

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IN RE MUTUAL FUNDS INVESTMENT LITIGATION	MDL No. 1586
This Document Relates to:	No. 04-md-15861
Pilgrim Baxter Sub-track	No. 04-md-15862
	No. 04-md-15863
	No. 04-md-15864

**PILGRIM BAXTER/BEAR STEARNS SEVERED AGREEMENT
AND STIPULATION OF SETTLEMENT**

WHEREAS, this Severed Agreement and Stipulation of Settlement (the “Severed Settlement Agreement” or the “Agreement”) is entered into by and among Class Plaintiff (as defined below) and the Bear Stearns Defendants (as defined below), by and through their respective counsel, subject to the approval of the Court (as defined below);

WHEREAS, based upon their investigation, Class Plaintiff and its counsel have concluded that the terms and conditions of this Severed Settlement (as defined below) is fair, reasonable and adequate to the Class Members (as defined below), and in their best interests, and, subject to the approval of the Court, have agreed to settle the claims raised in the Class Action (as defined below) as against the Bear Stearns Defendants pursuant to the terms and provisions of this Agreement; and

WHEREAS, in no event shall this Severed Settlement Agreement be construed or deemed to be evidence or an admission or a concession on the part of the Bear Stearns Defendants of any fault or liability or damages whatsoever. To the contrary, the Bear Stearns Defendants have vigorously denied and continue to deny any and all wrongdoing of any kind whatsoever and any liability to anyone in the Class Action, and no such defenses are waived and all such defenses are instead expressly preserved. The Bear Stearns Defendants believe they

have meritorious defenses to the Class Action. The Parties have nevertheless concluded that it is desirable that the Class Action be fully and finally settled in the manner and upon the terms and conditions set forth herein in order to avoid the expense, inconvenience, uncertainties and risks associated with further proceedings; and

WHEREAS, all defined terms shall have the meaning ascribed to them as set forth in paragraph 1 below.

IT IS HEREBY AGREED by the Parties hereto, by and through their undersigned attorneys, subject to approval by the Court, as follows:

DEFINITIONS

1. As used in this Severed Settlement Agreement, the following terms shall have the meanings set forth below:

(a) “Advisor Corporate Defendants” or “Pilgrim Baxter Advisor Corporate Defendants” means Pilgrim Baxter & Associates, Ltd. (n/k/a Liberty Ridge Capital, Inc.); PBHG Fund Distributors (n/k/a Old Mutual Investment Partners); PBHG Fund Services (n/k/a Old Mutual Fund Services); PBHG Shareholder Services, Inc. (n/k/a Old Mutual Shareholder Services, Inc.); Old Mutual plc; Old Mutual Asset Management; and Old Mutual (US) Holdings, Inc.;

(b) “Advisor Individual Defendants” or “Pilgrim Baxter Advisor Individual Defendants” means Gary L. Pilgrim and Harold J. Baxter;

(c) “Authorized Claimant” means any Class Member who is determined to be eligible for payment from the Net Settlement Sum;

(d) “Bear Stearns Cross-Claims” means any and all claims of the Bear Stearns Defendants against the Fund Family Defendants, Canary Defendants, and, as applicable,

any settling Other Defendant that agrees to provide a cross-claim release to the Bear Stearns Defendants and all of their respective Related Parties, whether under federal or state law, whether known or unknown (including “Unknown Claims” as defined below), whether suspected or unsuspected, whether accrued or unaccrued, whether asserted or unasserted, concerning in any respect, directly or indirectly, market-timing, late-trading, or short-term or excessive trading in any of the Pilgrim Baxter Mutual Funds during the Class Period, including any claims that the Fund Family Defendants, Canary Defendants, and, as applicable, any settling Other Defendant that agrees to provide a cross-claim release to the Bear Stearns Defendants, and their respective Related Parties, allowed, assisted, cleared, brokered, financed, provided the means for, participated or engaged in, caused, were involved in, acquiesced in, subjected investors to or otherwise facilitated or were responsible for market-timing, late-trading, or short-term or excessive trading and including, without limitation, all claims that could have been brought against the Fund Family Defendants, Canary Defendants, and, as applicable, any settling Other Defendant that agrees to provide a cross-claim release to the Bear Stearns Defendants, and their respective Related Parties concerning in any respect, directly or indirectly, market-timing, late-trading, or short-term or excessive trading in any of the Pilgrim Baxter Mutual Funds during the Class Period;

(e) “Bear Stearns Defendants” means Bear, Stearns & Co. Inc., Bear, Stearns Securities Corp., and The Bear Stearns Companies Inc., currently known as J.P. Morgan Securities Inc., J.P. Morgan Clearing Corp. and The Bear Stearns Companies LLC, respectively;

(f) “Bear Stearns Defendants’ Counsel” means Cleary Gottlieb Steen & Hamilton LLP;

(g) “Bear Stearns Escrow Account” means the interest-bearing escrow account to be established for the deposit of the \$14,000,000 to be paid, or caused to be paid, by the Bear Stearns Defendants in settlement of the Class Action;

(h) “Bear Stearns Escrow Agent” means the escrow agent appointed in the Bear Stearns Escrow Agreement;

(i) “Bear Stearns Escrow Agreement” means such agreement setting forth the terms under which the Escrow Agent shall maintain the Bear Stearns Escrow Account;

(j) “Bear Stearns Released Parties” means the Bear Stearns Defendants and all of their respective Related Parties;

(k) “Canary Defendants” means Canary Capital Partners, LLC; Canary Investment Management, LLC; Canary Capital Partners, Ltd.; and Edward J. Stern;

(l) “Claims Administrator” means the firm which shall administer this Severed Settlement, as proposed by Class Counsel and appointed by the Court;

(m) “Class” or “Pilgrim Baxter Class” means, for purposes of this Severed Settlement only:

(i) all Persons who, during the Class Period, held, purchased or otherwise acquired shares in any individual series of the Pilgrim Baxter Releasing Funds. Excluded from the Class are (i) the Defendants; (ii) members of the immediate family (*i.e.*, parents, current or former spouses, siblings, and children) of each of the Individual Defendants; (iii) the officers, directors, parents, subsidiaries, and affiliates of each of the Corporate

Defendants; and (iv) the legal representatives, agents, heirs, predecessors, successors and assigns of any of the foregoing excluded parties;

(ii) every Person, to the extent not already included in 1(m)(i), who is included in the definition of the Class in any settlement entered into by Class Plaintiff with any of the Pilgrim Baxter Fund Family Defendants in the Pilgrim Baxter Class Action; and

(iii) also excluded from the Class are any Persons who timely and validly exclude themselves by filing a request for exclusion from the Class;

(n) “Class Action” or “Pilgrim Baxter Class Action” means *Carey v. Pilgrim Baxter & Associates, Ltd., et al.*, Civil Action No. 04-cv-01151-JFM;

(o) “Class Complaint” means the Second Consolidated Amended Class Action Complaint filed in the Class Action on February 17, 2006 and entered as part of the MDL in docket number 1679 of *In re Alger, Columbia, Janus, MFS, One Group, Putnam, Allianz Dresdner*, 04-md-15863-JFM (D. Md.);

(p) “Class Counsel” means Bernstein Litowitz Berger & Grossmann LLP;

(q) “Class Member” or “Pilgrim Baxter Class Member” means any person or entity that is a member of the Class;

(r) “Class Period” means July 30, 1999 through and including November 13, 2003;

(s) “Class Plaintiff” or “Pilgrim Baxter Class Plaintiff” means the Ohio Public Employees Deferred Compensation Plan;

(t) “Common Benefit Counsel” has the meaning set forth in paragraph 22 below;

(u) “Corporate Defendants” means each Defendant that is not a natural person;

(v) “Costs of Administration” means the costs and expenses incurred in connection with the administration of this Severed Settlement;

(w) “Costs of Notice” means the costs and expenses incurred in connection with providing Notice as authorized by the Court (whether by direct mail, publication, internet or otherwise) of this Severed Settlement;

(x) “Court” means the United States District Court for the District of Maryland;

(y) “Cross-Claims” refers to any and all claims of any Fund Family Defendants, Canary Defendants, and, as applicable, any settling Other Defendants that agrees to provide a cross-claim release to the Bear Stearns Defendants, against the Bear Stearns Defendants and/or any one or more of the Bear Stearns Defendants’ respective Related Parties, whether under federal or state law, whether known or unknown (including “Unknown Claims” as defined below), whether suspected or unsuspected, whether accrued or unaccrued, whether asserted or unasserted, concerning in any respect, directly or indirectly, market-timing, late-trading, or short-term or excessive trading in any of the Pilgrim Baxter Mutual Funds during the Class Period, including any claims that any one or more of the Bear Stearns Defendants and/or any one or more of the Bear Stearns Defendants’ respective Related Parties, allowed, assisted, cleared, brokered, were involved in, caused, acquiesced in, participated or engaged in, financed, provided the means for, subjected investors to, or otherwise facilitated or were responsible for market-timing, late-trading, or short-term or excessive trading and including, without limitation,

all claims that could have been brought against any one or more of the Bear Stearns Defendants and/or any one or more of the Bear Stearns Defendants' respective Related Parties concerning in any respect, directly or indirectly, market-timing, late-trading, or short-term or excessive trading in any of the Pilgrim Baxter Mutual Funds during the Class Period;

(z) "Default Escrow Procedure" has the meaning set forth at paragraph 11(b) below;

(aa) "Defendants" means the Bear Stearns Defendants and all Other Defendants;

(bb) "Effective Date" has the meaning set forth at paragraph 42 below in the section entitled "Effective Date of Severed Settlement;"

(cc) "Escrow Accounts" refers collectively to the Bear Stearns Escrow Account and the Fund Family Escrow Account (or such other account as may be designated by Class Counsel in accordance with the Default Escrow Procedure described in paragraph 11(b) below);

(dd) "Escrow Agreements" means, together, the Bear Stearns Escrow Agreement and such agreement setting forth the terms under which the escrow agent shall maintain the Fund Family Escrow Account (or such other agreement setting forth the terms under which the escrow agent shall maintain the escrow account established in accordance with the Default Escrow Procedure);

(ee) "Fee and Expense Award" refers generally to an award to Class Counsel of fees and expenses and costs in connection with this Severed Settlement, as awarded by

the Court to Class Counsel (and including for this purpose Common Benefit Counsel) from the Severed Settlement Sum;

(ff) “Final” when referring to an order or judgment means: (i) that the time for appeal or appellate review of the order or judgment has expired; or (ii) if there has been an appeal, (a) that the appeal has been decided without causing a material change in the order or judgment; or (b) that the order or judgment has been upheld on appeal and is no longer subject to appellate review by further appeal or writ of certiorari. Any proceeding or order or any appeal or petition for a writ of certiorari pertaining solely to any plan of allocation and/or application for attorneys’ fees, costs or expenses shall not in any way delay or preclude the Order and Final Judgment from becoming Final;

(gg) “Final Settlement Hearing” refers generally to the hearing to be held by the Court pursuant to Federal Rule of Civil Procedure 23(e) to consider final approval of this Severed Settlement as scheduled by the Court;

(hh) “Fund Derivative Action” or “Pilgrim Baxter Fund Derivative Action” means *Jungalawala v. Pilgrim Baxter & Associates, Ltd. et al.*, Civil Action No. 04-md-00882-JFM;

(ii) “Fund Derivative Complaint” means the Consolidated Amended Fund Derivative Complaint filed in the Fund Derivative Action on September 29, 2004 and entered as part of the MDL in docket number 289 of *In Re Alliance, Franklin/Templeton, Bank of America/Nations, Pilgrim Baxter, and Alliance*, Civ. No. 1:04-MD-15862-AMD (D. Md.);

(jj) “Fund Family Defendants” or “Pilgrim Baxter Fund Family Defendants” means the Pilgrim Baxter Releasing Funds, the Pilgrim Baxter Releasing Funds Trusts,

the Pilgrim Baxter Advisor Corporate Defendants, and the Pilgrim Baxter Advisor Individual Defendants;

(kk) “Fund Family Escrow Account” or “Pilgrim Baxter Fund Family Escrow Account” means the escrow account established in connection with the settlement with the Fund Family Defendants;

(ll) “Fund Family Escrow Agent(s)” means the escrow agent(s) appointed to maintain the Fund Family Escrow Account pursuant to the settlement with the Fund Family Defendants;

(mm) “Individual Defendants” means each Defendant that is a natural person;

(nn) “Master Agreement” refers to the Master Agreement of Settlement with the Bear Stearns Defendants;

(oo) “MDL” means MDL Proceeding No. 1586 in the United States District Court for the District of Maryland;

(pp) “Mutual Funds” or “Pilgrim Baxter Mutual Funds” means all open-ended mutual funds advised by Pilgrim Baxter & Associates, Ltd. (n/k/a Liberty Ridge Capital, Inc.) during the Class Period;

(qq) “Net Settlement Sum” or “Pilgrim Baxter Net Settlement Sum” shall have the meaning set forth in paragraph 12 below;

(rr) “Notice” means notice of this Severed Settlement as authorized by the Court (whether by direct mail, publication, internet or otherwise) consistent with the requirements of the Federal Rules of Civil Procedure, the PSLRA and due process;

(ss) “Order and Final Judgment” means the Order and Final Judgment to be submitted to the Court for its approval in this Sub-Track approving the terms of this Severed Settlement and all other settlements in this Sub-Track;

(tt) “Other Defendants” refers to any and all defendants in this Sub-Track other than the Bear Stearns Defendants;

(uu) “Party” means any one of, and “Parties” means all of, Class Plaintiff and the Bear Stearns Defendants;

(vv) “Person” means a natural person or any legal entity (including, without limitation, individuals, corporations, employee pension or other benefit or ERISA plans, and trusts);

(ww) “Plan of Allocation” has the meaning set forth in paragraph 30 below;

(xx) “Preliminary Approval Order” means the Order to be entered by the Court (i) preliminarily approving the terms and conditions of the Severed Settlement; (ii) directing that notice be provided to the Class; and (iii) scheduling a hearing concerning the final approval of this Severed Settlement;

(yy) “PSLRA” means the Private Securities Litigation Reform Act of 1995;

(zz) “Related Parties” means (a) with respect to natural persons, all of their past and present agents, servants, attorneys, accountants, insurers, co-insurers and re-insurers, executors and administrators; (b) with respect to legal entities other than natural persons, all of their past and present parents, employees, subsidiaries, affiliates, general partners, limited partners, officers, directors, trustees, members, employees, agents, servants, attorneys, accountants, insurers, co-insurers and re-insurers, in any and all capacities; and (c) all of the predecessors, successors, heirs and assigns of the foregoing;

(aaa) “Released Claims” means any and all claims, rights, causes of action, counts, or liabilities against any or all of the Bear Stearns Released Parties, whether direct, derivative or brought in any other capacity, whether under federal or state law, whether known or unknown (including “Unknown Claims” as defined below), whether suspected or unsuspected, whether accrued or unaccrued, whether asserted or unasserted, concerning in any respect, directly or indirectly, market-timing, late-trading, or short-term or excessive trading in any of the Pilgrim Baxter Mutual Funds during all or any part of the Class Period, including any claims that any or all of the Bear Stearns Released Parties allowed, assisted, cleared, brokered, financed, caused, acquiesced in, participated or engaged in, provided the means for, subjected investors to or otherwise facilitated or were responsible for market-timing, late-trading, or short-term or excessive trading and including, without limitation, all of the claims and causes of action that were brought and all of such claims and causes of action that could have been brought against any or all of the Bear Stearns Released Parties in the Class Action or the Fund Derivative Action, or in any other legal proceeding or forum;

(bbb) “Released Parties’ Claims” means any and all claims, rights or causes of action or liabilities whatsoever, whether under federal, state, local, statutory or common law, whether known or unknown (including “Unknown Claims” as defined below), whether suspected or unsuspected, whether accrued or unaccrued, whether asserted or unasserted, that have been or could have been asserted in the Class Action or any other legal proceeding or forum by the Bear Stearns Released Parties or any of them or the successors and assigns of any of them against Class Plaintiff or any other Class Members or their respective attorneys that concern, arise out of or relate in any respect to the

institution, prosecution, or settlement of the Class Action (except for claims to enforce this Severed Settlement);

(ccc) "Releasing Funds" or "Pilgrim Baxter Releasing Funds" means each of the mutual funds set forth on Exhibit 1 attached hereto;

(ddd) "Releasing Funds Trusts" or "Pilgrim Baxter Releasing Funds Trusts" means all trusts, registrants, corporations or other similar entities that house the Releasing Funds;

(eee) "Releasing Plaintiffs Parties" means Class Plaintiff and all other Class Members, in any and all capacities, and their heirs, executors, administrators, successors and assigns;

(fff) "Request for Exclusion" means a valid written request by any potential member of the Class to opt out of or otherwise be excluded from the Class in accordance with the terms of the Notice to be provided to the Class;

(ggg) "Settlement" or "Severed Settlement" means the settlement embodied by this Agreement;

(hhh) "Settlement Amount" or "Pilgrim Baxter Settlement Amount" has the meaning set forth in paragraph 2(a) below;

(iii) "Severed Settlement Sum" or "Pilgrim Baxter Severed Settlement Sum" has the meaning set forth in paragraph 2(a) below;

(jjj) "Sub-Track" or "Pilgrim Baxter Sub-Track" refers to the sub-track in this MDL which includes the Pilgrim Baxter Class Action;

(kkk) "Taxes" means: (i) all federal, state and/or local taxes of any kind on any income earned by the Severed Settlement Sum; and (ii) the reasonable expenses and costs

incurred by Class Counsel in connection with determining the amount of, and paying, any taxes owed on or by the Severed Settlement Sum (including, without limitation, reasonable expenses of tax attorneys and accountants);

(III) "Unknown Claims" means any and all Released Claims which Class Plaintiff or any of the other Class Members does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and any Released Parties' Claims or Bear Stearns Cross-Claims which any of the Bear Stearns Defendants does not know or suspect to exist in its favor at the time of the release of such claims, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Severed Settlement. With respect to any and all Released Claims, Released Parties' Claims and Bear Stearns Cross-Claims, the Parties stipulate and agree that upon the Effective Date, Class Plaintiff and the Bear Stearns Defendants shall expressly waive, and each Class Member and each of the other Bear Stearns Released Parties shall with respect to such claims be deemed to have waived, and by operation of the Judgment in the Class Action shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, including that provision itself, 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.

The Parties acknowledge, and the Class Members and the other Bear Stearns Released Parties by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims, Released Parties’ Claims and Bear Stearns Cross-Claims was a material and separately bargained for element of this Severed Settlement.

SETTLEMENT CONSIDERATION

2. The Bear Stearns Defendants shall deposit, or cause to be deposited, the principal amount of \$14,000,000 into the Bear Stearns Escrow Account by no later than ten (10) days after Preliminary Approval Orders have been entered with respect to all of the following Severed Settlements: (i) the Allianz Dresdner (PIMCO) Severed Settlement; (ii) the Invesco/AM Severed Settlement; (iii) the MFS Severed Settlement; and (iv) the Pilgrim Baxter Severed Settlement. The sum equal to (x) 8.8% of the \$14,000,000 principal amount deposited into the Bear Stearns Escrow Account (*i.e.*, \$1,232,000) (the “Settlement Amount” or “Pilgrim Baxter Settlement Amount”), plus (y) the interest earned or accrued on the Pilgrim Baxter Settlement Amount while on deposit in the Bear Stearns Escrow Account, calculated on a *pro rata* basis, less (z) the amount of any Taxes or escrow fees or costs chargeable to the Pilgrim Baxter Settlement Amount while held on deposit in the Bear Stearns Escrow Account, calculated on a *pro rata* basis, shall be referred to as the “Severed Settlement Sum” or the “Pilgrim Baxter Severed Settlement Sum.” At the time set forth in paragraph 11 below, the Parties shall cause the appropriate persons under the Bear Stearns Escrow Agreement to cause the Bear Stearns Escrow Agent to pay from the Bear Stearns Escrow Account into the Pilgrim Baxter Fund Family Escrow Account the remaining balance of the Pilgrim Baxter Severed Settlement Sum after deducting therefrom any Costs of Notice and any Court-awarded attorneys’ fees and litigation

expenses previously paid from the Bear Stearns Escrow Account pursuant to paragraphs 19, 22, and 26 below.

STAY OF LITIGATION

3. All litigation against the Bear Stearns Released Parties in this Sub-Track with respect to the Released Claims shall be stayed, and subject to the approval of the Court, neither Class Plaintiff nor any other Class Member shall commence, join or otherwise prosecute any Released Claim against any Bear Stearns Released Party in any other proceeding, pending approval of this Severed Settlement by the Court.

4. This stay shall not preclude reasonable third-party discovery from the Bear Stearns Released Parties in any sub-track in the MDL pursuant to the Federal Rules of Civil Procedure, the Local Civil Rules of the United States District Court for the District of Maryland, or any Order issued by the court in such other sub-track.

CLASS CERTIFICATION

5. Solely for purposes of this Severed Settlement and for no other purpose, the Bear Stearns Defendants agree not to oppose: (a) certification of the Class Action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Class; (b) appointment of Class Plaintiff as class representative; and (c) appointment of Class Counsel as class counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure. Class Plaintiff will move for entry of the Preliminary Approval Order, which will preliminarily certify the Class Action to proceed as a class action solely for purposes of this Severed Settlement and the other settlements reached in this Sub-Track and for no other purpose.

DISMISSAL, RELEASES AND CROSS-CLAIM RELEASES

6. Upon the Effective Date, all claims brought by or on behalf of Class Plaintiff and all other Class Members against any or all of the Bear Stearns Released Parties in the Class Action (including, without limitation, the First, Second, Seventh and Eighth Claims for relief in the Class Complaint), and any and all claims brought by or on behalf of Class Plaintiff or any other Class Member(s) against any or all of the Bear Stearns Released Parties in any other action that concern in any respect, directly or indirectly, market-timing, late-trading, or short-term or excessive trading in any of the Pilgrim Baxter Mutual Funds during all or any part of the Class Period, shall be dismissed with prejudice, subject to the jurisdiction of the Court. Upon the Effective Date, all claims or causes of action asserted in the Class Complaint (including, without limitation, the First, Second, Seventh and Eighth Claims for relief in the Class Complaint) against any or all of the Bear Stearns Released Parties on behalf of shareholders that are not Class Members shall be dismissed.

7. Upon the Effective Date, all Releasing Plaintiffs Parties: (i) shall be conclusively deemed to have fully, finally and forever remised, released, relinquished, dismissed, discontinued, withdrawn, and discharged all Released Claims against any and all of the Bear Stearns Released Parties; (ii) shall be conclusively deemed to have covenanted not to sue or assert in any manner any claim, right, cause of action, count, or liability against any of the Bear Stearns Released Parties in any action alleging any claim, right, cause of action, count, or liability that is a Released Claim; (iii) shall be conclusively deemed to have covenanted not to assist, engage in, participate in, facilitate, provide information for, or be involved in any way in the commencement, prosecution, continuance, or pursuit by any third party of any legal, administrative, investigative, or any other action or proceeding of any nature or in asserting any

claim, count, right, cause of action, or liability against any of the Bear Stearns Released Parties relating to any Released Claim, including, without limitation, any derivative action or suit, and (iv) shall forever be enjoined and barred from asserting, or assisting, participating in, providing information for, engaging in, facilitating the assertion of, or being involved in any way in the assertion of, any of the Released Claims against any Bear Stearns Released Party in any legal, administrative, investigative, or any other action or proceeding of any nature.

8. Upon the Effective Date, each of the Bear Stearns Defendants, on behalf of themselves, their heirs, executors, administrators, successors and assigns, shall be conclusively deemed to have fully, finally and forever remised, released, relinquished, and discharged all Released Parties' Claims, and shall forever be enjoined from prosecuting any or all of the Released Parties' Claims, against the Releasing Plaintiffs Parties and their respective counsel.

9. As a condition of any settlement(s) with (i) the Fund Family Defendants and (ii) the Canary Defendants in the Class Action, Class Plaintiff shall obtain (to the extent it has not already done so) a cross-claim release from all such defendants, and from any settling Other Defendant that agrees to provide a cross-claim release to the Bear Stearns Defendants (including, without limitation, in the case of any settlement with the Fund Family Defendants, from the Releasing Funds, the Releasing Fund Trusts, the Advisor Corporate Defendants, and the Advisor Individual Defendants), on behalf of themselves, their heirs, executors, administrators, successors and assigns, in favor of the Bear Stearns Released Parties, releasing any and all of their Cross-Claims against any and all of the Bear Stearns Released Parties (each a "Cross-Claim Release"). The Bear Stearns Defendants (on behalf of themselves, their heirs, executors, administrators, successors and assigns) shall provide a reciprocal and co-extensive release of (i) each Fund Family Defendant and Canary Defendant that provides a Cross-Claim Release to the

Bear Stearns Released Parties (including, in the case of any settlement with the Fund Family Defendants, the Releasing Funds, the Releasing Fund Trusts, the Advisor Corporate Defendants, and the Advisor Individual Defendants), and, to the extent requested by any such defendants, to any one or more of such defendant's respective Related Parties, releasing any and all of their Bear Stearns Cross-Claims against such parties; and (ii) each settling Other Defendant that agrees to provide a Cross-Claim Release to the Bear Stearns Released Parties, and, to the extent requested by any such defendants, to any one or more of such defendant's respective Related Parties, releasing any and all of their Bear Stearns Cross-Claims against such parties. The proposed Order and Final Judgment to be entered in this Sub-Track shall provide for reciprocal, co-extensive cross-claim releases consistent with this paragraph, including appropriate reciprocal provisions barring and permanently enjoining the prosecution of Cross-Claims and Bear Stearns Cross-Claims, and such reciprocal cross-claim releases shall become effective at such time as the Order and Final Judgment providing for such cross-claim releases becomes Final.

BAR ORDER

10. The Parties shall request that the Court, as part of the Order and Final Judgment, enter a bar order that will remise, release, and discharge the Bear Stearns Released Parties, to the maximum extent allowed under applicable state, local, and federal law (including the PSLRA) from any and all claims for contribution, indemnification or the like, however styled, by any person or entity, whether arising under state, federal, local, statutory or common law, or any other law, rule or regulation, whether known or unknown, whether accrued or unaccrued, whether asserted or not asserted, based upon, arising out of, relating to, in connection with, or concerning in any way the Released Claims (the "Bar Order"). The foregoing sentence is intended to ensure that the requested Bar Order will bar all such claims to the maximum extent

allowed by applicable state or federal law (including the PSLRA): (a) against the Bear Stearns Released Parties; and (b) by the Bear Stearns Released Parties against any person or entity other than any person or entity whose liability to the Class has been extinguished pursuant to this Severed Settlement and the Order and Final Judgment.

TRANSFER OF FUNDS INTO FUND FAMILY ESCROW ACCOUNT

11. (a) Within ten (10) business days after the Effective Date, Class Counsel and the Bear Stearns Defendants shall jointly direct the Bear Stearns Escrow Agent to transfer the balance of the Severed Settlement Sum, after deducting therefrom any Costs of Notice and Administration and any Court-awarded attorneys' fees and litigation expenses previously paid from the Bear Stearns Escrow Account pursuant to paragraphs 19, 22, and 26 below, from the Bear Stearns Escrow Account to the Pilgrim Baxter Fund Family Escrow Account.

(b) In the event that Class Plaintiff does not obtain a judgment against, or settlement with, the Fund Family Defendants in this Sub-Track, such that a Fund Family Escrow Account is not established by the Fund Family Defendants, or in the event that the Fund Family Defendants do not agree to the transfer of the Severed Settlement Sum into the Fund Family Escrow Account as contemplated by paragraph (a) above, then subject to the voidance rights set forth in paragraphs 27, 28, 40, 43, and 44 below, in the Master Agreement, and in the Supplemental Agreement, within ten (10) business days of the Effective Date, Class Counsel and the Bear Stearns Defendants shall jointly direct the Bear Stearns Escrow Agent to transfer the remaining balance of the Pilgrim Baxter Severed Settlement Sum, after deducting therefrom any Costs of Notice and Administration and any Court-awarded attorneys' fees and litigation expenses previously paid from the Bear Stearns Escrow Account pursuant to paragraphs 19, 22, and 26 below, from the Bear Stearns Escrow Account to such other account for the benefit of the

Class as may be designated by Class Counsel (the “Default Escrow Account”). The procedures described in the preceding sentence shall be referred to as the “Default Escrow Procedure,” and any disputes that may arise with respect to the Default Escrow Procedure shall be resolved by the Court, consistent with the letter and intent of this Severed Settlement Agreement.

USE OF SETTLEMENT PROCEEDS

12. The Severed Settlement Sum shall first be used to pay: (i) Taxes due or owing on the Severed Settlement Sum; (ii) Costs of Notice; (iii) Costs of Administration; and (iv) any Fee and Expense Award. The Severed Settlement Sum plus any income earned by the Severed Settlement Sum less the payments made pursuant to the preceding sentence shall be the “Net Settlement Sum” or “Pilgrim Baxter Net Settlement Sum.” The Net Settlement Sum shall be distributed to Authorized Claimants in accordance with the terms of the Plan of Allocation.

13. Except as provided herein or pursuant to orders of the Court, prior to the Effective Date the Severed Settlement Sum shall remain either in the Bear Stearns Escrow Account or, as provided in paragraph 11 above, in the Fund Family Escrow Account (or, as the case may be, the Default Escrow Account) following Final approval of this Severed Settlement. All Settlement Sums held in the Bear Stearns Escrow Account or in the Fund Family Escrow Account (or Default Escrow Account) shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as such sums shall be paid out, distributed or returned pursuant to the terms of this Agreement, the Master Agreement, and/or further order of the Court.

14. All funds held in the Escrow Accounts shall, to the extent reasonably possible, be invested and reinvested in short term United States Agency or Treasury Securities, or mutual funds invested solely in such securities, except that any residual cash balances of less than

\$100,000 may be invested in money market mutual funds comprised exclusively of investments secured by the full faith and credit of the United States.

15. The Parties hereto agree that any Severed Settlement Sum deposited into the Fund Family Escrow Account (or Default Escrow Account) is intended to be part of a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Class Counsel, as administrator of the Severed Settlement Sum within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) with respect to the Severed Settlement Sum. Such returns shall be consistent with this paragraph and in all events shall reflect that all Taxes with respect to the Severed Settlement Sum shall be paid out of the Severed Settlement Sum as provided by paragraph 16 below. As administrator, Class Counsel shall also be solely responsible for causing payment to be made from the Severed Settlement Sum of any Taxes owed with respect to the Severed Settlement Sum. Bear Stearns Defendants' Counsel agrees to provide promptly to Class Counsel, to the extent it can reasonably do so, the statement described in Treasury Regulation § 1.468B-3(e). Class Counsel, as administrator of the Severed Settlement Sum within the meaning of Treasury Regulation § 1.468B-2(k)(3), with the reasonable cooperation of Bear Stearns Defendants' Counsel, if necessary, shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a "relation back election," as described in Treasury Regulation § 1.468B-1(j), to cause any Qualified Settlement Fund holding any portion of the Severed Settlement Sum to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

16. All Taxes paid or payable on interest earned on the Severed Settlement Sum while such sum is held in the Bear Stearns Escrow Account, shall be timely paid by the Bear Stearns Escrow Agent from the Severed Settlement Sum (before it is transferred into the Fund Family Escrow Account or Default Escrow Account), pursuant to the disbursement instructions set forth in the Bear Stearns Escrow Agreement, and without prior Order of the Court. All Taxes paid or payable on interest earned on the Severed Settlement Sum after such sum has been transferred to the Fund Family Escrow Account (or Default Escrow Account) shall be timely paid by the Fund Family Escrow Agent from the Fund Family Escrow Account pursuant to disbursement instructions to be set forth in the Fund Family Escrow Agreement (or, as the case may be, shall be timely paid from the Default Escrow Account in accordance with the escrow agency agreement relating to the Default Escrow Account), and without prior Order of the Court.

17. This is not a claims-made settlement. As of the Effective Date, the Bear Stearns Defendants shall not have any right to the return of the Severed Settlement Sum or any portion thereof, irrespective of the number of claims filed, the collective amount of losses of Authorized Claimants, the actual Costs of Notice and Administration, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement Sum.

ATTORNEYS' FEES AND EXPENSES

18. Class Counsel (on behalf of itself and on behalf of all other class plaintiffs' counsel, including Common Benefit Counsel) will apply to the Court for payment of a reasonable Fee and Expense Award from the Severed Settlement Sum in an amount not to exceed the amount referred to in the Notice forms approved by the Court, including accrued interest thereon calculated at the same net rate as earned by the Pilgrim Baxter Settlement Amount from the date of funding to the date of payment. Neither the Bears Stearns Defendants,

nor any other Bear Stearns Released Party, shall take any position with respect to Class Counsel's application for a Fee and Expense Award, provided such application is consistent with the terms of this Agreement. Class Counsel's application for a Fee and Expense Award is not the subject of any agreement between the Bear Stearns Defendants and Class Plaintiff other than what is set forth in this Agreement.

19. Upon written request of Bernstein Litowitz Berger & Grossmann LLP ("Bernstein Litowitz"), any Fee and Expense Award may be paid to Bernstein Litowitz, acting on behalf of Class Counsel, from the Bear Stearns Escrow Account (or Fund Family Escrow Account or Default Escrow Account), subject to the Court's approval, within ten (10) business days of such award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on this Settlement or any other settlement in the MDL, or any part thereof. Such payment shall, however, be subject to Bernstein Litowitz's obligation to make all appropriate refunds or repayments to the Bear Stearns Escrow Account (or Fund Family Escrow Account or Default Escrow Account), plus accrued interest at the same net rate as earned by the Bear Stearns Escrow Account (or the Fund Family Escrow Account or Default Escrow Account if the Bear Stearns Escrow Account has been terminated), if this Settlement is terminated pursuant to the terms of this Agreement or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the Fee and Expense Award is reduced or reversed. Bernstein Litowitz shall make all appropriate refunds or repayments in full no later than five (5) business days after receiving from Bear Stearns Defendants' Counsel notice of the termination of the Settlement or after receiving from a court of appropriate jurisdiction notice of any reduction of the Fee and Expense Award on appeal or otherwise.

20. To the extent practicable, the Bear Stearns Defendants shall cooperate with any efforts by Class Counsel to schedule a single hearing date before the Court to address any matters relating to Class Counsel's requests for an award of attorneys' fees and expenses both in this Sub-Track and in one or more of the other sub-tracks in the MDL.

21. Any order or proceedings relating to the Fee and Expense Award, or any appeal from such an order, is not a material term of this Settlement and shall not operate to void or cancel this Settlement, or affect or delay the finality of the Order and Final Judgment approving this Settlement. Neither a modification nor reversal or appeal of any Fee and Expense Award shall constitute grounds for cancellation or avoidance of this Settlement.

22. The Parties further agree that any fee and expense application may include provisions for (a) setting aside a portion of any attorneys' fees awarded from the Severed Settlement Sum to compensate counsel who have performed "cross-track" work in MDL 1586 that has conferred a benefit to the Class ("Common Benefit Counsel"), and (b) reimbursing a portion of expenses incurred by Common Benefit Counsel in connection with their cross-track work. Such sums may be paid from the Bear Stearns Escrow Account (or Fund Family Escrow Account or Default Escrow Account) to the law firm of Bernstein Litowitz, as agent on behalf of all Common Benefit Counsel, subject to the Court's approval, within ten (10) business days of entry of the Court's Fee and Expense Award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on this Settlement or any other settlement in the MDL, or any part thereof. Any such payment made to Bernstein Litowitz under this paragraph shall, however, be subject to Bernstein Litowitz's obligation to make all appropriate refunds or repayments to the Bear Stearns Escrow Account (or Fund Family Escrow Account or Default Escrow Account) of amounts paid to it, plus accrued interest at the same net

rate as earned by the Bear Stearns Escrow Account (or the Fund Family Escrow Account or Default Escrow Account if the Bear Stearns Escrow Account has been terminated), if this Settlement is terminated pursuant to the terms of this Agreement or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the Fee and Expense Award is reduced or reversed. Bernstein Litowitz shall make appropriate refunds or repayments in full no later than five (5) business days after receiving from Bear Stearns Defendants' Counsel notice of the termination of the Settlement or after receiving from a court of appropriate jurisdiction notice of any reduction of the Fee and Expense Award on appeal or otherwise.

NOTICE PROGRAM

23. Class Plaintiff shall use its best efforts to ensure that Notice of this Severed Settlement be given as part of the notice of the settlement with the Fund Family Defendants. Class Plaintiff shall also use reasonable efforts to formulate an efficient and cost effective Notice program for the Class that satisfies Rule 23 of the Federal Rules of Civil Procedure, the PSLRA and due process, and that takes into account the unique burdens and difficulties of noticing the Class. The Bear Stearns Defendants and their Counsel shall use reasonable efforts to cooperate with Class Plaintiff with respect to such Notice Program. In no event shall the Bear Stearns Defendants require that Class Plaintiff implement a Notice program that is more demanding than that required by Banc of America Securities, LLC or any of the other settling defendants in this Sub-Track. Any disputes as to the most appropriate form of Notice shall be resolved by the Court or its designee.

24. The Bear Stearns Defendants shall use reasonable efforts to assist and support Class Plaintiff in any attempt to obtain the permission of the Bear Stearns Independent Distribution Consultant ("IDC"), Prof. Francis McGovern, and the IDCs who have handled (or

have been and/or will be handling) distributions for the Pilgrim Baxter fund family, and to obtain the permission of the Securities and Exchange Commission (“SEC”), to provide information about the MDL, including notice of this Settlement or other settlements in the MDL, to shareholders of the Releasing Funds in connection with any fair fund distributions to any such shareholders.

25. In addition, the Bear Stearns Defendants shall at their own expense, upon the request of Class Counsel, use reasonable efforts to share with any persons assisting Class Counsel with the notice and/or administration of any settlement related to this Sub-Track reasonably accessible current shareholder information and addresses, and historical share holdings and trading data/information, in the Bear Stearns Defendants’ possession, custody or control for current shareholders in this Sub-Track. The Bear Stearns Defendants also specifically consent to the release, to any court-appointed claims or notice administrator that may be appointed in this Sub-Track, of any information that may have previously been provided by or on behalf of the Bear Stearns Defendants to any administrator that has been appointed by the SEC in connection with the distribution of SEC “fair funds” related to market-timing or late trading claims, provided that Class Counsel agree to treat such information confidentially if such info is subject to any existing confidentiality agreement.

26. Class Plaintiff may pay from the Severed Settlement Sum, without further approval of the Bear Stearns Defendants or the Court, all reasonable Costs of Notice and Administration actually incurred in connection with this Settlement. Such costs and expenses shall include, without limitation, the actual costs of publication, printing and mailing Notice, reimbursements to nominee owners for forwarding Notice to their beneficial owners, the administrative expenses incurred and fees charged by the Claims Administrator in connection

with providing Notice and, as necessary, processing claims, and the fees, if any, of the escrow agent(s) in connection with this Severed Settlement. Prior to the Effective Date, Class Plaintiff shall not pay more than 15% of the Severed Settlement Sum for such Cost of Notice and Administration without the approval of the Bear Stearns Defendants, which shall not be unreasonably withheld. The Parties hereto agree that any disputes that may arise concerning the payment of Cost of Notice or Administration shall be submitted to the Court for binding and non-appealable resolution.

27. Class Plaintiff shall have the right to void this Severed Settlement by providing written notice to the Bear Stearns Defendants in the event that the costs of providing Notice to the Class in this Sub-Track will exceed twenty percent (20%) of the aggregate settlement consideration provided under all of the settlements in this Sub-Track; provided, however, that Class Plaintiff shall not have the right to void this Settlement in the event that (i) another settlement in this Sub-Track is noticed, or (ii) the Bear Stearns Defendants determine in their sole and absolute discretion voluntarily to contribute additional funds to the costs of Notice and such funds are sufficient to fund the costs of Notice of this Settlement. The avoidance right set forth in this paragraph cannot be exercised until all claims against all Other Defendants in this Sub-Track have been settled, dismissed or otherwise resolved. In the event that this avoidance right is properly exercised, this Agreement shall become null and void and of no further force and effect and the provisions of paragraph 45(a) below shall apply.

REPRESENTATION CONCERNING TRADING DATA

28. The Bear Stearns Defendants hereby represent that to the best of their knowledge they have provided Class Plaintiff with an accurate reproduction of the available records in their possession reflecting all trades in Pilgrim Baxter mutual funds cleared by Bear Stearns Securities

Corp. for the period August 1998 through December 2003 (the "Trading Data"). If the Trading Data is proven to be materially inaccurate or materially incomplete with respect to any Pilgrim Baxter mutual fund, Class Plaintiff shall have the right to void this Severed Settlement by providing written notice to the Bear Stearns Defendants. The voidance right set forth in this paragraph shall expire upon this Settlement becoming Final. In the event that this voidance right is properly exercised, this Agreement shall become null and void and of no further force and effect and the provisions of paragraph 45(a) below shall apply.

COOPERATION

29. The Bear Stearns Defendants shall cooperate reasonably and in good faith with Class Plaintiff in Class Plaintiff's prosecution of claims against other defendants named in the MDL by, *inter alia*, providing Class Plaintiff with readily accessible information and access to documents and other things in their possession, custody, or control that are relevant to Class Plaintiff's claims and defendants' defenses, and by providing reasonable cooperation in assisting Class Plaintiff in any efforts to obtain testimony under oath of individuals currently employed by, or otherwise under the control of, the Bear Stearns Defendants.

ADMINISTRATION AND DISTRIBUTION OF THE SEVERED SETTLEMENT SUM

30. All payments from the Net Settlement Sum shall be determined by the Claims Administrator pursuant to a plan of allocation to be proposed by Class Counsel (the "Plan of Allocation"), subject to the approval of the Court. Neither the Bear Stearns Released Parties nor their attorneys will have any responsibility or be subject to any claims or liability for the design or implementation of the Plan of Allocation or for the Claims Administrator's determinations pertaining to payments from the Net Settlement Sum to Authorized Claimants.

31. None of the Bear Stearns Released Parties or their attorneys shall have any responsibility for the administration of the Severed Settlement Sum nor shall any of them be subject to any claims or liability in connection with such administration or the disbursement of the Net Settlement Sum.

32. This Settlement shall be administered by the Claims Administrator proposed by Class Counsel and appointed by the Court. The Parties understand that in the interests of efficient administration it is expected that Class Counsel will seek to have one claims administrator appointed by the Court who will be responsible for administering not only this Settlement, but also all other settlements that may be reached with any Other Defendants in this Sub-Track. Neither the Bear Stearns Released Parties nor their attorneys shall have any role or responsibility with respect to the selection or recommendation to the Court of any Claims Administrator.

33. On the Effective Date, the Bear Stearns Defendants shall cease to have any interest in any portion of the Severed Settlement Sum or the Net Settlement Sum, and there shall be no reversion or return of the Severed Settlement Sum or the Net Settlement to any of the Bear Stearns Defendants.

34. It is understood and agreed by the Parties hereto that any proposed Plan of Allocation or any portion thereof, including, but not limited to, any adjustments to an Authorized Claimant's payment as set forth in the Plan of Allocation, is not a part of this Severed Settlement, and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of this Settlement, and no order or proceeding or appeal relating to the Plan of Allocation shall operate to void or cancel this Settlement, or affect the

finality of any of the Court's Order(s) or Final Judgment(s) approving this Settlement or any other orders entered pursuant to this Settlement.

35. Subject to the Effective Date having occurred, Class Counsel shall seek approval of the Court to distribute the Net Settlement Sum in accordance with the terms of the Plan of Allocation.

APPROVAL OF THE SETTLEMENT

36. The Parties hereto agree that they shall not present this Settlement to the Court for preliminary approval until: (i) Class Plaintiff has obtained the agreement of each of the Fund Family Defendants to provide a Cross-Claim Release of the Bear Stearns Released Parties as set forth in paragraph 9 above; or (ii) if Class Plaintiff has failed to settle with any of the Fund Family Defendants, the claims against such Fund Family Defendant have been litigated to a final, non-appealable judgment. The Parties hereto further agree that they shall not present this Settlement to the Court for preliminary approval until all of the conditions of paragraph 12 of the Master Agreement have been satisfied.

37. At the appropriate time for presentation of this Severed Settlement to the Court in accordance with the preceding paragraph, Class Plaintiff shall move the Court for preliminary approval of this Severed Settlement and seek approval from the Court to provide Notice of the Settlement at such time and on such schedule as Class Counsel determine is most appropriate, taking into account, *inter alia*, the desirability of maximizing efficiencies that may result from (a) coordinating settlements with Other Defendants and/or (b) coordinating settlements with other defendants reached in other sub-tracks in the MDL. At least ten (10) days before submission of the Preliminary Approval papers to the Court, Class Plaintiff shall provide the Bear Stearns Defendants with the most recent draft of the Preliminary Approval papers, and the

Parties shall cooperate in good faith to agree upon the language of the Preliminary Approval papers prior to submission to the Court.

38. Class Plaintiff shall draft, and the Bear Stearns Defendants shall provide reasonable cooperation in connection with the drafting of a proposed Preliminary Approval Order, containing usual and customary terms, that would give preliminary Court-approval to this Severed Settlement and authorize the issuance of Notice of this Settlement to the Class consistent with the requirements of the Federal Rules of Civil Procedure, the PSLRA and due process. In order to maximize efficiency and minimize costs, the Parties agree to use best efforts to enable the coordination of the drafting of the proposed Preliminary Approval Order and forms of Notice (which the Parties anticipate will be exhibits to the Preliminary Approval Order) with counsel for any Other Defendants in this Sub-Track that have also settled with Class Plaintiff. It is anticipated that all settling parties in this Sub-Track (including the Parties to this Settlement) will cooperate in assisting Class Plaintiff in the drafting of (i) a “summary notice” to be mailed to the Class Members that will set forth in summary fashion the terms of this Settlement and all other settlements in this Sub-Track; (ii) a “long form notice” to be posted on a website established for this Sub-Track and to be made available to be mailed upon request that will set forth in detail the terms of all settlements in this Sub-Track (including this Settlement) and will include, among other things, the Plan of Allocation; and (iii) a “publication notice” to be published in accordance with a plan of publication coordinated across multiple sub-tracks in the MDL in which settlements have been reached. The Parties hereto agree to submit to the Court any disputes concerning the interpretation or application of this paragraph.

39. The Parties hereto shall cooperate in drafting a proposed Order and Final Judgment, containing usual and customary terms, that would provide for final Court-approval of

this Severed Settlement and all other settlements in this Sub-Track. The proposed Order and Final Judgment shall contain (i) a dismissal of claims consistent with paragraph 6 above; (ii) release provisions consistent with paragraphs 7, 8, and 9 above; and (iii) bar order provisions consistent with paragraph 10 above.

SUPPLEMENTAL AGREEMENT

40. Simultaneously herewith, the Parties hereto and the other parties to the Master Agreement are executing a side letter agreement (the “Supplemental Agreement”) setting forth certain contingencies concerning opt-outs and the penalty offset provision of the Bear Stearns SEC regulatory settlement pursuant to which this Settlement may be voided by the Bear Stearns Defendants.

41. In the event of a voidance of this Settlement pursuant to the Supplemental Agreement, this Settlement Agreement shall become null and void and of no further force and effect and the provisions of paragraph 45(a) below shall apply. Notwithstanding the foregoing, this Agreement shall not become null and void as a result of an election by the Bear Stearns Defendants to exercise their option to withdraw from this Settlement pursuant to the Supplemental Agreement unless the conditions for voidance set forth in the Supplemental Agreement have been satisfied.

EFFECTIVE DATE

42. The “Effective Date” of this Severed Settlement means the first business day after the date by which all of the following shall have occurred:

- (a) the Court has entered the Preliminary Approval Order substantially in the form agreed to and submitted by the Parties pursuant to paragraph 38 above;
- (b) the “Effective Date” of the Master Agreement has occurred;

(c) the Court has certified the Class for purposes of this Settlement only and has granted final approval to this Settlement, following Notice to the Class, and a hearing as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and

(d) the Court has entered the Order and Final Judgment, as described in paragraph 39 above, in a form substantially similar to that submitted by the Parties, that shall include, among other things, the dismissals, releases and cross-claim releases consistent with paragraphs 6, 7, 8 and 9 above (or, in the event that the Court enters an order or judgment finally approving the settlement in a form that is not substantially similar to that submitted by the Settling Parties (“Alternative Judgment”), none of the Settling Parties elect to void the Settlement within thirty (30) days of entry of the Alternative Judgment) and the Order and Final Judgment or the Alternative Judgment has become Final, and, if the Bar Order is separate from the Order and Final Judgment, the Court has entered the Bar Order and the order entering the Bar Order has become Final.

ADDITIONAL VOIDANCE RIGHTS AND EFFECT OF VOIDANCE

43. The Bear Stearns Defendants shall have the right to void this settlement pursuant to the terms and conditions set forth in paragraphs 13 and 16 of the Master Agreement, but subject to any limitations on such rights contained in the Master Agreement.

44. In addition to the rights of voidance set forth in paragraphs 27, 28, 40, and 43 above, within thirty (30) days of: (a) the Court’s declining to enter the Preliminary Approval Order in any material respect; (b) the Court’s declining to preliminarily or finally certify the Class; (c) the Court’s refusal to approve this Agreement or any material part of it; (d) the Court’s declining to enter the Order and Final Judgment in any material respect; or (e) the date upon which the approved Order and Final Judgment is modified or reversed in any material respect by

the United States Court of Appeals or the Supreme Court, Class Plaintiff and the Bear Stearns Defendants shall have the right to void this Settlement and this Agreement by providing written notice to all other Parties of an election to do so. However, any judicial rulings with respect to Class Counsel's application for the Fee and Expense Award, or with respect to the Plan of Allocation, shall not be considered material to this Severed Settlement and shall not be grounds for avoidance.

45. Except as otherwise provided herein, in the event this Settlement is voided pursuant to terms of this Agreement, then:

(a) within ten (10) business days of the written notice of avoidance, the Severed Settlement Sum (less any and all amounts paid or payable towards Costs of Notice and Administration and less any and all accrued but as yet unpaid Taxes or escrow fees or costs) shall be returned to the Bear Stearns Defendants;

(b) this Settlement shall be deemed null and void with respect to the Parties hereto, and shall have no further force and effect with respect to any of the Parties;

(c) the Parties hereto shall be deemed to have reverted to their respective status in the Class Action as of the date a day prior to the date that the Parties reached their agreement in principle to settle the Class Action, October 11, 2007, and, except as otherwise expressly provided, the Parties shall proceed as if the Master Agreement and this Agreement, and any related orders entered in connection with the contemplated settlement of the claims against the Bear Stearns Defendants in this Sub-Track, had not been executed or entered; and

(d) none of the following shall be used or referred to in this Sub-Track by any of the parties to the actions in this Sub-Track for any purpose: (i) the Master Agreement

and this Severed Settlement Agreement (including any of the exhibits thereto); (ii) the forms of Notice, orders and judgments contemplated by this Severed Settlement Agreement; (iii) any communications or negotiations with respect to the Master Agreement or this Severed Settlement Agreement; (iv) any of the other severed settlement agreements entered into by the Bear Stearns Defendants in any of the other MDL sub-tracks; and (v) any information provided by any of the Bear Stearns Defendants to Class Plaintiff in connection with any aspect of this Settlement.

NO ADMISSION OF WRONGDOING

46. The Bear Stearns Defendants expressly deny any negligence, fault, liability, damages, culpability, inappropriate or improper actions, or any wrongdoing of any kind. This Agreement, whether or not it becomes Effective, and any proceedings taken pursuant to it, or any matters relating to it, directly or indirectly:

(a) shall not be offered or received against any of the Bear Stearns Released Parties as evidence for any purpose, and shall not be construed as, or give rise to any presumption, concession, or admission, or evidence thereof, by any of the Bear Stearns Released Parties with respect to the truth or falsity of any allegation by Class Plaintiff or the validity of any claim that was or could have been asserted against any of the Bear Stearns Released Parties in the Class Action in this Sub-Track or in any other litigation, or of any negligence, fault, liability, damages, culpability, inappropriate or improper actions, or any wrongdoing of any kind by any of the Bear Stearns Released Parties in any Action in this Sub-Track;

(b) shall not be offered or received against any of the Bear Stearns Released Parties as evidence of, or giving rise to, a presumption, concession or admission by any

of the Bear Stearns Released Parties of any fault, negligence, misrepresentation, omission, or any other wrongdoing by any of the Bear Stearns Released Parties with respect to any statement or written document approved or made by the Bear Stearns Released Parties, or against Class Plaintiff or any of the Class Members as evidence of any infirmity in the claims of Class Plaintiff or any of the Class Members;

(c) shall not be offered or received against any of the Bear Stearns Released Parties, or against Class Plaintiff or any of the Class Members, as evidence of, or giving rise to, a presumption, concession or admission by any of the Bear Stearns Released Parties of any negligence, fault, liability, damages, culpability, inappropriate or improper actions, or any wrongdoing of any kind by, or in any way referred to for any other reason as against any of the Bear Stearns Released Parties, in any civil, criminal or administrative action or proceeding, or any other legal proceeding, in any forum, other than as may be necessary to effectuate the provisions of this Agreement; provided, however, that the Bear Stearns Released Parties may refer to it to effectuate the protection from liability granted them hereunder;

(d) shall not be construed against any of the Bear Stearns Released Parties, or Class Plaintiff or any of the Class Members, as an admission, concession, or presumption that the Settlement Amount hereunder represents an amount that would or could have been recovered after trial; and

(e) shall not be construed against Class Plaintiff or any of the Class Members as an admission, concession, or presumption that any of their claims are without merit or that damages recoverable against the Bear Stearns Defendants in the Class Action would not have exceeded the Settlement Amount.

MISCELLANEOUS PROVISIONS

47. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

48. The Parties hereto agree to cooperate with one another in seeking Court approval of this Settlement and to use their best efforts to consummate this Settlement.

49. Each Party will exert every reasonable effort and will act reasonably and in good faith to agree upon and execute such other documentation as may be required in order to implement and obtain preliminary and Final approval by the Court of this Settlement. If the Parties are unable to agree upon the form of documentation necessary to effectuate this Settlement and to obtain preliminary and Final approval of this Settlement, the Parties agree that they will bring any unresolved disputes as to the form of documentation to the attention of the Court for resolution. No Party shall seek to evade its good faith obligations to seek approval and implementation of this Settlement by virtue of any rulings, orders, governmental report, the results of the settlement administration process, or other development, whether in the Class Action or in any other action, or otherwise, that might hereinafter occur and might be deemed to alter the relative strengths of the Parties with respect to any claim or defense or their relative bargaining power with respect to negotiating a settlement, other than as permitted in the Master Agreement or this Agreement.

50. The Parties hereto intend for this Settlement to be a final and complete resolution of all claims, causes, and causes of action asserted or which could be asserted by Class Plaintiff and the Class Members against the Bear Stearns Released Parties with respect to the Released Claims. Accordingly, Class Plaintiff and the Bear Stearns Defendants agree not to assert in any forum that the litigation was brought by Class Plaintiff or defended by the Bear Stearns

Defendants in bad faith or without a reasonable basis. The Parties hereto shall not assert any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of the Class Action. The Parties agree that the settlement consideration and the other terms of the Settlement were negotiated at arm's length in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

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

52. The administration and consummation of this Settlement shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and expenses to Class Counsel and enforcing the terms of the Master Agreement and the Severed Settlement, and all Parties submit to the jurisdiction of the Court for such purposes.

53. The Master Agreement, this Agreement and the Supplemental Agreement, and all exhibits thereto, reflect the entirety of the agreement among the Parties hereto concerning the settlement of the Class Action with the Bear Stearns Defendants, and no representations, warranties, or inducements have been made by any Party hereto concerning the Master Agreement, the Severed Settlement, or any of the exhibits thereto, other than those contained and memorialized in such documents.

54. This Agreement may be amended or modified only by a written instrument signed by, or on behalf of, all of the undersigned Parties or their successors in interest.

55. The construction, interpretation, operation, effect and validity of the Master Agreement and this Agreement, and all documents necessary to effectuate this Settlement, shall

be governed by the internal laws of the State of Maryland without regard to the conflicts of laws principles of any state, except to the extent that federal law requires that federal law governs.

56. Except as otherwise expressly provided in this Agreement, each Party shall bear its own costs and expenses in connection with the prosecution and settlement of this litigation.

57. No opinion or advice is being given or will be given to any individual Class Member concerning the tax consequences of this Settlement or any other matter by the Bear Stearns Defendants or Bear Stearns Defendants' Counsel; and nothing in the Master Agreement or this Agreement is to be construed otherwise. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

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

59. All counsel executing this Agreement warrant and represent that they have the full authority to do so, and further represent and warrant that they have the authority to take appropriate action required or permitted to be taken pursuant to this Agreement to effectuate its terms with respect to this Settlement.

60. Without further order of the Court, the Parties hereto may agree to reasonable extensions of time to carry out their obligations under this Agreement.

61. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and assigns, and upon any corporation or other entity into or with which any Party hereto may merge or consolidate, or may have merged or been consolidated, provided, however, that no assignment by any Party shall operate to relieve such Party of its obligations hereunder.

62. The waiver by one Party of any provision or breach of this Agreement by another Party shall not be deemed a waiver of any other provision or breach of the Agreement.

63. This Agreement may be executed in one or more original, photocopied, electronically scanned or facsimile counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned counsel of record, as of the dates set forth below, on behalf of each of the respective Parties set forth below:

DATED: January 19, 2010

**BERNSTEIN LITOWITZ BERGER &
GROSSMANN LLP**

By: 

Chad Johnson
William C. Fredericks
~~Jerald Bien-Willner~~
1285 Avenue of the Americas
New York, NY 10019
Telephone: (212) 554-1400

*Lead Class Counsel in the Pilgrim Class
Action, on behalf of the Pilgrim Baxter Class
Action Lead Plaintiff*

**CLEARY GOTTlieb STEEN &
HAMILTON LLP**

By: 

Lewis J. Liman
Neil P. Forrest
One Liberty Plaza
New York, New York 10006
Telephone: (212) 225-2000

*Attorneys for Bear, Stearns & Co., Inc. n/k/a
J.P. Morgan Securities, Inc., Bear, Stearns
Securities Corp., n/k/a J.P. Morgan Clearing
Corp., and The Bear Stearns Companies Inc.
n/k/a The Bear Stearns Companies LLC*

#360415.11

EXHIBIT 1
(List of Pilgrim Baxter Releasing Funds)

PBHG Core Growth Fund

PBHG Emerging Growth Fund

PBHG Growth Fund

PBHG Large Cap 20 Fund

PBHG Large Cap Growth Fund

PBHG Limited Fund

PBHG Select Growth Fund

PBHG Small Cap Fund

PBHG Strategic Small Company Fund

PBHG Technology & Communications Fund

PBHG Cash Reserves Fund