UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE FOREIGN EXCHANGE BENCHMARK RATES ANTITRUST LITIGATION	Case No. 1:13-cv-07789 (LGS)

DECLARATION OF DEREK W. LOESER IN SUPPORT OF CLASS PLAINTIFFS' MOTION FOR FINAL APPROVAL OF FIFTEEN SETTLEMENT AGREEMENTS AND PLAN OF DISTRIBUTION

Pursuant to 28 U.S.C. § 1746, I, Derek W. Loeser, submit this Declaration in Support of Class Plaintiffs' Motion for Final Approval of Fifteen Settlement Agreements and Plan of Distribution (ECF No. 924).

1. I am a member in good standing of the Bars of the State of New York and the State of Washington.

2. I am a partner at the law firm of Keller Rohrback L.L.P. I have knowledge of the matters set forth herein.

3. Keller Rohrback was selected by Class Counsel to serve as ERISA Allocation Counsel to evaluate the fairness of the proposed settlement in the above captioned action (the "Settlement") with respect to those members of the Direct Settlement Class and/or Exchange-Only Settlement Class (collectively the "Classes") that are employee benefit plans covered by the Employee Retirement Income Security Act of 1974 ("ERISA"). These plans are hereinafter referred to as "ERISA Class Members."

Experience of ERISA Allocation Counsel

4. Keller Rohrback is one of America's leading law firms representing participants and beneficiaries of retirement and other employee benefit plans. I and a number of other Keller Rohrback attorneys have extensive experience handling complex litigation under ERISA, and the

firm is routinely appointed as lead or co-lead counsel in major class actions brought pursuant to ERISA. These cases include leading actions challenging the inclusion of employer stock in employee retirement plans, *see, e.g.*, *In re Enron Corp. ERISA Litigation*, MDL No. 02-1446 (S.D. Tex.); *In re WorldCom, Inc. ERISA Litigation*, No. 02-4816 (S.D.N.Y.), actions challenging excessive and improper fees associated with plan investment options, *see, e.g.*, *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585 (8th Cir. 2009), and actions challenging other imprudent plan investments, *see, e.g.*, *In re State Street Bank and Trust Co. ERISA Litigation*, No. 07-08488 (S.D.N.Y.). Collectively, Keller Rohrback has recovered over two billion dollars of retirement and other benefits on behalf of participants and beneficiaries. *See* Joint Declaration of Burke and Hausfeld (ECF No. 939-33) (Exhibit 33, attaching Keller Rohrback's ERISA Resume and Biographies, at 9-33).

5. Through these cases, Keller Rohrback has fought tirelessly to shape ERISA law so that the statute protects the interests of participants and beneficiaries rather than the interests of employers and service providers. Keller Rohrback includes among its ranks attorneys who have litigated ERISA cases since the Act's passage in 1974, have testified before Congress and Congressional committees on ERISA amendments and pension issues, and have served as editors and authors of ERISA's most preeminent publications. *See, e.g.*, *Employee Benefits Law* (Jeffrey Lewis et al. eds., 3d ed. 2012 & Supp. 2015) (Co-Chair of the Board of Senior Editors Jeffrey Lewis; Senior Editor David S. Preminger; Chapter Editors and Contributing Authors Gretchen S. Obrist and Erin M. Riley).

ERISA Allocation Counsel Analysis

6. ERISA Allocation Counsel have evaluated the terms of the Settlement, the recovery it provides, the scope of the release, and the relative strengths and weaknesses of the

potential ERISA claims that would be extinguished by the Settlement. ERISA Allocation Counsel also evaluated the Plan of Allocation that will be implemented if the Settlement is approved, along with Class Counsel's settlement approval filings.

7. In conducting its analysis, ERISA Allocation Counsel met with Class Counsel, and participated in numerous telephone conferences with Class Counsel regarding the bases for the proposed Settlement, the Plan of Allocation, and related factual and legal issues.

8. In addition, to assist with the evaluation of the fairness of the proposed Settlement to ERISA plans that are members of the Classes, ERISA Allocation Counsel retained Gallagher Fiduciary Advisors, LLC, the Institutional Investment & Fiduciary Services practice of Arthur J. Gallagher & Co. ("Gallagher"), to evaluate whether fiduciaries to ERISA plans that are members of the Classes could reasonably determine that it would be prudent to conclude that it would be in the interest of such plans to participate in the Settlement. Gallagher assigned Area Senior Vice President and Area Counsel Andrew Irving to provide the evaluation services and a report of Gallagher's conclusions. Attached hereto as Exhibit A is a true and correct copy of an expert fiduciary opinion authored by Mr. Irving for Gallagher. The biography of Mr. Irving and a list of representative cases in which he has performed fiduciary analysis are attached hereto as Exhibit B.

ERISA Allocation Counsel Analysis and Conclusions

9. Like other members of the Classes, ERISA Class Members that entered into an FX Instrument directly with a Defendant or party related to a Defendant or a trade of an FX Exchange Traded Instrument (collectively, "Direct Investments") possess potential antitrust claims that would be settled and released if ERISA Class Members participate in the Settlement.[1]

[1] The Settlement release and Class definition do not cover entities that invested indirectly in FX Instruments or FX Exchange-Traded Instruments, such as investors whose investment in FX Instruments or FX Exchange-Traded

These ERISA Class Members may also possess potential claims pursuant to ERISA related to their Direct Investments, including, in particular, claims for breaches of ERISA fiduciary duties where a Settling Defendant or an affiliate of a Settling Defendant served in a fiduciary capacity with respect to such plans and/or such Direct Investments.

10. Any ERISA claims related to Direct Investments would be released if ERISA Class Members participate in the Settlement.

11. Based on ERISA Allocation Counsel's analysis, and that of Gallagher, the fiduciary expert retained by ERISA Allocation Counsel, it is our opinion that in light of the particular facts and circumstances presented here, a reasonable fiduciary making a decision on behalf of an ERISA Class Member could decide to participate in the proposed Settlement and thus release all claims, including ERISA claims arising from the Direct Investments.

12. The proposed Settlement and Plan of Allocation treat ERISA Class Members the same as other Class Members. They neither provide a lower rate of compensation nor a premium to ERISA plans in the Classes—*i.e.*, if they participate in the Settlement, ERISA Class Members would receive the same compensation for the release of all claims as would any member of the Classes that does not possess ERISA claims. We have considered whether this is appropriate, and concluded that, in this particular case, it is.

13. As is true here, there are other class action settlements in which some members of the class possess ERISA claims while others do not. For example, a class may bring together a group of institutional investors, some of whom invest for ERISA plans and others that do not. Sometimes, the class members with ERISA claims receive a premium. The reasons for this are

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Instruments is via another entity like a collective investment vehicle or trust. *See* Notice of Class Action Settlements at 6, *In re Foreign Exchange Benchmark Rates Antitrust Litig.*, No. 13-cv-07789 (S.D.N.Y). Therefore, any claims of such indirect investors are not considered here.

varied, and no doubt hotly disputed, but ERISA counsel sometimes argue that the ERISA claims potentially are stronger than non-ERISA claims because, for example, they may be easier to prove or the remedy afforded may be superior.

14. In this particular case, a prudent fiduciary could reasonably conclude that the circumstances do not support an ERISA premium for ERISA Class Members. The remedies afforded by ERISA are not superior to the remedies provided by federal antitrust laws. The Sherman Antitrust Act provides for automatic treble damages if liability is established. 15 U.S.C. § 15(a). ERISA does not. Thus, in this particular case, the remedies afforded by the antitrust laws are both significantly different and potentially superior to the remedies provided by ERISA.

15. Another consideration that supports a reasonable fiduciary concluding that an ERISA premium is unnecessary under the facts and circumstances of this case is the nature and identity of the Defendants who are contributing funds to the Settlement. Although some of the Defendants likely are fiduciaries to some of the ERISA Class Members, it is unlikely that every Defendant is a fiduciary to every ERISA Class Member. ERISA imposes strict duties of prudence and loyalty on fiduciaries, generally referred to as the "highest known to the law." *LaScala v. Scrufari*, 479 F.3d 213, 219 (2d Cir. 2007); *see also* 29 U.S.C. § 1104 (prudence and loyalty); 29 U.S.C. § 1106 (conflicts of interest). Fiduciaries must make good to plans losses caused by their breach of their fiduciary duties. 29 U.S.C. § 1109. These strict duties, and corresponding remedial provisions do not apply to entities that are not fiduciaries. The antitrust laws do not differentiate among different actors in an antitrust conspiracy. Instead, all are potentially jointly and severally liable for treble damages. A specific ERISA Class Member that participates in the Settlement will receive a portion of funds from *all* Settling Defendants, regardless of whether each Settling Defendant had a fiduciary relationship with that particular

ERISA plan. So, in this regard as well, the remedy afforded by the antitrust laws in this particular case may be considered more favorable to ERISA Class Members than the relief that likely could be afforded by an ERISA claim alone.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 22nd day of January, 2018, in Seattle, WA.

KELLER ROHRBACK L.L.P.

By */s/ Derek W. Loeser*

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ERISA Allocation Counsel

EXHIBIT A

Arthur J. Gallagher & Co.
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To: Keller Rohrback, L.L.P. (the "Firm")

From: Gallagher Fiduciary Advisors, LLC ("Gallagher")

Re: *In re Foreign Exchange Benchmark Rates Antitrust Litig.*¸ 13 Civ. 7789(LGS) (S.D.N.Y.)

Date: January 22, 2018

Pursuant to the Independent Expert Consulting Agreement between Gallagher and the Firm made as of February 2, 2017, Gallagher presents this report to the Firm in the Firm's capacity as ERISA Allocation Counsel in *In re Foreign Exchange Benchmark Rates Antitrust Litig.*, 13 Civ. 7789 ("FOREX Antitrust Action"). Specifically, this report addresses whether, without regard to the specific circumstances of individual ERISA Class Members (as defined below), fiduciaries of ERISA Class Members could reasonably determine that it would be prudent to conclude that it was in the interest of ERISA Class Members to participate in the Proposed Settlement (as defined below) of the FOREX Antitrust Action and therefore forego excluding themselves from the Proposed Settlement and objecting to its terms notwithstanding that participating in the Proposed Settlement will bar ERISA Class Members from pursuing the ERISA FOREX Claims (as defined below) against the Settling Defendants (as defined below).

For the reasons explained below, Gallagher concludes that such fiduciaries could reasonably determine to cause the ERISA Class Members for whom they are responsible to participate in the Proposed Settlement and forego exclusion from the Proposed Settlement and lodging objections to its terms.[1] In reaching this conclusion, Gallagher assumes that each ERISA Class Member fiduciary who determines to grant the release pursuant to the Proposed Settlement will do so in a manner that does not constitute a prohibited transaction within the meaning of Section 406 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), for which a statutory or administrative exemption (including, without limitation, ERISA Prohibited Class Exemption 2003-39, as amended) is not available.

Background and Summary of Proposed Settlement

The term "Proposed Settlement" refers to the terms set forth in the Notice of Class Action Settlements dated September 29, 2017 in the FOREX Antitrust Action and the Settlement Agreements, Plan of Distribution and Court Orders referred to therein.

[1] Gallagher expresses no opinion with respect to attorneys' fees, litigation costs and service awards for the Class Plaintiffs which may be paid from the settlement fund to be established pursuant to the Proposed Settlement if approved by the Court.

The following summary of the background to and terms of the Proposed Settlement is derived from Gallagher's review of the numerous court filings submitted with respect to the Proposed Settlement, including documents posted on the Proposed Settlement's official website, www.fxantitrustsettlement.com/index, as well as pleadings and hearing transcripts not posted on that website.

The FOREX Antitrust Action involves allegations that numerous financial institutions conspired to fix prices in the foreign exchange ("FX") market in violation of the Sherman Anti-Trust Act (the "Antitrust Claims"). The Proposed Settlement constitutes a final resolution of claims against fifteen (15) of the defendants in the FOREX Antitrust Action (the "Settling Defendants") who have agreed to pay into a settlement fund a total of $2,310,275,000 (the "Settlement Amount"). The Settlement Class as defined in the Proposed Settlement consists, with refinements not germane to this report, of first, the Direct Settlement Class consisting of all persons who, between January 1, 2003 and December 15, 2015 (the "Class Period"), entered into a foreign exchange instrument *directly* with a defendant, and second, the Exchange-Only Settlement Class, consisting of all persons who, during the Class Period, entered into a foreign exchange traded instrument listed for trading through an exchange, such as a foreign exchange future or an option on a foreign exchange future.

The Proposed Settlement includes a proposed Plan of Distribution to allocate the Settlement Fund among members of the Settlement Class who timely file proofs of claim. The Plan of Distribution is intricate, reflective of, among other factors, the complexity of the FX market, differences in how the alleged violations of the antitrust laws affected different FX instruments and distinctive strengths and weakness of the antitrust claims arising in different time frames during the Class Period of almost thirteen years. The terms of the Proposed Settlement include a broad release of claims:

> in law or equity, or arising under constitution, statute, regulation, ordinance, contract or otherwise in nature for . . . liabilities of any nature whatsoever . . . , know or unknown, suspected or unsuspected, arising from, or relating in any way to, any conduct alleged, or that could have been alleged, in and arising from the factual predicate of the [FOREX Antitrust Action] . . . from the beginning of time until the Effective Date [of the Settlement].

A fairness hearing on the Proposed Settlement, including the Plan of Distribution, has been scheduled for May 23, 2018. Any member of the Settlement Class who does not timely opt out of the Proposed Settlement by the court-established deadline of February 7, 2018 will be bound by the terms of the Proposed Settlement if it is approved following the fairness hearing. February 7, 2018 is also the deadline for filing objections to the Proposed Settlement.

The ERISA Class Members and the ERISA FOREX Claims

The term "ERISA Class Members" refers to members of the Settlement Class that are employee benefit plans subject to ERISA.[2] Some of the defendants in the FOREX Antitrust Action, including some of the Settling Defendants, may be or have been fiduciaries, as defined in ERISA, with respect to some ERISA Class Members who exercised their fiduciary discretion to cause those ERISA Class Members to enter into direct FX trades with a defendant or FX exchange-traded instruments during the Class Period. Participants, beneficiaries and fiduciaries of such plans may have claims against those fiduciaries for breach of their fiduciary duties of loyalty and prudence established by ERISA by permitting the ERISA Class Members to make those investments in the FX market. Gallagher has been advised to assume that those claims (the "ERISA FOREX Claims") are within the scope of the Proposed Settlement's release so that ERISA Class Members who participate in the Proposed Settlement will be precluded from pursuing those claims. The Plan of Distribution makes no provision for any additional allocation to the ERISA Class Members in recognition of their distinctive claims under ERISA, and does not provide for any reduction in allocation based on which, if any, of the Settling Defendants may also have had a fiduciary duty under ERISA with respect to a particular ERISA Class Member.

The Reasonableness of ERISA Class Members' Participation in the Proposed Settlement

According to the Court-approved notice of the Proposed Settlement, the $2,310,275,000 Settlement Amount represents between 23-29% of the total damages caused by the conduct of all the defendants in the FOREX Antitrust Action during the Class Period, before application of the treble damages measure available for proven violations of the Sherman Antitrust Act. That figure assumes that 100% of the members of the Settlement Class will timely file proofs of claim for their share of the settlement fund calculated pursuant to the Plan of Distribution. Class Counsel represented to the Court that, assuming that the "take rate" on this settlement will resemble the 40% take rate for the class action settlement of different claims against a bank related to alleged manipulation of FX rates (*Axiom v. Barclays*, Case No. 1:15-cv-9323 (S.D.N.Y.)), Settlement Class Members who file claims will receive from 52.5-67% of the total damages. *See*, Transcript of September 5, 2017 Hearing, FOREX Antitrust Action, at 7-8. And if the calculation were made solely by reference to damages in the portion of the Class Period beginning December 1, 2007 (in recognition of the fact that the Court had dismissed claims in the FOREX Antitrust Action based on transactions occurring before that date) and ending December 31, 2013 (, the recovery represents from 33-43% of total damages assuming a 100% take rate, and 66-86% of damages assuming a more conservative 50% take rate. And Settlement Class Members may realize an additional recovery on the still-pending claims against the Credit Suisse defendants who have not settled. *See*, Class Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Fifteen Settlement Agreements and Plan of

[2] Thus, ERISA Class Members are employee benefit plans subject to ERISA that, between January 1, 2003 and December 15, 2015 are members of either or both of the Direct Settlement Class (consisting, by definition of persons who entered into FX Instruments directly) and the Exchange-Only Settlement Class.

Distribution (ECF No. 925, Forex Antitrust Action) at 17); Joint Declaration of Christopher M. Burke and Michael D. Hausfeld in Support of (A) Class Plaintiffs' Motion for Final Approval of Settlement Agreements, etc., (ECF No. 939, FOREX Antitrust Action) ("Burke and Hausfeld Declaration") at 5.

As set forth in the several declarations of Kenneth R. Feinberg submitted to the Court in support of the several settlements with the fifteen Settling Defendants, all of the settlements have been the product of vigorous, arms-length, contentious negotiation among skilled and knowledgeable counsel. And the filings in support of those settlements demonstrate the reasonableness of the settlement payments in light of the strengths and weakness of the Antitrust Claims and the ranges of settlements in other price-fixing claims under the antitrust laws. The baseline recovery rate of 23-29% compares favorably with antitrust settlements described in the filings in support of the settlement, and is in line with the value of the settlement in the *Axiom* case described above. Moreover, the settlement leaves pending the Antitrust Claims against the defendant who did not settle, and the Plan of Distribution calculates Settlement Class members' claims with reference to direct trades with all defendants, whether they have settled or not. Thus, Gallagher assumes that the Proposed Settlement is a reasonable settlement of the Antitrust Claims.

Although the Proposed Settlement does not provide for a premium recovery for the ERISA Class Members, prudent fiduciaries of ERISA Class Members could reasonably conclude that it would nonetheless be prudent for the ERISA Class Members to participate in the Proposed Settlement even though doing so would preclude pursuing the ERISA FOREX Claims. A decision to exclude an individual ERISA Class Member would require that plan to assume on its own the burden, expense and risk of not only pursuing the ERISA FOREX Claims but also the Antitrust Claims themselves.[3] And unlike other situations in which breach of ERISA fiduciary duty claims are brought on behalf of ERISA plans in parallel with class actions under other laws in which those plans are members of the plaintiff class[4], here it is difficult to identify elements of the ERISA FOREX Claims held by the ERISA Class Members that would be likely to enhance the ultimate recovery available if the ERISA FOREX and Antitrust Claims were to be brought in

[3] The memoranda submitted by Class Counsel to the Court in support of the several settlements with the Settling Defendants articulate in detail the challenges and risks associated with litigating the Antitrust Claims in lieu of settling them. *See, also, e.g.,* Burke and Hausfeld Declaration at 24-29 and 34-36 (describing extensive work associated with gathering, reviewing and analyzing documents produced by Settling Defendants and others).

[4] For example, when an ERISA-regulated defined contribution plan has included an investment option consisting of a fund invested exclusively or primarily in the common stock of the plan sponsor ("employer stock"), that plan will likely be a member of the plaintiff class in an action under the securities laws alleging fraud by misrepresenting or concealing material facts about the sponsor/issuer of the stock. However, the claims in such actions are usually limited to damages relating to actual purchases and sales of the employer stock during the class period. Plan participants may bring a separate action alleging that the plan fiduciaries violated their duties of prudence and loyalty under ERISA by maintaining the stock fund as an investment. The damages available under ERISA may be measured with respect to shares held during the class period, in addition to purchases and sales, and the calculation of damages may be made by reference to the returns on alternative, prudent investments rather than the alleged inflation in the value of the shares caused by the misrepresentations. Thus, there have been numerous settlements of ERISA claims related to employer stock providing for recovery in excess of the plan's recovery as a member of the plaintiff class in the parallel securities case. As explained in the main text, such alternative, additive elements do not appear to be present in the ERISA FOREX Claims, as opposed to the Antitrust Claims.

a single action. No remedy available under ERISA for the ERISA FOREX Claims is likely to provide a greater monetary recovery to an ERISA Class Member than is available under the antitrust laws for the Antitrust Claims in light of (i) the absence of an alternative market for FX investments untainted by antitrust violations in which a prudent fiduciary could have invested the ERISA Class Members' assets, and (ii) the availability of treble damages against defendants found liable for violating the Sherman Act. In addition, each ERISA Class Member will be recovering from a settlement fund to which all Settling Defendants contributed, including Settling Defendants who were not ERISA fiduciaries to a particular plan and therefore had only marginal exposure to the plan's ERISA FOREX Claims. Each ERISA Class Member's recovery from the settlement fund will be calculated without discount because some or all of the Settling Defendants did not happen also to be ERISA fiduciaries with respect to that plan.

An ERISA Class Member which desired to pursue the ERISA FOREX Claims would have to surrender its share of the Proposed Settlement to do so in the hope that it could achieve through independent litigation of both its Antitrust Claims and its ERISA FOREX Claims a recovery, net of fees and expenses, more valuable than the value of the Proposed Settlement (taking into account, among other factors, the time required for that independent litigation). Thus, Gallagher concludes, for the reasons set forth above, that fiduciaries of ERISA Class Members could reasonably determine that it would be prudent to conclude that it was in the interest of ERISA Class Members to participate in the Proposed Settlement.

The ERISA FOREX CIV Claims

ERISA Class Members (and other ERISA plans not members of the Settlement Class) may have also invested in collective investment vehicles ("CIVs") that entered into direct FX trades with a defendant or FX exchange-traded instruments during the Class Period. Those ERISA plans therefore also may have suffered losses by virtue of the losses incurred by such CIVs as a result of the Defendants' alleged violations of the antitrust laws that are the subject of the Antitrust Claims. Participants, beneficiaries and fiduciaries of those plans may have claims under ERISA against Settling Defendants who were managers of those CIVs and exercised their discretion as fiduciaries of the CIVs to cause the CIVs to invest in the FX market. Those participants, beneficiaries and fiduciaries may have claims that those defendants breached their fiduciary duties of loyalty and prudence as fiduciaries of the plans that invested in the CIVs[5] by causing the CIVs to invest in a market which they knew or should have known was impacted by the market manipulations resulting from the alleged violations of the antitrust laws. *See, generally,* Class Action Complaint, *Farrell, etc., v. JPMorgan Chase & Co., et al.,* No. 1:16-cv-02627 (S.D.N.Y.). Such claims are referred to herein as the "ERISA FOREX CIV Claims."

We are advised that the Firm has taken the position that the ERISA FOREX CIV Claims are not covered by the release set forth in the Proposed Settlement. Assuming the Firm is correct on that point, ERISA Class Members will be able to participate in the Proposed Settlement while

[5] *See,* 29 C.F.R. § 2510.3-101(h), to the effect that the underlying assets of a CIV are deemed to be the assets of the plans that invest in the CIV.

pursuing their ERISA FOREX CIV Claims to recover their losses incurred by virtue of the FX investments by the CIVs managed or sponsored by the Settling Defendants in which they were invested. The value of ERISA FOREX CIV Claims may be subject to offset by the distribution that a plan receives from a CIV that participates in the Proposed Settlement.

It is possible that, notwithstanding the Firm's position to the contrary, the ERISA FOREX CIV Claims possessed by ERISA Class Members may be deemed covered by the release set forth in the Proposed Settlement, even though the terms of the settlement do not permit a plan to make a claim arising out of losses through a CIV's investments in the FX market.[6] If that were to happen, the CIV that is a member of the Settlement Class in the FOREX Antitrust Action will itself be eligible to make a claim against the settlement fund established by the Proposed Settlement (taking care, if the CIV fiduciary responsible for making the claim is also a Settling Defendant, not to commit a prohibited transaction under ERISA). A CIV fiduciary's decision whether to file a claim against the settlement fund is a fiduciary function subject to ERISA's standards of prudence and loyalty. If the fiduciary does not file a claim on behalf of the CIV, that CIV fiduciary is subject to claims under ERISA, contract law and perhaps other laws. And if the fiduciary files a claim and the CIV receives a distribution, the subsequent decision as to the allocation of such distribution is likewise a matter for the prudent judgement of the CIV fiduciary. *See*, U.S. Department of Labor Field Assistance Bulletin 2006-1. An ERISA plan and its participants, beneficiaries and fiduciaries therefore retain separate claims if the fiduciary of a CIV were to be imprudent in making that decision.

These potential claims relating to a CIV fiduciary's decisions regarding the Proposed Settlement are outside the scope of the release granted by an ERISA Class Member's participation in the Proposed Settlement since, by definition, they will arise after the Effective Date of the settlement and will not involve any conduct that was or could have been the subject of the FOREX Antitrust Action. Accordingly, ERISA Class Members retain a prospect for recovering some of the value of their ERISA FOREX CIV Claims even if those claims are covered by the release.

[6] By taking into account the possibility of such a result, Gallagher is not indicating that it believes that the release in the Proposed Settlement includes the ERISA FOREX CIV Claims.

EXHIBIT B

Arthur J. Gallagher & Co.
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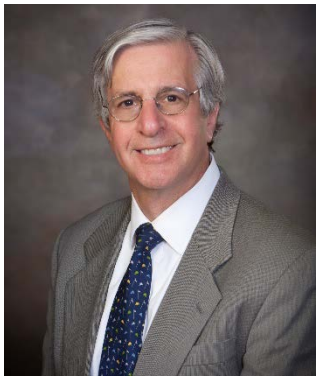
Biography



Andrew Irving

Area Senior Vice President
& Area Counsel

Andrew Irving is an Area Senior Vice President & Area Counsel with the Institutional Investment & Fiduciary Services practice of Arthur J. Gallagher & Co., Gallagher Fiduciary Advisors, LLC. Mr. Irving leads the firm's independent fiduciary decision-making group, which focuses on providing independent, conflict-free, discretionary decisions regarding particular transactions or plan assets. As Area Counsel, he also provides guidance on ERISA issues that arise in the course of client engagements and manages the services of outside legal counsel when particular assignments require their assistance. He also serves as a member of the firm's leadership team.

Mr. Irving joined Gallagher in 2003 after 25 years in private law practice during which Mr. Irving worked with plan fiduciaries and the investment community designing sophisticated investment products and strategies to comply with statutory requirements and improve plan funding. He also litigated challenging issues of fiduciary responsibility and plan administration related to single employer, multiemployer and governmental benefit plans. Having worked with leading investment and actuarial firms, he has in-depth knowledge of the interrelated roles various service providers play in assisting plan fiduciaries and sponsors with their duties.

Mr. Irving is a Fellow of the American College of Employee Benefits Counsel and an active member of the Employee Benefits Committee of the American Bar Association's Section on Labor and Employment Law. Appointed by Mayor Michael R. Bloomberg, with the advice and consent of the New York City Council, Mr. Irving served from 2005 to 2017 as a member of the New York City Conflicts of Interest Board, which administers the New York City Charter's Code of Ethics for the City's elected officials and public employees. Upon the expiration of his second term in 2017, the Board awarded Mr. Irving its Powell Pierpoint Award for outstanding service to the Board.

Mr. Irving is a *cum laude* graduate of Yale University and holds a law degree from Columbia Law School, where he was a member of the Law Review.

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*Note: Listed assignments include projects performed by predecessor firm Independent Fiduciary Services, Inc.