

**Exhibit 13 to Master Agreement**

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/CANARY 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 the Class Plaintiff (as defined below), the Fund Derivative Plaintiffs (as defined below), and the Canary 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, Plaintiffs (as defined below) and their counsel have concluded that the terms and conditions of this Severed Settlement (as defined below) are fair, reasonable and adequate to the Class (as defined below) and the Pilgrim Baxter Releasing Funds (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 Actions (as defined below) as against the Canary Defendants pursuant to the terms and provisions of this Agreement;

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 Canary Defendants of any fault or liability or damages whatsoever. To the contrary, the Canary Defendants have vigorously denied and continue to deny any and all wrongdoing of any kind whatsoever and any liability to anyone in the Actions, and no such defenses are waived. The Canary Defendants

believe that they have meritorious defenses to each of the Actions. The Parties have concluded that it is desirable that each of the Actions 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 the approval of the Court, as follows:

**DEFINITIONS**

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

(a) "Actions" refers collectively to the Class Action and the Fund Derivative Action;

(b) "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.;

(c) "Advisor Individual Defendants" or "Pilgrim Baxter Advisor Individual Defendants" means Gary L. Pilgrim and Harold J. Baxter;

(d) "Authorized Claimant" means any Class Member, including any Fund Shareholder who is a member of the Class, who is determined to be eligible for payment

from the Net Settlement Sum, and may include one or more of the Releasing Funds as provided for in the Plan of Allocation;

(e) "Canary Cross-Claims" means any and all claims of the Canary Defendants against the Fund Family Defendants and, as applicable, any other settling Other Defendant and all of their respective Related Parties, whether under federal or state law, whether known or unknown (including "unknown claims" as defined in the cross-releases to be exchanged between the Canary Defendants and the Fund Family Defendants pursuant to paragraph 9 below), whether suspected or unsuspected, whether accrued or unaccrued, 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 and, as applicable, any other settling Other Defendant and their respective Related Parties, allowed, assisted, cleared, brokered, financed, provided the means for, subjected investors to or otherwise facilitated 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 and, as applicable, any other settling Other Defendant 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;

(f) "Canary Defendants" means Canary Capital Partners, LLC; Canary Capital Partners, Ltd.; Canary Investment Management, LLC; and Edward Stern;

(g) "Canary Defendants' Counsel" means Kramer Levin Naftalis & Frankel LLP;

(h) "Canary Escrow Account" means the interest-bearing escrow account held at HSBC Bank into which Defendant Edward Stern paid or caused to be paid the Settlement Amount;

(i) "Canary Escrow Agents" means Bernstein Litowitz Berger & Grossmann LLP and Milberg LLP (formerly known as Milberg Weiss Bershad & Schulman LLP);

(j) "Canary MOU" means the Memorandum of Understanding, executed as of July 19, 2004 on behalf of (a) the plaintiffs and class members in the Alger, Alliance, Allianz Dresdner (PIMCO), Bank of America/Nations, Columbia, Excelsior, Federated, Franklin, Invesco/AIM, Janus, MFS, One Group, Pilgrim Baxter, Putnam, RS, Scudder and Strong Actions, on the one hand, and (b) the Canary Defendants, on the other hand;

(k) "Canary Released Parties" means the Canary Defendants and their respective Related Parties;

(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, 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. 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 (D. Md.);

(o) "Class Complaint" means the Consolidated Amended Class Action Complaint filed in the Class Action on September 30, 2004 and entered as part of the MDL in docket number 301 of *In re Alliance, Franklin/Templeton, Bank of America/Nations Funds, and Pilgrim Baxter*, Civil No. 04-md-15862-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 November 13, 2003, inclusive;

(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 Defendant" or "Pilgrim Baxter Corporate Defendant" means any 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) "Costs of Notice and Administration" refers collectively to the Costs of Notice and Costs of Administration;

(y) "Court" means the United States District Court for the District of Maryland;

(z) "Cross-Claims" refers to any and all claims of any Fund Family Defendants and, as applicable, any other settling Other Defendant against the Canary Defendants and/or any one or more of the Canary Defendants' respective Related Parties, whether under federal or state law, whether known or unknown (including "unknown claims" as defined in the cross-releases to be exchanged between the Canary Defendants and the Fund Family Defendants pursuant to paragraph 9 below), whether suspected or unsuspected, whether accrued or unaccrued, 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 Canary Defendants and/or any one or more of the Canary Defendants' respective Related Parties, allowed, assisted, cleared, brokered, financed, provided the means for, subjected investors to or otherwise facilitated 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 Canary Defendants and/or any one or more of the Canary 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;

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

(bb) "Defendants" means the Canary Defendants and all Other Defendants;

(cc) "Effective Date" has the meaning set forth at paragraph 42 below;

(dd) "Escrow Accounts" refers collectively to the Canary 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);

(ee) "Fee and Expense Award" refers generally to an award to Plaintiffs' Counsel of fees and expenses and costs in connection with this Severed Settlement, as awarded by the Court to Plaintiffs' 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 (D. Md.), and all constituent actions including, *Hall et al v. Pilgrim Baxter & Associates et al.* 04-cv-01459 (D.Md), *Simpkins v. Pilgrim Baxter & Assocs. et al.* 04-cv-1465 (D.Md.), and *Cohen v. Pilgrim Baxter & Asscos.* 04-cv-0983 (D.Md.);

(ii) "Fund Derivative Complaint" means the Consolidated Amended Fund Derivative Complaint filed in the Fund Derivative Action on September 30, 2004 and entered as part of the MDL in docket number 289 of *In re Alliance, Franklin/Templeton, Bank of America/Nations Funds, and Pilgrim Baxter*, Civil No. 04-md-15862-JFM (D. Md.);

(jj) "Fund Derivative Plaintiffs" or "Pilgrim Baxter Fund Derivative Plaintiffs" means Chuck Hall, Korshed Jungalawala, Risa Schneps, Katherine Simpkins and James Cohen;

(kk) "Fund Derivative Plaintiffs' Counsel" means Chemicles & Tikellis LLP;

(ll) "Fund Individual Defendants" or "Pilgrim Baxter Fund Individual Defendants" means John R. Bartholdson, Jettie M. Edwards, and Albert A. Miller;

(mm) "Fund Family Defendants" or "Pilgrim Baxter Fund Family Defendants" means the Pilgrim Baxter Releasing Funds, the Pilgrim Baxter Releasing Funds Trustees, the Pilgrim Baxter Advisor Corporate Defendants, and the Pilgrim Baxter Advisor Individual Defendants;



(nn) "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;

(oo) "Fund Family Escrow Agent(s)" means the escrow agent(s) appointed to maintain the Fund Family Escrow Account in connection with the settlement with the Fund Family Defendants;

(pp) "Fund Family Escrow Agreement" means such agreement setting forth the terms under which the escrow agent shall maintain the Fund Family Escrow Account;

(qq) "Fund Shareholder" or "Pilgrim Baxter Fund Shareholder" means any current shareholder of any of the Releasing Funds;

(rr) "Individual Defendant" or "Pilgrim Baxter Individual Defendant" means any Defendant that is a natural person;

(ss) "Master Agreement" refers to the Master Agreement of Settlement with Canary Defendants;

(tt) "MDL" means MDL Proceeding No. 1586 in the United States District Court for the District of Maryland;

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

(vv) "Net Settlement Sum" or "Pilgrim Baxter Net Settlement Sum" shall have the meaning set forth in paragraph 12 below;

(ww) "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;

(xx) "OAG" means the Office of the New York State Attorney General;

(yy) "OAG Restitution Escrow Account" means the interest-bearing escrow account held at HSBC Bank into which the OAG has caused the OAG Restitution Fund to be deposited;

(zz) "OAG Restitution Escrow Agreement" means the Escrow Agreement dated as of December 30, 2005 among (a) Bernstein Litowitz Berger & Grossmann LLP and Milberg LLP (formerly known as Milberg Weiss Bershad & Schulman LLP), on behalf of plaintiffs and the Classes; (b) Kramer Levin Naftalis & Frankel LLP, as counsel for the Canary Defendants; and (c) the OAG;

(aaa) "OAG Restitution Fund" refers to the \$30,000,000 paid by the Canary Defendants to the OAG pursuant to the OAG Settlement Agreement, together with any net interest earned thereon prior to the deposit of those funds into the OAG Escrow Account;

(bbb) "OAG Settlement Agreement" means the settlement agreement entered into between the Canary Defendants and the OAG;

(ccc) "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;

(ddd) "Other Defendants" refers to any and all defendants in this Sub-Track other than the Canary Defendants;

(eee) "Party" means any one of, and "Parties" means all of, the Class Plaintiff, the Fund Derivative Plaintiffs, and the Canary Defendants;

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

(ggg) "Plaintiffs" means the Class Plaintiff and Fund Derivative Plaintiffs;

(hhh) "Plaintiffs' Counsel" means Class Counsel and Fund Derivative Plaintiffs' Counsel;

(iii) "Plan of Allocation" has the meaning set forth in paragraph 28 below;

(jjj) "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 of this Severed Settlement be provided in the form and manner approved by the Court; and (iii) scheduling a hearing concerning the final approval of this Severed Settlement;

(kkk) "PSLRA" means the Private Securities Litigation Reform Act of 1995;

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

(mmm) "Released Claims" means any and all claims against the Canary 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, 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 Canary Released Parties allowed, assisted, cleared, brokered, financed, provided the means for, subjected investors to or otherwise facilitated market-timing, late-trading, or short-term or excessive trading and including, without limitation, all claims that were alleged in the Class Complaint and the Fund Derivative Complaint and all claims that could have been brought against the Canary Released 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;

(nnn) "Released Parties' Claims" means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether known or unknown (including "Unknown Claims" as defined below), that have been or could have been asserted in the Actions or any other forum by the Canary Released Parties or any of them or the successors and assigns of any of them against Plaintiffs or any Class Members or their respective attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of any of the Actions in this Sub-Track (except for claims to enforce this Severed Settlement);

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

(ppp) "Releasing Funds Current Trustees" or "Pilgrim Baxter Releasing Funds Current Trustees" means the current trustees of the Releasing Funds as of the date of the execution of the mutual cross-release with the Releasing Funds and the Releasing Funds Trustees referenced in paragraph 9 below;

(qqq) "Releasing Funds Trustees" or "Pilgrim Baxter Releasing Funds Trustees" means the Pilgrim Baxter Fund Individual Defendants and the Pilgrim Baxter Releasing Funds Current Trustees;

(rrr) "Releasing Plaintiffs Parties" means Plaintiffs and all Class Members;

(sss) "Restitution Amount" or "Pilgrim Baxter Restitution Amount" has the meaning set forth in paragraph 34 below;

(ttt) "Restitution Sum" or "Pilgrim Baxter Restitution Sum" has the meaning set forth in paragraph 34 below;

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

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

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

(xxx) "Sub-Track" or "Pilgrim Baxter Sub-Track" refers to the sub-track in this MDL which consists of the Pilgrim Baxter Class Action and Pilgrim Baxter Fund Derivative Action;

(yyy) "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 by the Severed Settlement Sum (including, without limitation, reasonable expenses of tax attorneys and accountants);

(zzz) "Unknown Claims" means any and all Released Claims which any Plaintiff or Class Member does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and any Released Parties' Claims which any Canary Defendant does not know or suspect to exist in his or its favor at the time of the release of such claims, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Severed Settlement. With respect to any and all Released Claims and Released Parties' Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs and the Canary Defendants shall expressly waive, and each Class Member and each of the other Canary Released Parties shall with respect to such claims be deemed to have waived, and by operation of the Order and Final Judgment in the Actions 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, 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 Canary Released Parties by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Claims and Released Parties' Claims was a material and separately bargained for element of this Severed Settlement.

### **SETTLEMENT CONSIDERATION**

2. Defendant Edward Stern has previously paid or caused to be paid the principal amount of \$15,000,000 into the Canary Escrow Account towards the settlement of various claims asserted against the Canary Defendants in the MDL. The sum equal to (x) 19.1% of the \$15,000,000 principal amount deposited into the Canary Escrow Account (*i.e.*, \$2,865,000) (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 Canary Escrow Account, calculated on a *pro rata* basis, less (z) the amount of any Taxes or escrow fees chargeable to the Pilgrim Baxter Settlement Amount while held on deposit in the Canary 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 hereto shall cause the Canary Escrow Agents to pay from the Canary 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 Administration and any Court-awarded attorneys' fees and litigation expenses previously paid from the Canary Escrow Account pursuant to paragraphs 19, 22, and 25 below.

### **STAY OF LITIGATION**

3. Litigation against the Canary Released Parties in this Sub-Track shall remain stayed, and neither Plaintiffs nor any Class Member shall commence, join or otherwise prosecute

any Released Claim against any Canary 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 Canary Released Parties in any sub-track in the MDL pursuant to the Federal Rules of Civil Procedure.

**CLASS CERTIFICATION**

5. Solely for purposes of this Severed Settlement and for no other purpose, the Canary 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 certify the Class Action to proceed as a class action solely for purposes of this Severed Settlement and for no other purpose.

**DISMISSAL, RELEASES AND CROSS-CLAIM RELEASES**

6. Upon the Effective Date, all Released Claims brought by or on behalf of any and/or all of the Releasing Plaintiffs Parties and their respective heirs, executors, administrators, successors and assigns against the Canary Released Parties in any case or complaint transferred to or filed in MDL-1586, including, without limitation, the Actions, including specifically, without limitation, Counts IV, V, XII and XIII of the Class Complaint, as against any and all of the Canary Released Parties, are to be dismissed with prejudice.

7. Upon the Effective Date, all Releasing Plaintiffs Parties, on behalf of themselves, their heirs, executors, administrators, successors and assigns: (i) shall be conclusively deemed to have fully, finally and forever released, relinquished, and discharged all Released Claims against



the Canary Released Parties; (ii) shall be conclusively deemed to have covenanted not to sue the Canary Released Parties in any action alleging any claim that is a Released Claim; (iii) shall be conclusively deemed to have covenanted not to knowingly and voluntarily assist in any way any third party in commencing or prosecuting any suit against the Canary Released Parties relating to any Released Claim, including any derivative suit, and (iv) shall forever be enjoined and barred from asserting the Released Claims against any Canary Released Party in any action or proceeding of any nature.

8. Upon the Effective Date, each of the Canary Defendants, on behalf of themselves, their heirs, executors, administrators, successors and assigns, shall release each and every of the 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 the Fund Family Defendants in the Actions, Class Plaintiff shall obtain (to the extent it has not already done so) a cross-claim release from each such settling defendant(s) (including, in the case of any settlement with the Fund Family Defendants, from the Releasing Funds), on behalf of themselves, their heirs, executors, administrators, successors and assigns, in favor of the Canary Released Parties, releasing any and all of their Cross-Claims against the Canary Released Parties (each a "Cross-Claim Release"). The Canary Defendants (on behalf of themselves, their heirs, executors, administrators, successors and assigns) shall provide a reciprocal and co-extensive release or releases of (i) each such settling Fund Family Defendant (including, in the case of any settlement with the Fund Family Defendants, the Releasing Funds) and its Related Parties that provides a Cross-Claim Release to the Canary Released Parties; and (ii) each other settling Other Defendant and its Related Parties that agrees to provide a Cross-Claim Release to the Canary Released

Parties. Each such Cross-Claim Release and reciprocal cross-claim release shall be structured so that it becomes effective at such time as the settlements involving the Canary Defendants and the settling Fund Family Defendants and/or other settling Other Defendants become effective. 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 Canary 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 discharge the Canary Released Parties, to the maximum extent allowed by applicable state or federal law (including the PSLRA) from any and all claims for contribution, and all claims for 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, based upon, arising out of, relating to, or in connection with the Released Claims (the "Bar Order"). The Bar Order will bar all such claims for contribution to the full extent provided by the PSLRA, and all such claims for indemnification or the like to the maximum extent allowed by applicable state or federal law (including the PSLRA): (a) against the Canary Released Parties; and (b) by the Canary 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 Agreement and the Order and Final Judgment.

**TRANSFER OF FUNDS INTO FUND FAMILY ESCROW ACCOUNT**

11. (a) Within ten (10) business days of the Effective Date, if so requested by Plaintiffs' Counsel, the Parties hereto shall cause the Canary Escrow Agents to transfer the remaining 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 Canary Escrow Account pursuant to paragraphs 19, 22, and 25 below, from the Canary Escrow Account to the Pilgrim Baxter Fund Family Escrow Account.

(b) In the event that Plaintiffs do 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, within ten (10) business days of the Effective Date, Class Counsel and the Canary Defendants shall jointly direct the Canary Escrow Agents 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 Canary Escrow Account pursuant to paragraphs 19, 22, and 25 below, from the Canary Escrow Account to such other account for the benefit of the Class and the Releasing Funds as may be designated by Class Counsel (the "Default Escrow Account"). The procedure 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 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. The Net Settlement Sum shall be distributed to Authorized Claimants as provided herein. 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 Canary 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 the Effective Date of this Severed Settlement. All Settlement Sums held in the Canary 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 and/or further order of the Court.

14. All funds held in the Escrow Accounts shall 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 the 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, so deposited, 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 once it is so deposited. 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, so deposited, as provided by paragraph 16 below. Class Counsel shall also be solely responsible for causing payment to be made from the Severed Settlement Sum, so deposited, of any Taxes owed with respect to the Severed Settlement Sum. Canary Defendants' Counsel agrees to provide promptly to Class Counsel the statement described in Treasury Regulation § 1.468B-3(e). Class Counsel, as administrator of the Severed Settlement Sum, so deposited, within the meaning of Treasury Regulation § 1.468B-2(k)(3), with the cooperation of Canary 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 Pilgrim Baxter Settlement Amount while such sum is held in the Canary Escrow Account shall be timely paid by the Canary Escrow Agents before the Severed Settlement Sum is transferred into the Fund Family Escrow Account (or Default Escrow Account), 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 Canary 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 and Fund Derivative Plaintiffs' Counsel (on behalf of themselves and on behalf of any of their respective co-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. The Canary Released Parties shall not take any position with respect to Plaintiffs' Counsel's application for a Fee and Expense Award, provided such application is consistent with the terms of this Agreement, and such matters are not the subject of any agreement between the Canary Defendants and Plaintiffs other than what is set forth in this Agreement.

19. Any Fee and Expense Award shall be paid to Class Counsel from the Canary 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 Class Counsel's obligation to make all appropriate refunds or repayments to the Canary Escrow Account (or Fund Family Escrow Account or Default Escrow Account), plus accrued interest at the same net rate as earned by the Canary Escrow Account (or the Fund Family Escrow Account or Default Escrow Account if the Canary 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. Class Counsel shall make all appropriate refunds or repayments in full no later than five (5) business days after receiving from Canary 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 Canary Defendants shall cooperate with any efforts by Plaintiffs' Counsel to schedule a single hearing date before the Court to address any matters relating to Plaintiffs' Counsel's requests for an award of attorneys' fees and expense 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 or to the Mutual Funds ("Common Benefit Counsel"), and (b) reimbursing a portion of expenses incurred by Common Benefit Counsel in connection with their cross-track work. Such sums as may be awarded to Common Benefit Counsel shall be paid from the Canary Escrow Account (or Fund Family Escrow Account or Default Escrow Account) to the law firms of Bernstein Litowitz Berger & Grossmann ("Bernstein Litowitz") and/or Tydings & Rosenberg LLP ("Tydings") as agents on behalf of all Common Benefit Counsel, 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. Any such payment made to Bernstein Litowitz or to Tydings under this paragraph shall, however, be subject to Bernstein Litowitz's obligation to make all appropriate refunds or repayments to the Canary Escrow Account (or Fund Family Escrow Account or Default Escrow Account) of amounts paid to it or to Tydings, plus accrued interest at the same net rate as earned by the Canary Escrow Account (or the Fund Family Escrow Account or Default Escrow Account if the Canary 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 Canary 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. The Parties hereto shall use their 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. The Parties shall use reasonable efforts to cooperate in formulating the most 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 the most efficient and cost effective Notice program with respect to the settlement of the Derivative Action that satisfies applicable rules and due process, and that takes into account the unique burdens and difficulties of noticing the Class and the settlement of the Derivative Action. Any disputes as to the most appropriate form of Notice shall be resolved by the Court or its designee.

24. The Canary Defendants shall use reasonable efforts to assist and support Plaintiffs in any attempt to obtain the permission of the Independent Distribution Consultant ("IDC") who has been and/or will be handling distributions to the Releasing Funds, and to obtain the permission of the Securities and Exchange Commission ("SEC"), to provide information to shareholders of the Releasing Funds about this Settlement in connection with any Fair Fund distributions to any such shareholders; provided, however, that this Settlement is not contingent on the IDC or the SEC agreeing to allow any form of notice to be sent in connection with any Fair Fund distribution.

25. Plaintiffs may pay from the Severed Settlement Sum, without further approval of the Canary Defendants or the Court, 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, Plaintiffs shall not pay more than 15% of the Severed Settlement Sum for such Costs of Notice and Administration without the approval of the Canary Defendants, which shall not be unreasonably withheld. In the event that this Settlement is voided pursuant to the terms of this Agreement, none of the Costs of Notice and Administration properly paid or payable from the Severed Settlement Sum, including any related fees, shall be returned or repaid to the Canary Defendants. The Parties hereto agree that any disputes that may arise concerning the payment of Costs of Notice or Administration shall be submitted to the Court for binding and non-appealable resolution.

26. In the event that Plaintiffs determine that the Costs of Notice will exceed twenty percent (20%) of the total settlement amounts allocated to this Sub-Track (which total settlement amounts shall include the Pilgrim Baxter Severed Settlement Sum, Pilgrim Baxter Restitution Sum, and all other settlement proceeds allocated to this Sub-Track), Plaintiffs shall have the right to delay the issuance of Notice of this Severed Settlement until such time as one or more of the defendants in this Sub-Track and/or the OAG (from the OAG Restitution Fund), have agreed to contribute additional money towards the Costs of Notice that is sufficient to fund Notice of this Severed Settlement.

**REPRESENTATION CONCERNING TRADING DATA**

27. The Canary Defendants hereby represent that to the best of their knowledge and ability they have provided Plaintiffs with full and accurate records of all trades in the Pilgrim

Baxter Mutual Funds that were made by the Canary Defendants during the Class Period (the "Trading Data"). If the Trading Data is proven to be materially inaccurate or materially incomplete with respect to any of the Pilgrim Baxter Mutual Funds, Plaintiffs shall have the right to void this Severed Settlement by providing written notice to the Canary Defendants. The avoidance right set forth in this paragraph shall expire upon the Effective Date of this Settlement. 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.

**ADMINISTRATION AND DISTRIBUTION OF THE SEVERED SETTLEMENT SUM**

28. 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 and Fund Derivative Plaintiffs' Counsel (or by the Court, or if the Court prefers, an individual appointed by the Court, in the event that Plaintiffs' Counsel cannot agree on an allocation) (the "Plan of Allocation"), subject to the approval of the Court. Neither the Canary Released Parties nor their attorneys will have any responsibility 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.

29. None of the Canary Released Parties or their attorneys shall have any responsibility for the administration of the Severed Settlement Sum and shall have no liability in connection with such administration or the allocation or disbursement of the Net Settlement Sum.

30. 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 Canary 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.

31. On the Effective Date, the Canary 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 Sum to the Canary Defendants.

32. 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 any order or proceeding or appeal relating to the Plan of Allocation shall not operate to void or cancel this Settlement, or affect the finality of any of the Court's Order(s) and Final Judgment(s) approving this Settlement or any other orders entered pursuant to this Severed Settlement.

33. At the conclusion of the settlement administration process in this Sub-Track, and subject to the Effective Date having occurred, Plaintiffs' Counsel shall seek approval of the Court to distribute the Net Settlement Sum in accordance with the terms of the Plan of Allocation.

**SETTLEMENT WITH THE OFFICE OF THE NEW YORK  
STATE ATTORNEY GENERAL**

34. Pursuant to the OAG Restitution Escrow Agreement, the OAG has caused the OAG Restitution Fund to be deposited into the OAG Restitution Escrow Account for the benefit of the plaintiff classes in the MDL. As set forth in the Master Agreement, the portion of the OAG Restitution Fund allocated to this Severed Settlement shall consist of the sum equal to (x) 19.1% of the OAG Restitution Fund originally deposited into the OAG Restitution Escrow Account (the "Restitution Amount" or "Pilgrim Baxter Restitution Amount"), plus (y) the interest earned or accrued on the Pilgrim Baxter Restitution Amount while on deposit in the OAG Restitution Escrow Account, calculated on a *pro rata* basis, less (z) the amount of any taxes or escrow fees chargeable to the Pilgrim Baxter Restitution Amount while held on deposit in the OAG Restitution Escrow Account, calculated on a *pro rata* basis. This sum ((x) plus (y) minus (z)) shall be referred to as the "Restitution Sum" or the "Pilgrim Baxter Restitution Sum."

35. Consistent with the terms of the OAG Escrow Agreement, the Pilgrim Baxter Restitution Sum shall be distributed to eligible Pilgrim Baxter Class Members along with the Pilgrim Baxter Severed Settlement Sum and all other settlement proceeds recovered in this Sub-Track in accordance with the terms of the Plan of Allocation ultimately approved by the Court in this Sub-Track. After the Effective Date has occurred and the Court has approved the distribution of the settlement proceeds in this Sub-Track to eligible Class Members, the Canary Defendants shall use their best efforts to cause the OAG to authorize the distribution of the Pilgrim Baxter Restitution Sum to eligible Pilgrim Baxter Class Members in accordance with the terms of the Court-approved Plan of Allocation.

36. Subject to the approval of the OAG, the Court-appointed Notice and/or Claims Administrator for this Sub-Track may expend a portion of the Pilgrim Baxter Restitution Sum to

fund the Costs of Notice and Administration of this Severed Settlement, provided, however, that (a) no award of attorneys' fees or expenses shall be deducted from the Pilgrim Baxter Restitution Sum, and (b) the amount of the Pilgrim Baxter Restitution Sum shall not be considered with respect to, or included in any calculation submitted in connection with, any request for an award of attorneys' fees or expenses in the Actions.

#### APPROVAL OF THE SETTLEMENT

37. Plaintiffs 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, Plaintiffs shall provide the Canary 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. The Parties hereto shall cooperate in drafting 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 to the Class consistent with the requirements of the Federal Rules of Civil Procedure, the PSLRA and due process, and Notice of the settlement of the Derivative Action that satisfies applicable rules and due process. In order to maximize efficiency and minimize costs, the Parties agree to use best efforts to coordinate 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 Plaintiffs. It is anticipated that all settling parties in this Sub-Track (including the Parties to this Settlement) will cooperate in drafting (i) a "summary notice" to be mailed to 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 are executing a "Supplemental Agreement" setting forth certain conditions under which this Settlement may be terminated by the Canary Defendants. Under the terms of the Supplemental Agreement, the Canary Defendants shall have the option to void this Settlement if shareholders who held shares representing in the aggregate

holders of a certain percentage of the total net assets during any three-month period during the Class Period of one or more Releasing Funds validly exclude themselves from the Class.

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 Canary Defendants to exercise their option to withdraw from this Settlement pursuant to the Supplemental Agreement unless the conditions 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 notice of the settlement of the Derivative Action, and following the Final Settlement Hearing; 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 (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 Parties ("Alternative Judgment"), none of the 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 Canary Defendants shall have the right to void this Settlement pursuant to the terms and conditions set forth in paragraph 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, 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 refusal to approve this Agreement or any material part of it; (c) the Court's declining to enter the Order and Final Judgment in any material respect; or (d) the date upon which the Order and Final Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court, Plaintiffs and the Canary 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 Plaintiffs' 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 voidance.

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

(a) within thirty (30) days of the written notice of voidance, 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 Canary 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 Actions as of the date a day prior to the date of the execution of the Canary MOU and, except as otherwise expressly provided, the Parties shall proceed as if the Canary MOU, the Master Agreement, and this Agreement, and any related orders entered in connection with the contemplated settlement of the claims against the Canary Defendants in this Sub-Track, had not been executed or entered; and

(d) neither the Master Agreement nor this Severed Settlement Agreement (including any of the exhibits thereto), nor the forms of Notice, orders or judgments contemplated by this Agreement, nor any communications or negotiations with respect to the Master Agreement or this Agreement, nor any of the other severed settlement agreements entered into by the Canary Defendants in any of the other MDL sub-tracks, shall be used or referred to in this Sub-Track by any of the parties to the Actions in this Sub-Track.

**NO ADMISSION OF WRONGDOING**

46. The Canary Defendants expressly deny any wrongdoing, liability or damages.

This Agreement, whether or not consummated, and any proceedings taken pursuant to it:

(a) shall not be offered or received against the Canary Released Parties as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by the Canary Released Parties with respect to the truth of any fact alleged

by any of the Plaintiffs or the validity of any claim that was or could have been asserted against Canary Released Parties in the Actions in this Sub-Track or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of the Canary Released Parties;

(b) shall not be offered or received against the Canary Released Parties as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Canary Released Parties, or against Plaintiffs or the Class Members as evidence of any infirmity in the claims of Plaintiffs or the Class Members;

(c) shall not be offered or received against the Canary Released Parties, or against Plaintiffs or the Class Members, as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Canary Released Parties, in any other civil, criminal or administrative action or proceeding, in any forum, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, the Canary Released Parties may refer to it to effectuate the protection from liability granted them hereunder;

(d) shall not be construed against the Canary Released Parties, or Plaintiffs or the Class Members, as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

(e) shall not be construed against Plaintiffs or the Class Members as an admission, concession, or presumption that any of their claims are without merit or that

damages recoverable against the Canary Defendants in the Actions in this Sub-Track 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 Actions 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, by their undersigned counsel, have arrived at the Master Agreement and this Agreement as a result of arm's-length negotiations and after consultations with their respective counsel and/or experts.

51. The Parties hereto intend for this Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Plaintiffs and the Class Members against the Canary Released Parties with respect to the Released Claims. Accordingly, Plaintiffs and the Canary Defendants agree not to assert in any forum that the litigation was brought by Plaintiffs or defended by the Canary 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 Actions. 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.

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

53. 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 Plaintiffs' 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.

54. 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 Actions with the Canary Defendants, and no representations, warranties, or inducements have been made by any Party hereto concerning the Master Agreement, this Agreement or the Supplemental Agreement, or any of the exhibits thereto, other than those contained and memorialized in such documents.

55. 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.

56. 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 conflicts of laws, except to the extent that federal law requires that federal law governs.

57. 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.

58. No opinion or advice concerning the tax consequences of this Settlement to any individual Class Members is being given or will be given by Canary Defendants' Counsel; nor is any representation or warranty in this regard made by virtue of this Agreement. 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.

59. 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 it 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.

60. 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.

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

62. 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, provided, however, that no assignment by any Party shall operate to relieve such Party of its obligations hereunder.

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

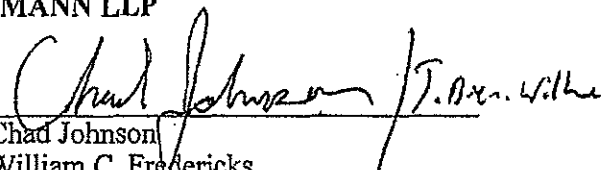
64. This Agreement may be executed in one or more original, photocopied, electronically scanned or facsimile counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

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:

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

January 19, 2010

CHIMICLES & TIKELLIS LLP

By: Nicholas E. Chimicles (by permission  
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Baxter Fund Derivative Action, on behalf of  
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Investment Management, LLC, and Edward  
Stern*

#425249.3

EXHIBIT 1  
(List of 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