

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IN RE MUTUAL FUNDS INVESTMENT
LITIGATION

MDL 1586

This Document Relates To:
In re Pilgrim Baxter (04-md-15862-04)

Case No. 04-MD-15862
(Hon. Andre M. Davis)

**STIPULATION AND AGREEMENT OF SETTLEMENT
WITH APPALACHIAN TRAILS**

This Stipulation and Agreement of Settlement (the “Stipulation”) is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of the Court, this Stipulation is entered into between Lead Plaintiff Ohio Public Employees Deferred Compensation Plan (“Lead Plaintiff”), on behalf of itself and the other members of the Class (as defined herein), and Defendants AT, L.P., a/k/a Appalachian Trails, L.P. (“Appalachian Trails”), CPTR, LLC (“CPTR”) and Michael G. Christiani (“Christiani”) (collectively, the “Settling Defendants”), by and through their respective counsel in the above-captioned action (the “Action”). Unless otherwise defined herein, capitalized terms used herein shall have the meanings as set forth below under “Definitions.”

WHEREAS:

A. On September 30, 2004, Lead Plaintiff filed the Consolidated Amended Class Action Complaint captioned *Carey v. Pilgrim Baxter & Associates, Ltd., et al.*, Civil Action No. 04-cv-01151-JFM (the “Complaint”), which seeks damages and other relief arising from alleged market-timing, late-trading, short-term and excessive trading in the PBHG Funds. The District Court denied in part and granted in part the motions to dismiss the Complaint.

B. Lead Counsel has conducted an extensive investigation relating to the claims and the underlying events and transactions alleged in the Complaint. Lead Counsel has reviewed

hundreds of thousands of pages of documents, comprehensive trading data, and other information produced by defendants in the Action;

C. Lead Plaintiff, by its counsel, has engaged in arm's-length negotiations with Settling Defendants' Counsel to secure a favorable compromise and settlement of the Action as against the Settling Defendants;

D. Based upon their investigation, Lead Plaintiff and Lead Counsel have concluded that the terms and conditions of the Settlement are fair, reasonable and adequate to the Class, and, subject to the approval of the District Court, have agreed to settle the claims raised in the Action as against the Settling Defendants pursuant to the terms and provisions of this Stipulation; and

E. The Settling Defendants have denied and continue to deny that they have committed any act or omission giving rise to any liability and/or violation of law, and state that they are entering into this Settlement to eliminate the burden, expense and uncertainty of further litigation. The Settling Parties agree that neither this Settlement nor any of its terms shall constitute an admission or finding of wrongful conduct, acts or omissions by the Settling Defendants. The Settling Parties also agree that this Stipulation shall not be construed or deemed to be a concession by Lead Plaintiff of any infirmity in the claims asserted in the Action.

NOW THEREFORE IT IS HEREBY STIPULATED AND AGREED, subject to approval of the District Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, as follows:

DEFINITIONS

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

(a) "Authorized Claimant" means any Class Member who is determined to be

eligible for payment from the Net Settlement Sum.

(b) "Bar Order" means the bar order referred to in paragraph 14 below.

(c) "Class" means all Persons who held, purchased or otherwise acquired shares in any individual series of the PBHG Funds during the Class Period. 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; (iv) any entity in which any Defendant has, or had during the Class Period, a controlling interest; and (v) 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.

(d) "Class Member" means a Person who is a member of the Class.

(e) "Class Period" means the period between and including July 30, 1999 and November 13, 2003.

(f) "Claims Administrator" means the firm(s) which shall implement the Notice program and administer this Settlement, as proposed by Lead Counsel and approved by the Court.

(g) "Consent Orders" means (i) the administrative order entered by the SEC against Pilgrim Baxter & Associates, Ltd., dated June 21, 2004, in Administrative Proceeding File No. 3-11524; (ii) the administrative order entered by the SEC against Gary L. Pilgrim, dated November 17, 2004, in Administrative Proceeding File No. 3-11739; and (iii) the administrative order entered by the SEC against Harold J. Baxter,

dated November 17, 2004, in Administrative Proceeding File No. 3-11740.

(h) "Corporate Defendant" means any Defendant that is not a natural person.

(i) "Costs of Notice and Administration" means the costs and expenses incurred in connection with the issuance of Notice and the administration of the Settlement, as approved by the District Court.

(j) "Court" or "District Court" means the United States District Court for the District of Maryland.

(k) "Defendants" means the Settling Defendants and all Other Defendants.

(l) "Effective Date" shall have the meaning set forth in paragraph 40 below.

(m) "Escrow Account" means the escrow account established by the Escrow Agreement.

(n) "Escrow Agent" means the Escrow Agent appointed in the Escrow Agreement.

(o) "Escrow Agreement" means such agreement setting forth the terms under which the Escrow Agent shall maintain the Settlement Sum.

(p) "Fee and Expense Award" means an award to Lead Counsel of fees and expenses and costs in connection with this Settlement, as awarded by the Court to Lead Counsel from the Settlement Sum.

(q) "Final," when referring to an order or judgment, means (i) that the time for appeal or appellate review of such order or judgment has expired; or (ii) if there has been an appeal, (a) that said appeal has been decided without causing a material change in the order or judgment; or (b) that such order or judgment has been upheld on appeal and is no longer subject to appellate review by further appeal or writ of certiorari.

(r) "Final Settlement Hearing" means the hearing set by the Court under Rule 23(e)(1)(c) of the Federal Rules of Civil Procedure to determine whether the proposed Settlement embodied by this Stipulation (and potentially other settlements in the MDL or in the Pilgrim Baxter Sub-Track) is fair, reasonable and adequate, and whether the Court should enter the Order and Final Judgment.

(s) "IDC" means the independent distribution consultant retained by Pilgrim Baxter & Associates, Ltd. and approved by the SEC to formulate a distribution plan and to distribute the respective payments made by Pilgrim Baxter & Associates, Ltd., Gary L. Pilgrim, and Harold J. Baxter to the SEC pursuant to the Consent Orders.

(t) "Individual Defendant" means any Defendant that is a natural person.

(u) "Lead Counsel" means the law firm of Bernstein Litowitz Berger & Grossmann LLP.

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

(w) "Notice" means notice of this Settlement as authorized by the Court, whether by direct mail, publication, internet or otherwise.

(x) "Notice Forms" means the forms of notice to be agreed upon by the Settling Parties and consistent with the terms of this Stipulation, which shall include a "summary notice," "long form notice," and "publication notice" as described in paragraph 38 below.

(y) "Order and Final Judgment" means the order and final judgment of dismissal with prejudice of the Action, in a form to be agreed upon by the Settling Parties and submitted to the Court and that shall be consistent with the terms of this Stipulation,

and that shall, among other things, approve this Settlement, enter the Bar Order, and release and discharge the Released Claims and Released Parties' Claims.

(z) "Other Defendants" means any and all defendants in the Pilgrim Baxter Sub-Track other than the Settling Defendants.

(aa) "PBHG Funds" means each of the mutual funds set forth on Schedule A attached hereto.

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

(cc) "Pilgrim Baxter" means Pilgrim Baxter & Associates, Ltd.

(dd) "Pilgrim Baxter Sub-Track" or "this Sub-Track" means the sub-track in the MDL which includes this Action.

(ee) "Plaintiff Released Parties" means Lead Plaintiff and all other Class Members and any of their respective attorneys, counsel, agents, successors, heirs and assigns.

(ff) "Plan of Allocation" shall have the meaning set forth in paragraph 28 below.

(gg) "Preliminary Approval Order" means an order of the District Court that preliminarily approves the Settlement and sets forth the means by which Notice of the Settlement shall be provided, in a form to be agreed upon by the Settling Parties and to be submitted to the Court, and that shall be consistent with the terms of this Stipulation.

(hh) "PSLRA" means the Private Securities Litigation Reform Act of 1995.

(ii) "Released Claims" means any and all claims against the Released Parties,

whether class or individual in nature, whether under federal or state law, whether known claims or Unknown Claims, whether suspected or unsuspected, whether accrued or unaccrued, concerning in any respect, market-timing, late-trading, or short-term or excessive trading during the Class Period, including any claims that the Released Parties allowed, assisted, cleared, brokered, financed, provided the means for, subjected investors to or otherwise facilitated or made material misstatements of fact or omissions concerning market-timing, late-trading, or short-term or excessive trading in the PBHG Funds during the Class Period and including, without limitation, all of the claims that were brought and all of such claims that could have been brought against the Released Parties in the Complaint concerning market-timing, late-trading, or short-term or excessive trading in the PBHG Funds during the Class Period.

(jj) "Released Parties" means (a) Appalachian Trails and CPTR, and their respective present and former employees, officers, directors, trustees, members, partners, managers, agents, counsel, predecessors, successors and assigns; and (b) Christiani.

(kk) "Released Parties' Claims" means any and all claims, whether under federal or state law, whether known claims or Unknown Claims, whether suspected or unsuspected, whether accrued or unaccrued, that have been, could have been or might be asserted in the Action or in any other forum by the Released Parties against any of the Plaintiff Released Parties, which concern, relate to or arise out of in any respect, directly or indirectly, the institution, prosecution or settlement of the Action (except for claims to enforce this Settlement).

(ll) "SEC" means the United States Securities and Exchange Commission.

(mm) "Settlement" shall mean the settlement contemplated by this Stipulation.

(nn) "Settlement Amount" means the \$500,000 in cash to be deposited into the Escrow Account by or on behalf of the Settling Defendants.

(oo) "Settlement Sum" shall have the meaning set forth in paragraph 3 below.

(pp) "Settling Defendants' Counsel" means the law firm of Murphy & Shaffer LLC.

(qq) "Settling Parties" means Lead Plaintiff, Class Members, and the Settling Defendants.

(rr) "Taxes" means: (i) all federal, state and/or local taxes of any kind on any income earned by the Settlement Sum; and (ii) the reasonable expenses and costs incurred by Lead Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Sum (including, without limitation, reasonable expenses of tax attorneys and accountants).

(ss) "Unknown Claims" means any and all Released Claims which Lead Plaintiff or any other Class Member does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and any Released Parties' Claims which the Settling Defendants or any other Released Party does not know or suspect to exist in his, her or its favor at the time of the release of such claims, which if known by him, her or it might have affected his, her or its decision(s) with respect to this Settlement. With respect to any and all Released Claims and Released Parties' Claims, the Settling Parties stipulate and agree that upon the Effective Date, Lead Plaintiff and the Settling Defendants shall expressly waive, and each other Class Member and each other Released Party shall with respect to such claims be deemed to have waived, and by operation of the Judgment in the 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, 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 Settling Parties acknowledge, and the other Class Members and the other 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 Settlement.

SETTLEMENT CONSIDERATION

2. The consideration for the Settlement consists of (a) the \$500,000 Settlement Amount (including any interest earned thereon) to be paid, or caused to be paid, by the Settling Defendants into the Escrow Account in accordance with paragraph 3 below; and (b) the dismissal and release of claims provided for herein, all as set forth in further detail below.

THE SETTLEMENT AMOUNT

3. Within fifteen (15) business days of the date of this Stipulation, the Settling Defendants shall pay, or cause to be paid, the Settlement Amount into the Escrow Account for the benefit of the Class. The Settlement Amount plus any income or interest earned thereon shall be referred to as the "Settlement Sum".

4. The Settlement Sum shall be used to pay: (i) any Taxes or escrow fees; (ii) Costs of Notice and Administration; and (iii) any Fee and Expense Award. The balance of the Settlement Sum after the above payments shall be the "Net Settlement Sum."

5. The Net Settlement Sum shall be distributed to Authorized Claimants as provided herein. The Settlement Sum 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 Stipulation and/or further Order of the Court.

6. All funds held in the Escrow Account 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.

7. The Settling Parties agree that the Settlement Sum is intended to be part of a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Lead Counsel, as administrator of the 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 Settlement Sum. Such returns shall be consistent with this paragraph and in all events shall reflect that all Taxes with respect to the Settlement Sum shall be paid out of the Settlement Sum as provided by paragraph 8 below. Lead Counsel shall also be solely responsible for causing payment to be made from the Settlement Sum of any Taxes owed with respect to the Settlement Sum. Settling Defendants' Counsel agree to provide promptly to Lead Counsel the statement described in Treasury Regulation § 1.468B-3(e). Lead Counsel, as administrator of the Settlement Sum within the meaning of Treasury Regulation § 1.468B-2(k)(3), with the cooperation of Settling 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 the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

8. All Taxes paid or payable on interest earned on the Settlement Sum shall be timely paid by the Escrow Agent from the Escrow Account pursuant to the disbursement instructions set forth in the Escrow Agreement, and without prior Order of the Court.

9. In no event shall the Settling Defendants have any responsibility whatsoever for making any filings (including elections, statements or returns) for the Settlement Sum or the Escrow Account, for paying any costs associated therewith, or for paying any Taxes due upon income derived from the Settlement Sum or for administration of the Escrow Account.

10. This is not a claims-made settlement. As of the Effective Date, the Settling Defendants shall not have any right to the return of the 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.

DISMISSAL AND RELEASES

11. This Settlement shall finally and fully dismiss the Action as against the Settling Defendants only, and shall finally and fully dispose of any and all Released Claims and Released Parties' Claims, as set forth herein.

12. Upon the Effective Date:

(a) all claims brought by Lead Plaintiff (on behalf of itself and all other Class Members) against the Settling Defendants in the Action are to be dismissed with prejudice;

(b) Lead Plaintiff and all other Class Members, on behalf of themselves, their heirs, executors, administrators, successors and assigns, shall be deemed to have released and forever discharged the Released Claims, and shall forever be enjoined from prosecuting the Released Claims, against the Released Parties;

(c) the Released Parties, on behalf of themselves, their heirs, executors, administrators, successors and assigns, shall be deemed to have released and forever discharged the Released Parties' Claims, and shall forever be enjoined from prosecuting the Released Parties' Claims, against the Plaintiff Released Parties.

CROSS-CLAIM RELEASES

13. In connection with any settlement(s) reached with any Other Defendants, Lead Plaintiff shall endeavor in good faith to procure a cross-claim release from each such Other Defendant releasing the Released Parties from any and all claims relating to the purchase, sale or retention of shares of any of the PBHG Funds during the Class Period (including any claims relating to market-timing, late-trading or short-term or excessive trading). The Settling Defendants shall provide a reciprocal cross-claim release of like scope of any such settling Other Defendant, and, to the extent requested by any such settling Other Defendant, any one or more of such Other Defendant's present and former employees, officers, directors, trustees, members, partners, managers, agents, counsel, predecessors, successors and assigns, that provides a cross-claim release to the Released Parties. Each such cross-claim release ("Cross-Claim Release") shall be structured so that it becomes effective at such time as this Settlement and the settlement

with the relevant Other Defendant(s) become effective, and may be held in escrow by Lead Counsel until the relevant settlements become effective. If such a settling Other Defendant that is not a natural person is willing to provide a Cross-Claim Release on behalf of not only itself, but also on behalf of its present or former employees, officers, directors, trustees, members, partners, agents, counsel, predecessors, successors or assigns, then the Settling Defendants shall provide a reciprocal cross-release on behalf of both itself and, as appropriate, its present and former employees, officers, directors, trustees, members, partners, agents, counsel, predecessors, successors and assigns. In no event shall the effectiveness of this Settlement be contingent upon Lead Plaintiff obtaining a Cross-Claim Release from any settling Other Defendant.

BAR ORDER

14. The Settling Parties will request that the Court, as part of the Judgment, enter a bar order in accordance with the Private Securities Litigation Reform Act of 1995 (the "PSLRA") that will discharge the Released Parties from any and all claims for contribution by any person or entity, whether arising under state, federal, local, statutory or common law, foreign law, or any other law, rule or regulation, based upon, arising out of, relating to, or in connection with the Settled Claims. To the full extent provided by the PSLRA, the bar order will bar all claims for contribution: (a) against the Released Parties; and (b) by the Released Parties against any person or entity other than any person or entity whose liability to the Class has been extinguished pursuant to this Stipulation and the Judgment.

STAY OF LITIGATION

15. Litigation against the Settling Defendants shall be stayed, and the Settling Parties shall seek an Order from the Court providing that neither Lead Plaintiff nor any other Class Member may commence, join or otherwise prosecute any Released Claim against any Released

Party in any other proceeding, pending approval of this Settlement by the Court. Notwithstanding the foregoing, the Released Parties shall remain subject to reasonable discovery requests from Lead Plaintiff in connection with ongoing litigation in the MDL against parties other than the Released Parties.

CLASS CERTIFICATION

16. The Settling Parties stipulate to the certification of the Class, and approval of Lead Plaintiff as class representative, for Settlement purposes only. The Settling Parties shall request that the Court shall order, and the Notice shall reflect, that the claims of putative Class Members arising prior to July 30, 1999 have been extinguished by the applicable statutes of limitations.

ATTORNEYS' FEES AND EXPENSES

17. Lead Counsel (on behalf of itself and on behalf of any other class counsel representing class plaintiffs in the Action under the direction of Lead Counsel) will apply to the Court for payment of a reasonable Fee and Expense Award from the Settlement Sum, in an amount not to exceed the amount referred to in the Notice Forms approved by the Court, including accrued interest thereon (net of taxes) at the same net rate and for the same period as earned by the Settlement Sum (until paid). Neither the Settling Defendants, nor any other Released Party, shall take any position with respect to Lead Counsel's application for a Fee and Expense Award, provided such application is consistent with the terms of this Stipulation, and such matters are not the subject of any agreement between the Settling Defendants and Lead Plaintiff other than what is set forth in this Stipulation.

18. Any Fee and Expense Award shall be paid to Lead Counsel from the Settlement Sum immediately upon 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 Lead Counsel's obligation to make appropriate refunds or repayments to the Escrow Account, plus accrued interest at the same net rate as earned by the Escrow Account, if this Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the Fee and Expense Award is reduced or reversed. Lead Counsel shall make the appropriate refund or repayment in full no later than ten (10) business days after receiving from Settling 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.

19. To the extent practicable, the Settling Defendants shall cooperate with any efforts by Lead Counsel to schedule a single hearing date before the Court to address any matters relating to Lead 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.

20. 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 terminate 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 termination of this Settlement.

21. The Settling 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 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 the expenses incurred by Common Benefit Counsel in connection with their cross-track work.

NOTICE PROGRAM

22. The Settling Parties shall cooperate in good faith to formulate the most efficient and cost effective Notice program that satisfies Rule 23 of the Federal Rules of Civil Procedure, the PSLRA and due process.

23. As set forth in paragraph 38 below, the Settling Parties will propose reasonable efforts to provide Notice of the Settlement. The Settling Parties shall use their best efforts to minimize the Costs of Notice and Administration of the Settlement, and to cooperate with one another, the SEC and third parties to facilitate the dissemination of the Notice Forms. These efforts shall include, to the extent feasible and requested by Lead Plaintiff, utilizing existing channels of communication with current shareholders of the PBHG Funds to provide notice of the Settlement, including, without limitation, distributing Notice of the Settlement on a folded, one-page 11" x 17" sheet included in regular or periodic mailings to current shareholders. In addition, to the extent reasonably proposed by Lead Plaintiff, the Settling Defendants and Settling Defendants' Counsel will work together with Lead Plaintiff and Lead Counsel to coordinate the notice and administration of this Settlement with the notice and administration of settlements that have been or may be reached with Other Defendants in this Sub-Track, as well as with the notice of one or more other settlements in the MDL.

24. Lead Plaintiff may pay from the Settlement Sum, without having to obtain further approval of the Settling Defendants or the Court, the Costs of Notice and Administration actually incurred in connection with this Settlement. In the event that the Settlement is terminated, Costs of Notice and Administration incurred and paid or payable from the Settlement Sum shall not be

returned to the Settling Defendants. Prior to the Effective Date, Lead Plaintiff shall not pay more than \$100,000 from the Settlement Sum for Costs of Notice and Administration without the approval of the Settling Defendants, which shall not be unreasonably withheld. The Settling Parties 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.

25. The Settling Defendants agree to share with Lead Plaintiff all information relating to the distribution of proceeds by the IDC or the proposed distribution of IDC settlement proceeds that the Settling Defendants have in their possession, custody or control, including the names and addresses of likely Class Members and their trading data, and such other information as may be reasonably necessary to provide notice, devise a Plan of Allocation, and distribute the settlement funds.

26. The Settling Defendants shall also use reasonable efforts to assist and support Lead Plaintiff in any attempt to obtain the consent of the IDC and the SEC to provide information to Pilgrim Baxter mutual fund shareholders about this Settlement in connection with any fair fund distributions or other mailings to any such shareholders by the IDC or SEC; 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 or other communications.

REPRESENTATION CONCERNING TRADING DATA

27. The Settling Defendants hereby represent that to the best of their knowledge and ability they have provided Lead Plaintiff with full and accurate records in their possession, custody or control of all trades in all open-ended Pilgrim Baxter mutual funds that were made by the Settling Defendants during the Class Period (the "Trading Data"), in accordance with

discovery requests served by Lead Plaintiff in this Action. If the Trading Data is proven to be materially inaccurate or materially incomplete with respect to any Pilgrim Baxter mutual fund, Lead Plaintiff shall have the right to void this Settlement by providing written notice to the Settling Defendants, and the Settling Defendants shall have the right to object to any such attempt on the ground that they complied with Lead Plaintiff's requests for information. The voidance right set forth in this paragraph shall expire upon of the Effective Date of this Settlement. 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 42 below shall apply.

ADMINISTRATION AND DISTRIBUTION OF THE SETTLEMENT SUM

28. All payments from the Net Settlement Sum to Authorized Claimants shall be determined by the Claims Administrator pursuant to a plan of allocation to be proposed by Lead Counsel (the "Plan of Allocation"), subject to the approval of the Court. Neither the 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. This Settlement shall be administered by the Claims Administrator proposed by Lead Counsel and appointed by the Court. The Settling Parties understand that in the interests of efficient administration it is expected that Lead 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 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.

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

31. It is understood and agreed by the Settling Parties 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 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 terminate or cancel this Settlement, or affect the finality of any of the Court's Order and Final Judgment approving this Settlement or any other orders entered pursuant to this Settlement.

32. It is anticipated that at least certain Class Members will be required to submit a proof of claim ("Proof of Claim"), in a form to be agreed upon by the Settling Parties, in order to be eligible to participate in the distribution of the Net Settlement Sum. Each Class Member who submits a Proof of Claim will be required to submit such supporting documents as are designated therein, including appropriate records of the Class Member's holdings in the PBHG Funds during the Class Period, or such other documents or proof as the Claims Administrator or Lead Counsel, in their discretion, may deem acceptable. Lead Counsel shall have the right, but not the obligation, to advise the Claims Administrator to waive what Lead Counsel deem to be formal or technical defects in any Proofs of Claim submitted in the interests of achieving substantial justice. It is anticipated that the Proof of Claim will be available for downloading from the website to be established for this Sub-Track and will also be made available for mailing upon request.

33. Notwithstanding the foregoing paragraph, if technically feasible based on sufficiently reliable trading and holdings data provided by the Pilgrim Baxter fund family defendants or other financial intermediaries to the Claims Administrator, payments from the Net Settlement Sum to certain Class Members may be calculated by the Claims Administrator pursuant to the Plan of Allocation using the share trading and holdings data made available to the Claims Administrator. Such payments may be made by the Claims Administrator to Authorized Claimants by mail to their last known addresses, without requiring Authorized Claimants to submit a Proof of Claim form or to take any other affirmative action.

34. At the conclusion of the settlement claims administration process in this Sub-Track, and subject to the Effective Date having occurred, Lead Counsel shall move the Court, on notice to Settling Defendants' Counsel, for an order approving the administration determinations of the Claims Administration accepting and rejecting Proof of Claims and calculating payment amounts for Authorized Claimants, and authorizing the distribution of the Net Settlement Sum to Authorized Claimants in accordance with the terms of the Plan of Allocation.

35. Except for its obligation to pay the Settlement Amount, the Settling Defendants shall have no liability, obligation or responsibility for the administration of the Settlement or the allocation or disbursement of the Net Settlement Sum.

APPROVAL OF THE SETTLEMENT

36. The Settling Parties agree that they shall not present this Settlement to the Court for preliminary or final approval (including approval of the proposed Notice Forms and Notice program) until all of Lead Plaintiff's claims in the Pilgrim Baxter Sub-Track against non-dismissed defendants have been resolved, either through a proposed settlement agreement, trial or otherwise.

37. At the appropriate time for presentation of this Settlement to the Court in accordance with the preceding paragraph, Lead Plaintiff shall move the Court for preliminary approval of this Settlement and seek approval from the Court to provide Notice of the Settlement at such time and on such schedule as Lead 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. The Settling Defendants shall not oppose Plaintiffs' motion for preliminary approval.

38. The Settling Parties shall cooperate in drafting a proposed Preliminary Approval Order, containing usual and customary terms that would give preliminary Court-approval to this Settlement and authorize the issuance of Notice to the Class consistent with the requirements of the Rule 23 of the Federal Rules of Civil Procedure, the PSLRA and due process. In order to maximize efficiency and minimize costs, the Settling Parties agree to use best efforts to coordinate the drafting of the proposed Preliminary Approval Order and Notice Forms (which the Settling 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 Lead Plaintiff. It is anticipated that all settling parties in this Sub-Track (including the Settling Parties) will cooperate in drafting (i) a "long form notice" to be posted on a settlement website established for this Sub-Track and to be made available for mailing to shareholders upon request and that will set forth in detail the terms of all settlements in this Sub-Track (including this Settlement) and that will include, among other things, the Plan of Allocation; (ii) a "summary notice" to be mailed to Class Members that will set forth in summary fashion the terms of all settlements in this Sub-Track (including this Settlement) and refer shareholders to the settlement website and/or

the 800 number(s) for more detailed information concerning the settlements, including the long form notice, and that will be capable of being printed on a mailer consisting of a single, folded 11" x 17" sheet printed on both sides; and (iii) a "publication notice," which shall be published in various national and regional media in accordance with a plan of publication coordinated across multiple sub-tracks in the MDL in which settlements have been reached. The Settling Parties agree to submit to the Court any disputes concerning the interpretation or application of this paragraph.

39. The Settling Parties shall cooperate in drafting a proposed Order and Final Judgment, containing usual and customary terms that would provide for final Court-approval of this Settlement (and which may provide for final Court-approval of any other settlement(s) in this Sub-Track). The proposed Order and Final Judgment shall contain (i) a dismissal of claims consistent with paragraph 12(a) above; (ii) release of claims provisions consistent with paragraphs 12(b) and 12(c); and (iii) bar order provisions consistent with paragraph 14 above, and may contain provisions relating to any Cross-Claim Releases exchanged pursuant to paragraph 13 above.

EFFECTIVE DATE

40. The "Effective Date" of this Settlement means the first business day after the date by which all of the following shall have occurred:

- (a) the Court has preliminarily approved the Settlement, consistent with the terms hereof, and entered the Preliminary Approval Order substantially in the form agreed to and submitted by the Settling Parties pursuant to paragraph 38 above;

(b) 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 the Final Settlement Hearing;

(c) 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; 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 Settling Parties (or, in the event that the Court enters an order or judgment finally approving this 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 terminate 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.

TERMINATION RIGHTS AND EFFECT OF TERMINATION

41. In addition to the right of termination set forth in paragraph 27 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 Stipulation 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, Lead Plaintiff and the Settling Defendants shall have the right to terminate this Settlement by providing written notice to the other Settling Party of an election to do so. However, any judicial rulings with respect to Lead Counsel’s application for the Fee and Expense Award, or with respect to the Plan of Allocation, shall not be considered material to this Settlement and shall not be grounds for termination.

42. Except as otherwise provided herein, in the event this Settlement is terminated pursuant to terms of this Stipulation, then:

(a) within fifteen (15) calendar days of the written notice of termination, the Settlement Sum, less all Costs of Notice and Administration actually incurred and paid or payable from the Settlement Sum in accordance with the terms of this Stipulation, shall be returned to the Settling Defendants;

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

(c) the Settling Parties shall revert to their respective positions in the Action immediately prior to the Settling Parties' agreement in principle to settle the Actions and, except as otherwise expressly provided, the Settling Parties shall proceed as if this Stipulation and any related orders entered in connection with the contemplated settlement of the claims against Released Parties in this Sub-Track, had not been executed or entered; and

(d) this Stipulation (including any of the attachments hereto), the Notice Forms and forms or orders and judgment contemplated by this Stipulation, and any communications or negotiations with respect to this Stipulation, shall not be used or referred to in this Sub-Track by the Settling Parties.

NO ADMISSION OF WRONGDOING

43. The Settling Defendants expressly deny any wrongdoing, liability or damages. This Stipulation, whether or not consummated, and any proceedings taken pursuant to it:

(a) shall not be offered or received against the Settling Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession,

or admission by the Settling Defendants with respect to the truth of any fact alleged by Lead Plaintiff or the validity of any claim that was or could have been asserted against the Settling Defendants in the Action in this Sub-Track or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of the Settling Defendants;

(b) shall not be offered or received against the Settling Defendants 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 Settling Defendants, or against Lead Plaintiff or any other Class Member as evidence of any infirmity in the claims of Lead Plaintiff or any other Class Member;

(c) shall not be offered or received against the Settling Defendants, or against Lead Plaintiff or any other Class Member, 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 the Settling Defendants, 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 Stipulation; provided, however, that if this Stipulation is approved by the Court, the Settling Defendants may refer to it to effectuate the protection from liability granted them hereunder;

(d) shall not be construed against the Settling Defendants, or Lead Plaintiff or any other Class Member, 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 Lead Plaintiff or any other Class Member as an admission, concession, or presumption that any of their claims are without merit or that damages recoverable against the Settling Defendants in the Action in this Sub-Track would not have exceeded the Settlement Amount.

MISCELLANEOUS PROVISIONS

44. All of the attachments hereto are hereby incorporated by reference as though fully set forth herein.

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

46. Each Settling 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 Settling 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 Settling Parties agree that they will bring any unresolved disputes as to the form of documentation to the attention of the Court for resolution. No Settling 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 Action or in any other action, or otherwise, that might hereinafter occur and might be deemed to alter the relative strengths of the Settling Parties with respect to any claim or defense or their relative bargaining power with respect to negotiating a settlement, other than as permitted in this Stipulation.

47. The Settling Parties, by their undersigned counsel, have arrived at this Stipulation

as a result of arm's-length negotiations and after consultations with their respective experts.

48. Each Settling Defendant contributing to the Settlement Amount warrants as to himself or itself that, as to the payments made by or on behalf of him or it, at the time of such payment that the Settling Defendant made or caused to be made pursuant to paragraph 3 above, he or it was not insolvent, nor did nor will the payment required to be made by or on behalf of him, her or it render such Settling Defendant insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This warranty is made by each such Settling Defendant and not by such Settling Defendant's Counsel

49. If a case is commenced in respect of the Settling Defendants (or any insurer that contributed funds to the Settlement Amount on behalf of the Settling Defendants) under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver, conservator, or other fiduciary is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining that the payment of the Settlement Amount, or any portion thereof, or any other payment by or on behalf of the Settling Defendants for the benefit of the Class constitutes a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited by others into the Escrow Account then, at the election of Lead Counsel, the Settling Parties shall jointly move the Court to vacate and set aside the releases given and the Order and Final Judgment entered in favor of the Released Parties pursuant to this Stipulation, which releases and Order and Final Judgment shall be null and void, and the Settling Parties shall revert to their respective positions in the Action immediately prior to the Settling Parties' agreement in principle to settle, and the Settlement Sum shall be returned as provided in paragraph 42(a) above.

50. The Settling Parties intend for this Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Lead Plaintiff or any other Class Member against the Released Parties with respect to the Released Claims. Accordingly, Lead Plaintiff and the Settling Defendants agree not to assert in any forum that the litigation was brought by Lead Plaintiff or defended by the Settling Defendants in bad faith or without a reasonable basis. The Settling Parties 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 Action. The Settling Parties agree that the settlement consideration and the other terms of the Settlement were negotiated at arm's-length in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

51. Until such date as this Stipulation is publicly filed, unless Settling Defendants' Counsel or Lead Counsel concludes that disclosure is required by applicable law, regulation or order of a court or administrative body having competent jurisdiction over one or more of the Settling Parties, the Settling Parties shall not disclose the substance of any negotiations leading to this Stipulation, or any of its terms, without prior notice to and consent of Lead Counsel and Settling Defendants' Counsel. Lead Counsel and Settling Defendants' Counsel shall not unreasonably withhold consent to publication of the fact of the execution of this Stipulation. Lead Counsel and Settling Defendants' Counsel shall provide drafts of any proposed press releases concerning this Stipulation to each other and shall consider in good faith any comments of the other prior to the dissemination of such a press release. Notwithstanding anything else in this Agreement, Settling Defendants may disclose this Stipulation to their counsel and accountants, and to the investors in CPTR, LLC and Appalachian Trails, L.P., and the investors' agents, attorneys, and accountants. The Settling Defendants agree to take reasonable steps to

inform those persons of the obligations of confidentiality imposed by this Agreement.

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 Lead Counsel and enforcing the terms of this Stipulation, and the Settling Parties submit to the jurisdiction of the Court for such purposes.

54. This Stipulation, and all attachments hereto, reflect the entirety of the agreement among the Settling Parties concerning the settlement of the Action with the Settling Defendants, and no representations, warranties, or inducements have been made by either Settling Party concerning this Stipulation, or any of the attachments hereto, other than those contained and memorialized in such documents.

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

56. The construction, interpretation, operation, effect and validity of this Stipulation, 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 Stipulation, each Settling Party shall bear its own costs and expenses in connection with the prosecution and settlement of the Action.

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 the Settling Defendants; nor is any

representation or warranty in this regard made by virtue of this Stipulation. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

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

60. All counsel executing this Stipulation warrant and represent that they have the full authority to do so on behalf of the respective clients listed under their signatures below, and further represent and warrant that they have the authority to take appropriate action required or permitted to be taken pursuant to this Stipulation to effectuate its terms with respect to this Settlement.

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

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


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

Stipulation.

64. This Stipulation 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.


Dated: September 23, 2009

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SCHEDULE A

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