

UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE

IN RE WILMINGTON TRUST  
SECURITIES LITIGATION

This document relates to: ALL ACTIONS

Master File No. 10-cv-00990-ER

(Securities Class Action)

Hon. Eduardo C. Robreno

STIPULATION AND AGREEMENT OF SETTLEMENT  
WITH WILMINGTON TRUST DEFENDANTS  
AND UNDERWRITER DEFENDANTS

This Stipulation and Agreement of Settlement with Wilmington Trust Defendants and Underwriter Defendants, dated as of May 15, 2018 (the “Stipulation”) is entered into between (a) Lead Plaintiffs the Coral Springs Police Pension Fund, the St. Petersburg Firefighters’ Retirement System, the Pompano Beach General Employees Retirement System, the Merced County Employees’ Retirement Association, and the Automotive Industries Pension Trust Fund (collectively, “Lead Plaintiffs” or “Class Representatives”), on behalf of themselves and the other members of the Class (defined below); and (b) (i) defendant Wilmington Trust Corporation (“Wilmington Trust” or the “Bank”) and M&T Bank (“M&T”), an affiliate company to Wilmington Trust; (ii) defendants Ted T. Cecala, David R. Gibson, Robert V.A. Harra Jr., William B. North, Kevyn N. Rakowski, Carolyn S. Burger, R. Keith Elliott, Donald E. Foley, Gailen Krug, Stacey J. Mobley, Michele M. Rollins, Oliver R. Sockwell, Robert W. Tunnell, Jr., Susan D. Whiting, Rex L. Mears, and Louis Freeh (collectively, the “Individual Defendants,” and, together with Wilmington Trust, the “Wilmington Trust Defendants”); and (iii) defendants J.P. Morgan Securities LLC and Keefe, Bruyette & Woods, Inc. (collectively, the “Underwriter Defendants,”

and, together with the Wilmington Trust Defendants, the “Settling Defendants”), and embodies the terms and conditions of the settlement between the Settling Parties (the “Settlement”).<sup>1</sup> Subject to the approval of the Court and the terms and conditions expressly provided herein, this Stipulation is intended to fully, finally, and forever compromise, settle, release, resolve, and dismiss with prejudice all claims asserted in the above-captioned action (the “Action”) against the Settling Defendants. This Stipulation does not settle, release, or otherwise impact any of the claims asserted in the Action against non-settling defendant KPMG LLP (“KPMG”).

WHEREAS:

A. Beginning in November 2010, numerous putative securities class actions were filed against certain of the Defendants in the United States District Court for the District of Delaware (the “Court”) alleging violations of the federal securities laws.

B. On March 7, 2011, the Court (the Honorable Leonard P. Stark) issued an Order that (i) consolidated all related actions under the caption *In re Wilmington Trust Securities Litigation*, Master File No. 10-cv-00990-LPS; (ii) appointed the Coral Springs Police Pension Fund, the St. Petersburg Firefighters’ Retirement System, the Pompano Beach General Employees Retirement System, the Merced County Employees’ Retirement Association, and the Automotive Industries Pension Trust Fund as “Lead Plaintiffs” pursuant to the PSLRA; and (iii) approved Lead Plaintiffs’ selection of Bernstein Litowitz Berger & Grossmann LLP and Saxena White P.A. as Lead Counsel for the Class.

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<sup>1</sup> All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in ¶ 1 herein.

C. On August 1, 2011, the Action was reassigned to the Honorable Sue L. Robinson.

D. The operative complaint in the Action, the Fourth Amended Consolidated Securities Class Action Complaint (the “Complaint”), was filed by Lead Plaintiffs on June 13, 2013. The Complaint asserted (i) claims for violations of § 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), and Rule 10b-5 promulgated thereunder, against defendants Wilmington Trust, Ted T. Cecala (“Cecala”), Donald E. Foley (“Foley”), David R. Gibson (“Gibson”), Robert V.A. Harra Jr. (“Harra”), William B. North (“North”), and KPMG; (ii) claims for violations of § 20(a) of the Exchange Act against defendants Cecala, Gibson, Harra, North, Carolyn S. Burger (“Burger”), R. Keith Elliott (“Elliott”), Foley, Gailen Krug (“Krug”), Stacey J. Mobley (“Mobley”), Michele M. Rollins (“Rollins”), David P. Roselle (“Roselle”), Oliver R. Sockwell (“Sockwell”), Robert W. Tunnell, Jr. (“Tunnell”), and Susan D. Whiting (“Whiting”); (iii) claims for violations of § 11 of the Securities Act of 1933 (the “Securities Act”) in connection with the secondary offering of Wilmington Trust common stock that occurred on or about February 23, 2010 (the “Offering”) against defendants Wilmington Trust, Cecala, Harra, Gibson, Kevyn N. Rakowski (“Rakowski”), Burger, Elliott, Foley, Krug, Mobley, Rollins, Roselle, Sockwell, Tunnell, Whiting, Rex L. Mears (“Mears”), Thomas DuPont (“Dupont”), Louis Freeh (“Freeh”), KPMG, J.P. Morgan Securities LLC, formerly known as J.P. Morgan Securities Inc. and named in the Complaint as “J.P. Morgan Securities” (“J.P. Morgan”), and Keefe, Bruyette & Woods, Inc. (“KBW”); (iv) claims for violations of § 12(a)(2) of the Securities Act in connection with the Offering against defendants Wilmington Trust, J.P. Morgan, and KBW; and (v) claims for violations of § 15 of the Securities Act in connection with the Offering against defendants Cecala, Gibson, Harra, Rakowski, Burger, Dupont, Elliott, Foley, Freeh, Krug, Mears, Mobley, Rollins, Roselle, Sockwell, Tunnell, and Whiting.

E. On July 17, 2013, defendants filed and served their motions to dismiss the Complaint. On August 15, 2013, Lead Plaintiffs filed and served their memorandum of law in opposition to the motions to dismiss and, on September 13, 2013, defendants filed and served their reply papers. On March 20, 2014, the Court (Judge Robinson) entered its Order that denied the motions to dismiss as to all defendants except Dupont and Roselle.

F. On September 12, 2014, Lead Plaintiffs filed their motion to certify the Action as a class action (D.I. 259). On September 3, 2015, the Court granted Lead Plaintiffs' motion (D.I. 406). The Court also appointed Lead Plaintiffs as "Class Representatives," Lead Counsel as "Class Counsel," and Chimicles & Tikellis LLP as "Liaison Counsel" for the Class.

G. On January 15, 2016, the Court entered an Order (D.I. 429) approving notice to be disseminated to potential members of the Class to notify them of, among other things: (i) the Action pending against defendants; (ii) the Court's certification of the Action to proceed as a class action on behalf of the Class; and (iii) their right to request to be excluded from the Class, the effect of remaining in the Class or requesting exclusion, and the requirements for requesting exclusion (the "Notice Order"). Among other things, the Notice Order found that the form and content of Class Notice met the requirements of Rule 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled to receive notice.

H. Beginning on March 1, 2016, the Notice of Pendency of Class Action was mailed to potential Class Members, and on March 8, 2016, the Summary Notice of Pendency of Class Action was published in the *Investor's Business Daily* and transmitted over the *PR Newswire*.

I. Pursuant to the Notice Order, the Class Notice provided Class Members with the opportunity to request exclusion from the Class, explained that right, and set forth the deadline and

procedures for doing so. The Class Notice stated that it would be within the Court's discretion whether to permit a second opportunity to request exclusion if there is a settlement or judgment in the Action. The Class Notice informed Class Members that if they chose to remain a member of the Class, they would "be bound by all past, present and future orders and judgments in the Action, whether favorable or unfavorable."

J. The deadline for requesting exclusion from the Class pursuant to the Class Notice was June 13, 2016. A total of eight (8) persons and entities requested exclusion from the Class. *See* Appendix 1 hereto.

K. On June 13, 2017, the Action was reassigned to the Honorable Eduardo C. Robreno.

L. At the time that the Settling Parties reached an agreement in principle to settle, counsel for the parties had completed extensive class, fact, and expert discovery, which included 39 depositions, the production and review of more than 12.7 million pages of documents, the preparation of hundreds of pages of written discovery, and the litigation of numerous discovery motions.

M. Following extensive arm's-length negotiations, the Settling Parties reached an agreement in principle to settle the claims asserted in the Action against the Settling Defendants, which was memorialized in a settlement term sheet executed on April 9, 2018 (the "Term Sheet"). At that time, the criminal trial against David R. Gibson, Robert V.A. Harra, Jr., Kevyn Rakowski and William B. North was ongoing, and no verdict had been reached. The Term Sheet sets forth, among other things, the Settling Parties' agreement to settle and release all claims against the Settling Defendants, Thomas DuPont, and David Roselle, in return for a cash payment of two hundred million dollars (\$200,000,000) for the benefit of the Class, subject to certain terms and

conditions and the execution of a customary “long form” stipulation and agreement of settlement and related papers.

N. When fully executed, this Stipulation (together with the exhibits hereto) reflects the final and binding agreement between the Settling Parties and supersedes the Term Sheet.

O. Based upon their investigation and prosecution of the case, Lead Plaintiffs and Lead Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable, and adequate to Lead Plaintiffs and the other members of the Class, and in their best interests. Based on Lead Plaintiffs’ direct oversight of the prosecution of this matter and with the advice of their counsel, Lead Plaintiffs have agreed to settle and release the claims asserted in the Action against the Settling Defendants pursuant to the terms and provisions of this Stipulation, after considering, among other things: (a) the substantial financial benefit that Lead Plaintiffs and the other members of the Class will receive under the proposed Settlement; and (b) the significant risks and costs of continued litigation and trial.

P. This Stipulation constitutes a compromise of matters that are in dispute between the Settling Parties. The Settling Defendants are entering into this Stipulation solely to eliminate the uncertainty, burden, and expense of further protracted litigation. Each of the Settling Defendants denies any wrongdoing, and this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Settling Defendants with respect to any claim or allegation of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Settling Defendants have, or could have, asserted in the Action. The Settling Defendants expressly deny that Lead Plaintiffs have asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever. Similarly, this Stipulation shall in no event be construed or deemed to be

evidence of or an admission or concession on the part of any Lead Plaintiff of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of the Settling Defendants' defenses to liability have or had any merit. Each of the Settling Parties recognizes and acknowledges, however, that the Action has been initiated, filed, and prosecuted by Lead Plaintiffs in good faith and defended by the Settling Defendants in good faith, that the Action as to the Settling Defendants is being voluntarily settled with the advice of counsel, and that the terms of the Settlement are fair, reasonable, and adequate.

NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among Lead Plaintiffs (individually and on behalf of all other members of the Class) and the Settling Defendants, by and through their respective undersigned counsel and subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the benefits flowing to the Settling Parties from the Settlement, all Released Plaintiffs' Claims as against the Settling Defendants' Releasees and all Released Settling Defendants' Claims as against the Plaintiffs' Releasees shall be settled and released, upon and subject to the terms and conditions set forth below.

#### **DEFINITIONS**

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

(a) "Action" means the consolidated securities class action in the matter styled *In re Wilmington Trust Securities Litigation*, Master File No. 10-cv-00990-ER, and includes all actions consolidated therein.

(b) "Alternate Judgment" means a form of final judgment that may be entered by the Court herein but in a form other than the form of Judgment provided for in this Stipulation.

(c) “Authorized Claimant” means a Class Member who submits a Claim to the Claims Administrator that is approved by the Court for payment from the Net Settlement Fund.

(d) “Claim” means a paper claim submitted on a Proof of Claim Form or an electronic claim that is submitted to the Claims Administrator.

(e) “Claim Form” or “Proof of Claim Form” means the form, substantially in the form attached hereto as Exhibit 2 to Exhibit A, that a Claimant must complete and submit should that Claimant seek to share in a distribution of the Net Settlement Fund.

(f) “Claimant” means a person or entity who or which submits a Claim to the Claims Administrator seeking to be eligible to share in the proceeds of the Net Settlement Fund.

(g) “Claims Administrator” means the administrator, Epiq Class Action & Claims Solutions, Inc., retained by Lead Counsel on behalf of the Class and approved by the Court in connection with the Class Notice, to provide all notices approved by the Court to potential Class Members and to administer the Settlement.

(h) “Class” means the class certified in the Court’s Order dated September 3, 2015 (D.I. 406). Specifically, the Class includes all persons or entities who purchased or otherwise acquired Wilmington Trust common stock during the period January 18, 2008 up to November 1, 2010 (the “Class Period”), including all persons or entities who purchased shares of Wilmington Trust common stock issued in the secondary common stock offering that occurred on or about February 23, 2010 (the “Offering”), and were damaged thereby. Excluded from the Class are: (i) Defendants; (ii) members of the Immediate Family of each Individual Defendant; (iii) any person who was an Officer or director of Wilmington Trust, KPMG, or any of the Underwriter Defendants during the Class Period; (iv) any firm, trust, corporation, Officer, or other entity in which any Defendant has or had a controlling interest; (v) any person who participated in the



wrongdoing alleged herein; and (vi) the legal representatives, agents, affiliates, heirs, beneficiaries, successors-in-interest, or assigns of any such excluded party; provided that Investment Vehicles meeting the criteria as defined herein shall in no event be excluded. Also excluded from the Class are the persons and entities that submitted a request for exclusion from the Class in connection with the Class Notice as set forth on Appendix 1 hereto. If and only if the Court permits a second opportunity for Class Members to request exclusion from the Class, also excluded from the Class shall be any persons or entities that exclude themselves from the Class by submitting a request for exclusion in connection with the Settlement Notice and whose requests are accepted by the Court.

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

(j) “Class Member” means each person or entity who or which is a member of the Class.

(k) “Class Notice” means the notice of pendency previously directed by the Court’s January 15, 2016 order (D.I. 429), which was disseminated to Class Members in accordance with that order.

(l) “Class Period” means the period January 18, 2008 up to November 1, 2010.

(m) “Complaint” means the Fourth Amended Consolidated Securities Class Action Complaint filed by Lead Plaintiffs in the Action on June 13, 2013. D.I. 149.

(n) “Court” means the United States District Court for the District of Delaware.

(o) “Defendants” means Wilmington Trust, the Individual Defendants, the Underwriter Defendants, and KPMG.

(p) “Effective Date” with respect to the Settlement means the first date by which all of the events and conditions specified in ¶ 33 of this Stipulation have been met and have occurred or have been waived.

(q) “Escrow Account” means an account maintained at Citibank, N.A. wherein the Settlement Amount shall be deposited and held in escrow under the control of Lead Counsel.

(r) “Escrow Agent” means Citibank, N.A.

(s) “Escrow Agreement” means the agreement between Lead Counsel and the Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow Account.

(t) “Final,” with respect to the Judgment or, if applicable, the Alternate Judgment, or any other court order, means: (i) if no appeal is filed, the expiration date of the time provided for filing or noticing any appeal under the Federal Rules of Appellate Procedure, *i.e.*, thirty (30) days after entry of the judgment or order; or (ii) if there is an appeal from the judgment or order, (a) the date of final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise, or (b) the date the judgment or order is finally affirmed on appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance following review pursuant to that grant. However, any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to (i) attorneys’ fees, costs or expenses, or (ii) the plan of allocation of Settlement proceeds (as submitted or subsequently modified), shall not in any way delay or preclude a judgment from becoming Final.

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

(v) “Individual Defendants” means defendants Ted T. Cecala, David R. Gibson, Robert V.A. Harra, Jr., William B. North, Kevyn N. Rakowski, Carolyn S. Burger, R. Keith Elliott, Donald E. Foley, Gailen Krug, Stacey J. Mobley, Michele M. Rollins, Oliver R. Sockwell, Robert W. Tunnell, Jr., Susan D. Whiting, Rex L. Mears, and Louis Freeh.

(w) “Investment Vehicle” means any investment company, separately managed account or pooled investment fund, including but not limited to mutual fund families, exchange-traded funds, fund of funds and hedge funds, retirement accounts and employee benefit plans in which any Underwriter Defendant has or may have a direct or indirect interest, or as to which its affiliates may act as an investment advisor, as well as any trust, trust account, custodial account, and any other accounts controlled by a Settling Defendant in a fiduciary capacity rather than for the Settling Defendant’s own benefit; *provided, however*, that any Claim Form submitted by an Investment Vehicle shall be limited to purchases or acquisitions made on behalf of or for the benefit of persons or entities other than persons or entities that are excluded from the Class by definition. This definition does not bring into the Class any of the Settling Defendants.

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

(y) “KPMG” means KPMG LLP.

(z) “Lead Counsel” or “Class Counsel” means the law firms of Bernstein Litowitz Berger & Grossmann LLP and Saxena White P.A.

(aa) “Lead Plaintiffs” or “Class Representatives” means the Coral Springs Police Pension Fund, the St. Petersburg Firefighters’ Retirement System, the Pompano Beach General Employees Retirement System, the Merced County Employees’ Retirement Association, and the Automotive Industries Pension Trust Fund.

(bb) “Liaison Counsel” means Chimicles & Tikellis LLP.

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

(dd) “M&T” means M&T Bank and its respective employees, officers, directors, agents, counsel, insurers, affiliates, parents, predecessors, successors, assigns, heirs, executors, administrators, and legal and/or authorized representatives.

(ee) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any attorneys’ fees awarded by the Court; (v) a litigation fund of \$3,000,000 awarded by the Court to fund expenses related to the prosecution of the claims against KPMG, any unused portion of which will be distributed to Authorized Claimants if practicable; and (vi) any other costs or fees approved by the Court.

(ff) “Notice and Administration Costs” means the costs, fees, and expenses that are incurred by the Claims Administrator and/or Lead Counsel in connection with: (i) providing notices to the Class (including, but not limited to, the Class Notice and Settlement Notice); and (ii) administering the Settlement, including but not limited to the Claims process, as well as the costs, fees, and expenses incurred in connection with the Escrow Account.

(gg) “Officer” means any officer as that term is defined in Securities and Exchange Act Rule 16a-1(f).

(hh) “Plaintiffs’ Counsel” means Lead Counsel, Liaison Counsel, and all other legal counsel who, at the direction and under the supervision of Lead Counsel, performed services on behalf of the Class in the Action.

(ii) “Plaintiffs’ Releasees” means Lead Plaintiffs, and their respective counsel, and all other Class Members, and Lead Plaintiffs’ and all other Class Members’ respective employees, officers, directors, agents, counsel, insurers, affiliates, parents, predecessors, successors, assigns, heirs, executors, administrators, and legal and/or authorized representatives.

(jj) “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund set forth in the Settlement Notice.

(kk) “Preliminary Approval Order” means the order, substantially in the form attached hereto as Exhibit A, to be entered by the Court preliminarily approving the Settlement and directing that notice of the Settlement be provided to the Class.

(ll) “PSLRA” means the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77z-1, 78u-4, as amended.

(mm) “Released Claims” means all Released Plaintiffs’ Claims and all Released Settling Defendants’ Claims.

(nn) “Released Plaintiffs’ Claims” means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common or foreign law, that Lead Plaintiffs or any other member of the Class (i) asserted in the Complaint, or (ii) could have asserted in any forum that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set

forth, or referred to in the Complaint and that relate to the purchase or acquisition of Wilmington Trust common stock during the Class Period. Released Plaintiffs' Claims do not include (i) any claims asserted against KPMG; (ii) any claims to any funds paid to the United States Government as part of a settlement or judgment in *United States v. Wilmington Trust Corp., et al.*, No. 15-cr-23-RGA (D. Del.) or settlement of Securities and Exchange Commission Administrative Proceeding No. 3-16098; (iii) any claims relating to the enforcement of the Settlement; (iv) any claims of the persons and entities that submitted a request for exclusion from the Class in connection with the Class Notice as set forth on Appendix 1 hereto; and (v) if and only if the Court permits a second opportunity for Class Members to request exclusion from the Class, any claims of any person or entity that submits a request for exclusion from the Class in connection with the Settlement Notice and whose request is accepted by the Court (the "Excluded Plaintiffs' Claims").

(oo) "Released Settling Defendants' Claims" means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims asserted in the Action against the Settling Defendants. Released Settling Defendants' Claims do not include: (i) any claims relating to the enforcement of the Settlement; (ii) any claims against the persons and entities that submitted a request for exclusion from the Class in connection with the Class Notice as set forth on Appendix 1 hereto; and (iii) if and only if the Court permits a second opportunity for Class Members to request exclusion from the Class, any claims against any person or entity that submits a request for exclusion from the Class in connection with the Settlement Notice and whose request is accepted by the Court (the "Excluded Settling Defendants' Claims").

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

(qq) “Releases” means the releases set forth in ¶¶ 5-6 of this Stipulation.

(rr) “Settlement” means the settlement between Lead Plaintiffs, the Settling Defendants, and M&T on the terms and conditions set forth in this Stipulation.

(ss) “Settlement Amount” means two hundred million dollars (\$200,000,000) in cash.

(tt) “Settlement Fund” means the Settlement Amount plus any and all interest earned thereon.

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

(vv) “Settlement Notice” means the Notice of (I) Proposed Settlement with Wilmington Trust Defendants and Underwriter Defendants; (II) Plan of Allocation; (III) Settlement Fairness Hearing; and (IV) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit 1 to Exhibit A, which is to be mailed to Class Members.

(ww) “Settling Defendants” means Wilmington Trust, the Individual Defendants, and the Underwriter Defendants.

(xx) “Settling Defendants’ Counsel” means (i) Williams & Connolly LLP and Venable LLP, counsel for Wilmington Trust and M&T; (ii) Morgan Lewis & Bockius LLP, counsel for Ted T. Cecala; (iii) Paul Hastings LLP and the Law Office of John S. Malik, counsel for David R. Gibson; (iv) McCarter & English LLP and Andrew M. Lawler, P.C., counsel for Robert V. A. Harra, Jr.; (v) Wilks, Lukoff & Bracegirdle, LLC and the Law Office of Thomas A.

Foley, counsel for William B. North; (vi) Krovatin Klingeman LLC and Dalton & Associates, P.A., counsel for Kevyn Rakowski; (vii) Snell & Wilmer LLP and Pepper Hamilton LLP, counsel for Carolyn S. Burger, R. Keith Elliott, Donald E. Foley, Gailen Krug, Stacey J. Mobley, Michele M. Rollins, Oliver R. Sockwell, Robert W. Tunnell, Jr., Susan D. Whiting, Rex L. Mears, and Louis Freeh; and (viii) Simpson Thacher & Bartlett LLP and Potter Anderson & Corroon LLP, counsel for the Underwriter Defendants.

(yy) “Settling Defendants’ Releasees” means the Settling Defendants, Thomas DuPont, David P. Roselle, and M&T, and their respective employees, officers, directors, agents, counsel, insurers, affiliates, parents, predecessors, successors, assigns, heirs, executors, administrators, and legal and/or authorized representatives. The Settling Defendants’ Releasees do not include KPMG.

(zz) “Settling Parties” means (i) Lead Plaintiffs, on behalf of themselves and the Class; and (ii) the Settling Defendants and M&T.

(aaa) “Summary Settlement Notice” means the Summary Notice of (I) Proposed Settlement with Wilmington Trust Defendants and Underwriter Defendants; (II) Plan of Allocation; (III) Settlement Fairness Hearing; and (IV) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit 3 to Exhibit A, to be published as set forth in the Preliminary Approval Order.

(bbb) “Taxes” means: (i) all federal, state and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Settlement Fund; and (ii) the expenses and costs incurred by Lead Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax counsel and accountants).



(ccc) “Underwriter Defendants” means defendants J.P. Morgan Securities LLC, formerly known as J.P. Morgan Securities Inc. and named in the Complaint as J.P. Morgan Securities, and Keefe, Bruyette & Woods, Inc.

(ddd) “Unknown Claims” means any Released Plaintiffs’ Claims which Lead Plaintiffs or any other Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, and any Released Settling Defendants’ Claims which any Settling Defendant or M&T does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiffs, the Settling Defendants, and M&T shall expressly waive, and each of the other Class Members shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

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

Lead Plaintiffs, the Settling Defendants, and M&T acknowledge, and each of the other Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement

(eee) “Wilmington Trust” or the “Bank” means Wilmington Trust Corporation.

(fff) “Wilmington Trust Defendants” means Wilmington Trust and the Individual Defendants.

**PRELIMINARY APPROVAL OF SETTLEMENT**

2. Promptly upon execution of this Stipulation, Lead Plaintiffs will move for preliminary approval of the Settlement and the scheduling of a hearing for consideration of final approval of the Settlement, which motion shall be unopposed by the Settling Defendants and M&T. Concurrently with the motion for preliminary approval, Lead Plaintiffs shall apply to the Court for, and the Settling Defendants and M&T shall agree to, entry of the Preliminary Approval Order, substantially in the form attached hereto as Exhibit A.

3. In connection with the motion for preliminary approval of the Settlement, the Settling Parties agree to request that the Court not permit a second opportunity for Class Members to request exclusion from the Class. However, the Settlement is not contingent on the Court's decision regarding whether or not a second opportunity to request exclusion from the Class shall be permitted.

**RELEASE OF CLAIMS**

4. The obligations incurred pursuant to this Stipulation are in consideration of: (i) the full and final disposition of the Action as against the Settling Defendants only; and (ii) the Releases provided for herein.

5. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without further action by anyone, upon the Effective Date of the Settlement, Lead Plaintiffs and each of the other Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, 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, and discharged each and every Released Plaintiffs' Claim against the Settling Defendants, M&T, and the other Settling Defendants' Releasees, and shall

forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Settling Defendants' Releasees. This Release shall not apply to any of the Excluded Plaintiffs' Claims.

6. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without further action by anyone, upon the Effective Date of the Settlement, the Settling Defendants, Thomas DuPont, David P. Roselle, and M&T, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, 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, and discharged each and every Released Settling Defendants' Claim against Lead Plaintiffs and the other Plaintiffs' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Settling Defendants' Claims against any of the Plaintiffs' Releasees. This Release shall not apply to any of the Excluded Settling Defendants' Claims.

7. Notwithstanding ¶¶ 5-6 above, nothing in the Judgment, or the Alternate Judgment, if applicable, shall bar any action by any of the Settling Parties to enforce or effectuate the terms of this Stipulation or the Judgment, or Alternate Judgment, if applicable.

#### **THE SETTLEMENT CONSIDERATION**

8. In consideration of the settlement of the Released Plaintiffs' Claims against the Settling Defendants' Releasees, Wilmington Trust shall pay the Settlement Amount into the Escrow Account no later than ten (10) business days after the date of entry by the Court of an order preliminarily approving this Settlement. In the event that Wilmington Trust shall fail to make payment as required, Wilmington Trust's parent, M&T Bank Corporation, shall be obligated to timely fund the Settlement Amount. For the avoidance of doubt, the Settling Parties agree that

under no circumstances will the Settling Defendants or M&T be obligated to provide any financial consideration in excess of the Settlement Amount to or for the benefit of Lead Plaintiffs, the Class or any member thereof, or Lead Counsel in connection with the Settlement; *provided, however*, that, as provided in ¶ 20 below, Wilmington Trust shall be responsible for any and all costs associated with disseminating notice of the Settlement under the Class Action Fairness Act, 28 U.S.C. § 1715 *et seq.* (“CAFA”).

#### **USE OF SETTLEMENT FUND**

9. The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice and Administration Costs; (c) any Litigation Expenses awarded by the Court; (d) any attorneys’ fees awarded by the Court; (e) a litigation fund in the amount of \$3,000,000 awarded by the Court to fund the expenses associated with the prosecution of the claims against KPMG; and (f) any other costs and fees approved by the Court. The balance remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Authorized Claimants as provided in ¶¶ 18-30 below.

10. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow Account exclusively in United States Treasury Bills (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances up to the amount that is insured by the FDIC may be deposited in any account that is fully insured by the FDIC. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by

the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. Additionally, if short-term placement of the funds is necessary, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States.

11. The Settling Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Lead Counsel, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Lead Counsel shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The Settling Defendants' Releasees shall not have any liability or responsibility for any such Taxes. Upon written request, M&T and/or Wilmington Trust will provide to Lead Counsel the statement described in Treasury Regulation § 1.468B-3(e). Lead Counsel, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a "relation back election," as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

12. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid, or caused to be paid, by Lead Counsel and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with

the previous paragraph and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

13. The Settlement is not a claims-made settlement. Upon the occurrence of the Effective Date, neither M&T, the Settling Defendants, their insurance carriers, nor any other person or entity who or which paid any portion of the Settlement Amount shall have any right to the return of the Settlement Fund or any portion thereof for any reason whatsoever, including without limitation, the number of Claims submitted, the collective amount of Recognized Claims of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund.

14. Notwithstanding the fact that the Effective Date of the Settlement has not yet occurred, Lead Counsel may pay up to \$750,000 from the Settlement Fund, without further approval from M&T or the Settling Defendants or further order of the Court, for Notice and Administration Costs actually incurred and paid or payable. Such costs and expenses shall include, without limitation, the actual costs of printing and mailing the Class Notice and Settlement Notice, publishing the Summary Settlement Notice, reimbursements to nominee owners for forwarding the Class Notice and/or Settlement Notice to their beneficial owners, the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice and administering the Settlement (including processing the submitted Claims), and the fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and Administration Costs paid or incurred, including any related fees, shall not be returned or repaid to M&T, the Settling Defendants, any of the other Settling Defendants' Releasees, or any other person or entity who or which paid any portion of the Settlement Amount.

**ATTORNEYS' FEES AND LITIGATION EXPENSES**

15. Lead Counsel will apply to the Court for a collective award of attorneys' fees to Plaintiffs' Counsel to be paid from (and out of) the Settlement Fund. Lead Counsel also will apply to the Court for reimbursement of Litigation Expenses, which may include a request for reimbursement of Lead Plaintiffs' costs and expenses directly related to their representation of the Class, to be paid from (and out of) the Settlement Fund. Lead Counsel's application for an award of attorneys' fees and/or Litigation Expenses is not the subject of any agreement between M&T, the Settling Defendants, and Lead Plaintiffs other than what is set forth in this Stipulation.

16. Any attorneys' fees and Litigation Expenses that are awarded by the Court shall be paid to Lead Counsel immediately upon award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Plaintiffs' Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or Litigation Expenses is reduced or reversed and such order reducing or reversing the award has become Final. Plaintiffs' Counsel shall make the appropriate refund or repayment in full no later than thirty (30) days after: (a) receiving from M&T's counsel notice of the termination of the Settlement; or (b) any order reducing or reversing the award of attorneys' fees and/or Litigation Expenses has become Final. An award of attorneys' fees and/or Litigation Expenses is not a necessary term of this Stipulation and is not a condition of the Settlement embodied herein. Neither Lead Plaintiffs nor Lead Counsel may cancel or terminate the Settlement

based on this Court's or any appellate court's ruling with respect to attorneys' fees and/or Litigation Expenses.

17. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which they, in good faith, believe reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action. The Settling Defendants' Releasees shall have no responsibility for or liability whatsoever with respect to the allocation or award of attorneys' fees or Litigation Expenses. The attorneys' fees and Litigation Expenses that are awarded to Plaintiffs' Counsel shall be payable solely from the Escrow Account.

**NOTICE AND SETTLEMENT ADMINISTRATION**

18. As part of the Preliminary Approval Order, Lead Counsel will seek appointment of the Claims Administrator. The Claims Administrator shall administer the Settlement, including but not limited to the process of receiving, reviewing, and approving or denying Claims, under Lead Counsel's supervision and subject to the jurisdiction of the Court. Neither M&T, the Settling Defendants, nor any of the other Settling Defendants' Releasees shall have any involvement in or any responsibility, authority, or liability whatsoever for the selection of the Claims Administrator, the Plan of Allocation, the administration of the Settlement, the Claims process, or disbursement of the Net Settlement Fund, and shall have no liability whatsoever to any person or entity, including, but not limited to, Lead Plaintiffs, any other Class Members, or Lead Counsel in connection with the foregoing. Settling Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms.

19. In accordance with the terms of the Preliminary Approval Order to be entered by the Court, Lead Counsel shall cause the Claims Administrator to mail the Settlement Notice and Proof of Claim Form to those members of the Class as may be identified through reasonable effort.



Lead Counsel shall also cause the Claims Administrator to have the Summary Settlement Notice published in accordance with the terms of the Preliminary Approval Order to be entered by the Court.

20. No later than ten (10) calendar days following the filing of this Stipulation with the Court, M&T and the Settling Defendants shall serve the notice required under CAFA. M&T and the Settling Defendants are solely responsible for the costs of the CAFA notice and administering the CAFA notice. At least seven (7) calendar days before the Settlement Fairness Hearing, M&T and the Settling Defendants shall cause to be served on Lead Counsel and filed with the Court proof, by affidavit or declaration, regarding compliance with 28 U.S.C. § 1715(b).

21. The Claims Administrator shall receive Claims and determine first, whether the Claim is a valid Claim, in whole or part, and second, each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim compared to the total Recognized Claims of all Authorized Claimants (as set forth in the Plan of Allocation set forth in the Settlement Notice attached hereto as Exhibit 1 to Exhibit A, or in such other plan of allocation as the Court approves).

22. The Plan of Allocation proposed in the Settlement Notice is not a necessary term of the Settlement or of this Stipulation and it is not a condition of the Settlement or of this Stipulation that any particular plan of allocation be approved by the Court. Lead Plaintiffs and Lead Counsel may not cancel or terminate the Settlement (or this Stipulation) based on this Court's or any appellate court's ruling with respect to the Plan of Allocation or any other plan of allocation in this Action. M&T, the Settling Defendants, and the other Settling Defendants' Releasees shall not object in any way to the Plan of Allocation or any other plan of allocation in this Action. Neither M&T, the Settling Defendants, nor any of the other Settling Defendants' Releasees shall

have any involvement with or liability, obligation, or responsibility whatsoever for the application of the Court-approved plan of allocation.

23. Any Class Member who does not submit a valid Claim will not be entitled to receive any distribution from the Net Settlement Fund, but will otherwise be bound by all of the terms of this Stipulation and Settlement, including the terms of the Judgment or, the Alternate Judgment, if applicable, to be entered in the Action and the releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against the Settling Defendants' Releasees with respect to the Released Plaintiffs' Claims in the event that the Effective Date occurs with respect to the Settlement.

24. Lead Counsel shall be responsible for supervising the administration of the Settlement and the disbursement of the Net Settlement Fund subject to Court approval. Neither M&T, the Settling Defendants, nor any of the other Settling Defendants' Releasees shall be permitted to review, contest or object to any Claim, or any decision of the Claims Administrator or Lead Counsel with respect to accepting or rejecting any Claim for payment. Lead Counsel shall have the right, but not the obligation, to waive what it deems to be formal or technical defects in any Claims submitted in the interests of achieving substantial justice.

25. For purposes of determining the extent, if any, to which a Claimant shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

(a) Each Claimant shall be required to submit a Claim in paper form, substantially in the form attached hereto as Exhibit 2 to Exhibit A, or in electronic form, in accordance with the instructions for the submission of such Claims, and supported by such documents as are designated therein, including proof of the Claimant's loss, or such other

documents or proof as the Claims Administrator or Lead Counsel, in their discretion, may deem acceptable;

(b) All Claims must be submitted by the date set by the Court in the Preliminary Approval Order and specified in the Settlement Notice. Any Class Member who fails to submit a Claim by such date shall be forever barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Stipulation (unless by Order of the Court such Class Member's Claim is accepted), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternate Judgment, if applicable, and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind against any Settling Defendants' Releasees with respect to any Released Plaintiffs' Claim. Provided that it is mailed by the claim-submission deadline, a Claim Form shall be deemed to be submitted when postmarked, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the Claim Form shall be deemed to have been submitted on the date when actually received by the Claims Administrator;

(c) Each Claim shall be submitted to and reviewed by the Claims Administrator who shall determine in accordance with this Stipulation and the plan of allocation the extent, if any, to which each Claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below as necessary;

(d) Claims that do not meet the submission requirements may be rejected. Prior to rejecting a Claim in whole or in part, the Claims Administrator shall communicate with the Claimant in writing, to give the Claimant the chance to remedy any curable deficiencies in the Claim submitted. The Claims Administrator shall notify, in a timely fashion and in writing, all

Claimants whose Claim the Claims Administrator proposes to reject in whole or in part, setting forth the reasons therefore, and shall indicate in such notice that the Claimant whose Claim is to be rejected has the right to a review by the Court if the Claimant so desires and complies with the requirements of subparagraph (e) below; and

(e) If any Claimant whose Claim has been rejected in whole or in part desires to contest such rejection, the Claimant must, within twenty (20) days after the date of mailing of the notice required in subparagraph (d) above or a lesser time period if the Claim was untimely, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a Claim cannot be otherwise resolved, Lead Counsel shall thereafter present the request for review to the Court.

26. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's Claim, and the Claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, *provided, however*, that such investigation and discovery shall be limited to that Claimant's status as a Class Member and the validity and amount of the Claimant's Claim. No discovery shall be allowed on the merits of this Action or of the Settlement in connection with the processing of Claims.

27. Lead Counsel will apply to the Court, on notice to Settling Defendants' Counsel, for a Class Distribution Order: (a) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims submitted; (b) approving payment of any administration fees and expenses associated with the administration of the Settlement from the Escrow Account; and (c) if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants from the Escrow Account.

28. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Claimants. All Class Members whose Claims are not approved by the Court for payment shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternate Judgment, if applicable, to be entered in this Action and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action against any and all Settling Defendants' Releasees with respect to any and all of the Released Plaintiffs' Claims.

29. No person or entity shall have any claim against Lead Plaintiffs, Plaintiffs' Counsel, the Claims Administrator or any other agent designated by Lead Counsel, or the Settling Defendants' Releasees and/or their respective counsel, arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or any order of the Court. Lead Plaintiffs, the Settling Defendants, and M&T, and their respective counsel, and Lead Plaintiffs' damages expert and all other Releasees shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund, the plan of allocation, or the determination, administration, calculation, or payment of any claim or nonperformance of the Claims Administrator, the payment or withholding of taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

30. All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court. All Class Members, other Claimants, and parties to this Settlement expressly waive trial by jury

(to the extent any such right may exist) and any right of appeal or review with respect to such determinations.

**TERMS OF THE JUDGMENT**

31. If the Settlement contemplated by this Stipulation is approved by the Court, Lead Counsel and Settling Defendants' Counsel shall request that the Court enter a Judgment, substantially in the form attached hereto as Exhibit B.

32. The Judgment shall contain a bar order ("Bar Order") substantially in the form set forth in Exhibit B hereto that shall, upon the Effective Date, permanently bar, extinguish, and discharge to the fullest extent permitted by law any and all claims, whether arising under state, federal or common law, for contribution or indemnity, however denominated, based upon, or related to any fact or circumstances involved in or arising out of the Action, (a) by any person or entity against any of the Settling Defendants' Releasees or (b) by any of the Settling Defendants' Releasees against any other person or entity, with the scope and preclusive effect of this bar order as broad as that permissible under 15 U.S.C. § 78u-4(f)(7) and other federal and state law, including Del. C. § 6304(b); *provided, however*, that the Bar Order shall not bar or release any Excluded Plaintiffs' Claims asserted by Class Members; and *further provided, however*, that nothing herein shall release or alter the contractual rights, if any, under the terms of any bylaws or other written agreement: (i) between or among the Settling Defendants; (ii) between the Settling Defendants, on the one hand, and Wilmington Trust, on the other hand; or (iii) between the Settling Defendants, on the one hand, and M&T, on the other hand. The Bar Order shall also provide that any final verdict or judgment that may be obtained by or on behalf of the Class or a Class Member against any person or entity subject to the Bar Order shall be reduced by the greater of: (a) an amount that corresponds to the percentage of responsibility of the Settling Defendants for common

damages; or (b) the amount paid by or on behalf of the Settling Defendants to the Class or Class Member for common damages.

**CONDITIONS OF SETTLEMENT AND EFFECT OF  
DISAPPROVAL, CANCELLATION OR TERMINATION**

33. The Effective Date of the Settlement shall be deemed to occur on the occurrence or waiver of all of the following events:

(a) the Court has entered the Preliminary Approval Order, substantially in the form set forth in Exhibit A attached hereto, as required by ¶ 2 above;

(b) the Settlement Amount has been deposited into the Escrow Account in accordance with the provisions of ¶ 8 above;

(c) M&T has not exercised its option to terminate the Settlement pursuant to the provisions of this Stipulation;

(d) Lead Plaintiffs have not exercised their option to terminate the Settlement pursuant to the provisions of this Stipulation; and

(e) the Court has approved the Settlement as described herein, following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, and entered the Judgment and the Judgment has become Final, or the Court has entered an Alternate Judgment and none of the Parties seek to terminate the Settlement and the Alternate Judgment has become Final.

34. Upon the occurrence of all of the events referenced in ¶ 33 above, any and all remaining interest or right of M&T or the Settling Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the Releases herein shall be effective.

35. If (i) M&T exercises its right to terminate the Settlement as provided in this Stipulation; (ii) Lead Plaintiffs exercise their right to terminate the Settlement as provided in this

Stipulation; (iii) the Court disapproves the Settlement; or (iv) the Effective Date as to the Settlement otherwise fails to occur, then:

(a) The Settlement and the relevant portions of this Stipulation shall be canceled and terminated.

(b) Lead Plaintiffs and the Settling Defendants shall revert to their respective positions in the Action as of immediately prior to the execution of the Term Sheet on April 9, 2018.

(c) The terms and provisions of this Stipulation, with the exception of this ¶ 35 and ¶¶ 14, 16, 39 and 60 of this Stipulation, shall have no further force and effect with respect to the Settling Parties and shall not be used in the Action or in any other proceeding for any purpose, and any Judgment, or Alternate Judgment, if applicable, or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*.

(d) Within thirty (30) calendar days after joint written notification of termination is sent by M&T's counsel and Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued interest thereon and any funds received by Lead Counsel consistent with ¶ 16 above), less any Notice and Administration Costs actually incurred, paid, or payable and less any Taxes paid, due, or owing shall be refunded by the Escrow Agent to Wilmington Trust (or such other persons or entities as Wilmington Trust may direct). In the event that the funds received by Lead Counsel consistent with ¶ 16 above have not been refunded to the Settlement Fund within the thirty (30) business days specified in this paragraph, those funds shall be refunded by the Escrow Agent to Wilmington Trust (or such other persons or entities as Wilmington Trust may direct) immediately upon their deposit into the Escrow Account consistent with ¶ 16 above.



36. It is further stipulated and agreed that Lead Plaintiffs and M&T shall each have the right to terminate the Settlement and this Stipulation, by providing written notice of their election to do so (“Termination Notice”) to the other Settling Parties within thirty (30) days of: (a) the Court’s final refusal to enter the Preliminary Approval Order in any material respect; (b) the Court’s final refusal to approve the Settlement or any material part thereof; (c) the Court’s final refusal to enter the Judgment in any material respect as to the Settlement; (d) the date upon which the Judgment is modified or reversed in any material respect by the United States Court of Appeals for the Third Circuit or the United States Supreme Court; or (e) the date upon which an Alternate Judgment is modified or reversed in any material respect by the United States Court of Appeals for the Third Circuit or the United States Supreme Court, and the provisions of ¶ 35 above shall apply. However, any decision or proceeding, whether in this Court or any appellate court, with respect to an application for attorneys’ fees or reimbursement of Litigation Expenses or with respect to any plan of allocation shall not be considered material to the Settlement, shall not affect the finality of any Judgment or Alternate Judgment, if applicable, and shall not be grounds for termination of the Settlement.

37. In addition to the grounds set forth in ¶ 36 above, Lead Plaintiffs shall have the right to terminate the Settlement in the event that the Settlement Amount has not been paid in the time period provided for in ¶ 8 above, by providing written notice of the election to terminate to all other Settling Parties.

38. In addition to the grounds set forth in ¶ 36 above, if and only if the Court permits a second opportunity for Class Members to request exclusion from the Class, M&T shall have the unilateral right to terminate the Settlement in the event that Class Members who timely and validly request exclusion from the Class in connection with the Settlement Notice meet the conditions set

forth in M&T's confidential supplemental agreement with Lead Plaintiffs (the "Supplemental Agreement"), in accordance with the terms of that agreement. The Supplemental Agreement, which is being executed concurrently herewith, shall not be filed with the Court and its terms shall not be disclosed in any other manner (other than the statements herein and in the Settlement Notice, to the extent necessary, or as otherwise provided in the Supplemental Agreement) unless and until the Court otherwise directs or a dispute arises between Lead Plaintiffs and M&T concerning its interpretation or application, in which event the Settling Parties shall submit the Supplemental Agreement to the Court *in camera* and request that the Court afford it confidential treatment.

**NO ADMISSION OF WRONGDOING**

39. Neither the Term Sheet, this Stipulation (whether or not consummated), including the exhibits hereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the Term Sheet and this Stipulation, nor any proceedings taken pursuant to or in connection with the Term Sheet, this Stipulation, and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Settling Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Settling Defendants' Releasees with respect to the truth of any fact alleged by Lead Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Settling Defendants' Releasees or in any way referred to for any other reason as against any of the Settling

Defendants' Releasees, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(b) shall be offered against any of the Plaintiffs' Releasees, as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Plaintiffs' Releasees that any of their claims are without merit, that any of the Settling Defendants' Releasees had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiffs' Releasees, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; or

(c) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial;

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

#### **MISCELLANEOUS PROVISIONS**

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

41. Wilmington Trust warrants that, as to the payments made or to be made by Wilmington Trust pursuant to this Stipulation, at the time of entering into this Stipulation and at

the time of such payment Wilmington Trust, or to its knowledge any persons or entities contributing to the payment of the Settlement Amount, were not insolvent, nor will the payment required to be made by or on behalf of them render them insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This representation is made by Wilmington Trust and not by its counsel.

42. In the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of Wilmington Trust to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited into the Settlement Fund by others, then, at the election of Lead Plaintiffs, Lead Plaintiffs and the Settling Defendants shall jointly move the Court to vacate and set aside the Releases given and the Judgment or Alternate Judgment, if applicable, entered in favor of the Settling Defendants and the other Releasees pursuant to this Stipulation, in which event the releases and Judgment, or Alternate Judgment, if applicable, shall be null and void, and Lead Plaintiffs and the Settling Defendants shall be restored to their respective positions in the litigation as provided in ¶ 35 above and any cash amounts in the Settlement Fund (less any Taxes paid, due or owing with respect to the Settlement Fund and less any Notice and Administration Costs actually incurred, paid, or payable) shall be returned as provided in ¶ 35 above.

43. For the avoidance of doubt, and notwithstanding other provisions of this Stipulation, if any, that could otherwise be construed or argued to impose such obligations or liabilities, this Stipulation does not impose on the Individual Defendants or the Underwriter Defendants (i) any obligation to pay the Settlement Amount, or any part thereof, or (ii) any liability to Lead Plaintiffs or any other Class Members to pay damages for or in connection with any alleged

breach of this Stipulation in the event that the Settlement Amount, or any part thereof, has not been paid in the time period provided for in ¶ 8 above.

44. The Settling Parties intend this Stipulation and the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Lead Plaintiffs and any other Class Members against the Settling Defendants' Releasees with respect to the Released Plaintiffs' Claims. Accordingly, Lead Plaintiffs and their counsel and the Settling Defendants, M&T, and their respective counsel agree not to assert in any forum that this Action was brought by Lead Plaintiffs or defended by the Settling Defendants in bad faith or without a reasonable basis. No Settling Party shall assert any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the institution, prosecution, defense, or settlement of this Action. The Settling Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm's length and in good faith by the Settling Parties, and reflect the Settlement that was reached voluntarily after extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

45. While retaining their right to deny that the claims asserted in the Action were meritorious, the Settling Defendants, M&T, and their respective counsel, in any statement made to any media representative (whether or not for attribution) will not assert that the Action was commenced or prosecuted in bad faith, nor will they deny that the Action was commenced and prosecuted in good faith and is being settled voluntarily as against the Settling Defendants after consultation with competent legal counsel. In all events, Lead Plaintiffs and their counsel and the Settling Defendants, M&T, and their respective counsel shall not make any accusations of wrongful or actionable conduct by any Settling Party concerning the prosecution, defense, and

resolution of the Action, and shall not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.

46. The terms of the Settlement, as reflected in this Stipulation, may not be modified or amended, nor may any of its provisions be waived except by a writing signed on behalf of each of the Settling Parties (or their successors-in-interest).

47. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

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

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

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

51. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

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

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

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

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

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

57. Lead Counsel and Settling Defendants' Counsel agree to cooperate fully with one another in seeking Court approval of the Preliminary Approval Order and the Settlement, as

embodied in this Stipulation, and to use best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

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

If to Lead Plaintiffs or Lead Counsel: Bernstein Litowitz Berger & Grossmann LLP  
Attn: Hannah Ross, Esq.  
1251 Avenue of the Americas  
New York, NY 10020  
Tel: (212) 554-1400  
Fax: (212) 554-1444  
Email: Hannah@blbglaw.com

Saxena White P.A.  
Attn: Joseph E. White, III, Esq.  
150 E. Palmetto Park Rd., Ste. 600  
Boca Raton, FL 33432  
Tel: (561) 394-3399  
Fax: (800) 361-4128  
Email: jwhite@saxenawhite.com

If to M&T or the Wilmington Trust  
Defendants:

Williams & Connolly LLP  
Attn: Brendan V. Sullivan, Jr.  
725 Twelfth Street NW  
Washington, D.C. 20005  
Tel: (202) 434-5800  
bsullivan@wc.com

Venable LLP  
Attn: James A. Dunbar  
210 West Pennsylvania Ave.  
Suite 500  
Towson, Maryland 21204  
Tel: (410) 494-6200  
jadunbar@venable.com

M&T Bank



Attn: Michael Driscoll  
One M&T Plaza, 8<sup>th</sup> Floor  
Buffalo, New York 14203

If to the Underwriter Defendants: Simpson Thacher & Bartlett LLP  
Attn: Craig S. Waldman, Esq.  
425 Lexington Avenue  
New York, NY 10017  
Tel: (212)-455-2000  
cwaldman@stblaw.com

59. Except as otherwise provided herein, and subject to any indemnification rights between or among the Settling Defendants, each Settling Party shall bear its own costs.


60. Whether or not the Stipulation is approved by the Court and whether or not the Stipulation is consummated, or the Effective Date occurs, the Settling Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed and proceedings in connection with the Stipulation confidential.

61. All agreements made and orders entered during the course of this Action relating to the confidentiality of information shall survive this Settlement.

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

**IN WITNESS WHEREOF**, the Settling Parties have caused this Stipulation to be executed, by their duly authorized counsel, as of May 15, 2018.

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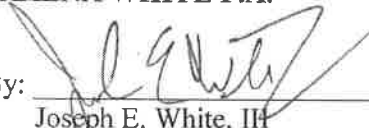
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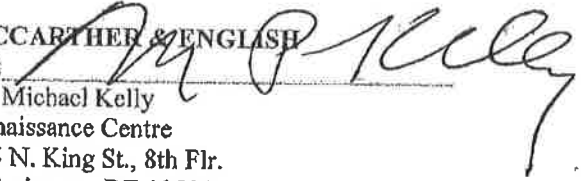
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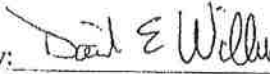
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#1178973

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Crystal Bay, NV

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Wilmington, DE

Thomas B. Cloud  
Wilmington, DE

Bruce DiBiaso  
Wilmington, DE

Thomas Massey, III  
Wilmington, DE

Michael Pascali  
Phoenixville, PA

Khatu Vo  
Sacramento, CA