defendant's Counsel (as well as to any other recipients that a court may specify). Parties may change the person(s) to whom such notices should be directed by giving notice pursuant to this Section. As of the date hereof, the respective representatives are as follows:

For Defendant:

Myron D. Rumeld
Proskauer Rose LLP
11 Times Square
New York, NY 10036
Telephone: (212) 969-3000
Facsimile: (212) 969-2900
Email: mrumeld@proskauer.com

For Plaintiff:

Gregory Y. Porter
Bailey & Glasser, LLP
910 17th Street, NW
Suite 800
Washington, D.C. 20006
Telephone: (202) 463-2101
Facsimile: (202) 463-2103
Email: gporter@baileyglasser.com

-and-

Mark G. Boyko
Bailey & Glasser, LLP
8012 Bonhomme Ave.
Suite 300
St. Louis, MO 63105
Telephone: (314) 863-5446
Facsimile: (314) 863-5483
Email: mboyko@baileyglasser.com

11.10 ***Extensions of Time.*** The Parties may agree, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of the Agreement.

11.11 ***Governing Law.*** This Agreement shall be governed by and construed in accordance with the laws of New York without giving effect to any conflict of law provisions

that would cause the application of the laws of any jurisdiction other than New York and any dispute arising out of shall be adjudicated in the United States District Court for the Southern District of New York.

11.12 ***Fees and Expenses.*** Except as otherwise expressly set forth herein, each Party hereto shall pay all of his, her, or its fees, costs and expenses incurred in connection with the Action, including fees, costs and expenses incident to his, her or its negotiation, preparation or compliance with this Agreement, and including any fees, expenses and disbursements of its counsel, accountants, and other advisors. Nothing in this Agreement shall require Defendant to pay any monies other than as expressly provided herein.

11.13 ***Communication With Participants.*** Nothing in this Agreement or Settlement shall prevent or inhibit the ability of Defendant, the Plan, or the Company to communicate with Current or Former Participants of the Plan.

11.14 ***Retention of Jurisdiction.*** The Parties shall request that the Court retain jurisdiction of this matter after the Effective Date and enter such orders as necessary or appropriate to effectuate the terms of the Agreement.

Agreed to on behalf of plaintiff Arthur Bekker

Dated: <u>6/10/2020</u>	<p>By: </p> <p>Mark G. Boyko Bailey & Glasser, LLP 8012 Bonhomme Ave. Suite 300 St. Louis, MO 63105 Telephone: (314) 863-5446 Facsimile: (314) 863-5483 Email: mboyko@baileyglasser.com</p>
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Agreed to on behalf of defendant Neuberger Berman Group 401(k) Plan Investment Committee

Dated: <u>6/10/2020</u>	<p>By: <u><i>Myron D. Rumeld</i></u></p> <p>Myron D. Rumeld Proskauer Rose LLP 11 Times Square New York, NY 10036 Telephone: (212) 969-3021 Facsimile: (212) 969-2900 Email: mrumeld@proskauer.com</p>
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EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ARTHUR BEKKER, *individually, on behalf of a
class of all other persons similarly situated, and on
behalf of the Neuberger Berman 401(k) plan,*
Plaintiff,

No. 16-cv-06123-LTS-BCM

v.
NEUBERGER BERMAN GROUP 401(K) PLAN
INVESTMENT COMMITTEE,
Defendant.

-----X

**[PROPOSED] ORDER AND JUDGMENT APPROVING SETTLEMENT OF CLASS
ACTION**

WHEREAS, Arthur Bekker (the “Plaintiff”) in the above-captioned lawsuit (the “Action”) on behalf of himself and the Settlement Class and the Plan, and Defendant Neuberger Berman Group 401(k) Plan Investment Committee (“Defendant”), have entered into a Class Action Settlement Agreement dated June 10, 2020 (the “Settlement Agreement”), that provides for a complete dismissal with prejudice of all claims asserted in the Action against Defendant by Settlement Class Members on the terms and conditions set forth in the Settlement Agreement, subject to the approval of this Court (the “Settlement”);

WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Settlement Agreement;

WHEREAS, by Order dated _____ (Dkt. __) (the “Preliminary Approval Order”), this Court (1) conditionally certified the Settlement Class and appointed Class Counsel; (2) preliminarily approved the Settlement; (3) directed notice to Settlement Class Members and approved the plan and form of Notice; (4) approved the Plan of Allocation and appointed a Settlement Administrator; (5) scheduled a Final Approval Hearing; and (6) scheduled a hearing

on Plaintiff's Counsel's motion for fees and costs and the payment of Case Contribution Awards;

WHEREAS, due and adequate notice has been given to the Settlement Class;

WHEREAS, the Court conducted a hearing on _____ (the "Final Approval Hearing") to consider, among other things, (a) whether the proposed Settlement on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, adequate and in the best interests of the Settlement Class and should be approved by the Court; (b) whether a Judgment substantially in the form attached as Exhibit A to the Agreement should be entered dismissing with prejudice all claims asserted in the Action against Defendant; (c) whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable and should be approved; (d) whether the motion by Plaintiff's Counsel for an award of attorneys' fees and reimbursement of litigation expenses and for Case Contribution Awards should be approved; and

WHEREAS, the Court having reviewed and considered the Settlement Agreement, all papers filed and proceedings held herein in connection with the Settlement, including all objections filed, all oral and written comments received regarding the proposed Settlement, and the record in the Action, and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Jurisdiction**: The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the Settlement Class Members.

2. **Incorporation of Settlement Documents**: This Order and Judgment incorporates and makes a part hereof: (a) the Settlement Agreement filed with the Court on June 10, 2020, including the Plan of Allocation submitted therewith, and (b) the Notice approved by the Court on _____.

3. **Objections:** The Court has duly considered the objections to the Settlement that were filed and that were raised during the Final Approval Hearing, and finds them to be without merit. The Court denies those objections for the reasons stated by Plaintiff in his submission in favor of final approval and in response to the objections, as well as reasons stated during the Final Approval Hearing.

4. **Class Certification for Settlement Purposes:** The Court hereby affirms its determinations certifying, for the purposes of the Settlement only, the Action as a class action pursuant to Rule 23(b)(1) of the Federal Rules of Civil Procedure with the Settlement Class consisting of:

All Participants in the Neuberger Berman Group 401(k) Plan during the Class Period (June 15, 2010 through December 16, 2019) who had any portion of their Plan accounts, at any time during the Class Period, invested in the VEF. Excluded from the class are: (i) Defendant Neuberger Berman Group 401(k) Plan Investment Committee and those of its current and past members who served from June 15, 2010 through August 2, 2016; (ii) non-party Marvin Schwartz; and (iii) beneficiaries, immediate family members, estates, and executors of (i) and (ii).

5. **Adequacy of Representation:** Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of Settlement only, the Court hereby affirms its determinations in the Preliminary Approval Order certifying Plaintiff as Class Representative for the Settlement Class and appointing Plaintiff's Counsel as Class Counsel for the Settlement Class both in terms of litigating the claims of the Settlement Class and for purposes of entering into and implementing the Settlement and finding that the Settlement has satisfied the requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g).

6. **Notice:** The Court finds that the dissemination of the Notice: (i) was implemented in accordance with the Preliminary Approval Order; (ii) constituted the best notice reasonably practicable under the circumstances; (iii) constituted notice that was reasonably calculated, under

the circumstances, to apprise all Settlement Class Members of the pendency of the Action, of the effect of the Settlement (including the releases provided for therein), of Plaintiff's Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses and case contribution awards, of their right to object to the Settlement, the Plan of Allocation and Plaintiff's Counsel's motion for attorneys' fee and reimbursement of litigation expenses, and of their right to appear at the Final Approval Hearing; (iv) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice of the proposed Settlement; and (v) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution including the Due Process Clause, and all other applicable law and rules.

7. **Final Settlement Approval and Dismissal of Claims:** Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Settlement Agreement in all respects including, without limitation, the amount of the Settlement; the releases provided for therein; and other dismissal with prejudice of the claims asserted in the Action, and finds that the Settlement is, in all respects, fair, reasonable and adequate, and is in the best interests of Plaintiff and the Settlement Class. The Parties are directed to implement, perform and consummate the Settlement in accordance with the terms and provisions of the Agreement.

8. As of the Settlement Effective Date, pursuant to Fed. R. Civ. P. 54(b), all of the claims asserted in this Action are hereby dismissed with prejudice. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Settlement Agreement.

9. **Binding Effect:** The terms of the Settlement Agreement and of this Judgment shall be forever binding on Defendant, Plaintiff, the Plan, and all Settlement Class Members, as well as their respective current and former beneficiaries, dependents, representatives, heirs,

executors, administrators, predecessors, successors and assigns.

10. **Releases**: The releases set forth in the Settlement Agreement, including but not limited to Section 6 of the Settlement Agreement (the “Releases”), together with the definitions contained in Section 2 of the Settlement Agreement relating thereto, are expressly incorporated herein in all respects. The Releases are effective as of the date of the entry of this Final Approval Order and Judgment. Accordingly, the Court orders that, as of the date of entry of this Final Approval Order and Judgment:

- a. The Plaintiff and each of the other Settlement Class Members (on behalf of themselves and their past, present and future heirs, beneficiaries, executors, administrators, estates, partners, officers, directors, agents, attorneys, predecessors, successors, and assigns), for themselves and on behalf of the Plan, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived, discharged, and dismissed with prejudice all Released Claims;
- b. The Plan, having received Independent Fiduciary approval as required by Section 3.8 of the Settlement Agreement, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived, discharged, and dismissed with prejudice all Released Claims;
- c. Plaintiff and each Settlement Class Member (on behalf of themselves and their past, present and future heirs, beneficiaries, executors, administrators, estates, partners, officers, directors, agents, attorneys, predecessors, successors, and assigns), for themselves and on behalf of the Plan, and the Plan (having received

Independent Fiduciary approval as required by Section 3.8 of the Settlement Agreement), acting individually or together, or in combination with others, shall not sue or seek to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a Department of Labor proceeding, an arbitration or a proceeding before any state insurance or other department or commission), any cause of action, demand, or claim on the basis of, connected with, or arising out of any of the Released Claims and that the foregoing covenants and agreements shall be a complete defense to any such Released Claims against any of the respective Released Parties. Nothing herein shall preclude any action to enforce the terms of this Settlement Agreement.

- d. If any Settlement Class Member or the Plan violates the covenant in Section 10(c) and the Released Party impacted is successful in having the claim dismissed, the Released Party shall be deemed to be a prevailing party for purposes of recovering attorneys' fees and costs incurred in defending against any such action.
- e. Defendant shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived, discharged, and dismissed with prejudice, and shall forever be enjoined from prosecuting, any or all claims against Plaintiff related to the pursuit of the Action as provided in the Settlement Agreement.

11. **Bar Order**: Upon the date of the entry of this Final Approval Order and Judgment, all persons and entities shall be permanently enjoined, barred and restrained from bringing, commencing, prosecuting or asserting any and all claims, actions, suits, causes of

actions, arbitrations, or demands in any forum against any of the Released Parties for recovery, contribution, indemnification or otherwise for any damages allegedly arising from any of the Released Claims, or the settlement thereof.

12. **Rule 11 Findings**: The Court finds and concludes that the Parties and their respective counsel have complied in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure in connection with the commencement, maintenance, prosecution, defense and settlement of the claims asserted in the Action against Defendant by Settlement Class Members.

13. **No Admissions**: This Judgment, the Preliminary Approval Order, the Settlement Agreement (whether or not consummated), including the exhibits thereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), materials submitted in support of the Plan of Allocation, and the negotiations that led to the agreement in principle reached on March 23, 2020, the negotiation of the Settlement Agreement and its exhibits, and any papers submitted in support of approval of the Settlement, and any proceedings taken pursuant to or in connection with the Settlement Agreement or approval of the Settlement (including any arguments proffered in connection therewith): (a) shall not give rise to any inference of, and shall not be construed or used as an admission, concession, or declaration against any Released Party of wrongdoing or liability in the Action or any other proceeding; (b) are not an admission of any liability of any kind, whether legal or factual; (c) shall not be offered as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any Released Party with respect to the truth of any fact alleged by Plaintiff or the validity of any claim that was, could have been, or may be asserted or the deficiency of any defense that has been, could have been, or may be asserted in this Action or in any litigation, or

of any liability, negligence, fault, or other wrongdoing of any kind by any Released Party; (d) shall not be offered against Plaintiff as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against Plaintiff in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Settlement Agreement; provided, however, that if the Settlement Agreement is approved by the Court, the Parties and their respective counsel may refer to it to effectuate the protections from liability granted thereunder or otherwise to enforce the terms of the Settlement; (e) shall not be construed against any of the Parties as an admission, concession, or presumption that the Settlement Amount represents the amount which could be or would have been recovered by the Settlement Class after trial with respect to their claims in the Action; and (f) shall not be construed against the Plaintiff as an admission, concession, or presumption that any of the claims asserted or to be asserted in the Action are without merit, that any of the Defendants have or had meritorious defenses, or that damages recoverable by the Settlement Class would not have exceeded the Settlement Amount.

14. **Retention of Jurisdiction:** Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation and enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) any motion for an award of attorneys' fees and litigation expenses by Plaintiff's Counsel in the Action that will be paid from the Settlement Fund; (d) any motion to approve the Plan of Allocation; (e) the Settlement Class Members for all matters relating to the Action; and (f) the interpretation, implementation and enforcement of this Judgment.

15. **Fees and Awards.** A separate order shall be entered on the motion of Plaintiff's Counsel for an award of attorneys' fees and reimbursement of litigation expenses and Case Contribution Fees. Such order shall in no way affect or delay the finality of this Judgment and shall not affect or delay the Effective Date of the Settlement.

16. **Modification of Settlement Agreement.** Without further approval from the Court, Plaintiff and Defendant are hereby authorized to agree to and adopt such amendments or modifications of the Settlement Agreement or any exhibits attached thereto to effectuate this Settlement that: (i) are not materially inconsistent with this Judgment; and (ii) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Plaintiff and Defendant may agree to reasonable extensions of time to carry out any provisions of the Settlement.

17. **Termination:** If the Effective Date does not occur or the Settlement is terminated as provided in the Settlement Agreement, then this Judgment (and any orders of the Court relating to the Settlement) shall be vacated, rendered null and void and be of no further force or effect, except as otherwise provided by the Settlement Agreement.

18. **Entry of Final Judgment:** There is no just reason to delay entry of this Judgment as a final judgment with respect to the claims asserted in the Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final judgment pursuant to Fed. R. Civ. P. 54(b).

SO ORDERED this ____ day of _____, 2020.

The Honorable Laura Taylor Swain
United States District Court Judge

EXHIBIT B

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

A federal court has authorized this Notice. This is not a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS

You are receiving this notice (the “Notice”) because the records of the Neuberger Berman Group 401(k) Plan (the “Plan”) indicate that you have been a participant in the Plan and invested some or all of your Plan account in the Neuberger Berman Value Equity Fund (“VEF”) between June 15, 2010 and December 16, 2019. As such, your rights may be affected by a proposed settlement of the class action litigation in the U.S. Federal Court for the Southern District of New York titled *Bekker v. Neuberger Berman Group 401(k) Plan Investment Committee*, Case No. 16-cv-06123-LTS-BCM (the “Action”).

This Notice summarizes the proposed Settlement. Capitalized terms not defined in this Notice are defined in the Settlement Agreement. The complete terms and conditions of the Settlement are described in the Settlement Agreement, which is available at www._____.com, by contacting Class Counsel, Mark G. Boyko at mboyko@baileyglasser, by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Southern District of New York, provided the office is not closed to the public due to COVID-19.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.

What this Litigation is About

This class action litigation is brought on behalf of participants in the Plan. Arthur Bekker is the named plaintiff and the representative on behalf of all members of the Class in the litigation. The lawsuit was originally filed on August 2, 2016.

Plaintiff originally sued Neuberger Berman Group LLC, Neuberger Berman LLC, Neuberger Berman Trust Company N.A, Marvin Schwartz, and the Neuberger Berman Group 401(k) Plan Investment Committee (the “Committee” or “Defendant”). At the time of settlement, only the Committee remained as a defendant. The complaint alleges that Defendant violated its fiduciary duties by continuing to offer the VEF in the Plan after it began charging fees to participants and after its performance weakened. Plaintiff alleges that there were superior, less expensive investment options available that Defendant should have chosen for the Plan. Plaintiff also alleges that once the VEF began charging fees, the payment of those fees constituted transactions prohibited by the Employee Retirement Income Security Act of 1974 (“ERISA”).

Defendant denies all allegations of wrongdoing, fault, liability or damage to the Plaintiff and the Class and denies that it engaged in any wrongdoing or violation of law or breach of fiduciary duties. Defendant maintains that it acted in the best interests of Plan participants at all times and complied with its fiduciary obligations to the Plan and its participants. Among other

things, Defendant contends that the Plan fiduciaries employed a robust and thorough process for selecting, monitoring, and removing Plan investment options and for monitoring fees. The VEF was removed from the Plan in December 2019.

The Terms of the Settlement

To avoid the time and expense of further litigation, Plaintiff and Defendant have agreed to resolve the litigation. The Settlement is the product of extensive negotiations between the parties, who were assisted in their negotiations by a neutral private mediator. The parties have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. If the Settlement is approved by the Court, the Class will obtain the benefits of the Settlement without the further delay and uncertainty of additional litigation. The Settlement resolves all issues regarding the VEF and its fees from June 15, 2010 through the time the Court grants final approval of the Settlement.

The terms of the Settlement are set forth in the Settlement Agreement and Release dated June 10, 2020 (the "Settlement Agreement"), which is available on the Settlement Website at www._____.com. Those terms are summarized below. This Notice is a summary, and in the event of any inconsistency, the Settlement Agreement controls. Nothing in the Settlement Agreement is an admission or concession on Defendant's part of any fault or liability, nor is it an admission or concession on Plaintiff's part that his claims lacked merit.

1. Who Is Covered by the Settlement?

Plaintiff will request that the Court certify a Class, and the Settlement will apply to, and be binding on, that Class. The Class is defined as:

All Participants in the Neuberger Berman Group 401(k) Plan during the Class Period who had any portion of their Plan accounts, at any time during the Class Period, invested in the VEF. Excluded from the Settlement Class are: (i) Defendant Neuberger Berman Group 401(k) Plan Investment Committee and those of its current and past members who served from June 15, 2010 through August 2, 2016; (ii) non-party Marvin Schwartz; and (iii) beneficiaries, immediate family members, estates, and executors of (i) and (ii).

Plan records indicate that you may be a member of the Class because you are a current or former participant in the Plan who invested in the VEF at some point since June 15, 2010.

2. Relief Provided to the Class by the Settlement.

Under the proposed Settlement, Defendant will arrange for \$17,000,000 to be paid into a Settlement Fund. After payment of Settlement Administration Costs (such as the cost of distributing this Notice), Class Counsel's attorneys' fees and costs, and other expenses, the remaining Distributable Settlement Amount will be paid to the Class.

The Distributable Settlement Amount will be distributed to eligible Settlement Class Members pursuant to a Plan of Allocation to be approved by the Court.¹ Individual payments under the Settlement for each Settlement Class Member will be determined in accordance with that Plan of Allocation, and cannot be quantified with certainty for any individual Settlement Class Member at this time. That is in part because the exact Distributable Settlement Amount and number of Settlement Class Members are not known at this time, although a preliminary review of Plan records suggests that approximately 1,500 individuals will be included in the Class. The proposed Plan of Allocation, and other case and settlement documents, are available at [URL].

On a summary level, the Plan of Allocation will work as follows: The Settlement Administrator will determine the Distributable Settlement Amount to be allocated to Settlement Class Members. The Settlement Administrator will then calculate the portion of the Distributable Settlement Amount to be allocated to each Settlement Class Member, based on that Settlement Class Member's quarter-ending account balances in the VEF throughout the Class Period. Thus, a Settlement Class Member's allocation will depend on the amount he or she had invested in the VEF during the Class Period, and for what amount of time. To ensure that no Settlement Class Member receives less than \$10, any Settlement Class Member entitled to receive less than \$10 will be allocated \$10, and the remaining allocations will be adjusted proportionally. If enough assets remain in the Settlement Fund following the initial distribution, one or more subsequent distributions may be made pursuant to the Plan of Allocation.

Settlement benefits will be distributed as follows: Current Plan participants with a balance in the Plan on the Distribution Date will receive their distributions through an electronic transfer directly into their Plan accounts, which will be invested in accordance with the Participant's instructions for new contributions or, absent instruction, in the Plan's applicable default investment, which is currently the Plan's target date funds. Settlement Class Members who no longer maintain a balance in their Plan account as of the Distribution Date will receive a check automatically mailed to them at the address provided in the Settlement Administrator's records (generally, the address where this notice has been mailed).

Actual allocation amounts will depend on the final Distributable Settlement Amount, the final number of Settlement Class Members, and the individual Settlement Class Member's aggregate quarterly VEF Plan investment balances and number of quarters in the Plan during the Class Period. It is possible that some Settlement Class Members may receive the minimum recovery of \$10.

All inquiries related to distributions should be addressed solely to the Settlement Administrator at the addresses listed below. In addition, if you are no longer a Plan Participant, you can contact the Administrator to request a roll-over of your distribution into a Qualified Retirement Account via email at [____@____.com]. If you are still a Plan Participant, your

¹ The Distributable Settlement Amount is the Settlement Amount, minus (i) the amounts approved by the Court for Class Counsel's Attorneys' Fees and Expenses and Case Contribution Award to the named Plaintiff, (ii) Administration Costs, (iii) Independent Fiduciary Fees and Costs, and (iv) Taxes and Tax-Related Costs.

distribution will be made into your Plan account automatically and you do not need to request a roll-over.

The Settlement Administrator can also be reached by mail at:

[ADDRESS]

3. Summary of the Claims Released by the Class. In exchange for the Settlement Amount and other terms of the Settlement, if the Settlement is approved, all members of the Class will release the “Released Claims” defined in the Settlement Agreement to be “any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys’ fees and costs, whether under local, state or federal law, whether by statute, contract, common law or equity, whether brought in an individual, representative or any other capacity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, against the Released Parties through the date the Court enters the Final Approval Order and Judgment (including, without limitation, any Unknown Claims) arising out of or in any way related to: (a) the conduct alleged in the Complaint or the First Amended Complaint and any subsequent pleading or legal memorandum filed in the Action; (b) the selection, retention, and monitoring of the VEF as a Plan investment option; (c) the performance, fees, and any other characteristic of the VEF; and (d) the approval by the Independent Fiduciary of the Settlement.”

Settlement Class Members will not have the right to bring any Released Claims against the Defendant or other Released Parties. “Released Parties” is defined in the Settlement Agreement and means “(1) Defendant and, as applicable, each of its predecessors, successors, past, present and future members, fiduciaries, affiliates, agents, and representatives and each of their descendants, dependents, beneficiaries, marital community, heirs, executors, and administrators; (2) the Company and each of its past, present and future parents, subsidiaries, affiliates, divisions, businesses, employee benefit plans, and related entities; (3) the Plan and each of its past, present and future trustees, fiduciaries (except the Independent Fiduciary), parties in interest, committees and committee members, employees, service providers, investment consultants, managers, administrators, actuaries, agents, representatives; (4) the VEF; and (5) each of the past, present, and future officers, directors, partners, shareholders, trustees, fiduciaries, employees, managers, insurers, attorneys, experts, agents and representatives of the entities and individuals in (1) through (4).”

The entire release is set forth in the Settlement Agreement, which can be viewed online at www._____.com, or requested from the Settlement Administrator or Class Counsel.

The Settlement Approval Process

The Court has granted preliminary approval of the proposed Settlement and approved this Notice. The Settlement will not take effect, and there will be no benefits distributed under the Settlement, however, if the Court does not enter a Final Approval Order and Judgment or the Settlement otherwise does not become effective. The Court will hold a Final Approval Hearing on _____. The Court and the Parties anticipate the hearing will be conducted in Courtroom 17C at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan Building & United States Courthouse, 500 Pearl Street, New York, New York.

Class Counsel will attend the hearing to answer any questions the Court may have. You are not required to attend the Final Approval Hearing.

The date and location of the Final Approval Hearing are subject to change by order of the Court without further notice to the Class. If you would like to attend the Final Approval Hearing, you should check the Settlement Website, [URL], or the Court's online docket to confirm that the date or location has not been changed. Prior to the Final Approval Hearing, an Independent Fiduciary will be asked to approve the Settlement and Released Claims on behalf of the Plan, as may be required by ERISA Prohibited Transaction Exemption 2003-39 or any other applicable class or statutory exemptions.

The Opportunity to Object to the Settlement

As a Settlement Class Member, you can ask the Court to deny approval of the Settlement by filing an objection. You cannot, however, ask the Court to order a settlement on different terms; the Court can approve or reject the Settlement only on the terms reached by the Parties. If the Court denies approval, the Settlement Amount will not be distributed and the litigation will resume.

Any objection to the proposed Settlement must be made in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must be submitted to the Court either by mailing to the Clerk of the Court, United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York, 10007, or by filing in person at any location of the United States District Court for the Southern District of New York. The objection must be filed or postmarked on or before [DATE]. Each objection must contain (a) the name and case number of the Action (*Bekker v. Neuberger Berman Group 401(k) Plan Investment Committee*, Case No. 16-cv-06123-LTS-BCM); (b) the Settlement Class Member's full name, address, telephone number, and signature; (c) a statement that the person submitting the comments or objections is a Settlement Class Member and an explanation of the basis upon which the person claims to be a Settlement Class Member; (d) all grounds for the objection, accompanied by any legal support known to the objector or his or her counsel; (e) a statement as to whether the Settlement Class Member or his or her counsel intends to personally appear and/or testify at the Final Approval Hearing; and (f) a list of any persons the objector or his or her counsel may call to testify at the Final Approval Hearing in support of the objection.

Those Settlement Class Members or their attorneys intending to appear at the Final Approval Hearing must give notice of their intention to appear setting forth, among other things, the name, address, and telephone number of the Settlement Class Member (and, if applicable, the name, address, and telephone number of that Settlement Class Member's attorney) to Class Counsel and Defendant's Counsel and file it with the Court Clerk on or before [DATE].

If the Court approves the Settlement, you will be bound by it and will receive whatever benefits you are entitled to under its terms. You cannot exclude yourself (or "opt-out") from the Settlement. The Court certified the Class under Federal Rule of Civil Procedure 23(b)(1), which does not permit Class Members to opt out of the Class.

Attorneys' Fees and Case Contribution Award for Named Plaintiff

The Class is represented by Class Counsel. The attorneys for the Class are as follows:

Gregory Y. Porter
Mark G. Boyko
BAILEY & GLASSER LLP
1055 Thomas Jefferson Street NW
Suite 540
Washington, DC 20007
mboyko@baileyglasser.com
314-863-5446

Class Counsel and the Named Plaintiff have devoted many hours to investigating the claims, bringing this litigation, and pursuing it for four years. During that time, Class Counsel incurred litigation expenses in addition to the time spent by attorneys, paralegals, and others. Class Counsel also took the risk of litigation and have not been paid for their time and expenses while this litigation has been pending before the Court.

Class Counsel will file a motion with the Court seeking approval of reasonable attorneys' fees and reimbursement of the expenses they incurred in prosecuting the litigation, to be paid from the Settlement Fund. Their request will not exceed (1) attorneys' fees of one-third of the Settlement Amount, or \$5,666,667, and (2) reimbursement of expenses of up to \$60,000. Plaintiff will also request that the Court approve a Case Contribution Award of \$20,000 for Plaintiff Bekker from the Settlement Fund.

Plaintiff's preliminary approval motion and supporting papers were filed on XXXXX, and the final approval motion and fee and expense motion, will be filed on or before [DATE]. You may review these filings at www._____.com. Any award of Attorneys' Fees and Expenses and Case Contribution Awards approved by the Court, in addition to the Administration Costs, Independent Fiduciary Fees and Costs, and Taxes and Tax-Related Costs, will be paid from the Settlement Fund.

Getting More Information

You do not need to do anything to be a part of this Class or, if the Settlement is approved, to be eligible to receive your share of the Settlement Fund. If you still have a Plan account with a positive balance when Settlement Fund distributions are made, your Settlement benefits will be distributed to your Plan account. If you no longer have a Plan account, a check will be mailed to you.

You can visit the Settlement Website at www._____.com, where you will find the full Settlement Agreement, the Court's order granting preliminary approval, this Notice, and other relevant documents. If there are any changes to the deadlines identified in this Notice, the date of the Final Approval Hearing, or the Settlement Agreement, those changes will be posted to the Settlement Website. You will not receive an additional mailed notice with those changes, unless separately ordered by the Court. If you cannot find the information you need on the

Settlement Website, you may also contact **1-800-xxx-xxxx** for more information. Please do not contact the Court or counsel for Defendant to get additional information.

Dated: _____, 2020

By Order of the United States District Court
District Judge Laura Taylor Swain

EXHIBIT C

EXHIBIT C - PLAN OF ALLOCATION

1. The Settlement Administrator shall obtain from Fidelity the market value of each Class Member's Plan investment in the VEF as of the last day of each quarter of the Class Period, through and including December 16, 2019. Defendant will identify in the list, or exclude from the list, persons excluded from the Class under Section 2.36 of the Settlement Agreement. Plan investments in the VEF from June 30, 2010 will be used for the first quarterly data and Plan investments in the VEF from December 15, 2019 will be used for the last quarterly data for purposes of this Plan of Allocation. The sum of the market value of each Class Member's VEF investment in the Plan across each quarterly period shall be known as the "Quarterly Account Balance."

2. The Settlement Administrator shall obtain, in writing, an agreement with Class Counsel and the Settlement Administrator on the net settlement proceeds, determined by the value of the Settlement Fund after all contributions and after deductions for payment of fees, expenses, costs and awards, and an agreed-upon additional amount for anticipated and unanticipated future settlement expenses ("Distributable Settlement Amount").

3. Allocation of payments shall be in proportion to Class Member Quarterly Account Balances. The Distributable Settlement Amount will be allocated as follows:

- a. First: Calculate the sum of all Quarterly Account Balances.
- b. Second: allocate each Class Member a share of the Distributable Settlement Amount in proportion to that participant's Quarterly Account Balance, where the numerator is Class Member's Quarterly Account Balances and the denominator is the total of all Class Members' Quarterly Account Balances;

4. Class Members who are entitled to a distribution of less than \$10.00 (combining all Plan accounts) will receive a distribution of \$10. Class members who can be identified as having

a Plan investment in the VEF during the Class Period, but not at the close of any quarter as defined above, will also receive a distribution of \$10. Class Members' awards falling below \$10.00 will be progressively increased to \$10 from the Distributable Settlement Amount and the Distributable Settlement Amount will be re-allocated until the lowest participating Class Member's award is \$10.00. This modified award shall be known as the Class Member's Entitlement Amount.

5. *Class Members with Multiple Accounts:* For Current Participants with multiple Plan accounts with positive balances on the Distribution Date,, the Class Member's Entitlement Amount will be deposited into his or her accounts and invested according to the Class Member's designated investment allocations on file with the Plan Administrator. For Participants with multiple accounts only one of which has a balance on the Distribution Date, the entire Class Member's Entitlement Amount will be allocated to the account with a balance. Former Participants, as defined in the Settlement Agreement, will receive a payment directly from the Settlement Administrator.

6. As near as practicable to distributions to the Class, Defendant shall cause Fidelity to provide the Settlement Administrator with a list identifying Class Members who continue to have an account balance in the Plan. These individuals will be paid by electronic distribution to their Plan accounts. All other Class Members will have the option to be paid by check or deposit into an IRA or other tax-qualified savings account. Checks will expire one-hundred twenty (120) days after issuance, after which the checks shall be void and the Settlement Administrator shall be instructed to return any such funds to the Settlement Fund. The Settlement Administrator shall make all necessary withholdings and reportings, consistent with federal and state tax law and the right of Former Participants to roll their distribution into a qualified retirement account. The check

expiration date shall be printed on the face of each check. These payments to Current Participants and Former Participants shall be called the “Initial Distribution.”

7. Notwithstanding these requirements, the Settlement Administrator shall have the authority to reissue checks to Settlement Class Members where it determines there is good cause to do so, provided that doing so will not compromise the Settlement Administrator’s ability to implement the Plan of Allocation. Reissued Checks shall expire in ninety (90) days. The voidance of checks shall have no effect on the Settlement Class Members’ release of claims, obligations, representations, or warranties as provided herein, which shall remain in full effect.

8. The Second Distribution: Following the voidance for time of all checks mailed in the Initial Distribution (not the voidance of all Reissued Checks), a Second Distributable Amount will be calculated using the balance of the Qualified Settlement Fund minus anticipated future Administrative Expenses and the sum of all non-voided Reissued Checks. If the Second Distributable Amount exceeds \$100,000, the Settlement Administrator shall allocate each Class Member a share of the Second Distributable Settlement Amount in proportion to that participant’s Entitlement Amount. Modifications of the amount to ensure a \$10 minimum distribution to each Class Member will be made consistent with the Initial Distribution. Fidelity shall provide the Settlement Administrator a list identifying Class Members who continue to have an account balance in the Plan as of a date as near as practicable to this second distribution. These individuals will be paid by electronic distribution to their Plan accounts. Checks mailed pursuant to this paragraph shall be void after ninety (90) days. The Settlement Administrator may, with the approval of Class Counsel, reissue checks under this Paragraph only if the void date on such checks does not extend beyond the void date of the check originally issued under this Paragraph.

9. Final Distribution: As soon as practicable following the voidance of all outstanding checks from the Second Distribution, or if the Second Distributable Amount is less than \$100,000, the Settlement Fund shall be closed. All remaining assets, following the payment of all outstanding costs, shall be deposited in the Plan and distributed among the individual accounts of Class Members who, at that time, continue to have active accounts in the Plan. Defendant shall cause Fidelity to identify Class Members who continue to have an account balance in the Plan as of a date as near as practicable to the Final Distribution. Only these individuals will be paid in the final distribution and they will only be paid by electronic distribution to their Plan accounts. Each payment shall be proportional to the Class Member's Entitlement Amount as defined in Paragraph 4 as a total of the Entitlement Amounts of Class Members entitled to the Final Distribution. Payments under the Final Distribution are not subject to the \$10 minimum and may be less than \$10 to any given Class Member.

10. The Settlement Administrator shall utilize the calculations required to be performed herein for making the required distributions of the Entitlement Amount, less any required tax withholdings or penalties, to each Class Member and do so in a manner that accommodates, where possible, Class Members wishing to deposit their payments in qualified retirement accounts. In the event that the Settlement Administrator determines that the Plan of Allocation would otherwise require payments exceeding the Settlement Fund, the Settlement Administrator is authorized, subject to the approval of the Parties, to make such changes to the Plan of Allocation as are necessary to ensure that payments under the Plan of Allocation do not exceed the amounts in the Settlement Fund. The Settlement Administrator shall be solely responsible for performing any calculations required by this Plan of Allocation.

11. If the Settlement Administrator concludes that it is impracticable to implement any provision of the Plan of Allocation, it shall be authorized, subject to approval by the Parties, to make such changes to the Plan of Allocation as are necessary to implement as closely as possible the terms of the Settlement Agreement, so long as the payments under this Plan of Allocation do not exceed the amounts on the Settlement Fund.

12. Any remaining funds after the Final Distribution may be paid to the Plan to pay Plan Expenses, provided that in no case shall such funds be paid to or for the benefit of the Company or Defendant or to pay Plan administrative expenses currently paid by the Company.

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ARTHUR BEKKER, *individually, on behalf of a
class of all other persons similarly situated, and on
behalf of the Neuberger Berman 401(k) plan,*
Plaintiff,

No. 16-cv-06123-LTS-BCM

v.
NEUBERGER BERMAN GROUP 401(K) PLAN
INVESTMENT COMMITTEE,

Defendant.

-----X

[PROPOSED] PRELIMINARY APPROVAL ORDER

- 1) **CONDITIONALLY CERTIFYING THE SETTLEMENT CLASS AND APPOINTING CLASS COUNSEL;**
- 2) **GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT;**
- 3) **ENJOINING SETTLEMENT CLASS MEMBERS FROM PURSUING ANY CLAIMS THAT ARISE OUT OF OR RELATE IN ANY WAY TO THE RELEASED CLAIMS PENDING FINAL APPROVAL OF THE SETTLEMENT;**
- 4) **DIRECTING NOTICE TO SETTLEMENT CLASS MEMBERS AND APPROVING THE PLAN AND FORM OF NOTICE;**
- 5) **APPOINTING A SETTLEMENT ADMINISTRATOR;**
- 6) **SCHEDULING A FINAL APPROVAL HEARING; AND**
- 7) **SCHEDULING A HEARING ON CLASS COUNSEL’S MOTION FOR FEES AND COSTS AND THE PAYMENT OF A CASE CONTRIBUTION AWARD TO THE PLAINTIFF.**

The Court having received and considered Plaintiff’s Unopposed Motion for Preliminary Approval, for Certification of Settlement Class, and for Appointment of Class Counsel (the “Motion”) (Doc. __) in the above-captioned action (the “Action”) and supporting papers including the Class Action Settlement Agreement dated June 10, 2020, (the “Settlement Agreement”) and the declarations of counsel, having further considered the arguments of counsel and the pleadings and record in this case, and having held a hearing on the motion on _____, and finding good cause for granting the Motion,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Order that are not otherwise identified herein have the meaning assigned to them in the Settlement Agreement.

2. This Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).

3. Venue before the Court is proper pursuant to 29 U.S.C. § 1132(e)(2).

4. The terms set forth in the Settlement Agreement are hereby preliminarily approved, subject to further consideration at the Final Approval Hearing provided for below. The Court concludes that the Settlement Agreement is sufficiently within the range of reasonableness to warrant the preliminary approval of the Settlement Agreement, the scheduling of the Final Approval Hearing, and the mailing of notices to Settlement Class Members, each as provided for in this Order. The Court further finds that the Plan of Allocation proposed for allocating the Distributable Settlement Amount among Settlement Class Members is fair and reasonable.

5. The Court approves the retention by Class Counsel of KCC Class Action Services LLC, as the Settlement Administrator.

6. In further aid of the Court's jurisdiction to review, consider, implement, and enforce the Settlement, the Court orders that Plaintiff, and the Plan, and all Settlement Class Members are preliminarily enjoined and barred from commencing, prosecuting, or otherwise litigating, in whole or in part, either directly, representatively, derivatively, or in any other capacity, whether by complaint, counterclaim, defense, or otherwise, in any local, state, or federal court, or in any agency or other authority or forum wherever located, any contention, allegation, claim, cause of action, matter, lawsuit, arbitration, or action (including but not limited

to actions pending as of the date of this Order), that arises out of or relates in any way to the Released Claims.

7. The Court approves the Notice of Proposed Class Action Settlement (“Notice”) in the form attached as Exhibit B to the Settlement Agreement.

Class Certification for Settlement Purposes

8. Pursuant to Rule 23(b)(1) of the Federal Rules of Civil Procedure, the Court certifies, solely for the purposes of effectuating the Settlement, a proposed non-opt-out Settlement Class under Rule 23(b)(1) consisting of:

All Participants in the Neuberger Berman Group 401(k) Plan during the Class Period who had any portion of their Plan accounts, at any time during the Class Period, invested in the VEF.¹

9. The Class Period is defined as June 15, 2010 through December 16, 2019.

10. Solely for purposes of the proposed Settlement of this Action, the Court finds that each element required for certification of the Settlement Class pursuant to Rule 23(a) of the Federal Rules of Civil Procedure has been met: (a) the members of the Settlement Class are so numerous that their joinder in the Actions would be impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Plaintiff are typical of the claims of the Settlement Class; (d) Plaintiff and Plaintiff’s Counsel have fairly and adequately represented and protected the interests of the Settlement Class. With respect to the Settlement Class, the Court finds that the requirements of Rule 23(b)(1)(A) and 23(b)(1)(B) have been met.

Prosecution of separate actions by individual members of the Settlement Class would create a

¹ Excluded from the class are: (i) Defendant Neuberger Berman Group 401(k) Plan Investment Committee and those of its current and past members who served from June 15, 2010 through August 2, 2016; (ii) non-party Marvin Schwartz; and (iii) beneficiaries, immediate family members, estates, and executors of (i) and (ii).

risk of inconsistent or varying adjudications as to individual Settlement Class Members that would establish incompatible standards of conduct for the parties opposing the claims asserted in this Action. Monetary relief ordered as a result of any one action by an individual class member would alter the Plan for all class members, impairing or impeding those other members' ability to prosecute their interests.

11. The Court hereby finds and concludes that pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, Plaintiff is an adequate class representative and certifies him as Class Representative for the Settlement Class. The Court also appoints Plaintiff's Counsel as Class Counsel for the Settlement Class.

Manner of Giving Notice

12. Defendant shall use reasonable efforts to cause data to be provided to the Settlement Administrator not later than fourteen (14) calendar days from the date of this Order sufficient to determine the identity and last known address of Settlement Class Members. The names and addresses provided to the Settlement Administrator pursuant to this Order shall be used solely for the purpose of providing notice of this Settlement and distribution of the Settlement Fund and for no other purpose.

13. Not later than forty-five (45) calendar days after entry of this Order, the Settlement Administrator shall send the Notice by electronic mail to Settlement Class Members who have elected to receive their quarterly statements electronically, or by first-class mail to the last address on file at Fidelity for Settlement Class Members who do not receive their quarterly statements electronically. For those receiving the Notice via mail, the mailing address will be updated by the Settlement Administrator through the National Change of Address database before mailing (with all returned mail skip-traced and promptly re-mailed).

14. Not later than five (5) business days after sending the Notice to Settlement Class Members, the Settlement Administrator shall provide to Class Counsel and to Defendants' Counsel a declaration attesting to compliance with the sending of the Settlement Notices, as set forth above.

15. The Court finds that the Notice to be provided as set forth in this Order is the best means of providing notice to the Settlement Class Members as is practicable under the circumstances and, when completed, shall constitute due and sufficient notice of the Settlement and the Final Approval Hearing to all persons affected by or entitled to participate in the Settlement, the hearing on the motion for fees, or the Final Approval Hearing, in full compliance with the requirements of due process and the Federal Rules of Civil Procedure.

16. All reasonable costs incurred by the Settlement Administrator for providing the Notice as well as for administering the Settlement shall be paid as set forth in the Settlement Agreement without further order of the Court.

17. The Court finds that the form of notice under the Class Action Fairness Act of 2005 ("CAFA") submitted as Exhibit E to the Settlement Agreement complies with the requirements of CAFA and will, upon mailing, discharge the Defendant's obligations pursuant to CAFA.

Final Approval Hearing

18. The Court will hold a settlement hearing (the "Final Approval Hearing") on _____. It is expected that the hearing will be in Courtroom 17C at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan Building & United States Courthouse, 500 Pearl Street, New York, New York, for the following purposes (a) to determine whether the proposed Settlement on the terms and conditions provided for in the Settlement

Agreement is fair, reasonable, adequate and in the best interests of the Settlement Class and should be approved by the Court; (b) to determine whether a Judgment substantially in the form attached as Exhibit A to the Settlement Agreement should be entered dismissing with prejudice all claims asserted in the Action; (c) to determine whether the proposed Plan of Allocation (attached as Exhibit C to the Settlement Agreement) for the net proceeds of the Settlement is fair and reasonable and should be approved; (d) to determine whether the motion by Class Counsel for an award of attorneys' fees and reimbursement of litigation expenses should be approved and to determine whether a Case Contribution Award for the Plaintiff should be approved; and (e) to consider any other matters that may properly be brought before the Court in connection with the Settlement. Notice of the Settlement and the Final Approval Hearing shall be given to Settlement Class Members as set forth in Paragraph 12 of this Order. Notice of any subsequent changes to the date, time, location, or process of the Final Approval Hearing shall be made by posting to the Settlement Website, unless additional notice is ordered by this Court.

19. The Court may adjourn the Final Approval Hearing and approve the proposed Settlement with such modification as the Parties may agree to, if appropriate, without further notice to the Settlement Class.

20. Not later than sixty (60) calendar days before the Final Approval Hearing, Class Counsel shall submit their application for attorneys' fees, expenses, and a Case Contribution Award for Plaintiff. Counsel need not supply detailed billing and expense records or receipts unless the Court directs otherwise. A summary of hours for each timekeeper, the hourly rates used for each, and a summary of expenses by category should be sufficient.

21. Not later than thirty (30) days before the Final Approval Hearing, Class Counsel shall submit their papers in support of final approval of the Settlement Agreement.

Objections to the Settlement

22. The Court will consider written comments and objections to the Settlement Agreement, to the proposed award of Attorneys' Fees and Expenses, or to the request for a Case Contribution Award for the Plaintiff only if such written comments or objections are filed with the Court Clerk not later than fourteen (14) calendar days before the Final Approval Hearing and comply with the requirements of Paragraph 23 below, and are served on the Parties at the following addresses

For Filing with the Court:

Class Action Clerk United States District Court for the Southern District of New York 500 Pearl Street, New York, New York, 10007

To Class Counsel:

Gregory Y. Porter Mark G. Boyko BAILEY & GLASSER LLP 1055 Thomas Jefferson Street NW Suite 540 Washington, DC 20007 Telephone: (314) 863-5446 Facsimile: (314) 863-5483 Email: mboyko@baileyglasser.com

To Defendant's Counsel:

Myron D. Rumeld Proskauer Rose LLP 11 Times Square New York, NY 10036 Telephone: (212) 969-3000 Facsimile: (212) 969-2900 Email: mrumeld@proskauer.com

23. The Court will only consider written comments and objections to the Settlement that are signed by the Settlement Class Member and are timely filed with the Court and include

all of the following: (a) the name and case number of the Action; (b) the Settlement Class Member's full name, address, telephone number, and signature; (c) a statement that the person submitting the comments or objections is a Settlement Class Member and an explanation of the basis upon which the person claims to be a Settlement Class Member; (d) all grounds for the objection, accompanied by any legal support known to the objector or his or her counsel; (e) a statement as to whether the Settlement Class Member or his or her counsel intends to personally appear and/or testify at the Final Approval Hearing; and (f) a list of any persons the objector or his or her counsel may call to testify at the Final Approval Hearing in support of the objection. Any member of the Settlement Class or other person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement Agreement, and any untimely objection shall be barred absent an order from the Court. The Plaintiff or Defendant may, bearing the cost, take discovery, including depositions not to exceed three hours in length, from anyone who files an objection with respect to any of the issues raised in the objection.

24. Anyone who files and serves a timely, written comment or objection in accordance with this Order may also appear at the Final Approval Hearing either in person or through qualified counsel retained at their own expense. Those persons or their attorneys intending to appear at the Final Approval Hearing must effect service of a notice of intention to appear setting forth, among other things, the name, address, and telephone number of the Settlement Class Member (and, if applicable, the name, address, and telephone number of that Settlement Class Member's attorney) on Class Counsel and Defendant's Counsel (at the addresses set out above) and file it with the Court Clerk by no later than 14 calendar days before the Final Approval Hearing. Anyone who does not timely file and serve a notice of intention to

appear in accordance with this paragraph shall not be permitted to appear at the Final Approval Hearing, except by Order of the Court for good cause shown. Any comment or objection that is timely filed will be considered by the Court even in the absence of a personal appearance by the Settlement Class Member or that Settlement Class Member's counsel.

25. The Parties may file written responses to any objections not later than seven (7) business days before the Final Approval Hearing.

Termination of Settlement

26. This Order shall become null and void, *ab initio*, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective statuses in the Action as of March 23, 2020, prior to this Settlement Agreement, if the Settlement Agreement is terminated in accordance with the terms of the Settlement Agreement.

Use of Order

27. This Order (a) shall not give rise to any inference of, and shall not be construed or used as an admission, concession, or declaration against Defendant or any Released Party of, wrongdoing or liability in the Action or any other proceeding; (b) is not an admission of any liability of any kind, whether legal or factual; (c) shall not be used or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce the Settlement Agreement; (d) shall not be construed or used as an admission, concession, or declaration by or against Plaintiff, the Plan, or the Settlement Class that their claims lack merit or that the relief requested in the Actions is inappropriate, improper or unavailable; (e) shall not be construed or used as an admission, concession, declaration or waiver by any party of any arguments, defenses, or claims he, she, or it may have, including, but not limited to, any objections by Defendant to class certification in the event that the Settlement Agreement is terminated. This Order and the

Settlement Agreement and any proceedings taken pursuant to the Settlement Agreement are for settlement purposes only. Defendant specifically denies any fault, breach, liability or wrongdoing.

Jurisdiction

28. The Court hereby retains jurisdiction for purposes of implementing the Settlement Agreement, and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the Settlement Agreement as may from time to time be appropriate, and to resolve any and all disputes arising thereunder.

SO ORDERED this ____ day of _____, 2020.

The Honorable Laura Taylor Swain
U.S. District Court Judge

EXHIBIT E



Proskauer Rose LLP Eleven Times Square New York, NY 10036-8299

June __, 2020

Myron D. Rumeld
Member of the Firm
d +1.212.969.3021
f 212.969.2900
mrumeld@proskauer.com
www.proskauer.com

By First Class Mail Return Receipt Requested

Re: *Bekker v. Neuberger Berman Group 401(k) Plan Investment Committee*, Case No. 16-cv-06123-LTS-BCM (S.D.N.Y.)

Dear Sir/Madam:

Defendant the Neuberger Berman Group 401(k) Plan Investment Committee (“Defendant”), through its undersigned counsel, hereby provides this notice of a Proposed Class Action Settlement in the above-referenced matter pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715. The proposed settlement will resolve this action.

On June 10, 2020, Plaintiff’s Counsel filed a Motion for Preliminary Approval of Class Action Settlement, which included the parties’ Settlement Agreement. These papers are attached hereto as **Exhibit 1**. The Settlement Agreement contemplates that the Court will certify a class, defined as: All Participants of the Neuberger Berman Group 401(k) Plan from June 15, 2010 through December 16, 2019 (the “Class Period”) who had any portion of their Plan accounts, at any time during the Class Period, invested in the Neuberger Berman Value Equity Fund. Excluded from the class are: (i) the Defendant and those of its current and past members who served from June 15, 2010 through August 2, 2016; (ii) non-party Marvin Schwartz; and (iii) beneficiaries, immediate family members, estates, and executors of (i) and (ii).

In accordance with its obligations under CAFA, Defendant encloses the following:

1. The Complaint, any materials filed with the Complaint, and any Amended Complaints.

Plaintiff’s Class Action Complaint and Amended Complaint are attached hereto as Exhibit 2.

2. Notice of any scheduled judicial hearing in the class action.

There are no judicial hearings scheduled at this time. Once the Court schedules the Final Approval Hearing, the date of the hearing and a copy of the Court’s order will be posted on a Settlement Website to be established by the Settlement Administrator.

3. Any proposed or final notification to class members.

The proposed Notice of Class Action Settlement submitted to the Court is enclosed as Exhibit B to the Settlement Agreement, which is included in Exhibit 1 hereto.



June __, 2020

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4. Any proposed or final class action settlement.

The Settlement Agreement entered into by the parties and as submitted to the Court is included in Exhibit 1 hereto.

5. Any settlement or other agreement contemporaneously made between class counsel and counsel for the defendants.

There are no agreements other than the Settlement Agreement contemporaneously made between Class Counsel and counsel for the Defendant.

6. Any final judgment or notice of dismissal.

Final judgment has not yet been entered. Once the Court issues its Final Approval Order and Judgment, a copy of the Court's order will be posted on the Settlement Website.

7. A reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement.

Attached as Exhibit 3 hereto is a table with reasonable estimates of: (i) the number of Settlement Class Members residing in each state according to the Plan's records, and (ii) the estimated proportionate share of the claims of such members to the settlement after amounts are awarded for attorneys' fees and costs to Plaintiff's counsel, a compensation award to the Plaintiff, and settlement administration and other costs.

8. Any written judicial opinion relating to the materials described in (3) through (6).

There are no written judicial opinions relating to the materials described in sections (3) through (6) at this time.

If you have questions about this notice, the lawsuit, or the enclosed materials, please do not hesitate to contact me.

Very truly yours,

Myron D. Rumeld

Enclosures