
EXHIBIT 1

CLASS ACTION SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Class Action Settlement Agreement (the “Agreement”), is entered into between Ashby Henderson and Thomas Hershenson (the “Class Representatives” or “Plaintiffs”), on behalf of themselves and the Settlement Class, defined below, and Defendant, BNY Mellon, N.A. (“BNY Mellon” or “Defendant”). The Class Representatives and BNY Mellon shall be referred to collectively to as the Parties.

WHEREAS, on February 27, 2015, Ashby Henderson filed a Class Action Complaint in the United States District Court for the District of Massachusetts, against BNY Mellon, National Association, The Bank of New York Mellon Corporation, and The Bank of New York Mellon Trust Company, National Association, alleging that the Defendants breached their fiduciary duties to the trusts they administered by investing trust assets in affiliated mutual funds or other affiliated investment vehicles (“the Action”);

WHEREAS, on November 23, 2015, the Court dismissed the claims against The Bank of New York Mellon Corporation;

WHEREAS, on March 3, 2016, Ms. Henderson filed a First Amended Class Action Complaint, which added a second set of class claims alleging that BNY Mellon marked-up the tax preparation fees it charged to trusts to prepare the returns (“the Tax Preparation Fee Claims”);

WHEREAS, on November 28, 2016, with leave of court, Ms. Henderson and Mr. Hershenson filed a Second Amended Class Action Complaint in the Action against BNY

Mellon and The Bank of New York Mellon Corporation, adding Mr. Hershenson as a named plaintiff as to the Tax Preparation Fee Claims only;

WHEREAS, On January 19, 2017, Ms. Henderson and Mr. Hershenson voluntarily dismissed with prejudice their claims against The Bank of New York Mellon Corporation;

WHEREAS, on June 8, 2018, Plaintiffs withdrew their motion to certify as to the claims relating to affiliated investments;

WHEREAS, on August 22, 2018, the Court dismissed Ms. Henderson's individual affiliated investment claims and the class's affiliated investment claims without prejudice;

WHEREAS, on September 14, 2018, this Court partially granted Plaintiffs' motion for class certification, and certified a class as to the Tax Preparation Fee Claims for certain trusts that paid a line-item tax preparation fee, but otherwise denied class certification as to the Tax Preparation Fee Claims;

WHEREAS, on September 14, 2018, this Court also denied the Parties' cross-motions for summary judgment on the line-item Tax Preparation Fee Claims, and granted BNY Mellon's motion for summary judgment as to the "bundled" Tax Preparation Fee Claims;

WHEREAS, on December 18, 2018, the Court amended the class definition to "specify 'grantors, settlors, co-trustees, and qualified beneficiaries' of the specified personal trusts;"

WHEREAS, the Parties have engaged in extensive and hard-fought discovery, including the exchange of written discovery requests and responses, the BNY Mellon production of more than 30,000 pages of documents and electronically stored information (ESI), the exchange of six expert reports, and the taking of fourteen depositions, including expert depositions. The Parties have also engaged in extensive motions practice and briefing, including motions to dismiss, a motion to strike Ms. Henderson as class representative, motions before a Magistrate Judge to resolve discovery disputes, Plaintiffs' motion for class certification, and both Parties' motions for summary judgment. BNY Mellon has filed two petitions for appellate review. The Parties have also participated in three mediation sessions with retired judge Diane Welsh of JAMS in New York;

WHEREAS, since the filing of the original Complaint, BNY Mellon has denied and continues to deny each and every allegation of liability, wrongdoing, and damages, as it has substantial factual and legal defenses to all claims and class allegations asserted in the Action, and has always maintained, and continues to maintain, that it has acted in accordance with all governing law;

WHEREAS, based on their review and analysis of the relevant facts and legal principles, the Class Representatives and Class Counsel believe that, in consideration of all the circumstances and after prolonged and serious arms' length settlement negotiations, the terms and conditions embodied in this Settlement are fair, reasonable, and adequate, and beneficial to and in the best interests of the Class Representatives and the proposed Settlement Class (as defined below);

WHEREAS, the Parties have decided that it is desirable to fully and finally settle the Action on the terms and conditions set forth herein to avoid the further expense, inconvenience and distraction of the Action and to dispel any related uncertainty;

WHEREAS, this Agreement and all associated exhibits or attachments are made for the sole purpose of attempting to consummate settlement of this Action on a class-wide basis. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because the Action is pled as a class action, the Parties herein request the Court to enter an order granting preliminary and final approval, as required under Rule 23(e);

WHEREAS, accordingly, the Class Representatives and BNY Mellon enter into this Agreement and associated settlement on a conditional basis. In the event that BNY Mellon or the Class Representatives exercise a right herein to terminate or rescind this Agreement, the Court does not enter the Final Approval Order, or the associated judgment does not become Final for any reason, this Agreement shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever by anyone, and the negotiation of the Agreement shall remain subject to the provisions of Federal Rule of Evidence 408, any and all state statutes of a similar nature, and the mediation privilege. Notwithstanding the foregoing, Defendant may use, offer, admit, or refer to the fact of the Agreement and the settlement reached therein where necessary to defend itself in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding;

WHEREAS, the Parties expressly reserve all rights, claims and defenses and do not waive any such rights, claims or defenses in the event that the Agreement is not approved for any reason;

NOW THEREFORE, in consideration of terms contained in this Settlement Agreement, and subject to approval by the Court, the Class Representatives, the Settlement Class, and BNY Mellon agree to the settlement of the Action, subject to the following terms and conditions:

I. DEFINITIONS.

The following terms shall have the following meanings in this Settlement Agreement and the attached exhibits.

1.01. “Action” means the civil action *Henderson, et al. v. BNY Mellon, N.A.*, Case No. 1:15-cv-10599-PBS, pending in the United States District Court for the District of Massachusetts.

1.02. “Agreement” or “Settlement Agreement” means this Class Action Settlement Agreement and all of its attachments and exhibits, which the Class Representatives and BNY Mellon understand and agree sets forth all material terms and conditions of the settlement of the Action between them and which is subject to Court approval. It is understood and agreed that BNY Mellon’s obligations under this Agreement are conditioned on the conditions set forth in this Agreement.

1.03. “Cash Settlement Amount” means the sum of \$10,000,000, which BNY Mellon will deposit into an interest-bearing qualified settlement fund to be established

and maintained by the Settlement Administrator, for purposes of implementing this Settlement as set forth below.

1.04. “Class Counsel” means, collectively, the counsel of record representing the Class Representatives in the Action, at the law firms of Bailey & Glasser LLP and Derek G. Howard Law Firm, Inc. (“Howard Law Firm”).

1.05. “Class Notice” means the notice that is mailed by the Settlement Administrator to Settlement Class Members, in substantially the form attached as Exhibit A to this Agreement.

1.06. “Class Period” means the period from January 1, 2008 through the date of Preliminary Approval.

1.07. “Class Representatives” means Ashby Henderson and Thomas Hershenson.

1.08. “Class Trust List” means an electronic list, in spreadsheet or similar form, to be prepared by or at the direction of BNY Mellon and provided to the Settlement Administrator, listing the names, account numbers, or other identifying information of all Class Trusts; the trust situs; the amount of Tax Preparation Fees paid by the trust during the Class Period; whether the trust is open or closed; and if closed, the date it closed. The Class Trust List will be treated as Confidential pursuant to the terms of the Protective Order.

1.09. “Class Trusts” means the trusts described in the Settlement Class definition.

1.10. “Closed Class Trust” means a trust that, on or before the Distribution Date, is no longer administered by BNY Mellon and for which the BNY Mellon trust account is closed.

1.11. “Complaint” refers to the Second Amended Class Action Complaint (ECF # 232) filed by the Class Representatives in the Action.

1.12. “Court” means the United States District Court for the District of Massachusetts.

1.13. “Distribution Date” means ten calendar days after the Effective Date.

1.14. “Effective Date” means the business date one day after the Final Approval Order becomes Final, as defined in paragraph 1.15, provided, however, that BNY Mellon has not exercised its right of termination under section 12 herein.

1.15. “Final” means five calendar days (or the next business day thereafter if not ending on a business day) after the latest of: (i) the date of final affirmance on an appeal of the Final Approval Order; (ii) the date of final dismissal with prejudice of the last pending appeal from the Final Approval Order; and (iii) if no appeal is filed, the expiration date of the time for the filing or noticing of any form of valid appeal or writ review from the Final Approval Order. If the Final Approval Order is set aside, modified, or overturned by any court including on appeal and is not fully reinstated on appeal, the Final Approval Order shall not become final under this definition.

1.16. “Final Approval Hearing” means a hearing set by the Court to take place on or about thirty-five calendar days after the Response Deadline for the purpose of:

- (i) determining the fairness, adequacy and reasonableness of the Agreement; and
- (ii) entering the Final Approval Order.

1.17. “Final Approval Order” shall mean an order to be entered and filed by the Court entitled “Final Judgment and Order of Dismissal with Prejudice,” substantially in the form attached hereto as Exhibit B.

1.18. “Notice List” means an electronic list, in spreadsheet or similar form, to be prepared by or at the direction of BNY Mellon and provided to the Settlement Administrator, listing, by Class Trust, the names and addresses of all Settlement Class Members. The Notice List will be treated as Confidential, attorneys’ eyes only, do not duplicate, pursuant to the terms of the Protective Order.

1.19. “Open Class Trust” means a Class Trust that BNY Mellon is administering as a trustee as of the Distribution Date.

1.20. “Preliminary Approval” of this Agreement means that the Court has entered an order, substantially in the form of Exhibit C to this Agreement (the “Preliminary Approval Order”), conditionally certifying a class and preliminarily approving the terms and conditions of this Agreement, including the manner of providing notice to the Class.

1.21. “Protective Order” means the Protective Order entered in the Action by the Hon. Donald L. Cabell on December 23, 2015.

1.22. “Released Claims” means and includes any and all claims, defenses, demands, objections, actions, causes of action, rights, offsets, setoffs, suits, damages, lawsuits, liens, costs, losses, attorneys’ fees, expenses or liabilities of any kind

whatsoever, in law or in equity, for any relief whatsoever, including monetary, injunctive, or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential, or punitive damages, as well as any and all claims for treble damages, penalties, interest, attorneys' fees, costs, or expenses, whether a known or Unknown Claim, suspected or unsuspected, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that in any way concern, that arise or may arise from the facts alleged in the Second Amended Complaint relating to or concerning the charging and/or disclosure of tax preparation fees. It is the intention of the Class Representatives to provide a general release of all Released Claims against the Releasees. Released Claims shall include any claims arising out of the Plan of Allocation described in section 3 herein.

For the avoidance of doubt, Released Claims does **not** include: (i) claims previously dismissed by the Court in this Action without prejudice; (ii) claims relating to affiliated investments that are at issue in *John Bernard and William Bernard v. BNY Mellon, N.A.*, Civil Action No. 2:18-cv-00783-CRE; or (iii) claims, objections, or allegations made in *In Re Trust Under Deed Of Morris A. Hershenson, F/B/O Lee M. Hershenson, et al.*, No 02-72-R-1324 (Allegheny County Orphans' Court), with the exception of claims seeking to recover amounts paid for tax preparation fees by the Hershenson trust between 2008 and 2018. These exceptions to the Released Claims shall apply and be incorporated into each subsequent paragraph of this Agreement which describes or otherwise references the Released Claims.

1.23. “Releasees” or “Released Parties” are defined to include (1) BNY Mellon, The Bank of New York Mellon Corporation, and The Bank of New York Mellon Trust Company, National Association; (2) each of their past, present or future subsidiaries, parent companies, divisions, affiliates, partners or any other organizational units of any kind doing business under their names, or doing business under any other names, or any entity now or in the past controlled by, controlling, or under the common control with any of the foregoing and doing business under any other names, and each and all of their respective affiliates and subsidiaries, and each of their respective predecessors, successors, and assigns; and (3) each of the present and former officers, directors, partners, shareholders, agents, employees, attorneys (including any consultants hired by counsel), advisors, trustees and co-trustees, investment advisors, associates, investment bankers, independent contractors, representatives, beneficial owners, insurers, accountants, heirs, executors, and administrators, and each of their respective predecessors, successors, and assigns of any person or entities in subparts (1) or (2) hereof.

1.24. “Releasors” means the Class Representatives, all Settlement Class Members, and each of their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them.

1.25. “Response Deadline” means the date identified in the Preliminary Approval Order by which a Settlement Class Member (i) must serve written objections to the Settlement, if any, to be able to object to the Settlement, (ii) must serve a notice of

intent to opt out, if the Settlement Class Member desires to be excluded from the Settlement Class, and (iii) must submit a Verification Form to the Settlement Administrator as described in section 7 of this Agreement. The Response Deadline shall be no later than thirty-five calendar days prior to the Final Approval Hearing or as the Court may otherwise direct.

1.26. "Settlement" means the settlement terms set forth in this Agreement.

1.27. "Settlement Administrator" means the independent class action settlement administration company, KCC, LLC, retained for purposes of administering the Settlement.

1.28. "Settlement Class" means: From 2008 to the date of Preliminary Approval, all grantors, settlors, co-trustees, and qualified beneficiaries of personal trusts for which:

- (1) BNY Mellon served or serves as trustee;
- (2) BNY Mellon charged line-item tax-preparation fees amounting to at least \$400 per year for grantor trusts, at least \$750 per year for revocable and "simple" irrevocable trusts, or at least \$950 per year for "complex" irrevocable trusts for one or more of the covered years;
- (3) the preparer of the fiduciary return covered by the line item tax-preparation fee was PricewaterhouseCoopers; and
- (4) the trust's Tax Preparation Fee Claim is not barred by the applicable state statute of repose.

1.29. "Settlement Class Member" or "Member of the Class," means a member of the Settlement Class.

1.30. “Tax Preparation Fees” means the line-item tax preparation fees charged to Class Trusts during the Class Period and meeting the dollar thresholds set forth in the Settlement Class definition.

1.31. “Unknown Claims” mean any Released Claims which any Releasor does not know or suspect to exist in his or her favor at the time of the entry of the Final Approval Order, and which, if known by him or her might have affected his or her settlement with and release of the Releasees, or might have affected his or her decision to opt out of the Settlement Class or to object to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date, the Class Representatives shall expressly and each of the Settlement Class Members shall be deemed to have, and by operation of the Final Approval Order shall have to the fullest extent allowed by law, waived the provisions, rights, and benefits of any statute or principle of common law similar 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.

Each Releasor may hereafter discover facts in addition to or different from those which he or she now knows or believes to be true with respect to the Released Claims, but the Releasors, upon the Effective Date, shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever settled and released to the fullest extent allowed by law any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or

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

1.32. “Verification Form” means a form substantially in the form of Exhibit D to this Agreement, which when completed, will confirm entitlement to payment for Settlement Class Members for Closed Class Trusts.

1.33. Other terms are defined in the text of this Agreement, and shall have the meaning given to those terms in the text. It shall be the intent of the Parties in connection with all documents related to the Settlement that defined terms as used in other documents shall have the meaning given to them in this Agreement.

II. Certification Of The Settlement Class

2.01. The Parties to this Agreement agree that the Settlement Class shall be certified solely for purposes of settlement under Fed. R. Civ. P. 23(e), in accordance with the requirements of Fed. R. Civ. P. 23(b)(3), consisting of all Settlement Class members, with the Named Plaintiffs as the Settlement Class representatives and current Class Counsel as counsel for the Settlement Class.

2.02. This Agreement and certification of the Settlement Class is for settlement purposes only, and neither the fact of, nor any provision contained in, this Agreement or its Exhibits, nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as, an admission of the validity of any claim or any fact alleged by Plaintiffs in this Action or in any other pending or subsequently filed action of any wrongdoing, violation of law, or liability of any kind on the part of BNY Mellon. This Agreement shall, however, be admissible in an action or proceeding to enforce the terms of the Agreement.

2.03. Any certification of a conditional, preliminary, or final Settlement Class pursuant to the terms of this Agreement shall not constitute, and shall not be construed as, an admission on the part of BNY Mellon that this Action, or any other proposed or certified class action, is appropriate for class treatment pursuant to Fed. R. Civ. P. 23 or any similar state or federal class action rule or statute outside the settlement context. This Agreement is without prejudice to the rights of BNY Mellon to: (1) oppose final certification in this Action should this Settlement not be approved or implemented for any reason; (2) oppose certification in any other proposed or certified class action; or (3) use the certification of this Settlement Class to oppose certification of any other proposed class action arising out of the issues and claims that are asserted herein.

2.04. In the event this Agreement is terminated pursuant to its own terms, or a Final Approval of the Settlement for any reason does not occur (subject to the Effect of Disapproval provisions of paragraph 13.17 and Termination provisions in section 12, below), the Settlement Class defined herein shall cease to exist and the Action shall

proceed as if no Settlement Class or Agreement had ever existed. The Parties shall not have waived any and all rights they might have with regard to class certification, and the allegations of the Complaint.

III. Monetary Relief For The Settlement Class.

3.01. Monetary relief will be provided to Settlement Class Members in accordance with the following.

3.02. Cash Settlement Amount. BNY Mellon will pay \$10,000,000 (the “Cash Settlement Amount”) into the interest-bearing qualified settlement fund established and maintained by the Settlement Administrator (“KCC”) at The Huntington National Bank, account number XXXXXXXX0713. In no event shall BNY Mellon’s cash payment obligation under this Settlement exceed \$10,000,000.

3.03. BNY Mellon will deposit the Cash Settlement Amount no later than three business days after this Agreement is fully executed by the Parties. The Parties agree that this is a material term of the Settlement.

3.04. Following BNY Mellon’s deposit of the Cash Settlement Amount, the Settlement Administrator will confirm in writing to the Parties, with such confirmation to be filed with the Court, that the Cash Settlement Amount has been deposited.

3.05. Any and all interest earned on the account in the qualified settlement fund shall accrue to the benefit of the Settlement Class, subject to the terms below regarding denial of approval, in paragraph 13.17.

3.06. This Cash Settlement Amount plus accrued interest shall comprise the “Cash Settlement Fund,” which shall be used to make payments to Settlement Class

Members or their trusts, to pay taxes on any interest earned during the time prior to distribution, to pay costs of notice and administration, to pay any incentive payments to the two class representatives, and to pay attorneys' fees and costs, all subject to Court approval.

3.07. Within ten calendar days after the Effective Date, the Cash Settlement Fund, after deduction for court approved attorneys' fees and costs, incentive awards, and administration costs, shall be distributed to Settlement Class Members in accordance with the allocation plan described below.

3.08. Plan of Allocation. Upon Court approval, the Cash Settlement Fund, after deductions for attorneys' fees and costs, incentive payments, costs of notice and administration, and any taxes (hereinafter the "Net Cash Settlement Fund") will be used to make *pro rata* per trust payments directly to: (i) all Open Class Trusts, (ii) to beneficiaries (and settlors or grantors where appropriate) of the Closed Class Trusts that closed on or before the date of Preliminary Approval, where at least one beneficiary, settlor or grantor timely returns a valid Verification Form, and (iii) to beneficiaries (and settlors or grantors where appropriate) of the Closed Class Trusts that closed after the date of Preliminary Approval. Upon the Effective Date, under no circumstances shall the Parties bear liability, and are released of liability pursuant to paragraph 1.22 and this paragraph, in connection with the allocation of settlement payments as between Class Trusts, as among principal and income for open trusts, or as among interested parties for closed trusts.

3.09. Per Trust Payment Amounts. The Per Trust payment amount shall be determined in accordance with the following formula.

- (a) Each Open Class Trust, each Closed Class Trust that closed on or before the date of Preliminary Approval for which at least one timely valid Verification Form is submitted, and each Closed Class Trust that closed after the date of Preliminary Approval will be entitled to a *pro rata* share of the Net Cash Settlement Fund.
- (b) The “Per Trust” *pro rata* share will be based on the proportion that the Tax Preparation Fees paid by that trust are to the total Tax Preparation Fees paid by all Open Class Trusts and Closed Class Trusts entitled to a *pro rata* share as described in subpart (a) above.¹
- (c) For Open Class Trusts, on the Distribution Date, the Settlement Administrator will forward a check from the Cash Settlement Fund to BNY Mellon, in the amount of the total of the *pro rata* payments to be made to Open Class Trusts, along with a spreadsheet identifying the individual deposit amounts per trust. BNY Mellon will expeditiously make the deposits in accordance with the spreadsheet, to the principal of each Open Class Trust. The payment shall be reflected on the trust’s account statement for the applicable period as “Class Action Settlement Payment.”
- (d) For Closed Class Trusts that closed on or before the date of Preliminary Approval and for which at least one timely, valid Verification Form is submitted, on the Distribution Date, the Settlement Administrator shall mail a check(s) to the person(s) who submit timely, valid Verification Forms. The Per Trust payment shall be divided equally, on a per capita basis, among those submitting timely valid Verification Forms for each trust.²
- (e) For Closed Class Trusts that closed after the date of Preliminary Approval, on the Distribution Date, the Settlement Administrator shall mail a check(s) to the Settlement Class Members identified for each such Class

¹ For example, if the Tax Preparation Fees paid by a particular trust represent 2% of the total Tax Preparation Fees paid by Open Class Trusts plus Closed Class trusts for which a Verification Form is submitted or which closed after the date of Preliminary Approval, then the trust shall be entitled to 2% of the Net Cash Settlement Fund.

² For example, if Closed Trust X is entitled to a \$400 payment, and four timely, valid Verification Forms are submitted by beneficiaries of Closed Trust X, each beneficiary will receive a check for \$100.

Trust on the updated information provided by BNY Mellon pursuant to paragraph 6.03 herein. The Per Trust payment shall be divided equally, on a per capita basis, to such Settlement Class Members.

3.10. Effect of Opt-Out on Open Class Trusts. A request to opt out shall not be effective as to a Settlement Class Member who is the beneficiary of an Open Class Trust unless all beneficiaries of that trust opt out.

3.11. Tax Preparation Fee Waiver Relief. For the approximately 500 Class Trusts currently being charged a line-item Tax Preparation Fee, BNY Mellon will continue to pay for the preparation of the trusts' tax returns, but will waive all Tax Preparation Fees for such trusts for a period of ten years beginning January 1, 2019. If, for any reason, the Settlement is not preliminarily or finally approved, BNY Mellon will not retroactively charge trusts for Tax Preparation Fees waived during the pendency of approval of this Settlement, but may resume charging line-item Tax Preparation Fees thereafter. BNY Mellon provided Class Counsel a declaration that quantifies the aggregate net present value (calculated using the current federal funds rate of 2.5%) of the tax fee waiver at \$621,350. BNY Mellon warrants and represents that this net calculation is a reasonable estimate of the present cash value of the tax fee waiver.

3.12. The Parties shall be required to meet the specific terms of this Agreement (as approved and/or modified by the Court) but no Party or Releasee shall have responsibility for or liability based upon, and the Settlement Class shall have no further claims against the Parties or Releasees based upon, notice and administration of the Settlement, or any other payment or consideration covered by the Agreement or provided for by further Order of the Court, or the determination, administration,

calculation, investment, allocation, distribution, or payment of award amounts or distributions, the payment or withholding of taxes, or any losses incurred in connection therewith. No person shall have any claim against the Releasees, Class Counsel or any other agent designated pursuant to this Agreement based upon the distributions made substantially in accordance with this Agreement or any order of Court.

3.13. For each payment made pursuant to this Agreement, BNY Mellon, itself or through the Settlement Administrator, may report each payment to government authorities including the Internal Revenue Service as required by law, and it shall make all required deductions and/or withholdings. The Settlement Administrator further may issue a Form 1099 to Settlement Class Members. Settlement Class Members who receive payments associated with Closed Class Trusts shall be solely responsible for the reporting and payment of any federal, state, and/or local income or other tax or any other withholdings, if any, on any of the payments made pursuant to this Agreement. BNY Mellon makes no representations and it is understood and agreed that BNY Mellon has made no representations as to the taxability of any portions of the settlement payments to any Settlement Class Members, the payment of any attorneys' fees and expenses, or the payment of any incentive payments to the Class Representatives. The Class Notice will advise Settlement Class Members to seek their own tax advice prior to acting in response to the Class Notice, and the Class Representatives and Class Counsel agree that Settlement Class Members will have an adequate opportunity to seek tax advice prior to acting in response to the Class Notice.

IV. Qualified Settlement Fund

4.01. The Cash Settlement Fund shall constitute a “qualified settlement fund” (“QSF”) within the meaning of Treasury Regulation Section 1.468B-1 promulgated under Section 468B of the Internal Revenue Code of 1986 as amended. The Settlement Administrator shall be the “administrator” within the meaning of Treasury Regulation § 1.468B-2(k)(3).

4.02. Upon or before establishment of the QSF, the Settlement Administrator shall apply for an employer identification number for the QSF utilizing Internal Revenue Service Form SS-4 and in accordance with Treasury Regulation § 1.468B-2(k)(4), and shall provide BNY Mellon with that employer identification number on a properly completed and signed IRS Form W-9.

4.03. If requested by either BNY Mellon or the Settlement Administrator, the Settlement Administrator and BNY Mellon shall fully cooperate in filing a relation-back election under Treasury Regulation § 1.468B-1 (j)(2) to treat the QSF as coming into existence as a settlement fund as of the earliest possible date.

4.04. Following its remittances of the Cash Settlement Fund monies as described in section 3 of this Agreement, and the provision of the Class Trust List and the Notice List, BNY Mellon shall have no responsibility, financial obligation or liability whatsoever with respect to the notifications to the Settlement Class required hereunder, the processing of opt out requests, distributions to Settlement Class Members, payments to Class Counsel, incentive payments to the Class Representatives, investment of QSF funds, payment of federal, state, and local income, employment, unemployment, excise, and any other taxes, penalties, interest or other charges related to taxes imposed on the

QSF or its disbursements, payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the QSF, since it is agreed that such deposits shall fully discharge BNY Mellon's obligation to the Class Representatives, Settlement Class Members, Class Counsel and expenses of administration with respect to the disposition of the Cash Settlement Fund, except as otherwise provided herein. Notwithstanding the above, BNY Mellon shall promptly respond to any reasonable questions the Settlement Administrator may have concerning the Class Trust List or the Notice List.

4.05. The Settlement Administrator shall file or cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns, including, but not limited to, any Form 1099-series return, and tax withholdings statements, in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(l) and Treasury Regulation § 1.468B-2(1)(2). Any contract, agreement or understanding with the Settlement Administrator relating to the QSF shall require the Settlement Administrator or its agent to file or cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns, including, but not limited to, any Form 1099-series return, and tax withholdings statements, in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(1) and Treasury Regulation § 1.468B-2(1)(2). The Settlement Administrator may, if necessary, secure the advice of a certified public accounting firm in connection with its duties and tax issues arising hereunder.

V. Attorneys' Fees, Costs And Incentive Payments.

5.01. Class Counsel shall apply for an award of attorneys' fees of up to one-third of the Cash Settlement Fund, plus expenses currently estimated to be \$390,000, to be paid from the Cash Settlement Fund. BNY Mellon shall not oppose, directly or indirectly, Class Counsel's request up to this amount. Any attorneys' fees and expenses that the Court awards shall be payable and in accordance with wiring instructions to be provided by Class Counsel. Any attorneys' fees and expenses awarded shall be paid from the Cash Settlement Fund by the Settlement Administrator within five calendar days after the Effective Date, or at such other time as the Court may direct following the Effective Date. In the event the Court awards Class Counsel less than the amount of attorneys' fees and expenses requested, the difference between the fees sought and those awarded shall go to the Class, and this Agreement shall nonetheless remain in full force and effect and the other benefits or payments due or to become due shall not be increased or changed.

5.02. In accepting an award of attorneys' fees and expenses, the Class Representatives and Class Counsel, on behalf of themselves and all Settlement Class Members, acknowledge that the payment and method of payment under this Agreement are in full satisfaction of any and all claims, rights, and demands that Class Counsel, the Class Representatives, or the Settlement Class had, have, or may claim to have in the future for attorneys' fees, costs, or expenses incurred in this Action. Defendant shall have no interest in nor responsibility for allocation or distribution of the award among Class Counsel.

5.03. Plaintiffs will apply to the Court for incentive payments for the Class Representatives of up to \$100,000 total, for their time, effort, and expenses incurred in pursuing this litigation, to be paid from the Cash Settlement Fund. BNY Mellon takes no position on the application. Any incentive payments awarded by the Court shall be paid from the Cash Settlement Fund by the Settlement Administrator or as the Court may otherwise direct within five calendar days after the Effective Date, or at such other time as the Court may direct following the Effective Date, and in accordance with instructions to be provided by Class Counsel. The Settlement Administrator shall file a Form 1099 for the payment of any incentive award as required by and consistent with IRS rules and regulations. In the event the Court awards incentive payments less than the amount requested, this Agreement shall nonetheless remain in full force and effect.

5.04. A Form 1099 for the payment of attorneys' fees and expenses will be filed as required by and consistent with IRS rules and regulations. Class Counsel shall cooperate with the Settlement Administrator to provide all information necessary to process the payment including completing any requested tax forms (e.g., IRS Form W-9 and applicable tax identification numbers). Defendant shall have no responsibility for, and no liability whatsoever with respect to any tax obligations or any allocation among the Class Representatives and Class Counsel, and/or any other person who may assert some claim thereto, of any award, payment or credit issued or made in this Action or pursuant to this Agreement, including but not limited to any award or payment pursuant to this section 5. Class Counsel and the Class Representatives shall alone be responsible for the reporting and payment of any federal, state, and/or local income or

other form of tax on any payment to them made pursuant to this section 5. Neither Class Counsel nor BNY Mellon's counsel are providing any tax-related advice to the Class Representatives or absent class members as part of this Settlement Agreement.

5.05. The Parties agree that Final Approval of this Settlement is independent of approval of any application of incentive payments to the Class Representatives or attorneys' fees and out of pocket costs.

VI. Identification Of Settlement Class Members And Their Trusts

6.01. Within ten calendar days (or the next business day thereafter if not ending on a business day) of Preliminary Approval, BNY Mellon will provide the Settlement Administrator with the Class Trust List and Notice List, as defined in paragraphs 1.08 and 1.18. Because the information about Settlement Class members that will be provided to the Settlement Administrator will consist of confidential information, non-public personal information, and other information protected by privacy laws, the Settlement Administrator will execute the addendum to the Protective Order and will take all reasonable steps to ensure that any information provided to it by BNY Mellon will be used solely for the purpose of effecting this Settlement and otherwise shall comply with BNY Mellon vendor and information security requirements. The Settlement Administrator shall administer the Settlement in accordance with the terms of this Settlement Agreement and, without limiting the foregoing, shall treat any and all documents, communications and other information and materials received in connection with the administration of the Settlement as confidential and shall not

disclose any or all such documents, communications, or other information to any person or entity except as provided for in this Settlement Agreement or by court order.

6.02. For each Settlement Class Member whose trust is closed, the Settlement Administrator will update the last known address through the United States Postal Service National Change of Address (NCOA) database, and, if needed, by performing a search through Accurint or similar service.

6.03. Following entry of the Final Approval Order and prior to the Distribution Date, BNY Mellon will update the open and closed status of each Class Trust and will provide a corresponding update to the Settlement Administrator, and will report to Class Counsel the number of Class Trusts that closed after the date of Preliminary approval. For Class Trusts that closed after the date of Preliminary Approval, BNY Mellon will make reasonable efforts to provide, using reasonably accessible information, (i) for irrevocable trusts, the names and addresses of beneficiaries at the time the trust closed, and (ii) for revocable trusts, the names and addresses of settlors/grantors at the time the trust closed.

VII. Class Settlement Procedures.

7.01. Class Data. Prior to the signing of this Agreement, BNY Mellon has provided Class Counsel with the following data, which the Parties agree shall not be admissible in the event this Settlement terminates, fails to obtain preliminary or final approval, or does not become Final for any reason: (1) the number of open Class Trusts; (2) the number of closed Class Trusts; (3) the aggregate amounts of line-item Tax Preparation Fees paid by open Class Trusts; and (4) the aggregate amounts of line-item

Tax Preparation Fees paid by closed Class Trusts. BNY Mellon will also provide Class Counsel with the number of Settlement Class Members, after the Notice List has been provided to and processed by the Settlement Administrator, which the Parties agree shall not be admissible in the event this Settlement terminates, fails to obtain preliminary or final approval, or does not become Final for any reason. In addition, after the Class Trust List has been provided to the Settlement Administrator, Class Counsel may make reasonable inquiries of the Settlement Administrator for information regarding average per trust payments. After the expiration of the Response Deadline, Class Counsel shall be entitled to review the per trust payment calculations of the Settlement Administrator by selecting 10 to 20 trusts at random and reviewing the calculations of the trusts' payment under the Plan of Allocation. Class Counsel may request information from the Settlement Administrator to respond to inquiries from Settlement Class Members. The Settlement Administrator and Class Counsel will include BNY Mellon's counsel on all communications made pursuant to this paragraph, and the Settlement Administrator may only provide information to Class Counsel subject to the terms of this Agreement, the Protective Order, and Federal Rule of Evidence 408.

7.02. Motion for Preliminary Approval. Within five calendar days after the signing of this Agreement, the Class Representatives shall file a motion for preliminary approval of the proposed settlement, which BNY Mellon agrees not to oppose, subject to a reasonable opportunity to review and comment upon it, but such review shall not exceed 3 calendar days not including the date of filing. The Class Representatives shall

request the entry of an order in the form annexed hereto as Exhibit C, providing, among other things:

- (a) That the Settlement is preliminarily approved as being within the range of reasonableness, and that the Court is likely to certify the class for purposes of settlement, such that notice thereof should be given to the Settlement Class;
- (b) That the Class Representatives are appointed as representatives for the Settlement Class and Class Counsel is appointed as counsel for the Settlement Class;
- (c) That the Class Notice substantially in the form attached as Exhibit A, is approved by the Court; and that the mailing of the Class Notice in the manner and form set forth in this Agreement meets all the requirements of Rule 23 and any other applicable law, constitutes the best notice practicable under the circumstances, and shall constitute valid, due and sufficient notice to all persons entitled thereto;
- (d) That deadlines shall be established consistent with this Settlement for mailing of the Class Notice, the filing of any objections, the filing of any requests to be excluded or to opt-out, the submission of Verification Forms, and deadlines for the filing of any papers in connection with the Final Approval Hearing and the consideration of the approval or disapproval of the Settlement;
- (e) That any objections to: (i) the certification of the Settlement Class and the proposed Settlement Agreement described in the Class Notice, and/or (ii) the entry of the Final Approval Order, shall be heard and any papers submitted in support of such objections shall be considered by the Court at the Final Approval Hearing only if, on or before the date to be specified in the Class Notice and Preliminary Approval Order, such objector timely files a written objection to the Settlement, states the basis for such objection, states whether it applies only to the objector, to a specific subset of the class, or to the entire class, and sends copies of the objection and all supporting documents to the Court and counsel for both Parties so that such papers are actually received by the Response Deadline set by the Court, which shall be no later than thirty calendar days after the mailing of the Class Notices. The objection must also include the name, address, telephone number of the Settlement Class Member objecting and, if represented by counsel, of his/her counsel, and a statement of whether he/she intends to appear at the Final Approval Hearing, either with or without counsel. Any Settlement Class Member who fails to object to the

Settlement in the manner described in the Class Notice and consistent with this paragraph shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means. Subject to approval of the Court, any Settlement Class Member who files and serves a written objection may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved, but only if the objecting Settlement Class Member: (i) files with the Clerk of the Court a notice of intention to appear at the Final Approval Hearing by the Response Deadline (“Notice of Intention to Appear”); and (ii) serves the Notice of Intention to Appear on counsel for both Parties by the Response Deadline. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth herein shall be deemed to have waived his or her right to appear;

- (f) That any attorneys representing Settlement Class Members shall be required to file a notice of appearance;
- (g) That any person who wishes to opt out of the Settlement shall mail a notice of intention to opt-out to the Settlement Administrator on or before a date specified in the Class Notice and Preliminary Approval Order. The notice of intention to opt out shall: (i) identify the case name; (ii) set forth the Settlement Class Member’s full name, current address and telephone number; (iii) state his or her intention not to participate in the Settlement; (iv) identify the trust(s) as to which he or she is opting out; and (v) be personally signed by the person requesting exclusion. The notice of intention to opt out shall be postmarked on or before the Response Deadline specified in the Class Notice, which shall be no later than thirty calendar days after the mailing of the Class Notices. No Settlement Class Member, or any person acting on behalf of or in concert or participation with that Settlement Class Member, may exclude any other class member. Any Settlement Class Member who desires to opt out must take timely affirmative written action pursuant to this section, even if the person desiring to opt out of the Class (i) files or has filed a separate action against any of the Released Parties, or (ii) is, or becomes, a putative or actual class member in any other class action filed against any of the Released Parties. Any Settlement Class Member who properly opts out of

the Settlement Class shall not: (i) be bound by any orders or judgments relating to the Settlement; (ii) be entitled to relief under, or be affected by, the Agreement; (iii) gain any rights by virtue of the Agreement; or (iv) be entitled to object to any aspect of the Settlement. Notwithstanding the foregoing, a Class Member shall have the right to revoke a properly and timely submitted request for exclusion, including requests for exclusion submitted following notice of the Court's September 14, 2018 class certification Order, if a notice of the Class Member's election to revoke his or her exclusion is sent to the Settlement Administrator, postmarked on or before the Response Deadline;

- (h) That the Preliminary Approval Order substantially in the form of Exhibit C to the Settlement Agreement is approved;
- (i) That a hearing shall be held at the time and date to be set by the Court, to consider and determine whether the proposed Settlement Agreement is fair, reasonable and adequate and should be approved by the Court, and whether the judgment approving the Settlement and dismissing the Action on the merits and with prejudice against the Class Representatives and the Settlement Class Members should be entered, and to consider such other matters as may properly come before the Court in connection with the Final Approval Hearing;
- (j) That the Final Approval Hearing may, from time to time and without further individual notice to the Settlement Class, be continued or adjourned by order of the Court;
- (k) That the Action is stayed, other than proceedings as may be necessary to carry out the terms and conditions of the Agreement;
- (l) That, pending Final Approval and upon expiration of the Response Deadline, each Settlement Class Member is preliminary enjoined from maintaining, commencing, prosecuting or pursuing directly, representatively, or in any other capacity any Released Claim subsumed and covered by the Release in this Agreement in any court or arbitration forum;
- (m) That all Settlement Class Members will be bound by the Final Approval Order; and
- (n) That the Plaintiffs shall file and serve all papers in support of the motion for entry of the Final Approval Order, which shall be substantially in the form of Exhibit B to this Settlement Agreement, the motion for approval of attorneys' fees and costs, and incentive payments, and/or in response to

any timely objections that comply with the requirements set forth in the Notice, on or before fourteen calendar days prior to the Final Approval Hearing or on a date (or dates) set by the Court.

7.03. Class Notice Procedure. Within thirty calendar days after Preliminary Approval, the Settlement Administrator will send to each Settlement Class Member a Class Notice in the form of Exhibit A by first class mail, addressed to the address contained in the Notice List, as updated. The Settlement Administrator shall provide counsel with written confirmation of the mailing.

7.04. If any Class Notices are returned with a new address prior to seven calendar days before the Response Deadline, the Settlement Administrator shall remail the notice to the new address. If any Class Notices are returned without a forwarding address prior to seven calendar days before the Response Deadline, the Settlement Administrator shall perform a search for a current address through Accurint or similar service. Nothing in this paragraph shall be construed to extend the Response Deadline for any Settlement Class Member.

7.05. No later than thirty calendar days after the Effective Date, the Settlement Administrator, upon the approval of the Court to file under seal pursuant to the Protective Order (to protect the names, addresses, and other personal information of Settlement Class Members), will cause to be filed ex parte with the Court a list of the names and addresses of all Settlement Class Members to whom the Class Notice was sent.

7.06. No later than the mailing of the Class Notice, the Settlement Administrator shall establish the settlement website, which shall contain copies of this

Agreement and Exhibits including the Class Notice and Verification Form, and the Second Amended Complaint. The website will also include contact information for the Settlement Administrator and Class Counsel. The settlement website shall remain open and accessible until ninety (90) calendar days after the Distribution Date.

7.07. All costs of settlement administration, including but not limited to the costs of printing and mailing the Class Notices and checks to Settlement Class Members, managing the Cash Settlement Fund, status reporting, submitting the CAFA notice, and creating and hosting the settlement website and toll-free number, shall be paid from the Cash Settlement Fund. BNY Mellon shall not be responsible for any costs of the Settlement Administrator.

7.08. Beneficiaries and grantors/settlors of Closed Class Trusts will also be sent a Verification Form, in the form of Exhibit D, with their Class Notice, which when completed will confirm their identity and current address, and the trust(s) for which they were a beneficiary or grantor/settlor, and will be a satisfactory certification that they are Settlement Class Members entitled to payment. The Settlement Administrator will maintain a toll-free number and an electronic Verification Form that can be completed online as well. The Class Notice will describe the purpose of the Verification Form and provide an online link to it. Recipients will have until the Response Deadline, as set by the Court, to complete the Verification Form and return it to the Settlement Administrator. Recipients who timely and properly complete such Verification Forms will, if they are verified by the Settlement Administrator, be entitled to a share of their

closed trust(s)' proportional settlement payment, such payment to be divided equally among those who submit timely and valid Verification Forms for that trust.

7.09. Within five business days after the deadline for submitting Verification Forms, the Settlement Administrator will, using the Notice List, confirm the information submitted on the Verification Form, and that the Settlement Class Member is therefore entitled to payment under the Settlement Agreement. The Settlement Administrator will report to Class Counsel and BNY Mellon's counsel promptly as to the Verification Forms received, whether or not the Settlement Administrator verified that the person submitting the Verification Form is entitled to a payment.

7.10. At least fourteen calendar days prior to the Final Approval Hearing, the Settlement Administrator shall prepare a list of the persons who submitted Verification Forms, the name of the trusts they are associated with, state whether it verified that the person is a person entitled to a payment under the Settlement, and shall serve this list on Class Counsel (with identifying information redacted) and BNY Mellon's counsel.

7.11. CAFA Notice. BNY Mellon shall cause the Settlement Administrator to send the notice required by Section 1715 of the Class Action Fairness Act (28 U.S.C. § 1715) to the required government officials within ten calendar days of filing this Agreement. In no event shall the Final Approval Hearing take place prior to the provision of effective notices and the expiration of the statutory time. The Final Approval Order shall make a finding that 28 U.S.C. § 1715 was fully complied with.

7.12. Within five business days after the Response Deadline, the Settlement Administrator shall prepare a list of the persons who have complied with the

requirements for exclusion from the Settlement Class and shall serve such list upon Class Counsel and BNY Mellon's Counsel. Class Counsel shall file such document with the Court, under seal pursuant to the Protective Order (to protect the names and addresses of Settlement Class Members), at least five calendar days prior to the Final Approval Hearing. Upon the entry of the Final Approval Order, the persons who timely and properly requested exclusion from the Class will not be considered Settlement Class Members for purposes of this Agreement.

7.13. At least fourteen calendar days prior to the Final Approval Hearing, the Plaintiffs shall file a motion for Final Approval of the Settlement Agreement, along with supporting documents, and Plaintiffs' counsel shall file a Motion for Approval of Attorneys' Fees and Expenses, and Incentive Awards. BNY Mellon will not oppose, directly or indirectly, such motions provided they are factually accurate, consistent with the terms of this Agreement, and subject to BNY Mellon's opportunity to review, and comment upon a draft of the motion for Final Approval before filing. Plaintiffs' motion will request that the Court grant Final Approval and enter judgment substantially in the form of the Final Approval Order attached as Exhibit B, approving this Agreement as final, fair, reasonable, adequate, and binding on all Settlement Class Members, ordering that the cash payments be made to the Settlement Class Members, and approving an award of attorneys' fees and expenses be paid to Class Counsel, and incentive payments to the Class Representatives. The Final Approval Order shall also, among other things:

- (a) Find that (i) the Court has personal jurisdiction over the Settlement Class Members, (ii) the Court has personal jurisdiction over the claims asserted in the Action, and (iii) venue is proper;

- (b) Finally certify the Settlement Class for settlement purposes only;
- (c) Find that the form and means of disseminating the Class Notice complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution, and find that the Parties and procedures used complied with federal law so as to give full effect to the Settlement;
- (d) Enter Final judgment with respect to the Released Claims of all Settlement Class Members and dismiss the Released Claims with prejudice;
- (e) Make the Releases in section 11 of this Agreement effective as of the date of the Final judgment;
- (f) Permanently bar and enjoin the Class Representatives and all Settlement Class Members from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction for the Released Claims;
- (g) Permanently bar and enjoin the Class Representatives and all Settlement Class Members from organizing Settlement Class Members, or soliciting the participation of Settlement Class Members, or persons who would otherwise fall within the definition of Settlement Class Members but who have requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint or counterclaim to include class allegations, or seeking class certification in a pending action) in any jurisdiction based on or relating to any of the Released Claims;
- (h) Find that, by operation of the entry of the Final Approval Order, the Class Representatives and all of the Settlement Class Members shall be deemed to have forever released, relinquished, and discharged the Released Parties from any and all Released Claims;
- (i) Authorize the Parties to implement the terms of this Agreement;
- (j) Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Agreement, the Final judgment, and for any other necessary purpose; and
- (k) Preserve all existing rights of the Hershenson Trust in *In re Trust Under Deed of Morris A. Hershenson F/B/O Lee M. Hershenson, et al.*, No. 02-72-

R1324 (Alleghany County Orphan's Court), other than any claims released by this Agreement.

7.14. The Final Approval Order shall not provide for any injunctive relief against Defendant.

VIII. Administration Of The Settlement.

8.01. **Uncashed/Unclaimed Checks.** Those Settlement Class Members whose checks are not cashed within ninety calendar days after the Distribution Date, shall be ineligible to share in the Cash Settlement Fund. The funds from any checks that remain uncashed after the ninety-day period provided herein shall be distributed to the *cy pres* beneficiaries selected by the Parties and approved by the Court.

8.02. **Notification to Counsel.** One hundred calendar days after the Distribution Date, the Settlement Administrator shall notify Class Counsel and BNY Mellon's counsel in writing of the number of Settlement Class Members sent checks, the number who did not cash the checks, the total dollar amount of the checks distributed, and the total dollar amount of uncashed checks.

8.03. **Cy Pres.** Thirty calendar days after the date the checks become void, any uncashed checks distributed pursuant to the terms of this Agreement shall be donated to the following charitable organizations: Massachusetts Bar Foundation and Pennsylvania Bar Foundation. The Settlement Administrator shall deliver the check made payable to the organization, with an explanatory letter, copying the Court and Class Counsel.

8.04. Certification of Distribution. Within twenty calendar days after the final distribution of all portions of the Settlement, the Settlement Administrator shall file a declaration certifying to the Court that the distributions provided for by this Agreement have all been timely made and shall serve a copy thereof on Class Counsel and BNY Mellon's counsel.

8.05. Dismissal of Claims. All Released Claims shall be dismissed with prejudice as to the Plaintiffs and Settlement Class Members upon entry of the Final Approval Order.

IX. Covenants Not to Sue

9.01. The Class Representatives, on behalf of themselves and the Settlement Class Members, covenant and agree: (i) not to file, commence, prosecute, intervene in, or participate in (as class members or otherwise) any action in any jurisdiction, or object to any accounting proceeding, for the Released Claims, against any of the Released Persons; (ii) not to organize or solicit the participation of Settlement Class Members, or persons who would otherwise fall within the definition of the Settlement Class but who requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) in any jurisdiction based on or relating to any of the Released Claims or the facts and circumstances relating thereto, against any of the Released Parties; and (iii) that the foregoing covenants and this Agreement shall be a complete defense to any of the Released Claims against any of the Releasees.

X. Representations and Warranties

10.01. The Class Representatives represent and warrant that they have not assigned or otherwise transferred any interest in any of the Released Claims against any of the Released Parties, and further covenant that they will not assign or otherwise transfer any interest in any of the Class Representatives' Released Claims.

10.02. The Class Representatives represent and warrant that they have no surviving claim or cause of action against any of the Released Parties with respect to any of the Released Claims.

10.03. The Parties, and each of them on his, her, or its own behalf only, represent and warrant that they are voluntarily entering into the Settlement Agreement as a result of arm's-length negotiations among their counsel, that in executing the Settlement Agreement, they are relying solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; and that, except as provided herein, they have not been influenced to any extent whatsoever in executing the Settlement Agreement by representations, statements or omissions pertaining to any of the foregoing matters by any Party or by any person representing any Party to the Settlement Agreement. Each of the Parties assumes the risk of mistake as to facts or law.

XI. Releases

11.01. On the Effective Date, Releasors, including but not limited to the Class Representatives, on their own behalf and on behalf of each Settlement Class Member, by operation of this Release and the judgment set forth in the Final Approval Order, do hereby and shall be deemed to have fully, finally, conclusively, irrevocably, and forever released, settled, compromised, relinquished, and discharged any and all of the Releasees of and from any and all Released Claims and, without further action by any person or the Court, will be deemed: (a) to have consented to dismissal of the Action and the dismissal with prejudice of any and all Released Claims; (b) to have released and forever discharged any and all Released Claims; and (c) to be forever barred and enjoined from objecting, instituting or further prosecuting, in any forum whatsoever, including but not limited to any state, federal, or foreign court, or regulatory agency, or any arbitration forum, each and every Released Claim. The Releasors acknowledge and agree that they are aware that they may hereafter discover material or immaterial facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Release, that it is possible that unknown facts, losses or claims exist, and that known losses may have been underestimated in amount or severity. This was explicitly taken into account in connection with this Agreement. It is the Releasors' intention to, and they do hereby, upon the Effective Date of this Agreement, fully, finally, and forever settle and release each and every one of the Releasees from each and every Released Claim.

11.02. Subject to Court approval, each Settlement Class Member who does not timely and validly opt out shall be bound by this Agreement and all of their Released

Claims shall be dismissed with prejudice and released even if they never received actual, prior notice of the Action or its settlement in the form of the Class Notice or otherwise. The Release and agreements contained in this section 11 shall apply to and bind all Settlement Class Members, including those Settlement Class Members whose mailed Class Notices are returned as undeliverable, and those for whom no current address can be found, if any.

11.03. Promptly after the Effective Date, Settlement Class Members shall dismiss with prejudice all claims, actions or proceedings that are released pursuant to this Agreement, or withdraw any objections to pending accountings as to claims or objections that are released pursuant to this Agreement. In the event any such actions or proceedings are not dismissed and BNY Mellon learns of the action, BNY Mellon may provide notice to the Settlement Class Member of this Settlement and request dismissal of the action or denial of any objection.

XII. Termination

12.01. In the event that the Settlement set forth in this Agreement is not approved without changes by the Court or, if one of the conditions upon which the Agreement is based is not satisfied, or if the Court determines that it lacks jurisdiction to approve the Settlement, or if there is a court order from another court that takes jurisdiction over some or all of the Claims, or if there is a regulator determination that frustrates the purpose of and protection of the Settlement, or in the event that the Effective Date does not occur, no further payments shall be made by BNY Mellon to anyone in accordance with the terms of this Agreement, the Parties will bear their own

costs and fees with regard to the efforts to obtain Court approval, and this Agreement shall be deemed null and void with no effect on the Action whatsoever. Reductions in the amount of the requested Attorneys' Fees and Expenses shall not be deemed a substantial change necessitating termination of the Settlement.

12.02. Failure of the Court to enter the Preliminary Approval or Final Approval Order in its entirety or in a similar form without material changes thereto as determined by BNY Mellon, Class Counsel or the Class Representatives will be grounds for BNY Mellon, Class Counsel or the Class Representatives to terminate the Settlement and the terms of this Agreement. If any material portion of the Agreement or the Final Approval Order is vacated, modified, or otherwise altered on appeal, BNY Mellon, Class Counsel or the Class Representatives may, in their sole discretion, within fourteen (14) calendar days of such appellate ruling, declare that the Agreement has failed to become effective, and in such circumstances the Agreement shall cease to be of any force and effect.

12.03. In the event that Settlement Class Members who are the grantors, settlors, qualified beneficiaries and/or co-trustees of 3% or more of the Class Trusts exclude themselves from the Settlement Class, Defendant shall have the absolute discretionary right (but not the obligation) to terminate this Settlement and Agreement and in such case, each and every one of BNY Mellon's obligations under this Agreement shall cease to be of any force and effect, and this Agreement and any orders entered into in connection therewith shall be vacated, rescinded, cancelled, and annulled (except for any provision included in the Preliminary Approval Order substantially similar to

paragraph 21 of the Preliminary Approval Order attached as Exhibit C). If BNY Mellon exercises this option, the Parties shall return to the status quo in the Action as if the Parties had not entered into this Agreement. In addition, in such event, the Agreement and all negotiations, court orders, and proceedings relating thereto shall be without prejudice to the rights of the Parties, and each of them, and evidence relating to the Agreement and all negotiations shall not be admissible or discoverable in the Action or in any other proceeding. BNY Mellon must exercise this option pursuant to this paragraph at least fifteen (15) calendar days prior to the Final Approval Hearing, by giving written notice of such exercise to Class Counsel.

12.04. If one of the Parties exercises a right herein to terminate or rescind this Agreement or this Agreement is not approved by the Court pursuant to the proposed Final Approval Order, this Agreement, the conditional class certification provided herein, the Settlement proposed herein (including any modifications made with the consent of the Parties), and any action taken or to be taken in connection therewith shall be terminated and shall become null and void and have no further force or effect, the Preliminary Approval Order shall be vacated (except for any provision included in the Preliminary Approval Order substantially similar to paragraph 21 of the Preliminary Approval Order attached as Exhibit C), the Parties shall be restored to their respective positions existing prior to the execution of this Agreement, and the Parties' rights and obligations with respect to the use of this Agreement and the Settlement contemplated hereby will be subject to section 2 hereof. In addition, neither this Agreement, the preliminary certification of the Class, the Preliminary Approval Order, nor any other

document in any way relating to any of the foregoing, shall be relied on, referred to, or used by anyone in any way for any purpose in connection with any further proceedings in this Action and/or any action, lawsuit, arbitration, or proceeding involving a Released Claim.

XIII. Miscellaneous Provisions.

13.01. Parties to Use Best Efforts to Effectuate Settlement. The Parties' Counsel shall use their best efforts to cause the Court to give Preliminary Approval to this Agreement as promptly as practicable, to take all steps contemplated by this Agreement to effectuate the Settlement on the stated terms and conditions and to obtain Final Approval of this Agreement.

13.02. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, without regard to conflict of laws rules. This Agreement shall be enforced the United States District Court in the District of Massachusetts. Defendant and Settlement Class Members waive any objection that any such Party may have or hereafter may have to the venue of such suit, action, or proceeding.

13.03. Entire Agreement. The terms and conditions set forth in this Agreement and the exhibits thereto constitute the complete and exclusive statement of the Class Action Settlement Agreement between the Parties and may not be contradicted by evidence of any prior or contemporaneous agreement.

13.04. Modification Only in Writing. This Agreement may be altered, amended, modified or waived, in whole or in part, only in a writing signed by the Class

Representatives, Class Counsel and Defendant. This Agreement may not be amended, altered, modified or waived, in whole or in part, orally.

13.05. No Ambiguity To Be Construed In Favor of Either Party. The determination of the terms of, and the drafting of, this Agreement has been by mutual agreement after negotiation, with consideration by and participation of all Parties hereto. Accordingly, this Agreement shall be considered neutral and no ambiguity shall be construed in favor or against the Parties.

13.06. Successors. This Agreement shall be binding upon, and inure to the benefit of, the respective heirs, successors and assigns of the Parties hereto; but this Agreement is not designed to and does not create any third party beneficiaries.

13.07. No Third Party Rights or Beneficiaries. Except as expressly provided for herein, no government agency or official can claim any rights under this Agreement or Settlement, whether with respect to the conduct that is the subject of the Releases, the restrictions in section 3, or the funds paid or used in the Settlement. There are no third party beneficiaries created or implied.

13.08. Waivers. The waiver by one Party of any provisions or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

13.09. Counterparts. This Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed

the same instrument. Signature pages exchanged by fax or by e-mail shall be as valid as originals.

13.10. Authority. Each person executing the Agreement or any of its exhibits on behalf of any Party hereto hereby warrants that such person has the full authority to do so.

13.11. Retention of Jurisdiction. The Court shall retain jurisdiction over the interpretation, effectuation and implementation of this Agreement, and all orders entered in connection therewith, and the Parties and their attorneys submit to the jurisdiction of the Court.

13.12. Recitals. The recitals set forth above shall be and hereby are terms of this Agreement as if set forth herein. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

13.13. No Collateral Attack. The Agreement shall not be subject to collateral attack by any Settlement Class Member or any recipient of notices of the Settlement after the Final judgment is entered.

13.14. Taxes. The Parties and their Counsel have provided no tax advice with respect to the terms of the Settlement. It is understood and agreed that Settlement Class Members and Class Counsel shall be responsible for paying any taxes due on any payments made to them pursuant to the Agreement.

13.15. No Opt Out Solicitation or Inducement. Plaintiffs and Class Counsel agree that they shall take no action which would or might have the effect of inducing or encouraging any person included in the Settlement Class to seek exclusion from the

Settlement Class, provided that this provision shall not restrict Class Counsel from providing appropriate legal advice in response to inquiries from the Settlement Class Members.

13.16. Conditional Nature of Settlement Agreement. This Class Action Settlement Agreement, including all associated exhibits and attachments, is made for the sole purpose of attempting to consummate a settlement of this Action on a class-wide basis. The Agreement is made in compromise of disputed claims. The Agreement is intended by the Parties to fully, finally and forever resolve, discharge and settle the Released Claims upon and subject to the terms and conditions set forth in this Agreement. Because this Action was pled as a class action, this Settlement must receive approval by the Court. Accordingly, the Parties enter into this Agreement and associated Settlement on a conditional basis that is subject to the final approval of the Court.

13.17. Effect of Disapproval. If the Court does not execute and enter the Preliminary Approval Order substantially in the form of Exhibit C to this Agreement without leave to amend or correct the Agreement or the associated Order, or if the Court does not execute and enter the Final Approval Order substantially in the form of Exhibit B to this Agreement without leave to amend or correct the Agreement or the associated Order, or if the associated Final judgment does not become Final for any reason, then this Agreement shall be deemed null and void *ab initio*; it shall be of no force or effect whatsoever; it shall not be referred to, utilized or admissible for any purpose whatsoever; and any negotiations concerning the terms of the Agreement shall

remain confidential and shall not be admissible in any proceeding for any purpose, and shall be destroyed. Further, by three business days after such Court disapproval, the Cash Settlement Amount shall be returned by the Settlement Administrator to BNY Mellon; provided, however, that (i) if Court disapproval or termination occurs before the Settlement has obtained Preliminary Approval, the interest accrued in the Cash Settlement Fund shall also be returned to BNY Mellon, and (ii) if Court disapproval or termination occurs after the Settlement has obtained Preliminary Approval, the interest accrued in the Cash Settlement Fund shall first be used to pay settlement administration costs already incurred by the Settlement Administrator pursuant to this Agreement, and, if any interest money remains, it too shall be returned to BNY Mellon.

13.18. Return/Destruction of Discovery Materials. The Parties agree that the terms of the Protective Order govern the dealings of the Parties with respect to materials produced in discovery in this Action and shall continue in force after the Effective Date of the Settlement. Accordingly, within sixty-three calendar days of the Effective Date, the Parties and their counsel of record, and any consultants or experts retained by the Parties or their counsel of record, shall use their best efforts to locate all Confidential Information (as the term is defined in the Protective Order) produced in the Action and return such Confidential Information to counsel of record for the producing party or destroy all originals or reproductions (whether in electronic, hard copy, or other form) of the Confidential Information subject to the exceptions contained in paragraph 11(b) of the Protective Order. The Parties acknowledge that their duty to return or destroy all Confidential Information is a continuing duty and the Parties agree

to return or destroy any such information found in the future. Notwithstanding this section, the Parties shall be excused from any duty to return or destroy Confidential Information to the extent necessary to comply with outstanding court orders or with judicial and non-judicial subpoenas, civil investigative demands or other compulsory process. The Court shall retain jurisdiction to ensure compliance with the Protective Order.

13.19. Media. The Parties, including their Counsel, agree that the terms of this Settlement shall remain confidential and not be disclosed by any Party until the Settlement Agreement is filed in connection with the Class Representatives' Motion for Preliminary Approval. The Parties and their counsel agree to keep all settlement negotiations confidential; provided, however, this obligation shall not prevent the Parties and their counsel from disclosing such information as required by law or regulation or to persons or entities (such as experts, the Court, and/or the Settlement Administrator) to whom the Parties agree disclosure must be made in order to effectuate the terms and conditions of this Agreement. The Parties and their counsel agree that any public statements they make (including, but not limited to, those made in social media and in response to media inquiries) regarding the Action or the Settlement shall not disparage any of the Parties, the claims, the defenses, or the Settlement. This provision shall not apply to objective statements of fact regarding the Action or the Settlement. This provision does not apply to any Settlement Class Members who contact Class Counsel concerning the Settlement. The Parties further agree that Class Counsel may make the settlement papers available on their firms' websites.

13.20. Notices. All notices (other than the Class Notice) required by the Agreement shall be made in writing and communicated by mail and email to the following addresses:

All notices to Class Counsel shall be sent to Class Counsel c/o:

Derek G. Howard
Derek G. Howard Law Firm, Inc.
42 Miller Avenue
Mill Valley, CA 94941
(415) 432-7192

John Roddy
Elizabeth Ryan
Bailey & Glasser LLP
99 High Street, Suite 304
Boston, MA 02110
Telephone: (617) 439-6730

All notices to Defense Counsel shall be sent to Defense Counsel c/o:

Jonathan M. Albano
S. Elaine McChesney
Morgan, Lewis & Bockius LLP
One Federal Street
Boston, MA 02110
Telephone: (617) 341-7700

K. Issac deVyver
Nellie E. Hestin
McGuireWoods LLP
260 Forbes Avenue, Suite 1800
Pittsburgh, PA 15222
Telephone: (412) 667-6000

13.21. Denial of Liability; No Admissions. BNY Mellon denies all of the claims as to liability, damages, fees, restitution and all other forms of relief as well as the class action allegations asserted in the Action. Neither this Agreement, nor any of its terms

and provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by BNY Mellon of any legal violations, any legal requirement or any failure to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or any Released Parties or to establish any condition constituting a violation of or non-compliance with federal, state, local or other applicable law, or the propriety of class certification in any proceeding or action. The Parties expressly agree and represent that, in the event that the Court does not approve this Agreement, or any appellate court disapproves of this Agreement in any way that prevents the Settlement from becoming final and effective, no Party will use or attempt to use any conduct or statement of any other Party in connection with this Agreement or any effort to seek approval of the Settlement to affect or prejudice any other Party's rights in any ensuing litigation. In the event that this Agreement is deemed void or the Effective Date does not occur, the Parties reserve all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including without limitation the ability to challenge class action treatment on any grounds or assert any and all defenses or privileges.

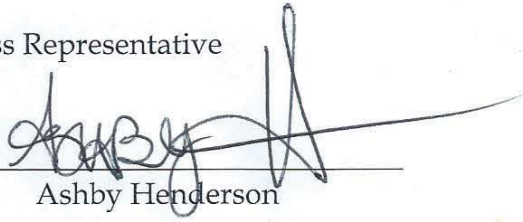
13.22. BNY Mellon's Attorneys' Fees and Costs. BNY Mellon shall bear its own legal fees, legal costs, and expenses incurred in this Action.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

AGREED TO AND ACCEPTED:

Dated: 10. May 2019

Class Representative

By: 
Ashby Henderson

Class Representative

Dated: _____

By: _____
Thomas Hershenson

Dated: _____

Defendant BNY Mellon, N.A.

By: _____

AGREED TO AND ACCEPTED:

Class Representative

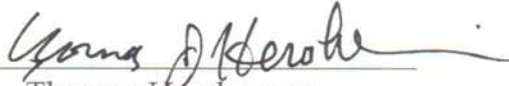
Dated: _____

By: _____

Ashby Henderson

Class Representative

Dated: 5/14/2019

By: 

Thomas Hershenson

Dated: _____

Defendant BNY Mellon, N.A.

By: _____

AGREED TO AND ACCEPTED:

Class Representative

Dated: _____

By: _____
Ashby Henderson

Class Representative

Dated: _____

By: _____
Thomas Hershenson

Dated: MAY 10, 2019

Defendant BNY Mellon, N.A.

By:  _____
JUDD HENRY
MANAGING COUNSEL

EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

If you are or were the beneficiary, grantor, or settlor of a personal trust administered by BNY Mellon that was charged a line item “tax preparation fee,” you could get a payment from a class action settlement.

A Federal Court Ordered This Notice – This is Not A Solicitation From A Lawyer.

- Plaintiffs and trust beneficiaries, Ashby Henderson and Thomas Hershenson (the “Plaintiffs”), have sued BNY Mellon, N.A. (“BNY Mellon”), alleging that it overcharged their trusts for tax return preparation.
- BNY Mellon’s records identify you as a class member in this class action lawsuit.
- If your trust is open, the proposed settlement provides for an automatic payment into your trust.
- If your trust is closed, the proposed settlement provides for payments to beneficiaries, grantors or settlors, who timely submit a valid verification form. For more details about the payments and whether your trust is open or closed see below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		
DO NOTHING	If your trust is open and you do nothing you will remain eligible to participate in the settlement, and obtain benefits. You will be bound by the Court’s final judgment and the release of claims explained in the Settlement Agreement.	
SUBMIT A VERIFICATION FORM	If your trust is closed and you timely submit a valid verification form confirming that you were a beneficiary, grantor, or settlor, you will be eligible to participate in the settlement, and obtain benefits. You will be bound by the Court’s final judgment and the release of claims explained in the Settlement Agreement. If your trust is closed, a Verification Form is included with this Notice.	Deadline: [Month Day, 2019]
EXCLUDE YOURSELF	<ul style="list-style-type: none"> • If your trust is closed and you exclude yourself from the Settlement, you will not receive any benefits from the Settlement. • If your trust is open, to validly exclude yourself, all of the beneficiaries of your trust must also exclude themselves. Excluding yourself is the only option that allows you to ever bring or maintain your own lawsuit against BNY Mellon regarding the allegations in the Action. 	Deadline: [Month Day, 2019]

OBJECT	You may write to the Court about why you object to the Settlement and think it shouldn't be approved. Filing an objection does not exclude you from the Settlement.	Deadline: [Month Day, 2019]
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- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after any appeals are resolved. *Please be patient.*
- These rights and options – **and the deadlines to exercise them** – are explained in more detail below.
- **Any questions? Read on and visit www.bnytaxfeeclasseaction.com.**

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BASIC INFORMATION

1. WHAT IS THIS LAWSUIT ABOUT?

A class action lawsuit entitled *Henderson, et al. v. BNY Mellon, N.A.*, Case No. 1:15-cv-10599-PBS, is pending in the U.S. District Court for the District of Massachusetts. The lawsuit claims that BNY Mellon breached its fiduciary duties to a class of trusts by allegedly charging excessive fees for the preparation of tax returns by a third party. You can read the Plaintiffs' Class Action Complaint at www.bnytaxfeeclassaction.com

BNY Mellon denies that it charged any improper fees. To the contrary, BNY Mellon's position is that the fees charged were reasonable and appropriate. BNY Mellon also contends that it has numerous other defenses to the action. The Court has not decided who is right or wrong.

Although no decision has been made about who is right and who is wrong, both sides have agreed to the proposed Settlement. A settlement avoids the expense, further delay and uncertainty of a trial and gives money and fee relief to Settlement Class Members more quickly. The Plaintiffs and the attorneys for the Settlement Class think the Settlement is best for all class members.

The lawsuit is called a "Class Action" because the Plaintiffs and Class Representatives are suing on behalf of other people with similar claims, called "Class Members." In a class action, one court resolves the issues for everyone in the Class—except for those people who choose to exclude themselves from the Class.

You may have received an earlier notice advising you that you are a member of the class in this Class Action. This earlier notice explained that the Court allowed, or "certified," a class that included you. Since that first notice was sent, the parties reached the Settlement described in this second notice. The Court preliminarily approved the Settlement and ordered that this second notice be sent to you. More information about the Settlement is available at www.bnytaxfeesclassaction.com.

2. HOW DO I KNOW IF I AM PART OF THE SETTLEMENT?

The Settlement Class is defined as:

From 2008 to the date of Preliminary Approval, all grantors, settlors, co-trustees, and qualified beneficiaries of personal trusts for which: (1) BNY Mellon served or serves as trustee; (2) BNY Mellon charged line-item tax-preparation fees amounting to at least \$400 per year for grantor trusts, at least \$750 per year for revocable and "simple" irrevocable trusts, or at least \$950 per year for "complex" irrevocable trusts for one or more of the covered years; (3) the preparer of the fiduciary return covered by the line item tax-preparation fee was PricewaterhouseCoopers; and (4) the trust's tax preparation fees claim is not barred by the applicable state statute of repose.

BNY Mellon's records show that you are a member of the Settlement Class. The settlement includes both open and closed trusts. If you have any questions about whether your BNY Mellon trust is open or closed, see below.

3. HOW DO I KNOW IF MY TRUST IS OPEN OR CLOSED?

Your trust is open if BNY Mellon is currently acting as a trustee and administering your trust. If your trust is open and you do not opt out of the Settlement, a cash payment will be deposited into your trust.

Your trust is deemed closed for purposes of the Settlement if for any reason, BNY Mellon is no longer administering your trust and the account is closed at BNY Mellon. If your trust is closed, you may receive a cash payment if you submit a Verification Form confirming that you were a beneficiary, grantor, or settlor of the closed trust, as described in Section 4 below, before the Month, Date, Year DEADLINE.

THE SETTLEMENT BENEFITS – WHAT YOU GET

4. WHAT DOES THE SETTLEMENT PROVIDE?

If the Court approves the Settlement, all Settlement Class Members who do not validly exclude themselves will be entitled to certain monetary benefits. If the Court does not approve the Settlement, Settlement Class Members will not get any benefits of the Settlement and the parties will go back to Court for further proceedings. The parties have made their best efforts to negotiate a settlement that is fair and reasonable under the circumstances.

Cash Payments. BNY Mellon will pay \$10,000,000 into a Settlement Fund which will be used, after deductions for court approved attorneys' fees and costs, administration costs, and any service awards to the Class Representatives, to make payments to open trusts and to Settlement Class Members who are beneficiaries, grantors, or settlors of closed trusts, on a proportional basis. Cash payments representing a trust's proportional share of the Settlement Fund, after court approved deductions, will be made (i) by a payment to the trust principal for open trusts, (ii) by checks to beneficiaries, grantors, or settlors of trusts that closed on or before the date the Settlement received Preliminary Approval who submit valid Verification Forms, and (iii) by checks to beneficiaries, grantors, or settlors of trusts that closed after the date of Preliminary Approval, as described below.

Each trust's *pro rata* share will be based on the proportion that the Tax Preparation Fees paid by that trust are to the total Tax Preparation Fees paid by all Open Class Trusts and Closed Class Trusts entitled to a pro rata share. For example, if the Tax Preparation Fees paid by a particular trust represent 2% of the total Tax Preparation Fees paid by Open Class Trusts plus Closed Class trusts for which a Verification Form is submitted or which closed after the date of Preliminary Approval, then the trust shall be entitled to 2% of the Net Cash Settlement Fund. The Plaintiffs estimate that on average the per trust payment will be approximately \$830, but this amount will vary depending on how much your trust paid in tax preparation fees during the Class Period.

In addition to these payments, for those trusts still being charged a line-item Tax Preparation Fee (as that term is defined in the Settlement Agreement), BNY Mellon will waive and not collect such fees for a period of ten years. Absorbing the third-party cost of preparing such tax returns for this ten-year period has a present monetary value of approximately \$621,350.

If your trust is still open you do NOT need to do anything to receive these benefits.

If Your Trust Is Closed. If your trust is closed, you must complete the Verification Form included with this Notice, which will confirm your identity and that you are a beneficiary of a closed irrevocable trust(s) and/or a grantor or settlor of a closed revocable trust(s), and entitled to a payment under the Settlement. Your completed Verification Form must be postmarked by [date] and mailed to the Settlement Administrator at the address in Section 7 below. The form may also be submitted online at the settlement website – www.bnytaxfeeclaimaction.com. If your trust closes between now and the date of distribution, your trust's pro rata payment will be paid to the beneficiaries, grantors, or settlors of the trust in equal shares.

The parties make no representations about the tax implications of any payments made in connection with this Settlement. You should seek your own tax advice before acting in response to this Notice.

5. IS THERE ANY MONEY AVAILABLE NOW?

No money or benefits are available now because the Court has not yet finally decided whether the Settlement should be approved. If the Court does finally approve the Settlement later this year, you or your trust will receive your portion of the recovery as soon as the Settlement Administrator determines your amount and sends you a check or distributes your trust's payment. With thousands of people entitled to recovery, this takes time.

THE LAWYERS AND CLASS REPRESENTATIVES REPRESENTING YOU

The Court decided that the law firms of Bailey & Glasser LLP and Derek G. Howard Law Firm, Inc. are qualified to represent you and all Settlement Class Members. Their addresses are at the end of this notice. Together the law firms are called "Settlement Class Counsel." They are experienced in handling similar cases.

You have the right to retain your own lawyer to represent you in this case, but you are not obligated to do so. If you do hire your own lawyer, you will have to pay his or her fees and expenses. You also have the right to represent yourself before the Court without a lawyer.

Counsel for the Settlement Class may seek attorneys' fees from the Settlement Fund of up to one-third of the Fund, plus expenses which are currently approximately \$390,000, subject to approval by the Court at the final approval hearing referred to below. Counsel for the Settlement Class will also apply to the Court for service awards of up to \$100,000 total for the two Class Representatives, to compensate them for their efforts undertaken on behalf of the Settlement Class. If the Court approves the requests, the fees, costs, and service awards will be

paid from the Settlement Fund. The remainder (“The Net Settlement Fund”) will be distributed to the class, as described above.

THE SETTLEMENT-WHAT YOU WILL GIVE UP

If the Court approves the proposed Settlement, unless you validly exclude yourself from the Settlement, you will be releasing BNY Mellon and the Released Parties from all of the claims described and identified in section 11 of the Settlement Agreement. A RELEASE MEANS THAT YOU WILL NOT BE ABLE TO FILE A LAWSUIT, CONTINUE PROSECUTING A LAWSUIT, OR BE PART OF ANY OTHER LAWSUIT AGAINST BNY MELLON, N.A. OR THE RELEASED PARTIES REGARDING CLAIMS RELATED TO THE CHARGING OF AND DISCLOSURE OF TAX PREPARATION FEES DURING THE PERIOD 2008 TO PRESENT.

6. YOUR RIGHTS AND OPTIONS—EXCLUDE YOURSELF

If you are a Settlement Class Member, you are included in the Settlement unless you validly request to be excluded. If you remain in the Settlement Class and this Settlement is approved by the Court, you will receive the benefits described above.

If your trust is closed, and you do not want to participate in the Settlement, you can exclude yourself or “opt out.” If your trust is open, in order to validly exclude yourself, all of the beneficiaries of your trust must exclude themselves.

If you exclude yourself, you will not receive any benefits from the Settlement, but you will not be bound by any judgment or release in this Action and will keep your right to sue BNY Mellon on your own if you want. If you exclude yourself, you may not object to the Settlement.

To exclude yourself, you must send a letter or postcard with your original signature stating: **(a)** the name and case number of the Action, “*Henderson v. BNY Mellon, N.A.*, Case No. 1:15-cv-10599-PBS”; **(b)** your full name, address, email address, and telephone number; and **(c)** a statement that you do not wish to participate in the Settlement, postmarked no later than [Month Day, Year] to the Settlement Administrator at:

Henderson v. BNY Mellon, N.A., c/o Class Administrator
[Address]
[City, State ZIP]

IF YOU DO NOT MAKE A TIMELY AND VALID REQUEST FOR EXCLUSION, YOU WILL REMAIN A SETTLEMENT CLASS MEMBER AND BE BOUND BY THE SETTLEMENT.

If you received an earlier notice advising you that you are a member of the class in this Class Action and you submitted a timely and valid request for exclusion following that notice, you are excluded from this Settlement *unless* you submit a request to revoke your exclusion to the Settlement Administrator at the above address, postmarked no later than [Month Day, Year].

7. YOUR RIGHTS AND OPTIONS— OBJECT TO THE SETTLEMENT

If you are a Settlement Class Member, you can object to the settlement if you don't like any part of it. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

To object, you must send a letter saying that you object to the *Henderson v. BNY Mellon* Settlement. You should give reasons why you think the Court should not approve it, and state whether your objection applies only to you, to a specific subset of the class, or to the entire class. Be sure to include your name, address, telephone number, your signature, and if you are represented by counsel, the name, address, and telephone number of your counsel. The Court will consider your views.

Your objection will not be valid unless it is sent to Settlement Class Counsel, BNY Mellon's Counsel, and the Court at the addresses provided below.

Mail the objection to these three different places, postmarked **no later than [Month] [Day], 2019:**

SETTLEMENT CLASS COUNSEL	BNY MELLON's COUNSEL	COURT
Elizabeth Ryan Bailey & Glasser LLP 99 High Street Suite 304 Boston, MA 02110	K. Issac deVyver McGuireWoods LLP 260 Forbes Avenue Pittsburgh, PA 15222	United States District Court John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300 Boston, MA 02210

FINAL APPROVAL HEARING

The Court will hold a hearing on _____ in Courtroom 19, 7th Floor, at the U.S. District Court for the District of Massachusetts, John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Boston, MA 02210, to decide whether to give final approval to the Settlement. The purpose of the Final Approval Hearing will be for the Court to determine whether the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class; to consider the award of attorneys' fees and costs to Class Counsel; to consider the request for a service award to the Class Representatives; and to consider whether the Settlement Class Members should be bound by the Release and be prohibited from suing over the release of claims about BNY Mellon charging line-item tax preparation fees. We do not know whether the Court will make its decision on the day of the hearing or sometime later.

The hearing may be postponed to a different date or time or location without notice. Please contact the Settlement Administrator or Class Counsel for any updates about the Settlement generally or the Final Approval Hearing specifically. At that hearing, the Court will hear any objections and arguments concerning the fairness of the Settlement. You may attend, but you do not have to. You may speak at the Final Approval Hearing only if (a) you have timely served and filed a proper objection, and (b) you have timely served and filed a Notice of Intent to Appear. Your Notice of Intent to Appear, along with any papers, exhibits, or other evidence you

intend to present, must be filed with the Court and sent to Class Counsel and BNY Mellon's Counsel (at the addresses listed in Question 7, above) no later than MONTH DAY, YEAR.

If you have requested exclusion from the Settlement, however, you may not speak at the Final Approval Hearing.

GETTING MORE INFORMATION

If you have additional questions you may contact Class Counsel at the address below. All of the records and other papers filed in the Action, including the Settlement Agreement, are on file with the Court and can be inspected during regular business hours at the Clerk's Office. The Clerk of the Court is located at the John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300, Boston, MA 02210. Key documents are also available on the settlement website www.bnytaxfeeclaimaction.com. **Please do not contact the Judge concerning this case.**

8. WHAT IF MY ADDRESS OR OTHER INFORMATION HAS CHANGED OR CHANGES AFTER I RECEIVE MY NOTICE?

It is your responsibility to inform the Settlement Administrator of your updated information so that a check may be sent to you, if the Settlement is approved and you have provided a timely and valid Verification Form in accordance with Section 4, above. You may do so by sending your updated information to: *Henderson v BNY Mellon, N.A.*, c/o Settlement Administrator [Address][City, State ZIP]

9. IMPORTANT DATES

_____ ALL VERIFICATION FORMS FROM BENEFICIARIES, GRANTORS, AND SETTLORS OF CLOSED TRUSTS must be postmarked and mailed to Henderson v. BNY Mellon Settlement Administrator P.O. Box XXXX, ADDRESS, ST ZIP.

_____ All OPT-OUTS/REQUESTS FOR EXCLUSION must be postmarked and mailed to Henderson v. BNY Mellon Settlement Administrator P.O. Box XXXX, ADDRESS, ST ZIP.

_____ All OBJECTIONS must be postmarked and mailed to the Court, Settlement Class Counsel, and BNY Mellon's Counsel, at the addresses above in Section 7.

10. IMPORTANT ADDRESSES

SETTLEMENT CLASS COUNSEL	BNY MELLON's COUNSEL
<p>John Roddy Elizabeth Ryan Bailey & Glasser LLP 99 High Street Suite 304 Boston, MA 02110</p> <p>Derek G. Howard Derek G. Howard Law Firm 42 Miller Avenue Mill Valley, CA 94941</p>	<p>Jonathan M. Albano S. Elaine McChesney Morgan Lewis & Bockius LLP One Federal Street Boston, MA 02110</p> <p>K. Issac deVyver Nellie E. Hestin McGuireWoods LLP 260 Forbes Avenue Pittsburgh, PA 15222</p>
COURT	SETTLEMENT ADMINISTRATOR
<p>United States District Court John Joseph Moakley U.S. Courthouse 1 Courthouse Way, Suite 2300 Boston, MA 02210</p>	<p>Henderson v. BNY Mellon Settlement Administrator P.O. Box _____ _____</p>

Dated: ____, 2019

By: Order of the District of Massachusetts
HONORABLE PATTI B. SARIS
UNITED STATES DISTRICT COURT JUDGE

EXHIBIT B

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ASHBY HENDERSON, et al.,

Plaintiffs,

v.

**BNY MELLON, NATIONAL
ASSOCIATION, et al.,**

Defendants.

Case No. 1:15-cv-10599-PBS

[PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

Plaintiffs Ashby Henderson and Thomas Hershenson (“Plaintiffs” or “Class Representatives”) have submitted a Motion for Final Approval of the Settlement set forth in the Class Action Settlement Agreement dated **[date of agreement]**, 2019 (the “Agreement” or “Settlement Agreement”). Class Counsel has also submitted to the Court their Unopposed Motion For An Order Awarding Attorneys’ Fees and Costs And Expenses To Class Counsel, and Incentive Awards to Class Representatives.

On _____, 2019, this Court granted preliminary approval to the proposed class action settlement set forth in the Agreement. This Court also provisionally certified a Settlement Class for settlement purposes, approved the procedure for giving Class Notice to the members of the Settlement Class, and set a Final Approval Hearing to take place on _____, 2019. The Court finds that due and adequate notice was given to the Settlement Class as required in the Court’s Order.

The Court has reviewed the papers filed in support of the motion for Final Approval, including the Settlement Agreement and exhibits thereto, memoranda and arguments submitted

on behalf of the Settlement Class, and supporting affidavits.

On _____, 2019, this Court held a duly noticed Final Approval Hearing to consider: (1) whether the terms and conditions of the Agreement are fair, reasonable and adequate; (2) whether a judgment should be entered dismissing the Settlement Class Members' Released Claims on the merits and with prejudice; and (3) whether and in what amount to award attorneys' fees and expenses to Class Counsel; and any award to the Class Representatives for their representation of the Class.

Based on the papers filed with the Court and the presentations made to the Court by the Parties and by other interested persons at the Final Approval Hearing, it appears to the Court that the Settlement Agreement is fair, adequate, and reasonable, and in the best interests of the Settlement Class.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. **Definitions.** This Judgment incorporates by reference the definitions in the Agreement, and all capitalized terms used, but not defined herein, shall have the same meanings as in the Agreement.

2. **Jurisdiction.** This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members, and venue in this Court is proper.

3. **No Merits Determination.** By entering this Order, the Court does not make any determination as to the merits of this case.

4. **Settlement Class.** Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finally certifies this Action as a class action, with the Class defined as: from 2008 to the date of Preliminary Approval, all grantors, settlors, co-trustees, and qualified

beneficiaries of personal trusts for which:

- (1) BNY Mellon served or serves as trustee;
- (2) BNY Mellon charged line-item tax-preparation fees amounting to at least \$400 per year for grantor trusts, at least \$750 per year for revocable and “simple” irrevocable trusts, or at least \$950 per year for “complex” irrevocable trusts for one or more of the covered years;
- (3) the preparer of the fiduciary return covered by the line item tax-preparation fee was PricewaterhouseCoopers; and
- (4) the trust’s Tax Preparation Fee Claim is not barred by the applicable state statute of repose.

5. The Court finds, for settlement purposes only, that class certification under Fed.

R. Civ. P. 23(b)(3) is appropriate in that, in the settlement context: (a) the Members of the Settlement Class are so numerous that joinder of all Settlement Class Members in the class action is impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual question; (c) the claims of the Class Representatives are typical of the claims of the Settlement Class; (d) the Class Representatives and their counsel will fairly and adequately represent and protect the interests of the Settlement Class; (e) the Settlement Class is ascertainable; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

6. **Designation of Class Representatives and Class Counsel.** The Court confirms the prior appointments of the Plaintiffs Ashby Henderson and Thomas Hershenson as Class Representatives, and the law firms of Bailey & Glasser LLP and Derek G. Howard Law Firm, Inc., as Class Counsel.

7. **Settlement Approval.** Pursuant to Rule 23(e), this Court hereby approves the Settlement and finds that it is, in all respects, fair, reasonable and adequate to the Parties. The Court further finds that the Settlement is the result of good faith arm’s-length negotiations

between experienced counsel representing the interests of the Parties. Accordingly, the Settlement is hereby finally approved in all respects, there is no just reason for delay, and the Parties are hereby directed to perform its terms.

8. **Dismissal with Prejudice.** Final Judgment is hereby entered with respect to the Released Claims of all Settlement Class Members, and the Released Claims in the Action are hereby dismissed in their entirety with prejudice and without costs, and the case shall be closed pursuant to Paragraph 21 of this Order. Nothing herein is intended to waive or prejudice the rights of Settlement Class Members who have validly and timely excluded themselves from the Settlement Class, as identified on Exhibit 1 hereto.

9. **Releases.** The releases as set forth in section 11 of the Agreement together with the definitions in paragraphs 1.1-1.32 relating thereto are expressly incorporated herein in all respects and made effective by operation of this Judgment. The Court hereby approves the release provisions as contained and incorporated in section 11 of the Agreement, including but not limited to the definitions of Released Claims, Releasers, Released Parties, and Unknown Claims. The Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally and forever released, relinquished and discharged all Released Claims (including Unknown Claims) against the Released Parties.

10. **Permanent Injunction.** The Releasers, including the Class Representatives and all Settlement Class Members, and anyone claiming through or on behalf of any of them, are forever barred and enjoined from: (a) filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction for the Released Claims; and (b) organizing Settlement Class Members, or soliciting the participation of Settlement Class Members, or persons who would otherwise fall within the definition of

Settlement Class Members but who have requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint or counterclaim to include class allegations, or seeking class certification in a pending action) in any jurisdiction based on or relating to any of the Released Claims.

11. **Approval of Class Notice.** The form and means of disseminating the Class Notice as provided for in the Order Preliminarily Approving Settlement and Providing for Notice constituted the best notice practicable under the circumstances, including individual notice to all Settlement Class Members who could be identified through reasonable effort. Said Notice fully satisfied the requirements of Rule 23 and complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution.

12. **Attorneys' Fees and Expenses.** Plaintiffs and Class Counsel have moved for an award of attorneys' fees in the amount of \$_____, and costs and expenses of \$_____. The Court has considered this application separately from this Judgment. The Court finds that an award of \$_____ in attorneys' fees, and \$_____ in costs and expenses is fair and reasonable, and the Court approves of Class Counsel attorneys' fees, costs and expenses in these amounts to be paid from the Cash Settlement Fund.

13. The Court further finds that incentive awards for Ms. Henderson in the amount of \$_____, and Mr. Hershenson in the amount of \$_____, are fair and reasonable, and the Court approves of the service awards in this amount. The Court directs the Settlement Administrator to disburse these amounts to Ms. Henderson and Mr. Hershenson from the Cash Settlement Fund as provided in the Settlement Agreement.

14. **Use of Order.** Neither this Order, the fact that a settlement was reached and filed, the Agreement, nor any related negotiations, statements or proceedings shall be construed

as, offered as, admitted as, received as, used as, or deemed to be an admission or concession of liability or wrongdoing whatsoever or breach of any duty on the part of BNY Mellon. This Order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. In no event shall this Order, the fact that a settlement was reached, the Agreement, or any of its provisions or any negotiations, statements, or proceedings relating to it in any way be used, offered, admitted, or referred to in the Action, in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding, by any person or entity, except by the Parties and only the Parties in a proceeding to enforce the Agreement.

15. **Continuing Jurisdiction.** Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over the administration, consummation, enforcement, and interpretation of the Agreement, the Final Judgment, and for any other necessary purpose, including to ensure compliance with the Protective Order.

16. **Termination of Settlement.** In the event that the Settlement does not become effective in accordance with the terms of the Agreement, or the Agreement is terminated pursuant to section 12 of the Agreement, the Parties shall be restored to their respective positions in the Action prior to the execution of the Agreement, the certification of the Settlement Class shall be automatically vacated, and this Judgment shall be rendered null and void (except paragraph 14 of this Order shall remain in effect) to the extent provided by and in accordance with the Agreement and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Agreement. By three business days after such termination or disapproval, the Cash Settlement Amount shall be returned by the Settlement Administrator to BNY Mellon; provided, however, that the interest accrued in the Cash Settlement Fund shall first be used to pay settlement administration costs already incurred by the Settlement Administrator pursuant to the Agreement, and, if any interest money remains, it too shall be returned to BNY Mellon.

17. **Implementation of the Agreement.** The Parties are hereby authorized to implement the terms of the Agreement.

18. **Reasonable Extensions.** Without further order of this Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Agreement.

19. **CAFA Notice.** BNY Mellon has provided notification to all appropriate federal and state officials regarding the Settlement as required by 28 U.S.C. § 1715.

20. **Class Notice List.** No later than thirty calendar days after the Effective Date (as defined in the Agreement), the Settlement Administrator shall file with this Court, under seal pursuant to the Protective Order entered in this litigation (in order to protect the names, addresses, and other personal information of Settlement Class Members), a list of the names and addresses of all Settlement Class Members to whom the Class Notice was sent.

21. **Entry of Final Judgment.** There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is hereby directed.

22. **Action Closed.** The Clerk of the Court is hereby directed to close the Action.

IT IS SO ORDERED.

DATED: _____

THE HONORABLE PATTI B. SARIS
UNITED STATES DISTRICT JUDGE

EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ASHBY HENDERSON, et al.,

Plaintiffs,

v.

BNY MELLON, NATIONAL
ASSOCIATION, et al.,

Defendants.

Case No. 1:15-cv-10599-PBS

**[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT AND
PROVIDING FOR NOTICE**

Plaintiffs Ashby Henderson and Thomas Hershenson (“Plaintiffs” or “Class Representatives”) have moved, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the settlement of this Action, in accordance with the Class Action Settlement Agreement dated [date of agreement], 2019 (the “Agreement” or “Settlement Agreement”), which, together with the exhibits thereto, sets forth the terms and conditions for a proposed settlement of the Action. The Court having read and considered the Agreement and the exhibits thereto,

IT IS HEREBY ORDERED that:

1. **Settlement.** Plaintiffs Ashby Henderson and Thomas Hershenson, on behalf of themselves and all members of the Class, and Defendant BNY Mellon, N.A. (“BNY Mellon”) have negotiated a potential settlement to the Action to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve the Released Claims (as defined in the Agreement) against BNY Mellon and the Released Parties.

2. **Definitions.** This Order incorporates by reference the definitions in the Agreement, and all capitalized terms used, but not defined herein, shall have the same meanings as in the Agreement.

3. **Jurisdiction.** This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Members of the Class, and venue in this Court is proper.

4. **Preliminary Approval.** The Court hereby preliminarily approves the Settlement Agreement as fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing described below. The Court finds on a preliminary basis that the Settlement Agreement falls within the range of reasonableness and was the product of informed, good-faith, arm's-length negotiations between the Parties and their counsel, and therefore meets the requirements for preliminary approval.

5. **Settlement Class.** The Court conditionally certifies, for settlement purposes only (and for no other purpose and with no other effect upon the Action, including no effect upon the Action should the Agreement not receive Final Approval or should the Effective Date not occur), a class defined as: from 2008 to the date of Preliminary Approval, all grantors, settlors, co-trustees, and qualified beneficiaries of personal trusts for which:

(1) BNY Mellon served or serves as trustee;

(2) BNY Mellon charged line-item tax-preparation fees amounting to at least \$400 per year for grantor trusts, at least \$750 per year for revocable and "simple" irrevocable trusts, or at least \$950 per year for "complex" irrevocable trusts for one or more of the covered years;

(3) the preparer of the fiduciary return covered by the line item tax-preparation fee was PricewaterhouseCoopers; and

(4) the trust's Tax Preparation Fee Claim is not barred by the applicable state statute of repose.

6. The Court finds, for settlement purposes only, that class certification under Fed. R. Civ. P. 23(b)(3) is appropriate in that, in the settlement context: (a) the Members of the Class are so numerous that joinder of all Settlement Class Members in the class action is impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over

any individual question; (c) the claims of the Class Representatives are typical of the claims of the Settlement Class; (d) the Class Representatives and their counsel will fairly and adequately represent and protect the interests of the Settlement Class Members; (e) the Settlement Class is ascertainable; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

7. **Designation of Class Representatives and Class Counsel.** The Court appoints the Plaintiffs Ashby Henderson and Thomas Hershenson as Class Representatives, and the law firms of Bailey & Glasser LLP and Derek G. Howard Law Firm, Inc., as Class Counsel for the Settlement Class.

8. **Final Approval Hearing.** A hearing (the “Final Approval Hearing”) shall be held before this Court, on _____, 2019, at _____m., at the United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, MA 02210 to determine, among other things: (i) whether the proposed Settlement of the Action on the terms and conditions provided for in the Agreement is fair, reasonable, and adequate to the Settlement Class and should be approved by the Court; (ii) whether a Final Judgment as provided in Paragraph 1.17 of the Agreement should be entered; (iii) whether Settlement Class Members should be bound by the Release set forth in the Agreement; and (iv) any amount of fees and expenses that should be awarded to Class Counsel and any award to the Class Representatives for their representation of the Settlement Class. The Parties shall include the date of the Final Approval Hearing in the Class Notice to be mailed to the Settlement Class.

9. **Class Notice.** The Court approves the form, substance and requirements of the proposed Class Notice, attached to the Settlement Agreement as Exhibit A. The Court further finds that the form, content and mailing of the Class Notice meet the requirements of Rule 23 and due process. The Court further finds that this is the best notice practicable under the circumstances and is reasonably calculated, under all the circumstances, to apprise potential Settlement Class Members of the pendency of the Action, to apprise persons who would otherwise fall within the definition of the Settlement Class of their right to exclude themselves

from the proposed Settlement Class, and to apprise Settlement Class Members of their right to object to the proposed Settlement and their right to appear at the Final Approval Hearing. The Court further finds that the Class Notice constitutes valid, due and sufficient notice to all persons entitled to notice.

10. **Settlement Administrator.** The Court appoints KCC, LLC (“Settlement Administrator”) to supervise and administer the notice procedure as more fully set forth below:

(a) No later than thirty days from the entry of this Order (“the Notice Date”), the Settlement Administrator shall mail the Class Notice, substantially in the form of Exhibit A to the Agreement (though the Settlement Administrator shall have discretion to format the Class Notice in a reasonable manner to minimize mailing or administration costs), by first class U.S. mail to each individual on the Notice List, along with a Verification Form for any recipients whose trust is a Closed Class Trust;

(b) No later than the Notice Date, the Settlement Administrator shall establish a website at [website], and shall post on the website the Agreement, the Class Notice, the Verification Form, and the operative Complaint in this Action, as well as contact information for the Settlement Administrator and Class Counsel;

(c) Following the issuance of the Class Notice, the Settlement Administrator shall provide counsel with written confirmation of the mailing; and

(d) The Settlement Administrator shall otherwise carry out its duties as set forth in the Agreement.

11. **Exclusion from the Class.** Any Settlement Class Member whose trust is closed may individually, upon request, be excluded or “opt out”, from the Settlement Class. Settlement Class Members whose trust is open may validly be excluded only if all of the beneficiaries of their trust also request exclusion. To request exclusion, the Settlement Class Member must mail a notice of intention to opt-out to the Settlement Administrator postmarked on or before the Response Date specified in the Class Notice, which shall be no later than 30 calendar days after the Notice Date. The notice of intention to opt out shall: (i) identify the case name; (ii) set forth

the Settlement Class Member's full name, current address, and telephone number; (iii) state his or her intention not to participate in the Settlement; (iv) identify the trust(s) as to which he or she is opting out; and (v) be personally signed by the person requesting exclusion. The notice of intention to opt out must be sent to the Settlement Administrator: *Henderson, et al. v. BNY Mellon, N.A.*, Settlement Administrator, [address] and be postmarked on or before the date specified in the Class Notice. All Settlement Class Members who submit a valid and timely notice of intention to opt out in the manner set forth in this paragraph shall have no rights under the Agreement and shall not be bound by the Agreement or any Final Judgment. Mass or class opt outs shall not be allowed. No Settlement Class Member, or any person acting on behalf of or in concert or participation with that Settlement Class Member, may exclude any other class member. A Settlement Class Member who desires to opt out must take timely affirmative written action pursuant to this Order and the Agreement, even if the person desiring to opt out of the Class (a) files or has filed a separate action against any of the Released Parties, or (b) is, or becomes, a putative class member in any other class action filed against any of the Released Parties. Any Settlement Class Member who properly opts out of the Settlement Class shall not: (i) be bound by any orders or judgments relating to the Settlement; (ii) be entitled to relief under, or be affected by, the Agreement; (iii) gain any rights by virtue of the Agreement; or (iv) be entitled to object to any aspect of the Settlement. Notwithstanding the foregoing, a Settlement Class Member shall have the right to revoke a properly and timely submitted request for exclusion, including requests for exclusion submitted following notice of the Court's September 14, 2018 class certification Order, if a notice of the Class Member's election to revoke his or her exclusion is sent to the Settlement Administrator, postmarked on or before the date specified in the Class Notice.

12. **Copies of Opt Out Requests.** The Settlement Administrator shall provide Class Counsel and Defense Counsel with a list of all timely notices of intention to opt out within five business days after the opt-out deadline.

13. **Entry of Appearance.** Any member of the Settlement Class who does not exclude himself or herself may enter an appearance in the Action, at his or her own expense, individually or through counsel of his or her own choice. If he or she does not enter an appearance, he or she will be represented by Class Counsel.

14. **Binding Effect on Class.** All Members who do not validly exclude themselves from the Settlement Class by properly and timely submitting an intention to opt out shall be bound by all determinations and judgments in the Action concerning the Settlement, whether favorable or unfavorable to the Settlement Class.

15. **Objections.** Any Settlement Class Member who does not timely and validly opt out of the Settlement Class may object to the proposed Settlement, or any aspect of it including attorneys' fees and expenses, and incentive awards, by filing a written objection with the Clerk of the United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, Massachusetts 02210, on or before thirty calendar days after the Notice Date. A copy of the objection must also be mailed to Class Counsel and Defense Counsel, so that it is received on or before thirty calendar days after the Notice Date. To be valid, the objection must set forth, in clear and concise terms: (a) the case name and number (*Henderson, et al. v. BNY Mellon, N.A.*, No. 1:15-cv-10599-PBS); (b) the name, address, and telephone number of the objector objecting and, if represented by counsel, of his or her counsel; (c) the complete basis for objection; (d) a statement of whether the objector intends to appear at the Final Approval Hearing, either with or without counsel; (e) a statement of whether the objection applies only to the objector, to a specific subset of the class, or to the entire class, and (f) copies of all supporting documents. Any Settlement Class Member who does not make his or her objection in the manner provided shall be deemed to have waived such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement as incorporated in the Agreement, and to the award of attorneys' fees and expenses to Class

Counsel and the payment of an award to the Class Representatives for their representation of the Class, unless otherwise ordered by the Court.

16. **Appearance of Objectors at Final Approval Hearing.** Any Settlement Class Member who files and serves a written objection in accordance with Paragraph 15 of this Order may appear, in person or by counsel, at the Final Approval Hearing, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objector: (a) files with the Clerk of the Court a notice of intention to appear at the Final Approval Hearing by the objection deadline (“Notice of Intention to Appear”); and (b) serves the Notice of Intention to Appear on Class Counsel and Defense Counsel by the objection deadline.

The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objector will present to the District Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Agreement and Class Notice shall be deemed to have waived his or her right to appear.

17. **Verification Forms.** Any beneficiary, grantor, or settlor of a Closed Class Trust that closed on or before the date of this Order who wishes to collect a payment under the terms of the Settlement must submit a completed Verification Form, substantially in the form of Exhibit D to the Agreement (though the Settlement Administrator shall have discretion to format the Verification Form in a reasonable manner to minimize mailing or administration costs), to the Settlement Administrator. Verification Forms must be submitted online or postmarked on or before the date specified in the Class Notice, which shall be no later than thirty calendar days after the Notice Date.

18. **Service of Motion for Final Approval.** The motion in support of final approval of the Settlement and Class Counsel’s application for attorneys’ fees and expenses and Class Representative service awards shall be filed and served no later than fourteen calendar days prior to the Final Approval Hearing and any responsive papers shall be filed and served no later than seven calendar days prior to the Final Approval Hearing.

19. **Fees, Expenses, and Awards.** Neither BNY Mellon nor the Released Parties shall have any responsibility for any application for attorneys' fees and expenses submitted by Class Counsel, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement. At or after the Final Approval Hearing, the Court shall determine whether any application for attorneys' fees and expenses, and any award to the Class Representatives for their representation of the Settlement Class, should be approved.

20. **Releases.** If the Settlement is finally approved, the Releasers shall release the Released Parties from all Released Claims and all Settlement Class Members will be bound by the Final Approval Order.

21. **Use of Order.** Neither this Order, the fact that a settlement was reached and filed, the Agreement, nor any related negotiations, statements, or proceedings shall be construed as, offered as, admitted as, received as, used as, or deemed to be an admission or concession of liability or wrongdoing whatsoever or breach of any duty on the part of BNY Mellon. This Order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. In no event shall this Order, the fact that a settlement was reached, the Agreement, or any of its provisions or any negotiations, statements, or proceedings relating to it in any way be used, offered, admitted, or referred to in the Action, in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding, by any person or entity, except by the Parties and only the Parties in a proceeding to enforce the Agreement.

22. **Continuance of Final Approval Hearing.** The Court reserves the right to continue the date of the Final Approval Hearing without further notice to Settlement Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Settlement Class.

23. **Stay of Proceedings.** All proceedings in this Action are stayed until further Order of this Court, except as may be necessary to implement the Settlement or comply with the terms of the Agreement.

24. **Preliminary Injunction.** Pending final determination of whether the Settlement should be approved, and upon expiration of the opt-out deadline, all Settlement Class Members who do not timely and validly exclude themselves, and anyone who purports to act on their behalf, are preliminarily enjoined from directly or indirectly maintaining, commencing, prosecuting, or pursuing directly, representatively, or in any other capacity, any Released Claim subsumed and covered by the Release in the Agreement, including in any court or arbitration forum.

25. **Termination of Settlement.** If the Agreement is terminated as provided in section 12 of the Agreement, or any specified material term or condition of the Settlement as set forth in the Agreement is not satisfied as provided in section 12 of the Agreement, then this Order may not be introduced as evidence or referred to in any actions or proceedings by any person or entity and shall be treated as vacated, *nunc pro tunc* (except paragraph 21 of this Order shall remain in effect), and each party shall be restored to his, her, or its respective position in this Action as it existed prior to the execution of the Agreement. By three business days after such termination or disapproval, the Cash Settlement Amount shall be returned by the Settlement Administrator to BNY Mellon; provided, however, that the interest accrued in the Cash Settlement Fund shall first be used to pay settlement administration costs already incurred by the Settlement Administrator pursuant to the Agreement, and, if any interest money remains, it too shall be returned to BNY Mellon.

26. **No Merits Determination.** By entering this Order, the Court does not make any determination as to the merits of this case.

27. **Authority.** The Court hereby authorizes the Parties to take such further steps as necessary and appropriate to establish the means necessary to implement the terms of the Agreement.

28. **Jurisdiction.** This Court retains jurisdiction over the Action to consider all further matters arising out of or connected with the Agreement and the Settlement.

IT IS SO ORDERED.

DATED: _____

THE HONORABLE PATTI B. SARIS
UNITED STATES DISTRICT JUDGE

EXHIBIT D

Henderson v. BNY Mellon, N.A.

Closed Trust Verification

If you are a beneficiary of a closed irrevocable trust(s) or grantor/settlor of a closed revocable trust(s) as described in paragraph 2 of the Notice you must complete and submit this form, either by U.S. Postal Service or through the online link at www.bnytaxfeeclassaction.com, to be entitled to a share of your closed trust's proportional settlement payment. The Settlement Administrator will review your Verification Form and determine whether you are eligible for a payment under the Settlement. **To be considered, this Verification Form must be submitted by Month XX, XXXX.**

Part I: Identification.

Name (First, Last): _____

Current Street Address: _____

City: _____ State: _____ ZIP Code: _____

Please check here if this address is different from the one to which the Class Notice was mailed.

Contact Phone #: (_____) _____ - _____

Name of the trust(s) in which you had an interest (and account number(s) if known):

Part II: Verification. By submitting this Verification Form, I verify that I am a beneficiary of a closed irrevocable trust and/or the grantor/settlor of a closed revocable trust which was formerly administered by BNY Mellon and I am entitled to payment under the Settlement.

Signature: _____

Date: ____ / ____ / ____

Print Name: _____